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**Deposition upon Oral Examination of Roger P. Soder
07-2-02323-2-115**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MATHEW & STEPHANIE McCLEARY,)
 on their own behalf and on)
 behalf of KELSEY & CARTER)
 McCLEARY, their two children)
 in Washington's public)
 schools; ROBERT & PATTY)
 VENEMA, on their own behalf)
 and on behalf of HALIE &)
 ROBBIE VENEMA, their two)
 children in Washington's)
 public schools; and NETWORK)
 FOR EXCELLENCE IN WASHINGTON)
 SCHOOLS ("NEWS"), a)
 state-wide coalition of)
 community groups, public)
 school districts, and)
 education organizations,)
)
 Petitioners,)
)
 vs.)
)
 STATE OF WASHINGTON,)
)
 Respondent.)

ORIGINAL

FILED
KING COUNTY WASHINGTON

SEP 16 2009

SUPERIOR COURT CLERK
THERESA GRAHAM
DEPUTY

NO. 07-2-02323-2 SEA

DEPOSITION UPON ORAL EXAMINATION
OF
ROGER P. SODER

9:11 A.M. - 11:58 A.M.

Friday, June 26, 2009

1111 Third Avenue, Suite 3400

Seattle, Washington

LORRAINE M. MILLAY, CCR/RPR
Seattle Deposition Reporters, LLC * (206) 622-6661

SEATTLE DEPOSITION REPORTERS, LLC

1 APPEARANCES:

2

3 FOR THE PETITIONERS: THOMAS F. AHEARNE
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8

9 FOR THE RESPONDENT: WILLIAM G. CLARK
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I N D E X

EXAMINATION

PAGE

Mr. Clark

4

Mr. Ahearne

85

I N D E X E X H I B I T

EXHIBIT NO.

DESCRIPTION

PAGE

520

7-page Curriculum Vitae of Roger Soder.

69

521

2-page document titled, Center For Educational Renewal Agenda For Education In A Democracy.

74

522

4-page document titled, American Education: Facing Up To Unspoken Assumptions.

78

523

3-page document titled, Instructor Class Description.

82

524

4-page document titled, When Words Find Their Meaning: Renewal Versus Reform.

84

1 BE IT REMEMBERED that on Friday, June 26, 2009,
2 at 9:11 a.m. at 1111 Third Avenue, Suite 3400, Seattle,
3 Washington, before LORRAINE M. MILLAY, Notary Public in and
4 for the State of Washington, appeared ROGER P. SODER, the
5 witness herein;

6 WHEREUPON, the following proceedings were had,
7 to wit:

8 * * * * *

9 ROGER P. SODER, having been first duly sworn by
10 the Notary, testified as follows:

11
12 EXAMINATION

13 BY MR. CLARK:

14 Q Professor Soder, my name is Bill Clark and I'm an Assistant
15 Attorney General with the State Attorney General's Office,
16 and I'm representing the State in the case of McCleary
17 versus State, the case that brings us here today.

18 Can we begin by having you state your name for the
19 record, please?

20 A My name is Roger Soder. R-O-G-E-R S-O-D-E-R.

21 Q And shall I call you professor, doctor, mister?

22 A Roger, professor, anything you want. Whatever. Up to you.

23 Q All right. I'll start with professor and hope I at least
24 stay consistent.

25 Have you ever testified in a deposition before?

1 A I never have.

2 Q Have you ever testified in a trial or administrative
3 hearing before?

4 A Some years back, when it involved the custody of my
5 daughter, after my wife and I had separated.

6 Q All right. Is that the only instance that you can think
7 of?

8 A That's the only thing.

9 Q All right. Were you able to meet with counsel for the
10 plaintiffs, either Mr. Ahearne or one of his colleagues, in
11 advance of this deposition?

12 A Yes, I was.

13 Q I assume, but you don't have to confirm, that you discussed
14 with them the procedure for deposition, and what I'm going
15 to do is just hit a couple of highlights to help us and the
16 court reporter out this morning.

17 I will be asking questions, you'll be providing
18 answers. The court reporter takes down everything we say.
19 And to help her out, so that she's not trying to take an
20 ongoing intermittent interrupted kind of conversation here,
21 it's best if we have a question pending and then it's just
22 as good if I wait for you to complete your answer.

