

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

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OLIVER BROWN, et al.,	)	
	Plaintiffs,	)
and	)	
CHARLES and KIMBERLY SMITH, minor	)	
children, by their mother and next	)	
friend, LINDA BROWN SMITH, et al.,	)	<u>No. T-316</u>
	Intervening	)
	Plaintiffs,	)
vs.	)	
BOARD OF EDUCATION OF TOPEKA,	)	
SHAWNEE COUNTY, KANSAS, et al.,	)	
	)	
	Defendants.	)

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DEPOSITION

OF

JAMES M. GRAY,

taken on behalf of the Plaintiffs and Intervening Plaintiffs,  
pursuant to FRCP Rule 30, beginning at 9:00 o'clock A.M., on  
the 11th day of June, 1984, in the Office of Mr. K. Gary  
Sebelius of Eidson, Lewis, Porter & Haynes, Attorneys at Law,  
1300 Merchants National Bank Building, Topeka, Kansas.

APPEARANCES

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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: Dr. Owen Henson, Mr. William Lamson.

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WITNESS:

On behalf of the Plaintiffs  
and Intervening Plaintiffs:

Direct    Cross    Redirect    Recross

JAMES M. GRAY

4  
(Hansen)

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EXHIBITS:

Gray Deposition Exhibit Numbers:

Marked

#1

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JAMES M. GRAY,

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 Dr. Gray, as you have heard me tell the other witnesses, that if I ask any questions that aren't clear, please feel free to say so and I will try and rephrase it and make it clear.

Would you state your full name and current occupation, please?

A James M. Gray, Superintendent of Schools, Topeka Unified School District 501.

Q How long have you held that position?

A Nine years.

Q What was your position immediately prior to that?

A Associate Superintendent of the same School District.

Q How long were you Associate School Superintendent?

A One year.

Q Prior to that?

A Deputy Superintendent of Personnel for the same School District, one year.

Q Prior to that?

A I was employed in the Shawnee Mission Unified School

1 District 512 in Kansas and employed there for six years.

2 Q In what capacity?

3 A I served in several capacities, because we were unifying  
4 thirteen school districts into one and I was on assignment  
5 from the Superintendent's Office. I worked in business  
6 and instruction, personnel, special services, open operation  
7 maintenance.

8 Q That was five years?

9 A Six years.

10 Q Prior to that?

11 A I was a Principal of Fairview, Kansas High School.

12 Q How long were you Principal?

13 A One year.

14 Q Prior to that?

15 A I was a teacher in the Shawnee Mission Unified School  
16 District 512.

17 Q What did you teach?

18 A Math.

19 Q What grade level?

20 A I taught 9th Grade. Well, I actually taught 8th and 9th.

21 Q How long did you teach?

22 A I was there one year.

23 Q Prior to that?

24 A I was a Math teacher at Liberty, Missouri Junior High School.

25 Q How long did you hold that job?

1 A Two years.

2 Q Prior to that?

3 A That is it.

4 Q Do you hold any degrees?

5 A I have a Bachelor of Science Degree, Master of Science

6 Degree and a Doctor of Education Degree.

7 Q Did you do a thesis for your Doctorate?

8 A Yes.

9 Q What was the subject of your thesis?

10 A Special Education Facility Standards for Special Education

11 Programs in Arkansas.

12 Q Can you tell me briefly what facility standards are in that

13 context?

14 A What it amounted to, out of the dissertation was to set up

15 a set of standards in developing a Special Education pro-

16 gram. What the classroom design would be. The types of,

17 even to the point, of the knobs on the door, the color of

18 the room, the various instructors you would put into a

19 special room for various exceptionalities.

20 Q Did it deal strictly with the physical plant as opposed to

21 the curriculum?

22 A Strictly physical.

23 Q Have you published any books or papers?

24 A No. I had a couple of magazine articles, but that is

25 about it.

1 Q What are your current responsibilities as Superintendent?

2 A Primarily you are chief executive officer for the school  
3 system. I provide information to the Board of Education  
4 to assist them in developing policies for operation of  
5 the schools and participate in development of those  
6 policies. But primarily after that I would be the person  
7 to see that those policies are implemented in the day-to-  
8 day operation of the school system, is carried out.

9 Q I want to go just a little bit over sort of the table of  
10 organization of the School District. How many people  
11 report to you directly?

12 A Actually I have three people.

13 Q Who are they and what are their areas of responsibility?

14 A Associate Superintendent of Education Services, Dr. Henson,  
15 is over all the educational.

16 Dr. Don O'Neil, Associate Superintendent of Management  
17 Services, and he would be over those areas like personnel  
18 business, public information and those areas.

19 Then Forrest Slaughter, who is Assistant Superintendent  
20 for Community Relations, and his area primarily is working  
21 with the community as liaison between the schools and the  
22 home.

23 Q Speaking of Mr. Slaughter, how many professional staff  
24 report directly to him, if any?

25 A He does not have any administrative people to report to him.

1 Q Mr. O'Neil - how many administrators report directly to  
2 Mr. O'Neil, if you know?

3 A I would say five.

4 Q Can you give me who they are and what their responsibilities  
5 are?

6 A Barbara Kudlacek, Director of Communications.  
7 Onan Burnett, Director of Governmental Relations.  
8 Dr. Mike Tribbey, Assistant Superintendent for  
9 Planning and Auditing.

10 Wayne Warner, Assistant Superintendent for Business.

11 Frank Ybarra, who is the General Director of Personnel  
12 Services; and Gene Smith, who is the General Director of  
13 Central Services.

14 Q Six?

15 A Six.

16 Q It is Miss Smith, that is a woman's name?

17 A No. Gene Smith.

18 Q Mr. Smith. What is Central Services?

19 A It is the building that houses all the warehousing and  
20 also all of the maintenance staff. So under his direction  
21 would be the maintenance employees plus the employees who  
22 operate the warehousing section.

23 Q Is it Burnett?

24 A Yes.

25 Q What is the responsibility in Government Relations?



1 A Primarily legislative liaison with the Legislature and  
 2 also governmental units, like the City and County.

3 Q When you mean the Legislature, that is the State Legislature?  
 4 A Yes.

5 Q Would Mr. Burnett also have responsibility for liaison  
 6 with the State Board of Department of Education?

7 A He would from the standpoint of attending their meetings,  
 8 working with them in relationship to things we might desire  
 9 from them or maybe their contact might be direct with me.  
 10 He might wind up working with them as a result of that.

11 Q The Communications Department, what are the responsibilities  
 12 of that department?

13 A She works with the news media, radio and t.v. and the news-  
 14 print in providing what we call a public relations program  
 15 for the School District.

16 Q The Community Relations Office doesn't do public relations?  
 17 A That is right.

18 Q How many members are there of the Board of Education?  
 19 A Seven.

20 Q Are they elected or appointed?  
 21 A Elected.

22 Q From districts?  
 23 A Two members are elected from three districts, which would  
 24 be three geographical areas and there are members from each  
 25 of those and then there is one elected at large.

1 Q How often are elections held?

2 A Usually on a 2-year basis.

3 Q Are all seven of them up every two years or is it staggered?

4 A Four up in two years and three up the next. They serve a  
5 term of four years, but once the process starts you have  
6 the elections.

7 Q How long has that system for the Board of Education been  
8 in effect?

9 A It was during my tenure when it was implemented. I would  
10 say probably seven years, six or seven years.

11 Q What was the method of selecting Board of Education Members  
12 prior to that?

13 A They were selected at large, in the school system.

14 Q Elected?

15 A Elected, yes.

16 Q What led to the change?

17 A I think the composition of the Board changed and that the  
18 new members of the Board preferred the selection procedures,  
19 the majority of them, over the current one.

20 Q What process did they have to go through in order to  
21 accomplish the change in method? Did it take a City-County  
22 Ordinance or a State Law change? How did that happen?

23 A If I remember correctly, there are several ways you can  
24 elect Boards. I think there is three different ways you  
25 can elect Boards in the State of Kansas, and I believe

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1 that was changed just by a vote by the Board of Education  
2 change.

3 Q How often does the Board meet?

4 A They are required to meet once a month, at a prescribed  
5 time, our Board usually meets twice a month. Sometimes  
6 they meet more frequently, but usually two.

7 Q Is there anyone on your staff who is required to attend  
8 Board Meetings besides you?

9 A I have some key administrators who I request to be there,  
10 and it is primarily the Associates, but the other admini-  
11 strators would come and attend or usually the ones that  
12 participate in the presentations.

13 Q Is anyone, besides the Superintendent, hired directly by  
14 the Board?

15 A No. Not that I know of.

16 Q Is there any Civil Service sort of thing covering the  
17 Topeka administrators that we have been talking about?

18 A No.

19 Q Could you fire any one of those people today if you wanted  
20 to? I mean, not on whim?

21 A Actually the Board of Education employs and dismisses or  
22 terminates everybody that is dismissed by the system. I  
23 could recommend to the Board, but the Board would be the  
24 final authority.

25 Q Does the Board have a President?

1 A Yes.

2 Q Any other officers?

3 A Vice President.

4 Q How are those people chosen?

5 A They are selected by the Board of Education.

6 Q How long a term do they serve for?

7 A Usually one year.

8 Q Does the Vice President automatically become President?

9 A Not necessarily.

10 Q Do you meet with individual Board Members of the Board of  
11 a group other than in the official meetings of the Board?

12 A Yes, if requested.

13 Q Can you give me a sense as to how often it would be that  
14 you would meet with individual Members, other than at the  
15 regular meetings?

16 A Usually I would communicate and meet with the Board  
17 President maybe once a week, from the standpoint of a  
18 personal meeting. Other Board Members, some I probably  
19 would never meet with and some become active or involved  
20 in a project, I might see them on that issue. But once  
21 in a while, I would say once every two weeks, I met with  
22 a Board Member.

23 Q Does it happen when you have - I don't know what the term  
24 is, informal Board Meetings, that is the whole group comes  
25 in to talk to you, but it is not a formal Board Meeting?

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1 A No, nothing like that.

2 Q Does the Board of Education itself have committees of the  
3 Board?

4 A No. They do not have a Standing Committee other than the  
5 District Citizens Advisory Council, which could be pursued  
6 as meeting the Board.

7 Q What is that?

8 A It is a group of individuals who are representative of a  
9 representative alternate from each attendance center in  
10 the School District, and then we have a representative  
11 alternate from several organizations and they meet to  
12 review things that are referred to them by the Board and  
13 also they can of course review the items they desire  
14 themselves.

15 Q How many people total is that?

16 A I forget now. I think fifty-some.

17 Q How are the members of that Committee selected?

18 A They are elected by their organization or by their  
19 attendance center and submitted. We do not participate in  
20 the selection of those. Those are selected by their own  
21 representative group.

22 Q The Bishop P.T.A., for example, would pick the Bishop  
23 attendance person?

24 A It is just whatever organization that works with that  
25 school. In most cases it would be P.T.A. or P.T.O.

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1 Q The Board Members themselves, have they formed themselves  
2 into subcommittees for any purposes?

3 A No.

4 Q How often does the District Citizens Advisory Committee  
5 meet?

6 A They have met usually during a school year once a month.  
7 Again, if there has been a need for more than once a month,  
8 they met, but usually it is once a month.

9 Q The administration person that would be most knowledgeable  
10 about their meetings and doings would be Mr. Slaughter?

11 A That is correct.

12 Q Do you know whether the Citizens Advisory Committee keeps  
13 Minutes of its meetings?

14 A I think they do.

15 Q Any other committees appointed by the Board or reporting  
16 to the Board, other than from the administration?

17 A No.

18 Q What about the School District staff, that is, yourself  
19 and people who report to you? Do you have Standing  
20 Committees?

21 A We would have committees like Dr. Henson might have a  
22 committee that he meets with weekly to just review operations  
23 and things that needed to be carried out in his division,  
24 and I would have the Administrative Council, which is a  
25 group of administrators, which we staff, basically District

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1 items. So there would be someone else.

2 Q Other than the Administrative Council or any other  
3 committees that you personally always attend, routinely  
4 attend?

5 A The Administrative Council and then I will attend meetings  
6 as requested by other groups, Student Transfer. When we  
7 have a called meeting of that, then I will attend that,  
8 but I do not establish the meeting. It is set up by Mr.  
9 Miller.

10 Q Any others besides Student Transfer and the Administrative  
11 Council?

12 A No.

13 Q How often does the Administrative Council meet?

14 A It meets once a week.

15 Q Who else is a member of the Administrative Council besides  
16 you?

17 A Do you want me to go through them by name?

18 Q Yes, I think this is probably the easiest way.

19 A The six individuals I gave you. I'm sorry, I will start  
20 over again on that. Dr. Roy Browning is an Assistant  
21 Superintendent.

22 Barbara Kudlacek, Director of Communications.

23 Mike Tribbey, Assistant Superintendent.

24 Frank Ybarra, General Director of Personnel.

25 Gary Livingston, Assistant Superintendent.

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1 Roy Berry, General Director of the Vo-Tech School.  
2 Forrest Slaughter, Assistant Superintendent.  
3 Dr. O'Neil, Associate Superintendent.  
4 Dr. Henson, Associate Superintendent.  
5 Of course, myself.  
6 Wayne Warner, Assistant Superintendent of Business.

7 I think I got them all.

8 Q Mr. Burnett or Mr. Smith?

9 A No.

10 Q Mr. Browning is responsible for what?

11 A He is Assistant Superintendent in charge of Student Support  
12 Services.

13 Q What is Student Support? Is that textbooks?

14 A No. The primary area of continuing education which would  
15 be summer school and evening school, basic education, the  
16 area of counseling, Director of Counseling, Head Start and  
17 the overall area of staff development for the school system.

18 Q Mr. Livingston?

19 A He is the Assistant Superintendent in charge of Instructional  
20 Services. He would be the one who provides or supervises  
21 the development and implementation of instructional programs  
22 district-wide.

23 Q Do both Mr. Browning and Mr. Livingston report through Dr.  
24 Henson?

25 A Yes.

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1 Q Mr. Berry is, you said, in charge of the Vocational-Technical  
2 School?

3 A Yes, AVTS, Kaw Valley Area Technical School.

4 Q Are Minutes kept of the Administrative Council meetings?

5 A No.

6 Q Are there memoranda circulated in preparation for  
7 Administrative Council meetings?

8 A There is an agenda that is circulated and a staff member  
9 has the opportunity to submit an item ahead of time to the  
10 people if it is going to take required reading. So there  
11 could be.

12 Q Who sets the agenda? How is the agenda set?

13 A Each member of the Council can call in and add an item to  
14 the agenda. Then of course take your presentation on that  
15 item.

16 Q Are there memoranda written as a result of actions taken  
17 at the Administrative Council?

18 A Yes.

19 Q After I asked that, I realized of course the answer was  
20 going to be yes. The agenda and the memoranda that are  
21 written for the meeting, that is, in preparation for the  
22 meeting, do you know how those are filed in your office?  
23 Whether they are filed in an Administrative Council folder  
24 or by topic?

25 A I would say they are not filed by Council. It would be by

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1 the topic. If it dealt with Topeka High School, they would  
2 probably be filed in Topeka High School.

3 Q How does the Administrative Council function? That is, is  
4 it a democracy? Is it a consensus? Do you win all the  
5 votes? How does that work?

6 A We ask people that add an item to the agenda to indicate  
7 whether they want to just present information to us, and  
8 it is indicated on the agenda, or whether they want us to  
9 assist in making a decision. Or it could be the third one.  
10 It could just be to come in and inform of a decision that  
11 has been made. It primarily depends upon the individuals  
12 asking of us. If it is an item that I have added to it,  
13 and the decision has to be made. Yes, I would like to have  
14 some consensus. If there is no consensus, I will make the  
15 decision.

16 Q Do administrators who are not regular members of the  
17 Administrative Council attend from time to time, when  
18 something in their area is being discussed?

19 A Yes.

20 Q If I am an administrator, other than you, and the issue  
21 that I am working with is going to require a decision of  
22 the Board itself rather than the staff, can I communicate  
23 directly with the Board? Do I communicate directly with  
24 the Board?

25 A Not normally. We would expect any administrator to go

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1 through the proper chains of command in the District. It  
2 could result, if it came to me, that I might request the  
3 administrator go ahead and communicate it directly to the  
4 Board. Normally it would be something I would communicate  
5 to them.

6 Q Does the Board itself have an agenda when it meets?

7 A Yes.

8 Q How is that agenda set up?

9 A Primarily we prepare draft agendas for a year in advance,  
10 the Administrative Council, and then as we meet with staff,  
11 those agendas, and once they are pretty well finalized,  
12 then I will contact the Board of Education President and  
13 finalize that agenda. Most of the agendas or items on the  
14 agenda are staffed in the Administrative Council and the  
15 basic formulation starts there with the final approval of  
16 the Board President.

17 Q Is there information submitted to the Board in preparation  
18 for a meeting, packets of information?

19 A Yes.

20 Q How are those collected and transmitted to the Board?

21 A When we staff an agenda in the Administrative Council, we  
22 decide at that time what type of backup information, we  
23 obviously decide the agenda item, the narration that goes  
24 with the recommendation, the backup information and the  
25 person who is assigned that item on the agenda is responsible

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1 for getting all that together and submitting it to the  
2 Clerk of the Board Secretary and then the Clerk of the Board  
3 Secretary puts it all together and then it is sent out to  
4 the Board, Friday before the next Wednesday meeting.

5 Q If that, whatever it is that you are taking to the Board,  
6 requires them to make a decision as opposed to you just  
7 telling them what is going on, does it contain a staff  
8 recommendation as to how you think they should decide the  
9 question?

10 A In recent years, yes.

11 Q Is that new? I gather from your answer that is a change?

12 A When I say that, it was not that way when I started as  
13 Superintendent. It probably has been three or four years  
14 like that.

15 Q When the Board of Education meeting itself takes place, if  
16 one of the other administrators is principally responsible  
17 for one of the agenda items, do they present it to the  
18 Board, or do you present everything to the Board?

19 A They present it. They write a presentation table and they  
20 present it to the Board if it is their item.

21 Q I take it from your discussion earlier, the Board of  
22 Education meetings are public meetings?

23 A Yes.

24 Q The packets of information that you send to the Board in  
25 preparation for those meetings, do you know how they are

1 filled within the office?

2 A They are kept by the Clerk of the Board Secretary and  
3 Minutes and the agenda and all of that is kept.

4 Q I have seen the Minutes of the Board, some of them are  
5 bound and some of them are, I don't know how to describe  
6 it, some of them have little poles and they go through  
7 holes?

8 A Yes.

9 Q There are two or three pages of Minutes and then there are  
10 a stack of attachments to the Minutes?

11 A Yes.

12 Q Is that necessarily everything that was submitted to the  
13 Board prior to the meeting?

14 A That is usually everything that is submitted prior to the  
15 meeting and anything that is submitted in the meeting it  
16 is a document that can be put in a file.

17 Q Are there documents that are submitted to the Board as  
18 part of their packet that aren't attached to Minutes?

19 A I don't think so.

20 Q The person that would know the answer to that would be Mr.  
21 Warner?

22 A Mr. Warner.

23 Q What about written communications with Board Members? Does  
24 it happen that we will write and say I have got this  
25 problem or this question. Would you please give me an

1 answer?

2 A Not normally, no. I would say that is very unusual.

3 Q If I am a Member of the Board itself and not the President,  
4 and I want to be sure that an item is on the agenda for  
5 the upcoming Board Meeting, how would I go about doing  
6 that?

7 A Normally call the President and request that it be on the  
8 agenda. You possibly could call me directly and request  
9 that it be on the agenda and, of course, I would clear it  
10 with the President.

11 Q Does the President of the Board have any additional legal  
12 powers by being President that other Board Members don't  
13 have?

14 A They would sign like contracts and so on, but only at the  
15 direction and vote of the Board. So I would say no.

16 Q Are you required to submit any regular reports to the  
17 Board?

18 A I may have been on certain issues, but as a standing thing,  
19 that like I am required to do this every month or so, no.

20 Q That was what I was looking for. What about the City  
21 government? In any way are you required to submit any  
22 regular or routine reports to the City ever?

23 A No.

24 Q Do you have contacts with the City government?

25 A Yes.

1 Q How does that happen?

2 A Normally it revolves around where we have an issue or  
3 something that comes up that requires a contacting the City  
4 and may require getting their approval.

5 Q I think we were talking about contacts with the City  
6 government. What kinds of things do come up that you need  
7 to consult the City government with?

