

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

OLIVER BROWN, et al.,)

Plaintiff,)

v.)

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.)

Case No. T-316

PLAINTIFFS' ANSWERS TO
THE SECOND SET OF
INTERROGATORIES DIRECTED
BY DEFENDANT
GOVERNOR JOHN CARLIN

INTRODUCTION

Pursuant to Rule 33 of the Federal Rules of Civil Procedure plaintiffs hereby respond to the Second Set of Interrogatories of Defendant Governor John Carlin. In making these responses plaintiffs have made every effort to be as specific as possible in light of the breadth of defendant's requests for information and the Interrogatories directed to the Governor and State Board that are outstanding. Defendants will note that many of plaintiffs' potential witnesses and trial exhibits remain unidentified. Such information will be provided as soon as it becomes available to plaintiffs.

Interrogatory No. 1

Please update all responses made by plaintiffs to this defendant's First Set of Interrogatories and the Supplemental Answer dated December 14, 1982.

ANSWER:

To the extent that this interrogatory seeks updated information on the relationship of this lawsuit to this defendant by virtue of Kansas state and constitutional law, the rulings in Brown I and Brown II, the filing of Plaintiffs' Motion for an Order Commanding Compliance with the Supreme Court's Mandate to Desegregate the Schools of Topeka in Brown v. Board of Education, 349 U.S. 294 (1955), and any acts, policies, practices or operations of the local defendant or this and other state officials see the answers provided infra.

Interrogatory No. 2

In the answer to Interrogatory No. 2 of the First Set of Interrogatories by this defendant, it is stated: "Brown v. Board of Education, 349 U.S. 249 (1955) (Brown II), the court imposed an obligation on Kansas school authorities to effectuate a transition to a racially non-discriminatory school system" Please identify the "Kansas school authorities" referred to in this answer, and the facts upon which you rely for this identification.

ANSWER:

Past and present state officials who were, have been, or continue to be under a continuing obligation since 1954 to assure that the Topeka schools not engage in illegal segregation include the Governor of the State of Kansas, the State Board of Education, the State Superintendent, the Department of Public Instruction, the Department of Education and the Commissioner of Education.

Reference can be made to Kansas State and Constitutional law respecting public education prior to, at the time of, and since Brown I and Brown II, the Topeka School Board Minutes, and Briefs and Transcripts on file in Docket No. T-316, Brown v. Board of Education, 347 U.S. 483 (1954); 349 U.S. 294 (1955).

Interragatory No. 3

Do you allege that any agency of the State of Kansas has failed to take steps you deem necessary to convert to a unitary school system in which racial discrimination is eliminated?

ANSWER

If yes, describe specifically and separately the following:

- a. each state agency you alleged has failed to take steps you deem necessary;
- b. steps which you believe should have been taken by each state agency;
- c. the facts upon which you rely for this claim;
- d. identify the specific source of the facts upon which you rely for this claim;
- e. list and identify the specific documentary evidence and particular indicate anything which will be used as a trial exhibit with respect to this claim;
- f. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

(a)(b)(c) Yes. Since 1954, agents, agencies, representatives of the State of Kansas, and other state officials authorized to act in the interest of public education, including in the past and present, the Governor, the State Board of Education, the State Superintendent, Department of Public Instruction, Department of Education or Commissioner of Education have been, were or are under a continuing duty to convert the dual system of education found to exist within U.S.D. 501 and its predecessors to a unitary system free of racial segregation. The present racial identifiability of schools within U.S.D. 501 results from the failure of both local and state officials to comply with the 1955 order to end illegal segregation in the

Topeka schools.

Every act of the Topeka School Board which has contributed to or perpetuated patterns of racial segregation impliedly required an effort by the Kansas state officials to prevent their implementation or to deter their segregative impact.

More specifically, the Kansas state officials might have affirmatively taken steps to condition approval of funds, transfers of territory or accreditation of schools on the Board's willingness to implement effective desegregation plan. If necessary, the Kansas state officials might have sought the authority to so act by seeking proposals, enactments, issuance and/or ratification of acts, laws, executive orders, constitutional amendments, rules or regulations which would negate the prior effect of K.S. 72-1724 and prohibit any form of racial discrimination, segregation of students and faculty or inequality of facilities solely on the basis of race within the public school system.

Actions could have been taken by the Governor to assure the appointment of members of the State Board of Education demonstrating a commitment to racial equality in education up until the time the Governor no longer directly appointed members to the State Board of Education (K.S. 72-124, repealed 1969). In light of subsequent changes in Kansas educational law actions could have been taken by the Governor to withhold appointment of members elected to fill vacancies on the State Board of Education when they bear no commitment to assuring racial equality in public education (K.S. 25-3902a (1980)).

