Texas Judge's Rebuke, Legislative Plans Feature School Month

AUSTIN, Tex.

COURT ACTION AND PREPARATION for the January session of the Texas legislature featured segregation-desegregation news in December.

U. S. District Judge William H. Atwell for the second time in two years held that Dallas public schools may remain segregated while studying the problems of integration. The trial judge also rebuked the U. S. Supreme Court for basing its segregation ruling on "modern psychological knowledge" rather than law and precedent. (See "Legal Action.")

Suit was filed in Houston, largest segregated school system in the nation, seeking admittance of Negroes to all-white schools. (See "Legal Action".)

State Dist. Judge Otis T. Dunagan heard the plea of the National Association for the Advancement of Colored People to remove from Tyler to another city trial of the state's suit to ban the organization. (See "Legal Action.")

Mansfield citizens adopted a "wait and see" attitude after the U. S. Supreme Court confirmed the decision that Mansfield cannot bar Negroes from the white high school because of adverse public opinion. (See "Legal Action.")

VOLUNTARY COUNSEL

Atty. Gen. John Ben Shepperd announced that he will serve as voluntary defense counsel for citizens of Clinton, Tenn., cited for contempt of a federal court. The hearing will come after Shepperd retires as attorney general on Jan. 1. (See "Legal Action.")

Legislators drafted 11 proposed laws and a constitutional amendment to be introduced at the session starting Jan. 8. (See "Legislative Action.")

Supt. W. T. White announced that Dallas public schools will have two more reports ready next spring on surveys of problems concerning integration. (See "Under Survey.")

BOARDS REPORT

Texas school board members reported that integration has occurred without incident in more than 100 districts, but not without problems. (See "School Boards and Schoolmen.")

Support for compliance with the Supreme Court integration decisions came from the CIO state convention and religious groups. (See "What They Say.")

NAACP Atty. W. J. Durham announced that an immediate appeal will be taken from Federal Dist. Judge William H. Atwell's decision that Negro children cannot yet enroll at white schools in Dallas. *(Bell v. Rippy.)*

"I dismiss this suit without prejudice in order that the school board may have ample time, as it appears to be doing, to work out this problem," said the 87-year-old judge, a veteran of 34 years on the federal bench. (See text on this page.)

Last year, Judge Atwell had ruled against the applicants on the ground that their effort was premature. Appellate courts held that the case should be tried on the merits.

In holding in favor of the school board this time, Judge Atwell noted that the U. S. Supreme Court had left for lower federal courts to enforce the decision that compulsory racial segregation is unconstitutional.

The judge said state laws require segregation in the schools. (The Texas Supreme Court has held that the U. S. Supreme Court invalidated such state laws insofar as they would prevent payment of state funds to integrated schools, in *McKinney v. Blankenship.*)

Parents of two Negro children filed the suit to integrate Houston schools *(Benjamin et al v. Houston Independent School District).*

U. S. District Judge Joe Ingraham set the case for hearing on application for temporary restraining order for Jan. 18. The applicants claim that the Fourteenth Amendment to the U. S. Constitution is being violated because the Negro children are not allowed to attend the schools nearest their homes. Plaintiffs are Mary Alice and Benny Benjamin, acting for their daughter, Delores Ross, and Marion Williams, acting in behalf of a daughter, Beneva Delois Williams. The Ross child is in elementary school and Miss Williams in junior high.

In 1955-1956, Houston schools averaged 82,373 daily attendance of whites and 24,537 of Negroes.

RULING DELAYED

At Tyler, State District Judge Dunagan delayed until January or later his decision on the NAACP's request to have the state's ouster suit *(State of Texas v. NAACP)* tried at Dallas or Austin. Dunagan has issued a temporary injunction against the organization on allegations that it operated unlawfully in Texas. (SSN, October, 1956.)

Witnesses for the NAACP denied it engaged in political activity or instigated lawsuits. Thurgood Marshall of New York, chief counsel for NAACP, said its goal is to help Negroes obtain full civil rights.

