
Brown v. Board of Education: Concluding Unfinished Business

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*No me saque sin razón. No me enbaine sin honor.*¹

While attending the University of Kansas School of Law, one of my first professors was Paul Wilson. I frankly don't remember how he worked it into his lecture on criminal law, but somewhere near the middle of the course, he let us know that he had represented the State of Kansas in the famous *Brown v. Board of Education*² case. I believe the point he was making at the time was that as a lawyer, you must take the side of the case you have and give the best possible representation. Even though I had attended six years of school in Topeka, Kansas, including high school, before attending college and law school, that was my first exposure to the notion that Topeka, Kansas had been involved in a pivotal civil rights case.

However, in May, 1979, I started developing an abiding interest in the *Brown* case—arguably the defining decision of the Twentieth Century. I was invited by a fellow lawyer to attend a press conference given by the Kansas Advisory Council to the U.S. Civil Rights Commission. During that press conference, the Commission reported that twenty-five years after the 1954 decision in *Brown*, the Topeka School District had still not complied with the Supreme Court's 1955³ mandate.

Following that press conference, I attended a meeting with other lawyers who were interested in civil rights and public education. That meeting turned into a series of research assignments, whereby we sought to verify what had been reported by the U.S. Civil Rights Commission and to make a determination as to what should be done if the report were true.

Within a couple of months of the press conference, we had made a determination that the Commission's report was in fact true, and we

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1. Inscription on a Spanish broad sword from the Eighteenth Century which was found near Lindsborg, Kansas, now on exhibit at the Kansas State Historical Museum.

2. 347 U.S. 483 (1954).

3. See *Brown v. Board of Educ. (Brown II)*, 349 U.S. 294 (1955) (remanding for appropriate remedy).

were convinced that the case of the century demanded local closure. At that time, the atmosphere in the United States Supreme Court and the lower federal courts was hospitable to justified civil rights claims. The American legal system had made substantial advancement from 1856, when the Supreme Court had handed down its *Dred Scott*⁴ decision. In *Dred Scott*, the Court stated unabashedly that African-Americans were “beings of an inferior order, and all together unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect”⁵

The original case of *Brown v. Board of Education*,⁶ was filed on February 28, 1951, and a trial was held before a three-judge district panel in June of that same year. The panel filed its opinion on August 3, 1951, holding that the schools for black children and the schools for white children were comparable with respect to “physical facilities, the curricula, courses of study, [and] qualification of and quality of teachers.”⁷ Then, based upon the Supreme Court’s decision in *Plessy v. Ferguson*⁸ and *Gong Lum v. Rice*,⁹ the three-judge panel acquiesced to the segregation of races within the school system.¹⁰ Plaintiffs were complaining that the school district’s policy of maintaining separate schools for whites and blacks was a violation of their rights secured under the Fourteenth Amendment to the Constitution of the United States. When plaintiffs appealed the panel’s decision to the Supreme Court,¹¹ their case was consolidated with similar cases from South Carolina, Virginia, and Delaware.¹²

The Supreme Court wound up dealing with the appeals in a manner which, upon reflection, appears to have been politically motivated. The Court decided in one session that the separation of children by race in the public school systems was unconstitutional. However, the Court saved until its next term the subject of how the unconstitutional actions should be dealt with.¹³ In its opinion following the first hearing, the Court rhetorically asked:

Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

4. *Dred Scott v. Sanford*, 60 U.S. 393 (1856).

5. *Id.* at 407.

6. 98 F. Supp. 797 (D. Kan. 1951).

7. *Id.* at 798.

8. 163 U.S. 537 (1896).

9. 275 U.S. 78 (1927).

10. *See Brown v. Board of Educ.*, 98 F. Supp. 797, 800 (D. Kan. 1951).

11. *See* 28 U.S.C. § 1253 (1994) (allowing direct appeal to the Supreme Court from a three-judge district panel).

12. *See Brown v. Board of Educ.*, 347 U.S. 483 (1954).

13. *See Brown v. Board of Educ.* (Brown II), 349 U.S. 294 (1955).

....

... To separate [minority school children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by findings in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

“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 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 the tendency to (retard) the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.”

....

