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Playoffs open
Mike Witt, left, and
Roger Clemens will be
on the mound as the
California Angels and
Boston Red Sox open
American League
playoff action today at
Fenway Park in
Boston. Page 19.

Arguments offered in Brown trial

By GWYN KNUDSEN
Capital-Journal federal affairs writer

Black children receive an inferior education in the Topeka schools because Topeka school officials never complied with the U.S. Supreme Court's 1955 mandate to desegregate the schools, Topeka attorney Rich Jones said Monday.

Jones offered that criticism in U.S. District Court during opening arguments for the plaintiffs in the reopened Brown vs. Board of Education case. The case opened Monday morning to a standing-room-only audience as Jones and attorneys for the defendants, the Topeka Unified School District 501 schools and the Kansas State Board of Education, outlined their cases.

"For those who didn't understand in 1955, the Supreme Court reiterated it in 1968 in the Green case when it said the school district had an 'affirmative duty' to remove 'all vestiges' of segregation, 'root and branch,'" Jones said.

"I think that may be a Southern expression for all deliberate speed. I think around here we might say lock, stock and barrel."

Jones charged that not only did the Topeka school district fail to fully desegregate, but that

the school board has taken actions, and failed to take actions, that have perpetuated discrimination in the schools and concentrated even higher percentages of blacks and whites in separate schools.

He also said the school district "virtually screamed out" forewarnings of policy changes

"For those who didn't understand in 1955, the Supreme Court reiterated it in 1968 ..."

— Rich Jones,
Topeka attorney

that would affect the racial composition of neighborhoods.

"The school district always gave a signal to white families far enough in advance to do some things to get out of the path" of desegregation, Jones said.

He said that white families then had the option of moving to a neighborhood with an even higher white population and, thus, a lower black enroll-

ment at that neighborhood's school.

Gary Sebelius, one of several attorneys for the Topeka school district, denied Jones' charges. He said the school district's defense would show that since 1955, the school district has made steady progress toward more-integrated schools.

Sebelius said the district was committed to a philosophy that "all children have the potential to learn and to achieve within that scope," and that achievement test scores and psychological testimony would prove that Topeka school children have not been harmed by racial imbalances in schools.

Sebelius also denied that the school district has taken any action, or intentionally failed to act, to preserve separate schools for blacks and whites.

In his opening argument, Dan Biles, general counsel for the state Board of Education, told U.S. District Judge Richard Rogers, who is hearing the case, that the state board would not have had the opportunity to prevent or participate in any attempt by the Topeka school district to thwart integration and perpetuate segregation.

"The state board does not control local school



—Staff illustration/Pat Marrin

LINDA BROWN SMITH ... lead plaintiff in both trials

Continued on page 3, column 1

Arguments

Continued from page 1

districts," Biles said.

Biles also pointed to state and national academic awards received by the Topeka school system and its students as an indication that harmful racial imbalances do not exist in Topeka schools.

"To me it is interesting that many of these programs of excellence occur in schools the plaintiffs have targeted as inferior black schools," he said.

Rogers told the court that the rehearing in the Brown case, which he ordered in 1979 when the plaintiffs claimed the Brown mandate had been ignored, would not be a rehashing of the same issues litigated in the original case. The hearing is expected to last a month.

"We're not going to spend any more time than necessary on a world that is dead and gone," Rogers said. He said that the emphasis of the hearing will be on issues that have affected the present racial complexion of Topeka schools.

Linda Brown Smith, the lead plaintiff in both the original case and the rehearing, was present in court Monday and sat at the plaintiffs' counsels' table as the designated representative of the plaintiffs.

In the rehearing, Smith and her children, Charles and Kimberly

Smith, head a list of parents and their children — present and former Topeka school children — who are taking issue with the racial makeup of Topeka schools.

Monday afternoon, Chris Hansen, an American Civil Liberties Union attorney from New York who is Jones' co-counsel, questioned William Lamson, a demographics expert from Jackson, Miss., about the effect school board actions had on the racial makeup of Topeka elementary schools in the 1950s and 1960s.

