



APPEARANCES

The Plaintiffs and Intervening Plaintiffs appear by Mr. Christopher Hansen, Attorney at Law, American Civil Liberties Union, 132 West 43rd Street, New York, New York, 10036; and by Mr. Richard E. Jones of Jones & Jones, Attorneys at Law, 605 S.E. Quincy Street, Topeka, Kansas, 66603.

The Defendants appear by Mr. K. Gary Sebelius and Mr. Charles N. Henson of Eidson, Lewis, Porter & Haynes, Attorneys at Law, 1300 Merchants National Bank Building, Topeka, Kansas, 66612.

The State of Kansas appears by Mr. Dan Biles, Assistant Attorney General, Litigation Division, Second Floor, Judicial Center, Topeka, Kansas, 66612.

Also present: Mr. William Lamson.

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GERALD A. MILLER,

called as a witness on behalf of the Plaintiffs and Intervening Plaintiffs, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HANSEN:

Q Mr. Miller, my name is Chris Hansen and I am the one that is going to be asking you the questions this morning.

A Okay.

Q If I ask you a question that isn't clear and you don't understand it, feel free to say so and I will try and make it clear or rephrase it in some way.

A Okay.

Q Would you state your name and current occupation?

A Gerald A. Miller. Current occupation, Director of Demographic Services for School District Number 501, Topeka Public Schools.

Q To whom do you report in this position?

A Directly to Dr. Mike Tribbey.

Q What is his title?

A General Director of Planning and Evaluation Services, I believe. My secretary usually fills those in. He is a good guy. Mike Tribbey is my friend, yes.

Q Does he report to the Superintendent?

A Yes, I suppose. I might say he reported to the Superintendent,

1 Dr. Don O'Neil and then on to Dr. Gray. I guess that  
2 should be in the record.

3 Q How many people do you supervise?

4 A I do not supervise any administrators, but have a varying  
5 number in my office, actually two and a half regular  
6 employees and then sometimes up to as many as eight,  
7 depending upon the seasonal workload. I guess I could say  
8 I supervise the record-keeping activities, the principals,  
9 their secretaries, terminal operation and so on. I use it  
10 across the District to keep up with student data base, but  
11 not a real line staff of direct communication. You are  
12 talking about District supervision.

13 Q Yes. How long have you held your current position?

14 A Since 1968.

15 Q Where were you employed prior to that?

16 A I have always been employed by School District 501 during  
17 my professional experience. I started in 1956 in the  
18 fall.

19 Q Your position immediately prior to the one you have now  
20 with 501?

21 A I should maybe state that I was called Director of Pupil  
22 Accounting and then that became Director of Demographic  
23 Services. Prior to that I had been a Junior High Counselor  
24 and Math teacher.

25 Q At which school?



1 A Two years at Crane Junior High. Prior to that ten years Math  
2 mainly, but then Industrial Arts for part of the time, at  
3 Roosevelt Junior High. Those are my full experiences in  
4 Topeka.

5 Q What degrees do you hold?

6 A I have a Bachelor of Science Degree, which is my basic degree,  
7 from Chadron State Teachers College in Nebraska and I have a  
8 Masters of Science in Education Psychology and Guidance  
9 from Kansas University in 1964 and some hours beyond that.

10 Q Did you have to write a dissertation or thesis?

11 A A thesis.

12 Q What was the subject of your thesis?

13 A Predictability that we had from our course grades in  
14 junior high to predict junior high success for Roosevelt  
15 students and their success at Topeka High.

16 Q Was the answer predictable or not?

17 A I think I knew a little bit ahead of time I couldn't argue  
18 with all the other dissertations having been done ahead.

19 Q What responsibility does your current position entail?

20 A I guess I could start off by just saying one of the main  
21 things is the supervision and planning for providing a  
22 data base that will record items that relate to School  
23 District administration, for record keeping for student  
24 records. We file many reports that are required by the  
25 local, federal, or state organizations. We serve as some-

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1 what of a coordinator and partly decision-making of student  
 2 transfers within the District. We answer all kinds of  
 3 questions regarding resident placement. In other words, a  
 4 new person coming to Topeka will call into our office and  
 5 say what school or schools would my child or children  
 6 attend. So we give them that information, either my staff  
 7 or I. I am a foreign student advisor for all students that  
 8 come in through what we call the F-1 non-immigrant student  
 9 status under the United States Department of Justice and  
 10 Immigration. Beyond that, I think I would be saying that  
 11 I serve as a supportive position for the planning function.  
 12 I work in an area that Dr. Tribbey is the head of and it  
 13 has to do with some of the long-range plans that we develop.  
 14 Ted Clark serves as the Director of Facilities. Then we  
 15 make reports to administration and the Board regarding  
 16 current enrollment school capacities. We do the racial  
 17 makeup of the District at periodic times. That is basically  
 18 it.

19 Q Do you have any responsibilities that relate to faculty  
 20 data bases, teaching staff?

21 A You are talking about the staff?

22 Q Yes.

23 A And some demographic data about them?

24 Q Yes.

25 A We do, yes, we know the number of teachers in a given

1 building or we know who to contact if it was a Third Grade  
2 teacher. But I don't record that as being part of our main  
3 job.

4 Q What about budgetary data? Are you responsible for that  
5 in any way?

6 A Only for my own department, which becomes a subsidiary  
7 budget for Dr. Tribbey.

8 Q Do you sit on any committees within the school administra-  
9 tion?

10 A Yes, we have the Student Transfer Review Committee which I  
11 am kind of the presider and bring it to the attention of  
12 about ten or twelve other administrative staff. Over the  
13 years I have served on some committees, but not a regular  
14 one, and sometimes I pass. I was on Administrative Counsel,  
15 but with reorganization then I am not on Administrative  
16 Counsel now. So I tend to be a supportive person for  
17 information, of say Dr. Tribbey, would need for his  
18 committees.

19 Q The Student Transfer Committee that you sit on, does it  
20 actually meet as a committee?

21 A Yes, it is on an on-call basis, usually letting a number  
22 of cases kind of come together when we have ten or nine or  
23 three. Depending upon how long you wait. If you want to  
24 give good response to the patron. But we let them accumu-  
25 late. The other thing is we have what we call a - I guess



1 I want to call it a pretransfer period from about the  
 2 first part of January into February or March where we kind  
 3 of group the first applications for student transfers for  
 4 the following year and then we kind of measure those against  
 5 the capacities of the building for the estimated enrollments.  
 6 Then that committee receives that information and determines  
 7 are there any schools that we ought to close temporarily  
 8 to receive any students. So that is kind of the makeup.  
 9 Otherwise, we deal with students that have particular needs  
 10 which the Board's policy would allow. Just to give you an  
 11 example, maybe a student, by medical opinion, needs to have  
 12 an air-conditioned or closed school environment because of  
 13 asthma. Then we can rule on that in favor of it, if we  
 14 want to send the child to that type of school. Or it  
 15 could be an educational setting that is judged by profes-  
 16 sionals that needs to be changed because of maybe being in  
 17 a school one year and not passing in enough subjects.  
 18 Sometimes you want to give them a new chance that may not  
 19 be there and subject to ridicule from other students.  
 20 That is just a few types.

21 Q Does the Student Transfer Committee keep Minutes of its  
 22 meetings?

23 A No, as far as Minutes, the approvals or disapprovals are  
 24 recorded and the parent and the school principals affected  
 25 are promptly notified.

1 Q You said that before this January-February period there  
2 was some attempt to analyze what the effect of the appli-  
3 cations would be on the schools if they were all approved?

4 A Yes.

5 Q Is that process written down somewhere and circulated?

6 A Well, it is in the regulations so to speak, how the  
7 Committee operates. Let's just say we may have 300 apply  
8 in a year. Probably two-thirds of them will apply in that  
9 given period. So you see, that is really important to us  
10 to make that planning. Then you see, over the summer,  
11 when schools are closed, you have a lot of people who are  
12 moving around and so on and then we kind of get hit in  
13 August again for additional requests for transfer.

14 Q If I wanted to find the piece of paper that describes what  
15 the effect would have been on the people who applied for  
16 transfer in January or February of last year, is there  
17 sort of a written piece of paper that says, Dear Committee  
18 Members, 200 people applied and the effect would be as  
19 follows, if we granted them all?

20 A We have a chart that shows the number of requests, the net  
21 effect upon that school, yes, and then they make the  
22 decision as to whether we ought to show this school is  
23 temporarily closed until we find out what the first week's  
24 enrollment is going to be. If it is going to be down we  
25 might say yes to a kindergartener, but not to a 4th grader

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1 and the 1st grader. Kindergarten might be low.

2 Q The transfer applications that come in, not during the  
3 January-February period, the fraction of it that trickle  
4 in over the rest of the school year, when you build up  
5 eight or nine or ten of them, do you have the same kind of  
6 memo that goes around to the people?

7 A No. I should have made that clear. If they are approved  
8 under the Board policy, it doesn't require me to take them  
9 to the Committee. If they are disapproved, due to capacity,  
10 and we get an appeal from the parents, then that goes to  
11 the Committee. If they are within the guidelines of the  
12 Board's policy, we notify the parents right away. If we  
13 got one today and it fit and that school is still open, we  
14 just notify, yes, it is approved. We don't go the  
15 Committee with that.

16 Q The Committee is an appellate board in some way?

17 A That is about right.

18 Q Does the Committee then approve transfers on a majority  
19 vote basis, on a consensus basis? Do you make the ultimate  
20 authority?

21 A I would say consensus basis, yes. Because we allow every-  
22 one to voice an opinion or ask questions. I will give just  
23 a little thumbnail sketch of the situation. We may walk  
24 through five of them. So each one is just a little sketch  
25 of what the situation is. Then they review that. They

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1 might even say we want more information. So we defer that  
2 one and go back to receive more professional input. But  
3 we try to make sure we get it from the beginning. Like I  
4 say, the Committee has the right to ask that and we give  
5 it to them as best we can.

6 Q Do the guidelines that allow you to make the first approval-  
7 non-approval decision, do those guidelines include the use  
8 of racial impact of the transfer in any way?

9 A It is not so much the racial impact as it is when we adopt  
10 the next year's transfer policy or it continues, one of  
11 the provisions in that as of September 15th or in that  
12 vicinity, we take the racial makeup of that school and we  
13 subtract out by minority or majority. We subtract those  
14 that transferred out of that school and we bring back  
15 those that transferred out and bring that back and get the  
16 net figure. We think this is the way to do it in that the  
17 neighborhood has a base figure. A majority student can  
18 move up to a higher minority school than his home school,  
19 whereas, a minority student must always go to a lower  
20 minority school than his home school or her school.

21 Q If I were White I could go from Bishop to Belvoir, but not  
22 the other way around?

23 A That is right. If Highland Park North is higher and you  
24 are a White student at Highland Park North, you could not  
25 leave at all, maybe.

1 Q Right.

2 A If Belvoir is just next under it, do you see what I mean?

3 Q Right. In the appeals process, the Student Transfer  
4 Committee process, does the issue of the racial impact of  
5 the transfer ever get discussed?

6 A I would say yes, we are always conscious of that and we  
7 purposely tabulate that. But again, the Committee doesn't  
8 say anything. If we are moving them in the way the policy  
9 says, and the Board had set the policy to go until we  
10 reach a capacity point, then we tend to stop it even though  
11 it could be approved racially. We might stop it, due to  
12 capacity until we get a new reading on it at the first of  
13 the school year.

14 Q If I were a White student in Belvoir and wanted to move to  
15 Bishop and you thereupon turned me down because of the  
16 racial impact of it, could I appeal that to the Transfer  
17 Committee?

18 A You could appeal it, but I would tend to say unless there  
19 are some other professional reasons that overshadow that,  
20 the race is probably the first priority that we consider  
21 and you would still be denied by the Committee. I am saying  
22 from my experience that they have been very supportive of  
23 that.

24 Q That is then sent out to the parents by the Committee.  
25 Does it indicate why the transfer was approved or disapproved?



1 A It just says they were or were not.

2 Q If I wanted to look at the list of the kids whose cases  
3 ultimately went to the Committee and were approved or not  
4 approved, could I find a reason for approval or non-approval  
5 on a piece of paper anywhere?

6 A I gave a report to the Board for a period of like two years.  
7 I think they asked for that. I am going to say it was like  
8 two years ago. Since that time, it has not been assembled  
9 on a chart, but if the Board asks for it, I would be willing  
10 to do it because they are a matter of record.

11 Q You have got it in your records somewhere although you  
12 haven't put it altogether?

13 A Yes, it would be the approval or disapproval sheet. Like  
14 the presentation I made to the Committee, I would write  
15 either approved or disapproved by it and I would also be  
16 able to go to the basic document application itself and  
17 see that we would have changed it from a "disapproved" to  
18 "approved" if that was the case, or "disapproval sustained."  
19 They get a letter saying it was reviewed by the Committee  
20 and the denial was sustained.

21 Q You could also track back the reason why the Committee  
22 either affirmed the previous opinion or reversed it?

23 A I am not sure that I could say that, no. Because as far  
24 as I would say, there either was a lack of professional  
25 support - I am talking about say from a psychiatrist or a



1 medical doctor or from our own staff dealing with a  
2 special education need. I want to make sure you understand  
3 Special Education students do not come under this. I am  
4 talking about a special education need of the child just  
5 to make sure we are clear on that.

6 Q Okay.

7 A We might again ask the school psychologist who wrote in  
8 support of it, and ask to look at some other alternatives.  
9 We cannot approve it now, but if you want to submit it back.

10 Q The transfer policy we have been talking about, how long  
11 has that been in effect?

12 A The current one I would have to say I don't have the dates  
13 just in my mind here. So I am going to say pretty much  
14 from 1980-81 to the one we are using presently, is just  
15 about the same word-for-word. Part of that time there is  
16 about a two-year period when the Board was having to be  
17 the ones to approve the acceptations. But the Board handed  
18 it back to us after that. I think they were saying since  
19 it was quite a transition from open enrollment going to  
20 what we are in now, they wanted to monitor it for a period  
21 of time and I think probably because of our experience and  
22 the way we handle it, I think we won their support and  
23 acceptance. So now we handle it within the staff. The  
24 record would be available then if they wanted to know.

25 Q The transfer policy I take it is something that is written

1 down somewhere?

2 A Yes, it is in the student handbook and a part of the Topeka  
3 Plan, which is our official policy book.

4 Q Prior to the 1980-81 school year, was the transfer policy  
5 that existed then also written down?

6 A Yes, it would have been written down and was a part of the  
7 major policy book. As I say, the one provision regarding  
8 who made the decision of those that were questionable, it  
9 was the Board of Education and we would carry them to a  
10 Board as an agenda item and they would deal with it. Where  
11 we do not have that now. I will say that it is possible  
12 for the Review Committee to say no. Say I said no to begin  
13 with and then the Review Committee said no, so a patron  
14 could go to the Board and the Board might ask us to bring  
15 the evidence in and they would make the judgment as to  
16 whether it is appealable or acceptable or not.

17 Q During the period when the transfers weren't decided by  
18 the Committee, they were decided by the Board?

19 A Yes.

20 Q Did you write a memorandum saying thirty-three kids wanted  
21 transfer and here is where they wanted to transfer and  
22 here is where they are starting from and here is where they  
23 are going?

24 A I believe that would be correct. I am going on memory it  
25 was an agenda item usually, whether what we presented the



1 Board would be written out. It was not the personal review  
2 or presentation by myself. I believe that would be correct.

3 Q Did it contain a recommendation by the staff whether the  
4 transfer should be approved or not?

5 A I believe so, but I am going on memory. I am not sure of  
6 that.

7 Q There was a period of time the School Board had open enroll-  
8 ment, is that right?

9 A Yes.

10 Q What period of time was that?

11 A You could check the documents. I am going to guess right  
12 now between '77 and '79, but I stand corrected if we look  
13 at the documents.

14 Q I am not going to hold you to the years. I am just sort  
15 of getting zeroed into the general area so we can talk  
16 about it?

17 A Yes.

18 Q Why was open enrollment done away with? First of all, by  
19 whom was it done away with?

20 A To the best of my knowledge, the Board of Education did  
21 away with it.

22 Q Was that based upon any recommendation or staff work that  
23 was sent to the Board?

24 A My recollection is that we evaluated what the transfer  
25 effect was during that time and we evaluated the several



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1 different parts. I think I ought to just review about  
2 three things for you. One is when the Board did go with  
3 open enrollment we were partway of getting approvals for  
4 transfer for that given year. I am going to say we received  
5 transfer requests during the spring of the year. It might  
6 be for kindergarteners who are pre-enrolling, other grades  
7 who are saying I want to go to a different school next  
8 year. I believe the Board made the decision like on June  
9 the 21st and that would have been because we had been  
10 through some closing of schools. There was community  
11 pressure on the Board to have a little more flexibility  
12 from the old policy. So I think that was what led to their  
13 going to some kind of an open enrollment. Also, coupled  
14 with that I think is the next Board meeting following that  
15 one where they made that first decision. The policy was  
16 enlarged to include day care providers, residences becoming  
17 the residence that would determine a school attendance, I  
18 am going to say like the July 1st meeting in that year.  
19 They let the old policy stand for those that had applied.  
20 But if someone had been denied in the spring, they could  
21 come back then and reapply under the open enrollment policy  
22 and be approved. Then those who had day care, where it  
23 used to be restricted to just Kindergarten and 1st Grade,  
24 it opened up clear through, I think it was Grade 6. Anyway,  
25 it greatly expanded the number who were applying. The

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situation was right in the community for saying there was more flexibility required by the patrons. So then the Board allowed this and we gave them the report like in November of that year, as to what was the net effect. The patrons expressed to the Board their opinions. The Board could tell from the statistics. We cannot comment on the intent of the patron.

Q Sure.

A We are talking only about what the figure shows as it seems like there were more Whites leaving Lowman Hill than there were Whites coming in. Or it might have been only minority were coming in and Whites were leaving. You could see Lowman Hill was going up in minority percentage of its student body. So then I think the Board did two things. As I recollect, they asked that the DCAC study this and come back with a recommendation. Then they asked the staff to be available to them to give them facts and figures. I believe that was done later on. I think it was in the spring. It seemed like in that one year though that they might have come back with a report in December, because the first year we had this new type of enrollment-- no, I am going to back up just a moment and say I believe for the first two years of this kind of modified enrollment cut way back I think we had a spring enrollment application period or transfer period. Then later we moved it - I



1 think like in 1980-81 we moved it back to saying we will  
2 open this first application period on the first-come -  
3 first-serve basis around January the 6th or 13th or some-  
4 where in there. I am going into more detail there. I am  
5 just trying to diagram for you the changes there. Then I  
6 think the Board then, after the first year, we submitted  
7 data, they evaluated it and I will just say every year  
8 since then we have produced a booklet in the fall giving  
9 them a report of all those requests from say the previous  
10 January on around and I will just say approximately the  
11 end of the first quarter, about November 1st. We have  
12 those booklets that could be added to what we have submitted  
13 as Interrogatory Answers, but we did not do it since I  
14 think it stopped in 1980.

15 Q Did the staff make any recommendation about the beginning  
16 of open enrollment?

17 A About the beginning?

18 Q Yes.

19 A Be a little more clear.

20 Q Two things, I guess the first is who first had the idea of  
21 open enrollment? Did it come from the staff who said to  
22 the Board, we should start considering an open enrollment  
23 policy? Or did the Board say to the staff, we are getting  
24 a lot of pressure from the community. Would you draw up  
25 an open enrollment policy so we can consider it?

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1 A I believe I could say we were holding meetings about the  
2 closing of schools during the spring. Of each meeting that  
3 we had there were probably two or more Board Members and  
4 some staff with a group of patrons there. I think I would  
5 tend to say it was probably the patrons' desire and pres-  
6 sure, some of which is unknown to me.

7 Q Right.

8 A But because the Board Members, some of them I will say, I  
9 don't want to say all of the Board, to suggest that as a  
10 possible alternative. I think we, as a staff, were asked  
11 to do some study on that. I would tend to say it did not  
12 come from the internal staff as far as the initiation of  
13 it.

14 Q When the Board asked for some sort of staff study on the  
15 possibility of instituting an open enrollment policy, were  
16 you the one that did the work?

17 A I don't think it was just me. I believe it was probably  
18 something that would have been handled almost by admini-  
19 strative council or something like that. I am sure I was  
20 the one to provide the statistics because I was the one  
21 who had them. But as far as what finding went to the  
22 Board, I think it would have been called like many other  
23 things. It was a complete staff or at least a large  
24 section of our Topeka administrative staff said this is  
25 what we will present. This seems to answer the questions

1 they had raised.

2 Q Do you recall whether that submission to the Board contained  
3 any recommendation from the staff, either we think open  
4 enrollment is a good idea, or we think open enrollment is  
5 a bad idea?

6 A I don't recollect frankly. I don't think it was a personal  
7 thing with us as a staff. I think we were trying to aid  
8 Board Members who were giving us direction with some  
9 perimeters suggested and then we tried to probably put into,  
10 as administratively as possible, a package to work with.  
11 That is just my guess.

12 Q When talk began of ending the open enrollment policy in  
13 the form it was in, in those years, did that talk originate  
14 with the staff, originate with the Board, or was it such a  
15 matter of constant discussion that you really can't identify  
16 which of those was the case?

17 A I am not sure.

18 MR. SEBELIUS: Or any other reason.

19 Q (By Mr. Hansen) Or anything else? How did that happen?

20 A I don't think I can say factually now. I am inclined to  
21 think that because we were doing some other reports and  
22 that the Board had asked the DCAC to do some studies,  
23 probably it was a thing we are all looking at this. I  
24 don't think I could say that it was initiated by any one  
25 group. Except the Board does give direction to the DCAC



1 and they study those things and report back.

2 Q Does the DCAC still exist?

3 A Yes.

4 Q Who appoints the members of that?

5 A I think I will have to defer some of that. I am not sure  
6 how those are done in all cases.

7 Q I assume the principal liaison person between the staff  
8 and the Board is the Superintendent, is that right?

9 A You say between the DCAC?

10 Q No, I'm sorry. I meant between the whole 501 staff?

11 A I would say yes, the Superintendent. I would say this,  
12 that we do have the Assistant Superintendent of Community  
13 Relations who does figure coordinating that leadership in  
14 the DCAC in with the Board's prerogatives and administration  
15 have counsel. That would be a fair statement, I think.

16 Q Who is that person?

17 A Forrest Slaughter.

18 Q When is the staff given some sort of report? I want to  
19 concentrate on how the decision got made to end the open  
20 enrollment? Did the staff make any kind of recommendation  
21 as to whether open enrollment should or should not continue  
22 to exist in this form, if you can remember?

23 A I can remember meetings of some of us on the staff with  
24 Board Members in - I will call it a "planning session" or  
25 "discovery session" and then I think probably several of



1 those sections. In fact, I think they had some more  
 2 questions that they wanted us to go back and look at and  
 3 then they came to their decision in January of that year.  
 4 I think we probably even had legal advice. We probably  
 5 had Board Members who have been bombarded by certain patrons.  
 6 I am speculating on those, how it came into the idea that  
 7 it was probably Board initiated, for saying we want to find  
 8 out how did we do on this as a Board, has a right to do.

9 Q Sure.

10 A That is where I think it came from.

11 Q When they asked that of the staff, and you wrote a letter  
 12 back saying here is how you did. Did the bottom of that  
 13 letter say, and given this, we as a staff recommend that  
 14 you continue open enrollment or change it in any way?

15 A I don't remember any recommendation from me or from the  
 16 staff. I think we just simply answered their questions.  
 17 Now as far as when we came back to like the January position,  
 18 someone had to write that up and I think, yes, we formulated  
 19 policy as taking the best of what the Board had and put it  
 20 into a policy. When they adopted that on say like the  
 21 first meeting in January, then that became the mode by  
 22 which we operated. I can't tell you how it was formed. I  
 23 guess I work on so many things where someone paints a  
 24 little bit here and someone paints a little bit here and  
 25 who gets the credit for it, the final picture? I don't

1 really know how to define that.

2 Q The meeting that you had with individual Board Members  
3 that we just talked about?

4 A The Board Members as a group. I did not meet with any  
5 individual Board Member that I recollect. It was a group  
6 meeting. Again, it was not policy-making in the meeting  
7 itself. It was a discussion. Then they make those  
8 decisions in a called Board meeting or regular Board meeting.  
9 It was not an executive session decision. It was that the  
10 executive decision was researched by discovery formulation,  
11 maybe.

12 Q It wasn't a formal Board meeting, but many or most of them  
13 came or all of them came to the office and said give us  
14 more information so when we get to the office, we can make  
15 a decision?

16 A Yes.

17 Q Were Minutes taken of those meetings?

18 A I do not recollect. I would say minimum would have been  
19 notes as to their direction to me. Then I would go down  
20 or it might have been to a group of us administrative  
21 counsel and so a group of us wrote the policy. The policy  
22 would be as near to the Minutes of it because it is the  
23 final outcome. I believe that would be a correct statement.