We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.¹⁴

In the following year, having heard reargument concerning what relief would be appropriate, the Court decided that the district courts should do whatever was necessary to see that the plaintiffs were admitted to public schools on a racially nondiscriminatory basis with “all deliberate speed.”¹⁵

The Supreme Court directed that the trial courts retain jurisdiction of the cases while the school districts were making the transition from dual to unitary status.¹⁶

In the interim, the Topeka Board of Education had developed, and began implementing, a four-step desegregation plan.¹⁷ In the fall of 1955, the three-judge district panel held a hearing to determine the adequacies of that plan.¹⁸ On October 28, 1955, in a two page opinion, the court ruled as follows:

It is the conclusion of the court that while complete desegregation has not been accomplished in the Topeka School System, a good faith effort

14. *Brown v. Board of Educ.*, 347 U.S. 483, 493-95 (1954) (quoting without citation *Brown v. Board of Educ.*, 98 F. Supp. 797 (D. Kan. 1951)).

15. *Brown v. Board of Educ. (Brown II)*, 349 U.S. 294, 301 (1955).

16. *See id.* at 299.

17. *See Brown v. Board of Educ.*, 139 F. Supp. 468, 469 (D. Kan. 1955).

The central principle of the plan is that hereafter, except in exceptional circumstances, school children irrespective of race or color shall be required to attend the school in the district in which they reside and that color or race is no element of exceptional circumstances warranting a deviation from this basic principle.

Id.

18. *See id.* at 468.

toward that end has been made and that, therefore, the plan adopted by the Board of Education of the City of Topeka be approved as a good faith beginning to bring about complete desegregation. Jurisdiction of the cause for the purpose for entering the final decree is retained until such time as the court feels¹⁹ there has been full compliance with the mandate of the Supreme Court.

Although the thought of trying to take on school desegregation in the site commonly associated with the principle was inundating, the fact, however, remained—we *were* in Topeka. Black children in Topeka appeared to be sinking into an educational morass, and Ronald Reagan was likely to compete for the presidency, and, if successful, the window of opportunity for school desegregation was likely to shrink. The more I thought about it, the more I got a feeling of standing on the shoulders of civil rights giants like Charles Hamilton Houston and Thurgood Marshall, just trying to add a couple of finishing touches to something that they had started.

Recently, I had guests visiting in Topeka, and took the opportunity to take them to one of my favorite sites, the Kansas State Historical Museum. One of the first exhibits you see as you walk into the museum is the shaft of an Eighteenth Century Spanish broad sword which was found near Lindsborg, Kansas. The shape of the sword is very much reminiscent of the sword that is often depicted in the right hand of lady justice, while she holds a set of scales in the left hand.

Although I had seen that sword many times, this time I noticed what appeared to be scratches along the shaft. But, to my astonishment, as I leaned forward I could see that what appeared to be scratches was actually a faint yet visible inscription. It read: *No me saque sin razón. No me enbaine sin honor.* This phrase, loosely translated means: Don't take me out [of the sheathe] without reason. Don't put me back [into the sheathe] without honor.

It struck me, as I was reading this inscription and preparing this essay, that the sword was a good metaphor for why Thurgood Marshall and his band of lawyers, including Charles and John Scott of Topeka, had invoked the law in this important racial segregation case in 1951. The reason for invoking the sword of justice in 1951 was to stop the state sponsored apartheid in the public school system. Upon reflection, I think it can be agreed that the reason for invoking it was a good one.

In 1979, we determined that it would be appropriate to have the federal court review the data presented by the U.S. Civil Rights Commission, and allow the court to make a determination as to what needed to be done in order to finally put an end to Topeka's dual school system. Because the school system was required to make numerous reports to what was then the U.S. Department of Health, Education and

19. *Id.* at 470.

Welfare (“HEW”) and because that data would be readily available, we figured that within six months we would be in a position to present the case to the district court. We hoped to receive a ruling and have a final ending to the case that had meant so much to so many symbolically over the years, all before Reagan would have a chance to oust Jimmy Carter from office. Our naïve hopes for a speedy conclusion would soon be dashed.

We made a calculation that the law was in such a state that all that was needed was to develop the factual skin to put on the legal bones, and we would be able to show the district court a pattern which would beg for judicial intervention and judicial remedy. When we first started looking at the case, we didn’t know what approach would best persuade the district court to enforce the original mandate. Clearly, we were going to have to either start a new lawsuit, or in some way, reactivate the original *Brown* suit, which had laid dormant for twenty-four years.

