TWO

# BLACK OR WHITE?

## *Asian Americans' Challenges to Segregated Schools*

In the summer of 1904, the Kentucky state school board found itself faced with an unprecedented question: Are Filipinos "Negroes"? This legal quandary was not part of the conversation earlier in the year when the DuPont Manual Training High School in Louisville agreed to admit four Filipino students into its engineering program. However, come July, the question of Filipinos' racial classification loomed large over the approaching school year. Based on Kentucky segregation laws, "coloreds" (synonymous at this time in Kentucky with "Negroes") were not permitted to attend school with whites. That much was clear, but whether or not Filipinos were colored was not so easy to discern. The school board agreed that Filipinos were certainly not white, but did that make them legally black? Throughout the early twentieth century, the state of Kentucky was not alone in its puzzlement over the racial classification of Asian Americans when it came to education.

The interstitial identity of Asian Americans living in the Jim Crow South often created unique challenges and obstacles to their achieving an education. While southern schools were often segregated along the lines of "colored" or "Negro" and "white," Asian Americans did not always fall neatly into one of these categories.[1] As more Asian Americans began to populate areas of the South during the 1920s and 1930s as families grew, the question of which school they should legally attend became more prominent and pressing. Although Asian Americans did not identify as black, southern law often lumped them together with "coloreds," barring them from attending white schools. However, determining whether or not Asian Americans were colored was also problematic considering the wide range of racial categories, including "Mongoloids," "Malays," "Orientals," or simply "yellows." These classifications were

certainly not "white," but did they warrant Asian Americans sending their children to all-black schools?[2]

The answers to this question varied, making southern school segregation both challenging and malleable for Asian Americans. Some (particularly Chinese Americans) who lived in the South used a strategy of "white accommodation" to attempt to gain access to white schools and other areas of white life, sometimes successfully and other times not.[3] In many ways, the experiences of Chinese Americans and other Asian Americans in the South were similar to those of other immigrant groups, such as the Italians, who could be simultaneously "white" and "immigrant other," depending on their location.[4] However, flattening the legal strategies and tactics of Asian Americans for attacking school segregation diminishes the complex challenges that Asian Americans presented to school districts, local and state law officials, and even the Supreme Court. "White" was often a murky concept, and Asian Americans living in the South tried to capitalize on the often fluctuating definitions of racial categories. Rather than argue for their whiteness, Asian Americans more often sought to prove their "Orientalness" or strove for a noncolored status, working with their "other" identity rather than fighting against it. Asian Americans believed that access to white schools was a fundamental right, and they challenged the binary racial system by attempting to fashion a third category defined by ethnicity rather than race.

Appealing to their foreign national status was also a legal strategy used by Chinese Americans to avoid sending their children to colored or black schools. In this case, not being an American citizen had benefits, as the Chinese claimed that they were protected under special privileges granted by treaties between the United States and China. Arguing that they were *nationally* Chinese was in some ways a more straightforward tactic supported with legal documents. Adding immigrant status to the study of school segregation further complicates a history of racism and discrimination that is usually summed up with *Brown v. Board of Education*. Discrimination in education was never simply about skin color or racial conceptions, but the legal status of Chinese immigrants brought questions of citizenship, national belonging, and political identity into debates surrounding race and ethnicity in southern schools.

The most notable example of Asian Americans' run-ins with southern segregation is the 1927 *Lum v. Rice* Supreme Court case. In 1924, Jeu Gong Lum, a Chinese immigrant merchant living in the Mississippi Delta, sent his two daughters, Martha and Berda (the oldest), to the school closest to his house, Bolivar County's Rosedale Consolidated High School, as he had done the previous year. When the school refused to admit Martha and Berda

that year, Gong Lum launched a fight against the local school board, arguing that his daughters were "pure Chinese" and therefore not subject to the local segregation laws because they were neither white nor colored. The case eventually worked its way through the legal system to the U.S. Supreme Court, where the judges declared that Chinese Americans are indeed colored and should attend colored schools in Mississippi.

While the Gong Lum case remains the most cited Asian American experience with school segregation in the South, a companion appeal, the 1927 *Bond, State Superintendent of Education v. Tij Fung* case is equally important in defining the varied experiences of Asian Americans with Jim Crow education. In 1927, Joe Tin Lun, an American-born boy of Chinese descent, was denied admission to a whites-only school in Dublin, Mississippi, prompting his guardians to sue the school district for denying him his immigrant rights as guaranteed in special treaties between China and the United States. The Mississippi Supreme Court dismissed Lun's appeal on the grounds that ethnic and immigrant status meant little in terms of racial classifications. The Lun case is often overlooked, but it reveals an interesting point of comparison and contrast with *Lum*, as do the legal battles of Chinese Americans and other ethnic groups across the South before *Brown v. Board*.

Placing the legal strategies found in the Lum and the Lun cases alongside those of other Asian Americans in the South exposes the complex picture of ethnicity, immigration, and otherness brought to light by school segregation. Rather than focusing on one group, such as Chinese Americans in Mississippi (the standard example in the existing literature), this chapter places Chinese Americans in Mississippi in a broader context through comparisons with the experiences of Chinese Americans in Georgia, Filipino Americans in Kentucky, and Japanese Americans and Chinese Americans in New Orleans, Texas, and parts of Florida. In some instances, Asian American students attended white schools and colleges without much resistance, even when the law demanded otherwise. In others, Asian Americans chose to construct their own private schools instead of being drawn into the identity games of choosing which "side" to fight on. However, as the Lum and Lun cases as well as the experiences of Chinese Americans of Georgia demonstrate, others emphasized either their "nonblackness" (rather than "whiteness") or their Chinese ethnicity and/or immigrant status to protest laws that required their children to attend the underfunded colored schools. If Chinese American students were forced to attend the colored schools by law, then Chinese Americans would be classified as colored, threatening the distance that Chinese Americans attempted to maintain between themselves and African

Americans. Unlike *Brown v. Board*, the legal fight against discrimination in education determined the racial status of Asian Americans and cast doubt on their ability to dictate their own identity in the black-and-white South.

