

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 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 individual named Defendants associated with the Kansas State Board of Education appear by Mr. Dan Biles of Gates & Clyde, Chartered, Attorneys at Law, Financial Plaza, Suite 700, 6800 College Boulevard, Overland Park, Kansas, 66211.

The Governor of the State of Kansas, John C. Carlin, appears by Mr. Carl A. Gallagher, Assistant Attorney General, Judicial Center, Topeka, Kansas, 66612.

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I N D E X

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WITNESS:

On behalf of the Plaintiffs
and Intervening Plaintiffs:

Direct Cross Redirect Recross

WILLIAM CLARK

4 190
(Hansen) (Biles)

192
(Gallagher)

EXHIBITS:

Deposition Exhibit Numbers:

Marked

#1

192

CERTIFICATE - - - - - Page 194

WILLIAM CLARK,

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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 Do you prefer to be addressed as Dr. Clark or Mr. Clark?

A I have no strong preference.

Q My name is Chris Hansen. I am a lawyer. I work for the American Civil Liberties Union in New York. This is Richard Jones, who is a lawyer here in Topeka, and we are two of the lawyers who represent the Plaintiffs in this case. I am the one that is going to be asking you the questions this morning. If I ask a question that isn't clear, feel free to say so, and I will try to make it clearer, okay?

A Yes.

Q How did you get involved in this case?

A I was contacted by Mr. Sebelius earlier this year. I think in January or February.

Q By phone?

A By phone.

Q Was that your office at the University?

A Yes.

Q What did Mr. Sebelius tell you at that point?

1 A I think I had a couple of messages from Mr. Sebelius before
2 I actually got back to him, because I was very busy at the
3 time. And when we did set up a call and talk, he mentioned
4 that the Brown case, which, of course, has some fame, was
5 being reopened, or had been reopened, and/or a number of
6 issues that were being raised about the decisions by the
7 School Board since the earlier court findings. And he was
8 interested in finding someone who could do some analysis
9 of the demographics of Topeka. We then talked about some
10 specifics of what had been happening since the 1950's,
11 what kind of things had been going on. Although, I can't
12 be sure of this, I said I would think about it, and perhaps
13 we could set up a meeting and talk about it more specifically.

14 Q What did he tell you specifically had been happening since
15 1950, or since 1954?

16 A I think he gave me kind of a chronological series of
17 comments that, for example, and I don't think I can recall
18 everything he said at that time. He mentioned that in
19 '66 there had been consolidation, so that the old Topeka
20 School District has been changed. He mentioned that there
21 had been a number of school closings, that there had been
22 attendance boundary changes, that in the '70's, about '74
23 or '75, there had been an HEW--shall I use the word
24 "investigation," "discussion" about some changes. He
25 mentioned some specific things that had gone on in the

1 Topeka school system by the School Board in continuing to
2 adjust the school areas as population change occurred.
3 Not very much on that, I don't think. He mentioned the
4 1979 filing to reopen the Brown case. There may have been
5 other things, but I don't recall them at the moment.

6 Q Did he tell you what the Plaintiffs' claims were in the
7 case?

8 A I think he said that at that point that he would send me
9 some documentation on what Plaintiffs were claiming,
10 because I naturally asked what was the issue here. And we
11 probably had a brief conversation about what the issue was,
12 but I asked for the documentation, and I don't specifically
13 recall if we had a detailed conversation on the specific
14 allegations.

15 Q Did he tell you who Plaintiffs' experts were?

16 A I don't believe so.

17 Q Did he tell you who else was going to be testifying for
18 the Defendants?

19 A As I recall it, I was the first person that he had talked
20 to. So I don't think so. Although, again, I am trying
21 to recall, we are talking about a conversation that
22 occurred seven or eight months ago. I don't remember in
23 that conversation whether he referred to the survey that
24 had been done, but I can't recall that.

25 Q Do you know whether Dr. Armour had been hired as an expert

1 by the Defendants at the time you were being called?

2 A I can't answer I know for sure, but I don't think so.

3 Q Did you discuss money in this first phone conversation?

4 A No.

5 Q What happened after the phone conversation? Were you still
6 willing, at least, to talk to him about it? What happened
7 next?

8 A Mr. Sebelius visited Los Angeles in, I think, late
9 February, and we can check the exact date. It will be on
10 my calendar, but I think late February.

11 Q You met with him then?

12 A Yes.

13 Q How long did that meeting take?

14 A It was a one-day meeting.

15 Q What did you talk about at the meeting?

16 A He had sent material ahead of time, so that I could get
17 somewhat familiar with the case. He spent, I suppose, much
18 of the morning in what I would describe as briefing me,
19 telling me in some detail about the Topeka school system,
20 about what has been happening. In other words, he elaborated
21 the conversation we had had on the phone.

22 Q In the folders that I looked at just before we started, a
23 letter from Mr. Sebelius to you, dated early February
24 sometime, could we pull that out for a minute? It is the
25 one that says you are staying at the--

1 A Oh, February 14th, yes.

2 Q This letter indicates that he sent you six things
3 accompanying the letter. Do you recall whether he sent
4 you anything other than the six items listed in that letter
5 before he arrived to talk to you in person?

6 A No.

7 Q Did you look over any of those things before the meeting?

8 A Very briefly. I, for example, did read the opinion. It
9 seemed to be the quickest way to get a sense of what was
10 happening, because it also has a summary of the past events.
11 I didn't spend much time on the long-range facilities
12 plan. I looked through the report on the percentage of
13 minority enrollment. Those two things I paid more attention
14 to.

15 Q Did you express in the phone conversation you had with Mr.
16 Sebelius, before the visit, did you express any opinions
17 that related specifically to Topeka?

18 A I don't believe so.

19 Q Did you discuss testimony that you had given in other
20 cases in the phone conversation?

21 A I don't recall those.

22 Q Did you discuss what your general opinions are with respect
23 to school desegregation?

24 A No.

25 Q When Mr. Sebelius arrived in Los Angeles, right, isn't that

1 where you are from?

2 A Yes.

3 Q When he arrived in Los Angeles to meet with you, did he
4 bring with him, as he said he was going to, Dr. Foster's
5 report, and Mr. Lamson's report?

6 A I have them. So I assume he brought them with him then.
7 But it is possible that he didn't. And said, oh, I forgot
8 these. I will put them in the mail. But I can assume he
9 brought them about that time.

10 Q When he briefed you on what had happened in Topeka since
11 1954, did he have maps with him?

12 A To be honest, I don't recall whether he had maps with him.
13 I assume he had at least one of the smaller maps of the
14 attendance areas. But I know he didn't have the sub-
15 sequent set of maps that I requested. But he may have had
16 a small map. But to be very frank, I can't recall whether
17 he even has one.

18 Q Did he talk to you about the desegregation plan that the
19 School Board put into effect between 1953 and 1955, or
20 1952 and 1955?

21 A He outlined what the School Board had done after the '51
22 filing and court action.

23 Q What did he say that the School Board had done after 1955,
24 which is when the last step of that four-step plan was put
25 into effect?

1 A If I recall correctly, we talked in terms of the---what I
2 refer to in my report, as the four-step plan. And we
3 talked about the school closings, the Black schools,
4 formerly all-Black schools were closed. There may have
5 been other things related to that, but I think that is
6 what I think the conversation centered about.

7 Q He did tell you that there had been schools, other than
8 those Black schools, that had been closed since 1955,
9 right?

10 A Yes. Excuse me, I thought you were referring specifically
11 in that period after 1955.

12 Q No.

13 A In discussing the whole period, we discussed schools that
14 had been closed, focusing on some more issues.

15 Q Do you remember which ones you focused on?

16 A Probably Parkdale and Monroe.

17 Q Did he tell you, is it your impression today, that the
18 School District did anything after 1955 with the intention
19 of achieving a desegregated effect--that is a confusing
20 question. Let me ask it a different way. Let me ask it
21 later in the day, actually, as I think about it some more.
22 Did you talk about the boundary changes that occurred
23 between '55 and the present?

24 A I am sure in that first day's conversation, there was
25 conversation about boundary changes. But it was more in

1 the line of the boundaries were changed at such and such a
2 school. Optional attendance zones were eliminated from
3 the following schools. It was that kind of conversation.
4 And without specific maps in front of you, those kinds of
5 conversations don't have a lot of meaning, because you
6 can't see it on the ground. But, yes, there were conver-
7 sations about boundary changes. I was being essentially
8 given an overview and briefing, and so I don't know that
9 any of those were particularly detailed.

10 Q Did you talk about annexations into the School District,
11 or deannexations from the School District?

12 A We have subsequently talked about those issues. I suspect
13 that there was a review of the annexations. I don't think
14 we talked much about deannexation. But we did talk about
15 the annexation of the Highland Park District, for example,
16 most of it took place in terms of talking about the con-
17 solidation, what was leading up to the consolidation.

18 Q What did he tell you about the consolidation?

19 A I think just the fact that in 1966 the State of Kansas
20 reorganized its school system, and in that reorganization
21 the Topeka school system reorganized what has now become
22 District 501.

23 Q Was anybody else present besides the two of you?

24 A At the first meeting?

25 Q Yes.

1 A Dr. Armour was at that meeting.

2 Q How did that come about?

3 A I am going to give you just what I have been told. I
4 assume from what Mr. Sebelius said, he contacted Dr. Armour
5 and asked him to be at that meeting. I had mentioned
6 other people in one of our telephone conversations.

7 Q They might want to contact?

8 A Yes.

9 Q Who besides Dr. Armour did you suggest that he might want
10 to contact?

11 A I don't recall specifically now. I ran a list of names.

12 Q Dr. Walberg?

13 A I may have. Dr. Armour sticks in my mind, because he came
14 to that meeting that day.

15 Q Anybody else present besides the three of you?

16 A No.

17 Q Did you discuss the use of temporary facilities or school
18 additions at that meeting?

19 A I can't recall specifically.

20 Q School construction, did you discuss school construction
21 and siting?

22 A As part of the review, I know we talked about the con-
23 struction of Topeka West. Whether there are other specific
24 examples, I don't recall.

25 Q Other than giving you a review of what had happened to the

1 physical, what physical changes had occurred in the School
2 District in 1950 or '51? What else did you discuss at
3 that meeting?

4 A We discussed the kinds of analyses that a demographer,
5 human demographer, might undertake if he was going to
6 investigate demographic changes.

7 Q Anything else?

8 A Dr. Armour was there, and I was present, at least for part
9 of the discussion, of the analyses of indices of separa-
10 tion. And I think I was there when there was a discussion
11 of some of the issues of optional attendance zones and the
12 impact of those optional attendance zones on the percent
13 of minorities in schools. I say I was there part of the
14 time, because I left. I had a doctor's appointment,
15 because I wasn't there for the whole of the meeting between
16 Dr. Armour and Mr. Sebelius.

17 Q Anything else, any other topics you remember being
18 discussed at that meeting?

19 A There may have been others, but I don't recall them off
20 the top of my head right now.

21 Q How about the central surveys study?

22 A It was mentioned. But I don't think we had any hard data
23 in front of us to do any kind of detailed discussion. I
24 think the discussion was along the lines of, there has
25 been a survey, and there was a discussion of my expertise

1 in surveys. But we didn't have any analytic discussion.

2 Q Did he tell you what the results of the survey were?

3 A He may have.

4 Q Did he tell you that he had hired an expert in Washington
5 to do a critique of the survey?

6 A Again, he may have mentioned that at that meeting, or I
7 may have learned it later.

8 Q Did you discuss the quality of education being provided
9 in the schools in Topeka at all, at that meeting?

10 A I don't recall specifically that we talked about the
11 quality of education. We may have had a discussion about
12 it, and he may have requested the name of someone that
13 would be able to do that kind of analysis. And if that
14 request would have occurred, I would have mentioned Dr.
15 Walberg.

16 Q Do you know today that Dr. Walberg is a witness in this
17 case?

18 A I understand that he is.

19 Q The discussion, or part of the discussion that you had
20 with him, about optional attendance zones, what was that?
21 What did that consist of?

22 A I think it was a discussion that related to why they were
23 in place, and how long they were in place, and which schools
24 had them.

25 Q Why were they in place?

1 A It is my understanding that the optional attendance zones
2 were in place throughout the City essentially because it
3 was a transitional period.

4 Q How long were they in place?

5 A Many schools had optional attendance zones still in '63-'64.
6 By the end of the '60's, there were virtually no optional
7 attendance zones. There may have been one.

8 Q Did you express any opinion as to the educational wisdom--
9 let me ask you this, are you an expert in education?

10 A That is a very broad question, am I an expert in education.
11 You will have to refine that a little.

12 Q I was about to ask you, did you express any opinion about
13 the educational wisdom about optional attendance zones,
14 and it occurred to me, you may not be an expert or qualified
15 to give an opinion. Did you express an opinion on the
16 educational value, or the lack thereof, of optional
17 attendance zones?

18 A I didn't think I am qualified to talk about educational
19 value. If you mean educational value, curriculum and the
20 associated issues of curriculum, no.

21 Q How about the impact of optional attendance zones on
22 school segregation or school racial separation? Do you
23 have an opinion on that?

24 A Yes.

25 Q What is your opinion?

1 A I think you have to look at specific cases and then
2 analyze the whole system. And I think then it will depend
3 on what the effects are that you find. That you can do
4 analyses of, including and excluding, optional attendance
5 zones, as in fact I have tried to do in the report. So I
6 think you can express an opinion, and that opinion is
7 based on demographic analysis.

8 Q Have you ever done a study of a school district before
9 that used optional attendance zones?

10 A I am sure I have been involved in the analysis of school
11 districts that have optional attendance zones. But when
12 you ask me like to recall it, I don't think I can give you
13 a name off the top of my head. But optional attendance
14 zones were used at various times in the past, and several
15 that I have been involved in some other cases, my suspicion
16 is that I have.

17 Q You said also one of the things you discussed at this
18 meeting with Mr. Sebelius was indexes of dissimilarity, I
19 think was the phrase you used. What was the nature of that
20 discussion?

21 A I think I used--I may have used similarity. I also used
22 the word separation. But both terms are commonly used.
23 Dissimilarity is in fact a specific index, as is the
24 exposure index. They are specific indices that measure
25 separation of groups. It could be races. It could be

1 income groups. It could be occupational groups. There
2 are measures to try to give you statistical assessment of
3 the level of separation between two sets of characteristics.

4 Q Did you talk about that at this first meeting with Mr.
5 Sebelius, that you recall?

6 A I am sure that was discussed.

7 Q In what context?

8 A Probably in two contexts. One in terms of assessing the
9 level of separation of the races in the school system, and
10 two, in terms of measuring the separation, if you do a
11 specific analysis of boundary changes.

12 Q Which brings me to the next thing I wanted to ask you
13 about. You talked about the kinds of analyses that you
14 might be in a position to do for this case, other than the
15 one that you actually did. Did you discuss other kinds of
16 analyses that you might have done, but didn't do?

17 A I don't believe so. I think the report is a fair summary
18 of what I outlined would be my approach to the problem.

19 Q Did you get hired at that meeting?

20 A I don't recall that I was specifically hired at that
21 meeting. I think probably, yes, I was asked after three-
22 quarters of the day, after there had been detailed
23 discussion, would I participate? And I believe I gave an
24 affirmative answer. So we could call that hiring. But I
25 suspect it wasn't a formal hiring, because Mr. Sebelius

1 had to come back and consult with his co-counsel.

2 Q Did you express any opinions in that meeting, as to what
3 had happened in Topeka?

4 A I may have expressed very general opinions, but nothing
5 specific, because I wanted to do an analysis before I
6 could come up with any conclusions.

7 Q What general opinions might you have expressed?

8 A Oh, the general opinions might have been things like, well,
9 how many boundary changes were there in the last seven or
10 eight years? There doesn't seem to have been a lot of
11 boundary changes, looking at the last period, off the top
12 of my head there doesn't look like there are. There are
13 significant potential boundary effects in the last ten
14 years. But I would have to go in and look at that in
15 detail. So there would be very general statements of that
16 kind.

17 Q What did you understand the question that is going to be
18 tried in this case to be?

19 A The central question that is going to be tried, I suppose,
20 and you will have to excuse me, but I am not a lawyer.

21 Q That is perfectly all right.

22 A So I might misstate it. But the central question is one
23 of whether or not the School Board carried out or engaged
24 in actions that were segregated and their impacts, I
25 think. And this is, of course, the most difficult issue.

1 There is also an issue of intent, which flounders around,
2 and I was recently in Washington, giving a paper for the
3 Civil Rights Commission, where a panel of lawyers, also
4 engaged in a huge debate on intent, in Title 6 to a lay
5 person, even to a social scientist, who is interested in
6 these problems, that discussion became fairly--it became
7 both heated and esoteric. I think is the best way to
8 put it. But to answer your question, to me, the issue is
9 about whether or not the School Board engaged in acts that
10 were segregated.

11 Q Did you discuss money in this first meeting?

12 A I am sure that Mr. Sebelius asked me my hourly fee.

13 Q What is it?

14 A It is \$100.00 an hour.

15 Q How many hours would you estimate you have put in on this
16 case so far?

17 A Analysis and meetings, everything?

18 Q Everything?

19 A I am estimating in excess of 100.

20 Q Did you at any point, have you or Mr. Sebelius, discussed
21 an upper limit? That is, you can have \$100.00 an hour,
22 but it can't go over "X" dollars?

23 A We have never discussed an upper limit. I gave him an
24 estimate of what I thought the work might entail. But as
25 you are well aware, attorneys have a habit of thinking of

1 other things they would like you to consider.

2 Q No. No, it is the expert that thinks of other things to
3 do. On this one, I am on his side. You have got to
4 understand that. What are you estimating this is going to
5 cost by the end, by the time you finish testifying?

6 A Do you want a dollar estimate?

7 Q Yes, roughly.

8 A Twenty thousand dollars.

9 Q After meeting in Los Angeles with Mr. Sebelius, what
10 happened next?

11 A I began collecting data and information to conduct the
12 demographic analysis.

13 Q Census data?

14 A Census data.

15 Q Anything else?

16 A Maps of the attendance areas and overtime.

17 Q You got those from Mr. Sebelius?

18 A I got the attendance maps from Mr. Sebelius. I got census
19 data from our library resources. I don't think that I
20 used anything besides census data and the maps.

21 Q The census data that you got, did you get it in the form
22 of reports or tapes?

23 A Printed reports.

24 Q Do you recall what the name of the book is that has the
25 data that you used?

1 A There are three separate sources which I think I listed on
2 the maps. It is just the census and population census,
3 Black statistics for 1967 to 1980.

4 Q So there are three separate books, because there are three
5 separate time periods?

6 A That is correct.

7 Q All the information you got for 1960 is in one book?

8 A That is correct.

9 Q Did you hire a graduate student or somebody else to help
10 you put all this data together?

11 A I have a couple of research assistants, and from time to
12 time I utilize them.

13 Q Some of them platted some of the portions of the map and
14 drew some of the lines on the map?

15 A That is correct.

16 Q Did you then check the maps to see that they had accurately
17 transcribed the result?

18 A I have checked all of the maps once, but I will check them
19 again. There are also changes for minor errors.

20 Q Is the School District paying for your research assistants
21 as well as that additional charge above and beyond the
22 amount we have talked about?

23 A No, that would be included within that.

24 Q Did you meet with Mr. Sebelius again?

25 A Yes.

1 Q When was that?

2 A I was trying to recall that this morning. But I think
3 without looking in my book, it was sometime in either late
4 June or early July.

5 Q Had you completed your analysis at that point?

6 A No, I had not. The reason I hesitate, I think our meeting
7 was after I had been to Sweden. So it was late June or
8 early July.

9 Q What was the purpose of that meeting?

10 A That was to give Mr. Sebelius an updating on the research
11 I had accomplished to that point.

12 Q Was anybody else present besides Mr. Sebelius?

13 A No.

14 Q Was it done here or done in Los Angeles?

15 A It was done in Los Angeles.

16 Q Is this your first trip to Topeka?

17 A No, it is not.

18 Q When were you first in Topeka?

19 A I was first in Topeka--well, apart from perhaps--

20 Q Apart from passing through?

21 A And some years ago when I was a graduate student and was
22 interested in traveling around the country, looking at the
23 United States, my first visit to Topeka, as part of this
24 case, was two weeks ago.

25 Q What was the purpose of that visit?

1 A The primary purpose of that visit was to give Mr. Sebelius
2 a further update as the report was almost concluded. I
3 expressed the need to do a field survey to look at the
4 City of Topeka, and have some feel for it, to visit some
5 of the schools and to have some sense of what the City is
6 like.

7 Q Let's back up a bit. The meeting in late June or early
8 July in Los Angeles, did I ask you whether anybody else
9 was present? I think I did, right? And you said, no?

10 MR. SEBELIUS: Yes.

11 Q (By Mr. Hansen) Dr. Armour was not present for that meeting?

12 A No.

13 Q Did Dr. Armour work on your report, or on your work at all?

14 A He saw a draft of the report.

15 Q Did he give you advice on it?

16 A He gave me comments.

17 Q Do you remember any of the comments he gave you?

18 A One of the comments was, was that I think I--let me back
19 up. The comments were, you are not clear at this point.
20 It was editorial kind of comments. I remember there was
21 one paragraph he said, your survey is just not communicating.
22 An academist doesn't like to hear that.

23 Q No one likes to hear that.

24 A It was an editorial comment.

25 Q In the meeting in Los Angeles, what did you tell Mr.

1 Sebelius your preliminary results indicated?

2 A The preliminary results that I reported to him then, were
3 that an analysis of the attendance boundary was not showing
4 particularly important or significant racial separation
5 impact from the boundary changes. That there may have
6 been some potentially segregated effects in the '60's.
7 But after the middle of the '70's, there was very little
8 in the way of an impact of boundary changes, that I have
9 not yet computed indices. I have not yet computed the
10 tables of which schools I thought had demographic neutral
11 or potential desegregated or segregated effects. But my
12 overall estimate was that there was a small proportion of
13 the total number of events. I think that answers your
14 question.

15 Q How long did the meeting last?

16 A Six hours.

17 Q Did you discuss the central surveys study at that point?

18 A I think at that point I had already sent Mr. Sebelius a
19 review of the central surveys.

20 Q Did you then discuss what you had sent him?

1-B 21 A I think he brought the final Hickman Report. Is it Hickman?

22 Q Yes.

23 A I think he had sent me a piece of the Hickman Report earlier,
24 and I had looked at it. He sent me enough tables that I
25 could do my discussion of the tables that Hickman had

1 prepared, and I think he may have brought the final
2 Hickman study with him at that meeting. And we probably
3 talked about it. But if I recall specifically, I had
4 already done the analysis of the central surveys report
5 prior to the late June-July meeting.

6 Q Other than the documents that you have with you today, and
7 the census data that is in the published books, are there
8 any other documents that you have been sent in this case,
9 that you have looked at?

10 A Yes.

11 Q What else?

12 A I was sent the William Lamson report.

13 Q Right.

14 A Which is not, I don't believe, in this file here.

15 Q Right.

16 A I was sent a critique of the Lamson report, done by--I
17 don't recall his name, someone in the School Board had
18 looked through the Lamson report--not School Board, excuse
19 me, the school administration.

20 Q Anything else?

21 A Nothing that comes to mind. But I wouldn't want to pre-
22 clude that I wasn't sent something--oh, yes, I was sent
23 the enrollment data for the Topeka schools.

24 Q Enrollment data by race?

25 A By race for individual schools.

1 Q The HEW forms?

2 A It came in a blue book. Yes, like that.

3 MR. SEBELIUS: You got it.

4 Q (By Mr. Hansen) It is actually also mentioned in the cover
5 letter. The cover letter mentions some things which are
6 substantially bulky, which you had seen that you don't
7 have with you. It is a response to an Interrogatory.

8 A Yes, I have a copy. You are asking, and I am just recalling.

9 Q Right.

10 A It is not something that I spent a lot of time with. I
11 did put that data up on the computer. Nothing else comes
12 to mind.

13 Q Any depositions?

14 A I don't think so.

15 Q The central surveys people did essentially apply to the
16 Hickman critique? Have you seen that?

17 A Now that you ask that question, I recall something about
18 that. But I don't think I have a copy.

19 Q The critique of the Lamson study that you saw, do you
20 recall by whom that was done?

21 A I believe a Mr. Miller.

22 Q Did you read that?

23 A I glanced over it.

24 Q Did you use it in any way?

25 A No. I had already completed my critique before I saw it.

1 Q Any other documents that you recall seeing in preparation
2 for your analysis?

3 A Not that I recall.

4 Q Did you have any, before you finished, before you reached
5 your conclusions, did you have any conversations with any-
6 body from the School District besides Mr. Sebelius?

7 A We had the field tour with Mr. Hanson or Hensen.

8 Q That was approximately two weeks ago?

9 A That was approximately two weeks ago.

10 Q Presumably your analysis, if not totally done virtually,
11 totally done by then?

12 A No. The broad analysis was done. But I think I finished
13 the report--

14 Q The night before it got sent to me, obviously?

15 A That means a substantial demographic analysis had been
16 done. You asked for the report.

17 Q In addition to Mr. Hensen, did you talk to anybody else
18 from the School District before you completed your analysis?

19 MR. JONES: Which Hensen?

20 Q (By Mr. Hansen) There are two potential. There is a Mr.
21 Henson, who is Gary Sebelius' law partner. And there is
22 someone else who is a very high official in the District.
23 Do you know which individual you were with?