24 Q When that sort of thing happens, when the Board Members or  
25 the Board itself wants you to supply data, do you send it

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1 to the Board directly? Do you channel it through someone  
2 else? How does that process work?

3 A Most of mine comes as a direction of the Superintendent or  
4 my immediate supervisor and it has come down the line, you  
5 see.

6 Q Yes.

7 A If a Board says we want a report at the next meeting,  
8 generally I would have shared that with my upper staff or  
9 the ones above me, the supervision, before it would go to  
10 the Board. Generally this goes to the Board like say on a  
11 Thursday and their next meeting is on the next Wednesday  
12 or something. So it goes in a packet of materials. Am I  
13 answering your question?

14 Q Yes.

15 A Okay.

16 Q Open enrollment started in '77-ish?

17 A I am going to say the summer of '77 or '78. I can't  
18 remember exactly.

19 Q The transfer policy prior to that -

20 A Okay.

21 Q What did it look like?

22 A I am going on recollection. You should have it in the  
23 Interrogatories. I remember one part of it was that for  
24 Kindergarten or 1st Grade students they could attend the  
25 school serving the day care provider.



1 Q Let me interrupt you. Yes, I do have that kind of stuff  
2 in the Interrogatory and I didn't ask the question right.

3 A Okay.

4 Q What I am looking for is the procedure by which it happened,  
5 the same way which you talked about it goes through you  
6 and the Committee. What happened then?

7 A Part of that time it came in as an application. It did  
8 not have race on it, very similar to the present form.  
9 Just the name and some phone numbers and so forth, so you  
10 could get in touch with the parents if you had some questions  
11 or something. Then they had to put down more of a reason.  
12 In other words, more of my decision was based on the  
13 reasons they provided us as to hardship. There was one  
14 general category of hardship and so hardship was not very  
15 well defined. So it could have been that a home was just  
16 splitting up and father here, mother there. So the children  
17 need something stable during this time. There are all  
18 kinds of reasons in there. From the time I came in that  
19 office and was kind of an understudy for Ray Tilsey, my  
20 predecessor, he kind of went over it with me the summer of  
21 '68. So I kind of knew what was the general method of  
22 operation, what might be acceptable reasons, you might say.  
23 I will have to say that during the time as I went into my  
24 first and second and third years and so on, it seemed like  
25 each year we were having more applications. Part of it

1 was during the kind of stormy late '60's and early '70's.  
2 So many times parents were saying the best solution to the  
3 problem that we have at a given school is to move my kid  
4 out of there into another school. So we were flooded with  
5 a lot of those and we did not approve every one of them  
6 trying to use the background given to us, being up with  
7 the times we tried to reason it out without being Solomon.  
8 We did the best we could. So those were never dealt with  
9 on the basis of race, sex or anything like that. It was  
10 just simply more on a need basis, or else it was so clearly  
11 spelled out that every kindergartener or 1st grader if  
12 they gave me the name of the day care provider, that was  
13 coming to be a very acceptable thing. So those were done.  
14 They did require the signatures of the two principals  
15 involved. The home school principal and the home receiving  
16 school principal. Those were dealt with and we tried to  
17 mail back out a notice to all affected parties as soon as  
18 we could.

19 Q Could you overrule the two principals or one or the other  
20 of the principals?

21 A The school principals I think were really on there because  
22 they would be a local person who would know a situation  
23 better than I would at a district level. So I valued  
24 their names being on there and their advice. Sometimes  
25 they would even call me and give me a little addition, other



1 than what their signature meant, approve or disapprove.  
2 Parents may have contacted them first and spilled the whole  
3 story to them and they might have said yes, that seems very  
4 reasonable in light of the ones Jerry Miller has already  
5 approved before. Then we had others that didn't want to  
6 talk to the principal at all. They thought the principal  
7 was prejudiced toward their child. So they just wanted to  
8 go to the District person. So that is kind of the gambit  
9 of the type of requests that came in. So then we would  
10 either say yes or no to those and they would go to the  
11 other school or be denied. Sometimes they might even say  
12 then what other school. It may have been we turned them  
13 down for a school that was overlooked on population even  
14 then.

15 Q Was there somebody to whom they would appeal your decision  
16 in those days?

17 A I am going to say yes, they could have. I don't remember  
18 very many appeals. But I think it probably would have gone  
19 to the Superintendent's council or a principal might have,  
20 if he wanted to, may go through the heads of the Department.  
21 They might have said Jerry, you know, this one here we  
22 don't really think this will be for the good of the student  
23 or for the school or something else. I don't remember any,  
24 but I am sure there might have been a very few. I am going  
25 to say, I suppose in this case, you would probably say I

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1 was the one who made the decision and it stuck. I am not  
2 saying that in a haughty way and saying I was always right  
3 in doing that. I just don't remember of any.

4 Q Those did not have to go to the Board in those years?

5 A No.

6 Q I take it that procedure was in effect from when you started  
7 because you said you learned it from your predecessor?

8 A I started like in '68. I know it was in effect prior to  
9 that time and I think I would tend to say that it went up  
10 until the time of the open enrollment. But I would have  
11 to tell you that in that time though, again, during the  
12 early '70's, there was a little more turmoil in the schools  
13 and so the numbers kept increasing. I think I would have  
14 to be fair and say probably the instability of the marital  
15 situations of many homes. I think we as a country are  
16 getting more conscious of those who were poor and needy  
17 and special programs were being offered by the Federal  
18 Government. There were some schools that if we had like  
19 follow-through, those institutions were allowed to go  
20 through without making application. If someone wanted to  
21 benefit from some of the things that were in a given school,  
22 I guess they asked for it. We hopefully approved it or  
23 said why not. I believe up until 1977, I think, I would  
24 say in there, in that period of what, about nine years or  
25 so was probably a pretty stable policy, stated in the

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1 student handbook and in the Topeka Plan.

2 Q And a reasonably stable procedure as well?

3 A Yes, I would say so.

4 Q Did you know however, before '68, that procedure was in  
5 effect?

6 A No. Except I am going to say that when Dr. Bolton came as  
7 a teacher out in the schools I remember first getting a so-  
8 called big book called the Topeka Plan. I wouldn't say he  
9 was the author of it. It may have been that he was simply  
10 building on something else. That was kind of the main  
11 administrative office handbook and he just made it more  
12 open to principals out in the schools. As near as I can  
13 recollect, at least back to '63, that policy was in effect.  
14 I mean the main policies were in effect. I will say it  
15 that way.

16 Q At least back in '63 the procedure was roughly the same,  
17 that it went to your predecessor and he made the decision?

18 A As far as I know, yes. Again, I did not have access to  
19 those papers. What he made his decision on we felt with  
20 more of those who came in that summer, he would kind of  
21 go over and say this one I would approve and this one not  
22 approved. I don't have any backlog. I don't know of any  
23 of those that are available for study.

24 Q You said that for some period of time you were a member of  
25 the Administrative Council, is that right?

1 A Yes.

2 Q What years was that?

3 A I am going to say from 1968 and that summer. I am going  
4 to say probably for two to three years after that. Then  
5 we had a little reorganization. In fact, I think that is  
6 when we began even having--I don't know how to say it, I  
7 guess the only thing I could say is some realignment of  
8 positions answerable maybe to the Superintendent. The  
9 ultimate Administrative Council was getting kind of large.  
10 I think we went with the small one and we went with the  
11 large one because we had representatives of the different  
12 principals, elementary, secondary and senior high. We had  
13 to have some from IRC. We had a fragmented staff. Some  
14 of them were down at Van Buren School. It seemed like it  
15 got to be just a little bit unmanageable as far as size.  
16 But there may have been other reasons I don't want to  
17 comment on that maybe the Superintendent or the Board  
18 decided. But it narrowed down somewhat. We went through  
19 a major change, I am going to say 1974-75 was it, about  
20 the time I think we had some new people coming on and some  
21 changes in staff. That is just my best recollection.

22 Q During the two or three years, late '60's and early '70's  
23 that you were on the Administrative Council, do you recall  
24 whether there were Minutes of the Administrative Council  
25 meetings?



1 A I think we had an agenda which could be added to it at  
2 the meetings. As far as Minutes of it, I am not sure. I  
3 really don't remember.

4 Q Do you recall whether there were instances when you were  
5 asked to submit a report prior to the Administrative Council  
6 meetings so that it could be discussed as part of the  
7 agenda?

8 A I think there were times like that, yes, because I was a  
9 contributing member to it. Not just a decider on things.  
10 It was a good information session, too.

11 Q Even during the period since, when you haven't been attending  
12 the Administrative Council meetings, are there times when  
13 you are asked by them whenever they meet, would you give  
14 us a report we are going to discuss at that meeting?

15 A Yes. More often it has been Dr. Tribbey is going to present  
16 something, since he is a member of that. Sometimes I just  
17 say I will give it to him and other times they may want to  
18 have me there.

19 Q Is that on a regular basis, a frequent basis? How does  
20 that happen?

21 A I would say a rather frequent basis. I would just say  
22 probably pertaining to something that was so germane to  
23 just my narrow area that they might want to have me there.

24 Q I got on this long diversion from going through your resumé  
25 is what I started out on and I got interested in transfers

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and got off on this tangent. I didn't ask you about scholarly books or publications. Have you got any?

A No, I have not published anything. I have participated in conferences where I have delivered some papers, more just reciting my experiences were true and my experience with record keeping. I am glad to say that my predecessor and some others on the staff had more or less inaugurated the pilot project of the student data system. So I came into that with a lot of it already been going on and then we followed up with the implementation of it. So then we tend to share that experience with some of the more larger school districts. But my comments have been probably more like--oh, ASA I delivered a paper on demographics about five years ago. I am not a big writer.

Q Have any of the papers that you presented dealt with the kinds of things that this lawsuit is about, racial impact?

A No.

Q Have you ever testified before in a court case?

A Relating to truancy, yes.

Q Other than truancy?

A I have sometimes taken records into court where the father and mother were maybe getting a divorce and I testified as to what progress the student made in school that year or didn't make. So otherwise I don't believe I have had any other testimony regarding this case. I will put it that

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1 way. Is that getting at what you are trying to find out?

2-A 2 Q Yes, I am sort of looking as to how often you have gotten  
3 dragged into courtrooms and why?

4 A I would say very seldom.

5 Q Have you ever had to give a deposition before?

6 A I don't believe so. I was thinking of this the other day.  
7 It might have been one other time on a car accident thing.  
8 Nothing serious in my own mind, but I think I was asked  
9 to give a testimony and I can't remember now. I don't  
10 think it was even my own. I was going to--

11 Q I wasn't going to ask whether you hit the other car or  
12 whether they hit you.

13 A No.

14 Q You said earlier that you have to submit regular reports  
15 to a variety of people?

16 A Yes.

17 Q Is there a list somewhere of the reports that you are  
18 required to submit to the rest of the administration of  
19 Topeka to the School Board, to the State government and to  
20 the Federal government?

21 MR. SEBELIUS: I object, compound.

22 Q (By Mr. Hansen) He is objecting to the form of my question.  
23 You can go ahead and answer if you can.

24 A Is that acceptable?

25 MR. SEBELIUS: Yes. The objection is simply for the

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1 record. If you can understand the question, go ahead and  
2 answer it.

3 A I don't know if there is an exact listing. However, in  
4 writing up a job description I have put down what things I  
5 do and that has been used possibly for a redefinition of  
6 our administrative organization. So I suppose you would  
7 find it there, but otherwise I guess I probably would go  
8 traditional plus additional, because it seems to be that  
9 way. Very few of them tend to be deleted.

10 Q I am not surprised by that at all.

11 A Am I answering your question?

12 Q Yes, I was going to ask you what each of the reports were  
13 and it occurred to me we could be here for a while if you  
14 tried to remember all the reports and that didn't make  
15 sense. That is why I asked, was it written down somewhere.  
16 Let me ask, are you required to submit any periodic reports  
17 to the State?

18 A Yes.

19 Q What reports are those?

20 A One that would be our main one is the one that was the  
21 basis for the State aid. So on September 15th we are  
22 required by law regulation to submit a listing. I say,  
23 not required by law to do the listing, but I do think for  
24 auditing purposes I am required to submit a number and my  
25 information goes in on both principals' and superintendents'

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1 reports. So we verify or certify a given number of students,  
2 head count and full-time equivalency. So then those are  
3 audited and they do have to be by individual so they can  
4 check them out. A student is under a unique number so it  
5 is not that difficult to do. Another State report that we  
6 do is we assist the Business Office in providing the PL874  
7 listing of federally employed parents. So that basically  
8 Shirley Martin in the Business Office and others under  
9 William Warner's supervision, they supply that to the State.  
10 Then that goes on to the Federal Government. Another report  
11 that we do at the end of the year is called an ADA and ADM  
12 reports and it goes in I think 18-E and that goes in and  
13 that is more of a summary report. I know of no aid based  
14 on it. We do not get paid on the basis of average days of  
15 attendance or average days of membership. Another report  
16 that would go to the State would be a statement of the  
17 students that are in Special Ed. on December 1st approxi-  
18 mately and it is not my report, but actually is from Win  
19 Green, who is the Director of Special Education. It is  
20 his report, but we have a student data base that can respond  
21 to that so well and plus, he has a staff member up there  
22 who does coding for Special Ed. type and instruction of  
23 the IEP dates, things like this, you see. So that I am an  
24 assistant because I have management of a student data base,  
25 not that it is not my report really.

1 Q Any others that occur to you?

2 A Not that I can think of right off. I guess if the State  
3 asks something of our District and it came down through  
4 our Superintendent, and he forwarded it on to me, I would  
5 do it. But there is no regular ones that I am aware of.

6 Q Has that happened? Do you recall that happening?

7 A I think now and then there might have been somewhere I  
8 have contributed to where a legislative study committee or  
9 legislature itself is trying to determine the effects of  
10 funding. So they might ask us to do projections for the  
11 next three years. So with Dr. Tribbey and myself, we  
12 would project ahead. But we might alter it to fit the  
13 scheme that they are studying at the time.

14 Q The State reports that you listed earlier, what part of  
15 the State do they go to?

16 A Basically they go into the Finance Section, Mr. Dale Dennis.

17 Q That is the Finance Section?

18 A He is the Commissioner of Finance or Assistant Commissioner,  
19 whatever his correct title would be.

20 Q Does he report to the Governor? Or does he report to the  
21 Commissioner of Education?

22 A No, he reports to the State Commissioner of Education,  
23 which was Dr. Merle Bolton and which is now Dr. Harold  
24 Blackburn.

25 Q Is that true of all the reports that you talked about that

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1 you submit on a regular basis, that they go to the State  
2 Department of Education?

3 A The one on Special Education, it might go to a person in  
4 charge of Special Ed. over there. I am just saying many  
5 times we give them to the Superintendent and he forwards  
6 them in with his signature required on them. So I am not  
7 sure I can always state I know just exactly what office.  
8 But I know basically the use of them.

9 Q I will ask him on Monday.

10 A All right.

11 Q Do you have any responsibility for keeping track of student  
12 data base on students who are in the Topeka geographic  
13 area, but don't attend 501 schools? Things like parochial  
14 schools and private schools and places like that in Topeka?

15 A There are two things. One is done voluntarily and the  
16 other one is done as a requirement of the State, too. I  
17 just thought of another little report that she sends out  
18 saying please notify us of all the parochial and private  
19 schools located within the confines of your District. So  
20 we do submit that. The other thing that I do is just from  
21 a demographic point of view, because I want to find out  
22 what is happening and it helps me do a better job, I get  
23 information from the other school superintendents, but no  
24 one else has an office quite like ours. It is usually out  
25 of the Superintendent's office. So we find out how many

1 students there are in grades K through 12, including  
2 Special Ed. in Shawnee County. So that is judged to be a  
3 part of my work papers. Not a required report.

4 Q That means the parochial schools?

5 A Yes.

6 Q Is there a list of those schools, the non-501 schools in  
7 Shawnee County somewhere?

8 A I could give you the last report I sent in and I try to be  
9 alert to announcements. They are now enrolling on things  
10 like that to try to keep up on it.

11 Q Do you ask for race data from those schools, race or ethnicity  
12 data?

13 A No. I really just say the number per grade and the total  
14 enrollment in your school. That is all we ask.

15 Q The reports that you have given, it is to the State  
16 Department of Education?

17 A No. What I do is just kind of like one of those things  
18 where you generate some information and then you feed it  
19 back to people who provide it so every Superintendent or  
20 public or private school principal or director that supplies  
21 it, I send them back a copy of it. So they might be better  
22 informed. It is a benevolent thing I guess you could call  
23 it. It creates better working relationships and it helps  
24 keep me in the know. It is a planning tool from my stand-  
25 point, even though I give no direction to those other



1 districts. I think it helps them know themselves on how  
2 they work within the Shawnee County area.

3 Q Does that data get put on the 501 computer data base at  
4 all?

5 A No, that is just compiled manually and typed up and sent  
6 back out. It is about four pages.

7 Q Does your area of responsibility include anything relating  
8 to teacher assignment or hiring or recruitment?

9 A Not at all.

10 Q Other than knowing that Student A is in Teacher B's class,  
11 do you have any other teacher data that you are responsible  
12 for?

13 A We might know where a child is located by room sometimes  
14 or by teacher. That is not a main concern of ours. Other  
15 than we would tend to be interested in it. But I am not  
16 saying it doesn't determine the assignment of a teacher--I  
17 guess I should back up and say that when I make reductions  
18 of enrollment in a school, then yes, it does affect how  
19 many teachers are assigned there. I thought you were asking  
20 the question meaning if there is a question whether Mr. X  
21 or Mr. Y or Mr. Z gets a job in that school. I have  
22 nothing to do with that.

23 Q Was there a time when the School District used optional  
24 attendance zones?

25 A No.

1 Q The School District does not now use them?

2 A Does not now use them.

3 Q There are none in the system?

4 A None at all.

5 Q Do you remember what the time period was in which optional  
6 attendance zones were in effect?

7 A I came into a system which apparently had these optional  
8 zones. I was teaching at Roosevelt. I knew that we would  
9 get some students from Lowman Hill, but not all of them.  
10 I knew we had some that had a choice between Boswell and  
11 Roosevelt. I was aware of it, but I didn't always know the  
12 boundaries. We took away all optional areas I believe in  
13 1977.

14 Q What was the process by which the decision was made to  
15 eliminate optional attendance zones? How did that happen?

16 A I think there were a number of things, but I am going to  
17 give you as near as I can recollect. I believe that one  
18 of the reasons for optional areas--

19 MR. SEBELIUS: Wait just a moment. I am not sure he  
20 understands your question based on the way he is starting  
21 to answer it. You were asking for the process and I think  
22 you were starting to talk about the reason for zones.

23 A I am working backwards. Maybe I should say that we did  
24 disband the optional area because we no longer had the  
25 need. That was the reason for their being established, I

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1 guess, is what I was trying to say. Let me just give an  
 2 example. If you had a school that was going to be over-  
 3 crowded, say because of an influx of military personnel  
 4 coming into Forbes, the only way of financing many buildings  
 5 years and years ago was to go with a bond levy, bond issue.  
 6 That may or may not have been an easy thing to get accom-  
 7 plished. So they might have said, if we have room over  
 8 here at the adjacent school, let's put them over there.  
 9 The way we do it is by draining on optional attendance  
 10 boundaries. Now going back to your basic question again,  
 11 as to why did we or who did the disbanding or the removing  
 12 of those, am I correct in that statement there?

13 Q (By Mr. Hansen) Yes, exactly.

14 A Okay. I think one thing is that we felt like having an  
 15 option when it wasn't needed gave a favored position to  
 16 some people that it didn't to others probably. I believe  
 17 the other thing was that our Board, in about 1975, said its  
 18 goal was to have a more unitary school system and built  
 19 around it the idea of a neighborhood school. So therefore,  
 20 if you have optional areas then you are not able to hold  
 21 with that basic goal. So that is the way I remember it.

22 Q Were there staff discussions at that point about whether  
 23 optional attendance zones should be continued or not con-  
 24 tinued?

25 A You say staff?



1 Q Yes, staff amongst itself as opposed to staff-Board?

2 A I guess I would say most any big issue always has staff  
3 discussion. So I guess I would have to answer it yes.

4 Q I guess my next question, is there paper that reflects  
5 that discussion? Would there be memos or internal documents  
6 that would reflect that you have had a Committee meeting  
7 and talked about whether to have optional attendance zones?  
8 Is there a paper trail of those decisions?

9 A There are some. I think in the Answer to Interrogatories  
10 a study done in 1963 to 1965 was a pretty full scale and I  
11 think there is something like 55 optional attendance areas  
12 then and you have that. I was not a party to those dis-  
13 cussions. That was prior to my tenure as an administrator.  
14 You will find in that document--or I will wait a minute if  
15 you would like to delay a moment here.

16 Q Sure, I want to ask you some questions about that document,  
17 as long as we are at it.

18 (A recess was taken, after which the  
19 following proceedings were held.)

20 Q (By Mr. Hansen) I think we were talking about optional  
21 attendance zones just before we broke and you had just  
22 referred to a '63 study on optional attendance zones, which  
23 was supplied in your response to Interrogatories. Let me  
24 show you a booklet which we got called A Study in the  
25 Reduction of Optional Areas - Topeka Public Schools -

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1 December 12, 1963. Is that the document you were talking  
2 about?

3 A It looks like a copy of the one we have, yes.

4 (Miller Deposition Exhibit Number 1 was  
5 marked by the court reporter.)

6 Q (By Mr. Hansen) Let me indicate to you the document which  
7 has been marked Exhibit 1 has a brown cover and a lot of  
8 tabs and in each of the tabs, which seemingly refers to a  
9 different optional attendance zone, there is a description  
10 of the zone. This study was done prior to you being in  
11 your present job?

12 A Yes.

13 Q So you didn't participate in the drawing up of the study?

14 A No.

15 Q The first thing that I was confused about with respect to  
16 this study is the relationship between the Table of Contents  
17 and all the rest of it, because it appeared to me that many  
18 of the items reflected in the Table of Contents aren't in  
19 the study itself. I don't understand that. I was hoping  
20 you could help clarify it for me.

21 A The first one here is putting in all the optional areas  
22 and there is the recommendation. I guess I just have to  
23 say I can't vouch for it. I wasn't there. That is the  
24 document I presented just exactly the way we have it and I  
25 guess I would make no comment pro or con as to why it is

1 the way it is.

2 Q Do you know what it was that generated the desire to have  
3 that report done? That is not what I want to know. What  
4 I want to know, do you know the procedure?

5 A The purpose is stated up here, is that what you are asking?

6 Q I guess it is, yes.

7 A The purpose of the study is to reduce the number of optional  
8 areas in the Topeka elementary schools, reasons for reducing  
9 the number of optional areas includes: (A) Some optional  
10 areas are apparently obsolete.

11 (B) Rising enrollment makes it imperative that the  
12 number of variables, one variable being students living in  
13 optional areas, should be reduced to make school enrollment  
14 figures more concrete for more efficient use of building  
15 facilities. If you have too many that are there just  
16 because they elected to, you can't really nail down an  
17 accurate prediction on which to then do your staffing. So  
18 I would have to go on what they state as their basic  
19 purpose.

20 Q Do you know whether that purpose comes from the Board or  
21 from the staff?

22 A I don't.

23 Q Do you know whether the Board requested this report or  
24 whether the staff generated it?

25 A I don't think I can answer that. I don't know the source



1 of it.

2 Q This was done by your predecessor, is that right?

3 A He was one of them. It says that Mr. Joe Evans, who was  
4 at that time employed in--I don't know whether he was in  
5 Personnel. He had been a principal at Crestview. I know  
6 Miss Sylvia Nelson, who was more or less an elementary  
7 instruction administrator supervisor. Mr. Ray Tilsey was  
8 my predecessor. Dr. Harold Blackburn was Chairman and in  
9 '63 Harold was probably either an Associate Superintendent  
10 or Assistant to the Superintendent. I don't know his exact  
11 title. I just know that much about it. But I was not a  
12 party to it or didn't even know it was being done at that  
13 time.

14 Q Do you still in your control of the records of your prede-  
15 cessor?

16 A As far as enrollment records, yes.

17 Q What I am looking for, suppose for example there were  
18 memos written by those people that you just listed back  
19 and forth. Let's put together a study on optional zones.  
20 Here is why I think we should do it. Here is what the  
21 purpose is.

22 A No, the reason and the purpose is why I submitted this.  
23 This is all I had to lay my hands on. I will just say the  
24 attendance maps from '63 through succeeding years would  
25 have been some evidence of the outcome. I don't know when,

1 you asked the question, do I know how it came about or any  
2 memos regarding it. I would say, no.

3 Q The people who you just read as having participated in this  
4 '63 optional zone, are any of those people still alive and  
5 well and living in Topeka?