8 A We may have had things that revolve around zoning. There  
9 may be things that really there is more contact with the  
10 legal staff that deal with a closed facility, checking  
11 titles out and vacating alleys and things of that nature.  
12 There could be some things that we are trying to work with  
13 them jointly. We have had projects where we have tried to  
14 develop a joint facility for Recreation and Parks to use  
15 as well as for our use, but they would revolve primarily  
16 around that.

17 Q Would you always have contact with the same person in City  
18 government, or would it depend on the project?

19 A Not the way our City government is set up. We have a  
20 commission form of government. So it would depend on the  
21 issue.

22 Q With respect to zoning kind of changes, are there instances  
23 in which you are notified by the City of zoning, proposed  
24 zoning changes?

25 A We get notified--we have a joint - it is called Topeka-

1 Shawnee County Planning Commission and we get notice from  
2 them concerning zoning things that affect us primarily.

3 Q How is that? Is it within X feet of a school? Or is it  
4 things, that in their judgment, might be interesting to  
5 you or is it everything?

6 A I have forgotten on that. Dr. Tribbey would know better  
7 than me. I think it is written in one of our units.

8 Q Do you also get information on housing projects, there is  
9 a new apartment complex going up?

10 A Yes, I think we would from the same group. I have forgotten  
11 exactly what range that is, but when we are eligible to  
12 receive it, we do get that.

13 Q Does somebody from the School Board actually sit on that  
14 Planning Committee or Council?

15 A Yes, Dr. Tribbey.

16 Q What about the County government, do you have contact with  
17 the County government?

18 A Yes.

19 Q What issues would you have contact with the County govern-  
20 ment about?

21 A We have had probably a lot lesser number of contacts there  
22 because of our contact more directly with the City. I can  
23 think of an instance where the collection of our funds to  
24 operate our school system would be the most important  
25 contact we had.



1 Q Elaborate on that a little bit?

2 A The taxes and so on are collected through the County and  
3 of course, we receive those taxes as a result of their  
4 collecting them.

5 Q Is there a City Council? Is it the equivalent of the  
6 legislature for the City?

7 A No. Just a City Commission.

8 Q Are the City Commissioners elected?

9 A Yes.

10 Q Is there a County legislature?

11 A No. Just County Commissioners.

12 Q They are also elected?

13 A Yes.

14 Q What about contacts with the State government? Do you  
15 have contacts with the State government?

16 A Yes.

17 Q I take it from the fact that you have got somebody assigned  
18 to the Legislature, that you have contacts with the  
19 Legislature?

20 A That is correct. Right.

21 Q Does it happen that you propose legislation as well as  
22 react to legislation?

23 A We wouldn't probably be in a position where we would  
24 propose a piece of legislation that is written. We might  
25 request a legislator to introduce a piece of legislation,

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1 but they would develop it in working with us.

2 Q Do you take positions on legislation?

3 A The Board. We present the legislative areas of concern  
4 that we have, but it is modified or accepted or rejected  
5 by the Board and that is the position of the District.

6 Q Is that the way we talked about it earlier? As it happens  
7 now, do you generally make a recommendation as to what  
8 position you think the Board should take on a piece of  
9 legislation?

10 A On some we would. Not all.

11 Q Why would you not on some?

12 A Because it may be an issue that it is really a prerogative  
13 of the Board to establish a position on. It is something  
14 that we feel they need to decide rather than us making a  
15 recommendation.

16 Q Did you have contact with the State Executive Branch?

17 A Yes, we would have.

18 Q Let's take pieces of that at a time. How about the  
19 Governor's Office? Do you have contact with the Governor's  
20 Office?

21 A Yes.

22 Q How would that happen? What sort of issues would lead you  
23 to have contact with the Governor's Office?

24 A This last year he wanted to recognize the top 1% of all  
25 graduating seniors in the State and they made contact with

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1 us and asked how we handled our commencements. They wanted  
2 to know how they can recognize many youngsters at one time.  
3 We worked with them on backup facilities, they were going  
4 to hold it outside, just in case it would rain and provide  
5 quite a bit of input as to how they would handle that and  
6 as a result they carried out the program and we just gave  
7 them moral assistance.

8 Q Can you give me any other examples where you might have  
9 had contact with the Governor's Office?

10 A What was requested by us from the State in reference to  
11 filling forms out for financial areas that we felt we were  
12 being treated unjustly. Not only us, but several other  
13 districts and we approached the Governor's Office in a  
14 request for contact with him on that. He either met with  
15 us or assigned one of his chief persons to work with us.  
16 We work with the office all the time in reference to  
17 recognition in declaring a day for teachers, a day for  
18 Head Start or something like that.

19 Q The instance in which you were asked by the State in  
20 reference to filling forms out, was the Governor successful  
21 in resolving that problem for you?

22 A Yes.

23 Q Did that result in lessening the number of forms or changing  
24 the forms?

25 A It was a new form that was being required by the Division

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1 of Accounts and Audit and we felt in filling it out we  
2 couldn't fill it out to be truthful and we would have to  
3 lie on the form because it didn't really comply with good  
4 financial reporting by the State Law and the school finance.  
5 We pointed that out to the person in charge, why they  
6 changed the form.

7 Q Is the Governor's Office organized in such a way that he  
8 has one top aide that is always responsible for education-  
9 related issues?

10 A He has - I can't tell you the number of aides, but primarily  
11 the one person that makes the most contact is the person  
12 who has been a former educator.

13 Q What is that person's name?

14 A I can't remember. Bob Wootton.

15 Q Is there a Lieutenant Governor in Kansas, and if so, do  
16 you have contact with his or her office?

17 A Yes and no.

18 Q Can you explain to me the relationship between the State  
19 Board of Education and the State Department of Education?

20 A It would be the same basic relationship that I have with  
21 my Board. That the State Board of Education again is  
22 elected and they primarily represent certain areas of the  
23 State. They develop policy. They have a Commissioner of  
24 Education, where our Board has a Superintendent of Schools.  
25 The Department of Education would be much like the

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1 administration or organization of our public schools except  
2 they are statewide.

3 Q Is the Commissioner appointed by the Board or by the  
4 Governor?

5 A By the Board.

6 Q All of the State Board Members are elected?

7 A Yes.

8 Q Do you have any, holding aside the Board for the State  
9 Board of Education for a moment, did you have any contact  
10 with any other branches of State government?

11 A Of course we have contact with any of the administrative  
12 areas that are part of State government, but I can't think  
13 of any.

14 Q You mentioned the Audit and Control Audit and Finance,  
15 something like that?

16 A Yes, they have control. Basically they get financial  
17 reports when the auditing is done and they prescribe certain  
18 forms and we utilize them. We have contact, I guess you  
19 might say again with the State Attorney General's Office  
20 in reference to any opinions we might need. We have contact  
21 with the various departments that might fall within some  
22 of our Special Education areas which would fall under the  
23 Department of Education, Social and Rehabilitation Services.  
24 We have quite a bit of contact with them because we operate  
25 some programs that are under their jurisdiction. Like the

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1 State Hospital, we run the education program and we receive  
2 funds from them to operate it, but those are the primary  
3 areas we deal with.

4 Q Are you required to submit any regular reports to any of  
5 the people we have talked about, again, excluding the  
6 State Board of Education?

7 A There would be, probably some reports in reference to  
8 units like Capital City Schools, which is located at the  
9 State Hospital, and have a working arrangement with them  
10 because they provide the funds for the people that are  
11 employed there.

12 Q Any other routine reports you can think of that you would  
13 have to submit those--

14 A Financial audits and things like that. Primarily it would  
15 be the State Department of Education and there might be  
16 some in some of the areas like the special educational  
17 areas we deal with.

18 Q Are there any routine reports you have to submit to the  
19 Governor's Office?

20 A No.

21 Q With respect to the State Board of Education, is there a  
22 person within the State Board that is your primary liaison  
23 person?

24 A No.

25 Q Are you required to submit routine reports to the State

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1 Board of Education?

2 A Yes.

3 Q Does that include financial reports?

4 A Yes, there would be financial reports.

5 Q Leaving aside financial reports, what other reports are  
6 you required to submit to them on a regular basis?

7 A I think the large ones, the organizational report is the  
8 September 15th report, is the big one from our standpoint  
9 and the one I am most directly related to signing. There  
10 are some other reports that are submitted by some of our  
11 departments I may not sign off. They are just submitted.  
12 Like Jerry Miller mentioned the 18E Report.

13 Q Is there a Superintendent's annual report, something with  
14 that title?

15 A No. The organizational report probably would be considered  
16 that more than anything.

17 Q For how long has the District been required to submit an  
18 organizational report?

19 A Ever since I have been here, and long before that. I think  
20 ever since I have been in education in the State of Kansas  
21 that has been a requirement.

22 Q Can you give me some sense as to what is in it besides the  
23 pupil information, stuff like Mr. Miller talked about?

24 A You would have the pupil information, data about the  
25 schools. That is really just about everything, general

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1 overall, overview of the School District and the attendance  
2 center.

3 Q What about changes in policy? Do you report on changes in  
4 policy to the State?

5 A No.

6 Q I take it you also have no routine contacts with the State  
7 Education people?

8 A Yes.

9 Q How frequently would you estimate that you personally have  
10 contact with the State officials?

11 A I wouldn't probably more than once a month.

12 Q Let's talk next about Federal contacts. Do you have con-  
13 tacts with the Federal government?

14 A Periodically we would have.

15 Q Are there routine reports you are required to submit to  
16 the Federal government?

17 A I wouldn't submit them. There may be one or two reports  
18 we submit that would come out of probably Mr. Miller's  
19 office.

20 Q How often would you personally have contact with someone  
21 from the Federal government?

22 A Maybe once every three months or something like that.

23 Q Would it usually be the Department of Education Regional  
24 Office?

25 A It would be the one usually in Kansas City.

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1 Q Is there one person there in particular that you would  
2 usually be in touch with if you were calling them or they  
3 were calling you?

4 A Probably it would be Jesse High.

5 Q Does the District have a policy manual or a policy guide?

6 A Yes.

7 Q What is that called?

8 A Just the Board of Education Policies and Administrative  
9 Regulations.

10 Q Has that been in existence as long as you have been around?

11 A The document itself has, but there have been changes in it.

12 Q Do you know if there has always been such a thing? Do you  
13 know when they started writing down the regulations?

14 A I don't know when, no.

15 Q Do you recall a time when there wasn't such a thing?

16 A No.

17 Q What is the relationship between that and what I think I  
18 have heard referred to as the Topeka Plan?

19 A It is the same thing. It was called the Topeka Plan earlier  
20 and it is not called that anymore.

21 Q How fat is that?

22 A About like that.

23 Q The witness is indicating about three inches.

24 A About three or four inches.

25 Q How are those policies set, by the Board, staff? How does

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that work?

A The policy usually comes about as the needs exist or it comes about as a result of something happening and we find we don't have a policy to cover that. It could be at the request of the Board we develop a policy. It could be just as a result of the issue that came up, we need to develop a policy. The administration would develop the policy and present it to the Board and then it would become effective upon vote by the full Members of the Board.

Q Do you have authority to act contrary to policy under any circumstances?

A No.

Q Are there any other, other than the policies contained in this book we have just been talking about, are there any other rules and regulations set by the Board that you are required to follow?

A No.

Q Are there policies or procedures, written policies or procedures set by the staff that don't have to go to the Board?

A Yes.

Q What are they contained in?

A They are contained in the same document.

Q What is the process by which those come to be adopted?

1 A Usually we have the Board policies, as I mentioned earlier  
2 how they are developed. Then we will implement administra-  
3 tive regulations. We will carry out the desire of that  
4 Board policy and they are developed by the administrative  
5 staff and staff through the Administrative Council and  
6 then they are placed in the document as a backup regulation  
7 to that policy.

8 Q Would there be an instance in which the staff could adopt  
9 some sort of regulation or whatever it is called, policy  
10 guide, that is an area that is covered by policy that has  
11 been set by the Board?

12 A Normally what we would have, I would say negotiations.  
13 Because if we find an area we need a regulation in, then  
14 we know we need a policy to back it up.

15 Q I went through what I had hoped was all the governmental  
16 bodies you might possibly have to respond to or have con-  
17 tact with. Are there any that I didn't ask that you do  
18 have to have contact with or respond to?

19 A I think you know the Federal, State and local covers it  
20 all, City and County.

21 Q Do you have contact with elected representatives, either  
22 at the State level or at the Federal level, State  
23 Representatives, State Senators, Congressmen, Senators?

24 A Yes.

25 Q How does that occur?

1 A Usually it is through a telephone contact, in reference to  
2 a concern we have. It could be elective in nature. It  
3 could be something administratively we run into or it  
4 could be we have written a letter to them requesting that  
5 they assist us in getting something done.

6 Q Does it also happen that they call you and say I have had  
7 a problem in my district and you would talk about it?

8 A Yes.

9 Q Would that inquiry generally come to you in the first  
10 instance?

11 A Most of the time.

12 Q Would you generally handle those yourself or would someone  
13 else deal with those, the Congressional or State  
14 Representative or State Senator?

15 A Most cases it would require the assistance of one of the  
16 administrative staff.

17 Q Would you remain involved in those?

18 A Yes, probably so. The initial contact came to me.

19 Q We talked a little bit about your contact with the Regional  
20 Planning Commission?

21 A Topeka-Shawnee County Planning Commission.

22 Q Do you have other contacts with the real estate or develop-  
23 ment community in Topeka?

24 A We have, yes.

25 Q How do those occur?

1 A Normally it is more of an educational type of approach.  
2 We try to keep in touch with our realtors and the Topeka  
3 Board of Realtors to inform them about our school system,  
4 what is happening in the school system. Primarily a lot  
5 of it is boundaries. We talk to them on educational pro-  
6 grams that we provide and things of that nature.

7 Q What about other sort of - I guess it is semi-governmental  
8 bodies like the Chamber of Commerce or the local service  
9 clubs or the League of Women Voters, those sort of organi-  
10 zations within the Topeka area? Does the School Board have  
11 contacts with groups like that?

12 A Yes.

13 Q Do you personally--I don't know even if this is possible,  
14 but is the Board a member of the Chamber of Commerce?

15 A I am a member of the Board of Directors of the Chamber of  
16 Commerce.

17 Q Will you stop being that when you leave the job as  
18 Superintendent? Is that sort of the Superintendent's  
19 slot?

20 A It is a position that we have asked to be reserved for the  
21 Superintendent of Schools.

22 Q Why is that, that you have contact with the Chamber of  
23 Commerce?

24 A We have always felt that the educational aspect of the  
25 community is one of the key components and that it should

1 be involved in what is going on within the City. Because  
2 most people when they move or want to come to a city, the  
3 first thing they want to know is about the schools.

4 Q What about the service clubs, Kiwanis, Lions, organizations  
5 like that, does the School Board have contact with those  
6 groups?

7 A Yes.

8 Q Are there times when those groups will ask someone from  
9 the School Board to come and talk to their organization?

10 A Yes.

11 Q Is that usually you, or is it somebody else?

12 A It could be me or some other administrator or even a  
13 teacher.

14 Q What about local advocacy, like the League of Women Voters?

15 A Yes.

16 Q How is it that you would have contact with them?

17 A Maybe in the same manner. We could have some of our own  
18 staff that are members.

19 Q Is there a local NAACP?

20 A Yes.

21 Q Would you have contact with them?

22 A Yes.

23 Q Normally how would that contact take place?

24 A Primarily with the President of the NAACP.

25 Q Who is that?

1 A Kenneth Hill.

2 Q Who in the school system would have contact with Mr. Hill?

3 A I would say predominantly it would be Mr. Slaughter and  
4 myself.

5 Q Is there an Affirmative Action Officer attached to the  
6 school system?

7 A Yes.

8 Q To whom does he or she report?

9 A Dr. O'Neil. I think it is Dr. O'Neil.

10 Q I understand there are two Hispanic organizations that are  
11 reasonably active in this City, is that right?

12 A Yes.

13 Q Does the school system have contact with those groups?

14 A Yes.

15 Q To whom on the School Board would that contact come?

16 A That would be probably Mr. Slaughter. Again, I would be  
17 involved, but primarily Mr. Slaughter.

18 Q Again, what would the nature of those contacts be? How  
19 would it come to be that you would talk to one of those  
20 groups?

21 A Not all of those groups, but some of those groups are  
22 members of the District Citizens Advisory Council.  
23 Therefore, that responsibility falls to Mr. Slaughter.

24 Q Have there been any significant real estate developments  
25 during your tenure as Superintendent, new, big projects

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1 where you had to have close contact with the developer to  
2 plan for the needs of the school?

3 A Not any what I would consider large ones. Probably our  
4 most direct contact was the one we talked to Mr. Hogue  
5 about, out around French. It is not all in our District,  
6 but if we carry out what we want done, it will be a pretty  
7 good size development. The rest of them I would consider  
8 small developments.

9 Q I have forgotten some of the details I am afraid of the  
10 one that Mr. Hogue is proposing. Do you try and negotiate  
11 with developers in situations like that to make sure they  
12 set aside land for a school if the development is large  
13 enough that it required its own school?

14 A I suppose if I was in a situation that hadn't already been  
15 developed, if we see a large area that was going to be  
16 developed, then I would probably work with the Board in  
17 determining where we might need a future site. Depending  
18 on where that might be, you know, whether you would purchase  
19 the land or what you would do would have to be worked out.  
20 Since I have been Superintendent, this school system we  
21 haven't done that because our District is pretty fully  
22 developed.

23 Q Is it anticipated at all that your District will annex any  
24 additional land in the foreseeable future?

25 A No.



1 Q Who was your predecessor as Superintendent?

2 A Mr. Merle Bolton.

3 Q How long did Dr. Bolton have his job?

4 A He was here from '62 to '75. It would be thirteen years.

5 Q Is Dr. Bolton still alive?

6 A Yes.

7 Q Is he still in Topeka?

8 A Yes.

9 Q Is he retired or employed?

10 A Retired.

11 Q Do you know who his predecessor was?

12 A Mose Whitson.

13 Q Do you know how long Dr. Whitson was Superintendent?

14 A I don't know.

15 Q Is he still alive?

16 A I don't know. I don't think so.

17 Q Does the School District own land that it is not currently  
18 using for school represented purposes?

19 A Yes.

20 Q Why is that?

21 A The land that we currently have is as a result of school  
22 closing and the unit is not being used as an educational  
23 center and some of it is on the market for sale.

24 Q Do you own any land in anticipation of building a school  
25 on that land?

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1 A No.

2 Q Mr. Miller talked a little bit about the degree to which  
3 the school system, 501, has contact with or responsibility  
4 for non-501 schools that are nevertheless within your  
5 District, parochial schools and private schools. I would  
6 like to hear a little bit more about that. Do you have  
7 contact with the parochial school system or the private  
8 schools?

9 A Some.

10 Q How does that happen?

11 A It may be just like Hayden School, I will use as an example.  
12 They like to utilize our method of calling school. When I  
13 call school, they want to call school. So I have direct  
14 contact with them. In assisting the Principal there at  
15 Hayden, I won't have as much contact, but there may be  
16 contact with reference to implementation of Title I monies  
17 which requires involvement of all non-public schools, but  
18 I don't even know about that. I wouldn't be directly  
19 doing it, that type of thing.

20 Q Do you regularly get together with the non-501 school  
21 educators in the City?

22 A No.

23 Q You don't have like a school council or something that  
24 would include those people?

25 A No.

1 Q Other than what Mr. Miller talked about the other day, are  
2 there ways in which your responsibility for gathering data  
3 from the public, from the private and parochial schools  
4 for the State government?

5 A No.

6 Q How about planning responsibilities? If there is planning  
7 going on for a new parochial school or a new private school,  
8 are you involved in that at all?

9 A No.

10 Q If you were planning a school closing or opening or some-  
11 thing like that, within 501, would there be a way in which  
12 you would contact the parochial or private schools to sort  
13 of alert them to let them know what your plans are and see  
14 if they wanted any say in that?

15 A No. They would be primarily following it like all the  
16 other organizations through the newspapers.

17 Q Do the parochial schools have any representation on the  
18 Planning Council, that Shawnee County Planning Council we  
19 talked about earlier?

20 A Not other than just maybe somebody there that sends their  
21 kids to school, but I don't think there is any established  
22 one.

23 Q How many private high schools are there in the 501 District?

24 A One high school.

25 Q That is Hayden?

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1 A Hayden.

2 Q Is that a parochial school or private?

3 A Yes, Catholic.

4 Q How many middle schools are there in the District that

5 aren't 501 operated, if you know?

6 A I would say two.

7 Q Are they both parochial?

8 A Yes.

9 Q What about elementary schools? Do you know how many there

10 are in the District?