Actions could have been taken to remove members of the State Board of Education who failed to seek of local school districts performance of educational functions in accordance with the constitutional mandate of Brown not to engage in segregation of the races in public education (K.S. 72-124).

Since 1954, the Topeka School Board has engaged in various practices and policies which have contributed to and perpetuated racial segregation, many of which acts fall under the supervisory powers and duties of past and present Kansas state officials. Any failure to act in the interest of desegregating the schools within U.S.D. 501, any passive acknowledgement of, and/or tacit or express approval of acts of the Topeka School Board which have perpetuated racial segregation within U.S.D. 501 are no more than an attempt to persist in separating the races in public education as was previously authorized under Kansas state law by K.S. 72-1724 and therefore caused racial segregation within U.S.D. 501.

For a further description of the acts or failures to act by agents or agencies of the State of Kansas which have perpetuated racial segregation within U.S.D. 501 see subpart (a) to the answer to Interrogatory No. 4 infra. Additionally, the connection between the acts of the Topeka School Board and agents or agencies of the State of Kansas by virtue of the facts, circumstances, and rulings in Brown I and Brown II imposes liability on these defendants for U.S.D. 501's failure to adopt plans or proposals having a potential for integration.

Both formal and informal desegregation plans having the potential for an integrative effect on the Topeka Unified School

District have been rejected by the Topeka School Board. To date plaintiffs know of:

(1) a proposal made by the NAACP on December 21, 1955 to the School Board to make integration of the teaching faculty part of the Topeka Four-Step Plan for Desegregation proposed in 1954, which proposal was rejected; and

(2) a desegregation plan designed by staff of the Topeka Unified School District in or about 1974 which the staff believed would have an integrative effect and which was also rejected. ("Tentative Plan for a More Perfect Unitary School System For Topeka Unified School District No. 501 For Implementation at the Beginning of the 1974-1975 School Year.")

(3) Long-range facilities Plans "N" and "X", designed by the staff of the Topeka Unified School District and proposed to the School Board on January 4, 1984, about which public hearings were held, and which Plans were rescinded by the Topeka School Board on April 18, 1984.

(d)(e) Answers and Supplemental Answers to Plaintiffs' First, Second and Third Interrogatories and Topeka School Board Minutes, Kansas Education Law. Specifically, any answers dealing with Interrogatories regarding proposals for desegregating the Topeka schools, references in the Board Minutes or in Kansas State and Constitutional law about the same.

(f) See answer to 4(d) infra.

Interrogatory No. 4

Do you allege the State of Kansas or any of its agencies has imposed segregation on account of race?

If yes, in what specific manner or manners has the state or its agencies imposed such segregation? Identify in addition, the following:

- a. the facts upon which you rely for this claim;
- b. identify the specific source of facts upon which you rely for this claim;
- c. list and identify the specific documentary evidence and particularly indicate anything which will be used as a trial exhibit with respect to this claim;
- d. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

(a) Yes. First, the State of Kansas by K.S. 72-1724 permitted segregation on account of race. Second, the Kansas school authorities listed in response to Interrogatory No. 2 and the local defendants have engaged in a pattern and practice since 1954 of perpetuating the illegal segregation of the races in public education outlawed by the Supreme Court's decision in Brown I. They have imposed segregation by failing to abide by the order to implement a desegregation plan in Topeka "with all deliberate speed." Being on notice that illegal segregation existed in Topeka, the state officials have nevertheless abdicated their responsibility for assuring that post-1954 acts of the Topeka School Board would not result in continued segregation. Their responsibility to assist in the process of removing the vestiges of discrimination allowed by K.S. 72-1724 stems from the ruling in Brown I and the role of the state

officials in governing education. State officials, agents and representatives have failed to encourage desegregation, discourage actions having a segregative impact and have failed to exercise their general supervisory powers in a manner consistent with the duty to uphold the principle that segregation of the races in public education is illegal.