## THE FLUIDITY OF RACE IN SCHOOL SEGREGATION

Although segregation was certainly not unheard of in other parts of the nation, southern states ardently codified and enforced their Jim Crow laws in education. In the decades before and even after *Brown v. Board*, a racial line drawn between blacks and whites characterized the educational experiences of generations of children in the South. Asian Americans were also no strangers to school segregation. While there was often no de jure segregation at the state level along the West Coast, there was also no explicit legislation preventing local school boards from prohibiting Asian American and other minority students from attending white schools. In 1906, Japanese American parents in San Francisco objected when the city attempted to segregate their children from whites in public schools. In response to the outcry, the Japanese government entered into the Gentlemen's Agreement with America in 1907 that secured a guarantee from President Theodore Roosevelt that Japanese in the United States would receive basic rights and protections in exchange for Japan's limiting the number of visas it approved for laborers seeking to enter the United States. This halted legally enforced segregation in San Francisco for Japanese Americans; but other forms of de facto segregation abounded in California, and the agreement did not address discrimination for other Asian Americans across the country. The terrain of segregation in education was varied on the West Coast: Some Asian American students attended public schools that were majority Asian, others received their education from private tutors or from Chinese- or Japanese-language schools, and many attended integrated schools where possible. However, the stigma of being "Oriental" affected the educational experiences of many students.[5]

For Asian Americans living in the South, seeking an education at a segregated school was often a conundrum. Not only did Asian Americans experience extreme fluctuations in school policies from one state to the next, but discrepancies often arose at the local levels even within the same state. Take, for example, the cases of a group of Filipino students and a Chinese student who attempted to enroll in white high schools in two separate cities in Kentucky during the early 1900s. In 1904, four *pensionados* (students from the Philippines invited to attend high schools and colleges in the United States on scholarships from the American colonial government) applied and

were initially accepted to the DuPont Manual Training School in Louisville. Filipino and American colonial officials designed the Pensionado Program in 1903 as an opportunity for "Americanization" of Filipinos who chose to pursue their education at American high schools and colleges and universities. In doing so, colonial leaders hoped that Filipinos who took advantage of the government-funded scholarships would develop a deep appreciation of American values, traditions, and democracy and return to the Philippines after their studies in order to assume positions in the colonial bureaucracy. The Pensionado Program was also an attempt to cultivate good relations between the colony and the metropole and overcome lingering revolutionary tendencies after the American victory in the Spanish-American War of 1898 and the subsequent American annexation of the islands. High schools and colleges across the country readily admitted *pensionados* as an opportunity to bring culture and worldliness to their students. In Kentucky, however, the problem of race far outweighed the potential for cultural growth and improved colonial relations.[6]

While the DuPont School initially supported the Pensionado Program and agreed to admit the students earlier in the year, by July 1904 questions of the racial status of the Filipino Americans created distress for the local administration as well as the state school board. Under Kentucky law (as in many other southern states), schools were segregated along lines of "white" and "colored." "Colored" was a catchall term meant to encompass any race that was not considered white. If race was so easily demarcated, then the DuPont administration would have determined the Filipinos to be colored and therefore unfit to attend the white high schools in the state. But such determination was not easy when it came to Filipino Americans. Many southerners in the early 1900s had never before encountered Filipinos beyond pictures and souvenirs sent back from the Philippines or images taken of the "savage" Filipino exhibit at the 1904 St. Louis World's Fair. Filipinos were people to be studied and ogled from afar, and the possibility of them arriving in Kentucky no doubt forced the school board to think carefully about whether or not their decision to admit the students was wise. As the meeting between the colonial subjects and the white students and teachers of DuPont loomed, the administration worried about a potential clash with parents and other white residents.[7]

In an attempt to solve the problem of the *pensionado* students, the school board investigated the racial standing of Filipino Americans in a segregated system. More specifically, the debate over the Filipino Americans' racial status was not whether or not they were white or "colored" but whether or not the *pensionados* were "Negroes." Under the revamped Kentucky segregation law

(or the Day Law) of 1904, it was "unlawful to maintain or operate any college, school, or institution where persons of the white and colored races are both allowed to attend," and colored institutions were required to be located at least twenty-five miles from the white schools.[8] The Day Law was clear in stating that African Americans were colored, but it was less so regarding Filipinos Americans. Because the school board associated "colored" with "Negro," it had the task of determining whether or not Filipino Americans were black according to the law. This was no easy undertaking and required the assistance of a professor from the University of Kentucky who investigated the state's Jim Crow laws to decipher the Filipinos Americans' standing.[9]

After analyzing the racial implications of the Day Law, Professor H. Mark declared that while the law ordered schools to separate white from colored or Negro students, "colored" also included "Indians" and "other brown races." The conclusion that Filipinos were a "brown" race was no surprise: Many Americans often referred to Filipinos as "brown brothers" or, more paternally, their "little brown brothers" in describing their colonial relationship to the United States as well as their skin color. However, the "little brown brothers" presented a challenge to the new Day Law. Was there a difference between "brown" and "colored," or "brown" and "Negro"? The Filipino American students forced the state school board and scholars to grapple with this puzzle in the state's segregation and education policies. Apart from Native Americans, the presence of other races besides African Americans was small, with virtually no other Filipinos in the state at the time of the debate over the students' racial status.[10] Essentially, the Filipino American students presented to both the school board and the state of Kentucky the first real technical problem with the supposedly easy segregation of schools between white and colored. However, because the ultimate conclusion was that brown races are indeed colored, the school board refused to admit the Filipino American students and cited the Day Law as justification for their decision. While it is not clear what happened to the four Filipino American students who were turned away from DuPont, the stir they created led to the establishment of a new racial category in Kentucky—other brown races—to be used for any future legal complications that might arise in school policy. The creation of the "brown" race was useful for the school board but lacked any special privileges for the Filipino Americans, who were grouped with African Americans.[11]

But the state school board's decision in the case of the Louisville Filipino Americans did not match the outcome of a later battle between a Chinese American boy and an all-white school in Covington, Kentucky, which demonstrated that not all Asian Americans were "colored" after all.