11 A No, I don't know the number.

12 Q Are there any non-parochial elementary schools in the

13 District?

14 A Yes.

15 Q Do you know how many that would be?

16 A I would say three or four.

17 Q If I want to send my kids to one of those schools, either

18 the parochial schools or the private schools, and I wanted

19 somebody to know the kids are in school so I don't get

20 accused of abuse or neglect by not putting my kids in

21 school, does the school handle that? Do you play any role

22 in that?

23 A No. We don't get involved in the enrollment process for

24 private schools.

25 Q You don't have to report to the State that this child "X"

1 is attending a parochial school so he is meeting the  
2 mandatory attendance requirements?

3 A No, we don't have to.

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

6 Q (By Mr. Hansen) We talked at the very beginning of the  
7 morning about your doctoral thesis on facility standards.  
8 Are there facility standards similar to those you developed  
9 in your thesis that are applicable to the regular public  
10 schools in Topeka?

11 A Not to my knowledge, no.

12 Q What sort of accreditation or certification process do the  
13 schools have to go through?

14 A Of course they are accredited by the State Department of  
15 Education and their criteria, the teachers are certified  
16 and things of that nature and we do have the North Central  
17 Accreditation for the high school.

18 Q I don't remember whether you were present when we talked  
19 about this with Dr. Henson, were you?

20 A I think I was. Some of it. I am not sure of all.

21 Q Are there accreditation certification procedures that the  
22 District has to go through that he didn't talk about?

23 A I don't recall.

24 MR. SEBELIUS: I object to the question. The testimony  
25 was several days ago and I think it is unfair to ask a

1 witness is there anything else that he didn't talk about.

2 MR. HANSEN: What I am trying to do is to save time.  
3 I can have him go through the whole stuff again. I am  
4 trying to save time for all of us.

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

7 Q (By Mr. Hansen) We were talking about the accreditation  
8 process by the State. Are there accreditation standards,  
9 written standards?

10 A Yes.

11 Q Does the School District have a copy of those?

12 A Yes.

13 Q Are they called anything besides accreditation standards?

14 A If I remember correctly, bulletin numbers and then separate  
15 ones apply at different levels.

16 Q Do they contain any requirements concerning the physical  
17 plan of the school? The school has to meet fire and safety  
18 codes or has to have X-number of square feet for each kid?

19 A Usually through recommendations they give that, but you  
20 may find some of those other requirements under other  
21 departments in the State.

22 Q I take it you do have to meet fire and safety codes?

23 A Yes. For example, you are not supposed to have a  
24 Kindergarten room on the second floor because of fire  
25 problems.

1 Q Who enforces those?

2 A We are required to see that those are carried out.

3 Q Does the City Fire Department or something like that check  
4 to see that you do?

5 A They inspect the building.

6 Q How about the City Building Department, do they also?

7 A I think any that would fall in their area they would do  
8 the inspection, yes.

9 Q The State accreditation standards, do they contain anything  
10 about curriculum?

11 A I don't remember exactly all the details in there about  
12 that, but I am sure there would be some recommendations  
13 and specifically high school you would have your graduation  
14 requirements.

15 Q Do you personally play any role in the accreditation  
16 process and in preparing the accreditation documents for  
17 the State?

18 A Not directly, no.

19 Q Other than the--I keep getting this wrong, North Central?

20 A Yes.

21 Q Other than the North Central people and the State accredi-  
22 tation process, are there any other accreditation or certi-  
23 fication procedures that the District schools go through?

24 A I don't know of anything, except you might have some  
25 requirements from a specific Federal program where you are

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1 receiving Federal money.

2 Q During one of the depositions, I have now forgotten which  
3 one, we talked a little bit about accelerated classes and  
4 remedial classes and regular classes in your various levels  
5 of the schools in Topeka. As I understand it, you do have  
6 such things, right?

7 A Yes.

8 Q What I was trying to get at in the other deposition was  
9 how I could tell that, not knowing, not having as much of  
10 a feel for the school system as you do or the people on  
11 your staff do, is there a list somewhere of which--let's  
12 start with the high schools, of which classes in the high  
13 schools are the accelerated classes and which are the  
14 remedial classes and which are the regular classes?

15 A I think you would find courses that we offer, like in  
16 Math, all the way through from the 9th Grade to the Senior  
17 High. Some of those courses would obviously by name point  
18 out that they are accelerated.

19 Q Like Advanced Calculus?

20 A Yes. Or Honorary Geometry and some just by the fact that  
21 they are at the level they are at. Like Calculus, which  
22 automatically says to most people that that is an advanced  
23 course. If you said Algebra, is that advanced or not? It  
24 might just be a regular course.  
25

Q Is there anything different about the middle schools? You



1 do have the same sort of thing in the middle schools?

2 A Yes. You could have some that would be identified by the  
3 title.

4 Q And some that wouldn't?

5 A Some that wouldn't, right.

6 Q How about the elementary schools? Is there a similar  
7 system in the elementary schools?

8 A I don't think so. You would have your maybe ancillary-type  
9 programs. Like programs for your academically gifted.  
10 But as far as the general curriculum, no.

11 Q How does it work in the elementary school? That is, is  
12 teacher "X" assigned a group of however many kids that are  
13 all kids that would be in accelerated, if we were talking  
14 about high school, and teacher "Y", her class is sort of  
15 a regular class, and teacher "Z", her class is sort of a  
16 remedial class?

17 A No. The number of students would be assigned to teachers,  
18 but that teacher wouldn't necessarily have just all brighter  
19 students and the other one more slower. They are inter-  
20 mixed.

21 Q The elementary school kids do not go from class to class,  
22 right?

23 A Normally it is a self-contained classroom. But in the  
24 upper levels you may have in some schools, depending upon  
25 the staff and Principal, some departmentalization.

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1 Q Do you look at the test scores, the scores on standardized  
2 tests as they come into the District?

3 A Yes.

4 Q Do you look at those on a school-by-school basis?

5 A Yes.

6 Q Why?

7 A Primarily to see how the students are achieving across the  
8 District and if there is an area that we need to emphasize  
9 on that we feel needs strengthened that can provide better  
10 direction that way.

11 Q If school "X" scored in the 50% and the test standard  
12 average is 70% on a standardized test, what would that tell  
13 you, if anything?

14 A I don't perceive, wouldn't perceive, that one score would  
15 be terrible because 50 percentile on a standardized test  
16 is still a very acceptable score. It might have actually  
17 a little bit about the makeup of the school and the back-  
18 ground of the youngster. Really the general area the  
19 students reside in. Many things. It could be youngsters  
20 didn't do as good that year on the test. It could be some  
21 extra thing.

22 Q Do you think it would give you any indication as to the  
23 quality of teaching that is going on in the school?

24 A Not necessarily.

25 Q But maybe?

1 A No, I wouldn't say maybe.

2 Q Why not?

3 A Because you might have youngsters in one school who, because  
4 of their background, because of the parental situation in  
5 the home, because of the type of things that are made  
6 available to those youngsters, like travel and things along  
7 that line, might have a greater opportunity to have the  
8 background and so on, to deal with the subjects you get  
9 involved in with schools. Whereas, the other group, you  
10 may have the opposite and that the teaching could be the  
11 same and still the youngsters may not achieve as high a  
12 level.

13 Q Does the School District have any information in its files  
14 concerning the socio-economic status of the family that  
15 the child is coming from?

16 A I suppose individual student folders when you review them  
17 and look where parents work and maybe the type of income.  
18 If there is something filed with Food Service you might be  
19 able to obtain that, but not on a collective basis.

20 Q Do you have a school lunch program?

21 A Yes.

22 Q That has an income eligibility part of it?

23 A Income eligibility for price lunch and free lunch.

24 Q How does the family let you know that they need the income  
25 eligibility?

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1 A They usually fill out a form provided by the District that  
2 is required by the Federal government and indicate their  
3 income and we try to substantiate that income as much as  
4 possible.

5 Q Do you know whether that is put on any of the computer  
6 systems of the District?

7 A I don't think it is.

8 Q Is it correlated in any form? That is, if you wanted to  
9 know what percentage of the kids at school "X" were on  
10 either free lunch or subsidized luncheon, what percentage,  
11 compared to the percentage at school "Y." Could you find  
12 out that information?

13 A Yes, I think I could.

14 Q Who in the District would know the answer to that question?

15 A Dick Feleay, Director of Food Services.

16 Q Who does he report to?

17 A Primarily he reports now to Dr. O'Neil. We have had a  
18 change in the organization a little bit.

19 Q What about other financial eligibility programs that the  
20 School District collects information on from which you might  
21 be able to determine information about the parents?

22 A The only thing would be textbooks, but we use pretty much  
23 the same guidelines as the school lunch program.

24 Q Would the financial information, as it relates to textbooks,  
25 be on the computer sometime anyway?

1 A No, I don't think so.

2 Q The Follow-through Program no longer exists, is that right?

3 A That is right.

4 Q Are there any other, excluding Head Start, are there any  
5 other special subsidized Federal programs for low-income  
6 kids? Leaving aside Head Start, the Food Service one, and  
7 the textbook one?

8 A Title I would be one criteria.

9 Q Do you collect financial information in order to receive a  
10 direct Title I fund?

11 A There is something where a family becomes eligible, but I  
12 don't know exactly what that date is right now. I don't  
13 know how we do that, really.

14 Q Who within the District would know the answer to that?

15 A That would fall under probably Dr. Livingston's area.  
16 Glendyn Buckley might be in charge of that.

17 Q Do you know whether that information is on any of the  
18 computer systems of the District?

19 A I don't know for sure.

20 Q Is the quality of the instructional program in each school  
21 a question that is important to you?

22 A Yes.

23 Q How do you go about finding out the quality of the educa-  
24 tional program in each school?

25 A I think we primarily do it through the administration and

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1 see that there is proper supervision over the individual  
2 buildings, and those supervisors over those buildings are  
3 in the buildings a lot. They are doing what is happening  
4 in the building, basically monitoring the curriculum,  
5 along with the Principal. If they feel there is some area  
6 that is not being emphasized or carried out by the admini-  
7 strator of the staff, they would present that to their  
8 superiors and we would take action, take whatever needs to  
9 be done.

10 Q I want to get some sense of the administrative structure.  
11 The Principal reports to a person who is responsible for  
12 a region of Principals?

13 A That is right.

14 Q How many of those people are there?

15 A Three.

16 Q Those three people then report to whom?

17 A Dr. Henson.

18 Q If a given teacher is really not teaching, is doing cross-  
19 word puzzles during the classroom period rather than doing  
20 any teaching, how would that come to your attention other  
21 than students and their parents complaining?

22 A The Principal is in charge of the building. Of course,  
23 the staff evaluations fall within the Principal's responsi-  
24 bility and the everyday supervision of the classroom is an  
25 aspect the teacher has is also an aspect that the Principal

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1 has to deal with. If he sees a teacher is not "doing the  
2 job that she should be doing," then it is his responsi-  
3 bility to take any remedial effects that could be done and  
4 that could be working with the staff member individually  
5 himself. It could be bringing in people from the Central  
6 Office to assist in the instruction in an area and hope-  
7 fully we could remediate by doing that. If not, if a  
8 person is just not doing a good job, then the next step  
9 would be removal from the classroom.

10 Q How would the Principal know that the teacher wasn't doing  
11 a good job? How does that filter up to the Principal?

12 A Probably staff evaluation they are required to do and in  
13 the actual performance of the evaluation. Predominantly a  
14 Principal would recognize whether something is going on  
15 through observation in visiting the room and if things are  
16 not occurring in the classroom there is probably going to  
17 be complaints from the parents.

18 Q I knew that. But the only reason I am asking this, I don't  
19 remember, it may have happened 100 times. I don't remember  
20 when I was in school Principals sitting in the classroom.  
21 It may have happened all the time, I just don't remember  
22 it happening.

23 A It may not. I do remember a Principal being in class  
24 quite a bit and I know our Principals are required to be  
25 in there as part of the staff evaluation. If the staff

1 member has been doing a good job, you are pretty aware of  
2 those things, if you are in the building you observe it,  
3 you hear what the students say. You obviously hear what  
4 the parents say. You don't particularly have to walk in  
5 and sit down in the classroom for two hours to find that  
6 out, that is correct.

7 Q Within the high schools and the middle schools, are there  
8 department heads, someone who is Chairman of the English  
9 Department?

10 A Yes, we usually designate in certain areas.

11 Q What does it mean to be a department head? What added  
12 responsibilities do you have?

13 A Primarily the person there would coordinate those areas  
14 under the direction, from the standpoint of what is being  
15 taught and what type of things that are occurring. They  
16 would not be an evaluation setting. They would not  
17 evaluate the staff. They would be there to work with the  
18 other staff members, to see that the curriculum in that  
19 area is coordinated in this school.

20 Q Is the curriculum standardized across the high school,  
21 everybody reads Moby Dick?

22 A I wouldn't say it is standardized to that degree. We do  
23 have consistency in curriculum and offerings, but it  
24 wouldn't mean that a school wouldn't do more if a student  
25 demanded a need.



1 Q How would you know about the students' demands or needs  
2 that you need more in X than you do in one school?

3 A Usually through a pre-enrollment or some technique like  
4 that, to have gained from the student what they feel they  
5 want for the next year and we work curriculum around that.  
6 There are certain things that are required, but once you  
7 go out beyond those requirements, usually it comes about  
8 as a result of the desire of the students.

9 Q We had in my high school, again I feel a little silly to  
10 keep referring to that as my way of asking the question,  
11 we have in the high school a couple of courses that weren't  
12 sort of regular English, Math courses. They were special.  
13 There was a special English seminar for advanced. There  
14 was a special Social Science seminar for advanced kids.  
15 Do you have things like that for kids in high school here?

16 A Yes.

17 Q How would I find out where those classes are? Would I  
18 look at the school curriculum list?

19 A Yes. We have a school within school and we have a Principal  
20 assigned within each division and you would work with  
21 students and parents and the Assistant Principal of that  
22 division working out a program of studies for you. That  
23 is done usually in the Freshman year. Once you start that,  
24 it pretty well falls in line, but just through working  
25 with the Council and the Assistant Principal.

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1 Q What is a division of a school?

2 A It is usually a makeup where we have an Assistant Principal  
3 and counseling staff and they offer a certain number of  
4 students, like if you had a school of four administrators  
5 and 1,600 kids, you would have probably 400 kids under  
6 each administrator.

7 Q Who within the school does discipline?

8 A It is primarily, of course, in the classroom. We try to  
9 get the teachers to handle the discipline problems if they  
10 can handle it in the classroom. If they cannot succeed  
11 with the problem, then it is reported to the Assistant  
12 Principal of that area and they deal with the discipline.

13 Q Who can suspend children from the school system?

14 A The Principal makes the suspension or if it is delegated  
15 to another person. It is the Principal primarily.

16 Q Do you personally have to see all the suspensions?

17 A No, I do not.

18 Q You don't have to approve them in any way?

19 A No.

20 Q Does anyone in the Central Office have to either review  
21 them or approve them?

22 A They get a copy of the suspension. It is sent into the  
23 Central Office. The Central Office does not approve or  
24 disapprove. It is done at the building level.

25 Q Do you see any statistics on the suspension rates of the

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1 various schools?

2 A I have periodically. If somebody has asked a question  
3 about why, I may look at something. But normally it is  
4 usually in a one-to-one situation where a parent calls and  
5 says, my child was not treated properly and shouldn't have  
6 been suspended. Or the length of the suspension wasn't  
7 proper. Then I may look at that individual thing and talk  
8 with the Central Office person as well as the school  
9 Principal in reference to the situation. Or the other  
10 thing would be, maybe where a parent is wanting to appeal  
11 it, I will indicate to the Board.

12 Q Do you have an idea of the magnitude of the number of kids  
13 that are suspended in a given year, five, fifty, 500?

14 A I don't know, really. There would be several because of  
15 the size of the District we are in.

16 Q Who would know that information?

17 A I think it is handled by one of the area directors, but I  
18 would have to check which one it is right now.

19 Q Suspension rates by race, have you ever seen any information  
20 concerning that?

21 A I have never seen any compiled on that, no.

22 Q How does the budgeting process work for the District?

23 A What we would normally do in our process is that we start  
24 basically in October to November and Mr. Warner would  
25 prepare work forms and work sheets which would be sent out

1 to the building level administrators and also to the  
2 Central staff and we would allocate a certain amount of  
3 money to the building level by per pupil with a minimum  
4 and ask the building to work with their staff in dividing  
5 up how they are going to use that money. At the Central  
6 level we would ask people to prepare what we call the  
7 decision packages and through the process these decision  
8 packages and decisions would all be funneled through the  
9 Central unit and essentially developed into a final budget  
10 which would be presented to the Board in the first meeting  
11 of July, with the authorization publisher and then the  
12 Board, we usually act on it the first meeting in August.  
13 Then your budget is finalized for that year. Our budget  
14 is not finalized until the first year has already started.  
15 Our fiscal year is July 1 to June 30th, but your budget is  
16 not approved until August for that current year.

17 Q I want to ask a few questions about the building role in  
18 this process. Is there a separate capital budget and  
19 operating budget?

20 A You mean capital outlay, like the building?

21 Q Yes. If I am the Principal or the building person re-  
22 sponsible for developing the budget, what is it I don't  
23 have responsibility for that relates to my building?

24 A Primarily you would have the responsibility over your  
25 instructional program, any monies that goes for supplies

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1 and so on like that. We have textbooks that are selected  
2 through a selection process and of course utilized there.  
3 So you wouldn't have the responsibility for that, except  
4 the numbers that you need. We just supply what you need.  
5 Personnel of course when people are selected, that is paid  
6 for through the control basically by Personnel Finance.  
7 If you need maintenance done on the building, you submit  
8 that and that is a process through a central group. When  
9 the maintenance is done, as far as additional remodeling  
10 or construction that is headed up by a Capital Improvements  
11 Committee and they decide on that and make a recommendation  
12 to me.

13 Q When I am the building Principal and I am preparing this  
14 annual budget to send to Mr. Warner or whoever, I don't  
15 have to include salaries as part of my estimate of what it  
16 is going to cost me for the coming fiscal year?

17 A No, that is done centrally.

18 Q I don't have to include maintenance expenses, other than  
19 salaries, cleaning expense and things like that?

20 A You would maybe be involved with your custodial supplies  
21 and things like that. You would not be involved with  
22 maintenance on the boiler and things of that nature.

23 Q Does the School District at present ever allocate those  
24 central things like faculty, like salaries or maintenance  
25 on the boiler, things like that, to the school?

1 A No.

2 Q Do you draw up a budget in such a way that it is allocated  
3 to the school?

4 A No.

5 Q I guess I am a little confused as to what is left. The  
6 operating expenses that the Principal is including in his  
7 or her budget, if it doesn't include textbooks, maintenance  
8 or salaries, what does it include?

9 A Primarily instructional supplies would be the area of  
10 office supplies, custodial supplies and of course they  
11 have under their own jurisdiction activity accounts, which  
12 they have a large amount of monies that goes through those.  
13 So they have quite a bit of jurisdiction there. We are  
14 not thinking of that as "District money." But if you  
15 think of that as money that is coming into the high school  
16 reallocated by - I am thinking by general operating budget,  
17 mainly supplies in all those areas and in instructional  
18 materials.

19 Q You said initially that that stuff gets allocated on a  
20 per pupil basis?

21 A Right.

22 Q Do I understand it then that you tell Principal X it looks  
23 as though in next year's budget you are going to have 40¢  
24 per pupil? Tell me how you are going to break that down  
25 and how you are going to use it?

1 A We have a minimum there. If a school gets too small and  
2 one other area the Principal has some control over is staff  
3 development money.

4 Q Is the per pupil number that you gave to the Principals  
5 each year that they are supposed to be working from, is  
6 that the same for all the elementary schools?

7 A Yes.

8 Q Is it the same for all middle schools and high schools?

9 A Yes, it would be for all middle schools and for elementary.

10 Q Other than the School Board, are there any other people  
11 to whom you have to submit your budget?

12 A Of course we wind up submitting it to the Financial Services  
13 Division of the State Department of Education and then on  
14 audit report on it we have to submit it to the State  
15 Council.

16 Q What does the State have to do with your budget besides  
17 receive it and put it in a file drawer?

18 A I think they monitor it, make sure we comply with the  
19 laws of the State of Kansas to finance the schools and  
20 utilize it for reports I am sure.

21 Q Do they ever get back to you about it? Have they ever  
22 gotten back to you about the reports that you have sent in,  
23 the budget report, since you have been Superintendent?

24 A It never happened to me.

25 Q You mentioned two State branches that you had to send the

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budget to?

A Not budget.

Q The financial information?

A Yes.

Q The second of the two, what does it get the money for?

A It just gets a copy of our audit report at the end of the school year.

