TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 8 1

OLIVER BROWN, MRS. RICHARD LAWTON, MRS. SADIE EMMANUEL, ET AL., APPELLANTS,

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

FILED NOVEMBER 19, 1951

Probable jurisdiction noted June 9, 1952

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 8, 1952.

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[fol. a]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

[Caption omitted]

OLIVER BROWN, MRS. RICHARD LAWTON, MRS. SADIE EMMANUEL, Mrs. Lucinda Todd, Mrs. Iona Richardson, Mrs. Lena Carper, Mrs. Shirley Hodison, Mrs. Alma Lewis, Mrs. Darlene Brown, Mrs. Shirla Fleming, Mrs. Andrew Henderson, Mrs. Vivian Scales, Mrs. Marguerite Emmerson, and

LINDA CAROL BROWN, an infant, by Oliver Brown, her father and next friend,

VICTORIA JEAN LAWTON and CAROL KAY LAWTON, infants, by Mrs. Richard Lawton, their mother and next friend,

JAMES MELDON EMMANUEL, an infant, by Mrs. Sadie Emmanuel, his mother and next friend,

NANCY JANE TODD, an infant, by Mrs. Lucinda Todd, her mother and next friend,

RONALD DOUGLAS RICHARDSON, an infant, by Mrs. Iona Richardson, his mother and next friend,

KATHERINE LOUISE CARPER, an infant, by Mrs. Lena Carper, her mother and next friend,

CHARLES HODISON, an infant, by Mrs. Shirley Hodison, his mother and next friend,

[fol. b] THERON LEWIS, MARTHA JEAN LEWIS, ARTHUR LEWIS and Frances Lewis, infants, by Mrs. Alma Lewis, their mother and next friend,

SAUNDRIA DORSTELLA BROWN, an infant, by Mrs. Darlene Brown, her mother and next friend,

DUANE DEAN FLEMING and SILAS HARDRICK FLEMING, infants, by Mrs. Shirla Fleming, their mother and next friend,

DONALD ANDREW HENDERSON and VICKI ANN HENDERSON, infants, by Mrs. Andrew Henderson, their mother and next friend,

RUTH ANN SCALES, an infant, by Mrs. Vivian Scales, her mother and next friend,

CLAUDE ARTHUR EMMERSON and GEORGE ROBERT EMMERSON, infants, by Mrs. Marguerite Emmerson, their mother and next friend, Plaintiffs,

vs.

BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS; Kenneth McFarland, Superintendent of Schools of Topeka, Kansas; and Frank Wilson, Principal of Sumner Elementary School, Defendants,

and

THE STATE OF KANSAS, Intervening Defendant

No. T-316 Civil

[fol. 1] AMENDED COMPLAINT—Filed March 22, 1951

1. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, section 1331. This action arises under the Fourteenth Amendment of the Constitution of the United States, section 1, and the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41), as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3000.00).

(b) The jurisdiction of this Court is also invoked under Title 28, United States Code, section 1343. This action is authorized by the Act of April 20, 1871, Chapter 22, section 1, 17 Stat. 13 (Title 8, United States Code, section 43), to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation, under color of a state law, statute, ordinance, regulation, custom or usage, or rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, section 1, and by the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41), providing for the equal rights of citizens and of all other persons within the jurisdiction of the United States, as hereinafter more fully appears.

(c) The jurisdiction of this Court is also invoked under Title 28, United States Code, section 2281. This is an action for an interlocutory injunction and a permanent injunction restraining the enforcement, operation and execution of statutes of the State of Kansas by restraining the action of defendants, officers of such state, in the enforcement and execution of such statutes.

2. This is a proceeding for a declaratory judgment and injunction under Title 28, United States Code, section 2201, for the purpose of determining questions in actual contro- [fol. 2] versy between the parties to wit:

(a) The question of whether the state statute, ch. 72-1724 of the General Statutes of Kansas 1935, is unconstitutional in that it gives to defendants the power to organize and maintain separate schools for the education of white and colored children in the City of Topeka, Kansas.

(b) The question of whether the customs and practices of the defendants operating under Ch. 72-1724 of the General Statutes of Kansas, 1935, are unconstitutional in that they deny infant plaintiffs the rights and privileges of enrolling in, attending and receiving instruction in public schools of the district within which they live while such rights and privileges are granted to white children similarly situated; where the basis of this refusal and grant is the race and color of the children, and that alone.

(c) The question of whether the denial to infant plaintiffs, solely because of race, of educational opportunities equal to those afforded white children is in contravention of the Fourteenth Amendment to the United States Constitution as being a denial of the equal protection of the laws.

3. (a) Infant plaintiffs are citizens of the United States, the State of Kansas, and Shawnee County, the City of Topeka, Kansas. They are among those classified as Negroes. They reside within various school districts in the City of Topeka, satisfy all requirements for admission to schools within the districts within which they live, have presented themselves for enrollment and registration at the proper times and places, and were denied the right to enroll therein, on account of their race and color. Instead, they

are required, solely because of race, to attend schools where they do not and cannot receive educational advantages, opportunities and facilities equal to those furnished white [fol. 3] children.

(b) Adult plaintiffs are citizens of the United States and the State of Kansas, are residents of and domiciled in Topeka, Shawnee County, Kansas, are taxpayers of said county, of the State of Kansas, and of the United States. They are the parents and natural guardians of infant plaintiffs named herein. By being compelled to send their children to schools outside the districts wherein they live rather than to schools within said districts, they must bear certain burdens and forego certain advantages, neither of which is suffered by parents of white children situated similarly to children of plaintiffs.

(c) Plaintiffs bring this action on their own behalf and also on behalf of all citizens similarly situated and affected, pursuant to Rule 23A of the Federal Rules of Civil Procedure, there being common questions of law and fact affecting the rights of all Negro citizens of the United States similarly situated who reside in cities in the State of Kansas in which separate public schools are maintained for white and Negro children of public school age, and who are so numerous as to make it impracticable to bring them all before the Court.

4. The State of Kansas has declared public education a state function in the Constitution of the State of Kansas, Article 6, Sections 1 and 2. Pursuant to this mandate, the Legislature of Kansas has established a system of free public schools in the State of Kansas, according to a plan set out in Chapter 72 of the General Statutes of Kansas, 1935, and supplements thereto. The establishment, maintenance, and administration of the public school system of Kansas is vested in a Superintendent of Public Instruction, County Superintendent of Schools, and City School Boards. (Constitution of Kansas, Article 6, section 1.)

[fol. 4] 5. The public schools of Topeka, Shawnee County, Kansas are under the control and supervision of the defendants.

(a) Defendant, Board of Education, is under a duty to enforce the school laws of the State of Kansas (General Statutes of Kansas, 1935, [and supplements thereto,] * section 72-1809); to maintain an efficient system of public schools in Topeka, Shawnee County, Kansas; to determine the studies pursued, the methods of teaching, and to establish such schools as may be necessary to the completeness and efficiency of the school system. It is an administrative department of the State of Kansas, which discharges governmental functions pursuant to the Constitution and the laws of the State of Kansas. (Constitution of Kansas, Article 6, sections 1 and 2, General Statutes, 1935, and supplements thereto of Kansas, section 72-1601). It is declared by law to be a body corporate and is sued in its governmental capacity.

6/22/51 amended at Pre-Trial A.J.M. 1949 72-1724

(b) Defendant Kenneth McFarland is Superintendent of Schools, and holds office pursuant to the Constitution and the laws of the State of Kansas, as an administrative officer of the free public school system of the State of Kansas. He has immediate control of the operation of public schools in Topeka, Shawnee County, Kansas. He is sued in his official capacity.

6. Defendant, Board of Education of Topeka, Shawnee County, Kansas, has established and at the present time maintains in the City of Topeka, State of Kansas, elementary schools for the education of the school children of the City of Topeka. They are located within different districts of the City of Topeka, whose boundaries are designated by the defendant, Board of Education.

7. White Children of elementary school age go to the school within the designated boundaries of the district in which they live.

[fol. 5] Infant plaintiffs live within the boundaries of these districts, but they are required to leave the districts within which they live and travel from one and one-half miles to

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* Struck out in copy.

two miles to separate all-Negro schools, solely because of their race and color and in violation of their rights under the Fourteenth Amendment to the Constitution of the United States.

8. The educational opportunities provided by defendants for infant plaintiffs in the separate all-Negro schools are inferior to those provided for white school children similarly situated in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

9. Adult plaintiffs are required to send their children outside the school districts in which they reside to separate all-Negro schools, whereas parents of white children are permitted to send their children to schools close at hand within the district in which they live, solely because of race and color. Thus adult plaintiffs are being denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

10. Infant plaintiffs and adult plaintiffs are thereby being wilfully and unlawfully discriminated against by the defendants on account of their race and color, in that infant plaintiffs are compelled to attend schools outside the school districts in which they live, while white children similarly situated are not so compelled; infant plaintiffs and adult plaintiffs are being deprived of their rights guaranteed by the Constitution and laws of the United States.

11. Plaintiffs are suffering irreparable injury and face irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of, other than this suit for a declaration of rights [fol. 6] and an injunction. Any other remedy to which plaintiffs might be remitted would be attended by such uncertainties and delays as to deny substantial relief; would involve a multiplicity of suits; and would cause further irreparable injury not only to plaintiffs, but to defendants as governmental agencies.

Wherefore, plaintiffs respectfully pray that:

1. The Honorable Court, upon filing of this complaint, notify the Chief Judge of this Circuit as required by 28 U. S. C. A., section 2284, so that the Chief Judge may desig-

nate two other judges to serve as members of a three-judge court as required by Title 28, U. S. C. A., section 2281, to hear and determine this action.

2. The Honorable Court enter a judgment or decree declaring that the General Statutes of Kansas, 1935, 72-1724, is unconstitutional insofar as it empowers defendants to set up separate schools for Negro and white school children.

3. The Honorable Court enter a judgment or decree declaring that the policy, custom, usage and practice of defendants in operating under Ch. 72-1724, General Statutes of Kansas, 1935, in denying plaintiffs and other Negro children residing in Topeka, Shawnee County, Kansas, solely because of race or color, the right and privilege of enrolling in, attending and receiving instruction in schools within the district within which they reside as is provided for white children of like qualifications, are denials of the equal protection clause of the United States Constitution and are therefore unconstitutional and void.

4. The Honorable Court issue a permanent injunction forever restraining and enjoining the defendants from executing so much of Ch. 72-1724, General Statutes of Kansas, 1935, as empowers them to set up separate schools for Negro and white school children.

[fol. 7] 5. The Honorable Court issue a permanent injunction forever restraining defendants from denying the Negro school children of Topeka, Shawnee County, Kansas, on account of their race or color, the right and privilege of attending public schools within the district wherein they live, and from making any distinction based upon race or color in the opportunities which the defendants provide for public education.

6. The Honorable Court will allow plaintiffs their costs herein, reasonable fees for attorneys, and such other and further relief as may appear to the Court to be equitable and just.

7. The Honorable Court retain jurisdiction of this cause after judgment to render such relief as may become necessary in the future.

Bledsoe, Scott, Scott & Scott, by Chas. E. Bledsoe, Charles S. Scott, John J. Scott, Attorneys for Plaintiffs.

Duly sworn to by Charles E. Bledsoe. Jurat omitted in printing.

[fol. 8] IN UNITED STATES DISTRICT COURT

DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT AND TO STRIKE—Filed May 15, 1951

Defendants move the court for an order, as follows:

1. Requiring plaintiffs to amend their amended complaint, paragraph 3 (a), last sentence thereof, which reads as follows: "Instead, they are required, solely because of race, to attend schools where they do not and cannot receive educational advantages, opportunities and facilities equal to those furnished white children." by making a more definite statement therein setting forth the facts upon which plaintiffs base their conclusion as to unequal advantages, opportunities and facilities, for the reason that the present statement is so vague or ambiguous that defendants cannot reasonably be required to frame a responsive pleading thereto.

2. Requiring plaintiffs to amend their amended complaint, paragraph 3 (b), last sentence thereof, which reads as follows:

> "By being compelled to send their children to schools outside the districts wherein they live rather than to schools within said districts, they must bear certain burdens and forego certain advantages, neither of which is suffered by parents of white children situated similarly to children of plaintiffs."

by making a more definite statement therein setting forth the facts upon which plaintiffs base their conclusion that adult plaintiffs must bear certain burdens and forego certain benefits; for the reason that the present statement is so vague and ambiguous that defendants cannot reasonably be required to frame a responsive pleading thereto.

3. Requiring plaintiffs to strike from their amended complaint the following language in paragraph 7 thereof:

> "and in violation of their rights under the Fourteenth Amendment to the Constitution of the United States."

[fol. 9] for the reason that the same is a conclusion and is redundant.

4. Requiring plaintiffs to amend the eighth paragraph of their amended complaint, which reads as follows:

> "The educational opportunities provided by defendants for infant plaintiffs in the separate all-Negro schools are inferior to those provided for white school children similarly situated in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

by making a more definite statement therein setting forth the facts upon which plaintiffs base their conclusion that educational opportunities claimed therein are inferior to those provided for white children; for the reason that the present statement is so vague and ambiguous that defendants cannot reasonably be required to frame a responsive pleading thereto, and further requiring plaintiffs to strike from said paragraph 8, the following language:

> "in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

for the reason that the same is a conclusion and is redundant.

5. Requiring plaintiffs to strike from paragraph 9 of the amended complaint the last sentence thereof which reads as follows:

> "Thus adult plaintiffs are being denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States."

for the reason that the same is a conclusion and is redundant.

6. By requiring plaintiffs to amend their amended complaint by striking all of paragraph 10 thereof, which reads as follows:

> "Infant plaintiffs and adult plaintiffs are thereby being wilfully and unlawfully discriminated against by the defendants on account of their race and color, in

that infant plaintiffs are compelled to attend schools outside the school districts in which they live, while white children similarly situated are not so compelled; infant plaintiffs and adult plaintiffs are being deprived [fol. 10] of their rights guaranteed by the Constitution and laws of the United States."

for the reason that the same is a conclusion and is redundant.

Lester M. Goodell, George M. Brewster, 401 Columbian Building, Topeka, Kansas, Attorneys for Defendants.

[fol. 11] IN UNITED STATES DISTRICT COURT

DOCKET ENTRY

"May 25, 1951. At Topeka, before Huxman, Mellott, and Hill, JJ.: Defendants' Motion for more definite statement and to Strike denied except as to paragraph 8 which is to be amended; plaintiffs given five days to amend paragraph 8 and defendants to have five days to plead or ten days to answer."

[fol. 12] IN UNITED STATES DISTRICT COURT

AMENDMENT TO PARAGRAPH EIGHT OF THE AMENDED COMPLAINT—Filed May 29, 1951

8. The educational opportunities provided by defendants for infant plaintiffs in the separate all-Negro schools are inferior to those provided for white school children similarly situated in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. The respects in which these opportunities are inferior include the physical facilities, curricula, teaching, resources, student personnel services, access and all other educational factors, tangible and intangible, offered to school children in Topeka. Apart from all other factors, the racial segregation herein practiced in and of itself constitutes an inferiority in educational opportunity offered

to Negroes, when compared to educational opportunity offered to whites.

Bledsoe, Scott, Scott & Scott, by Chas. E. Bledsoe.

Duly sworn to by Charles E. Bledsoe. Jurat omitted in printing.

[fol. 13] IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANTS TO AMENDED COMPLAINT AS AMENDED IN PARAGRAPH 8 THEREOF—Filed June 7, 1951

1. Defendants admit the allegations stated in paragraphs 4 and 6 of the Amended Complaint, except that defendants allege that the City of Topeka is one school district, as hereinafter set forth. Defendants deny all the allegations stated in Amendments to paragraph 8 of the Amended Complaint, and further deny all the allegations stated in paragraphs 9, 10 and 11 of the Amended Complaint.

2. Defendants admit the allegations stated in paragraph 1 (a) of the Amended Complaint, except defendants deny that the amount in controversy, exclusive of interest and costs, exceeds $3,000.00.

3. Defendants admit the allegations stated in paragraph 2, except defendants deny that infant plaintiffs are denied rights and privileges of enrolling in, attending and receiving instruction in public schools within the district in which they live; and deny that they have denied infant plaintiffs educational opportunities equal to those afforded white children.

4. Defendants allege that the City of Topeka, Kansas, is in and of itself one school district; that acting pursuant to authority vested in it, defendants have designated and defined 22 separate territories within the City of Topeka and in each of said territories have established and maintain a public elementary school, and white children are required to attend the elementary school located in the territory in which they live; that defendants have also established and maintain four separate elementary schools for colored children within said district, and only colored children in the City of Topeka may attend said four schools. [fol. 14] Defendants further allege that the colored school

children, including infant plaintiffs, may attend any one of these four schools.

5. Defendants allege that said separate schools are established and maintained pursuant to the laws of the State of Kansas, G. S. 1949, 72-1724, and separate schools are provided only for elementary school children, to-wit, the first six grades.

6. Defendants allege that they have established and maintain junior high schools throughout the City of Topeka and have designated and defined territories for each of said schools; that both colored and white children may attend these schools and are required to attend the junior high school located within the territory in which they live.

7. Defendants allege that transportation facilities are provided for colored school children attending the four colored schools mentioned in paragraph 4 hereof, and said transportation facilities are furnished any colored school child attending elementary schools, upon request; that no transportation is furnished white children by the defendants.

8. Defendants admit the allegations stated in paragraph 3 (b) that adult plaintiffs are citizens of the United States, the State of Kansas, Shawnee County and the City of Topeka, Kansas, and deny the remainder of said paragraph. Defendants further deny that adult plaintiffs are compelled to send their children to schools outside the district wherein they live.

9. Defendants admit the allegations stated in paragraph 3 (a) that infant plaintiffs are citizens of the United States, State of Kansas, Shawnee County and the City of Topeka, Kansas, and that they are among those classified as negroes. [fol. 15] Defendants allege that infant plaintiffs have presented themselves for enrollment and registration in elementary schools for white children but were denied the right to enroll therein. Defendants allege that infant plaintiffs, because of race and color, do not satisfy the requirements for admission to schools for white children and by reason thereof they were denied admission. Defendants deny the remainder of paragraph 3 (a).

10. Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations stated in paragraph 3 (c) of the Amended

Complaint, or that adult plaintiffs are taxpayers of Shawnee County, the State of Kansas, and the United States, as stated in paragraph 3 (b).

11. Defendants admit the allegations stated in paragraph 5 of the Amended Complaint, but deny that they are governed by General Statutes 1935, and supplements thereto, section 72-1809, for the reason that said statute applies to public schools in cities of the second class and not to public schools in cities of the first class to which class the City of Topeka belongs.

12. Defendants deny the allegations stated in paragraph 7 of the Amended Complaint, and allege that white school children of elementary school age in the City of Topeka are required to go to the elementary schools within the designated boundaries of the territory in which they live, and that these schools are within the school district of the City of Topeka; that infant plaintiffs go to elementary schools within the district in which they live, namely, the school district of the City of Topeka, Kansas, and they may attend any of the colored elementary schools within the City of Topeka, as set forth in paragraph 4 hereof. Defendants further allege that the distance traveled by colored children [fol. 16] in reaching the schools they attend is not on the average greater than the distance white children are required to travel.

Wherefore, Defendants pray that plaintiffs take naught; and that defendants have judgment and costs.

Lester M. Goodell, George M. Brewster, Topeka, Kansas, Attorneys for Defendants.

Duly sworn to by Lester M. Goodell. Jurat omitted in printing.

[fol. 17] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SEPARATE ANSWER OF THE STATE OF KANSAS—Filed June 15, 1951

Comes now the State of Kansas, an intervening defendant, by Edward F. Arn, Governor of said State, and Harold R. Fatzer, the Attorney General thereof, and for its answer to the amended complaint herein alleges as follows:

I

That the amended complaint in said cause fails to state a claim or cause of action against this intervening defendant upon which relief may be granted to the plaintiffs.

II

This intervening defendant admits the allegations contained in paragraph 1 of the amended complaint except that it denies the amount in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

III

This intervening defendant admits the allegations contained in paragraph 2 (a) of the amended complaint except that it expressly denies Chapter 72-1724 of the General Statutes of Kansas, 1935 (1949), is unconstitutional. This defendant is without knowledge or information to either admit or deny the truth or the allegations contained in paragraph 2 (b), (c), and paragraph 3 (a), (b) of the amended complaint.

[fol. 18] IV

This defendant admits the allegations contained in paragraphs 4 and 5 of the amended complaint, but denies that the defendant, Board of Education of Topeka, Shawnee County, Kansas, is governed by the General Statutes of Kansas, 1935, and supplements thereto, Section 72-1809, for the reason that said statute has no application to pub-

lic schools in cities of the first class to which class the city of Topeka belongs.

V

For further answer herein this intervening defendant states it is without knowledge or information to either admit or deny the truth of the allegations contained in paragraphs 6, 7, 8 as amended, 9 or 10 of the amended complaint. All other allegations contained in the amended complaint which are not hereinbefore admitted or explained are hereby expressly denied.

Wherefore this intervening defendant prays that plaintiffs take naught by this action and that defendants have judgment for all costs herein expended.

Harold R. Fatzer, Attorney General for the State of Kansas; Willis H. McQueary, Assistant Attorney General for the State of Kansas; C. Harold Hughes, Assistant Attorney General of the State of Kansas.

[Verified by Willis H. McQueary.]

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Proceedings of Pre-Trial Conference—Filed October 30, 1951

APPEARANCES:

Hon. Walter A. Huxman, Judge, United States Court of Appeals, Tenth Circuit.

Hon. Arthur J. Mellott, Judge, United States District Court, District of Kansas.

Charles S. Scott, Topeka, Kansas; John Scott, Topeka, Kansas; Charles Bledsoe, Topeka, Kansas; Robert L. Carter, New York, New York, and Jack Greenberg, New York, New York. Appeared on behalf of Plaintiffs.

Lester M. Goodell, Topeka, Kansas, and George M. Brewster, Topeka, Kansas. Appeared on behalf of De-

fendants, Board of Education, Topeka, Shawnee County, Kansas, et al.

Harold R. Fatzer, Attorney General, State of Kansas, by Willis H. McQueary and Charles H. Hobart, Assistant Attorneys General, State of Kansas, Topeka, Kansas. Appeared on behalf of State of Kansas.

Harold Pittell, Official Reporter.

[fol. 20] Be it remembered, on this 22nd day of June, A.D. 1951, the above matter coming on for hearing before Honorable Walter A. Huxman, Judge, United States Court of Appeals, Tenth Circuit and Honorable Arthur J. Mellott, Judge, United States District Court, District of Kansas, and the parties appearing in person and/or by counsel, as hereinabove set forth, the following proceedings were had:

* * * * * * *

[fol. 21] Colloquy Between Court and Counsel

Judge Mellott: Do you have the appearances, Mr. Reporter?

The Reporter: Yes, Your Honor.

Judge Huxman: Gentlemen, the purpose of this session this morning is to hold a pre-trial conference to see whether we can simplify the matters and what can be agreed to before we go to trial next Monday.

Judge Mellott has called my attention to Rule 16. It provides for conference to simplify the issues, whether there is any necessity for amendments to the pleadings and to inquire into the possibility of obtaining admissions of fact concerning which there can be no dispute, limitation of the number of expert witnesses, the advisability of a preliminary reference of the issues to a master for findings and any such other matters as may simplify the issues at the time of the trial.

All the parties have entered—are in court and have filed pleadings; that is true of the State of Kansas, is it not?

Mr. McQueary: It is, Your Honor.

Judge Huxman: Is there a desire on the part of anybody to amend the pleadings in any manner; any necessity for amendment of pleadings?

Mr. Charles Scott: Yes, if the Court please. We have one amendment we desire to make.

[fol. 22] Judge Mellott: To what paragraph?

Mr. Charles Scott: Paragraph 5, sub-paragraph (a) of the plaintiffs' amended complaint.

Mr. Goodell: What was that again?

Mr. Charles Scott: Paragraph 5, sub-paragraph (a).

Judge Huxman: Paragraph 5 what?

Mr. Charles Scott: Paragraph 5(a).

Judge Mellott: Let me orient myself and Judge Huxman. Did you file a complete amended complaint?

Mr. Charles Scott: No, sir.

Judge Mellott: You filed an original complaint.

Mr. Charles Scott: And an amended complaint and——

Judge Mellott: And then in the amended complaint—there was an amendment to the amended complaint.

Mr. Goodell: I interpret that they did file——

Judge Mellott: You did file an amended complaint on March 22nd, didn't you?

Mr. Charles Scott: Yes.

Judge Mellott: The motion to make more definite was addressed to that amended complaint.

[fol. 23] Mr. Charles Scott: That is correct.

Judge Mellott: And then you filed an amendment to the amended complaint, under date of May 29th, did you not?

Mr. Charles Scott: That is correct, sir.

Judge Huxman: What do you desire presently?

Mr. Charles Scott: We desire to correct the statute of 72-1809 of the General Statutes of 1935 and the supplements thereto.

Judge Mellott: Let me get this in the pleading here. You are now talking about your original amended complaint, aren't you?

Mr. Charles Scott: The original amended complaint.

Judge Mellott: And you say you want to refer to paragraph 5 of that.

Mr. Charles Scott: 5(a).

Judge Mellott: 5(a). Your amendment is what; you want to make reference to the General Statutes of '49 instead of 1935, is that what you are saying?

Mr. Charles Scott: We also want to make reference to the General Statutes of 1949 and also strike therefrom Section 72-1809 and insert therein 72-1724.

Judge Mellott: 72-1724.

Mr. Charles Scott: That is correct.

[fol. 24] Judge Mellott: And does that read, then, that that is the General Statutes of Kansas for 1949?

Mr. Charles Scott: That is correct.

Judge Mellott: You wish to leave out the words, "and supplements thereto."

Mr. Charles Scott: Yes, we can take that out, that's true.

Judge Mellott: Let me see if I understand what you are doing. Paragraph 5(a), as amended, now reads: "Defendant, Board of Education, is under a duty to enforce the school laws of the State of Kansas (General Statutes of Kansas, 1949, Section 72-1724)", is that the amendment you are making?

Mr. Charles Scott: That is correct, sir.

Judge Mellott: Any other amendments?

Mr. Charles Scott: That is all we have.

Judge Huxman: Any objections to that? No objections; the amendment will be——

Mr. Goodell: If I understand his point, he cited in his amended complaint, which he now desires to correct, a statute which applies to cities of second class, erroneously when he intended to use—so we have no objection.

Judge Huxman: All right; the amendment will be ordered.

Judge Mellott: The Court will make the amendment by [fol. 25] interlineation.

Judge Huxman: Any other amendment to the pleadings?

Mr. Goodell: We have none, Your Honor.

Judge Huxman: No further amendments to any of the pleadings.

Mr. Bledsoe: If the Court please, at this time I would like to inform the Court we have two attorneys who are interested in this case with the plaintiffs, and they are here now, and I would like to present them to the Court at this time.

Judge Huxman: I will ask Judge Mellott to handle that because he knows how that matter is handled.

Judge Mellott: Very well. You may introduce them, if you will, and tell me who they are.

Mr. Bledsoe: They would like to be admitted for the purpose of this case only.

Judge Mellott: Present them.

Mr. Bledsoe: If the Court please, this gentleman here is Robert Carter, from New York. This, gentlemen, is Judge Huxman of the Tenth Circuit Court of Appeals; the gentleman over here is Jack Greenberg, of New York, and this is Judge Mellott of the District of Kansas Federal Court.

Judge Mellott: Are these gentlemen members of the bar?

[fol. 26] Mr. Bledsoe: They are.

Judge Mellott: In what state?

Mr. Bledsoe: New York.

Judge Mellott: In good standing?

Mr. Bledsoe: They are.

Judge Mellott: And are they admitted to practice in federal courts and courts such as this in their home jurisdiction?

Mr. Bledsoe: They are.

Judge Mellott: Never been disbarred. You vouch for them.

Mr. Bledsoe: I do.

Judge Mellott: Without further formality, then, they will be permitted to appear as counsel, along with the other gentlemen who presently appear as counsel in this case. Thank you, gentlemen; you may be seated.

Judge Huxman: Unless there is something else preliminary, we might——

Mr. Carter: Your Honor, if I may, I would like to raise one point. I don't think an amendment would be necessary to our pleadings, but we erroneously refer to school districts in Topeka, where it should be "territories", and we were going to make a stipulation with the defendants that they are territories rather than districts—and there is one school district.

[fol. 27] Judge Huxman: I think that is covered.

Mr. Carter: I just want to be sure.

Judge Mellott: I suppose, if necessary, for all proper purposes in this case, the Court can consider that where you use the word "district" in your pleading, that really what you are referring to is "territories." I believe I suggested that at an earlier proceeding here. It was my under-

standing Topeka was one school district, so you were referring to territories.

Judge Huxman: There is one other matter that might come up during the trial—at least I think the Court might want to make inquiry—will either or any of the parties to this litigation want to use expert witnesses?

Mr. Carter: Well, Your Honor——

Judge Huxman: For what purpose?

Mr. Carter: We want to use expert witnesses for the general purpose of showing that the segregation, which is the issue in the case, the segregation of the plaintiffs and of the class they represent in the negro schools is in fact a denial to them of their right to equal educational opportunities, that they are not getting equal educational opportunities by virtue of that. That is the purpose of our expert testimony.

Judge Huxman: Will there be any opposition to expert witnesses?

[fol. 28] Mr. Goodell: The——

Judge Huxman: —the use of expert witnesses by the plaintiffs?

Mr. Goodell: The way the question was stated, we will certainly object to that. We think that is a question of law. I, of course, don't know what turn it will take.

Judge Huxman: Well, the question of whether such testimony is competent, does not need to be decided at this time. The purpose of this inquiry is to ascertain how many such witnesses you will request and whether there shall be a limit. How many witnesses do you gentlemen desire on that question, assuming that the Court rules it is competent.

Mr. Carter: Well, Your Honor, I think that we were not certain of the exact number but approximately nine. We have approximately nine or ten people who we want to call who have made studies of this.

Judge Huxman: Well, the Court feels that nine witnesses on that one issue is too many witnesses. In other words, the issue is whether segregation itself, I presume, is not a denial of due process, irrespective of whether everything else is equal, to that furnished in the white schools, is that not your general contention?

Mr. Carter: Yes, sir.

Judge Huxman: Because of the effect it has upon the

[fol. 29] mind, upon the student, upon his outlook; I presume that would be your position.

Mr. Carter: That is absolutely correct, Your Honor.

Judge Huxman: Could nine witnesses give different testimony, or would their testimony be largely the same?

Mr. Carter: I doubt that, Your Honor. Our testimony will not be cumulative. Our purpose of getting these people was in order to give a rounded picture with respect to the subject that we have just raised. Now, we will have some witnesses who will testify as to tangible and physical inequalities also among those people, so that I think that it would be a great hardship to us if we were limited. We have no intention of merely bringing on witnesses to be cumulative.

Judge Mellott: That is the thing the Court thinks it should avoid. We shouldn't hear nine witnesses testify cumulatively even as experts, it seems to me, on the same thing.

Mr. Carter: I agree, but, Your Honor, we have no—we are not going to have duplication. Each of the people that we are asking to come here to testify will handle a different phase of this.

Judge Mellott: Then we should not limit you if that is what you expect to do.

[fol. 30] Judge Huxman: The Court feels this way, that it's difficult for it at this time to see where nine witnesses could testify on this one subject, to nine different sets of facts, unrelated facts, but you may be right; we do not intend to deny you the right to fully present your case. The Court, however, feels that after it has heard five witnesses, expert witnesses, if the Court then feels that the witnesses that you are offering thereafter are merely duplicating what has been said, an objection to their testimony on that ground will be sustained. If, on the other hand, the testimony is clearly different from what has been given, why you then should have the right to present your nine witnesses. But at the end of five, the Court will certainly scrutinize the testimony of the other four quite carefully to see whether it is duplication or additional testimony.

Mr. Carter: All right, sir.

Judge Huxman: Do you gentlemen then stipulate that, in any event, the expert witnesses which you request will be limited in number to nine.

Mr. Carter: Your Honor, frankly, our difficulty in making any stipulation like that is that Mr. Greenberg and I have just gotten here from New York this morning about——

Judge Huxman: This isn't the first case of this kind you were in. You were in the South Carolina case, weren't [fol. 31] you?

Mr. Carter: Yes, sir; but the thing is we haven't really had an opportunity to go over this. I would not want to make that stipulation. What I will say and what Your Honor has ruled is that after five, you will scrutinize whatever testimony we present for duplication, and we will certainly attempt to avoid that, but I wouldn't want to say that we would only have nine.

Judge Huxman: That was your statement in response.

Mr. Carter: I said approximately; I didn't want to be tied down to that number at all.

Judge Mellott: How much leeway do you want?

Mr. Carter: Well, I frankly think that we won't have more than nine, but I just would prefer not to be tied down. I am not going to, believe me, Your Honor, we are not going to parade a lot of witnesses here merely to keep you tied down.

Mr. Goodell: It would be under ninety, wouldn't it?

Mr. Carter: It will be under fifteen.

Mr. Goodell: Nine to ninety.

Judge Huxman: It would be the order of the Court that expert witnesses on behalf of the plaintiff, in the first [fol. 32] instance, will be limited to five, but if at that point the plaintiffs have additional witnesses which they feel have testimony to offer which has not been covered by these five, they will not be denied the right to present that testimony, is that correct, judge?

Judge Mellott: Yes, at this time, I think.

Judge Huxman: But that after five have been heard, the Court will reserve the right to reject any further evidence if it should feel that the evidence that is being offered is cumulative and not additional to what the first five have testified, is that fair to you boys?

In view of the fact that there has been a statement that plaintiffs will offer expert witnesses on this subject, assuming that the testimony will be received, will the de-

fendants, or any of them, want to on their part offer expert testimony along this same line?

Mr. Goodell: Well, I am a little at a handicap of knowing exactly what their line is. They mention there is to be testimony from experts, as I understood it, on some physical facts which, of course, I don't know what they are referring to except I take it to mean that inferiority to—as to some —something relating to the school system and, of course, if that comes up, we will probably want to rebut that, not with experts, I don't think.

[fol. 33] Judge Huxman: Judge Mellott——

Mr. Goodell: As to the other phase which I understand is the psychological aspect and sociological, until I have heard their testimony, I am at a loss to know whether we will want to rebut it or attempt to rebut it.

Judge Mellott: Well, would it not be proper if the Court thought in terms of the same basic premise that in the event you do decide to offer experts rebutting the testimony of the plaintiffs' experts, that a limitation somewhat along the line suggested by Judge Huxman to the plaintiff should, likewise, apply to you.

Mr. Goodell: I certainly think so.

Judge Huxman: All right; that will be the order of the Court at this time.

Now, is there anything else, gentlemen, as to preliminary matters that we want to discuss before we go into these requests for admissions. Anything else that might be helpful in shaping the issues, shortening this trial.

I may state for myself, as a member of this court, that it would certainly be my purpose to afford the parties a full and complete hearing and an opportunity to present the issues fully and completely but, on the other hand, I would be very loathe to just permit the introduction of a great mass of testimony for any purpose whatever that has no bearing upon the issues; it merely prolongs and drags out [fol. 34] this trial.

Anything else preliminary? Do you care to say anything more?

Judge Mellott: I am quite sure Judge Hill and I concur entirely as to what you have just said, though my authority, of course, to speak is only to speak for myself.

Judge Huxman: In a preliminary conference, Judge

Mellott, to bring you up to date, purely informal, with attorneys for the plaintiffs and the defendants, I suggested that, as a preliminary to this pre-trial conference, each side prepare requested admissions of fact and serve them on the other side.

Judge Mellott: I am sure that was quite helpful.

Judge Huxman: We have that here this morning and, if there is nothing further, suppose, gentlemen, we proceed to see how many of these requests we can agree upon.

We will take up the defendants' requests for stipulations first.

No. 1 is a request for an agreement that the City of Topeka, Kansas, constitutes one school district.

Mr. Carter: We agree.

Judge Huxman: That is agreed to.

Judge Mellott: Thank you, gentlemen.

[fol. 35] Judge Huxman: Request No. 2:

"That defendants have designated within the City of Topeka, Kansas, eighteen territories and in each of these territories have established and maintain a public elementary school for white children only; in addition thereto defendants have established and maintain in the City of Topeka, Kansas, four separate elementary schools for colored children and attendance at these four schools is restricted to colored children. Exhibit A, which is made a part hereof by reference, is a map of the City of Topeka and adjacent territories attached to Topeka School District for school purposes only. Said Exhibit A correctly designates the school territory for white schools for the City of Topeka, Kansas. Said map also designates the four colored schools, which are Buchanan, McKinley, Monroe and Washington. Colored school children in the City of Topeka, Kansas, may attend any one of these four colored schools, and the choice of schools is made by the colored school children or their parents. The territory colored blue on Exhibit A represents areas not within the City of Topeka except for school purposes, and children residing in said areas attend schools in the City of Topeka, Kansas."

Now, before you make any request, Judge Mellott has not seen Exhibit "A". As a preliminary question, may I ask, Mr. Goodell, who prepared that exhibit?

[fol. 36] Mr. Goodell: The clerk of the Topeka Board of Education.

Judge Huxman: Do you vouch for its territorial correctness and integrity?

Mr. Goodell: Absolutely.

Judge Huxman: All right. With that preliminary statement, is there any objection to the admission requested in request No. 2?

Mr. Carter: Well, Your Honor, this is the first—I think we have no objection on Exhibit "A", but going over on to page 2—about the fifth line from the top——

Judge Huxman: Fifth line from the top on page 2.

Mr. Carter: "and the choice of schools is made by the colored school children or their parents." I should think we have to get more information on that before we could agree. With that exception, we will agree.

Mr. Goodell: For clarity, what is meant there, of course, is choice of which of the four colored schools. It doesn't mean to say——

Mr. Carter: It is a question in our minds as to whether that is true.

Judge Huxman: Do you have testimony to the effect that that is not true?

Mr. Carter: We may.

[fol. 37] Judge Huxman: You may.

Mr. Carter: Yes, sir.

Judge Huxman: Well, do you have reasons to believe that it is not true?

Mr. Carter: Well, the only thing I can say at this time, Your Honor, is that up to—as far as this is concerned, we have to know—we would have to make a little further investigation on this ourselves. We might stipulate, agree, that this is true by Monday, but I don't think we can do it today.

Judge Huxman: All right. I just feel this way, that there ought to be a perfect willingness on the part of both parties to freely and frankly agree to facts concerning which there just can't be any dispute. Now, if there is a question about a fact, that should not be agreed to, of course, but you have local colored counsel here who no doubt went to schools here, these segregated schools.

Mr. Carter: That is——

Judge Huxman: Do you agree to the request with the exception of that portion starting—with this exception: "Colored school children in the City of Topeka, Kansas, may attend any one of these four colored schools, and the choice of schools is made by the colored school children or their parents."

Mr. Carter: All we reject is of the choice.

[fol. 38] Judge Huxman: Do you agree to everything but that?

Mr. Carter: We agree with the first part of the statement. All we don't know about is the choice.

Judge Huxman: I am just taking the one sentence. I don't like to divide a sentence. You want to reserve the agreement to that until Monday.

Mr. Carter: Yes, sir.

Judge Huxman: And, in the meantime, you will make an investigation and if you find that that is a fact——

Mr. Carter: We will agree to it.

Judge Huxman: Mr. Scott, you have been a resident of Topeka all your life.

Mr. Charles Scott: Yes, sir.

Judge Huxman: Are you able to say whether that is or is not a fact as the schools are administered.

Mr. Charles Scott: Qualified, Your Honor. We are allowed to go to the schools that are closest to our home. Now, whether or not the school board has any control over that or not, I don't know, but, as a practical matter, naturally, the colored students go to the school closest to their home.

Judge Huxman: I tell you what I wish you would do with your New York counsel. I wish you would have a confer-

[fol. 39] ence with the members of the school board between now and Monday and ask them if a colored student wants to attend any one of these four schools whether there is any restriction upon his right to do so.

Mr. Charles Scott: I will do that, Your Honor.

Judge Huxman: And then come in Monday morning——

Mr. Goodell: Of course, my information came from the board and the administrative officers on all these matters.

Judge Huxman: They should have the right to get that information themselves.

It is agreed, then, that request for admission No. 2 is argeed to with the exception of that portion which has just been read by the Court and, as to that portion, inquiry will be made by Monday and a statement by counsel for plaintiffs will be made then as to whether they agree to that portion which is presently eliminated.

We will take up No. 3:

"That the same curriculum is used in the elementary colored schools in the City of Topeka, Kansas, as is used in the elementary white schools in said city."

Mr. Carter: After conference, Your Honor, we cannot stipulate to that.

[fol. 40] Judge Huxman: Do you claim that that is not so?

Mr. Carter: We would change in the first sentence where it reads, "That the same curricula is used", we would change that to "prescribed" as long as curricula is understood to mean courses of study.

Judge Huxman: That is what the curricula means, isn't it, courses of study.

Mr. Goodell: That is what I intended by it.

Mr. Carter: I am not sure.

Judge Huxman: Do you have a different meaning of curricula?

Mr. Carter: Yes, sir.

Judge Huxman: Is there any objection to the elimination of the word "curricula" and the substitution of the "studies are used"?

Mr. Carter: "Prescribed" is what we want to use.

Judge Huxman: That wouldn't be any admission. The question is, is it actually used, that is the test.

Mr. Carter: We are advised that that is not true, Your Honor.

Judge Huxman: How?

[fol. 41] Mr. Carter: We at this table don't feel that we can stipulate to that at this time.

Judge Huxman: Well, do you intend to offer evidence to show that that is not so?

Mr. Carter: Yes, sir.

Judge Huxman: In what respect do you contend that there is a difference?

Mr. Carter: Well, there are several things that I have

right now at my fingertips that I can indicate. One is that there is a difference in terms of the special teachers and the special—there are special teachers that are used at the White schools. No special teachers or special courses for certain classes of the student body are at the Negro School.

Judge Huxman: The teachers have nothing to do with the courses of study?

Mr. Carter: Yes, sir. They have set up, as we understand it, Your Honor, set up at the White school a special course of study for children who are somewhat retarded who are not able to come up to the part of their class. Now, no such course is available at the Negro school. We also have a question right now as to whether even though the same courses of study are prescribed, and we think that we have evidence to show that it is not used, that this is not followed out at the Negro school generally.

[fol. 42] Judge Huxman: Mr. Goodell, what do you say with regard to the statement that special courses prescribed in white schools for sub-normal children are not in colored schools?

Mr. Goodell: I don't think that is curricula that is special —that comes under a heading later in our brief about special services which they cover in paragraph 8, which I don't think is embraced in the question of curricula.

Judge Mellott: I am wondering if you gentlemen perhaps are in dispute primarily about the definition of the word "curricula." I wonder if that is your difficulty.

Mr. Goodell: I think—my interpretation of it and the use I intended is the—as meaning the subjects taught, programs used in the school and the subjects taught, courses of study.

Judge Mellott: Well, do you wish to rephrase it so that it does limit it to those particular terms? Maybe your adversary will agree if you rephrase it.

Mr. Goodell: I am willing to change it, Your Honor, by striking out the word "curricula" and substituting therefor "that the same course of study"—"courses of study".

Judge Mellott: I suggest that counsel for the plaintiff give attention to what is being said.

[fol. 43] Mr. Carter: Yes, sir.

Judge Huxman: He is suggesting that perhaps a change in the word "curricula" might make this understandable

so you do agree upon its meaning and perhaps get closer to a stipulation.

Mr. Goodell: "That the same course of study is used in the elementary colored schools in the City of Topeka as is used in the elementary white schools." It will read, Your Honor, my suggested amendment.

Judge Huxman: Also keep in mind, gentlemen, that under Mr. Goodell's explanation this special matter which you mentioned for abnormal children is not meant to be included in here, and the agreement to this stipulation would not bar you from showing that some special services are rendered to white children that are not rendered to colored children. With that statement, are you willing to agree with this?

Mr. Charles Scott: At this time, Your Honor, I don't think we are inclined to accept it.

Judge Mellott: Your associates think they are. They say if you limit it to simply saying that the same course of study is used, that they don't have any objection.

Mr. Charles Scott: Well, this is the reason, Your Honor: We have examined a greater portion of the curricula, as prescribed by the school board, and we have found that [fol. 44] there are some differences, certain course of studies are offered in some schools and are not offered in some of the colored schools, and so I don't think we are inclined to accept it on those basis.

Judge Huxman: Can you name a specific instance?

Mr. Charles Scott: Yes, sir.

Judge Huxman: All right, let's have it.

Mr. Charles Scott: They have a course entitled "Literature Appreciation" that is offered in the fifth and sixth grades in several of the white schools, and it is not offered in one or two of the colored schools. Then you have——

Judge Huxman: Is that shown by the exhibits?

Mr. Charles Scott: Yes, sir.

Judge Huxman: All right. What would you say to this: Would you agree that the courses of study as outlined in these exhibits—what are the exhibits?

Mr. Charles Scott: If the Court please, now they label——

Judge Huxman: Are the courses of studies that are used.

Mr. Charles Scott: They call it the school program, but it appears to be the course of study.

[fol. 45] Judge Huxman: That is quibbling about words, isn't it?

Mr. Charles Scott: Well——

Mr. Goodell: I am willing to limit that again. I am not familiar with that matter he points out—to have it read, "That the same course of study required by the Kansas"—by law—"by the Kansas statute is given." I think what he is talking about is some extra-curricular subject that some teachers of their own volition give, like outside reading, reference texts, and so forth, rather than a prescribed course of study.

Mr. Charles Scott: No, I beg to differ with counsel. This is prescribed by the school board and sent down.

Mr. Goodell: I am talking about what the state law requires to be taught in our Kansas elementary public school system.

(Colloquy was here had between counsel off the record.)

Mr. Goodell: If we are going to have a lawsuit here and pursue factual inquiry as to—as to school by school, of which there are twenty-two, we will be chasing down each textbook for outside reading that Miss Jones may prescribe at Randolph which Miss Baker at another school doesn't like, and she prescribes another text for outside [fol. 46] reading. Suppose they are taking history; one likes this for outside reading and another teacher likes another. That will frequently occur.

Judge Mellott: Do you have a printed course of study?

Mr. Goodell: Absolutely.

Judge Mellott: Do you have one?

Mr. Goodell: I have it attached as an exhibit here. And what I meant to convey and what I mean by this stipulation and will reframe it——

Judge Mellott: Where is it attached?

Mr. Brewster: Exhibit "F".

Mr. Goodell: That the course of study required by our Kansas statute is followed in all of the schools without any distinction between the white and colored elementary schools.

(Colloquy was here had between counsel off the record.)

Judge Huxman: Shall we then eliminate request No. 3?

Mr. Goodell: Let's pass that, Your Honor.

Judge Huxman: We will pass request No. 3 and take up No. 4:

"That the same school books are used in the elementary colored schools in the City of Topeka, Kansas, as are used in [fol. 47] the elementary white schools in said city."

Is that not related to 3 and also covered by your exhibits?

Mr. Goodell: Yes.

Judge Huxman: Shall we pass it?

Mr. Goodell: Yes, that is satisfactory.

Mr. Carter: Your Honor, we are having one of our expert witnesses, that is going to be a librarian, who is at the present time checking the holdings of all the schools.

Judge Huxman: Is what?