As our local research progressed, we found that in 1974, the Topeka School District had been threatened with a withholding of federal funds by the HEW. This threatened federal action was prompted because the school district had allegedly fallen short with respect to the very issues we were attempting to address. When HEW threatened to withhold the federal funds, the local school district went to federal court, asked for and received an injunction, preventing HEW from cutting off its funds. The school district claimed an exception under HEW’s own mandates, which forbade the withholding of funds from a school district that was under ongoing federal supervision through an open case. Therefore, in 1974, the school district had argued that *Brown* was still “open” in a successful attempt to use this fact as a defensive shield to the federal government’s threat to withhold funds.

Now, five years later, it appeared that if the case was open in 1974—when it was advantageous to the school district—and there had been no action in the case in the intervening five years, it should also be “open” to a group of persons who had an interest in getting the decree implemented and the case finally closed.

We filed the Motion to Intervene in the *Brown* case on August 22, 1979,²⁰ on behalf of the intervening plaintiffs.²¹ To our surprise, the school district vigorously opposed the intervention contending that when the original plaintiffs had graduated from school, the claims became moot.²² In opposing the motion, the school district also claimed that it would be prejudiced by facing different burdens of proof in the reactivated case than it would if the plaintiffs were required to file a

20. See generally *Brown v. Board of Educ.*, 84 F.R.D. 383 (D. Kan. 1979).

21. The intervening plaintiffs in 1979 were African-American schoolchildren currently enrolled in the Topeka School District and their parents.

22. See *Brown v. Board of Educ.*, 84 F.R.D. 383, 392 (D. Kan. 1979).

new action.²³ In addition, the school district claimed that it would be prejudiced by having to defend against issues which were not present in the original action.²⁴ The court rejected these objections and in its ruling, gave the parties a view toward where the evidence should proceed, stating:

[A]pplicants will have the burden of proof to show (1) that segregated schooling exists, and (2) that it was brought about or maintained by intentional state action. This showing must be "satisfactorily established by factual proof and justified by a reasoned statement of legal principles." Once a plaintiff meets this burden of proof as to a meaningful portion of a school district the burden shifts to the school board to show that its actions as to other segregated schools within the system were not also motivated by segregative intent.²⁵

Next, the school district, in arguing against intervention, contended that the plaintiffs should be forced to file a new action, in which, they would have to prove that Topeka maintained a dual system in 1954.²⁶ The court short-circuited this argument by indicating that, either in a new suit or in the present action, it would take judicial notice of the fact that the Topeka district had been found to have an unconstitutional dual school system.²⁷ The court also noted that plaintiffs would have to meet their threshold burden by proving that the school district had not fully complied with the mandates of *Brown* and *Brown II*.²⁸

The Topeka School District²⁹ also complained bitterly about the fact that the prospective plaintiffs wanted to have the Supreme Court's mandate applied to the junior high and high schools as well as the elementary schools.³⁰ The court ruled that the case could properly be expanded by stating:

Topeka intentionally segregated elementary schools in 1951. Elementary schools constitute a meaningful portion of the school district. The Keyes presumptions, in light of Topeka's use of a "feeder" school system, provide a basis for finding that segregation in junior high and high schools, if any, is purposeful. Thus, continued supervision of the Topeka schools under the decree in *Brown II* would naturally have led the Court over the years to turn its attention to the possibility of segregation in the junior and senior high schools, and now to the middle schools which are being adopted in Topeka.

23. See *id.* at 399-400.

24. See *id.* at 400-02.

25. *Id.* at 399-400 (quoting *Dayton Bd. of Educ. v. Brinkman* (Dayton I), 433 U.S. 406, 410 (1977)) (citations omitted).

26. See *id.* at 400. The term "dual" refers to a state sponsored racially segregated school district operating two separate systems. The opposite of a dual system is a "unitary" district. For further discussion, see *Brown v. Board of Educ.*, 671 F. Supp. 1290, 1292-94 (D. Kan. 1987).

27. See *Brown v. Board of Educ.*, 84 F.R.D. 383, 400 (D. Kan. 1979).

28. See *id.*

29. In 1965, a Kansas state statute unified the school districts across the state. Unified School District #501 was the named successor to the original defendant, Topeka Public Schools No. 23. For further discussion, see *Brown v. Board of Educ.*, 671 F. Supp. 1290, 1292 (D. Kan. 1987).