In 1913, fourteen-year-old American-born Pong Dock sought enrollment in the all-white First District School. What followed after Pong Dock's request was a debate similar to that involving the Filipino Americans in Louisville. Rather than focusing on whether or not the boy was Negro, however, the main goal of the Covington school board entailed deciphering whether or not Pong Dock fell into the category of "colored." The population of Chinese Americans in northern Kentucky during the 1900s was small, and most of the inhabitants were single males. But as the number of American-born Chinese children increased, the question of where they should go to school in the segregated state became an obsession. Although Pong Dock was the first Chinese American to request admission to the white school, white parents and residents of Covington argued that he should attend the colored school because he was not of European descent and therefore not white. On the contrary, Pong Dock's parents argued that he was certainly not black and therefore belonged in the white school rather than the colored school in Covington.[12]

The question of Pong Dock's racial status and its effect on which school he attended grew into a statewide problem. "What shall be done with Pong Dock?" became a concern for not only the Covington school board but also the state of Kentucky. An article in the *Hartford Herald* explained to readers that the "little chubby fellow" was an "oriental" and the first Chinese American to request admission to the Covington public schools. Unlike Pong Dock, other Chinese American parents schooled their own children or sent them to Chinese-language schools in nearby Cincinnati. "Oriental" was a racial category that the author of the news article used and one that, presumably, Kentuckians were aware of, but this classification did little to clarify which school Pong Dock should attend. His background and residential history also added a layer of complexity to his case. While he was born in America, he relocated to China with his parents when he was three years old. In September 1913, his parents sent him back to America to live with family friend Sing Lee so that he would be "brought up and educated as an American citizen." Because Pong Dock spent a good number of his formative years in China, Kentuckians viewed him as being "educated there as a Chinaman," negating his American status and emphasizing his Oriental otherness. Not only was Pong Dock's racial classification up for grabs, but his ethnicity also complicated his educational standing in the state's attempts to determine his legal race. His predicament had "the state of Kentucky scratching its legal head" over whether or not a Chinese boy belongs in a white or colored school.[13]

The official determination of Pong Dock's admission and racial status became a game of hot potato, with various officials eager to avoid ruling on

the complicated question. When white parents protested against Pong Dock's potential admission, First Covington's Superintendent Homer O. Sluss elected to defer to the authority of the Covington Board of School Commissioners. Unable to come to an agreement on whether or not they should permit Pong Dock to attend the white school, the board then turned the matter over to the Kentucky attorney general, James Garnett. While Sluss, the school board, and other parties focused heavily on determining Pong Dock's race, the attorney general also concentrated on bringing Pong Dock's citizenship status into the debate. In a letter to Superintendent of Public Instruction Barksdale Hamlett, Garnett explained that "under the laws of the United States, a Chinese immigrant cannot become a citizen of the United States, therefore, he cannot become a citizen of this state. So far as I'm informed, there are only two races that can become citizens of the United States, i.e., the white race and the negro race." Garnett emphasized that "there is no provision whereby a Mongolian may become a citizen of this country."[14] Although Pong Dock was an American citizen based on his birth in the United States, his "Mongolian" race more generally was denied naturalization under existing legislation and was also denied admission to the United States under the Chinese Exclusion Act, passed in 1882 and renewed indefinitely in 1902.

Unlike African Americans who fought against Jim Crow laws that violated their given rights as American citizens, individuals like Pong Dock had to fight to prove that they had citizenship rights in the first place, struggling to overcome generalized stereotypes that all Asian Americans, even those born in America, were racially and legally others. Despite the 1898 Supreme Court ruling in *United States v. Wong Kim Ark* that emphasized that the birthright citizenship component of the Fourteenth Amendment applied to all persons born in the United States, including Chinese Americans, many Americans still doubted the citizenship of Asian Americans because of their racial and ethnic backgrounds.[15] As such, Mongolians were not and could not become American citizens and were only aliens with limited rights and privileges. As Garnett explained, "Generally speaking, we owe to aliens no duty, except to protect their person and their property, and if the State of Kentucky should deny to a person of the Mongolian race, the right to attend public schools, it could not be said that the State was depriving citizens the equal protection of the laws."[16] For Garnett, Pong Dock's citizenship and civil rights were irrelevant; it was Pong Dock's race, specifically his "Mongolian-ness," that gave Garnett pause.[17]

Garnett then moved on to a more convoluted explanation of how Pong Dock's citizenship affected his racial standing in Kentucky by drawing on the

significance of states' rights in relation to education. Despite a Mongolian's inability to naturalize, "the State has the right to care for and educate the members of alien races if it so desires." Garnett explained that "it is necessary to consider the Constitution of Kentucky . . . in order to ascertain whether the right to attend the common schools of the State is based upon citizenship or the right to citizenship."[18] In the exceptional case of Pong Dock, who was both a Mongolian and an American citizen, if the state took only his citizenship into consideration rather than his race, then he "would have no right to attend our public schools, because our Legislature has provided for schools only for the white race and the colored race and the word, 'colored,' as used in our Constitution and Statute relates to the negro race."[19] While Pong Dock was a citizen (despite being of Mongolian descent), he was, according to the Kentucky constitution, a member of neither the white nor the black race and therefore was not entitled to an education in the state. There were no state-funded Mongolian or Chinese schools, and although Pong Dock did hold American citizenship, he was not a citizen of the state of Kentucky and therefore the state could decide whether or not it wanted to accommodate him. If he were either white or colored (which is how the Louisville district described the Filipinos), it would be easier to decide which school he should attend. In this case, Pong Dock's in-between racial status and American citizenship did little to advance his case with the attorney general.