6 A Dr. Harold Blackburn is now the new Commissioner of  
7 Education. Going into that job here very recently.

8 Joe Evans is alive and living here.

9 Sylvia Nelson is here.

10 Also, Ray Tilsey. His sight has failed very much in  
11 the last year. I have tried to keep in touch with him and  
12 one of our former employees had tried to contact him in  
13 Albuquerque, but he has moved with his son in Idaho.

14 Q When you talk about the purpose of an optional attendance  
15 zone, can you explain that to me again?

16 A An optional attendance zone was an area that gave the  
17 children of those parents residing there a choice of one  
18 or more schools besides their own neighborhood school--

19 Q So far I understand it. Why would the school have an  
20 interest in creating such an option for parents?

21 A That is not exhaustive. I will say some reasons it would  
22 have been, is that some of our schools were built--let's  
23 just use an example, junior high schools were built during  
24 the late '20's and early '30's maybe. In those years  
25 population would show to be dense around those schools.

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1 Then with growth or new people coming into town with  
 2 industry or the Air Force or whatever the reasons, they  
 3 wanted to build either a new house or else they repopulated  
 4 those areas where maybe some of them going down towards  
 5 school age children had perked them up again. So where  
 6 some of them may have had an extreme number far in excess  
 7 of the capacity of the school, so where you have a firm  
 8 fixed school that cannot be moved over a block to get to  
 9 the center, a lot of times in their planning they were  
 10 trying to say, how can we make this so the school will fit  
 11 the population there and yet not make certain kids walk  
 12 too far to go to the ultimate school when we have to shut  
 13 off this optional area with saying we will leave some  
 14 choice here, and hopefully the patrons, by their own  
 15 decisions, will tend to alleviate something rather than  
 16 having to build a new school.

17 Q It seems to me though the easiest way of solving that  
 18 problem is to simply redraw the boundaries. The reason  
 19 why you would use an optional attendance zone rather than  
 20 redrawing the boundaries is what?

21 A I am going to say maybe you had older children in the  
 22 family though that wanted to go to the old school. So  
 23 where do you divide it? It might have been the family  
 24 would take the choice. We will let our 6th grader finish,  
 25 but we are going to start our new ones over here--give me



1 the question again and I will try to answer it more cor-  
2 rectly.

3 Q That is fine. The rationale that you described would  
4 suggest that optional attendance zones ought to be temporary  
5 things. I notice that some of them went on for extended  
6 periods of time?

7 A Yes.

8 Q Do you know why that was?

9 A No, except I know from being a school administrator, once  
10 something is set, you have to have a good reason for  
11 changing it. Let's say the optional area existed for  
12 fifteen years. The people who are now in that area they  
13 see where their neighborhood children go. They have long  
14 forgotten the reason why it was originally assigned an  
15 optional area. The other thing is the School District, by  
16 way of limited resources, simply cannot build another school  
17 that would alleviate that. So when you have that probably  
18 the thing just stays sitting.

19 Q Do you know who the person who would be most knowledgeable  
20 about the optional attendance zones system since most of  
21 it took place before you? If you wanted to track down  
22 some more information about the optional attendance zones,  
23 who do you think would be most knowledgeable?

24 A I suppose just as a matter of record here, Harold Blackburn,  
25 even though he has had some things in his professional

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1 experience since here. Whether he would remember those, I  
2 don't know. But I just say he is an outstanding profes-  
3 sional person.

4 Joe Evans, I don't know his health right now, but I  
5 would say Joe was fairly knowledgeable of Topeka schools,  
6 having been a long tenured person.

7 Sylvia Nelson. Those three out of the four, I don't  
8 think Ray would be a very good one because his memory may  
9 or may not be okay.

10 Q What was Joe Evans' job in the Topeka school system?

11 A Joe was in several areas. I am only going on memory. But  
12 I know at one time he was like a Principal at Crestview.  
13 At a later time maybe he was in some other schools as a  
14 Principal. But then he was in the Personnel Office. I  
15 don't know whether he was assigned just to elementary  
16 personnel or just in general, and I believe he retired  
17 from that position.

18 Q Sylvia Nelson, what was her job?

19 A Sylvia Nelson, for as long as I knew her, was the elementary  
20 supervisor for up to Grade 6. She had several consultants  
21 under her, music and different other subjects.

22 Q Why doesn't the School Board have any optional attendance  
23 zones now?

24 A I believe I would go back to the statement I made just  
25 prior, they adopted a goal somewhere around the middle '70's

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1 of removing all optional areas, with the idea that they  
2 could serve everyone going to a neighborhood school, there  
3 was no option other than the transfer policy.

4 Q Do you know whether the racial impact of the optional  
5 attendance zones were ever looked at by the School Board  
6 or the School Board staff?

7 A School District staff.

8 MR. SEBELIUS: You mean prior to the decision to  
9 eliminate?

10 Q (By Mr. Hansen) Prior to its elimination?

11 A I would say that information was available to them. How  
12 it affected their decision, I will just say that ever since  
13 about 1966 we had racial information available to them. I  
14 don't know that the impact of optional attendance areas by  
15 race was a prime concern, but I don't want to say that it  
16 wasn't a concern. I don't think I could tell you - I don't  
17 know a Board that intimately and I only touch them in  
18 certain areas. So I believe I probably better restrict my  
19 answer to that.

20 Q During that period when the racial data was available to  
21 them, did they have, without even asking for the reports  
22 that they got on a regular basis, that the Capper--let me  
23 take one example.

24 A Okay.

25 Q The Crestview-Whitson optional attendance zone has X number

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1 of Blacks and Whites going to one of those schools and X  
2 number of Blacks and Whites going to the other?

3 A As far as I can recollect, I don't remember of a report  
4 requested by the School Board about the racial makeup of  
5 those. It tends to be more in numbers. I remember doing  
6 a study once on the Highland Park-Topeka High area, which  
7 is kind of Oakland and East Topeka, and charting how many  
8 of those people living in that zone elected to go to Topeka  
9 High and how many elected Highland Park. I don't remember  
10 the racial makeup ever being computed.

11 Q Was the racial impact of optional attendance zones a factor  
12 in their elimination?

13 A I guess I would say yes, I think so. Because that was the  
14 reason then for saying we want to have a unitary school  
15 district, so that we could say we are not giving any more  
16 privileges to one race over another or one resident over  
17 another.

18 Q How did they know? How did they know that the effect was  
19 to give privileges?

20 A I think it would be through some complaints that were  
21 lodged with our Board, I would say 1971 was one and then I  
22 think with the other case of Johnson vs. Whittier and my  
23 consultations with HEW and so on. Then I think that that  
24 caused them to look at it more and then I guess ultimately  
25 to adopt their own goal or resolution. That is the way I

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1 remember it, yes.

2 Q Once they started looking at it in the late '60's or early  
3 '70's, were you then required to submit reports about the  
4 racial impact of it that you recall?

5 A Of the optional attendance areas?

6 Q Right.

7 A I am going to say I dealt with the numbers so much rather  
8 than--I mean numbers meaning enrollment numbers,--

9 Q Right.

10 A (Continuing) --that I don't recollect the racial makeup.  
11 Particularly when we were talking about ways of adjusting  
12 attendance boundaries. Then, yes, we were using that.  
13 But as far as doing away with the optional areas, I don't  
14 recollect just the makeup. It could have been. I am just  
15 saying I don't recollect right now.

16 Q During the whole HEW fuss, during '74, '75 and '76 a little  
17 bit were you involved in that at all?

18 A Yes, I was.

19 Q Did the subject of optional zones come up during those  
20 discussions?

21 A Yes.

22 Q The whole District boundaries' makeup came under discussion?

23 A Yes.

24

(Miller Deposition Exhibit Numbers 2 and 3

25

were marked by the court reporter.)

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1 Q (By Mr. Hansen) I show you two documents marked Exhibits  
2 2 and 3. One of which is entitled Basic Information  
3 Relative to Schools Operated in USD 501 Since the 1950-51  
4 School Year, and the other one has exactly the same title,  
5 both of which are five pages. One of them was attached to  
6 the Answer of USD 501's Answer to Plaintiff's Interrogatories  
7 9a, b, c, d, l and e. Let me show Exhibits 2 and 3 to you.  
8 The reason I am going to ask, there are some differences.  
9 Exhibit 2, which is the one - I can't remember its source,  
10 has had two changes made by me on it from what it was like  
11 when I got it from you. The first, is there some schools  
12 that have had their name marked off in yellow and the  
13 second is that in the furthest right-hand column there are  
14 penciled in percentages, neither of which were on the  
15 document when it originally existed?

16 A You did these yourself?

17 Q I did those myself and I did the yellow as well.

18 MR. SEBELIUS: Are you saying that the exhibits are  
19 identical in all other respects?

20 MR. HANSEN: No. That is why I want to ask about  
21 them, because they are not identical in all other respects.  
22 I can identify the source of Plaintiff's Exhibit 2, it is  
23 the Answer to 9a through e, g, o, s and t. Let me ask  
24 that. They appear to be the same thing. Are these charts  
25 that were prepared specifically for us? Or are they charts

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1 that were already in existence in the District?

2 A I am not sure I can answer that totally. I gave some of  
3 this information to assist Ted Clark and Mike Tribbey, who  
4 is in my own department. I did not have them typed out.  
5 Mine was just in longhand and mine were basically to give  
6 them a list of what I had on my records as all the schools  
7 that existed in that time period. Then they supplied some  
8 of these other items here, the facility and the acres and  
9 the site size and I think I might have given them a date  
10 of closing. Because that was part of what I generated for  
11 the same Interrogatory. So I can't vouch for why they are  
12 not the same or why any difference in them, frankly.

13 Q Let me see if I can locate one of the specific differences.  
14 Exhibit 2 lists Chase Middle School and Exhibit 3 doesn't.  
15 Also Exhibit 3 lists Branner and Branner Annex and Exhibit  
16 2 doesn't?

17 A Let me suggest this, maybe when we were providing this for  
18 the period of 1940 to 1950, but then this was recalculated  
19 because Branner and Branner Annex would have appeared on  
20 this listing if we are talking from 1940. But you see,  
21 the first submission I think was for the years 1950 through  
22 1980 roughly. Would that be correct, Mr. Sebelius?

23 MR. SEBELIUS: Yes.

24 A So I am guessing. But I am not much help to you on that.  
25 That is the only reason I can see why there would be any



1 difference.

2 Q (By Mr. Hansen) If you would look at Exhibit 2?

3 A Okay.

4 Q I am looking at Exhibit 3 and under the listing for Dawson  
5 Elementary School?

6 A Yes.

7 Q The one I have, which I will show you, has no Date of  
8 Construction or Opening and no Size of Facility and the  
9 one you have I believe does have that information?

10 A Yes, I don't have any answer for you.

11 Q You didn't fill in the size of facility on this?

12 A No, I did not.

13 Q Who did that part of it? I think you told me?

14 A I am told that Ted Clark and Mike Tribbey, because that is  
15 Ted's expertise, is the facilities. That is why I am  
16 thinking that as we did assignments on these within our  
17 staff, I think he probably did that. But I don't even have  
18 that information in my files. So that is why I am sure it  
19 had to be someone else.

20 MR. SEBELIUS: Off the record.

21 (An off-the-record discussion was had,  
22 after which the following proceedings  
23 were held.)

24 Q (By Mr. Hansen) Let me ask, I guess about either one of  
25 these. The Date of Construction or Opening column, was

1 that part of your responsibility?

2 A I will say I don't think so. I have the first enrollment  
3 data that I submitted to Ted, but Ted being the one who  
4 would have been the District representative on accepting  
5 construction and the punch list and all this, you know.  
6 Whether it would be able to open at a given time, I don't  
7 have that instruction detail, but I have the first enroll-  
8 ment on these schools if that will help you.

9 Q For those schools that were annexed into the School District  
10 at one point or another?

11 A Yes.

12 Q The date listed in that column, do you know whether it is  
13 the date the actual building was built? Or the date 501  
14 took responsibility for it, or how that worked?

15 A I will look at two or three of them here and I can answer  
16 that.

17 Q You have Dawson on that one there and it didn't have it  
18 here. What is the date given on Dawson construction?

19 A 1960. Well, there was an addition put on to Dawson.  
20 Maybe, I am not sure, but I would say on this one here the  
21 date that we received Avondale East in is not the date that  
22 is shown here. It was more likely 1957. Avondale Southwest  
23 it says 1957. I suppose it was built very near that time.  
24 Then Highland Park, I was going to look at Highland Park  
25 South, '55; North was '55. This looks like the date that

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1 they were constructed. Not the date they were annexed in,  
2 because I know Highland Park came in, in the late '50's and  
3 early '60's. I believe the construction date is the most  
4 accurate.

5 Q You just referred to Avondale Southwest. What kind of  
6 school was that when that came into the District? Was it  
7 a high school, junior high, elementary school?

8 A If I recollect, it was the elementary and Avondale West  
9 was the junior high. What grades were within them, I  
10 can't tell you. It might have been the junior high was  
11 really Grades 5 through 8 or something. I don't know that.  
12 I would have to go back to records.

13 Q You also talked about one school, I have now forgotten  
14 which one you said, that had one name and now has another  
15 name?

16 A Yes, the Avondale District had a Superintendent of Schools  
17 by the name of Paul Shaner. So when he retired, he went  
18 on and became a Topeka 501 administrator. I don't know  
19 whether he is still living. Anyway, I think that was kind  
20 of a memorial to have the school named after him. Just  
21 like French was named after Margery French, a former Math  
22 supervisor in Topeka 501.

23 Q The listing that we both have been looking at in some  
24 instances indicates that schools had other names. Seabrook  
25 and Shaner are the ones and Southwest just as I glanced

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1 through?

2 A Yes.

3 Q Do you recall any other schools that had?

4 A Let's just go down through--

5 Q What I am looking for, schools that had other names other  
6 than the ones that we have already got indicated?

7 A Do you have Oakland becoming Lundgren?

8 Q Yes.

9 A Central Park Elementary now is Robinson Middle School. Did  
10 you catch that?

11 Q Yes. Let's look at the Lundgren entry and the Oakland  
12 entry. One shows an Opening or Construction 1950 and the  
13 other 1949. Do you know which was the right year or how  
14 that happened?

15 A No, I really don't know. That again was prior to my ex-  
16 perience in 501, but I know the name Lundgren went on  
17 after I started teaching and it was named after a Mr.  
18 Lundgren who had been a long-term Principal there. I won't  
19 say long-term. He had been in the system for quite a  
20 while. But Herb Lundgren is who it was named after. I  
21 can't answer that.

22 Q Would Dr. Tribbey be the one who would have the records  
23 that would contain the answer to that?

24 A I think Ted Clark is probably the one, and Ted's long  
25 experience. But then I don't know. Some of this could be



1 gotten off of Minutes which would come out of maybe Mr.  
 2 Warner's office. If you talk about when a construction  
 3 contract was let, there might be some dates off of the  
 4 plans when an architect draws the plans. I don't know.  
 5 There is several ways to go at it. I will quickly run  
 6 through the rest. The one labeled Southwest, if I remember  
 7 right, Southwest was in the planning stage when we received  
 8 it from the Auburn-Washburn District. So they changed it  
 9 from being planned to a junior high. They made it into  
 10 our Board of Education, made it into an elementary. It  
 11 was the only elementary and it had such a big gymnasium  
 12 and that was left in the plan and then it was renamed  
 13 Whitson, after Mose Whitson, who was a Deputy Superintendent.  
 14 He passed away I am going to say in '61 or '62. Let's see  
 15 if there are any others. I don't find any others, except  
 16 this Van Buren Elementary became an industrial resource  
 17 center, but it had no children attending there.

18 Q Were there schools in these lists that started as elementary  
 19 schools? You just talked about one that was originally  
 20 planned as a junior high?

21 A Central Park, there was an original Central Park. It was  
 22 damaged in the tornado eighteen years ago tonight, June 8th.  
 23 Then when it was rebuilt it was called Central Park  
 24 Elementary and then two or three years ago, whatever it was -

25 Q It was a middle school before?



1 A It was refurbished and changed over in some ways, like  
2 shop and different things. We opened it then again as a  
3 middle school, which it is today, and it is called Robinson.

4 Q It is now called Robinson?

5 A Right.

6 Q It was a middle school prior to the tornado?

7 A No. No, elementary school. It only became an upper  
8 division or middle school when we changed, put the 9th Grade  
9 into the high schools and made it a middle school for 7th  
10 and 8th.

11 Q Did the name change correspond with the name when it was  
12 changed to a middle school?

13 A Yes, I believe so.

14 Q Were there any other schools that have been started as  
15 elementary schools and moved to middle or vice versa?

16 A I can't think of any others.

17 Q Okay.

18 A I might say this, that some of the schools we took in like  
19 Dawson, they might have been Grade 1 through 8 as kind of  
20 a country school when they came in to us. We made them  
21 elementary, which would be K through 6. I won't vouch for  
22 much more history on that. Belvoir came in that way and  
23 Dawson came in that way and the Avondales and Highland  
24 Park. So I don't recollect, even Highland Park with their  
25 three big schools, being built as elementaries. I don't

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1 believe they did ever use those for any other grades.

2 Q Even putting together both Exhibits 2 and 3, there is  
3 still some schools for which information is missing. The  
4 one that leaps out at me is Branner, Date of Construction?

5 A Branner and Branner Annex I cannot answer you as to the  
6 date they were constructed. I think it would be available  
7 probably, but it says the year they were closed there. I  
8 just say part of the Branner Annex was moved over and it  
9 was used at Boswell for a while. I don't know whether it  
10 was like when they called it an Annex, whether it was like  
11 a portable or what it was. I never did see it. So I can't  
12 answer that. But Branner itself then was sold to a com-  
13 mercial outlet and it was used by a roofing company for a  
14 long time as just a main warehouse. It is over here at  
15 Third and Branner.

16 Q You think the Date of Construction or Opening Date would  
17 be around somewhere in there?

18 A I am quite sure Ted Clark could tell you that from some  
19 construction details, even from the plans that were drawn.  
20 I think he has a plan for every school, I believe so. I  
21 think it could be located, or Board Minutes maybe.

22 Q Has Capper ever had a different name?

23 A Capper now is called Topeka Education Center. Before that  
24 it was Capper for us. Then prior to that it was called  
25 Washburn Rural High School.



1 Q Was it a high school?

2 A To the best of my knowledge. I am going on history here.

3 I am not personally able to vouch for that.

4 Q Exhibit 2 shows for Capper the Date of Construction as

5 1940?

6 A That is probably the original date when Washburn Rural High

7 School was built. That is what it was called then. Then

8 when we took it in, there was an addition made onto the

9 south side of an auditorium and maybe a few classrooms.

10 Q 1940 is not the date that you started using it?

11 A No. Our date is probably in the early '50's.

12 Q Were there instances in which a building was torn down and

13 a new building built on the same site?

14 A You mean totally obliterated? Or do you mean partially

15 torn down and a new addition on?

16 Q I guess I mean either of those possibilities?

17 A Okay. Yes, Belvoir. Do you want me to cite them?

18 Q Yes, please.

19 A Let me start out here with the very first page; Highland

20 Park High School has mainly had additions and then some

21 inner demolition done there.

22 Topeka High or Topeka Senior High, it has had renovation

23 and has had some additions across the street.

24 Topeka West has just basically been building additions.

25 I don't believe anything demolished.



1           Boswell is totally demolished now.

2           Capper is still alive and going.

3           Crane is being refurbished now, sold to a private  
4 individual. I guess I don't need to tell you all those  
5 things.

6   Q   No.

7   A   Let's just go down the line here. Eisenhower had additions.

8           Highland Park Junior High had an addition. Then it  
9 was demolished, I believe.

10          Holiday is demolished now.

11          Belvoir had some additions and some parts that were  
12 bad were demolished.

13          Branner was sold.

14          Branner Annex, like I say, part of it was taken to  
15 Boswell and I guess the rest of it demolished. I don't  
16 know.

17          Central Park was demolished by the tornado. Then  
18 they operated out of federally placed mobile or portable  
19 classrooms and it was rebuilt on just slightly off from  
20 the main site.

21   Q   I have got two sites for that, 15th and Buchanan and West  
22 14th?

23   A   Yes.

24   Q   Those are real close to each other?

25   A   They are real close to each other.

1 Q Are they literally the same property but a different corner  
2 of the property?

3 A It was kind of an L-shape place there, too. So what we  
4 did was simply put the portable on the vacant area, what  
5 might have been called playground area for the old Central  
6 Park while the other was being built more over to the  
7 north and east of there. Then they took this other and  
8 kind of cleared it off and it became the parking lot and  
9 tennis courts and so on and so forth over there.

10 Q Okay.

11 A Let's go on down here. There was an old Lafayette and  
12 there was a new building built in '57. I don't know  
13 whether you are wanting that kind of thing.

14 Q Yes.

15 A There was an old school called Lafayette and across from  
16 it, those two addresses are very close, I was almost  
17 thinking across the street from each other. I am not real  
18 sure.

19 Q The date I have here is '57? Is that the date you have?

20 A That is when the new one was apparently built, yes.

21 Q Would the date of the old one be in existence?

22 A Quite old, yes, I assume. I think it has been under the  
23 Topeka Board of Education District twenty-three or something,  
24 back years before, but that had better be called speculation,  
25 but I know it has been existing as an old building, but I

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1 don't know when it was built.

2 Q The old building was also an elementary school?

3 A To the best of my knowledge.

4 Q Okay.

5 A Lincoln, that was razed and that is where Ramada Inn is  
6 now.

7 Q What about Lowman Hill? I have two addresses for Lowman  
8 Hill?

9 A Yes, that is one I did skip over. It had been on the  
10 northeast corner of the present playground is where the old  
11 Lowman Hill School had been. So they left the old school  
12 operating while building the new one. No substitute  
13 facility in between. Then the old one was torn down after  
14 the new one was finished.

15 Q Both old and new were elementary schools?

16 A Yes.

17 Q All right.

18 A McKinley, I don't know. There was one year that it did  
19 not operate after the '51 flood. I wasn't here then, but  
20 they had to go in and bolster some floors or something. I  
21 don't know. You might say there was one year that it didn't  
22 operate.

23 Parkdale had a new addition. The old part was never  
24 torn down until they quit having school there.

25 I can't answer about Pierce. I don't know about it.

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1 Polk was an old building. It was on the north end of  
 2 what the playground is now and now we have the new one.  
 3 It is on the north side of it. It serves as the Head Start  
 4 now.

5 Q It is not a general elementary school?

6 A No, it has not since, just roughly speaking, 1979. It was  
 7 one of those closed in our 5-year plan that started in 1975  
 8 or so. So sometime prior to 1980 Polk was closed to being  
 9 a regular school and it has been Head Start ever since.

10 Q Is this the example of where the kids were in the old  
 11 building while the new one was being constructed?

3-A 12 A Probably. But I don't think I can tell you. I'd better  
 13 just leave it at that because I don't know.

14 Q Okay.

15 A I think Potwin here had an old school back in - and this  
 16 was built in '49, and I think it again was one of those  
 17 like at the north and south end of the lot, but they don't  
 18 give you any other address. That was one that went through  
 19 that same type of thing. I think it probably operated. I  
 20 don't know of any substitute school in the building process.

21 Q The earlier version would have been constructed before '49?

22 A Yes, this is the one that exists now, was built in '49.  
 23 The old one was maybe in the '20's or '30's. I am just  
 24 guessing. Quincy School, you have two there. The new  
 25 Quincy has been built and then has had an addition placed



1 on it and in more recent years the old Quincy at Quincy  
2 and Fairchild, was damaged somewhat by the flood. It was  
3 quite a large building, two or three stories and so on.  
4 It was replaced and it was razed, I guess. I don't remember  
5 much about it. I think there is a bank built on that site  
6 now.

7 Quinton Heights, there was an old Quinton Heights  
8 School at 26th and Buchanan and the kids went there while  
9 the new one was being built and it is the one right below  
10 our Administrative Center there, that has been in operation  
11 since '54.

12 Q 26th and Buchanan and Topeka Boulevard?

13 A They are two separate sites. They are seven or eight  
14 blocks apart.

15 Q Okay.

16 A Rice, we took that one in by annexation and it had some  
17 additions to it, but I can't remark much about it, I guess.

18 Q Okay.

19 A Seabrook, we took it in and if I remember right, they had  
20 a fire or something there and almost the year after we took  
21 it in, or two years after, it was taken out of use. It  
22 says "see Capper Junior High," but it was not the same  
23 building. It is on another corner over there.

24 Sheldon, it is no longer used as a building for  
25 students in there now. State Street, Shaner. We talked

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1 about Shaner already there.

2 Q Yes.

3 A Stout is brand new.

4 Sumner has had a new refurbishing. I guess that is  
5 about it.

6 MR. SEBELIUS: Excuse me for interrupting, you do  
7 have certain schools on your list, as we discovered earlier,  
8 that do not appear on Deposition Exhibit Number 3.

