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TO: Gordon Foster, Bill Lamson, Hugh Speer, Bob Crain

FROM: Chris Hansen

Chris Hansen

We appeared before the judge in early December. The defendants have not indentified any further experts. The dates remain the same.

I have sent defense counsel the enclosed very early draft of the findings of fact (final version is due January 30). I'd appreciate it if you'd look this over and let me know what you think.

cc: Jones
Scott, Sr., Jr.
Johnson
Larson

Brown v. Board of Education
Plaintiffs' Contentions
12/24/85

I. Topeka schools were unconstitutionally and illegally segregated by race.

A. Elementary Schools in Topeka were segregated as a result of a permissive state statute and the conscious choice of the Topeka School Board and Topeka school officials.

B. Prior to 1941, Topeka junior high schools were illegally and unconstitutionally segregated by the conscious choice of the Topeka School Board and Topeka school officials. State defendants knew or should have known of this segregation. They took no steps to end it. They continued to accredit Topeka schools and otherwise ratify the segregation.

C. Prior to 1949, The Topeka High School was illegally and unconstitutionally segregated in virtually all sports and extracurricular activities. There were, for example, segregated basketball teams, cheerleaders, and dances. This segregation was a result of the conscious choice of the Topeka School Board and Topeka school officials. State defendants knew or should have known of this segregation. They took no steps to end it. They continued to accredit Topeka schools and otherwise ratify the segregation.

D. Prior to its closing in 1957, the Pierce elementary school was illegally (it was not in a city of the first class) and unconstitutionally segregated. State defendants knew Pierce was segregated but took no steps to end it. They continued to accredit Pierce and otherwise ratify the segregation.

II. Each defendant had a duty to take affirmative steps to end segregation in Topeka.

A. Each defendant received notice of its duty pursuant to Brown I and Title VI.

B. Defendants receive Federal funds.

III. Each defendant had or could have sought authority to take affirmative steps to end segregation in Topeka.

A. The Governor and State Board argued in Brown I that education was the responsibility of the state pursuant to the police power.

B. The Governor:

1. Until 1968, the Governor appointed members of The State Board of Education and could remove them for cause.
2. The Governor controlled and controls the submission of the budget for the State Board and State Superintendent, and State Department.
3. The Governor has had constant contact with the State Board, State Superintendent, and State Department.
4. The Governor could have sought legislation seeking additional authority, if necessary.
5. Since 1968, the Governor has had authority to fill vacancies on the State Board.
6. Virtually every Governor since 1954 has considered education a major responsibility and/or priority. Each has exercised the responsibility by keeping in constant touch with other state education officials, by forming Education Cabinets or Committees, by meeting frequently with state education officials, by legislative recommendations, by approving statewide education plans, by running conferences, by receiving reports, by approving the education Commissioners, and by otherwise assisting the other state education officials.

C. The State Board (hereinafter including the State Superintendent, State Department of Education, State Commissioner, and other state officials):

1. The State Board could have sought legislation seeking additional authority, if necessary.
2. The State Board has the responsibility to administer public education law in Kansas. This includes more than advising on education policy. The State Board describes its authority as "general direction" or "general supervision." It has said that education is a state responsibility, and that local Boards are "agents" of the State Board.
3. The State Board has authority to approve school district boundaries.
4. The State Board has said that its duties include ensuring equal educational opportunity.

5. The State Board has responsibility and authority for ensuring that local boards comply with state and federal law. This includes Title VI certification.
6. The State Board accredits schools and can refuse to accredit a school acting illegally
7. An unaccredited school does not receive state education money which the State Board otherwise provides.
8. The State Board passes regulations that are binding on local districts.
9. Current regulations of the State Board permit the Board to refuse to accredit a segregated school
10. The State Board certifies teachers.
11. The State Board plays a role in school site selection.
12. The State Board provides research and technical assistance and has authority to seek state and federal funds for these purposes.
13. The State Board has collected, at some times, race data on students.
14. The State Board surveys school facilities and determines needs of districts.
15. The State Board administers uniform education and skills testing.
16. The State Board supervises local school board elections.
17. The State Board supervises local union elections.
18. The State Board imposes graduation requirements.
19. The State Board approves text books.
20. The State Board approves certain contracts.
21. The State Board approves capital fund and bond expenditures.
22. The State Board reviews special education decisions.
23. The State Board conducts fiscal reviews of local

districts.

24. State and Federal officials have criticized the State Board for failing to use the full scope of its lawful authority.

D. Topeka School Board. The Topeka School Board has general supervisory authority over Topeka schools and could have taken any actions necessary to end segregation.

IV. Steps identified by defendants as meeting their duty to desegregate were inadequate.

A. Each Governor admits he took no steps designed to end segregation in Topeka. No Governor used any of his authority to end segregation. No Governor sought authority to end segregation.