Garnett used his labyrinthine reasoning to meditate on the legal puzzles of Pong Dock's position rather than to offer a clear solution to the problem facing the school district. Despite his argument that Pong Dock's race meant that he could not attend either a white or a colored school in the state, Garnett emphasized that in Kentucky, "there is no provision for a separate school for any of the races, except the white race and the negro race. If a child belongs to any race and resides within the State of Kentucky, in good faith, and comes within the provisions of the School Law, it is entitled to the benefits of the public school. . . . Children shall all attend the public school, regardless of race."[20] Because public education was a privilege for all children in Kentucky and Mongolians were not specifically mentioned as colored, then "there is nothing in [the] law that would prevent the Chinese boy to whom you refer, from attending either the white or the colored school, and in my opinion, it is left to the Board of Education as to which school he shall attend."[21] Not only did the attorney general rule that the question be returned to the school board; he also suggested that "if the board should be of the opinion that it was not best for [Pong Dock] to attend either of the schools, I think the board might make some reasonable regulation to have the child privately

instructed, so that he would receive the equal benefits of the public school."[22] Unlike the school board in Louisville, the attorney general did not consider Mongolians as part of the colored race because they were not black, and in the state of Kentucky, the education decisions for those who were neither white nor black were to be decided at the local level. The Covington school board agreed to allow Pong Dock to attend the white school, and despite the pushback from parents and other white residents of Covington who attempted to persuade the boy to attend the colored school, other Asian Americans were able to attend white or colored schools after Pong Dock's experience. Although Pong Dock's racial and citizenship status initially presented a roadblock, his "Mongolian-ness" worked in his favor with the attorney general later on.

The above examples of how two different groups of Asian Americans could be considered "brown/colored" and "Mongolian/not black" within the same state raises an interesting point on the perplexing presence of Asian Americans in the South. Even African Americans across the country took note of Pong Dock's case and the ruling that he was not colored and placed it in context with other segregation laws. How could Chinese be "noncolored" enough to attend white schools in Kentucky, while in Nebraska and other states around the country, Chinese were considered "colored" and unable to wed whites?[23] In many cases, the state and local decisions on education did not always line up with decisions on other matters, including miscegenation. A Chinese American boy might be considered noncolored and able to attend a white school, while in the same state a Chinese American man could be classified as colored for the purposes of preventing interracial marriage. Even in terms of education, there was wide variation from state to state. Under state law in Louisiana, schools were segregated along white and colored lines; however, unlike in the state of Kentucky, there was never a challenge to the binary system by Asian Americans. Legally, for educational purposes, Asian Americans were neither colored nor white, and there was no official ruling or discussion of which school the students should attend. As a result, the few Chinese Americans and Japanese Americans living in New Orleans during the early twentieth century often attended white schools or organized their own private institutions for learning. Similarly, in Tennessee and Arkansas, Asian Americans were legally allowed to attend white schools, unlike in neighboring Mississippi, where Asian Americans were considered colored. In the Jacksonville area of Florida and other communities along the Atlantic coast of the state, small Japanese American farming communities created their own schools for Japanese children because under Florida law

"the schools for white children and the schools for Negro children shall be conducted separately." In some cases, no mention of Asians, Orientals, or Mongolians meant that Asian American children were free to attend white schools, particularly if the population in a given area was small enough to not raise concern among white residents. Unlike miscegenation, allowing Asian Americans into white schools was often not deemed an immediate threat to white society. Jim Crow laws were clear in stating the limitations for black students, but when it came to Asian Americans, there was more maneuverability and access to white schools throughout the South. Such maneuverability, however, only lasted so long as the population of Asian Americans within larger communities remained low.[24]

The prospect of one or two Chinese American or Japanese American students attending white schools typically did not produce any mass outcries from citizens between the late 1800s and the 1920s, but when the population of Asian Americans in southern communities began to creep up past three or four families and the number of Asian American children grew by the mid-1920s, trouble began for the Asian students. This slight yet noticeable population growth coincided with a growing wave of wariness and suspicion toward Asians and "new" immigrants from southern, central, and eastern Europe. Anti-immigrant sentiment shaped immigration policy between 1917 and 1924, when Congress passed a series of exclusionary and restrictive immigration laws. Although the Chinese Exclusion Act had been in place since 1882, a growing population of Japanese immigrants on the West Coast prompted calls from inhabitants and legislators in California and Washington for exclusion of Japanese and, more generally, Asians. In addition to a variety of acts prohibiting immigrants who were illiterate, suspected of criminal activity, and/or mentally or physical ill from entering the United States, Congress also passed the Immigration Act of 1917, which created the Asiatic Barred Zone and added Indians to a growing list of Asian immigrants who were not permitted to settle in the United States. At that point, Japanese immigrants were exempt from the list due to diplomatic relations between Japan and the United States. In 1924, however, Congress passed the National Origins Act and severely restricted the number of "undesirable" immigrants coming from southern and southeastern Europe in favor of "traditional" immigrants from western and northern European countries. The 1924 act also excluded all Asians (Japanese included) from entering the United States, granting exceptions only for temporary migrants such as students, state officials, and clergy. The rash of exclusionary and restrictive immigration acts following World War I reflected rising anti-immigrant and anti-Asian attitudes across

the country that reached the smallest schoolhouses in the South and affected the small bands of Chinese students who attended them.

No greater example of the increasing challenges to Asian Americans pursuing their education in white schools can be found than in the case of Chinese Americans. They were the Asian American group with the largest population across southern states during the early to mid-twentieth century, and their slowly increasing numbers bred growing resentment against their children attending white schools. Chinese Americans were once seen as an acceptable oddity, a group of others who tended to their businesses in the black sections of town and generally kept to themselves, save the one or two children who attended white schools, but their racial identities came under fire during the mid-1920s and early 1930s. Suddenly, school boards began to bar Chinese Americans from attending the schools where they had been fellow students with white children, forcing them into the colored schools for African Americans. Chinese Americans were once racial others, but now local schools and white parents attempted to reclassify them as colored. Although previous skirmishes between students such as Pong Dock and the Kentucky school board were settled informally through reviews by the attorney general or local school boards on a case-by-case basis, in states with larger Asian populations, local, state, and federal courts were increasingly tasked with enumerating the specific legal rights of "in-between" people.[25]