Q What does it do with that?

A I don't really know exactly. We work hard to submit it to them. That is all I can tell you.

Q One of the things I forgot to ask Mr. Ybarra when he was here was whether the District makes any effort to - let's start with the high schools, to ensure that each high school has a range of experience in its teachers? That is, no one high school has all of the most experienced teachers or all of the new teachers? Does the District make any effort on that?

A We, in our selection process, the final decisions rest with the Principal and we let the Principal review all the information concerning that candidate. Of course, one of those would be the length of experience and so on. But we do not push the Principal to select one experienced person over another.

Q Suppose, I am not saying this is true, but suppose hypothetically Topeka West had a lot of turnover, just for the



1 last five years it had an enormous amount of turnover so  
2 there were relatively few experienced teachers and Topeka  
3 High had almost no turnover in that same period. Would  
4 you make an effort to sort of move some of the experienced  
5 teachers over to Topeka West in order to ensure that it  
6 had a continuing mix of experience?

7 A No, we would not. Because the people you recruit from are  
8 not all beginning people. When you select staff for a  
9 building you may select staff from thirteen or fourteen  
10 years of experience or eight or ten years of experience.  
11 So the experience factor is one that by recruiting people  
12 may be there.

13 Q When you recruit teachers are there - I guess I am asking,  
14 are there different recruitment slots? Are you looking  
15 for a teacher with ten or fifteen years experience or five  
16 or ten years experience? Or do you just say I want a  
17 teacher and see what the process turns up?

18 A Depending on the subject, when a Principal makes a decision  
19 on a person's experience, may be a very important factor  
20 because of the area that they are instructing in and also  
21 it gives a good criteria for--whether the person has been  
22 successful or not. So say experience, what will we look  
23 for, whether we would look for five-year or ten-year, it  
24 may not make any difference between that length of time.  
25 Whether we take a five-year or a ten-year versus a beginning

2-B

1 person, we have a criteria there of reference that would  
2 give you a good indicator about what a person has done  
3 from the standpoint of recruiting into the system. To say  
4 that an eight-year experienced teacher is better than a  
5 four-year experienced teacher, I am not sure that you could  
6 make that judgment.

7 Q I am not necessarily making that judgment. I didn't ask  
8 it clearly obviously. If this firm were advertising for  
9 a new lawyer today, they would, I think, say we want a  
10 new lawyer and we are looking for someone who is a recent  
11 graduate of law school. Or they might say, we are looking  
12 for a lawyer that has got ten years experience. Would you  
13 advertise the job targeted to one of those other applicant  
14 pools, not to both? What I am looking for is whether you  
15 do that in the teaching profession as well?

16 A No, we do not advertise whether they have experience or  
17 not.

18 Q How about in terms of degrees? Do you advise that you will  
19 only take a Masters person for this slot you are looking  
20 for? Or you will only take a Doctorate person for this?

21 A No. You might find in some administrative positions you  
22 might find the statement Doctorate or equivalent, but not  
23 for normal teaching positions, no.

24 Q If I have a Masters Degree, does that give me a salary  
25 bump over a Bachelor Degree teacher?

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1 A Yes.

2 Q Even if I am teaching essentially the same course?

3 A Yes.

4 Q Do all the teachers who teach in the District have to be  
5 certified?

6 A Not all. Because some of the teachers they are certified  
7 by maybe different standards, for example. The only ones  
8 I really can think of are the ones in the area of the  
9 Vocational Technical School. They may be certified voca-  
10 tionally, which would be different than the certification  
11 that we normally think of.

12 Q Other than the Vocational Technical School, are all the  
13 teachers certified?

14 A I think they are all required to have certification. I  
15 don't know of any who don't.

16 Q Can you start teaching while you are getting your certifi-  
17 cate?

18 A There have been some areas of Special Ed. where they have  
19 had provisional certification until the person reaches it.  
20 But in essence, technically you are certified but there  
21 are some requirements in Special Ed. For example, where  
22 you have to have a year's experience teaching in that area  
23 before you become permanently certified. The only way you  
24 can get that is to teach it year around under provisional  
25 certification before you become permanently certified.

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1 That is the only one I can think of, is in the Special Ed.  
2 area. Now you can have emergency certificates, which has  
3 been in more recent years.

4 Q What would cause you to get an emergency certificate?

5 A Maybe it is an area that is very difficult to obtain people  
6 in, but that has to be approved by the State.

7 Q Do you have any teachers currently teaching on emergency  
8 certificates in the Topeka system?

9 A We may have a couple or three.

10 Q I gather from what you have just said, somebody in the  
11 State Board of Education then has to approve that particular  
12 individual?

13 A Yes.

14 Q Prior to that person starting in your system?

15 A I am not sure on that. They may be able to start and have  
16 to go with it within a certain amount of time. I am not  
17 sure on that.

18 Q When you are certified, are you certified for life?

19 A No.

20 Q How long is this certificate good for?

21 A Normally three or five years.

22 Q Taking the high schools, are you certified for English or  
23 are you certified for high school or are you certified to  
24 teach?

25 A You are certified for both. You are certified whether you

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1 are in a sub area, if you are a secondary person and you  
2 would be certified usually at that level. For example,  
3 elementary, there is an elementary certification.

4 Q If I am certified as a high school English teacher, can I  
5 teach Math courses?

6 A Certified now as a high school English teacher?

7 Q Right.

8 A No. If you don't have certification in Math.

9 Q In the time you have been Superintendent, or at the time  
10 you have been with 501, has the system we have just described,  
11 the certification system, been different?

12 A No. I think it is pretty consistent all the way through.

13 Q Has there ever been a time when 501 used non-certified  
14 teachers?

15 A I don't know of any time that we have ever put anybody in  
16 a position that they weren't certified in and we have gotten  
17 notification sometimes that people were not certified and  
18 we check it out and sometimes it is misplaced. I can't  
19 think of any. There was one, I don't recall right now.  
20 What I am saying is the State report, they go through and  
21 review and say that this person apparently is not certified.  
22 When they come back and check it out, the person is certi-  
23 fied in the area, but they haven't maybe gotten their final  
24 papers in on some stuff.

25 Q Does anyone teach in the Topeka school system that doesn't

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1 have at least a Bachelors Degree?

2 A There would be some probably at Vocational School, yes.

3 Q Other than the Vocational School?

4 A Not that I am aware of.

5 Q Is a Bachelors Degree required for certification, do you  
6 know?

7 A In this State, yes.

8 Q I understand that the hiring process we went through that  
9 with Dr. Ybarra, are there any other written criteria,  
10 other than certification that a teacher needs in order to  
11 teach in the Topeka school system? That is, do you say  
12 you have to be certified plus something?

13 A Basically if they are certified and they've got all the  
14 requirements that we require them to have, like the physical  
15 and things of that nature, then I think that is it.

16 Q I wasn't suggesting there should be.

17 A Yes, I think that is it.

18 Q What does the District do to ensure that it has adequate  
19 Black and Hispanic teachers?

20 A Of course we have an Affirmative Action Plan which I think  
21 speaks to that. Because it gives our indication of what we  
22 are trying to achieve in that area.

23 MR. SEBELIUS: Can I just ask for a point of clari-  
24 fication? I can see that question coming in at least two  
25 different levels. When you said adequate Black and Hispanic,

1 are you talking about in terms of the relationship or the  
2 availability within whatever the relevant labor pool might  
3 be to their representation within the work force of the  
4 School District?

5 MR. HANSEN: I hadn't formulated a clear question as  
6 that. I hadn't gotten more detailed about that.

7 Q (By Mr. Hansen) Let me ask it a different way, because it  
8 is a perfectly valid point. What does the policy concerning  
9 hiring of Black and the hiring of minority teachers suggest  
10 the District goals or aim is?

11 A I don't remember it all in detail, to be very honest about  
12 it. As we put together an Affirmative Action Plan, as it  
13 was our intent out of that Plan to bring into that system  
14 minority people and to try to achieve certain standards to  
15 a certain degree, but I don't remember all the details on  
16 that.

17 Q When was that Plan adopted, if you recall?

18 A Back in about probably 1976, somewhere in that range.

19 Q I take it, you have an Affirmative Action Officer?

20 A Yes.

21 Q Have you had one since '76?

22 A Yes, we have always had one.

23 Q Has it been the same person during that period?

24 A No.

25 Q I would take it that would be the person most knowledgeable

1 on that subject?

2 A Yes.

3 Q Have you seen race statistics on teachers in '76, you  
4 personally?

5 A I don't think I have.

6 Q Do you recall whether those numbers have been presented to  
7 the School Board at any time since then?

8 A When I say race statistics, there has been presentations  
9 made to the Board in reference to our Affirmative Action  
10 Plans and what we have done in that area and there certainly  
11 is some statistics in there. I am not sure how they were  
12 presented. I know they were presented to the Board updating  
13 our Affirmative Action Plan.

14 Q Do you see race statistics on students at all, you per-  
15 sonally?

16 A Yes.

17 Q In what context do you see them?

18 A I think when we look at the racial appearance of our schools.

19 Q Why would you be looking at that?

20 A I think anything we do in this school system that we have  
21 to look at the racial balance of our school system of  
22 individual schools as we make decisions and do things.

23 Q Just as an example, when was the last time, other than the  
24 context of this--if you can separate out litigation as  
25 opposed to your other responsibilities as Superintendent,



1 when was the last time you looked at race numbers and what  
2 was the purpose of that?

3 A I probably looked at them periodically through this year  
4 when we deal with student transfers. Anybody that we are  
5 dealing with on that, we always have that available. In  
6 order to interpret that policy, you have got to have it  
7 available.

8 Q Other than transfers, do you recall a time within the last  
9 year, for example, other than litigation, that you have  
10 looked at the student race numbers?

11 A I am sure I have, but I just don't recall specifically.

12 Q Are you satisfied with the racial balance of the Topeka  
13 schools?

14 A I think this District has, at least since I have been here,  
15 we have made significant strides in working with the racial  
16 balance in our schools and I am very pleased with the  
17 actions we have taken and we have moved I think in a very  
18 good direction to make our system more unitary.

19 Q Do you think there are additional strides to be made?

20 A There are always improvements that you can make in a school  
21 system, no matter where you are.

22 Q You would, I take it, agree that racial and ethnic diversity  
23 is good in the process for the children?

24 A Yes.

25 Q That would be true not only of the students' race, nationality

1 and diversity of the students, but also of the faculty?

2 A I think it is good, yes.

3 Q One of the questions I asked, again I have forgotten who,  
4 I can't find a policy that relates to racial assignment of  
5 teachers as opposed to hiring of teachers. Do you know  
6 whether such a policy exists or not?

7 A I don't think anything other than what we have in our  
8 Affirmative Action Plan.

9 Q The teacher evaluation forms that the Principals fill out,  
10 how often do they have to fill those out?

11 A I don't exactly remember all the details. It depends on  
12 how long you have been in the system and so on. It is  
13 prescribed for under State Law. So there is a State Law  
14 on teacher evaluation and it doesn't mean that you couldn't  
15 exceed what they are doing, but you have to do at least  
16 that. I think there is some provisions--I don't know  
17 whether we have changed it, it used to be you could have  
18 it every year, but I am not sure that is the same right  
19 now. I would have to look at it and see.

20 Q I understand they are filled out by the Principal, right?

21 A The supervising administrator, in most cases it would be  
22 the Principal.

23 Q They are sent to the regional administrator or the person  
24 in charge of more than one Principal?

25 A Yes.

- 1 Q Are they also sent to someone in the Central Office?
- 2 A They would eventually go into the Personnel area. Well,  
3 the regional person is in the Central Office.
- 4 Q Would the Central Office do anything in terms of correlating  
5 them and drawing statistics out of them?
- 6 A I think what they would do is to review them to assure that  
7 they abide by the State Law or in the District policy and  
8 a professional agreement or if they all completed that, I  
9 am sure they might look at the evaluation, obviously go  
10 through that. But they are primarily responsible for  
11 seeing that they are meeting the prescribed law or policy.
- 12 Q Is there a pass-fail on those or a grade on those? Is the  
13 teacher graded A through F? Or is the teacher given a  
14 pass-fail?
- 15 A There is renewal, probationary renewal and then I guess  
16 the other one would be termination. If I remember the  
17 three areas, I think that is it.
- 18 Q Do you know whether they go through and say school X has  
19 X percent of its teachers recommended for renewal, Y per-  
20 centage are recommended for termination and Z percentage  
21 recommended for probationary renewal?
- 22 A Not to my knowledge.
- 23 Q If they did that sort of thing, who would know about it?
- 24 A Apparently it would be the Area Directors.
- 25 Q They report to Dr. O'Neil, the Area Directors?

1 A No, Dr. Henson.

2 Q The Area Director deals with all three levels of the schools?

3 A Yes.

4 Q I am going to turn to a new area now. I would like to  
5 talk a little bit about the kind of things that we talked  
6 about on Friday with Mr. Miller, annexation, de-annexations,  
7 all that kind of stuff. If there is an annexation or de-  
8 annexation take place, what is the procedure that is gone  
9 through?

10 MR. BILES: Could you clarify what you mean by annexa-  
11 tion?

12 MR. HANSEN: I don't know whether I can or not.

13 Q (By Mr. Hansen) If the School District is taking responsi-  
14 bility for additional land or giving up responsibility for  
15 some of the land it already has, which is what I thought  
16 annexation and de-annexation was, what is the process by  
17 which that happens?

18 A There are two ways you can go about it, the School District,  
19 meaning our School District, would approach the other  
20 school district that is involved, whether we are receiving  
21 or sending, and if both of those school districts can  
22 have a mutual agreement on what is going to occur and they  
23 both approve it at a Board Meeting, their own Board Meetings  
24 and the proper information is provided to the State  
25 Department of Education, and then it is approved there by

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1 the State Board of Education, then it will occur.

2 Q Under that method the City-County hasn't had to get involved  
3 and the County government hasn't had to get involved?

4 A No.

5 Q The State Legislature has not had to get involved?

6 A Nobody else has not. The other procedure would be where a  
7 director or somebody I guess would request that one part  
8 of one district be put as part of another or taken away or  
9 however you want to put it, and that that request be made  
10 directly to the State Board and then they can make a  
11 decision to modify the districts without even involving  
12 the two districts from the standpoint of actually getting  
13 their approval. Those are the two methods. All I know of,  
14 anyway. I guess there could be a legislative method where  
15 the Legislature would change the current law which provides  
16 for you to have five school districts and that would change  
17 it.

18 Q I gather you are in the midst of an annexation-de-annexation  
19 at the moment?

20 A Right.

21 Q Do you submit that, I understand you don't have to get  
22 approval from the City Commission, do you submit it to  
23 them anyway for informational purposes?

24 A I don't think we probably did. I think they are aware of  
25 what we are doing because of the news, but there is no

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1 requirement that we do that.

2 Q Does anybody from the School District attend on a regular  
3 basis the City Commission meetings?

4 A Not on a regular basis.

5 Q Does anyone from the City Commission attend the Board  
6 Meetings on a regular basis?

7 A No.

8 Q Anybody from the State government attend your meetings on  
9 a regular basis?

10 A No.

11 Q Does anybody from your District attend the State Board of  
12 Education meetings on a regular basis?

13 A Yes, maybe not every time, but the majority of the time.

14 Q Who is that?

15 A Onan Burnett.

16 Q The two methods of annexation-de-annexation we just talked  
17 about, have those always been the only two methods, if you  
18 know?

19 A Since unification, I think this is true. I don't know what  
20 it was prior to that.

21 Q Unification was in what year?

22 A '69, somewhere around that range.

23 Q When we went through your resumé you talked about at one  
24 point being assigned to what it sounded to me like was the  
25 unification process. It sounds like you played a major

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1 role of pulling all these schools in the area together.

2 Was I right?

3 A Not really. What I was involved in, I was in what was  
4 called High School Districts before the unification,  
5 Shawnee Mission High School Districts, and there was  
6 legislation passed by the State that called for the unifi-  
7 cation of all the school districts in that area, which I  
8 think there were thirteen districts counting the elementaries  
9 and high school districts. My job involvement in that was  
10 the fact that we were merging these districts all together  
11 and the Superintendent asked me to go in to selected areas  
12 within the school system to help straighten them out and  
13 get them operating to start with. So from that aspect, I  
14 was involved in unification as a result of what happened,  
15 not in the actual unification of the districts.

16 Q Which Superintendent asked you to do that?

17 A Dr. Arzel Ball.

18 Q What was he Superintendent of?

19 A He was former Superintendent of the High School Districts  
20 in that area and when they unified into the unified district,  
21 he was over all of them. He was selected by the new Board  
22 to be the Superintendent of the whole system.

23 Q I am confused. I thought somebody else was Superintendent  
24 in '69. He was selected to be Superintendent of 501?

25 A No. Shawnee Mission School District, which is 512, which

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1 is the southwest part of Kansas City. At the time unifi-  
2 cation took place I was not in this District.

3 Q That is what I wasn't understanding. Unification brought  
4 together a number of school districts, right?

5 A Yes.

6 Q Do you know what happened to the records of all those  
7 school districts? Did they get co-mingled or kept in  
8 your office?

9 A I don't know.

10 Q Who might know?

11 A I guess probably the person that would know best would be  
12 the Superintendent and probably the Board Members at those  
13 times that there was unification. I don't know. That was  
14 long before I was here.

15 Q Mr. Miller talked about a County Superintendent, I think  
16 it was called a Superintendent, that existed at that point.  
17 Are you familiar with that part of the governmental structure?

18 A Yes, I was at that time.

19 Q That no longer exists as I understand?

20 A No.

21 Q Do you know who the County Superintendent was in '69 when  
22 there was unification in Topeka?

23 A I am not sure that is when unification was. I think I  
24 need to clarify that when I spoke of unification a while  
25 ago I was specifically speaking of more than unification

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1 in the School District I was with at that time. When 501  
2 unified, I am not sure of the exact date, because not every  
3 district unified at once. It occurred over a period of  
4 time. So when I talked about unification earlier, I was  
5 talking about unification in 512.

6 Q Have there been any significant annexations or de-annexations  
7 during the time you have been Superintendent?

8 A We would not consider significant, anyway.

9 Q There was one we asked for as part of the Interrogatory  
10 Answer lists all the annexations and de-annexations and  
11 there was really only one significant de-annexation. Are  
12 you familiar with that occurrence? It may have been prior  
13 to you?

14 A It may have been.

15 Q I think actually if you give me a second I am going to  
16 look to see if I can track it down.

17 A Okay.

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

20 Q (By Mr. Hansen) In the time you have been with 501, have  
21 you opened any new schools?

22 A Yes.

23 Q Did you build them as well as open them? Were they con-  
24 structed from scratch?

25 A Yes.

1 Q Did you, while you were with 501, was the decision as to  
2 where the school should be situated made?

3 A Yes.

4 Q How about that process taking place, deciding where to set  
5 it?

6 A In the specifications where we constructed the school it  
7 was an area that we wanted a school in. We were using  
8 some buildings and the schools were being merged together  
9 and it is the only piece of land in the whole area that we  
10 probably could have gotten to construct it. So it was not  
11 a decision that took a whole lot of time, because of the  
12 amount of building space we have left in this District.

13 Q Which school was that, that we are talking about?

14 A Chase Middle School.

15 Q What schools were you closing that led you to need a school  
16 in that neighborhood?

17 A We were closing Holliday Middle School and Junior High  
18 School at that time and East Topeka Junior High School.

19 Q Roughly, what region of town are we talking about?

20 A In the northeast primarily.

21 Q Why were you closing those two schools?

22 A This system has twelve junior high schools probably in  
23 number of schools. We didn't need more than probably four  
24 or five. As a result of enrollment declining so much and  
25 the buildings were getting to the position that they needed

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1 major repair to them, so the Board chose to construct a new  
2 facility and merge them together.

3 Q What is the process when the staff sees something like  
4 that coming? What is the process by which you advise the  
5 Board of it and the decision is made?

6 A It is kind of like when you are planning to build a new  
7 building, you can see down the road where economically a  
8 building is not the most economical, you can see that the  
9 number of kids, you only have so many students for the  
10 programs, you look at economics, you look at the economics  
11 of staffing as well as the economics in the facility and  
12 preparing. So you need to make plans for conversation to  
13 a different operation and so much for the same process in  
14 reversing in closing as you do in opening.

15 Q I am asking more specifically who first notices it and how  
16 does it get brought to your attention first, and how do  
17 you draw it to the Board's attention?

18 A We review annually, Dr. Tribbey looks at our enrollments.  
19 He looks at, of course, the facility needs in the department.  
20 We kind of look at all those together annually to see if  
21 there are areas we need to start placing our attention on.