9 MR. HANSEN: I was sort of keeping an eye out for them.

10 MR. SEBELIUS: For example, I think we discovered on  
11 the first page Chase Middle School.

12 MR. HANSEN: Right, I have Chase.

13 A That is new construction.

14 Q (By Mr. Hansen) It is 1980?

15 A Yes.

16 Q It is the only school that has been on that site?

17 A Yes, it is the replacement for Holiday, but it is again one  
18 of those where Holiday operated while they were constructing  
19 Chase and Holiday had Grades 7, 8 and 9. Then when we  
20 went into the new Chase, the 9th Grade went into high school  
21 and the 7th and 8th went into Chase and it has been  
22 operated that way ever since.

23 Q We talked just a minute ago about Seabrook?

24 A Yes.

25 Q It was an elementary school?



1 A I believe so.

2 Q When we went through, another one that I had questions  
3 about when we went through, was Pierce. Can you tell me  
4 anything about Pierce School?

5 A I cannot.

6 Q Who might know about Pierce Elementary School?

7 A All I can say it was kind of over between the east edge of  
8 the Topeka District and the west edge of the Highland Park.  
9 It was kind of along there is the way I understand where  
10 it was, but I never did see the building that I am aware  
11 of.

12 Q Is there someone still employed by the School District who  
13 would have been around in those years and who would be  
14 knowledgeable about that?

15 A I suppose anyone who is employed prior to--say after World  
16 War II and up through maybe 1954. Again, I think it was  
17 maybe operated like a country school, you know. It was  
18 just kind of in that little "no man's land," if I can  
19 call it that, between the two districts. I don't think  
20 that Highland Park owned it, but I may be wrong, and the  
21 Topeka District took it in by annexation in roughly '56 or  
22 '57. Somewhere along in there.

23 Q Your recollection it was sort of semi-autonomous, it didn't  
24 really belong to either district?

25 A That is as far as I know.

1 Q When a school is annexed, let's take Pierce as an example,  
2 the records that existed of the School District, who has  
3 the responsibility for those records? What happens to  
4 those?

5 A I am not sure they were consistent all the time, but I am  
6 just going to say like on the Pierce District, as those  
7 students came in, then we just started collecting the same  
8 information we were doing on all of our other schools. So  
9 they became integrated into the whole process. But as far  
10 as their past records, some of those would probably be  
11 downtown at the Register of Deeds Office. Because they  
12 had formerly been under the County Superintendent of  
13 Schools, which is different than the Superintendent of  
14 District 23. So when that County Superintendent went out  
15 of existence, it was abolished as far as an elected position  
16 in roughly I am going to say '66 or '67. Somewhere along  
17 in there. All the records from the County Superintendent's  
18 office related to students and maybe their achievements in  
19 school and so on went into the Register of Deeds Office.  
20 So we forward a request to them sometimes when we cannot  
21 find them in our records.

22 Q Would that be where they are, building records I mean? If  
23 she had construction records and addition records and stuff?

24 A I had seen some of those and I wouldn't say this is an  
25 exhaustive statement again, but basically each teacher

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1 keeps a class role for attendance and for grading purposes.  
2 So they have some of these bound into volumes and some of  
3 them are just kind of loose. So you would have to know  
4 the year the student attended there and then you would try  
5 to search through maybe some small schools that might have  
6 seven or eight teachers and some might have twenty. I  
7 don't know.

8 Q What about the Highland Park annexation? What happened to  
9 the records of the Highland Park School District?

10 A Highland Park High School had its own record-keeping system.  
11 When the high school went from that old junior high site  
12 out there to the present facility, they took all the records  
13 and the high school records was of more importance than an  
14 elementary. So I just say we do have records of that  
15 school and its graduates in their files. So they could  
16 supply that. Now those that came out or were currently  
17 students after the annexation, they being just melted into  
18 our attendance and record-keeping system then.

19 Q How about the Highland Park Elementary or Junior High  
20 Schools that were annexed?

21 A Again, I don't know of any records prior to our annexation.  
22 It is just when they came in they were assimilated in and  
23 became a part of ours. I don't know of any early records.

24 Q Those records must have existed at one point, but you just  
25 don't know what happened to them?

1 A I don't know.

2 Q Do you know who might know the answer to that question?

3 A C.P. Wetlaufer, who I believe is still living, was a long-  
4 term administrator with that District and he might remember  
5 some. But I don't know. Here again, I will just say you  
6 could contact him, I guess would be the one that would  
7 know as much as anyone I know.

8 Q How about the Avondale records, do you know what happened  
9 to those?

10 A It would be the same thing there, and they didn't have a  
11 high school as best I know. My former statement would not  
12 apply there. But they were assimilated into ours. I don't  
13 know if you wanted to check, let's see, Paul Shaner is  
14 deceased and I was going to say he would be the Principal  
15 or Superintendent at the time they came in. So I don't  
16 know, frankly, know who to recommend to you.

17 Q Is Potwin the one we were just talking about--no, Pierce.  
18 When Pierce came in--oh, it came in in '57?

19 A Right.

20 Q I withdraw that.

21 A I have a blank on that. I don't know anything about it.

22 Q Do you know whether it was an all-Black or all-White school?

23 A No, I don't.

24 Q Do you know whether any of the schools that were annexed  
25 by the School District were either all-Black or all-White

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1 schools prior to annexation?

2 A Let me look at the list again. I am not aware of it. Let  
3 me look a minute here and see. No, I am not aware of any  
4 schools that were all Black.

5 Q All Black or all White was what I was looking for.

6 A I would just say that because of my knowledge of the City,  
7 I would say there is possibly some areas where there were  
8 very few minorities, but I can't state that, so I will not.

9 Q Back in the very early '50's and late '40's, there were  
10 annual reports that your School District was submitting to  
11 the State Government?

12 A Yes.

13 Q You gave us copies of some of those?

14 A Yes.

15 Q Do you know whether the Avondale School District and the  
16 Highland Park School District and the Pierce School District,  
17 do you know whether they were required in those years to  
18 submit the same kind of reports?

19 A No, I don't really know.

20 Q We talked a little earlier about how Seabrook and Capper  
21 were not quite the same school as they are referred to back  
22 then?

23 A Yes.

24 Q Why are they linked so tightly?

25 A I think it would be fair to say that there was a Seabrook

1 area as an elementary district that probably fed into a  
 2 Washburn-Rural High. Just the same as they have some  
 3 schools currently existing, one of them being Wanamaker  
 4 School, is probably kind of like an elementary school in  
 5 the country area, more at that time. That is thirty years  
 6 ago. So they operated as an elementary school with their  
 7 Board of Education. Am I getting on your question?

8 Q No, I think either I didn't understand your answer or you  
 9 didn't understand my question, one or the other.

10 A Okay.

11 Q When you give us this list, you refer back and forth between  
 12 Seabrook and Capper, one is a junior high and one was an  
 13 elementary school and they are on different sites. I  
 14 don't understand why they are linked in everything so  
 15 tightly?

16 A I think because when we took them in, they came in simul-  
 17 taneously probably, but that is speculation. They were  
 18 alien to our District, but they probably came in at about  
 19 the same time. The construction would not be the same on  
 20 it I don't think. They are not very far apart.

21 Q I understand that, but you are right, they are not on the  
 22 same property.

23 A I would have to say, do you have one of the books that we  
 24 submitted that has the enrollment?

25 Q Enrollment?



1 A If you are wanting to tie this together, I would offer that  
 2 to try to assist you. This is it right there. I was going  
 3 to go back here to Seabrook, because I think I would have  
 4 submitted it there. All right, 5051 and 5152. They had  
 5 students. Then it was closed. I thought I remembered  
 6 that, but I couldn't say for sure.

7 MR. HANSEN: Off the record.

8 (A recess was taken, after which the  
 9 following proceedings were held.)

10 Q (By Mr. Hansen) As near as we can tell from the enrollment  
 11 sheets and the maps, Capper started as a junior high in  
 12 the '54-'55 school year?

13 A Yes, I think that is right. Whatever it says there. Yes,  
 14 for District 23. Right.

15 Q I am not sure I understand exactly what the school system  
 16 structure looked like prior to unification. Were there  
 17 several, lots of little geographical school districts  
 18 around the Topeka area?

19 A Yes.

20 Q Were they all autonomous?

21 A Yes, I think if I put it into a small picture and say if  
 22 you got to be a big district that did your own, even if  
 23 you had a case of small school buildings, as you got bigger  
 24 and bigger and as the City went out you would annex another  
 25 school district or part of it. There were certain legal

1 provisions what you had to do about the indebtedness and  
2 so on and you kept expanding and in 1965, actually you had  
3 the report done back in 1962, the Legislature said we are  
4 going to consolidate some of these 3,000 school districts.  
5 So what they did, they had their choice of uniting together  
6 and they had to be contiguous areas so somebody kind of  
7 got left out. I think the State Board had a right to  
8 assign them to one other unified district. So what happened  
9 is basically the District stayed as one unified district.  
10 Just about like it was in the beginning. I think Lyman  
11 School and then they eventually opted to go back out to  
12 Seaman, but the County Superintendent was over all these  
13 schools within the county. That was in his job description  
14 so to speak. But he became almost like the educational  
15 leader for those small districts and their Principal or  
16 head teacher or whatever.

17 Q If there is a little school district, were there school  
18 districts that would only have one school?

19 A One school with a 3-member Board of Education, yes.

20 Q He was County Superintendent is his title?

21 A Yes.

22 Q Could he hire or fire the Principal or the people in that  
23 little school district?

24 A I don't think so. He had to make sure that certification  
25 requirements were met. But the 3-member Board was the

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1 power.

2 Q He was more like a regulator and a consultant than a line  
3 officer?

4 A Yes.

5 Q Was he elected or appointed?

6 A I believe elected. Maybe in the later years appointed. I  
7 know Nebraska better than I do Kansas on that. But there  
8 were similarities. You will get me out in the reaches  
9 where I don't have too much expertise, but that is the way  
10 I understand it here.

11 Q Prior to annexation, where did the Washburn kids go to  
12 high school, if you know?

13 A That was the high school.

14 Q Where did they go to elementary school?

15 A I would assume it could go like at Wanamaker School with a  
16 3-member Board. I assume Seabrook was like that and I  
17 don't know how many other schools were out there then.

18 Q When that part was annexed in, do I understand the junior  
19 high kids went to Capper Junior High?

20 A Yes.

21 Q Where did the high school-age kids go?

22 A At that time they would have all gone to Topeka High.  
23 Some of them might have been granted privileges as a part  
24 of the conditions of the annexation that Auburn-Washburn  
25 or what we now call 437 may have given them a right to go

1           there or stay with us or maybe graduate out of that other  
2           district.

3           Q    Who would have been the responsible official on the staff  
4           during that annexation?  Who was on the staff of the  
5           School Board who have dealt with the annexation, if you  
6           know?

7           A    I believe it would have been probably either at the very  
8           end of Superintendent McFarland's administration or  
9           Wendell Godwin's early years of his administrative position.

10          Q    I understand from one of the depositions yesterday it was,  
11          if not an annexation, a slight readjustment of the boundary  
12          within the last year or so?

13          A    Yes.

14          Q    Who is the staff person that is principally responsible  
15          for that?

16          A    Well, if you want me to comment on the current one?

17          Q    Right.

18          A    All right.  I tend to say that our Superintendent and the  
19          Superintendent of the other district performed leadership  
20          roles, in that I am a supporting member of the staff.  
21          That along with I guess maybe I will just say Dr. Tribbey's  
22          department, we have worked on getting the content for the  
23          application submitted and then we had to do the same from  
24          Auburn-Washburn and then that submitted with both Boards  
25          of Education having made agreements that they will accept

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1 this new boundary and if there is any policy dealing with  
2 those students and that is with the State Board of Education  
3 right now.

4 Q Before the annexation can take effect it has to be approved  
5 by them?

6 A Yes, right.

7 Q How did this current one begin?

8 A This last one, the one we are just dealing with now?

9 Q Right.

10 Q I will just say informally I was a part of a Shawnee County  
11 consortium of school and other public people and it included  
12 some people from the Planning Department, City-County  
13 Planning. We talked about the problem we had in an area  
14 that is developing. They don't run the streets right down  
15 the District boundary lines and we had a problem with the  
16 Quail Cove area where people facing on to Arrowhead and  
17 sometimes two houses back from that were in our District.  
18 If you follow the line exactly, it was really one of those  
19 community developments where the lawns and the maintenance  
20 outside the house is provided by the association. The  
21 people only own the interior of the house. We have people  
22 moving in out there and they would say I want to go to  
23 Topeka West High School or my child does. We would have  
24 to say if you are on this side or if you are house number  
25 so and so, you belong in Auburn-Washburn. They say we are

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1 a part of the same complex. Yes, you are. But the line  
2 is where the line is. So we said it would seem to be  
3 helpful if out in this far reaches where it is undeveloped  
4 land ten years ago, but it is developing, if we could get  
5 Planning to designate to the developer, you must run a  
6 street down that line or in some cases it really wouldn't  
7 be good planning to do that because you have changes in  
8 topography and it wouldn't be a good plan. We said then  
9 why couldn't we get the School District to agree wherever  
10 this new boundary is going to be, should be down the middle  
11 of a street as it cuts across the whole area. So that is  
12 what we did. Mr. Hogue, who is one of the developers out  
13 there, agreed that it would be good to do. So what we  
14 tried to do is use his preliminary platting and describe  
15 it legally and so then he can actually in his publicity  
16 tell people over here in this A residential you are going  
17 to be a part of the Auburn-Washburn District. We are  
18 selling houses based on that idea. Over here they are in  
19 501. If you have a preference maybe you want to buy over  
20 here instead of over here. Does that give you enough  
21 background?

22 Q Yes. People do sometimes make decisions in terms of where  
23 they are going to live based on what school district they  
24 are in?

25 A I am sure. Not just here, but over the country, yes.



1 Q Do you keep in close touch with developers in order to  
2 insure that problems like this are solved in advance of  
3 becoming serious problems?

4 A Informally they owe nothing to us and I guess we owe nothing  
5 to them, except as people trying to get along, and keep  
6 from having people ill-informed we publish maps as we have  
7 for a number of years. We have even made arrangements with  
8 the Topeka Board of Realtors where they will include our  
9 attendance area maps in the back of the multiple listing  
10 book. This is to help what is a very constantly changing  
11 group of realtors. They have higher mobility than even  
12 some teachers who were on the move all the time. So it  
13 helps them to not make statements that are untrue and be  
14 subject to litigation. It also, we think, makes better  
15 publicity for our School District for people to know in  
16 their planning and will tend to have a more happy parent  
17 or one who is looking forward to attending one of our  
18 schools. Rather than to get to the door and told, I'm  
19 sorry, you don't belong. It is almost like being kicked  
20 out of the family.

21 Q Mr. Hogue, if I am him and I am about to develop a fairly  
22 large part of Topeka, is there someone within the School  
23 District, within the school administration that I would  
24 sort of routinely touch base with, talk about what the  
25 boundaries are going to be and whether I am going to have

1 to set land aside for a new school?

2 A Yes.

3 Q Where the kids are going to go, things like that?

4 A He could probably start out by saying, talk to the Board.  
5 They would say talk to the Superintendent and that is where  
6 to start.

7 Q Does that routinely happen with big developers or big  
8 developments?

9 A Let me say that in the last ten years we have not had that  
10 many big developments in the late '50's and early '60's,  
11 were having some that were developing forty acres at a time.  
12 Most of our land area has been developed. This one area  
13 out in there near French Middle School is the only one  
14 left. Like McFarland's farm, if they would ever sell it.  
15 I call it that. You may have some on the east side of  
16 Highland Park High School. There is still some vacant  
17 land there, but it would be awfully hard to find forty  
18 acres of contiguous territory that could be developed  
19 right now.

20 Q Were there times, I am a little shaky on the dates, when  
21 you have been in your current job where there have been  
22 big developments going on?

23 A We have had several, yes, sir.

24 Q In those instances, were you in touch with the developers?

25 A Yes.



1 Q How does that process work?

2 A Like Misty Glen Apartments, that is one that is not a  
3 large area, but located off of Randolph Street between  
4 29th and 33rd. When we see that happening we watch it.  
5 We were in touch always. We would get some preliminary  
6 plattings of that from the City-County Planning and it was  
7 our way of trying to keep on top of this so we knew how to  
8 make projections for that school and keep our other staff  
9 informed what time we were going to get students coming in  
10 there, what would be the grade range, you know, or whatever.  
11 Some apartment complexes could say we will only take in  
12 those without children. So you see, we tried to find out  
13 what their policies were to determine the impact on our  
14 schools. So it was just a planning function.

15 Q I get the impression of a basically triangular conversation  
16 going on between you and the developer and the City-County  
17 Planning Commission?

18 A Sure.

19 Q Is that accurate?

20 A Yes.

21 MR. SEBELIUS: I am not altogether clear. Are we  
22 talking in terms of prior to construction of a project?  
23 Because I didn't understand that there was any--

24 A It doesn't always come prior to. It would be sometimes  
25 after the City or County Planning and other City-County

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1 officials have okayed this. We tried to find out. In  
2 other words, we don't go out and recruit. We don't try to  
3 change the plan. All we say is we want to be ready so if  
4 they are saying in eight months we are going to have these  
5 filled, we want to make sure that the school is able to  
6 handle them or else we may have to I suppose look at  
7 alternatives to that.

8 Q Do you have to sort of sign on for big developments like  
9 that?

10 A No.

11 Q Does the City or County Planning Department ask you to sign  
12 on?

13 A I suppose maybe the Board of Education gets notified of  
14 this, but I don't personally.

15 Q Do you know for sure that the Board of Education does?

16 A I guess I had better say I don't know.

17 Q How about if there is a part of town that is now zoned  
18 commercial, and I am going to tear down whatever commercial  
19 building is there and put up some apartments or something  
20 that might have an impact on the schools. Does the School  
21 Board or School Board staff have to sign on that kind of  
22 zoning change?

23 A I am not sure I can answer that. There were some A-95  
24 things that we did work on. I will say otherwise, if the  
25 School District figures there will be an adverse effect,

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and in some cases we have told them about this, then they could choose to get in touch with the other governmental bodies and talk about the problem that it created, just to give you one example.

Q That is what I was going to ask.

A Okay. Let me just say when they were going to widen Burlingame Road south of 29th Street and there was a proposed development called Pepper Tree Park, we went to the developer and said what kind of proceeds in the way of school kids are you going to have coming out of here? He said, we expect, because of the cost of these and for what some of the people wanting to live here have in their plans, we don't think there will be very many children come out of that. Another thing, Mr. Rothrock, the Traffic Engineer, I talked with him because we were trying to plan how are we going to have a crossing there because that was one of the conversations. We did have a chance to appear before a hearing, because it was partially a Federal project, some Federal monies and some County, City and State monies that did the widening of Burlingame Road, so we told them this. I think it probably helped make sure we got a signal there right by the Countryside Methodist Church and our West Avondale School. So there would be using for our attendance area on the west side coming over. I think we have taken responsive action to try and inform decision-



1 makers prior to things being set in concrete so to speak.  
2 But yet we are not by law told that we have to sign off  
3 on some of these, I guess. I don't think we fit in as  
4 being one of the decision-makers. But I am a little hazy  
5 on that area. Maybe it doesn't come to me. Maybe it goes  
6 to the Board and the Clerk of the Board takes that action  
7 and sends it back in and I am not even aware of it.

8 Q This Pepper Tree Park development, how did you hear about  
9 the fact that that development was going on?

10 A The City-County Planning gave us a preliminary plat of  
11 that and we just tried to stay on top of it. They used to  
12 make us a mailing on that and Mr. Gaston, who was Director  
13 of Research and part of the time my supervisor and part of  
14 the time we were just co-Directors, he was always in on  
15 that. He is a very responsible person and was interested  
16 in the community. So some of that was done informally to  
17 begin with and I think they saw the value of it and the  
18 Superintendent saw that and I think they met with other  
19 Superintendents. Like I say, we try to act responsibly  
20 whether lower staff or upper staff.

21 Q So City Planning would sort of routinely let you know of  
22 changes that were going to go on that might have an effect  
23 on the school?

24 MR. SEBELIUS: I object to that characterization. I  
25 think he talked about it informally. There is no indi-



1 cation as to how frequently it happened. I appreciate it  
2 is not a big point, but I do think it unfairly characterizes  
3 what he has attempted to explain.

4 Q (By Mr. Hansen) I guess that is what I was trying to find  
5 out, is whether I was fairly characterizing it or not?

6 A Could I make this statement? I think to keep that clear,  
7 Mr. Hogue's development is the one I have received probably  
8 the last two to three years. But building has been done.  
9 Does that maybe clarify this or help? I am just saying  
10 that I am not regularly getting these things and this other  
11 kind of came about even as an inquiry from the City-County  
12 Planning as to how could we better do this thing.

13 Q Let's talk about the Pepper Tree one again, just as an  
14 example of how soon this process goes?

15 A Yes.

16 Q You hear from City Planning about the fact that there is  
17 going to be this development. What happens next?

18 A I know in that case I contacted Mr. Murrow, who was the  
19 developer of that, I think Jayhawk Construction Company,  
20 and we talked about the yield of it as well as I had the  
21 map of it there and we talked some about it. I think we  
22 determined sometimes there wouldn't be very many children  
23 coming out of there. I will have to tell you at the same  
24 time it wasn't just that. We were concerned about his  
25 construction. But that was during part of this time of



1 this long-range plan and where will we draw lines. So you  
2 look at yield, from partially new housing determines where  
3 the yield is drawn.

4 Q What I gather you were most concerned about the Pepper  
5 Tree project was this crossing location?

6 A I didn't know whether it would be a help to justify that  
7 we knew we had others to the west there, clear on down to  
8 Misty Glen that were going to be going to West Avondale.  
9 At that time with no transportation, it was going to be a  
10 long walk for some of them. Where do you keep them from  
11 coming across 34th Street, 33rd, 32nd or whatever?

12 Q Did you then see an opportunity to put a crossing walk  
13 there? Did you then write a memo to the Board? Did you  
14 deal directly with City Planning? How did it get decided  
15 that you would go to this hearing and say, let's put a  
16 crossing here?

17 A I think because of our interest I was asked by the  
18 Superintendent to attend the hearing.

19 Q You would have discussed the project with the Superintendent?

20 A Yes.

21 Q Would that be the usual process, that is where you have  
22 heard about a development or something like that? You  
23 wouldn't deal with it just by yourself?

24 A No. That was during the time I was a member of the  
25 Administrative Council.



1 Q I see. So it would have gotten talked about at the  
2 Administrative Council?

3 A Yes. But since that time I have not had as much of that  
4 to do. Building has been down somewhat here in the '70's.  
5 Again, I am just saying that there are others, maybe even  
6 Dr. Tribbey would have knowledge of that, that I don't. I  
7 am talking about in times past how did we keep in touch.  
8 That is the way we were doing it.

9 Q You said you are in touch with the Realtors Association  
10 Council? Have I forgotten what it was?

11 A We just make immediate maps available. It would be kind  
12 of, I suppose, the Executive Secretary of the Topeka  
13 realtors.

14 Q Are you the liaison person with them?

15 A I am not. It isn't that formally established. I guess I  
16 tend to work with people that I think we can help in the  
17 community and it has also been accepted in the past when we  
18 went into some transfer policy or directly initiated kind  
19 of a conference with as many of the Board of Realtor  
20 members as would come to acquaint them with, here is a  
21 change of policy from what you might have been used to for  
22 some time. So I would have to say we took the affirmative  
23 stance they should be better informed rather than waiting  
24 for the props to come out and that I guess again is a  
25 subject of the kind of leadership we have in our District.

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1 We try to meet it that way in a preventive way rather than  
2 to wait until problems come up and try to iron them out.

3 Q That particular meeting, the transfer policy meeting, you  
4 are talking about, do you recall roughly what year that  
5 was?

6 A I think it must have been roughly in the neighborhood of  
7 '77 to '79..

8 Q Were the realtors in that meeting essentially being presented  
9 with that information? Or were they given an opportunity  
10 to talk about it and say, you ought to change that in this  
11 way or change it in that way?

12 A No, I would say it was more of an informational meeting  
13 where the policy had already been decided and it was  
14 informing them of this and it was for their good use. It  
15 was not like a DCAC Committee where you are trying to get  
16 input to the Board. The Board had made the decision and  
17 we thought they needed to be informed of it.

18 Q I asked about commercial zoning changes, a zoning change  
19 from commercial to residential, and you weren't sure  
20 whether that was automatically given, that you automatically  
21 have to sign up on that. I take it you sort of keep an  
22 eye out for that so you can see where the trends are going  
23 to be?

24 A We try to be informed of that. Maybe because of that  
25 commercial tract is in some proximity of a school. There

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1 is a requirement that the school or any neighbors would be  
2 notified. So see, we probably get it that way. Then  
3 being a part of an inter-governmental organization, I think  
4 these are fed into that. So probably our Superintendent  
5 or others learn of it and maybe we help provide I guess, I  
6 am saying it is a planning thing that we need to know and  
7 we are told or whether we know it or not or whatever, I  
8 guess that is just part of trying to find the best thing  
9 to do for the community.