Mr. Carter: The holdings, the library holdings of all of the schools, and we therefore are not—we can't——

Judge Huxman: We passed 4.

Mr. Goodell: I would like to amend, in view of his remarks, I would like to amend that to read, "The same textbooks"—"school textbooks"—so that it doesn't——

Judge Huxman: All right, that will be permitted.

Judge Mellott: Do you agree that the same textbooks are used?

Mr. Carter: I think we will agree.

Judge Mellott: Very well.

Judge Huxman: Did you, Mr. Reporter, get request No. [fol. 48] 4, as amended?

The Reporter: Yes, Your Honor.

Judge Huxman: We will take No. 5:

"That each of the four colored elementary schools in the City of Topeka, Kansas, is situated in neighborhoods where the population is predominantly colored."

Mr. John Scott: That is agreeable, Your Honor.

Judge Huxman: That is agreed to.

Judge Huxman: No. 6:

"That transportation to and from school is furnished colored children in the elementary schools of the City of

Topeka, Kansas, without cost to said children or their parents. No such transportation is furnished white children in the elementary schools of the City of Topeka."

It would seem to me that is either a fact or isn't a fact.

Mr. Charles Scott: We will agree to that.

Judge Huxman: All right. No. 6 is agreed to.

No. 7:

"That the same services are offered to colored and white elementary schools by the school authorities of the City of Topeka, Kansas, except in the case of transportation, as [fol. 49] set out in the preceding paragraph hereof."

Now, before you speak on that, I would like to ask a preliminary question: I am not sure that I understand, Mr. Goodell, what you mean by the "same services."

Mr. Goddell: I mean services like supervised play of the children at recess and noon period; I mean services of public health, nursing, which is furnished the elementary schools, both white and colored alike; I mean services that are entailed in departmental heads calling on the elementary school system, such as music department, and giving supervision and advice to the teachers. That is what I mean.

Judge Huxman: Is there anything else that you include in services?

Mr. Goodell: No, that is what I mean.

Judge Huxman: All right. And your request, requested admission, that these services which you have mentioned are furnished both in the colored schools and in the white schools.

Mr. Goodell: That is correct.

Mr. John Scott: We don't accept that, if Your Honor please. I think that is a little too indefinite; we need a little more definite and certain——

Judge Huxman: That is the reason I asked you to state [fol. 50] specifically the kind of services he had in mind.

Mr. John Scott: Yes, Your Honor, I understand that, but, as it stands in the stipulation at the present time, we wouldn't have a way of knowing.

Judge Huxman: The stipulation as it reads in the printed record isn't going to be the record. The record

that is made is as modified by the statements of Mr. Goodell. They are the ones that go into the record.

All right; is that agreed to, then?

Mr. Carter: That is agreeable, Your Honor.

Judge Huxman: That is agreeable.

Judge Mellott: Well, are there any other services that either side thinks should be incorporated. Now, I have in my mind some three or four services. Now, in order to make that complete, do you wish to give us a more detailed or do you wish to add anything to the services which Mr. Goodell has referred to?

Mr. Carter: No, sir. We have one item that I think I spoke of before. I think that Mr. Goodell indicated that it was a service, but he doesn't include that in his special statements. The statement is satisfactory to us.

Judge Mellott: The word "services" is rather big and broad and all-inclusive.

Judge Huxman: Of course, it—all right, that is agreed [fol. 51] to, then, as modified by the explanation; the furnishing of services as stated is agreed to.

We will take up No. 8:

"That the distance traveled by colored children in reaching the schools they attend is not on the average greater than the distance white children are required to travel to reach the schools they attend."

Mr. Carter: Well, Your Honor, I don't think we want to stipulate on this. I don't think it has anything to do with the case. I think it's irrelevant.

Mr. Goodell: If the Court please, on that point, it is merely a mathematical proposition. That map, Exhibit "A", shows the whole City of Topeka and territory outside of the city is in blue, which is in Topeka for school purposes. We have marked on the map, Exhibit "A", each school territory. It shows, of course, the physical facts of distances which appear on this city map and can be computed. Children, in other words, living, for example—taking Exhibit "A"—in the blue territory over here in the corner (indicating) their school that they would have to go to, white children, would be Randolph, and all of that. Of course the matter of various school distances are written in

on the map—are identified. Of course to get at it any more accurately, which would be almost an intolerable job, would be to get each child that went to the city schools and get the [fol. 52] actual distance travelled divided by the number of children, and then you would get the average, and then get each colored child and get the actual distance divided by number of children, and then you would have the average.

Judge Huxman: Mr. Goodell, I doubt whether the Court would want that kind of a stipulation agreed to. That might be mathematically correct when you take an outlying territory. Now, to reach that result, you take territory that is not in the city limits and that——

Mr. Goodell: I have done some computing with a ruler, and I have taken the school population of the various schools, and I have taken distances in various different territories, and I know that as a matter of fact, it's a conservative statement, it's on the conservative side.

Judge Huxman: Well, now you may be right, but I wouldn't want this, as far as I am concerned; I wouldn't be content to have it established by stipulation that you can have four schools in the City of Topeka for one group of people and eighteen for another in that same territorial limit and yet those in the four schools would not be required to travel greater distances than the children that have eighteen schools. Now maybe it's a fact, I don't know.

Mr. Goodell: Keep in mind, Your Honor, that the colored schools have been, and that is covered by prior stipulation which is admitted, are located in neighborhoods in each case [fol. 53] which are predominantly colored neighborhoods; consequently, you don't have a situation in the case of where four colored schools have children living blocks—thirty some blocks—away from the nearest school which we—which does obtain in the case of many of our white schools—several of them—because of the population trends in the southwest part of our city in the last few years, particularly since the war. We have had great population trends out toward the west and southwest which has caused the territory to be taken in for school purposes and, in some cases, annexed territory, and has brought about that situation.

Furthermore, I—except for paragraph 8, when they make that as one of their grounds for inequality, is the matter

of distance travelled or inaccessibility of their schools. I can't see where that is too important because we do transport them in every case where they ask to be transported.

Judge Huxman: Now that is a conclusion which flows from what is done, and you might be right on that, but the fact is a different thing, and Judge Mellott and I are in agreement that the Court does not want the stipulation as an admitted fact in this case.

Mr. Goodell: Would it add anything to it for me to have some witness get on the stand and testify as to just what the map shows and testify that the children do come from [fol. 54] the territories as shown by the map, to the various schools. Now, to make anything——

Judge Huxman: Speaking for myself alone, Mr. Goodell, as I get—if I understand the effect of what you are trying to say, is that the average distances travelled by the white children are as great as the average distance travelled by the colored children.

Mr. Goodell: That's right.

Judge Huxman: I wouldn't be impressed with that in the case at all. If the fact remained that a colored child over here had to travel two miles and a number of colored children had to travel two miles by virtue of the fact that there weren't so many of them and you had an outlying district of white children which brought their average travelled distance to as great as the colored children had to travel, I still think it might be an imposition upon a colored child if it had to travel two miles whereas a white child did not have to travel two miles.

Mr. Goodell: We will have an isolated case. When I talk about travel, I say again, in the stipulations, have already been admitted on that; that they are furnished transportation so that travel doesn't seem to me as a very significant issue.

Judge Huxman: That is a different matter.

Mr. Goodell: But, be that as it may, you still have iso- [fol. 55] lated cases where a colored child may go twenty-four blocks by bus.

Judge Huxman: The Court is of the view that the request for stipulation No. 8 might be eliminated, so we might as well pass it for the time being.

Mr. Goodell: As I understand the Court, I have to prove

the distance all the white children go to school and the distance the colored children go to school, is that my understanding, is that correct? We would be here for days and days on that.

Judge Mellott: You have your map here, and I think you can demonstrate—you already have indicated what you think your demonstration would consist of. What Judge Huxman, as I understand, is suggesting, and I am in accord with his views, is a mere mathematical calculation out of which flows an average allocated in one instance to the colored pupils and in another instance to the white pupils, wouldn't be particularly helpful.

Mr. Goodell: Of course there is inequality within the white structure. You have some white kids living next door and half a block away from the schoolhouse and others living thirty-six blocks away. To cure that we would have to have a schoolhouse on every corner. There always has to be that disparity.

Judge Huxman: But, as Judge Mellott has just stated, [fol. 56] an average distance travelled arrived upon the composite of a great number, has very little weight with me.

Mr. Goodell: I admit that fallacies in it, of course. I have to prove that because they have injected that as an issue.

Judge Huxman: They might be willing to concede that you having arrived at this by average, that the total distance travelled by all the white children and the total distance travelled by the colored children would produce this result; that is a different matter. But, anyhow, it wouldn't take you very long to prove that, how this computation was arrived at.

Mr. Goodell: Your Honor, I am not trying to say that I proved that on a school attendance record. I took—arbitrarily—distances and assume there would be children going to school in some of *their* territory. Now, that was an assumption. To get at that on a factual basis, I would have to get the school attendance from each and every one of these schools, look up the records where each kid lives, put those altogether, those children and distances, divided by the number of children to get at the average distance, and I would be all summer doing that.

Judge Mellott: I don't think we would ever ask you to do that or permit you to do it.

Judge Huxman: Request No. 8 is omitted.

[fol. 57] Mr. Brewster: One statement, judge. Plaintiffs' objection to this stipulation was the fact that distance travelled was immaterial. If that is what he meant, are you willing to stipulate, then, that the distance the students are required to travel is not an issue in the lawsuit.

Mr. Carter: No; I didn't say that. I said that the stipulation was immaterial.

Judge Huxman: No use or purpose would be served by pursuing the inquiry further because the Court itself has eliminated request No. 8.

Mr. Brewster: The point was——

Judge Huxman: We will come to No. 9:

"That Exhibits B-1 to B-22, inclusive, attached hereto and made a part hereof, are correct compilations for each of the elementary public schools in the City of Topeka, Kansas, and correctly state for the 1950-1951 school period the following as to each school designated:

"1. Name of elementary school.

"2. Name of principal.

"3. Class-room units.

"4. Enrollment.

"5. Kindergarten units.

"6. Kindergarten enrollment.

"7. Names of teachers, grades taught, enrollment for each grade, and average daily attendance."

[fol. 58] Now, before we go to that, I think I would like to clear up in my mind a matter that is somewhat cloudy. I want to be sure that I understand these designations. "SP" means what?

Mr. Goodell: Special.

Judge Huxman: Special teacher. What does "K" mean?

Mr. Goodell: Kindergarten.

Judge Huxman: And the figures appearing after "K" is the number of kindergarten students, or what is that? For instance, in Buchanan, you have this: "Teacher, SP K 1 1-2 2 2-3".

Judge Mellott: I suppose those are first grades.

(Colloquy was here had between Court and Counsel off the record.)

Judge Mellott: Do you stipulate, gentlemen, that these exhibits are correct and reflect those various matters?

Mr. Charles Scott: If the Court please, we agree to everything. I think there is a typographical error in the name of Mildred Starnes, as appears on Exhibit "B-1." The name should be changed to Myrtle. It isn't material.

Judge Mellott: Any correction such as that is not very material, but if you want them corrected——

[fol. 59] Judge Huxman: Do plaintiffs agree to request for admissions as contained in No. 9, then.

Mr. Carter: Yes, sir.

Judge Huxman: No. 9 is agreed to.

No. 10:

"That Exhibits C-1 to C-22 inclusive, attached hereto and made a part hereof, are correct compilations for each of the elementary public schools in the City of Topeka, Kansas, and correctly state for the 1950-1951 school period the following as to each school designated:

"1. Name of teacher or principal.

"2. Total service.

"3. Degree or hours credit.

"4. 1950-1951 salary.

"5. 1951-1952 salary."

Is there any objection to agreeing to that?

Mr. Charles Scott: No, sir.

Judge Huxman: All right. Request No. 10 is agreed to in toto.

No. 11:

"That in arriving at the salary to be paid teachers in the elementary public schools of Topeka, Kansas, the determining factors are the same for colored teachers as for white teachers, and the application of these factors is the [fol. 60] same."

Mr. Carter: Well, Your Honor, we can't say that this is a fact. We don't think it's important.

Judge Huxman: That's rather a conclusion, isn't it?

Mr. Goodell: Maybe it is, except what is meant by it, the

clear implication of it, what I meant to say, if it can be made plainer, I will amend it to say it. No distinction is made in the matter of payment of salaries between white and colored teachers.

Judge Huxman: Well, Mr. Goodell——

Mr. Goodell: ——because of color.

Judge Huxman: The Court is of the view that No. 11 perhaps would serve no useful purpose if agreed to, and it is of such a nature that the plaintiffs perhaps shouldn't be required to agree to it. I doubt if they make an issue of that.

Mr. Goodell: If the Court please——

Judge Mellott: They have covered it in the preceding paragraph admitting what the salaries are, haven't they?

Mr. Goodell: That admits salaries, yes. That shows the physical facts of what the salaries being paid are, yes.

(Colloquy was here had off the record.)

[fol. 61] Judge Huxman: What is it you state?

Mr. Goodell: The amendment to the amended complaint which is amending paragraph 8 of the amended complaint filed in this case makes blanket allegations. They don't go into particularity, but they make blanket allegations of disparities that exist between the white and the colored elementary schools. Now one of the disparities covered by that pleading in amendment to paragraph 8 of the original —of the amended complaint, is teaching. Now I take it that under that allegation it would be fair—it would be a fair line of proof for them to admit—to introduce evidence that we are treating the teacher differently with respect to their contracts and their salary and so forth. So of course you don't get as good work and their children are suffering because they are not getting the benefit of a well-paid teacher.

Judge Huxman: Speaking for myself, Mr. Goodell, I am still of the opinion that even if that is so, if that is their position, it's a matter that you can't very well reduce to an absolute agreement. They may not——

Mr. Goodell: I see the Court's point about that.

Judge Huxman: ——they may not contend that. If they do, it's their burden to establish. If they fail to establish

it, it's out of the case. If they make the contention it's a very simple matter for you to prove that it isn't so.
[fol. 62] Mr. Goodell: Of course they know that whether it's a fact or not. I say that it's a fact, but I agree with you that they may not care to admit it and perhaps shouldn't be required to.

Judge Huxman: No. 11 is out. All right. No. 12:

"That Exhibit D, attached hereto and made a part hereof, is a correct compilation of statistics of the transportation costs for the colored elementary schools in the City of Topeka for the 1950-1951 school period."

Mr. Goodell: That is shown by our records, the treasurer's office.

Judge Mellott: Do you contend that that is not an accurate compilation, gentlemen?

Mr. Charles Scott: We agree to it.

Mr. John Scott: That is admitted.

Judge Huxman: No. 13:

"That Exhibits E-1 to E-5 inclusive, attached hereto and made a part hereof, are correct compilations of statistics relating to public school nurses in the City of Topeka, Kansas, and correctly set forth statistics relating to public health nurses in the City of Topeka for the 1950-1951 school period."

Mr. Goodell: Now all that exhibit is is to show the num-
[fol. 63] ber of persons or children served by the various public school nurses over the city as reflecting on the question of whether there are enough nurses to give adequate service to the colored schools. In other words, it shows the load per pupil for the nurses.

Mr. Carter: Your Honor, there again is one of the things that we don't know. We are not going to controvert it.

Mr. Goodell. Our records show it.

Judge Huxman: If the records show it, could you not agree to the exhibit without agreeing to the matter which they intend to establish by it. You don't have to agree to that. You could agree that this is a fact or the facts shown by this exhibit are correct. You don't have to agree to the conclusion that flows from that.

Mr. Carter: All right.

Judge Huxman: All right. It is then agreed that Exhibits "E-1" to "E-5", as attached to the request for stipulations, are correct.

Mr. Carter: Yes, sir.

Mr. Goodell: The record is correct.

Judge Huxman: And the facts therein reflected are the facts.

Mr. Carter: All right.

Judge Huxman: All right.

[fol. 64] No, No. 14:

"That Exhibits F-1 to F-22 inclusive, attached hereto and made a part hereof, are correct compilations of the elementary public school program for each of the designated elementary schools in the City of Topeka, Kansas, for the 1950-1951 school period."

Any objections to that?

Mr. Carter: No, sir. We agree to that.

Judge Huxman: You agree.

Mr. Carter: Yes, sir.

Judge Huxman: All right. Request for admission No. 14, as read, is agreed.

Judge Mellott: Let me be on the record for just a moment.

I believe that if I have understood correctly what Judge Huxman has accomplished so far in the pre-trial, it has resulted in the receipt in evidence of all of these exhibits here, is not that correct, gentlemen?

Mr. Charles Scott: That is correct.

Judge Mellott: I am wondering if we shouldn't just turn these exhibits over to the clerk and let him mark them as exhibits admitted in evidence for all purposes, and then they constitute a part of the formal record.

Mr. Brewster: We have additional ones, supplemental requests.

[fol. 65] Judge Huxman: I think that is a good suggestion, Judge Mellott, and the parties have agreed to it.

Mr. Goodell: If Your Honor please, we were going back to the preceding paragraphs which were passed for the moment in the light of this last exhibit.

I am willing to amend paragraph 3 by substituting for "curricula" the words, "course of study."

Judge Huxman: Mr. Goodell, let me ask you, for my information, these exhibits, I forget what the numbers of them are, set out the courses of study.

Mr. Goodell: "F-1."

Judge Huxman: The "F" series of exhibits sets out the actual courses of study that are taught in all of these schools.

Mr. Goodell: That's right.

Judge Huxman: What does your request for admission No. 3 add to what those exhibits actually show?

Mr. Brewster: How would it be if on 14 we just added, "And said program includes all courses of study prescribed by the law of the State of Kansas." Is that what you are getting at?

Mr. Goodell: I wanted to make that plan that we were following the prescribed course of study.

Judge Huxman: You have actually set out the courses of study that you say are taught.

[fol. 66] Mr. Goodell: All it takes to pick it up and make it complete——

Judge Huxman: There is no contention made that they don't conform to the state requirements. If they want to claim it, let them prove it. You say those are the courses of study.

Mr. Goodell: I don't care to belabor the point.

Judge Huxman: What would 3 add?

Mr. Goodell: Three supplements 14 only in respect, that it ties up and shows that it's a legal course of study being followed or taught.

Judge Mellott: May I suggest that the reporter read what Mr. Brewster interpolated and see if, perhaps, his interpolation may not be added as a part of your admission with reference to Exhibit "F".

(Portion referred to by Judge Mellott read aloud by the reporter.)

Judge Mellott: Is there any reason why you couldn't supplement No.——

Mr. Carter: I think, if I may, Your Honor——

Judge Mellott: Any reason why you couldn't supplement No. XI which you have agreed to, by the addition of what Mr. Brewster just said.

[fol. 67] Mr. Carter: I frankly am unable to see where it adds anything. We have admitted the facts.

Judge Mellott: I don't think it adds much. You are not contending that Topeka in the operation of its school system is refusing to abide by the statutes of Kansas and the orders of the state superintendent of public instruction with reference to courses of study, are you; you are not making that contention.

Mr. Carter: I would prefer, however, Your Honor, if the exhibit which sets out the courses and they are admitted in the record, I think they speak for themselves.

Judge Mellott: You haven't answered my question. I think you should answer it. Do you contend that the board of education of the City of Topeka, Kansas, is not complying with the state law and the regulations and the orders of the state superintendent of public instruction?

Mr. Carter: That is not our contention, no.

Judge Mellott: All right.

Judge Huxman: Then why do you object to this addition? The only reason you could object to it is that you claim they aren't complying.

Mr. Carter: Well, Your Honor, the point is that we have admitted the courses of study. These are facts which [fol. 68] they have set forth in the record; these are the courses of study which are taught.

Judge Mellott: Well, I think we would take his statement as an admission that of course he is not contending that the Board of Education of Topeka is doing other than complying with the Kansas statutes so far as course of study is concerned. I would certainly spell that out of counsel's statement.

Judge Huxman: With that statement by counsel perhaps the addition isn't necessary.

Judge Mellott: I don't think so.

Judge Huxman: Let's take up the supplemental requests for stipulations which have been filed by the defendants.

No. 15:

"That Exhibit G, attached hereto and made a part hereof, is a correct statement taken from the records of the Board of Education of the City of Topeka, Kansas, pertaining to bus schedules for colored elementary school children for transportation furnished said children by the said Board of Education for the 1950-1951 school year."

Is there any objection to agreeing to that stipulation?

Mr. Carter: We agree to that, Your Honor, with the exception of line 9.

[fol. 69] Judge Huxman: Line 9?

Mr. Carter: Line 2 under "Monroe"; that is on the exhibit itself.

Judge Mellott: That is on the exhibit.

Mr. Carter: Line 2 under "Monroe."

Judge Huxman: Which says, "8:10—First and Kansas." You don't agree to that.

Mr. Goodell: You mean that is erroneous? What should it be?

Mr. Charles Scott: Should be First and Quincy.

Mr. Goodell: Is that correct, First and Quincy?

Judge Mellott: Let's change it to First and Quincy, then.

Mr. Goodell: I am writing that in as an amendment then.

Judge Huxman: And, as amended, plaintiffs agree to request 15 for admissions.

Mr. Carter: Your Honor, Mr. Scott brought something to our attention. This addendum down here, "Bus picks up students also anywhere along route."

Judge Mellott: You haven't gotten to that yet, have you?

Mr. Carter: That is on the same exhibit—on the exhibit.

[fol. 70] Judge Huxman: "Bus picks up students also anywhere along route." You don't agree to that?

Mr. Carter: I understand that they picked them up at these various stops.

Mr. Goodell: They do and, in addition, along the way at not designated stops they will pick them up. That is what they tell me; I don't know. That is what the clerk's office tells me has been the practice for years.

Judge Mellott: Well, do you Topeka lawyers especially, do you know whether that is a fact or not?

Mr. Charles Scott: No, sir.

Judge Mellott: Suppose we admit the exhibit, then, eliminating from it the parenthetical clause and let that remain as an item requiring proof, if that is required.

Judge Huxman: If requested. As so modified, do you agree to the admission?

Mr. Charles Scott: Yes, sir.

Judge Huxman: All right.

No. 16:

"That Exhibit H attached hereto and made a part hereof, is a correct statement of facts from the records of the Board of Education of the City of Topeka pertaining to teacher load in the kindergartens of the Topeka public schools for [fol. 71] the 1950-1951 school year."

Any objection to agreeing to that?

Mr. Carter: Our witness informs us that this is not correct.

Judge Mellott: Who is your witness?

Mr. Carter: Dr. Speer.

Judge Mellott: What does he know about it; has he checked the records?

Mr. Carter: Yes, sir.

Judge Mellott: Is he here now?

Mr. Carter: No, he isn't.

Judge Mellott: How much of that is covered here in exhibits which are already in evidence.

Mr. Carter: I don't know.

Judge Mellott: You have stipulated with refere, I believe it was "E" or "F", has already been covered. Let me refer back here.

Mr. Brewster: Series "B", I imagine.

Judge Mellott: You have shown here what the number of kindergarten children were in each of the schools, and you have shown what the average daily attendance of the kindergarten was. I don't know what is shown by "H".

Mr. Carter: Isn't this the teacher load? These are facts taken from that other report, isn't it, Mr. Goodell?

[fol. 72] Mr. Goodell: Sure. It's a breakdown of each school in the City of Topeka showing the teaching load per teacher. In other words, children each teacher has under her for particular grades starting with kindergarten.

Judge Mellott: What I am asking is simply this: Isn't Exhibit "H" a mere assembling of the data which is already in Exhibit "B"?

Mr. Goodell: It's calculations drawn therefrom from that other data; it's a mathematical, in other words, reduction of what the other exhibits show. I can prove that; I don't care to argue it.

Judge Huxman: Now, gentlemen, the Court is of this view, that this exhibit is just a compilation of the other exhibits already in there.

Mr. Carter: But, Your Honor, Mr. Goodell himself says it's a calculation based upon it which is entirely different.

Judge Huxman: That is what I mean, a compilation made from data already in. It's a simple calculation, and it's either right or it's wrong.

Mr. Goodell: Calculation—it's a reduction of the figures used down to teaching load.

Judge Huxman: The Court is of this view, that we will not ask for an admission at this time, and we will give both parties an opportunity to check this exhibit again, against [fol. 73] the basic data which is contained in these other exhibits, and then, before we start into the trial Monday morning, we will again ask Mr. Goodell whether he is satisfied with the correctness, and we will also ask plaintiff- then if they still contend that this computation is not correct, to have for the benefit of the Court your computation in which you point out the manner and respect in which this is not correct. Now if it is not correct, it shouldn't go in. If it is correct, I know both parties want to agree to it.

Now, that is 16, isn't it?

Mr. Goodell: Yes.

Judge Huxman: That will be passed until Monday morning.

Both parties here have shown a spirit of fairness and cooperation and I see no reason in the world why you shouldn't get together on the question of whether this exhibit is or is not correct.

No. 17:

"That Exhibit I attached hereto and made a part hereof is a correct statement of facts from the records of the Board of Education of the City of Topeka pertaining to

teacher load in the first six grades of the elementary schools of the Topeka public school system for the 1950-1951 school year."

[fol. 74] Mr. Carter: We could shorten this, Your Honor, if we might have the same ruling as you made on the last one apply to this one.

Judge Huxman: All right. We pass No. 17 to Monday.

Mr. Brewster: As I understand it, their claim is, using the first series of exhibits, we haven't computed correctly, is that what they mean?

Mr. Goodell: No, they are challenging the reductions we made there.

Judge Huxman: No. 18:

"That Exhibit J attached hereto and made a part hereof is a correct statement of facts from the records of the Board of Education of the City of Topeka pertaining to auditoriums and gymnasiums in the elementary schools of the City of Topeka, Kansas."

Mr. Goodell: I think there is a typographical error in that which I would like to correct.

Judge Huxman: All right. Where is that.

Mr. Goodell: Exhibit "J". On the Monroe School where I have in my exhibit "combination", meaning that they have combination auditorium and gymnasium, that is erroneous, according to my later information, that they do not have a gymnasium, only an auditorium.

Judge Huxman: Only an auditorium.

[fol. 75] Judge Mellott: What do you want to do, strike out the word "combination" and put in the word "yes" under "Auditorium."

Mr. Goodell: That's right and "no" under "Gymnasium."

Judge Huxman: And "no" under "Gymnasium", all right. That correction will be made.

Mr. Carter: Your Honor, we don't feel that we can accept this at this time. We are today, as of today, our experts are now checking these items, and we cannot say whether they are true or not, so we are not willing to accept them as of now.

Judge Huxman: We will pass that as we have some of these others until Monday morning.

Judge Mellott: May I inquire if counsel understand that we are expecting you to tell us Monday morning whether these are correct and, if they are not, you will give us what you say the correct data is.

Mr. Carter: I understand that completely.

Judge Huxman: No. 19:

"That no distinction is shown by the Board of Education of the City of Topeka in school plant facilities and equipment, because of race or color. Instead, the same factors are considered and applied by said Board of Education as to plant facilities and equipment in both white and colored [fol. 76] elementary schools."

Mr. Carter: We can't agree to that.

Judge Huxman: All right, plaintiffs will not be required to agree to No. 19.

No. 20:

"That Exhibit K attached hereto and made a part hereof, is a correct statement of facts from the records of the Board of Education of the City of Topeka pertaining to original cost of school buildings in the City of Topeka, Kansas, and correctly states the following:

"1. Name of building or school.
"2. Year of construction.
"3. Structural cost.
"4. Land cost.
"5. Equipment cost."

Mr. Carter: We agree.

Judge Huxman: 20 is agreed to.

No. 21:

"That Exhibit L attached hereto and made a part hereof, is a correct statement from the records of the Board of Education of the City of Topeka pertaining to the present appraised value of the school buildings and equipment, for both white and colored elementary schools; that said appraised value is the appraised value furnished by the appraisers for the insurance underwriters for the purpose of

[fol. 77] fixing values of said buildings and equipment for issuing insurance thereon."

Mr. Carter: We agree to that.

Judge Huxman: No. 21 is agreed to.

Now, that completes the defendants' request for agreement.

Judge Mellott: In the light of what has just been gone through, the Exhibits "G" and "K" and "L" seem now to be ready for admission formally, is not that correct, gentlemen?

Mr. Charles Scott: That is correct.

Judge Mellott: The clerk, then, will mark them as admitted in evidence. The others just covered, namely, the others, "H", "I" and "J" may be handed to the clerk and marked for identification only.

How has the map been marked, if at all.

Mr. Goodell: Exhibit "A", Your Honor.

Judge Mellott: Exhibit "A". It may be marked and admitted in evidence, subject to any corrections that counsel may desire to call to the Court's attention based upon the draftsmanship of the map.

Mr. Goodell: I do think this, Your Honor, I want to recheck it. I think since this map was prepared, the copy prepared which came from the map that the Board of Education clerk's office keeps, that there is a segment of that southwest territory that may have been annexed so it wouldn't be correctly outside of the city now.

[fol. 78] Judge Huxman: Yes.

Judge Mellott: Well, I believe we all know and can take judicial notice of the fact that under the statutes of Kansas pertaining to cities of the first class, schools within and adjoining cities of the first class, that the statutes contemplate, and most of the cities of Kansas do, attach to the cities for school purposes territory which is outside of the city, and that is what you refer to as property attached to the city for school purposes.

Mr. Goodell: Yes.

Judge Mellott: Now since your map indicates that certain of that territory has been attached for school purposes but that there may be some inaccuracies in that, you have not

checked to see if subsequently some of the territory has actually been annexed to and brought into the city for all purposes.

Mr. Goodell: I will reconcile that with all the later annexations.

Judge Huxman: Let me ask you this, Mr. Goodell, is it your understanding that this map is accurate and correct as to the close of the school year?

Mr. Goodell: Yes.

Judge Huxman: Then it would seem to me, that is, on the questions which we have, that what has taken place in the last three or four months or as to the annexation of [fol. 79] additional territory, would not be any factor in determining the constitutionality — the questions before us in this case, do you gentlemen agree with that?

Mr. Charles Scott: Yes.

Judge Huxman: And if this map is correct as drawn, any changes since would not need to be shown.

(A brief recess was here had at the conclusion of which the following further proceedings were had:)

Judge Huxman: Let me address this remark to attorneys for plaintiffs: Has your request for admission No. 1 not already been met by defendants' request for admission 1. There is no difference in them, is there?

Mr. John Scott: Except for the latter part, Your Honor, "That Negro children of elementary school age are compelled to attend one of the four Negro schools aforementioned because of their race and color, pursuant to the custom and usage provided in General Statutes 1949, 72-1724."

Judge Huxman: That is a fact, isn't it?

Mr. John Scott: Yes, sir.

Judge Huxman: I am asking Mr. Goodell now. That latter part is a fact now, isn't it?

Mr. Goodell: I think it's embraced in our stipulation.

Judge Huxman: You do not have that—you do not have [fol. 80] in your request the statement, "Negro children of elementary school age are compelled to attend one of the four negro schools because of their race and color pursuant to the custom and usage provided in G. S. 1949, 72-1724." You do not have that in your——

Mr. Goodell: We don't use the statute; we say they are required to attend instead of compelled.

Judge Huxman: That is a fact that it is because of their——

Mr. Goodell: That's right.

Judge Huxman: All right, then—is it then agreed, gentlemen, that it is a fact and so stipulated for the purpose of this trial that negro children of elementary school age are compelled to attend one of the four negro schools provided for in Topeka because of their race and color pursuant to the custom and usage provided in G. S. 1949, 72-1724.

Mr. Goodell: Well, that is a fact. I don't think the "custom and usage" is provided by the statute. It's simply an authorization, but we won't quibble about that.

Judge Huxman: Suppose we eliminate "custom and usage" as authorized.

Mr. Goodell: That is all right.

Judge Mellott: I understand there isn't any dispute.

[fol. 81] Mr. Goodell: We will admit it.

Judge Mellott: —that they are, you say, required—the word "required" connotes about the same thing as compelled.

Judge Huxman: He objected to the words "custom and usage" provided by the statute. The statute doesn't perhaps provide a custom.

Mr. Goodell: I would say pursuant to the statute.

Judge Huxman: All right. We will put in the word "pursuant", is that agreed to?

Mr. Goodell: Yes.

Judge Huxman: All right.

Now, we will take up No. 2:

"2. That the distance be computed based on city blocks from given points of residence of infant plaintiffs and other Negro children similarly situated, to the designated Negro schools where they must attend as outlined on the official map of the City of Topeka."

Judge Mellott: Since we did not require you to go into that average one, it seems to me that you wouldn't want to insist upon this, would you, Mr. Scott?

Mr. John Scott: Well, if Your Honor please——

Judge Huxman: In other words, do you want to go back [fol. 82] now to the defendants' request No. 8 and add to it what you now have, is that what you want to do?

Mr. John Scott: No, sir. We will withdraw that.

Judge Huxman: You will withdraw request No. 2.

Mr. Carter: No, sir. We are talking about an entirely different point there, Your Honor.

Judge Mellott: I don't understand what you are talking about.

Mr. Carter: I will try to explain it for a moment. When the defendants are talking about averages, insofar as we are concerned, we feel that that is irrelevant because it has nothing to do with the individual disadvantage. When we speak here of a distance which is travelled by individual plaintiffs we are attempting to show an individual disadvantage which these plaintiffs have in making the trip. We are not talking about general averages; we are talking about what affects the individual plaintiff, and I think that is entirely a different point.

Judge Huxman: Mr. Counsel, we didn't permit the defendants to commit you to a yardstick of measuring distances and why should we——

Mr. Carter: We will put on proof to that effect.

[fol. 83] Judge Huxman: Let me just finish my sentence for the record so it doesn't stand up there in the air. Why should we permit you to commit them to a yardstick of measurement?

Request for admission No. 2 is withdrawn.

Request No. 3:

"Infant plaintiffs and other Negro children similarly situated are transported by buses to the Negro schools where they attend and are picked up by said buses at designated points along prescribed routes in accordance with schedules and designated pick-up points outlined by the School Board or its agents. A copy of the schedule of routes is hereto attached marked Exhibit 'A' and made a part hereof."

That schedule has already been agreed to, hasn't it, and request No. 3 will therefore, I presume, be withdrawn.

Judge Mellott: That is Exhibit "G" which has been ad-

mitted in evidence with the parenthetical clause, "Bus picks up students also anywhere along the route." eliminated.

Now you gentlemen did tell us, did you not, that you would make inquiry and find out, if you can, by Monday morning whether the parenthetical clause is or is not applicable, can you not do that?

[fol. 84] Mr. John Scott: Yes, sir.

Judge Huxman: That's right.

Judge Mellott: Then that probably covers everything that you have. Now you have a copy of the schedule of routes.

Mr. John Scott: Yes, sir.

Judge Huxman: Is it any different from Exhibit "G"?

Mr. Charles Scott: No.

Mr. John Scott: No, it's exactly the same.

Judge Mellott: Do you propose to offer it in evidence as an additional exhibit?

Mr. John Scott: No, sir. The one that the defendants offered——

Judge Huxman: The entire request No. 3 is withdrawn in view of the admissions already made.

Mr. John Scott: That's right, sir.

Judge Huxman: Request for admission No. 4:

"That no provision made for shelter or protection against inclement weather conditions or safety regulations at designated pick-up points for infant plaintiffs and other Negro children similarly situated while waiting for the arrival of their respective buses."

[fol. 85] What do the attorneys for the defendant say as to that request?

Mr. Goodell: We don't have shelter-houses, so I would say we do admit that. "Safety regulations" is pretty broad. I don't know what they mean by that.

Judge Huxman: Well, what would you say to this: Safety regulations other than those provided for traffic generally.

Mr. Brewster: The board of education doesn't provide the lights anyway.

Mr. Goodell: In Topeka the Police Department and the

Judge Huxman: In other words, do you want to go back [fol. 82] now to the defendants' request No. 8 and add to it what you now have, is that what you want to do?

Mr. John Scott: No, sir. We will withdraw that.

Judge Huxman: You will withdraw request No. 2.

Mr. Carter: No, sir. We are talking about an entirely different point there, Your Honor.

Judge Mellott: I don't understand what you are talking about.

Mr. Carter: I will try to explain it for a moment. When the defendants are talking about averages, insofar as we are concerned, we feel that that is irrelevant because it has nothing to do with the individual disadvantage. When we speak here of a distance which is travelled by individual plaintiffs we are attempting to show an individual disadvantage which these plaintiffs have in making the trip. We are not talking about general averages; we are talking about what affects the individual plaintiff, and I think that is entirely a different point.

Judge Huxman: Mr. Counsel, we didn't permit the defendants to commit you to a yardstick of measuring distances and why should we——

Mr. Carter: We will put on proof to that effect.

[fol. 83] Judge Huxman: Let me just finish my sentence for the record so it doesn't stand up there in the air. Why should we permit you to commit them to a yardstick of measurement?

Request for admission No. 2 is withdrawn.

Request No. 3:

"Infant plaintiffs and other Negro children similarly situated are transported by buses to the Negro schools where they attend and are picked up by said buses at designated points along prescribed routes in accordance with schedules and designated pick-up points outlined by the School Board or its agents. A copy of the schedule of routes is hereto attached marked Exhibit 'A' and made a part hereof."

That schedule has already been agreed to, hasn't it, and request No. 3 will therefore, I presume, be withdrawn.

Judge Mellott: That is Exhibit "G" which has been ad-

mitted in evidence with the parenthetical clause, "Bus picks up students also anywhere along the route." eliminated.

Now you gentlemen did tell us, did you not, that you would make inquiry and find out, if you can, by Monday morning whether the parenthetical clause is or is not applicable, can you not do that?

[fol. 84] Mr. John Scott: Yes, sir.

Judge Huxman: That's right.

Judge Mellott: Then that probably covers everything that you have. Now you have a copy of the schedule of routes.

Mr. John Scott: Yes, sir.

Judge Huxman: Is it any different from Exhibit "G"?

Mr. Charles Scott: No.

Mr. John Scott: No, it's exactly the same.

Judge Mellott: Do you propose to offer it in evidence as an additional exhibit?

Mr. John Scott: No, sir. The one that the defendants offered——

Judge Huxman: The entire request No. 3 is withdrawn in view of the admissions already made.

Mr. John Scott: That's right, sir.

Judge Huxman: Request for admission No. 4:

"That no provision made for shelter or protection against inclement weather conditions or safety regulations at designated pick-up points for infant plaintiffs and other Negro children similarly situated while waiting for the arrival of their respective buses."

[fol. 85] What do the attorneys for the defendant say as to that request?

Mr. Goodell: We don't have shelter-houses, so I would say we do admit that. "Safety regulations" is pretty broad. I don't know what they mean by that.

Judge Huxman: Well, what would you say to this: Safety regulations other than those provided for traffic generally.

Mr. Brewster: The board of education doesn't provide the lights anyway.

Mr. Goodell: In Topeka the Police Department and the

traffic control division have jurisdiction over those matters.

Judge Huxman: Don't you gentlemen feel that the question of safety regulations could be deleted? What value is there to——

Mr. John Scott: Well, if Your Honor please——

Judge Huxman: Now you can show, if you want to, that there are no added regulations or precautions. Of course the Court will take knowledge, in the absence of anything else, that the usual conditions with respect to traffic and travel in the city obtains, and no other, unless it's shown.

Mr. John Scott: Yes, I think that is sufficient, don't [fol. 86] you?

Mr. Carter: Yes.

Mr. John Scott: I think that is sufficient.

Judge Huxman: Then is it agreed that request for admission No. 4, as follows, is agreed to:

"That no provision made for shelter or protection against inclement weather"—"That no provision is made for shelter or protection against inclement weather conditions."

Do the defendants agree to that?

Mr. Goodell: That is correct.

Judge Huxman: And we will omit from your request the reference to any additional safety regulations.

Mr. John Scott: Yes, sir.

Judge Huxman: I didn't go quite far enough, Mr. Reporter. The admission should read as follows:

"That no provision is made for shelter or protection against inclement weather conditions at designated pick-up points for infant plaintiffs and other Negro children similarly situated while waiting for the arrival of their respective buses."

That is the admission as it is agreed to.

Judge Mellott: The affirmative answer was made by counsel for the School Board.

Mr. Goodell: Yes.

[fol. 87] Judge Huxman: No. 5:

"That said buses make only two trips a day to and fro to the respective all Negro schools in the morning as prescribed"——

Judge Mellott: We don't have the exhibit, so I suppose——

Judge Huxman: Would you object if we substituted for your Exhibit "A" the number of their exhibit to which——

Judge Mellott: Exhibit "G".

Mr. John Scott: That will be perfectly all right.

Judge Huxman: "in the morning as prescribed in Defendants' Exhibit 'G' admitted in the record and in the evening at the close of school."

Judge Mellott: I understand that is admitted.

Mr. John Scott: Yes, sir.

Judge Mellott: Correct, Mr. Goodell?

Mr. Goodell: Yes.

Judge Huxman: I wanted to stop there purposely; so far you admit that much of the request of No. 5.

Mr. Goodell: The schedule shows that they are taken to the school in the morning and returned at night.

[fol. 88] Judge Huxman: Now, we will take up the rest of the request because we might run into trouble there. The further request is made for an admission, "As a result, infant plaintiffs and other Negro children similarly situated are required to spend the entire day at their respective school without the opportunity and benefit of seeing their parents during the noon hour and are required to eat cold lunches which are prepared by their parents before leaving home in the morning."

Mr. Goodell: We are not prepared to admit. It's a conclusion.

Judge Huxman: That is a conclusion, isn't it, that flows from the admission.

Mr. John Scott: We can prove that, Your Honor.

Judge Huxman: That portion of the request will be denied.

Mr. Goodell: I don't think it's a proper issue in the case because they are treated no differently than white children. If they want to go home for lunch, they go, and if they don't, they stay and eat lunch.

Judge Huxman: That is argumentative, in any event.

Request No. 6:

"That the respective buses are without any supervisor other than the driver to exercise disciplinary measures [fol. 89] and control of said children."

Is that agreed to?

Mr. Goodell: I don't think we send a guard along; I believe that is accurate; we just have a driver.

Judge Huxman: You agree to that, then.

Mr. Goodell: I would like to check it. I think it's correct.

Judge Huxman: Let's put it this way, you agree to that, subject to your right to check and withdraw your agreement if your further investigation shows otherwise.

Mr. Goodell: Yes.

Judge Huxman: No. 7:

"That Buchanan School does not have an auditorium or gymnasium; such facilities are available at Sumner,"—before we go further, gentlemen, we have already covered the question of auditoriums and gymnasiums in the series of exhibits designated "J".

Mr. John Scott: Yes, sir.

Judge Mellott: We have not yet admitted "J", but you were to——

Mr. John Scott: —check it.

Judge Mellott: —check it and give us any corrections on Monday morning.

Mr. John Scott: That's right.

Judge Huxman: Then we should not agree to request [fol. 90] No. 7 here and that can be ironed out on your investigation as to Exhibit "J", as proffered by the defendant.

Mr. John Scott: Yes. We will withdraw that.

Judge Huxman: Request for admission No. 7 is withdrawn because of these other matters in the record.

No. 8:

"That Monroe School's playground or a portion thereof is separated by a public thoroughfare adjacent to the building and located on the easterly side of said playground is the A. T. S. F. Railroad right-of-way and track."

Is that a fact, Mr. Goodell?

Mr. Goodell: I believe that is accurate, yes.

Judge Huxman: Then you admit request No. 8 as read.

Mr. Goodell: Yes.

Judge Huxman: All right.

No. 9:

"That no provisions are made for electrically operated school stop signs and safety signals at any of the Negro schools and no safety measures are provided for Infant Plaintiffs and other Negro children similarly situated who are required to cross the intersection of First and Kansas [fol. 91] Avenue at a time when the vehicular traffic is dense, while they are enroute to the designated bus pick-up points and at other busy intersections throughout the City of Topeka where Infant Plaintiffs and other Negro children similarly situated are required to cross enroute to designated bus pick-up points."

Mr. Goodell: We can't admit that because it isn't an accurate statement. Furthermore, we have no control over traffic lights, electric devices. The City of Topeka Police Department takes traffic counts at various points in town and, from their determination, decide that a designated point should have school blinker signs, and we have several cases, the evidence will show if we get in that point,—in several cases requested signs which they on the traffic count didn't think it was justified and wouldn't put them in. We don't have any control over it.

Mr. John Scott: If Your Honor please——

Judge Huxman: Didn't we, when we had up defendants' request for agreement, agree that there were no extra safety or traffic regulations provided at these places.

Mr. Goodell: I don't think so. There are some——

Judge Mellott: Let me ask this question: You agree, do you not, Mr. Scott and counsel for the plaintiffs, that Mr. [fol. 91a] Goodell is correct in his statement that the Board of Education has nothing whatever to do with putting in blinker lights and safety devices for school children and others to cross the public streets, but at best, can only request that the traffic department of the state and the city police department take care of those matters; do you not agree that that is a fact?

Mr. John Scott: We agree that that is a fact and also, to extend that, Your Honor, I think the first part of that request is a fact, that there are no——

Judge Mellott: Well, I suppose that if you divide the

request, there may be some merit, "That no provisions are made for electrically operated school stop signs and safety signals at any of the Negro schools." Now, I suppose——

Mr. Goodell: If the Court please, that is not accurate.

Judge Mellott: Then you should not agree upon it.

Mr. John Scott: It is accurate.

Mr. Goodell: No, it isn't accurate.

Mr. John Scott: We can prove it, Your Honor.

Judge Huxman: The Court feels that that is a very minor matter, whatever the electrical arrangements are or aren't, and, if you can't agree on it, it will take only fif- [fol. 92] teen minutes of evidence to establish what the fact is.

Mr. Goodell: They make a broad statement, as I understand it, no safety devices in any of the areas traversed by the colored children to go to their schools——

Judge Huxman: They don't say that at all.

(Colloquy was here had off the record.)

Mr. Goodell: For example, on 10th Street, you have Parkdale School and Washington School in very close proximity. The negro children who have to cross 10th Street to get to Washington School that walk and don't ride, they use that traffic sign—I mean there is a designated crossing for school children where they cross over 10th there for Parkdale. Now it's splitting hairs to say that is solely for Parkdale and no benefit to Washington.

Judge Huxman: Well, the Court feels that is a minor matter.

Mr. Goodell: We have got that situation in other parts of town.

Judge Huxman: It's a simple matter, and we will not require the parties to agree on that—request No. 9.

Mr. John Scott: We can prove it very easily, Your Honor.

[fol. 93] Judge Huxman: I believe the attorneys for the plaintiffs will agree that this case, the outcome, doesn't hinge upon that one little factor; I doubt whether it's going to be determinative too much.

Now, does that conclude plaintiffs' requests for admissions?

Mr. John Scott: Yes, sir.

Judge Huxman: We want to ask at this point counsel for the State of Kansas whether they have at this time any requests for admissions of fact in addition to what has been agreed to and, if not, whether they go along with, and agree to, these admissions which have been made by the respective parties to this litigation.

Mr. McQueary: If Your Honor please, the position of the State of Kansas, insofar as this lawsuit or this controversy is concerned, is going to be to endeavor to uphold the constitutionality of the statute in question, and our participation will be limited to that field, and so far as equal facilities or the conditions provided by the Board of Education of the City of Topeka or the facilities enjoyed by the negro, by the plaintiffs, we are not going to make that a matter of issue insofar as we are concerned. We have no knowledge as to that; we haven't investigated it. That will be left solely to the other parties in this matter.

Judge Huxman: Then I understand your position is that you have no request for admissions of fact.