The acts of U.S.D. 501 and its predecessors which have contributed to or perpetuated racial discrimination in the Topeka public school system are not those of an independent and autonomous body. The functioning of the Kansas state educational system depends in whole or in part on the duties exercised by various local and state officials including the Governor. Other Kansas state officials have supervisory duties requiring surveillance and continuing interaction with local school boards. The State Board of Education, among other things, publishes school laws, rules and regulations (K.S. § 72-120 (1980)); selects subject matters within the field of instruction mandated by the Legislature (K.S. 72-1101 (1980)); applies for and supervises the expenditure of federal funds by local school districts (K.S. §§ 72-126, 72-127, 72-6201, 72-6202) administers and supervises local administration of federal food service programs (K.S. 72-5112 et. seq. (1980)); approves bonds issued by local school boards for school construction and other needs (K.S. 72-6761 (Cum. Supp. 1982)); determines state aid entitlement for local districts (K.S. 72-7043 (Cum. Supp. (1982))); orders and approves the transfer of territory between school districts; (K.S. 72-7108 (1980)); and approves consolidations of school

districts (K.S. 72-8703)).

Many of the actions of the Topeka school board which have contributed to or perpetuated racial discrimination fall under the supervisory duties exercised by the Kansas State Board of Education which body in turn has maintained various relationships with the Governor, depending on the years involved, which affects public education. They include a pattern and practice of opening and closing schools, making boundary changes, annexations and de-annexations, creating optional attendance zones, modifying existing attendance zones, and supporting open enrollment and transfer policies, all of which have perpetuated and/or promoted racial segregation among students and therefore effectuated a racially segregated school system. The Kansas state officials have allowed the Topeka School Board to design and implement various building and construction plans involving all of the elementary and secondary schools which have included, among other things, permanent and temporary additions to existing facilities, siting and erecting new schools, closing certain schools and reassigning students in a manner which has perpetuated and/or promoted racial segregation. Defendants have allocated funds to support each of the policies and plans described above, as well as to implement policies to maintain separate and unequal schools and facilities, including, among others, segregative faculty assignments and transfer policies, and allocation of unequal physical, curricular and extra-curricular facilities to racially identifiable schools.

(b)(c) See Board Minutes of Topeka, and acts of Defendants

as described in Intervening Plaintiffs' Response to U.S.D. 501's First Set of Interrogatories (April 13, 1984).

(d) To date only the individuals listed below have been identified as witnesses who will testify on the facts and the segregative impact of actions taken by the defendants which have contributed to racial segregation in the Topeka schools:

Mr. William Lamson
704 Windward Road
Jackson, MS
(601) 982-3849

Dr. Gordon Foster
7751 S.W. 131st Street
Miami, FL 33156
(305) 284-3212

Interrogatory No. 5

In the answer to Interrogatory No. 2 of the First Set of Interrogatories to plaintiffs by this defendant, it is stated "Rather, where an intentional dual school system is found to have existed at the time of Brown I, school authorities are deemed to be operating under a continuous affirmative duty to disestablish that system since the time of Brown II." Do you allege that the State of Kansas or any of its agencies have failed to disestablish a dual school system?

ANSWER

- a. the facts upon which you rely for this claim;
- b. identify the specific source of facts upon which you rely for this claim;
- c. list and identify the specific documentary evidence and particularly indicate anything which will be used as a trial exhibit with respect to this claim;
- d. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

Yes. The information sought in this interrogatory has been provided in the response to Interrogatory No. 3 above.

Interrogatory No. 6

In the answer to Interrogatory No. 2 of the First Set of Interrogatories to plaintiffs by this defendant, you allege "Accordingly, the State is responsible for its failure to utilize its broad educational powers to eradicate the condition of segregation in the school district."

- a. identify the "broad educational powers" which you allege the State has failed to utilize;
- b. describe fully "the condition of segregation" which you refer to; and
- c. describe how the "broad educational powers" you allege to exist could have been used to eradicate the "condition of segregation" you allege exists, and state specifically any statutory authority for the exercise of those "broad educational powers."

ANSWER:

(a) The acts of U.S.D. 501 which have contributed to or perpetuated racial discrimination in the Topeka public school system are not those of an independent and autonomous body. The State of Kansas has embodied various state officials with supervisory and general supervisory duties which require continuing interaction with local school boards. The State Board of Education, among other things, publishes school laws, rules and regulations (K.S. § 72-120 (1980)); selects subject matters within the field of instruction mandated by the Legislature (K.S. 72-1101 (1980)); applies for and supervises the expenditure of federal funds by local school districts (K.S. §§ 72-126, 72-127, 72-6201, 72-6202) administers and supervises local administration of federal food service programs (K.S. 72-5112 et. seq. (1980)); approves bonds issued by local school boards for school construction and other needs (K.S. 72-6761 (Cum. Supp. 1982)); determines state aid entitlement for local districts (K.S. 72-43

(Cum. Supp. (1982)); orders and approves the transfer of territory between school districts; (K.S. 72-7108 (1980)); and approves consolidations of school districts (K.S. 72-8703)). Many of these supervisory powers might have been used in a manner to encourage desegregation.