24 A This was with the School District.

25 MR. HANSEN: I assumed it the other way.

1 MR. JONES: So did I.

2 A I did meet Mr. Miller, did I not?

3 MR. SEBELIUS: Yes.

4 A That was Mr. Miller. I have trouble keeping names straight.
5 No one else that I recall.

6 Q (By Mr. Hansen) Did you simply meet Mr. Miller, or did
7 you have a substantive conversation with him?

8 A I have to be careful with the "substantive conversation."

9 Q I don't care if you talked about the weather. I do care
10 if you talked about boundary changes.

11 A No, we did not have a substantive conversation about the
12 boundary changes, and the School District decision making.
13 We did talk about something that was substantive and very
14 interesting to me, the tornado.

15 Q The tornado that whipped through downtown Topeka?

16 A In 1966.

17 Q Is that how the phrase on the tornado got incorporated in
18 your report?

19 A No. I obviously wanted to know about that, because it was
20 something of a historical event of some significance, and
21 clearly had an impact on the decisions in the City.

22 Q Anybody else from the School District that you have met?

23 A I don't think so.

24 Q How long did the tour take with Dr. Hensen and Mr.
25 Sebelius?

1 A Three hours, four hours, half a day.

2 Q Did you go in any schools?

3 A No.

4 Q Did you see all the schools in town?

5 A I saw a large number of them. I don't think we saw every
6 school. I had prepared a list of schools that I wanted to
7 see, and I had suggested where I wanted to go, so it was
8 essentially at my suggestion that we were doing that.

9 Q Do you still have the notes that you used to guide the
10 driver of the car?

11 A No. I had suggested I wanted to see the schools in these
12 areas, and I left it up to whoever was going to be the
13 driver to make the decisions about directions. And then I
14 had a map that I think is somewhere in here, and I made
15 notations on it, and I got essentially a structure on the
16 City from that.

17 Q Did you and Dr. Hensen talk about what your testimony was
18 going to be, while you were doing that automobile ride?

19 A No, we didn't talk about my testimony. We did towards the
20 end of the trip stop at the School District headquarters
21 and look at some maps.

22 Q Maps that showed what?

23 A That the School District had prepared of the locations of
24 pupils, pin maps.

25 Q Did you see a current pin map?

1 A I don't believe, no.

2 Q Did Dr. Hensen give a running commentary on the City as
3 you drove around?

4 A I wouldn't describe it as a running commentary. He made
5 some comments. He made observations about some of the
6 schools.

7 Q Did any of the things he told you in the car influence
8 your report or your analysis?

9 A That is a difficult question to answer. You don't know
10 how something goes into your mind. But there was no piece
11 of information he gave me that influenced my analysis that
12 I was doing. He gave me more general information on
13 things, like school facilities. And he was telling me
14 this school had a new library. The school had a new lunch
15 room or things like that. He gave me some school informa-
16 tion about different schools.

17 Q After that tour, and looking at the pin maps in the central
18 headquarters of the School District, did you do anything
19 else on that trip to Topeka?

20 A We had driven over and I took some time myself to look at
21 the City, the outer edges of the City.

22 Q Did you have a conversation with Mr. Sebelius, or anybody
23 else, about what your results were going to be? I know
24 you had talked about it in Los Angeles. But did you have
25 yet another conversation about it, when you were out here?

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1 A At this meeting?

2 Q Yes.

3 A Yes.

4 Q Who else was present, besides you and Mr. Sebelius?

5 A Mr. Biles was present, I think for most of that meeting.

6 And I believe that you were present at some of that
7 meeting, but not for very long.

8 MR. GALLAGHER: No.

9 Q (By Mr. Hansen) Was anybody else but lawyers there and you?

10 A I don't think so.

11 Q Did you do anything aside from completing your report and
12 sending it in? Have you been back to Topeka since that
13 tour, and except for today?

14 A No.

15 Q Have you met with Mr. Sebelius or anybody else from the
16 School District between that Topeka tour two weeks ago or
17 so and today?

18 A No.

19 Q Have you had any phone conversations with anybody other
20 than the lawyers in this case, since that tour in Topeka?

21 A I haven't had any phone conversations with anybody.

22 Q About this case, obviously?

23 A I may have talked to Dr. Armour once, but that may have
24 been before the report, before the field survey.

25 Q Did you send a copy of your report to Dr. Armour?

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1 A I did.

2 Q Do you have an understanding as to what his testimony is
3 going to be in this case?

4 A Only in the very broadest terms.

5 Q What do you understand it is going to be?

6 A I think he is going to testify about the levels of
7 separation in the school system.

8 Q How is that going to be different than the level of
9 separation materials you have?

10 A He is going to do, I think, a more extensive analysis of
11 indices of the schools in the system of the time.

12 Q Do you know whether he is going to utilize your report in
13 any way, in reaching his conclusions?

14 A I have no idea.

15 Q Have you testified in other school desegregation cases?

16 A Yes.

17 Q Can we have a list of them? First of all, is there a list
18 in your resumé?

19 A I think the list in the resumé is relatively up to date.

20 Q Let me show you a copy of the resumé that I have gotten
21 from you. Is this the most recent copy of your resumé?
22 There is more than just yourself in this stack. Dr. Walberg
23 is in there, and Dr. Armour is in there.

24 A Right. I don't know that this is the most up to date.

25 MR. SEBELIUS: That is the most up to date that I have.

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1 You may have done one more currently. This is more current.
2 A I thought I had sent you a more up-to-date one than this.

3 MR. SEBELIUS: Let me check. It looks very similar.

4 A They always look similar, because they are run on a word
5 processor. But I can update that list there. I can tell
6 you one way of checking whether it is up to date--no, it
7 is not up to date. And it is not the latest one I sent
8 you.

9 MR. SEBELIUS: I may have another one that came.
10 When did we send that one?

11 MR. HANSEN: Late February.

12 MR. SEBELIUS: There would be one that I think I have
13 a copy of that I got. When, a month ago, in June?

14 A Yes. That one, I think, was sent initially or may have
15 been given to you at our initial meeting when you wanted
16 to find out something about me. But that is not up to date.

17 MR. HANSEN: It might be this was February 28th when
18 you sent this.

19 A Yes, I am sure I gave you a copy at our meeting.

20 Q (By Mr. Hansen) Are there other cases in which you have
21 testified that would be on a more recent resumé?

22 A Where does that one stop?

23 Q It's got Norfolk, Kansas City, Milwaukee, Omaha and
24 Atlanta?

25 A No cases since then, which I have testified.

1 Q Are there cases in which you have been retained, but not
2 yet testified?

3 A Yes.

4 Q What cases are those?

5 A The Milwaukee Metropolitan case, which is ongoing, DeKalb
6 County.

7 Q DeKalb what?

8 A Georgia, and this case.

9 Q Have you ever testified for anybody but defendants?

10 A I have testified in a housing case for the Center on Law
11 and Poverty, I think it is called.

12 Q That is listed in here?

13 A It should be.

14 Q Should it be under public service?

15 A Yes.

16 Q No--

17 A This is in the revised one. But I was retained. Did I
18 not testify? I think your word "testify--

19 Q I meant to use the word testify. You answered the question
20 I wanted to ask, but it wasn't the one I asked. Let me
21 ask a clearer question. Are there any other school
22 desegregation cases in which you have been retained?

23 A Yes. But there is a gag order. I don't know how you deal
24 with that.

25 Q I don't know how to deal with that either. Any others

1 besides that one, where there is a gag order?

2 A No.

3 Q Is there only one where there is a gag order?

4 A Yes. The orders were not to--neither experts on either
5 side are not to speak about the case, which makes it very
6 mysterious and strange.

7 Q Our curiosity level just goes shooting up. I don't know
8 about anybody elses, but mine does.

9 A I think everyone's curiosity goes shooting up.

10 Q In Norfolk, can you summarize what you are going to testify
11 to in two or three sentences?

12 A I was retained to examine the issue of "white flight,"
13 potential for white flight given that the school system
14 returned to a neighborhood school policy.

15 Q What was your conclusion?

16 A My conclusion was, from a survey and statistical analysis,
17 that the return to a neighborhood school policy would be
18 likely to keep Whites in Norfolk and reduce the amount of
19 White loss to the surrounding Virginia Beach suburbs.

20 Q That is exactly what I am looking for. I would like to do
21 that for each of the cases you testified in. The next one
22 listed on your resumé is Kansas City?

23 A That is a strange situation, because in the way of preface,
24 I was retained by the suburban school district, along with
25 the State defendants in the case, and I was retained to do

1 a demographic analysis of the relationship of the growth
2 of minority population in relationship to housing. And in
3 the kinds of decision making that households went through,
4 the suburbs. As you almost certainly know, I know Topeka
5 lawyers will be aware, the suburbs were dismissed from the
6 case, and the State was kept in the case. And it was tried
7 as an intra-district case, not inter-district case. And
8 my testimony was, therefore, limited. And I spoke only
9 about some demographic changes. Showing the way in which
10 the Black population had spread from the central city out
11 of the Kansas City District and into surrounding territory.

12 Q Was your testimony to the effect that that would have
13 happened, regardless of what the school district would
14 have done?

15 A My testimony was to that effect, yes.

16 Q If the suburban school districts were the ones who retained
17 you and they got dismissed out, who actually called you to
18 the stand?

19 A The State.

20 Q In Norfolk, your resumé said you were a consultant for
21 Williams and Worley?

22 A Yes.

23 Q Who did they represent?

24 A They represented the Norfolk School Board.

25 Q In Milwaukee, your resumé says you are a consultant to

1 Quarrels and Brady. Who did they represent?

2 A They represented the Milwaukee City School Board. And in
3 1978 I was an expert testifying on the behalf of the
4 Milwaukee City School Board. In 1986, I am an expert
5 witness on the behalf of the suburban school districts.

6 Q Who are on the other side?

7 A Who are being sued by the Milwaukee City School Board.

8 Q And your testimony in '78 in Milwaukee was briefly what?

9 You were retained to testify to what, and you testified to
10 what?

11 A I testified to the pattern of the Black population changing
12 over a time, and the analysis I did showed that that
13 pattern is similar to other metropolitan areas, and that
14 it is, was, in my opinion, based on my analysis of the
15 results of the decision making of households, that was
16 related to the cost of housing and economic and social
17 demographic forces at work in the city.

18 Q Rather than school board actions?

19 A Rather than school board actions.

20 Q What is your testimony in '86 going to be?

21 A It will be much the same as it was in '78, with an updated
22 analysis.

23 Q The Milwaukee School District hasn't tried to disqualify
24 you?

25 A No.

- 1 Q Not yet. What were you retained to testify to in Omaha?
- 2 A Omaha; you have to remember, both the Milwaukee in 1978
3 and the Omaha in 1978, were different kinds of cases. In
4 that they were not liability cases, but remedy cases. The
5 liability phase had already been tried in Omaha. I was
6 retained to look at the same kinds of issues, the pattern
7 of Black development over time, related to school boards'
8 actions or as it related to the demographics and economic
9 processes at work in the city.
- 10 Q You concluded the same way that you had in Milwaukee, that
11 it was due to demographic, not school board actions?
- 12 A Yes.
- 13 Q In any of those cases, any of the four we have discussed
14 so far, did you analyze school numbers as opposed to
15 residential numbers?
- 16 A Those analyses were all population analyses. When you
17 say "all," were you including the Norfolk?
- 18 Q Yes. Norfolk, Kansas City and Omaha?
- 19 A In Norfolk, I also worked with survey analyses of
20 children and their probabilities of entering the school
21 system from the survey.
- 22 Q A public opinion survey?
- 23 A A public opinion survey.
- 24 Q Done by whom?
- 25 A Done by Amracon.

1 Q What was that survey? What was it designed to find out?

2 A One of the portions was whether or not--what is the like-
3 lihood that a child not presently in the school system
4 will enter the school system under certain situations.
5 That is, if there is busing versus not having buses. What
6 is the likelihood a White parent, a Black parent or a
7 White parent in certain residential areas will send their
8 child to the school system. Because often the decision
9 that is made very early on to enter the school system has
10 an important impact on the school children entering the
11 school system at another time.

12 Q Norfolk, it wasn't a liability phase. It wasn't a remedy
13 phase. Now that we have put the remedy into place, what
14 happens next?

15 A I think you can interpret it that way.

16 Q And in Kansas City, you were testifying for the liability
17 phase?

18 A Yes.

19 Q And Milwaukee, was the remedy phase?

20 A Yes. The second Milwaukee situation is now an inter-
21 district case.

22 Q Inter-district liability?

23 A Yes.

24 Q Have you testified yet in Milwaukee the second time around?

25 A No.

1 Q Has that got a trial date?

2 A Yes.

3 Q What is it?

4 A April of 1987.

5 Q The next case listed on your resumé is Atlanta--wait a
6 minute, I didn't ask you in Omaha. Again, there is what I
7 gather a law firm listed here. Who does the law firm
8 represent?

9 A The Omaha School Board.

10 Q In Atlanta, what were you retained to testify to?

11 A That was the first case in which I testified, and the
12 first case in which I did a demographic analysis.

13 Q I mean, for what purpose?

14 A It was a more general analysis of the forces that impact
15 the development of racial separation and the patterns of
16 Black concentration over time.

17 Q I don't understand that. Can you elaborate on it just a
18 little bit?

19 A I mapped the Black population over time. I looked at the
20 literature that discussed these kinds of issues and I
21 synthesized that literature, prepared some maps of data on
22 cost of housing, and I gave opinions as to the explanation
23 for that pattern of Black development over time, and in
24 particular, its movement into the suburban areas or
25 surrounding the City of Atlanta.

1 Q Is the gist of it, Blacks didn't move into the suburbs
2 because it is too expensive?

3 A The fact in Atlanta, they were beginning to move to the
4 suburbs.

5 Q What was the relevance of that testimony to the case?

6 A It was an inter-district liability case.

7 Q So it was your conclusion that the School Board wasn't
8 taking any action that was having--negative effects?

9 A It was my conclusion that the county school districts
10 surrounding the City of Atlanta were not taking actions
11 that were preventing Black households from moving out of
12 the City of Atlanta.

13 Q You testified there for the suburban school districts, or
14 the City or both?

15 A If I remember correctly, now this is eight years ago, and
16 I don't tend to remember who brings suits, it is not a
17 particular concern to me; but I believe it was brought by
18 the ACLU. But it may have been brought by local attorneys
19 as well. And I believe I was an expert for the City of
20 Atlanta School Board and the surrounding school boards.

21 Q The next case that you mentioned was DeKalb County, Georgia?

22 A Yes.

23 Q You have not yet testified there?

24 A No.

25 Q Have you done your analysis?

1 A It is not complete.

2 Q What were you asked to look at in that case?

3 A I am looking at patterns of residential development over
4 time, particularly racial residential transition, as it
5 impacts school enrollment.

6 Q Racial residential transition means where Blacks are
7 moving and where Whites are moving in town?

8 A Yes.

9 Q You have been retained in that case by whom?

10 A By the DeKalb County School Board.

11 Q Is it an inter-district or intra-district case?

12 A I don't believe it is either. I believe it is going to be
13 a hearing to determine unitary status. That is an expert's
14 interpretation of what is probably going to be a legal
15 decision.

16 Q You said you had testified in one other case, in which you
17 were retained by the Center for Law and something?

18 A I didn't testify.

19 Q You were retained by--

20 A Retained by them.

21 Q By who?

22 A I was retained by attorneys for the Center to look at
23 housing issues in Orange County.

24 Q And the case was about what?

25 A The case was about the positioning of assisted housing and

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1 the amount of money that was being given for assisted
2 housing. Particularly with respect to developers having
3 the requirement to build a certain number of low-income
4 units as part of the affirmative action process.

5 Q Did you reach any conclusions?

6 A I gave some preliminary reports.

7 Q What were your preliminary conclusions?

8 A I don't recall now, off the top of my head.

9 Q Did you find that the assisted housing siting had a
10 negative racial impact?

11 A If I recall correctly, first of all, it was not a siting
12 issue so much as an issue of the set asides. And it was
13 complicated in a sense that some developers were selling
14 off or purchasing in other units their requirement to
15 fulfill a certain number of low-income units. It wasn't
16 so much an issue of siting. But it was of a proportion of
17 these were being constructed. And secondly, it was not,
18 if I remember correctly, specifically concerned with racial
19 issues. It was more concerned with low-income issues. I
20 never got to the point of doing an analysis based on
21 census data.

22 Q Did you reach any tentative conclusion?

23 A The tentative conclusion was that there was some evidence
24 that the low-income population was not being sufficiently
25 well-served by this particular mechanism of requiring

1 developers to set aside a certain amount of low-income
2 housing.

3 Q Not being well-served because of what?

4 A Because the way in which these set asides were being
5 practiced.

6 Q It was resulting in a concentration of the low-income units
7 in what place? What was bad about the way--

8 A We hadn't got to the point there was an impact. We
9 hadn't got to the point to determine what that impact was.

10 Q What year were you doing this work?

11 A It is on the revised vitae. I think in the early '80's.

12 Q Are there any other cases in which you have testified as
13 an expert witness?

14 A I think we have covered them all.

15 Q Your vitae lists a whole slew of publications. Are there
16 any on there in which you relied in doing the analysis you
17 did in this case?

18 A My writing over the past twenty years, and particularly
19 the last ten years, has been concerned with issues of
20 residential decision-making, residential relocation and
21 the demographics associated with that. And so to that
22 extent, any of the papers talking about population and
23 relocation are part of what has gone on in my building up
24 an analytic process. There are probably some papers that
25 are more specific. The paper on urban geography, I don't

1 have a copy in front of me, is certainly one of those
2 papers. There is a paper to the Civil Rights Commission
3 that is going to be published, which is not on that list,
4 that is how I could determine it wasn't up to date, which
5 gives a summary of this kind of analysis, is certainly one
6 of those papers. I can give you the number of the urban
7 geography.

8 Q I was going to ask you that.

9 A I would say papers that were important, 491980, relation
10 and mobility and neighborhood change in urban geography.
11 Item Number 49. I am trying to pick out two. Item 67 on
12 the life cycle and housing adjustment. That is Item 67--
13 Item 66, residential mobility and public programs in the
14 general social instance. And then this recent paper on the
15 analysis of racial segregation in major metropolitan areas.
16 That was a paper that was given to the Civil Rights
17 Commission, which will be forthcoming, in population
18 research and review, later this year. But there is a
19 preliminary version available.

20 Q Available from the Civil Rights Commission, or from you?

21 A I have a copy.

22 Q The testimony that you are going to give in this case,
23 other than the commentary on the central surveys study,
24 and the information that is contained in your report, do
25 you anticipate any other areas of testimony?

1 A Not at this time.

2 MR. SEBELIUS: Why don't we take a 5-minute mid-morning
3 break.

4 MR. HANSEN: That will be fine.

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

7 Q (By Mr. Hansen) Dr. Clark, you did a written report in
8 this case, is that right?

9 A That is correct.

10 Q I would like to take you through the report a little bit,
11 if we can talk about some of the things that are in it.
12 Starting on Page 2, I guess, in the first paragraph, you
13 explain what the reasons are for doing the report. And
14 you identified the fact that you are looking at boundary
15 changes during the period 1963 to 1985. Why that period?

2-A

16 A I think it is partially explained in the report that there
17 was a lot of change going on pursuant to the desegregation
18 of the Topeka schools after 1951. And I chose '63-'64 as
19 being some point when the 4-step plan had been completed.
20 Optional attendance zones still existed, so we would have
21 had that as part of the analysis, and it seemed to me to
22 be a good starting point. It was essentially enough time
23 then to look at these boundary changes.

24 Q Why not start in 1950 or 1954?

25 A The City grew very rapidly between 1950 and 1960, in terms

1 of its total population, and there is much less detailed
2 data available for Topeka in 1950 and you would need Black
3 data in detail to carry out this analysis. Plus, in 1950,
4 you still had the Black schools and White schools. And
5 they were dismantled over this period we are looking at.
6 And so I just wanted to start after that time.

7 Q Why not in 1955, then, which is when the official boundaries
8 were drawn around those schools?

9 A Again, the same thing applies in that the Black data doesn't
10 cover the whole City for that time.

11 Q Any other reason, besides the inadequacy of available data?

12 A It was like I said, a combination of inadequacy of available
13 data. Plus, in my judgment, at that point we had completed
14 the process that was begun with the 4-step plan and we
15 could look at it after that.

16 Q You completed the 4-step plan in the sense that any kid
17 who started school at that point would have then have
18 graduated from high school at that time?

19 A That is what I understand.

20 Q Did you assume that the 4-step plan resulted in complete
21 desegregation in Topeka by 1963?

22 A Did I assume a complete desegregation? I don't think that
23 I made an assumption one way or another. I assumed that
24 they were put in place, what had been discussion of the
25 1955--the remedy which had begun before then, and that

1 remedy they had undertaken and published was their good
2 faith effort to desegregate the system. And that they had
3 proceeded with that plan. Whether or not the school was
4 completely, as you put it, desegregated as of 1963, I didn't
5 make an assumption one way or the other.

6 Q Did you have an opinion as to that question, as to whether
7 in 1963 that the Topeka school system was completely
8 desegregated?

9 A I would have to do an analysis of the school system at
10 that point and look at the data. But I think there was a
11 problem even there, because I don't think we have racial
12 data for the school. So it would be a rather difficult
13 decision to make without individual racial data on the
14 schools.

15 Q So today you don't have an opinion on that question?

16 A I do not.

17 Q Do you anticipate trying to do that analysis before trial?

18 A That is something that I might consider looking further at,
19 the changes in that period and what their impacts were.

20 Q Do you have an opinion today as to whether at any point
21 Topeka has had a completely desegregated school system?

22 A Yes.

23 Q When did that occur?

24 A I think the school system was certainly substantially
25 desegregated in the '70's.

1 Q Can you be more specific as to when it occurred?

2 A I would say again, we haven't put any specific terms on
3 what we mean by "completely desegregated" or "substantially
4 desegregated" and so on. But just talking in these terms
5 loosely, I think as one of my readings of the chronology
6 of the system, say during the period around '75-'76, when
7 HEW was doing their investigation, that essentially the
8 system was desegregated by that time. By that time, it
9 doesn't mean that it was segregated before that. Just by
10 looking at that data, it seems to be a conclusion you would
11 come to.

12 Q Do you know what conclusion HEW came to in '74?

13 MR. SEBELIUS: You are not talking about what he said
14 in '76, but you want to go back to '74?

15 MR. HANSEN: I think he said in the '74 to '76 period.

16 MR. SEBELIUS: '75 to '76.

17 Q (By Mr. Hansen) Do you know whether HEW reached any con-
18 clusions at any stage about the segregated or desegregated
19 nature of the school system?

20 A Yes.

21 Q What conclusions did they reach?

22 A They began an investigation in about 1974. And by about
23 1977, there was an agreement between, I assume, between
24 the School District and HEW. I can't be sure exactly who
25 was involved in the agreement. And that agreement was that

1 the HEW did not see any point--they did not wish to pursue
2 any proceedings further. And the assumption at that
3 point, they were satisfied with the status of desegregation
4 in the system.

5 Q Is it on that, that you base your conclusion that by the
6 mid-'70's the school system was desegregated?

7 A I think that enters into it, yes.

8 Q What other factors enter into that conclusion?

9 A Other factors of just looking at the enrollment of the
10 schools and the percentage of Blacks in the schools, and
11 taking a very brief look at the indices over time show a
12 substantial desegregation in the system.

13 Q How would you measure a school system that, in your view,
14 was completely desegregated? If I asked you to look at a
15 set of numbers, what would you look for?

16 A There are a number of ways that this has been done. What
17 I would do, if you were asking me to look at this kind of
18 question, would be to take the school enrollment by race
19 and run dissimilarities and exposure indices over time,
20 and then I would make statements of levels of what I
21 consider desegregation based on those numbers.

22 Q What would be a dissimilarity number that would lead you
23 to conclude that it was desegregated?

24 A If we have numbers that are low, towards zero at the
25 exposure or the dissimilarity, I would say the system is

1 desegregated. If the numbers were high, towards one, I
2 would say it is a segregated system.

3 Q Where would you draw a cutoff?

4 A I don't think there is any cutoff point that has ever been
5 agreed on. I think these are issues that become a judgment
6 about what is totally desegregated.

7 Q Do you have an opinion as to that?

8 A I have not done a specific analysis of the school system.
9 But I would say, in my looking at the figures for the
10 Topeka school system, it is a desegregated school system.

11 Q On Page 36 of your report, you do some of this, I gather?
12 And in '66-'67, you have a dissimilarity index. Is that
13 the proper way of talking about it?

14 A Yes.

15 Q Dissimilarity index of .48 in the schools. Is that a high
16 number or a low number?

17 A Well, all numbers are relative.

18 Q Exactly. Does that number suggest to you that the school
19 system is segregated, is completely segregated, or is
20 some place in transition between those two?

21 A I feel that the exposure index is a more accurate repre-
22 sentation. I think the dissimilarity index is subject to
23 small numbers, as has been discussed in a number of
24 situations. And the exposure index, to me, shows a
25 substantially desegregated set of schools. However, this

1 index is not for all schools in the system. This is only
2 for the set of schools that were examined in this report.
3 Those involve principally Black areas and those that have
4 many boundary changes and school closings. So it is a
5 sub set. But if we look at the schools, I would say it is
6 a substantially desegregated system, in this case, 1960's,
7 for those schools, and certainly in the '70's. Those
8 values are very low.