23 So if we can try to have a complete question and a
24 complete answer as we go along that will be best. If we
25 start to overlap, the court reporter will tell us both to

1 try to do better, and I'm sure we will, but that's one of
2 the limitations we have with a stenographic thing that's
3 taken down by typing and otherwise.

4 If at any time you want to take a break, that will be
5 just fine for whatever reason. I would ask, however, that
6 if there's a question pending that you go ahead and answer
7 it before we take the break. And if there's an issue about
8 that, I'm sure Mr. Ahearne and I can sort it out with you.

9 Nods of the head and shakes of the head aren't as
10 good as answering yes or no. It's best to verbalize an
11 answer, again for the convenience of the court reporter.

12 If you don't understand any of my questions, please
13 feel free to ask me to restate or tell me you don't
14 understand and I'll do the best I can.

15 It's important that we understand each other and
16 communicate. If you do not ask me to repeat, I'll just
17 assume that the question is fine and we'll proceed. Is
18 that okay?

19 A Yes.

20 Q When we conclude today, the court reporter will produce a
21 written transcript of your testimony for you to review.
22 You have an opportunity to review and make changes if you
23 so desire, and those changes may be as minor as the
24 spelling of a name or a piece of punctuation. They could
25 be as significant as something that actually changes an

1 answer from, say, an affirmation to a negative statement.

2 I would caution you, however, that any substantive
3 changes you make downstream if we're at trial, it may be
4 pointed out that there is an apparent inconsistency in the
5 testimony you gave today and that which became your
6 testimony upon further reflection.

7 I'm not saying that will happen, it might, and I just
8 want you to be aware that you have the right to make
9 changes, but substantive ones may carry with them -- well,
10 not consequences, but we may have to sort it out with the
11 judge at trial.

12 Do you have any questions before we begin?

13 A No.

14 Q I don't mean to be prying into your personal life, but are
15 there any medical or other reasons why you can't testify
16 today?

17 A No.

18 Q Okay. Great. And thank you for coming down to Seattle to
19 do it this morning. I love the university and the campus,
20 but I also enjoy coming to Tom's offices, too. So let's
21 begin.

22 You have been retained as an expert in this case,
23 have you not?

24 A I have.

25 Q And who retained you to provide your expertise in this

1 case?

2 A Foster Pepper.

3 Q When were you first approached about becoming an expert in
4 the case?

5 A Late November, to the best of my recollection.

6 Q Of last year?

7 A That's right. In 2008.

8 Q Do you have a written engagement agreement or consulting
9 agreement that pertains to this litigation?

10 A I do.

11 Q Are you being compensated for your efforts?

12 A Yes.

13 Q At what rate are you being compensated?

14 A \$300 an hour.

15 Q Does that apply to all tasks, for example, to your
16 deposition testimony today, as well as the research that
17 you did?

18 A To the best of my understanding.

19 Q Can you tell me approximately how many hours you've spent
20 working on the engagement that pertains to this case?

21 A Including meetings and personal preparation?

22 Q Yes.

23 A Twenty.

24 Q Have you completed your assignment, except for testifying
25 today and perhaps testifying at trial?

1 A Yes.

2 Q So there's no work remaining for you to do other than
3 testimonial work?

4 A Work related to the testimony, that is correct.

5 Q In performing your work for the plaintiffs or their counsel
6 in this case, have you done all the work yourself?

7 A I have.

8 Q You have no one assisting you?

9 A No.

10 Q Have you generated a report that summarizes what you did
11 and states your conclusions?

12 A No.

13 Q Have you prepared any writings that do so?

14 A Let me see if I can answer your question as best as I can
15 here. I have been involved in my area of expertise for
16 some 35-plus years. I have written a great deal.

17 I believe you have a copy of my CV, and that CV lists
18 relevant books, book chapters, articles, papers that I have
19 produced over a long period of time dealing with the
20 relationship of democracy and education.

21 So I have in effect prepared a great deal that my
22 expert testimony will be based on. I have not prepared a
23 specific memorandum or report for the attorneys.

24 Q All right. Thank you. Have you ever been engaged as a
25 consultant or an expert in connection with any other

1 litigation?