30. See *Brown v. Board of Educ.*, 84 F.R.D. 383, 400-01 (D. Kan. 1979).

This fact was recognized in the Weinberger case by the defendant which argued that the School system [sic] was under court supervision in opposition to the government's position that an HEW investigation of the entire system was not barred because this case, as originally filed, involved only elementary school.³¹

With the successful Motion to Intervene, we had cleared the first of many legal obstacles. Over the next five years, the parties engaged in discovery. Initially, the school district determined that it would object to any discovery requests for data before 1954, contending that anything prior to 1954 was irrelevant. Plaintiffs wanted to discover the defendant's records, going back forty years. Our argument, with respect to going back for forty years of records, was based on the fact that the Supreme Court had noted that the scope of any desegregation remedy should be shaped by the scope of the constitutional violation that had taken place.³² And, of course, in order to know the depth of the constitutional violation, we needed to delve into records of occurrences prior to the lawsuit being filed in 1951. The magistrate assigned to supervise the litigation at the time agreed with the school district's objection. One of the longest delays during the five year discovery process was the time in which the appeal from that decision to the district judge was under review.

Ultimately, the district judge overturned the decision of the magistrate and required that the school district provide available records for a period prior to the Supreme Court's 1954 decision. As it turned out, the school district did not keep extensive records regarding the student body's racial make-up prior to the desegregation order in 1955. What was known was that prior to the desegregation decision, black students attended only four of the district's twenty-two elementary schools.³³ The remaining eighteen schools were entirely populated by non-blacks. Demographic data regarding secondary education was difficult to assemble. What data that was available came from unlikely sources—high school yearbooks. In the district's only high school at the time, there was a school basketball team, the Topeka High Trojans, for which only whites could play, and a black basketball team, the Topeka High Ramblers, which had no white members. In these yearbooks one could typically see the segregated sports teams, the whites only prom, and the blacks only spring dance.

Although the school district subsequently began to collect race data, there were a few years in the 1960's for which there was no race

31. *Id.* at 401 (citing *Keyes v. School Dist. No. 1*, 413 U.S. 189 (1973) (holding that once a plaintiff shows intentional segregation in a significant portion of a school district, the defendant must then prove that any segregation in the remainder of the schools is not intentional)).

32. *See generally* *Pasedena City Bd. of Educ. v. Spangler*, 427 U.S. 424 (1976).

33. *See generally* *Brown v. Board of Educ.*, 671 F. Supp. 1290, 1293-94 (D. Kan. 1987) (detailing the racial make-up of the Topeka School District).

data maintained because the district administration had concluded that it was illegal to keep data on race. Eventually, the school district provided what records it had.

Nearly all the discovery plaintiffs received from the school district, either pre or post 1954, was a compilation of statistics or drawings which helped our experts demonstrate how the school district, over the years when it was under an obligation to desegregate, made decision after decision which was either segregative or neutral. Even though we did not ultimately get the document from the school district, a ruling that anything before 1954 was irrelevant would have excluded the document which, for me, best illustrates the state of race relations in Jim Crow Topeka, Kansas in that era—the Godwin letter.

In the spring of 1953, after the Supreme Court had granted certiorari, but before the *Brown I* decision, the school district's new superintendent sent a presumably apologetic letter to all black teachers in the school district, saying:

[I]t is not possible at this time to offer you employment for next year. If the Supreme Court should rule that segregation in the elementary grades is unconstitutional, our Board will proceed on the assumption that the majority of people in Topeka will not want to employ negro teachers next year for white children. It is necessary for me to notify you now that your services will not be needed for next year.³⁴

Following the extensive discovery, the parties filed motions for summary judgment, and the court made rulings thereon which required the parties to go forward to trial. Following the rulings on the dispositive motions, the court scheduled the matter for a trial on the liability aspect of the case. Due to the nature of the litigation, both parties had agreed and the court acquiesced, that it would be better to bifurcate the matter—letting the court first make a determination as to whether (and to what extent) there still existed a constitutional violation. If such a violation was present, then the court could determine what course of action would be appropriate. In preparing for the trial, we determined that we should concentrate, not only on the student body populations in the schools, but rather also on what have become known as the *Green*³⁵ factors. In determining whether a school district has removed the vestiges of de jure segregation, the Supreme Court has identified six aspects of school administration that the district courts should consider: student assignments, faculty assignments, staff assignments, transportation, extra-curricular activities, and physical facilities.³⁶

The original *Brown* case had been filed in February, 1951, tried in

34. Letter from Wendel Godwin, Superintendent, Topeka Public Schools, to Darla Buchanan (Mar. 13, 1953) (on file at the Kansas State Historical Society).

35. *Green v. County Sch. Bd.*, 391 U.S. 430, 435 (1968).