9 Q Did that desegregation take place as a result of School
10 Board actions?

11 A The Table 9 shows that over time the combination of demo-
12 graphic transition and attendance boundaries have led to
13 in this set of schools, desegregation.

14 Q Does Table 9 tell you what percentage of the change has
15 been as a result of demographic and what percentage has
16 been as a result of School Board action?

17 A No, it doesn't.

18 Q Do we know the answer to that in these terms, in dis-
19 similarity and exposure terms?

20 A You are asking can we break down the dissimilarity and the
21 proportion that was from boundary changes?

22 Q Right.

23 A I would have to think about that. Potentially, I suppose--
24 I would have to think about that. I can't answer the
25 question, that I could break it out into those two parts.

1 This shows over time that the school system became more
2 integrated and that was one of the major questions in my
3 mind.

4 Q But it is also your opinion that after '66-'67, it was an
5 integrated school system already?

6 A I don't have the table before me that has the index for
7 '66-'67. And I believe I saw it at one point, and it
8 seems to me that that table shows over time a relatively
9 high level of integration over the whole period. And an
10 increasing level of integration. But I don't have that
11 table of all schools before me. But I believe it has
12 results, the parallel results, for this sub set of schools.

13 Q Did you do any analysis as to the exposure index or the
14 dissimilarity index between '65 and '66, either for the
15 sub set of schools or for all the schools?

16 A No.

17 Q Or for the attendance areas?

18 A No.

19 Q Why did you look in your report at residential population
20 as opposed to school population?

21 MR. SEBELIUS: I object, that misstates certainly what
22 is contained on Table 9. It appears to me that both the
23 schools and the residential populations were explored.
24 So to that extent, your question suggests otherwise. I
25 object.

1 Q (By Mr. Hansen) Is it fair to say that the thrust of your
2 analysis or majority of your analysis was directed to
3 residential population, rather than school population?

4 A I think that the majority of the report is focused on
5 residential population.

6 Q Why is that?

7 A The analysis of demographic changes and their impact
8 necessarily has to focus on residential population.

9 Q Why?

10 A Well, you want to know something about population change
11 in these attendance areas. We need to know what is the
12 base. What was going on in the base area.

13 Q Are you making any assumptions about the impact of the
14 relationship between residential population and school
15 population?

16 A The school population has grown from the residential popu-
17 lation.

18 Q Are you making any assumptions--let me ask it a different
19 way. For at least 1966 to the present, you do have school
20 enrollment data, do you not, available to you?

21 A That is correct.

22 Q Why not? Since that is a more accurate--when you use
23 residential population, you are doing an inferential look
24 at school population. Why not school population directly?

25 A There are a number of relations. You have school population,

1 which is the population that shows up at the school, and
2 that is subject to a number of decisions on the parents
3 and others. The attendance boundaries are drawn to capture
4 an area that will provide children, for example, if a
5 household chooses to send children to a private school,
6 you impact the school, but the attendance boundary--the
7 school population doesn't reflect that fact. That is a
8 decision that is outside the control of the School Board
9 in drawing the attendance boundary. So we need to know
10 what is going on in the attendance boundary. That is an
11 illustration of why we want to look at the attendance
12 boundary, rather than school population, per se.

13 Q Are there any other illustrations of say, why we would?

14 A There was one in my mind when I started to comment, when I
15 started, it slipped away. Another reason, we want to look
16 at attendance areas, is that school populations, although
17 we have the number in the school, we do not have the number
18 of the children that were in a particular area. And unless
19 we could go to the issue of actually locating every child
20 at a street address and counting the effect of attendance
21 boundaries on those children, we have no way of assessing
22 what the likelihood of that boundary change was on the
23 school population. Because what we are concerned with,
24 finding out what was the attendance boundary change, what
25 was its impact. All we know is the school changed as a

1 result of it. But was it because that particular residential
2 area was included or excluded?

3 Q But we know the school population before the boundary
4 change. We know the school population after the boundary
5 change. And we know the boundary change. Why do we then
6 need to look yet at two more numbers? Namely, the
7 residential population before, and residential population
8 after?

9 A If we don't do that, we know nothing about the transition
10 that occurred in the school attendance area during that
11 time, about twenty percent of that population is a rough
12 figure. They move every year.

13 Q I guess my question is, why are we concerned about the
14 school attendance area as a unit of analysis, rather than
15 the school of a unit of analysis?

16 A I thought I explained that. I will try again.

17 Q Maybe not. I didn't understand it.

18 A There are issues that relate to whether or not the children
19 attended the school, which are not captured by taking the
20 population of the school. It says nothing to the issue of
21 whether the parents decided to send their children there
22 or not. And the second thing I said was that it is important
23 if we want to look at this, because of school change. It
24 could have changed because it was a racial transition.
25 There was a large number of White households that moved in.

1 or a large number of Black households that moved in, which
2 changed the school composition. Whether or not there was
3 an attendance boundary, if you see an attendance boundary
4 change and a Black minority child, and ten percent minority
5 change and you associate them, you are compounding the
6 demographics and the boundary change, and that boundary
7 change is what I am entangling.

8 Q I gather it is your general opinion that in deciding where
9 to live, people don't take schools into account, is one of
10 the major factors?

11 A This is a thorny issue that has been debated, and--big
12 debates have gone on about this. And I have tried, I think,
13 to clarify this. In general, there are many more important
14 issues than schools, when people make decisions about
15 where to locate. That is, they think about the cost of the
16 housing, the quality of the neighborhood and issues like
17 that. This does not mean they don't include or are not
18 influenced at all by schools. But that is a much more
19 priority in making their decision. Secondly, the school,
20 when we look at the literature and went back and went
21 through the literature and analyzed the survey results,
22 because there was a discussion of this in one case on a
23 lot of literature read, and people talking very generally,
24 I decided this had to be solved by doing a detailed analysis.
25 You do that survey results that confirms that point of view.

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1 but secondly, given the issues that have arisen, particularly
2 since the busing of school children was initiated in the
3 '60's, and '69 and '70, in the last ten years, fifteen
4 years, schools have become a more conscientious issue. So
5 although they are not the primary issue in which people
6 make decisions, but slowly over time, people are more
7 aware of schools. So it is a complicated issue, both
8 because of the temporal changes as well as because of the
9 relative ranking of these.

10 Q Does your analysis here make any assumptions on that
11 question?

12 A I don't believe there are any assumptions about the
13 influence of schools on residential decision-making built
14 into that analysis.

15 Q You don't assume one way or the other that people move
16 from one part of town to another as a result of a boundary
17 change or a school composition change?

18 A No.

19 Q If you don't assume anything on that question, do you
20 reach any conclusions as to it?

21 A I didn't do a relocation analysis. I don't look at the
22 behavior of households. It is something that I may
23 consider, but there was no specific analysis on that issue.

24 Q In doing your analysis on the boundary changes, did you
25 also look at school construction and siting?

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1 A To the extent that they change boundaries and new schools
2 were built, they are reflected in the population changes
3 in those areas.

4 Q The same would be true of school closings?

5 A That would also be true of school closings, and I
6 specifically looked at two school closings.

7 Q What about the use of temporary facilities? Did you take
8 that into account in your analysis in any way?

9 A Only to the extent that it is reflected in those population
10 changes over time. I mean, the attendance area is not
11 influenced by putting a new facility there.

12 Q Right. The attendance area doesn't change. If you decide
13 to put a temporary facility in there, rather than changing
14 the boundary line, that would not be reflected in the
15 analysis?

16 A That would not be reflected in the analysis at the present.

17 Q Do you expect to anticipate doing something about that
18 before trial?

19 A I don't anticipate doing that at the present.

20 Q Did you read the Lamson report?

21 A Yes.

22 Q Did you form any conclusions about it?

23 A Yes.

24 Q What conclusions did you form?

25 A Several.

1 Q Let's talk about each of them.

2 A The first conclusion I formed was that the report was
3 largely concerned with an analysis of school enrollment
4 and school boundary changes, and other things to do with
5 schools in the period between 1950 and 1960. Two-thirds
6 of the report probably covers the period 1950 to 1963-66.
7 Only one-third of the report is on the changes in the last
8 twenty years. That is one conclusion. Another conclusion,
9 is that much of the report is antidotal in nature. That
10 is, Mr. Lamson--I don't--is it Dr. Lamson?

11 Q Mister.

12 A Mr. Lamson analyzes a specific school by talking about the
13 boundary change and the school enrollment. So it is an
14 antidotal description of what happened in many cases.
15 There is no analytic procedure that allows me to assess
16 the implications of those changes. Another conclusion I
17 formed, was that Mr. Lamson examines school-by-school
18 studies, and doesn't allow me to get an overall picture
19 for a set of schools or for the system. So there is no
20 tabular analysis that allows me to go in and say these
21 were the kinds of impacts that were occurring of this kind.
22 Another conclusion was that much of the report seems to
23 be concerned with the lack of affirmative actions by the
24 School Board, rather than the actions that were taken. My
25 final conclusions, I am just running these by in my mind,

1 is that the boundary changes that he examines never get at
2 the underlying demographics of population shifts. He only
3 is looking at the school issue, the school population
4 change. But I hesitated, because there are a couple of
5 instances where he does talk about blocks, but that is
6 unusual in the report. And finally, he talks about potential
7 things that the School Board could have done without any
8 regard to whether or not the school attendance areas were
9 coterminous or separated. In other words, he didn't cite
10 his analysis into context. There is no geographic analysis.
11 I think those are the general things. There may be other
12 comments I had on the report, but those are the problems I
13 had in looking at the report.

14 Q As I understand those problems, they are, for the most
15 part, methodological. It is not disagreeing with the way
16 he did the analysis, is that right?

17 A No, I describe it that way.

18 Q You disagree with both methodology and conclusions of the
19 Lamson report?

20 A Yes.

21 Q In your mind, does the Lamson report demonstrate anything
22 at all about the Topeka school system over the period it
23 analyzes?

24 A When I say anything at all, clearly it has some of it
25 today taken there, which I have used. Yes, it demonstrates

1 that there were schools back in the '50's, '52, '53 and '54.
2 that were all Black, for example. So it is demonstrating
3 a number of facts. That my problem in dealing with the
4 report is that I find difficulty with the methodology
5 which gives me difficulty in analyzing the substantive
6 results.

7 Q Did you look at the Foster report in preparation for your
8 report?

9 A I did.

10 Q Do you have any opinion as to the Foster report?

11 A I don't think opinions are as clearly organized as they
12 are for the Lamson, because the Lamson was a demographic
13 study. The Foster report is more what I describe as a
14 school's report.

15 Q Do you have any opinion as to its validity or usefulness?

16 A Well, as I read Mr. Foster's report, he is concerned with
17 racial identifiability. That is one of the ways in which
18 people have examined the system, and he uses one particular--
19 well, he actually changes his standards at various points
20 in the report. He is not consistent in his data, and he
21 uses plus or minus 15. When plus or minus 20 has been
22 used. Which reminds me, that I testified in a case which
23 we didn't go over this morning, which just came to mind.
24 That is the San Jose case. But it is on that revised vitae,
25 and I used both Christian Rozelle, and I used both a plus

1 and minus 15, and 20 percent in the San Jose case, in
 2 looking at a plan. This was a case concerned with putting
 3 into place a magna plan, magna school plan for the San Jose
 4 school system. And we used plus or minus 20 percent. So
 5 there are various ranges that are used. He used several
 6 different ranges. He wasn't consistent. He used plus or
 7 minus 15. He used minority, but minority is somewhat a
 8 misleading presentation, because the school system, of
 9 course, in 1950 and in 1960, the minority was Black
 10 basically. There was a small Hispanic, but by 1980 and
 11 '85, there was a substantial Hispanic-Asian-non-Black
 12 minority in Topeka. So to keep that standard across--it
 13 makes the results harder to interpret in terms of what is
 14 going on. So as a demographer, I would want a standardized
 15 description in doing the analysis, rather than using a
 16 term "minority," which has changed over time. There are
 17 probably other comments I have about the report, but they
 18 don't come to mind right now. Those are the ones that
 19 stick out. Oh, there is one other I wish I agreed with.
 20 His comments on optional attendance zones, that they allow--
 21 it is a two-way thing, he was commenting that optional
 22 zones allow Whites to escape from the system. But they
 23 also allow Blacks to attend other schools. And he made
 24 the comment that they were both White, which I agree with.
 25 Q The dispute between you on the plus or minus question, the

1 concept you use in your report, plus or minus 10 percent
2 in looking at the residential population--

3 A Yes.

4 Q Why do you use 10 percent?

5 A I thought you might ask that. I used plus or minus 10,
6 because it is a very conservative measure, and he mentions
7 it in his report. So I thought, well, let's be conservative,
8 let's in fact not use plus or minus 15 or plus or minus 20,
9 let's use 10 percent, and that is the reason it was chosen.

10 Q Does it make any difference in your mind, in choosing the
11 plus or minus number, what the percentage of Black or
12 minority population in the system is?

13 A Does it make any difference? Why, it certainly makes a
14 difference. It can have an impact, yes.

15 Q If I were asking you to pick a plus or minus figure that
16 would be fair in Topeka for the schools not in the popula-
17 tion, would it make any difference to you if a school
18 system was a 5 percent Black system, or 95 percent, or 50
19 percent? Would the plus or minus change on this hypothetical?

20 A You have a comment about "fair."

21 Q Would you use it, would it be professionally responsible?

22 A I think in this case, where we are talking about standards
23 that have emerged as people have used them, and plus or
24 minus 15 and plus or minus 20 has been used frequently,
25 whether or not the system has a low percent or a high

1 percent, those standards are being used in a number of
2 different cases. I think that, I am comfortable with a
3 plus or minus 15. I am not comfortable with a plus or
4 minus 20.

5 Q Even if the school system is only 5 percent Black, and
6 thus, you can't get the 15 percent going that direction
7 drops below zero?

8 A That is correct. I think the point to be made, is that we
9 are concerned, in my mind, as the exposure index discusses,
10 with interracial contact. If you have small numbers of
11 Blacks or small numbers of minorities, and they are spread,
12 they are in contact with Whites, that is what we are trying
13 to achieve. And that is what we were concerned about in
14 the San Jose case, rather than with a racial balance
15 approach, which is what the dissimilarity index proposes.

16 Q If you have a school that falls outside of the plus or
17 minus boundary, whether we use 10 percent or 15 percent or
18 20 percent, is that a school which, in your mind, is
19 insufficiently exposed or similar? I am trying to use the
20 dissimilarity exposure index words, to avoid using "fair"
21 or "integrated?"

22 A If a school falls outside the boundary, it has commonly
23 been called a racially identifiable school. That is, that
24 it has a significantly greater proportion of Blacks or
25 minorities or Whites, and so it is a racially identifiable

1 school.

3-A

2 Q So if there were schools in Topeka today who fell outside
3 whatever boundaries we choose, you would agree that those
4 would be racially identifiable schools?

5 A On that standard, yes. If we apply that standard, and
6 they are outside, we would have to be, if we decide that
7 is a racially identifiable school.

8 Q Right. But you accept the standards, either 15 or 20
9 percent variance as an acceptable standard for the measure
10 of racially identifiable, in your mind?

11 A No. I said, if we are going to use that standard as a
12 measurement for segregation or separation, then those
13 standards have been used. And obviously, in the San Jose
14 case, I accepted the plus or minus 20 percent as a band in
15 which this could occur. I must, as I expressed earlier,
16 think that the exposure or the dissimilarity perhaps is a
17 better measure of the levels of segregation in the system.
18 It is one number for the whole system, which is what I
19 think we are dealing with. We are dealing with systems,
20 not with individual schools.

21 Q The band analysis is professionally acceptable, but not
22 your preferred method?

23 A Professionally acceptable. I don't like juggling with
24 words, but it is being used as a means of identifying
25 particular schools. And it is one way of doing it. I

1 don't know whether we could say it is professionally
 2 acceptable. It is to some extent. Whereas, the index is
 3 actually a measure which we can calculate, which doesn't
 4 require any judgments, the judgments come later. In the
 5 case of doing this racial identifiable issue, the band
 6 itself is a judgment.

7 Q But a judgment that you have made, and in some circumstances
 8 you find acceptable?

9 A Yes.

10 Q There was a distinction. I want to get back to the other
 11 part, which I got away from. I asked you earlier about
 12 the name of the census bureau books that have the informa-
 13 tion that you used in it. You said you thought it was in
 14 the report. Is that it down at the bottom of Page 2,
 15 Population and Housing Census Tract Statistics?

16 A That is the first data I used, census tract data. The
 17 second data is the census block data.

18 Q If I called the Census Bureau, I could ask them for the
 19 block statistics?

20 A If you called them in 1980, you would ask them for the
 21 census block statistics for the City, or the metropolitan
 22 area of Topeka, and they would send it to you on microfiche.
 23 They would not give you a printed form, is my guess. Now,
 24 the printed form was available in '80, when it was published.
 25 Whether it is still available in a printed form, I don't

1 know.

2 Q Your library bought it in '80, and so you bought it in
3 printed form?

4 A It is available in printed form, and is available in other
5 libraries.

6 Q You used census tract data for some of your analysis, and
7 block data in the other parts?

8 A I used census tract data in giving data on race in Tables
9 1 and 2. So I used the tract data, as I mentioned, and
10 the report has more detail.

11 Q You used it for the first three methods of analysis?

12 A Yes.

13 Q And for the second two, you used block data?

14 A Yes.

15 Q In the first of your analyses, you plot on the maps the
16 percentage of Blacks in any given geographic area in 10
17 percent increments, is that correct?

18 A That is correct.

19 Q Who decided to do it in 10 percent increments, rather than
20 15 or 20?

21 A Ten percent is a commonly used standard.

22 Q You plotted Black, not minority?

23 A That is correct.

24 Q Why was that?

25 A In the block data it gives it. And I think I mentioned in

1 the report that it gives data for Blacks. Hispanics are
2 treated as White, in the '70 and '80 census. And that
3 data is not available on a Black basis.

4 Q If you had the data, would you have done this differently?
5 Would you have applied minority, rather than Black?

6 A No.

7 Q Why not?

8 A I think the original case was about Black children going
9 to school. And I think that is what we are really con-
10 cerned with the analysis of whether boundary changes
11 impacted Black enrollment.

12 Q Let's talk about the first analysis, and I gather, I think
13 we are going to have to open up the maps to do this,
14 because my impression is that the conclusion you reached
15 on the first analysis is on Page 10, and it is the last
16 two sentences of the first full paragraph on the page.
17 The sentence I am referring to starts with, "A visual
18 analysis of these boundary changes shows that there is no
19 consistent pattern related to the underlying demographic
20 changes."

21 A Yes.

22 Q Is it fair to say that that sentence is a conclusion of
23 your first analysis?

24 A I think the first analysis, that is a fair conclusion,
25 about the boundary changes. But there was a discussion

1 previous to that, which is now, you have this new map,
2 which speaks to the issue of population change over time.
3 And shows that the inter-city was declining. The mid-
4 city declined at a later point, and that there was
5 significant growth in the outer areas, at least some growth
6 to the east, for a short period in the '60's. But then,
7 the massive growth that occurred in West Topeka during the
8 late '60's and '70's, so that is a conclusion that speaks
9 to a number of issues about school closings, about school
10 boundary changes. In other words, a school board essentially
11 dealing with population change. In other words, they are
12 not making these changes out of context. The context is
13 in fact in this colored map, showing significant population
14 change over time. And with those kinds of changes, you
15 make changes in the boundaries, so that I think is the
16 first conclusion. A second conclusion then is the maps,
17 and their overlays.

18 Q Let's take them one at a time. The new colored map that
19 we have the green and pink and the yellow?

20 A Yes.

21 Q There is no code, so what does green mean?

22 A Excuse me. The code is just that those tracts relate to
23 the tracts on the tables. So inter-city is yellow. Mid-
24 city is pink. I don't particularly like these colors.

25 Q Those were the crayons you had handy when you did this?

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1 A When we present this at trial, it will not be yellow, pink
2 and green. But the yellow is inter-city. The pink is
3 middle city, and the green is outer-city. These are just
4 geographic locations of tracts. This map, for convenience,
5 is done on a 1980 tract map.

6 Q So the significant results of the things that are in Table 3?

7 A Table 3 then results to this, and the line which begins on
8 Burlingame and then runs up to Topeka Avenue, is the
9 dividing line between east and west.

10 Q Which has sort of a little pink at the end, to indicate
11 that is the line?

12 A That is the line.

13 Q And the conclusions you draw from Table 3 are what?

14 A The conclusions I draw from Table 3 is that we had a
15 significant set of population or demographic changes
16 occurring over time, and that these changes were the
17 decline in inter-city and mid-city populations, especially
18 in the eastern part of Topeka, and the growth over time of
19 the outer-city tracts. Especially the areas outside in
20 the west of Topeka. And we might remember that this is
21 for the City of Topeka. It is not for the School District,
22 which would require a much more detailed analysis of the
23 population changes. So in fact, it is somewhat overstated,
24 the growth in East Topeka, because the growth that was
25 occurring in Tracts 32, 33 and 31, some of it was outside

1 of the School District boundary. But the conclusion is,
2 it is not going to change. It is broadly that a decline
3 was occurring in inter-city tracts and growth in the
4 western part of Topeka.

5 Q What made you go from the earlier draft to this table,
6 which had just inter and outer, to a second draft that has
7 middle, inter and outer?

8 A The first draft I had used in drawing the boundary
9 identified the line furthest to the west. And so that in
10 fact it wasn't always on Topeka Avenue, which I thought
11 was misleading. Secondly, I thought that giving just an
12 inter and outer does not portray the kind of things that
13 were going on, and in fact, gave a misleading impression
14 of the amount of growth in the west. I wanted to be more
15 accurate in the presentation of the balance that was
16 occurring there. So I think that the second table is a
17 clearer presentation and a more balanced presentation.

18 Q And the reason the old table has, as a total from 1960 to
19 1970, change in West Topeka, is 208.7, and the new table
20 is 8.1?

21 A I will have to find my old table. Now, I am sorry.

3-B

22 Q The reason, if you look at just the very first number on
23 the two charts, one is 11 and the other is 25 or something?

24 A Yes.

25 Q The reason that they are different is because the boundaries

1 have now changed?

2 A I have moved the boundaries to more accurately represent
3 where the inter-city is.

4 Q How do you decide where the inter-city is?

5 A Well, the first one was done before I had the field survey
6 of Topeka. And I was essentially working from maps. And
7 once I had seen it on the ground, and spent some time here,
8 in fact, driven up and down Topeka Avenue and looked
9 around the downtown area and looked around the inter-city
10 area, which incidentally, I drove out with my little map,
11 and decided whether or not I was really on target. I
12 thought I was. And indeed the changes came as part of the
13 field survey.

14 Q Both changes as to where you change the line and also as
15 to deciding the three-part division?

16 A Yes.

17 Q The numbers in Table 3 are percentages, is that right?

18 A Yes, the percent change in population.

19 Q So inter-city 1960 to 1970 west of Topeka, lost ten percent
20 of its population?

21 A That is correct.

22 Q Why is the second part of Table 3, 1960 to 1980, rather
23 than 1970 to 1980?

24 A Just the convenience of just doing the analysis. I wanted
25 the first part of the analysis related to what was going

1 on in the '60's, the beginning of the suburbanization in
2 Topeka. And then I wanted an overall picture. I could
3 very well, in my presentation, do, and in fact, we probably--
4 or I will do this, give '60 to '70, '70 to '80, and then
5 '60 to '80, as a summary.

6 Q And the only conclusion you are really drawing off of
7 Table 3, is that there were population losses, were greater
8 east of Topeka than west of Topeka. And the population
9 losses were greater as you move from inter-out?

10 A That is correct. That is not the only conclusion, but
11 that is one conclusion.

12 Q What other conclusions are you drawing from that table?

13 A Also, we draw the conclusion that the change between 1960
14 and 1980 was that there was an overall sixty percent growth
15 in the tracts to the west, while there was only a seventeen
16 percent growth in the tracts to the east.

17 Q Any other conclusions?

18 A Those are the demographic conclusions that you can draw
19 from the table. Then they have implications.

20 Q What are the implications to this, as to what the school
21 system has done? Why is it relevant?

22 A It is relevant as to Topeka West High School, in which
23 there has been a discussion about Topeka West opening as
24 an all-white school, and as I note in the report, given
25 that there was--because the school in the east, in the

1 center, if you are going to build a new school, given that
2 you know little about the population changes that are going
3 on, it is not unreasonable to have built the school in the
4 western part of the City. That is one conclusion you can
5 come to. The second conclusion that you come to from the
6 analysis of the boundaries of population changes in the
7 inter-city and the mid-city, at least significant declines
8 in the population faced the School Board with the problem
9 of changing attendance boundaries and closing schools to
10 keep reasonable numbers in the schools. So they were faced
11 with having to make changes. It was not a situation in
12 which they could sit and not make changes in the school
13 attendance areas. Had, for example, the population stayed
14 constant, one could argue then that the boundary changes
15 wouldn't have been necessary.

16 Q Did you look at all at school capacity figures or change
17 in capacity figures?

18 A I looked at them. I didn't do an analysis.

19 Q You did not do an analysis of school capacities?

20 A No. I looked at data on school capacity. I didn't do a
21 specific analysis of school capacity.

22 Q Did you utilize the school capacity data in any way?

23 A Not in this report.

24 Q Did you utilize it in any of the conclusions you are going
25 to testify to?

1 A I may, when I prepare final preparation for presentation.
2 But not at this moment. I don't recall anywhere, where I
3 would use capacity.