[fol. 94] Mr. McQueary: We have none, Your Honor.

Judge Huxman: And that the state has no interest in these admissions which have been made by the parties, the plaintiff and defendant, other than the state, because you do not think that they touch the state's phase of this case.

Mr. McQueary: That is a correct statement.

Judge Huxman: All right.

Mr. Goodell: I have one more matter. I would like to request a stipulation that the—as an exhibit, that seventeen cites, first and second class cities of the State of Kansas, operate separate colored and white schools in the elementary grades, and I have an exhibit.

Judge Huxman: I am not sure that I understand that, Mr. Goodell.

Mr. Goodell: I have an exhibit with the names of the cities showing that seventeen cities in the State of Kansas are operating their elementary school systems similar to Topeka—strike that—operating separate white and colored schools in the elementary grades pursuant to the same statute.

Judge Huxman: Is there any objection to that admission?

Mr. Greenberg: Yes, Your Honor. We object on the [fol. 95] ground that what may happen in any other city in the State of Kansas is not relevant to the rights of our particular plaintiffs who operate in this school system here and now.

Judge Huxman: Since there is one member of the Court not here, in any event we will—and since this is the trial court, we will receive it. You have no objection to the correctness of the statement.

Mr. Greenberg: We don't know, as a matter fact; we haven't——

Judge Huxman: You have no reason to doubt the correctness of the statement.

Mr. Greenberg: We have had no occasion to investigate it because we haven't thought it pertinent.

Judge Huxman: The exhibit will be received subject to its materiality.

Judge Mellott: It will be marked as Exhibit "M", Defendants' Exhibit "M".

Judge Huxman: Also subject to the right of counsel before trial, if he so desires, to attack it as to its correctness.

Mr. Greenberg: That is agreeable.

Judge Huxman: Is there anything else?

Judge Mellott: That may be taken up Monday also.

[fol. 96] Judge Huxman: Is there anything else now, gentlemen?

Judge Mellott has a matter that he would like to inquire about. Go ahead, judge.

Judge Mellott: I was only going to suggest to my associates on the bench that we may not have covered categorically sub-division (6) of Rule 16 which says that it's proper for us at a pre-trial to give consideration to such other matters as may aid in the disposition of the action. That is, of course, only a general statement. Does either side care to suggest, in line with that sub-section, any other matters which you think might be taken up with the Court at this time which would aid in the disposition of the action.

Mr. Goodell: I think of none, Your Honor.

Judge Mellott: Very well. The concluding sentences of the rule under which we are now functioning provides that, "The court shall make an order which recites the action taken at the conference, the amendments allowed to the

pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel;".

Now, where a pre-trial is handled as intelligently and as expeditiously as this has been handled by reason of the [fol. 97] preliminary requests for admissions having been made and secured to some extent, it seems to me that perhaps it is wholly unnecessary for this tribunal to make any order because your record itself shows just what disposition has been made.

Counsel may desire to secure from the reporter copies of what has been accomplished, but I believe that the way in which this has been handled that everybody has it pretty well in mind, and I am suggesting that perhaps it would be mere supererogation and wholly unnecessary for the Court in this particular instance to dictate into the record a lengthy order inasmuch as Judge Huxman has pretty well covered that as we have proceeded.

Do you think this Court should make a separate order or not?

Mr. Goodell: No, I think not.

Judge Huxman: All right. Anything else that anyone has to suggest which might tend to expedite this hearing before we recess. If not, the pre-trial conference will be recessed until 10:00 o'clock Monday morning when we will take up for final disposition the matters that we have left here in abeyance and which you gentlemen on your respective parts will investigate and see if you can satisfy yourselves, and we will then make final disposition of that and immediately go into the trial of this case at the conclusion —final conclusion of the pre-trial conference.

* * * * * * *

[fol. 98] (Reporter's Note:) The further proceedings in the pre-trial conference had on June 25, 1951, are contained in the transcript of proceedings of the hearing proper.

* * * * * * *

Reporter's Certificate (omitted in printing).

[fol. 99] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CORRECTING TRANSCRIPT OF RECORD—Filed August 27, 1951

It has been called to the attention of the Court that certain minor typographical errors exist in the certified record filed in the Court in the above entitled cause. The Court Reporter has checked the record and confirms the existence of these minor typographical errors.

So that the record may speak the truth, it is considered, ordered and adjudged that it be corrected in the following respects:

That on Page 10, Line 4, the name "Dr. Spee" be corrected to read "Dr. Speer"; that on Page 56, Line 2, the phrase "Hold are they" be corrected to read "How old are they?"; that on Page 115 in the last two lines the word "depredations" be changed to read "deprevations"; that on Page 119, Line 2, the sentence there should be made [fols. 100-103] to read ". . . United States *there* are . . ."; that the index record be corrected to correctly reflect the name of Horace B. English as it appears on Page 145 of the record; that at Page 162, Line 4, the phrase "minor groups" be changed to read "minority groups"; that on Page 164 in Line 7 from the bottom the word "roll" be changed to "role"; that at Page 169 the record be corrected to show "direct examination was by Mr. Carter"; that at Page 173 in the third line of the paragraph marked "Q" the last word "them" be deleted; that at Page 212 in Line 9 from the bottom the word "minitors" be changed to "monitors"; that at Page 219, 11 Lines from the top, the sentence should read "of the entire school system?"; that at Page 248, 6 Lines from the bottom, the semi-colon after the word "individual" be changed to a comma; that at Page 249, 12 Lines from the top the word "disadvantages" be changed to "disadvantaged"; that at Page 251 and 255 where the case name McLawrin appears the record be changed to show the name of the case to be "McLaurin".

It is by the Court further considered, ordered and adjudged that a filing of this order constitute the correction of the record and that copies of this order be furnished to the parties requesting or now having a copy of the record.

(S.) Walter A. Huxman, United States Circuit Judge.

[fol. 104] In United States District Court

[Title omitted]

[fol. 105] Transcript of Proceedings—Filed October 16, 1951

[fol. 106] Be it remembered, on this 25th day of June, A.D. 1951, the above matter coming on for hearing before Honorable Walter A. Huxman, Judge, United States Court of Appeals, Tenth Circuit; Honorable Arthur J. Mellott, Judge, United States District Court, District of Kansas, and Honorable Delmas C. Hill, Judge, United States District Court, District of Kansas, duly constituted as a Three-Judge Court under Chap. 155, Title 28, U.S.C., and the parties appearing in person and/or by counsel, as hereinabove set forth, the following proceedings were had:

[fol. 107] Colloquy Between Court and Counsel

Judge Huxman: I take it there are no additional parties to be entered of record. All of that was done the other day, was it? Anyone else to be entered as an attorney of record?

Mr. Goodell: If the Court please, this is Mr. Bannon, attorney for the Board of Education of Leavenworth, Kansas.

Judge Huxman: Do you desire to have your name entered as——

Mr. Bannon: As appearing, Your Honor, but I do not know whether or not the Board might ask for authority to file a brief at some later stage of the proceeding.

Judge Huxman: All right.

Mr. Goodell: The attorney for the Board of Education at Coffeyville.

Judge Mellott: I suppose he should be admitted only as amicus curiae at this time since he filed no pleading.

Mr. Goodell: I suppose so.

Mr. Dallas Knapp, attorney for the Board of Education at Coffeyville called me and asked to have his name entered and wanted to be allowed to participate for filing a brief.

Judge Huxman: Well, we will have his name entered at this time, and we will determine——

[fol. 108] Mr. Goodell: The same is true of Mr. Hal Harlan, of Manhattan, Kansas, who is attorney for the Board of Education there.

Judge Huxman: What do they desire?

Mr. Goodell: To have his name entered and be permitted to file a brief.

Judge Huxman: His name will be entered, and the question of filing of briefs amicus curiae will be determined at the conclusion of the hearing.

Mr. Goodell: Surely.

Judge Huxman: Now, at the conclusion of our pre-trial conference Friday there were certain matters that were passed for final determination this morning. The first one I have noted is Stipulation 16, which reads as follows: "That Exhibit "H", attached hereto and made a part hereof, is a correct statement of facts from the records of the Board of Education of the City of Topeka, pertaining to teacher load in the kindergarten of the Topeka public schools for the 1950 and 1951 school years." Attorneys for plaintiff wanted opportunity to check into that. What do you say this morning?

Mr. Carter: We are willing to accept that.

OFFERS IN EVIDENCE

Judge Mellott: Let the record show Exhibit "H" is formally admitted then in evidence.

Defendants' Exhibit "H", having been offered and [fol. 109] *received in evidence,* is contained in the case file.

Judge Huxman: All right. Request 17; "That Exhibit 'I', attached hereto and made a part hereof, is a correct statement of facts from the Board of Education of the City of Topeka, pertaining to teacher load in the first

six grades of the elementary schools of the Topeka public school system for the school years 1950 and 1951."

Mr. Carter: We will accept that, too.

Judge Huxman: The record may show that their request No. 17 is agreed to, stipulated, and that Exhibit "I" is admitted.

Defendants' Exhibit "I", having been offered and received in evidence, is contained in the case file.

Judge Huxman: Request No. 18, "That Exhibit 'J', attached hereto and made a part hereof, is a correct statement of facts from the records of the Board of Education of the City of Topeka pertaining to auditoriums and gymnasiums in the elementary schools of the City of Topeka, Kansas."

Mr. Carter: On that we have a question, Your Honor; definition, I suppose. Our investigation reveals——

Judge Huxman: I didn't understand.

Mr. Carter: We have a question. I suppose it's one of definition and——

Judge Huxman: Let's look at Exhibit "J". Is that in [fol. 110] the original exhibits?

Mr. Carter: That is in the supplement attached to the supplement that you were reading; pertains to auditoriums and gymnasiums.

Mr. Goodell: Which one are you talking about now?

Mr. Carter: Exhibit "J".

Mr. Goodell: Any particular part of Exhibit "J"?

Judge Huxman: All right. Now what is it?

Mr. Carter: We are unable to accept the definition under "Buchanan" "Yes", as having an auditorium because our investigation shows that there are two rooms, makeshift rooms, that have been thrown together in which there are chairs. Now we think that is totally different from the feeling of an auditorium which has been built in the school. With that reservation, we will accept that part.

Judge Huxman: If we eliminated "Buchanan" do you accept the statements in Exhibit "J" as to the auditorium and gymnasium in Central Park, Clay—what are the three colored schools?

Mr. Goodell: Monroe.

Judge Huxman: Do you accept the rest of the exhibit with the exception of that pertaining to Buchanan?

Mr. Carter: Well, just three items, Your Honor. If you [fol. 111] read down there to Lafayette——

Judge Huxman: Is that a colored school?

Mr. Carter: No, sir; that is not. It is shown here "yes" an auditorium, "no" gymnasium. We have found that there is a playroom in the school building which is ample, and we think that that should be entered on the record.

Mr. Goodell: We say "yes" it has an auditorium.

Judge Huxman: Suppose we change the "no" to "playroom", what do you say, Mr. Goodell?

Mr. Goodell: I don't think it's accurate; neither is his statement accurate about Buchanan. We will offer evidence on it.

Judge Huxman: All right. If you can't agree, we will eliminate Lafayette from the exhibit.

Mr. Carter: And we have the same——

Judge Huxman: Just a minute. How about Buchanan? You won't agree to Buchanan as stated in the exhibit?

Mr. Carter: No, sir.

Judge Huxman: We will eliminate Buchanan.

Mr. Carter: We agree with everything else on the exhibit with the exception of Polk and Potwin and in both of those schools there are playrooms, even though there is no gymnasiums.

Judge Huxman: Polk and Potwin. All right. We will [fol. 112] eliminate Polk and Potwin. With Buchanan, Lafayette, Polk and Potwin eliminated, do you agree to Exhibit "J" as it now remains?

Mr. Carter: Yes, sir.

Judge Huxman: The record will then shown that it is agreed that Exhibit "J", with Buchanan, Lafayette, Polk and Potwin eliminated therefrom, will be admitted and received in the record as evidence.

Defendants' Exhibit "J", as agreed to above, having been offered and received in evidence, is contained in the case file.

Judge Huxman: Now, that is all that I have marked that was left for consideration today. Have I omitted anything?

Mr. Carter: No, sir, not that I know of.

Judge Huxman: Any other stipulations that the parties wish or can agree to as to evidence?

Mr. John Scott: If the Court please, we have prepared a map of the City of Topeka for the purpose of showing valuations of the buildings that are located within the City of Topeka school district.

Judge Huxman: That is a- evaluation of the school buildings?

Mr. John Scott: The school buildings; that is correct, sir, and we would like to enter this as a stipulation in this [fol. 113] particular case.

Mr. Goodell: I couldn't agree to that without knowing something about it. Who appraised it?

Mr. John Scott: Dr. Speer.

Mr. Goodell: I wouldn't agree to such a thing as that. It's some school teacher that gave an expert opinion about——

Mr. John Scott: It's no such a thing.

Judge Huxman: Now, gentlemen, don't get to quarreling with each other before the real trial starts.

Mr. John Scott: This was taken from your exhibits.

Judge Huxman: Now, just a minute; you address your remarks to the Court, please. If you can't agree to it, why you can offer it in the due course of time, and we will then rule on it at that time.

Judge Mellott makes this suggestion, and I agree with him: This case to the Court is just another burden that we have in a trial to be decided by us and approached by us just as any other case that comes before the Court. It will be the endeavor of the Court to decide this case according to the law and the evidence. We realize that, of course, there is considerable sentiment in this case that you can't get away from. We trust that, first, there will be no quarreling or bickering among counsel; it's not [fol. 114] called for; it isn't necessary; doesn't add anying to the value of the case. We trust that counsel will keep that in mind. Also, there will be no demonstration on the part of the audience or spectators in any way. This, of course, is a public trial. We want all those who are interested to be here; but the decorum that is main-

tained in federal courts must be maintained throughout the trial.

Is there anything else before we proceed to the trial of the case? If not, the Court is ready to proceed with the trial of case No. T-316, Orville Brown and others vs. Board of Education of Topeka, Shawnee County, Kansas.

Mr. Carter: If Your Honor please, plaintiffs would like to invoke Rule 43(b) of the Federal Rules of Civil Procedure and call as the first witness the president of the Board of Education, Mr. Kelsey Petry.

Judge Mellott: That is what, calling your adversary as a hostile witness?

Mr. Carter: Yes, sir.

Judge Mellott: "A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent" and so forth. Proceed.

Judge Huxman: You may proceed.

Judge Mellott: The witness that was called come forward; Mr. Speer, was that his name?

[fol. 115] Mr. Goodell: It is my understanding that this witness was out of the city.

Judge Huxman: Who is the witness?

Mr. Goodell: Mr. Petry, who is president of the board.

Judge Huxman: Is he here? Is Mr. Petry here?

Mr. Goodell: He was out of the city, I think, when the subpoena was issued, in Colorado.

Mr. Carter: Then we will call Mr. Saville.

Judge Huxman: Mr. Saville present? Come forward and be sworn.

ARTHUR H. SAVILLE, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Carter:

Q. Mr. Saville, how long have you been a member of the Board of Education of Topeka?

A. About twelve years.

Judge Mellott: May I have the witness' name?
The Witness: Arthur H. Saville.

By Mr. Carter:

Q. What are your duties and responsibilities as a member of the Board of Education?
[fol. 116] A. To adopt policies that are carried out by the school administration, build a budget and various things of that sort.

Q. Does the Board of Education promulgate rules and regulations governing the entire school system of Topeka?
A. Yes, sir.

Q. You maintain, do you not, eighteen schools, elementary schools, in Topeka that are located in eighteen territories, is that correct?
A. Elementary schools? I think there are twenty-two.

Judge Huxman: Isn't that all stipulated to, the number of schools that are maintained.
Mr. Carter: Yes, sir; it's stipulated to, but I am leading up to a question.
Judge Huxman: All right.

By Mr. Carter:

Q. Well, you maintain a total of twenty-two.
A. I believe so, yes, that is correct.

Q. Eighteen are for white children and four for negro children.
A. That's right.

Q. Now, why is it that the Board of Education requires negro children to attend the four separate schools in Topeka?

Mr. Goodell: Object to that as incompetent, irrelevant and immaterial and invading the province of the Court. The pleadings show the issues are joined, that they are doing it, [fol. 117] and they are doing it under a permissive statute, 72-1724. The personal feelings of a board member has nothing to do——
Judge Huxman: I think the objection will be sustained.
Mr. Carter: I think, if I may——

Judge Huxman: It's agreed they are doing it under statute and the ordinance of the City of Topeka.

Mr. Carter: I know that, Your Honor, but I think that I would be entitled to inquire as to whether there are any rules and regulations that the board adopted.

Judge Huxman: You did inquire that and you ask him now why they maintain them. The objection is sustained.

By Mr. Carter:

Q. In your opinion, as a member of the Board of Education, would the board—wouldn't the board have a much simpler problem, since it must maintain the high schools on an unsegregated basis, to integrate negro and white children at the elementary school level?

Mr. Goodell: Object to that as incompetent, irrelevant and immaterial, not having any probative force on the issues in this case.

Judge Huxman: The objection will be sustained.

By Mr. Carter:

Q. Mr. Saville, are you familiar with the document known [fol. 118] as the comprehensive plan of the City of Topeka and Shawnee County, Kansas. I might add that this was—this document was sponsored jointly by the Board of City Commissioners, the Board of County Commissioners and the Board of Education of Topeka and, at the time of the sponsorship, your name, A. H. Saville, is listed as being on the board.

A. Yes.

Q. You are familiar with this.

A. Is that the Bartholomew plan?

Q. Yes, sir.

A. I believe I remember it.

Q. Can you tell me whether or not this plan has been adopted, is being followed at the present time by the Board of Education.

Mr. Goodell: Object to that as incompetent, irrelevant and immaterial; has to do with a long-range view building plan; outside the issues of the case.

Judge Huxman: The objection will be overruled. He may answer.

The Witness: Frankly, I don't remember. What was the date of that?

By Mr. Carter:

Q. The document was published May, 1945.

A. I couldn't tell you; I couldn't answer that yes or no.

Q. You can't say whether before this document was [fol. 119] published you looked at it as a member of the Board of Education and approved it.

A. Yes, I looked at it—I am familiar to some extent with the contents of the document, but I have no recollection at this time what's contained in it.

Q. Well, if I may, I would like to address your attention to several extracts from the document and find whether this is the policy of the board or whether you approved of it. The document reads as follows, under Schools, Chapter 7. "Schools and Recreational Facilities. No city affords satisfactory living facilities unless adequate parks and schools are available to all persons living therein. Just as the economic welfare of the community is largely dependent upon the extent and diversity of its commerce and industry, the mental and physical wellbeing of the population are largely dependent upon the educational and recreational facilities available. The vital role which public education plays in democracy has long been recognized." Would you subscribe to that statement?

Mr. Goodell: We object to that as pursuit here of an academic matter of a report prepared by Bartholomew which this witness didn't prepare.

Judge Huxman: What's the purpose of this line of questioning?

Mr. Carter: This is a document, Your Honor, which was [fol. 120] sponsored by the Board of Education. It is true that it sets up a long-range plan. The document was prepared by Harlan Bartholomew, but it is indicated in the document that changes were made in it, and so forth, at the suggestion of the various people here listed, the members of the Board of Education. I think that I am entitled to attempt to find out whether or not this witness, as a member of the Board of Education, either had anything to do with the preparation of the document, whether he agrees with the

statements, some of the statements which are listed here and whether they are being followed. Now, Mr. Saville indicates he does not know whether this plan is now being followed by the Board of Education.

Judge Huxman: Mr. Counsel, the question before the Court in this case is not what the viewpoint of anyone is or might be as to the future, the present or the past; but it seems to me the question in this case turns upon what the City of Topeka has and is doing, and what they may think about it is immaterial, if they are furnishing adequate facilities. If they are doing that, then what they are thinking about is immaterial. The objection to this line of questioning is sustained.

Mr. Carter: Your Honor, I don't want to press this point too much, but I think the Court is being unduly severe. [fol. 121] There are statements in here which have to do with a question of the adequacy of facilities.

Judge Huxman: That is a long-range program laid down by a man, Bartholomew, who is not even a member of the Board of Education. It has nothing to do with what the City of Topeka is doing or is not doing with regard to its school system. No, the objection will be sustained. That line of questioning will not be pursued.

Mr. Carter: All right, Your Honor. I think that is all.

Judge Huxman: Any questions?

Mr. Goodell: No questions.

Judge Huxman: Any need for this witness remaining longer or may he be excused from attendance?

Mr. Carter: We have no further need for him.

Judge Huxman: You are not required to attend further upon the Court.

(Witness excused.)

KENNETH MCFARLAND, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Carter:

Q. Mr. McFarland, you are at present the superintendent [fol. 122] of schools of Topeka, Kansas?

A. Correct.

Q. How long have you been superintendent?

A. Nine years.

Q. Are there any rules and regulations that you know of that are in force with regard to the choice of schools by negro pupils in the school system, among the four that are set aside for them?

A. Well, we have administered the schools as they were organized at the time this administration took over in 1942. The four negro districts were established at that time.

Q. What I am driving at is what determines, in terms of the place in the city where a negro child lives, what determines what school that child will attend?

A. Those districts were drawn prior to 1942 and adopted by the Board of Education, and we have administered them in essentially the same form.

Q. Well, may I have what they are?

A. Well, you have a map.

Judge Huxman: Doctor, what he asks is what determines the location, if you know. Is that what you want?

Mr. Carter: I am trying to ask—there are four negro schools—the white schools—the school system is divided into territories. That apparently is not true of the negro [fol. 123] schools. Now a negro who lives—out let's say—let's say the Randolph area, what determines what school, what colored school, he or she will attend? That is what I am trying to find out. Are there any rules about that? ered by the admitted state of facts.

Mr. Goodell: Object to this as already having been covered by the admitted state of facts.

Judge Huxman: I am sorry; repeat that question.

(The last preceding question was here read by the reporter.)

Mr. Goodell: The objection is that this is in conflict with the admitted statement of facts.

Judge Mellott: Was it admitted? I have overlooked it, and that is what I was asking Judge Huxman, is the reason he didn't hear you. In paragraph 2, I believe, of your original stipulation——

statements, some of the statements which are listed here and whether they are being followed. Now, Mr. Saville indicates he does not know whether this plan is now being followed by the Board of Education.

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Mr. Carter: All right, Your Honor. I think that is all.

Judge Huxman: Any questions?

Mr. Goodell: No questions.

Judge Huxman: Any need for this witness remaining longer or may he be excused from attendance?

Mr. Carter: We have no further need for him.

Judge Huxman: You are not required to attend further upon the Court.

(Witness excused.)

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Mr. Goodell: Object to this as already having been covered by the admitted state of facts.

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Mr. Goodell: The objection is that this is in conflict with the admitted statement of facts.

Judge Mellott: Was it admitted? I have overlooked it, and that is what I was asking Judge Huxman, is the reason he didn't hear you. In paragraph 2, I believe, of your original stipulation——

Mr. Goodell: On Page 2, Your Honor, there was that—that portion was not agreed to.

Judge Mellott: That is what I thought.

Mr. Goodell: I withdraw my objection.

Mr. Carter: That is what I am trying to find out.

Mr. Goodell: Our pleadings allege that a colored child may attend any one of the four colored schools based upon [fol. 124] the selection of his parents.

Judge Mellott: As I recollect it, counsel did not agree upon that Friday, so I think he should pursue it.

Judge Huxman: The witness may answer.

The Witness: Theoretically, the plan would be to give the best coverage possible with four buildings in relationship to where children live and with relationship to bus routes, and so forth.

By Mr. Carter:

Q. Now, Mr. McFarland, the defendants have introduced a series of exhibits relating to school program, teacher salaries, bus schedules and transportation costs. Are you familiar with those exhibits?

A. Not in detail. I am familiar with the fact that the exhibits were prepared and delivered to the counsel.

Q. They were prepared in your office.

A. By my office, yes.

Mr. Carter: If I may get the exhibit "F"(1) to "F"(22).

Mr. Goodell: You have copies of that.

Mr. Carter: All right.

By Mr. Carter:

Q. I want to direct your attention—these are the exhibits. Now, those exhibits "F"(1) to (22) relate to the school schedule program for the school year in each of the schools. [fol. 125] Judge Mellott: You said "F"(22).

Mr. Carter: "F"(1) to (22) covering the twenty-two schools.

By Mr. Carter:

Q. That is the school program for each of the schools. What I want to know, we do not have any information as

to the hours that school is in session. Would you have that at your fingertips?

A. Well, 9:00 o'clock until 4:00 o'clock is the general hour for elementary schools.

Q. Is there any difference with respect to—does that apply from the first grade through the sixth grade?

A. No, first grades convene a little later, adjourn a little earlier, so do kindergartens. They also have different schedules for the first few weeks of school than they do later.

Q. Without regard for the first few weeks of school, I would like to get the accurate figures on that, if available. When does kindergarten convene and when does it let out?

A. Well, we have let the kindergartens out at 11:30.

Q. They convene at 9:00?

A. And convene at 9:00.

Q. Do you have any in the afternoons?

A. 1:30 and 3:30.

Q. 1:30 and 3:30.

A. I think most of those——

[fol. 126] Q. What about the first year, the first grade?

A. We usually, during warm weather, when the schools first start, we are more lenient on those; we will start about fifteen minutes later.

Q. That would be 9:15.

A. 9:15. We will let them out at 11:30 and sometimes 11:45.

Q. 11:30, 11:45. They reconvene at what time?

A. 1:30, 1:15.

Q. Until 4:00. What about the second through sixth?

A. 1:15 to 4:00.

Q. What about the morning schedule?

A. 9:00 to 12:00.

Q. 9:00 to 12:00. An hour for lunch.

A. Right; an hour *or* a half or an hour and fifteen minutes, depending.

Q. In order that I may be absolutely correct on this, you have half session of kindergarten, half day of kindergarten from 9:00 to 11:30 or from 1:30 to 3:30.

Judge Huxman: Answer, doctor.

The Witness: Yes.

By Mr. Carter:

Q. You have in the first grade, you convene at approximately 9:00 or 9:15; you let out at approximately 11:30, 11:45.

A. Right.

Q. And reconvene at 1:15 to 4:00.

[fol. 127] A. That's right; those are approximately right. There are some variations in that. We have a schedule here, if you want it, admitted in evidence.

Q. If you have the schedule.

A. We have a complete schedule of that and will be glad to get it.

Q. Well, I think it would be—if it's here I would like to see it because I am going to ask some questions.

Mr. Goodell: If the Court please, we introduced, and it's admitted, the program. I don't understand—do you claim they don't get as many hours of instruction?

Mr. Carter: What I am trying to find out is the hours of the classes. You have introduced the program but not the hours of the school.

Mr. Goodell: If the Court please, we submit it would be immaterial unless he claims there is disparity between the two schools as to hours of instruction.

Judge Huxman: I don't see much probative value to that unless there is discrimination, if you will not pursue it too far——

Mr. Carter: I am going to ask some questions on it, Your Honor, and I think the questions will be germane. I wanted [fol. 128] to be certain that Mr. McFarland is certain of his hours. I don't want to have an approximation, and I am not trying to lead you or trap you. I merely want to get the facts. I think it's important for us to know the school schedule.

The Witness: We should prepare a schedule and hand it to you for every school, in that case.

By Mr. Carter:

Q. You mean there are differences?

A. And differences in season, difference in time.

Judge Huxman: Does counsel contend there is a discrimination in those hours between colored schools and white schools?

Mr. Carter: We are trying to find out something which we think is—affects the school program with regard to a particular school in terms of—that would—it would be important for us to know what hours the classes are in session, and it is for that reason I am particularly anxious to find that out.

Judge Huxman: Do you contend there is any discrimination between the hours in the colored schools and in the white schools?

Mr. Carter: That is not what we are directing it to, Your Honor. We would contend there is discrimination if certain facts occur with regard to the hours that the school operates. For example, I would be interested chiefly in [fol. 129] Washington School. I am chiefly interested in what the schedule is in Washington School, particularly the first grade, kindergarten and the second to sixth grade.

Judge Huxman: Mr. Counsel, the Court feels that this is purely a fishing expedition at this time. You don't make an allegation that there is discrimination in the hours of school in colored schools as against the white schools. You are just, by your frank admission, you are stating that you are trying to see whether there is or not. The Court is going to sustain this objection; going to sustain an objection to this line of questioning at this time. You have an opportunity at recess to get this schedule and go over it. If you can find anything material in it, why you may then pursue this line of examination and Dr. McFarland will be available. But just to go into a fishing expedition in all of this line of testimony, the Court doesn't think it's proper. The objection will be sustained at this time.

Doctor, you will make available to counsel those schedules for their examination, if you have them.

The Witness: We have them.

Judge Huxman: Then if you want to renew your request for this examination later on, you may pursue it, but at this time the objection is sustained.

[fol. 130] Mr. Carter: The thing I want to find out, I think I can find out.

By Mr. Carter:

Q. Now, I would like to direct your attention to Exhibit "G", which is the morning schedule, bus schedule, to take the negro children to school, is that correct?
A. Yes.

Judge Mellott: What is your——
Mr. Carter: Exhibit "G".
Judge Mellott: Exhibit "G".

By Mr. Carter:

Q. I understand that from—from Mr. Goodell that there was not submitted a schedule for taking the children home, but he has advised me that that would be available. Now, I would also like to address your attention to Exhibit "D" and then we can take "D" and "G" together.

Mr. Goodell: Exhibit what?
Mr. Carter: "D".
Judge Huxman: "D" like in dog.
Mr. Carter: "D" like in dog.

By Mr. Carter:

Q. Now, I am directing your attention to both of those schedules, both of those exhibits. I note that you—the Board of Education paid a Miss Washington for transportation of negro pupils in 1950-1951. Can you tell me what part of the schedule on Exhibit "G" Miss Washington [fol. 131] handled?

Judge Huxman: What is the materiality of that?

Mr. Carter: I want to find out, Your Honor—I want to find out the bus schedule for each—who is handling each of the bus schedules because we think it's material.
Mr. Goodell: We object to this as being outside——
Judge Huxman: Will you state in what respect it's material.
Mr. Carter: Well, for example, I want to find out whether Mr. Grimes handles both the schedule which is listed at the top to Washington and the one listed at Monroe; whether Mr. Grimes handles the 8:00 o'clock pick-up to

8:29 and then—I think I want to find out how that operates. I want to find out what bus—which of these people handles the taking of the children to McKinley and which handles the taking of the children to Buchanan.

Mr. Goodell: I object to this as incompetent, irrelevant and immaterial, and outside the scope of the issues made up by the pleadings and the admitted stipulation of facts. The two exhibits that he's asked to compare with, one of them is [fol. 132] a regularly maintained bus; the other he has called attention to are some teachers, an isolated case of a teacher or two in the kindergarten who has taken her private car and taken children home, which ordinarily would be done by taxi cabs or by the bus, but to let the teacher make a little extra money, at their request voluntarily, she has taken them home and has been paid by the Board of Education.

Judge Huxman: Mr. Counsel, the Court fails to see any materiality in the question as to who drove the bus. The Court can't see how it makes any difference.

Mr. Carter: Let me pursue it for a moment; I won't take up your time, Your Honor.

By Mr. Carter:

Q. The bus schedule, as listed here, indicates that with regard to Monroe School, children are taken to Monroe; they begin at 8:00 o'clock; they are let off at Monroe School at 8:29. Now, it's my understanding—I would like to have it cleared up—that this same bus driver and this same bus then has a pick-up at 6th and Brannan at 8:30. Now I—the only way I can find that out——

Judge Huxman: Ask the witness if he knows whether that is a fact or not.

Mr. Carter: That is what I asked, Your Honor, whether Mr. Grimes handled both of these schedules. Mr. Grimes is the one who is involved in this.

[fol. 133] Mr. Goodell: Do I understand it that you challenge the accurateness of that exhibit now? You want to inquire into its accuracy, is that what you are getting at?

Mr. Carter: I would like to find out whether Mr. Grimes handles both of these and, therefore, I have a right to, of course, inquire into that.

By Mr. Carter:

Q. Now, I would like to direct your attention to Exhibit "G", which is the morning schedule, bus schedule, to take the negro children to school, is that correct?

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Mr. Goodell: Exhibit what?

Mr. Carter: "D".

Judge Huxman: "D" like in dog.

Mr. Carter: "D" like in dog.

By Mr. Carter:

Q. Now, I am directing your attention to both of those schedules, both of those exhibits. I note that you—the Board of Education paid a Miss Washington for transportation of negro pupils in 1950-1951. Can you tell me what part of the schedule on Exhibit "G" Miss Washington [fol. 131] handled?

Judge Huxman: What is the materiality of that?

Mr. Carter: I want to find out, Your Honor—I want to find out the bus schedule for each—who is handling each of the bus schedules because we think it's material.

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Judge Huxman: Will you state in what respect it's material.

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8:29 and then—I think I want to find out how that operates. I want to find out what bus—which of these people handles the taking of the children to McKinley and which handles the taking of the children to Buchanan.

Mr. Goodell: I object to this as incompetent, irrelevant and immaterial, and outside the scope of the issues made up by the pleadings and the admitted stipulation of facts. The two exhibits that he's asked to compare with, one of them is [fol. 132] a regularly maintained bus; the other he has called attention to are some teachers, an isolated case of a teacher or two in the kindergarten who has taken her private car and taken children home, which ordinarily would be done by taxi cabs or by the bus, but to let the teacher make a little extra money, at their request voluntarily, she has taken them home and has been paid by the Board of Education.

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Judge Huxman: Ask the witness if he knows whether that is a fact or not.

Mr. Carter: That is what I asked, Your Honor, whether Mr. Grimes handled both of these schedules. Mr. Grimes is the one who is involved in this.

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Mr. Carter: I would like to find out whether Mr. Grimes handles both of these and, therefore, I have a right to, of course, inquire into that.

Mr. Goodell: If the Court please, we renew our objection. They have admitted the bus schedule as being accurate excepting only that they stop at additional places other than the scheduled bus stops.

Judge Huxman: The doctor may answer, if he knows. I fail to see the materiality of it.

The Witness: I don't know.

Mr. Carter: All right, that's okay.

By Mr. Carter:

Q. Now, Mr. McFarland, in your schools are there anything that you call special rooms that you have set aside for white children in your public school system?

A. Yes.

Q. Are there any such special rooms for negro children in the public schools?

A. We have no special rooms for negro children. We have health rooms for both, but not special rooms.

Q. What is the nature of these special rooms?

A. Special rooms are for groups that are, for one reason [fol. 134] or another, unable to fit into regular classroom, do regular work and still we would consider as public school people.

Q. If you know, can you tell us why there are no special rooms for negro children?

A. We haven't had the need. We haven't had, we felt, sufficient numbers of them who were far enough out of line from the regular group to warrant special rooms.

Q. Are any provisions made in the school system for hot lunches, aside from the health rooms? I understand the health rooms are for undernourished children.

A. That's right.

Q. Aside from that, are any provisions made for hot lunches?

A. Not in elementary schools.

Q. I see. Now that would apply to the negro children regardless of the fact that whether they were too far to go home to lunch, you make no provisions for hot lunches for them, is that right?

A. Outside the health rooms, no provision. You understand we have two health rooms for four colored schools,

where we have only two health rooms for eighteen white schools.

Q. I understand. Can you tell me, in terms of the transportation of pupils to school, if you know, can you tell me what is the number of children that are transported, negro children that are transported to school, total number.

[fol. 135] A. I couldn't give you that figure. I don't have it at hand.

Q. Is that figure available?

A. We can get that for you.

Q. Would I be able to get that from you?

A. Yes.

Mr. Carter: That's all.

Judge Huxman: Any questions by defendants?

Mr. Goodell: We have no questions.

Judge Huxman: Anyone request the presence of Dr. McFarland any further, or may he be excused?

Mr. Carter: Well, I would like for Dr. McFarland to be able to get from him the school schedule and the number of pupils transported, and I think——

Dr. McFarland: You mean class schedule or hours? You want hours?

Mr. Carter: Hours that the school is in session, that is, including the afternoon recess.

Judge Huxman: Can you furnish that, doctor?

Dr. McFarland: Yes.

Judge Huxman: Will you furnish that to counsel on each side and also copies for the Court?

Dr. McFarland: Yes, sir.

(Witness excused.)

[fol. 136] LENA MAE CARPER, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. John Scott:

Q. State your name to the Court please.

A. Lena Mae Carper.

Q. Are you one of the plaintiffs in this action?

Mr. Goodell: If the Court please, we renew our objection. They have admitted the bus schedule as being accurate excepting only that they stop at additional places other than the scheduled bus stops.

Judge Huxman: The doctor may answer, if he knows. I fail to see the materiality of it.

The Witness: I don't know.

Mr. Carter: All right, that's okay.

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[fol. 135] A. I couldn't give you that figure. I don't have it at hand.

Q. Is that figure available?

A. We can get that for you.

Q. Would I be able to get that from you?

A. Yes.

Mr. Carter: That's all. . .

Judge Huxman: Any questions by defendants?

Mr. Goodell: We have no questions.

Judge Huxman: Anyone request the presence of Dr. McFarland any further, or may he be excused?

Mr. Carter: Well, I would like for Dr. McFarland to be able to get from him the school schedule and the number of pupils transported, and I think——

Dr. McFarland: You mean class schedule or hours? You want hours?

Mr. Carter: Hours that the school is in session, that is, including the afternoon recess.

Judge Huxman: Can you furnish that, doctor?

Dr. McFarland: Yes.

Judge Huxman: Will you furnish that to counsel on each side and also copies for the Court?

Dr. McFarland: Yes, sir.

(Witness excused.)

[fol. 136] LENA MAE CARPER, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. John Scott:

Q. State your name to the Court please.

A. Lena Mae Carper.

Q. Are you one of the plaintiffs in this action?

A. Yes.
Q. Where do you live, Mrs. Carper?
A. 1217 Hillsdale.
Q. 1217.
A. Yes.

Mr. Goodell: Twelve what?
The Witness: 1217 Hillsdale.

By Mr. John Scott:

Q. Is that in the City of Topeka?
A. Yes.
Q. Are you married, Mrs. Carper?
A. Yes.
Q. And do you have children or a child of school age?
A. I have one.
Q. What is her name?
A. Katherine Louise Carper.
Q. How old is she?
A. She's ten years old.
[fol. 137] Q. Will you state to the Court what school she attends?
A. She attends the Buchanan School.
Q. The Buchanan School. What grade is she in?
A. Fifth grade.
Q. Fifth grade.

Mr. John Scott: For the purpose of the record, the residence the plaintiff, Mrs. Carper, has testified to appears to be in the district Gage and Randolph indicated on the official map of Topeka, the same being Exhibit—Defendants' Exhibit "A".

Mr. Goodell: No, that is our exhibit "A". Oh, pardon me. Did you say was in both of those school districts?

Mr. John Scott: Yes, and it's also indicated on the map in the color of red and blue.

Mr. Goodell: Do you mean it's in Gage and Randolph?

Mr. John Scott: Gage-Randolph.

Mr. Goodell: There are two different territories.

Mr. John Scott: She lives in the same district.

By Mr. John Scott:

Q. Now, Mrs. Carper, how does your child go to school?

A. She has to walk about four blocks on Huntoon and then [fol. 138] has to cross the highway at Huntoon and Gage and catch a school bus.

Q. What time does she catch the school bus?

A. The school bus is supposed to be there at 8:40. However, I go to work, and I go with her each morning she goes to school, and sometimes it has been as high as five minutes to nine before the bus showed up.

Q. Can you state to the Court the approximate distance from the school—strike that—the approximate distance of the pick-up point to the Buchanan School.

A. Oh, in the neighborhood of about—oh, I say about twenty-four blocks, anyhow.

Q. And can you state to the Court what schools that you live near?

A. She—we live near the Gage Park or the Randolph School.

Q. Randolph School. And is there also a school now under construction located at 17th and Stone?

A. Yes.

Q. Do you know the name of that school now under construction?

A. No, I don't.

Q. Are you also located near that particular site?

A. Yes.

Q. Now, Mrs. Carper, do you prepare a lunch for your child?

A. Yes.

[fol. 139] Q. Every day that she attends school?

A. Yes.

Q. Does she come home for dinner?

A. No.

Q. What time does she return home?

A. She usually gets home around 4:30.

Q. Around 4:30. Have you ever had an occasion to observe the number of people riding the bus that your child rides?

A. When the bus comes for my child it's nearly loaded.

Q. When you say "nearly loaded" be more explicit about that, Mrs. Carper.

A. Sometimes it is really overloaded.

Mr. Goodell: Move to strike that answer as a conclusion of the witness.

Judge Huxman: Overruled.

By Mr. John Scott:

Q. And I believe you stated, Mrs. Carper, that there have been times that the bus has been late, is that correct?

A. Many times.

Q. Would that be during the cold winter months?

A. Yes.

Q. And what would your child and other children be doing at that time?

A. They would usually stand in the cold waiting for the bus until they couldn't stand it any longer, and then we would take them to a small grocery store on Gage and [fol. 140] take them in there and try to get them warm until the bus come. When the bus come, I would get out and hail the bus in front of the store to pick them up.

Q. Are there any shelters or any means of protection against weather conditions there on the corner where the bus stops?

A. None.

Q. Is there a stop signal there at Huntoon and Gage?

A. Absolutely none.

Q. Can you tell the Court what the traffic conditions are where your little girl catches the bus?

Mr. Goodell: Object to this as outside the scope of the issues and the pleadings. There is no evidence that the Board of Education has any control over safety devices, the installation or operation of them.

Mr. John Scott: If the Court please——

Judge Huxman: Just a minute. The objection will be overruled.

By Mr. John Scott:

Q. Did you understand the question?

(The last preceding question was here read by the reporter.)

A. At that time of the morning the cars are really congested going along that highway. It's really congested

traffic along there at that time. In the morning most people are going to work at that time.

[fol. 141] Mr. John Scott: I believe that is all. You may cross examine.

Mr. Goodell: No questions.

Judge Huxman: You may step down; call your next witness.

(Witness excused.)

KATHERINE CARPER, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. John Scott:

Q. Katherine, don't be nervous; these gentlemen up here are your friends. Now, what is your name?

A. Katherine Carper.

Q. Katherine, how old are you?

A. Ten.

Q. When is your birthday?

A. February 24th.

Q. February 24th.

A. Yes.

Q. Where do you live, Katherine?

A. 1217 Hillsdale.

Q. What—was that your mother that was just on the stand?

A. Yes, sir.

Q. Do you know the difference between right and wrong, [fol. 142] Katherine?

A. Yes, sir.

Q. And you know what it means to tell the truth, don't you?

A. Yes, sir.

Q. Now, Katherine, you attend Buchanan School, is that correct?

A. Yes, sir.

Q. And you also ride the bus.

A. Yes, sir.

Q. I want you to tell these three gentlemen up here—strike that. Just tell the Court how many people, the conditions of the bus that you ride when you catch it in the morning,

A. It is loaded, and there is no place hardly to sit.

Q. There is no place hardly to sit, is that right?

A. No, sir.

Q. People are standing up.

A. Yes, sir.

Q. And you have stood on the corner when it was cold, is that right?

A. Yes, sir.

Q. And did your hands get cold?

A. Yes, sir.

Q. Now what grade are you in, Katherine?

A. Fifth.

[fol. 143] Q. Fifth grade.

A. Yes, sir.

Q. Do you know what time you arrive at school in the morning?

A. Quarter to nine.

Q. And what time does school—what time does school start?

A. Nine o'clock.

Q. Nine o'clock. And what time do you get out at noon?

A. Quarter to twelve.

Q. Quarter to twelve.

A. Yes, sir.

Q. Do you know what time the first grade gets out?

A. Eleven thirty.

Q. And do you know Mrs. Crawford?

A. Yes, sir.

Q. What grade does she teach?

A. The first and half the second.

Q. Is that at Buchanan School?

A. Yes, sir.

Q. And does she do anything else other than teach school?

A. Takes the kindergarten home.

Q. The kindergarten children home.

A. Yes, sir.

Q. What time does she take the kindergarten children home?

A. Eleven thirty.

Q. Eleven thirty. And what does she do with her class?

[fol. 144] A. Let's them go into Miss McBrier's room.

Q. Mrs. McBrier?

A. Yes, sir.

Q. What grade does she teach?

A. The third and half the second.

Q. The third and half the second. Is her class out at the time that Mrs. Crawford's children go in there?

A. Yes, sir.

Q. They are out. Katherine, I want you to tell these three gentlemen what the conditions of the bus in the evening are when you go home.

A. Sometimes when I get on the bus it is loaded, and there is no place to sit.

Q. And are the children sitting on top of each other?

A. Yes, sir.

Mr. Goodell: We object to this whole line of leading questions of counsel testifying rather than the child.

Judge Huxman: They are slightly leading, but try not to lead the witness. The objection is overruled.

By Mr. John Scott:

Q. In your neighborhood, Katherine, do you live in a neighborhood with white children?

A. Yes, sir.

Q. Do you play with them?

[fol. 145] A. Yes, sir.

Q. What schools do they go to?

A. Randolph.

Mr. Goodell: I object to that as incompetent, irrelevant and immaterial, outside the issue.

Judge Huxman: Objection to this line of questioning will be sustained.

Mr. John Scott: I believe that is all.

Judge Huxman: Any questions? You may be excused.

(Witness excused.)

Mr. Goodell: If the Court please, if they will tell me where these children live, what the distance is to the pick-up point, we will agree to all of this and shorten this up.

Judge Huxman: They are entitled to make their case. We will proceed this way, at least presently.

OLIVER L. BROWN, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Bledsoe:

Q. You may state your name to the Court, please.
A. Oliver Leon Brown.
Q. And where do you live, Mr. Brown?
[fol. 146] A. 511 West First Street.
Q. Are you a citizen of the United States?
A. I am.
Q. And you are a plaintiff in this lawsuit?
A. I am.

Judge Huxman: Talk a little louder, Mr. Brown.
Judge Mellott: He didn't answer yet.
The Witness: Yes.

By Mr. Bledsoe:

Q. What is your business or occupation?
A. Carman welder.

Mr. Bledsoe: Speak a little louder.
The Witness: A carman welder.
Judge Huxman: Mr. Brown, it's difficult to hear you. I wish you would make an effort to speak so we can hear you distinctly; we want to hear what you say.

By Mr. Bledsoe:

Q. Are you married?
A. Yes.
Q. And, if so, who constitutes the members of your family
A. I do.
Q. What I mean by that, who constitute the members of your family?
A. I have a wife and three children.

Q. What are the ages of your children?
[fol. 147] A. My oldest daughter is eight years old; I have one four and another one five months.
Q. What is the name of your daughter, oldest daughter?
A. Linda Carol Brown.
Q. In what school district or territory do you live, Mr. Brown?
A. I live in the Sumner District.
Q. Sumner School District.
A. Yes.

Mr. Bledsoe: For the purpose of the record, if the Court please, let it be shown that the witness resides in Sumner School District. I think it's this district here marked (indicating on exhibit)—that is colored red.

Judge Mellott: Well, I am afraid your testimony standing alone isn't too intelligent; it isn't to me. Now, as I understand it, Topeko is one school district, you agreed at the pre-trial, but you said that there were certain territories.

Mr. Bledsoe: Well, I may susbstitute territory for—if I may—territory for district.