22 Q When you say "we," you mean the Administrative Council?

23 A Right.

24 Q When you talk about how you had twelve junior highs and  
25 all you really needed were four or five, how do you decide

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1           how many junior highs you need or how many elementary  
2           schools you need for that matter?

3       A    If you had maybe four people in this room, there might be  
4           four different opinions on that and we have to inject based  
5           on our background and our expertise in education, is that  
6           we feel is probably the most appropriate numbers. I think  
7           there are many levels you get to, you wouldn't argue over,  
8           but I think you try to reach a minimum that you would have  
9           in a building and that is based on primarily educational  
10          research and our own educational backgrounds.

11       Q    What you are looking for is a rule of thumb that a junior  
12          high ought to have X number of kids in it?

13       A    Right.

14       Q    The same is true of high school and elementary schools?

15       A    I would say so, yes. Much more flexible in high school  
16          because of the numbers.

17       Q    Does the District currently have a rule of thumb for what  
18          a high school size ought to be?

19       A    We said we would like to keep our high schools at least  
20          around 1,200.

21       Q    Is there an upper limit as well as a lower limit?

22       A    We haven't placed an upper limit on it.

23       Q    Are all three high schools now at least 1,200?

24       A    I think so, yes.

25       Q    When annually do you sort of look at all of the schools

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1 and how does that get brought to your attention annually?

2 A I think after we do our enrollment reports in the fall, at  
3 that time I would say we have looked at what is occurring  
4 within the system and try to point out areas where we might  
5 need to look at individual schools.

6 Q I am talking about the--I'm sorry, I forgot the new school  
7 you opened was which one?

8 A Chase.

3-A 9 Q Talking about the Chase opening and the closings that  
10 surrounded that process, you had an annual meeting, not an  
11 annual meeting, you had the meeting of the Administrative  
12 Council where this began to be discussed?

13 A Yes.

14 Q Was there a memo or something that started out the discus-  
15 sion of that agenda item?

16 A I think that it is not only started with the administrators,  
17 I think there was concern on the part of the Board of the  
18 number of facilities and the number of youngsters we had  
19 in facilities that we should look at what is involved,  
20 what needs to be done and so on. So it kind of generated  
21 from that standpoint and we put together the information  
22 on it and of course, we have had a short-range facility  
23 plan and a long-range plan and those are of a direct result  
24 of studying.

25 Q I understand there is a process you are always looking at

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1 and I understand the thinking of closing schools and  
2 opening schools. The actual planning for it seems to me  
3 there must have been a day when you started getting serious  
4 as to whether they should be closed or a new school opening  
5 should take place in that region. I am looking for how  
6 that day came about when Dr. Tribbey sent a memo or the  
7 School Board sent a memo to you or whether you sent a memo  
8 to Dr. Tribbey. I want to know how that sort of begins to  
9 become concrete?

10 A As I recall, I don't think I can think of a specific day  
11 or anything like that, but when I was selected as  
12 Superintendent one of the things that I felt the Board  
13 felt that something needed to be done with the facilities,  
14 that we needed to merge the facilities because we had some  
15 junior highs with very, very small enrollments. What I  
16 got is a goal in essence as the Superintendent was to look  
17 into it, see what needs to be done and make the reports  
18 back to the Board on that and that is where we started  
19 moving into that. I was not Superintendent until '75, so  
20 I can't speak prior to that. But when I came into the  
21 Superintendency, direction was already set, that we needed  
22 to look at the numbers of facilities and do something along  
23 that line.

24 Q Speaking specifically about Chase, did you know by '75 or  
25 '76 that that was a region of where you were going to close

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1 a school and open a new school?

2 A Yes, we presented a long-range facility plan. I can't  
3 remember the exact date it was presented, but it seems  
4 like a year or so before we actually adopted a long-range  
5 plan and incorporated in that was some recommendations  
6 concerning the Chase area. It probably would have been in  
7 '75 because we adopted the plan in March or April of '76.

8 Q Did that include closing Holliday and the one other school  
9 in that vicinity?

10 A Yes.

11 Q What kind of staff work goes into getting that in shape to  
12 present to the Board as a recommendation?

13 A You have got to have, of course, look at all your student  
14 data and you have got to consider every aspect of student  
15 information that you can think of. You need to look at  
16 your current facilities to see if you want to take one of  
17 those facilities and make it a receiving facility or  
18 whether you want to construct a new one. You have got to  
19 look at transportation information. If transportation is  
20 involved, how much that is going to cost you from the  
21 standpoint of implementation. You have got to look at the  
22 whole process of closing the building timewise so that you  
23 can merge the students into the building safely. You have  
24 got to look at the reassignment of staff. There are  
25 numerous other things. Those are some examples.

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1 Q There's got to be a lot of paper being generated as a  
2 result of this discussion?

3 A That is right.

4 Q How does that exactly happen? Is it in the Administrative  
5 Council where you say to Dr. Tribbey, of all your people,  
6 give me the file on 43 records, or he does it in one of  
7 his committee meetings? He says, you people give me the  
8 information so I can give it to the Superintendent?

9 A He has the authority to develop it, like the long-range  
10 plan. So he has access to whatever information he needs  
11 to put together to form that plan and once he puts it  
12 together, we review it. That is how we finalize it.

13 Q Were you involved in the '76 Plan? Were you involved in  
14 the development of that prior to the first draft, if you  
15 recall? Does he just sort of do all the staff work and  
16 give you the first draft? Or do you talk about it con-  
17 stantly even while the first draft is being developed?

18 A I would say, yes, I was involved in the development of  
19 that plan and we set forth with directions to develop a  
20 long-range master plan, facilities plan and I have kind of  
21 let him go to--where to start. I didn't specifically sit  
22 down with him and say, Mike, this is what I want done here.  
23 That is what I want done there. Because that is his job.  
24 I asked him to put together, with consideration of all the  
25 things in mind that we are going to have to deal with and

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1 then he started preparing a plan. As far as to which  
2 buildings were going to be closed or which one was going  
3 to be kept open, that was not predetermined.

4 Q He obviously had to have his staff do lots of memoranda  
5 and reports for him in order for him to begin to make  
6 those, in order to do the first draft of the plan, if you  
7 will? Did you get those underlined memos as well as the  
8 first draft of the plan?

9 A When he started putting the plan together I would see the  
10 plan. A lot of the information like student information  
11 is right in his own department. If he had to cost out a  
12 staff plan, he would have to go to Frank and say, Frank,  
13 here is what I am going to have in the building. Staff it  
14 for me. Tell me what it is going to cost. He had the  
15 latitude to go in there, but I didn't get that data indi-  
16 vidually from each area. I looked at it when it began to  
17 develop into the plan.

18 Q Did you propose to the Board it is time for a new long-  
19 range plan or how did that work?

20 A When I came into the Superintendency, of course, it was  
21 rather quickly the Superintendent left. I think he announced  
22 his new appointment in the middle of June or something  
23 like that. I was appointed three or four days later. So  
24 at the time I was probably appointed, I am not sure we  
25 discussed in specific detail what needed to be done. It

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1 was obvious that we needed to make some changes because of  
 2 the number of facilities we had versus the number of kids  
 3 and it looked like we are going to decline for some period  
 4 after that. So it was almost I guess assumed and the  
 5 Board never did. They just said we have got some problems  
 6 in the area we need to deal with and we need to deal with  
 7 those enrollment problems and that is one of the big tasks  
 8 you are going to have to take on.

9 Q The problem I gather it has been declining population  
 10 during the recent time period?

11 A Yes.

12 Q It seems to me you had a couple of options during that time  
 13 period. I am talking about the Chase part of town. Rather  
 14 than building a new school, for example, you could have re-  
 15 drawn the boundaries for some of the other middle schools  
 16 to take in that part of town, is that right?

17 A That is right.

18 Q How does that decision get made, the decision to build a  
 19 new school in the Chase area, rather than redraw the  
 20 boundary?

21 A We have to look at the enrollment data. If you look over  
 22 there, we had, using that as an example, the schools that  
 23 we were dealing with in the central part of the District,  
 24 they all had enrollment problems. I don't think there was  
 25 probably a school that didn't have some form of enrollment

1 numbers of kids. So when you look at the data, you have  
2 got to look at the distance to travel. You have got to  
3 look at the economics involved. You have got to look at  
4 how much capital improvement it is going to take on the  
5 building and see if you can make remodeling or additions  
6 to accommodate that number of youngsters. You have got to  
7 look at the site to see if the size is proper and correct  
8 and so on and make a judgment out of that. It gets down  
9 to a judgment which one is best.

10 Q Is there a hierarchy of desirable options, that it is more  
11 desirable to change the boundary than to build, it's more  
12 desirable to use portables or it is less desirable to use.  
13 I don't know all the options you have for dealing with the  
14 problems of declining enrollment in that neighborhood.

15 A That I think would depend on the individual philosophy of  
16 the Board Members and the Superintendent involved. Porta-  
17 bility in this school system, since I came here to where  
18 they are now declined, we haven't added any. We have gone  
19 from 70 or so--I don't know how many we had when I came,  
20 down to 15 or 16, if that right now. I think that  
21 philosophy, whether you use it, would depend on the Boards.

22 Q Is that your philosophy, that portables aren't a particularly  
23 good idea?

24 A I don't think there is anything wrong with portables when  
25 used properly and placed properly. They are used all over

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1 the nation. When you have growing population, sometimes  
2 you don't have any alternative. Because I have seen  
3 schools open and before the end of the school year they  
4 have to move portables in because the growth is so rapid  
5 you wouldn't have time to make any adjustment. So in a  
6 growing district, portables may be the only option. If I  
7 have a choice, when I am declining, why then the only  
8 choice is really you eliminate them and that is what you  
9 have done.

10 Q The example you gave is a good one. Assuming we have popu-  
11 lation expansion rather than contracting the way I have  
12 just said it, it strikes me you might well think, I don't  
13 want to put words in your mouth, it might well be true that  
14 you think you ought to try boundary changes first and only  
15 go to portable classrooms if you fail in solving the  
16 problem by boundary changes. That suggests a hierarchy of  
17 desirability of those approaches. What I am looking for  
18 is whether that kind of hierarchy does exist?

19 A No, I don't think it does, because you have got to look at  
20 the individual situation at the time it occurs as to what  
21 is the best solution for you. Number one, is this what I  
22 want to do? Number two, I approach it from the point let's  
23 look at all the options and see what is best for the  
24 District.

25 MR. HANSEN: Might I suggest this is the proper time

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1 to have our lunch.

2 (A recess was taken for the noon hour,  
3 after which the following proceedings  
4 were held.)

5 Q (By Mr. Hansen) A couple of things I should have asked  
6 this morning and forgot to. The first is, who was the  
7 Superintendent before Mr. Whitson?

8 A I believe it was Kenneth McFarland.

9 Q He was around a long time?

10 A He has been around quite a while, yes.

11 Q Do you know whether he is still alive or not?

12 A I am not sure who that was. It may have been him or  
13 Wendell Godwin. I don't remember.

14 Q Are either Mr. McFarland or Mr. Godwin still alive, still  
15 in Topeka?

16 A Mr. McFarland is here. He has a place. I am not sure if  
17 he is here all the time. I think Mr. Godwin is still alive.

18 Q At the time, prior to unification, when there were annexa-  
19 tions going on of schools, do you know where the records  
20 exist of the schools prior to annexation? That wasn't a  
21 clear question. Suppose you were taking in Highland Park  
22 High School. Highland Park must have had a set of its own  
23 records prior to the time it was taken into the Topeka  
24 school system at that point. Do you know what happened to  
25 those records?

1 A No. The student records probably would have come in with  
2 a student. When the student graduated it probably would  
3 have been microfilmed and kept in the student's data.  
4 As far as business and personnel information, if the  
5 employees were brought in, that would be part of their  
6 employment, that would be part of the Personnel Office.  
7 The business area, we are getting into payrolls and stuff  
8 like that. I don't know. They are probably just brought  
9 in after so long a period of time and then may have been  
10 disposed of, but I have no knowledge of that.

11 Q Would there be records of who were the Members of the  
12 Board of Education, if they had a Board of Education in  
13 the Highland Park area, before that was annexed? Would  
14 there be records of who was on that Board or who was that  
15 Superintendent?

16 A If we had the Minutes of the Board Meetings and stuff, you  
17 would have that, yes.

18 Q Do you know whether you do have the Board Minutes or not?

19 A I do not know.

20 Q Who would know that?

21 A Wayne Warner, Assistant Superintendent of Business.

22 Q Do you know whether any of the schools that were annexed,  
23 using the term the way we explained it this morning,  
24 between 1950 and unification, were all Black schools prior  
25 to annexation?

1 A I don't know.

2 Q Do you know whether there is anyone who is currently  
3 employed by the School District who would know the answer  
4 to that?

5 A No. There might be somebody that has been employed for a  
6 long period of time that I wouldn't be aware of. I don't  
7 know of anybody that would have that information.

8 Q We talked earlier also this morning about contacts that  
9 the School District has with the real estate and housing  
10 and development community in Topeka, and since there has  
11 been relatively little of that kind of development since  
12 you have been Superintendent, there isn't much for me to  
13 get at there. Who within the School District, prior to  
14 your Superintendency, would be most knowledgeable, say  
15 someone in the '50's and '60's, during the period when  
16 there was a lot of development going on in Topeka? Is  
17 there someone who is still employed who would sort of know  
18 all those stories?

19 A Of course you would have to have somebody more at the  
20 central level and I don't know of anybody that really  
21 exists centrally. Other than the former Superintendent,  
22 who still lives here. Of course, we went back to the  
23 early '60's and then maybe some of the other Superintendents  
24 mentioned that are still alive that would have that. But  
25 as far as internally in any central office, I don't believe

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1           there is a person that would have that background and  
2           knowledge.

3   Q   Did you ever have responsibility for liaison with the Air  
4       Force when the Air Force Base was here?

5   A   No. I came here after it closed.

6   Q   We talked about the two schools you closed and opened and  
7       the one school you opened up in that one part of town?

8   A   Yes.

9   Q   Have you closed or opened any other schools since you have  
10      been Superintendent?

11   A   Yes.

12   Q   Have you closed or opened any schools other than those  
13      reflected in the long-term or short-term plans?

14   A   That is all that I have closed, been involved in.

15   Q   I think I had asked you about other openings and closings?

16   A   Yes.

17   Q   Were there other schools that have been opened or closed--  
18      I did ask that. I'm sorry. I don't need to ask it a  
19      second time. Is the racial impact of school openings and  
20      closings considered when that decision is being made?

21   A   Yes.

22   Q   How does that part of it happen?

23   A   Of course, the impact that we have always looked--anytime  
24      we make a decision in reference to significance where it  
25      involves the possibility of changing the racial balance in

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1 any school, we take that into consideration and if two  
2 buildings are being proposed to be closed and merged, we  
3 have to look at the new makeup of the enrollment in the  
4 next building.

5 Q Is there someone on staff who is essentially supposed to  
6 be reminding you each time that that is what you are sup-  
7 posed to look at?

8 A Yes.

9 Q Who would that be?

10 A Mike Tribbey submits data to us and shows us the statistics.

11 Q Is there a policy or regulation or something like that  
12 written down anywhere that requires you to look at the  
13 racial impact of those kinds of actions?

14 A No.

15 Q You adopted the '76 long-range plan during your tenure,  
16 right?

17 A That is right.

18 Q When that plan was being discussed with the Board itself,  
19 was there a discussion of the racial impact of the actions  
20 proposed in that plan?

21 A Yes.

22 Q Was that discussion initiated by you, that is, you, the  
23 staff, or the Board?

24 A I would say that when we prepared a plan and presented a  
25 rough plan to them, we outlined the racial makeup of the

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1 new buildings and as a result of outlining what the new  
2 one would be, that would create a discussion, yes, on both  
3 sides.

4 Q Was there more than they just read it and noticed it, but  
5 they actually wanted to talk about it?

6 A We talked about it.

7 Q Can you give me some flavor for what that discussion was  
8 like?

9 A I think when we would have discussions, why we would look  
10 at varying boundaries, the makeup enrollment of the school  
11 and see if that would have an effect upon the racial balance  
12 of the school. We would take those into consideration.

13 Q You might have two possible ways of achieving the same  
14 goal and you would look to see what their relative impact  
15 of those two ways would be?

16 A Yes, maybe more than that alternative. Of course, we had  
17 to weigh other things in relationship to that to just not  
18 only that, but they would have an impact.

19 Q I understand that. Where would I be able to find those  
20 alternatives in writing somewhere? I understand we are  
21 not just talking about two alternatives, we are talking  
22 about a range of questions. When you discussed alternatives,  
23 did they get written down?

24 A They may have been written down. Whether they exist today  
25 or not, I am not sure. When we developed them or presented

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1           them and as we moved along the old alternatives nobody was  
2           interested in. We would probably discard those.

3   Q    If they still existed, would they be in Dr. Tribbey's file?

4   A    Yes.

5   Q    Was he in that position that same year?

6   A    Generally the same responsibilities.

7   Q    How long has he had the responsibility of general planning,  
8           if you know?

9   A    He came here in the '74-'75 year.

10   Q    When the comprehensive 1976 long-range plans are developed,  
11           are they discussed with the community?

12   A    I think plans like that they were discussed after the  
13           Board, basically what was done, a plan was drafted and it  
14           was submitted at a Board Meeting, an open Board Meeting,  
15           and referred to our District Citizens Advisory Council,  
16           which was the essence of the community. Because it repre-  
17           sented each school attendance area and then they went out  
18           to each building that was proposed to be closed and went  
19           and presented a plan to staff and Members of the Board of  
20           Education. Not all Members maybe, but at least some. We  
21           also presented them any place anybody asked us to come.  
22           If, for example, a school was not being closed, but was  
23           receiving students, then we would go present that.

24   Q    Were Minutes kept of those meetings?

25   A    There was no set Minutes prescribed. There were notes

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1 taken by individual Board Members and administrators, but  
2 there was nothing set like a Board of Education meeting.

3 Q There have been updates of the '76 Plan? Right there is a  
4 '76-'77 update and a '77-'78 update?

5 A What we were asked to do by the Board, after the original  
6 adoption of the '76 Plan, was to review it annually and if  
7 there were any changes that needed to be made, to make  
8 changes in it.

9 Q Why might there need to be changes made based on the annual  
10 update?

11 A You could have a shift in your decline of enrollment in a  
12 specific building or you could have some enrollment data  
13 that was not available to you at the time you made the  
14 plan available. The plan itself involved enrollment pro-  
15 jections. Of course, we wouldn't know whether they were  
16 totally accurate until the actual time occurred. So we  
17 had to look at it from the standpoint of that, the impact  
18 of what it might change in financial, it could be a result  
19 of changing things that occurred during those years. So  
20 the data we used to develop the long-range plan, when we  
21 work strictly projections and the review of it annually,  
22 was what we followed through, of what we knew to be the  
23 case.

24 Q Are you still doing reviews of the 1976 Plan?

25 A No. It was completed in '81.

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1 Q Was there a new plan developed in '80 or '81 during that  
2 time period?

3 A Not '80.

4 Q Today has there been a new plan developed that is equivalent  
5 to the '76 Plan?

6 A There was a plan developed and submitted.

7 Q Is that the X and N Plans?

8 A Yes.

9 Q Is that the only plan that is equivalent of that '76 Plan,  
10 since '76?

11 A Yes.

12 Q I want to ask you about those plans, but I am going to get  
13 back to them?

14 A Okay.

15 Q I have been asking about opening and closings. I would  
16 like to talk a little about boundary line changes, internal  
17 boundary line changes, that is not the outside limits of  
18 the District, but in lines around each individual school.  
19 Are those done in ways other than through the long-range  
20 planning process?

21 A We primarily, since I have been here, it has been part of  
22 the long-range planning process. Because we have been so  
23 deeply involved in that. I think if you didn't have the  
24 long-range planning process going on, you would still be  
25 looking at attendance boundaries no matter what system you

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1 are in.

2 Q What is the process that goes into deciding whether to re-  
3 draw the boundaries between two schools? Assuming that a  
4 school isn't opening or closing. I understand you auto-  
5 matically have to do it during opening and closing.

6 A I think you would have to give consideration about if you  
7 have had an increase in students or decrease could cause a  
8 result of looking at the boundary because of the student  
9 population in any one of the schools.

10 Q Has that happened during your tenure that you had a boundary  
11 line change that wasn't as a result of an opening or a  
12 closing?

13 A I think all that I have ever dealt with, dealt with the  
14 long-range plans and the implementation of those plans.