10 Q The impression I get is you are sort of trying to stay  
11 ahead of the curve? You are sort of trying to always be  
12 looking to see where there are going to be changes in the  
13 School District and anticipate where the impact would be?

14 A That is true. But without any mandatory action required  
15 of us, or mandatory action of a governmental body to inform  
16 us, I am saying it is a voluntary thing more than it is a  
17 regular thing.

18 Q I have forgotten now the answer to this question. Were  
19 you partially responsible for giving us the answers on  
20 portable classrooms?

21 A No, I didn't do that. I am not very knowledgeable on it.  
22 I know some existed, but as to where or when or how many,  
23 I don't have that.

24 Q Would the same be true of additions and construction and  
25 renovations?

1 A Yes.

2 Q Someone else would have that?

3 A I am partially knowledgeable, but no, I am not the authority  
4 that should be answering that.

5 Q You are the authority on the maps, I take it?

6 A I think generally speaking so.

7 Q Let me ask you some questions about the maps.

8 MR. SEBELIUS: Would this be a good time to break?

9 MR. HANSEN: Yes.

10 (A recess was taken for the noon hour,  
11 after which the following proceedings  
12 were held.)

13 Q (By Mr. Hansen) There are some questions that my colleague  
14 suggests I might have missed this morning on areas we  
15 covered this morning. So let me go over a few. It won't  
16 be in a clear pattern maybe, but there are a few things I  
17 need to clean up on. The first has to do with optional  
18 attendance zones. In Answer to Plaintiff's Interrogatories,  
19 the second set, Question 7, 8 and 9, you gave us a series  
20 of attachments, one of which is titled Identification of  
21 U.S.D. 501 Junior High Schools With Common Optional  
22 Attendance Zones for - and the specific one I am looking  
23 at is for the school year 1963-64. Did you play any role  
24 in that? Let me show you this?

25 A Yes, I made up all of these that you have.



1 Q I have one question about that specific one.

2 A Okay.

3 Q Highland Park Junior High School appears to have a "p" shown  
4 within it, is that right, and if so, how did that work?

5 A No, I think that is just a misnomer. I will have to state  
6 "x's" were probably taken down by a secretary or else I  
7 did it myself. I am saying that is not supposed to be in  
8 there on that one.

9 Q That is the only year that appears to have that box?

10 A Yes. The only thing I would tend to look on either side  
11 of it just to make sure. For instance, so far Holiday and  
12 Highland Park I don't think shared anything in common. So  
13 I believe it is just an error. It would appear that way.

14 MR. SEBELIUS: Are we going to mark that?

15 MR. HANSEN: We can, if you want.

16 (Miller Deposition Exhibit Number 4 was  
17 marked by the court reporter.)

18 Q (By Mr. Hansen) We have marked as Exhibit 4 the sheet that  
19 I just described earlier. What was the last optional zone  
20 that was eliminated, do you recall?

21 A I don't think I can tell right now. It was submitted and  
22 I don't recollect. But the year would have been like '77  
23 or eight. I can't tell you.

24 Q When the last ones were eliminated, were there any sort of  
25 a grandfather clause? That is, the kid who already changed

1           could stay in the school, kids could stay in the school  
2           they were in or siblings could stay in the school they were  
3           in based on the optional zone?

4           A    Yes, on one like in taking away the senior high one, we  
5           allowed those that were enrolled at a senior high or  
6           something like that to continue on going to the school,  
7           like they have an older brother or sister. I can't cite  
8           those from memory, but yes, there was kind of a way of  
9           allowing them grandfathering or continuation.

10          Q    Would that also be true of the elementary school kids, in  
11          the elementary school in the same family that are sort of  
12          moving up through the system?

13          A    There is with a cutoff at something like the 5th Grade or  
14          6th Grade, that is my recollection.

15          Q    What about the elementary schools? If I was in an "h"  
16          zone and had chosen to go to the school that I wouldn't be  
17          in, based on how the new boundaries were drawn, could I  
18          finish school in that school?

19          A    I know it would be true for a 5th grader, could return to  
20          the 6th Grade. But I couldn't tell you on those lower.

21          Q    Is there a policy guide on all of these questions that is  
22          written down somewhere?

23          A    This is still policy.

24          Q    So it would be in the Topeka Plan?

25          A    It would be in the Topeka Plan. The last ones we submitted.

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1 I believe it was still active in there. We are still doing  
2 this today. Those in the 5th or the 7th or the 11th Grades  
3 may go back and finish in those next higher grades even if  
4 their parents move elsewhere within 501.

5 Q The open enrollment, when open enrollment was ended, could  
6 you stay in the school to which you had transferred under  
7 open enrollment?

8 A I am not real sure. As I say, the 5th, 7th or maybe in  
9 that case it might have been the 8th at that time because  
10 we still had junior high schools, and the 11th I think  
11 still applied, but I can't tell you about the others.

12 Q What about your siblings? If you, under open enrollment,  
13 chose to go to another school, could your siblings, even  
14 though it was no longer technically available, could your  
15 siblings go into that school?

16 A I'm sorry, I couldn't answer that from memory.

17 Q Is that still in the Topeka Plan for that year?

18 A Yes, that is where it would be. I just don't recollect it  
19 right now, to tell you exactly yes it was. It would be  
20 a matter of documentation.

21 Q Let me ask you some of the numbers questions. I guess the  
22 best way to do these is to mark them. Let me mark as  
23 Exhibit 5 a stack of sheets that are titled School Enrollment  
24 and the top sheet has the word School and then in the  
25 blank is filled in Avondale East. Across the top row of

1 these sheets is a listing of school year and then K through  
 2 8, Special Education total K through 8 plus Special Education  
 3 and Head Start. Then along the first column of the sheets  
 4 is school years starting with 1950 and '51. At least the  
 5 top sheet starts at that year and ending with '84-'85.  
 6 The last sheet in this stack that I have.

7 A The last ones are not filled in. Maybe you want to make  
 8 those another record.

9 Q I probably don't need this as part of the stack, the last  
 10 sheet in the stack that we are marking is the listing for  
 11 schools (Southwest-Whitson)—

12 MR. SEBELIUS: What are the number of pages?

13 MR. HANSEN: I don't know. That is the thing we will  
 14 do at the end of the day after everybody has left.

15 A Roughly thirty-six I think.

16 (Miller Deposition Exhibit Number 5 was  
 17 marked by the court reporter.)

18 Q (By Mr. Hansen) Let's start with this one. Did you play  
 19 a role in preparing these documents?

20 A Yes, I did.

21 Q Were these prepared specifically for us? Or are these  
 22 things you had already in your file?

23 A These are already in our files year-by-year. Or some of  
 24 them in the earlier years my predecessor had them, like a  
 25 State report for September 15th or it might have been just



1 a preliminary enrollment document for that school year.

2 But we compile these in the order and with the span here,  
3 basically because of the case starting with 1950 and just  
4 filled in the blanks according to official documents in  
5 our office.

6 Q As I understand what you have just said, it is not neces-  
7 sarily the same official documents for each year from  
8 which the information was derived?

9 A Yes, it would have been. What I am saying is that there  
10 is an elementary school enrollment document that my prede-  
11 cessor had that I just copied direct from some of these.  
12 I was a part of the system then, so I know they came from  
13 my document on the September 15th State report.

14 Q The document from which this came is called the Elementary  
15 School Report. What is it called?

16 A I am going to say it was called the Official Enrollment  
17 Report for the District. In earlier years State aid is  
18 not dependent upon September 15th. In later years it is.  
19 But we try to use as near to September 15th as we can, so  
20 you would have comparable dates. We didn't pull one of  
21 them and call it May 28th and another one September 15th.  
22 Do you see what I mean?

23 Q Yes, so this document reflects the attendance on September  
24 15th?

25 A The enrollment. Basically that is accurate enrollment and

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1 attendance on that date.

2 Q The source from which it was drawn is the reports that you  
3 do send to the State, that also reflects September 15th  
4 enrollment?

5 A Some of these were in later years sent to the State and  
6 some of the earlier ones were simply for internal record  
7 keeping within the District that my predecessor probably  
8 did.

9 MR. HANSEN: Let me mark the next number.

10 (Miller Deposition Exhibit Number 6 was  
11 marked by the court reporter.)

12 Q (By Mr. Hansen) I have marked as Exhibit 6 a stack of  
13 documents entitled Racial Inventory of U.S.D. 501 Students  
14 (requested by State Department of Public Instruction for  
15 United States Department of Health, Education and Welfare  
16 School Year 1966-67, includes Head Start, Follow-through,  
17 Special Education and Homebound), and the last page I have  
18 in this document, these are numbered actually, I don't  
19 know whether you put the numbers on or whether we did, 25  
20 to 83. So whatever the difference between 25 and 83, tells  
21 us how many pages there are here. The last page is Racial  
22 Inventory for U.S.D. 501 Students, September 15th, 1980,  
23 Page 4 of 4. Are you familiar with those?

24 A Yes, I am.

25 Q What is the source from which those numbers are derived?

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1 A The first one for the school year '66-'67 was taken from  
2 documents in our office that were provided to the Federal  
3 Government to which grant applications were made for some  
4 of the earlier programs. I was not in the office then, as  
5 I told you, but these are taken down and in the beginning  
6 stages you will note that not every column is filled.  
7 That was because apparently the racial makeup was not  
8 required in all these different racial areas. So I just  
9 copied these onto this form. This is a form that was made  
10 to be used across all those years. This is not the actual  
11 document submitted, but the numbers is what was submitted  
12 to the Federal Government.

13 Q In the later years, it is the form that you actually send  
14 in?

15 A No. All the later years are District reports, which we  
16 have, is a matter of public information within the District.  
17 But the Federal Government was taking every other year for  
18 a report and there is one separate report for each indi-  
19 vidual school. So this is just part of the information  
20 contained therein. This is just the enrollment information  
21 and the makeup of that. Then there was a summary document  
22 that is the Superintendent's report for the District.  
23 That would be like a Form 102, I think, and a Form 101,  
24 which is normally used by the office of the Civil Rights.  
25 So we do this every year for our own internal records, but

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1 we submit the Federal forms as prescribed every other year  
2 or as often as they ask us for it.

3 Q The Federal forms are more detailed than what is contained  
4 in Exhibit 6?

5 A Yes, that is right.

6 Q Do the numbers on these forms reflect September 15th  
7 enrollment as well?

8 A I cannot answer that for these earlier ones because I don't  
9 know when the applications were being submitted, and what  
10 the Federal Government said you have to submit first before  
11 we determine your eligibility. Maybe I can't vouch for  
12 that. But I will just say on their directions it is  
13 generally on or about October 1, and in our case sometimes  
14 we use September 15th figures. Just because we tried to  
15 make a similarity between that and what we put to the State  
16 on State aid, and it keeps us from having two separate  
17 sets of figures, which sometimes the public doesn't under-  
18 stand.

4-A

19 Q At what point in this stack are you certain of what the  
20 date was that the numbers are reflective of? That was not  
21 a clear question. You said in the early years you are  
22 not sure whether they are September 15th numbers or not?

23 A Yes.

24 Q Does there come a time in that stack that you are sure  
25 whether they are September 15th numbers or October 1



1 numbers?

2 A No.

3 Q Or average numbers?

4 A No, I don't know which one of these. I am just going to  
5 say it became a general office policy to just use synonymous  
6 numbers. I have no reason to believe that we were doing  
7 it one way one year and then skip over and do it another  
8 way the next year. I think at some point we just started  
9 doing it and we are still doing it and I think it would be  
10 September 15th figures that predominate.

11 Q The way you are doing it now, the instructions to your  
12 people now, is to do it September 15th?

13 A Yes.

14 Q I have one final set of numbers. We will have them marked  
15 as 7.

(Miller Deposition Exhibit Number 7 was  
marked by the court reporter.)

18 Q (By Mr. Hansen) It says at the top in handwriting Submission  
19 Number 5, over to the left it says U.S.D. 501 Topeka Public  
20 Schools, School District Center. The title is School  
21 Background Information. Over to the right under school  
22 name it says Avondale East. Along the top row is plant  
23 utilization, students, teachers, teachers new to school,  
24 and along the left column is years starting with '53-'54  
25 for this cover page and going up to '67-'68 and each of

1 the boxes is filled in in handwriting. The last page of  
2 this stack is the identical thing for Sumner School for  
3 the years '68-'69 to '73-'74. Are you familiar with those?

4 A Yes, I think I had a part in this. Yes, I recognize it.

5 Q Do you know whether those are September 15th numbers, what  
6 the source of those numbers are?

7 A I think so, because it says 9-15 total up here. I would  
8 say on the student dates, yes. I couldn't vouch for the  
9 teacher dates or teacher new to school. I recognize my own  
10 writing, some of this under teachers. But I cannot vouch  
11 for the fact. I think it was given to me by Personnel. I  
12 have nothing to do with determining the makeup of those  
13 teachers. But I think this is one of those like we do on  
14 many reports where I did the student part, someone had  
15 supplied me with this part, someone supplied me with this.  
16 So we did the form. This is my secretary's writing here.  
17 This has some of hers. I recognize this as being mine,  
18 which is probably copied on.

19 Q If there are discrepancies among Exhibits 5, 6 and 7, do  
20 you have an opinion as to which is the most reliable,  
21 which ones you would rely on?

22 A I am just saying that there is a possibility that doing  
23 these, in retrospect after a year was audited. We might  
24 have actually used audit figures that the State gave us  
25 back to which we corrected a copy. But I can't tell by



1 just a cursory look. I would believe them to be the very  
2 same, but I have to comment that on the State enrollment  
3 records we cannot claim those students that are in our co-  
4 op Special Ed. They might belong to Shawnee Heights,  
5 Washburn Rural. We might have them at Capper Foundation  
6 and they are in there on a tuition basis, clear from the  
7 western part of the State. I am just trying to cite for  
8 you places where I think there could be discrepancies, but  
9 in the true spirit of what we are trying to keep, the State  
10 defines how they want their report done and it will be a  
11 little different than what might be our gross count. Do  
12 you get what I mean?

13 Q Right. I did a very random and unsystemized and unscientific  
14 comparison of the three packets and I found very minor  
15 differences across the three. Do you have a sense as to  
16 which one you think is most reliable?

17 A I think you have to define for me what type of enrollment  
18 figure you want? If you ask for a gross, then I would  
19 have one answer. If you said a net figure after all these  
20 other district students are deducted, then it is back out  
21 there. Basically the Civil Rights report is to reflect  
22 the actual assignment of students.

23 Q Right.

24 A But when we are laying claim to State aid, we have to  
25 deduct those out. Sometimes the school will send a report

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1 and it says we have 595 students. Then in our office  
2 because we have access to Special Ed. contracts through  
3 Mr. Green, we deduct those out. I have a worksheet for  
4 every year we do this. The auditors get a copy of it and  
5 I show them how I deduct those. There is also some Special  
6 Education students that fall out of that because they are  
7 under 5 years of age, but mandated programs for hearing-  
8 impaired or something like that may say you can take them  
9 as early as eighteen months, but we have to deduct them  
10 out. Yet, they are a student's name and number on our  
11 student data base. Am I making that clear?

12 Q Yes. So those kids might well be in Exhibit 6, which is  
13 the HEW data and not in Exhibit 7, which is the handwritten?

14 A Right.

15 Q How about Exhibit 5, those kids would be presumably reflected  
16 in the right columns on Exhibit 5?

17 A These generally would have been the claimed September 15th  
18 State aid number, but I will have to say I am not sure. I  
19 can state that for every year consistently. I guess that  
20 is my best judgment.

21 Q When we are talking about the State reports that you submit,  
22 you talked about the September 15th report and an ADA  
23 report and an ADM report?

24 A Yes. It is also called an 1SE. They are combined if you  
25 want to designate that. The ADA, which is the Average

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1 Daily Attendance and then the ADM is the Average Daily  
2 Membership. The difference between those is your average  
3 daily absence, but they don't show it. Do you get what I  
4 mean there?

5 Q No, I don't. I thought attendance would reflect absences?

6 A No. Attendance is how many were present.

7 Q Right.

8 A So if you know two things you can always get the third  
9 one. Average Daily Membership is the gross number enrolled  
10 on an average.

11 Q I see.

12 A The next one is your gross number on an average that were  
13 present in the schools. The difference between those two  
14 is, one they don't even have a column for, but it would be  
15 what your gross average daily absence is.

16 Q The ADA and ADM, the numbers are good as of September 15th?

17 A No. That is one that goes all through a year. We have  
18 180-day school term and so there is technically a District  
19 enrollment, call it membership, for any given day. In  
20 order to arrive at percentages, you cannot average persons.  
21 So you actually have to get your gross raw data and so at  
22 the end of a year you pull off from the gross numbers of  
23 days from attendance the gross number of days of member-  
24 ship. You determine then 93.8% attendance. Am I illu-  
25 strating it well enough?



1 Q Yes. What happens to kids that have moved out of the  
2 District or have gotten suspended? Would that be reflected  
3 in the average of the membership number?

4 A Yes, that is right.

5 (Miller Deposition Exhibit Number 8 was  
6 marked by the court reporter.)

7 Q (By Mr. Hansen) Exhibit Number 8 is entitled Summary of  
8 the Effect of Approved Applications for Transfer of Student  
9 Enrollment received during the period of April 9th to August  
10 29, 1980. It's got along the left column a listing of  
11 schools and along the top row 9-17-79 minority percentages  
12 is the first column and 9-15-80, total enrollment is the  
13 last column. The two I would like to ask you about are  
14 the first column, which is 1979 minority percentages and  
15 the second to the last column, which is 10-9-80 minority  
16 percentages. First, do you recognize this document?

17 A Yes, I do.

18 Q You will see that the document is not in exactly the same  
19 form you gave it to us because I wrote something up at the  
20 top in my own handwriting?

21 A Yes.

22 Q That is exactly the question I want to ask you. Is the  
23 little note I wrote to myself, those two columns don't  
24 correspond with the numbers in Exhibit 6, which is the HEW  
25 numbers and I speculate that that is the difference in

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1 dates. I was wanting to ask you whether that was right or  
2 not?

3 A I think that would be true, yes. I might just say in 1979  
4 probably the 15th was on a Saturday or Sunday. So whenever  
5 we have that, then the State says use the next Monday. So  
6 in that case it would be 9-17-79, yes.

7 Q Then I am confused again because when I compared this  
8 column 9-17-79 of this year with the same numbers in HEW,  
9 which is Exhibit 6, there are some differences in the way  
10 I think you are explaining it to me now there shouldn't be?

11 A I am just calling your attention to the fact I keep using  
12 September 15th as the date for State aid.

13 Q Right.

14 A I am saying in given years, when the 15th is a date that  
15 falls on a Saturday or Sunday, you go ahead and use the  
16 Monday date and that is what this would be also.

17 Q I understand that. Should this first column correspond  
18 to the HEW numbers? Or does it come from a different data  
19 source? Or is there some other explanation?

20 A Without looking over the figures, I cannot answer that  
21 right off.

22 Q Let's take a quick look then.

23 A I am not saying your proposal is right. I am just not  
24 sure what this 32.2 really means here. Is this the net  
25 makeup of that school of regular students? We remove



1 Special Ed. students out of any kind of concern for transfer  
2 effect. This includes Special Ed., everyone who is housed  
3 in that school that goes in there, HEW, and so on. But  
4 when you come over here and we are talking about transfers,  
5 we usually eliminate Special Ed. because they are assigned  
6 there because of a room available or special exceptions  
7 that a teacher will be there for. So I hesitate to comment  
8 until I can see how these were derived.

9 Q Would you be able to find out how those numbers were derived  
10 by going back to your office and checking?

11 A I think so if worksheets are still available. I will just  
12 say it might be part of worksheet dates which may or may  
13 not be available. Again, I know the intent of what this  
14 is probably for, but I would want to make sure because  
15 there are some other pages that are attached to this I  
16 think and they are not here.

17 Q I suspect they are, but I didn't keep them.

18 A If you look at this down here at the bottom, it has these  
19 codes here and how we have marked some of these out and  
20 using the dotted one here, these that are dotted I think I  
21 recognize as being schools that had higher minority per-  
22 centages in our District. If you talk about the extremes  
23 in their given instructional levels. So it indicates the  
24 class that is closed to minority in transfers and majority  
25 out transfers. This is a part of our transfer situation,

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1 your rank ordering of those, the top or the bottom more  
2 particularly, are more or less going to keep movement from  
3 happening. Except that which would temper and bring the  
4 minority percentages down on one or at the lower level  
5 bring the minority percentages up. Do you see what I am  
6 getting at?

7 Q Yes.

8 A These ones in the books, that is the hard-line or those  
9 that are the most White schools, those that are in the  
10 dashed box are those that are in the highest minority  
11 schools. It says all enrollment of minority percentages  
12 figures includes Special Education students. That was  
13 probably the best we had at the time. The figures we have  
14 now we always eliminate those. If we have, we can say we  
15 can go one way or the other. We can throw one school out  
16 just simply by the way we assign Special Ed. students. Am  
17 I making that clear or not?

18 Q Yes, you are. Given the note at the bottom that Special  
19 Ed. may not explain the discrepancy, let me just have you  
20 compare the two?

21 A All right.

22 Q Here is the HEW, which is Exhibit 6 and I think it is the  
23 same year and also as you pointed out it says September  
24 17th, not 15th?

25 A Yes.



1 Q Belvoir is the one that leaped out at me, HEW 74.6 and on  
2 this one is 67.2 and they both include Special Ed. That  
3 is a sizable discrepancy. I am not sure I understand it,  
4 that is why I asked?

5 A This is the 1980 here. This one here is a September 15,  
6 '79. So he is really saying this one here seems low.

7 Q Right.

8 A Let me ask you this, if we started with Belvoir and this  
9 year here and we wanted to go back and get its net for  
10 what it would be, we would subtract out those transfers in  
11 during open enrollment time, which might have had a high  
12 number of minority who wanted to go there, because that  
13 is where grandma lives and she takes care of my children.  
14 Then we would subtract out those--I mean we would add back  
15 in those that had gone to Hudson or some other school  
16 around. So this could be very likely maybe better named  
17 on 9-17-79, adjusted minority percentage. I am just saying  
18 this is true to what we sometimes do, but I would refrain  
19 from any substantiations of what that really means. I am  
20 just trying to be helpful to you.

21 Q Good.

22 A Does that answer it?

23 Q Yes.

24  
25 MR. HANSEN: I'd like to have that marked Exhibit 9.



marked by the court reporter.)

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Q (By Mr. Hansen) We have marked as Exhibit 9 to the deposition an 8½ x 11 version of what was a legal-size piece of paper when it was sent to us. It is called Comparison of Minority Percentage of Selected Student Groups. The schools down the left column and three columns after the list of the schools labeled with Roman Numerals and down at the bottom it says, DS 12-11-80. Are you familiar with this document?

A Yes, I am.

Q Who is DS, a person?

A No. Demographic Services. It is just an abbreviation.

Q I would like to ask you specifically about Column 3 on this document. From what sources does that information come?

A This is a computed figure and it comes from taking the beginning percentages here. But you have to actually know the number of minority and majority in order to come to this. The second column is again the number of minority and majority which comes to a percentage figure. Then by subtracting two from one you get three and the idea it is a way of excluding Special Education from the computation of minority percentage. You cannot subtract percentages because they are based on different bases. I will use Avondale East who would have had a number of minority, a

1 number of majority, which made 32.51% in the student body  
2 on September 15.

3 Q You included Special Ed. in that?

4 A With Special Ed. included.

5 Q All right.

6 A Column 2 we determined by actual count the number of  
7 Special Ed. and their respective minority and majority for  
8 a given percent.

9 Q Column 2 is just the Special Ed. kids? Or it is the reverse  
10 excluding the Special Ed.?

11 A I'm sorry, after you exclude the Special Ed. you come down  
12 to this, yes. I'm sorry, that was an error. Going from  
13 Column 2 to Column 3 is, we do a subtraction of those  
14 students who transferred into Avondale East and returned  
15 them to their home school and you brought those that had  
16 left from Avondale East and brought them back from the  
17 receiving school, back into theirs. So that you substantiate  
18 in Column 3 a number of minority and majority and its  
19 percentage of what you might call the home group. If you  
20 put a fence around Avondale East and didn't let anyone go  
21 out or anyone come in, then 32.05 represents their home  
22 percentage.

23 Q That is based on students who are in the school system so  
24 that if, for example, there was a kid living in the Avondale  
25 District -



1 A Avondale East.

2 Q (Continuing) --had never registered for school, was school  
3 age, but played hooky, you wouldn't be picking that kid up  
4 anywhere?

5 A No, this is based on enrolled students. They had to be  
6 enrolled in one of these 501 schools. In this case this  
7 first one is the number enrolled in Avondale East itself  
8 in the school. This is not major population. This is  
9 talking about student population for Grades K through 6 in  
10 these elementary schools and these other respective grades  
11 down here.