(b) Many of the actions of the Topeka school board which have contributed to or perpetuated racial discrimination fall under the supervisory duties exercised by the Kansas State Board of Education. They include a pattern and practice of opening and closing schools, making boundary changes, annexations and de-annexations, creating optional attendance zones, modifying existing attendance zones, and supporting open enrollment and transfer policies, all of which have perpetuated and/or promoted racial segregation among students and therefore effectuated a racially segregated school system. The Kansas state officials have allowed the Topeka School Board to design and implement various building and construction plans involving all of the elementary and secondary schools which have included, among other things, permanent and temporary additions to existing facilities, siting and erecting new schools, closing certain schools and reassigning students in a manner which has perpetuated and/or promoted racial segregation. Defendants have allocated funds to support each of the policies and plans described above, as well as to implement policies to maintain separate and unequal schools and facilities, including, among others, segregative faculty assignments and transfer policies, and allocation of unequal physical, curricular and extra-curricular facilities to racially

identifiable schools.

(c) The Kansas state officials might have affirmatively taken steps to condition approval of funds, transfers of territory or accreditation of schools on the Board's willingness to implement an effective desegregation plan. If necessary, the Kansas state officials might have sought the authority to do so by seeking the enactment or adoption of proposals, laws, executive orders, constitutional amendments, rules or regulations which would negate the prior effect of K.S. 72-1724 and prohibit any form of racial discrimination, segregation of students and faculty or inequality of facilities solely on the basis of race within the public school system.

Actions could have been taken by the Governor to assure the appointment of members of the State Board of Education demonstrating a commitment to racial equality in education up to the time he no longer appointed members to the State Board of Education (K.S. 72-124 (repealed 1969)). In light of statutory and constitutional changes in Kansas educational law actions could have been taken by the Governor to withhold appointment of members elected to fill vacancies on the State Board of Education when they bear no commitment to assuring racial equality in public education. (K.S. 25-3902(a) (1980)).

Actions could have been taken under prior and present law to remove members of the State Board of Education who failed to seek of local school districts performance of educational functions in accordance with the constitutional mandate of Brown not to engage in segregation of the races in public education.

The broad power of the Kansas State Board of Education to "administer the laws" concerning the requisites of public education (e.g., issuance of guidelines, rules and regulations, courses, textbooks, accreditation of schools) consonant with other applicable statutory authority (K.S. 72-7513), might also have been used to encourage desegregation within U.S.D. 501. In particular, the Kansas State Board of Education exercises various supervisory functions involving application for and distribution of monetary funding (e.g., K.S. 72-5112 et. seq.; 72-6761; 72-7043), which power might have been used in a manner to discourage U.S.D. 501 from perpetuating patterns of racial segregation. The Kansas State Board of Education must also administer the laws concerning all other matters relating to the general supervision of the public schools. (K.S. 72-7513). It is inconsistent with the duty to administer the laws to exercise general supervisory duties over public education, without concern for all matters relating to public education, including the duty imposed on the local and state defendants by Brown not to engage in illegal racial segregation in public education.

Interrogatory No. 7

In the answer to Interrogatory No. 2 of the First Set of Interrogatories to plaintiffs by this defendant is stated "Further, the state's constitutional obligation requires it to steer clear of supporting segregation 'through any arrangement, management, funds or property.'" As to this statement, describe the specific manner in which you allege the State has supported directly or indirectly segregation through any "arrangement, management, funds or property."

ANSWER:

The present racial identifiability of schools within U.S.D. 501 results from the failure of both local and state officials to comply with the 1955 order to eliminate the racial segregation of children in public schools allowed by K.S. 72-1724. Both the Topeka school board and the State of Kansas defended the constitutionality of K.S. 72-1724. (Topeka School Board Minutes of December 1, 1952 and November 18, 1953). Because of Brown II, the State officials' supervisory duties over education and their interaction with local school districts also carry an affirmative duty to act in the interest of desegregating the Topeka school system. Any acts of the Topeka School Board which perpetuated or which failed to desegregate "with all deliberate speed" are also a joint act or failure to act by Kansas state officials.