MUST REQUEST AID

"The NAACP does not volunteer legal aid to anyone unless aid is requested," said Marshall. "Such aid is not extended to persons violating the order of the nation's Supreme Court."

This was a reference to the acceptance by Atty. Gen. John Ben Shepperd of Texas, who will go out of office Jan. 1, to help defend Clinton, Tenn., defendants of a federal court contempt order.

(At Austin, Atty. Gen. Shepperd said he would serve the Tennessee Federation for Constitutional Government as a private attorney. He called the federal district court order concerning Clinton citizens "an infringement of thought and speech . . . a crucial test of our constitutional rights.")

The U. S. Supreme Court meanwhile upheld the Fifth Circuit Court of Appeals decision that Mansfield, Texas, cannot transfer Negro high school students to Fort Worth simply because public opinion opposes integration *(Jackson v. Rawdon).* The town has no Negro high school.

'WAIT AND SEE'

Terry Walsh, correspondent for the *Dallas Morning News,* reported after visiting Mansfield that citizens adopted a "wait and see" attitude after learning of the court ruling. There was no indication when another effort will be made to enroll Negroes at Mansfield High and no organized protest over the Supreme Court's latest action.

At New Orleans, the U. S. Circuit Court of Appeals upheld a lower court injunction against Harris County, Texas (Houston) from leasing its courthouse cafeteria without assurances that all races would be served *(Plummer v. Case).*

U. S. Dist. Judge James V. Allred extended the time for filing briefs in a case involving alleged discrimination against Latin-American children in a Nueces County school. No date for further argument was set.

SCHOOL BOARDS AND SCHOOLMEN

Integration was discussed at the Texas Association of School Boards' annual meeting. Mrs. Lemore Hill, Borger board member, summed up what she said was sentiment of the section meeting on this topic as follows:

—*Dallas Morning News*

JUDGE WILLIAM H. ATWELL
'There Are Also Civil Wrongs'

"There was considerable difference of opinion expressed on a variety of questions in relation to racial integration in Texas public schools. There was a difference in viewpoints among board members from different sections of the state. (This was the largest discussion group at the 1956 annual meeting.) The following statements were generally accepted unless there is an explanation to the contrary.

"Experience Shows: Implications from experiences in racial integration in Texas public schools brought forth the following observations:

"The vast majority of school districts in which any degree of integration has occurred have a small ratio of colored to white students.

LITTLE TROUBLE

"There has been almost no trouble in schools where integration has been effected. Community understanding and acceptance of integration in schools is a prerequisite for success.

"Social integration, that is integration in a great many school activities, is not keeping pace with classroom integration. This seems to be accepted as a natural lag. (A few expressed the belief that it is a desirable and necessary lag.)

"The average colored pupil does not have the academic and social background of the average white pupil in integrated districts. (There was some discussion of the reasons, but it still seemed to be accepted as a fact.)

"Although it has sometimes been a problem, Negro teachers have been retained in most integrated systems.

"General Discussion: The pros and cons of legal, philosophical, moral and sociological aspects of integration received considerable debate. Some of the points made follow:

"Board members are legally responsible agents of the state government when acting in official capacities. Thus, the decisions, the responsibilities, and the procedures for integration fall to the board."

KEEP INFORMED

"School boards should keep themselves well informed concerning facts related to integration. There is a conflict between legal and moral aspects of the question insofar as local board action is concerned." This statement was expanded to point out that a board is responsible for operating within the law and at the same time morally bound to respond to the desires of its community. (As would be suspected, there was considerable difference of opinion as to which responsibility—legal or moral—is paramount.) The responsibilities of the school board in relation to this question were listed as follows:

"1. To obey and enforce the law.

"2. To educate or inform the public of facts pertinent to the question.

"3. To carry out the wishes of the community.

"4. To act (ranging from judicial decision concerning action or no action to ministerial function of carrying out the law).