12 Q In the same way that Columns 1 and 2 are based on enrolled  
13 students, Column 3 is as well?

14 A Yes.

15 Q There are some handwritten things on the document and  
16 wasn't part of the document when it was given to me. You  
17 also have in your offices or suite of offices pin maps?

18 A Yes.

19 Q What is the source that leads you to put a pin in a given  
20 part of the map?

21 A Part of the old student data base prior to the middle of  
22 the year 1982-83 on what is called an old student data  
23 base that was written years ago for 1401 IBM Computer. It  
24 had a program in it that would take the identity of the  
25 students and tell you how many of each race there were per

1 block. The blocks are identified on those maps up there.  
2 So the prefix of the block number, which is on every  
3 student's PIR's, People Information Record, the first digit  
4 was always the quadrant and the next two were either a  
5 north-south direction on streets from the access or then  
6 the last two were a distance maybe east and west. I am  
7 just saying I don't remember the exact directions there,  
8 but it was a way of coordinating a given block in the City.  
9 Then this would tend to print out how many Indians were in  
10 that block, how many Whites were in that block, and how  
11 many Spanish were in that block and so on.

12 Q That was by this home address?

13 A Yes, as of a given date.

14 Q Did you keep that map for a period of time and change it  
15 every year? How did that work?

16 A We made new maps, here of late, so that we have them for  
17 a little period of time. Prior to that we would have two  
18 sets of boards. We would always keep one year in arrears  
19 so to speak, to go back if you wanted to. But we had  
20 another set that was just determined off of September 15th  
21 basically every year.

22 Q Do those still exist as well?

23 A Some still exist. I think on recollection we probably  
24 have '79, '80, '81, '82, but that is just recollection.

25 Q If there were kids who moved during the year, did the kid's

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1 pin get moved?

2 A No, it was done at a time--it is just like you snapped a  
3 picture of it on a given day and that is where they were  
4 recorded. They might have been moving three times in a  
5 year, but not be changed.

6 Q On the same given day each year as they run along?

7 A These were run off of the same base for September 15th. I  
8 will just say sometimes the old system we would have a  
9 preliminary run on September 15th or the 16th say. We  
10 would send it out to the schools to have them proofed up  
11 and if they made any corrections, then we would hold off  
12 on running all these other programs that had race and  
13 everything on it until after we had solidified, until what  
14 we thought was the final best picture, then we would run  
15 those off on the same base.

16 Q Does the current computer system allow you to do that run?

17 A No. It is not programmed for that. Hopefully we will get  
18 to it.

19 Q The most recent one of those block maps you would have?

20 A 9-15-82.

21 Q Let me turn to the map questions.

22 A Okay.

23 Q Let me ask the question, we may or may not have to look at  
24 maps. You gave us a set of maps for the elementary schools  
25 and the junior high schools and the high schools?



1 A That is right.

2 Q We found instances in which the outer boundaries of those  
3 maps were not coextensive?

4 A That would be true.

5 Q How does that happen?

6 A First of all, in 1963, I think one of the earliest maps  
7 of what I call the large variety, those maps were based on  
8 the School District boundaries of that year. Remember back  
9 in those years when there was further developments by  
10 contractors and so on, they would come to the Board of  
11 Education almost after they got it approved by the City.  
12 They would say all right, we want sewer, we want water and  
13 we want electricity. Will you provide us with a school or  
14 which school will these children in half of these homes go  
15 to? So our Board every now and then was annexing, if I  
16 can call it that. They weren't taking away from Auburn-  
17 Washburn in a formal way, but because the City permitted  
18 them to go out and keep annexing, we received those  
19 students. So the outer boundaries would fluctuate every  
20 year. When we got to '65 we had unification. Since that  
21 time there, notably the Lyman School District in North  
22 Topeka, decided they wanted to go with Seaman. They were  
23 de-annexed from their school district and given to another.  
24 We had another one out around the French Middle School  
25 where we took in a little more ground around that site,

4-B

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1 which the Board had purchased at an earlier time. Then the  
2 next one that I remember is we made a line on the half-  
3 section line out in this Section 16 at the far southwest  
4 side because it was vacant ground and we just made it an  
5 easy way of identifying the half-section as the line  
6 between the two districts. Instead of a nice straight  
7 line on the half-section, it is following Arrowhead and  
8 other streets on down to finally 37th. Now only changes  
9 can be made by mutual agreement between the districts or  
10 with orders from the State and State Board of Education.

11 Q The current boundaries, the outer boundaries of the high  
12 schools, junior highs and elementary schools, it should be  
13 all the same boundaries?

14 A They all should have been the same anyway from '63 on.  
15 Yes, that is true.

16 Q Pre-'63 there would have been instances where your School  
17 Board would have responsibility for elementary schools in  
18 a given geographical area, but not middle schools or high  
19 schools in a given geographical area?

20 A To the best of my knowledge, no, they would have always  
21 had a K through 6 responsibility. I don't know that they  
22 would have differed then, but that is getting back before  
23 my time, too. I probably shouldn't comment on that.

24 Q That is why I asked, because we find instances where the  
25 School District has the responsibility for the elementary

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1 school and I looked at the junior high map and that is  
2 Auburn-Washburn's responsibility or Highland Park's re-  
3 sponsibility or somebody else? That should or should not  
4 have happened?

5 A I am not aware that it ever did happen, but I can't comment  
6 on that really.

7 Q If we found those schools, would there be a rule of thumb  
8 as to which one of the maps would be the most reliable,  
9 the high school or the middle school or the elementary?

10 A I guess I don't know how to respond because I always  
11 thought they were equivalent no matter what the level was.

12 Q Would it help if we showed some examples?

13 A Yes, it would help.

14 Q We are looking at the maps that were supplied in 1963 to  
15 1968 for the senior high school map, in 1963 the junior  
16 high school map and then in 1964 the elementary school map.  
17 What we are looking at is a set of maps we have drawn from  
18 the maps you gave us. The only reason we are doing that  
19 is because these are bigger than the ones you gave us.  
20 Directing your attention to the area north of the river,  
21 the boundaries appear not to be coextensive?

22 A Right, I could explain that by saying that at some time in  
23 there the Lyman School wanted to be a part of District 501.  
24 I can't explain without going back into data. But it was  
25 around the time of unification, to the best of my knowledge.

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1 They were in our District from let's just say approximately  
 2 1965 to 1967 and then they requested that they be opted  
 3 out. So this on the second map looks like the Lyman area.  
 4 I am just saying without verification that looks like  
 5 Lyman and so that is one reason for a discrepancy.

6 Q What confuses us is that for 1969 the junior high map  
 7 appears to include what I have described as the Lyman area  
 8 for 1963. The high school map does not appear to include  
 9 what you have described as that area?

10 A There is an area that I can't respond without looking up.  
 11 I just say that Lyman is an elementary school only, so  
 12 whether they had the right to come into Curtis Junior High  
 13 or whether they wanted to go on to Seaman area schools, I  
 14 don't know. I can't answer that.

15 Q How would we check the answer to this? Is there stuff in  
 16 your office or in Dr. Tribbey's office or is there some  
 17 place in the School District that would give us the answer?

18 A To the best of my knowledge, there would be two sources.  
 19 One is that our Board, by Minute action, might have shown  
 20 an acceptance or rejection of some part of that land over  
 21 in there. As to what caused them to go out, I don't know,  
 22 or what brought them in, whether it is population, by  
 23 petition, got this up and came to our Board. I have no  
 24 idea, frankly.

25 Q I have read through the Board Minutes and I don't recall

1 seeing boundary line descriptions. We will take in the  
2 Seaman area or we will take in the Lyman area, but it  
3 doesn't give the metes and boundaries?

4 A Right.

5 Q The Board Minutes wouldn't help us explain that discrepancy?

6 A The other one would be whether there is some data in the  
7 State Department of Education of the unification process  
8 and how they knew what to include.

9 Q Was there a petition from them?

10 A I don't really know, but I just say I remember working with  
11 a guy even two or three years after. I think he is retired  
12 now. It is in Dave Kester's office, but there is a gentle-  
13 man before that. I can't think of his name right off, but  
14 he and Ray Tilsey were very close and knew the outline  
15 very well. Like I say, Ray I don't know that he is still  
16 physically able to handle it today. This other gentleman,  
17 I don't know where he is, if he is still living.

18 MR. SEBELIUS: Before you go any further, I am not  
19 sure the record reflects this. The senior high map that  
20 you were referring to, which bears the red outlining, is  
21 dated in pencil 1963-68, whereas, the junior high map,  
22 which bears the original outlining of what you believe to  
23 be the District boundaries, bears a penciled in date of  
24 1963 and the elementary schools which are outlined in  
25 black, bear a 1964 date, correct?

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1 MR. HANSEN: Correct. A point of clarification, the  
2 map appears to be the official map of the City of Topeka,  
3 but it does not indicate what year in which this was the  
4 official map. Do we know? Is that a current map of Topeka?

5 MR. LAMSON: It should be the most current that they  
6 have.

7 MR. SEBELIUS: The idea being that you may see streets,  
8 you may see buildings identified here that may not have  
9 existed during the time period that is identified, just as  
10 a matter of clarification. Nobody is trying to fool any-  
11 body here. We are just trying to understand.

12 MR. HANSEN: Right.

13 Q (By Mr. Hansen) That wouldn't necessarily explain, assuming  
14 that in '63 you weren't responsible for the high school  
15 up here and this is in the Lyman area, but you don't know?

16 A I don't know.

17 MR. SEBELIUS: The record should indicate at the  
18 present time the areas outlined as representing the high  
19 school boundaries do not meet in the area to which you  
20 have been referring. So there is no way to know whether  
21 or not, at least based upon this map, whether it is  
22 included or excluded?

23 A I just don't know. I was not in that office then. I don't  
24 know any talk or plans or anything for that. So you got  
25 the maps that were official on our records for that time.

1 We shared all that with you.

2 Q (By Mr. Hansen) Okay. The next question I want to ask you,  
3 again, off of one of the maps we have created based on the  
4 maps you gave us, this is elementary schools 1951-52. Let  
5 me show it to you and draw your attention to the Seabrook  
6 School. The question I have, there appear to be two  
7 elementary schools in that district with the exact same  
8 boundaries and we were confused by that. Every other  
9 district has just one elementary school in it and that  
10 appears to have two?

11 A Let me ask you this, this is not a map that we would have  
12 had. I think you are quoting from a map that was a part  
13 of the original Brown that was with a different colored  
14 pencil used on that or else you are using something from a  
15 newspaper account. Do you have the original source docu-  
16 ments I presented you with? If I can look at it, it will  
17 help me I think.

18 Q Okay, we can do that. It is 5-1-52.

19 A Okay. What I am getting at is I just want to check and  
20 see was Seabrook shown on this one here. There is Southwest  
21 and here is Seabrook shown right here.

22 Q Yes.

23 A This is a map that was a part of the original Brown submis-  
24 sion. The way I understand it, by some of the marks I saw  
25 on it, if we get down to the legend, I can show you what

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1 that is. Anyway, what I am trying to say is that on the  
2 fact that Seabrook was shown there, I would have to ask the  
3 question and we would go back here and look at Whitson or  
4 Southwest and see what year did they first enroll students.  
5 Now you notice here, here is '50-'51, '51-'52, is the only  
6 lifetime of the Seabrook School when apparently it was a  
7 part of ours. Let's go over here to Whitson next. Here  
8 it says received through annexation, but that was not the  
9 whole building because the plans were started, but it was  
10 actually built by our Board of Education. So here, if you  
11 will notice '50-'51, '51-'52, Southwest did not exist.  
12 So what I am saying here is Southwest showing on there,  
13 because it was closed as you are moving on towards the  
14 1953-54 display of information, and this was probably razed,  
15 to the best of my knowledge, soon after the last year it  
16 operated. I don't see this as being two operating at the  
17 same time. That is a rationalization I cannot document  
18 without going back and looking, but this is an exact copy  
19 of what I call a colored pencil shaded map.

20 Q Okay. We should note for the record that when we went back  
21 at the witness's suggestion, to the original documents  
22 you gave us, we went back to the Answer of Unified School  
23 District 501 to Plaintiff Intervenor's Interrogatory Number  
24 9 (e, f, h, l, i, j and k).

25 MR. SEBELIUS: That is h, Sub Part 1.

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1 MR. HANSEN: I'm sorry, h-1, not h, l.

2 Q (By Mr. Hansen) We were referring to a map about one-third  
3 of the way--

4 A Just call it the 1951-52 map of the District.

5 Q Okay. In making the explanation, the witness referred  
6 back to the student enrollment columns and rows that are  
7 at the front of that book?

8 A For Seabrook and Southwest. We ought to call it that way,  
9 right.

10 Q Right.

11 A Okay. Does that answer it?

12 Q Yes.

13 A Okay.

14 Q The block numbers, we are talking about the pin maps?

15 A Yes.

16 Q The block numbers, those are the numbers that the School  
17 District has assigned?

18 A We assign them. It is unique in District numbering.  
19 There is no City or County numbering system we were fol-  
20 lowing.

21 Q You also referred to the fact that both were, I think it  
22 was, Whitson and French, that in some way the School  
23 District was involved in the school prior to annexation.  
24 Did I understand that right?

25 A Prior to annexation.



1 Q Yes. I thought when you mentioned French a little while  
2 ago, you said--I know what it was, the French site was  
3 purchased prior to annexation?

4 A Our Board of Education, in its best of long-range planning,  
5 could see what was happening to Southwest Topeka. So they  
6 went out and purchased acreage-size situations where you  
7 had a site that would be adequate for a building, maybe  
8 ten acres or seven acres or whatever, and tried to buy it  
9 up before the developer went out there. Then we would have  
10 had to buy back lots to support a school.

11 Q Was the site that you purchased within the boundaries of  
12 another school district at that point? That is what  
13 confuses me. It looks like you are going into another  
14 school district and buying land?

15 A I can't tell you which came first. If they purchased it,  
16 then they soon after went out there and got the agreement  
17 to do that annexation. So we would have water and we would  
18 have sewer and so forth or it might have been that we went  
19 out there and annexed it first and then bought the ground.  
20 I don't know.

21 Q Where would the paper trail exist that would explain that,  
22 if it exists?

23 A I think that would be Board Minutes.

24 Q No, it wouldn't.

25 A I am just saying any time that a Board makes a purchase,

1 it would have to be in the Minutes. That is why I gave you  
2 that as a record. Otherwise, as to annexation, then I  
3 think it would be your City-County Planning or City  
4 Commission. Their Minutes would tend to show under a given  
5 ordinance number as to when such and such a plat of ground  
6 was taken into the City proper or whatever. That was prior  
7 to--well, I think prior to unification, to the best of my  
8 knowledge.

9 Q Prior to unification the boundary of the City and the  
10 boundary of the School District were not necessarily co-  
11 extensive, right?

12 A Not exactly, but quite often did become one and the same.

13 Q Were there instances that the School District has responsi-  
14 bility for land that was outside of the Topeka School  
15 District, having annexed land that Topeka itself hadn't  
16 annexed?

17 A State that again. I want to think that over.

18 Q The issue is Topeka has its own boundary?

19 A Yes, the City.

20 Q The City of Topeka?

21 A Yes.

22 Q The City didn't want to annex a given plat of land but the  
23 School Board, being more farsighted than the City, the  
24 School Board annexes prior to the City annexing. The  
25 question is, did that ever happen, if you recall?

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1 A I can't answer that. I would say that there may have been,  
2 that the School District could only purchase property  
3 within its domain. So they might have gone out and got the  
4 City to annex it and then they would purchase the property.  
5 Even though they might have gotten thirty acres annexed in,  
6 they might have only purchased ten, but that is speculation.

7 Q Were there instances prior to unification where the School  
8 District did not include some of the land at that time the  
9 City of Topeka did include?

10 A I can't answer that without study.

11 Q How about post-unification, are the boundaries of the City  
12 and the School District coextensive?

13 A They are not the same now, no.

14 Q Does the School District have any more responsibility than  
15 the City, County or both?

16 A They both can operate independently of each other on that.  
17 Right now the City, let's say the City annexed in Forbes  
18 Air Base, but yet we do not provide schooling for that  
19 facility, that is just an example of some information for  
20 your research.

21 Q You referred to, I think it was Whitson that was annexed  
22 by--the area in which Whitson is located was annexed by  
23 the School District and then the school was--as the school,  
24 in the midst of being constructed, during that process or  
25 was it constructed after annexation?

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- 1 A Let me make that clear in that I cannot vouch for the fact  
2 when the School District took that in as to saying whether  
3 it was already in the City and they were following suit.  
4 The order arrangement is not clear in my mind.
- 5 Q I am shifting from the City School District order to the  
6 construction School District order.
- 7 A Okay.
- 8 Q Had construction started before the School District and  
9 had Whitson construction on that building started?
- 10 A I can't answer that, other than just even yesterday we had  
11 some question come up about this and I talked to Ted Clark  
12 and he showed me the architect's specifications for Whitson.  
13 It was at that time assigned to our Board of Education.  
14 So whether the property was there and then our Board  
15 decided to build on it or whether the other district had  
16 started anything, foundations and then gave up on it, I  
17 don't know. Let's just say I don't know.
- 18 Q Do you know whether there were instances in which the  
19 building was--would the construction have started before  
20 annexation started and finished after?
- 21 A I don't know that.
- 22 Q The Dawson School boundary, I show you the map if that  
23 would be helpful to you?
- 24 A All right.
- 25 Q Again, we are referring to this big book that we just

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1 referred to earlier?

2 A Okay.

3 Q The question has to do with the comparison between the  
4 Dawson boundary in 1960 and the Dawson boundary in 1963 or  
5 '64. I can't tell whether it is the same or not?

6 A Again I would--

7 Q Let me make sure I am asking you the right question.

8 A Sure.

9 Q I was asking the wrong question. As I understand it now,  
10 Dawson--there are some maps missing and we have a '58 map.  
11 The next map we have is the '63-'64 map. Dawson came in  
12 during that interim period?

13 A Yes. I would refer you to the school enrollment page and  
14 it shows we have received through annexation the first  
15 year we tabulated attendance and enrollment for Dawson  
16 being in District 23, it later became 501, is 1960-61. So  
17 the map that you have here you are referring to in the  
18 first case here was from the Topeka Daily Capital, August  
19 21, 1958. This one does not show Dawson on it and it  
20 should not according to our enrollment history. The next  
21 one you cite is Dawson showing on a map at the bottom  
22 showing 1963-64. That would be in the period in which it  
23 was a part of our District and should be on our maps.

24 Q My question is the '63-'64 boundary, do you know whether  
25 that was the same boundary it had as of '60 when it came

1 into the system?

2 A No.

3 Q Did the boundary change between '60 and '64?

4 A I don't know.

5 Q Do records exist anywhere from which we could derive the  
6 answer to that question?

7 A Not that I know of. I will say I would have supplied it  
8 to you. '63-'64 is the first year we had any real hard  
9 copy other than the old one back there in '52. The rest  
10 of them I believe I can say with certainty all they have  
11 would have been just newspaper accounts. This is a newspaper  
12 account here. I have never located any others.

13 MR. SEBELIUS: Let the record reflect that Mr. Miller  
14 has looked, too.

15 A Yes, I have.

16 MR. SEBELIUS: To the ends of the earth.

17 A We have gone through microfilm of the Topeka Daily Capital  
18 and the Topeka State Journal and perused those for long  
19 periods and did not find anything that we haven't given  
20 to you.

21 Q What about the State? Do you have to submit internal  
22 boundary changes to the State?

23 A No. I will go back to this and state I don't know prior  
24 to unification that any district had to. Whenever they  
25 wanted to combine with another school district who said

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1 they can or can't or whether that was just simply a mutual  
2 agreement between the two Boards of Education. So I can't  
3 answer that.

4 Q Since you have been responsible, internal boundary changes  
5 do not have to be--

6 A To the best of my knowledge, they have never submitted it  
7 to the State.

8 Q Do you submit it to them after you decided to change it?

9 A No. To the best of my knowledge there is no map required  
10 to be submitted to the State. The only thing is that for  
11 every school you operate, you must submit a September 15th  
12 Principal's Report and include in your Superintendent's  
13 Report for that District.

14 Q What about Dawson before it was annexed? Do you remember  
15 what school district it was in?

16 A No. I really don't. I am inclined to believe, because of  
17 some data that I have seen on Shawnee County, this is like  
18 a publication from the Shawnee County Superintendent of  
19 Schools, remember I alluded to that earlier?

20 Q Right.

21 A It would have listed it just like any country school in  
22 Kansas with its own government, but that ought to be  
23 checked out for fact, but that might give you a little  
24 lead on it.

25 Q The next question is between the maps and the enrollment

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1 sheets that are at the front of that same book -

2 A Yes.

3 Q Referring to Lincoln and Lafayette. It has to do when  
4 Lincoln was closed, where those kids went. The enrollment  
5 sheets and the maps appear inconsistent about what happened  
6 to the Lincoln kids when it was closed. I want to ask you  
7 whether you can clarify that for us?

8 A Okay, looking at Lincoln for those years they were just  
9 up through Grade 6. If we looked at Lafayette for that  
10 same period of years, it looks like up through Grade 6.  
11 Lincoln was closed 6-1-62.

12 Q On the sheet which we are looking at, which is the enroll-  
13 ment sheet, it says "school closed, students assigned to  
14 Lafayette," right?

15 A Yes.

16 Q Now if you will look at the map for the year after Lincoln  
17 was closed?

18 A Yes, in the '62-'63, so we look at--no, you don't have a  
19 map for '62-'63. I don't either. Go to the next year,  
20 '63-'64.

21 Q Right.

22 A '63.

23 Q I see that, too. But look at the '63-'64 map. The zone  
24 that was previously the Lincoln zone appears to encompass  
25 more than Lafayette. It looks as though the zone from

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5-A



1 which kids previously went to Lincoln now includes not  
 2 just Lafayette, but also Sumner, Clay, Parkdale, Polk and  
 3 Monroe. So the map appears to suggest that the kids are  
 4 sent out to more than just Lafayette and the enrollment  
 5 sheet appears to indicate that the kids were just sent to  
 6 Lafayette. That is the question we are asking.

7 A I am inclined to believe that this is like an optional  
 8 area showing here in fact the zone Sumner, Parkdale,  
 9 Lafayette, I don't see Clay. It is right up in there  
 10 probably. I would say that would be a good rationalization,  
 11 but I can't establish that as a fact without going back to  
 12 my records.

13 Q Which would you view as the more reliable of the two? The  
 14 map or the student enrollment sheet notation?

15 A I am a little hesitant on that. I have no hard evidence  
 16 to say how the students were assigned. I ought to go back  
 17 and look at the Minutes again. I guess I am going to re-  
 18 frain from giving you an answer because I don't know.

19 Q I don't want you to give answers that you don't know, it  
 20 doesn't help us. On the list of schools that we talked  
 21 about earlier, Exhibit 2 is one of the two lists of  
 22 schools that we talked about earlier. I am going to ask  
 23 you about Robinson Middle School?

24 A Okay.

25 Q Robinson Middle School was opened in 1980?



1 A It says on here Central Park here, and we come up here it  
2 shows 1980. I am just saying I am not sure I supplied all  
3 this. I am just saying that is what the sheet says and  
4 that is reasonably correct. If you are asking for an  
5 accurate picture, we have had three years of 9th Grade in  
6 the high school. Do you have our books showing the enroll-  
7 ments? Again, that little stack, one of the exhibits that  
8 we just talked about.

9 Q The real fat one?

10 A No.

11 Q This one?

12 A Yes, right under it. Let me say I believe these are only  
13 elementary--it would be the next year. Okay, we said the  
14 last years in elementary was '79-'80. So it would have to  
15 be the '80-'81 year. So let's get that one. Does that  
16 take care of that?

17 Q Yes. While he is getting the next map question, we talked  
18 a little bit earlier about the private school and parochial  
19 school responsibilities that you have. I got confused  
20 about that. I gather there was one part of that that you  
21 do essentially voluntarily that you aren't required to do,  
22 but I also thought you said there is a part that you are  
23 required to do?

24 A Yes. The Superintendent delegates it to me, but it is a  
25 requirement that the State Board of Education, through one

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1 of its offices, says give us a list of all the parochial  
2 and private schools that are located within your District.

3 Q And the number of kids?

4 A No. I think we are just supposed to give the name and  
5 address and likely directing Principal or Superintendent  
6 or whatever to help them make contact with them, should  
7 they not be filing for a certification or something else.  
8 So it is just an information thing. I don't think it gives  
9 even enrollment.

10 Q The enrollment figures you deal with for the private schools  
11 and parochial schools, that is the stuff that you don't  
12 have to do that you do voluntarily?

13 A Right. Even one school does not give us the enrollment  
14 and because of that we just go ahead and leave them out,  
15 knowledge unavailable.