Judge Huxman: Wouldn't it be more helpful to the Court if you just had these witnesses locate their residence with reference to the colored school that they attend, rather than having it defined by the various territories. [fol. 148] That is the important factor, how far they are from school.

By Mr. Bledsoe:

Q. Now, Mr. Brown, where do you live with reference to Monroe School?
A. Well, — stated that I live at 511 West First Street which is fifteen blocks, approximately, from Monroe School.

Mr. Goodell: I didn't get that.
Judge Mellott: Fifteen blocks from Monroe School.
The Witness: Twenty-one blocks, pardon me; approximately twenty-one blocks.

By Mr. Bledsoe:

Q. You are talking about now the way your daughter has to travel to go to Monroe School, is that correct?

A. That is true.

Q. Does your daughter ride the school bus?

A. Yes,

Q. All right. Now, Mr. Brown, what time does your daughter leave home in the morning to walk to First and Quincy, the bus pick-up point, to go to school; what time does she leave home?

A. She leaves at twenty minutes 'till eight o'clock.

Q. Twenty minutes of eight.

A. Every school morning.

Q. What time, or thereabouts, does she board the bus [fol. 149] at First and Quincy?

A. Well, she is supposed to be there at eight o'clock and which she has been, in many instances, but many times she has had to wait through the cold, the rain and the snow until the bus got there, not knowing definitely what time it gets there all the time.

Q. All right. Now, Mr. Brown, she boards that bus about eight o'clock. What time does she arrive at the school?

A. She's supposed to arrive at the school around 8:30.

Q. Eight thirty. And, as I understand it, what time does the classes begin at school?

A. Nine o'clock.

Q. What does your daughter do between the time the bus arrives at the school at 8:30 and 9:00 o'clock?

A. Well, there is sometimes she has had to wait outside the school until someone came to let them in, through the winter season and likewise, many times.

Q. What else does she do, if anything?

A. Well, there is nothing she can do except stand out and clap her hands to keep them warm or jump up and down. They have no provisions at all to shelter them.

Q. And what you want the Court to understand is that your daughter is conveyed to the school, she gets there by 8:30 in the morning, and that she has nothing to do until school starts at 9:00 o'clock, is that right?

[fol. 150] A. That is correct.

Q. Now, Mr. Brown, you don't—withdraw that, please. What provisions are made by the school board for your daughter to have warm lunch, if any.

A. There are no provisions made at all.

Judge Huxman: Mr. Bledsoe, hasn't it been agreed and testified to by Dr. McFarland that no provision is made for warm lunches?

Mr. Bledsoe: I beg your pardon; I believe you are correct, if the Court please.

Judge Huxman: That stands admitted, doesn't it?

Mr. Bledsoe: That's right; that is all right. Let me withdraw that, please.

By Mr. Bledsoe:

Q. Now, then, your child—you don't get to see your child during the daytime until she returns home in the evening, is that right?

A. That is correct, sir.

Q. Would you, Mr. Brown, would you like to have your daughter home, have the same opportunity of giving her parental guidance as the white fathers and mothers might do their child.

A. Yes, sir.

Mr. Goodell: We object to the form of that question as assuming a state of facts not in evidence and, in fact, con- [fol. 151] trary to some of the admitted stipulation of facts.

Judge Huxman: The objection will be sustained.

By Mr. Bledsoe:

Q. But you do not see your daughter from the time she leaves in the morning until she returns in the evening, is that correct?

A. I do not.

Q. What time is that?

A. She gets home around fifteen minutes to five.

Q. Fifteen minutes to five. Do you know whether or not there is any provisions made to shelter or protect your daughter while she is standing on the street or the designated bus pick-up——

Judge Huxman: Mr. Bledsoe, that has been testified to, and I think it's conceded no shelter is provided in any of these points where colored children are picked up, is that not so, Mr. Goodell?

Mr. Goodell: That's right.

By Mr. Bledsoe:

Q. Now, Mr. Brown, what is the condition of the area there between your residence and First and Quincy where your daughter boards the bus?

A. Well, there are a considerable amount of railroad tracks there; they do a vast amount of switching from the Rock Island yards and from the time that she leaves [fol. 152] home until she gets to Quincy, First and Quincy, to board the bus, she has to pass all of these switch tracks and she—also including the main thoroughfare, Kansas Avenue and First; there is a vast amount of traffic there morning and evening when she goes and returns. There is no provisions at all made for safety precautions to protect those children passing these thoroughfares at all.

Q. Now, Mr. Brown, if your daughter were permitted to attend Sumner School would there be any such obstructions or any such conditions as she will meet on her way to First and Quincy?

A. Not hardly as I know of.

Q. How far is it from your residence to Sumner School?

A. Seven blocks.

Q. Seven blocks. Mr. Brown, are you assessed a tax for the support and maintenance of the public schools of the City of Topeka?

A. I am.

Mr. Goodell: We object to that, if the Court please; it's wholly outside the scope——

Judge Huxman: He may answer.

The Witness: I am, sir.

By Mr. Bledsoe:

Q. Mr. Brown, do you consider it an advantage to have a school in the neighborhood in which you live near your home? Do you consider that an advantage?

[fol. 153] Mr. Goodell: We object to that as incompetent, irrelevant and immaterial what he considers.

Judge Huxman: Objection sustained.

Mr. Bledsoe: If the Court please, I believe that is really a part of our case.

Mr. Goodell: If the Court please, every parent would like to have a school next door, but that is impossible.

Judge Huxman: I think it flows naturally it's an advantage to live closer to a school than to have one far away. I don't think we need to spend much time to establish that fact. I think the Court will take judicial knowledge of the fact that if it had children of school age it would rather have them go to a close school than one far away.

By Mr. Bledsoe:

Q. Mr. Brown, is there a more direct route from your residence, 511 West First Street, to the bus pick-up point at First and Quincy; is there any more direct route than there?

A. Than just my family do you mean?

Q. No, for your daughter going down to the bus pick-up point, is there a more direct route for her to travel?

A. No, there isn't.

Q. There is not.

Judge Huxman: Any questions?

[fol. 154] Cross-examination.

By Mr. Goodell:

Q. Mr. Brown, you see that map there, Defendants' Exhibit "A"?

A. I do.

Q. You understand that the portions colored there form the school territory for the whole city of Topeka.

A. I do.

Q. And, directing your attention to the corner here or all the area in blue, you understand that that is territory outside of the city limits of Topeka, but in Topeka for school purposes alone.

A. I understand.

Q. What?

A. I understand that.

Q. You say your child goes four blocks to the bus pick-up point.

A. She goes six blocks to the pick-up point.

Q. Six blocks, pardon me. Don't you know as a matter of fact that in many, many instances there are children that go to the white schools in this town that go thirty and thirty-five blocks and walk to get there.

Mr. Carter: I object to that.

The Witness: Where at?

Mr. Carter: I see no materiality to this question.

[fol. 155] Judge Huxman: Objection will be sustained. That is not proper cross-examination of this witness.

Mr. Goodell: No further questions.

Judge Huxman: The Court will take a short recess of approximately ten minutes.

(The Court then, at 11:15 o'clock a.m., stood at recess until 11:25 o'clock a.m., at which time the following further proceedings were had:)

Judge Huxman: You may proceed:

Darlene Watson, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Bledsoe:

Q. State your name to the Court, please.

A. Darlene Watson.

Q. Where do you live?

A. I live at 508 West First.

Q. Do you have children of school age?

A. Yes, I do.

Q. And what school do your children attend?

A. They go to Sumner.

Q. Sumner School. Are you acquainted with Oliver Brown and his family, the Oliver Brown who just left the stand.

A. Yes; we are neighbors.

[fol. 156] Q. You are neighbors. Now, Mrs. Watson, are you able to tell the Court what time Linda Brown leaves in the morning to go to school?

Mr. Goodell: We object to this as repetition; simply cumulative; already been testified to.

Judge Huxman: Yes, this evidence is cumulative but plaintiff is entitled to reasonable latitude.

Mr. Goodell: We will admit the time you say is right; we will admit that.

Judge Huxman: You may answer.

The Witness: I have watched her leave at 7:40.

By Mr. Bledsoe:

Q. Now, do you have a son who attends Sumner School?

A. Yes.

Q. What time does you son leave; you live directly across the street from Mr. Brown.

A. That's right.

Q. Now, what time does your son leave to go to Sumner School?

Mr. Goodell: We object to this as incompetent, irrelevant and immaterial, and not tending to prove any burden within the scope of the 14th Amendment which is what this lawsuit involves, for the reason that if this is a proper inquiry, then we have got to subpoena all of the parents of the white children and show in some cases they live [fol. 157] thirty-six blocks away, and they have to leave maybe at 7:15. It's pure accident where families may live close to schoolhouses. We can't have schoolhouses next door to everybody.

Judge Huxman: The objection will be overruled.

The Witness: My boy leaves at 8:40, twenty minutes of nine.

Q. Twenty minutes of nine.

A. Yes.

Q. How far is it from your home to the Sumner School?

A. It's seven blocks.

Q. Seven blocks. And you just testified that Linda leaves home at 7:40 in the morning.

A. That's right.

Mr. Goodell: We object to this as repetition.

Mr. Bledsoe: That is all.

Judge Huxman: Mr. Bledsoe, speaking for myself alone, for your future guidance, I will take judicial knowledge of

the fact that where there are only four colored schools in a town of this size, against eighteen white schools, that there are innumerable instances of this kind where colored children will go by a white school and go much farther to [fol. 158] a colored school than they would be required to go if they had the privilege of attending the white school. That is what you are trying to establish, isn't it?

Mr. Bledsoe: That is, if the Court please.

Judge Huxman: I think we can take judicial knowledge of the fact that that is inevitable where you have only four colored schools as against eighteen white schools.

Mr. Bledsoe: That is. You may take the witness.

Mr. Goodell: No questions.

ALMA JEAN GALLOWAY, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. John Scott:

Q. State your name to the Court, please.

A. Alma Jean Galloway.

Q. Mrs. Galloway, please speak right out enough so the Court and the reporter may hear you, please. Where do you live, Mrs. Galloway?

A. 428 North Lake.

Q. 428 North Lake.

A. Yes.

Q. Do you have a child or children of school age?

[fol. 159] A. Yes; I have two.

Q. Have two. How old are they?

A. One is six and one is five.

Q. And do they attend any of the public schools in the City of Topeka?

A. Washington School.

Q. Washington School. Do you know the approximate distance Washington School is from your residence?

A. I think it's sixteen blocks.

Q. How do they go to school?

A. Well, they take the school bus.

Q. Where does the school bus pick them up?
A. On the corner of Chandler and Greeley.
Q. How far is the bus pick-up point from your residence?
A. Well, it's two and a half blocks.
Q. Two and a half blocks. Are you located near any school that might be within close proximity of your home?
A. Yes, State Street School.
Q. State Street School. Have you ever had an opportunity to observe the conditions of the buses that take your children to school?
A. Well, no, I haven't.
Q. Are you required to fix a lunch in the morning?
A. Yes.
Q. And your children do not come home at noon, is that [fol. 160] correct?
A. No.
Q. What time do they arrive home in the evening?
A. Well, about five or ten minutes past four.
Q. I see. And what time do they leave in the morning?
A. About between 8:20 and 8:25.

Mr. John Scott: That will be all. You may cross-examine.
Judge Huxman: Any cross-examination?
Mr. Goodell: No.
Judge Huxman: You may step down.

(Witness excused.)

Sadie Emanuel, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. John Scott:

Q. State your name to the Court, please.
A. Mrs. Sadie Emanuel.
Q. Are you one of the plaintiffs in this actions, Mrs. Emanuel?
A. I am.
Q. Where do you live?
A. I live at 1606 East Third.
Q. 1606 East Third Street.

[fol. 161] A. Yes.

Q. Are you a parent of children of school age?

A. I have one boy in school.

Q. How old is he?

A. He is nine years old.

Q. And what school does he attend?

A. He attends Washington School.

Q. Washington School.

A. Yes.

Q. Do you know the approximate distance Washington is from your home?

A. Well, I don't know just exactly, but I imagine it would be from our place to Washington around about fifteen or sixteen blocks, I just imagine; I don't know.

Q. How does your child travel to school?

A. I send him to school on the city bus.

Q. State to the Court why you send your child to school on the city bus.

A. Well, when he was in kindergarten, the kindergarten teacher she picked him up at our home, and then he would return on the school bus in the evenings, and I would meet the school bus which he had about five blocks to come from the bus line when he was in kindergarten, and the reason why that I stopped him—after he got out of kindergarten and started in the first grade when I would [fol. 162] meet the school bus the children would be hanging out of the bus and when they would get so far the other larger children would push the smaller children on the ground, and I bought him a cap and when he came home he said some of the children pulled his cap off and threw it out of the bus, so we were only just one block from the city bus, and he has been riding on the city bus ever since, and I just didn't like it because it seemed that there wasn't any order on the school bus, and I just didn't like the condition; it was so crowded and congested until I just didn't like the idea so I send him to school on the city bus.

Q. And you pay his fare each and every day.

A. I sure do.

Q. Approximately how long have you been doing that, Mrs. Emanuel?

A. Ever since he has been in the first grade.

Q. What grade is he in now?

A. He is going into the fourth.

Q. Do you prepare a lunch for him in the morning?

A. Yes, I do.

Q. Therefore he stays at school and eats his lunch, is that right?

A. Yes.

Judge Huxman: Mr. Counsel, can't we stipulate and [fol. 163] agree that in all instances lunches are prepared, and the colored students stay from the time they come there in the morning until they go home at night.

Mr. Goodell: That would be true as to the children transported, but it is not an accurate statement as to——

Judge Huxman: That is what I mean, as to those who are transported. Can we stipulate that into the record that all colored school children who are transported stay at the school from the morning; they take their lunch with them and leave the school building only when school is completed in the afternoon.

Mr. John Scott: Yes, sir.

Mr. Goodell: The stipulation ought to be that they are not required to stay.

Judge Huxman: They are not required but, of necessity, they do that.

Mr. John Scott: Convenience.

Judge Huxman: They have no place else to go.

Mr. Goodell: Which is precisely like it is in the white schools where children live far away.

Judge Huxman: We will not add that on to it.

Mr. John Scott: That is your case.

[fol. 164] Judge Huxman: Nothing gained by asking each witness whether they prepare the lunch and whether their children stay there and don't come home until evening because that seems to be the pattern.

By Mr. John Scott:

Q. Is there a school located near your home?

A. Two blocks.

Q. Two blocks. What's the name of that school?

A. Lafayette School.

Q. Lafayette School.

Mr. John Scott: I believe that is all.

Judge Huxman: Any questions; cross-examination?
Mr. Goodell: No.

SHIRLEY MAE HODISON, having been first duly sworn, assumed the stand and testified as follows:

Direct Examination.

By Mr. John Scott:

Q. State your name to the Court, please.
A. Shirley Mae Hodison.
Q. Are you one of the plaintiffs in this action?
A. Yes.
Q. Where do you live?
A. 734 Garfield.
[fol. 165] Q. Do you have a child or children of school age?
A. I have one of school age.
Q. What is his name?
A. Charles Hodison, Jr.
Q. How old is he?
A. He is nine.
Q. Do you know what grade he is in?
A. He is in the fifth.
Q. What school does he attend.
A. Buchanan.

Judge Mellott: What school?
The Witness: Buchanan.

By Mr. John Scott:

Q. Does he ride the school bus?
A. Yes, he does.
Q. What time does he—do you prepare him to catch the school bus in the morning?
A. Well, I have him to leave about ten after eight.

Mr. Goodell: If the Court please, we don't want to be obstreperous. We object to this whole line of questioning on the basis that it could not furnish the basis of recovery, distance travelled, and a long line of decisions by the federal

courts have held that that is not such a situation that would invoke the 14th Amendment. I have a long line of decisions on that.

Mr. John Scott: We have——

[fol. 166] Mr. Goodell: That is, those are disparities that are bound up here in any school system, and it occurs within the white districts and that that is not a ground for invoking the equal protection of the laws.

Judge Huxman: The objection will be overruled and, if a study of the authorities should convince the Court that this testimony is incompetent, of course, it would be disregarded in reaching our conclusion. We can't stop to analyze all the cases at this stage.

By Mr. John Scott:

Q. What time did you say he left for school?
A. Ten after eight.
Q. Is that the time the bus arrives?
A. It's supposed to be there about a quarter after.
Q. And where do you catch the bus?
A. On 7th and Garfield.
Q. On 7th and Garfield. That is a block from your home.
A. Just about; I live the second house from the corner of 8th and Garfield.
Q. Do you know the approximate distance Buchanan School is from your home?
A. I am not sure; I believe it's about eight blocks, I imagine.
Q. Would you say twelve?
A. I am not sure.
Q. Do you know what time your child arrives at school?
[fol. 167] A. No, I don't.
Q. Is there a school located near your home?
A. Yes.
Q. What's the name of that school?
A. Clay.
Q. Clay School.

Mr. John Scott: It has already been stipulated about the lunches so we don't have to go into that.

Judge Huxman: Any questions?

Mr. Goodell: No questions.

JAMES V. RICHARDSON, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Bledsoe:

Q. State your name to the Court, please.
A. James V. Richardson.
Q. Where do you live, Mr. Richardson?
A. 1035 Jewell.
Q. 1035 Jewell. Do you have a—children of school age?
A. One boy.
Q. What is his name?
A. Ronald.
Q. Did you tell me how old he was?
A. Seven years old.
[fol. 168] Q. Seven years old. What school does he now attend?
A. Holy Name School.
Q. The Holy Name. That is a parochial school?
A. That's right, sir.
Q. Why do you send your child to a parochial school, Mr. ——
A. Simply because I do not believe in segregation.

Mr. Goodell: Move to strike out that testimony as incompetent, irrelevant and immaterial.
Judge Huxman: The objection will be overruled.

By Mr. Bledsoe:

Q. Now, did your child ever attend Buchanan School?
A. Yes, sir.
Q. How far is Buchanan School from you?
A. Oh, approximately ten or eleven blocks.
Q. How far is Lowman School from——
A. Two or three blocks.
Q. Two or three blocks.

Mr. Bledsoe: I believe that's all.
Judge Huxman: Any questions?
Mr. Goodell: No questions. You may step down.

(Witness excused.)

[fol. 169] LUCINDA TODD, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Bledsoe:

Q. State your name to the Court, please.
A. Lucinda Todd.
Q. Where do you live, Mrs. Todd?
A. At 1007 Jewell.
Q. Do you have a daughter of school age?
A. Yes, I do.
Q. Now what school does your daughter attend?
A. Buchanan.
Q. Buchanan School. How far is Buchanan School from your residence?
A. About ten blocks.
Q. About ten blocks. Is there a school nearer your home than——
A. Yes, there is.
Q. What school is that?
A. Lowman Hill.
Q. How far is that school from your residence?
A. About three blocks.
Q. Does your child ride the bus?
A. Yes, she does.
Q. What time does she leave in the morning?
[fol. 170] A. About twenty minutes of nine.
Q. About twenty minutes of nine. And of course she doesn't return for the noontime.
A. No.
Q. She does not. What time does your daughter get home in the evening?
A. About four fifteen, four twenty.
Q. And she rides—comes home on the bus, does she?
A. Yes, she does.
Q. Have you noticed the condition of that bus as to how many rides it?
A. Yes, I have; it's very crowded.
Q. Mrs. Todd, do you know of any instances where your daughter suffered from waiting for the school bus?

A. Oh, many instances; she has been stranded on the corner waiting for the bus from a half-hour to forty-five minutes many times.

Mr. Bledsoe: I believe that is all.
Judge Huxman: Any questions?
Mr. Goodell: No questions.
Judge Huxman: You may step down, please.
(Witness excused.)

[fol. 171] MARGUERITE EMMERSON, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. John Scott:

Q. State your name to the Court, please.
A. Marguerite Emmerson.
Q. Are you one of the plaintiffs in this action?
A. Yes, I am.
Q. Where do you live?
A. 1029 Grand.
Q. Are you a parent of a child or children of school age?
A. Yes, I have two.
Q. What are their names?
A. Claude Arthur and George Robert.
Q. How old are they?
A. They are nine and eight—nine and seven.
Q. Do you know what grades they are in?
A. They are in the second and fourth grades.
Q. What school do they attend?
A. Buchanan.
Q. How do they get to school?
A. On the school bus.
Q. What time does the school bus pick up your children?
A. Around a quarter to nine and ten minutes to nine.
[fol. 172] Q. Where do they catch the bus?
A. On 11th and Woodward.
Q. Has there ever been any instances that your children have missed the bus?
A. Yes, there has been.

Q. You can state to the Court what you did, if anything.
A. Well, they have missed the bus, and I have called the school, and they have sent the bus back after them.
Q. They sent the bus back after them.
A. Yes.
Q. Have there been any instances that they missed the bus and your child didn't go to school at all?
A. No, because when he has missed the bus before that I have sent him on the city bus.
Q. On the city bus, I see. Is there a school located near your residence?
A. Yes, there is.
Q. What's the name of that school?
A. Lowman Hill.
Q. How far is it from your residence?
A. About five blocks.
Q. About five blocks.

Mr. John Scott: That is all. You may cross examine.
Mr. Goodell: No questions.

[fol. 173] Judge Huxman: Step down, please.

(Witness excused.)

Zelma Henderson, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Bledsoe:

Q. State your name to the Court, please.
A. Zelma Henderson.
Q. Where do you live, Mrs. Henderson?
A. 1307 North Jefferson.
Q. Now, Mrs. Henderson, do you have children of school age?
A. Yes, I do; I have two.
Q. What school does your children attend?
A. McKinley.
Q. How old are your children?

A. Seven and five.

Q. Seven and five. Do you have a child in the kindergarten now?

A. Yes, she just completed the kindergarten.

Q. In what grade—the other?

A. In the first grade.

Q. Is there a school nearer your residence than McKinley School?

A. Yes, there is.

[fol. 174] Q. How far is that school from——

A. I would say approximately five blocks.

Q. What is the name of that school?

A. Quincy.

Q. What time does your children leave home in the morning?

A. All the way from 8:15 to 8:30.

Q. Do they ride the bus?

A. Yes, they do.

Q. And, of course, they don't come back for lunch.

A. No; the little girl did at noon, of course, but the little boy stayed all day.

Q. What time would they return home in the evening?

A. About 4:15.

Q. Now, tell the Court whether or not you prepare lunches for your son.

A. Yes, I prepare lunch but——

Mr. Goodell: Object to this as having already been stipulated to.

Mr. Bledsoe: If the Court please, I have something else I want to——

Judge Huxman: All right, you may ask.

By Mr. Bledsoe:

Q. Do you prepare lunch for your son?

A. Yes, I do.

Q. Tell the Court whether or not your son is able to eat his lunches.

[fol. 175] A. My son——

Mr. Goodell: We object to that; that might depend on a lot of things rather than that the school board——

Judge Huxman: I think the objection will be sustained.

By Mr. Bledsoe:

Q. Have you noticed any physical difference in your son due to his eating the lunch?

A. Yes.

Mr. Goodell: Wait a minute. We object to this as this witness is not qualified to give an opinion of that character.

Judge Huxman: Objection sustained.

By Mr. Bledsoe:

Q. Have you observed your son; what was his condition?

A. One month after starting to first grade he was ill.

Mr. Goodell: Just a minute, we object to that unless—we are not trying the physical elements of these children unless it's connected up with discrimination and violation of the 14th Amendment.

Judge Huxman: I think the answer would be immaterial. Furthermore, the question is so vague; you couldn't tell what condition was referred to. What effect the eating of a lunch would have upon one individual wouldn't throw any light on the constitutional question involved. The objection [fol. 176] is sustained.

Mr. Bledsoe: That will be all. Thank you.

Mr. Goodell: No questions.

(Witness excused.)

Silas Hardrick Fleming, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. John Scott:

Q. State your name to the Court, please.

A. Silas Hardrick Fleming.

Q. Where do you live, Mr. Fleming?

A. 522 Liberty.

Q. Are you a parent of a child or children of school age?

A. Yes, sir.

Q. What are there—how many?

A. Two.

Q. What are their names?
A. Silas Hardrick Fleming, Jr., and Duane Dean Fleming.
Q. And state to the Court their ages?
A. Well, ten and seven.

Mr. Goodell: What was that again, please?
The Witness: Ten and seven.

By Mr. John Scott:

Q. What school do they attend?
A. Washington School.
[fol. 177] Q. Do you know the approximate distance Washington is from your school—I mean from your home.
A. Oh, between ten, twelve blocks, I would say; I don't know the exact distance.
Q. How do they get to school?
A. They ride the East Tenth Street bus.
Q. They don't ride the school bus.
A. No.
Q. You state to the Court why they don't ride the school bus.
A. Well, the school bus is about six or eight blocks away. It comes across Brannan Street; that is about six or seven blocks away from Sixth and Liberty.
Q. You mean that is the pick-up point?
A. That's right.
Q. I see. Go ahead. Well, how far do you have—the children have to walk to catch the regular city bus?
A. Half a block going to school and about a block starting home.
Q. Do you pay their fare?
A. Yes, sir.
Q. Each and every day?
A. That's right.
Q. Is there a school located near your home?
A. Yes, there is one two blocks away from me, and there [fol. 178] is one about four or five blocks. They pass two schools going to their school.
Q. They pass two schools.
A. Two white schools, yes.
Q. What's the name of those schools, if you know?
A. Lafayette is one and Parkdale the other.

Q. Which of the two schools is closer to your home?

A. How's that?

Q. Which of the two schools that you just mention are closer to your home?

A. I guess it's Parkdale; it's two blocks away, Parkdale.

Q. You are mistaken——

A. It's Lafayette.

Q. That's right. Is there any other reason you don't permit your children to ride the school bus?

A. How's that?

Q. Is there any other reason that you don't permit your children to ride the regular school bus?

A. No; my only reason is that it's just about as far away from the bus as they would be from the school. They are only a few blocks away from the school to pick up the bus. I will ask the Court, Your Honor——

Judge Mellott: I can't hear the witness.

The Witness: I would ask this for a few minutes to explain why I got into the suit whole soul and body.

[fol. 179] Mr. Goodell: We object to the voluntary statement.

Judge Huxman: I can't hear what you say.

Mr. Goodell: He wants to explain why he got in with the other plaintiffs to bring this lawsuit.

Mr. John Scott: He has a right to do that.

Judge Huxman: Didn't you consent to be a plaintiff in this case?

The Witness: That's right.

Judge Huxman: You did not?

Judge Mellott: He said he did, but he wants to tell the reason why.

The Witness: I want to tell the cause.

Judge Huxman: You want to tell the Court why you joined this lawsuit?

The Witness: That's right.

Judge Huxman: All right, go ahead and tell it.

The Witness: Well, it wasn't for the sake of hot dogs; it wasn't to cast any insinuations that our teachers are not capable of teaching our children because they are supreme, extremely intelligent and are capable of teaching my kids or white or black kids. But my point was that not only I and

my children are craving light, the entire colored race is [fol. 180] craving light, and the only way to reach the light is to start our children together in their infancy and they come up together.

Judge Huxman: All right, now you have answered and given us your reason.

The Witness: That was my reason.

Mr. John Scott: Thank you.

By Mr. John Scott:

Q. Just one more question, Mr. Fleming. What time do your children leave in the morning to go to school?

A. About 8:20.

Q. What time do they get home in the evening?

A. Oh, about 4:10 or 4:15; sometimes the bus is a little early and sometimes late.

Judge Huxman: The Court is going to adjourn presently at 12:00 o'clock. Before we adjourn, we would like to request that counsel on both sides meet with the Court in the district courtroom chambers.

We will adjourn to 1:30. We would like to have counsel meet us at 1:15 in the district courtroom chambers.

You may announce a recess of the court until 1:30.

(The court then, at 12:00 o'clock noon, stood at recess until 1:30 o'clock p.m., at which time court was reconvened [fol. 181] and the following further proceedings were had:)

Judge Huxman: You may proceed.

Mr. Goodell: If the Court please, we do have one of the records that was asked for on the schedule, the hourly schedule, of the elementary schools. I have that record.

Judge Huxman: Is that what they promised to furnish?

Mr. Goodell: Yes.

Judge Huxman: I don't think we have that in the record here. One of those should be marked.

Mr. Goodell: Dr. McFarland said he would furnish it. It was what the witness, McFarland, Dr. McFarland said he would furnish.

Judge Huxman: And that has been prepared.

Mr. Goodell: This is it.

Judge Huxman: Is this offered as an exhibit in the case?

Mr. Goodell: Yes.

Judge Mellott: What is the next exhibit number, Mr. Clerk?

The Clerk: "N".

Judge Mellott: "N". Let it be admitted as Defendants' Exhibit "N".

[fol. 182] Defendants' Exhibit "N", having been offered and received in evidence, is contained in the case file.

Hugh W. Speer, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Will you please tell the Court your name.

A. Hugh W. Speer.

Q. And what is your occupation?

A. I am chairman of the Department of Education at the University of Kansas City.

Q. Have you ever been in public school work, Mr. Speer?

A. Yes, I was in public school work in Kansas for about twelve years.

Q. You mentioned the Department of Education, University of Kansas City, what is the function of the Department of Education?

A. Our chief function at the present time is the training of elementary school teachers.

Q. Do you train teachers eligible to teach in Kansas?

A. Yes, and a number of them do.

Q. How many members are on the teaching staff of your Education Department under your supervision?

[fol. 183] A. At the present about twenty.

Q. Do you have any other responsibilities at your university?

A. Well, I am a member of the President's Advisory Committee; I am chairman of the Curriculum Committee of the university.

Q. Do you regularly come into contact with elementary schools?

A. Yes, we conduct an elementary school of our own. We call it the demonstration school in the summer. We do practice teaching in the public schools in our locality, which means we are in and out of the schools constantly.

Q. Would you tell us something of your educational background, Dr. Speer; where did you attend public school?

A. Attended public schools at Olathe, Kansas.

Q. And what universities did you attend and what degrees do you hold?

A. I hold a Bachelor's Degree from American University in Washington, D. C., a Master's Degree from George Washington University, and a PhD. Degree from the University of Chicago.

Q. What was your major field in your doctorate?

A. Evaluation.

Q. Would you please explain to the Court what evaluation means.

A. Evaluation is a rather general term. We sometimes evaluate educational programs or buildings or the behavior changes that are produced in children as a result of educa-
[fol. 184] tional programs.

Q. Do you belong to any professional organizations, Dr. Speer?

A. I am a key member of the National Education Association, a member of the Missouri State Teachers Association, a member of the National Vocational Guidance Association; that is about it.

Q. Do you hold any honors or scholarships?

A. I have recently been granted a Fullbright scholarship by the United States Department of State to lecture on education in Iran.

Q. What will be the purpose of your visit in Iran?

A. I will work through the University of Tehran to help improve the school system of Iran.

Q. Dr. Speer, have you ever made an examination of the elementary schools of Topeka?

A. Yes.

Q. When?

A. During the last month.

Q. Why did you make this examination, Dr. Speer?

A. At the request of counsel for plaintiffs.

Q. What aspects of the schools did you examine during your examination?

A. We examined the more important aspects that we thought had a bearing on the major issues in this case. We [fol. 185] have examined the buildings, the curriculum, the equipment, the library, the preparation and experience of the teaching staff and the salaries, the class loads, the size of classes and a few other minor points.

Q. Now, I am going to ask you some questions about your findings. What did you find concerning the comparison of teachers in the colored schools with those of the white schools?

A. I found only minor differences between the two groups, and these differences tend to balance each other. For example, in preparation, all the colored teachers have Bachelor's degree and all but 15% of the white teachers have Bachelor's degrees. On the other hand, in terms of Master's degrees, 12% of the colored teachers have Master's degree and 15% of the white teachers hold Master's degrees. The colored teachers average twenty years of experience, and the white teachers nineteen years.

Q. Dr. Speer, what did you find concerning class size and teaching load; would you explain to the Court what teaching load is?

A. Teaching load is the number of pupils which the teacher has each day and, again, here I found not much difference. There is some difference at the kindergarden level where the colored kindergartens are somewhat smaller. I think the white average is 42; the colored aver- [fol. 186] age about 25. But, in grades 1 to 6, the average is very close together; 34 in the white schools and 32 in the colored schools. Again, I would say, I found no significant difference in teacher load or teacher preparation.

Q. In examining the two sets of schools, negro and white, did you find any provisions for special rooms in any of these?

A. I found provision for two special rooms for white children; I found no provision for special rooms for any colored children.

Q. Now, did you study all of the school buildings in Topeka, Dr. Speer?

A. Yes, we examined data in the Board of Education files on all school buildings, and we personally visited, Dr. Buchanan and I and some of my other assistants, we visited about two-thirds of the schools in the city.

Judge Hill: If counsel will let me interrupt, what do you mean by special rooms?

Mr. Greenberg: Well, if I may explain, in the white schools there are rooms for specially retarded or handicapped children, whereas in the negro schools there are none.

Judge Hill: Very well.

By Mr. Greenberg:

Q. Did you examine these schools with regard to their age and their insured value?

A. Yes. We——

[fol. 187] Judge Huxman: With regard to what?

Mr. Greenberg: Regard to their age and insured value.

The Witness: On the revised list furnished by the Board of Education we secured the ages of the buildings and also from the insured values of buildings, as provided by the Board of Education, in the exhibits, we made a study of the current values in terms of the insured values.

By Mr. Greenberg:

Q. Why did you use insurance value rather than construction cost, Dr. Speer?

A. Construction cost back over the sixty-year period dates these buildings would vary a great deal which is obvious. Therefore, we could not make comparisons on construction cost; but we assumed that the Board of Education and their insurance companies have arrived accurately at the current value of buildings, and that those values are reflected in the insurance figures furnished by the board.

Q. Is the total insurance value—does the total insurance value of the building reflect accurately the value of the building as broken down into instructional units?

Mr. Goodell: We object to this testimony from this witness. There is no foundation laid for his expert knowledge about evaluating of physical property. The testimony

[fol. 188] shows he is an educator, that is true. That is in the field of engineering and architects.

Judge Huxman: The question presupposes a knowledge he might not have because sometimes you only insure a building for three-fourths of its value and others may be insured for 100%.

Mr. Goodell: Plus the additional reason for the objection is that it stands admitted the physical value of the physical plants on two exhibits.

Judge Huxman: We will let the witness answer.

Mr. Greenberg: May I ask him whether or not, as an educational expert he has been trained in evaluating the physical plants of buildings?

Judge Huxman: On the basis of insurance?

Mr. Greenberg: On the basis of insurance.

Judge Huxman: Mr. Counsel, here's the difficulty with that question: Suppose it is the policy of the board to insure Buildings for 25% of their—75%——

Mr. Greenberg: I intend to bring out an explanation of that particular factor.

Judge Huxman: You don't know the basic of the insurance.

Mr. Greenberg: They insure on the basis of 80%, Your Honor, and I intend to bring that out.

[fol. 189] Judge Hill: That would be hearsay from this witness, wouldn't it?

Mr. Greenberg: It has been admitted in evidence by stipulation.

Judge Hill: All right.

Judge Huxman: They are insured at 80% of their value, is that in the stipulation?

Mr. Greenberg: Your printed sheet of insurance values of each building; the one you have right there.

Mr. Goodell: No, that doesn't mean that. We have got an insurance clause that 80% on total loss is paid; that is the type of insurance, but that doesn't mean that their insurability of the buildings is limited to 80%.

Judge Huxman: I think the objection to the question will be sustained.

By Mr. Greenberg:

Q. Dr. Speer, in making your evaluation, did you take into account the fact that some buildings might have had some unused classrooms?

A. Yes.

Q. What significance did you ascribe to that fact?

A. Well, an unused classroom is very limited value to the school. We assume that as most schools operate one class with one teacher, can profitably use one classroom.

[fol. 190] Q. Now, did you conduct a visual inspection of any of the buildings in Topeka as well as inspecting the records which you have indicated?

A. Yes, we did.

Q. How many schools did you inspect visually?

A. We inspected I think it was fourteen directly.

Q. And what criteria did you use to determine which schools you would evaluate merely on the basis of the records and which schools you would evaluate by a personal visit?

A. We first examined the records on all of them, and then, in order to substantiate our findings, we thought we should visit at least a representative sample and we visited in all two-thirds of them, making sure we got the older buildings and the newer buildings and some of the medium-aged buildings so that we would have a representation of the complete range.

Q. What criteria did you use in your visit?

A. We used the usual criteria that are recognized in this area, such as sight, the nature of the structure, the plan of the building, the classrooms, the service rooms, the kindergartens, library books, the supplies, the safety features, the maintenance features. I might add these are the kind of features that are included by such authorities as Holly and Arnold in their scorecard for elementary school [fol. 191] buildings. Dr. Holly is from the Ohio State University and Dr. Arnold is from the University of Pennsylvania.

Mr. Goodell: We object to this as hearsay, about what some book says about evaluation.

Judge Huxman: He is testifying as to the basis of his

knowledge of works on this. I think it's competent. This is an expert witness. He may testify.

Judge Mellott: There seems to be no unanswered question.

By Mr. Greenberg:

Q. In order to save the time of the Court, Dr. Speer, did you make any general observations that seemed to apply to all of the buildings you visited?

A. Yes, I think I can. First of all, in regard to gymnasiums and auditoriums, the facilities, all in all, seemed to be about equal between the colored schools and the white schools. Three-fourths of the colored schools have a combined gymnasium-auditorium, and we would say approximately that proportion of the white schools have similar facilities. However, I should add that none of the colored schools have anything like the luxurious facilities that we would find in the Oakland building or the State Street building or the Gage Building, for example.

Q. How do the various——

A. I might, if I may——

Q. Go ahead.

[fol. 192] A. —add one or two other general observations to save time. The buildings are all well kept, well preserved, and I think well maintained. Dr. Buchanan and I felt that that was equal throughout the system.

Q. How do the buildings compare as to their ages, Dr. Speer?

A. The ages of the white buildings average twenty-seven years, according to the figures furnished by the board, and the ages of the colored buildings thirty-three years. In other words, the white buildings average six years newer. However, I think we should add another feature here. Inasmuch as the newer buildings tend to be larger, we found this to be the case, that according to last year's enrollment figures, 45% of the white children attend schools that were newer than the newest colored buildings, whereas 14% of the white children attended schools that were older than the oldest colored building. To state another kind of a comparison, 66%, or two-thirds, of all white children attend schools that are newer than the average age of the colored buildings.

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By Mr. Greenberg:

Q. In order to save the time of the Court, Dr. Speer, did you make any general observations that seemed to apply to all of the buildings you visited?

A. Yes, I think I can. First of all, in regard to gymnasiums and auditoriums, the facilities, all in all, seemed to be about equal between the colored schools and the white schools. Three-fourths of the colored schools have a combined gymnasium-auditorium, and we would say approximately that proportion of the white schools have similar facilities. However, I should add that none of the colored schools have anything like the luxurious facilities that we would find in the Oakland building or the State Street building or the Gage Building, for example.

Q. How do the various——

A. I might, if I may——

Q. Go ahead.

[fol. 192] A. —add one or two other general observations to save time. The buildings are all well kept, well preserved, and I think well maintained. Dr. Buchanan and I felt that that was equal throughout the system.

Q. How do the buildings compare as to their ages, Dr. Speer?

A. The ages of the white buildings average twenty-seven years, according to the figures furnished by the board, and the ages of the colored buildings thirty-three years. In other words, the white buildings average six years newer. However, I think we should add another feature here. Inasmuch as the newer buildings tend to be larger, we found this to be the case, that according to last year's enrollment figures, 45% of the white children attend schools that were newer than the newest colored buildings, whereas 14% of the white children attended schools that were older than the oldest colored building. To state another kind of a comparison, 66%, or two-thirds, of all white children attend schools that are newer than the average age of the colored buildings.

Q. Dr. Speer, how do the colored schools compare to the

white schools in regard to the insured value per available classroom?

A. The average for the white schools is $10,517, and the average for the colored schools is $6,317. Or, stated another way, the insured value per available classroom is 66% [fol. 193] higher in the white schools.

Q. Dr. Speer, did you examine the curriculum in the schools in the City of Topeka?

A. Yes.

Q. Tell the Court what you mean by "curriculum", also.

A. By "curriculum" we mean something more than the course of study. As commonly defined and accepted now, "curriculum" means the total school experience of the child. Now, when it comes to the mere prescription of the course of study, we found no significant difference. But, when it comes to the total school experience of the child, there are some differences. In other words, we consider that education is more than just remembering something. It is concerned with a child's total development, his personality, his personal and social adjustment. Therefore it becomes the obligation of the school to provide the kind of an environment in which the child can learn knowledge and skills such as the three "R's" and also social skills and social attitudes and appreciations and interests, and these considerations are all now part of the curriculum.

Q. I see, Dr. Speer. Do you have anything further to say?

A. Yes. And we might add the more heterogeneous the group in which the children participate, the better th*an* can function in our multi-cultural and multi-group society. For example, if the colored children are denied the experience [fol. 194] in school of associating with white children, who represent 90% of our national society in which these colored children must live, then the colored child's curriculum is being greatly curtailed. The Topeka curriculum or any school curriculum cannot be equal under segregation.

Q. Dr. Speer, I would like to go through these—through the school system rather rapidly now school by school and have you point out key characteristics you found as to each school.

What did you find concerning the Buchanan School in regard to these?

A. The Buchanan School is thirty years old; the insurance

value per available classroom is $5,623. It has five rooms, all of which are in use, including a double room divided with sliding doors that is used for an auditorium and also for a playroom. The furniture is quite old, reflecting the age of the building. The site and playground is only fairly adequate. The books in the building are generally old and in poor condition. Many titles date back to the 1920's and even some before 1920.

Q. What did you find concerning Gage School, Dr. Speer?

A. The Gage School, a white school, is twenty-three years old and has an insured value per classroom of a little more —of $9,136. It has fifteen classrooms all in use. The building is more crowded than most, although the classes run [fol. 195] about average for the system. It has a good auditorium with—it's combination—it has a kitchenette that adjoins the auditorium and has an attractive kindergarten room with murals, toilet facilities and a fireplace; and also it has some old titles among the books, but a fair proportion of the books in this building are of a newer and better — than we found elsewhere. It has a very excellent and spacious playground.

Q. Concerning Lafayette School, Dr. Speer.

A. Lafayette is forty-eight years old, has an insurance value per classroom of $3,373.

Mr. Goodell: While he is making his testimony, would it be better if he designates which are the white schools.

Mr. Greenberg: Dr. Speer, when you describe a school, tell us also whether it's a negro school or white school.

The Witness: Thus far——

By Mr. Greenberg:

Q. Buchanan is what?

A. Colored.

Q. What about Gage?

A. White.

Q. What about Lafayette?

A. Is white. The Lafayette building is forty-eight years old, insured for $3,373. Although not the oldest, this is [fol. 196] certainly one of the poorest buildings in Topeka. The comprehensive plan suggested in 1942 by the planning commission recommended that it be abandoned but it still

houses 300 pupils. Small, the auditorium is small, and the playground is small. The kindergarten is fair; books are only fair. There are two fire escapes, but the safety factor is somewhat questionable partly due to the number of children who are housed in the building.

Q. Tell us your findings concerning the McKinley School, Dr. Speer.

A. McKinley is a colored school; it's forty-four years old. It's insured value per available classroom is $2,477. The building was well constructed. It has wooden floors and stairs, which make it something of a fire hazard. It has one fire escape. Approximately three-fourths of the books were too old to be suitable for school use. The comprehensive plan for the City of Topeka, prepared by the City Commissioner——

Mr. Goodell: If the Court please, we object to this witness telling about some book comprehensive plan. It's outside the scope of the issues in this case; secondly, it's not the best evidence; it's hearsay as far as this witness is concerned.

Mr. Greenberg: If the Court please, may I ask Dr. Speer whether such city plans and city surveys are things which [fol. 197] an educator customarily studies in making an evaluation.

Judge Huxman: What comprehensive plan are you referring to, Doctor?

The Witness: I am referring, Your Honor——

Judge Huxman: Bartholomew plan?

The Witness: I am referring, Your Honor, to the one that was mentioned in court this morning that was prepared jointly by the Board of Education, the City Commissioners, and, I think——

Mr. Goodell: Now, if the Court please, that is this witness' idea that it was prepared jointly.

Judge Huxman: That plan was ruled out. We haven't received or permitted any evidence concerning that plan. I think the witness should refrain from reference to this comprehensive plan.

The Witness: This—the site of the McKinley building is not at all attractive and hardly adequate for school purposes. In other words, we might say it has very poor aesthetic value.

By Mr. Greenberg:

Q. Would you tell us what you found concerning Monroe School?

A. Monroe. Colored building, is twenty-four years old; it's valued at $9,760. This is, in our judgment, the best of the colored buildings. It's well constructed, has tile floors. [fol. 198] Again, however, many of the books are too old for good school use. The site is rather small, and the building and site are not very attractive.

Q. And tell us about what you found concerning Oakland School, Dr. Speer.

A. The Oakland School is white; it's only one year old. It's insured value per available classroom is $23,906. It's a beautiful structure. It's about the last word in school buildings; has modern furniture, asphalt tile floors, acoustical ceilings, good lighting, good heating, darkroom for audio-visual aids, office vault, public address system for use of radio programs, music programs, has a beautiful, large combination auditorium-gymnasium very suitable for community gatherings and parent meetings, large dining and social room with a kitchen adjoining; well adapted for community meetings; has a beautiful kindergarten room with new equipment; the books still not ideal but they are very good. All in all, it's an excellent building that should provide for one of the best educational opportunities.

Q. And tell the Court what you found concerning the Parkdale School.

A. The Parkdale, white, is age twenty-seven, value $8,016. The building appears to have been rather poorly constructed. It has a stucco exterior for the most part. It is [fol. 199] in rather an attractive location with ample playground area. The kindergarten room is quite dull; the books are just fairly good.

Q. And would you do the same concerning the Polk School.

A. The Polk School, for white children, is sixty-four years old; it's the oldest building in Topeka. It's insured value per room is $2,547. It is the oldest building in Topeka, but it is not, in my judgment, the worst building. It is surprisingly substantial, surprisingly attractive on the inside. Has a nice auditorium, two playrooms in the basement, built

of native stone; has two fire escapes; the books in the building are very good.

Q. And what did you find concerning the Potwin School?

A. The Potwin School is white, age two years, value per room, $18,100. It's a beautiful building with very modern features. It has a spacious playground which is surfaced with asphalt. It has a beautiful auditorium, also double playrooms. The books are mostly good, at least dating from the 1930's on, mostly. It has a kitchen, a visual aids room. This building seems to be filled to capacity already although only two years old. It is, all in all, one that should provide an excellent educational opportunity.

Q. And what about the Randolph School, Dr. Speer.

A. The Randolph School, a large school, age twenty-four, [fol. 200] value $6,947. It's a large building which is reasonably good. The desks are old, but the books are fairly good, the majority of them dating in the 1940's. It has a very attractive kindergarten with a fireplace and good decorations. It has an excellent, spacious playground. It has a beautiful row of trees which highlight the landscaping. Although it's a little old, this building is still capable of providing a very good educational opportunity. It has a small combination auditorium-gymnasium which is not adequate for the entire enrollment.

Q. Would you please tell the Court what you found concerning State Street School.

A. State Street is a white school, age eleven years, insured value per classroom, $13,880. It's an excellent building, beautifully located, well landscaped; most of the new features, such as a public address system, beautiful auditorium, adequate gymnasium, excellent playground, has a kitchen, library room; the books are fairly good but not in keeping with the building. All in all, the facilities are available to provide a very good educational opportunity, one of the best.