KEEP OUT POLITICS

"Boards should make their decisions on the question with major consideration for what is best for the children for whom the schools are maintained. It would be helpful if politics could be eliminated from this sociological problem. (In the opinion of many, racial integration is not an educational, but a sociological problem.)"

Dallas awarded a $1,099,243 contract to build a junior high school for 1,600 Negroes. Supt. White said the identical plans will be used to build a white junior high school later.

LEGISLATIVE ACTION

Twenty of Texas' 181 legislators met Dec. 20 at Marshall, in a county with more than one-half Negro population. They pledged unanimous support to a program drafted by the Texas Committee on Segregation in Public Schools appointed by Gov. Allan Shivers. (SSN, October, 1956).

Rep. Jerry Sadler of Percilla, another East Texan, already had announced he plans to introduce 11 bills, including nine to fulfill the Texas Committee on Segregation's program, just as early as these will be accepted at the forthcoming session. Sadler also will sponsor two bills aimed at restricting the NAACP.

LIST PROPOSALS

The proposals backed by the Marshall group and Sadler to set up administrative procedure on segregation follow:

- Assigning students to schools of their own race where integration has been ordered by local option vote.
- Exempting any child from compulsory attendance at an integrated school upon application by the parent or guardian.
- Forbidding payment of state funds on child transferred from segregated to integrated schools without authorization at a local option election.
- Prohibiting trustees from abolishing segregated schools, or revising arrangements for transferring students outside the district to maintain segregation, without approval at an election. This could be called by petition of 20 per cent of the qualified voters.

TUITION PROVIDED

- If parents wish for a child to attend a segregated school, and no such public school is available locally, a sum equal to the usual state payment would be allowed for his education at an approved non-sectarian private school. Penalty up to two years in prison and a $500 fine is provided for a parent or guardian who spent the state tuition for an unauthorized purpose.
- Requiring approval by the principal and superintendent of the sending school on all transfers. The local board would not decide whether the transfer should be allowed. Race would not be a bar. But the board could consider "health, morals, family background, intellectual aptitude, course of study, residence, previous training," and the effect on academic standards at the receiving schools.

Appeals from such decisions would be made to the Texas Commissioner of Education and then to a Joint Legislative Committee on School Assignments. If the dispute is taken to court, it would be defended by the Joint Legislative Committee, whose decisions otherwise would be final.

COMMITTEE PLANNED

- Creating the Joint Legislative Committee on School Assignments. Members would be appointed by presiding officers. Sadler has not decided how large a committee to recommend.
- Directing the attorney general to "defend all litigation" aimed at destroying segregated schools.
- Declaring a public policy concerning integration. It would support the provisions of the other eight laws. This act would call for study before a school integrates. It would assert that local boards have no authority to assign pupils to integrated schools without considering how it will affect other pupils and discipline, health and morals.

TWO MORE BILLS

The other two Sadler bills would:

- Make it unlawful for a school or any state or local agency to employ a member of the National Association for the Advancement of Colored People. The employing agency could require a written oath.
- Require registration with the Secretary of State of all persons or organizations whose principal function is to promote—or oppose—racial integration. The law is intended to foster "peaceful coexistence," according to its preamble.

Rep. Sadler announced that he also will support legislative efforts to ratify an amendment to the U. S. Constitution recognizing state and local government authority. This, he said, would give them a stronger hand in dealing with the federal government and federal courts. The Texas Advisory Committee on Segregation also recommended this proposal.

SEES 'HOT ISSUE'

Robert Cargill of Longview, chairman of a committee which sponsored three referendum questions on segregation on the July Democratic ballot (SSN, August, 1956) predicted this will be "a hot issue" in the legislature. The Democrats by heavy majorities favored abolishing compulsory attendance at integrated schools; called for stronger laws against mixed marriages; and supported efforts to interpose state authority against federal encroachment on its rights.