16 Q How long have you been doing that process, both processes,  
17 both the one that the State requires and the one that you  
18 do voluntarily?

19 A I am going to say we possibly have in our office for about  
20 fifteen years.

21 Q Do they both start at the same time? Did you start doing  
22 both things at the same time?

23 A No. The State required report I am going to say is two to  
24 three years. The other part done earlier was just simply  
25 a part of our long-range planning and trying to keep a

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handle on things.

Q Let me ask you another question out of this very big stack of documents that we got in response to Answers to Interrogatories, referring you to the page that says Identification of Feeder Elementary Schools Served by Each Junior High School. It is the school year '64-'65. The first column says Feeder Elementary School Attendance Areas and the first row starts with Boswell and it goes through Capper and so on. As I read that page, Parkdale is shown as a school that feeds into Curtis Junior High, is that correct? Is that the way it worked?

A No, I don't believe it would. I think it just got on the wrong line and it should be under East Topeka, I believe. I will acknowledge what appears to be an incorrect statement there. The reason I say that is that East Topeka does not have any designation in it and I am going to say that is a typo. I don't blame everything on my secretary, but I think it is a typo on that. Because it would be obvious to Parkdale where it is. It is fed totally into East Topeka Junior High. So I believe that should be cited as a correction. There is no page number, but if you want to, '64-'65 and I guess you cited it.

Q What was the source for this series of documents, the Feeder Charts?

A I believe that it would have been a comparison of the



1 elementary attendance area maps to the junior high attendance  
2 maps, which we gave you full sets of. I think if we wanted  
3 to look on here on that '64-'65, if this is the one that  
4 is by school, and find Parkdale, Randolph, Polk. All  
5 right, Parkdale here. If you compare that map to the East  
6 Topeka map over here in the junior high section, which I  
7 think is in that other book over there, if you will compare  
8 that, it looks like our lines are not too strong here, but  
9 I am just saying you can see that Parkdale, almost in  
10 total, was in the East Topeka Junior High area.

11 Q Were those feeder graphs done for us or is that something  
12 the School Board already had?

13 A No, they were done as an Answer to Interrogatory total, the  
14 maps. We just generally go to ours if we had a question,  
15 yes.

16 Q If you would look at the '65-'66 elementary attendance  
17 boundary map?

18 A For which school?

19 Q Bishop and McEachron?

20 A Okay, here is Bishop and here is McEachron right next to  
21 it. What is the question?

22 Q Referring to the map we just talked about there is an area  
23 as the map is bounded to the right, right about in the  
24 middle of the map, that is bounded. Is this the railroad  
25 or the river?

- 1 A No. That is the I-470 bypass.
- 2 Q Bounded by the bypass and then off to the right edge of  
3 the map and the question is, does this triangle and rectangular  
4 space, where do those kids go to school?
- 5 A There is a little corridor to indicate on 37th Street that  
6 this Greenboro Addition, south of 37th there, this goes to  
7 Avondale Southwest or now called Shaner. The little cor-  
8 ridor goes right down here. Now these all go into this  
9 school here. This is not a hard-line all the way through,  
10 I think, because of the wide line out here. Let me see if  
11 I can go to Avondale Southwest. This goes right over here  
12 and that isn't a hard-line down there. That should go  
13 into there.
- 14 Q So both the rectangle and the triangle of those kids go to  
15 Shaner?
- 16 A Yes, or Avondale Southwest is the old name.
- 17 Q Thank you.
- 18 A I'm sorry. I can see the confusion there.
- 19 Q I am not sure whether it was clear or not. For the record,  
20 let me make it clear, again we have been looking at a whole  
21 series of maps and the last series of questions have been  
22 out of the thick-bound volume that is the Answer to  
23 Interrogatory 9(e, f, h-1, i, j and k) and it has a stamp  
24 number at the top, 002281. Let me have two more documents  
25 marked as exhibits.



1 (Miller Deposition Exhibit Numbers 10 and  
2 11 were marked by the court reporter.)

3 Q (By Mr. Hansen) I have marked as Exhibit 10 something  
4 entitled at the top, Annual Report Cities of the First and  
5 Second Class School Year Beginning September 11, 1950 and  
6 Closing May 25, 1951. It is three pages long.

7 I have marked as Exhibit 11 a large sheet called  
8 Comparison of the Total School Enrollment in District  
9 Black Schools. Were total Black students included on  
10 State report and annual school census report for the years  
11 1940 to the year 1950? I take it Exhibit 10 was not  
12 prepared for us and Exhibit 11 was, is that correct?

13 A That is true.

14 Q Was Exhibit 10 a report at that time that the school was  
15 required to submit to the State every year?

16 A I will say to someone else and I would guess it was either  
17 the County Superintendent of Schools or to a State organi-  
18 zation, it was an annual school census is what they call  
19 it, or annual school report, I should say.

20 Q How does census compare with what we were talking about  
21 earlier, that is, the Average Daily Membership, Average  
22 Daily Attendance September 15th. Do you know which of  
23 those or what other possibility it is?

24 A I did not know exactly what this one is here except it just  
25 says this is a report for the school year beginning



1 September 11, 1950 and closing May 25, 1951. When you  
2 talk about enrollment over here, I will just say it could  
3 be that it is the total of all those male Whites, female  
4 Whites and then there is the same column for colored, as  
5 they used that term then, that enrollment in the School  
6 District during that year because it gives a period up  
7 there or a range. The next place where it talks about  
8 total days of attendance. Then this is in our terms that  
9 same thing. Instead of it being Average Daily Attendance,  
10 it is Total Days. Then they could compute by--if it was a  
11 175-day school year, you could get your Average Daily  
12 Attendance. They have that Total Days Attendance, then  
13 the averages computed down here based on the number of days  
14 taught. It even tells so down here. I can't answer the  
15 question as to whether that is any one student who was  
16 enrolled at any one time in the school year, or whether it  
17 was on a given date, but I think since it gives a period  
18 being a range, I am going to say it looks like it would be  
19 all those that are enrolled as a matter of record that  
20 year.

21 Q Were there reports like Exhibit 10 for 1940 to 1950 each  
22 year?

23 A I am going to say that I didn't report them to you earlier  
24 because I thought the period that we are in on this discovery  
25 was from 1950 to 1980 roughly, '79. I would go back and



1 check these. I am inclined to think that they were doing  
2 some of these earlier than that. I now can answer up here.  
3 This one has Clifford Watson at the top and he was the  
4 Superintendent of Schools for Shawnee County, of Shawnee  
5 County at that time. So this is probably a County  
6 Superintendent report.

7 Q The witness has been referring to Page 3 of Exhibit 10.

8 A Yes, that is correct.

9 Q Exhibit 11, was that derived from the 1940 to 1950 versions  
10 of Exhibit 10?

11 A If you want to know an exact answer, I am going to have to  
12 say I will refrain until I can check it.

13 Q All right, the title of Exhibit 11?

14 A It says Data From State Reports Filed Annually. Because I  
15 have this on here, I think, now as I look it over a little  
16 more carefully, I believe it was the same type of report  
17 or I wouldn't have been able to use it for a base. I think  
18 I can say yes now.

19 Q The title of Exhibit 11 talks about the State Report and  
20 annual school census?

21 A Yes.

22 Q Do you recall whether those are two things or one thing?

23 A No. Except that it has been cited to me that they dismissed  
24 school for one day, usually in the spring, and teachers  
25 within the employ of the District were told you have this

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1 9 blocks or this 13 blocks or something like that and you  
2 are supposed to go around during that day as a part of your  
3 day employment to ascertain these by their age groups or  
4 grades and race. That is what has been told to me.

5 Q When you were compiling Exhibit 11, did you use anything  
6 besides the versions of Exhibit 10, if you recall?

7 A Yes, and this was cited I think in--I was going to say it  
8 was either like something from the School Board Minutes or  
9 where we had enrollments--I take that back. These are the  
10 enrollments for those four named Black schools in these  
11 years. So I just took those out and I said we were making  
12 an assumption. I think there is another sheet attached to  
13 this to where I am making an assumption that only Black  
14 students attended Buchanan, McKinley, Monroe and Washington.  
15 If you go with that assumption, then what we are trying to  
16 do is back out of this thing, then how many other Black  
17 students were there available and we know this was Buchanan  
18 K through 8. I made an asterisk by some of these because  
19 the gradation was different after '41 and '42, after the  
20 Graham case than prior to that. This is some basic infor-  
21 mation. Like this one here, if you would look down through  
22 here for Buchanan School for those years you should find  
23 the very same enrollment is what I say here.

24 Q The witness is referring to Exhibit 5, because this only  
25 goes to '50-'51. I mean it starts at '50-'51.



1 A That is right. We have worked it back in years and that  
2 would be the information cited up here.

3 Q This is one of those questions my colleagues weren't sure  
4 I got this morning.

5 A Okay.

6 Q I am not sure whether I did or not. I apologize if I asked  
7 it before. I am looking for schools that were originally  
8 elementary schools and were turned into secondary schools  
9 and vice versa, and I am told I may have only asked one of  
10 those distributions rather than both?

11 A Let me review an elementary school that became something  
12 different. Let's do that first.

13 Q All right. Then let's do secondary schools that became  
14 elementary schools, if any?

15 MR. SEBELIUS: For what time period are you referring,  
16 since 1950?

17 Q (By Mr. Hansen) Since 1940 to the degree you know it. I  
18 understand you may not know 1940.

19 A This I am not sure.

20 Q In going through that, would it help if I gave you one of  
21 those spread sheets?

22 A I really need something like that.

23 Q Here is Exhibit 2.

24 A That gives '50 to '51. So I can go back that far.

25 Q Okay, let's do that.



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(A recess was taken, after which the following proceedings were held.)

Q (By Mr. Hansen) Just before we broke we were going to talk about elementary schools that became secondary schools or vice versa?

A Yes.

Q In that regard I showed you Exhibit 2 and I was going to give you Exhibit 3 as well to help track those down to the extent we can, given the list that we have got. Here are the two lists. Now if you would just sort of go through them?

A We are talking about elementary that went to something else? Is that the way we are starting out?

Q Right. Let's start with that.

A Okay. Something else of identical--

Q Yes. If it was a rubber plant I am not interested in that.

A All right. Central Park Elementary was remodeled. After remodeling it became Robinson Middle School.

Q The date that that took place, is it reflected on one or the other of those two?

A Robinson, 1980, yes.

Q Okay.

A Name change, no.

Q No, we went through name changes.



1 A You are just talking about use?

2 Q I think we covered all the name changes. I think we did  
3 that. If you spot one you don't remember talking about,  
4 you might highlight that, but I think we did that.

5 A All right. Polk, it became from elementary to Head Start  
6 only. Is that what you are meaning?

7 Q Yes.

8 A All right. I can't cite the year exactly, except you can  
9 find Polk in that stack over there of enrollment and you  
10 can find where it says that. I will let you look that up.  
11 Rice School was closed and it became the Adventure Center.

12 Q What is the Adventure Center?

13 A The Adventure Center started back a number of years ago.  
14 It was in Crane. Then it went over to a school where I am  
15 going to say all 4th and 5th graders would go from the  
16 different schools to have somewhat of an intercultural  
17 experience. As well as what I will call an enrichment  
18 experience, subject oriented as well as socially, for  
19 about a 2-week period. They are kind of matched up with  
20 different other schools in the District. Also while the  
21 students are being dealt with by a staff member, or more  
22 than one, more than one in all cases, the teachers from  
23 what would be their normal teacher is undergoing an in-  
24 service training by other teachers in that facility.

25 Q Is the head of that called the Principal?



1 A Principal or Director or something like that.

2 Q Do you know who that person is?

3 A Yes, the current one is George Rondell. In prior years  
4 we had Dick Schiller, was there. I am not sure I can name  
5 the others. It seems like there was one other one.

6 Q Let's go back to the elementary school list.

7 A Sheldon has been an elementary school up until some years  
8 ago. It says here closed in '77-'78. So at that time it  
9 became a Special Ed. facility and even more recently, I  
10 don't believe they even have classes for Special Ed. there,  
11 but it is more of a staff center. They do audio-visual  
12 testing and so forth there and probably some psychological  
13 testing.

14 Van Buren was closed. It says in 1964-65. After that  
15 served for a period of years, until it was sold, as an  
16 instructional resource center and housed the films, audio-  
17 visual things that were sent out from there as per schedule.  
18 Like classroom teachers. It was then placed for the  
19 instructional consultants, like the heads of the Math  
20 Department for the whole District was there and had an  
21 office there. I guess that is all. I guess that is all  
22 I see here of elementaries of a different use.

23 MR. SEBELIUS: Look through the ones that are high-  
24 lighted.

25 A Okay. I ought to go through that. Clay was sold, but you

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1 didn't really want to know that. It is just if they went  
2 to another 501 use, right?

3 Q (By Mr. Hansen) Right.

4 A Monroe didn't go--I mean it went to a stockroom used for  
5 a while. It says closed '75-'76 and it was the District  
6 stockroom for a while until we got our new facility built.

7 Parkdale, they tore down the old east building. But  
8 they still have the classroom section there and it has  
9 restrooms in it and it is right next to Topeka High's  
10 practice field. So it serves as kind of a storage facility  
11 and showering, maybe restroom, at least for the Topeka  
12 High practice field.

13 We already told you Polk became Head Start in - it  
14 looks like it must have been '80-'81 for the first year of  
15 Head Start there. I don't see any others.

16 Q Is Head Start an all-day program?

17 A Yes. I say all day, I am going to qualify that and say  
18 approximately there are 250 students there, but I don't  
19 know whether they are half-day or all-day. My feeling is  
20 that they are half-days, kind of like pre-kindergarten and  
21 they have a different set of 125 students in the afternoon  
22 that are different than the 125 in the morning. I believe  
23 that is correct.

24 Q They don't go to the Head Start Program in the morning and  
25 some other school in the afternoon?



1 A No, not that I am aware of.

2 Q The Follow-through Program, is that an all-day program?

3 A Follow-through was an all-day program. It was kindergarten  
4 for all day. Where the normal kindergarten was for a  
5 morning or afternoon, but never both. So you might say  
6 they got an extra help there. Then for 1st, 2nd, and 3rd  
7 Grade, which was the upper level of it there, it was like  
8 assisting those that came from either economic, social,  
9 educationally deprived homes, as judged by some criteria  
10 and sometimes the Follow-through is in maybe as many as  
11 three or four schools. Sometimes just in two. You will  
12 find the records usually showing a little asterisk by that,  
13 so you will find qualified enrollments that did not come  
14 from the neighborhood so to speak.

15 Q Follow-through didn't exist?

16 A Follow-through was phased out, I am going to say that was  
17 two or three years ago, something like that. It was a  
18 Federal program and annually applied for something like  
19 that and phased down, I can't tell you exactly, maybe in  
20 1980 when we had a Presidential election. I don't know.

21 Q Let's go through secondary schools becoming something else?

22 A Capper Junior High became what is now known as Topeka  
23 Educational Center. Do you want to know what is housed in  
24 there basically?

25 Q Yes, please.



1 A We have the teenage school, which is really those girls  
2 that are not necessarily unmarried, but who because of  
3 doctor's orders or recommendations, go on maybe a part-  
4 time basis and complete their diploma or GED requirements  
5 in a little more of a sheltered atmosphere. AEP, which is  
6 the Alternate Educational Program. That is for someone  
7 who is non-pregnant, who is maybe on a negotiated suspension  
8 basis. They go out there. They may still be under age  
9 sixteen, but they can still continue their education, but  
10 they have to be away from the school from which they were  
11 suspended.

12 Q Age sixteen?

13 A I say if they are under age sixteen there is a mandatory  
14 education requirement. If they are over that, then they  
15 might be suspended and then they re-enroll at the regular  
16 high school at a later date, okay?

17 Q Yes.

18 A Then we have some Special Ed. classes taught there. They  
19 teach BIU, which I think is a--I had better cross that out.

20 Q An acronym for something?

21 A Yes. I know it is a Special Education group. That is I  
22 guess all of that one. We have Crane Junior High, which  
23 for part of the period we are considering becoming the  
24 Adventure Center after it was closed out as a junior high.  
25 Then it was closed out as the Adventure Center when it was

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5-B 1 moved to Rice Elementary and that has been sold.

2 Curtis Junior High was sold to a private school. So  
3 it is still educational, but not under District 501.

4 East Topeka Junior High was sold, I believe. I will  
5 leave it there.

6 Highland Park Junior High was razed.

7 Holiday Junior High was razed. Those students assigned  
8 to Chase and Roosevelt Junior High was razed. I guess  
9 that is all the middle schools.

10 The high schools have always been used for what they  
11 are except they used to be Grades 10 through 12 and now  
12 Grades 9 through 12. Does that cover it?

13 Q Yes. During the period when the school is heading for  
14 overcrowding, getting up to its capacity, the School Board,  
15 I take it, has a number of choices of how to deal with  
16 that. It can change boundaries. It can put in portable  
17 classrooms. It can build a new school. There are a number  
18 of ways to deal with it. There is a hierarchy or a set of  
19 criteria by which the School District decides to do one of  
20 those things rather than the other?

21 A I don't think I can answer that in the terms you stated  
22 there. I really don't. I don't know that there is.

23 Q Is Dr. Gray the one who would know if there is such a  
24 thing? Or is my question so bad that no one could answer  
25 it?



1 A I am going to give you an answer because I think it deserves  
2 an answer. I am going to couch it a little bit differently.  
3 I am going to say when we have come to the point of adopting  
4 long-range plans, you are looking at more than one school.  
5 You are looking at a District. You are looking at needed  
6 changes in instructional programs, maybe even mandated  
7 programs. You are looking at such things as the assignment  
8 of staff in order to make the most efficient use of the  
9 dollar. You are probably saying there is not the amount of  
10 money set aside for buildings that you--I mean you don't  
11 have to pass a bond issue every time, but I am just saying  
12 you look at the priority for how to spend that money, re-  
13 furbishing an old building or maybe it is time for it to  
14 go and you build a new one. So it is not just simply  
15 changing boundaries. Have you reviewed the last long-  
16 range plan?

17 Q Yes.

18 A I think if you look through it, it will probably tell you  
19 as much as I could tell you and it is done by someone who  
20 is an authority to say this. It is an overall plan. Not  
21 just should the boundary be changed because enrollment has  
22 reached the peak or something. Am I getting in on that?

23 Q Yes.

24 A I think that is a better answer.

25 Q Dr. Tribbey, as I understand, is responsible for the long-



range plans, is that right?

2 A Yes, he is the one that can answer that. Again, it quickly  
3 becomes the Administrative Council's plans. It becomes  
4 the Board's plans. The Board ultimately adopts it and it  
5 becomes known as their long-range planning. It is not Dr.  
6 Tribbey's long-range plan.

7 Q I understand. Let me try one example. You may not be  
8 able to help me with this. Topeka West currently has some  
9 portable classrooms, right?

10 A I believe that is correct.

11 Q Were you involved in the decision to put portable class-  
12 rooms out there as opposed to using some other method of  
13 dealing with the students attending that school?

14 A I would have to say probably, I was involved during that  
15 period. I was on the Administrative Council, but not in a  
16 direct way. I probably furnished statistics on projected  
17 enrollments. As I recollect, those portables were placed  
18 there prior to the time that Division E or call it the  
19 fourth little school or third little school, the way we  
20 have it now was built, and so they might have been put  
21 there during the time when we had to have more room and we  
22 couldn't get the drawings and the construction done to meet  
23 the needs and then once they are there, then sometimes you  
24 don't simply take them off when they are not needed. Unless  
25 you have another priority for them, they probably set there

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1 for a time and might even be used for athletic storage,  
2 not for students today. I am using that for an example.  
3 I believe it is practical and factual.

4 Q One thing I didn't ask the first thing this morning when  
5 we started talking about your responsibilities within the  
6 staff, the relationship you have with the Computer Department,  
7 how much interaction is there between you? What is the  
8 nature of that kind of interaction? What statistics do  
9 they keep as opposed to you and what statistics do you  
10 keep as opposed to them?

11 A Let me define the computer setup as being a service  
12 department and they not only serve my needs, but they  
13 serve Personnel, they serve Business. They have a training  
14 facility, a Vo-Tech, which uses it for training of students  
15 on programming and whatever, key punch and everything.  
16 State your question again? I want to make sure I zero in  
17 on it.

18 Q I am looking for how it is decided that you should keep X  
19 statistics, if you have a given body of data, how is it  
20 decided that you should keep track of it or whether they  
21 should keep track of it?

22 A There is a committee now that I would have to go to, to  
23 get an increased priority given to my request that might  
24 put it over someone else. I will just say if there is a  
25 competing interest, Mr. Warner wants to have a new payroll

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1 system, and I want to have a new pin map. I am competing  
2 in two areas. One is programming, and another one is the  
3 matter of the ability to maintain the system. So I have  
4 to be able to justify a higher priority than his, or other-  
5 wise he gets his payroll system or I am down the line  
6 competing with another sub-department request.

7 I want to comment on the idea when we first went into  
8 the program we were using a I401. I believe my Department  
9 was more of a department anxious to get data going and I  
10 already had my predecessor and his committee who had worked  
11 so far getting pupil information was a high priority and  
12 because I was under the direct supervision of the man who  
13 was in charge of the computer system, we explained that  
14 the best we could, I think in 1971 from some statistics  
15 the running time of the computer for pupil information  
16 versus others was something like 41%. Now we had a change  
17 in business staff about that time, with the retirement of  
18 a Business person. Mr. Warner was becoming a competitor  
19 with me and a good competitor.

20 Q A skillful competitor?

21 A Skillful. I am proud of our home team. It is not cut-  
22 throat or anything like that.

23 Q I understand that.

24 A I want to just tell you, I have less input or management  
25 of what gets done by the computer than I used to have.

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1 But I think there is the avenue to providing justification  
2 and the priority given. But those who are superior to me,  
3 I still have access to that and hope to keep on improving  
4 it.

5 Q Would the Administrative Council be the body that would  
6 decide between Mr. Warner wanting to put a new budget thing  
7 on the computer and you wanting to put a pin map on the  
8 computer?

9 A Physically I am talking about money and time. More of  
10 that is determined by Administrative Council and ultimately  
11 the Board of Education and their budget authority, the  
12 one I really work through is the Data User Committee, which  
13 is headed up I believe by Dr. Tribbey and Wayne Warner is  
14 also under his jurisdiction and Ted Clark and myself. Yet,  
15 we are all under management services in the way Mr. Warner  
16 and Dr. Tribbey are the same status people. So we are  
17 competing departmentally and also kind of inter-departmentally.  
18 Am I answering your question to give you the feel for it?

19 Q Yes, I understand it completely.

20 A Okay.

21 Q Another one of those questions that I am not sure that we  
22 went over this morning, and I am not sure I asked right.

23 A Feel free.

24 Q One of the ways in which you can apply for a transfer, one  
25 of the transfer policies is that you can transfer to the

1 school where the day care person is, rather than where you  
2 live, right?

3 A Not currently, unless you qualify that a little bit more.  
4 Go ahead.

5 Q That is my question.

6 A Not just by itself.

7 Q I thought when everybody talked about my question on that,  
8 they thought I didn't make that clear how it--

9 A Day care, in my early supervision of that, day care was  
10 legitimate needs and could be approved, irregardless of  
11 race or whatever.

12 Q Irregardless of the kids' age?

13 A The first case it was for Kindergarten and Grade 1. Then  
14 we went into open enrollment. So that just meant the  
15 school is limited then. We came down to a more restrictive  
16 thing again and it was by special request, but if they did  
17 have a day care person, it was automatically approved up  
18 through Grade 6 or I think a two-year period. I am going  
19 to say '77 to '79. Since that time the reason is almost  
20 of no value to the application. First of all, the first  
21 priority is, does it fit the movement of a minority or a  
22 majority as prescribed by the policy. Then the second  
23 thing after that is, does the school have a capacity or  
24 not. Then the third thing beyond that I guess is more or  
25 less if we have given them a disapproved because of either

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1 of those two reasons they may reapply or I should say  
2 "appeal," maybe is a correct term and then if we grant it,  
3 it is based on special educational needs approved by the  
4 Superintendent's Review Committee. I suppose technically  
5 if we denied it there, they would have the right to go to  
6 the Board of Education, which would be a second level of  
7 appeal, and if they would approve it, they could throw out  
8 everything we said and take the case. If they sustain that--  
9 I will just tell you I don't believe in the three or four  
10 years that the Board has ever overridden us. I think they  
11 have been pretty happy with what we have done.

12 Q Do you do periodic studies of the cumulative effects of all  
13 the transfers that have been approved?

14 A Yes. That is a form of a book which I think has been  
15 submitted to you for up through the time that we said. I  
16 will just say since then we have done an annual statement  
17 of that. The Board gets a copy of it. I will just say it  
18 is properly done. We have given a copy of that. I might  
19 just say that part of this, if I give you a little time  
20 line, I think it might be helpful to you, we start appli-  
21 cations for that in January going around and could go  
22 clear through all the next school year. Because the Board  
23 is wanting to know before they talk about the opening of  
24 another pre-enrollment application period instead of waiting  
25 until you got clear through the next May. They know

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1 people are sitting here waiting to review their applications  
2 in January. We do a study about the first part of November  
3 and present it to the Board in December. So what we  
4 really do is summarize all the applications in the preceding  
5 January, around to November for that school year.