Q. Would you tell the Court what you found concerning Sumner School.

A. The Sumner School is white, age fifteen years, value $15,936 per room. It's another excellent building; beautiful [fol. 201] auditorium, a large good gymnasium, has its public address system; the books are good; very attractive

kindergarten. Again, the facilities are available for an excellent educational opportunity.

Q. Would you do the same concerning the Van Buren School.

A. Van Buren is a white school, age forty-one years, value $6,030 per classroom. Although it's an old building, it has steel stairways which eliminates some fire hazard. It has an auditorium and a playroom; has good pictures and good books. The one fire escape, however, is approached through a window on the second floor which might be locked or hard for children to reach in an emergency. However, the building can still provide a fair educational opportunity.

Q. Would you tell the Court what you found concerning the Washington School.

A. Washington is a colored school, thirty-six years old, valued at $6,284. It's a fairly good building in a rather unattractive setting. One room seemed to be set aside for books. The books were fair; better than in most of the colored buildings. The faculty here—there was evidence to lead us to believe that the faculty here were doing the best to make the most of their facilities.

Q. Are there other buildings that you did not visit, Dr. Speer, but concerning which you have data.

[fol. 202] A. Yes, there are, I think, eight other buildings that I have this data on.

Q. Could you rapidly go down that list and tell the Court what data you found.

A. Yes, I will very quickly read age first and value second, if I may.

Central Park, white, thirty-nine years old, $5,160.

Clay, White, twenty-five years old, $12,750.

Grant, thirteen years old, $15,336. Grant is a white school.

Lincoln, a white school, thirty-five years old, $4,610.

Lowman Hill, a white school, forty-eight years old, $5,220.

Quincy, white building, forty-seven years old, $4,040.

Quinton Heights, thirty-eight years old, $3,024.

I might mention here that there is a new building now under construction to be called the Southwest building which, I presume, will be available sometime during the

coming year and, by our formula, the insured value per classroom should be about $26,660.

Q. Now, Dr. Speer, you have gone through all the schools [fol. 203] in the City of Topeka, and I would like to ask you some hypothetical questions which I would like you to answer on the basis of your study of the schools in the City of Topeka and on the basis of your knowledge and experience and study as an educator.

I want you to assume the following set of facts, Dr. Speer: That a negro child who lives in Topeka, where there are racially segregated schools, attends the Buchanan School, although if there were not racial segregation in the City of Topeka, because of where he lives, he would otherwise attend the Randolph School, would you say that on the basis of the evidence you have given above and the other factors which I mentioned, that he obtains the same educational opportunity at Buchanan that he would obtain if he attended Randolph?

Mr. Goodell: To which we object as the hypothetical question assumes a fact not proven, and the fact assumes another fact that is contrary to some evidence. The fact it assumes that if the child lived at Randolph and there wasn't racial segregation he would attend Randolph. It assumes that fact. It isn't necessarily so. The child, even if you didn't have segregation, might not prefer to go to Randolph. He might prefer to go to some school where he wasn't outnumbered by fifty to one. Object to the question in the present form because it assumes a hypothe- [fol. 204] tical fact unsupported by any evidence.

Judge Huxman: You may answer, Doctor.

The Witness: The question, as I understand it——

Mr. Greenberg: (To reporter) Would you read it back, please.

(The last preceding question was read by the reporter.)

By Mr. Greenberg:

Q. What is your answer to that question, Dr. Speer?

A. No, I would say he would not get the same educational opportunity for some of the following reasons: First of

all, the Buchanan building is an older building; it's thirty years old; Randolph is twenty-four years old. The insured value per classroom for Buchanan is $5,623; for Randolph it's $6,947. To look at some of the details of the buildings, Buchanan has no combined gymnasium-auditorium; Randolph has one that is not completely adequate but it will hold several grades at one time. The furniture——

Mr. Goodell: Pardon me, I want to interpose another objection, that this has no probative force to show denial of equal protection of the law on this sort of a comparison because he is now demonstrating that because—that an inequality exists because some physical plants are newer [fol. 205] and bigger and better than other physical plants. He is comparing, it's true, with a colored plant, but he is also in the other part of his testimony—he has shown that the same disparity exists between many white schools as to the newer school where we have very old schools, very low cost per capita per room, classroom, and also the testimony very obviously shows no school system in the world could have buildings equal because newer buildings necessarily incorporate modern facilities not known when they were built twenty or thirty years ago.

Mr. Greenberg: May I answer that, Your Honor?

Mr. Goodell: I address that to the Court, not you.

Mr. Greenberg: I didn't ask you whether I could answer it.

Judge Huxman: The witness may answer.

The Witness: Proceeding, on the other hand, we might say that the Randolph building has these features, a much more attractive kindergarten room, more spacious playground, much more attractive surroundings which adds to its aesthetic educational value, and I would add, if I may consult my notes a moment here——

Mr. Greenberg: Go ahead.

The Witness: That the books in the Randolph School are better than the books in the Buchanan building, in [fol. 206] my judgment. There are better heating and lighting in the Randolph building, and I think I would add, Your Honor, that most important of all the curriculum in the Randolph building provides a much better educational opportunity than the one in the Buchanan building, be-

cause, in the Randolph building, the colored child would have opportunity to learn to live with, to work with, to cooperate with, white children who are representative of approximately 90% of the population of the society in which he is to live.

By Mr. Greenberg:

Q. Now, Dr. Speer, rather than asking you the same question again, I would like you to answer the same question, comparing the Gage and the Buchanan Schools.

Judge Huxman: Would your answers be substantially the same, based upon substantially the same reasons?

The Witness: Some of the reasons would be the same, Your Honor. However, I believe this particular comparison the difference is greater.

Judge Huxman: Well, would be a difference of degree, otherwise your answer would be the same.

The Witness: Some of the specific details might be different.

Judge Huxman: Does that satisfy you, Mr.——

[fol. 207] Mr. Greenberg: That is all right; that satisfies us, yes.

By Mr. Greenberg:

Q. I would like to ask you the same question concerning a comparison of Sumner and Monroe Schools, Dr. Speer.

A. Sumner and Monroe. Again I would say for some of the same kinds of reasons that the Sumner building would provide a better educational opportunity.

Judge Huxman: May I ask the doctor a question?

Mr. Greenberg: Yes.

Judge Huxman: To be sure I understand his answer, is one of the reasons which is common to all three of these, your reason that they are by segregation denied in all three of these schools the opportunity to mingle and live with the white children, which they would otherwise have and that, to you, is an important factor, is that part of your answer?

The Witness: Yes, Your Honor, that would enter into all of them.

Judge Huxman: I was quite sure that was it, but I wanted to be clear in my own mind that that was a part of your answer in all of these schools.

By Mr. Greenberg:

Q. Dr. Speer, I would like you to make a similar comparison between State and Washington Schools.

[fol. 208] A. The same curriculum reasons, of course, apply and, in addition, we find, as I stated in earlier testimony, that the State Street School is one of the better schools, and it has many features such as the P. A. system and a beautiful auditorium, an excellent playground, a library room, a kitchen that can be used to provide a considerably better educational opportunity than could be provided in the Washington School.

Mr. Greenberg: Your witness.

Judge Huxman: You may cross examine.

Cross-examination.

By Mr. Goodell:

Q. Dr. Speer, if I understand your testimony correctly, boiled down to—as to the physical facts on the comparison of buildings and facilities feature of it, eliminating the racial feature, is it your opinion that any school, white school, that is considerably older and inferior and a wide disparity as to modern facilities, that that child going to such a white school is likewise being denied an equal opportunity of education?

A. It is unequal in another sense, I would say, if I understand your question correctly. Would you mind repeating the crux of it; I am not sure that I understand you.

Q. What I am trying to say is, eliminating the racial feature and restricting your opinion entirely to comparison of plants, facilities and accessories, will you still [fol. 209] say that a child, a white child, who goes to one of these other schools, such as Lafayette, Quinton Heights, Polk and some of these old schools, and Lowman, are

denied equal educational opportunities as against children —as compared to children who live in a territory such as Oakland and Randolph and Potwin and get to go to those new schools.

A. A child might be—might have an inferior educational opportunity in some respects, but he would not have the stigma of segregation, nor be denied the opportunity to mix with the majority group of the population. Also——

Q. I said eliminating that feature of it. Other than that, do you consider that it's an inferior opportunity as far as the white child is concerned so that he is denied an equal opportunity of education, eliminating the racial thing.

A. It might be if all other facilities are equal, but that is an accident of geography.

Q. Well, you made comparisons between some of the best white schools we have here in town to the colored schools, haven't you?

A. Yes, sir.

Q. Now, while we are on that subject, I will ask you to turn to Exhibit "K", which is the Board of Education's record pertaining to the original cost of these buildings [fol. 210] and also, in the same connection——

A. I don't have a copy of that here, sir.

Q. I will step over here and let you see it. What I have marked on my copy here in red are the negro schools; what I have marked in blue pencil are the white schools; you understand?

A. Yes, sir.

Q. Now, I will direct your attention, if the schools that were built about the same time, the white schools, as the colored schools, if this exhibit doesn't show the same—practically—outlay of cost and, in some instances, more money spent for structural, or the school, and land acquisition than there were for white schools that were built at that same period of time.

A. I think that may be possible.

Q. Doesn't the exhibit show that, the records of the Board of Education.

A. Which two buildings do you mean?

Q. Well, compare Quinton Heights, which was built in 1913, at a cost of $12,640.

A. With what?

Q. We will get that in a minute, and McKinley, which was built six years earlier at a cost of $51,000 for the structure.

A. I would say that between 1907 and 1913 building costs might have fluctuated a great deal, and I don't think— [fol. 211] I would not base a comparison on building—on construction cost with that many years intervening. That is why we used insurance costs which are supposed to be current and accurate as prepared by the Board of Education.

Q. Let's compare Lowman Hill, which is a white school built, according to the exhibit, in 1906, with McKinley.

A. May I correct you? It was built in 1901 and an addition in 1906.

Q. All right. Compare that to McKinley School.

A. McKinley School was built in 1907, six years later; again there may have been considerable difference in construction costs over a six-year period. They sometimes change very rapidly to the best cycle and other things.

Q. Let's look at the exhibit on the insurance values; don't you see disparity between the old white schools and the new white schools?

A. That is possible.

Q. On the present insurance table——

Judge Mellott: What is the exhibit on the insurance?

Mr. Goodell: "L".

By Mr. Goodell:

Q. I call your attention specifically to some schools shown on this exhibit and their present insurance values as shown by this exhibit. Quinton Heights has a total [fol. 212] structure insured value of $14,000, doesn't it?

A. Yes, sir.

Q. Van Buren has an insured value of $46,800, doesn't it?

A. Yes, sir.

Q. That is a white school. Washington has an insured value of $64,800, doesn't it?

A. Yes, sir.

Q. Monroe has an insured value of $112,000, doesn't it?

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Q. That is a white school. Washington has an insured value of $64,800, doesn't it?

A. Yes, sir.

Q. Monroe has an insured value of $112,000, doesn't it?

A. Yes, sir.

Q. So there you have got three white schools, all of which are lower present value than the colored schools, isn't that right?

A. If I may express my view, my basis, you cannot compare building by building on—even on insured cost because some buildings are larger than others. Therefore, the only basis I was able to arrive at was an insured value per available classroom. You have to have some kind of a common yardstick to use on all buildings. For instance, some of those buildings are twice as big as others and, therefore, their value would naturally be proportionately greater.

Q. Do you know of any school system in the United States—not just Topeka—in the United States, that has buildings that are equal, that there isn't great differences based upon when they were built and the needs of the com- [fol. 213] munity at the time they were built?

A. That has not—doesn't have great differences as to their value and commodious quarters and characters that are recognized now in modern education and that are applied in modern buildings, that doesn't have great disparities, those types of buildings, in any school system in the United States with buildings built twenty, thirty or forty years ago.

A. I believe there is very likely to be some disparity, may not be great, and may not be great as compared to this group and this group, but between individual buildings, I am sure you would find some disparity if there is more than one building.

Q. You realize that school buildings are built as a community grows up and population trends—where the town grows and which way it grows determines whether buildings are located and newer buildings are added.

A. That is one factor.

Q. Do you know of any way *way* on earth to keep those facilities adequate and at the same time equal in any school system?

A. There are ways that it can be approached.

Q. Well, just tell me how you would approach it.

A. By forming a good cooperative city planning with

the Board of Education and the City Commissioners on [fol. 214] a long-term scale and then following it.

Q. Would you recommend that if we had a building like, say in Topeka, that cost $112,000 and is now a sound and structural safe colored building, that you tear that down because we happen to have a new building built a year ago that cost a half million dollars; would you recommend that?

A. Not merely for that reason, no.

Q. What other reasons would you have for tearing it down?

A. If I found that throughout the community the colored children's buildings were decidedly inferior to the buildings of the white schools, then I would consider that to be an unequal educational opportunity between the groups.

Q. Well, now, let's talk about that subject. Let's talk about Quinton Heights and Polk Street and Lafayette School and Lowman School, all of which have a physical plant value at the time they were built and at the present time, an insurance value less than any of the four colored schools. Do you think that makes the white children get inferior education than to the colored children going to those schools?

A. The colored children are getting an inferior education, I think, for this reason: That, as I cited in my original testimony, 45% of the white children can go to schools that are newer than the newest colored building; only 14% [fol. 215] of the white children have to go to schools that are older than the oldest colored building, so it's a comparison of 14% against 45%.

Q. Let's get back on the track. I asked you whether or not, using an illustration of four white schools, if they are inferior as to value, both at the time they were built and now, to the colored schools, do you consider that alone makes the white child that is attending those schools, Quinton Heights, Polk, Lowman and Lafayette, receive in and of itself, receive an inferior education.

A. Not necessarily.

Q. Well, then, why do you say that when you talk about that element as causing the colored child——

A. Because——

Q. Wait just a minute until I ask my question, will you please? Why do you say that when you are talking about a colored child who goes to one of the four colored schools and you compare the plant and facilities to some of the modern buildings—school buildings—in the last two or three years.

A. Because, in the first instance, we are assuming——

Judge Mellott: The witness must wait until the question is completely asked. The reporter can't get it down when you both talk at the same time.

(The last preceding question was read by the re-
[fol. 216] porter.)

Judge Mellott: Strike out the answer as partially given.

By Mr. Goodell:

Q. Why do you say in such a situation in making the comparison in the case of a negro child going to one of the four negro schools, comparing it to some of the schools built in the Topeka area, in the Topeka school system in the last two or three or four years, such as Randolph, Potwin and Oakland, that that fact alone gives the negro child an inferior educational opportunity, that would not apply in the case of the children going to the white schools that I have previously mentioned in my other question.

A. In the first instance, if I understand you correctly, I was assuming that other things were equal because of the —as we admitted, the faculty preparation is approximately equal, the class size equal, and so forth. But, in the latter instance, other things are not equal primarily because of the difference in the curriculum which is a very important factor.

Q. All right, now, what is present in the case of the Quinton Heights white school, in the curriculum you talk about, that is not present for comparison purposes in any of the four colored schools?

A. Because in Quinton Heights the child has the opportunity to learn his personal adjustments, his social adjust-
[fol. 217] ments and his citizenship skills in the presence of a cross-section of the population.

Q. I asked you to eliminate the racial feature entirely and restrict it to physical things alone; that is what I asked you.

The Witness: If the Court will permit, I don't think that we can answer an educational opportunity purely on physical features. There are too many other elements that are also involved.

Q. Mr. Speer, Professor Speer, I probably misunderstood you. I thought—I understood your testimony to be that because of these physical things that in and of itself, ignoring the racial thing, that that constituted an unequal educational opportunity to the negro child because of these modern buildings that he wasn't allowed to go to; is that correct, or not?

A. It is certainly one of the very important things and, if the other factors are equal, and this one is unequal, then there may be an inequality in the total educational opportunity.

Q. Maybe I am so stupid I can't understand you. Did you not say, is it your opinion, that because of physical factors, and I mean by physical factors differences in plant facilities, of some of the white schools and the four negro [fol. 218] schools, that alone, in and of itself, causes you to give an opinion, and it is your opinion that that child, the negro child, because of that alone, doesn't have equal educational opportunity.

A. That is a contributing factor, but I do not consider that of—that alone.

Q. Then you didn't say that alone caused him to have an unequal opportunity.

A. No, but that coupled with other factors did cause him to have an unequal opportunity.

Q. What are the other factors rather than racial factors.

A. Curriculum factor; there is faculty; there is size of classrooms; there is books——

Q. Let's compare some white schools—let's take Quinton Heights, Lowman, Polk and Lafayette again. What is present as to the faculty, comparing that to the faculty of the four negro schools, that is inferior or that is—there is a disparity.

Mr. Carter: I would like—I think that we have listened to this line of questioning—it seems to us that it is now objectionable. What I apparently gather from the line of examination that is being made is that the—Mr. Goodell is attempting to establish that because there are deprivations of white children that he call off the deprivations of the negro child in segregation. We don't think that is [fol. 219] the issue in the case.

Judge Huxman: This is cross-examination of your expert witness where the latitude is a little greater. You may proceed.

By Mr. Goodell:

Q. Restricting now for this question, I will ask you to compare and point out dissimilarities or disparities between the faculty—one thing alone now—the faculty, that is, the teaching in the four white schools, that is, Quinton, Polk—Quinton Heights, Polk Street, Lowman Hill and Lafayette, to the four negro schools that are in issue in this lawsuit.

A. I can't answer that at the moment, sir. I would have to add up the preparation of the faculties of those four particular schools. I do not have that at hand. I added them up for the entire system and took the entire averages, but I do not have them for those four particular schools.

Q. As far as you know, they are perfectly equal then, is that right?

A. I don't think they could be perfectly equal; that would be impossible.

Judge Huxman: Well, now, that is rather quibbling, of course. Perfect equality you can't find in two teachers any place.

Mr. Goodell: I think so.

The Witness: Yes.

[fol. 220] By Mr. Goodell:

Q. What—is the faculty, then, comparing it to the other factor which you mentioned, curriculum, on the four white schools covered by the illustration and the four negro schools——

A. How does the curriculum compare?

Q. Yes.

A. Between the two schools. As far as course of study is concerned, as far as I know, it is probably about equal but as far as the total curriculum is concerned, and that is the only basis on which I can discuss it, it is not equal.

Q. What do you mean by total curriculum?

A. I mean the total school experience of the school child, what the instructions, what the books are, what the surroundings of the buildings are, what his associations with the other children are.

Q. Well, eliminating that feature, the associations with the other children, which is the racial feature, what are the other part of the curriculum which is any dissimilarity or inferior factors present in the case of the negro schools and the white schools that I have used for illustration.

A. In professional circles we have a term called the great "gestalt" which means the sum is greater—the whole is greater than the sum of the parts and, when we start taking into account only the parts one by one, we destroy [fol. 221] our "gestalt", and we cannot make a wise comparison.

Judge Mellott: What was that word?

The Witness: (Spelling) G-e-s-t-a-l-t.

By Mr. Goodell:

Q. Now you come from Missouri, don't you?

A. I at present live in Missouri, yes, sir.

Q. You have segregated schools there, don't you?

A. We have some segregated schools. On the university campus we have a mixed school.

Q. I am talking about the public school system in the State of Missouri.

A. Yes, sir.

Q. And it is mandatory, isn't that right?

A. I presume in some cases it is.

Q. Have you studied any of the various state statutes over the country which we have had for a half century concerning this segregation of students?

Mr. Carter: Your Honor, I can't see how this——

Mr. Goodell. This is preliminary for another question.

Judge Huxman: I think that is an improper question. Well, as long as it is preliminary, you may answer whether you have or have not studied these various statutes.

Mr. Goodell: I will withdraw the question.

[fol. 222] By Mr. Goodell:

Q. You know in a great many cities and communities of the United States there are statutes similar to the statutes here in Kansas which we have had for a half century or three-fourt-s of a century, isn't that right?

A. I presume so.

Q. You know, as a practical man, laws get passed by legislators coming from the various parts of their communities over the state, don't you?

A. Yes, sir.

Judge Huxman: Mr. Goodell, what is the purpose of that question? What value does that have to our problem how laws are passed?

Mr. Goodell: I am getting to that. I can't ask it all at once. I am trying to get from this witness the feature as to whether he thinks elimination of racial segregation, if it's unwanted by the community and is out of step with the thinking of the community which the mere existence of the laws have some indication——

Judge Huxman: I think Dr. Speer has made it quite clear from his evidence—he has to me at least, if I understand it—that segregation, racial segregation, is the prime and controlling factor of the equality of the whole curriculum, and that these physical factors are secondary, and that his testimony, as it registered with me, is that aside from [fol. 223] racial segregation he perhaps would not testify that there was any such inequality in the physical properties as would deny anybody an equal educational opportunity. Do I understand your testimony correctly?

The Witness: If I may say, Your Honor, I think I would sum up this way: That there is, in my opinion, some inequality in physical facilities between the groups in Topeka, but, in addition to that, there is also the difference of segregation itself which affects the school curriculum.

Judge Huxman: Let's see if I can get myself straightened

out. Do you not also agree with what Mr. Goodell is trying to bring out here—you haven't gotten together—that if you put it on that fact, that there is inequality in physical facilities as between the white schools and the colored schools, sometimes the greater facilities are with the colored schools against the older white schools.

The Witness: Yes, Your Honor, but they are not as many in that direction as there are in the other direction in this case.

Judge Huxman: It seems to me we are spending a lot of time on that when that is rather, it seems to me, it would be obvious if you have an older white building [fol. 224] than a colored building that perhaps the physical facilities in the older white building would be poorer than the colored building.

The Witness: Yes, I will agree.

Mr. Goodell: I will try to shorten this up.

By Mr. Goodell:

Q. If I understand you correctly, the basis of your opinion on saying that the mere separation—strike that. It's your opinion, then, that you can't have separate schools in any public school system and have equality, is that right?

A. Yes.

Q. And that is predicated on the—on your philosophy or your theory that merely because the two races are kept apart in the educational process, isn't that right, mere separation causes inequality.

A. That is one of the things which causes inequality, yes, sir.

Q. Yes. Now, assuming, Doctor, that we didn't have separate schools and they were altogether, and you still had a social situation in this community which didn't recoignize co-mingling of the races, didn't admit them on free equality, that child would run against those—run up against those things in his practical every-day world, wouldn't he?

[fol. 225] A. I presume so.

Q. Sir?

A. I would think so.

Q. Wouldn't that tend to cause more of a tempest and emotional strain or psychological impact if he got used to going to school with white children than when he went downtown and couldn't eat in a white restaurant, couldn't go to a white hotel and couldn't do this and that, wouldn't that make the impact greater and accentuate that very thing.

Mr. Greenberg: This witness is qualified as an expert in the field of education, and I don't believe has testified or is qualified to testify concerning segregation all over the State of Kansas or elsewhere.

Mr. Goodell: Well, I restrict it to Topeka.

Judge Huxman: I think the Court will sustain the objection. That is purely argumentative. I doubt whether the doctor has qualified himself.

By Mr. Goodell:

Q. Assuming, Doctor, we will restrict this to the educational process, assuming that—that we didn't have segregation, for the purpose of this question, and assuming further we had a negro child going to Potwin or Oakland or Randolph and assuming that the population trend appears in the schoolroom as it does in our city, so that he would be outnumbered from twenty to fifty to one, assuming all that, for the purpose of this question as being true, [fol. 226] wouldn't that cause some inferiority feeling on the part of the colored child when he went to such a school where he was outnumbered twenty to fifty to one and caused some sort of mental disturbance and upset.

A. On which basis would you rather for me to—on theory or on personal observation or experience?

Q. I am talking about theory here.

A. And personal observation and experience.

Q. Yes.

A. Let me first mention the latter one; we have adjoining our campus a demonstration school of 210 students in the elementary grades and mixed in with them are about ten negro children, so they are outnumbered in that proportion, and my observation is, and the reports I receive from my assistants are, that those children are very happy, very

well adjusted, and they are there voluntarily. They don't have to attend.

Mr. Elisha Scott: I object to that.

Judge Huxman: Mr. Scott, are you entered here as an attorney of record?

Mr. Elisha Scott: I am supposed to be.

Judge Huxman: Go ahead.

Mr. Elisha Scott: I object to that because he is invading the rights, and he is answering a question not based upon [fol. 227] the evidence adduced or could be adduced.

Mr. Goodell: You just got here; you wouldn't know.

Mr. Elisha Scott: Yes I do know.

Judge Huxman: Objection will be overruled. You may answer.

The Witness: Shall I repeat the answer?

By Mr. Goodell:

Q. Have you finished?

A. I think, also, on the basis of our knowledge of child behavior that we can say on a short-range basis there may be occasionally, the first time we jump into water we may be a little bit frightened, but, on a long-range basis, we generally are able to work out our adjustments and make a good situation out of it.

Q. Segregation occurs, doesn't it, Doctor, in any school system among the races. I mean by that, children that come from wealthy families co-mingle with children from poor families; they go off into different cliques; that occurs, doesn't it?

A. It occurs sometimes.

Q. Occurs frequently, doesn't it?

A. Well, it all depends on your definition.

Q. And the child that is left out of the swim, so to speak, he feels inferior or second-class, doesn't he?

A. Yes, and I think we should prevent that in all cases [fol. 228] possible.

Q. You wouldn't make a new social order to prevent social strata of society, would you?

Judge Huxman: Just a minute. The Court will sustain an objection to that question.

By Mr. Goodell:

Q. Have you made a survey of any of the students that have gone to our segregated schools, the negro students, and picked them up to see what effect to their education that you call attention to as being inferior, how it's worked out in every-day life.

A. I have talked to a few of them, but I have not made a survey of them.

Q. Have you heard of anybody getting hired or a professional man having a plant or a businessman having a customer based upon what elementary school he went to in the first grade or the second grade or the sixth grade for that matter?

A. Oh, probably not, but probably there are cases where a person is hired or not hired on the basis of the kind of education he received in the first six grades.

Q. You don't know a thing about our community and how the negro child, when he goes through our school system, how he is received in the business world at all, do you?

A. Oh, I have known Topeka for some years. I may have a little knowledge.

[fol. 229] Q. Do you know anything about that?

A. A little, not too much.

Q. What?

A. I don't know too much about it.

Q. Do you know that in the case of the junior high grades and in the senior high grades that they are not segregated?

A. Yes, sir.

Q. Do you think, getting back to the school system and the illustration of where the negro child would go to a school where he would be outnumbered twenty to fifty to one, and he wasn't recognized because of pure majority rule and wasn't elected head of his class or class officers or recognized in the various school activities, that that would have any impact on such a child.

A. Not as much impact as having been denied even to get into the running.

Q. You think if you got in the school and left out entirely he would feel happy about it, would he?

A. What's that again?

Q. You think if the negro child was simply by edict of

law forced into the white school, whether the white school was ready to receive him or not, and however much he was in the minority and however much he would be left out of things, he would still be happy merely because he had found his way into the white school, is that right?
[fol. 230] A. I think on a long-range plan he would be happier than on the other way.

Mr. Goodell: That's all.

Mr. Carter: Your Honor, may we have a five-minute recess?

Judge Huxman: Yes. The court will take a ten-minute recess.

(The court then, at 2:40 o'clock p. m., stood at recess until 2:50 o'clock p. m., at which time court was reconvened and the following further proceedings were had:)

Mr. Goodell: I would like to recall Dr. Speer for two short questions.

Judge Huxman: Dr. Speer, take the witness stand for a question or two further.

Hugh W. Speer, having been previously sworn, reassumed the stand and testified further as follows:

Cross-examination (continued).

By Mr. Goodell:

Q. Dr. Speer, in giving your opinion here a moment ago as to the comparison based upon library books—library or books in certain of the negro—in the negro schools to certain of the white schools covered by your testimony, did you consider, in forming that opinion, the fact that the Par-
[fol. 231] ent Teachers Association in the various school territories contribute personally and raise the money to buy those books, and they are not furnished by the Board of Education.

A. Yes, I have been informed that that is sometimes the case.

Q. Well, how did you segregate which books have been bought by Parent Teachers Association and the books that have been furnished by the Board of Education?

A. I didn't make that separation. I felt that by neglect the Board of Education permitted an inequality to exist.

Q. Now, did you also—strike that. State whether or not any of the books in any of the libraries or rooms in the schools that you made the investigation concerning books, that at the end of the term the books, some of them, were gone, that is, packed up in boxes.

A. Yes, we understood that, and we also understood that some of the books are regularly kept in the central office of the Board of Education, and we took that into account, knowing that the same—those books are taken out of all the schools and kept in the Board of Education, so that what remained are really the comparable—form the basis for comparison.

Q. So if some of the books were missing, either being packed up or gone, and you didn't know what they were, you are just basing your testimony, your considered opin-
[fol. 232] ion, on what you found, is that right?

A. Sir, the books that were gone are the books that circulate among all the buildings in the course of the year, so we assume that those are equal. It's the books that are left in the building that really belong to that building, and it is on that basis that we made our differential.

Q. Were some of them packed up?

A. Some of them packed up, and we looked into the boxes.

Q. Did you take them all out volume by volume and examine them?

A. We did not examine every book in the Topeka school system, but we sampled it in an unbiased way. We sampled a large number of rooms and a large number of buildings and a large number of boxes, but we did not examine every book.

Q. You mean you took a book out here and there from a box and, from that, made up your mind that they were all alike and, consequently, that is the way you got at your opinion.

A. No, sir. We took sampling in a scientific way.

Q. What do you mean scientific way?

A. We took a sample that was representative and large enough to where we could feel confident in it.

Judge Huxman: Is that all?

By Mr. Goodell:

Q. Which books were bought in the various schools that you gave your opinion about—were bought by the Parent [fol. 233] Teachers Association?

A. I don't know just which books. Some, no doubt, were but not a great many. It is not enough to affect the percentage very much.

Q. If you don't know what books they were, some of the books you didn't even examine, you don't know what quantity they are, how do you get at an opinion as to book facilities at the various schools?

A. On this basis, sir, that it is the books in the school that are responsible for the education of the child, and we examined the books in the school and, on that basis, we made our opinion.

Q. So what you are saying, if I understand you right, the books you found and examined showed less books or inferior quality as to date and so forth in the colored schools than the books you found in the white schools, is that right?

A. Yes, sir.

Mr. Goodell: All right.

Judge Huxman: Step down.

James H. Buchanan, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Greenberg:

[fol. 234] Q. Dr. Buchanan, will you tell the Court your full name, please.

A. James H. Buchanan.

Q. Please tell the Court something of your educational background.

A. At the present time I am Director of the Graduate Division, Kansas State Teachers College, and acting head of the Department of Education. The year preceding this year I was associate professor of education at the Kansas State Teachers College. Six years preceding that time, from 1943 to 1949, I was superintendent of schools at Boulder, Colorado. From 1933 to 1943 superintendent of schools in Lamar, Colorado, and, from 1930 to '33, superintendent of schools at La Jara, Colorado, and, from 1928 to 1930, superintendent of schools in Boyero, Colorado.

Q. Dr. Buchanan, what degrees do you hold and where were they earned?

A. I hold an A.B. Degree from Denver University, 1928; Master of Arts Degree, University of Colorado, 1932; I have had three years—three summers of graduate study at Harvard University, 1936, 1938, 1939, and a Doctor of Education Degree from the University of Colorado, 1949.

Q. Have you visited any of the schools in the City of Topeka?

A. Yes.

Q. Did you visit the Buchanan School?

[fol. 235] A. Yes, I did.

Q. Gage, Lafayette?

A. Yes.

Q. McKinley?

A. Yes.

Q. Monroe?

A. Yes.

Q. Parkdale?

A. Yes.

Q. Polk?

A. Yes.

Q. Potwin?

A. Yes.

Q. Randolph?

A. Yes.

Q. State Street?

A. Yes.

Q. Sumner?
A. Yes.
Q. Van Buren?
A. Yes.
Q. Washington?
A. Yes.

Q. Did you observe the general appearance of the interior, exterior and the surrounding areas about the school? [fol. 236] A. I did.

Q. Would you describe what you noticed with regard to these factors in the Randolph School.

A. Well, I would say that the Randolph School was situated in a very average residential section; perhaps above average. I think the school is a well-constructed building; it shows good signs of being in a very good state of repair, I should say, and the maintenance in it has been excellent. The facilities in it, such as auditorium, the classrooms and so on, are adequate to a good educational program. I would say the grounds are ample for proper play and recreation for the pupils.

Q. Would you tell us what you found concerning these factors at the Buchanan School, Dr. Buchanan.

A. I would say that the Buchanan School is an older school. It has been well constructed. The walls are in a good state of preservation; redecoration seems to have been done within a reasonable time and the maintenance is equally good. I think in the maintenance you have to take into consideration the age of the building, but I would say it was very good at the Buchanan School. The playground, it would seem to me, was ample for recreational facilities. I think there was no auditorium in the Buchanan School, but it was my impression that adequate precautions have been made for prevention of fire or escape from the building [fol. 237] in case of fire.

Q. I don't recall, Dr. Buchanan, did you say anything concerning the surrounding areas of the Buchanan School?

A. Yes, I would say the surrounding area, as I observed it, being a stranger to the city, practically so, was not quite as substantial; certainly not as substantial a residential area as I would say around the Randolph School.

In other words, I would say it would reflect the general community in which it was associated, perhaps both in age and state of preservation of the building.

Q. Would you tell us what you found concerning the Gage School, Dr. Buchanan.

A. Well, the Gage School is a very fine school. I would say, speaking from memory, I would say it's within a few years of the age of the Randolph School. I have the impression it's somewhat larger. It had some very good pictures on the wall; the walls were in a good state of preservation; there was some repair work going on. There were some rooms in which they needed some repair work and were planning on doing it immediately because there were materials placed outside the doors and, in some places, the floors were up. I would say that the playground and the landscaping is quite attractive and quite beautiful; a very nice piece of work.

Q. Would you tell us, now, what you found concerning [fol. 238] the Sumner School.

A. The Sumner School is a newer school than Gage. I think it's perhaps about ten or eleven years old. It has quite ample—very spacious suitable classroom facilities and a nice auditorium. I think the landscaping would be nothing that anyone could take particular objection to. The general appearance of the building, I should say, was in keeping with a good school situation.

Q. Will you now tell us what you found concerning the Monroe School, Dr. Buchanan.

A. I would say the Monroe School would compare fairly well in construction, in appearance, with the Randolph School, I would rather carry them in mind. I think the Monroe School, I woud say, is about twenty-four, twenty-five years of age. It has fireproof stairways. It shows sign of good care and good maintenance and quite serviceable, I should say, for a number of years. The playground and the landscaping in front of the building is about in keeping with the community in which it is located, I should say. In other words, I would say it is a credit to the community.

Q. And would you tell the Court about the State Street School?

A. Yes. I saw the State Street School. It is a very good school, I should say; it's more or less in a class with the Sumner School, perhaps a little more modernistic, a [fol. 239] little more in keeping with modern design and the demands of modern education. The playground or the grounds that were vacant, which I assume were available for the children, I thought were quite adequate and quite spacious for a large enrollment. It had auditorium facilities and other features of that kind that make for a good educational situation.

Q. Would you tell us something about the area surrounding the State Street School.

A. I would say that it was quite a creditable residential section.

Mr. Goodell: I didn't hear that.

The Witness: I say it was quite a creditable residential section; very good residential section.

By Mr. Greenberg:

Q. Would you tell us what you found concerning the Washington School, Dr. Buchanan?

A. Well, the Washington School is an older school; I think it is not so old as the Buchanan School; at least that is my impression of it. It has been well cared for. It has an auditorium which, I would assume, for an enrollment of 150, 160 children, would be adequate for them. The maintenance there is quite a creditable thing. I would say that was characteristic of the Topeka schools. There were fourteen I visited; I would say the maintenance and repairs were quite good.

[fol. 240] Q. In your visit to the fourteen schools, Dr. Buchanan, did you make any general observations concerning the areas in which they exist?

A. I think I have already implied that in the answers that I have given. My observation would be that the schools visited, the fourteen of the twenty-two schools, reflect the communities in which they are located, that is, if they are like, well, Polk, perhaps Buchanan, Gage; the varying degrees of the quality of the school is somewhat dependent upon the age of the residential region or section

of the city in which they are located. That is, you would find the better schools in the places that are comparatively newer and better developed; that would be my general observation. The poorer schools were perhaps in a region, we might say, have longer been a residential region or area of the city, which is tending, perhaps, to slide down just a bit in quality.

Q. Can you make any general statement concerning the negro schools which you saw and the areas in which they live, Dr. Buchanan.

A. My general statement would be merely to say that they reflect the situation which I have outlined. I think they show a very good care. I think, for instance, the Monroe School, is a school that definitely looks the way you would expect; I think anyone who has had experience [fol. 241] in examining or visiting schools would say that it looks about the way you would expect it to look when you see it from the outside and when you go in. It has been well cared for. All of the schools in Topeka I was impressed by the fact that there was a minimum amount of marking on the walls or disfiguring of the walls or furniture in any way, either in the white schools or the colored schools.

Q. Did you make any general observation concerning the areas in which these colored schools existed, Doctor?

A. I would say, in general, they probably are in the areas which were not the best residential section of the city. I don't know that they would be the poorest, but they were not in the best residential section, and I think there was some variation there. I thought I observed some variation in the quality of the residential section.

Q. Dr. Buchanan, in evaluating the quality of education which a student obtains when attending school, does an educator consider the physical characteristics of the school; I mean their appearance and the appearance which they present to the child, along with the appearance of the area in which the school exists. Is there a direct correlation between that and educational opportunity?

A. Yes, I think that is true. I think the educator—educators do recognize the relationship between the quality [fol. 242] of the building, landscaping of the grounds, the

area in which it is placed as an important factor in education.

Q. Now, bearing that criterion in mind, Dr. Buchanan, I would like you to make several comparisons. I want you to assume in the City of Topeka a negro child would attend Randolph School, if there were not racial segregation in the city, but is compelled to attend Buchanan because of racial segregation. Would you say that if all other factors in the City of Topeka and in the schools were equal, except these factors concerning appearance, residential area, and so forth which you have just described in answer to a previous question, if all factors were equal except those factors, would the child attending Buchanan obtain the same educational opportunities that he would obtain if he attended Randolph?

A. I believe no; my answer would be that he would not receive the same educational opportunity.

Q. Well, bearing in mind the correlation which you stated between educational opportunity and physical appearance and area, would you explain the reason for your answer?

A. I believe that education is best facilitated when it is in a beautiful environment, where there is a building which pupils can take pride in and where they have beautiful landscaping and the interior of the building is a place where there are the maximum number of modern facilities [fol. 243] to facilitate a good curriculum.

Q. And to the estent that these are different, you would say that the opportunity to learn is different.

A. Beg pardon; would you——

Q. Would you say that to the extent that these are different, the opportunity to learn is different?

A. Yes, I think it has a relationship to the opportunity, yes.

Q. Is this supported by the authorities in the field of education, Dr. Buchanan?

A. I am certain it is, yes, sir.

Q. Did you say yes?

A. I am certain that it is, yes.

Q. Could you state any authorities who support this view?

A. Well, I think that my number of authorities, for instance, Dr. Reeder of Ohio State University in his recent

publication on administration, "Public Education of the United States" which came from the press in 1951, just a few months ago, a revision of his book, makes that very clear. He makes that statement that the quality of a building, its setting, is an important factor in the education of a child. Strayer and Englehart, of Columbia University, who are recognized as the leading authorities in schoolhouse construction, hold that view and numerous others.

Judge Mellott: You drop your voice, and I usually get [fol. 244] most excepting the last two or three words. You drop your voice, and I can't hear you.

The Witness: I am sorry; I thought I had a very strong voice.

Judge Mellott: You do, but you don't keep it up.

By Mr. Greenberg:

Q. Dr. Buchanan, I am going to ask you to make three more comparisons without going into as much detail, if you believe the detail you stated concerning the first comparison applies to the following schools: I would like you to compare Gage against Buchanan with regard to these criteria.

A. I would say that Gage very obviously is a better school than Buchanan.

Q. On the basis of the criterion you stated?

A. Yes.

Q. I would like you to compare Sumner against Monroe.

A. Obviously Sumner is a better school than Monroe; a more up-to-date school, a newer school, as I have indicated.

Q. I would like you to compare State Street School against Washington Street School with regard to these criteria.

A. State Street is a better school than Washington School in terms of age, in the terms of these things we have talked about.

Mr. Greenberg: Your witness.

[fol. 245] Cross-examination.

By Mr. Goodell:

Q. Dr. Buchanan, if I understand you correctly, you are stating that the plant or the building is a very important factor in the educational opportunity.

A. Yes.

Q. The building a child goes to.

A. Yes, indeed.

Q. And, therefore, where you have one building with shrubbery around it and landscaping, which is pretty, and another building built earlier many years ago which isn't as pretty, even however strong and commodious and sufficient, if it isn't as pretty and big and new and as modern, that educational opportunity is minimized in the child that goes to that building, is that right?

A. That would be—other factors being equal, I would say the better one——

Q. I am restricting it to that factor if I understood your testimony.

A. That's right; I would say that that would be detracting from it.

Q. The only way children in any community could have an equal educational opportunity would be to have buildings all beautiful, built about the same time, all modern, all beautifully landscaped and everything just about alike, [fol. 246] isn't that right?

A. As far as that factor is concerned, that is correct.

Q. As a practical matter, don't you realize that we live in a practical world?

A. I have lived in it for nearly fifty years.

Q. How do you think any Board of Education could have all of their buildings built at the same time, same landscaping——

Judge Huxman: You need not answer that question; that is argumentative, has no probative value.

By Mr. Goodell:

Q. Well, according to your theory, if I understand it right, if I went to a little country schoolhouse, even though I had good teaching and good texts and all other facilities,

but not a building as good as Randolph, I was in a bad way, or anybody would be in a bad way, to get an education, is that right?

A. No, that isn't my theory. My theory would be you would get a better education if you had better equipment, but you would not—I wouldn't say you would have a poor education because you went to a poorer building. You might have a very superior teacher or you might have very superior ability yourself.

Q. Buildings don't make the educated child, does it?

A. I wouldn't say entirely, no; they are a contributing factor, but not the entire thing.

[fol. 247] Q. You compared the negro schools to Gage and Randolph and Sumner, I believe those three.

A. I think so.

Q. Now, would you please compare those same schools, I mean those white schools; they are all white schools, aren't they?

A. Yes.

Q. —with the schools of Lafayette and Quinton Heights and Polk and Lowman and Quincy.

A. Well, I didn't visit all you have named, but——

Q. Which did you visit?

A. Lafayette. I visited——

Q. Didn't you know we had those others?

A. Yes, but——

Q. You didn't get around to them.

A. We didn't get around to them. I would say that Lafayette compared with Gage or Randolph or Sumner would be far inferior.

Q. Far inferior.

A. Far inferior to it.

Q. We are discriminating then against a child that lives in that territory if he goes to Lafayette as against a child that lives—goes to Gage.

Judge Huxman: That is immaterial and need not be answered.

[fol. 248] Mr. Goodell: No further questions.

Judge Huxman: Anything else of this witness? Doctor, you may stand aside.

(Witness excused.)

R. S. B. ENGLISH, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Greenberg:

Q. Will you please tell the Court your full name, Mr. English.

A. Horace B. English.

Q. What is your occupation, Mr. English?

A. I am professor of psychology at the Ohio State University.

Q. Would you tell the Court something about your background and the degrees you hold.

A. I took my Bachelor's Degree at Oxford University, and there I also took a certificate in cultural anthropology. Later I took the Ph.D. Degree at Yale. As for my experience, I have been teaching and doing research work since 1916. I have been a full professor since 1921. During the war I was—during the first war I was psychological examiner and then chief of the re-education service in one of the hospitals. In the second world war I was a consultant on personnel problems part time for the Adjutant General's Office of the Army and then immediately after the surrender [fol. 249] I was a morale analyist in Japan. I then—I have had a number of part-time positions; I was consultant for the Forest Service on human relations. I was consultant to the West Virginia Department of Education on the curriculum in their state teachers colleges. I was chairman of the counsel on human relations appointed by the American Association for the Advancement of Science, for work with the Conservation Departments of the government, and I spent some six months in the study and research in the field of child development under the auspices of the American Council on Education.

Q. Have you ever held office in, or been a member of, any learned societies?

A. Yes, in the American Psychological Association I am a Fellow; I have been a member of the Council of Directors, and I have been chairman of the Committee on Professional Ethics of that association. At the moment I am president

of the Division of Educational Psychology of that association. In 1940 I was president of the American Association for the Advancement of Science—for the American Association for Applied Psychology, and I have been president of the Ohio State Psychologists and the Midwestern Psychological Association. And I am a Fellow of the British Psychological Society and member of the Executive Committee of the Psychology Section of the American As- [fol. 250] sociation for the Advancement of Science.

Q. Have you ever published any books or articles in the field of education and psychology, Dr. English?

A. Published with Victor Ramey, of the University of Colorado, a book on studying the individual school child. Just this year brought out a textbook on child psychology, and I have published something around 150 articles in professional journals.

Q. Have you ever made any studies bearing on the capacities of different groups to profit by education?

A. Yes. As a matter of fact my first research, which was begun in 1912, was addressed to this very thing; the results were published in 1918. Then I was also on the team which brought out the celebrated alpha test of intelligence in the United States Army, as I helped with the experimental work which lead to that; and I have been continuously occupied in the field of individual differences and of group differences, and I teach that subject at the Ohio State University. Then I also supervise somewhere between 75 and 100 students a year who make case studies of individual children and I may add some of these are always negro children. I have done some research studies in the field of attitudes, including two of them concerning the attitudes of negroes and, finally, in this list I have done a rather prolonged [fol. 251] series of experiments in the field of learning with special reference to how children learn in school, rather than mere laboratory learning.

Q. Dr. English, have you told me all the courses that you now teach at Ohio State University?

A. No; I teach chiefly individual differences, child psychology and the more practical aspects of learning, rather than theoretical, and I also teach the theory of personality. Those are the main courses.

Q. Dr. English, at this point I want to ask you a hypothetical question. I want you to assume that in the City of Topeka there is a body of white school children and a body of negro school children, and that there is also racially enforced segregation in the schools. Would you say that on the basis of your learning, experience and study that on the basis of color alone there is a difference in their ability to learn?

A. No, there certainly is not.

Q. Would you tell me, the support for your statement.

A. Well, in the first place, we don't have racial groups learning; we have individuals learning and in both groups, white and negro, we have some persons who are very good learners; we have some persons who are very poor learners, and we have some medium learners. You can break that down to as fine a point as you like; the range is exactly [fol. 252] the same. Well, I say that, as a matter of fact, with regard to school children in respect to the I. Q. which is the best single measure of a child's ability to learn. The best I. Q. on record is that of a negro girl who has no white blood as far as that can be told at all, but right after this child there are four white children, so, you see, it's—at the top it's quite equal and at the bottom it's quite equal and in the middle it's quite equal. It's a matter of individuals and not a matter of groups. So knowing only the color you can't predict at all how well a child can learn. If a child is white you can't tell from that fact alone how well that child will learn in comparison with a group of negro children and, of course, vice versa from the fact that a child is a negro you can't tell how well he will learn with respect to a group of white children. From color alone there is no telling. We know that the negro child, moreover, learns in the same way, that he uses the same process in learning and learns the same things, but I do want to make one exception; it's a notable exception: If we din it into a person that it is unnatural for him to learn certain things, if we din it into a person that he is incapable of learning, then he is less likely to be able to learn.