4 Q Let's talk about the plotting on the maps and the con-
5 clusion I was referring to earlier on Page 10. What you
6 say on Page 10 is, "A visual analysis of these boundary
7 changes shows that there is no consistent pattern related
8 to the underlying demographic changes." Can you explain
9 that to me, walk me through that visual analysis?

10 A I think the way to do this will be to show you the 1960--
11 if we juxtapose the '60 and the 1980 maps, the first
12 comment to make, just very briefly, is that we see a
13 pattern of Black population by blocks that has both
14 increased in number, and especially more dispersed. The
15 visual presentation, I think, is very clear, that we had
16 concentrations in 1960. Really, only one major concentra-
17 tion. And in fact, the pattern was quite spread out.
18 Four blocks were more than ten percent Black. That doesn't
19 mean there aren't Black households in any other blocks.
20 And there are four blocks that had ten people. When you
21 have less than ten people, you aren't talking about a
22 block that is industrial. For example, this area, or the
23 railroad yards or the downtown area, where there aren't
24 any houses, there may be one or two houses, but it would
25 be misleading to plot percentages. So as I say, in summary,

1 we increased the population and we dispersed the Black
2 population.

3 Q Let me ask a question before you go on. The shading, the
4 blocks that are shaded, are all blocks in the City of
5 Topeka, are all blocks in the School District?

6 A All blocks in the School District.

7 Q Is that in the School District's current boundaries, so
8 that, for example, in 1960, if there is a block in 1960
9 that wasn't then in the School District, but now is in the
10 School District today, is that block shaded in the 1960
11 map?

12 A Yes.

13 Q Now, you were starting to take me through the rationale
14 analysis?

15 A I was going to say, in 1970, we have a mid point between
16 these two. It is a process of change over time, and that
17 1970 is the mid point. And we see that much of the special
18 dispersion occurred, it has already special dispersion
19 that occurred. The process continued by 1980.

20 Q Okay.

21 A So demographically, we have increases in the number of
22 Black households, and there are special dispersions where
23 we have indeed dispersions in the west part of Topeka.

24 Q Which is only to say, from the maps, we can see the same
25 thing you are trying to report, in the table here, in

1 Table 2 and Table 3?

2 A We are seeing similar kinds of things demographically, and
3 especially--and it is important to point those out. Those
4 are Figures 1, 2 and 3. Now, the second conclusion you
5 asked about was with respect to this in terms of overall
6 boundary changes for the system as a whole.

7 Q Yes.

8 A And to get some feel for those Figures 4-A through F,
9 which I listed in the report, are a set of overlays, for
10 the school years that match those in the report. In other
11 words, there are overlays for the years 1963-64, '66-'67,
12 '69-'70, '74-'75, '79-'80 and '85-'86. So these overlays
13 match the points in time that we discussed in the report.
14 They are fairly close fit. But as you well know, from
15 your own experience, Xerox tends to stretch over time, and
16 that is one of the problems we have. But if we spend a
17 couple of minutes, we can get these so the overlay in 1963
18 and '64 has the optional boundaries on it. And it has all
19 the attendance boundaries. When these are completed, they
20 will have school names so we can identify the attendance
21 boundaries. I know where they are. I don't know how
22 familiar you are with the analysis. So we can look at
23 these, and if we overlay each map in turn, if we look at
24 that, the issue, we see that there are optional zones
25 throughout the City. And if we go now to--let's just go

1 to a '69-'70. We put it over a '60 base. Now, virtually
2 all the optional zones have gone. I think there is one
3 left. There is another one there, too.

4 Q The 1, 30?

4-A

5 A There may be another one. I think there was still another
6 one. Most of the optional zones have gone, and we do
7 these in turn. What we are asking is, are the boundary
8 lines drawn? Do they appear to be drawn in such a way to
9 have racial impacts? Now, this is for the whole system.
10 There are boundary changes out here, and indeed, if we
11 take--now, a 1979-80, we can do a number of things. Let's
12 move up to a 1979-80 on a 1980 base. Now, we have got a
13 '79-'80 on a 1980 base. We can also, of course, look at,
14 which I was about to say, look at changes by overlaying
15 two of these greens, one on top of the other. So what
16 changes have occurred? And we can ask a person what
17 changes occurred between 1979-80, and 1985-86. By flipping
18 that backwards and forwards, we see that there were changes
19 in this area.

20 MR. HANSEN: The witness is indicating Tracts 18 and
21 4 and 21 and 5.

22 A Right. And we have here a change. And the question is,
23 the general question that is being asked, there are
24 boundary changes over the whole system. Does it appear
25 that there is a consistent pattern of boundary changes

1 that might have had a negative impact, segregated impact.
2 From looking at this one, for example, looking at the
3 boundary area that covers Tracts 18 and 4, we see the
4 boundary change was such that Black households were
5 included into that zone. That, I think, is probably from
6 the closing of the Polk School after 1979. So there are
7 many administrators under a number of constraints in
8 trying to draw boundaries, and where they place those
9 boundaries. And the question of this kind of an analysis,
10 which I come to the conclusion from overlaying these in
11 turn on the pattern of the districts, the conclusion that
12 I express in the report is that I did not see, from this
13 analysis, evidence that boundaries were being changed--
14 were segregated impacts.

15 Q (By Mr. Hansen) The one that you are looking at now, is
16 the change between '79-'80?

17 A Between '79-'80 and '85-'86.

18 Q Is that the only change in that time period? That is the
19 only one I saw.

20 A No, there is a change here in the eastern area, which is
21 probably due to the closing of the Rice School, and here,
22 this must have been to the Rice School. I am pointing to
23 the area in the east of Tract 11, and that change meant
24 that the boundary for Lafayette and Belvoir and State also
25 changed.

1 Q Did you reach a conclusion about that change as to whether
2 it had a--I am trying to think of a non-emotional term,
3 whether it had a segregated effect, whether it had a de-
4 segregated effect, or whether it had a neutral effect?

5 A The significant analysis--I didn't do a significant analysis
6 of the Rice School. But looking at the boundaries, if you
7 are closing the school here, given that you have got--
8 given that you are going to put--how are you going to
9 divide up that former attendance area, I don't see that
10 the pattern, given the attendance areas and the locations
11 of the schools, it didn't appear to me that the boundary
12 change was done in such a way as to have a segregated
13 effect. For example, there are other ways of drawing it--
14 you could have used the phrase "gerrymandered" the
15 boundaries in different directions. I don't see evidence
16 on this. But as I say, this is a visual map, we have to
17 go to the analytic method to decide what the impacts were
18 here. We are saying, does something jump out at you, is
19 what I am trying to say.

20 Q This Tract 11, the eastern half of Tract 11, you think is
21 Rice?

22 A I believe that is the Rice School.

23 Q If that is Rice, and if Rice were closed and the School
24 District chose to put most or all of the Rice children into
25 Lafayette, rather than to--what is the school immediately

1 to the north that would cover Tract 10?

2 A State.

3 Q Right, State. Did you try to decide by the visual analysis
4 whether that choice was segregative or integrative?

5 A We have a number of things. Let me answer your question,
6 did it have a segregated or integrated effect. I didn't
7 do a specific analysis of the closing of Rice. We do have
8 an analysis. We know what was happening to Lafayette over
9 time. So there was an attendance boundary change for
10 Lafayette between '79 and '80, and '85 and '86. When we
11 looked at that attendance boundary change for Lafayette,
12 and whether or not that attendance change was from a
13 population change, that was an attendance boundary change,
14 it came from Rice, but we weren't analyzing Rice.

15 Q So optional attendance is embedded in the report. I am
16 trying to find out what you did from the visual analysis,
17 assuming that Rice School had the option to send Rice kids
18 to Lafayette, the School District chose to send them to
19 Lafayette rather than to State, according to this map, if
20 the residential population and school population of
21 Lafayette is obviously a Blacker school than State, and
22 the Rice area is a Blacker area than the State area, and
23 thus, it would appear that the Rice kids, who were dis-
24 proportionately, if you will, went to the disproportionately
25 White school. If that is true, from just this visual look

1 at this, why didn't that indeed have a segregative effect?

2 A We can't determine that. What you are saying, this is
3 something that is something that you could look at. You
4 could make a determination that that particular case may
5 have had a segregated impact. Do you remember my point was,
6 that I used these overall, to look at the whole system? I
7 did not use the visual overlays to examine one system or
8 another. We did talk about this. And I said, yes, this
9 looks like it is integrated. You could look at this one
10 and say, this looks like it is segregated. Two cases out
11 of what, thirty-some situations. Now, and if you wish,
12 those two boundary changes, you could say one went one
13 way and one went the other way. But both of them would
14 require an analytic analysis, overall one percent, two
15 percent of all situations being involved in this. So this
16 is really a system-wide analysis. Now, we need to turn to
17 the second part of the report to look at specific cases.

18 Q When you just talked about, in your answer, about the two
19 examples, one example is 18, 19, 20 and 21, and the other
20 example is 11 and 12--

21 A This is the closing of Lafayette, and this is the closing
22 of Polk, which had an influence, I think, on the Randolph
23 School.

24 Q Did you do what we just did, that is, did you look at
25 boundary change one and say, well, that one seems roughly

1 integrative, and boundary two seems roughly segregative,
2 and tally it up that there was a pattern?

3 A The conclusions were drawn not from a tallying process,
4 but putting it on the wall and saying, system-wide, do I
5 see something that is coming out that seems to be a boundary
6 change. For example, if a boundary change had been made,
7 let's take an extreme case; this is Highland Park North.
8 If the boundary change had been drawn, for example, some-
9 where through here, it would come out so it was paralleling
10 the Black concentration. If the boundaries had been drawn
11 around a Black area, I would say this appears to me to be
12 a clear boundary change that looks like it could have had
13 a segregated impact. I need to analyze that in detail. I
14 didn't see from these overlays anything like those jumping
15 out at me. And I would say in the system-wide, in the
16 case you raised for the system-wide, we are talking about
17 for the system, all the schools. Now the case you raise
18 here, we can't tell. I am saying it is not a case that
19 comes out and says, oh, clearly that is the conclusion
20 that I draw.

21 Q So the one I have been fussing about, the Rice closing
22 kids going to Lafayette, rather than State, that could
23 have had a segregative effect, that could have had an
24 integrative effect, and from this analysis, we can't tell?

25 A We can't tell.

1 Q From your report we can't tell?

2 A I believe we can tell, because we can look at Lafayette
3 and see what happened to it.

4 Q But what you are looking for with these overlay maps, was
5 whether there were any green lines right around red and
6 orange colors, and it is at that gross a level, if you
7 will?

8 A I was looking for more than that. That is one part of it.
9 I was also looking, for example, if we can go back to this,
10 one of the statements that was made, was that optional
11 zones, at least the feeling I got from reading the Lamson
12 report, was that optional zones were used to impact Black
13 schools. So I wanted to know for the system, were the
14 optional zones only around Black schools. And that is
15 obviously an important question, if they are only around
16 Black schools, these ten optional zones are only in here,
17 then I would say, it looks like something is going on in
18 "A" zone, I found optional zones are used throughout the
19 District. They weren't specific to the areas that have
20 most of the Black population. So there is another way in
21 which I was looking--yes, at a general level, I wouldn't
22 use the word "gross," but I was looking at a general level
23 of these issues that preceded the analytic focus. So there
24 is the one point about the optional zones. And then if
25 you run through these, you can also get a sense, if we go

1 to the '85-'86 overlay here, we see, of course, now that
2 you have analyzed the other map, you see it is hard, I
3 recognize, to look at this. But if we put it on a white
4 background, you can see it. But we see that these areas
5 were being enlarged. The school boundaries in the central
6 area were being enlarged over time, as we have this. And
7 this is the area, if you think this boundary through here,
8 we had, of course, being allowed over time, to deal with
9 the declining enrollment, to keep sufficiency normal in
10 the school. So they allow you to speak to that issue as
11 well.

12 Q Anything else that you concluded from the overlay level of
13 analysis?

14 A No, I think that summarizes it.

15 Q Let me be clear, the map that we looked at, most spe-
16 cifically the '79-'80?

17 A '79-'80.

18 Q '79-'80, you didn't go through and tally each of the
19 boundary changes and say that one seems segregative, and
20 that one seems integrative and so on?

21 A No, I didn't do that specific analysis. I have not done
22 that specific analysis. That is the sort of thing I can
23 certainly imagine doing before final presentation.

24 Q In looking at the maps in order to draw a--you didn't like
25 "gross," what was the word used, "general?"

1 A General.

2 Q General conclusions, did you look at the Lamson report at
3 all, to say well, let's see what he says about that par-
4 ticular boundary change?

5 A I did do it in some situations where I looked at some of
6 the things where he made some discussions. One of the
7 issues I remember specifically, he said five blocks had
8 large numbers of Blacks. I think it was around maybe the
9 Polk School. It may have been Monroe. I don't remember
10 the specific case, but I remember going to my block map
11 after I had made it, because he made a general statement,
12 because these apply to the Black areas. The rest of the
13 areas had a substantial number of Blacks. And when I
14 went to my map, he was right, in that some blocks had
15 specific numbers of Blacks, but they were not the ones
16 that were shifted. The ones that he called substantial
17 numbers had shifted. But I would have to go back to my
18 map. I am recalling from my mind. But you could go back
19 to the report, and do a more specific analysis. But I
20 would have to do a more specific analysis of individual
21 cases. Now, I remember summing up the Lamson report, and
22 looking at some of those cases. I didn't keep notes on
23 them.

24 Q The analysis portion of this part of your report, this
25 first one-third of your report, one is the maps and the

1 lines were all drawn, and you actually looked at it. How
2 long did it take you to reach the conclusion?

3 MR. BILES: I object to the form. I can't understand
4 the question.

5 Q (By Mr. Hansen) Do you understand the question?

6 A Well, I can come up with an answer.

7 Q Good.

8 A You are basically asking me how much analysis did I do of
9 the overlays on top of the other maps?

10 Q Yes.

11 A And in that, I was doing a lot of the drawing, a lot of it
12 was done as I went along. I was looking at what was this
13 change or what change was there. So each pair that was
14 done, I would look at. So I can't give you a specific
15 answer. When you say how much time between when it was
16 done, when it was all completed, I already had a pretty
17 well-organized opinion. Then I put them up on the wall,
18 as I mentioned, and looked to see if there was anything I
19 missed. So it was an ongoing thought.

20 Q Are there any other conclusions that you are drawing from
21 the overlay maps we haven't talked about?

22 A There is nothing that comes to mind right now.

23 Q We can roll them back up right now.

24 MR. HANSEN: It is 12:05. What are we going to do
25 about lunch?

1 MR. SEBELIUS: This is probably a good time to take
2 a break.

3 Q (By Mr. Hansen) On Page 10, I think I have two questions
4 from this page. One is, you say in the paragraph that is
5 continuing from Page 9, that the number of blocks with
6 some Black population has increased from approximately 250
7 to 540, out of how many?

8 A I don't know.

9 Q Do you have an order of magnitude idea?

10 A Thousands.

11 Q Tens of thousands?

12 A No.

13 Q Is it in five figures, or is it in four figures?

14 A Four figures.

15 Q The second question, I guess, I think I have on this page,
16 is the last sentence of the first full paragraph. "It is
17 not possible to argue that the boundary changes were
18 designed to increase the racial percentage of particular
19 schools." You don't mean to say, I gather, that no boundary
20 changes were designed to increase the racial percentages
21 of schools? Instead, what you mean to say, is that as a
22 general principle, most or all of the boundary changes
23 weren't designed to increase the racial percentages of
24 schools, is that right?

25 MR. BILES: I object to the form.

1 A That is a complicated--there are a lot of things in that
2 question that are difficult, because I think that boundary--
3 I don't have any evidence that the School Board set out to
4 make racial boundary changes. They made attendance boundary
5 changes for various reasons. As I say, I don't have any
6 evidence that they made a boundary change to impact the
7 racial percentage of the school. I think the School Board
8 was certainly aware of the desegregation issues. You
9 would have to talk with the School Board officials about
10 specific changes they made. We are really asking questions
11 about what the intention of the School Board was--not the
12 School Board, the school administration officials. And I
13 can't speak for them.

14 Q (By Mr. Hansen) One way or the other, you are neither
15 confirming the hypothetical that they intentionally changed
16 boundaries, nor rebutting it?

17 A Well, we are showing that the boundary changes, this
18 visual analysis showing the boundary changes, did not
19 appear to have segregative effects. If they didn't have
20 segregative effects, that seems to me to be the critical
21 issue.

22 Q Let's put the intent effect question aside. The second
23 thing I am trying to get at, about this sentence, is
24 whether you are saying that the racial analysis, the
25 overlay and map analysis, proves to you that there was not

1 a single solitary boundary change that took place, that
2 had a segregative effect?

3 A That isn't what that sentence says, nor what that analysis
4 shows. The analysis was a system-wide analysis, that in
5 general I don't see a pervasive pattern of boundary
6 changes that had segregative effects.

7 Q There could be some that did have segregative effects, and
8 there could be some that had integrative effects. But you
9 see no pattern?

10 A I see no pattern. But my general assessment is that I
11 don't see changes that were segregative. That is why I
12 wrote the sentence. Word design is probably a more choice
13 of words. But we tend to get down in things like this, in
14 discussing this word or that word. As I look at the whole
15 map system-wide, I don't see a pattern of boundary changes
16 as they were made by the School Board, increasing the
17 racial percentages of certain schools.

18 Q The question I am trying to get at, the first part of that
19 sentence, not the second part; I want to put the word
20 "design" and the "intent" part of the question aside. I
21 want to know whether you intend, by the first half of the
22 sentence, to say, it is not possible to argue that the
23 boundary changes--or whether you mean that sentence to say,
24 it is not possible to argue that all the boundary changes,
25 or some variation?

1 A What I was intending to say there was, that I didn't see
2 any evidence that there were any boundary changes that
3 were segregative in their effect.

4 Q None?

5 A I didn't see any that had segregative effects.

6 Q But you also would agree with me that at least some of the
7 boundary changes, you can't draw a conclusion from what
8 you have done, as to whether they had a segregative effect
9 or integrative effect?

10 A That is why there is a second part to the analysis.

11 Q Does the second part of the analysis, in your opinion,
12 cover enough of the City that you can now conclude, based
13 on all parts of the analysis, that there was never a
14 boundary change in Topeka that had a segregative effect?

15 A No. I think the report shows that this is the case of
16 Parkdale, in the past it may have been partly segregated,
17 and partly demographic.

18 Q That is the only one in the entire School District you can
19 reach a conclusion and have change in the boundary
20 change and that is the only one in the District?

21 A I took a sub set of all of the schools. In doing an
22 analysis for a sub set of schools, is incredibly time
23 consuming and tedious. And I did the schools mentioned by
24 Plaintiffs. And I believe that I covered all of the
25 possible situations. This is not to say that there isn't

1 a case out there that I haven't looked at, and I will
2 concede that it could have.

3 MR. HANSEN: Let's break for lunch then.

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

7 Q (By Mr. Hansen) I want to ask you a few more questions
8 about the first analysis, the first of the three analyses
9 you report in the written report. Your overlays are snap-
10 shot overlays. That is, the '79-'80 overlay, for example,
11 gives us a picture of what the boundaries were on that
12 particular date, right?

13 A That is correct.

14 Q So if between the '79-'80 overlay and the '85-'86 overlay,
15 if there was a boundary that was changed and was changed
16 back, that wouldn't be reflected in any way, in your
17 analysis?

18 A In that unlikely event, that would not be represented.

19 Q But any boundary changes that took place, that weren't
20 reflected in the snapshots you took are close to your
21 analysis?

22 A You have to be careful. There is only instance in which
23 that would be true. And that is, if you changed a boundary
24 and changed it back, specifically to exactly the way it
25 was previously. That would be the only one that is not

1 reflected. Otherwise, the snapshot must represent the
2 boundary changes that have occurred between Point A and
3 Point B.

4 Q But not all the boundary changes that have occurred between
5 Point A and Point B?

6 A All but the specific events of changing it and changing it
7 back to the way it was.

8 Q In the second of your third analyses, in your report,
9 which is the one in which you hold the '63-'64 boundary
10 constant, according to your report, which you are trying
11 to discover through that analysis, is what would have
12 happened to the residential population if the School
13 District had never changed any boundaries, is that correct?

14 A What would have happened to the population in the attendance
15 boundary and therefore, potentially the school composition,
16 if there had been no change in the boundary over time.

17 Q Do you assume there, in doing that analyses, that the
18 changes that did in fact take place, had no effect on the
19 changes in residential population in Topeka?

20 A I am not sure I understand your question.

21 Q You are trying to hold constant something, that in the
22 real world wasn't in fact held constant. In fact, boundaries
23 did change after '63-'64?

24 A Yes.

25 Q If those boundary changes themselves had an impact on the

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1 residential population, then you can't in fact find out
2 what would have happened if those boundaries hadn't been
3 changed, right?

4 A I am still not understanding you. Let me see if you are
5 saying the '63-'64 boundary was the boundary that was in
6 effect in '63-'64.

7 Q Right.

8 A Hold it constant, and you can ask the question. What
9 changes were occurring in that area because of population
10 composition. Now, you can take '63-'64 and look at the
11 boundary change that actually took place, the difference
12 between the population composition with the boundary
13 changes and the '63-'64 constant is a measure of demographic
14 shift as against the boundary shift.

15 Q But the demographic shift could include people who moved
16 as a result of the boundary shift?

17 A As a result, you mean the people moved because the boundary
18 was changed, people decided to relocate?

19 Q Right.

20 A That is a demographic shift.

21 Q Those demographic shifts may have occurred between '63 and
22 '80?

23 A People move. The likelihood that any bit of small fraction
24 of people move because of a boundary change, there may
25 have been some, there are a very small number, given what

1 we know about relocation behavior.

2 Q But when we look at the '80 underlying map, that is the
3 '80 census map of the change between the '70 map and the
4 '80 map may be as a result of School Board actions in
5 boundary changes or school populations or school closings?

6 A You can only make that assumption, if you also make the
7 assumption that people specifically relocated only because
8 of the boundary change. That is, the people moved because
9 there was a boundary change, and there was no other
10 reasoning in what they did.

11 Q Why wouldn't it be equally true if they moved and the
12 boundary change was one of the factors that governed their
13 move, but not the sole factor? Why wouldn't it still be
14 true that the '80 match is different as you portray it
15 would be different, if in fact the boundary had been
16 changed?

17 A Because I think what we are trying to do here is, we are
18 looking at demographic patterns, and what we know from the
19 research literature on mobility, is that in fact schools,
20 and we survey people in general, are very small proportions,
21 somewhere in two and three percent of the people, say
22 school within reason. You would have to go within that
23 school. And where an attendance boundary change, that is
24 any significant portion of the explanation, seems to me to
25 be very small. So I am essentially saying it is not a

1 function, the population doesn't move as a function of
2 attendance boundary changes. They move as a function of
3 cost considerations of the desire for more space. They
4 have children. Their family grows and so on.

5 Q Your analysis, this second of the three analyses, assumes
6 all of that, assumes that the '80 map would have looked
7 exactly the same, if in fact the boundaries hadn't been
8 changed, that the change in boundaries that did in fact
9 occur, had not impact on the way you drew your '80 map?

10 A The '80 map is actually what happened.

11 Q Right. And that means, if in fact half of the people on
12 the '80 map in fact moved because of boundary changes,
13 then your second analysis totally falls apart?

14 A But we know that that isn't true.

15 Q But, am I right, that your analysis totally falls apart,
16 if you take, as given, that half of the people moved as a
17 result of boundary changes?

18 A But I am not willing to take that as given. Why would I
19 take something as given, which I know to be incorrect?

20 Q Because at this point, I am trying to understand what the
21 underlying assumptions are that govern your analysis and
22 it seems to me one underlying analysis that you have to
23 make for your analysis to be valid, is that nobody moved
24 or that so few moved as a result of boundary changes, that
25 it is unimportant?

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1 A I think the assumption that people move for reasons other
2 than boundary change, yes.

3 Q You treated the optional attendance zones two different
4 ways in this second analysis. One, you included them in
5 the School District, and the other you excluded them in
6 the School District, is that right?

7 A Yes, school attendance area.

8 Q School attendance area?

9 A Yes.

10 Q Did you look at the actual numbers to see what percentage
11 of Black kids from the optional attendance zone went to
12 School X and what percentage went to School Y?

13 A Did I look at the numbers of children in the attendance
14 area that attended a particular school?

15 Q Right.

16 A No, I didn't.

17 Q If in fact, out of an optional attendance zone all the
18 Black kids had gone to one school, and all the White kids
19 had gone to the other school, if they had a choice between
20 two schools, between the options, if they had a choice
21 between two, and all the Black kids had gone to one school
22 and all the White kids had gone to the other school, your
23 analysis wouldn't account for that phenomenon, right?

24 A If all the Black children went to one school, and all the
25 White children went to another school, there are two

1 scenarios. All the Black children, if we take a school
2 like Lafayette, was an optional zone. All the Black
3 children could have gone to Lafayette, or all the Black
4 children could have gone to the all-White school next to
5 it.

