

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

OLIVER BROWN, et al.,)

Plaintiffs,)

and)

CHARLES and KIMBERLY SMITH,)
minor children, by their mother)
and next friend, LINDA BROWN)
SMITH, et al.,)

Intervening Plaintiffs,)

v.)

BOARD OF EDUCATION OF TOPEKA,)
SHAWNEE COUNTY, KANSAS, et al.,)

Defendants.)

By _____

Case No:

T-316

PLAINTIFFS' RESPONSE TO DEFENDANT
JOHN C. CARLIN'S MOTION TO COMPEL

On June 1, 1982, the plaintiffs served their first set of interrogatories on the defendant-officials associated with the State of Kansas and the State Department of Education. (Hereinafter "State defendants"). In order to supplement the generalized allegations in the amended complaint, these interrogatories, totaling 55 questions and subparts, ^{1/} request detailed specific information regarding the state's and state officials' roles, responsibilities, policies, programs and acts in affecting the level of segregation in Unified School District #501 and in other school districts within the state. The plaintiffs have not yet received answers to these interrogatories.

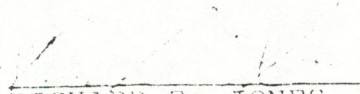
On July 6, 1982, over a month later, state defendant-Governor John Carlin served his first set of interrogatories on the plaintiffs requesting the specific information which the plaintiffs

^{1/} The plaintiffs and defendant school district had informally agreed to waive local rule 17(d)'s limitation on the number of interrogatories that may be served and on October 27, 1982, this court denied the state defendants' motion for a protective order where those defendants had sought such an order on rule 17(d) grounds.

are relying on to support their allegations regarding the state defendants' liability. Since the plaintiffs have not yet received any answers to their interrogatories served on the state defendants requesting such specific information, they are only able to provide partial answers to the governor's interrogatories, at this time, limited to a generalized theory of the state defendants' liability.^{2/} These answers are attached to the response.

Respectfully submitted,

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CHARLES SCOTT, JR.
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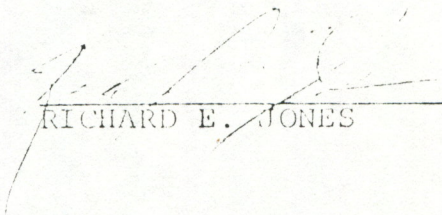
JOSEPH D. JOHNSON
III Townsite Plaza
Topeka, Kansas 66603

E. RICHARD LARSON
JON C. DUBIN
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132 West 43rd Street
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^{2/} In recognition of the plaintiffs' situation of not being able to provide complete answers to interrogatories on what specific facts they are relying on without first obtaining facts through discovery, the defendant-school district has agreed to wait for complete answers from the plaintiffs to the school district's interrogatories until after the plaintiffs have received answers to their non-disputed interrogatories filed on the school district. The state defendants have refused to follow the same course.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiffs' response to Defendant, John C. Carlin's Motion to Compel, together with Plaintiffs' answers to Defendant's first set of interrogatories was served by depositing same in the United States mail, first class postage prepaid, the day of November, 1982, to Leslie A. Kulick, Assistant Attorney General, Kansas Judicial Center, 2d Floor, Topeka, Kansas 66612 Attorney for Defendant John C. Carlin and a copy to K. Gary Sebelius, 1300 Merchants National Bank Building, Topeka, Kansas 66612, Attorney for Unified School District #501.



RICHARD E. JONES

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 Plaintiffs,)
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 CHARLES AND KIMBERLY SMITH,)
 minor children, by their mother)
 and next friend, LINDA BROWN)
 SMITH, et al.,)
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 Intervening Plaintiffs,)
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 v.)
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 BOARD OF EDUCATION OF TOPEKA,)
 SHAWNEE COUNTY, KANSAS, et al.,)
)
 Defendants.)
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Case No:
T-316

PLAINTIFFS' ANSWERS TO DEFENDANT JOHN C. CARLIN'S
FIRST SET OF INTERROGATORIES

With the limitations set forth in the response to the motion to compel, the plaintiffs answer the defendant John C. Carlin's interrogatories as follows:

1. State the full name, address, title, age, and relationship to this lawsuit of the person answering these interrogatories on behalf of the intervening plaintiffs.

ANSWER: The answer to these interrogatories have been prepared by Richard E. Jones, Jones and Jones, 605 S.E. Quincy, Suite 1, Topeka, Kansas, and Jon C. Dubin, American Civil Liberties Union, 132 West 43rd Street, New York, New York, attorneys for plaintiffs.

2. With respect to your allegation in paragraph 5 of your amended complaint that the State of Kansas has not seen fit to comply with the Court's order to desegregate the schools and establish a unitary and integrated school system, state:

a. Each and every fact upon which you rely to support

your allegation that the State of Kansas has failed to comply with the Court's order in Brown v. Bd. of Education of Topeka;

- b. The description, location, nature, condition, and custody of any documents, reports, memoranda, letters, or other tangible items upon which you rely to support this allegation;
- c. The names, addresses, and present whereabouts of persons upon whom you rely to substantiate the allegation.