## "OF PURE CHINESE DESCENT": MISSISSIPPI CHINESE AMERICANS AND SCHOOL SEGREGATION

Before there was Oliver Brown, the father from Topeka, Kansas, who would become the figurehead in the battle against school segregation with the 1954 *Brown v. Board* Supreme Court case, there was Jeu Gong Lum, a Chinese immigrant grocery store owner from Rosedale, Mississippi. Like other Chinese living in the Mississippi Delta region in the 1920s, Gong Lum had a comfortable life. Gong Lum entered the United States through the Canadian border in the Pacific Northwest in an attempt to avoid immigration officials after the Chinese Exclusion Act and eventually found his way to the Mississippi Delta, where a distant relative lived. Once settled, Gong Lum met and married a Chinese woman, Katherine Wong, who had lived in the Delta since she was a child. Gong Lum traveled a route similar to that of other Chinese looking to leave the West Coast and its stringent anti-alien land laws that prohibited Asians from owning property.[26] No such legislation existed in Mississippi,

and Chinese seeking new business ventures in the state (the home of the largest Chinese population in the South at the time) joined other Chinese who were descendants of the hired Chinese laborers who came to Arkansas during the late 1800s to work in agriculture. During the late nineteenth and early twentieth centuries, the Chinese population was low (only 243 Chinese were counted in the entire state of Mississippi, according to the 1900 census), and Chinese were generally tolerated by both white and black residents. They filled an economic niche by living and setting up shop as grocers in the black neighborhoods of Delta towns and earning the toleration if not the outright respect and acceptance of the local white population. So long as the Chinese were not competing for labor or business with whites and abided by the rules and customs of the state and local communities, they were often prosperous and comfortable in their new homes.[27]

The relative economic comfort of Chinese American merchants in the Delta allowed families to grow and raise American-born children, as the Lums did when their daughters, Berda and Martha, were born in Rosedale in 1913 and 1915, respectively. Between 1900 and 1920, the Chinese American population in Mississippi increased to 364, a growth attributed to more settlement but also to a rising number of children born to Chinese immigrants in the state. In accordance with the Mississippi constitution of 1890, all children were to attend public schools, and throughout the early twentieth century the few Chinese Americans in Mississippi towns often attended the local white schools with few objections from white parents. As in other states, Mississippi state law segregated white students from colored students, but residents and school officials presumed "colored" to mean "black." Since Chinese American students were not black, they initially attended white schools throughout the Delta and the state. No school boards or state officials had formally ruled at this point that Chinese Americans were colored, and for Chinese American parents, sending their children to the white schools was not a choice as much as a reaction to Mississippi culture and racism. While the white schools were better-maintained than the colored schools and had obvious advantages for achieving a higher level of education, Chinese American parents' desires to keep their children out of the black schools also reflected the often uneasy tensions between Chinese and blacks in Mississippi. Although blacks were often customers at Chinese groceries and Chinese Americans willingly accepted their money, the relationship between the two races rarely went beyond that of clerk and customer. Chinese Americans were well aware of the stigma that African Americans carried, and, also aware of the prejudice against Asian Americans as demonstrated on the West Coast, they believed

Students and instructor Miss Mary Ethel Dismukes at the Greenville Chinese School, established by Superintendent E. E. Bass following his concern for the lack of education opportunities for Chinese Americans, March 29, 1938. *Courtesy of the Archives and Records Services Division, Mississippi Department of Archives and History.*

that generally avoiding personal interactions with African Americans was a smart strategy in the South. More personal relationships between Chinese Americans and African Americans developed, particularly among the early male Chinese settlers, who intermarried with black women in the Delta, but by the 1920s, such behavior was shunned by the Chinese American community. Chinese Americans who willingly entered into relationships with African Americans could expect to be ostracized by the rest of their small, tight-knit community, a fate that could spell social and economic ruin. One Chinese American woman explained that "there are two circles of Chinese in the town between which a decided line is drawn. The set who are 100 per cent Chinese do not associate with those who mingle with Negroes or intermarry with them."[28] Chinese American parents attempted to maintain the distance between themselves and African Americans by avoiding the colored schools. Their self-segregation was not so much an attempt to classify themselves as white as much as it was a way to be sure that they were not classified as black or colored by the rest of society. For Chinese Americans, their Orientalness took them far in Mississippi, and they tried to hold on to this status and the

social and economic benefits it provided for as long as possible, be it through preserving their ethnic purity or by keeping their children away from the colored schools.

As Gong Lum would find out, however, sending his children to white schools became more difficult as the Chinese American population grew in the Delta. When the number of American-born Chinese in Mississippi increased, more whites noticed the subsequent increase in the number of Chinese Americans attending their schools. Although growth was modest, it was noticeable, and white parents grew wary of a potential Asian American population explosion on the model of the West Coast and increased interaction between their children and Chinese American students. White parents began to object to the presence of Chinese Americans in their children's schools, and principals and other school administrators noted the complaints. Rapidly, local schools began to classify Chinese Americans as colored and barred them from attending white institutions. In the case of young Martha Lum, the transformation from Oriental to colored happened not overnight but, rather, within a few hours.[29]

On September 2, 1924, Gong Lum's daughters, nine-year-old Martha and her older sister, Berda, prepared for their first day at the Rosedale Consolidated High School (a combination of elementary, junior high, and high school levels for white Rosedale residents). This was both Martha's and Berda's second year at Rosedale, and upon arriving at the school that morning, they registered and attended their first lessons. The day was uneventful until after lunch, when their teacher sent them to the main office, where Martha and Berda learned that they would have to return home because they could no longer attend Rosedale. Superintendent J. H. Nutt informed Martha and her sister that Rosedale was for white students, and since they were not white, they would have to attend the colored school. Martha and Berda began their school day as Chinese American or Oriental pupils and left as colored students.[30]

When Martha and Berda returned home and explained to their puzzled father and mother what had happened, Gong Lum and his wife became furious. What had changed? Martha and Berda were not colored when they left for school that morning. Also, Gong Lum's daughters had attended Rosedale Consolidated the year before with no problems. Gong Lum was a quiet man who tended to his own affairs and did not go looking for trouble, so he could not imagine any personal reasons for the school sending his children home. Perhaps the newly enacted Immigration Act of 1924, which barred Asians from entering the United States, combined with anti-Asian hysteria on the West Coast convinced the school officials that now Martha and Berda were of

Undated photo from the Works Progress Administration study of Chinese Americans in Mississippi depicting a Chinese Sunday school in Bolivar County, Mississippi. *Courtesy of the Archives and Records Services Division, Mississippi Department of Archives and History.*

a different ethnic or racial class. All he knew was that by kicking Martha and Berda out of the school, Superintendent Nutt declared them to be colored, which was an affront to Martha and Berda, their father, and their family's identity and respectability. While it is difficult to uncover Gong Lum's personal opinions on African Americans, his desire not to be considered colored and to continue sending his children to white schools demonstrates that Gong Lum was content with the level of tolerance that he received from both white and black residents of Rosedale. Now, however, the school's decision to send Martha and Berda home challenged his racial standing in the community and, as he would argue, his and his children's basic civil rights. Gong Lum began his three-year battle against the school's actions in 1924 and initiated a fight for Chinese American rights in the United States by challenging Mississippi's Jim Crow laws.[31]