15 Q That is not quite what I asked. The long-range plans  
16 certainly contemplates opening and closing, but does it  
17 contemplate some boundary line changes that are not as a  
18 result of opening or closing, if you remember?

19 A I think we have had some cases when we were dealing with  
20 long-range planning, that out of those discussions, maybe  
21 even community discussions, there were other attendance  
22 boundary changes proposed that were not in the original  
23 long-range plan. So, yes, we would have considered those  
24 as another alternative to what we were proposing. It may  
25 not have involved a school being closed. It may have just

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1       been one group felt that they shouldn't be put in this  
2       school. That they should be put over in this school.

3       Q   If that happens, that is, you are considering a boundary  
4       change, not as a consequence of an opening or closing, are  
5       the people affected by the boundary change notified in any  
6       way?

7       A   Yes.

8       Q   How does that happen?

9       A   Again it would depend on the Board, but normally what we  
10      would do if the Board is considering a boundary change or  
11      maybe there has been a request from the patron group to  
12      consider a boundary change, then we usually conduct a  
13      community meeting back in those schools affected and listen  
14      to the comments, and they could be written comments or  
15      verbal comments, made by the patron. Usually Board Members  
16      are in attendance, again maybe not all of them, if they  
17      are not, information from that meeting is taken back to  
18      the Board before the Board takes any action concerning it.

19      Q   Is the procedure from those kinds of meetings taken back  
20      to the Board in any written form?

21      A   Usually we present, like in a regular Board Meeting if  
22      there is a large amount of comments and so on, they would  
23      probably be put in writing if they are part of the Board  
24      presentation. But in some cases I think there has been  
25      Board Members just come back and share with other Board

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1 Members at the meeting about what occurred.

2 Q What factors go into deciding how to draw internal boundaries?

3 A I think in our situation we certainly look at the capacities  
4 of the schools involved. We look at the number of students  
5 obviously that are attending the units. We certainly look  
6 at the racial makeup of the schools that are involved. We  
7 look at the safety problems involved with students that  
8 might have to walk to the facilities. We look at transpor-  
9 tation cost that would be involved, any additional remodeling  
10 or cost along that line, basically. There may be others,  
11 but those are the ones I can think of immediately.

3-B

12 Q Is there a hierarchy in terms of which of those are the  
13 most important factors?

14 A We have not established one which would stand out number  
15 one over the others because I think again you certainly  
16 couldn't look at just racial minority or racial balance in  
17 the school without looking at capacity and things like  
18 that.

19 Q How can you determine the racial impact of a boundary  
20 change?

21 A You will look at the projections of students who are  
22 currently residing in that area, which we would be able to  
23 have and as you know from the comments on the student  
24 data base we have where students reside and we would look  
25 at the numbers involved and what impact it would have. We

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1 can also look at the race of the students that are involved  
2 and then you could use enrollment projections to see what  
3 is going to occur on down the road, but you can only go so  
4 far.

5 Q Correct me if I am wrong, I thought I understood the  
6 student data base discussions that I had with several of  
7 the witnesses to suggest that at least that the newest  
8 data you would have of the kind we are now talking about,  
9 the block-by-block data, is '82? Is that your understanding  
10 as well?

11 A I think that is correct.

12 Q If you were proposing to shift a boundary today a block,  
13 for natural or traffic flow reasons or something that has  
14 nothing to do with racial reasons, would you rely on the  
15 '82 data?

16 A It depends on the level you are at. If you are looking at  
17 a boundary range from 9th Grade level you have all the  
18 student data so you could project what your current student  
19 population is. Obviously that could change. But you could  
20 use a trending program to see what trend in the past is  
21 going to happen to these students, but it is pretty easy  
22 to project when the higher you get on the level. When you  
23 get at Kindergarten level all we can use is birth certifi-  
24 cates. We know the kids that were born.

25 Q If you were looking at high school you would look at kids

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1 in junior high and their race?

2 A Yes, and you would apply trending factors to see if they  
3 are still declining and you would estimate those populations.

4-A 4 Q I asked you some of the questions and I recognize you may  
5 not know the answer to this one either. I asked you some  
6 questions about the pre-annexation, the records of the  
7 schools that were annexed prior to annexation. Let me ask  
8 you more specifically about the boundary lines of those  
9 schools, assuming then the Highland Park annexation, for  
10 example, there was more than one school; do you know whether  
11 there exists any maps anywhere that would show what the  
12 boundary of those schools were prior to annexation?

13 A No, I do not.

14 Q Who would be the best person for me to ask to see if those  
15 exist, other than Mr. Miller, who I have already asked?

16 A From our District he would be the one. If you chose to  
17 look at the State level, you would have to look at the  
18 State to see whether they have any. I don't know. But  
19 from our District you have already talked to the one most  
20 knowledgeable.

21 Q Do any of the schools in the District, I think we talked  
22 about this, do some of the schools in the District have  
23 portable classrooms today, is that right?

24 A That is correct.

25 Q Do any of the high schools have portable classrooms?

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1 A Yes.

2 Q Which of the high schools?

3 A Topeka West has portable classrooms.

4 Q Why is that?

5 A They were placed back when--I will respond the best I can.

6 I am not sure how accurate that would be, but as I under-

7 stood when the building was built it was built for a

8 certain capacity and we had at that time a growing popu-

9 lation of kids and all of the schools, high schools, were

10 pretty high in capacity. We had a lot of students and as

11 we had more building going on in the western part of the

12 District we have, of course, gained more students there

13 and they were placed there to accommodate the students who

14 were residing in the Topeka West District.

15 Q Do you know why the decision was made to put portables

16 there rather than to build additions?

17 A I don't know.

18 Q How about, do you know why the decision was made to put

19 portables there, rather than to put portables at Topeka

20 High, for example?

21 A It is my understanding at the time, I may stand corrected,

22 Topeka High was at the top enrollment at that time. As a

23 matter of fact, I think had an enrollment that exceeded it,

24 reached the point of its very capacity and because of the

25 number of students I think at Topeka High we probably had

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1 2,200 or 2,300 versus at West I think at that point probably  
2 had some in excess of 1,400. So that the feeling I would  
3 guess, I was not part of it, would be to put it at the  
4 smaller school and I think the site size would explain  
5 that. The site of Topeka High is very limited, and to  
6 place portables on that site it would be very difficult to  
7 find a place to put them.

8 Q Did you currently have portables in use in any of the  
9 middle schools?

10 A We have two at Landon, but they are being removed this  
11 summer.

12 Q Why are they still around if the population of the middle  
13 schools has been declining and if in fact you only need  
14 four or five little schools and have six?

15 A Those portables were put there several years ago prior to  
16 me coming into the District and as you know, when you don't  
17 take them off the site, there is always somebody that  
18 generates a use for them. Quite honestly, they have not  
19 been needed for several years and it is a matter of whether  
20 you want to assign a teacher to a classroom for an hour  
21 and then the next hour they rotate. You can meet that  
22 standard or you can just leave that classroom for that  
23 teacher. What they have done at Landon, the Principal did  
24 that and I finally said no more portables. Move them  
25 off. I want to get rid of them. I want to move them out

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1 because of the condition of them. They were getting very  
 2 bad and I was concerned about the safety problem with them.  
 3 It is how you staff a building. If you staff a building  
 4 very compact and don't have a teacher to have a room to  
 5 themselves, you can make the capacity very high.

6 Q Do all the high schools have teacher lounges?

7 A Yes.

8 Q Do the middle schools have teacher lounges?

9 A Yes.

10 Q Do elementary schools have such things?

11 A Yes. If we didn't have those we would hear from them.

12 Q I believe that. How did you hear about the fact that the  
 13 Landon portables were beginning to physically deteriorate?

14 A I have seen them.

15 Q How often do you get into every school?

16 A I try to visit every school every year.

17 Q Is it on a regular basis, you are always at Topeka High in  
 18 September?

19 A No.

20 Q And always at Topeka West in October?

21 A I just ask the Area Directors to sit down and work out a  
 22 schedule based on my calendar and they work it out and put  
 23 it on the calendar. It is never the same. It is whenever  
 24 they can get it on the calendar.

25 Q Are there currently portables in use in the elementary

1 schools?

2 A Yes.

3 Q Which schools, if you recall of them?

4 A I may not get them all. Hudson Elementary School has  
5 portables. Lafayette did have some, but I think they are  
6 gone now, very recently, they moved last year. McEachron  
7 may still have one or two left. Although they may be gone  
8 by now. I think that is about it. I may have missed one  
9 some place.

10 Q The ones that are still around, why are they still around,  
11 for any reasons other than the ones we talked about for  
12 the high schools and middle schools?

13 A They primarily are there because of special programs that  
14 have been put in the school that is sort of small instruc-  
15 tional space they did not have. This primarily, those  
16 portables are being used for a small instructional program  
17 of five or six kids. Since we didn't have space internally,  
18 that would handle them, why we had to leave them there.

19 Q There are no optional attendance zones currently, is that  
20 right?

21 A That is right.

22 Q Did that end while you were Superintendent?

23 A Yes.

24 Q Why did you end it?

25 A Of course, when I came here as Superintendent there was

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1 several optional attendance areas to the point that I felt  
2 that they were hard--for me to keep track of everybody and  
3 it created a lot of problems in trying to administer. I  
4 didn't really formulate the reasons for them, but at least  
5 had to deal with them and when we were progressing through  
6 the development of a long-range plan, one of the assumptions  
7 we wanted, it was to eliminate all optional attendance  
8 areas. Because I felt with that it would be an easier  
9 plan to administer with a different transfer-type plan and  
10 I just felt that the people in the community should all  
11 have access to the transfer plan.

12 Q The negative feeling you had about optional attendance  
13 zones was that you, as opposed to the Board, I understand  
14 they supported you, but was it at largely your initiative?

15 A We did recommend that they be eliminated because I didn't  
16 feel that they should be expanded. It is like any situation  
17 like that, you need to make a decision whether you are  
18 going to have them throughout the District or not have them.  
19 I felt from the standpoint of administration that it would  
20 be the best remedy to eliminate them.

21 Q Did race play a role in that at all? Did you look at the  
22 racial impact of the optional attendance zones? Was that  
23 a prior consideration?

24 A Yes. Not the only, that wasn't the only thing.

25 Q I am not suggesting it was. How would you look at that?

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1           Would you ask someone on your staff, give me a report on  
2           what the impact of these zones are?

3   A    You could look at the student population that reside within  
4           the zone. That again would be in Mike Tribbey's area.

5   Q    That was my next question. It is also true that you no  
6           longer have optional enrollment, is that right?

7   A    That is correct.

8   Q    Let me ask again on optional attendance zones, when you  
9           were talking about eliminating optional attendance zones,  
10          did you make any effort to find out when or why they had  
11          initially been instituted?

12   A    No.

13   Q    Why was open enrollment stopped?

14   A    One of the things involved, of course, I guess you could  
15          look at the transfer policies as all being open enrollment  
16          with certain restrictions on it and we had a transfer plan  
17          that you asked me why it was stopped.

18   Q    Yes.

19   A    In that transfer plan, it allowed - called open enrollment,  
20          allowed people to attend schools of their choice. What  
21          really occurred from that plan was not so much elimination  
22          of open enrollment, it was to put a restriction on that  
23          transfer plan. So if you looked at the open enrollment  
24          and the transfer plan, the transfer plan today has a  
25          restriction placed in it. It still gives everybody in the

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1 School District an option to transfer if they so choose as  
2 long as they prescribe to the restrictions that came about.  
3 I think probably as we had the other plan dealing with that,  
4 we automatically put that restriction in there. There was  
5 nothing that I remember seeing that would point out that  
6 the open enrollment plan was negative. It is just that I  
7 think that again the composition of the Board changed.  
8 The feeling from the community about the plan was presented  
9 and the Board chose to put another restriction in it.

10 Q Did the restriction you are talking about, the one that  
11 has to do with minority transfers?

12 A That is right, and they put restrictions on capacity and  
13 things like that, that all kinds of fit in together.

14 Q Sticking with the minority-majority transfer restriction,  
15 was that a staff-generated idea or a Board-generated idea?

16 A The DCAC again studied open enrollment and they did not  
17 recommend to do away with it, but they recommended it be  
18 monitored closely and considered some restrictions if  
19 things did move to a negative point. I think out of those  
20 recommendations the Board administration considered it and  
21 decided to do that.

22 Q Do you recall whether the administration specifically  
23 recommended that the racial restriction, as it now exists,  
24 be adopted?

25 A I think in the end result, of course, on a major policy

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1 like that we work with the Board. So I think we were in  
2 joint agreement. As to who initiated specifically to the  
3 point, I am not sure I could testify to that.

4 Q Where within the District would I find the paper trail on  
5 the ending of open enrollment, the memos that were written  
6 back and forth? I know where the Board Minutes are that  
7 reflect the discussion, but the internal staff discussions  
8 that were written down, that decision?

9 A I don't know. I might have some. I don't know whether I  
10 do or not. Probably since it is more at Board level there  
11 might be some information that came from the DCAC that  
12 would be a record.

13 Q Do you know? I don't want to go through all the little  
14 tiny intricacies of the current transfer policy. What I  
15 am interested in is the grandfather question, the kids who  
16 had already transferred under open enrollment or their  
17 siblings and how they were handled. Is there somewhere in  
18 writing where I could track down all those little intri-  
19 cacies?

20 A If you go back to the Board of Education policy, if some-  
21 body still has copies of those old ones, which show the  
22 wording of the policy as it changed, that would be the  
23 best source I would know of.

24 Q Do you know whether the policy has changed since it was--  
25 since that minority-majority part of the transfer policy

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1 has changed since the time of the closing of enrollment?

2 A If the majority-minority restriction has changed?

3 Q Right.

4 A I don't think so. I think it is pretty much what it was.

5 Originally when it was in the process of changing, the

6 Board acted upon the first year of it based on schools.

7 They said this year this school is closed for this. This

8 school is closed for that. This one is open. Then we

9 generally rewrote the policy to apply. But they dealt

10 with it on what it was that first year verbally by school,

11 but we changed it and put it in general policy. We actually

12 put in process the policy what we had done.

13 Q I may have asked this, if I did, I am sorry, but I am not

14 sure whether I asked specifically whether in your opinion

15 the ending of optional attendance zones had a negative or

16 neutral effect on racial balance in the schools?

17 A From where we were before in the old policy, I saw almost

18 no effect of anything occurring under that. When you put

19 the restrictions in, obviously there is only one way that

20 it can go. So if you look at it from that standpoint, you

21 could be assured it is not going to increase 100%.

22 Q I switched back to optional attendance zones.

23 A I'm sorry. I wasn't listening very good.

24 MR. SEBELIUS: Let the record reflect in his mind Mr.

25 Hansen switched back.

1 MR. HANSEN: I did it with my eyes. I may not have  
2 done it with my mouth.

3 A Maybe you stated it, but I wasn't listening.

4 Q (By Mr. Hansen) What I was looking for, optional attendance  
5 zones negative or positive effects?

6 A I don't remember looking at any information that can tell  
7 me one way or another on that one.

8 Q The '76 through '81 long-range plan, there were a lot of  
9 activities that took place as a result of that plan?

10 A Right.

11 Q Do you think those activities had a positive, negative or  
12 neutral effect on racial balance?

13 A They had a positive.

14 Q In what way?

15 A By closing schools and merging schools we were able to  
16 significantly lower minority percentages in schools.

17 Q Do you have in your mind a rule of thumb whether the  
18 minority percentage currently in Topeka is too high?

19 MR. SEBELIUS: In any respect?

20 MR. HANSEN: Students.

21 MR. SEBELIUS: In view of what, educational achieve-  
22 ment?

23 Q (By Mr. Hansen) I gather you think the racial balance is  
24 an important goal for the School District, is that right?

25 A Yes.

1 Q Do you have a formulation in your mind as to what racial  
2 balance is, what kind of numbers you are striving for?

3 A I don't personally feel that I can just tell you a number  
4 where everything is "great." My feelings have been in  
5 this system that what we should be doing is everything we  
6 deal with in decisions should be to improve the minority  
7 percentage no matter what building it is and to say whether  
8 it should be 40, 45, 50 or what, I have no educational  
9 philosophy that will say one is better than the other.

10 Q You don't have a rule of thumb as to what is the best  
11 possible situation? Do you have a rule of thumb as to  
12 what is completely unacceptable?

13 A I wouldn't want 100% minority school, no.

14 Q Is there anything short of 100% minority school that would  
15 be totally unacceptable to you?

16 A I think the closer you can get to the 50% area you are much  
17 better there.

18 Q Are you troubled then by the fact that there is still a  
19 couple of schools that are above 50% minority?

20 A I am not troubled. I think from my standpoint that any-  
21 thing that we do we should move towards lowering those  
22 percentages.

23 Q Do you currently look at the cumulative facts of the  
24 transfer policy in terms of racial balance?

25 A I haven't for a while, but I have, yes.

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1 Q Who would give those reports to you?

2 A Mr. Miller.

3 Q I know that in the mid-'70's the School District hired a  
4 couple of people, Gordon Foster and Bill Lamson, to look  
5 at the question roughly of racial balance in the public  
6 schools. Were you around for that process?

7 A I was here in Personnel.

8 Q Did you sit on Administrative Council discussions when  
9 they were heard?

10 A Mr. Bolton was the Superintendent at that time and he did  
11 not have what we term our Administrative Council at that  
12 time and I had very little involvement in it at that point.  
13 Because I think I was more in Personnel at that time than  
14 I was over Assistant Superintendent.

15 Q Did you ever have discussion and opinion whether theirs  
16 was a good plan, bad plan or neutral plan?

17 A I don't think I have ever seen their plan.

18 Q Has the School District hired anyone like that since then?

19 A No.

20 Q Does the School District utilize consultants?

21 A Yes.

22 Q Does a consultant's contract have to be approved by the  
23 Board?

24 A Usually almost in every case there would be. There might  
25 be times where a certain amount it might not be involved,

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1 but I think all consultants we have had have been approved  
2 by the Board.

3 Q I take it when the Board approves it, I take it you have  
4 to tell the Board what the consultant is going to do and  
5 why you have hired them?

6 A Yes.

7 Q Do you use consultants on a long-range process at all?

8 A We have not.

9 Q When I was asking about the table of organization this  
10 morning -

11 A I might correct that and say if we are looking for some  
12 trending statistics that maybe we didn't have the computer  
13 program to do, we may have gone off and hired like the  
14 University of Kansas to do that for us.

15 Q When I was asking about table of organization, I didn't  
16 ask about in-house lawyers. Do you have any lawyers on  
17 staff?

18 A No.

19 Q This firm takes care of all your needs just fine. I guess  
20 then I am done with a lot of those "planning" and "opening"  
21 and "closing" kind of questions. I would like to talk  
22 with you a little bit about the '74 HEW discussions. Were  
23 you around for those discussions?

24 A Yes, correct. Some of them started before I became  
25 Superintendent. The majority of them came after.

1 Q I have looked through a lot of the papers that relate to  
 2 the '74 issue, HEW discussions and I can find no record of  
 3 the School Board either agreeing or disagreeing with the  
 4 allegations that HEW is making about the District. Do you  
 5 know whether such a thing exists?

6 A No, I don't.

(Gray Deposition Exhibit Number 1 was  
 marked by the court reporter.)

7  
 8  
 9 Q (By Mr. Hansen) I have marked as Gray Exhibit 1 a letter  
 10 dated January 11, 1974 from the Department of Health,  
 11 Education and Welfare, signed by Taylor August, Director  
 12 of the Office of Civil Rights for Region 7 to Dr. Merle R.  
 13 Bolton, Superintendent of Schools. It is a 3-page letter  
 14 and the copy I have is actually four pages, because it has  
 15 the envelope attached to it. Do you recall ever seeing  
 16 that letter?

17 A Yes.

18 Q Starting on Page 2 it lists right at the top of Page 2, it  
 19 says, "We have discovered non-compliance in the following  
 20 areas." It then lists four areas. I am not characterizing  
 21 that. The letter characterizes it as four others. I would  
 22 like to go through each of those four areas and have you  
 23 read what the letter says about it and ask you whether you  
 24 currently have an opinion--no, that is not--what I want to  
 25 ask, whether you recall whether you had an opinion at the



1 time as to whether you would agree with what HEW said in  
2 each of those four areas. I am asking you now not whether  
3 your opinion is true today, but whether you recall at the  
4 time whether you had a feeling on it or not?

5 A Number one says--

6 MR. SEBELIUS: Will you identify that?

7 A It is dealing with stating five schools, elementary schools,  
8 and their opinion of disproportionately higher minority  
9 student composition and saying that we should take action  
10 to eliminate building pattern assignment at the time and  
11 when I looked at this, I would have to say that these  
12 schools did have a higher minority and I felt they were  
13 high minority schools in our school system. As to whether  
14 I would say they were disproportionate, I think would have  
15 to be defined at that point, but I will say it felt at  
16 that time they were high minority.