6 Q Right.

7 A Let's not indicate White school. We don't know what the
8 racial proportions were. So there are two scenarios. I
9 did the two analyses which I thought were most appropriate,
10 the attendance boundary, without optional attendance zones,
11 and the attendance boundary, with optional attendance zones,
12 as a range of the possible scenarios.

4-B

13 Q Do you have an opinion as to whether optional zones have
14 had a segregative or desegregative effect nationwide over
15 time?

16 A I don't have an opinion, because I haven't done a study of
17 optional attendance zones.

18 Q How about the school districts that you have studied?
19 Have you seen whether optional attendance zones has a
20 segregative effect or a desegregative effect or neutral?

21 A I don't recall doing any study on that kind of a basis.

22 Q Now, you picked eleven schools to look at, in this second
23 analysis, is that right?

24 A That is correct.

25 Q Who picked those schools?

1 A I did.

2 Q Could you have done all twenty-six or twenty-eight schools?

3 A Given enough money and enough time.

4 Q Did you have discussion with the lawyers about, I am willing
5 to do all twenty-six, but it will cost you an extra ten
6 thousand? I mean, something along those lines?

7 A As I say, it is money and time. I didn't want to expend
8 that amount of time, nor did I think it was necessary.
9 Instead, I think I chose those schools that were mentioned
10 by Plaintiffs, and were schools that were in the areas
11 that had most of the Black population.

12 Q Were those the only criterial that you used to select
13 these schools?

14 A I tried to select a set of schools that had a geographic
15 coverage, that had no holes in it. In other words, I
16 didn't think that Central Park South was particularly
17 critical, but it did have a change with Avondale.

18 MR. SEBELIUS: You said Central Park South.

19 A Highland Park South. Excuse me. Highland Park South.
20 But I wanted a geographic coverage. I didn't want a hole
21 in the middle of my analysis, and so I took that school.
22 If you look at my map, there is a sketch map, you get a
23 geographic area that covers the areas. Too, it is most of
24 the schools that were singled out for attention in the
25 Lamson report, and the schools that were commented on by

1 Plaintiffs in the filings. It is the geographic coverage,
2 Black schools, areas with Black population, and schools
3 that were mentioned. Those were the three criteria.

4 Q (By Mr. Hansen) Why did you not include schools in the
5 White part of town?

6 A It seems to me the arguments were mainly boundary changes
7 that had impacts on schools having higher proportions of
8 Black population. So that is what I wanted to look at.

9 Q Do you have an opinion as to whether a school can be
10 racially identifiable White?

11 A Do I have an opinion?

12 Q Yes.

13 A Yes.

14 Q Can a school be racially identifiable White?

15 A Given the band we have been discussing before, you can
16 identify a school as largely being White.

17 Q But you didn't look at any schools in this District that
18 might be potentially identifiable White?

19 A No, I didn't.

20 Q Was there any reason why you didn't see that would not be
21 our primary focus?

22 A It seems to me if you had made a boundary change and the
23 school was ninety percent to ninety-five percent White,
24 and the boundary change, and it stayed ninety-five percent
25 White, that was not a particular reason for examining that.

1 But principally, these were schools that seemed to be at
2 issue.

3 Q Why did you not include the Grant School or the North
4 Topeka area, geographic area?

5 A Well, as I say, I took the area that had geographic
6 coherence, that would mean crossing over into North Topeka.
7 You can't just pick another school and put it in. You want
8 an area, because once you pick one school, you pick the
9 attendance boundaries and any optional zones and the other
10 school it is conducted with. And so there are some of
11 those in this case. Sumner has some overlap. So it is a
12 question of limiting the analysis on where you stop at.

13 Q On the top of Page 14, the first sentence, "In all but two
14 of the areas, there was a significant decline in the White
15 population over the twenty-year period." That sentence is
16 referring to Table 4, is that correct?

17 A Yes.

18 Q Now, in looking then at Table 4, there is, as I read this,
19 there is an increase in the White population in the Hudson
20 geographic area from 1468 to 2052?

21 A That is correct.

22 Q There is an increase in the Avondale East area, from 3019
23 to 3672?

24 A That is correct.

25 Q There is a small increase in the Belvoir area from 1348 to

1 1358?

2 A That is correct.

3 Q So your estimate is incorrect?

4 A It appears to be.

5 Q Now, the percentage in the next paragraph, the percentage
6 was eight percent in 1960 and ten percent in 1980?

7 A Yes.

8 Q That is the percentage of Blacks in the geographic
9 attendance area, is that correct?

10 A In the Topeka School District.

11 Q Right.

12 A Yes.

13 Q It is not the Black children and it is not the school
14 population?

15 A No, it is the school population.

16 Q It is the residential population, not the school population?

17 A That is correct.

18 Q Now, Table 4, you report in that paragraph, shows that
19 three schools were already out of the plus and minus range
20 in 1963-64 and continued to segregate, if the boundaries
21 had remained constant. Are you with me?

22 A Yes.

23 Q Which three schools were they?

24 A Monroe, Parkdale and Belvoir.

25 Q You next say three schools moved out of the plus and minus

1 band, that is, they would have continued to segregate over
2 time. By that, you mean, you mean they would have become
3 more segregated over time, is that right?

4 A That is correct.

5 Q Which three are those?

6 A Quinton Heights, Lafayette and Highland Park North.

7 Q You next say, one school moved into the plus and minus
8 band, that is one school that was racially identifiable,
9 became non-racially identifiable, right? That is what
10 you mean by plus or minus band?

11 A Yes.

12 Q Which school was that?

13 A One moved in and one moved out.

14 Q One moved into, and another moved out, in and out?

15 A Right.

16 Q Those are two different schools. Which are they?

17 A The one that moved into, and then moved out, was Lowman
18 Hill. And the one that moved into was Avondale East.

19 Q And the three that would have remained in the band are the
20 remaining three?

21 A Yes.

22 Q Did the same pattern follow for school attendance numbers?

23 A I did not do a school attendance numbers parallel to this.

24 Q From Table 4 we can tell that the Belvoir attendance area
25 in '63-'64 was--I don't know how to put this, but the

1 percentage of Blacks in the Belvoir attendance area was
2 more than ten percent of the average number of Blacks in
3 the whole City?

4 A That is correct.

5 Q And that it continued to be that way from '63-'64 to '80?

6 A It increased.

7 Q In fact, over that period of time, we don't necessarily
8 know what happened to the percentage of Black children in
9 the Belvoir School in that time period, from your report,
10 is that correct?

11 A From the report, you do not know that.

12 Q Do you intend to testify as to what happened to the school
13 attendance population in Belvoir over that period?

14 A It is possible I will make comments on that. The data on
15 the population of the schools is stuff I have. I have done
16 no formal graphing of that, for this report, which was
17 directed specifically to attendance area changes.

18 Q The analysis we just went through, Table 4, shows that
19 three schools were outside and so on, you couldn't today
20 do that analysis with school population?

21 A You could take--

22 Q You haven't done it today? I understand it is dooable?

23 A Yes. And you can't do it for '63-'64, because you don't
24 have race data for the school in '63-'64.

25 Q You can't say that the results would be the same as

1 demonstrated in Table 4, if we did it for school population,
2 rather than residential population?

3 A You could do it for '67 on, and you could parallel those
4 lines.

5 Q But you have not done it?

6 A I have not done it.

7 Q You don't know if it were done, if the report would be
8 the same as the report here?

9 A I believe the results would be the same. In some cases,
10 the percentage in the school varies from this. But I
11 remember at one point looking at that data, and thinking
12 there was similarity, and what was happening to the school
13 was what was happening to the attendance area. But my
14 aim in this report was to look at boundary changes. And
15 I wanted to be comparable in terms of the data for
16 attendance areas with no changes that is held constant,
17 and then with changes.

18 Q Maybe we are back to the question I was trying to get at
19 before, and didn't understand. Let me try again. If the
20 crucial question in this case is segregated schools, and
21 not segregated housing, and given the facts from Table 4,
22 is what we learn about housing, not schools, we learn
23 about housing in school boundary areas, I can see. But
24 we learn about housing, not schools. Why is this relevant?

25 A We learn about population, not housing.

1 Q I accept your correction. Why is that relevant in terms
2 of what actually happened in schools?

3 A Because this is the boundary area from which the school
4 population has to come.

5 Q Right.

6 A We can draw a boundary. We can draw, for example, a boundary
7 of an area that is to take an example, fifty percent. The
8 residential population is fifty percent Black and fifty
9 percent White, if all the Black families do not choose, or
10 most--excuse me, most of the White families do not choose
11 to send their children to that school, you will have a
12 school that is largely Black. The attendance area is
13 relevant, because if you make a boundary area in that
14 attendance area, and you want to know the effects of that
15 boundary change, that is what you have to look at, not at
16 what is happening in the school population. Because the
17 school population is impacted by other events in the system,
18 and decisions by parties.

19 Q If all the White parents chose to attend a White school,
20 and thus, that 50-50 boundary area turns out to result in
21 an all-Black school, at some level, what you are saying,
22 the school boundary shouldn't be blamed for that?

23 A I am not saying at some level. I am saying that is a
24 distinction in terms of the attendance boundary, that is
25 out of control of the District.

1 Q When the School District in Topeka was making decisions as
2 to how to change the boundary, did they have available to
3 them residential population data?

4 A I can't answer that.

5 Q For any period?

6 A I can't answer what they had available to them.

7 Q If you assume, for the sake of argument, that they did not
8 have, except in 1970 and 1980, when the Census Bureau
9 comes out, that they did not have residential population
10 data, but in fact they did have school population data, at
11 least post-'66, wouldn't you then assume that they were
12 making their decisions based on school data, rather than
13 based on residential data?

14 A No, I don't think they were making decision on racial
15 composition at all. I think they were making decisions as
16 best they could, given the constraints of a total school
17 system and capacity school enrollment, number of children,
18 where the children are, physical boundaries, freeways,
19 railroads. I think all of that goes into making attendance
20 boundaries. I don't think they make them on the basis of
21 just racial composition.

22 Q But it seems to me that your analyses, all of them, in
23 fact, assumed that the School District had available to it
24 the residential data. Am I right? Do you assume that?

25 A No, I don't see why that assumes so.

1 Q Why didn't you do an analysis of the distance decay curve
2 or any of that other stuff that you do in other cases?

3 A If I can correct you. I did it in two cases. Not in
4 other cases.

5 Q That you have done in some other cases?

6 A Only in Milwaukee and Omaha. It appeared to be an appro-
7 priate analysis at that time, and it didn't appear to be
8 an appropriate analysis at this time.

9 Q Why not?

10 A We are not concerned with simulating the expansion of the
11 Black area over time, given the kinds of distance behavior.
12 We are concerned about what happened with the demographic
13 transition that occurred.

14 Q We are not trying to predict the future, because we are
15 looking at the past, is that it?

16 A We are looking at what happened.

17 Q And a distance decay curve is projective? That is, looking
18 towards the future technique?

19 A It can be.

20 Q Did you use it that way in Milwaukee and Omaha?

21 A Not exactly. It was used to try and bring into play the
22 forces that might have impacted people's mobility patterns.

23 Q Why is that no relevant here?

24 A We are not looking at people's mobility. We were looking
25 at the demographic transition that people lived in an area

1 and changed over the time. We had the actual representa-
2 tion, but we are not trying to talk about the forces that
3 influenced those moves. We are interested in what patterns
4 occurred after that demographic transition took place.
5 Whereas, in Omaha and Milwaukee, is why those patterns
6 occurred--how those patterns occurred and why they did.

7 Q The results of the report on Tables 4 and 5, I assume
8 these are essentially on a computer tape that you generated
9 yourself. It didn't come either from the School District
10 or from the Census Bureau. It came from the synthesis of
11 data that came from both of those sources, is that right?

12 A It is not correct. It is the census data by block using
13 the block maps with boundary overlay, as described in the
14 report. And then essentially you just tally up the numbers,
15 total Black and White, what you can just do with the
16 program. That adds them up as you input them. So all
17 you end up with is the summary statement. This is the
18 printout of the summary.

19 Q Did you print out any other schools?

20 A These were the only ones that we did. The time-consuming
21 part of the analysis is taking those boundaries, putting
22 them on the block maps for '60, '70 and '80, and inter-
23 polating them back and forth. The time-consuming part is
24 creating the base maps.

25 Q If I had your computer in my hand, I couldn't print out

5-A

1 that data because you never put that into the computer?

2 A No.

3 Q The conclusion from this second analysis, as I understand
4 it, if the '63-'64 boundaries had never been changed, do
5 you conclude that the attendance at the Topeka schools--
6 let me try it a different way. Are you concluding the
7 Topeka schools would have been more segregated, if in fact
8 the boundaries had not changed after '63-'64?

9 A Yes.

10 MR. SEBELIUS: I object to the form.

11 Q (By Mr. Hansen) The schools themselves, as opposed to the
12 residential population in the school attendance boundary?

13 A I was quick to say yes. But what I was going to continue
14 and say is, when you look at attendance areas of these
15 schools I examined, they were--you are right, the table
16 doesn't show that. The analysis of the table that I report
17 here is what I am saying, more of those attendance areas
18 would have been--I don't want to say that. I want to
19 revise that. I am saying that the impact of maintaining
20 those boundaries over time would have been that you would
21 have had a set of the attendance areas, not all of them,
22 but a substantial set of them, which would have had
23 segregative impacts on the school system in that they
24 became a greater percentage of Blacks over time.

25 Q But it seems to me there is an assumption built in there,

1 and that is what I want to talk about for a second. It
2 seems to me, in the way you just stated your answer, you
3 are assuming, if in fact, take Parkdale, if in fact on
4 Table 4 Parkdale goes from forty percent Black in its
5 attendance area to fifty-seven percent Black in its
6 attendance area, you are assuming that the school would
7 in fact have gone, if not twenty-seven percent Blacker or
8 some degree of Blacker, as a result of this change in the
9 attendance area, is that right?

10 A Well, first of all, it went from forty-five to fifty-eight,
11 as I look at it.

12 Q On Table 4?

13 A Excuse me. From forty to fifty-seven. You are correct.
14 I am saying that the attendance area became Blacker and
15 the school probably became Blacker over a period of time.

16 Q Probably, but not necessarily?

17 A We can find that out.

18 Q But your report doesn't speak to that question?

19 A The report does not do a parallel analysis on what was
20 happening to the school in the Parkdale area.

21 Q That is what I am trying to get at. I am trying to get
22 at the inference or inclusion or whether you draw the
23 conclusion from your report, that the same results you
24 report in your report for school attendance areas would
25 have happened in school attendance population?

1 A We have to remember that the purpose of the report is to
2 assess the impact of boundary changes on the population
3 composition inferential schools. But the population
4 composition of the area, was the attendance boundary
5 change undertaken, did it have segregative or desegregative
6 or a neutral impact. That was the primary purpose of the
7 report. I have not done a parallel analysis, which you
8 are suggesting, as an important thing of what happened to
9 the school. If we took Parkdale, what happened to the
10 school? Now, a cursory analysis of these schools shows
11 that they, in many cases, paralleled the attendance area,
12 because I don't have that data before me, but I examined
13 it. And, for example, Parkdale went up in its percent of
14 minorities. So in that sense, it was paralleling the
15 attendance area changes. The constant attendance area,
16 if we kept it constant, we would have seen that. But we
17 don't have the school data on a constant boundary. The
18 analysis you keep coming back to can't be done, because
19 the attendance of Parkdale is what the attendance was. We
20 can't find out what Parkdale's attendance in 1970 would
21 have been, in '63 and '74, on a constant boundary. And
22 you are asking the question, is that possible. We have
23 talked about it as if it was, and I want to clarify that
24 point.

25 Q I may or may not be asking the questions on that basis.

1 What I am trying to get at is, whether you can draw the
2 conclusion, based on this report, whether you can draw
3 conclusions about school attendance rather than school
4 attendance areas from this report?

5 A I believe I can.

6 Q That is inferential, because it seems logical to you that
7 the trends in school attendance would be the same as
8 schools in attendance areas?

9 A Given some of the constraints we discussed this morning,
10 about the decision of parents sending their children to
11 schools, and the fact there were differences in fertility,
12 and I think we can, in that the birth rate was higher, and
13 now Black households are coming down towards the same
14 birth rate as White households. But during the '60's, the
15 average number of the Black family was higher than for
16 Whites.

17 Q I want to pursue this just a minute more, and then I will
18 get off of it, I promise. I have not done this, this is
19 a totally hypothetical. I am only raising it to see if I
20 can get at the underlying assumptions, assuming the fact
21 that the actual student population in Parkdale went down
22 during these three time periods, if that fact were, and if
23 we looked at the actual populations and they went down--

24 A School population?

25 Q School attendance population. It is not attendance zone

1 population. Would that in fact undercut your conclusions?

2 A I don't see why it would.

3 Q It seems to me you have to assume for your report to speak
4 to attendance population, not attendance area population,
5 you have to assume a rough correlation between those two
6 numbers. You have to assume that attendance population
7 and attendance zone population are going to be up and down
8 in roughly the same proportions, at roughly the same times,
9 at roughly the same way, and if in fact that assumption is
10 incorrect, then it seems to me that your report, the
11 inference you draw from your report, inferring from these
12 residential areas to school population, would fall apart,
13 right?

14 A No, I don't buy that inference at all.

15 Q Why not?

16 A Because I think, first of all, we can assume that in general
17 there is a relationship between attendance areas and
18 population composition in those attendance areas and
19 school population. In general, that is true. And in
20 trying to analyze the effect of a boundary change, we have
21 got to have some constant numbers to deal with. I suppose
22 if you had infinite resources, you could take every child
23 and every child's address, and you could go down and do
24 that kind of analysis. But then we don't have five years
25 to do this.

1 Q I didn't do that analysis, because I don't have any
2 resources, either.

3 A They won't always move together. But the fact they don't
4 always move together doesn't undercut the report. It
5 doesn't undercut it, because there are other forces that
6 come into play, demographic forces, the aging of the
7 population. The fact that you get all the population in
8 the central city, fewer children. These also come into
9 play in terms of influencing the population composition in
10 the school. But it doesn't undercut the analysis of trying
11 to examine whether or not a boundary change had an impact.

12 Q It doesn't undercut the report's conclusion that the
13 boundary change had an impact or didn't have an impact on
14 residential area population. But doesn't it undercut the
15 inference that that change was or was not reflected in
16 the school population?

17 A No, I don't think it undercuts that.

18 Q On Page 14 of the report, right before 5.0, the sentence
19 right before 5.0, when you use the terms "desegregative,"
20 "segregative," or "neutral" in that sentence, can you
21 define those terms as you are using them there?

22 A I am using them as displayed in the next paragraph--two or
23 three families decide not to send their children this year,
24 or they move out of the district, the impact, not one thing
25 or the other, a small change segregative, it moves it away

1 from the overall district, the residential composition.
2 In other words, a change can move it towards it, so an
3 attendance area might be four percent White. If it
4 increases the minority to seven or eight percent--excuse
5 me, four percent Black, it moved it to seven or eight
6 percent Black, it is moving it towards the district, I
7 would call that a segregative action. If it was twenty
8 percent or twenty-five percent Black, and there was a
9 boundary change or some other demographic change and it
10 moved it away, that has made it more Black. That would be
11 a segregative change. So it is in relationship to the
12 District average over time.

13 Q What if it is twenty-five percent and instead of going to
14 forty, it goes down to fifteen, is that a change that is
15 segregative or integrative?

16 A That is integrative.

17 Q Because it is going towards the ten percent?

18 A Yes.

19 Q Anything heading toward the number eight or ten, you were
20 talking about, is integrative?

21 A Yes, or desegregative, as I saw it.

22 Q On Page 17, in the middle of the first full paragraph, of
23 the twenty-seven instances of boundary change, eight
24 involved changes in the percent Black, which were potentially
25 segregative. Can we go through which eight those are?

1 Now, we are working off of the table on Page 15.

2 A Table 6.

3 Q Which is on Page 15?

4 A Yes.

5 Q My staple covers the number.

6 A Quinton Heights, between '74-'75 and '79-'80. Actually
7 there is an easier way of doing it. If you go to Page 35,
8 they are all summarized there. I just suddenly realize,
9 if we are going to spend the next thirty minutes picking
10 them out of the table, I believe that is an accurate
11 summary on Page 35, and the report in fact does mention
12 that these refer back to the discussion on Page 35, refers
13 back to the discussion on Page 20. So you can get them
14 off there. I can go through and do these if you wish, but
15 they are all there, and there is also a chance you will
16 make a mistake in reading them off. Can I ask a question?

17 Q Sure.

18 A You did have the Page 35?

19 MR. SEBELIUS: Yes.

20 Q (By Mr. Hansen) Then my question is, why don't you include
21 Sumner '74-'75 to '79-'80?

22 A That is a desegregative change.

23 Q Because it is heading toward the--

24 A Yes.

25 Q So the next sentence then on Page 17, that is in eight cases

1 the boundary change was associated with an increase in the
2 percent Black. That is incorrect, because at least nine
3 cases--

4 A Yes, you are right. That is probably a sentence that
5 didn't get changed from an earlier draft. That is incorrect,
6 because in fact, there are at least two of the cases that
7 were in fact decreased. So six of them have an increase,
8 and two had an increase. The other one is Avondale East,
9 between '63-'64 and '66-'67. So that sentence shall be in
10 six cases.

11 Q Now I am confused, because Avondale East, '63-'64 to '66-'67,
12 is not one of your eight?

13 A Excuse me.

14 Q Right. I think not.

15 A No, you are right. It is a desegregative change.

16 Q Right.

17 A Right. So it wouldn't be there. Let's look at the eight
18 cases--excuse me, it is only seven. We have got confused.
19 We have got turned around.

20 Q Exactly.

21 A You asked me a question earlier about this sentence, and
22 whenever you take a sentence out of context, it is likely
23 to get confused. We have eight cases that involve--you
24 asked initially, eight cases, these were segregative
25 changes. And I mentioned that they are listed here. You

1 then asked me, however, what about Sumner.

2 Q Right.

3 A And I replied, it was desegregated.

4 Q Right.

5 A Then you went to that sentence. I don't have eight cases.
6 I only have seven. And you got me thinking about segregative
7 changes, and not segregative. If it was segregative, it
8 had to be a change or an increase or a move away from the
9 average district.

10 Q Right.

11 A Percent Black.

12 Q It is true that there were eight cases--your eight cases,
13 the ones that are reported on Page 35, were all associated
14 with an increase in percent Black? But it is also equally
15 true that there were some cases that were associated with
16 an increase in the percent Black that you did not view as
17 potentially segregative?

18 A For example?

19 Q For example, Sumner.

20 A It was desegregative.

21 Q It was an increase in the percent Black, but it was
22 desegregated?

23 A But it was desegregated.

24 Q You say three of the four remaining cases, three of the
25 cases related to the closing of Parkdale, and Lafayette--

1 MR. SEBELIUS: Excuse me, and the closing of Lafayette?

2 Q (By Mr. Hansen) Parkdale and Lafayette is what the report
3 says. I am on Page 17, about the tenth line up from the
4 bottom. I assume that Lafayette is a mistake, and it
5 should say Monroe, is that right?

6 MR. SEBELIUS: Yes, because earlier it says that.

7 Q (By Mr. Hansen) Do you see where I am?

8 A I do now.

9 Q Should that read Monroe?

10 A Yes.

11 Q What were the three that you are talking about there?

12 A Monroe impacted. Quinton Heights impacted, and Lafayette.

13 Q And the school closing, you did some school closing graphs,
14 figures, you call them, right?

15 A Yes.

16 Q And the school closing impact, too, which is Figure 6 on
17 Page 19, you indicate that the closing of Parkdale
18 impacted Lafayette, Highland Park North and Sumner?

19 A No. Sumner is on the graph.

20 Q Why, if it didn't have an impact, why is it on the graph?

21 A It is on the graph because the area over which--this is a
22 little complicated. What happened is, when they changed
23 all those boundaries, some of Lafayette went into Sumner.
24 Now, there were very few people in that area. It was part
25 of the downtown area, but they adjusted the boundary so

1 Lafayette got a bit of Sumner. But Parkdale, actually the
2 closing of Parkdale, only had direct impacts on Lafayette
3 and Highland Park North. In other words, there was none
4 of Parkdale that went into Sumner. But Sumner got a bit
5 of Lafayette. So I put it on the graph, just as a parallel.
6 In fact, at one point, in trying to keep all these boundary
7 changes straight, I thought it did in fact, and a very
8 careful analysis, showed that it did not. But I thought
9 it was important to show on the graph that it was part of
10 that completion of events.

11 Q According to Figure 6, the indirect closing of Parkdale
12 was to drive Sumner up, out of the band?

13 A No. It brought it right up on it districtwide.

14 Q Are those two lines to be parallel?

15 MR. SEBELIUS: Here is your band. It came off poorly.

16 MR. HANSEN: Oh, it is my Xeroxing.

17 MR. SEBELIUS: Yes, here is the band here.

18 MR. HANSEN: I lost this line on the Xerox. That is
19 all that happened.

20 Q (By Mr. Hansen) If there were more than one boundary change
21 between '63-'64 and '66-'67, you treat it as though there
22 were one boundary change here, right?

23 A I treat it as an instance of boundary changes, yes. I
24 think I say that in the report.

25 Q Even if there were four instances actually in this time

1 period?

2 A That is correct.

3 Q Is that troubling at all to you in terms of the analysis?

4 A No.

5 Q Why not?

6 A I took what were some, a set of relatively evenly spaced

7 intervals, and I looked at instances of boundary change.