Lamson, who said he had testified in dozens of desegregation cases, used maps of school attendance boundaries and color overlays of boundary changes to show where percentages of black and white pupils attended school and how boundary changes caused shifts in the racial composition of school enrollments.

Lamson testified that in the 1950s the school district drew boundaries so that black students generally were concentrated within a few Topeka schools and that when the four all-black schools at issue in the original Brown case were taken out of the school system, other schools fulfilled their role.

"Upon organizational integration

of the black schools into the white schools, the attendance boundary lines were drawn to maintain the black schools as black schools," Lamson said.

Lamson presented several examples of how he believed the attendance boundaries could have been redrawn to provide a more realistic racial mix in all the racially lopsided schools. He also criticized the district policy of allowing optional enrollment, which gives parents in so-called optional zones the choice of sending a child to one school or another, as another means of maintaining segregated schools.

"Generally speaking, whites never elect to go to the black schools," Lamson said.

Lamson also testified that in several cases the school district placed portable classrooms at predominantly white schools to accommodate surplus enrollments while classrooms at predominantly black schools were not fully used.

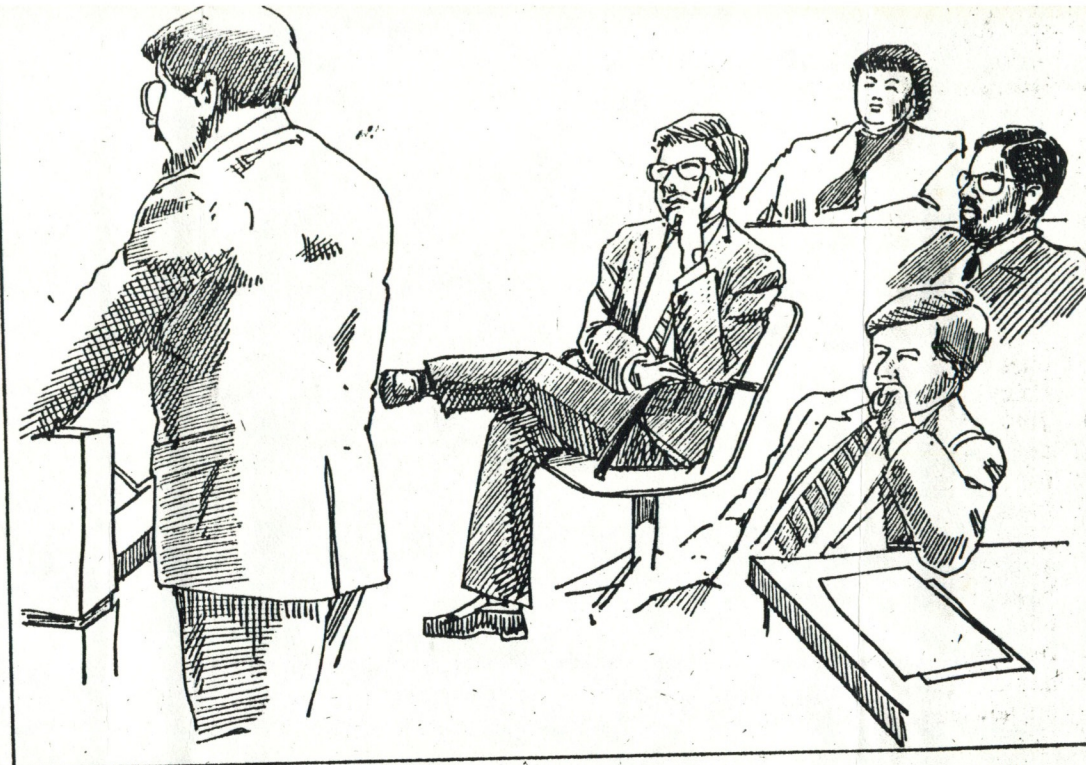
"It means an election on the part of the school district to continue to serve the burgeoning white population at the periphery of the school district and not make use of schools at the center," he said.

Lamson also maintained that the school district compensated when it annexed new areas with existing schools by shifting attendance boundaries and providing portable classrooms to maintain segregated schools.

The school district's 1955 desegregation plan, which was offered in response to the Supreme Court's ruling in Brown, did not achieve its stated purpose, Lamson said.