Q. That difference is not based upon any inherent quality.

A. Not at all. It's a parallel exactly the way it is with [fol. 253] women learning mathematics. There is sort of

a supersticion that women are naturally incapable of learning mathematics, and so they don't, most of them, learn it. They can, if they will, and some of them do, but there is a tendency for us to live up to, or perhaps I should say to live down to the social expectation and to learn what we think people say we can learn, and legal segregation definitely depresses the negroes expectancy, and is therefore prejudicial to his learning. If you get a child in the attitude that he is somehow inferior, and he thinks to himself, "Well, I can't learn this very well.", then he is unlikely to learn it very well.

Q. Dr. English, is there any other scientific evidence to support this conclusion which you have stated other than what you have said.

A. Yes, there is a good deal. For example, in the last war we took the people who were illiterates. These, of course—a good many more of them were colored than white, but we put them into schools to teach them fourth-grade literacy and, as a matter of fact, 87% of the negroes and 84% of the whites successfully completed the work of these schools. Now I don't make anything of the difference of 3% in favor of the negroes as compared with the white. That is, of course, within the range of accidental error, but I say these results do show that under favorable conditions [fol. 254] and under conditions of motivation where these men wanted to learn, the negro men proved that they could learn as well as the whites. Most of the scientific evidence concerns intelligence testing, which, as I said a moment ago, is the best single measure of the ability to learn, and the scientific question that we would ask is, "Are there differences in intelligence which we find? Are these differences due to race or are they due to unequal opportunities?" and the whole trend of the evidence, beginning with the work in 1912, but especially beginning after the first world war when we analyzed the scores of the recruits in the first world war, the whole trend of the evidence is this, and there are no real exceptions to this trend, that wherever we try to equalize the opportunities, we minimize or extinguish the differences in learning ability as between the two racial groups. Perhaps the best study of this is Dr. Klineberg's study showing the results of the migration to New York

City of children from the deep south. He found—of course we all know that the schools in the south, and particularly the negro schools in the south, are by and large inferior. There are some cities in the south where the schools are very good, but the general tendency, and especially in the rural regions, is for the educational opportunities in the south to be very bad and particularly bad for negroes. [fol. 255] These things are well known in educational circles. So the negroes then coming out of these very poor school situations had very low ability to learn. They seemed stupid and their intelligence test scores were low. But each year that they were in the more favorable learning opportunities in the north, their intelligence quotient was rising, and the longer they were in that favorable region the more their intelligence rose, so that the conclusion is unavoidable that their previous condition was due to the unfavorable opportunities.

Q. Dr. English, is there any scientific evidence to the contrary?

A. Very little indeed and such little evidence as there is doesn't stand up. Now, for example, there was a study by a man named Tanzer, worked with Canadian negroes in a place in Ontario. They went to the same school with the whites, and the whites were, as a group, somewhat better than the negroes. But in this study when we reanalyze the data we found that the negroes were of lower economic status, and we know that lower economic status affects these things, and we found that the negro children went to school less often. In the white group the attendance was 93 and in the colored group it was 84% of the time. With a loss of schooling like that and coming from an inferior group, the tendency is to think that the difference found was [fol. 256] attributable to these unfavorable factors, rather than the race itself. Certainly these factors that I mention were a contributing cause, and I don't say they are the whole thing; they themselves reflect the whole tissue of social circumstances which somewhat discouraged negro learning, and this is a rather typical sample of the few, the relatively few, studies which even seem to point in the opposite direction. The overwhelming tendency is all in the direction of my first statement. May I summarize that?

It seems to me that what we have here is that the segregation tends to create—first of all, segregation seemingly is based upon a fallacy of a difference and then by the mere fact of segregation it turns around and creates the very difference which it assumes to have been present to begin with, and we get into a vicious circle.

Q. Dr. English, I would like to ask you another hypothetical question now, and I would like you to answer on the basis of your experience and learning as an educational psychologist. I want you to assume that a negro child lives within a few blocks of a school; that he lives a much greater distance from another school, which is a negro school which he is compelled to attend on the basis of race; that he spends perhaps a half hour, perhaps more, perhaps an hour or two a day travelling to and from school, whereas if he were not compelled to attend this negro school he [fol. 257] would spend a few minutes, perhaps fifteen or twenty minutes, a day going to and from school. Would you say that if all other factors were equal that he would receive the same benefits from attending the negro school as he would from attending the white school?

A. Definitely not.

Q. Give us the reasons.

A. May I say—perhaps your question is, you say from attending the negro school. May I broaden it, from his education, if the Court will permit that extension because it's the whole education of the child which is being damaged here. The education of the child is not wholly in the classroom. The education of the child goes on on the playground, in playing with his equals and his fellows, around home. This is one of the most important things for the wholesome development of the child and, when you take an hour a day from a child, you are taking away something very precious to his total education. I have had this in my own home because one of my children had to go to quite a distant school because of a physical handicap, and we could see the results upon his development of this deprivation. It was one of those things we couldn't help. I gather that what you are talking about is something that we could help if it were not for the presence of the law.

[fol. 258] Q. Is there any scientific data supporting this opinion which you have just given, Dr. English?

A. It would be very hard to find it, for me to recall it. It's one of those things which has such universal consent that I can't recall it ever being challenged. I am sure we see in our clinics all the time, as we examine children who are disadvantaged and who are maladjusted, we see all the time the evidence of the children who do not get out and play with others. As a matter of fact, I don't think there is any—I am sure there is no psychologist, no child psychologist in the country who would challenge the statement that there is—that the child's play is of the utmost importance and should not be unnecessarily diminished.

Mr. Greenberg: That is all.

Cross-examination.

By Mr. Goodell:

Q. Dr. English, this opinion you have rendered is somewhat founded upon theory, is it not?

A. No, sir, it is based upon literally thousands of experimental studies.

Q. How many cases have you taken, for example, of children that have gone to segregated schools and followed them through—you yourself—and examined their situation in adult life.

A. Well, now to what answer of mine is that addressed. I [fol. 259] thought you were asking me about the question of individual differences.

Q. No.

A. What are you asking them about.

Q. Have you personally conducted a survey or supervised a survey where you took cases of children that had gone through, negro children, that had gone through segregated schools and examined them in their adult life to determine whether or not the fact that they had gone to segregated schools had any bearing or relation to their success or achievement record.

A. I don't believe that I testified on that point, did I?

Q. I didn't say you did. I am asking you if you have ever done such a thing.

A. I have not done such a thing. I am not sure that it's relevant at all to my testimony.

Q. Well, is it possible that you could be in error in some of your conclusions here? Could you be mistaken about some of them?

A. Every man can be mistaken; certainly I can.

Q. You could be mistaken, couldn't you?

A. Oh, yes.

Q. Have you given this expert testimony around the country in cases such as this?

A. No, sir, never before; I teach it.

[fol. 260] Q. Now, Doctor, the ideal state, if I understand your testimony, that you testified in your opinion to, would be where you had no segregation as far as educational process.

A. I don't think I said anything about the ideal state.

Q. Well, it would be better, in other words, is that right?

A. I certainly believe that things would be better if we had no segregation, but that is not an expert opinion; that is my personal opinion. I didn't testify to that.

Q. Well, I mean restricting it to the educational process is what I meant.

A. Yes, without any doubt.

Q. Would you—would it change your opinion any if the facts present in this community were that the child, the negro child, that we are dealing with, if he went to a white school he would be outnumbered ten to one or fifty to one.

A. Not at all. I have seen that happen. I have grown up in schools where that happened myself. I have seen it happen repeatedly. We have it in our own city.

Q. Don't you think there is a general tendency, forgetting the racial thing, for the majority to rule and operate the thing that they belong to.

A. In what sense "majority"?

Q. Well——

A. Racial majority?

[fol. 261] Q. Assuming you had 500 white children going to Randolph School and ten negro children. What would be the natural tendency, taking into account the human element and human equations of whether the negro children

would run that school or participate actively in the student activities or whether it would be run by the white students?

A. Well, of course, the majority would generally have a preponderant voice if they divided along racial lines which they tend to do, but which they do not invariably do. I have seen many cases where the colored child receives in a mixed school from the majority group considerable amount of status and honor. You may recall just recently a man was elected captain of the football team in a predominantly white school. I think it was Williams or Amherst, I am not quite sure which, and this is reproduced all the way through our school systems where we do have mixed schools.

Q. And there are some outstanding negroes in different fields of professions and—who have received their—part of their education—in the deep south in segregated schools.

A. That is true.

Q. And yet have achieved great places of importance, isn't that right?

A. Education isn't the whole answer to ability; it is merely one factor. There are men who are big enough, [fol. 262] white or black, to rise above unfavorable circumstances.

Q. Surely. You are familiar, of course, as an educator, with the experience that was had back in the reconstruction days, sometimes referred to as the carpet-bagger days in the south.

A. Very definitely.

Q. You realize that a certain element, radical element I would call it, of the Republican party, perhaps to gain some political advantage, decided to go down in the various states and abolish certain segregation; you realize that was done.

A. Well, there wasn't exactly segregation at that time, but they did go down there and set up some laws of one sort or another, yes.

Q. Which attempted, in one swoop, to eliminate all of their custom and usages of those communities in the south, didn't it?

A. I am not here as an expert on history, but I read history that way, yes.

Q. Surely. Don't you realize that the experience of that period was that they had a tremendous amount of trouble, tremendous amount of emotional outburst and that it caused a great deal of strife between the races and didn't work at all.

[fol. 263] A. Well, if the Court wants a layman's opinion on history, I will answer that question to the best of my knowledge as a layman on history; I am not here as a historian.

Judge Huxman: It seems to me the question is going far afield.

Mr. Goodell: That is all.

Judge Huxman: Any further questions of the doctor? If not, you may step down, doctor.

(Witness excused.)

Wilbur B. Brookover, having been first duly sworn, assumed the stand and testified as follows:

Direct Examination.

By Mr. Greenberg:

Q. Mr. Brookover, will you please state your full name.

A. Wilbur B. Brookover.

Q. What is your occupation?

A. I am a social psychologist by profession. The position I now hold is professor of social science, sociology, at Michigan State College.

Q. What degrees do you hold, Mr. Brookover?

A. I hold an A.B. Degree from Manchester College, a Master of Arts Degree and a Doctor of Philosophy Degree in sociology and psychology from the University of Wisconsin.

Q. Are you a member of any learned societies, Doctor?

[fol. 264] A. I am a member of the American Sociological Society, Society for Applied Anthropology, Society for the Psychological study of Social Issues, the High Valley

Sociological Society, Michigan Academy of Science, the American Association for the Advancement of Science.

Q. What is your field of special interest, Dr. Brookover?

A. I am particularly concerned in my teaching and research in the field of social psychology with particular reference to the human relations in the school society, or the school as a social institution and in relations between minority groups and majority groups in society.

Q. Are you the author of any books or publications?

A. I am the author of several articles on various topics concerned with social relations between teachers and pupils and other aspects of social factors in education. I am also the author of articles concerned with relation of these social factors to teaching—to pupil achievement. I have published articles on the impact of social stratafication on education, one that is in press at the present time to appear in the Journal of Educational Theory. I am also the author of articles concerning social factors in relation to citizenship education, an article to appear in the 1951 yearbook of the National Council of Social Studies, now in press. I have in preparation a book to be published by the American Book company that will be entitled "The Sociology of [fol. 265] Education." I am a joint author of a book now in preparation; it's a monograph which will report research which—committee of which I was chairman conducted on minority groups in Maple County, which is a midwestern community.

Q. Other than what you have stated, have you devoted any special study to the problem of the effect of racial segregation on the individual?

A. Well, the monograph which I last mentioned grows out of a rather extended project still in process on the analysis of minority group relations in midwestern society. I have inaugurated at the present time, designed a study to analyze the dynamics of prejudices among youth.

Mr. Goodell: I didn't get that.

The Witness: The dynamics of prejudices among youth in a midwestern school community.

Q. Now, Dr. Brookover, I am going to ask you a hypothetical question which I would like to have you answer

on the basis of your learning. Assume that in the City of Topeka there is maintained a racially segregated school system. Would you say that the negro child who attends the racially segregated school receives the same benefits as he would receive from attending a racial integrated school, if all other factors were equal?

A. No, I would not.

[fol. 266] Q. On what do you base your opinion?

A. Well, I would say, first of all, that I would want to emphasize the nature of the educational process in this respect: Education is a process of teaching youth to behave in those ways that society thinks is essential. In our society it has long been held that this is a necessary function, to prepare democratic citizens. Now, the child acquires these essential behavior patterns in association with other people. In other words, they are not fixed; they are not inherent in the behavior of the child, but they are acquired in a social situation. Now, in order to acquire the types of behavior that any society may expect and to learn how to behave in various situations, the child must be provided an opportunity to interact with and understand what kinds of behavior are desired, expected, in all kinds of situations. This is achieved only if the child has presented to him clearly defined models.

Q. What do you mean by models, Professor?

A. Examples, illustrations of behavior; persons behaving in the ways that are—that the child is expected to behave and also consistent behavior of this sort. In other words, of an example, one kind of a model, and another time he is expected to behave if at one time he is presented one kind of an example, one kind of model, and another time he is [fol. 267] presented another kind of a model, and there is a constant confusion. Now that, I think, leads us immediately to the situation with regard to segregated schools. In American society we consistently present to the child a model of democratic equality of opportunity. We teach him the principles of equality; we teach him what kind of ideals we have in American society and set this model of behavior before him and expect him to internalize, to take on, this model, to believe it, to understand it. At the same time, in a segregated school situation he is pre-

sented a contradictory or inharmonious model. He is presented a school situation in which it is obvious that he is a subordinate, inferior kind of a citizen. He is not presented a model of equality and equal opportunity and basis of operating in terms of his own individual rights and privileges. Now, this conflict of models always creates confusion, insecurity, and difficulty for the child who can not internalize a clearly defined and clearly accepted definition of his role, so he is faced with situations which he doesn't—he has two or three, at least two in this situation, definitions of how he is expected to behave. This frustration that results may result in a delinquent behavior or otherwise criminal or socially abnormal behavior. Now the negro child is constantly presented with this dual definition of his role as a citizen and the segregated schools perpet- [fol. 268] uates this conflict in expectancies, condemns the negro child to an ineffective role as a citizen and member of society.

Q. Dr. Brookover, this opinion and the reasons you have just given, are they supported by scientific authority?

A. Yes, there is extensive work been done by psychologists, social psychologists, on the whole theory of role-taking and the question of eternization of patterns of expectancy, such people as George Herbert Meade, Charles Horton Cooley and numerous other people have done extensive work, extensive research in the processes of personality development and learning a situation through social interaction.

Mr. Greenberg: That is all.

Cross-examination.

By Mr. Goodell:

Q. Doctor, I will just ask you one question: Have you ever heard of these people, all negroes: Mary McLeod Bethune of Sumter, South Carolina, who is president of the college there, Bethune-Cookman College, Daytona Beach, Florida.

A. I have heard of someone by the name of Bethune. I am not sure that I know.

Q. Richard Wright, Greenwood, Mississippi and Jackson, Mississippi, author of Native Son, negro.

A. I have.

[fol. 269] Q. Charles Johnson of Bristol, Virginia.

A. Charles Johnson, that I know.

Q. Sociologist and president of Fisk University.

A. I think that is in Tennessee.

Q. Perhaps so. Walter White, of Atlanta, Georgia, Executive Secretary of National Association for the Advancement of Colored People.

A. I have heard of him; don't know him.

Q. George Washington Carver, Neosho, Missouri, residence.

A. I have heard of him.

Q. Langston Hughes, poet and author; I believe from Kansas.

A. I have heard of him; don't know him.

Q. W. E. B. DuBois who was an author, I believe connected with Fisk University at Nashville.

A. I know a DuBois who is an anthropologist. I don't know if this is the one.

Q. Mordecai Johnson, Paris, Tennessee, president of Howard University, Washington, D. C., negro university.

A. I know the name; I don't know him at all.

Q. William Grant Still, a composer of Little Rock, Arkansas.

A. Don't know him.

Q. Negro. A. Philip Randolph, Florida, president of the Sleeping—strike that. Charles Wesley of Baltimore, Maryland, president of the university in Ohio; I don't have the town.

[fol. 270] A. I don't know him.

Q. Frederick Patterson, president of Tuskegee Institute, Washington, D. C.

A. I don't know him.

Q. Some of these men you know. Assuming they were all educated—got their preliminary education in segregated schools, a large part of them in the south, would you—did you consider that in arriving at your opinion here?

A. Certainly did. The fact that occasionally a person is able to overcome, through various readjustments and other

experiences, the conflict of roles, the conflict of models, does not disturb the generalization which I make, in the least. Certainly there are individual cases which either through psychotherapy or other experiences, the individual is able to overcome such difficulties. But this is not the general case at all.

Q. Well, there are many illustrations of emotional stress and strain among the white children who go to school and don't get—get sort of left out, don't make the football team or the basketball team or don't get invited to the parties, isn't that right?

A. Sure, there are differences in ability to adjust and there are emotional disturbances. The differences which you cite are not enforced differences. They are not inevitable in terms of the situation in which they come—in which [fol. 271] they operate. The child is not by fiat or legalization required to have presented to him this conflict.

Q. That is your opinion about what the law ought to be, in other words, is that it?

A. I would say on the basis of my testimony that the segregation of schools presents a conflicting set of models inevitably.

Q. This opinion you have given here is largely your own personal view based upon your study.

A. No, I wouldn't say it's my own personal view at all. I would say it's the result of a tremendous amount of research and evidence.

Q. I said study.

A. That is accumulated by social psychologists over a period of years and as I have studied and analyzed this research, I would come to this conclusion.

Q. You think you could be wrong?

A. Of course any scientist always presents the possibility or recognizes the possibility that new evidence and new research may modify to some extent the conclusions of a particular time.

Mr. Goodell: That is all.

(Witness excused.)

[fol. 272] Louisa Holt, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Carter:

Q. Mrs. Holt, what is you occupation?

A. I am a social psychologist.

Q. Would you indicate to the Court what your educational background is.

A. I received the Bachelor's Degree, Master's Degree and Ph.D. all from Radcliffe College, which is the feminine adjunct of Harvard University. This was in the field of sociology in the Department of Social Relations there, which includes cultural anthropology, clinical psychology, social psychology, as well as sociology.

Q. Mrs. Holt, would you also describe your various job experiences.

A. Well, I started under an arrangement which gave me a kind of internship in public administration where I worked in the Federal Bureau of Prisons.

Q. Where was this?

A. For six months in Alderson, West Virginia; for about nine months in Washington. Following that, I had a year of graduate study concurrent with work in a settlement house in Boston, South End House, and then was appointed an instructor in sociology at Skidmore College and also [fol. 273] director of a college community center in Saratoga Springs. I was then returned to Radcliffe College where I was appointed a teaching fellow and tutor in sociology. Concurrently with that, I held a Sigmund Freud Memorial Fellowship at the Boston Psychoanalytic Institute in 1944 and 1945. Following these other jobs, I participated in some research work for the Family Society of Boston in connection with their vocational counseling service. I was then an educational counselor for the National Institute of Public Affairs in Washington. From 1947 to 1949 I held a part-time appointment in the Menninger Foundation School of Psychiatry and for part of that time in their school of clinical psychology affiliated with the University of Kansas.

Q. That is located in this city.

A. What's that?

A. Is that in Topeka?

A. Yes. In the interim, there was a post-doctorate research fellowship of the National Institute of Mental Health. This past year I have been on the faculty of the University of Kansas in the Psychology Department, teaching courses in social psychology and personality and some of their inter-relations. At the same time I also prepared a long paper for a United States Public Health Service project in connection with the Mid-Century Whitehouse Conference [fol. 274] on Children and Youth dealing with the problems, the methodology of evaluating mental health programs.

Q. What is your major field of interests, Mrs. Holt?

A. It's probably clear that I am interested in the relations between social process and social conditions and personality functioning behavior.

Q. Are you a member of any professional societies?

A. The American Sociological Society, the Society for Applied Anthropology, Society for the Psychological Study of Social Issues, the American Society for Group Psychotherapy and Psychodrama, and I am an associate member of the Topeka Psychoanalytic Society.

Q. Mrs. Holt, are you at all familiar with the school system in Topeka?

A. Yes; I have one child who entered that system this last year and another who enters next September.

Q. You are then aware of the fact that the schools are operated on a segregated basis.

A. I am.

Q. Based upon your experience and your knowledge, taking the segregated factor alone in the school system in Topeka, in your opinion does enforced legal separation have any adverse effect upon the personality development of the negro child?

[fol. 275] A. The fact that it is enforced, that it is legal, I think, has more importance than the mere fact of segregation by itself does because this gives legal and official sanction to a policy which inevitably is interpreted both by white people and by negroes as denoting the inferiority of the negro group. Were it not for the sense that one group

is inferior to the other, there would be no basis, and I am not granting that this is a rational basis, for such segregation.

Q. Well, does this interference have any effect, in your opinion, on the learning process?

A. A sense of inferiority must always affect one's motivation for learning since it affects the feeling one has of one's self as a person, as a personality or a self or an ego identity, as Eric Erickson has recently expressed it. That sense of ego identity is built up on the basis of attitudes that are expressed toward a person by others who are important. First the parents and then teachers, other people in the community, whether they are older or one's own peers. It is other peoples reactions to one's self which most basically affects the conception of one's self that one has. If these attitudes that are reflected back and then internalized or projected, are unfavorable ones, then one develops a sense of one's self as an inferior being. That may not be deleterious necessarily from the standpoint of [fol. 276] educational motivation. I believe in some cases it can lead to stronger motivation to achieve well in academic pursuits, to strive to disprove to the world that one is inferior since the world feels that one is inferior. In other cases, of course, the reaction may be the opposite and apathetic acceptance, fatalistic submission to the feeling others have expressed that one is inferior and therefore any efforts to prove otherwise would be doomed to failure.

Q. Now these difficulties that you have described, whether they give a feeling of inferiority which you were motivated to attempt to disprove to the world by doing more or whether they give you a feeling of inferiority and therefore cause you to do less, would you say that the difficulties which segregation causes in the public school system interfere with a well—development of a well-rounded personality?

A. I think the maximum or maximal development of any personality can only be based on the potentialities which that individual himself possesses. Of course they are affected for good or ill by the attitudes, opinions, feelings, which are expressed by others and which may be fossilized into laws. On the other hand, these can be overcome in

exceptional cases. The instances I cited of those whose motivation to succeed in academic competition is heightened [fol. 277] may very well not be fulfilling their own most basic, most appropriate potentialities but seeking, rather, to tilt against windmills, to disprove something which there was no valid reason, in my opinion, to think was so anyhow, namely, the feeling of their inferiority. So even when educational success is achieved that still may not denote the most self-realization of the person. I feel, if I may add another word, I feel that when segregation exists, it's not something—although it may seem to be such—that is directed against people for what they are. It is directed against them on the basis of who their parents are, since that is the definition which, according to sociologists and social psychologists analysis of the matter, that is used in determining who shall go to a segregated school, a negro school or a white school; it is not simply skin color. In the case of Walter White, for example, and sociologist Allison Davis, his brother, John Davis, who are negroes, their skin color is lighter than mine; of course, I have been out in the sun—the definition does depend upon who a person's parents were. That appears also if a dark-skinned person had parents who were high potentates in India he is not defined as a negro; therefore he is not required to use segregated facilities. It is not the skin color; it is who the parents were, and my understanding and various sociolo- [fol. 278] gists and psychologists analysis of the American tradition, religious tradition as well as set of values and ethos, determining much of our most valued and significant behavior, hinges upon a belief in treating people upon their own merits and we are inclined to oppose a view which states that we should respect people or reject them on the basis of who their parents were.

Q. Now, Mrs. Holt, you are aware of the fact that segregation is practiced in Topeka only for the first six grades. Thereafter, the child goes to high school and junior high school apparently without regard to race or color. You have described difficulties and interferences with the personality development which occurs by virtue of segregation at the first six grades. Is the integration of the child at the

junior high school level, does that correct these difficulties which you have just spoken of, in your opinion?

A. I think it's a theory that would be accepted by virtually all students of personality development that the earlier a significant event occurs in the life of an individual the more lasting, the more far-reaching and deeper the effects of that incident, that trauma, will be; the more—the earlier an event occurs, the more difficult it is later on to eradicate those effects.

[fol. 279] Q. Your opinion would be that it would be more difficult to eradicate those effects at the junior high school level, is that it; merely because you integrate them at the junior high school level——

A. Well, once a trauma has occurred, and I do believe that attending a segregated school, perhaps after the preschool years of free play with others of different skin color, is a trauma to the negro child; that occurs early. There is also evidence emerging from a study now going on at Harvard University that the later achievement of individuals in their adult occupational careers can be predicted at the first grade. If that is true, it means that the important effects of schooling in relation to later achievement are set down at that early age, and I therefore don't think that simply removing segregation at a somewhat later grade could possibly und*ue* those effects.

Cross-examination:

By Mr. Goodell:

Q. You mean, Mrs. Holt, there is a serious study being made now to project in the future whether a child in the first grade is going to be a flop or a success?

A. I do.

Q. You have confidence in that, do you?

A. That study is being directed by Professor Tawkett [fol. 280] Parsons, the head of the Department of Social Relations.

Q. You have a good deal of confidence in that?

A. I certainly do.

Q. You made a comment in your testimony I would like

to call your attention to again; this segregation in some cases would spur, act as a whiplash, on the child to spur him on and make him achieve, and that would be a bad thing.

A. Yes.

Q. You mean it's a bad thing, for example, for a poor boy, because he is poor, the whiplash of poverty makes him work harder to rise higher; that is a bad thing?

A. I mean that that can be at the expense of healthy personality development, self-actualization, self-realization of the most basic fundamental and appropriate kind for that person, and we have plenty of evidence of people who burn themselves out with various emotional or perhaps psychosomatic diseases in whose cases that can be attributed to this overweening striving for competitive success to overcome feelings of inferiority.

Q. Mrs. Holt, more or less educational process has in it competitive features, that is, the children are given tests and examinations and gradecards and the ones that don't make good grades, they get poor grades; at least the teacher gives them their merit grade. You don't believe [fol. 281] in that, do you?

A. I believe in the children being appraised on the basis of their own objective achievement.

Q. You don't believe, then, in any sort of competition in the public school system, do you?

A. I believe competition has its values.

Q. Do you believe in that in the way it's carried on and have competitive examinations and gradecarding and things of that kind?

A. I don't know how else one can operate a society in which individuals are judged primarily on their own merits rather than through connections of who their parents were or who they know which are the alternatives to that system.

Q. Progressive education, that is one of the elements that they believe which has been set up in California and other areas, to abolish all grading, abolish all examinations, let every child go to school and never have to worry about what his grades are; never know what they are, isn't that right?

A. I think a child needs some definiteness in the expectations which the authorities over him, the teachers, have in order to stimulate him to his own maximal productiveness. I think also competition with his peers, if not carried to excessive limits, if not *if not* undue emphasis is placed on it, can also have very beneficial effects.

[fol. 282] Q. These are your personal views you have been giving here largely.

A. They are based on a fair amount of acquaintance with scientific work in this field.

Mr. Goodell: That is all.

If the Court please, at the outset the Court mentioned—I don't care to be objecting about it, but the Court, I thought, suggested a limit on this line of testimony.

Judge Mellott: That is about nine now that we have had on this phase. How many more are there?

Mr. Greenberg: Pardon me, sir, I didn't hear you.

Judge Mellott: You have had several now of the so-called expert testimony; how many will there be?

Mr. Greenberg: We have three or four more, Your Honor, and they are all different.

Judge Huxman: Well, now, we are not disposed to be critical, but it's my opinion from having listened to this testimony, the last four witnesses—that it's all cumulative. I can see no difference, substantial difference, between any of the testimony of the last three or four witnesses. It's fifteen minutes until adjournment time. We are going to have to adjourn this evening at 4:30 on account of a com-[fol. 283] mitment I have. We can, perhaps, finish one more witness in that time. Then I suggest that you gentlemen tonight really appraise your witnesses and appraise this evidence, see whether my statement is warranted that this evidence we are now receiving is all substantially the same and, unless there is more difference in the testimony that you have, we might well have the qualifications of the remaining witnesses read into the record and have a stipulation that their testimony as to the effect of segregation itself upon the mental attitude upon the outlook and life of the student is substantially as testified to by these witnesses. I am just simply suggesting that, saying not that

we will enforce that rule in the morning, but it was understood that about five witnesses would be allowed, and then we would examine the subject, and we are reaching that point, so suppose you call your next witness; that will take us to adjournment time.

JOHN J. KANE, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Greenberg:

Q. What is your full name?

A. John J. Kane.

[fol. 284] Q. What is your occupation?

A. I am an instructor in Sociology at the University of Notre Dame.

Q. What is your educational background?

A. I have a Bachelor of Arts Degree from St. Joseph's College, a Master of Arts Degree in sociology from Temple University, a Doctor of Philosophy Degree in Sociology from the University of Pennsylvania.

Q. What positions have you held?

A. I was an instructor in sociology at St. Joseph's College about two and a half or three years. I have been instructor in Sociology at the University of Notre Dame for three years.

Q. Have you devoted yourself for any of your professional attention to the field of the impact of racial segregation on the individual?

A. I have done two studies in the general field of prejudices, racial—my major interest in the graduate school was in the field of race relations and ethnic relations.

Q. Mr. Kane, on the basis of your educational experience and your studies, I want you to answer the following hypothetical question: Assume that in the City of Topeka there is maintained a racially segregated school system and that a negro child is compelled to attend a racially segregated school because of his race alone; that if this [fol. 285] system did not exist, he would attend a racially

integrated school, would you say that if all other factors are equal, that he obtains the same educational opportunities at the former school as at the latter?

A. No, I would not.

Q. Now, would you give us the basis for your opinion, Mr. Kane.

A. I would begin with two points: The first one is that the school, with the exception of the home, is the institution that makes the greatest impact on American youth. You see, the school gets the child early in life, keeps him for a number of years, so that day after day, year after year it is transferring attitudes for him. Now, we have some scientific evidence about the effectiveness of the accumulation of materials in this area. For instance, Professor Thurston's work on changing attitudes through motion pictures shows that when one picture was shown to a group of youngsters it had relatively little influence in changing attitudes; two had a little more, but if he worked in series of three, he discovered cumulative evidence was very powerful in changing attitudes. What I am mentioning this for is the fact that the influence of the segregated school, when a negro child day after day, year after year, does have this cumulative effect. Secondly, I would like to point out that one of the things children get out of education besides cer- [fol. 286] tain manual skills, spelling, arithmetic and science, is above all, the formation of attitudes. This is what lasts; this is what continues after the school years, and therefore the attitude they get in the particular schools is of great significance. Now, in a school system in which racial segregation is practiced, you have a day after day accumulation of attitudes that the negro child is inferior because segregation is differentiation and distinction. It means, as Professor Newcomb has pointed out, that one group denies to another group, status, privilege and power and so it is borne in upon a negro boy and girl that they are being differentiated not merely because of skin color or physical characteristics, but because there is something inately inferior or subordinate about them and so most of them begin to learn that certain avenues of vertical mobility are closed to them.

Q. What do you mean by vertical mobility?

A. I mean the opportunity of advancing in the world, moving ahead, having a better job than your father had, more social position, and I would point out to you that this concept is fundamental to the American system of values. This is one of the things that we Americans believe in very intensively, and it is something which is denied to negro children. Furthermore, the philosophy of racial segrega-
[fol. 287] gation is supported by rationalizations on the racial myth of inferiority for which we have no adequate scientific evidence. Secondly, segregation cuts down on the communication among people. It erects a barrier. Now, certain barriers will exist whether you have a segregation enforced by law or not, but here's a case where barriers are created and upheld by law. The total effect is to make most of your negro children feel inferior, and I would like to refer to a study that was made by Preston with regard to projected scores on tests. A number of white boys were asked to put down the score they expected to get on a certain test and, when they put down the score, they were told that negro youths had made a higher score. The white boys were allowed to change, and they immediately changed their scores above the negro score. Negro youths were told they were about to take a test and were asked to put down the expected score and, when they put it down, they were told this was higher than the white boys made, and they were asked if they wanted to change it, and they lowered their scores below that of the white group. This is indicative of the expectation of behavior which is engendered in a segregated school among most of your colored students.

Q. Dr. Kane, you mentioned a study that you made.

A. Well——

[fol. 288] Q. —in this field. Could you tell us whether or not that study supports the conclusion which you just stated and describe the study.

A. I studied groups of negro boys, gangs, in West Philadelphia. I think it could be used.

Q. Will you describe what you did in this study.

A. We discovered in this particular area there was a system of social stratafication among negroes. The area

was roughly split into two sections, one in which the negroes called the "Tops" and the other which they called the "Bottoms." In the "Tops" you had a high degree of homeownership, negro males there, the fathers had better occupations, larger income and a fairly stable family. The "Bottoms" area you never had any area in which as many as 6% of the negroes owned their homes. You had a relatively unstable family; for the most part they were employed in menial jobs. Now you would think that the "Bottoms" area, as a group, represented the lowest level of negro society, but these negroes themselves made a distinction, and they would point out that there was still a lower group than this, and that was the negro from the south and, if you asked them, they said because of segregated education. Now, I want to point out, whether or not that was true, is quite beside the point because, as W. I. Thomas indicated long ago, if men define situations as [fol. 289] real, they are real in their consequences and this is the attitude the negro group itself held, and, of course, this is the way we form attitudes about ourselves; not only what we think, but what we know or believe other people think about us. So, here again, you have an indication of the inferiority that was engendered because of the segregated school system amongst the immigrants from the south.

Mr. Greenberg: That is all.

Cross-examination.

By Mr. Goodell:

Q. Professor, don't you believe a home which has the child, say the first five years without any—where the school doesn't have him at all, in any case whether he is negro or white, don't you think the child has a great deal to do with attitudes, it's race and towards another race and acceptance, and so forth.

A. You are perfectly correct. As a matter of fact, the home is much more important than the school, if it's an adequate home. Now, I should like to point out, if I may——

Q. That answers my question.

Judge Huxman: You may go ahead and give your explanation. This is an expert witness.

The Witness: I should like to point out that when the home facilities are inadequate, as they are in so many [fol. 290] cases of your poor negro family, then the school becomes increasingly important and, in those cases probably, more important than the home since it is exercising little influence.

Mr. Goodell: I have no further questions.

Judge Huxman: It is now five minutes of adjournment time, and we perhaps could not finish another witness, and I just have an appointment I must keep. So we will suspend at this time.

The court will be in recess until tomorrow morning promptly at 9:30.

(The court then, at 4:25 o'clock p. m., adjourned until 9:30 o'clock a. m., the following day, Tuesday, June 26, 1951.)

[fol. 291] Tuesday, June 26, 1951

(Pursuant to adjournment as aforesaid, the court met, present and presiding as before, and the following proceedings were had:)

Judge Huxman: You may proceed, gentlemen.

Let me inquire of the attorney for plaintiff, how many more of these expert witnesses do you have?

Mr. Carter: Your Honor, we at the present time—we only have one more expert witness to put on.

Judge Huxman: Just one more expert witness.

Do you have any testimony after that or will that conclude your case?

Mr. Carter: We have subpoenaed a number of witnesses, Your Honor, and we are contemplating calling only one other witness to establish one point.

Judge Huxman: All right, you may put on this other witness, expert witness.

BETTIE BELK, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Carter:

Q. Miss Belk, what is your occupation?

A. At the present time I am on the staff of the Workshop in Human Relations at the University of Kansas City, Missouri.

[fol. 292] Q. What is your educational background?

A. I have my Bachelor's Degree from State Teachers College in Worcester, Massachusetts, my Master's Degree from Clark University in Worcester, Massachusetts, and, at the present time, I am working on my Ph.D. in Human Development at the University of Chicago.

Q. Miss Belk, what other than your present employment at the University of Kansas City—what other job experience have you had?

A. I have taught junior and senior high school in Indiana for two years; for ten years I was employed by the Y. W. C. A., first as director of the teen age program in Trenton, New Jersey, and for five years as a member of the national staff as a consultant on the teen age program. In that capacity I did work in the midwest; Kansas was one of the twelve states in the area that I served, and I have worked with the local organization here on their problems of teen age program. At the university I have been employed as a research assistant in the study of developmental tasks of adolescents and, during the past year, I have been on the staff of the Center for Inter-Group Education.

Q. Have you published any books or articles on the problems of adolescents?

A. Yes, for the Y. W. C. A. I published several articles on teen age problems and a pamphlet designed for train-

[fol. 293] ing adult leaders to work with teen agers.

Q. Do you belong to any professional societies?

A. Yes. I am a member of the National Association of Group Workers.

Q. What is your field of major interests?

A. Well, my recent experience has been in training adults to work with groups, and I am particularly interested in this aspect of human development. My work at the present time is in the training of adult leadership for this kind of job.

Q. That is the training of an adult—of adults to work with adolescents and so forth?

A. Yes.

Q. Now, assume, Miss Belk, that the City of Topeka has organized its public school system so that a child enters the first grade at approximately the age of six; goes through the elementary schools, six grades; he would be entering a junior high school at approximately the age of twelve. Assume that for the first six grades the schools in Topeka are maintained on a segregated basis. Thereafter, the junior high schools and high schools, the schools are integrated. Based upon your experience and your knowledge, would you give an opinion as to whether or not it would be harmful—it would have any adverse effect on the child at that stage of his development to move from a segregated educational [fol. 294] pattern into an integrated pattern?

A. I would say that by bringing children together for the first time at this age, the Board of Education is working a real hardship on both the negro and white children, and I would like to explain why, if I may.

Q. Please do so.

A. I think that it is a well established fact that the years just preceding age 12, the years 10 to 12, roughly, for girls and 11 to 13 for boys, are the years during which the important physical and physiological changes take place. The child at age 12 is trying to integrate two to five inches of standing height that he had acquired very rapidly. He is also trying to integrate very important physiological changes. In our society, girls reach puberty at about twelve and a half and boys at about thirteen and a half, and they are adjusting to really a new kind of body for them because of the changes which have taken place. There are social changes that take place also at this age; changes take place within the school system itself. Up until this point the child has been accustomed to a school situation in which he has related to one adult. Now he moves into what we

call a departmentalized pattern. He has several teachers; he moves from one classroom to another. In other words, he has a pattern of relationship with many important adults in the school system. Also, at this age the child moves [fol. 295] from a peer society which has been largely made up of members of the same sex, into a heterosexual society. The seventh grade is a crucial one for girls, particularly, because they become interested in boys before boys become interested in them, and this is a very difficult time for them to live through. All in all, these are the years when children are making some of their most important life adjustments, and I would say that having been brought up in a separate system where they can only learn that negroes and white are different, they must at this age then make an adjustment to living with someone that they have learned is different, and I think that this puts an additional adjustment on them at an age when it is very difficult for them to make it.

Cross-examination.

By Mr. Goodell:

Q. Is it Miss or Mrs. Belk?

A. It's Miss Belk.

Q. Are you familiar with the City of Topeka and the customs and usages with respect to inter-racial matters?

A. I have visited the City of Topeka as a consultant for the Y. W. C. A., yes.

Q. Do you realize that for half a century, to some degree, there has been segregation practiced in the business world and in the social strata of this community?

A. I believe that I have heard that there is segregation in [fol. 296] *in* the community, yes.

Q. Without regard to the merits, if that is a fact, assuming—strike that—that there is segregation practiced in the ordinary workday life of the community in the business world and in the social strata as of our two races here, negro and the white, and assuming further for the purpose of this question that there were no segregation in the first six grades of our public school system, and the negro children were absorbed in the present existing white schools,

where they were outnumbered twenty-five to fifty to one and, in some cases, more than that, would you reform your opinion any, taking that into account?

A. No, I would not.

Q. Do you know what the natural tendencies are in a practical world? Would it be customary, where children come from homes—living in a community where segregation is practiced other than in the schools, for those same white children to carry on that same custom and usage in their relations with the race—with the opposite race—the negro.

A. I don't understand your question.

Q. Well, assuming that segregation, as I have just stated, as practiced in this community in Topeka, in the city, outside of the school, and that is a fact, children coming from homes in this community, isn't it very natural that they [fol. 297] would simply carry on that custom and usage in their relations with other negro students of the opposite race?

A. Well, I think our recent studies have shown that children, adolescents particularly, take most of their social pattern from their peers rather than their parents; in fact, it's one of the real problems in our American society today that this is true.

Q. Who are the children, what do you mean by that, that the negro children they would look upon as their peers and therefore they would follow them; what do you mean?

A. I mean that all adolescent children take most of their social patterns from people their own age; they tend to see each other as authorities. It's an age at which they break away completely from parental authority, in fact to the extent that it becomes a difficult problem in home-life, so it is not always the patterns of the parents that they are repeating; in fact, during this time they are forming their own values.

Q. I don't know as I understand it. You consider another child, that a child will look upon another white child as his peer, is that what you are getting at?

A. Yes.

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Q. I don't know as I understand it. You consider another child, that a child will look upon another white child as his peer, is that what you are getting at?

A. Yes.

Q. What is there about another child of the same age that would make him a peer as to another child?

A. This is one of the phenomena of development. The child must, in his growing up process, ultimately break [fol. 298] away from the home. Now adolescents in our society are treated at one moment as though they were children and the parents are very authoritarian with them and at another moment they are expected to behave like adults and, consequently, most of them are in some state of confusion as to what their status really is. But they are moving always toward adulthood, toward establishing their own values and, for this reason, they take more of their pattern—you can see it even in their dress. I don't know if you have any adolescent children of your own, but if you do you know they dress alike, they act alike, they talk alike. They get their values largely from each other at this age.

Q. Assuming for the purpose of this question, though, that segregation was abolished and the negro child was absorbed in the white school system and, for illustration, he was outnumbered in the particular school system on the average of thirty to one or twenty to one or any figure of that proportion; taking into account the natural factors of every-day life and the practicabilities of the situation, wouldn't that result in and of itself of him being a very small minority group and being left out of activities and the run of things, the negro child.

A. I do not think that that is necessarily true. In fact, in my own experience I have seen it not to be true.

[fol. 299] Q. Well, isn't that true within the white structure, that some children run things and others tag along; some are leaders and others aren't?

A. This is an individual matter. It is quite true.

Q. And to that extent where you have children that do run things, elected class officers and in all activities, make the teams and so forth, and in their own group, and in the other children that doesn't—aren't given recognition in that sense, that child—this philosophy of yours, this theory of yours, is made to feel second-class and left out of things, isn't that right, of his own group.

A. Of his own group, yes, and most of us who work in

inter-group relations nowadays see this as a total thing. There is no longer any stress on negro-white relations; it's on inter-group relations.

Q. I mean without regard to the racial factor, you have that situation in any organized society, don't you; some people get along better than others, run things, are leaders; others tagging along and are not leaders.

A. This is true and our problem is to work so that everybody has a niche into which he fits.

Q. How would you eliminate that aspect of life in a school system where some children are not the leaders and don't run the show and are sort of left out, so they don't have an inferiority feeling that they are second-
[fol. 300] class? How would you get rid of that?

A. As a matter of fact we have been doing some work on that at the center for inter-group education. Our work deals with schools. Well, for example, in one school children said you are separated here according to whether or not you belong to the cashmere sweater set, so this became the problem that we worked on. The way that we usually do it is sitting down with young people themselves and talking about why people do exclude other people and why this is important to them and what are the values in learning to live with people who are different from you and being able to accept them.

Q. Well, without regard to your—adoption of your theories and your opinion here in the school system, you are still going to have that problem considering the practicalities of the situation.

A. The problem of rejection and acceptance is one that will be with all of us all through life.

Q. Surely. Isn't it awfully difficult for you to have the experience of a negro child so that you could expertly say what he feels, a first grader and a third grader, and so forth, how he feels about anything.

A. Is it difficult for me?

Q. Certainly, to put your mind—I mean to—for you to assume the feelings of a negro child that is in these elemen-
[fol. 301] tary grades? How do you do that?

A. It is difficult for me really to understand the experiences of anyone else, but this is part of my job.

Q. What is there about another child of the same age that would make him a peer as to another child?

A. This is one of the phenomena of development. The child must, in his growing up process, ultimately break [fol. 298] away from the home. Now adolescents in our society are treated at one moment as though they were children and the parents are very authoritarian with them and at another moment they are expected to behave like adults and, consequently, most of them are in some state of confusion as to what their status really is. But they are moving always toward adulthood, toward establishing their own values and, for this reason, they take more of their pattern—you can see it even in their dress. I don't know if you have any adolescent children of your own, but if you do you know they dress alike, they act alike, they talk alike. They get their values largely from each other at this age.

Q. Assuming for the purpose of this question, though, that segregation was abolished and the negro child was absorbed in the white school system and, for illustration, he was outnumbered in the particular school system on the average of thirty to one or twenty to one or any figure of that proportion; taking into account the natural factors of every-day life and the practicabilities of the situation, wouldn't that result in and of itself of him being a very small minority group and being left out of activities and the run of things, the negro child.

A. I do not think that that is necessarily true. In fact, in my own experience I have seen it not to be true.

[fol. 299] Q. Well, isn't that true within the white structure, that some children run things and others tag along; some are leaders and others aren't?

A. This is an individual matter. It is quite true.

Q. And to that extent where you have children that do run things, elected class officers and in all activities, make the teams and so forth, and in their own group, and in the other children that doesn't—aren't given recognition in that sense, that child—this philosophy of yours, this theory of yours, is made to feel second-class and left out of things, isn't that right, of his own group.

A. Of his own group, yes, and most of us who work in

inter-group relations nowadays see this as a total thing. There is no longer any stress on negro-white relations; it's on inter-group relations.

Q. I mean without regard to the racial factor, you have that situation in any organized society, don't you; some people get along better than others, run things, are leaders; others tagging along and are not leaders.

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Q. Well, without regard to your—adoption of your theories and your opinion here in the school system, you are still going to have that problem considering the practicalities of the situation.

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A. Is it difficult for me?

Q. Certainly, to put your mind—I mean to—for you to assume the feelings of a negro child that is in these elemen-
[fol. 301] tary grades? How do you do that?

A. It is difficult for me really to understand the experiences of anyone else, but this is part of my job.

Q. Well, I grant all that, but how do you do it; how can you tell what I feel and react and my reactions, and so forth, to a set of facts or my social relations.

A. How do I actually do it?

Q. How do you tell it, yes.

A. Well, I try to put myself in the other person's place.

Q. Well, I know that, but I mean is it like a mathematical problem that we have got in algebra so that you can add it up and prove it.

A. We do have techniques for doing this sort of thing and the technique is known as role-playing, and I would be glad to describe it to you.

Q. If some of your assumptions are wrong, then your whole conclusions you reach are wrong too, aren't they; isn't that right? That's all.

A. Well——

(Witness excused.)

Mr. Carter: We were going to call our next witness, Mrs. Dorothy Crawford, but I don't believe she is here, and so we will rest.

Judge Huxman: You will rest.

Mr. Carter: Yes, sir.

[fol. 302] Judge Huxman: Plaintiff rests.