Gov.-elect Price Daniel, who will take

(See TEXAS, Page 13)

The Dallas Case

Text of Atwell Decision Challenging High Court

Following is the complete text of the decision of U.S. District Judge William H. Atwell Dec. 19, 1956, in the Dallas case:

This case was originally filed in September, 1955, and the Court dismissed the case, after having heard testimony, without prejudice.

Plaintiffs appealed, and on May 25, the Circuit Court of Appeals, through two of its judges, reversed, and directed the trial court to afford the parties a full hearing on the issues tendered in their pleadings. In his dissenting opinion, Chief Justice Cameron was most convincing and somewhat elaborate in his citation and reasoning, and announced that he would affirm the lower court.

We must bear in mind that the laws of Texas, for a long time in existence and based upon a constitutional provision, provide for public schools which shall be financed out of and from taxation. For many years, the colored people of Texas have been their own teachers, and have had their own teachers and their own school facilities and pupils of their own color. The white people have had their own schools with appropriate facilities and teachers.

A year or two ago, the Supreme Court of the United States, on the question of segregation, stated, "We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does."

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I believe that it will be seen that the court based its decision on no law but rather on what the court regarded as more authoritative, modern psychological knowledge, than existed at the time that the now discarded doctrine of equal facilities was initiated. It will be recalled that in 1952, Mr. Justice Frankfurter said it was not competent to take judicial notice of "claims of social scientists."

The testimony, which has been fully developed under the pleadings of each side in the case, as directed by the majority opinion of the Circuit Court of Appeals, shows unmistakenly that competent teachers, equal school facilities, and text books, and all sorts of school paraphernalia are furnished to both the white and colored schools and pupils, and so the sole question for the determination of this court of equity is whether the keeping apart of the two races is a deprivation of any constitutional right. There is no complaint against the colored teachers, though we might quite appropriately inquire what would become of the colored teachers if and when the colored students are taken away from them. Is it possible or probable that the colored teachers would be hired to teach the white pupils? There is no complaint by the plaintiffs against the competency of the colored teachers nor against the impediments or physical features of the school buildings and the school grounds, or the size.

Furthermore, the suggestion of the Supreme Court that the involved parties should studiously and carefully seek to integrate seems to have been attempted here; but so far has not succeeded; but it has not been abandoned by the school authorities. I think that the testimony shows completely that the school authorities here in charge of this independent school district are certainly doing their very best to comply with the ruling of the Supreme Court of the United States. And that court, it will be remembered, left it up to the school authorities and the local courts to further this integration process.

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In the Wichita Falls decision a few years ago, this court tried a case brought by some colored children against Midwestern University, which would not allow them to matriculate. The court entered an order, after a full trial, allowing them to be admitted as students; because there was no near institution in which they could matriculate other than Prairie View, which was approximately three hundred miles distant. That case was affirmed by the Circuit Court of Appeals, and also by the Supreme Court of the United States.

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It should also be borne in mind that the state statute requires separate schools for colored and white students. This suit is brought, therefore, under the national civil rights of the Constitution, and not under the state statutes, as the counsel for the defendants contends here. There is no question here as to the administrative procedure or administrative course that should be followed. We have civil rights for all people under the national Constitution, and I might suggest that if there are civil rights, there are also civil wrongs.

It seems to me, in view of the facts, that the white schools are hardly sufficient to hold the present number of white students; that it would be unthinkably and unbearingly wrong to require the white students to get out so that the colored students could come in. That would be the result of integration here.

The facts reveal that there are about fifteen per cent of the 119,000 students in Dallas that are colored, and the remainder of that vast amount are, of course, white students. Dallas is constantly growing, as the testimony shows, and the school board and city council are constantly making further expenditures to increase school facilities for each white and colored, and I see no equity here, gentlemen, which would require an injunction which would compel integration as prayed and sought at the present time. I therefore dismiss this suit without prejudice in order that the school board may have ample time, as it appears to be doing, to work out this problem.