Unlike later civil rights activists who would argue for school integration, Gong Lum's strategy rested on pursuing his own rights, not those for all minorities. He understood the ramifications for his family if they were designated as on par with African Americans. Gong Lum knew that he could

never be seen as white in Mississippi, but he could legally fight to be seen as Chinese, a race not specifically mentioned in statewide segregation laws and unclassifiable according to Mississippi's binary racial system. In order to challenge Rosedale Consolidated, Gong Lum turned to respected law firm Brewer, Brewer, and McGeehee, based in nearby Clarksdale and known for taking on more controversial cases. As a noted merchant, Gong Lum was able to afford his attorneys and work closely with them to file a lawsuit against the Rosedale school board on October 29, 1924. Gong Lum's attorney chose to focus on Martha's right to attend Rosedale Consolidated, as she was the more "gifted" pupil among the two girls.[32]

Gong Lum and his attorneys appeared before Judge William Alcorn Jr. at the Circuit Court of Bolivar County on November 5 and presented an argument against the school board that emphasized Martha's right to attend white schools based on her ethnicity. Martha's citizenship was not in dispute. Both the judge and the Rosedale school board knew that the young girl was a citizen of both the United States and Mississippi and, as such, was entitled to a public education. What was at stake in this case was determining if Rosedale was correct in sending Martha home from the white school because she was supposedly colored. Gong Lum's attorneys argued that Martha was indeed not white, but she was also "not a member of the colored race nor is she of mixed blood, but she is of pure Chinese origin or descent" as well as a "good, clean, moral girl" and deserving of a just education. Because Martha was not colored, she did not belong in the colored school, and there were no schools established and maintained by Bolivar County solely for Chinese American children. By denying Martha admission, the Rosedale school board discriminated against her and denied her an education, which was a violation of the "privileges and immunities" granted to her under both the U.S. and the Mississippi state constitutions. The school board's actions also violated Martha's right to equal protection under the law as guaranteed by the Fourteenth Amendment. As was a Chinese American living in Mississippi, Martha's ethnicity allowed her to attend white schools, and her citizenship ensured her access to an education equal to that of other noncolored residents of Bolivar County and Mississippi. Gong Lum and his attorneys did not argue that Martha should be considered white (which would be impossible to prove) but, rather, that she was of "pure" Chinese descent and unqualified for the colored schools. Gong Lum and his lawyers also avoided using "Oriental" or "Asiatic" or any other terms that would group Martha with others of Asian descent. Her identity rested not on being seen as Oriental but as being seen by the court specifically as Chinese to prevent anyone from classifying her as part

of the colored race. Martha's ethnicity bought her options that her race did not. Because "Chinese" was a classification that Mississippi state law did not address, Martha was uncolored. Socially and culturally, Chinese Americans may have desired to blend in with white society, but legally they were well aware that making such an argument for the sake of defying Jim Crow laws was foolish and unpromising.[33]

As Martha's father, Gong Lum also argued that the Rosedale school board violated his own rights and privileges as a Chinese national living in the United States. Although he was not a citizen, the Mississippi constitution, the U.S. Constitution, and previous treaties between China and the United States provided him with the right to send his daughter to school. Since the Rosedale school expelled Martha, Gong Lum was prevented from fulfilling his duty to the state of Mississippi by educating his children. In this instance, not only did Rosedale Consolidated force Gong Lum to violate Mississippi law, but it also denied him rights and privileges guaranteed by the Fourteenth Amendment. Gong Lum argued that he did not receive equal protection under the law when Rosedale Consolidated refused to admit his daughter. Because Rosedale was the only school in the area that Chinese American students could attend (since they were not colored, according to the plaintiffs), Gong Lum was not allowed to practice his fatherly duties and rights as did other parents who lived in Bolivar County.

Gong Lum also argued that as a Chinese immigrant, he held special privileges, beyond constitutional protections and rights, that were also violated by Rosedale Consolidated's decision. Gong Lum referred to rights "guaranteed . . . by the treaties of the United States with the Chinese government." Although he did not specify, Gong Lum referenced the Burlingame Treaty, an 1868 agreement between the United States and China that granted "most favored nation" status to Chinese immigrants who came to America. This treaty ensured that like Americans living in China, Chinese in the United States would "enjoy entire liberty of conscience and shall be exempt from all disability or persecution on account of their religious faith or worship." While the religious lines of the treaty were designed to protect Christian missionaries and Americans living in China, there were also guarantees to protect Chinese against discrimination, exploitation, and violence in America. Rosedale Consolidated also violated, along with the general provisions of the Fourteenth Amendment, this treaty by denying specific rights granted to Chinese from the American government. While the Chinese Exclusion Act of 1882 was in effect by the time of the case, Gong Lum argued that the privileges and rights mentioned in the Burlingame Treaty still applied to Chinese who

did live in the United States. Rosedale's decision to send Martha home not only went against Gong Lum's citizenship rights and duties but also undermined federal authority over the rights of Chinese immigrants.[34]

Gong Lum's contributions as a taxpayer to the state of Mississippi also played a role in his case. Public schools in Mississippi were funded by a combination of poll taxes, property taxes, and other various taxes at the time. Gong Lum did not vote or pay a poll tax, but he did pay property and business taxes that contributed to the state and local funds for education. Because he was a taxpayer and helped to maintain Rosedale Consolidated, he was entitled to send his daughter there regardless of her ethnicity. As a working and contributing resident, Gong Lum had economic rights for providing Martha with an education. A denial of his right to do so would be to discount the role of Lum in the local economy, which ordinarily few others in Rosedale would object to. Gong Lum was a productive, taxpaying, and law-abiding member of society, an identity that, similar to the emphasis on Martha's good and moral character, Gong Lum and his attorneys emphasized in order to downplay any suspicion or prejudice that might be harbored against the Lums because they were Chinese.[35]