8 And we could take every year and every boundary change and

9 we would enlarge the sub set. We might have got some more

10 boundary changes that were potentially segregative, de-

11 segregative, neutral demographic. But what I think we are

12 trying to do is establish the overall impact of boundary

13 changes in this sub set of schools. And I think this is

14 an appropriate set of analysis of taking these time lines

15 and examining the instances and effects of events between

16 these periods. As you can see, for many schools for long

17 time periods, there are no boundary changes whatsoever.

18 And many of the boundary changes, the predominance of them,

19 perhaps half of them, occurred in the period of '60's. So

20 it would have been inefficient and wasteful of time and

21 energy, if nothing else, to go about it in any other way.

22 Q The other change, in terms of the way you look at it,

23 let's look at Belvoir. For instance, if the change were

24 two or three percent, you would treat it as no change?

25 A Neutral.

1 Q That is true, even in Belvoir from '66 to '67, and '79 to
2 '80, two and three changes actually raised the population
3 nine percent over those years?

4 A I have lost you, between '63 and '64?

5 Q No. '66-'67 and '79-'80, Belvoir goes from thirty-seven
6 percent to forty-six percent Black?

7 A Would you restate that?

8 Q Yes.

9 A '66-'67?

10 Q Right, to '79-'80, Belvoir goes from thirty-six percent
11 Black to forty-six percent Black?

12 A Right.

13 Q There are three time periods reflected on your chart.
14 There are two of which involve boundary changes, and the
15 total over that time period, Belvoir has got nine percent
16 Black. But nothing there gets reflected in your analysis,
17 because those three incremental three's get lost out of
18 your analysis.

19 MR. BILES: I object to the form.

20 Q (By Mr. Hansen) Is that right?

21 A They don't get lost out of the analysis. They are there,
22 because we are analyzing the events between '66-'67, '79
23 and '80. There was a boundary change. What was its impact,
24 I am saying it was a minor change. If we then had a period
25 where there was another boundary change--excuse me, another

1 period in which there was no boundary change, but there
2 was a demographic shift, and then another boundary change
3 between '74-'75, '79-'80, if anything, the analysis
4 suggests you have got a trend, and the boundary change had
5 no impact. The trend was this, was a school attendance
6 area that was increasing its attendance Black. The fact
7 the change was very similar in the intermediate period,
8 suggests to me, if anything, that we had a demographic
9 shift growing, and the attendance changes were irrelevant.
10 So all I am saying, it is not lost in the analysis.

11 Q But in each one of these instances, the boundary change
12 that Belvoir has of the five possible time periods, four
13 of them involve boundary changes. Three of the four, at
14 least all the way up to 1980, there is a very clear trend
15 toward this school getting Blacker. Could it not be that
16 the change between '69-'70 and '74-'75 is a reflection of
17 parents in that attendance area realizing that the boundary
18 changes that the School District is going through is
19 signaling this is going to be a Black school? The White
20 parents are moving out, and what you see between '69-'70
21 and '74-'75, is what the parents see as boundary changes.

22 MR. BILES: I object to the form.

23 A I don't think you can make that assumption. I think you
24 have got a demographic change going on. If you look at the
25 White population, the change from 1400 to 1040, it came

1 down about 383, something in that range. Black population
2 went up--came down to being quite stable. There was a
3 decline in the White population. But it certainly wasn't
4 an issue of a large number of Whites moving out. There
5 were some Whites moving out. Then I look after '79-'80,
6 and we obviously change the boundary to bring in a large
7 number of Whites, and we have brought the system down
8 substantially. There was a boundary change of desegregative
9 impact. I don't think you can make that statement you were
10 making, that it was being a signal and Whites were moving
11 out, because there aren't enough Whites moving out for me
12 to come to that conclusion.

13 Q Although the number of Whites changed from '63-'64 to '66-'67,
14 is about seventy-five, from '66-'67 to '79-'80, is about
15 seventy-five--I'm sorry.

16 A Yes, it goes up.

17 Q Seventy-five, the next, and then it goes to 200. I am
18 going across the White column on Belvoir. The first number
19 is 1348 to 1423, is about a drop of seventy-five?

20 A You see, you have an increase in White and Blacks. But
21 the Blacks are growing much larger in terms of the number
22 of Blacks than Whites. We have to go back and look at the
23 attendance boundaries in the change that occurred there.
24 But you had an increase in both Black and White populations.

25 Q What I am interested in looking at, this is an actual

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1 example, is getting back to the question of whether actions
2 of the School District in changing the boundaries can have
3 an impact on the residential decisions of the parents.

4 And if in fact, we took this Belvoir analysis back and it
5 showed that back before '63, every single boundary change,
6 the school was getting Blacker and Blacker and Blacker,
7 then what you describe as a demographic change between
8 '69-'70, '74 and '75, it seems to me might have been a
9 reaction by the parents that the School District was saying
10 to the parents, this school is going Black. And if you
11 want it, that is fine. If you don't want that, you had
12 better move out. And the 200 parents dropped between '69-
13 '70, '74 and '75 might be parents reacting to the School
14 District's actions. Is that a logical hypothetical?

15 MR. BILES: I object to the form. He started out
16 saying we don't want to talk about hypotheticals. We want
17 to talk about facts. And then you list an entire series
18 of points and speculations.

19 A Now, do I get to answer?

20 Q (By Mr. Hansen) If you can, yes.

21 A I think the situation you are setting up is obviously
22 speculative. You are speculating about all kinds of
23 things. And I don't think, as an expert studying these
24 changes, I want to get into those speculations.

25 Q As an expert, do you think that there are times when the

1 School District's boundary change actions affect residential
2 decisions by parents?

3 A Are there times?

4 Q Yes.

5 A When it can?

6 Q Yes.

7 A I can imagine a boundary change by a school having an
8 impact on any person's decision to send their child to a
9 particular school. Whether it would have an impact on
10 moving, there isn't, in the literature, much evidence.
11 Any evidence of boundary changes, apart from a little anti-
12 dotal stuff that has that. Some apartment dwellers can
13 move easy. But a house is a big investment. You don't
14 sell it because someone changes the boundary or the tax
15 base, that may enter into your decision in the long-run.

16 MR. BILES: Let's take a quick break. We have been
17 going an hour.

18 MR. HANSEN: Okay.

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

21 Q (By Mr. Hansen) On Page 20 you draw an analysis of the--
22 well, first of all, the chart that is on Page 20, that is
23 listed on Page 20, let me make sure I understand it. What
24 you are saying here is that there were eight instances,
25 this is from the tables, in which there were boundary

1 changes which were potentially segregative, eight instances
2 in which they were potentially desegregative; eleven
3 neutral; three instances of segregative trend; two
4 segregative trend; and twenty-one neutral, the last three
5 being demographic?

6 A That is correct.

7 Q This is based on the table that includes optional zones?

8 A Yes.

9 Q Why, as opposed to the one that excludes optional zones?

10 A It seems to me that in many cases the difference between
11 the optional attendance of what it included and excluded
12 wasn't that great. And secondly, most of the optional
13 zones, I think, except in one or two instances, were gone
14 by 1966. They were really in place in '63-'64. So a
15 couple of instances later, it would show up on the maps.

16 Q And Table 7, or whatever, which I guess is Table 7, the
17 table on Page 16, the check marks would all be exactly the
18 same places if there were check marks there?

19 A Yes.

20 Q There probably shouldn't be, should there?

21 A If I was doing the analysis off of Table 16, that is where
22 I would put the check marks. They could be transferred
23 exactly.

24 Q The elementary school analysis uses six time periods. The
25 junior high school analysis uses only three time periods.

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1 How come?

6-A 2 A I think that in looking at the data, the attendance
3 boundary changes were much less. And if I remember
4 correctly, there were no boundary changes after '69 and '70
5 in Eisenhower. I just looked at those three points.
6 There was much less attention in the Plaintiffs' comments,
7 or in the Lamson report, on the middle schools. And I
8 examined only the one school.

9 Q Does Table 8-A--I guess I want to know what is Table 8-A
10 equivalent to. 8-A, is it equivalent of 6 and 7, or the
11 equivalent of Tables 4 and 5?

12 A It is equivalent of Tables 6 and 7.

13 Q Were there no boundary changes any place here?

14 A They erased that, I believe, and I haven't put them on
15 there. I would have to go back and look.

16 Q The conclusion that you draw in the junior high, right at
17 the top of what I gather is the top of Page 22, the changes
18 are explicable totally in terms of population composition
19 change. On what do you base that conclusion?

20 A Looking at the demographics, in that I believe--I don't
21 believe there were any boundary changes. I say I would
22 have to check it, between '69 and '70 and '79-'80, and
23 during that period. During the whole period, the shift,
24 anyway, was towards the--it was under in '69 and '70. And
25 then over--the shift was right around the average percent

1 Black for the District. It was just a little bit below it
2 in '69 and '70. And just a little above it in '79-'80 in
3 the attendance area. The change that occurred there was
4 an optional zone, which was included by '69-'70.

5 Q But the reason you are concluding that the changes between
6 '69-'70 and '79-'80 are as a result of an increase in
7 student population?

8 A There was no boundary change.

9 Q And secondly, it would have gone from eight to ten, anyway,
10 with a seven to fourteen percent is awfully close to eight
11 to ten?

12 A Yes.

13 Q What about the '63-'64 to '69-'70 change?

14 A Well, it was desegregated.

15 Q Because it was heading towards the average?

16 A Yes.

17 Q You say that the increased percentage in the Eisenhower
18 attendance area was due to an increased Black and decreased
19 White population in the attendance area. That is looking
20 at the raw numbers on Table 8-A?

21 A Yes.

22 Q The next sentence on Page 22, "The conclusion of this
23 second analysis is that overall the boundary changes in
24 the most part had desegregative effects..." Looking at
25 the table you did on Page 20, it appears to me that the

1 boundary changes--

2 A Page 20?

3 Q Page 20.

4 A Go on.

5 Q It appears to me that the boundary changes were eight and
6 eight, half of that had an effect on segregative and half
7 had the desegregative, potentially desegregative, eight
8 and eight?

9 A No. That is not the way you do the analysis. You had a
10 situation, like I said earlier, there were fifty-three
11 possible instances of changes that could have occurred.
12 Twenty-seven of them, there were instances of those twenty-
13 seven, eight potentially segregated. You have to look at
14 all instances. You can't select out an eight with
15 potentially segregated, and eight were potentially de-
16 segregated. So the conclusion is that for the most part,
17 it changes the boundary--and even if we take just the
18 boundary changes, we had eleven that were neutral.

19 Q But you can't exclude that eleven. What you are saying,
20 is that the School District had twenty-seven opportunities
21 to have an effect on the residential populations in these
22 districts eleven times. The School District's actions had
23 no effect one way or the other. Eight times it had a
24 potentially desegregative effect, and eight times it had
25 a potentially segregative effect?

1 A I was listing them this way of the desegregative. There
2 were three relating to the Parkdale-Monroe Schools. If
3 you want to say at this point you could say five were
4 potentially segregated. That is why I listed that three
5 there, because when we turn to the final table, where I do
6 the overall analysis, we remove three immediately.

7 Q But to say that the boundary changes, for the most part,
8 had a desegregative effect?

9 A I think that follows on the table from Page 20.

10 Q Even if you give the three Parkdale-Monroe, if you take
11 them out of the first row and put them in the second row,
12 so that Table 20 goes five, eleven and eleven, you still
13 can't say that the majority of School Board actions had a
14 desegregative effect, which appears to be what you are
15 saying?

16 A I think you can. These are potential that have their
17 actions. Even if we leave it this way, we have got two-
18 thirds of the actions with either neutral or desegregative.
19 So for the most part, they were either no effect or de-
20 segregative. If you want to revise this and say for the
21 most part, they were either neutral or desegregated, I
22 would accede to that.

23 Q That would be more accurate, because you seem to be giving
24 the School District credit for neutral change that gets
25 lumped in with desegregative, rather than segregative?

1 A Yes, I would say a more careful wording of it would be in
2 order. For the most part, they were neutral or potential
3 desegregative.

4 Q That is one of the things lawyers do, is pick over
5 sentences.

6 A I understand.

7 Q The next thing I would like to do is look at the table on
8 Page 12. I keep referring to page numbers, because the
9 way mine is stapled, I can't read the table number. Table
10 4 on Page 12, these are comparable table rates, because
11 they both include optional zones?

12 A Page 12 and Page 15.

13 Q Yes. They are comparable. Those are the two, if we are
14 going to compare, those are the two, because they both
15 include optional zones, right?

16 A That is correct.

17 Q The first question, why does the table on Page 15 go to
18 '85-'86, and the table on Page 12 stops at '80?

19 A Because there would be no difference between the 1980 and
20 the 1985. We can't interpolate the 1985-86, because we
21 don't have block data for 1980.

22 Q The interpolation you did for '63-'64, was that based on
23 '60 data and '70 data?

24 A Yes.

25 Q If you compare the 1980 column with the 1979-80 column,

1 Lowman Hill, if the boundary had been kept constant, the
2 Lowman Hill district would have been twenty-three percent
3 Black. It in fact turned out to be twenty-one percent
4 Black, right?

5 A That is correct.

6 Q Is that a fair comparison? Is the comparison I am now
7 doing a fair comparison?

8 A That is what the graph has as a comparison. Each school
9 is done as a graph, just what you are doing.

10 Q Quinton Heights would have been twenty-three percent. So
11 Lowman Hill is closer to the average than it would have
12 been if there had been no boundary changes?

13 A Yes.

14 Q Quinton Heights would have been twenty-three percent Black
15 and it turned out to be twenty-five percent Black, right?

16 A That is correct.

17 Q Lowman Hill is more segregated than it would have been?

18 MR. SEBELIUS: I object to the form.

19 A Lowman Hill?

20 Q (By Mr. Hansen) I'm sorry, Quinton Heights. Lowman Hill
21 is less segregated than it would have been and Quinton
22 Heights is more so, right?

23 A I don't think that a change of one and three-quarter
24 percentages is one way or the other.

25 Q It is Blacker than it would have been if there had been no

1 change. You don't think it is relatively different?

2 A It is one and three-quarters Blacker than it would have
3 been.

4 Q Parkdale, it gets closed, right? So Parkdale, we can't
5 look at. Can we look at Lafayette?

6 A We can look at Parkdale.

7 Q There is no number in Parkdale in '79-'80, because it is
8 closed.

9 A Right. So essentially, it was desegregated.

10 Q It was closed. It is certainly not desegregated. There
11 is nobody in Parkdale. There are no Black kids or White
12 kids. It is not segregated or integrated in 1980. It is
13 not a school.

14 A That is correct.

15 Q So the next one where we have a school is Lafayette.
16 Lafayette would have been twenty-six percent, is in fact
17 thirty-one percent Blacker than it would have been, right?

18 A That is correct.

19 Q Belvoir would have been forty-three percent, is forty-six
20 percent Blacker, right?

21 A That is correct.

22 Q Avondale would have been fifteen percent, is eighteen
23 percent Blacker?

24 A That is correct.

25 Q Highland Park North would have been twenty-two, is thirty-

1 six Blacker?

2 A Correct.

3 Q This one is a lot Blacker. This one is not closed, right?

4 A Right.

5 Q Hudson would have been eighteen and two-thirds?

6 A Correct.

7 Q Even I will give you that one. It is totally neutral,
8 twenty-one hundredths of a change. Sumner would have been
9 five, is ten and a half Blacker, right?

10 A That is correct.

11 Q Highland Park Central would have been eight, is twelve
12 Blacker, right?

13 A That is correct.

14 Q Virtually all, with the exception of Lowman Hill and the
15 one where there was no change, Hudson, virtually all are
16 Blacker than they would have been if the School Board hadn't
17 acted, right?

18 A That is correct.

19 Q Why is that contrary to the conclusion you reached?

20 A We established, I think, at some length, that the school
21 had to act. The first part of the analysis shows that
22 there were declining enrollments. The school systems
23 couldn't have been kept the same as they were given the
24 numbers of the pupils. In some of these schools, you
25 would have had quite small numbers of pupils in the schools.

1 tells the demographic decline in population. We had an
2 aging population. That is, people were getting older and
3 many of the children had grown up and moved away. Secondly,
4 we established, in looking at this analysis, that there
5 was an increase in the Black population. The Black popu-
6 lation increased in these areas. And so we had an increase
7 in the number of Black people who could be going to these
8 schools. And in fact, one could say that the similarity,
9 in most cases, suggests that the School Board has done a
10 reasonably good, made a reasonably good effort to keep the
11 schools, given the fact that they have got to change them,
12 were, in many cases, with significant proportions of Whites.

13 Q The first of these two tables, the constant table, Table 4
14 takes into account the aging process and the increase in
15 Blacks in town, right?

16 A Yes.

17 Q So even taking that into account, most of the schools you
18 looked at turned out Blacker than they would have, if the
19 School Board hadn't acted as a result of demographic factors,
20 because Table 4 takes demographic factors into account.
21 But it was as a result of School Board action?

22 A It takes into account the Board's action, assuming that the
23 population that we have in there. It does not deal with
24 the one demographic composition issue of aging of the
25 population. It holds the boundary constant. And you can

1 compute the people in there. But there is an aging going
2 on at the same time. People are getting older. It is
3 twenty years, and the central cities have larger numbers
4 of older people. There are fewer children to fill those
5 school seats, and that is in fact why schools are closed
6 in inter-city areas, and boundary changes.

7 Q That suggests to me then that Table 4 isn't accurate.
8 Either Table 4 does show us what would have happened if
9 the boundary had been changed or it doesn't?

10 A It shows you what would have happened if you kept those
11 boundaries.

12 Q If aging hadn't occurred, or including the fact that aging
13 had occurred?

14 A Including that aging occurred is a demographic occurrence.

15 Q There are more Blacks in town in the earlier years than in
16 the later years. And taking both of those into account,
17 as a result of School Board action, the schools became
18 Blacker?

19 A Not as a result of School Board action.

20 Q It has to be as a result of School Board action?

21 A No. For example, let's look at Hudson. Hudson stayed
22 the same.

23 Q Hudson is the aberration, from the way I analyze the data?

24 A It is.

25 Q I understand you are not conceding my interpretation.

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1 A It is not a matter of conceding. The data is there, and
2 that is what we are dealing with.

3 Q Take Highland Park North, for example. Highland Park
4 North, under Table 4, would have been twenty-two years in
5 1980--now, that takes into account that the fact that the
6 population was aging, and it takes into account that there
7 were more Blacks?

8 A Yes, and there would have been 25.92 percent Blacks, if
9 the whole system could have been held constant.

10 Q 22.05 in '80. I am on Table 4, not Table 5.

11 A Excuse me, twenty-two percent.

12 Q Okay. Given the fact the population did in fact age, and
13 given the fact there were more Blacks, Highland Park North
14 would have been twenty-two percent, if you could have held
15 the boundary constant?

16 A If you could have held the whole system constant. You are
17 focusing on one school. In fact, you couldn't hold the
18 whole system constant. And if you kept the school
19 constant, it would have been less Black.

20 Q If we project out, we would have had a Parkdale School
21 that would have stayed substantially segregated, and a
22 Monroe School substantially segregated, because those two
23 schools had direct impacts on Quinton Heights, Highland
24 Park North and Lafayette. So you look at Highland Park
25 North and say, yes, it is Blacker than it would have been.

1 You have got to go back to the school closing analysis,
2 which is an earlier graph. The school is still sixty-five
3 percent White in '79 and '80. If you want to focus on the
4 Black. But it is still sixty-five percent White. The
5 school isn't the attendance area.

6 A Yes. So we are drawing from a sixty-five percent White
7 attendance boundary. And that is related to the school
8 closing, if you go school-by-school, and ignore Monroe and
9 Parkdale, you can come up with the analysis that you did.

10 Q Or if the Monroe and Parkdale Schools had been sent to
11 Whitson and McEachron, Highland Park North would not have
12 been Blacker, or certainly not gotten Blacker, as it did.
13 Whitson and McEachron are way out on the west side.

14 A They are not coterminous areas. So I don't know how you
15 would do that.

16 Q There are any number of ways to do it.

17 A I don't agree there are any number of ways to do it. But
18 that is a statement you can make. But I don't think that
19 is true.

20 Q If in fact the Monroe and Parkdale kids had not gone to
21 these schools, but had gone to schools that had been more
22 dispersed among the City, rather than going into these two
23 or three schools, in fact, these schools would not have
24 gotten as Black as they did?

25 A That is what the Lamson report says, if we send children

1 to distant areas away from the central areas, we would
2 have different composition. That can't be denied.

3 Q The data on Page 15 and Page 16 is census data. It is
4 interpolated census data?

5 A Where the year is an interpolation, yes.

6 Q So '66 and '67 is interpolated census data?

7 A That is correct.

8 Q '69 and '70 is data--is that '70 census data?

9 A Yes.

10 Q When is the '70 census data actually collected?

11 A April.

12 Q So that would have been nearing the '69-'70 school year?

13 A You can say nearing the end, or you can say during the
14 school year, depending on what judgment you want to put on
15 it.

16 Q How about the '85-'86 data? Where does that come from?
17 How do you interpolate that?

18 A That is the 1980 census data.

19 Q '85-'86?

20 A '85-'86 is the 1980 Black data.

21 Q Interpolated?

22 A Not interpolated.

23 Q What is '79-'80, then?

24 A It is exactly the same data. And you will see there are
25 two cases where there is no change in the boundary, or

1 virtually no change. They will be exactly the same.

2 Q Avondale East?

3 A Avondale East or Hudson. Or Hudson or Highland Park North.

4 Q In fact, if there aren't check marks there--

5 A It has to be exactly the same. We can't interpolate it
6 because we don't know what was happening. That is why I
7 stopped at '79-'80.

8 Q I don't know how to ask this delicately, but doesn't that
9 cast doubt on the accuracy of this column? There is a
10 six-year difference, presumably people have moved around
11 in those six years?

12 A That is correct.

13 Q Yet you are using '79-'80 data to report events that are
14 occurring in '85-'86?

15 A As I stated in the report, there was a boundary change.
16 What was the effect of the boundary change, and the effect
17 of the boundary change can be measured by looking at data.
18 Assuming that the population has stayed the same. If the
19 population hasn't stayed the same, but what it does do is
20 find out the effects of a boundary change, holding constant
21 the population for 1980. So in Lowman Hill, the boundary
22 change brought the school down by four percent Black. Now,
23 there may have been a change in the demographic underlying
24 composition to change that four percent as a result of
25 that. We had no way of analyzing that. But in terms of

1 analyzing a boundary change, we can make a statement whether
2 or not the boundary change was segregated or desegregated.
3 So it didn't undermine the report in any way.

4 Q It doesn't say anything at all about the population in
5 '85 or '86. We don't know the population in that District
6 in this day?

7 A We are not trying to say that. We are trying to say some-
8 thing about the boundary change. Was the boundary change
9 in Lowman Hill desegregated, segregated or neutral.

10 Q The answer is, we don't know, because we can't look at the
11 post-change data?

12 A We do know. We know that if we put the boundary change
13 in '79-'80 down, and the boundary in '85-'86, the same
14 data, if the boundary change was changing the population
15 composition, it would show up as it did.

16 Q Let me try it a different way. The '74-'75 date, is that
17 interpolated dates?

18 A Yes.

19 Q So the comparisons we can draw between '79-'80 and '85-'86,
20 are different from the rest of the comparisons we draw in
21 the rest of the chart?

22 A That is correct.

23 Q Your report doesn't reflect though, that '79-'80 and '85-'86
24 comparisons are different than the comparisons on this
25 page, does it?

1 A I would think it does. But maybe it is not clear.

2 Q You didn't look to see what the actual school population
3 changes were in Lowman Hill in that time period?

4 A Which time period?

5 Q '79-'80, '85-'86?

6 A I may have looked, but I don't recall what they were.

7 Q The report doesn't reflect that?

8 A The report doesn't reflect it, no.

9 Q Do you anticipate testifying to it?

10 A I don't know. You have raised a number of questions about
11 school enrollment. This may be something that I continue
12 to examine.

13 Q Let me have you look at Page 22, the Lowman Hill paragraph
14 at the bottom. Are you intending in that paragraph to
15 step into the intent effect thicket? That is, do you
16 intend that paragraph to mean that the School Board
17 intentionally desegregated?

18 A No.

19 Q On Page 35, the instances that you are reporting here are
20 the eight cases you were talking about on Page 17, which
21 were changes in the percent Black that were potentially
22 segregative?

23 A Yes.

24 Q Was a reason why you did this table only for those eight,
25 rather than all twenty-seven instances of boundary changes?