36. See *Board of Educ. v. Dowell*, 498 U.S. 237, 245 (1991) (quoting *Green*, 391 U.S. at 435).

a day and a half in June, 1951, and decided in August, 1951. The revived case, after mountainous discovery and extensive motion briefing beginning in August, 1979, was tried in October, 1986, beginning the first Monday of the month and ending on the last Friday of the month. The court then required both parties to file closing briefs with proposed findings of fact and conclusions of law. The following February, the court issued its opinion.³⁷ It was an opinion that was well documented and apparently well thought out. The opinion's findings of fact were so close to the ones proposed by the plaintiffs that given the state of the law in 1987, the plaintiffs' legal team was shocked and devastated at the ultimate conclusion of law.³⁸

We carefully reviewed the court's opinion in the days to follow—making sure that what we were reading to be an erroneous conclusion was not merely sour grapes at having lost. After a couple of weeks, we determined that if the lawsuit was to be closed out on this conclusion, it deserved to be done at a higher level. We, therefore, decided to seek an appeal.

Within a week after the appeal had been docketed, I received a call from a person at the Tenth Circuit Court of Appeals who indicated that she was the "attorney expediter." In those days, I had other cases on appeal in that court, and up until then, I had never heard of an attorney expediter, nor had I ever received such a call. That was my first hint that the Tenth Circuit was taking a special interest in this case. When I inquired of the caller what an attorney expediter did, she indicated that it was a new position created to help attorneys get their briefs in on time. I resisted the temptation of asking her if she wanted to write any particular section of the brief. After the defendant filed its brief, the case was quickly scheduled for oral argument, thus furthering my perception that the Tenth Circuit had taken an interest in this case. Rather than summon us to Denver, Colorado, oral arguments were held in the Kansas City, Kansas federal courthouse.

For what seemed like an eternity, but in reality was only two years, the Tenth Circuit Court of Appeals kept the case under consideration. After twenty months of having the case under consideration, the majority opinion came down with a note appended, indicating that a dissenting opinion would follow. After a few weeks, there was an indication from the district court clerk's office that the court had requested a copy of the curriculum vitae of one of the plaintiffs' experts. This was a clear signal that the dissenting judge had discovered an error in the majority opinion. In the opinion, the two judges in the majority had made the

37. See *Brown v. Board of Educ.*, 671 F. Supp. 1290 (D. Kan. 1987).

38. See *id.* at 1311 (holding that the "case has reached an appropriate denouement. The district has a unitary system of education").

same mistake that a couple of other circuits had made in the past by referring to our demographics expert as though he had a Ph.D. When what was apparent to us also became apparent to the majority on the court, the original opinion was withdrawn, and several months later, the entire opinion came down at once, including a revised majority opinion absent the enhanced reference to our demographics expert.³⁹ The majority opinion clearly demonstrated that the district court had not correctly applied the law to the facts as presented.

The defendant, still not ready to give up, “politically spun” the situation by stating that the parties were “tied” at this point. The school district commented that two federal judges ruled in favor of the plaintiff (the two appellate judges who adopted the majority opinion) and two federal judges ruled in favor of the defendant (the district court judge and the dissenting appellate judge).

The school district then sought a rehearing en banc by the Tenth Circuit Court of Appeals. When that request was denied, the school district petitioned for certiorari to the United States Supreme Court. That request languished in the United States Supreme Court for three terms.

At the same time the defendant in the *Brown* case requested that the Supreme Court review the Tenth Circuit decision, the Supreme Court had two other desegregation cases before it for consideration. The Court held our case and the DeKalb County, Georgia case of *Freeman v Pitts*⁴⁰ in abeyance while listening to arguments and making a decision in the Oklahoma City, Oklahoma case of *Board of Education v. Dowell*.⁴¹ *Dowell* was a case wherein the school district had once achieved compliance with a school desegregation order and subsequently fell out of compliance therewith. The next year, the Court decided to hear arguments in the *Freeman* case. The ruling in *Freeman* established the principle that “in the course of supervising desegregation plans, federal courts have the authority to relinquish supervision and control of the school districts in incremental stages, before full compliance has been achieved in every area of school operations.”⁴²

After the Court handed down its opinion in *Freeman*, the Court remanded the *Brown* case to the Tenth Circuit Court of Appeals, and told it to review *Brown* in light of the two recent Supreme Court desegregation cases.⁴³ The Tenth Circuit Court of Appeals again promptly scheduled briefs and held arguments in the summer of 1992 on the re-

39. See *Brown v. Board of Educ.*, 892 F.2d 851 (10th Cir. 1989) (holding that the school district was not unitary under constitutional standards).