2 A No.

3 Q So presuming that you testify at trial, it will be the
4 first time that you have testified at a trial where you
5 have been engaged as an expert for one of the parties in
6 the case?

7 A That's correct.

8 Q Do you have any expertise in the area of education finance?

9 A No particular expertise.

10 Q Okay. When you say no particular expertise, then what in
11 your mind is general expertise or why did you qualify your
12 answer in that regard?

13 A Sure. I am a research professor of education at the
14 University of Washington. Education covers a great many
15 areas.

16 In part of what I teach in some of my classes, I talk
17 about allocation of scarce resources and education finance
18 in terms of the decisions that are going to have to be made
19 all of the time, but how do we allocate resources for
20 education in this state.

21 I have some general knowledge then and familiarity
22 with where funds come for schools and how funds are
23 allocated, so basic issues of education finance in a
24 general way I have as much familiarity with as most other
25 people who are professors of education.

1 Q What familiarity do you have with regard to Washington's
2 K-12 public school system?

3 A Are we talking, if I may, about finances, about curriculum,
4 about how the K-12 system is structured? Could you help
5 me?

6 Q It's all of the above. The three areas that you've just
7 mentioned are components of it, and I can break it down for
8 you.

9 Let's start with the latter. How familiar are you
10 with the structure of public K-12 education in Washington?

11 A I'm reasonably familiar with the structure of education in
12 schooling in this state.

13 Q Okay. And how would you describe that structure?

14 A We have the Office of Superintendent of Public Instruction.
15 We have local education agencies in the form of school
16 districts of which there used to be some 1,200 and then 600
17 and now 295, I believe.

18 Those school districts are run, if you will, by
19 school boards which in a larger district has seven members
20 and a smaller district has five. There's usually a
21 superintendent who is secretary of the Board.

22 And I don't have familiarity with all of the RCW and
23 WACs, but I bring them to my classes, a large purple book
24 about the size of the Seattle telephone book, to say that
25 education and the law in the state are clearly intertwined

1 in many, many respects.

2 Q The purple book you've described, is that the common school
3 manual?

4 A That's correct.

5 Q So you are generally familiar with the laws in the State of
6 Washington that pertain to K-12 education?

7 A Yes, I am.

8 Q What is your familiarity and how would you describe the
9 finance system that pertains to Washington's K-12 schools,
10 public schools?

11 A Again with the caveat that I do not claim expertise in the
12 area of educational finance, I have looked at school
13 finance in this state for many years.

14 I was born and raised in Seattle, I went to public
15 schools here in Seattle, I was aware at an early age of
16 levies, school levies, and the importance of levies.

17 As I got older, and particularly by the time I was
18 working at the Seattle Urban League as Education Director,
19 we were involved with Citizens For Fair School Funding and
20 I was aware of, familiar with in many states the concerns
21 that were being expressed by citizens and educator groups
22 that the basic way of funding public schools, at least
23 certainly in Washington state, was considered unfair, and
24 that wealthy districts, wealthy for any number of reasons
25 that happen to have access to some sort of taxable source,

1 were much better off than other districts, thus then the
2 attempted shift to let us put more of the education costs,
3 if you will, directly at the state, that's what the
4 Citizens For Fair School Funding were saying.

5 And back, as I recall now, to the best of my
6 knowledge, we were talking about what should be
7 grandfathered in, what levy lids were and that sort of
8 thing.

9 Q Are you talking about events that took place back in the
10 1970s?

11 A In the '70s, that's correct.

12 Q Okay. Any other information that you have by way of
13 description of the public school K-12 financing in
14 Washington other than what you've just narrated?

15 A In conversations with colleagues and with friends, it would
16 seem that we still have many inequities in that there might
17 be a basic level of education funding and there might still
18 be levies, but in addition there's also all sorts of parent
19 support and volunteer contributions.