In response to Gong Lum's claims, Superintendent Nutt, the other members of the Rosedale Consolidated school board, and the superintendent of education of the state of Mississippi insisted that they had done nothing wrong or illegal by dismissing Martha. E. C. Sharp, the assistant attorney general of Mississippi, represented the school board in court and argued that "the complainant is a member of the Mongolian, or yellow race, and therefore, not entitled to attend the schools provided by the law in the State of Mississippi for the children of the white, or Caucasian race."[36] Here Martha was not Chinese (as her father hoped she would be seen by the court) but, rather, "Mongolian," making her clearly not white and therefore unqualified to attend Rosedale Consolidated. She may not have been colored in the sense of being black, but according to Sharp and the school board, she was colored as part of the "yellow" race. While Gong Lum was fighting to have his daughter recognized as Chinese rather than colored, Sharp relied on convincing the court that Martha's Chineseness made her colored. Because Martha was colored, the school board's decision to send Martha home and prohibit her return was a "full, complete, and adequate remedy at law," and to do otherwise would be "contrary to the statutes and violation of the constitution of the State of Mississippi."[37] If the school board allowed Martha to go to school at Rosedale, it would be committing an illegal act under Mississippi law that forbade colored children from attending white schools. Plus, there was "within the reach of Martha, and accessible to her, a school of equal facilities and

advantages which she might attend."[38] The school board's defense rested on proving that Martha was not Chinese but, rather, colored, and thus the school board simply followed the proper procedure for ensuring segregation.

Judge Alcorn ruled in favor of Martha Lum. The court determined that Martha was not a member of the colored race under Mississippi law, and therefore she was entitled to attend the white school, particularly because there were no publicly funded schools for Chinese American students in the state. Simply put, Rosedale was "the only school conducted in the said district available to her as a pupil," and to deny her admission would be to deny her the rights and privileges guaranteed to her by the Fourteenth Amendment. The court also called into question Rosedale's initial agreement to let Martha attend the school and then their sudden dismissal of the girl, pointing out irregularities in the reasoning of the school board. The Bolivar County Circuit Court recognized that Martha was Chinese American, was not colored, and therefore was allowed to attend Rosedale in spite of the school board's erroneous decision.

Gong Lum's success in Bolivar County was similar to that of the Tape family in 1885. Two Chinese immigrants, Joseph Tape and Mary Tape, became furious when the San Francisco school board prevented their daughter, Mamie Tape, from attending the local white school. In response, the Tapes sued the school board and won their case: Mamie was allowed to attend the white school because California state law only listed "filthy or vicious habits" and "contagious or infection diseases" as reasons for prohibiting a student from attending a school. Mamie Tape possessed neither of these qualities, and when the school board appealed the lower court's decision to the California Supreme Court, the higher court upheld the ruling in favor of the Tapes. Gong Lum's insistence that his daughter was of good character and a pure girl reflected some of the anxieties that Chinese American parents had when it came to their children being perceived as dirty or foul. For Gong Lum, however, his success in proving that his daughter was Chinese and not colored is what led to a favorable ruling.[39]

While the Bolivar County Court's decision was a victory for Gong Lum, it was not a victory for all Chinese Americans in Mississippi and certainly not a victory for all Asian Americans. This case focused specifically on Martha Lum and her right or lack thereof to attend a white school. Geography, demographics, and her father's ability and desire to hire a legal team to fight on her behalf were contributing factors to this case, possibly more so than race. The Chinese American community in Rosedale was small, Gong Lum held a certain amount of economic standing in the community, and the white residents

typically tolerated his presence. He had the means to hire an attorney and the social capital to use the court system to his advantage in order to send his daughter to a white school. Gong Lum fought for Martha and his own personal rights and privileges as a Chinese immigrant with an American-born child living in the South; he did not fight for all Asian Americans or even all Chinese. Gong Lum did not so much wish to challenge the system of segregated education in Mississippi as much as he wished to challenge the racial classification of his daughter. Similar to African Americans who initiated lawsuits for private property, educational access, and other rights prior to *Brown v. Board*, Gong Lum was an individual with his own series of complaints directed toward the Rosedale school board. An affront to his daughter's Chineseness was an attack on his own standing in the community. If white schools in Bolivar County continued to admit Chinese American students following Gong Lum's case, then the court's decision might usher in more opportunities for minority students; however, Gong Lum's victory at the moment was his alone.[40]

Unfortunately, Gong Lum's justice would be short lived. Following the decision on the Lum case, state attorney general Rush Knox filed an appeal on the Bolivar County Court decision and was granted a motion to advance before the supreme court of Mississippi in January 1925. Knox argued that Alcorn's decision should be reconsidered as soon as possible because "many children are now being prevented from attending their schools" as a result of Martha's readmission to Rosedale Consolidated.[41] Knox's concern for the white children of Rosedale stemmed from the outrage of white parents over the county court's ruling. An article from the *Bolivar Democrat* described the resentment growing among Rosedale residents not only for the court's trying to "force the white children of Mississippi to share their schools with the Chinese" but also for the colored schools who refused to accept Chinese American students.[42] White parents argued that Assistant Attorney General Sharp's arguments in the original case overruled the Bolivar County Court's decision and that Judge Alcorn had greatly misread the situation and underestimated the potential problems of allowing Chinese American children to attend school with whites. While there are few written sources that fully explain the specific reasons why white parents objected so vehemently to Chinese Americans in white schools, the general arguments rested on upholding the law and a sudden shift in seeing Chinese Americans as colored as soon as their population increased. Few newspapers or other sources reveal anti-Asian sentiments or fears over land or job competition from Chinese Americans. The backlash against the Bolivar County Court's decision was

a reaction to a challenge to the white racial, political, and social order in Mississippi. Preventing Martha from attending Rosedale Consolidated was about finally determining the legal and racial standing of Chinese Americans as well as maintaining lily-white schools. The Rosedale school board's decision to pursue an appeal represented the frustrations of the white community as well as the school's disagreement with the lower court's ruling.[43]