B. The State Board took no steps designed to end segregation in Topeka. The State Board did not use any of its authority to end segregation. The State Board did not seek authority to end segregation. The State Board has described its response to its duty created by Brown I as a "hands off" policy.

C. The Topeka School Board's only step designed to end segregation in Topeka was its four-step plan, 1953-1955. That plan left most black students in all-black schools and most white students in all white schools; it did not provide for any integration of faculty or staff. It did not end segregation in Topeka's schools. The City School Board failed to use any of its authority to end segregation in Topeka in any other ways.

D. State officials admitted that continued segregation after the four-step plan was a result of prior school segregation.

V. After 1954, defendants took action that contributed to segregation in Topeka.

A. In 1970, 1971, and 1975 the Governor rejected proposals by the State Board for a Technical Assistance Project to assist districts in desegregation.

B. City School Board

1. City School Board teacher and staff assignment policies and practices contributed to segregation in Topeka.

2. City School Board annexations and deannexations

contributed to segregation in Topeka.

3. City School Board school siting, openings, closings, renovations or additions, and boundary changes contributed to segregation in Topeka.

4. City School Board attendance policies including optional attendance zones, open enrollment and transfer policies contributed to segregation in Topeka.

5. City School Board use of portable or temporary classrooms contributed to segregation in Topeka.

6. City School Board plans, including Long and Short Range Facilities Plans contributed to segregation in Topeka.

7. The City School Board's neighborhood schools policy, as implemented, contributed to segregation in Topeka.

8. The City Board's transportation policies contributed to segregation in Topeka.

9. The City School Board refused to adopt proposed actions and plans that would have had an integrative effect:

a. In 1963, 1974, and 1975, including the plan developed pursuant to complaint by the Federal government.

b. In 1985, the Board rejected Plans N and X.

10. City school officials decided to fire all black teachers in 1953-1955 to avoid placing them in white schools. Ultimately they did not do so since some schools remained all black. Well into the 1960's, no black teacher was placed in a white school without full Board discussion. Today, there is no Board policy prohibiting discrimination in assignment.

11. The City School Board stopped collecting data on race of students from 1956-1966.

12. Topeka schools provided and still provide poorer education in the black schools than in the white schools.

C. State Board

1. The State Board approved school district consolidations, annexations and deannexations.

2. Through its authority listed above, the State Board approved school siting, opening, closing, renovations and addition decisions.

3. The State Board accredited segregated schools.

4. The State Board certified segregated teachers.

5. The State Board provided state and Federal funds to Topeka's segregated schools.

6. The State Board participated in certification, pursuant to Title VI, that Topeka's schools were not segregated.

7. In 1981, The State Board rejected the staff's proposal that it seek federal funds for desegregation. Until 1985, the Board provided no technical assistance to local boards in desegregation. It did not even circulate relevant laws, decisions, or articles.

8. The State Board decided to stop collecting data on race of students, faculty, and staff in 1955.

VI. After 1954 each of the defendants knew or should have known that Topeka's schools were still segregated.

A. The Governors:

1. Governor Arn was advised that the Pierce school was segregated.

2. Governors Anderson and Docking were advised that Topeka's schools were still segregated.

3. Other Governors knew or should have known that Topeka's schools were still segregated.

B. State Board

1. Since 1970, the State Board has admitted that there are problems of segregation in Kansas schools.

2. The State Board was advised of various complaints concerning segregation in the Topeka schools by the Federal government.

3. For some periods, the state has collected data on the race and assignment of students and teachers in Topeka's schools. That data showed segregation existed.

4. The State Board knew or should have known that the actions identified above contributed to segregation.

C. The City School Board

1. In 1953-1955, The City School Board was advised of the inadequacies of its desegregation plans.

2. In 1963, 1964, 1968, 1969, 1970, 1971, 1973, 1975, 1980, residents of Topeka told the School Board there were still segregated schools.

3. In 1974-1975, the Federal government told the School Board there were still segregated schools.

4. Since reopening of this case in 1979, the School Board has been told there are still segregated schools.

5. The City School Board members admitted there were still segregation problems.

6. The City School Board was made aware of and acknowledged differential treatment between black and white students and differential quality between black and white schools.

7. The City School Board knew or should have known that the actions identified above contributed to segregation.

VII. Topeka schools are segregated today. Approximately half of all schools are racially identifiable as white or black schools due to student assignment, faculty assignment, and other historical actions and inactions by defendants.

VIII Segregated schools in Topeka are harmful to children.

A. Segregated schools harm children.

B. Some schools in Topeka are perceived as black schools. Those schools are also perceived as the worst schools. Some schools in Topeka are perceived as white schools. Those schools are also perceived as the best schools.

C. The test scores of students in the black schools are very significantly less than test scores in the white schools.