17 Q Troubling high?

18 A I felt they would have to be the ones we would have to  
19 deal with in doing something, yes.

20 Q How about Number 2?

21 A When we first looked at that we felt that this was erroneous  
22 because we weren't real sure about what they meant. When  
23 we met with them and discussed with them we found out that  
24 they were referring to the Lafayette School and that there  
25 were students who have been placed in Lafayette School who

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1 did not reassign in that area and I think what they were  
 2 looking at were the Follow-through kids I believe or Head  
 3 Start-Follow-through, I believe, and when we explained to  
 4 them that that was a Federal program and those kids were  
 5 placed there as a Federal program, then they said that  
 6 wasn't an issue with them.

7 Q If you would turn to Number 3?

8 A This deals with most minority junior high school students  
 9 in attending schools which are generally inferior in  
 10 facilities to the junior high schools most White students  
 11 attend. Then they mention the schools, the four highest  
 12 minority and the four lowest minority. Then Sub Section B,  
 13 most minority students attend junior high schools that are  
 14 significantly older, smaller in general classroom sizes  
 15 along with acreage and smaller in size facilities. When  
 16 I first looked at that, I felt it was correct, that the  
 17 schools mentioned were the highest minority schools and  
 18 the lowest minority schools. There is no way you can  
 19 refute the fact that that was the case. When they talked  
 20 about schools, I felt that it was obvious that the schools  
 21 they mentioned that did not have as large a classrooms as  
 22 some of the sites. Some of the general classroom size  
 23 wouldn't have because the ones they cited as lower minority  
 24 were new schools that had been constructed as a result of  
 25 the growth of the District and the schools that they had

1 mentioned on the other end were schools that had been here  
 2 for quite some time or had been annexed by the school  
 3 system in, and therefore, wouldn't be the oldest facilities.  
 4 As a result, classroom sizes would be smaller because they  
 5 were built under different educational specifications than  
 6 the earlier ones.

5-A

7 Q Calling your attention specifically to the first sentence  
 8 of 3-A, which is "Most minority junior high students in  
 9 Topeka attend schools which are generally inferior in  
 10 facilities to the junior high schools most White students  
 11 attend." Again, as of that time did you feel that sentence  
 12 was accurate?

13 A I took issue with the fact, ".generally inferior facili-  
 14 ties..." If you say you can consider a school inferior  
 15 because it is thirty years older than another building,  
 16 then you would have to say yes. But I didn't consider the  
 17 building inferior because it was older. Obviously, if it  
 18 is an older building it is not going to have 1,000 square  
 19 feet in the classroom. But at the time it was constructed  
 20 for the informational program it was considered what it  
 21 should be. In my mind, as an administrator, I have to  
 22 look at the data behind the building and that is the fact  
 23 that this building was constructed during this era and  
 24 this one during this era and they are going to be different  
 25 when you compare them. They are not going to be the same

1 type of facility. So my concern out of the thing is we  
2 need to do, if we need more classroom space in the current  
3 standards, then we need to enlarge or do something to  
4 accommodate that. I felt we should do something with  
5 those facilities, but I didn't feel that I could say that  
6 they are inferior because they were built thirty or forty  
7 years apart.

8 Q Item Number 3, if I recall correctly, was based upon a  
9 consultant that HEW retained who looked at the junior high  
10 schools. Is that the way you remember it as well?

11 A I remember that we had a study from a consultant hired by  
12 HEW and he made some comment about it, yes. Obviously  
13 based on the HEW letter he was purporting to take a look  
14 at relative quality of the junior high schools in the  
15 District.

16 MR. SEBELIUS: I think that may be an accurate--or  
17 inaccurate assumption. I don't see anything in the letter  
18 that suggests the consultant arrived at that conclusion.

19 MR. HANSEN: I don't think I, unfortunately, have his  
20 report.

21 MR. SEBELIUS: All I am saying is, your statement  
22 assumes a fact that really is not established by the testi-  
23 mony of Dr. Gray or established by the deposition exhibit  
24 that has been marked.

25 MR. HANSEN: I don't have it, either.

1 Q (By Mr. Hansen) Do you recall whether you had concerns  
2 other than the one we just talked about with the methodology  
3 the consultant used?

4 A I did not attend with the consultant when he visited our  
5 building. I can only report what the administration said  
6 that did go with the consultant. They said he walked into  
7 the building, walked down the hall and walked out the other  
8 end and made his analysis on the building. Whether he did  
9 or not, that of course is perception. He had data available  
10 on the building through our facility's office anyway. But  
11 I didn't get into any argument or anything with him about  
12 it. I knew who he was and that he came here and I never  
13 attended with him, so I don't know where he got that.

14 Q Has the School District, since '74, tried to do one like  
15 the consultant did, tried to compare schools?

16 A We haven't compared schools. What we have done as a  
17 result of having Dr. Tribbey here, we have gone through  
18 all our facilities and we have looked at each one of them  
19 and determined what needs to be done to the building.  
20 Whether it needs a new media center. I am talking about  
21 physical facilities right now. We have gone through every  
22 aspect of that and out of that, of course, that is part of  
23 the long-range plan part of it was closing buildings and  
24 constructing new ones. Part of it was remodeling some and  
25 closing others. So, yes, I would have to say we did

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1 extensive--

2 MR. HANSEN: Off the record.

3 (An off-the-record discussion was had,  
4 after which the following proceedings were  
5 held.)

6 (Gray Deposition Exhibit Numbers 3 and 4  
7 were marked by the court reporter.)

8 MR. HANSEN: The record should reflect that we made  
9 an effort to track down the document I asked for before  
10 the break and we were all jointly unsuccessful. During  
11 the break we marked Exhibit 3, something called the Topeka  
12 Schools Plan - A Study of School Building and Site Needs,  
13 dated April, 1958, and as Exhibit 4 a document entitled  
14 Tentative Plan for a More Perfect Unitary School System  
15 for Topeka Unified School District Number 501 for imple-  
16 mentation at the beginning of the 1974-1975 school year.  
17 Since we pre-marked those, there is no sense in re-marking  
18 them, but the record should reflect there is now no longer  
19 an Exhibit 2 since we contemplated the Plan we can't find,  
20 being Exhibit 2.

21 Q (By Mr. Hansen) I suppose I should ask you about that  
22 Plan, since none of us can find it. Going back to the HEW  
23 letter, to the School District letter, the letter of  
24 January 11th. We went through Items 1 through 3. Did you  
25 have a reaction at the time to Item 4?

1 A I think my reaction on Item 4 would fall in the same  
2 reaction to the Item 3. That 4-A indicates that it is a  
3 significant larger percentage of minorities compared to  
4 that of inadequate Kindergarten rooms. I would disagree  
5 with the comment of "inadequate." I would say like in  
6 "3" that the Kindergarten rooms in the higher minority  
7 schools were smaller and such as that. I would not say  
8 that they were inadequate rooms. They were again built in  
9 a period where they probably didn't even have Kindergarten  
10 and some of the more recent ones do that, were built with  
11 Kindergarten rooms in mind. As far as the media center,  
12 my reaction on that, this is the B part of the form, again  
13 the older facilities of smaller media centers, because at  
14 the time they were constructed they didn't even have media  
15 centers in schools, so therefore, most of those areas were  
16 taking classrooms and knocking out a wall and making a  
17 media center for two classrooms.

18 Q Has the School District done any building? By building,  
19 comparisons like those reflected in Items 3 and 4 of the  
20 HEW letter, since '74?

21 A I believe as we have upgraded our long-range plan and we  
22 dealt with our capital improvements, we analyzed our needs  
23 throughout the system based on the capital improvements  
24 group looking at the request and some of them may be  
25 enlarging media centers. So we dealt with specific items

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1 that we commented on. We haven't done it from the stand-  
2 point of saying, how is it compared to this school. We  
3 have done it on a requested need, as we upgraded all the  
4 media centers and things like that.

5 Q Let me show you Exhibit 3 which was previously marked,  
6 which is the Topeka Schools Plan, April, 1958, done by the  
7 Bureau of Educational Research in Denver. Are you familiar  
8 with that?

9 A I have seen the Plan and skim read it a little bit, not in  
10 total.

11 Q It, as you will recall or as you may recall or if you want,  
12 you can refresh your recollection by looking at any school,  
13 it purports to give a numerical score for each school, a  
14 very specific numerical score for each school. Do you  
15 have any opinion as to the methodology that was used by  
16 that study?

17 A No, I do not.

18 Q Has the District done, other than this '74 or '75  
19 characteristic study that none of us can find at the moment,  
20 has the School District done anything like the '58 Denver  
21 study since you have been around?

22 A I don't know as we have done a study. We have on file of  
23 each building and its layout, which indicates with a  
24 classroom space, small instructional space, and we try to  
25 update that as we change it. I don't think we have gone

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1 in and done any rating of schools. I know we haven't done  
2 any where we rate schools according to that.

3 Q Do you think that can be done, schools can be rated?

4 A The only thing I can look at, I was in Yonkers, New York  
5 and they had a serious situation where they had to use  
6 schools and they did not involve any of the community.  
7 They just developed a check sheet and went through it and  
8 checked off the sheet and then the ones that came out with  
9 a certain rating is the ones they closed. I felt there  
10 were other things that needed to be involved rather than  
11 just going through and checking the school on site, size  
12 and so on. So I guess you can use the checking system  
13 somewhat, but not totally.

14 Q The '58 Plan that we have been talking about, and to some  
15 extent the '74 one, that we haven't got in front of us,  
16 are primarily building conditions, site condition, physical  
17 plant-related criteria on which the scores are being given.  
18 Do you think there is a valid way to do the equivalent  
19 thing in talking about the instructional program?

20 A I think you would have much more difficulty in doing that  
21 with an instructional program. Because you have got so  
22 many unmeasurable type items that you have to deal with.  
23 You can, of course, deal with the size of your media center,  
24 but the size of your media center, for example, I am  
25 talking about numbers of books. Maybe you might have 10,000

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1 items in a media center, but 5,000 are duplicative. So  
2 you don't go by numbers. You have to do a title check to  
3 find out if you have ten copies of this or that. So just  
4 to look at numbers doesn't mean anything. A lot of them  
5 are more student related and it would be hard to measure.  
6 So I think it would be extremely difficult to do that.

7 Q Impossible to do that or just extremely difficult?

8 A I think it would be impossible to do that.

9 Q Have you ever seen someone make a stab at that?

10 MR. SEBELIUS: At what?

11 Q (By Mr. Hansen) At doing the kind of things the '58 study  
12 does for buildings and size for instruction?

13 A You would find in districts where districts have their  
14 curriculum laid out. Like it would be things they can  
15 lay out, course numbers, objectives, textbooks. Obviously  
16 they select things like that, the measurable ones. But to  
17 get in and try to define the internal aspect of curriculum  
18 beyond test scores or actually what is taught in the  
19 classroom, would be very difficult.

20 Q Do the teachers in 501 sometimes have any performance  
21 measures? I am not sure I know what I am looking for.  
22 What I think I am looking for is things like if 80% of the  
23 kids in that particular teacher's classroom doesn't improve  
24 in reading during the year, that pops up in some way, and  
25 the school administration learns about it? Or if they

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1 don't improve in Math in some way that pops up and the  
2 school can look at it and see why that problem has occurred.  
3 Has anything like that occurred?

4 A We don't have anything to say a cutoff. We take our test  
5 scores when they are administered and we get back the  
6 results on the test. We then forward that back to the  
7 building, and the building Principal gives each teacher a  
8 copy of their test data. So each teacher then analyzes  
9 what she's done and if there has been a drastic drop, I am  
10 sure the Principal and the teacher are going to discuss  
11 about what the problems are and what needs to be done to  
12 help it. But that is not done districtwise. That is done  
13 at the building level.

14 Q Let me ask you next about Exhibit 4, which is the Tentative  
15 Plan for a More Perfect Unitary School System. I don't  
16 know how many pages long. The numbers don't seem to be  
17 consecutive. I can't explain that.

18 Q Are you familiar with this Plan?

19 A Yes, I have seen it.

20 Q Did you play any role in preparing it?

21 A I was not Superintendent at the time this was adopted by  
22 the Board. I think primarily it was prepared by the  
23 Planning staff. I won't say that for sure. I think that  
24 is right. I don't remember sitting down and working out  
25 this myself, no. I could have been involved in some

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1 meetings on it, but right now I do remember the document.

2 Q Is there someone currently employed by the Board that would  
3 have been heavily involved in the preparation of that docu-  
4 ment?

5 A It possibly would be Mike Tribbey if he were employed at  
6 this time. If not, it would have to be Mr. Miller. That  
7 is the type of data they would have.

8 Q I would like you to look at the second page of the docu-  
9 ment. There are eleven items on the second page.

10 A Yes.

11 Q That is the one I want you to look at. The way I read  
12 that, those are essentially the end results that the Plan  
13 is designed to achieve. Is that your understanding of  
14 that list as well?

15 A Yes, from looking at it, that is what it would be.

16 Q If I wanted to find out how, take Item 1 as an example,  
17 Item 1 talks about losing a list of schools that starts  
18 with Belvoir. If I wanted to find out how those schools  
19 were picked as the schools that the District was proposing  
20 to close and how they came to be incorporated in this Plan,  
21 do you know how I would go about finding the papers that  
22 would reflect that?

23 A The only thing, if it was prepared by the Planning Department  
24 and they kept any working papers. I don't know whether  
25 they would or not.

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1 Q Do you recall seeing those eleven things at the time the  
2 Plan was being developed?

3 A Most of all, I recall the first page because I think it  
4 was used in a news release, part of it. I am sure, I  
5 don't recall all of it now, but I am sure I have seen it.

6 Q Was this Plan that we have marked as Exhibit 4 prepared  
7 responsive to the HEW complaint?

8 A It is my understanding that this Plan was put together and  
9 it falls around Item Number 11, Plan to be implemented, if  
10 approved by HEW and the Board of Education of Unified  
11 School District Number 501, at the beginning of the '74-'75  
12 school year. I think this explains it.

13 Q Is it your understanding that this Plan would not have  
14 been done in this form if it had not been for the HEW  
15 complaint?

16 A I could not say that for sure.

17 Q Let me ask you about Item 6 of the eleven items. Let me  
18 read it into the record so everybody knows what we are  
19 talking about. "Adopt policy to ensure that no school will  
20 be allowed to become racially isolated in excess of 50%  
21 minority composition." Do you know where the 50% number  
22 came from, that is in Item 6?

23 A No, I do not.

24 Q I take it that policy was never adopted, is that right?

25 A That is correct.

1 Q There is no policy that would be the equivalent of that  
2 policy currently, is that correct?

3 A That is correct.

4 Q Do I also take it that Mr. Tribbey would be most likely to  
5 know where that 50% number comes from?

6 A If he presented this, I think it would be his department,  
7 he would know better than anybody in the system on this.

8 Q The next thing I want to ask you about is the only other  
9 one on that list is Number 9, which has to do with the  
10 assignment of programs like Head Start and Follow-through?  
11 Does Number 9 reflect current policy?

12 MR. SEBELIUS: For the sake of clarity of the record,  
13 perhaps we ought to read that one in.

14 MR. HANSEN: Sure.

15 Q (By Mr. Hansen) Nine says, "Assigned special programs  
16 such as Head Start, Follow-through, Special Ed. and other  
17 alternative programs in such a way as to not create  
18 racially isolated school centers?"

19 A I think currently, of course, we do not have Follow-through,  
20 but people in Head Start they are more preschool group and  
21 when we mentioned that letter of citation about the inter-  
22 assignment of students like this for those in the Federal  
23 program, there didn't seem to be a problem. So we have  
24 Head Start in one facility. Now it is by itself. Special  
25 Ed. programs we consider, I think we can make any assignment

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1 of special programs as to what effect it has upon the  
2 building itself. More than anything else we try to put a  
3 Special Ed. program in an area where a lot of students  
4 reside, as best as possible. As that changes the facility  
5 could change. Although, I don't think that we are going  
6 to do anything that would create a problem for the school  
7 that is going to be assigned to.

8 Q Have you looked at the Special Ed. race numbers, the  
9 Special Ed. program in Topeka disproportionately minority?

10 A I don't know. If I might say, that Special Ed. program we  
11 have to assign students that program based on their eligi-  
12 bility for it and we have to stand up for that eligibility.  
13 So we only put students in Special Ed. who are qualified  
14 for Special Ed.

15 Q I can't find my note on it at this point, but I think it  
16 was with Mr. Miller, he talked about a free-standing  
17 program, Adventure Center?

18 A Yes.

19 Q Can you describe to me a little bit what that is?

20 A It is a program that is housed at old Rice Elementary  
21 School. We call it the Adventure Center now and it takes  
22 5th Grade students from across the District and it keeps  
23 them there for two weeks at a time. We try to mix the  
24 students based on sex, race and socio-economic level so  
25 that we will have students from higher economic as well as

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1 students from lower economic, et cetera. We provide pro-  
2 grams there in specialized areas that you would not normally  
3 find back in a regular elementary school and we do that to  
4 more enrich the program for all the youngsters and all the  
5 5th Grade students will go there. We have had in the past  
6 3rd Grade students who will attend there. I think it has  
7 been for a two-day period and with the same setup. So we  
8 have a variety of what we consider a pretty creative enrich-  
9 ment program.

10 Q Does every 5th grader go there sometime during the year?

11 A Yes.

12 Q There appear to be from the reading of the Board Minutes  
13 from around the '74 time period, other committees, other  
14 than the DCAC that we talked about this morning, that were  
15 involved in discussing what should happen in '74, both in  
16 terms of long-range plans and in terms of response to HEW.  
17 Do you recall that?

18 A Yes.

19 Q One that I recall seeing was the acronym, was CACE. Do  
20 you recall that committee?

21 A That was the original Board of Education Committee. It is  
22 now called DCAC. It was originally called Community  
23 Advisory Council for Education or something like that, so  
24 that was the first citizens group established by the  
25 Board.



1 Q Do you recall when it was established?

2 A It would have been I think around '74.

3 Q Most of the time in the Board Minutes they refer to this  
4 only by acronym, because everybody knew what they meant  
5 and referred to. So I am going through the acronym to  
6 understand what they were. The next one I wrote down was  
7 the COBME, which may have been, I am not sure, the Committee  
8 On Better Minority Education?

9 A There was a committee called the Coordinating Committee  
10 for the Black Community. That is the only one I remember.

11 Q Is there an equivalent one that exists today?

12 A Yes, it still exists.

13 Q Does the School District have contact with that committee?

14 A Yes.

15 Q What form is that contact?

16 A It would be through Mr. Forrest Slaughter's office and I  
17 don't believe they are on DCAC right now, but they are not  
18 really active. They are still in existence.

19 Q The only other one I wrote down was CAC, which I believe  
20 is Community Advisory Council?

21 A That probably was the same one that the Board, when we  
22 first organized the committee, they had two or three  
23 acronyms because they went to DCAC.

24 Q There appears to be a reorganization of that at some point  
25 in the mid '70's. Do you recall that? Maybe it is when

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1 CACE turns into DCAC. Do you recall that reorganization  
2 and why it took place?

3 A I think that the original CACE Committee had a limited  
4 scope and was not to be a standing committee. The Board  
5 had provisions that they would not have any standing  
6 committees and once the CACE Committee operated for I think  
7 about a year, it may have gone two years, then the Board  
8 decided they wanted to establish a standing committee.  
9 That is when they directed us to set up the DCAC with a  
10 set of constitution bylaws, to deal with other than just  
11 one or two items.

12 Q I think you said a second ago that the - I have forgotten  
13 now what the title was, the Coordinating Committee for the  
14 Black Citizens of Topeka?

15 A Coordinating Committee for the Black Community, yes.

16 Q You said they are not in the DCAC?

17 A I don't believe they are active like they used to be. We  
18 had the NAACP on there. They have been, but they are not  
19 attending. So I am not sure. We have some groups and  
20 various minority communities represented.

21 Q Who decides what community groups get a slot on that  
22 committee?

23 A Initially in the beginning, we wrote all of the "considered  
24 agencies" in the community of any size that would be  
25 recognized, more like League of Women Voters and things

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1 like that, and said we were organizing a group and would  
2 they have an interest in that. We initially had more than  
3 we could accommodate. Because we didn't want to make the  
4 committee so big it couldn't operate. The Board made the  
5 final decision as to who would be on the initial committee.  
6 Since that time the committee asks to be considered to be  
7 placed on there. Then we carry that request to the Board  
8 of Education. But in order to expand that, that has to be  
9 a decision of the Board.