ANSWER: In Brown v. Board of Education, 347 U.S. 483 (1954) (Brown I), the Supreme Court invalidated the Kansas statute that permitted segregation by race in the Topeka Schools. In Brown v. Board of Education, 349 U.S. 294 (1955) (Brown II) the court imposed an obligation on Kansas school authorities to effectuate a transition to a racially non-discriminatory school system. Later cases have interpreted the Brown decision, in states with state-imposed dual school systems, as making state authorities "duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system". Cooper v. Aaron, 358 U.S. 1,7 (1958), and as imposing an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated, root and branch". Green v. County School Board 391 U.S. 430 437-38 (1968).

The scope of this affirmative duty extends not merely to student assignment practices, but to "all vestiges of state imposed segregation". Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1,15 (1971). Accordingly, this duty extends to the eradication of racial distinctions with respect to faculty and administrative hiring and assignments, transportation, building maintenance and organization of school activities and curricula. This compelling obligation is

not discharged by the mere repeal of the offending law, Brown v. Board of Education, 84 FRD 363, 391 n.5 (Kans. 1979), or by adherence to facially neutral school assignment policies. Adams v. United States, 620 F.2d 1277, 1285-1286 (8th cir. 1980). Rather, where an intentional dual school system is found to have existed at the time of Brown I, school authorities are deemed to have been operating under a continuous affirmative duty to disestablish that system since the time of Brown II. Each instance of failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment. Columbus Board of Education v. Pennick, 443 U.S. 449, 458-59 (1979). As Judge Rogers has already noted in his opinion adding the state defendants as parties in this action, the State of Kansas was originally a defendant in this action and, therefore, has an obligation to ensure that the relief ordered by the Supreme Court be carried out. Brown v. Board of Education, No. T-316, P.4, (D. Kans. June 13, 1980).

Accordingly, the plaintiffs rely on the continuing condition of segregation in the school district and the absence of any information indicating the formulation or implementation of any adequate state plans or programs to comply with the Brown II mandate, to support their allegations against the state.

Further, as a matter of state law, the state is responsible for the failure to desegregate the school district, by virtue of the broad state constitutional and statutory powers vested in the state, over education. Article 6 of the Kansas constitution §§ 1, 2 and 5 and Kansas Statutes §§ 72-7503, 72-7513 and 72-7514 grant the state board of education broad powers to establish and maintain public schools, to supervise the local school districts' boards and to oversee virtually all of the states educational interests. See State Ex Rel Miller v. Board of Education, 511 P. 7d 705, 713 (1973).

Kansas Department of Education regulations, Agency 91, specifies additional state regulation over education in the local districts, including the regulation of faculty and administrative certification and school accreditation. Accordingly, the state is responsible for its failure to utilize its broad educational powers to eradicate the condition of segregation in the school district.

Moreover, local school districts are agencies of the state for Fourteenth Amendment purposes. See Miliken v. Bradley, 418 U.S. 717, 786 (1974); Cooper v. Aaron, 358 U.S. 1, 16 (1958). Accordingly, the state as principal, is liable for the school district's failure to desegregate.

Further, the state's constitutional obligation requires it to steer clear of supporting segregation "through any arrangement, management, funds or property." Cooper v. Aaron, 358 U.S. 1, 19 (1958). The state is thus responsible for any direct or indirect aid it provided over the years that enhanced or perpetuated segregation in the school district.

Under Article I, § 3 of the Kansas constitution, the Governor is the state's supreme executive, responsible for the enforcement of the state's laws. While the Eleventh Amendment bars actions against the state in federal court, state officials who commit unconstitutional acts in their official capacities, may be sued for prospective relief See Miliken v. Bradley, 433 U.S. 267 289-90 (1977). The state defendants, Governor John C. Carlin and the members of the board of education, are responsible for continuing a chain of policies and practices that fail to comply with the constitutional duty to desegregate the school district as evidenced by the continuing segregation in the district. They may, therefore, be sued in federal court for prospective relief.

Further specification of the state defendants' acts is not possible until the receipt of the state defendants' answers to the plaintiffs' interrogatories.

All documents, materials, papers, memoranda and letters which the plaintiffs rely on to support the assertion that a condition of segregation exists in the district, and to establish the school district's liability, are contained in the answers provided by the school district to the plaintiffs' interrogatories. These materials are located at the law offices of Scott, Scott, Scott and Scott, 724-1/2 Kansas Avenue, Topeka, Kansas. The plaintiffs do not as yet rely on witnesses to substantiate their allegations.