- 1 A Was there a reason, yes.
- 2 Q What was it?
- 3 A Given the statements by Plaintiffs, and given Mr. Lamson's
4 analysis, it seems to me that I had to focus on these
5 issues, because they emerged in my report as a careful
6 analysis of all these changes. You will remember, this
7 morning in talking about Mr. Lamson's report, one of my
8 criticisms was, I couldn't disentangle everything. Having
9 disentangled them, it behooved me to look at these specific
10 cases.
- 11 Q The first one, which is Monroe, '63-'64 to '66-'67?
- 12 A Yes, the table on Page 17 shows that the change in Monroe,
13 during that period, was eight percent.
- 14 MR. JONES: Fifteen.
- 15 Q (By Mr. Hansen) Fifteen, I'm sorry.
- 16 A Yes.
- 17 Q It went from twenty-seven percent to thirty-four percent,
18 a seven percent change?
- 19 A Yes.
- 20 Q You concluded that that is a demographic change, that is
21 as a result of demographics and not as a result of that
22 check mark that is in that little space?
- 23 A Right.
- 24 Q Why is it that you conclude that?
- 25 A Look at Page 25, you have a graph that shows the relation-

1 ship of the actual and constant boundary change. They
2 begin at the same point, obviously. They have to, and
3 most of that change from twenty-seven would have occurred
4 anyway, if you would have kept a constant boundary. So
5 what we have got, the difference then is that two or three
6 percent is a measure of the boundary impact. So I am
7 saying, the explanation is, we could put a percentage term
8 on the seventy percent, eighty percent. It is largely a
9 demographic shift, based on this limited analysis, not
10 without looking at other issues of demographics, just on
11 the boundary change. It is a demographic change. Not a
12 boundary change on impact. So I use the graphs to
13 elaborate and come up with this table.

14 Q On the graphs, the "X" is actually what happened in the
15 residence?

16 A The little "hat."

17 Q Mine looks like a cross. This is what actually happened
18 in the school system?

19 A Yes.

20 Q The little spade, is that what this is, a spade?

21 A Tree.

22 Q Tree is what would have happened if the '63-'64 boundary
23 would have been kept constant?

24 A That is correct.

25 Q The analysis that you did of the '63-'64 boundary being

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1 kept constant doesn't have a '66-'67 point. Did you just
2 draw a straight line?

3 A That is an interpolation between the two points, yes.

4 Q It is a pure straight line interpolation?

5 A Interpolation is by linear. If you don't have any informa-
6 tion than two inch points, linear would be the best and
7 most appropriate.

8 Q So the conclusion we can draw from Monroe for that time
9 period is that most of the change, the conclusion you draw
10 from the Monroe for that period of time, is that most of
11 the change in the school attendance area population in this
12 time period was as a result of demographic changes,
13 unrelated to School Board actions, and that some small
14 portion was as a result of School Board action?

15 A No, the conclusion I drew, was that it was related to
16 demographic changes. And I couldn't see any impact of the
17 boundary. I am essentially assigning it as a demographic
18 change.

19 Q Although the lines aren't perfectly parallel?

20 A Right.

21 Q You use the actual numbers, Monroe, between that time
22 period, a change of seven percent. And so when you look
23 at the graph, because the change is small, the two lines
24 are very close together. I am not asking this clearly.
25 The fact that the actual change--would it be possible to

1 compute what percentage of the change that occurred between
2 '63-'64 and '66-'67 was demographic and what percentage
3 was as a result of School Board action?

4 A We can compute based on this analysis the demographic
5 shift from holding the boundary constant. But that is,
6 and from that analysis, I can conclude that most of it is
7 demographic. I say it is demographic changes, because
8 there are other things going on in the demography as well
9 as what was happening in the attendance boundary. Thus,
10 it holds a change to petition it out only between demographic
11 and boundary change, would be to ignore other things that
12 were going on. The decisions during that time period of
13 parents to enroll their children in parochial schools,
14 decisions with respect to changing fertility patterns.
15 These would not be necessarily reflected in this. So I am
16 saying that we know from the first analysis that it was a
17 significant demographic change going on. We have already
18 established that, we established that these lines are very
19 close. We are saying now, we have more fluctuations.
20 Those minor fluctuations could come from a number of cases.
21 I don't want to put all of those on to boundary changes.

22 Q The tree number on Page 25, for Monroe, from '66 to '67,
23 do you know what that number is, 31?

24 A 32.

25 Q 32, okay. Does that number exist somewhere? Or did you

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1 just draw a straight line with a ruler?

2 A I probably computed the number at some point. And then
3 said, I want to use your phrase earlier, "fair," so I said
4 a two to three percent change. Actually, in my range, I
5 was leaning over backwards to in fact be fair in terms of
6 allocation of these numbers.

7 Q The actual change in those two time periods went from
8 twenty-six and three-quarters to thirty-four. There is
9 seven percent between '63 and '64?

10 A Yes.

11 Q If that seven percent to two and three-sevenths was non-
12 demographic, doesn't that mean that almost half of the
13 change was as a result of something other than demographic
14 between two-sevenths and three-sevenths of the change?

6-B 15 A No. Because what we are saying, we had a seven percent
16 shift. We have got that at that point in time, '66-'67.
17 That the shift was--if we took the actual data on Page 12,
18 if we took the number in between the two, we get about
19 thirty-four. We have got to do that as a ratio of the
20 whole percentage, not just as a shift. So we are doing it
21 as a ratio, not of the change, but of the total Black
22 population, the increase. I am not making this as clear
23 as I might.

24 Q There is a seven percent change in that time period,
25 actually. There would only have been approximately a four

1 to five percent change, you say two to three percent
2 difference. So there would have only been a four to five
3 percent change?

4 A All right. You could then do a ratio of the five percent
5 and the seven percent, and say that is the amount that was
6 a demographic shift, only focusing on the boundary issue.

7-A

7 Q But it would not be fair to say that two-sevenths to
8 three-sevenths of the change that occurred during that
9 time period is non-demographic?

10 A I think if you were going to do an analysis, you would want
11 to deal with the exact number, and compute what that
12 percentage difference was.

13 Q Let's try it for some time period when we can actually do
14 it. Let's take Belvoir, where we have actual numbers, and
15 let's use '69-'70 and '79-'80, which in your view will
16 give us actual numbers, right?

17 A It depends on what you mean by "going to work."

18 Q I want to know if it raises properly the question I want
19 to raise. Let me have just a second to myself to see if
20 this does what I want it to do.

21 A I should point out, before you get heavily into that, we
22 are not concerned with Belvoir in '79-'80. I mean, the
23 boundary change that was segregated was between '63-'64 and
24 '66-'67. After that, we had an ongoing demographic
25 process.

1 Q Let me do it differently. Let me do Highland Park North,
2 which appears to raise the question the way I want to
3 raise it. Let's look at Highland Park North, and what I
4 am doing is looking at Table 12, the table on Page 12, and
5 the table on Page 15, and the figure on Page 29. As I
6 understand this, Highland Park North, if we had held at
7 all constant, if we had held the '63-'64 boundary constant
8 between 1970 and 1980, Highland Park North would have gone
9 from eighteen to twenty-two percent Black? A change of
10 approximately four percent?

11 A No, that is not what the analysis shows.

12 Q Highland Park residential area would have done that?

13 A No. The boundary change that is discussed on Page 35 for
14 Highland Park North is '74-'75, '79-'80.

15 Q Right. I understand that.

16 A You used different dates.

17 Q I understand that. I am not on Page 35 at all anymore. I
18 am off Page 35.

19 A Okay.

20 Q Let me try and be more clear as to what I am trying to do.
21 I want you to look at 12, 15 and 29. And I am looking
22 only at Highland Park North data, and I am looking at only
23 1970 to 1980 dates?

24 A 1970 to 1980?

25 Q Right. Because that way, we don't have to worry about

1 interpolation. We have got numbers here. The problem
2 that I had with Monroe or Parkdale, where we just were,
3 was that they didn't have an actual number there. You had
4 drawn a straight line. And I tried to avoid that problem.
5 Highland Park North, if we kept the '63-'64 boundary con-
6 stant between 1970 to 1980, would have been from eighteen
7 percent Black to twenty-two percent Black. The residential
8 area surrounding Highland Park North would have. In fact,
9 Highland Park North between '70 and '80 went from twenty-
10 one to thirty-six percent. I learned that on Page 15,
11 which is a change of fifteen percent, instead of four
12 percent?

13 A Yes.

14 Q And that is reflective, if you look as I see it, on the
15 chart on Page 29?

16 A That is correct.

17 Q If in fact there was a fifteen percent change, four
18 percent of that was demographic, that is, we learn off of
19 Table 4 that four percent of that would have happened no
20 matter what the remaining eleven percent of that happened
21 as a result of School Board actions, right?

22 A Boundary change.

23 Q Right.

24 A Well, we don't know that all of it was from the boundary,
25 but a portion of the remainder was boundary changes, yes.

1 Q So what we can tell is that the boundary change caused most
2 of the increased Black population, it caused eleven of the
3 fifteen percent?

4 A It caused some portion of the eleven. We don't know if it
5 caused all of it. But, yes, it caused some portion of the
6 eleven percent, and that action was the closing of Parkdale,
7 which in fact integrated the system of schools.

8 Q At some level, the math I am interested in here, the
9 fifteen percent change, is it fair to say that, given the
10 fact that the table on Page 12 shows a four percent change,
11 on Page 15 it shows a fifteen percent change, that the
12 vast majority, two-thirds, approximately two-thirds of the
13 difference was caused by School Board action. Two-thirds
14 of the change in that time period was caused by School
15 Board action, rather than demographic?

16 MR. BILES: I object. Asked and answered.

17 A Yes, that is a correct statement.

18 Q (By Mr. Hansen) Okay, that is all I am asking.

19 MR. SEBELIUS: School Board action, was that the
20 question?

21 MR. HANSEN: Yes.

22 A Administrative system boundary change.

23 MR. SEBELIUS: Ultimately, I think the School Board
24 has to ratify administrative actions.

25 Q (By Mr. Hansen) So the math on that is correct. If the

1 method of analyzing that question, taking the four percent
 2 and the fifteen percent and comparing them, if we go back
 3 now to Monroe and even assuming--the most favorable
 4 results, two of the seven percent was as a result of the
 5 School Board's actions, then we can say that two-sevenths
 6 of the increased segregation of Monroe in '63-'64 to '66-
 7 '67, was as a result of School Board action?

8 A When I answered this question earlier, some portion of
 9 that. But not the whole twenty-three percent. We have
 10 other things going on as well. Demographically, if we look
 11 at the rest of the demographics, I believe is most of the
 12 story. But there is a small portion of that there that is
 13 perhaps due to the attendance boundary change.

14 Q It isn't two or three percent. It is in the order of
 15 two-sevenths?

16 A I don't know that we can say that. We can say it is off
 17 some magnitude larger than two or three percent. It is
 18 two or three percent, because of the boundaries. They are
 19 paralleling one another.

20 Q The way I did the analysis on Highland Park North, I got
 21 you to agree that approximately four percent out of fifteen,
 22 I got you to agree I could do the math that way on Highland
 23 Park North. I am trying to do the same mathematical
 24 calculation.

25 A I agree with you.

1 MR. BILES: The witness has said that some portion of
2 that change, Chris. You keep asking the question, trying
3 to make the distinction only between demographics and
4 School Board action. And I understand the witness to say
5 that School Board action, and some other things are
6 impacting upon what is left. And it is not fair in your
7 question to keep coming back that way. We are in effect
8 getting an objection to the form, because the witness is
9 talking about one thing, and you are talking about another.

10 MR. HANSEN: I think it is fair for me to try to get
11 anything I can out of the witness, since he is not my
12 witness.

13 MR. BILES: No. You are trying discovery as to what
14 the man's opinions are, and not do the analysis and mis-
15 stating his testimony, and that is not fair.

16 Q (By Mr. Hansen) What I am trying to see, if it is fair to
17 say for Monroe, '63-'64 to '66-'67, it is closer to thirty
18 percent. The reason for the change, reason for thirty
19 percent, it is closer to accurate to say that thirty
20 percent of the change in that period was as a result of
21 School Board action, and seventy percent as a result of
22 demographic change. And what you have said here, which is
23 that there is a two to three percent difference?

24 A No. The graphs are there. This report is an accurate
25 representation. The interpretation you are placing on

1 the given caveats that I have stated, is correct. If you
2 want to say that some proportion, if you want to do the
3 computation, it is thirty percent of this change, twenty
4 years ago, which is what it is. It is a change. We are
5 talking about something twenty years ago. If you want to
6 say that some portion of that, somewhere between zero and
7 thirty percent, was due to boundary change, I think we
8 have agreed on that. We have been going around that, the
9 same thing for some time.

10 Q Now, let me get at qualifications, the asterisks you are
11 drawing to that, because you say the problem with the way
12 I look at it doesn't account for some demographic things,
13 and you gave a list and I didn't write them down. Tell me
14 what the demographic factors are it doesn't account for?

15 A When we do population in attendance areas, there are
16 other shifts as well as just the increasing number of
17 Black households. That is the demographics we are talking
18 about here, is increasing number of Black households in an
19 area, and a decreasing number of Whites. But along with
20 that, often comes aging of the population in the area, so
21 that there is a differential aging occurs. You may have
22 more younger Black people than younger White people. There
23 is a difference in fertility, that Blacks in the 1960's,
24 '50's and '60's, had a larger number of children per
25 household. So that also has an impact. It is part of this

1 demographic transition. And the third thing in this, is
2 that parents do differentially make decisions about where
3 they send their children to school. And while overall the
4 private school enrollment is ten percent in the whole
5 country, there are particular areas in Topeka where you
6 have a large number of White households sending, did in
7 the past and presently, sending their children to private
8 schools. If you have a small number of White households
9 in an attendance area, a dozen families making the
10 decision not to send their children to the local school can
11 have a significant impact on that percentage. So we might
12 be dealing with what appears to be a thirty percent boundary
13 change. But if associated with that, a dozen parents
14 decided not to send their children, that is not a boundary
15 change. But it is the effect of White parents making that
16 decision. We can't find that level of detail out. There-
17 fore, I give you the caveat, we can't say it is all thirty
18 percent, the analysis, if you are suggesting can be done,
19 given those caveats.

20 Q Do those caveats also apply to Tables 4 and 5? That is,
21 does Table 4 and Table 5 have to be taken with a grain of
22 salt, because they don't account for differential fertility,
23 the increase in Blacks in town, to the aging of the
24 population and for private school enrollment?

25 A I don't want to have a phrase like "grain of salt" in there.

1 Q Okay, I will try and ask the question more precisely. Do
2 Tables 4 and 5, do they take those futures into account,
3 or not?

4 A They reflect the demographics, but they don't reflect, for
5 example, decisions by parents.

6 Q Private school decision?

7 A Private school.

8 Q Or fertility decision?

9 A They reflect fertility, yes.

10 Q Are there any features that are not reflected in Table 4
11 besides private schools?

12 A I would have to think about that. Probably not.

13 Q Then the comparisons we were doing, my comparisons that
14 you wanted to make an asterisk to, were comparisons of
15 Table 4 and the later table, the table on Page 15?

16 A Yes.

17 Q So to the extent Table 4 takes into account aging, increased
18 number of Blacks in town, and fertility, so does any
19 analysis, and to the extent Table 4 doesn't take into
20 account private schools, neither does any analysis, right?

21 A You are running things by me quickly. Let me think. Not
22 completely, because when you hold the attendance boundary
23 constant, the differential population composition in that
24 area is reflected at points in time--that is correct.
25 That seems to be correct. I want to think about it some

1 more. That seems to be correct. The decisions by parents
2 with respect to private schools moving out of the District
3 are not reflected.

4 Q Either in Table 4 or in what I was trying to do?

5 A No, they are not reflected in the analysis.

6 Q To look at Page 36, which we looked at a little bit earlier,
7 I would like to look at it a little bit more. On Page 36,
8 did you use the actual attendance populations of the schools?

9 A Yes.

10 Q So this is the one place in the report where you don't use
11 attendance area data? You use actual school data?

12 A That is correct.

13 Q This is the only place in the report that that is true?

14 A That is correct.

15 Q Is the mathematical formula for dissimilarity different
16 when you were looking at schools as opposed to attendance
17 areas?

18 A No.

19 Q Are there more than one commonly used formula for measuring
20 dissimilarity?

21 A No.

22 Q Does the one that you used here have a name?

23 A It is the dissimilarity index.

24 Q What if I say, dissimilarity index, to one of my experts
25 and if they are expert in this, they will know what I am

1 talking about and there wouldn't be confusion about which
2 possible formula you are using?

3 A They should.

4 Q I knew you were going to say that. What about the
5 exposure index? Is there more than one commonly accepted
6 exposure index?

7 A The exposure index used there is the relative exposure
8 index. It has two absolute forms as well. The absolute
9 forms are used in the calculation of relative, there would
10 be no difference of opinion on the relative and the two
11 absolute forms.

12 Q There is only one relative exposure index?

13 A Yes.

14 Q What is the difference between the dissimilarity index and
15 the exposure index?

16 A The dissimilarity index is the measure of the proportion--
17 we will use Blacks and Whites, in this case Whites, is one
18 of the races that would have to move to bring every sub
19 unit, school, tract, whatever you are examining, into the
20 same proportion as the districtwide proportion.

21 Q That is the dissimilarity index?

22 A Yes.

23 Q And the exposure index?

24 A It is a measure of the average interracial contact.

25 Q Why are the dissimilarity indexes for the schools different

1 than the dissimilarity index for the attendance areas,
2 sometimes?

3 A Because you are using different population bases in the
4 calculation, the attendance areas are not exactly co-
5 terminous--excuse me. Although the attendance areas are
6 coterminous with the school bases, one, we are using the
7 residential population. And the other, we are using the
8 population at the school.

9 Q But this gets back to the question I raised earlier, I
10 think, this morning, which is the ability to use the
11 report you have done, drew conclusions about school
12 populations as opposed to school attendance area population.
13 It seems to me if you look at the table on Page 36, the
14 difference between dissimilarity and exposure is .1. The
15 next three time periods they are roughly the same. And
16 then they are off again by .07. That suggests that you
17 can't fairly assume parallel lines between attendance
18 area and school population?

19 A We would have to examine specifically--because we went
20 around it this morning.

21 Q Yes, we did.

22 A That we looked at it. I thought in general they were
23 parallel. You can't use the indices to make that assess-
24 ment, because this is an overall assessment of the schools
25 we have been examining.

1 Q That is my next question. I'm sorry, I didn't mean to
2 interrupt.

3 A No.

4 Q Schools here are the schools reported in the report, are
5 all the schools in the District?

6 A The schools are reported in my analysis in this report.

7 Q The attendance areas in the report are not all the
8 attendance areas?

9 A That is correct.

10 Q All of the first two rows, the school rows, dissimilarity
11 and exposure columns, are based on the actual data?

12 A Actual enrollment for Blacks and Whites.

13 Q And the attendance area rows for '79-'80 are based on the
14 attendance areas in those boundaries?

15 A That is correct.

16 Q And '66 and '67 and '74 and '75 are interpolations?

17 A That is correct.

18 Q The bottom two, the '85-'86 attendance area, are those
19 interpolations? Or are those the '79-'80 numbers?

20 A Those are the '79-'80 numbers.

21 Q Let's look at the files.

22 A The file?

23 Q Yes.

24 A Which one do you want?

25 Q Let's start with this file. I am going to ask you about

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1 these first. And if they are of interest to us, we will
2 mark them as exhibits and give you back your originals.
3 The first thing I would like to have you look at is a map
4 of '83-'84, USD 501 elementary attendance zones with some
5 pen marks on it. What was the purpose of putting pen marks
6 on this map?

7 A Just to remind myself of little things that I was learning
8 and acquiring during my research on the project and during
9 my visit here.

10 Q What is the circle down at the bottom that says, X is a
11 reminder to you? Is that concerning the annexation at
12 some point?

13 A I guess probably it means it was annexed at some point. I
14 think that area is Avondale West. Yes, I have a vague
15 recollection. I didn't spend a lot of time studying
16 annexation, but that was annexed. At the time I was more
17 concerned of the annexation of Highland Park, which was
18 outside the District until 1959.

19 Q The crosshatched portion reflects Highland Park's annexa-
20 tion, or the areas you did in your report?

21 A The areas I did in my report.

22 Q This extra crosshatched part, up around 25, between 25 and
23 11, it is sort of this part that is darker crosshatched?

24 A As I was driving around and doing my field survey, of
25 course, it is the downtown area, and there is virtually no

1 residences in that area whatsoever. And this is the
2 Atchison, Topeka and Santa Fe yards. So I was merely
3 making notations to myself. And this was particularly
4 important for this Sumner-Lafayette issue, because this is
5 divided up into school districts, the number of children
6 there are, are very small.

7 MR. HANSEN: The only thing I want out of this, you
8 can have this file back, what I would like to do is make
9 copies of these. Do you want to mark them as well? I
10 don't feel strongly one way or the other.

11 MR. SEBELIUS: We can make copies.

12 Q (By Mr. Hansen) Let me first ask, there are two copies of
13 this, of your comments on the central survey's survey. Do
14 you know whether these are identical--

15 A They are clearly not identical. Whether there are any
16 substantive changes, I would have to read them and examine
17 them. They appear to be very similar. They appear to be
18 exactly the same. In fact, this may have just been reported.
19 In fact, I see a change here.

20 Q That has just been whited out here?

21 A It is possibly I read this through and gave it to my
22 secretary and said, reprint it.

23 MR. HANSEN: I don't need two copies of the same thing.
24 Let's make copies of these two documents. The first is a
25 letter from Gary Sebelius to Dr. Clark, dated February 14,

1 1986. And the second is a memo from Gary Sebelius, dated
2 April 2, 1986. Do you want to wait before you copy those
3 and let me look at the small folder?

4 MR. SEBELIUS: Sure.

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

7 Q (By Mr. Hansen) Dr. Clark, on April 2, 1986, you sent a
8 report to Mr. Sebelius about the central survey study, is
9 that right?

10 A That is correct.

11 Q Is this a copy of it?

12 A Yes.

13 Q Does this report accurately reflect your evaluation of the
14 central survey report?

15 A Yes.

16 Q It is labeled Preliminary Evaluation. Have you done a
17 final evaluation?

18 A I have talked with Gary Sebelius about this and about other
19 things that might be done. I think it is labeled Preliminary,
20 because I didn't know subsequent to the analysis, I think
21 we were talking about that day, we were meeting here in the
22 office and this reminded me, I think there was someone else
23 at that meeting--I'm sorry.

24 Q That is all right.

25 A But I think we have talked about that. He is a planner.

1 John, I have forgotten his other name.

2 MR. JONES: Keller.

3 A Keller, yes. But he was there only a brief time. He came
4 over and he was there perhaps in the morning for an hour.
5 So we had some discussion, further discussion of things I
6 could do. That is why I labeled it Preliminary, but I
7 have done no further work.

8 Q (By Mr. Hansen) Do you anticipate doing further work?

9 A We haven't discussed doing any more work, and I don't at
10 this point anticipate doing any more work.

11 Q Do you have any comments to make about the central survey's
12 report that aren't contained in this report?

13 A No. I think this summarizes my view of the study.

14 Q Under the third paragraph on the first page of this report,
15 the paragraph that begins, "As I am sure....," the second
16 to the last sentence in that paragraph, it begins, "The
17 sample size...?"

18 A Yes.

19 Q It goes on to say, "selected in this case is reported
20 variously as 400, but the information from your other
21 evaluation reports 3-87." That is referring to the Hickman
22 report?

23 A Yes.

24 Q When you say in the next sentence, "The table prepared by
25 your other reviewers....," is that referring to the Hickman

1 report?

2 A Yes, the Hickman preliminary--I should be more careful.
3 The Hickman pages that I was sent. I didn't get the whole
4 report.

5 Q At the bottom, "There are two errors in the presentation
6 on Page 13." Page 13 of the Hickman stuff, or Page 13 of
7 the central survey?

8 A Page 13 of the Hickman preliminary.

9 Q Do you know whether those errors--do you know, first,
10 whether the Hickman report agreed with you that those were
11 errors? And secondly, whether they changed those in the
12 final draft?

13 A I think they were changed in the final draft. They were
14 just computations.

15 Q I gather it is your conclusion on Page 2, that the--what
16 you believe to be the low response rate here casts doubt
17 on the conclusions of the survey, is that right?

18 A Not what I believe. What the responses are, correct.
19 There was no question about that. And I would say that is
20 putting it mildly to say that I cast doubt on it.

21 Q Why is that?

22 A You haven't surveyed the population. You have no way of
23 knowing what your population is, and there was no analysis
24 of the population, that wasn't surveyed.

25 Q Is there any basis for assuming that the non-response

1 calls would have answered the questions different than the
2 response calls?

3 A We can't say how they would have answered them, because
4 they haven't been contacted.

5 Q I guess what I am probing for is the whole concept of
6 sampling is based on random sampling. We didn't ask
7 everybody in Topeka. We couldn't have asked everybody in
8 Topeka if we are going to ask a sample of that group, is
9 that right?

10 A Yes.

11 Q In fact, the survey group did ask a sample of those people
12 what they thought on those questions?

13 A They asked a sample, yes.

14 Q They drew the sample randomly. They drew the numbers to
15 be called randomly out of the phone book?

16 A Yes.

17 Q You would have preferred random digit dialing, but that
18 is okay?

19 A That is okay.

20 Q And using a phone survey rather than an in-person survey
21 is also acceptable?

22 A More and more so.

23 Q What is troubling to you is the fact that in your fifty-
24 eight percent of the people that they tried to reach on
25 the phone didn't answer the phone?

1 A Actually, it is more than that. If you bend over backwards,
2 if you are really trying to make a case, that you could
3 use this survey and rely on, if you bend over backwards
4 and go this way, you can come up with fifty-eight. But in
5 fact, I would look at this as academic. It would be lower
6 than thirty-five, because I don't even know about the 154,
7 about the not working-change number. It is one of the
8 lowest response rates I have ever seen.

