

EIDSON, LEWIS, PORTER & HAYNES

LAWYERS

1300 MERCHANTS NATIONAL BANK BUILDING

EIGHTH AND JACKSON STREETS

TOPEKA, KANSAS 66612-1252

913-233-2332

PHILIP H. LEWIS  
JAMES W. PORTER  
WILLIAM G. HAYNES  
CHARLES N. HENSON  
AUSTIN NOTHERN  
CHARLES D. MCATEE  
DALE L. SOMERS  
K. GARY SEBELIUS  
RICHARD F. HAYSE  
RONALD W. FAIRCHILD  
JOHN H. WACHTER

ANNE L. BAKER  
JAMES P. RANKIN  
PATRICIA A. REEDER  
THOMAS D. HANEY  
CRAIG A. FONTAINE  
JOHN D. ENSLEY  
N. LARRY BORK  
CATHERINE A. WALTER  
AARON G. HOVE  
OF COUNSEL:  
O. B. EIDSON

August 6, 1986

**Via Federal Express**

Chris Hansen  
National Staff Counsel  
American Civil Liberties Union  
132 West 43rd Street  
New York, NY 10036

Re: Brown v. Board of Education, et al.  
U.S.D.C. Kansas, No. T-316

Dear Chris:

After extended discussion, we are enclosing copies of three separate documents authored by Dr. Herbert Walberg at our request. Those documents are:

- (1) Bibliography of Major Studies Relating Desegregation and Learning;
- (2) Quotes from and Comments on Curriculum Guides and Related Materials and Reports on the Education Program of the Topeka Public Schools; and
- (3) Report on Interviews of Central Office Staff, Automobile Tours, and School Visits and Interviews.

You will note that these documents contain the legend "confidential and privileged - attorney client request". While we consider these documents privileged and confidential, we are willing to provide them to you with the understanding that this does not constitute a waiver of the privilege generally. If you consider our providing you these documents without a Court order to be a waiver of the privilege, we insist that they be returned without their contents having been read, copied or reviewed in any manner until the Court has had an opportunity to rule. We are making these statements out of an abundance of caution as you had previously acted cautiously with regard to initially providing us with certain Central Surveys material.

By way of explanation, you will see that these documents do not purport to be all-inclusive and they should not be taken as

Christopher A. Hansen  
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the full extent and nature of Dr. Walberg's testimony. I assume that you will learn the full nature of his testimony during the taking of his deposition on August 23, 1986. We have not asked him to generate a written report regarding the full nature and extent of his testimony. Unlike Dr. Crain, however, he has completed his analysis of the information and data upon which he will rely for testimony at trial.

Since everyone is attempting to keep this matter on schedule, rather than delay providing you with these documents and await the Court's determination of the necessity of providing them to you, we offer them at this time under the above-stated conditions.

If you believe that such documents constitute a waiver of the attorney-client privilege generally, please notify me so that we may bring this matter to the Court's attention at once. In any event, we shall see you on August 13, 1986 here in Topeka.

Yours very truly,



K. Gary Sebelius  
of Eidson, Lewis, Porter & Haynes

KGS:tf  
cc: Dan Biles  
Carl Gallagher  
Rich Jones