Mr. Goodell: If the Court please, I would like to be given about ten minutes. There were some members of the school system I couldn't reach last night and, because you started at 9:30, I couldn't get hold of them in time. I won't take over ten minutes.

Judge Huxman: That was too early for the school members to be out?

Mr. Goodell: No, I couldn't get in touch with them.

Judge Huxman: You want a ten-minute recess?

Mr. Goodell: If it isn't imposing, yes.

Judge Huxman: Court will be in recess.

(The court then, at 9:45 o'clock a. m., stood at recess until 9:55 o'clock a. m., at which time the following proceedings were had:)

Mr. Goodell: Does the Court want all my witnesses sworn at one time?

Judge Huxman: We will follow the same procedure.

Mr. John Scott: If the Court please, we have a witness that just arrived, and we would like to put her on; just a short witness.

Judge Huxman: All right.

Mr. John Scott: And we would also like to invoke Rule [fol. 303] 43(b), that is, on hostile witnesses. This witness will testify pertaining to transportation, and she also has a financial interest in it and, therefore, we would like to invoke that rule.

Mr. Goodell: Who is the witness?

Mr. John Scott: Mrs. Dorothy Crawford.

Judge Huxman: The hostile witness rule is rather a flexible rule, and it depends upon whether the witness shows any hostility, so suppose you proceed in the regular way of examination, and we will then be guided by what follows.

Mr. John Scott: All right.

Dorothy Crawford, having been first duly sworn, assumed the stand and testified as follows:

Direct Examination.

By Mr. John Scott:

Q. State your name to the Court, please.

A. Mrs. Dorothy Crawford.

Q. Where do you live?

A. 835 Clay.

Q. Here in the City of Topeka?

A. Topeka.

Q. Defendants' Exhibit "B"(1) that has been admitted into evidence indicates that you are engaged in the pro- [fol. 304] fession of teaching, is that correct?

A. That's right.

Q. And you also teach at Buchanan School.

A. That's right.

Q. And you also teach the first and part of the second grade, is that right?

A. That's right.

Q. And also Defendants' Exhibit "D" states that you receive $272.19 for transportation, is that correct?

A. I don't remember the exact amount.

Q. I want you to explain to the Court, if anybody, that you transport, what persons and of what grades that you transport.

Mr. Goodell: We object to that as incompetent, irrelevant and immaterial; don't see the purpose of it.

Judge Hill: What is the purpose of it?

Mr. John Scott: The purpose of this testimony is to show that she transports kindergarten children and she dismisses her grade for the purpose of transporting children, and those children are sent to another classroom during the time that she is conveying these children.

Judge Huxman: You may answer.

(The last preceding question was here read by the re-[fol. 305] porter.)

By Mr. John Scott:

Q. —if any.

A. I do transport kindergarten children after dismissing the first grade at 11:30 and the second grade at 11:45.

Q. Now, when you dismiss your class at 11:30, where does—where do the second-grade children go?

A. I stay in the building and teach the second-grade children until 11:45. I do not dismiss the second grade until 11:45.

Q. Now, Mrs. Crawford, you say you transport the children at 11:30, is that correct?

A. No, I did not say that. I said that I transport the children after dismissing the first grade at 11:30 and the second grade at 11:45. I do not leave the building until after I dismiss the second grade at 11:45.

Q. Isn't it a matter of fact that you take the kindergarten children home at 11:30, and you send the second-grade class into another classroom?

A. No, I do not.

Q. During the time that you have undertaken these duties

of transporting the kindergarten children, haven't you done that?

A. I have not.

Judge Mellott: Didn't your witness testify it was 11:45 that this transportation began?

[fol. 306] Mr. John Scott: No, 11:30.

Judge Mellott: I don't agree.

Mr. John Scott: I think the testimony yesterday indicated it was 11:30.

Judge Mellott: No, the testimony yesterday was as she has given, after the dismissal of the second class at 11:45 that she transported the children.

Mr. John Scott: I don't think the record shows that, Your Honor.

Judge Mellott: I think it does, but you may proceed.

By Mr. John Scott:

Q. Well, during the year of 1950 and '51 can you state to the Court the approximate number of children that you transported, that is, each day.

A. The number varied according to the attendance, daily attendance, and also according to the transfer of children from one district to another and according to some children going out of town and some coming in town and also some parents on some days elected to come for their children; so it's hard to tell the exact number each day.

Q. Well, use your best judgment, Mrs. Crawford.

Judge Huxman: What's the purpose of this? What are you trying——

Mr. John Scott: It's to ascertain the number of children she transports daily, and I am going to ask her the type [fol. 307] of vehicle she is driving, Your Honor.

Mr. Goodell: If the Court please, this isn't an accounting procedure. Do they claim she's overpaid or what is it?

Mr. John Scott: We are not claiming anything such.

Judge Huxman: You are trying to establish the buses are overcrowded, is that it?

Mr. John Scott: Trying to establish the number of children she's transporting daily and the type of vehicle.

Judge Huxman: What is the purpose of that when you establish it?

Mr. John Scott: The fact that these children are transported under crowded conditions.

Judge Huxman: Well——

By Mr. John Scott:

Q. What type of vehicle do you drive, Mrs. Crawford?
A. I drive a Ford two-door.
Q. What model?
A. A two-door.
Q. Well, I mean——

Mr. Goodell: Year model he means.

By Mr. John Scott:

Q. Year model.
A. 1938.

[fol. 308] Q. Just give your best judgment the number of children that you take in that car each day; is it six, eight, nine, ten or twelve?

A. Well, I take no more than five at a time. When there are more than five children I make two trips.

Q. You make two trips.
A. Yes.

Q. I see. Do you have any special coverage for liability of these children that you carry?

Mr. Goodell: Now, we submit, if the Court please, we object to that as incompetent, irrelevant and immaterial, has no probative force in this case.

Judge Huxman: The objection will be sustained. It is collateral and can't go to any due process, has no bearing on this matter.

Mr. John Scott: I believe that is all.

Cross-examination.

By Mr. Goodell:

Q. Are you neglecting your teaching job by hauling some kids wholly during the noon hour?

A. I am not.

Mr. Goodell: That is all.

Judge Huxman: Are you through now? Plaintiff rests?

Mr. Carter: Yes.

[fol. 309] Judge Huxman: You may proceed with the defense.

CLARENCE G. GRIMES, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Goodell:

Q. State your name for the record and for the Court.

A. Clarence G. Grimes.

Q. You are commonly known around town here as "Cap" Grimes.

A. That's right.

Q. Were you an officer in World War I?

A. I was.

Q. Have you had for many years the contract with the Topeka Board of Education for the transporting of pupils to the negro schools?

A. Thirty-five years.

Q. Are you familiar then with all the details of the actual carrying out of that mission or the transportation of——

A. I am.

Q. There has been some testimony here offered in the plaintiffs' case to the effect that they had to wait long periods of time at scheduled bus stops. State what the facts are about these buses running on schedule, and so forth.

A. I plan my schedule on clock time to reach the corners at a certain time and, if they are waiting much longer [fol. 310] than what they say here, they are there before the bus is supposed to get there.

Judge Hill: I can't hear the witness.

Judge Mellott: It's difficult to hear you, Mr. Grimes; if you will talk a little louder.

By Mr. Goodell:

Q. Repeat that.

A. I say I run my bus on the scheduled time by the clock and, if there is children at the corners that have to wait any length of time, they are there long before the bus should be able to get there. They know what time the bus is supposed to get to the corner.

Q. There is some testimony here in the case given yesterday relating to scheduled stop where a child or parent, perhaps both, testified they had to go seven blocks down here to get to the bus at First and Quincy. Are you familiar with that?

A. Yes, I am.

Q. Is that correct?

A. No.

Q. What are the facts about it?

A. This child lives four blocks and three houses west of First and Kansas Avenue and the bus sets seventy-five feet east of First and Kansas Avenue.

Q. Were you present in court when the testimony was given about the time of the morning that they left in [fol. 311] order to get to the bus stop?

A. I was.

Q. So that would be thirty minutes to go four blocks.

A. That's right.

Q. Do you have, as a practical matter, do you have instances of colored children, negro children, going farther from their home than a scheduled bus stop in order to get to ride longer?

A. I used to have, but I don't have that anymore.

Q. What—do you know the proximity—some of the children have you pick them up—how far away?

A. I think the longest distance is five blocks.

Q. And the closest?

A. The closest distance, some of them are right by their houses.

Q. How far from school?

A. Oh, some of the Washington children are eight or nine blocks from school when I pick them up.

Q. What are some of the closest you pick up and take?

A. From the school?

Q. From many of the schools, yes.

A. That is about the distance—Sixth and Chandler is the closest.

Q. Yes. Now there was some testimony given yesterday [fol. 312] to the effect by one parent—I don't have his name—lives out here in the east part of town, around Chandler in that neighborhood—he had his child ride on the city bus because he had observed children leaning out the windows and their arms out the windows, and so forth. How are these buses built?

A. According to the state regulations on buses, school buses, you have to have half windows in your buses and my windows let down from the top, not any farther than that distance, and they can't get their heads out.

Q. It's impossible.

Judge Mellott: Indicating what, six inches?

The Witness: About six inches.

By Mr. Goodell:

Q. Now, do you try to maintain some decorum in those buses so that it's orderly and the children——

A. —the principal to put a patrol on each one of these buses.

Q. You mean the principal- of the schools have a school patrol on each bus.

A. That's right.

Q. And they ride the buses, do they?

A. They do.

Mr. Goodell: I believe that is all.

Judge Huxman: You may cross-examine.

[fol. 313] Cross-examination.

By Mr. Carter:

Q. Mr. Grimes, how many buses do you operate?

A. Just one.

Q. And to how many schools do you take children?

A. Two.

Q. I show you this exhibit, would you indicate to me what

the bus schedule you follow on that exhibit—the exhibit is marked "G"——

Judge Mellott: "G"?

Mr. Carter: "G".

The Witness: I follow the Washington and Monroe schedules.

By Mr. Carter:

Q. Now you have looked at this schedule and this is correct?

A. That is the time the bus arrives at certain places.

Q. I note on this schedule which you have indicated is correct that at 8:29 you unload the rest of the group at the Monroe School; that is, your first load is taken to the Monroe School, and you get there 8:29, is that correct?

A. That varies on account of traffic sometimes; sometimes it's after that and sometimes a little before that.

Q. The schedules—the schedule indicates—I think your testimony indicated that you arrived at a certain time per day and that there was no waiting because of the sched- [fol. 314] ule. Now you tell me that here when it says you are supposed to get to the Monroe School at 8:29 you cannot say that is correct because it varies due to the traffic. Now is this or is this not a correct time schedule for your buses?

A. I didn't say I got to the Monroe School at 8:29.

Q. Your schedule says it does.

A. I know, but that is not my schedule.

Judge Huxman: It seems to me—I don't want to restrict the opportunity to present this evidence—but this goes to a very minor matter. In the first place, there is a schedule and, in the second place, I think I would take judicial knowledge that maybe buses sometimes are a little bit late and sometimes children get there a little ahead of time. I doubt if there ever was a bus that ran exactly on the second. I don't want to restrict you in your cross-examination, but I wouldn't pursue that too far.

Mr. Carter: Well, the only reason that I raised it is that the testimony which has been established, attempted to be established by the defendants, is that the schedule is followed and that the bus arrives on time.

Judge Huxman: Suppose you established that the schedule varied or the bus wasn't always there on time, do you think that would have a weighty bearing on the question [fol. 315] of whether the due process clause of the Fourteenth Amendment was thereby violated. It might be an insignificant——

Mr. Carter: I don't believe it would be crucial.

Judge Huxman: Let's not pursue it too far. This case isn't going to turn on whether this schedule is strictly adhered to or whether there is a variance in it.

Mr. Carter: All right, sir, I will follow your suggestion.

Judge Huxman: In the first place, I think the buses are late. I have never seen a bus yet that wasn't late.

By Mr. Carter:

Q. What is the maximum capacity on your buses?

A. My bus has a seating capacity of thirty-six.

Q. And you indicated that there are monitors on the bus.

A. Yes.

Q. Who are they?

A. I don't know them by name. I don't know hardly any of the children by last names; some of the first names, I believe, the older boys and girls of the different schools.

Q. Is this only on your return from school?

A. No, going to and coming.

Q. Going to and coming.

[fol. 316] A. Yes, sir.

Q. Every day there is a different person.

A. No, it isn't a different person; it's the same child.

Q. You don't know who it is.

A. I know who they are by looking at them. I can't tell you their names because I am not familiar with all their names.

Redirect examination.

By Mr. Goodell:

Q. Mr. Grimes, you mentioned that only Monroe and Washington were the only ones you personally transported.

Do you know how the other schools are handled, who transports them?

A. The Topeka Transportation Company.

Q. The city bus system.

A. The city bus system.

Q. They use their own ordinary equipment.

A. That's right.

Q. They contract that with the Board of Education.

A. That's right.

Mr. Goodell: That's all.

Judge Huxman: Step down.

(Witness excused.)

[fol. 317] THELMA MIFFLIN, having been first duly sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Goodell:

Q. State your name to the Court and for the record.

A. Thelma Mifflin.

Q. What official position do you hold in the city schools?

A. I am the clerk of the Board of Education.

Judge Huxman: I didn't get the answer.

The Witness: I am the clerk of the Board of Education.

By Mr. Goodell:

Q. How long have you been in such administrative capacity?

A. I have been in Topeka in that capacity for nine years; twenty-seven years total in other school systems.

Q. Are the records then that have been furnished the Court here that are exhibits in this case, were they made under your supervision and direction?

A. Yes, sir.

Q. They are true and accurate records?

A. They are.

Q. And reflect correctly the matters which are covered by them?

A. That's right.

[fol. 318] Q. Did you bring with you this morning at my direction an exhibit or list of the number of colored, negro, students transported?

A. Yes, sir, four copies.

Q. I will hand you what has been marked Defendants' Exhibit "O" and is that a list of the—broken down by schools—of the negro students that are transported in the City of Topeka to the negro schools?

A. That's right.

Q. And it's true and correct?

A. It is.

Mr. Goodell: We offer the same in evidence.

Judge Huxman: What is the exhibit number?

Judge Mellott: "O".

Judge Huxman: Exhibit "O" will be received.

Defendants' Exhibit "O", having been offered and received in evidence, is contained in the case file.

By Mr. Goodell:

Q. Mrs. Mifflin, do you attend all board meetings in your capacity as clerk for the Board of Education?

A. Yes, sir, I do.

Q. You are present then when discussions of policy and administrative policy and the running of the schools comes up for discussion by the board and Dr. McFarland.

[fol. 319] A. Yes, sir.

Q. You are familiar, then, and have been all these years, with that policy.

A. Yes, sir.

Q. Are you familiar then with the actual policy with respect to the operation of the entire school system which includes the eighteen elementary schools and the four negro schools?

A. Yes, sir, I am.

Q. State whether or not you know the policy that has been adopted and carried out by the Board of Education with respect to the negro schools concerning the right of a child, if he so elects or his parents, to attend any one of the four negro schools of his own selection; do you know the policy about that?

A. Yes, it is the policy of the board to allow the child to attend the school which he wishes to attend in the colored division.

Q. Do you recall of any instances when that election was made which wasn't acceded to?

A. No.

Q. Are you likewise familiar with the course of study that is prescribed by state law and whether or not it's been adopted and used in the city schools, elementary schools, both negro and white schools.

A. The same course of study is used in all schools.

[fol. 320] Q. That would mean then, of course, the same textbooks.

A. That's right.

Q. There was some testimony given here yesterday by Dr. Speer concerning his examination of books and comparisons that he made from books found in negro schools, comparing the books found in certain of the white schools, that he made such a similar examination. Do you know whether or not, as far as the Board of Education is concerned, there is any distinction or differences in the furnishing of books to the different schools on the basis of their color, whether negro or white schools.

A. There is no distinction made. The number of books isn't—the number of books sent is determined by the number of children in the school.

Q. Well, I mean do you have any policy to send old-style books down to the negro schools and new books to the white schools?

A. No, there is no policy like that. I am sorry that Dr. Speer didn't see the schools when they were in operation. He saw them after they were closed. If a principal had "put his school to bed" as we say correctly, the good books would have been packed in boxes and packed away. The books that are left out on the shelf are books that could be eliminated, really.

Q. Obsolete books.

A. That's right.

[fol. 321] Q. But the modern up-to-date books that are actually used in the operation of the schools, your policy

has been as soon as school is out to box them up and put them away.

A. Put them away very carefully so they won't be dusty when school starts.

Q. Now, Miss Mifflin, state, if you know, whether or not additional books, not furnished by the Board of Education, are sometimes furnished by the Parent Teachers Association made up of parents of children living in the various territories in the city?

A. Yes. P. T. A.'s very frequently have money to spend, and they do buy books for various schools.

Q. Buy it with their own money, not public funds.

A. That's right.

Q. And put it in that particular school where the P. T. A. decides to make that purchase, is that correct?

A. That's right.

Q. And that is no different, whether it's negro or white, is that right?

A. That's right.

Q. The board doesn't spend its money or have any control over that.

A. No.

Q. Other than that dissimilarity wherein the Parent Teachers Association in some territory might buy more—might have more money to spend, is there any dissimilarity [fol. 322] by reference books or books furnished by the board in any of the schools in the elementary system?

A. There is no difference.

Q. Now, I want to direct your attention, Miss Mifflin, to what has been introduced in evidence as Exhibit "A" and which I want—first, I will ask you if all of the territories are named and designated on this Exhibit "A", both white and negro?

A. Yes, sir.

Q. Of the entire school system?

A. That's right.

Q. Are school territories also shown on Exhibit "A" which are outside the city limits of Topeka?

A. Yes; the school district is on that map.

Q. In other words, you have some areas shown on Ex-

hibit "A" which are in the City of Topeka for school purposes alone, is that right?

A. That's right.

Q. Does that appear colored in blue?

A. That's right.

Q. I will ask you whether or not in each, if you know, according to the records of the Board of Education, if you have children attending from all of these areas shown in the territory, school territory, or put it another way, from [fol. 323] the blue, what is marked blue.

A. Yes, we do have.

Q. Is any transportation furnished to any of the white children from any part of town?

A. None at all.

Q. Do some of them live as much as thirty blocks away?

A. Yes, sir.

Q. Well, in those cases, if they ride a bus, do they ride a city bus?

A. Yes, they would have to furnish their own transportation.

Q. Now, do you furnish a convoy with any of these children, people to go with them to get them across the streets, and so forth.

A. No, sir.

Q. White children.

A. No.

Q. Do you have any control—state, if you know, whether you have any control—I mean by you, the Board of Education, over selection of traffic lights or blinker lights at any territory in the City of Topeka?

A. No; that is the business of the city.

Q. And how—and do you know how they make that decision?

A. I think they——

Judge Huxman: Mr. Goodell, that would have to be hearsay on her part.

[fol. 324] Mr. Goodell: Yes, it would be.

By Mr. Goodell:

Q. Miss Mifflin, Exhibit "E" and "J" that have been introduced in evidence have to do or set out in a portion

of the exhibits the facilities of each school in the whole City of Topeka and, particularly, it shows on that exhibit —those exhibits—whether they have a gymnasium or auditorium and, in some cases, where they are combined, is that accurate, true and correct?

A. Yes, sir.

Q. Those exhibits.

A. That's right.

Q. Do you have some white schools where you have that combination where you turn one room into one, using it——

Judge Huxman: Mr. Goodell, haven't those exhibits been agreed to?

Mr. Goddell: I believe so. I have a note that it wasn't entirely agreed to as to that particular feature.

Judge Huxman: There were only two questions -bout it at all. The exhibits were admitted.

Mr. Goodell: Except it was held up because they claim inaccuracies in the case of one school. I have a note to that effect.

Judge Huxman: You might ask her about that one inaccuracy.

By Mr. Goodell:

Q. I believe Dr. Speer was the witness who testified [fol. 325] pertaining to four schools which I will direct your attention to, as being Buchanan, Lafayette, Polk and Potwin—in other words the data contained in this data as being true with respect to auditoriums and gymnasiums, will you examine now particularly those schools I have indicated. I will take it one by one and ask you a question: Potwin, for example, you have the record shows that it has an auditorium but no gymnasium, is that correct?

A. That's right, it has a playroom but all schools have playrooms.

Q. Is that true of the negro schools?

A. They all have rooms that they do not use; any room that is not used can be called a playroom.

Q. I notice Polk Street now, the next one that Dr. Speer mentioned in his testimony, it's marked auditorium room

used for auditorium purposes but no gymnasium, is that correct?

A. That's right; there is no gymnasium there.

Q. I notice the same before Lafayette, that your records show it has an auditorium room, facilities for an auditorium, but no gymnasium, is that right?

A. That's right.

Q. And I direct your attention to the same matter on Buchanan; your record shows it has an auditorium but [fol. 326] no gymnasium, is that correct?

A. That is correct.

Judge Mellott: Is the difference of opinion, take, for instance, Buchanan School, purely one of terminology? Now she refers to it as having an auditorium. As I understood it, counsel's statement was that there were two rooms capable of being thrown together for an assembly room, but they object to calling it an auditorium, is that the point of difference?

Mr. Goodell: That perhaps is the point of difference.

By Mr. Goodell:

Q. That is correct in some of these older schools, white schools, for example, like Lafayette and Polk and some of the others.

A. We have made auditoriums by remodeling in a number of schools. Now the auditorium, what we call auditorium at Buchanan, has a stage; it has seating. The only difference, if they do not wish to have the whole room included in the auditorium, they may pull a sliding door closed and not use the entire auditorium.

Q. Now, are you familiar and is it part of your job and are you familiar with the ordinary maintenance and operation of the school system with respect to furnishing of supplies upon requisition, accessories and needed supplies to properly make the school function?

[fol. 327] A. Yes, sir; I am the business manager of the schools; purchase all the supplies.

Q. You are familiar, then, with the practice and policy that actually has been adopted and used by the board in that respect in the furnishing of supplies.

A. Yes, sir.

Q. State, if you know, as a matter of policy, whether there has ever been any distinction shown between furnishing supplies when requested to negro schools as compared to white schools in the elementary system?

A. There is no distinction made between colored and white schools.

Q. They are operated, in other words, the whole thing is operated as a school system, is it?

A. That's right; it's a school system, and we operate entirely on the need of the school.

Q. And do you know what factors—strike that. Are you familiar with the factors, by reason of board policy and administrative practice, that Dr. McFarland and the board uses actually in fixing teachers' salaries in the entire school system, inclusive of these elementary schools.

A. Yes, sir.

Q. What are those factors?

A. Salaries—you mean the salaries?

Q. How are they arrived at?

[fol. 328] A. Salaries are determined by education, by experience and how well the job is being done.

Q. Teaching experience, educational attainments?

A. That's right.

Q. And actual manner in which the teacher has performed his duties, is that right?

A. That's right.

Q. If I understand you correctly, then, you might have a teacher with the same number of years experience and the same educational attainments, but one that didn't have as good performance record; in the case of one that had a good performance record might get more money than another one having all the other qualities except that one.

A. He might; he also might have extra duties.

Q. Extra duties.

A. That's right.

Q. State whether or not the Board, as a matter of policy by Dr. McFarland and the board, in fixing these salaries there has ever been any other factors applied to the negro school teachers not applied to the white teachers in fixing those salaries?

Mr. Carter: Your Honor, all the things brought out, I think, so far have been stipulated to, particularly the salaries.

Mr. Goodell: They wouldn't stipulate on that, and I [fol. 329] have it in my stipulation and I have it marked they wouldn't stipulate.

Judge Huxman: She may answer. I didn't think there was any issue made on it. There is no evidence whatever to show anything to the contrary, but she may answer.

By Mr. Goodell:

Q. Are the same factors used, in other words, in fixing salaries in teachers contracts—I mean the same factors observed and actually followed in fixing salaries for both negro and white teachers?

A. Yes, sir, exactly the same.

Mr. Goodell: I believe that is all.

Cross-examination.

By Mr. Carter:

Q. Miss Mifflin, you said you were the clerk of the Board of Education?

A. That's right.

Q. I think you testified that—as to an exhibit with regard to the school program that this program was carried out throughout the school system, is that correct?

A. That's right.

Q. Among your duties as clerk of the board, are you the person who goes and visits the schools and examines them and inspects them; are those—is that included in your duties?

A. Yes, it is; I call on all schools.

[fol. 330] Q. I see. Now, with regard to the books that are held, if there is any difference between the books that are held by the white schools and those that are held by the negroes, if I understand your testimony correctly, you would attribute that to donations by the P. T. A. organization, is that right?

A. That's right.

Q. Is it or is it not a fact that if these books do—if they are donated by the P. T. A. they belong to the school or the Board of Education or what happens?

Mr. Goodell: We object to that as calling for a conclusion, legal conclusion, of this witness, where title is in the books.

Judge Huxman: She said she's in charge of the school system for that purpose. She may answer.

The Witness: They are usually gifts to the school. If they are a gift, then they become the property of the school.

By Mr. Carter:

Q. They become the property of the school to which they are given.

A. However, we wouldn't feel that we could go—if a gift would go to a certain school, we wouldn't feel that we should go in and remove it to another school.

Q. I understand that. They become the property of the school to which it's given, and they remain there, is that correct?

[fol. 331] A. That's right.

Judge Huxman: You may step aside, please.

(Witness excused.)

KENNETH MCFARLAND, having been previously sworn, assumed the stand and testified as follows:

Direct examination.

By Mr. Goodell:

Q. State your name again for the record.

A. Kenneth McFarland.

Q. And you are the superintendent of schools of the City of Topeka.

A. Yes.

Q. How long have you held that post?

A. Nine years; since 1942.

Q. How long have you been in educational work?

Judge Huxman: Wasn't all of that gone into yesterday. I thought the doctor was asked his qualifications.

The Witness: No.

Mr. Goodell: I don't recall it.

Judge Huxman: Proceed.

Mr. Goodell: I will dismiss it, though, if the Court doesn't want to hear it. I will make this very brief.

[fol. 332] By Mr. Goodell:

Q. What is your educational background?

A. Bachelor's Degree from Pittsburgh Teachers College here in Kansas and a Master's Degree from Columbia University and doctorate degree from Stanford University.

Q. How long have you been in education work, Doctor?

A. Twenty-four years.

Q. When you came to Topeka, state whether or not the elementary schools were being operated, separated as to negro and whites in the first six grades.

A. Yes, sir.

Q. You understand, do you, that the statute of Kansas is a permissive one, that the Board of Education may—it's up to their discretion—according to statute.

A. Yes.

Q. —to so operate the elementary schools.

A. Yes, I understand that.

Q. Has it ever been your policy that you recommended to the board to change that operation actually?

A. We have—no; we have never recommended that we change the fundamental structure of the elementary schools.

Q. Why not.

Judge Huxman: Mr. Goodell, what would that establish in this lawsuit?

Mr. Goodell: Well, I think he, as an administrator—I am leading to something. I can't ask more than one question [fol. 333] at a time.

Judge Huxman: I know, but what's the purpose? If the statute gives the city permission to operate the schools, and he testified they are operating separate schools, what difference would it make whether they had or had not considered changing?

Mr. Goodell: It might make some difference. We had a lot of expert testimony here on a hypothetical community or hypothetical situation, and I want to show the human factor in the custom and usage in this community, whether he knows it and whether or not it had something to do with the operation of the schools, why they operated——

Judge Huxman: Whether the city authorities had considered discarding what they had a right under the statute to do or hadn't considered, wouldn't prove any issue in this case.

By Mr. Goodell:

Q. Have you ever, as an administrator of schools, considered it part of your business to formulate custom and—social customs and usage in the community?

A. Mr. Goodell, I think that point is extremely significant; in fact, it's probably the major factor in why the Board of Education is defending this lawsuit, and that is that we have never considered it, and there is nothing in the record historically, that it's the place of the public school system to dictate the social customs of the people [fol. 334] who support the public school system.

Q. Do you say that the separation of the schools that we have is in harmony with the public opinion, weight of public opinion, in this community?

A. We have no objective evidence that the majority sentiment of the public would desire a change in the fundamental structure.

Q. Now, we will get on to the actual operation. Have there been any distinction in the question of fixing salaries, furnishing accessories or supplies to the negro schools as opposed to the white schools?

A. No. I think we found what we thought were some discrepancies when we first came here in salaries. Those were corrected; we adopted a minimum salary of $2400 for inexperienced teachers with degrees; that was the basis where we started and, from that point on, there has been no discrepancy of any kind.

Q. Do you take into account, as head of the schools, as recommending to the Board of Education the matter of the

color of the teacher at all in fixing that teacher's contract salary?

A. No.

Q. You have heard Mrs. Mifflin testify to the factors that are considered, is that correct?

A. The three factors plus the total responsibilities in- [fol. 335] volved in the job.

Q. Some teachers have more responsibilities than others.

A. That's right.

Q. Of course a principal, that would be naturally true. Now, in respect to furnishing, honoring requisitions and furnishing all supplies, are the same factors considered by you and the Board of Education in respect to that, without regard to whether the school is white or negro school?

A. Oh, yes, no difference.

Q. There has been some testimony here about curriculum. Is the same curriculum followed in both the negro and white schools, elementary schools.

A. Yes, they are all under the same director of elementary schools, same supervisor of elementary schools and same special supervisors, no difference.

Q. Your administrative set-up is entirely one for the operation of the entire school system, is it not?

A. Yes, it's considered twenty-two elementary schools.

Q. Yes. In any particular, whether I have asked you or not, is there the slightest difference in the actual operation and maintenance of the school system between the negro and the white schools the way it's carried on?

A. Nothing done on the basis of color. They are merely treated as individuals.

Q. Do you know whether or not this operation has been [fol. 336] well received in this community?

A. Well, I feel that it has, in the main, been well received.

Q. State whether or not the school system has been commented on by national authorities, educational authorities.

Judge Huxman: Doctor, you need not answer that question. Mr. Goodell, that is not an issue in this case, has nothing to do with the problems concerning the Court.

Mr. Goodell: I thought they were trying to show we had some poor schools. Maybe not. That is all.

Judge Huxman: You may cross-examine.

Cross examination.

By Mr. Carter:

Q. Mr. McFarland, I think you said that you didn't consider it the function of the Board of Education to go against the prevailing opinion with regard to the maintenance of public schools.

A. I said the social customs of the people. I didn't think it was the purpose of the school system to dictate the social customs of the people who support the schools. That has been our policy.

Q. Now, how do you know that social customs of Topeka require the maintenance of separate schools at the elementary school level?

A. I said we had no objective evidence that the majority [fol. 337] of the people wishes to change in the fundamental structure which we don't have.

Q. Would you say that there is a difference in the social or public opinion or social customs with regard to the maintenance of segregated schools above the elementary school level?

A. I didn't say that.

Q. Would you say, I am asking you a question.

A. I don't know; I wouldn't pass on that. You see, we are operating the schools under essentially the same structure that we took them over in 1942.

Q. But you are operating schools that have a mixed characteristic, mixed characteristics, rather, do you not? You are operating schools that are segregated at the elementary school level, integrated beyond. Now why does the Board of Education feel that they are maintaining their —they are in accord with public opinion by maintaining that type of operation?

A. Well, we have——

Mr. Goodell: Just a minute. Object to this question because it assumes as a part of the question—assumes that

part of this integration is caused by public policy of the board. The Supreme Court decision in the case of Graham vs. Board of Education, decided that there couldn't be a separation in the seventh and eighth grade where we had [fol. 338] a junior and senior set up. There is a policy set up on it of cities of the first class, all except Kansas City, which is controlled by another statute, so it isn't a matter of policy of the board.

Judge Huxman: I doubt if there is very much value to this whole line of questions.

Mr. Goodell: My point is that the law compels them to have integrated system as to junior high and high school.

Judge Huxman: The witness may answer the question.

(The last preceding question was read by the reporter.)

Mr. Goodell: If the Court please, I insist again my objection is proper. He is asking the doctor to distinguish the board forming a policy, saying in the elementary grades they will be separate and in the others it won't; it isn't a matter of choice with them as to junior high and high school. It's fixed by law.

Judge Huxman: The objection will be overruled.

The Witness: The answer is essentially that given by the attorney. The board has had no vote upon whether or not they would segregate the schools above the sixth grade [fol. 339] nor have the people—the public that they represent.

By Mr. Carter:

Q. I see. So, actually, you are not maintaining—you can't really say you are maintaining the schools in accord with social custom. You merely have kept consant the status quo as you found it when you came here. You are maintaining segregated schools merely because they were here when you arrived; that's all you can say, isn't that true?

A. We have, as I stated, no objective evidence that there is any substantial desire for a change among the people that the board represents.

Judge Huxman: May I ask counsel on both sides, assuming that is true, assuming the schools are maintained in

accordance with social customs and the wishes of the people, or that they are not, what bearing does that have on the right to so maintain them under the Fourteenth Amendment?

Mr. Goodell: Judge Parker in his opinion that was handed down by that court of South Carolina, goes into that very, very carefully.

Judge Huxman: Presently we are not interested in that. I am asking—this is——

Mr. Goodell: Our theory of the equal protection of the laws——

Judge Huxman: Mr. Goodell, the question is what the [fol. 340] Fourteenth Amendment warrants and what it doesn't. We don't care what social customs provide. That is the reason I can't see any use in pursuing this line of argument unduly—this line of questioning.

Mr. Carter: I agree with that, Your Honor, but——

Judge Huxman: Then let's not pursue it too far. I don't want to cut you off because Mr. Goodell opened it up, but don't pursue it unnecessarily.

Mr. Carter: I am not going to pursue it any further, but I thought I shouldn't allow it to remain in the record unchallenged. That is the only reason I have asked the question.

By Mr. Carter:

Q. Now, I have just a few more questions, Mr. McFarland. Are you familiar with J. Murray Lee, who is the dean of the School of Education of the State of Washington; are you familiar with him; do you know him?

A. No, I don't know him.

Q. Do you know his wife, Doris Mae Lee, who is the co-author of "Learning to Read Through Experience"?

A. Do I know her?

Q. Are you familiar——

A. I just know there is such a person.

Q. In a book which both of them collaborated on——

[fol. 341] Mr. Goodell: What did you say? I didn't hear you.

Mr. Carter: Collaborated in writing.

By Mr. Carter:

Q. This statement appears, and I would like to get your views on this: "No longer is the curriculum to be considered a fixed body of subject matter to be learned. We realize only too well that the curriculum for each child is the sum total of all of his experiences which are in any way affected by the school. However rich or valuable any printed course of study may seem to be, the child benefits not at all if he does not have those experiences in classroom."

Now, would you agree or disagree with that statement?

A. Well, you lift one statement like that out of its context in an educational philosophy—it's a little difficult to say whether you would agree with the single statement or not. We would have to know the background of that, what lead up to it.

Q. The statement is—follows a philosophy that the sum total of a child's experience throughout the school—is the curriculum, not merely the subjects in the school. Now, do you or do you not agree with that?

A. I would agree with that in principle, but, of course, you understand when you go to that theory of education that the child is in the public schools a small percentage of [fol. 342] his total living hours. That puts the curriculum over into a field that is largely out of control of the schools.

Q. It puts the curriculum certainly out of control of the school but insofar as the school provides the atmosphere and everything that is part of the curriculum, not only the books but everything else that goes into the—into his experience in the schools, is that right?

A. Anything that would have to do with motivation of learning.

Mr. Carter: That is all.

Judge Huxman: Is that all.

Mr. Carter: That is all.

Judge Huxman: You may step down.

Mr. Goodell: The defendant rests.

Judge Huxman: The defendant rests. Any rebuttal testimony?

Mr. Greenberg: Yes, Your Honor.

ERNEST MANHEIM, having been first duly sworn, testified on behalf of the plaintiffs in rebuttal as follows:

Direct examination.

By Mr. Greenberg:

Q. Would you please state your full name to the Court.

A. Ernest Manheim.

Q. What is your occupation, Mr. Manheim?

A. Professor of Sociology at the University of Kansas City.

[fol. 343] Q. What degrees do you hold and where were they earned?

A. A Ph.D. in sociology at the University of Leipzig, a Ph.D. in anthropology from the University of London.

Q. What is your field of special interest, Professor Manheim?

A. Social organization, juvenile delinquency and social theory.

Q. Have you published any articles in this particular field? Or any books?

Mr. Goodell: We don't want to interfere but we object to this if this is a repetition, simply cumulative of more expert opinion.

Mr. Greenberg: It is not, Your Honor.

Judge Huxman: What do you propose to rebut by the testimony of this witness? I take it you are qualifying him as an expert. Now just what testimony offered by the defendants are you proposing to rebut?

Mr. Greenberg: The clerk of the School Board stated that to the extent that there was a difference of library holdings between the colored and white schools, it was attributable to P. T. A. donations to the white schools. We intend to show that the maintenance of a segregated school system in Topeka has caused this difference in P. T. A. and community support of the colored as against the white schools.

Mr. Goodell: We object to that.

[fol. 344] Mr. Greenberg: Directly rebuts——

Judge Huxman: Just a minute. The doctor isn't a resident of this community, is he?

Mr. Greenberg: The doctor is not a resident of this community.

Judge Huxman: How could he know whether that is what caused this condition in Topeka?

Mr. Greenberg: Well, the doctor is a man who has studied social forces in nearby communities and, in qualifying as an expert, we believe that he will be competent to generalize from his studies and his experience.

Judge Huxman: How would that qualify him to testify that segregated schools in Topeka is what caused certain voluntary and independent groups to make donations of books to certain schools?

Mr. Greenberg: I don't want to give the doctor's testimony, but——

Judge Huxman: How could it tend to establish that?

Mr. Greenberg: I believe the doctor is going to testify that studies have shown that the distance which community support—the distance that community support is from a particular school determines the force of the community effectiveness of the community support.

Judge Huxman: How long is this testimony going to [fol. 345] take?

Mr. Greenberg: Perhaps five or ten minutes.

Judge Huxman: Frankly, the Court doubts if it is rebuttal testimony. If it's brief, we will give you the benefit of the doubt and let you go ahead. I don't think it rebuts anything.

(The last question was here read by the reporter.)

The Witness: Yes, I have published in my field in sociology six books; one of them deals with juvenile delinquency in Kansas City.

By Mr. Greenberg:

Q. Have you ever made any studies which would enable you to form a conclusion concerning the community support which a community gives to a school?

Mr. Goodell: We object to this as calling not for any fact, pure conjecture and guesswork and conclusion on the part of the witness.

Judge Huxman: He may answer.

The Witness: Inasmuch as I can generalize from experience in Kansas City, I would tend to say that a school which is far from the clientele's residence, from their parents, is weakened in its position to supervise the conduct of the children, and is—and it is the cooperation between the teachers and the parents tend to be weaker.

[fol. 346] Mr. Goodell: We object to this for the further reason it's not rebuttal. If anything, it's part of their case in chief and, for the further reason, that is opinion——

Judge Huxman: The objection to that question will be sustained. It isn't responsive; it doesn't rebut anything that has been offered in the case.

Mr. Greenberg: Well, Your Honor, I believe that the clerk of the Board of Education did testify that the discrepancy between the white and colored schools was attributable to discrepancies in P. T. A. support. We are trying to show that——

Judge Huxman: Didn't so testify. She testified that these additional books or extra books were the result of donations by P. T. A. organizations; that is what she testified to and——

Mr. Greenberg: I hope to establish by this witness that a weakened P. T. A. is caused by having children and parents great distance from the school which the children attend.

Mr. Goodell: Object to it for the further reason it's outside the scope of the pleadings; it's not an issue raised by the pleadings as being one or any of the grounds of inequality, so it's outside the scope of the issues.

[fol. 347] Judge Huxman: The majority of the Court feels that this testimony is not proper rebuttal testimony from the very nature of the explanation that you have given. The doctor could not testify that the discrimination, if you want to so refer to it, which results in the donation of books in Topeka to one school and not to another is caused by segregation. He could only give that as his theory that that will flow and result from segregation generally. But he knows nothing about Topeka. The objection will be sustained. We will receive no further evidence along this line.

Anything further?

Mr. Carter: We have nothing further.
Judge Huxman: Both parties rest?
Mr. Goodell: Yes, Your Honor.
Mr. Carter: Yes.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Huxman: We perhaps should take a short recess. We would like to ask counsel, is there a desire to argue this case orally?

Mr. Goodell: I would personally, my notion about it, I believe the Court has heard all the testimony, that we could perhaps aid the Court more in a written brief. I would like to submit a written brief, and I can have it ready inside of a week.

Judge Huxman: Does plaintiff desire to argue the case [fol. 348] to the Court?

Mr. Carter: Yes, we do, Your Honor.

Judge Huxman: You shall be afforded that opportunity. Will the defendant then want to argue the case?

Mr. Goodell: We will make a short argument.

Judge Huxman: How much time do you feel you would want to argue this case?

Mr. Carter: We would think, Your Honor, just about a half hour on opening, and we would like to have time for rebuttal.

Judge Huxman: How much time for rebuttal?

Mr. Carter: I should think approximately fifteen minutes.

Judge Huxman: Forty-five minutes, of which you take thirty minutes in the opening argument and fifteen in the closing; and how much does the defendant want?

Mr. Goodell: Twenty or thirty minutes, I think, will be sufficient.

Judge Huxman: We will take a five or ten-minute recess before we start into that phase.

(The court then, at 11:05 o'clock a. m., stood at recess until 11:15 o'clock a. m., at which time the following further proceedings were had:)

[fol. 349] Judge Huxman: Do you gentlemen desire the Court to keep a record of your time or will you do that yourselves?

Mr. Carter: I will do that, Your Honor.

Judge Huxman: All right, forty-five minutes, thirty for opening, fifteen for closing and, of course, the defendant, while they have only asked for twenty, if they should want not to exceed that, they will be given the same amount.

You may proceed.

OPENING ARGUMENT ON BEHALF OF PLAINTIFF

Mr. Carter: Involved in this case is a question of the constitutionality of the state statute, Section 72-1724, of the General Statutes of the State of Kansas which purports to give to the Boards of Education of cities of certain class the power to organize and maintain separate schools for the education of white and colored children, and I think that the reading of the wordage of the statute is very interesting. The statute says that such power as "to organize and maintain separate schools for the education of white and colored children, including the high schools in Kansas City, Kansas; no discrimination on account of color shall be made in high schools, except as provided herein; * * *."

Now, I think, that that is very interesting verbiage because, I think, there is a recognition, certainly the lan-[fol. 350] guage is a recognition by the framers of the statute, that the separation at the elementary school level was discrimination and is discrimination.

Now we rest our case on the question of the power of the state. We feel, one, that the state has no authority and no power to make any distinction or any classification among its citizenry based upon race and color alone. We think that this has been settled by the Supreme Court of the United States in a long line of cases which hold that in order for a classification to be constitutional it must be based on a real difference, a real and substantial difference which has pertinence to the legislative objective. The Supreme Court has also held in a series of cases that race and ancestry and color are irrelevant differences and cannot form the basis for any legislative action. The only exception to this provision has been in the cases involving the Japanese war cases which included—involved rights under the Fifth Amendment and the exception has been repeated by the Supreme Court of the United States after

Hirabayashi vs. U. S. and other cases that were decided, Korematsu vs. United States, and the Supreme Court has repeated again and again when it has struck down a legislative or governmental action because it said it was based on race and race alone, the Supreme Court has said that there is absence of compelling necessity to support the [fol. 351] constitutionality of this statute and the only compelling necessity that we have found in the cases is a national emergency which, in the Hirabayashi case, the court decided even though it questioned the constitutionality of the Exclusion Act of the Japanese because of their ancestry; the Supreme Court felt that national interests were of such a nature that they could not interfere with the judgment of the War Department. But that is the only exception to this general theory which I think the Court is familiar with and the principle of law established by the Supreme Court that there can be no distinction, no classification, unless it is based upon a real and substantial difference, and race is not a real and substantial difference.

The other trend of the law is that the rights under the Fourteenth Amendment are individual rights. You cannot take away the individual's rights by classifying him or putting him in a group and therefore saying that we, on the average, treat the group well, therefore the individual, if he suffers he has to suffer because he is a member of the group. The Supreme Court of the United States has taken care of that in a series of cases which I think I need not mention but one particularly is Missouri ex rel Gaines vs. Canada; the other is the recent Sweatt vs. Painter, involving the admission of a negro to the University of Texas. [fol. 352] Another is the Henderson vs. U. S. which involved the right of negroes to eat any place on a dining car without the curtains or signs or distinctions based on race and color.

Now, in all of those cases the argument raised was that we are providing for negroes as a group about as much as we can. We are meeting the demand. It just happens that this individual—if this individual wants to eat in the dining car and the space we have reserved for him is filled, then even though there are vacant seats in the outer part of the dining car, the fact that he has to wait, he is no

more disadvantaged than a white person who comes into the dining car and the place is filled, and he has to wait. The Supreme Court said in those cases that the Fourteenth Amendment granted individual rights, rights to the individual, and it was no answer to say that because the person was a member of a group or because of his number, because of the numbers of the group, that therefore he should not be accorded this right which the Fourteenth Amendment gives.

Now, I think that those two trends of the law—those are the two trends of the law which presently exist, and those two trends, I think, make it clear that no other conclusion can be reached in this case other than that this statute is unconstitutional.

[fol. 353] I realize that there is a body of law which is classified under the separate but equal doctrine of Plessy vs. Ferguson which would seem to give authority to a state to maintain segregation, but it is our contention, and I will attempt to show—I will attempt to demonstrate to the Court that whatever potency that doctrine may have had that by virtue of the present classification doctrine which has been established by the Supreme Court of the United States by the emphasis and reemphasis of the individual right under the Fourteenth Amendment, the Plessy vs. Ferguson doctrine of separate but equal has been whittled away.

Now, it is interesting, in examining the cases under this doctrine, in the field of education to find that in none of the Supreme Court cases has this doctrine been applied. It was mentioned—the nearest case in which it came to being applied, rather, was a case which was decided sometime ago, I think about 1925, Gong Lum vs. Rice. In that case Mr. Chief Justice Taft assumed that the Supreme Court of the United States had followed and had made as to law the separate but equal doctrine of Plessy vs. Ferguson, but the real problem in that case was not the application of the separate but equal doctrine; the real problem in Gong Lum vs. Rice is whether a person of Chinese extraction who was classified by the state as a negro had [fol. 354] a right to being so classified. The petitioner, the Chinese child, did not question the power of the state to

make a classification; it questioned the use of the power in putting her, as a Chinese, being classified as a negro for purposes of education, so that the problem which we here present as to whether or not the state has the power to classify on the basis of race, was not presented in Gong Lum vs. Rice and certainly was not passed upon. The Gaines case, the Sipuel case, Sweatt case, the McLaurin case, the McKissick vs. Carmichael, and I will merely mention it because it is a more recent case and it may well be that the Court hasn't read it; I am sure that you are familiar with the other cases that I will not have to go into, but in McKissick vs. Carmichael involves the right of a negro to attend the University of North Carolina School of Law. The state maintained a separate and segregated school at the North Carolina College for Negroes. The case was lost in the lower court on the grounds that it would be better for negroes to go to a segregated school than it would be for them to go to the university—to the University of North Carolina. On appeal to the United States Court of Appeals for the Fourth Circuit the judgment of the court below was reversed on authority of the U. S. Supreme Court in Sweatt vs. Painter, and the Supreme Court, on June 4, 1951, refused to review the case. Now, the interesting [fol. 355] thing about that case, if the Court please, is that here in North Carolina one of the oldest negro law schools in the country had been operated. It had been established and had been operating since 1939—the oldest school. It was conceded that the state was making an effort to maintain a school for the education of negroes but, because of the segregation, because that school was segregated, the Court of Appeals held, consistent with the case of Sweatt vs. Painter, the state had no power to make any such distinctions.