When the case finally reached the supreme court of Mississippi in March 1925, the judges issued a unanimous overturn of the lower court's ruling. According to the state supreme court, Judge Alcorn greatly erred in his support of the Lums. Not only did Alcorn expect the Rosedale school board to go against Mississippi law by allowing Martha to attend Rosedale Consolidated, but Alcorn also incorrectly concluded that Martha was not colored. Under the state's miscegenation laws, marriages between whites and persons of at least one-eighth Asian blood were prohibited. Therefore, as the supreme court argued, Chinese Americans were legally colored. This legal racial classification naturally carried over to education, making Martha ineligible to attend Rosedale Consolidated. The purpose of segregated schools was to "preserve the integrity and purity of the white race," and the state was not legally obligated to provide separate schools for all races. The only option for Martha and other Chinese American students in the state was to attend a colored school or be privately tutored. There was no argument that Martha deserved a public education as an American and Mississippi citizen; however, that education, under existing Jim Crow laws, would not be provided in a white school.[44]

Still, Gong Lum would not rest with this decision and appealed the Mississippi Supreme Court's decision to the Supreme Court of the United States in 1927. While Martha was privately tutored by friends of the family in Rosedale, her father worked with local attorneys Earl Brewer (also a former governor of Mississippi) and J. Flowers to craft an argument that would center on Martha's loss of rights and privileges to an education because of the state supreme court's ruling. Brewer was especially interested in cases resting on the Fourteenth Amendment's protections for racial minorities and eagerly took to interrogating and investigating Gong Lum's plight (although Gong Lum was more concerned with how the Fourteenth Amendment upheld *his* rights as a Chinese man living in the South).[45] The goal was to convince the U.S. Supreme Court that the state had violated basic Fourteenth Amendment rights by defining Martha as colored and to prove that Martha was allowed to go to the white school because she was Chinese ethnically. Because there were no publicly funded schools for Chinese Americans, Martha was unable

to attend school in Mississippi, forcing Gong Lum to renege on his duties as a parent. Gong Lum and his attorneys presented their appeal to the Court in the hopes that a ruling in favor of Martha and the rights of Chinese Americans to attend white schools would result.[46]

Gong Lum's hopes would once again be short lived. In November 1927, the U.S. Supreme Court upheld the ruling of the Mississippi Supreme Court, establishing a precedent that would shape hearings on school segregation through the *Brown v. Board* decision. Chief Justice William Taft delivered the opinion of the Court and explained, first, that "the right and power of the state to regulate the method of providing for the education of its youth at public expense is clear," drawing on the 1899 *Cumming v. Richmond County Board of Education* decision that affirmed the state's right to oversee its own system of public education.[47] Second, the justices turned to the problem of whether or not the state's classification of Martha as colored denied her rights and privileges accorded by the Fourteenth Amendment. The Court ruled that all Chinese Americans were members of the "yellow" race and, as such, were correctly classified as "colored" in Mississippi, thereby negating the argument that Martha's basic rights to an education were in jeopardy. For the Court, this was a relatively straightforward issue, stemming from *Plessy v. Ferguson* and the separate-but-equal doctrine that governed any disputes that arose over the years in relation to school segregation. The Court did not find the debate over whether or not Martha's classification as colored and its subsequent effect on her education and rights to be unique. "Were this a new question, it would call for very full argument and consideration, but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature."[48] While Martha's case was different in that it involved a member of the "yellow" race, the Court stated that there was no indication that "the question is any different or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is as between white pupils and the pupils of the yellow races." In its decision on the *Lum v. Rice* case, the Supreme Court declared that Chinese Americans were yellow, that they could be classified as colored, and that education was a state's right and the state could deal with its own system of public education accordingly.[49]

With a swift stroke of the pen, Gong Lum's fight came to an end, and the U.S. Supreme Court established a groundbreaking precedent in relation to Asian Americans and school segregation in the South. Prior cases involving Asian Americans had rested on determining issues of citizenship and/or property rights rather than racial status. In 1886, the Supreme Court heard the

case of laundry owner Yick Wo, who fell victim to a San Francisco tax targeting Chinese immigrants, and the justices concluded that a law that was "race-neutral" but prejudicially enacted violated basic Fourteenth Amendment rights. Such a ruling did not hold up in Gong Lum's case because segregation was applied equally to all who lived in Mississippi. Although the federal courts previously declared in 1878 that Mongolians were not Caucasians, there was a wide variety of definitions of "Mongolian" that left loopholes and questions pertaining to which groups of Asian Americans fell under this racial classification. The only other cases that specifically addressed the issue of race were *Ozawa v. United States* (1922) and *United States v. Bhagat Singh Thind* (1923). Both Ozawa (a Japanese immigrant) and Thind (an Indian immigrant) argued that Japanese and Hindus were Caucasians and deserved the right to naturalization, a right they were barred from under the Naturalization Act of 1906. However, the Court ruled in both instances that Asians are not white and therefore were ineligible to become citizens. With Gong Lum, the Court once and for all determined that Asians were "yellow" and therefore "colored." As Gong Lum found out, legally there were no "in-between" or "interstitial" identities in this case: For Mississippi and the Supreme Court you were either colored or you were white.[50]

STOP HERE

## "MOST FAVORED" IMMIGRANTS IN JIM CROW MISSISSIPPI

Following Gong Lum's failed attempts in the courts, another lesser-known case wended its way through the Mississippi court system in 1927. While Gong Lum and his family packed up and moved to Elaine, Arkansas, following the Supreme Court's decision, other Chinese living in Mississippi, including fourteen-year-old Joe Tin Lun and his family, continued to fight for access to white schools. Unlike Martha Lum, Joe Tin Lun was an immigrant from China and had arrived in the United States with his merchant family in the years immediately after World War I. The Luns settled in Dublin, Mississippi (not far from Rosedale in the Delta), and privately tutored their son until the beginning of the 1917 school year, when they wished to enroll him in Dublin Consolidated High School, which was maintained for white students. Undeterred by Gong Lum's failed attempts, the Luns believed that their situation would be different: They lived outside Rosedale and they were Chinese immigrants with basic rights and protections. Regardless of whether or not the state had previously ruled that Chinese were colored, the Luns were immigrants, they were Chinese nationals, and they therefore were