"It is my opinion that the Topeka Board of Education reestablished a racially segregated school system" with the plan, he said.

Lamson was scheduled to resume his testimony this morning. Hansen said Lamson will critique the school district's actions regarding boundary changes, the use of portable classrooms, school siting decisions and other means of assigning attendance centers for all levels of schools through the early 1980s.



—Staff/Pat Marrin

Participants (clockwise, from left) in the opening day of Brown vs. Board of Education were Gary Sebellius, an attorney for the schools; Chris Hansen, representing the plaintiffs; Linda Brown Smith, one of the plaintiffs; Richard Jones, attorney for plaintiffs; and Dan Biles, an attorney for the schools.

Smith says fight 'national struggle'

Topeka's desegregation fight is representative of a national struggle for racial balance in public schools, said Linda Brown Smith, the lead plaintiff in the landmark civil rights case, Brown v. Board of Education.

Smith, who generally shuns interviews with the news media, agreed to answer questions at an impromptu press conference Monday during the noon recess in the rehearing of the Brown case.

Smith heads a list of plaintiffs who have asked the district court to decide whether the Topeka school district has intentionally isolated black students in certain schools in violation of the U.S. Supreme Court's 1955 ruling in Brown.

"You see this fight being fought

throughout the United States," Smith said. "The concept of having totally desegregated schools has not come about."

"It is frustrating to me, but more than frustrating I find it disheartening."

Asked what she hoped the present court hearing would accomplish, Smith said, "I would like to see total racial balance, in terms of numbers, in terms of children of all nationalities."

Smith said that racial balance in the classroom would be "more like the world outside the child will be exposed to."

Smith conceded that in the original Brown case her father, the Rev. Oliver Brown, sued the school dis-

trict to allow her to attend Sumner, her neighborhood school, instead of an all-black school farther away.

Now Smith and the other plaintiffs in the case, a group of parents and their children, want the court to abolish the neighborhood school concept because, they say, it promotes predominantly black and predominantly white schools.

"There is an irony, but for the sake of racial balance in the schools I favor busing," Smith said.

Smith, whose children are grown and no longer are students in the Topeka district, also defended her role as lead plaintiff in the reopened Brown case.

"I feel I should have played a part in this," she said.

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findings because they did not consider birth rates, state and regional migration, residential construction data and other factors.

Sebelius charged that Hansen's letter to the survey company, which was carbon copied to Lamson, influenced the outcome of his report. In the letter Hansen said he wanted the survey to ask whether Topekans perceive some schools as black and others white and whether Topekans perceive black schools as inferior.

"I want the answer to be yes," Hansen said in the letter.

Hansen told U.S. District Judge Richard Rogers, who will rule on evidence presented in the case, that he was "appalled" the letter and memo had "inadvertently" become part of the defendants' case because he considered both communications to be part of an attorney's work product.

During a recess in Wednesday's hearing, Hansen told reporters that he "screwed up" by letting the documents fall into the hands of USD 501 attorneys, but defended his action in providing the documents to Lamson and denied that Lamson had been prejudiced by reading them.

"I'm sure there are experts who will say whatever you want them to say," Hansen said. "But that kind of expert you can tear apart on cross-examination. They didn't do that."

When given an opportunity to question Lamson after Sebelius had finished cross-examination, Hansen clarified statistics published in news reports of the hearing and distinguished between percentages of school enrollments that are black and percentages of district enrollments that are black and assigned to a given school.

For example, The Capital-Journal reported Wednesday that in 1980 Topeka West High School had a black enrollment of 4.1 percent, compared with 51.5 percent and 44.4 percent at Highland Park and Topeka high schools. According to Lamson's findings, those numbers represent the percentage of USD 501's total black high school enrollment that was assigned to each school.

In 1980 the actual percentage of student enrollment that was black at Highland Park High School, the "blackest" of Topeka's high schools, was 29.1 percent.

Hansen said Lamson's study found that, while none of Topeka's high schools is racially identifiable when measured by the "plus or minus 15 percent" formula, all three are still off balance in their racial makeups.

Wednesday's pollen

Grass	1
Ragweed	1
Other pollen	1
Mold spores	105