10 Q Has that happened during your tenure, new committees?

11 A I think we have added one or two and deleted one or two,  
12 yes.

13 Q Did the staff make a recommendation to the Board when this  
14 issue arose?

15 A We researched the group and made a report to the Board,  
16 and I think we did make a recommendation on that addition.  
17 But basically, under the constitution bylaws, the group is  
18 eliminated if they don't attend the meeting. So that  
19 takes care of itself.

20 Q The DCAC has officers to it?

21 A Yes.

22 Q How are they selected?

23 A By their own group.

24 Q Is there a city-wide PTA or PTO?

25 A Area Council PTA, which is normally the City Council for

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1 all the branch councils. But through inactivity on their  
2 part--there is a lot of activity at the building, but not  
3 at the District level. The Area Council just disband, so  
4 we have that building. We have a PTA in some buildings  
5 and some buildings we will have PTO, which is Parent  
6 Teacher Organization. Primarily they operate so they  
7 don't have to pay dues to PTA, that is the reason. PTA  
8 you have got to pay national membership. In high schools  
9 we will have usually the Booster Club, although there could  
10 be other organizations. We primarily leave that at a  
11 local level.

12 Q When we were going through your resumé, one of the things  
13 I failed to ask you was whether you ever testified before?

14 A Yes.

15 Q In what context?

16 A It was on behalf of the Board of Education as an admini-  
17 strator in court.

18 Q What was the nature of the case?

19 A The first one was when I was in Shawnee Mission, I testified  
20 on a litigation involving the interpretation of a piece of  
21 legislation dealing with negotiations.

22 Q Any others?

23 A I think that is it on that. I was involved in litigation  
24 in this system.

25 Q That is what I was going to ask you.

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1 A This again was in reference to negotiation, items dealing  
2 with negotiation and it was in court here in Shawnee  
3 County.

5-B

4 Q Any other testimony?

5 A I believe that is all in court.

6 Q Any depositions besides this one?

7 A No.

8 Q One of the things I have asked, I have now forgotten who,  
9 I think it was Mr. Miller, was when it first came to be  
10 that Blacks were legally permitted in the Topeka system to  
11 be administrators at what had previously been all White  
12 schools. He, as I recall, didn't know the answer to that.

13 A No, I do not.

14 Q We alluded earlier this morning I think to the X and N  
15 Plan. Are those the two letters that they are?

16 A Yes.

17 Q Do those letters stand for anything?

18 A No.

19 Q When did the process of preparing those plans begin?

20 A I suppose they started around a couple years ago.

21 Q The '76 Plan you said earlier ended in '81 and if planning  
22 for the X and N Plan essentially started in '82, was there  
23 a time when you didn't have a plan and weren't planning  
24 for a plan?

25 A Yes, that is correct.

1 Q How did that happen?

2 A When we originally had the 5-year Plan and we were supposed  
3 to update it, but as the Board of Education changed, we  
4 never could get an additional year added onto it and there  
5 was usually somebody who was not in favor of doing this.  
6 You know, trying to get a decision whether you were going  
7 to close anymore buildings or not is very easy. So the  
8 plans were not updated on a year-to-year basis as we had  
9 planned them to be, because we couldn't get the Board to  
10 finalize it.

11 Q Was there a proposed plan, but just never adopted by the  
12 Board?

13 A We could not get into the development of one. No, there  
14 was not a plan.

15 Q What precipitated the beginning of the X and N Plan develop-  
16 ment?

17 A I think that we felt that even though we had gone through  
18 the closing of schools and things that had occurred under  
19 the original Plan, there were still areas that we needed  
20 to work on and try to improve in and that is what brought  
21 it on.

22 Q What areas did you think you needed to work on and try to  
23 improve in?

24 A What had happened to our student population. Our student  
25 population in '76 had declined significantly. So as we

1 closed buildings we were able to maintain decent building  
2 sizes up through '81. But we were losing students all the  
3 way along. So where we were in 1982 was about where we  
4 were in 1976 because we lost additional students. So we  
5 had begun a situation of buildings that were low in  
6 enrollment. That if we were going to maintain programs  
7 with young people that we had to increase the size. They  
8 were quite costly in operation. We had to review our  
9 racial balance in each school and consider that and it is  
10 an item that is an ongoing process. So a lot of the same  
11 problems we were faced with in '76 we were somewhat faced  
12 with in 1982 again because of decline.

13 Q How did that start, the development of the X and N Plan?  
14 Did you say to Dr. Tribbey, I think we ought to start  
15 working up another plan? Or did the Board say to you it  
16 is time to start working up another plan? Who got the  
17 ball rolling and how did that happen?

18 A I think as part of our administrative operation we could  
19 again see the situation, that we are dealing with declining  
20 enrollment. Our class size was decreasing at some buildings  
21 and we had to maintain a certain staff to maintain our  
22 program. So I think through initial discussions with the  
23 Board, and again it is more of a two-way discussion, we  
24 felt we needed to move to make some changes. So those  
25 were generated I guess as a result of us, but we couldn't

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1 pursue unless the Board gave us direction.

2 Q Was Mr. Douglas President of the Board at that time?

3 A No. I don't think he would have been President of the  
4 Board. He has been President before, but I don't think  
5 it was at that time.

6 Q This two-way discussion, does it take place in a formal  
7 Board Meeting?

8 A Some, and some in executive session.

9 Q Executive session is still a formal Board Meeting, but it  
10 is not public?

11 A Yes.

12 Q Is that the difference?

13 A Yes, I'm sorry.

14 Q I just wanted to make sure I understood it. Why would  
15 that sort of thing be discussed in executive session as  
16 opposed to a public session?

17 A I think it was the general feeling of the Board that a  
18 discussion of this dealt with a lot of people in the  
19 community, it dealt with some very emotional issues and  
20 that there was a feeling that if you brought that into the  
21 open and discussed it openly, that it would create a lot  
22 of turmoil and disruption maybe needlessly. Because of  
23 the fact you may not do what you want to talk about. You  
24 may be just discussing it.

25 Q Did the X and the N Plans go through more than one draft?

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1 A I am not sure they went through a draft. They might have  
2 gone through a change in a boundary here and a change in a  
3 boundary there. If that is what you mean by draft.

4 Q Why were there two plans instead of one?

5 A I feel that the Board felt that there should be more than  
6 just one plan presented to the community. Second of all,  
7 there was a totally different organizational structure of  
8 the buildings in the one plan versus the other. One had  
9 a structure of K through 5, 6 through 8, 9 through 12.  
10 The other had a K through 6, 7, 8, 9 through 12.

11 Q Did the staff recommend either be adopted?

12 A Our recommendation to the Board is that both plans we  
13 could live with and be implemented.

14 Q Was it further your recommendation that they should pick  
15 one or the other as opposed to doing either?

16 A It was our recommendation that they develop a long-range  
17 plan, whether it be one of those, it could be a modified  
18 plan or something.

19 Q Is there any difference between X and N in terms of the  
20 impact on the racial balance in the schools?

21 A I think both of them were good plans along that line.

22 Q It would have improved racial balance in the schools?

23 A Yes.

24 Q Would one of them have improved it better than the other?

25 A I don't think there was one probably overly better than

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1 the other. That would be just a point of judgment.

2 Q I think you said earlier, again, don't let me put words  
3 in your mouth if you don't want them there, but I think  
4 you said earlier one of the factors that went into the  
5 developing of these plans was an effort to improve racial  
6 balance in the schools, is that right?

7 A That is one of the things we consider when we develop plans,  
8 yes.

9 Q Is there a writing somewhere that indicates that that was  
10 one of the factors that you wanted to consider as you were  
11 developing the plan?

12 A Part of the proposed plans were a set of assumptions in  
13 which we had been given directions on those assumptions is  
14 what we used to develop the plans from.

15 Q Where did those assumptions come from?

16 A They were as a result of working with the Board as to what  
17 they wanted in the plan.

18 Q Were those formally adopted by the Board before you started  
19 working on the specific details of the plans?

20 A They were ones that the Members of the Board gave us  
21 direction to use in developing a plan, but we did not  
22 formally adopt them in an open meeting as such.

23 Q How did it happen? Would you sit down with Mr. Douglas,  
24 for example, and you would sit down separately with somebody  
25 else? This is the only name I happen to know.

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1 A We would sit down with the Board. These are things we need  
2 some direction on. We need to know some perimeters to  
3 develop a plan and we need at least four Members of the  
4 Board to feel that those were acceptable assumptions to  
5 work with. But we did not take any vote on them in any  
6 fashion.

7 Q So you presented what you thought would be a likely set of  
8 assumptions the Board might want to work through? The  
9 Board said yes, Number 6 sounds fine and so on?

10 A That is because there are certain areas you always fall  
11 within and like you need to know how big of a school you  
12 want.

13 Q Was there any discussion of the racial criteria with the  
14 Board?

15 A Yes.

16 Q What was the nature of that discussion?

17 A We needed to establish what the feeling of the assumption  
18 should be in reference to the minority percentage in  
19 buildings.

20 Q Did any Board Members express an opinion on that question?

21 A Yes.

22 Q Which Board Members and what was their opinion?

23 A We had some that felt we needed to lower the percentages,  
24 below 50%. Some felt that getting them around 50% was  
25 adequate. We didn't particularly give a "specific number"

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1 as such.

2 Q Which Board Members fell into the first of those categories,  
3 and which Board Members fell into the second, if you can  
4 recall?

5 A The below 50% factor I felt that Dr. Ward, Mr. Douglas,  
6 Mr. Hall and Mr. Taylor probably were inclined to move in  
7 that direction.

8 Q The second category, the around 50% as opposed to the  
9 below 50% category?

10 A I think Mrs. Bergkamp and Mrs. Romero and I am not sure  
11 what Mrs. Boggs' position was.

12 Q When you had this discussion with the Board, was the  
13 discussion minority-majority, Black-White, Black-Hispanic-  
14 White?

15 A It was minority-majority.

16 Q Minority for this purpose is non-White?

17 A Yes.

18 Q Did an actual number get incorporated in the assumptions?

19 A In the tentative plans that was prepared to the public, we  
20 would bring the minority percent below 50%.

21 Q Your projection was the plans would accomplish that?

22 A Yes.

23 Q That would be true of both plans?

24 A Yes.

25 Q I am not sure how to ask this, did you start with that as

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1 a goal going in rather than of that as a goal coming out?

2 A That was a goal going in because we did not develop any  
3 plan until we had our assumptions.

4 Q The plan was developed primarily by Dr. Tribbey's office?

5 A Yes.

6 Q After the two plans were completed by staff, they were then  
7 presented to the Board?

8 A Yes.

9 Q What happened next?

10 A They basically decided that they would, once they got some  
11 agreement on what they release to the community, then the  
12 plans X and N were released to the community and we started  
13 the same process that we had gone under, the 1976 Plans.

14 Q Release to the community, how does that happen? The press  
15 release?

16 A The document is put together and we did have a news release  
17 and it was sent out to the buildings and presented to the  
18 DCAC and that process.

19 Q Did the DCAC make any recommendation concerning either  
20 plan, N or X?

21 A Yes.

22 Q What was their recommendation?

23 A That would be hard for me to explain the whole thing.

24 Q Is it in writing somewhere?

25 A Yes.

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1 Q Was there a minority report to the DCAC opinion?

2 A As I understand, they had a subcommittee that developed  
3 the report and presented it to the large DCAC body. It  
4 was not adopted by them as according to the constitution  
5 and bylaws. But it was recommended by the group to present  
6 it to the Board with the stipulation that it was not full  
7 adoption of the whole committee. But they didn't refuse  
8 to not get it to the Board.

9 Q It would not be fair to characterize it as either pro or  
10 con? It was more complicated. Pro or con X or pro or con  
11 N?

12 A It was a modification. Of course, the great configuration  
13 obviously related to one plan, but I think it had some  
14 combination and modification.

15 Q Did they express any opinion concerning the racial balance  
16 of the plans?

17 A Yes, they looked at that.

18 Q Can you fairly, without me reading it, can you fairly  
19 characterize what they said about that?

20 A Racial balance should be below 50%.

21 Q Were there public hearings of any kind surrounding those  
22 two plans?

23 A Yes.

24 Q How does that happen? Is that just a regular Board Meeting  
25 and people can come and talk?

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1 A The Board held four regular Board Meetings, which they  
2 allowed an hour or better for people to come in and make  
3 comments in an open Board Meeting. We also went to every  
4 building that was requested us to come. Of course, I think  
5 everyone that was affected did request us. I think we had  
6 a neighborhood of twenty-three or twenty-four building  
7 meetings that Board Members and administrators set up. So  
8 we went out again and presented the plans and they listened  
9 to comments, questions and tried to answer questions and  
10 things of that nature.

11 Q Did you have to attend all twenty-three building meetings?

12 A Not all twenty-three. I probably attended probably three-  
13 fourths of them.

14 Q Could anybody speak at those meetings?

15 A Yes.

16 Q Even if they didn't have kids in the public schools?

17 A Yes.

18 Q Were the plans presented to City government in any way?

19 A We sent a copy, I personally did, a copy to the City  
20 Commission and County Commissioners.

21 Q Did you get reaction from either of those bodies?

22 A No. In a letter we requested if they would like for us to  
23 come before them and present them we would do so. But we  
24 did not get any reaction.

25 Q How about State Legislators?

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1 A We gave some copies to some State Legislators, but not  
2 everybody in the State Legislature.

3 Q Did you get comments from State Legislators?

4 A No.

5 Q What about the State Board of Education?

6 A I don't know whether I sent a copy to all of them or not.  
7 I sent them to about everybody I could think of that might  
8 be affected. I would know if I check my own office.

9 Q Do you recall whether you got any feedback from the State  
10 Board of Education?

11 A No, I did not get any feedback.

12 Q What about the Governor's Office, did you send it to  
13 anybody in the Governor's Office?

14 A I can't recall on that. I don't know.

15 Q Do you recall any feedback from the Governor's Office?

16 A No.

17 Q After you had all these public meetings and the four Board  
18 Meetings where everyone was able to comment, what happened  
19 next?

20 A After we made all of our visits and talked to the Board,  
21 if anything was said at a meeting we tried to share that  
22 with the other Board Members if they weren't in attendance.  
23 Then the Board had established previously in their long-  
24 range plan a time line which they were going to fall within.  
25 They were approached by another citizens group asking for

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1 delay in this time line because they wanted to study it  
2 too. The Board delayed that time line and allowed them  
3 to put comments in. Then we got to the point of whether  
4 the Board was going to adopt it. It was not adopted by the  
5 Board.

6 Q What was that other citizens group?

7 A Topeka for Education Involvement.

8 Q Who are they besides what is descriptive of their title?  
9 Can you tell me anything else about them?

10 A The only thing I can tell you is that there were a few  
11 people involved. I never met with the group. I never saw  
12 the group. The only ones I can tell you are the names  
13 they said they were members.

14 Q Were they parents?

15 A I feel that the ones that I am aware of were parents.

16 Q Do you currently have kids in the public schools in Topeka?

17 A Yes.

18 Q What grades are they in?

19 A I have a boy in the 2nd Grade. He will be in the 3rd next  
20 year, and a girl in the 6th, she will be in the 7th next  
21 year, and a boy in the 9th, he will be in the 10th next  
22 year.

23 Q Was there a formal vote to not adopt plans X and N?

24 A There was a formal vote to withdraw the plans.

25 Q What was that vote?

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1 A Four-three, I think.

2 Q Did you get any instructions about preparing another plan?

3 A No.

4 Q Are there currently any plans going on for a plan? Is  
5 there any development going on of a new long-range plan  
6 currently?

7 A Not from the administration.

8 Q I tried to look at the Board Minutes surrounding X and N,  
9 which is why I am asking so many details and frankly didn't  
10 get a lot of the Board Minutes on that. Can you, with  
11 fairness, characterize why--I understand I am asking you  
12 to do something a little funny here, namely characterize  
13 what other people's motives were. Did Members of the Board  
14 say things that from which you could conclude why the plan  
15 was voted to be withdrawn?

16 MR. SEBELIUS: I am going to object to the form of  
17 the question. I am going to permit the witness to answer  
18 if he is able to.

19 A I got some reaction. You must remember most of our Board  
20 Members were relatively newer Board Members and had not  
21 gone through a long-range plan. Mr. Douglas had. I got  
22 some reaction from some other Board Members that the  
23 concerns expressed by the community were significant enough  
24 that they didn't feel like they would implement those  
25 plans. It was not ever expressed to me by a joint group

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1 of Board Members.

2 Q The reason I am asking is, what I looked for in the Minutes  
3 was things like Board Member Douglas announced that he  
4 would vote against this plan because - and he gave a little  
5 statement explaining why. I didn't find that kind of  
6 stuff. Did Board Members give statements prior to their  
7 vote being taken?

8 A I think in individual meetings they did, yes.

9 Q Were there Minutes of all those individual Board Meetings?

10 A No.

11 Q Did the local paper take a position on X or N, take an  
12 editorial position?

13 A I will have to think back on that one. I think first it  
14 was presented in a fashion of the plans and obviously you  
15 got letters to the Editor. I think they took a position  
16 in the end. I am not sure they took a position until the  
17 Board withdrew. I would have to research that. But I  
18 know they took some positions after the Board withdrew.

19 Q Did the Board Members state their rationale? Did any of  
20 them have press releases? Is there any place I can find  
21 an explanation as to why a Board Member voted the way they  
22 did?

23 A Not really.

24 Q You have heard me ask the next series of questions of other  
25 witnesses. Let me ask them of you. Sticking with the high

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1 school, starting with the high schools, in your mind is  
2 there a high school that is the best, and sticking with  
3 educational quality, is there a high school of the three  
4 that you would consider the best in the system?

5 A I would not.

6 Q How about the middle schools? Is there one that stands  
7 out as providing an exceptional program as compared to the  
8 others?

9 A I wouldn't say so.

10 Q Is there one, either in the high schools or the middle  
11 schools, about whose educational program you are concerned?

12 A No.

13 Q Or that stands out as maybe the most troubled of the high  
14 schools or middle schools?

15 A No, I wouldn't think so.

16 Q What about the elementary schools? Is there an elementary  
17 school that stands out as the jewel of the system?

18 A No.

19 Q Is there one or more that cause you concern that you would  
20 view as having an educational program that is troubled at  
21 the moment?

22 A No.

23 Q Is there one elementary school or more in your mind that  
24 stands out as providing the least best educational program  
25 at the moment?

1 A No.

2 Q In what part of town do you live? I don't care about your  
3 address.

4 A Southwest.

5 Q When you moved to Topeka from Kansas City, is that right -

6 A That is right.

7 Q (Continuing) --when you moved to Topeka, had you lived in  
8 the same house since you moved here?

9 A I lived in the same area, not the same house.

10 Q Why did you move into that area?

11 A At the time it was when I came here there was very few  
12 homes on the market of what I really wanted. As a matter  
13 of fact, there wasn't any that had been listed by real  
14 estate. I heard about the house I bought by word of mouth  
15 and I called the guy and asked him if he was interested in  
16 selling and he said he was and that is when I purchased it.

17 Q Did you make any inquiry about the schools--that is a silly  
18 question, at some level? We talked earlier about how  
19 people when they decide where to move, one of the first  
20 things they ask is the schools. We talked about that.  
21 Did you make those kinds of inquiries when you were trying  
22 to decide where in Topeka to live?

23 A I did not. It sounds ridiculous, but I didn't have any  
24 children at that time in school. I never even thought  
25 about it. I just assumed the schools were good so when we

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1 moved in there we didn't have a child that was ready to  
2 go in school and I didn't even think about it. I said  
3 that earlier but that is the truth. If I had somebody in  
4 school, I am sure I would have had a different feeling  
5 about it.

6 Q I only have one more line of questioning and it is--

7 MR. HANSEN: Why don't we take a recess.

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

10 Q (By Mr. Hansen) You are leaving your current position in  
11 the foreseeable future, is that correct?

12 A Correct.

13 Q Effective as of when?

14 A July 31st.

15 Q Did the circumstances of your leaving have anything to do  
16 with the issues in this case?

17 A No.

18 Q Will you continue to have an association with 501?

19 A Yes.

20 Q What is the name of that association?

21 A That I will be working with the Board, legal counsel, and  
22 administrative staff with items that apparently in the  
23 process at the end of July we are dealing with.

24 Q Does that include us?

25 A Yes.

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1 STATE OF KANSAS )  
 ) SS:  
2 COUNTY OF SHAWNEE )

3 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, JAMES M. GRAY, was by me  
6 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  
of Kansas.