The acts of U.S.D. 501 which have contributed to or perpetuated racial discrimination in the Topeka public school system are not those of an independent and autonomous body. Kansas state officials have supervisory duties requiring surveillance and continuing interaction with local school boards. The State Board of Education, among other things, publishes school laws, rules and regulations (K.S. § 72-120 (1980)); selects subject matters within the field of instruction

mandated by the Legislature (K.S. 72-1101 (1980)); applies for and supervises the expenditure of federal funds by local school districts (K.S. §§ 72-126, 72-127, 72-6201, 72-6202) administers and supervises local administration of federal food service programs (K.S. 72-5112 et. seq. (1980)); approves bonds issued by local school boards for school construction and other needs (K.S. 72-6761 (Cum. Supp. 1982)); determines state aid entitlement for local districts (K.S. 72-7043 (Cum. Supp. (1982))); orders and approves the transfer of territory between school districts; (K.S. 72-7108 (1980)); and approves consolidations of school districts (K.S. 72-8703)).

Many of the actions of the Topeka school board which have contributed to or perpetuated racial discrimination fall under the supervisory duties exercised by the Kansas State Board of Education. They include a pattern and practice of opening and closing schools, making boundary changes, annexations and de-annexations, creating optional attendance zones, modifying existing attendance zones, and supporting open enrollment and transfer policies, all of which have perpetuated and/or promoted racial segregation among students and therefore effectuated a racially segregated school system. The Kansas state officials have allowed the Topeka School Board to design and implement various building and construction plans involving all of the elementary and secondary schools which have included, among other things, permanent and temporary additions to existing facilities, siting and erecting new schools, closing certain schools and reassigning students in a manner which has perpetuated and/or

promoted racial segregation. Defendants have allocated funds to support each of the policies and plans described above, as well as to implement policies to maintain separate and unequal schools and facilities, including, among others, segregative faculty assignments and transfer policies, and allocation of unequal physical, curricular and extra-curricular facilities to racially identifiable schools.

Defendants have also approved, permitted or failed to discourage transactions which affected changes in geographical boundaries within U.S.D. 501 which in turn led to further segregation as a result of decisions of the Topeka School Board including, among others, attendance zones, siting of new schools, openings and closings, and transfer policies.

A further arrangement includes the absolute abdication of responsibility for desegregation in Topeka by Kansas state officials despite clear notice to them from the facts, circumstances, and rulings in Brown I and Brown II that illegal racial segregation could no longer exist within the Topeka school system. For a further description refer to subpart (a)(b)(c) in the answer to Interrogatory No. 3 above.

Interrogatory No. 8

In the answer to Interrogatory No. 2 of the First Set of Interrogatories to plaintiffs by this defendant it is stated "The State is thus responsible for any segregation in the school system." As to this statement, state specifically any direct or indirect state aid which you allege has enhanced or perpetuated segregation in the school district. Then describe the following:

- a. the facts upon which you rely for this claim;
- b. identify the specific source of facts upon which you rely for this claim;
- c. list and identify the specific documentary evidence and particularly indicate anything which will be used as a trial exhibit with respect to this claim;
- d. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

The circumstances surrounding Brown I and Brown II indicated that both local and state entities were responsible for the illegal segregation in the Topeka public schools. Disbursement of any monetary funds through State channels, approval of any transaction by the Topeka school board which required State involvement and which contributed to the actions described in Interrogatory No. 4, and failure to encourage in any form the implementation of an effective desegregation plan in Topeka are all forms of state aid which have contributed to the illegal segregation within U.S.D. 501.

(a)(b) Refer to the answer provided to Interrogatory No. 4, No. 10 and No. 2. See also generally, the answers provided in response to the First Set of Interrogatories Propounded by the State Board of Education. See Kansas State and Constitutional law respecting public education prior to and at

the time of Brown I.

(c) Trial exhibits remain unidentified.

(d) See answer to question 4(d).

Interrogatory No. 9

In the answer to Interrogatory No. 2 of the First Set of Interrogatories to the plaintiffs by this defendant it is stated, "The State defendant Governor John C. Carlin (sic) 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 school district as evidenced by the continuing segregation in the district." As to this statement, please describe specifically the "chain of policies and practices" which you refer to, and then state the following:

- a. the facts upon which you rely for this claim;
- b. identify the specific source of facts upon which you rely for this claim;
- c. list and identify the specific documentary evidence and particularly indicate anything which will be used as a trial exhibit with respect to this claim;
- d. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

(a) The Governor of Kansas, the State Board of Education, Department of Education, or the Commissioner of Education, and any other past or present Kansas official empowered to act in the interest of Kansas public education (e.g. Department of Public Instruction and State Superintendent), have maintained a policy and practice of abdication of the responsibility for desegregation in Topeka. No immediate effort was even made to have K.S. 72-1724 repealed by the Legislature. The State Governor and other officials have never sought to encourage desegregation by, for example, attempting to condition approval of funds for the Topeka School District, accreditation of schools, transfers of territories between school districts, or other procedures incident to annexations or de-annexations on the Board's also complying with the order to desegregate the schools.

