

M E M O R A N D U M

TO: Richard Jones, Charles Scott, Sr., Charles Scott, Jr.,
Joseph Johnson, Bill Rich, John Powell, Bill Lamson,
Richard Larson

FROM: Chris Hansen

RE: Brown Appeal

DATE: May 20, 1987

Our brief on the Appeal is due 40 days after the transcript is filed. Rich is taking care of the transcript which, of course, can be filed immediately. Thus, our brief will probably be due in late June.

I will be out of the office in depositions in Louisiana the weeks beginning May 25 and June 22. I will be on vacation from June 5-15. I plan to spend most of this week as well as the weeks beginning June 1 and June 15 on Brown.

Enclosed is an Introduction or Summary of Argument to the brief. I propose that we structure the brief as outlined in this. Let me know what you think.

We should also be considering whether we want to seek amici, and if so, who. Do we want amici? National groups such as NAACP? Local groups such as CCBC?

I also need to know who, if anyone, should be given drafts of the brief for review and comment. Please give me the names of anyone you think should be involved.

Finally, I will call Gary about settlement and let you know what I hear.

INTRODUCTION

Prior to 1954, the Topeka School Board maintained a de jure segregated school system. (Op., 1). In 1954, in one of the most famous cases in this nation's history, the Supreme Court held that the de jure segregation of Topeka's schools was unconstitutional. Brown v. Board of Ed., 347 U.S. 483 (1954). A year later, the Supreme Court ordered the Topeka school board to desegregate the schools. Brown v. Board of Ed., 349 U.S. 294 (1955).

After 1955, the District Court found that

- * The Topeka School Board adopted a neighborhood schools plan (Op., 14, 40)
- * The drawing of the new "neighborhood" boundaries of the previously all-Black schools "appear(s) to have perpetuated the racial identity of those schools" (Op., 23)
- * "The construction of [new] schools, particularly on the west side of the district, appears to have promoted racial separation" (Op., 21)
- * In some cases, additions were made to white schools to add capacity at a time when space was available at Black schools (Op., p. 18)
- * Black and minority staff have been and are disproportionately assigned to schools that are disproportionately Black and minority by student assignment (Op. 32)
- * In closing the four previously all-Black schools, the school district assigned most or all of the students to the nearest remaining school, making it disproportionately Black (Op. 27, 28, 29)

* The only desegregative steps taken by the School Board were to go to a "neighborhood" school system and then subsequently close the four previously all-Black schools (Op. 30)

* The Board could have made different school siting decisions that would have had a more desegregative effect, but chose not to (Op., 22)

* The Board refused to adopt several building plans that would have had a more desegregative effect (Op., 40-43)

* The Topeka school district today is more segregated than other comparable school districts (Op. 17)

Notwithstanding these factual findings, the District Court concluded that the Topeka school board had taken sufficient actions to meet its affirmative duty to desegregate the schools "root and branch." The critical error in the District Court's opinion is not in its factual findings, but in its refusal to apply desegregation law clearly established by the Supreme Court to those facts.

Any de jure school system has a duty to fully desegregate its schools "root and branch." [cite] Simply moving to neighborhood schools -- as the Topeka school district did -- particularly when the "neighborhoods" are gerrymandered -- as the District Court found here -- is not sufficient. [cite] The District Court avoided this obvious conclusion only by repeatedly requiring plaintiffs to demonstrate that the school district intentionally segregated its schools after 1954 (e.g. Op. 20, 23, 41). Even where the District Court found that the question was whether the school district's actions had the effect of perpetuating

segregation -- pursuant to plaintiffs' claim under the Title VI regulations -- and in the face of its explicit finding that school construction policies "promoted racial separation" the District Court found no violation.

Applying the facts found by the District Court to settled Supreme Court law, there can be no doubt that the Topeka school board did not fully desegregate Topeka's schools. For that reason, plaintiffs respectfully ask that the order be reversed and remanded for further hearings on additional steps necessary to complete the desegregation of Topeka's schools.

Preliminary
Outline of Statement
of Facts

- I. History of Proceedings
- II. Four-Step Plan and "neighborhood" schools incl. p. 90
- III. 1955 - present
 - A. Openings and additions and siting
 - B. Closings including specific B successor sch.
 - C. Boundaries including vestige sch.
 - D. Missed opportunities
 - 1. General incl. numerous boundaries
 - 2. Specific --
 - (a) 74 Plan
 - (b) N and X
 - E. Results over time as in pp. 14-19 of Post-Trial Brief
- IV. State Defendant Facts
- V. Situation today
 - A. Summaries -- link all factors together
 - B. Summaries -- i.e., p. 9 of Post-Trial Brief
 - C. Specifics on each of factors
 - 1. Student Assignment - deal with desegregation vs. racial balance (?)
 - 2. Faculty
 - 3. Perception