Now I think that, if anything, the only argument that can be made with regard to this problem is not whether the law, as it now stands, is for the proposition that the maintenance of separate schools can be maintained by the state. I think that the law, as it now stands with the classification cases, with the individual right under the Fourteenth Amendment, I think that the inevitable conclusion must be

that segregation, the maintenance by the state of segregated facilities on the basis of race, is unconstitutional.

The question sometimes may arise with regard to whether or not even though this is the law, it is expedient for the Court to reach a decision at this time, and I think that that seems to me to probably be apparently the trend of [fol. 356] the present cases. The United States Supreme Court recently also handled a case involving interstate travel and, in this case, in which it denied to review on May 28, 1951, the Fourth Circuit held that Jim Crow coaches—the separate coaches for negroes and whites on a north-south journey was unconstitutional. The Supreme Court refused to review this. Now I see no distinction between Jim Crow coaches on a north-south journey than between Jim Crow coaches on a south-north journey. The Court made the distinction, and the law as I understand it at the present time, applies only to north-south journies. I think that the distinction was made because the Court felt that it could and should strike down illegal regulations involving racial distinctions of a person who comes from an area in which they do not have to submit to that, going into an area in which they do, even though they pass the imaginary Mason-Dixon Line.

Now, however, I think the facts show that here in Topeka the time is now ripe for decision and for this court to use its power to strike down this statute. The system in Topeka is operated with eighteen schools for white children and four schools for negroes. The white children attend the schools in the territories in which they live. Negroes attend four schools that are located in I think for the most part in the center of town, with one in an area which I believe is called North Topeka. A number of negro children have to be [fol. 357] transported to these schools in buses. We have submitted testimony to show that insofar as the time spent on the bus takes away from the child the opportunity to play and to learn, to play rather, that he is being deprived of something of value to his education, and he is being deprived of this in this instance because the state says that the City of Topeka can, and the City of Topeka has decided to maintain separate schools at the elementary school level.

Now also in the City of Topeka there is a school system which is different from that at the elementary school level. At the junior high school level and the high school level we have mixed schools. Now, defendants have indicated, and I realize that this is because the statute says that there can be no discrimination at the high school level; however, in this type of mixed situation where on one hand you have for only six grades of the same public school system you maintain segregation, with the other six grades you do not maintain segregation, then certainly the interest, whatever interest the state may have in the maintenance of segregation, if it could be argued that it has such an interest, and therefore a court should withhold its authority to strike down that power, whatever interest it has, it seems that the picture of it maintaining in one end of the system for most of the system and not maintaining it in another, in-[fol. 358] dicates that if there is such an interest, it is of minor importance and should be disregarded.

We maintain, of course, that the state has no power in this area. But this case, I think, is as close to McLaurin vs. The Board of Regents of Oklahoma as any other case that we have been familiar with. If the Court will remember, in that case a negro, or a group of negroes, were admitted to the University of Oklahoma. They were given the same teachers, the same textbooks; they apparently got the same education, that is, in terms of subject matter. But, because they were negroes, they were forced in the classroom to sit at separate seats; they were forced to sit at separate benches in the library; they were forced to eat at separate tables in the cafeteria. In reviewing this case, the United States Supreme Court felt that here was an area in which it was apparent that this type of segregation was ridiculous and meaningless. If McLaurin could be admitted into the classroom, necessarily he should be able to be permitted into the classroom without distinction or difference based upon race and color. The Court found that these arbitrary distinctions, putting him aside, stigmatized him and interfered with his ability to learn and with the learning process.

Now we contend the same thing here. We contend that [fol. 359] this statute, one, that the state has no power to enforce the statute in the first place, and, two, that if it has

such power, that by making a difference at the high school level and the junior high level, whatever interest it may have, that interest is not now of any importance because it is clear that there is no distinction between maintaining a power to maintain segregation in the first six grades of school and the power to maintain segregation at the junior high and the high school level. So that with this mixed situation we think that it's even more important that the power of this Court should be exercised in striking down this statute.

We have introduced testimony to show that there are differences, substantial differences, between various of the white schools as contrasted to the negro schools. We have shown that on the average in terms of teacher preparation, subject matter taught, buildings, and so forth, that on the average the school system here, as between the negro and the white schools, there is not too much difference except for this factor: We have shown that 45% of the white children attend schools newer than the newest colored schools and that 66% of them attend in buildings newer than the average age of the negro school, and that on the average the insured value per classroom of the negro school is approximately $4,000 below that of the white school. We have also [fol. 360] shown that in terms of books which are held by the various schools that the white schools maintain a newer supply of books; that the white schools have better books and that therefore the book holdings of the schools, as between negro and white, is substantially different.

Now, the defendants attempt to defend this on the grounds that the P. T. A. is the cause of this difference. It is our contention that in spite of where the books come from and it has been testified that when they get into the school they belong to that particular school; that without regard to where they come from, the fact that they belong to the school and are held by the school is really the factor which makes for the difference and that has to be considered.

We have submitted testimony also to show that the separation of negroes and whites in the elementary school of the school grades of Topeka is harmful to the development of the child, although it has been conceded that the subject-matters taught are the same, and in our definition

of what is a school curriculum we have attempted to point out in the record that the school curriculum is the sum total of the child's experience from the time he leaves home to go to school until the time that he returns, and therefore the fact that negroes have to ride buses, those [fol. 361] who do, and cannot go to the school which is within walking distance of them, therefore they cannot come home for hot lunches, that they are required to travel across the town merely because they are negroes and attend a segregated school and makes it impossible for us to say that the curriculum at the segregated negro schools are equal to those at the white schools.

We have also attempted to establish that, if anything, the maintenance of the segregated system at the first six grades and then integration at the high school, junior high school level, places an added burden upon the child because that is the time that he is meeting the problems of adolescence and attempting to develop into a man or into a woman and that with those additional burdens upon him, we think this is an additional hardship which makes this statute, in our view, unreasonable.

Now, with that in mind we feel that we have sufficiently established that the separation of negroes and whites in the public schools of Topeka is a denial of equal protection because of the Fourteenth Amendment, that this statute which the city or Board of Education under which it purports to operate, is unconstitutional and should be so declared by this Court, and we also contend that by virtue of the facts which we have set in the record with regard to the stigma on the negro child because of race and color [fol. 362] at what is considered the most crucial age of his development, that the injuries which are established here, we have put on evidence to show that these injuries are likely permanent and that they cannot be corrected merely by introducing them into the junior high school at a later age. In fact, we show that it probably by making this introduction to the junior high school on an integrated basis at the adolescent age, probably compounds the injury which has been suffered at the elementary school level and, for these reasons, we think we have established the rights of the plaintiffs for the issuance of the injunction for which

we have prayed and we submit that this Court should declare this statute to be unconstitutional and order the Board of Education of Topeka to admit all persons into its schools without regard to race or color.

Judge Huxman: In assigning time for argument, we overlooked the State of Kansas represented by the attorney general. That was unintentional. How much time, Mr. McQueary, if any, do you desire to argue in behalf of the constitutionality of the state statute which you are defending here.

Mr. McQueary: If the Court please, I think we can explain our position very fully and amply well in a brief [fol. 363] on the matter of the constitutionality of the statute.

Judge Huxman: All right. You may proceed with the argument.

Do you desire the Court to keep track of your time, or are you going to keep track of your time?

Mr. Brewster: Perhaps you better keep track, Your Honor.

Judge Huxman: How much time do you desire to take in the opening argument, Mr. Brewster?

Mr. Brewster: I would say twenty, twenty-five minutes.

Judge Huxman: Well, now, you say which? I can't keep——

Mr. Brewster: Twenty-five minutes.

Argument on Behalf of Defendants

Your Honor, I would like to touch on one point mentioned by counsel for the plaintiffs, and that is attempting to lay some stress on the fact that the distance traveled by a pupil in attending school has some bearing upon the question before this Court.

There are a number of cases to the effect that the mere fact that certain colored school children must travel farther to reach a colored school than any white child is required to travel to reach the white school, is not necessarily a deprivation of equal advantages. There are a lot of cases on that. They are collected in an annotation in A. L. R. [fol. 364] Then, going to a United States Supreme Court

decision of Gong Lum vs. Rice, in there the Court pointed out that there was no colored school within the district in which this—school for other than whites; that involved a Chinese girl being declared as ineligible to attend a white school; but they did point out in that case that there was a school in the county in which this particular school district was located where she could attend and therefore there could be no objection made on constitutional ground. The distance you travel is immaterial, and I would say that that is especially true in our situation where the entire city of Topeka constitutes a school district and where the evidence, testimony, shows that there are a number of white students who are required to walk to school a greater distance than these colored children who are furnished transportation, and we have the Kansas case in which this question was raised, Reynolds vs. The Board of Education—well, I believe it's the Wright case, and there the Supreme Court pointed out that the question was raised that they had to attend Buchanan School which was twenty blocks farther than a white school they could attend, and our court pointed out the fact that transportation was furnished and therefore the question of distance traveled would have no bearing on the proposition. Now that is all I want to say right [fol. 365] now on distance traveled.

The plaintiffs in this case, of course, are by these cases attempting to have the courts abandon the separate but equal doctrine which was enunciated in the case of Plessy vs. Ferguson, which appears in 163 U. S. 537. It has been mentioned by counsel for the plaintiff, and they mention or contend that the more recent descisions have whittled away the effect of that decision and, of course, in that connection, they rely upon the case of Sweatt vs. Painter, which is the most recent case on this point. I will come to that in just a minute. First, I would like to call attention to the fact that there have been a number of decisions to the effect that establishing separate schools for white and colored children does not violate the constitutional right to equal privileges and immunities if equal advantages are afforded for each class.

Now, defendants admit that there has been engrafted upon this separate but equal doctrine the requirement that

you must afford equal opportunity, and it's our position that under the facts stipulated to here and the evidence, that there is no real question but what we do afford equal educational opportunities to the colored folks, and we finally get down to there one point and that is that segregation in and [fol. 366] of itself constitutes a discrimination.

School segregation statutes have been before the United States Supreme Court in a number of cases and at no time have they held that these state statutes are unconstitutional.

Now, getting down to the case of Sweatt vs. Painter, we have here the opinion of the District Court of the United States for the Eastern District of South Carolina. This is the opinion of the court and, while it is not published, it is, of course, authority—Harry Briggs, Jr., et al, Plaintiff, vs. R. W. Elliott, et al.

Judge Mellott: You mean that is the last case that came down a year or two ago.

Mr. Brewster: That is correct. This is the opinion of the court, and it was decided June 23, 1951. I would like to first call attention to this Sweatt case. In the opening paragraph of the opinion of that case the Court said this:

"This case and McLaurin vs. Oklahoma State Regents" and cites "present different aspects of this general question: To what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university?" [fol. 367] In other words, the Court specifically restricted that to professional and graduate education in a state university. Then the Court pointed out that broader issues had been urged for their consideration, but adhering to the rule that constitutional questions are made as narrow as possible, and the Court says that was—is not necessary to consider, and the point I am making is that the Sweatt and the McLaurin cases do not in anyway detract from the effect of Plessy vs. Ferguson which is still the law.

Now, reviewing Plessy vs. Ferguson, that is the case which involved the state statute providing for separate railway carriages for white and colored races, and it was a Louisiana statute, and it provided that the passengers be

assigned to the coaches according to their race by the conductor, and the Court held that it did not violate—deprive a colored person of any rights under the Fourteenth Amendment to the federal constitution. That is the case from which stems this separate but equal doctrine which the defendants think is still applicable and which the plaintiffs, of course, are seeking to overturn.

Here's one thing the Court said:

"So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question [fol. 368] whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, [fol. 369] and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an

enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals."

Judge Huxman: Mr. Brewster, I don't know——

Mr. Brewster: I am about through with that.

Judge Huxman: I was going to say that on the Circuit Court we do not care to have reading from an opinion.

Mr. Brewster: I want to point out that Plessy vs. Ferguson, which establishes the separate but equal doctrine and the basis upon which they go, and that is that this regulation that this is a part of the police power of the state. Now, it has been repeatedly held, and that is part—that is the basis of the decision in the South Carolina case, that each state determines for itself, subject to the observ- [fol. 370] ance of fundamental rights and liberties guaranteed by the federal constitution, how it shall exercise the police power and that the power to legislate with respect to safety, morals, health and general welfare and that in no field—in no field is this right of the several states more clearly recognized than in that of public education.

Well, now, the case—the South Carolina case—bases their decision, and I won't quote a great deal from it on the proposition that it's within the police power of the state to segregate these schools if they want to, but they must provide equal educational facilities.

Now, speaking of the Sweatt vs. Painter case which, of course, it will be found the plaintiffs rely on that to a great extent; that dealt with a professional or graduate school. We are here dealing with an elementary school system which, assuming that the student goes through high school and college, this segregation exists in less than one-half of the normal educational, formal educational, period. "At this level" I would like to quote just briefly from this opinion, "At this level as good education can be afforded in negro schools as in white schools and the thought of establishing professional contacts does not enter into the picture. Moreover, education at this level is not a matter of voluntary choice on the part of the student, but of compulsion by the [fol. 371] state."

Now, I would like to also call attention to the fact that in Sweatt vs. Painter the Supreme Court of the United States specifically refused to overrule Plessy vs. Ferguson and, in that respect, I think it strengthens the opinion and shows that the present segregation and separation and equality is still recognized.

Now, there has been testimony to the effect that mixed schools would give a better education. But, on the other hand, it's been indicated that mixed schools might result in additional racial friction due to the fact that the colored student would be greatly outnumbered and you'd still have that inferior feeling.

I would like to, with the Court's permission, quote just a little more from this South Carolina opinion; I just got it this morning or I would have tried to give it without quoting it:

"The federal courts would be going far outside their constitutional function were they to attempt to prescribe educational policies for the state in such matters, however desirable such policies might be in the opinion of some sociologists or educators. For the federal courts to do so, would result not only in interference with local affairs by an agency of the federal government, but also in the substitution of the judicial for the legislative process in what [fol. 372] is essentially a legislative matter." In other words continuing the theory that this is a matter of the police power, and the state has the right to make this regulation.

We submit that under the facts which are stipulated, there is established—it is established that there is no inequality of educational facilities and, furthermore, that it is within the province of the state to determine what regulations necessary under its police power which, of course, is to promote the peace and the welfare of the people of that state, and, as far as the opinions of some sociologists or educators are concerned, we are in agreement with what the Court decided in South Carolina that it would not be within the province of a federal court or any federal agency to adopt those views regardless of what the state might consider to be the proper regulation under the police powers.

Judge Huxman: You may proceed, Mr. Goodell.

Mr. Goodell: I prefer to—if we are given authority to file briefs, I will waive argument.

Judge Huxman: You will waive your argument. All right, the plaintiff may close the argument, then.

Closing Argument on Behalf of Plaintiff

Mr. Carter: Your Honor, I just have a few comments to make.

[fol. 373] I remember the last point that counsel for the defendants made about the statements of sociologists and educators. I would like to point the Court's attention again to the decision in McLaurin vs. The Board of Regents where what was considered in that case to be crucial to the decision was the mental attitude of the negro and the impact of segregation upon him mentally, and therefore it was held that he was deprived of the equal protection of the laws in the segregated educational system.

Now, I have to congratulate the attorneys for the Board of Education on being much more efficient than, at least, I am, because I had hoped that we could have the South Carolina opinion ourselves and that we could quote from the dissent, but we were unable to get it.

Judge Mellott: We have a copy of it.

Mr. Carter: No, thank you. But, at any rate, if the Court please, I think that although these two decisions certainly, McLaurin and Sweatt, were limited, as counsel indicated, to the graduate and professional schools, it was not necessary for the Court to have made any such limitation because that would have been obvious because they applied to graduate and professional schools anyway, but the United States Supreme Court, in a recent case, Rice vs. Arnold, which I don't remember the exact date of the decision, I think it was about October 16, 1950; I don't [fol. 374] believe it's yet reported—that case involved a question of the separate days for the use of a golf course in Miami; negroes were given certain days of the week and whites were given the rest of the time. The matter was appealed through the Florida Supreme Court to the U. S. Supreme Court, and the question raised was whether or not the separation and giving of this separate time to negroes and not permitting them to use the golf course without dis-

crimination based on race or color was a denial of the equal protection clause, the golf course being municipally owned. The Supreme Court took the case, granted certiorari, reversed and remanded in the light of the McLaurin and Sweatt opinions.

Now, I think that that is clear evidence at least that the Supreme Court realized and certainly feels that the decisions and the principles which it enunciated in Sweatt and McLaurin have wide application and cannot be limited in the narrow scope of a professional school or a law school. I believe that what the Supreme Court, of course, in Plessy vs. Ferguson—the Supreme Court refused to overrule Plessy vs. Ferguson, refused to apply it or refused to reexamine it, but I don't believe that counsel for the defendants can take too much hope in that in view of the decision which was reached. The two decisions reached were to the effect that segregation, at least at the level at [fol. 375] which the decision was handed down, were unconstitutional in the law school and in the graduate schools and I might also add that Plessy vs. Ferguson applied to railroads and not to education and, although it has somehow been taken over into the educational field, it is really a railroad case. However, I think that actually what—with the trend of the law, I think that the trend of the law is to such an extent that it is impossible to reach any other decision except that the State of Kansas has no power to order segregation. I think also that here this is no situation—this is not applicable to South Carolina; the two states are entirely different. There is not the vested interest in the maintenance of segregation in Kansas as there is in South Carolina or in Georgia. This is clear, by virtue of the fact that the state forbids it at one level even though it permits it at another, and I think that what should be applied in this case is the rule that at least if the segregation is unconstitutional, and I think that the Supreme Court cases inevitably point to that end, that a declaration of unconstitutionality should be made in an area in which it is ripe. The time is ripe for such a decision to be reached, and I think that certainly in Kansas, with the situation as it is, that the time is now ripe for this Court to strike down the statute here in issue and to declare

[fol. 376] that the State of Kansas has no power to maintain segregation in its public school system.

Judge Huxman: Before the Court adjourns, the Court wants to compliment the parties on both sides for their fairness in the presentation of this case, the spirit of cooperation exhibited by all, to have a speedy determination of the issues in the trial of the case. I think this case was tried within less than ten days after the issues were made up and concluded, and we feel that we want to have as speedy a determination by the Court as can be handed down, giving counsel an opportunity to file briefs because, if this law is declared unconstitutional, certainly the City of Topeka is—wants to have it done as soon as possible before the beginning of the fall school term and all those matters. So we are all interested in having the matter determined just as expeditiously as it can be done, affording everybody an opportunity to prepare and file their briefs.

Now, the questions are comparatively simple to state and quite difficult to answer. There are only two questions in the case; one is, are the facilities, as I see them, are the facilities which are afforded by Topeka in its separate schools, comparable; that is one question, and the other is, granting that they are, is segregation unconstitutional notwithstanding, in light of the Fourteenth Amendment. As [fol. 377] I get it, those are the two points in the case, is that right?

Mr. Carter: Yes, sir.

Colloquy Between Court and Counsel.

Judge Huxman: There is nothing else.

Now, ordinarily, of course, the plaintiffs prepare and file their briefs and the defendants have a certain time to reply thereafter, which, of course, would take additional time. I am wondering if you want to invoke that rule or whether, in view of the fact that these two issues are so clear, and the testimony is clear in the minds of all of us, whether you would be willing or feel that you would prefer to proceed without waiting to receive the briefs on the part of the plaintiff. What do you say, Mr. Goodell?

Mr. Goodell: Subject only to this, Your Honor: If coun-

sel chooses to argue points of evidence, I would be a little handicapped to answer them when I didn't know what he was going to argue.

Judge Huxman: You would be given the right for reply brief.

Mr. Goodell: With that exception, I would be perfectly willing to hand mine in at the same time.

Judge Huxman: How much time do you think you need to prepare and file your brief?

[fol. 378] Mr. Goodell: I think a week we can do it in.

Judge Huxman: Well, no need of rushing you to that extent.

Mr. Goodell: Ten days.

Judge Huxman: What do plaintiffs—of course, you have done a lot of work; you have practically got your material assembled on the law, naturally. How long does plaintiff feel that you need to prepare and file your brief?

Mr. Carter: Well, Your Honor, we could, of course, do it within a week, but we would like to have, say, a week from next Monday, which would give us about ten days.

Judge Huxman: Well, let's give the parties—do you want to wait in the preparation of your brief until you receive the record? Of course it will take approximately ten days to get the record. I presume each side will want a record, because, irrespective of the outcome of this litigation, it's headed for the Supreme Court anyway. Do you prefer to wait with your brief until you have a copy of the record? What do you say?

Mr. Goodell: That depends on the turn it takes. As I understand counsel, you are relying now entirely on the question of segregation in itself is discriminatory.

[fol. 379] Mr. Carter: We are relying—of course we are relying on that. I think, Your Honor, that we would not need the record. I think we have our testimony in mind that has been presented.

Mr. Goodell: If that is your point, of course, then——

Judge Huxman: Mr. Goodell, I do not understand the attorneys for plaintiff waive the one point and rely on the other alone.

Mr. Goodell: I——

Judge Huxman: I understand from what they have said

they practically indicate they do not lean too heavily on this discrimination in the facilities which are furnished.

How much time from today does plaintiff want to file their brief, assuming the record will be ready for you in ten days. We will put it that way. How much time do you want from today?

Mr. Carter: We would like to have ten days, Your Honor.

Judge Huxman: We will give you fifteen days. You understand what I asked was assuming that it will take ten days from now to get the record, how much time from now do you want to file your brief? If you want ten days after the record is furnished, you may take twenty days, of [fol. 380] course, from now.

Mr. Goodell: The time, Your Honor, while I am on that subject——

Mr. Carter: Fifteen days will be ample.

Mr. Goodell: If it's going to be appealed, and I think it will be perhaps, either way this decision goes, the time lag would be such that we couldn't have a determination, I don't believe, by September in the appellate court.

Judge Huxman: Of course there are these factors: Judge Mellott and Judge Hill, both, have heavy schedules left and myself, my schedule isn't as heavy as theirs is for the remaining portion of the summer, but if we defer this matter too long, it runs into the fall when our new terms of court take place, and then it would be difficult for any of us to devote our time to it. We don't want to cut the parties short, but, on the other hand, there is no need of granting more time than you need for the preparation.

Mr. Goodell: It seems to me if he is going to go into evidence, it's pretty awkward to write a brief about evidentiary matters without having a transcript, and it's not satisfactory.

Judge Huxman: We will give you twenty days from today for the filing of your brief, and the reporter has told us [fol. 381] it would be about a week for the preparation of the record so, in any event, if you wanted the record, you will have ten or twelve days, and I will say this: If your briefs don't get in on the twentieth day, you will not be out of court.

Mr. Goodell: That will be satisfactory.

Judge Huxman: Are the parties going to order a copy of the record, each of you; I presume that is your intention.

Mr. Goodell: Yes, we will.

Mr. Carter: Yes, sir.

Judge Huxman: All right.

Mr. Goodell: Your Honor, do I understand we are given the privilege of a reply brief if we desire.

Judge Hill: Certainly.

Judge Huxman: Now, there is one other suggestion that the Court has in mind that you could be very helpful to the Court, and that may take a little additional time; that when you file your brief, to go with it each side file suggested findings or requested findings of fact, on the theory that you are going to prevail in the lawsuit, and conclusions of law.

Judge Mellott: We are required to make them under Rule 52.

Judge Huxman: Yes. We must make them, of course, and [fol. 382] it will be helpful to the Court if we had in mind when we come to consider this case, the idea and the theories of both sides as to the findings of fact; if we have both of them, then we will make our own findings, of course.

You also understand that there are three of us, that we all live in separate cities and if you would file your briefs in triplicate so that each judge can have a copy of the brief, it will expedite matters.

One thing I would like to inquire of my two associates of the district bench, what is your practice with regard to requiring printed or typewritten briefs in cases such as these? Of course in the Circuit Court, as you know, briefs must be printed, but my associates tell me that typewritten briefs are the practice here so that will be the practice in this case.

Judge Mellott: Use some good carbon paper because carbons are hard to read.

Mr. Goodell: We will do that.

Judge Huxman: Judge Hill makes this suggestion, which I have found valuable in my work on the appellate bench: If, when you prepare and submit a requested finding of fact, if you will alongside of it have the page of the record that you claim sustains that request, it will save us a

tremendous amount of work; otherwise we have to go [fol. 383] through the whole record to see whether there is any warrant in the record for that request. So, if you will do that, that will help the Court.

Judge Mellott: I would like to have you get copies of the court's rules of practice, which are printed, and that will call your attention to the way we want the brief prepared; give us a table of cases and your citations.

Judge Huxman: My associates are more familiar with those rules than I am. It's their court, and they know what the practice is.

Now, I suppose Judge Mellott and Judge Hill, that we should make the same order with respect to all of these requests for brief amicus curiae, that they be filed within the same length of time, within twenty days from today; anybody that has appeared here that wants to file a brief as amicus curiae.

Mr. Goodell: Our notion, if it doesn't interfere with the rules of the court, would be to have the other lawyers join with us in a certain section of the brief.

Judge Huxman: Well, I would certainly prefer—frankly, I have never been very much impressed with this amicus curiae theory of the law. There just isn't such a thing anyhow because an amicus curiae has an active interest on [fol. 384] one side or the other of the litigation and if you could get—that is, however, for you defendants to arrange—if you could get all the parties who have entered an appearance amicus curiae to join with you in the brief, it would save a lot of duplication.

Mr. Goodell: That is what I thought.

Judge Huxman: These issues are sharply drawn. There is a certain line of cases, and it's just a question of analyzing and distinguishing those cases, but, however, I doubt whether we could order that—whether we can order amicus curiae to join with you in a brief.

Mr. Goodell: If it's satisfactory, I meant, I think that is what we will do.

Judge Huxman: That would be much simpler. Anything that the parties have to request? The court will be adjourned subject to further call.

(The court then, at 12:15 o'clock p. m., stood adjourned until further call.)

* * *

REPORTER'S CERTIFICATE (omitted in printing)

[fol. 385] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 386] IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT—Entered August 3, 1951.

HUXMAN, Circuit Judge, delivered the opinion of the Court.

Chapter 72-1724 of the General Statutes of Kansas, 1949, relating to public schools in cities of the first class, so far as material, authorizes such cities to organize and maintain separate schools for the education of white and colored children in the grades below the high school grades. Pursuant to this authority, the City of Topeka, Kansas, a city of the first class, has established and maintains a segregated system of schools for the first six grades. It has established and maintains in the Topeka School District eighteen schools for white students and four schools for colored students.

The adult plaintiffs instituted this action for themselves, their minor children plaintiffs, and all other persons similarly situated for an interlocutory injunction, a permanent injunction, restraining the enforcement, operation and execution of the state statute and the segregation instituted thereunder by the school authorities of the City of Topeka and for a declaratory judgment declaring unconstitutional the state statute and the segregation set up thereunder by the school authorities of the City of Topeka.

As against the school district of Topeka they contend that the opportunities provided for the infant plaintiffs in the separate all negro schools are inferior to those pro-

vided white children in the all white schools; that the respects in which these opportunities are inferior include the physical facilities, curricula, teaching resources, student personnel services as well as all other services. As against both the state and the school district, they contend that apart from all other factors segregation in itself constitutes [fol. 387] an inferiority in educational opportunities offered to negroes and that all of this is in violation of due process guaranteed them by the Fourteenth Amendment to the United States Constitution. In their answer both the state and the school district defend the constitutionality of the state law and in addition the school district defends the segregation in its schools instituted thereunder.

We have found as a fact that the physical facilities, the curricula, courses of study, qualification of and quality of teachers, as well as other educational facilities in the two sets of schools are comparable. It is obvious that absolute equality of physical facilities is impossible of attainment in buildings that are erected at different times. So also absolute equality of subjects taught is impossible of maintenance when teachers are permitted to select books of their own choosing to use in teaching in addition to the prescribed courses of study. It is without dispute that the prescribed courses of study are identical in all of the Topeka Schools and that there is no discrimination in this respect. It is also clear in the record that the educational qualifications of the teachers in the colored schools are equal to those in the white schools and that in all other respects the educational facilities and services are comparable. It is obvious from the fact that there are only four colored schools as against eighteen white schools in the Topeka School District, that colored children in many instances are required to travel much greater distances than they would be required to travel could they attend a white school, and are required to travel much greater distances than white children are required to travel. The evidence, however, establishes that the school district transports colored children to and from school free of charge. No such service is furnished to white children. We conclude that in the maintenance and operation of the [fol. 388] schools there is no willful, intentional or sub-

stantial discrimination in the matters referred to above between the colored and white schools. In fact, while plaintiffs' attorneys have not abandoned this contention, they did not give it great emphasis in their presentation before the court. They relied primarily upon the contention that segregation in and of itself without more violates their rights guaranteed by the Fourteenth Amendment.

This contention poses a question not free from difficulty. As a subordinate court in the federal judicial system, we seek the answer to this constitutional question in the decisions of the Supreme Court when it has spoken on the subject and do not substitute our own views for the declared law by the Supreme Court. The difficult question as always is to analyze the decisions and seek to ascertain the trend as revealed by the later decisions.

There are a great number of cases, both federal and state, that have dealt with the many phases of segregation. Since the question involves a construction and interpretation of the federal Constitution and the pronouncements of the Supreme Court, we will consider only those cases by the Supreme Court with respect to segregation in the schools. In the early case of Plessy v. Ferguson, 163 U. S. 537, the Supreme Court said:

> "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily [fol. 389] imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where

> the political rights of the colored race have been longest and most earnestly enforced."

It is true as contended by plaintiffs that the Plessy case involved transportation and that the above quoted statement relating to schools was not essential to the decision of the question before the court and was therefore somewhat in the nature of dicta. But that the statement is considered more than dicta is evidenced by the treatment accorded it by those seeking to strike down segregation as well as by statements in subsequent decisions of the Supreme Court. On numerous occasions the Supreme Court has been asked to overrule the Plessy case. This the Supreme Court has refused to do, on the sole ground that a decision of the question was not necessary to a disposal of the controversy presented. In the late case of Sweatt v. Painter, 339 U. S. 629, the Supreme Court again refused to review the Plessy case. The Court said:

> "Nor need we reach petitioner's contention that Plessy v. Ferguson should be reexamined in the light of contemporary knowledge respecting the purposes of the Fourteenth Amendment and the effects of racial segregation."

Gong Lum v. Rice, 275 U. S. 78, was a grade school segregation case. It involved the segregation law of Mississippi. Gong Lum was a Chinese child and, because of color, was required to attend the separate schools provided for colored children. The opinion of the court assumes that the educational facilities in the colored schools were adequate and equal to those of the white schools. Thus the court said: "The question here is whether a Chinese citizen of the [fol. 390] United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow or black." In addition to numerous state decisions on the subject, the Supreme Court in support of its conclusions cited Plessy v. Ferguson, supra. The Court also pointed out that the question was the same no matter what the color of the class that was

required to attend separate schools. Thus the Court said: "Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils, but we cannot think that the question is any different or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is as between white pupils and the pupils of the yellow race." The court held that the question of segregation was within the discretion of the state in regulating its public schools and did not conflict with the Fourteenth Amendment.

It is vigorously argued and not without some basis therefor that the later decisions of the Supreme Court in McLaurin v. Oklahoma, 339 U. S. 637, and Sweatt v. Painter, 339 U. S. 629, show a trend away from the Plessy and Lum cases. McLaurin v. Oklahoma arose under the segregation laws of Oklahoma. McLaurin, a colored student, applied for admission to the University of Oklahoma in order to pursue studies leading to a doctorate degree in education. He was denied admission solely because he was a negro. After litigation in the courts, which need not be reviewed herein, the legislature amended the statute permitting the admission of colored students to institutions of higher learning attended by white students, but providing that such instruction should be given on a segregated basis; that the instruction be given in separate class rooms or at separate times. In compliance with this statute McLaurin [fol. 391] was admitted to the university but was required to sit at a separate desk in the ante room adjoining the class room; to sit at a designated desk on the mezzanine floor of the library; and to sit at a designated table and eat at a different time from the other students in the school cafeteria. These restrictions were held to violate his rights under the federal Constitution. The Supreme Court held that such treatment handicapped the student in his pursuit of effective graduate instruction.[1]

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[1] The court said: "Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an

In Sweatt v. Painter, 339 U. S. 629, petitioner, a colored student, filed an application for admission to the University of Texas Law School. His application was rejected solely on the ground that he was a negro. In its opinion the Supreme Court stressed the educational benefits from commingling with white students. The court concluded by stating: "We cannot conclude that the education offered petitioner in a separate school is substantially equal to that which he would receive if admitted to the University of Texas Law School." If segregation within a school as in the McLaurin case is a denial of due process, it is difficult to see why segregation in separate schools would not result [fol. 392] in the same denial. Or if the denial of the right to commingle with the majority group in higher institutions of learning as in the Sweatt case and gain the educational advantages resulting therefrom, is lack of due process, it is difficult to see why such denial would not result in the same lack of due process if practiced in the lower grades.

It must however be remembered that in both of these cases the Supreme Court made it clear that it was confining itself to answering the one specific question, namely: "To what extent does the equal protection clause limit the

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advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under this guidance and influence must be directly affected by the education he received. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State imposed restrictions which produce such inequalities cannot be sustained."

"It may be argued that appellant will be in no better position when these restrictions are removed, for he may still be set apart by his fellow students. This we think irrelevant. There is a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar. * * * having been admitted to a state supported graduate school, [he] must receive the same treatment at the hands of the state as students of other races."

power of a state to distinguish between students of different races in professional and graduate education in a state university?", and that the Supreme Court refused to review the Plessy case because that question was not essential to a decision of the controversy in the case.

We are accordingly of the view that the Plessy and Lum cases, supra, have not been overruled and that they still presently are authority for the maintenance of a segregated school system in the lower grades.

The prayer for relief will be denied and judgment will be entered for defendants for costs.

[fol. 393] IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Entered August 3, 1951.

FINDINGS OF FACT

I

This is a class action in which plaintiffs seek a decree, declaring Section 72-1724 of the General Statutes of Kansas 1949 to be unconstitutional, insofar as it empowers the Board of Education of the City of Topeka "to organize and maintain separate schools for the education of white and colored children" and an injunction restraining the enforcement, operation and execution of that portion of the statute and of the segregation instituted thereunder by the School Board.

II

This suit arises under the Constitution of the United States and involves more than $3,000 exclusive of interest and costs. It is also a civil action to redress an alleged deprivation, under color of State law, of a right, privilege or immunity secured by the Constitution of the United States providing for an equal rights of citizens and to have the court declare the rights and other legal relations of the interested parties. The Court has jurisdiction of the subject matter and of the parties to the action.

III

Pursuant to statutory authority contained in Section 72-1724 of the General Statutes of Kansas 1949, the City of Topeka, Kansas, a city of the first class, has established and maintains a segregated system of schools for the first six grades. It has established and maintains in the Topeka School District, eighteen schools for white children and four [fol. 394] for colored children, the latter being located in neighborhoods where the population is predominantly colored. The City of Topeka is one school district. The colored children may attend any one of the four schools established for them, the choice being made either by the children or by their parents.

IV

There is no material difference in the physical facilities in the colored schools and in the white schools and such facilities in the colored schools are not inferior in any material respects to those in the white schools.

V

The educational qualifications of the teachers and the quality of instruction in the colored schools are not inferior to and are comparable to those of the white schools.

VI

The courses of study prescribed by the State law are taught in both the colored schools and in the white schools. The prescribed courses of study are identical in both classes of schools.

VII

Transportation to and from school is furnished colored children in the segregated schools without cost to the children or to their parents. No such transportation is furnished to the white children in the segregated schools.

[fol. 395]

VIII

Segregation of white and colored children in public schools has a detrimental effect upon the colored children.

The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retain the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial integrated school system.

IX

The court finds as facts the stipulated facts and those agreed upon by counsel at the pre-trial and during the course of the trial.

CONCLUSIONS OF LAW

I

This court has jurisdiction of the subject matter and of the parties to the action.[1]

II

We conclude that no discrimination is practiced against plaintiffs in the colored schools set apart for them because of the nature of the physical characteristics of the buildings, the equipment, the curricula, quality of instructors and [fol. 396] instruction or school services furnished and that they are denied no constitutional rights or privileges by reason of any of these matters.

III

Plessy v. Ferguson, 163 U. S. 537, and Gong Lum v. Rice, 275 U. S. 78 upholds the constitutionality of a legally segregated school system in the lower grades and no denial of due process results from the maintenance of such a segregated system of schools absent discrimination in the maintenance of the segregated schools. We conclude that the above cited cases have not been overruled by the later cases of McLaurin v. Oklahoma, 339 U. S. 637, and Sweatt v. Painter, 339 U. S. 629.

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[1] Title 28 U.S.C. § 1331; idem § 1343; idem Ch. 151. Title 8 U.S.C. Ch. 3. Title 28 U.S.C. Ch. 155.

IV

The only question in the case under the record is whether legal segregation in and of itself without more constitutes denial of due process. We are of the view that under the above decisions of the Supreme Court the answer must be in the negative. We accordingly conclude that plaintiffs have suffered no denial of due process by virtue of the manner in which the segregated school system of Topeka, Kansas, is being operated. The relief sought is therefore denied. Judgment will be entered for defendants for costs.

Walter A. Huxman, Circuit Judge, Arthur J. Mellott, Chief District Judge, Delmas C. Hill, District Judge.

[fol. 397] In United States District Court

Degree—Entered August 3, 1951.

Now on this 3rd day of August, 1951 this cause comes regularly on for hearing before the undersigned Judges, constituting a three-judge court, duly convened pursuant to the provisions of Title 28 U. S. C. 2281 and 2284.

The Court has heretofore filed its Findings of Fact and Conclusions of Law together with an opinion and has held as a matter of law that the plaintiffs have failed to prove they are entitled to the relief demanded.

Now, therefore, it is by the court, considered, ordered, adjudged and decreed that judgment be and it hereby is entered in favor of the defendants.

Walter A. Huxman, Circuit Judge, Arthur J. Mellott, Chief District Judge, Delmas C. Hill, District Judge.

[fol. 398] In United States District Court

[Title omitted]

Petition for Appeal—Filed October 1, 1951

Considering themselves aggrieved by the final decree and judgment of this court entered on August 3, 1951, Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emanuel, Mrs. Lucinda Todd, Mrs. Iona Richardson, Mrs. Lena Carper, Mrs. Shirley Hodison, Mrs. Alma Lewis, Mrs. Darlene Brown, Mrs. Shirla Fleming, Mrs. Andrew Henderson, Mrs. Vivian Scales, Mrs. Marguerite Emmerson, and Linda Carol Brown, an infant by Oliver Brown, her father and next friend; Victoria Jean Lawton and Carol Kay Lawton, infants, by Mrs. Richard Lawton, their mother and next friend; James Meldon Emanuel, an infant, by Mrs. Sadie Emanuel, his mother and next friend; Nancy Jane Todd, an infant, by Mrs. Lucinda Todd, her mother and next friend; Ronald Douglas Richardson, an infant, by Mrs. Iona Richardson, his mother and next friend; Katherine Louise Carper, an infant, by Mrs. Lena Carper, her mother and next friend; Charles Hodison, an infant, by Mrs. Shirley Hodison, his mother and next friend; Theron Lewis, Martha Jean Lewis, Arthur Lewis and Frances Lewis, infants, by Mrs. Alma Lewis, their mother and next friend; Saundria Dorstella Brown, an infant, by Mrs. Darlene Brown, her mother and next friend; Duane Dean Fleming and Silas Hardrick Fleming, infants, by Mrs. Shirla Flem-
[fol. 399] ing, their mother and next friend; Donald Andrew Henderson and Vicki Ann Henderson, infants, by Mrs. Andrew Henderson, their mother and next friend; Ruth Ann Scales, an infant, by Mrs. Vivian Scales, her mother and next friend; Claude Arthur Emmerson and George Robert Emmerson, infants, by Mrs. Marguerite Emmerson, their mother and next friend, plaintiffs herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said plaintiffs, and that the amount of security be fixed by the order allowing the

appeal, and that the material parts of the record, proceedings and papers upon which said final judgment and decree was based duly authenticated be sent to the Supreme Court of the United States in accordance with the rules in such cases made and provided.

Respectfully submitted, Charles E. Bledsoe, 330 Kansas Avenue, Topeka, Kansas, John J. Scott, Charles S. Scott, 410 Kansas Avenue, Topeka, Kansas, Robert L. Carter, Jack Greenberg, Thurgood Marshall, 20 West 40th Street, New York 18, New York, Counsel for Plaintiffs-Appellants.

[fol. 400] In United States District Court

[Title omitted]

Assignment of Errors and Prayer for Reversal—filed October 1, 1951.

Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emanuel, Mrs. Lucinda Todd, Mrs. Iona Richardson, Mrs. Lena Carper, Mrs. Shirley Hodison, Mrs. Alma Lewis, Mrs. Darlene Brown, Mrs. Shirla Fleming, Mrs. Andrew Henderson, Mrs. Vivian Scales, Mrs. Marguerite Emmerson, and Linda Carol Brown, an infant by Oliver Brown, her father and next friend; Victoria Jean Lawton and Carol Kay Lawton, infants, by Mrs. Richard Lawton, their mother and next friend; James Meldon Emanuel, an infant, by Mrs. Sadie Emanuel, his mother and next friend; Nancy Jane Todd, an infant, by Mrs. Lucinda Todd, her mother and next friend; Ronald Douglas Richardson, an infant, by Mrs. Iona Richardson, his mother and next friend; Katherine Louise Carper, an infant, by Mrs. Lena Carper, her mother and next friend; Charles Hodison, an infant, by Mrs. Shirley Hodison, his mother and next friend; Theron Lewis, Martha Jean Lewis, Arthur Lewis and Frances Lewis, infants, by Mrs. Alma Lewis, their mother and next friend; Saundria Dorstella Brown, an infant, by Mrs. Darlene Brown, her mother and next friend; Duane Dean Fleming and Silas Hardrick Fleming, infants, by Mrs. Shirla Fleming, their [fol. 401] mother and next friend; Donald Andrew Hen-

derson and Vicki Ann Henderson, infants, by Mrs. Andrew Henderson, their mother and next friend; Ruth Ann Scales, an infant, by Mrs. Vivian Scales, her mother and next friend; Claude Arthur Emmerson and George Robert Emmerson, infants, by Mrs. Marguerite Emmerson, their mother and next friend, plaintiffs in the above-entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final judgment of the District Court entered on August 3, 1951.

The District Court erred:

1. In refusing to grant plaintiffs' application for a temporary and permanent injunction restraining the defendants from acting pursuant to Chapter 72-1724 of the General Statutes of Kansas under which they are maintaining separate public elementary schools through the first six grades for Negro children solely because of their race and color.

2. In refusing to hold that the State of Kansas is without authority to promulgate Chapter 72-1724 of the General Statutes of Kansas in that such statute constitutes a classification based upon race and color which is violative of the Constitution of the United States.

3. In refusing to enter judgment in favor of plaintiffs, after the court found that plaintiffs suffered serious harm and detriment in being required to attend segregated elementary schools in the City of Topeka, and were deprived thereby of benefits they would have received in a racially integrated school system.

Wherefore, plaintiffs pray that the final decree of the [fol. 402] District Court be reversed, and for such other relief as the Court may deem fit and proper.

Charles E. Bledsoe, 330 Kansas Avenue, Topeka, Kansas, Charles S. Scott, John Scott, 410 Kansas Avenue, Topeka, Kansas, Robert L. Carter, Jack Greenberg, Thurgood Marshall, Counsel for Plaintiffs-Appellants.

Dated: September 28, 1951.

[fol. 403] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Entered October 1, 1951.

Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emanuel, Mrs. Lucinda Todd, Mrs. Iona Richardson, Mrs. Lena Carper, Mrs. Shirley Hodison, Mrs. Alma Lewis, Mrs. Darlene Brown, Mrs. Shirla Fleming, Mrs. Andrew Henderson, Mrs. Vivian Scales, Mrs. Marguerite Emmerson, and Linda Carol Brown, an infant by Oliver Brown, her father and next friend; Victoria Jean Lawton and Carol Kay Lawton, infants, by Mrs. Richard Lawton, their mother and next friend; James Meldon Emanuel, an infant, by Mrs. Sadie Emanuel, his mother and next friend; Nancy Jane Todd, an infant, by Mrs. Lucinda Todd, her mother and next friend; Ronald Douglas Richardson, an infant, by Mrs. Iona Richardson, his mother and next friend; Katherine Louise Carper, an infant, by Mrs. Lena Carper, her mother and next friend; Charles Hodison, an infant, by Mrs. Shirley Hodison, his mother and next friend; Theron Lewis, Martha Jean Lewis, Arthur Lewis and Frances Lewis, infants, by Mrs. Alma Lewis, their mother and next friend; Saundria Dorstella Brown, an infant, by Mrs. Darlene Brown, her mother and next friend; Duane Dean Fleming and Silas Hardrick Fleming, infants, by Mrs. Shirla Fleming, their mother and next friend; Donald Andrew Henderson and [fol. 404] Vicki Ann Henderson, infants, by Mrs. Andrew Henderson, their mother and next friend; Ruth Ann Scales, an infant, by Mrs. Vivian Scales, her mother and next friend; Claude Arthur Emmerson and George Robert Emmerson, infants, by Mrs. Marguerite Emmerson, their mother and next friend, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this court in this cause entered on August 3, 1951, and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statements as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and

rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of $500 with good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

Walter A. Huxman, U. S. Circuit Judge.

Dated: October 1, 1951.

[fol. 405] Citation in usual form showing service on Lester M. Goodell and George Brewster omitted in printing.

[fol. 406] NOTE RE COST BOND

Cost bond in the sum of $500.00, with Fidelity & Deposit Company of Maryland, as surety, was approved by the Clerk and Filed October 1, 1951.

[fols. 407-408] Statement required by Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States (omitted in printing).

[fols. 409-411] Acknowledgment of service (omitted in printing).

[fols. 412-413] PRAECIPE—Filed October 5, 1951 (omitted in printing).

[fol. 414] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE AND DOCKET RECORD ON APPEAL IN THE SUPREME COURT OF THE UNITED STATES—Entered November 5, 1951

Now, on this 5 day of November, 1951, upon the application of Charles S. Scott, one of the attorneys for the plaintiffs, and for good cause shown,

It is hereby ordered that the time within which to file and docket the record on appeal in above action in the Supreme Court of the United States be and it is hereby extended twenty days from November 9, 1951.

Walter A. Huxman, United States Circuit Judge.

[fol. 415] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 416-417] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951, No. 436

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed November 27, 1951

A. Appellants adopt for their statement of points upon which they intend to rely in their appeal to this Court the points contained in their Assignment of Errors heretofore filed.

B. Appellants designate the entire record, as filed in the above-entitled case, for printing by the Clerk of this Court.

Robert L. Carter, Counsel for Appellants.

[File endorsement omitted.]

[fol. 418] SUPREME COURT OF THE UNITED STATES

No. 436, OCTOBER TERM, 1951

ORDER NOTING PROBABLE JURISDICTION—June 9, 1952

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.