No attempt has ever been made to seek implementation of any act, law, constitutional amendment, executive order, ruling, or regulation which would encourage desegregation of the public schools and encourage compliance with the order to dismantle a dual system of education within U.S.D. 501.

The series of explicit or tacit policies and practices of the Governor, the Topeka Board of Education and all other officials authorized to act in the interest of Kansas public education all amount to a defiance of the order issued in Brown II as evidenced by the persistence of racial identifiability of schools within U.S.D. 501.

In light of the connection between acts of the Topeka School Board, the Governor and other Kansas state officials by virtue of Brown I and Brown II, the constitutional and statutory scheme creating a supervisory role of the State over the actions of local school boards, and the absence of affirmative steps by state officials to assure the implementation of an effective desegregation plan, acts of the Topeka School Board in rejecting plans or proposals having a potential for integration are also attributable as a failure to comply with the constitutional duty implied by Brown II and part of the practices and policies referred to in plaintiffs' answers.

(b) As a source of these facts, plaintiffs have used the many acts of the Topeka School Board which have contributed to or perpetuated racial discrimination and which fall under past and present supervisory duties of the Governor to other Kansas state officials involving education. They include a pattern and

practice of opening and closing schools, making boundary changes, annexations and de-annexations, creating optional attendance zones, modifying existing attendance zones, and supporting open enrollment and transfer policies, all of which have perpetuated and/or promoted racial segregation among students and therefore effectuated a racially segregated school system. The Kansas state officials have allowed the Topeka School Board to design and implement various building and construction plans involving all of the elementary and secondary schools which have included, among other things, permanent and temporary additions to existing facilities, siting and erecting new schools, closing certain schools and reassigning students in a manner which has perpetuated and/or promoted racial segregation. U.S.D. 501 and its predecessors had to allocate funds, transfer property, expand or diminish territory, as well as implement policies to maintain separate and unequal schools and facilities, including, among others, segregative faculty assignments and transfer policies, and allocation of unequal physical, curricular and extra-curricular facilities to racially identifiable schools.

Reference can be made to the Topeka School Board Minutes, Defendants responses and supplemental responses to interrogatories and the Depositions of Owen Henson and Gerald Miller.

(c) Trial exhibits remain unidentified.

(d) Most witnesses remain unidentified. Mr. Lamson and Dr. Foster will testify on facts and opinions involving the policies and practices which have failed to prevent a racial segregative

impact.

Interrogatory No. 10

Do you allege any policies, practices, procedures, rules or regulations of any agency of the State of Kansas has preserved or promoted the alleged racial segregation complained of in this case?

ANSWER

If yes, describe specifically and separately the following:

- a. each of the specific practices, procedures, rules or regulations you claim preserves or promotes the alleged racial segregation;
- b. the facts upon which you rely to claim each practice, procedure, rule or regulation preserves or promotes the alleged racial segregation;
- c. identify the specific source of the facts upon which you rely for this claim;
- d. list and identify the specific documentary evidence and particularly indicate anything which will be used as a trial exhibit with respect to this claim;
- e. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

(a) Yes. See the answer to Interrogatory No. 4. The Kansas State Board of Education has maintained a practice since 1954 of not taking a single affirmative step to accelerate the process of desegregation in Topeka. The Governor of Kansas, the State Board of Education, Department of Education, or the Commissioner of Education, and any other past or present Kansas official empowered to act in the interest of Kansas public education (e.g. Department of Public Instruction and State Superintendent), have also maintained a policy of absolving themselves of any responsibility for desegregation in Topeka. The State officials have never sought to encourage desegregation by, for example, attempting to condition approval of funds for

the Topeka School District, accreditation of schools, transfers of territories between school districts, or other procedures incident to annexations or de-annexations on the Board's also complying with the order to desegregate the schools.

(b) The series of acts of the Topeka School Board described in the answer to Interrogatory No. 4(a) have received the tacit approval of the Kansas State Board of Education by its failure to object to or prevent the implementation of decisions having a foreseeable segregative impact.

(c)(d)(e) See the answers in Interrogatory No. 4.