3. With respect to paragraph 12 of your amended complaint that the unconstitutional segregation alleged to be present in Topeka schools today stems from a Kansas statute in effect in 1951 authorizing racial segregation in elementary schools, state:

- a. Each and every fact upon which you rely to support the allegation that the unconstitutional segregation present in Topeka public schools stems from a Kansas statute in effect in 1951 authorizing racial segregation in elementary schools;
- b. The description, location, nature, condition, and custody of any documents, reports, memoranda, letters, and other tangible items upon which you rely to substantiate the allegation;
- c. The names, addresses, and present whereabouts of persons upon whom you rely to substantiate the allegation.

ANSWER: The answer to this interrogatory is contained within the answer to interrogatory #2.

4. With respect to your allegation in paragraph 13 that the state officials have direct executive and/or administrative responsibility for the school system of the State of Kansas, including Unified School District No. 501 in accordance with the provisions

of Article 6, section 2 of the Constitution of Kansas, state:

- a. Each and every fact upon which you rely to support your allegation that the governor of the State of Kansas, John C. Carlin, has direct executive and/or administrative responsibility for the school system of Kansas;
- b. The description, location, nature, condition, and custody of any documents, reports, memoranda, letters, or other tangible items upon which you rely to substantiate the allegation that Governor Carlin has direct executive and/or administrative responsibility for the school system of Kansas;
- c. The names, addresses, and present whereabouts of persons upon whom you rely to substantiate the allegation that Governor Carlin has direct executive and/or administrative responsibility for the school system of Kansas.
- d. The relevant provisions of any Kansas laws or statutes you are claiming gives Governor Carlin direct executive and/or administrative responsibility for the school system of Kansas.

ANSWER: The answer to this interrogatory is contained within the answer to interrogatory #2.

5. List each and every act you are alleging was taken by Governor Carlin with respect to the maintenance, policy, planning, or operations of Unified School District No. 501, and provide a description, location, nature, condition, and custody of any documents, reports, memoranda, letters, or other tangible items upon which you rely to substantiate this allegation.

ANSWER: The answer to this interrogatory is contained within the answer to #2.

6. List any control you are alleging was exercised by Governor John C. Carlin with respect to the policies or planning of school boundaries, long-range facility plans, facilities, equipment, and instruction, or assignments of teaching personnel in Unified School District No. 501.

ANSWER: The answer to this interrogatory is contained within the answer to #2.

7. Are you claiming Governor John C. Carlin had any knowledge of any intentional segregative practices on the part of Unified School District No. 501? If your answer to this interrogatory is in the affirmative, state:

- a. All facts upon which you rely to support that Governor John C. Carlin had any knowledge of any intentional segregative practices on the part of the Unified School District No. 501;
- b. The description, location, nature, condition, and custody of any documents, reports, memoranda, letters, or other tangible items upon which you rely to substantiate said allegation;
- c. The names, addresses, and present whereabouts of persons upon which you rely to substantiate said allegation.

ANSWER: The answer to this question is contained within the answer to #2.

8. Are you claiming Governor John C. Carlin intentionally supported any intentional segregative practices by Unified School District No. 501? If your answer to this interrogatory is in the affirmative, state:

- a. All facts upon which to support that Governor John C. Carlin intentionally supported intentional segregative practices on the part of Unified School District No. 501;
- b. The description, location, nature, condition, and custody of any documents, reports, memoranda, letters, or other tangible items upon which you rely to substantiate the allegation that Governor John C. Carlin intentionally supported intentional segregative practices on the part of Unified School District No. 501;
- c. The names, addresses, and present whereabouts of persons upon which you rely to support the allegation that Governor John C. Carlin intentionally supported intentional segregative practices on the part of Unified School District No. 501.

ANSWER: The answer to this question is contained within the answer to #2.

9. List all provisions of any law or statute of the State of Kansas you claim imposes any responsibility or affirmative duty upon Governor John C. Carlin to control the policies, facilities, equipment, curriculum and instruction, or personnel assignments of Unified School District No. 501.

ANSWER: The answer to this interrogatory is contained within the answer to #2

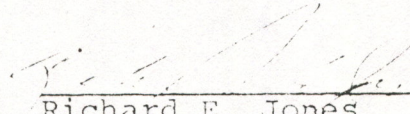
VERIFICATION

STATE OF KANSAS)
)SS:
COUNTY OF SHAWNEE)

The undersigned, of lawful age, being first duly sworn upon his oath, deposes and states;

That he is one of the Attorneys for Plaintiffs, that he has read the answers to the Defendant John C. Carlin's Interrogatories-- First Set which were prepared under his general direction and supervision and such answers are true and correct to the best of his knowledge and belief.

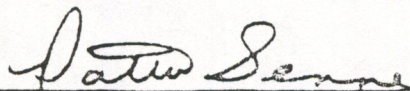
Further affiant saith not.



Richard E. Jones

Subscribed and sworn to before me this 11th day of November, 1982.

My commission expires 8-4-86



Notary Public

