IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EDDIE MITCHELL TASBY, ET AL)
VS.) CA 3-4211-C
DR. NOLAN ESTES, ET AL)

MEMORANDUM OPINION

It is difficult to believe in this day and time that anyone anywhere would be surprised, shocked or amazed at this case or at the pendency of this law suit. It would be difficult for me to believe that anyone anywhere would be surprised, shocked or amazed by what I am about to rule in this case at this time.

On May 17, 1954, the Supreme Court of the United States, in Brown vs. Board of Education, said, "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore we hold that the plaintiffs and others similarly situated...are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the 14th Amendment." In 1955 the Supreme Court handed down its opinion in Brown #2 ordering desegregation of schools with "deliberate speed".

In the 16 years since Brown #2 little progress had been made and the Courts were confronted with actions by School Boards that used every device imaginable to evade and avoid their responsibilities in this regard.

In 1968 the Supreme Court, in Green vs. County School Board, pointed out this lack of progress and required that "The burden on a school board today is to come forward with a plan that promises realistically to work ... now ... until it is clear that state

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imposed segregation has been completely removed. Green vs. County School Board, 391 U.S. 430.

Despite this plain language in 1969 there was before the Court fresh evidence of the dilatory tactics of many school authorities and the Court, in Alexander vs. Holmes County Board of Education, 396 U.S. 19, held that the remedy must be implemented forthwith.

On April 20, 1971, Chief Justice Berger of the Supreme Court delivered for a unanimous court his landmark opinion in Swan vs. Charlotte-Mecklenberg Board of Education which said, among other things, the objective today remains to eliminate from the public schools all vestiges of state imposed segregation.

When it appears as it clearly does from the evidence in this case that in the Dallas Independent School District 70 schools are 90% or more white (Anglo), 40 schools are 90% or more black, and 49 schools with 90% or more minority, 91% of black students in 90% or more of the minority schools, 3% of the black students attend schools in which the majority is white or Anglo, it would be less than honest for me to say or to hold that all vestiges of a dual system have been eliminated in the Dallas Independent School District, and I find and hold that elements of a dual system still remain.

The School Board has asserted that some of the all black schools have come about as a result of changes in the neighborhood patterns but this fails to account for many others that remain as segregated schools. The defendant School Board has also defended on the ground that it is following a 1965 Court order. This position is untenable.

The Green and Alexander cases have been handed down by the Supreme Court since the 1965 order of the Court of Appeals for the Fifth Circuit to the Dallas Independent School District.

There have been too many changes in the law even in the Fifth Circuit and it is fairly obvious to me that the defendant School Board and its administration have been as aware of them as I. For example, the case of Singleton vs. Jackson Municipal Separate School District was handed down in December of 1969. This was the case in which the Court ordered, among other things, desegregation of faculty and other staff, majority to minority transfer policy, transportation, an order with reference to school construction and site selection, the appointment of bi-racial committees. The Dallas School Board has failed to implement any of these tools or to even suggest that it would consider such plans until long after the filing of this suit and in part after the commencement of this trial.

There is another question which this Court must decide and that has to do with the complaint of those plaintiffs who brought this suit as Mexican-Americans in behalf of themselves and all others similarly situated.

It is my opinion and I so hold that Mexican-Americans constitute a clearly separate and clearly identifiable ethnic group. No one ever had any doubt about Lee Trevino's ethnic origin and this is true of many many others. But as was said by Judge Jack Roberts of the Federal Court in Austin, "But the mere existence of an ethnic group, regardless of its racial origin, and standing alone, does not establish a case integrating it with the remainder of the school population. Rather, the plaintiff must show that there has been some form of de jure segregation against the ethnic minority." And I find that the plaintiff Mexican-Americans have failed in maintaining the burden of proof. I would point out, however, that this particular ruling may not be too significant in the light of what I propose to do in this regard and that is that any plan or remedy must take the Mexican-American into consideration and there will be the appointment

of a tri-ethnic committee as distinguished from a bi-racial advisory committee. In this connection, I would advise that I will appoint Rev. Zan Holmes, Rene Martinez, and Attorney David Kendall on this committee, if they are willing to serve.

I have heretofore indicated during this trial that I would call upon the Board of the Dallas Independent School District for its plan to eliminate segregation in its school district and that I would expect that done now. Judge Woodrow Seals in Corpus Christi was confronted by a board that stood like a balky steer in the road and refused to do anything and he pointed out that he was deprived of the expertise of the Board of Education and its administrative personnel in the fashioning of a plan and order of the Court that would eliminate the dual system. Judge Jack Roberts in Austin has called upon the parties, both plaintiffs and defendants, to file with the Court an adequate and sufficient plan. Judge Leo Brewster in Fort Worth has done the same thing. Defendant Dallas Independent School District has throughout this trial asserted its good faith and its willingness to cooperate with the Court and has also stated that it is opposed to segregation. Therefore, I direct that the Dallas Independent School District Board file with this Court its plan for the establishment of a unitary school system by 10:00 A.M. next Friday, July 23, 1971. It is obvious to me that the Board has been considering these matters for some time and that it has done some soul searching in this regard, as it should do.

Now all of this is not as grim as it sounds. I am opposed to and do not believe in massive cross-town bussing of students for the sole purpose of mixing bodies. I doubt that there is a Federal Judge anywhere that would advocate that type of integration as distinguished from desegregation. There are many many other tools at

the command of the School Board and I would direct its attention to part of one of the plans suggested by TEDTAC which proposed the use of television in the elementary grades and the transfer of classes on occasion by bus during school hours in order to enable the different ethnic groups to communicate. How better could lines of communication be established than by saying, "I saw you on TV yesterday," and, besides that, television is much cheaper than bussing and a lot faster and safer. This is in no sense a Court order but is merely something that the Board might consider.

At this point I want to make a few remarks about TEDTAC. That agency has been harassed, intimidated, pressured and abused in many other ways, and it did not deserve this type of treatment. The politicians have made their speeches, have called their office demanding names, suggesting loss of employment sometimes subtly and sometimes not so subtly. Some of the staff of TEDTAC have been obliged to unlist their phone numbers in order to escape harassing telephone calls. I have considered the entry of an order in this case that such harassment, intimidation and threats will be considered an obstruction of justice and therefore in contempt of this Court. It was TEDTAC which first suggested the "confluence of cultures" concept as was testified to by Dr. Estes. TEDTAC has worked in many of these matters and sincerely desires to be of assistance to the School Boards that are confronted with these problems. I would also suggest that the School Board could well hear from the plaintiffs' representatives as well as the ones who heretofore have been named as members of the tri-ethnic committee of this Court if they are willing to serve.

I would suggest that the Dallas Board of Education could make the "confluence of cultures" an actuality rather than a catch-phrase or a dream and that it could be of vast help to the City of Dallas in deserving its Chamber of Commerce appellation of "City of Excellence."

W. M. Taylor

UNITED STATES DISTRICT JUDGE