Interrogatory No. 11

Do you allege any act or acts of any agency of the State of Kansas has preserved or promoted the alleged racial segregation complained of in this case?

ANSWER

If yes, describe specifically and separately the following:

- a. each of the specific practices, procedures, rules or regulations you claim preserves or promotes the alleged racial segregation;
- b. the facts upon which you rely to claim each practice, procedure, rule or regulation preserves or promotes the alleged racial segregation;
- c. identify the specific source of the facts upon which you rely for this claim;
- d. list and identify the specific documentary evidence and particularly indicate anything which will be used as a trial exhibit with respect to this claim;
- e. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

This Interrogatory seeks the same information sought in Interrogatory No. 10. An act of (acts of) an agent, agency or representative of the State of Kansas or any other past or present state official who could act in the interest of public education which might have preserved or promoted racial segregation is (are) necessarily incident to the authority or habit of acting under policies, practices, rules and regulations to preserve or promote racial segregation.

See the answer to Interrogatory No. 10.

Interrogatory No. 12

State the names and addresses of any witnesses the plaintiffs intend to use to prove their case as alleged against this defendant.

ANSWER:

Many witnesses remain unidentified.

To date only the individuals listed below have been identified as witnesses who will testify on the facts and the segregative impact of actions taken by the defendants which have contributed to racial segregation in the Topeka schools:

Mr. William Lamson
704 Windward Road
Jackson, MS
(601) 982-3849

Dr. Gordon Foster
7751 S.W. 131st Street
Miami, FL 33156
(305) 284-3212

Interrogatory No. 13

If you intend to call as a witness any individual who may have the qualifications to testify as an expert to prove your case as alleged against this defendant, state:

- a. the name and address of each such individual;
- b. the subject matter upon which the expert is expected to testify;
- c. the substance of the facts and opinions to which the expert is expected to testify;
- d. a summary of the grounds for each such opinion;
- e. the field of expertise of the expert;
- f. set forth in detail the qualifications and training of the expert, including professional and practical experience, educational institutions attended, and degrees obtained. As to each item listed in the answer to this interrogatory, set forth the relevant dates and the nature and identify of each institution attended and of each place at which experience or training was received;
- g. set forth the exact title of any and all articles or publications written by the expert relating in any way to his or her field of expertise or the subject matter of his or her anticipated testimony. As to each such article or publication, identify the publisher and set forth the date and location of publication;
- h. set forth a detailed description of any and all oral reports, conclusions, or comments ever prepared by the expert with respect to the subject matter of this litigation.

ANSWER:

(a)(b)(c)(d) To date plaintiffs intend to call as expert witnesses the individuals listed below who will testify on the racially segregative impact of actions taken by U.S.D. 501 and Kansas state officials and their predecessors or failures to act by U.S.D. 501 and the Kansas state defendants including, among others, the creation of optional attendance zones, boundary changes, annexations and de-annexations, opening and closing of

certain schools and support of open enrollment and transfer policies.

Additional persons who may serve as expert witnesses to testify on policies and practices which perpetuated and/or promoted racial segregation within Unified School District No. 501 remain unidentified but supplemental information will be provided as soon as it is available to plaintiffs:

Mr. William Lamson
704 Windward Road
Jackson, MS
(601) 982-3849

Dr. Gordon Foster
7751 S.W. 131st Street
Miami, FL 33156
(305) 284-3212

(e)(f)(g) Resumes are being provided in a supplemental response to this interrogatory which will detail the field of expertise of each individual, his or her practical and professional experience in the stated field of expertise and, where relevant, titles of articles or publications relating to such field and the subject matter which qualifies the person to serve as an expert witness in this litigation.

(h) To the extent this interrogatory seeks details on oral comments or conclusions given by expert witnesses, an objection is made on grounds that the final question is burdensome and not an appropriate subject of discovery. If the question seeks discovery of written expert reports, no such reports exist to date but they will be made available to defendants when plaintiffs receive it (subject to defendants similarly agreeing to supply experts reports.)

Interrogatory No. 14

Do you allege this defendant intentionally caused the alleged segregation within USD 501 or its legal predecessor?

ANSWER

- a. the facts upon which you rely for this claim;
- b. identify the specific source of facts upon which you rely for this claim;
- c. list and identify the specific documentary evidence and particularly indicate anything which will be used as a trial exhibit with respect to this claim;
- d. give the names, telephone numbers and addresses of all persons expected to be called as witnesses to prove this claim at the trial of this case.

