

Topeka Judge Hushed Civil Rights Settlement

By Greg Edwards

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TOPEKA—The Topeka Board of Education and a federal judge hushed up a payment of almost \$20,000 to a black schoolgirl who claimed she received an inferior education because of her race.

The Star has learned that \$19,500, minus attorney fees, was paid last December to Evelyn Rene Johnson, a 16-year-old student in the Topeka public schools. The payment settled a 1973 civil rights suit filed for the girl by Mrs. Marlene Miller, her aunt and guardian.

U.S. District Judge George Templar of Topeka, who approved the settlement, ordered those connected with

the case not to discuss it and sealed the court files—effectively preventing the public from finding out about the payment.

The school board did not want the public to know about the large settlement because it feared similar suits would follow, Don Oden, school board president, admitted in an interview last week.

Sources say the school district also foresaw a public relations fiasco if the settlement became widely known so close to next month's 25th anniversary of the Brown vs. Topeka Board of Education decision. The board was the defendant in that landmark 1954 Supreme Court case, which outlawed segregated schools.

School officials, except Oden, refused to answer any questions about the payment and the secrecy agreement. They referred a reporter to their attorneys, who also refused to discuss the case.

"The court entered certain orders in the case," said Charles Henson, a school board attorney. "I'm not going to say any more. There's a chance I could be in violation of the court order."

"I can't talk about it," echoed Eugene Ralston, another board attorney. "I simply can't do it."

Templar, a senior judge (the federal judiciary's euphemism for semi-re-

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tired), said he did not remember the case or exactly why he entered a gag order and sealed the court records.

"I don't have any recollection of the case except that it was dismissed," Templar said. "Many cases are dismissed. I think that's what happened."

Why seal the records, a highly unusual move?

"I don't remember," the judge said. "I can tell you this: I think if it was done, it was done at the request of the parties."

Do you always seal public records when lawyers request it?

"I don't have any rules about it," the judge said. He could recall sealing a file one other time during his 17 years on the federal bench.

The Johnson case received national attention in 1974 when newspapers and broadcast reporters from throughout the country came to Topeka for the 20th anniversary of the Brown decision.

At that time, Miss Johnson's lawyers were pressing to have her case declared a class action suit so that 10,000 other present and former Topeka public school students could be included and sue for \$200 million. Her lawyers contended blacks in the Topeka schools were being cheated out of a quality education despite the Brown ruling.

In 1975 Templar refused to allow the others to be included but said Miss Johnson could pursue her individual claims against the school district in the amount of \$20,000. His decision was upheld on appeal.

Templar, 74, became a federal judge in 1962, one of only three Republicans appointed to the federal bench by President John F. Kennedy. He stepped down to semi-retirement in 1974. He was the center of a controversy in 1972 when he refused to allow William Kunstler, the activist lawyer, to practice in his court, saying, "Your attitude toward the courts and judges is one of utter disdain."

Templar's Dec. 15 order dismissing the suit approves "settlement in the amount of \$19,500 . . . as fair and reasonable" but warns that "the parties and counsel are enjoined from divulging the nature and amount of the settlement." A copy of the order was obtained by *The Star*.

Records at the Shawnee County Probate Court in Topeka show Miss Johnson received \$3,907 after attorney fees and expenses. An estate was set up for her through the probate court because she is a minor.

Oden, the first black school board president in Topeka, confirmed the payment had been made by the school district's insurance company and kept secret to prevent the board from being "besieged with that type of suit."

But after a phone call to Dr. James Gray, school superintendent, Oden clammed up about the details and lamented his inability to talk frankly.

"We had agreed we wouldn't speak about it," Oden said apologetically. "I've made that commitment—right, wrong or indifferent—so I will have to stay with it."

"I'm in a very uncomfortable position right now," he added. "Frankly, I don't know what to do. I don't want to appear to be trying to withhold anything, but it's a very delicate situation."

Even Fred W. Phelps, the attorney who won the settlement for Miss Johnson, declined to comment, apparently out of fear of the judge's gag order.

Mrs. Miller, the girl's aunt, was anxious to talk but felt restrained also.

"I don't think it should be hushed up," she said during an interview at her apartment, located in a housing project on Topeka's east side. "There's a lot I would like to say, but I have a hush-hush part too."

A licensed babysitter who is proud of the settlement she helped get for her niece, Mrs. Miller shook her head over the secrecy bond: "I just don't understand it."