6 Q You are not really involved in the land management of the  
7 School District, right?

8 A No.

9 Q Like whether there is land out there that is not being  
10 used and that sort of stuff?

11 A No.

12 Q Who in the School District administration would be re-  
13 sponsible for that?

14 A I would tend to call that a part of Facilities Planning  
15 with Ted Clark, but I suppose beyond that it would be Mr.  
16 Warner as being the one who holds like the deeds in his  
17 file. If that was a matter of probably Administrative  
18 Council, again assessing do we want to keep this site any  
19 longer, but Ted Clark can tell you the current status on  
20 that.

21 Q I asked you earlier about State reports. I forgot to ask  
22 you about Federal reports that you are required to submit  
23 other than the ones that go through the State, are there  
24 reports that you are required to submit on a regular basis  
25 directly to the Federal Government?



1 A Civil Rights actually has a copy sent to the State and you  
2 send the rest on to Washington, D.C., the PL874. I am not  
3 the one that supplies that totally. I assist the Business  
4 Office with that and they file it and it goes into our  
5 State and then goes on to the Federal Government.

6 Q What does it cover?

7 A It is the Federally employed parent.

8 Q All right.

9 A Let's see, they used to call it the Impacted Aid Bill.  
10 I am trying to think if there is any others. I am trying  
11 to make one other statement and that is that as far as a  
12 Federal report, I am accountable to the Department of  
13 Justice Immigration and Naturalization Service for the  
14 acceptance or certifying of an F-1 student as being able  
15 to come from a foreign country into ours. So I guess I  
16 am answerable on that kind of a report basis or permit  
17 basis. I believe that is all that I have. I can't think  
18 of any others right now.

19 Q Talking about boundary line changes within the District,  
20 what is the process by which those take place?

21 A I would have to say that is a part of the long-range  
22 planning and is seldom--well, I don't think it is ever held  
23 out just by itself. So can I just allude to that and then  
24 maybe someone else can better describe the long-range  
25 planning process?



1 Q Has that answer been true throughout the time you have been  
2 in your current job?

3 A I am going to say we never had a formalized long-range  
4 plan really until Dr. Tribbey came and which you have  
5 copies of. I want to tell you before that time that we had  
6 as kind of like the Administrative Council itself with Mr.  
7 Tilsey and then myself furnishing demographic data and Ted  
8 Clark building data. It became Administrative Council  
9 with final presentations going to the Board. So, yes, I  
10 authored some, the boundary changes based on how many  
11 there are per block and so on. I would recommend that we  
12 bring it down 9th Street instead of 10th in order to put  
13 some in the other area. I did do it then, but I would  
14 have to say I didn't have any strong input into that since  
15 probably about '75 when Dr. Tribbey came on board.

16 Q During the period you did have input into it, was race  
17 considered at all when you were talking about changing  
18 boundaries within the School District?

19 A If you are talking about '68 or '69, one of my first years  
20 there, I would tend to say no. I don't have any statistics  
21 showing that as being a part of that planning. It was  
22 more on numbers. I just cite for the record, we were at  
23 our peak enrollment in '68-'69-'70, right along in there,  
24 25,070 students or something like that. Because of some  
25 complaints cited, I think like in 1971 and then going into



1 it later, Johnson vs. Whittier, I would have to say yes  
2 then, it became a concern that we were doing the proper  
3 thing.

4 Q That would have been around what year?

5 A I am going to say '73-'74. Just in my own recollection I  
6 don't know.

7 Q We talked earlier a little bit about the '74 HEW contro-  
8 versy and I thought you indicated that you were at least  
9 somewhat involved in that controversy?

10 A I was.

11 Q Are you familiar with the plan that was developed by the  
12 School District that was never actually adopted by the  
13 School Board?

14 A Yes, I am familiar with it. I mean I remember it. What  
15 I am saying, if you ask me today which line divided Lowman  
16 Hill, I can't tell you.

17 Q I was going to ask you whether you recall whether you had  
18 an opinion whether the plan would have a racial impact or  
19 not and if so, what your opinion was?

20 A My recollection of it was that with the Board of Education  
21 having some input on that, and with our visit to HEW being  
22 a condition thereto, I would say yes, we were very interested  
23 in it and we were trying our best to come up with a racially  
24 balanced plan. So yes, I would say that was one of the  
25 goals of it.



1 Q If it had been adopted, it would have achieved that goal?

2 A It would have achieved pretty well what I think HEW was  
3 recommending that we do knowing certain limitations. We  
4 were not under order to desegregate, so to speak, like our  
5 neighbor, Wichita, would have been. But with the voluntary  
6 way trying to redraw lines, that would tend to bring schools  
7 into more of a district average and yet you realize that  
8 some are so far away from maybe pockets of minorities that  
9 there was no transportation that I remember cited in that.  
10 So no transportation being furnished, this would be a plan  
11 that would do about all we could do.

12 Q There is reference in that plan to a 50% rule of thumb,  
13 that is if a school is more than 50% minority. That is  
14 troubling in some way. Do you know where that 50% number  
15 came from?

16 A No, I really can't cite that because I heard several  
17 different things said in all those meetings. One time was  
18 that you ought to have 50%. Some other times it was a  
19 plus or minus so many percent. I cannot name the individual,  
20 if there was an individual, that stated that. It was one  
21 of those things I guess after several meetings this came  
22 out as either an expected thing or else someone said it to  
23 somebody else and I didn't hear the original one saying it.  
24 So I have no proof of that. So I can't substantiate other  
25 than my memory.



1 Q Did the School District itself perform a criteria by which  
2 you would judge that the School District--that an individual  
3 school was to minorities in the same way that that 50%  
4 rule would have judged or the plus or minus rule would  
5 have judged?

6 A You mean an independent feeling?

7 Q Right.

8 A I don't believe we did that. I don't remember.

9 Q There have been plans developed within the last year,  
10 roughly year or six months, called the "X" plan and the "N"  
11 plan, is that right?

12 A That was part of this current year's long-range plan, yes.

13 Q Were you involved in the development of those plans?

14 A Only in the fact of giving current enrollment statistics  
15 for regular students.

16 Q Did the statistics that you supplied, that were used by  
17 the people that developed that plan, include race?

18 A I am going to say I did not work directly on that. But I  
19 believe, yes, because the pin maps were a basis for some  
20 of the lines that were drawn or maybe all of them. I am  
21 just saying I wasn't the author of it. So I shouldn't  
22 make any comments beyond that. I do know that the pin maps  
23 in my office were used as part of the basis for that.

24 Q Who was the principal author of those plans?

25 A Dr. Tribbey, to the best of my knowledge, because he is

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1 the one that I gave them to. If I can say it that way.

2 Q I may have asked this, if I did, I apologize. We talked a  
3 little bit about the legal process that takes place when a  
4 school district wants to annex land area, post-unification.  
5 Do you have any information concerning what the process  
6 was for annexation pre-unification?

7 A Not that I can document.

8 Q Who might know how that process worked?

9 A I would say again Board Minutes might reflect that, or  
10 otherwise I would tend to say the legal advisors, our own  
11 official probably could tell you what we went through.  
12 There is a step-by-step to probably do that, or it would  
13 be recorded in the Statutes of Kansas or regulations under  
14 the State Superintendent of Public Schools or whatever the  
15 predecessor name was.

16 MR. SEBELIUS: Parenthetically Dr. Gray may know.  
17 Although he was not with this School District, he was in a  
18 school district in Kansas and may know.

19 MR. HANSEN: Good.

20 Q (By Mr. Hansen) There was one de-annexation that we  
21 alluded to a couple of times today?

22 A The Lyman School.

23 Q Yes.

24 A Yes.

25 Q Were you around for that?



1 A That was just prior to my coming into the office.

2 Q Do you know how the process was that that took place?

3 A No, I don't think I do. Again, I just have to resort to  
4 the very same credible references. I think it would be in  
5 the Minutes as to when the transaction took place. It is  
6 probably available in the State Department files as to how  
7 it was done. I can't say for sure.

8 Q Was there a period of time when Forbes Field was used as  
9 an Air Force Base?

10 A Yes.

11 Q During the period of time that it was used as an Air Force  
12 Base, were there kids living there? Did the service people  
13 have their kids with them?

14 A I am going to say the adjacent area, there was what they  
15 call K-Part Housing, which is now known as Montara. That  
16 was more for officer rank and their children lived there.  
17 In fact, I think one of the Pauline Elementary Schools was  
18 built in that area just to serve that, probably built  
19 mainly with Federal bucks on that.

20 Q Was that a school 501 or its predecessor was responsible  
21 for?

22 A No. That was Auburn-Washburn.

23 Q This is pre-501, right? When was Forbes closed as an Air  
24 Force Base, if you remember?

25 A I believe 1973.

1 Q It is both pre- and post-501 unification?

2 A Yes. The only way, if I can help you on this, and I am  
3 saying it for our own good, too, we had people living in  
4 Topeka whose fathers or mothers served out there. We even  
5 have some now who go to Ft. Riley that commute every day  
6 or they might commute to Ft. Leavenworth. I am talking  
7 about Federally connected students again, you say?

8 Q Right.

9 A We never did supply schooling to Forbes' personnel, other  
10 than the fact they lived in our District and we were  
11 obligated to do it.

12 Q Was there a relationship between the Air Force and the  
13 School District? Was there a need for one or was there  
14 one going on during those periods?

15 A I can speak to '68 to '73. I don't remember in the early  
16 case that we had much of a liaison with them. But I  
17 remember visiting with several people from the Base and  
18 also I was serving on a Chamber of Commerce Education  
19 Committee. So I became privy to some of the information  
20 in an unofficial way, but it was my goal to find out what  
21 was going to happen to a number of the houses that were in  
22 the Avondale East area that were mainly inhabited by  
23 personnel from Forbes, also what we call the Likins-Foster  
24 area, which is part of Avondale West and Shaner. Those  
25 were the areas that were closest to the Base and they were

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1 smaller homes which a soldier or an airman could afford.

2 So I worked with them to try to figure out when they were  
3 going to be leaving and I probably would just estimate  
4 that within the last year we talked a lot, but prior to  
5 that I don't think I really had that much contact.

6 Q Because you were going to be getting responsibilities when  
7 the airmen moved out of there and other people moved in?

8 A We didn't want to lose them in some areas and that was  
9 part of our planning function again.

10 Q What about public housing? Has there been any public  
11 housing since you have been in your current position?

12 MR. SEBELIUS: What do you mean, has there been any  
13 public housing? Do you mean new construction?

14 MR. HANSEN: Yes, construction.

15 A Yes, that is my understanding that the Ripley Plaza area  
16 was after 1968, in that area anyway. It might have had its  
17 first planning in 1965, but by the time they were actually  
18 building the buildings - I went out and worked with the  
19 Topeka Housing Director, Harold Barnes, to determine how  
20 many students were coming out of there and also Deer Creek,  
21 which is in the Highland Park area, Hudson Elementary area,  
22 and we did a survey on it also. The other two that are  
23 well-known are the Pine Ridge and Trail Ridge, were already  
24 in place and so we simply kept up with them, but it was  
25 not like something new.

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1 Q The new ones, did you or anyone in the District sit on any  
2 committees or boards to decide whether those were to be  
3 approved and if they were to be approved, whether that was  
4 the right location?

5 A Never an opportunity that I know of at all.

6 Q This morning you referred to something that you called A-95  
7 when we were talking about the--

8 A Those are some things that we had a short period of time,  
9 when there was some people in the Shawnee Planning  
10 Commission and they talked about building some things and  
11 I can't remember those things, but I remember there were  
12 two people that we basically dealt with. They wanted to  
13 know what we thought about it and each time we would tend  
14 to put down the current enrollment and if we could the  
15 capacity of the schools and that was about it. But it  
16 was kind of like they were notifying us and there was a  
17 prescribed period of time that we would notify them and  
18 we tried to, in each case, indicate the current status.  
19 That is about all I remember about it and it didn't last  
20 very long. I was going to say maybe a year, maybe two.

21 Q A-95, what is it in reference to? I don't understand.

22 A I am a little vague on that. To me it was almost like a  
23 condition of building something. The contractor or say  
24 the approving agency, being the City-County Planning, kind  
25 of had to give notice as to the impact of it. If we wrote

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1 back saying we will, yes. Yes, we think we can handle them,  
2 the goal of the public schools will always be able to take  
3 care of the ones that come to live in those areas, but I  
4 don't remember now whether we objected to any or whether  
5 we approved them all. I can't remember.

6 Q That was going to be my next question. Would there be  
7 records whether you objected to any of them that still  
8 exist in your files as opposed to the Planning Department?

9 A I am going to say it will just be a chance. I can't tell  
10 you that I could go right to it.

11 Q The other potential source would be the City Planning  
12 Department?

13 A That is where I think these came from. So I am going to  
14 say that there were two people that were involved, a Jim  
15 McHenry, and there was a young lady, she is a Black gal,  
16 that was a planner. I don't know whether I can name her  
17 name right off. The other day I thought of her name--well,  
18 I guess I will just say I don't know.

19 Q When the City Planning Department notified you of this  
20 stuff and asked you to report back, did race play a role  
21 in either their notification or your report back?

22 A I don't remember. I don't think so, but I really just  
23 don't remember.

24 Q We talked a little bit this morning about other areas in  
25 which you were formally notified about changes in the

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1 nature of Topeka, if you will?

2 A Yes.

3 Q The only one that I remember you talking about was zoning  
4 changes, a certain space around existing schools?

5 A Yes.

6 Q Do you have to formally sign off or approve or disapprove  
7 those?

8 A No. It was strictly on an informational basis between us.  
9 They knew we wanted their help and requested it to let us  
10 know when you think there is a Misty Glen going in or  
11 something else, you see. Mr. Gaston, who was my supervisor,  
12 he got them to send it to him and they would pass it on  
13 down to me. I can't remember, there might have been some-  
14 thing. I will just say like Westchester Apartments out  
15 around Topeka West, I think there was one, but I don't  
16 remember of any that, you know, they were concerned about  
17 the racial aspect. I was just saying will we be able to  
18 handle all of Misty Glen. I will tell you at that time the  
19 line was down Randolph. So then the question was, could  
20 Bishop handle this. So rather than adding on to Bishop, I  
21 believe we put some of those kids into Avondale West. I  
22 believe today the line is the creek right behind Misty  
23 Glen. A good friend of mine was the project manager for  
24 Fidelity Investment Company, so he is the one I first  
25 learned about it from, not the City-County Planning.

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1 Q Today if I owned a house, right next-door to Bishop and I  
 2 wanted to tear my house down and build apartments there,  
 3 do you know whether the School Board would have to be  
 4 notified of that?

5 A I believe according to law, if you were changing the zoning.  
 6 If you are just talking about a demolition permit, I don't  
 7 know what the City requires on that. If you are talking  
 8 about a change in zoning and you wanted to go from a  
 9 single-family to "d," I believe all those within a certain  
 10 footage, yards or something like that, from the Bishop  
 11 building. That means the School District would be notified,  
 12 but I can't tell you the particulars.

13 Q Do you know who within the School District would be noti-  
 14 fied?

15 A Most anything like that would generally be named like the  
 16 Clerk of the Board or the President of the Board is probably  
 17 the way most of those official communications come.

18 Q Do you know whether the Board has to formally approve or  
 19 not?

20 A I guess I am going to say I think they would tend to  
 21 respond if they had a concern. Otherwise, I suppose simply  
 22 letting it go by means you are accepting it. I don't  
 23 think I want to answer for them. I believe I want to say,  
 24 let's let Dr. Gray or someone else answer for that.

25

MR. SEBELIUS: You weren't calling for a legal con-

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1 clusion?

2 MR. HANSEN: No.

3 A I don't know.

4 Q (By Mr. Hansen) Based on the transfers that crossed your  
5 desk, or go through the Committee that you are a part of,  
6 let's talk about the high school transfers at the high  
7 school level first.

8 A All right.

9 Q Can you tell from the transfers that there is a most  
10 desirable high school and most of the kids would really  
11 like to transfer into "X" high school or "Y" high school?

12 A No, I really couldn't.

13 Q What about the middle school?

14 A The other thing I would say if I could add to that.

15 Q Yes.

16 A It is getting to be more publicized now as to what the  
17 Board's policy is. In the first stage I used to hear more  
18 of what the desires were and I would answer over the  
19 telephone, no, it would be denied. This is Board policy.  
20 Now I think with the Principal becoming better informed,  
21 some people may come to him and say, may I transfer. You  
22 have the application. It is doubtful whether it would be  
23 approved. Whether they were told that, I don't know. So  
24 I really believe I would answer that no. I don't think  
25 that there is as much of a preference as a high school, as

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being sometimes just a transportation thing. I know some of the people over in the Oakland area, their parents come downtown to work. There is not good transportation out of the Oakland area, down Golden or something. Unless you got another kid that is going to Highland Park. So I am sure they are not saying, I like Topeka High better than the other.

Q Of the three high schools, is there one, either within the District or within the community, generally considered the best of the schools?

A I don't believe that there is.

MR. SEBELIUS: You mean academically best, Chris?

MR. HANSEN: Yes.

A Some go on how many National Merit Scholars. Somebody else goes on how many good athletes. I will just say sometimes realtors will tend to try to sell a house in an area they will mention the school as though it is the one to go to. But as far as saying that I know there is any difference, I am going to say I don't think there is.

Q Do you think there is a common wisdom among realtors as to what the best high school is in town?

MR. SEBELIUS: I object to the form of the question.

A I can't answer that.

Q (By Mr. Hansen) What about middle schools from the transfer applications that you see? Does there appear to be a



1 middle school that is the jewel of the system?

2 A No, I don't believe so. There aren't as many--actually  
3 there are only two grade schools in there. We just don't  
4 have very many transfers in middle school.

5 Q What about representation within the District or the City  
6 or the community? Is there a middle school that is generally  
7 viewed as the best middle school academically?

8 A I don't think I can say it, no.

9 Q I want to ask the same thing about elementary schools?

10 A Yes.

11 Q First, with transfers and second, on a representational  
12 basis?

13 A No, I would have to say by and large the reasons for  
14 elementary is day care. One of the reasons we record it  
15 is academic preference and it is not a high number. Day  
16 care is probably the highest.

17 Q What about representation within the community? Is there  
18 one elementary school that sort of shines out that the  
19 community is most proud of?

20 A I don't really think so. I am just going to say maybe it  
21 is air-conditioned. You will hear comments made by someone  
22 that it is great, you know. There are some others that I  
23 have heard them talk about how well their faculty works  
24 together. I have another one that says they don't offer  
25 as much instruction at Highland Park as they do at Topeka

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1 High. That is not in my terms saying Topeka High is better.  
2 It may be a greater offering in Industrial Arts, Music or  
3 something, see.

4 Q Right.

5 A I took your question as to just what you said. Is there  
6 one that is a jewel as compared to the others. I would  
7 say no, I don't think there is one that is really put down.

8 Q I am not looking for the ones that are the least jeweled.  
9 I am looking for the ones that are the most jeweled?

10 A I would make the comment that probably just like with  
11 housing, if you can live in a new house that is rated  
12 better than old housing. Except you go to the Potwin  
13 area and price the old mansions. So which is of more  
14 value. You have a personal desire to go. So someone says  
15 Topeka West is the best because it is the newest. We have  
16 had additions onto Highland Park and we have had additions  
17 onto Topeka West, so that is the basis for my answer, sir.

18 Q Let's say if you are just talking about physical beauty, I  
19 like Topeka High myself.

20 A I do, too.

21 Q My understanding from the Answers to Interrogatories that  
22 we have gotten is the teacher segregation was stopped in  
23 the '57-'58 school year. Do you know about administering  
24 segregation principles and counseling?

25 A No, I don't.



1 Q Do you personally recall, has there ever been a Black  
 2 administrator of a school that is predominantly White?  
 3 A Yes, I would say Merle Ross for Avondale West.  
 4 Q Do you recall when he first became Principal of that school?  
 5 A It has been quite a while. He was there before he went to  
 6 Quinton Heights. I am just going to make a guesstimate  
 7 that he was probably there ten or twelve years. Let me  
 8 think just a moment, were there any others. Do you want  
 9 like an Assistant Principal?  
 10 Q Yes.  
 11 A Okay. Harold Sheffield was at Topeka West, I am going to  
 12 say for three or four or five years. I think before that  
 13 he might have been at either Landon or Jardine. But  
 14 Harold Sheffield is one. He is at Topeka High now. When  
 15 you say "predominantly," I am just going to say are you  
 16 meaning is Topeka High predominantly White?  
 17 Q There is a good question.  
 18 A It is nearly 60% White. Is that predominant?  
 19 Q Statistically it is predominantly White?  
 20 A Okay.  
 21 Q What I am looking for, there was a time when Black teachers  
 22 and Black administrators were assigned only to the Black  
 23 schools and that ended for the teachers in '57 and '58. I  
 24 am looking for when that ended with the administrators, if  
 25 you know?



1 A I think I had better defer to Personnel to answer that. I  
 2 have only some personal recollections, but I sure can't  
 3 tie it down by date and I think you are wanting something  
 4 more accurate than that. So I believe I had better defer.

5 Q Do you keep data in your Department on test scores or grades  
 6 of students?

7 A Yes, we have the grades and the test scores as they are  
 8 put on labels on the cum. folder and it would be only for  
 9 the student that left the system. If the student is  
 10 actively enrolled, the record is out at the school, but we  
 11 get it whenever they become inactive or graduate.

12 Q Do you get Federal Government census data in any way?

13 A Yes, I do.

14 Q What do you use it for?

15 A One of the latest uses of it was--I am kind of in charge  
 16 of the responsibility for monitoring the makeup of the  
 17 Board Member election districts. We have three districts.  
 18 Each of them elect two Board Members in alternating terms  
 19 and one Member is elected at large. One of the goals and  
 20 I think even the statutory requirement is that they  
 21 generally be pretty close in number. So we got the 1980  
 22 census figures and took it by tract and laid that out on  
 23 what were our current Board Member election districts.  
 24 Because of that, we made an amendment or we recommended it  
 25 and the Board adopted it to where we felt they were more



1 near equal and we will keep doing that as far as I know.

2 Q Did you look at race when you did that at all?

3 A No. I don't believe so. I was going to say some of the  
4 race data came out afterwards, and it was not by tract.

5 It was by large areas. I will say the whole tract rather  
6 than done by the block. We have to have it by block in  
7 order to really do it right.

8 Q Do you use the census data for any other purpose?

9 A I can't think right now that we use it in any other direct  
10 way. I will just make a comment that we feel like it would  
11 be important to have it on the data base some day, but I  
12 don't have that priority guaranteed to me yet, either.

13 Q How about the '75 census or the '80 census? Did you do  
14 the same sort of thing with them?

15 A We did not have any in '75. So we were building up 1980  
16 and some various planning things we were using. I will  
17 just tell you 1980 is not that accurate because of some of  
18 the changes economically within our community. Move in,  
19 move out. I wish we could get the 1985 during the middle  
20 of '85.

21 MR. HANSEN: I don't have any other questions.

22 I mentioned before you were here with all the  
23 other lawyers it is possible I may want to ask Mr. Miller  
24 to come back at some future date, because we are getting  
25 the updates. I just want to mention that for the record.

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MR. SEBELIUS: I understand with the updates you may need some further clarification.

MR. HANSEN: Thank you very much. You have been very helpful and courteous. I appreciate it.

MR. SEBELIUS: No questions at this time.

\_\_\_\_\_  
Signature of Witness

STATE OF KANSAS        )  
                              ) SS:  
COUNTY OF SHAWNEE    )

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of

\_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

1 STATE OF KANSAS )  
2 ) SS:  
3 COUNTY OF SHAWNEE )

C E R T I F I C A T E

4 I, Richard T. Waters, a Certified Shorthand Reporter  
5 of Kansas, certify that the witness, GERALD A. MILLER, was by  
6 me first duly sworn to testify the truth, the whole truth, and  
7 nothing but the truth; that his deposition was reported by me  
8 in shorthand and thereafter reduced to typewriting under my  
9 supervision, and is a true and correct record of the testimony  
10 given by said witness. I further certify that said deposition  
11 was taken pursuant to FRCP Rule 30.

12 I further certify that I am not attorney for, nor  
13 related to any of the parties or attorneys to this action, nor  
14 financially interested in the action.

15 IN WITNESS WHEREOF, I have set my hand and official  
16 seal at Topeka, Kansas, this \_\_\_\_ day of \_\_\_\_\_,  
17 19\_\_\_\_.

20 RICHARD T. WATERS  
21 Certified Shorthand Reporter  
22 of Kansas.