40. 503 U.S. 467 (1992).

41. 498 U.S. 237 (1991).

42. *Freeman*, 503 U.S. at 490.

43. See *Board of Educ. v. Brown*, 503 U.S. 978 (1992) (remanding in light of recent decisions).

manded case. Later, the court issued its opinion reaffirming its earlier ruling, with the same judges in the majority and the same judge dissenting.⁴⁴

The school district again petitioned for certiorari to the Supreme Court. This time, the Supreme Court denied certiorari⁴⁵ and the case returned to the district court. Thus, after fourteen years, the liability phase of the lawsuit was complete.⁴⁶ In 1993, when the case came back to the district court, the court was under orders to devise and implement a desegregation plan.⁴⁷ Sadly ironic, this desegregation plan order would be the first for the Topeka School District since the Supreme Court's historic declaration that separate but equal in the field of education was unconstitutional.⁴⁸

Both sides again consulted experts in the field with respect to the remedy phase of the lawsuit, which would require drafting desegregation plans. The school district, with the assistance of its experts, devised a plan which combined school closings, school construction, attendance zone changes, and magnet schools. The plaintiffs, with the assistance of their experts, chose to use existing schools with a "choice plan" whereby the students and their parents would be asked to make choices as to which school they would prefer to attend. The common denominator, however, of the two plans was the fact that both sides were seeking to accomplish the same thing—compliance with the 1955 Supreme Court mandate to dismantle the unconstitutional dual school system.

The district court ruled and the parties accepted the proposition that to be in compliance with the Constitution, the school district was going to have to meet certain goals and timetables with respect to the racial makeup of the schools. The school district was required to have the white/non-white percentage of the student body at each school reflect the overall white/non-white percentage of the district wide student body, plus or minus fifteen percent. The white/non-white percentage of the staff at any school had to reflect the district wide white/non-white percentages, plus or minus five percent, and the white/non-white percentage of the faculty at any school had to reflect the district wide white/non-white percentages, plus or minus ten percent.

44. See *Brown v. Board of Educ.*, 978 F.2d 585 (10th Cir. 1992) (holding that the school system has not achieved unitary status and remanding to the district court for formulation of the appropriate remedy).

45. See *Brown v. Board of Educ.*, 978 F.2d 585 (10th Cir. 1992), *cert. denied*, 509 U.S. 903 (1993).

46. The fourteen years only represents the time since the Motion for Intervention was originally filed.

47. See *Brown v. Board of Educ.*, 978 F.2d 585, 593 (10th Cir. 1992) ("We say simply that because Topeka has not fulfilled its affirmative duty in the areas of student and faculty/staff assignments, the district court erred in concluding that the system as a whole had achieved unitary status. The district court must instead formulate an appropriate remedy.")

48. See *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

After taking into account plaintiffs' objections and requiring a couple of revisions, the district court accepted the plan submitted by the school district. The school district commenced the early stages of its desegregation plan in the fall of 1994, including the staging of a bond issue vote at the next election, wherein the electorate approved a twenty million dollar bond issue. The district used much of that money to construct three new schools, two of which are large "high-tech" magnet schools to replace four older schools in the predominately black neighborhoods of Topeka.

The three new schools were opened in the fall of 1996, and for the first time the school district came into compliance with the U.S. Supreme Court's 1955 mandate. After the district had stayed in compliance for three years, the defendant then motioned the district court and asked that the school district be declared unitary. We analyzed the data that had been generated over the course of the five years since the desegregation plan was adopted, with particular attention to the last three years after the new schools had been built. We concluded that the sword of justice had served its purpose in this case and that it could indeed be re-sheathed with honor. So, we wrote a one sentence response to the court, letting it know that we would not object to the school district's motion.⁴⁹

49. See *Brown v. Unified Sch. Dist. No. 501*, 56 F. Supp. 2d 1212 (D. Kan. 1999) (granting unitary status).

Before concluding, the court wants to express our gratitude for the good faith and professionalism exhibited by both sides in this litigation. After careful consideration, the court has no reservation in finding that: defendant has complied in good faith with the mandates of the court over a reasonable period of time; the vestiges of past discrimination in the school district have been eliminated to the extent practicable; and defendant has demonstrated a good faith commitment to the law and the Constitution which presages no future need for judicial intervention. Accordingly, the court grants defendant's motion for a declaration of unitary status; the court ceases further supervision of defendant stemming from past mandates in this case; and the court directs that this *case be closed*. *Id.* at 1214 (emphasis added).