9 Q Assume they called Arthur Clark, and didn't reach him, and
10 went down the phone book and reached William Clark instead.
11 Why does that make a difference?

12 A But they didn't do that. They selected their sample from
13 the phone book. And once they had it, they had an Arthur
14 Clark and a William Clark. And if they didn't continue
15 to call Arthur Clark, and make contact with him, they have
16 no way of knowing what that sub set of Arthur Clark and
17 others not contacted were like. And if you had, let's say
18 a sixty percent response rate, you could say we will go
19 back and check some of the numbers, maybe we can live with
20 it. But when you have only got one-third, you just have
21 no way of knowing what those people are like. And you
22 have left out two-thirds of the population. And so you
23 don't know that you haven't missed an important sub sector,
24 sub set of population of Topeka.

25 Q But by definition, I am not going to call everybody. And

1 I don't see any reason why it would make sense to assume
2 that the Arthur Clark would express a view any different
3 than the William Clark?

4 A Yes, that is the point of having a random survey. If you
5 choose 1,000 names, that is your random sample. They are
6 representative of the population of Topeka. To get a
7 representation of the City of Topeka, you must get as many
8 of those 1,000 names as you can. If you only get 300 or
9 when women are home all day, you are not going to get as
10 easy the two working households with children in the day
11 care center. So you miss two sectors of the population.

12 Q The sub sets you missed are people who are more likely to
13 be home and answering the phone?

14 A We don't know without going back and looking who, when they
15 made the calls. But the point I am making, you miss sectors
16 of the population. It is not a random sample of the
17 Topeka population.

18 Q What would be the matter with this procedure, if I took,
19 though, a random sample of 1,000 and I called all the 1,000
20 and I could only reach 300, and I wasn't comfortable with
21 300 as a large enough sample to draw a conclusion of
22 Topeka? So I took another random sample of Topeka and
23 used 600. Would that be an acceptable procedure?

24 A No. You would still have a thirty percent response rate.

25 Q But I would have 600 people chosen?

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1 A No, you would have 600 people that answered the phone out
2 of your random sample, out of 2,000.

8-A 3 Q You can't conclude that the non-response people would have
4 answered the survey different. All you are saying is that
5 we can't conclude that they would have answered it
6 differently?

7 A Run that by me one more time.

8 MR. BILES: I object to the question.

9 Q (By Mr. Hansen) You are not saying that the seventy percent,
10 who you say didn't answer this phone to respond to this
11 survey, would in fact have answered the questions differently?
12 All you are saying is that we can't assume that they would
13 have answered them the same way?

14 A No, I think I can say there would be differences. We have
15 got seventy percent of the population out there, that is
16 not represented. Those results are going to be different.
17 How much different, I can't say.

18 Q They could be different either way. It could be that they
19 would find the Blacker schools crummier and the Whiter
20 schools better. Or it could be the reverse of that.

21 A We have no way of knowing.

22 Q That is my question. We have no way of knowing how, if
23 at all, those other seventy percent would have changed
24 the results?

25 A It would be different.

1 Q We don't know?

2 A We do know where, particularly.

3 Q You said you thought you had maybe seen the central survey
4 response to the Hickman report?

5 A I thought about it later, and I don't remember. It isn't
6 in the file, obviously, and I don't remember that I have
7 ever seen it.

8 MR. SEBELIUS: If he has seen it, it wasn't from me.

9 MR. HANSEN: It wasn't from me.

10 Q (By Mr. Hansen) On Page 3 of this memo, Item Number 2,
11 under Substantive Analysis, I am not sure I understand
12 this. I understand what he is saying, that the report
13 would have been better if it had broken down the results
14 by race and location. Are you saying it is anything more
15 than that?

16 A I am saying two things in Item 2. One, it is customary,
17 and in fact, more than customary, it is standard practice
18 to break down responses by race. And secondly, I am saying
19 that as a geographer on special issues that are certainly
20 central in this case, you would want to break it down by
21 location as well. So the report is inadequate because it
22 doesn't do what we would think of as commonly acceptable,
23 take a common accepted practice.

24 Q In Item Number 3, the last sentence of Item Number 3,
25 "Furthermore, the percentages appear to be calculated on

1 different bases, but then compared with one another."

2 What are you referring to there?

3 A What I was referring to there is when you go through their
4 tables, they use percentages as part of their analysis.
5 But sometimes the percentages are calculated with a basis
6 of the whole sample, 400. Sometimes they are calculated
7 with a base of familiarity with the school. Maybe thirty
8 people. But then they all use those two figures. You can't
9 compare percentages with a different basis, when you are
10 doing that cross-classified kind of analysis.

11 Q And the place they do that is in the one table that tries
12 to bring together three columns of dates?

13 A Yes, I think that is the way they do it.

14 Q On Page 4, Item C, do you have a copy of this report? You
15 do in one of your folders. Right, the central survey
16 report. I need to look at it to ask an intelligent
17 question. Why 17 and 18 are better than 19. On Page 4,
18 in Section C, you talk about the fact in your view Questions
19 17 and 18 were the most appropriate questions rather than
20 Question 19. Is there any reason for that, other than the
21 fact that they are open-ended?

22 A I say they may be.

23 Q Right.

24 A Not as appropriate. It is not the issue of them being
25 open-ended. It is the issue that Question 19 plays off

1 Question 12. And I have no way of knowing how they did
2 the skip patterns for that. I would like to know quite a
3 bit how they did the skip patterns in the survey, from
4 going from 12 to 19, that is part of my concern. But
5 another part of my concern, these questions where people
6 are being asked to recall, what do I think of, as a Black
7 minority school. Once you have given someone a name of a
8 school and then ask them to judge it, you are giving them
9 in fact information. You are leading them. And I think
10 it is better when you are trying to determine this kind of
11 information, to ask them what they think about it, without
12 leading them, because here I say, do you think of as mainly
13 a White school or Black school or minority school. You
14 are giving them ideas. Then you read them the list, what
15 do you think of this school over here. A person may have
16 never thought of Topeka West at all, as a White-Black or
17 racially balanced school. So I think that is why I say
18 that in an analysis you need to go back to the individual
19 school, you need to look at those questions, or the most
20 appropriate thing to do would be to analyze both. This,
21 of course, is assuming all the reports are worth analyzing.
22 It just would not stand up to professional scrutiny.

23 Q The Hickman report lists a whole series of criticisms of
24 the central service study. And I would like to sort of
25 go through the summary pages, which are on Pages 1 through 3.

1 And the criticisms that are reflected on those pages, and
2 ask you essentially whether you agree or disagree with the
3 Hickman comments on that? So starting on Page 1, I am
4 going to ask you about each of the little dot items. It
5 is possibly easier if you read them to yourself, and then
6 we will go through them one at a time. Why don't you read
7 the first one and then we will talk about it, and then the
8 second one?

9 A Okay.

10 Q Do you agree with the first one?

11 A It is a criticism that is being made, but my own feeling
12 is that the availability of telephones are sufficiently
13 wide now. That we are not likely to be biasing sub-
14 stantially the results, because of the use of an up-to-date
15 telephone directory. There will be some numbers you will
16 list. You will be missing unlisted numbers. I suspect
17 unlisted numbers in Topeka is not a particular problem.
18 I would have to check it. This would be a problem in
19 Los Angeles. But I would say, do I agree with it or don't
20 agree with it. I think it is a criticism. I should have
21 used a random digit dial technique. They didn't. If I
22 have to come down and say, is it biased, it is a very
23 small criticism.

24 Q How about the second item?

25 A I think the second issue is much more serious.

1 Q You did talk about the second issue in your report?

2 A The screening sessions, why did they exclude some and
3 include others. To exclude people who just finished school.
4 If you want to find out what is going on, in terms of
5 decision-making with respect to parents, to exclude people
6 who may have children and are not in the system, I don't
7 understand how that system is made. That is an arbitrary
8 decision. That is a poor one.

9 Q What about the third comment on Page 1?

10 A They should have matched the boundaries to the boundaries
11 of the system by using the prefixed codes and matching the
12 prefixed codes. That also can lead to bias in the system.

13 Q What if there are prefixed codes that are partially in the
14 boundary, and partially out of the boundary?

15 A Then you have to ask the people with the screening question,
16 whether they are outside or inside.

17 Q What about the next criticism on the page, which begins,
18 the poll was conducted?

19 A Timing of the poll is always a problem. And you traditionally
20 would not call Thanksgiving, Christmas and in the vacation
21 periods. They called in one of those periods, and that
22 is a criticism I would agree with.

23 Q A serious criticism, as opposed to the first one, which
24 you said was a criticism, but was not serious?

25 A The first one was serious, but this is a serious criticism.

1 Q And the last one on Page 1?

2 A As I note on the side, it is the most critical.

3 Q At the top of Page 2, the first criticism there?

4 A It was not adjusted for household size. We are trying to
5 get household responses. I am not sure how serious, how
6 much there is a need to adjust for household size.

7 Q And the next one, which is randomly chosen within the
8 household?

9 A Standard procedure in surveys is to randomize your
10 selection procedure, so that you get, if you are doing,
11 for example, a health survey, so you get someone of 18
12 years old or older. And at times it is critical because
13 you are asking for individual responses. In this case, we
14 are really asking for a response of the household. I would
15 say it is a lesser serious criticism.

16 Q The next one, which is quotas?

17 A Fails to use quotas to adjust--I don't know what they meant
18 by that. I read it at one time. I can't give you an
19 opinion.

20 Q How about the next one, which has to do with the pretest?

21 A It is incredible that they would do that. You do a pretest
22 and you get results from the pretest, to help you refine
23 the instrument or you do a rolling pretest. That is, you
24 are pretty sure your questions are right. You collect
25 your data and you don't change them. If you change the

1 questions, that is a different survey. There is no way
2 you can combine the two.

3 Q Even if the changes and questions are relatively minor?

4 A Well, it depends then. We would have to discuss what is
5 relatively minor. If you change the questions, you
6 normally would not include that data with your results.

7 Q Do you remember from the Hickman report what the changes,
8 if any, were made between the pretest and the final?

9 A No, I don't recall.

10 Q If, assume for the sake of argument, that two questions
11 were dropped and the pretest were otherwise identical,
12 would that be a serious concern?

13 MR. SEBELIUS: I object, because that simply misstates
14 what in fact happened. But if he can answer, based on
15 that hypothetical, go ahead.

16 A You are getting off. I would need to go back to it
17 individually. I would need to look at it, this whole
18 issue, of the pretest. If a question was changed or
19 questions were dropped, it would change the likelihood of
20 the answers changing or a question was dropped. So that
21 you have changed the overall composition of the questionnaire.
22 I think I would say that is a serious change. If a
23 question was modified to where you asked someone to give
24 you greater or lesser or a percentage instead of that, I
25 would say that is a minor change. So I think I have to

1 answer your question that way.

2 Q (By Mr. Hansen) The next criticism on the page, it begins,
3 since central survey did not test?

4 A They didn't test, nor did they define. And so they left
5 that up for people to have to decide. And then, of course,
6 you get different people responding in different ways,
7 when they use a term like racially balanced, which has a
8 very specific meaning. That could be misleading to people,
9 because they may not necessarily know what they mean by
10 racially balanced.

11 Q So you agree with that criticism?

12 A I agree with that criticism.

13 Q Is it something of a serious concern?

14 A Given that you have got such a poor response rate, a lot
15 of this is what we were doing earlier, is nit-picking,
16 because given that response rate, the rest is just not
17 particularly important. Whether they fulfilled some issue
18 about defining a term, seems to me to be irrelevant when
19 you have only got one-third of the responses that you
20 should have had.

21 Q The next criticism?

22 A Did not include several questions. Well, that is always
23 up to the survey and what they put in, and I don't think
24 you can say you should have put this in. But I won't
25 criticize the survey in terms of its quality, because it

1 did or didn't have certain questions in it.

2 Q Your final criticism on Page 2?

3 A Order is always important. They should have been randomized
4 and presented in different methods.

5 Q Referring to the skip system?

6 A Not skip. It is how you get to a question. You asked a
7 question in one place. Then you ask it in another. You
8 only ask the question at the latter period that some people
9 asked at an earlier period. I don't know how they did the
10 skip. There is always a chance for errors when you do
11 skips.

12 Q And your first criticism on Page 3?

13 A I would have to go back and look at the questionnaire again.

14 Q What about the second one on Page 3? I take it from your
15 check mark in the margin, that that is one that caused you
16 concern?

17 A Yes. They don't give any ranges. And they should have.
18 The check mark meant, yes, I agree with the criticism.

19 Q But they do suggest what the ranges would be, even if
20 they don't report them, right?

21 A I don't believe they reported the ranges on an individual
22 basis. They talk about the range for the 400 people. But
23 in my questions, they only had half a dozen people, and
24 the range changes, depending on the total circumstance.

25 Q And the final criticism on Page 3?

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1 A I don't think you can do that substantive of an analysis,
2 given the quality of the report.

3 Q The last page of your two-page memo, the second to the
4 last sentence on the page, only with the detailed analysis
5 of the individual responses, would it be possible to
6 identify the relationships from these simple tabular
7 analyses?

8 A Excuse me?

9 Q That is what mine says.

10 A Yes.

11 Q Is that sentence referring back to the first sentence in
12 the first paragraph, residential data and--

13 A No. It is referring to the kinds of tabular analyses they
14 were doing, not report "X" percent for West Topeka was a
15 White school, "X" percent thought it was a good school.
16 We don't know whether they were the same people. And we
17 would have to analyze the data on an individual level to
18 find that out.

19 Q When we took the break, I asked Gary to make a copy of a
20 series of pages that you and I talked about a little bit
21 off the record that were analyses done, but not used. Did
22 you do any analyses that you didn't use, other than are
23 reflected in the sheets of paper that I got?

24 A Not that I recall. I may have done rough charts,
25 thinking about what kind of an analysis I was going to do.

1 But they were more on the matter of sketch an ideas.

2 Q Are you going to testify to anything we haven't covered
3 today?

4 A I think we have covered quite enough for me to testify to.

5 Q So the answer is no?

6 A At this point, I am not planning any further detailed
7 analyses. I may elaborate on some of the things that we
8 have talked about, and some of the things that may have
9 been raised, I may prepare tables.

10 Q Did you look at faculty data at all?

11 A I only read material on faculty data and read comments. I
12 didn't do any analysis of faculty.

13 Q Did it play any role in any of the conclusions you are
14 going to draw or the opinions you are going to express?

15 A No, it doesn't.

16 Q In your mind, is the faculty data relevant at all to
17 racial identifiability?

18 A Well, relevant at all, let me phrase it this way; there
19 have been discussions about faculty assignments, as being
20 one of the issues involved in identifying schools. And
21 to the extent that these discussions have taken place in
22 trials and cases like this, I think they are probably
23 relevant to these issues, yes.

24 Q From whatever starting date you feel comfortable expressing
25 your opinion on, to 1979-80, is it your opinion that the

1 Topeka School Board took actions that had a segregative
2 effect, desegregative effect or no effect?

3 A From any point I feel comfortable with until 1979-80?

4 Q Right.

5 A I think over that whole period the School Board was engaged,
6 from the time of the initial filing in 1951, and I guess
7 even prior to that, but certainly from '51 and later, they
8 began taking actions to desegregate. They closed Black
9 schools. They made boundary changes to have Black children
10 and White children going to school together. They moved
11 deliberately. As they say in their own memo, this is not
12 something that can be done overnight. Now, we might, with
13 the experience of thirty years, have a different opinion
14 on that. But they were doing it in the time that was
15 their context. So I feel from then on, they were taking
16 desegregative actions. We could argue about how fast or
17 what they might have done. But your question was, did they
18 desegregative or segregative actions. And I think in
19 general they were taking desegregative actions. And this
20 report, for the latter period, I think documents that.
21 And as we get into the '70's, we take the middle of the
22 '70's, from the long-range facilities plan, and there is a
23 lot of evidence that that is what they were about.

24 Q Do you have an opinion as to whether today the Topeka
25 schools are fully desegregated?

1 Q Before I answer that, you will have to give me some peri-
2 meters. What do you mean by fully desegregated?

3 Q I prefer not to give you perimeters. That is why I am
4 trying to formulate a question to give you perimeters. I
5 am going to withdraw the question. You testified that
6 the School District has been taking steps that have had a
7 desegregative effect. Do you anticipate testifying that
8 a sufficient number of those steps have been taken, that
9 the School District need not take any more?

10 MR. SEBELIUS: I object to the form of the question.
11 Are you assuming that a static system over the following
12 years, so that School District doesn't have to make changes
13 based upon demographic trends, or declining enrollments,
14 or any variety of any other factors?

15 Q (By Mr. Hansen) Let me try it a different way. You
16 testified that one of the other cases in which you are
17 involved, the question in this case is whether the School
18 District has achieved a unitary status, is that right?

19 A That is correct.

20 Q Does that term have a meaning to you, the School District
21 having attained a unitary status?

22 A I can't produce for you a definition of unitary status.
23 The reason this is coming up, the Judge used that term in
24 an opinion, and was asked in fact, I don't know whether he
25 meant it in a legal sense, because it does have a legal

1 meaning. I can't reproduce that for you. That is what I
2 am saying. I have a general notion that the School Board
3 has--I can't recall a specific thing on the unitary school
4 system.

5 Q Are you going to testify that Topeka has in any way done
6 or is unitary or has sufficiently desegregated, or whatever
7 definition you want to use, or however you want to phrase
8 it, whether that will be part of your testimony?

9 MR. SEBELIUS: I object to the form, but you can
10 answer.

11 Q (By Mr. Hansen) Which means you can answer, if you can.

12 A I understand. I think somebody, when I prepare for trial,
13 will talk about how I will present my testimony, and that
14 is the kind of thing I think that comes when I present my
15 direct. I haven't formulated a specific expression of how
16 I will present that information at this point.

17 Q In San Jose you testified that you had referred to a twenty
18 percent band standard for determining racially identi-
19 fiability, is that right?

20 A Yes.

21 Q Was the purpose of identifying racial identifiability by
22 that band to try to get schools within that band?

23 A Yes, I think that is a reasonable summary. I would want
24 to go back and look at it specifically. I think the idea
25 of the band was that we didn't have schools outside that

1 band.

2 Q Schools outside that band are racially identifiable and
3 that is a band thing?

4 A You are putting that statement on there. This comment
5 could be made, there was a discussion about whether or
6 not, if we accept this band, can we get schools inside it,
7 so the schools would have a mixture of Blacks and Whites.
8 Now, if you use the exposure index, which we didn't in
9 that case, it showed there was a substantial exposure to
10 Blacks and Whites.

11 Q Using the band method of analysis, the twenty percent band
12 method of analysis, is it your opinion that it is bad for
13 a school district to have schools outside the band?

14 A I don't think we can say it is bad for the School District.
15 I think it depends on a lot of things. I can envision a
16 school action outside the band, to use your terms, bad for
17 the schools.

18 Q If all of the schools in a school district were outside
19 the band, would that trouble you?

20 MR. SEBELIUS: I object. I don't know how that is
21 possible mathematically.

22 Q (By Mr. Hansen) Sure, all Black and all White?

23 MR. SEBELIUS: Is that your question?

24 MR. HANSEN: No. Because they wouldn't have to be
25 all Black and all White. They could be all three percent

1 and ninety-seven percent.

2 Q (By Mr. Hansen) But if all of the schools in this given
3 school district were outside the twenty percent band,
4 would that be troubling to you?

5 A I think that that wouldn't be desirable.

6 Q If I were to tell you that I just did rapidly a calculation
7 of the September, 1985 statistics of school population in
8 Topeka, using your twenty percent band, and came up with
9 five of the twenty-six elementary schools are Blacker--
10 fall outside the twenty percent band in the sense that
11 they have a higher percentage of minority students than
12 would be permissible--the question is getting convoluted.
13 In 1985, the average was 26.36, five of the schools are
14 forty-six percent minority. Does that trouble you?

15 A You have mixed Black and minority.

16 Q I meant to say minority both places. The minority
17 percentage systemwide is 26.36 percent, and five of the
18 twenty-six elementary schools are more than forty-six
19 percent minority, does that trouble you?

20 A To answer your question, I think it depends on looking at
21 some other method, as well as assessing the segregation or
22 integration in the system. That alone, taking that figure,
23 we don't want to examine those schools, look at them a
24 little more closely. But more importantly, we would want
25 to look at the system and the whole system. When we look

1 at the levels of separation, as measured by the dissimi-
2 larity and exposure index, shows that the system, it seems
3 to me, to have high levels of interracial contact. So the
4 fact that five schools, and it depends whether they are
5 way outside the boundary or just outside the boundary, may
6 or may not be troubling, depending on other statistical
7 analysis. And that in itself isn't enough to make a final
8 conclusion.

9 Q You haven't calculated the index for dissimilarity for the
10 system as a whole?

11 A Not in this report.

12 Q Or the index for exposure for the system as a whole?

13 A No.

14 Q Do you anticipate testimony in regard to the index for
15 the school system as a whole?

16 A They certainly could be calculated. I haven't, at this
17 point, any plans in that direction.

18 Q If I told you that I recalculated the September 15th data,
19 using the fifteen percent band, rather than a twenty
20 percent, and knowing that for fourteen of the twenty-six
21 schools fall outside the band, does that trouble you?

22 A I think I answered it with respect to the twenty percent
23 band. So that my answer would be similar, it would
24 depend on the overall level of the integration in the
25 system.

1 MR. HANSEN: I have no more questions.

2 CROSS-EXAMINATION

3 BY MR. BILES:

4 Q Dr. Clark, if I ask you any questions that you don't
5 understand, let me know, okay?

6 A Okay.

7 Q You made reference, in response to some questions by Mr.
8 Hansen, concerning literature on family relocation. What
9 references were you making to that literature? Where is
10 that literature? Where may I find it?

11 A That is my research area, more than any one area, what I
12 have done for the last fifteen or twenty years is work on
13 migration and mobility. So my own vitae is a very good
14 source for that material. So you could look at many of
15 the articles, including the book on human migration, which
16 is a very elementary book. I am sorry to recommend, an
17 elementary book, I mean in the sense that it is designed
18 for undergraduate classes.

19 Q Like lawyers?

20 A No. No, I find, in fact, just the opposite. Lawyers are
21 quite knowledgeable in these matters. That book discusses
22 these kinds of issues, at a very general--there is research
23 that is listed in the vitae, which has the more up-to-date
24 material. These would give you then a set of references
25 to which you could go for more detailed analysis on human

1 migration and decision making.

2 Q So this literature that you were referring to is in fact
3 an analysis and literature of your own doing, and your
4 own authorship?

5 A It is of my own, and of others, because in the human
6 migration book, I summarize literature.

7 Q Dr. Clark, you also made a reference in response to some
8 of Mr. Hansen's questions concerning the central survey
9 report and the Hickman analysis. And specifically, I want
10 to ask you about the unlisted phone number point made in
11 the Hickman report. You said you couldn't recall what the
12 unlisted phone number percentage was in Topeka. So you
13 couldn't comment on whether it was much of a problem or a
14 serious problem or a minor problem. The Hickman report
15 indicates, on Page 8, that it is a twelve percent unlisted
16 phone number factor. With this percentage, does that give
17 you any guidance as to whether that is a big problem or a
18 little problem or something in between?

19 A Probably something in between.

20 Q Is that percentage higher than you thought it was in
21 Topeka?

22 A It is a little higher than I thought it would be. Yes, I
23 would say it is higher than I thought it would be for
24 Topeka. I didn't think anyone in Topeka would have an
25 unlisted number--I'm sorry, I don't mean to be slighting

1 to Topekans, but it is much higher in Los Angeles. But I
2 am not sure how much higher. Also, I have to reiterate,
3 that when I read the Hickman analysis, and having done my
4 own, that these things together, each of them, produced a
5 pattern of inadequacies in the report. That on top of the
6 low response rate, just say why you might have been able
7 to argue, we will let this go, but even the sequence of
8 events and their aggregate effect, is much greater than
9 any individual effect. So you are asking me specifically,
10 this is a little higher, if this was the only thing we
11 were talking about, I would say it might have been better
12 if they used a random digital sampling. They didn't. We
13 can leave with that. But given all the other events, it
14 is one more negative element in the preparation of the
15 report.

16 MR. BILES: Thank you. No further questions.

17 (Deposition Exhibit Number 1 was marked by
18 the court reporter.)

19 CROSS-EXAMINATION

20 BY MR. GALLAGHER:

21 Q Dr. Clark, I am going to hand you what has been marked by
22 the court reporter as Deposition Exhibit Number 1, and I
23 ask you, sir, can you identify that four-page document?

24 A This is a report called a Preliminary Evaluation of Survey
25 of Topeka Residents, Regarding Public Schools, Central

1 Surveys, Inc.

2 Q Is that the document to which Mr. Hansen was referring to
3 earlier in his questions regarding comments you made to me
4 in the written report?

5 A You lost me in your question.

6 Q Let me restate it. Is Deposition Exhibit Number 1 the
7 document to which you were referring when responding to
8 questions addressed by Mr. Hansen to you about your survey?

9 A Yes.

10 MR. GALLAGHER: No further questions.

11 MR. HANSEN: That is it. You are done.

12 MR. SEBELIUS: We will review and sign.

13

14

Signature of Witness

15

16 STATE OF _____)
17 COUNTY OF _____) SS:

18

SUBSCRIBED AND SWORN TO before me this ____ day of

19

_____, 1986.

20

21

Notary Public

22

My Commission Expires:

23

24

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