ANSWER:

Yes. (a) In Brown I the United States Supreme Court held that the segregation of the races permitted by K.S. 72-1724 was a form of intentional racial discrimination against Black children prohibited by the 14th Amendment to the United States Constitution. In light of this ruling, the Kansas State officials, including the Governor, empowered then and now to act in the interest of Kansas public education have been on notice that acts of the Topeka School Board which perpetuate racial segregation must be discouraged.

Compliance with this duty to eradicate racial discrimination in the public schools imposes on the Governor an obligation to see that all subordinates involved in education and any agent, agency, or representative of the State of Kansas encourage desegregation, assist in the implementation of desegregation plans, and discourage through the exercise of available supervisory powers under Kansas educational law, the

implementation of practices and policies which contributed to or perpetuated patterns of racial segregation in the public schools.

Since 1954, the Topeka School Board has engaged in various practices and policies which have contributed to and perpetuated racial segregation, many of which acts fall under the supervisory powers and duties of past and present Kansas state officials, including past and present powers and duties of the Governor of the State of Kansas in the area of public education. Many of these officials have had a close relationship to the Governor and continue to maintain a relationship which affects public education. Any failure to act in the interest of desegregating the schools within U.S.D. 501, any passive acknowledgement of, and/or tacit or express approval of acts of the Topeka School Board by any of these officials, including the Governor, which have perpetuated racial segregation within U.S.D. 501 are no more than an attempt to persist in separating the races in public education as was previously authorized under Kansas state law by K.S. 72-1724 and therefore amount to intentional causation of racial segregation within U.S.D. 501.

(b) For a further description of the acts or failures to act which have resulted in intentional causation of racial segregation see subpart (a) to the answers to Interrogatory No. 4.

(c) Trial exhibits remain unidentified.

(d) To date only the individuals listed below have been identified as witnesses who will testify on the facts and the segregative impact of actions taken by the defendants which have

contributed to racial segregation within U.S.D. 501:

Mr. William Lamson
704 Windward Road
Jackson, MS
(601) 982-3849

Dr. Gordon Foster
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Interrogatory No. 15

Describe all communications, if any, between intervening plaintiffs' members of the plaintiff class, their parents or their attorneys and this defendant (of which you are aware) complaining about or alleging a perpetuation of segregation in the Topeka school system.

ANSWER:

The constitutionality of K.S. 72-1724 was challenged by members of the plaintiff class in Brown I. The State Attorney General represented the State of Kansas in the action to defend this case before the United States Supreme Court. Intervening Plaintiffs' Motion for an Order to Command Compliance with the Order to Desegregate alleged a continuation of the segregation which had been brought to the attention of these defendants in Brown I and Brown II.

In the decision to reopen this case (84 F.R.D. 343, 392-393 (1979)), Judge Rogers specifically recognized that intervening plaintiffs, had an interest in determining the compliance of these defendants with the ruling of Brown I and Brown II. By virtue of the facts and circumstances of Brown I, a challenge to the constitutionality of an official legislative act permitting racial segregation in public education in the State of Kansas, state officials, particularly this defendant, were put on notice that illegal segregation existed in Topeka and that illegal segregation could no longer be allowed to exist subsequent to the Court's ruling.

This complaint alleges that this defendant and other state officials, who have been on notice that post-1954 actions of the Topeka School Board must not perpetuate segregation, have failed

to exercise their duty to investigate or otherwise assure that desegregation is implemented "with all deliberate speed."

Dated this 15th day of August, 1984.

E. Richard Larson
CHRISTOPHER A. HANSEN
E. RICHARD LARSON
American Civil Liberties Union
Foundation
132 West 43rd Street
New York, New York 10036

Richard E. Jones, (by ERL)
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(413) 235-3961

Attorneys for Intervening Plaintiffs

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

E. Richard Larson, of lawful age, being first duly sworn, deposes and says he is the duly authorized representative of the intervening plaintiffs above named, that he has given answers to said interrogatories and that the answers above given are true and correct.

E. Richard Larson

Subscribed and sworn to
before me this 17th day
of August, 1984

MARY HEEN
Notary Public, State of New York
No. 31-4763009
Qualified in New York County
~~Commission Expires March, 30 1986~~
Mary Heen
NOTARY PUBLIC

CERTIFICATE OF SERVICE

This is to certify that the original and two copies of the foregoing Answers to First Set of Interrogatories of Defendant Kansas State Board of Education were served by depositing same in the U.S. Mail this 17th day of August, 1984, to

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Assistant Attorney General
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