20 Q And this is based on conversations you've had with
21 colleagues, friends, perhaps family?

22 A That's correct. Thus you can talk -- sorry.

23 Q No. You can complete your answer.

24 A You can look at some school districts like Issaquah School
25 District. Parts of Issaquah School District are really

1 quite wealthy, the houses are very nice, the people make a
2 lot of money. The other parts of Issaquah are very poor.
3 So if people feel that they have financial needs for their
4 school that aren't being met --

5 Q I'm sorry. I was turning this off.

6 A -- then in some places they can get together and have a
7 bake sale and raise literally \$50,000. In other parts of
8 that district or in other school districts that would be
9 really quite impossible.

10 Q As part of your assignment in this case or your engagement
11 in this case, have you undertaken any analysis of
12 Washington's financing of the public K-12 school system?

13 A I have not.

14 Q In performing your work in this case, have you undertaken
15 any analysis of the structure pursuant to which Washington
16 supplies K-12 public education?

17 A Not beyond the documents that were sent to me by the
18 attorneys that at least directly or perhaps indirectly
19 relate to structure. The Basic Education Finance Final
20 Report, Washington Learns, those documents refer to
21 structure, but I would say only in an ancillary way.

22 Q All right.

23 A And I did not refer to them as fundamentally forming the
24 basis for my expert testimony.

25 Q Okay. Did you undertake any analysis of the curriculum,

1 generally speaking, that is offered in Washington's K-12
2 public schools for your duties in this case?

3 A I have some familiarity with the curriculum of the
4 Washington schools. I am familiar with the Washington
5 State Learning Standards and the Essential Academic
6 Learning Requirements.

7 I have reviewed the relevant portions of social
8 studies, subsections of the EALRs and some of the others,
9 that all came from 1993.

10 Q Have you reached any conclusions or reached any opinions as
11 a result of your work in connection with this case?

12 A My opinions and my testimony will be based on my scholarly
13 research and my related professional experience over the
14 last 35 to 38 years, and I have indeed reached conclusions.

15 Q Please state each conclusion that you've reached for this
16 case.

17 A In order for an authentic, healthy democracy to survive and
18 thrive, there are certain conditions that have to be in
19 place.

20 And by condition, if I may give an example. If we
21 think about mosquitoes and we want to deal with mosquitoes
22 and get rid of them, we do not go after individual
23 mosquitoes, we will only go after the pond. The pond is an
24 enabling condition for mosquitoes.

25 My scholarly research and my work in the field over

1 these many years, I have identified 12 fundamental
2 conditions that must be in place for an authentic
3 democracy.

4 I could, if you wish, and I believe you have them as
5 part of what was sent to you, for each of those 12
6 conditions it is clear that those conditions are not known
7 from birth but have to be learned.

8 The only place that they can be learned in a
9 democracy just by definition means all people, all citizens
10 have to be familiar with these conditions is in the common
11 public schools.

12 Q Okay. I didn't mean to interrupt you. Had you completed
13 your answer?

14 A (Witness nods head.)

15 Q Let me follow up asking you, are there any other
16 conclusions or opinions that you've reached as a result of
17 your work in this case?

18 A The conditions that I have identified as part of my
19 professional opinion are reasonably congruent with what the
20 State of Washington has already said are important
21 fundamental aspects of education in this state for all
22 children as related to the State Supreme Court decision
23 again of 1978, Seattle School District versus Washington,
24 in which they talk about not only do we need such basic
25 matters of reading, writing and arithmetic, but they very

1 explicitly refer to the need for an educated citizenry.
2 Not educated subjects, but educated citizens.

3 If you look at that Supreme Court opinion, if we look
4 then at the Washington State Learning Standards and the
5 EALRs, the conclusion I would draw is that there is a very
6 high level of congruence between what I'm saying in my
7 professional opinion or what all students need to have in
8 the way of knowledge and skills to function authentically
9 and effectively in a democracy and what the state has said
10 education needs to do.

11 Q Any other conclusions or opinions that you've reached as a
12 result of your work in this case?

13 A Not at this point.

14 Q We will get to the 12 conditions. I think I understand
15 what you were alluding to. And I have a document, so I
16 will defer following up until we get to that document. I
17 think that will probably be the best way for me to proceed.

18 I want to focus on the second opinion or observation
19 that you made, and that is that your opinions are
20 reasonably congruent with learning standards and the EALRs,
21 and I will not leave out of course your reference to the
22 Supreme Court decision of Seattle School District versus
23 State.

24 My first question, though, is: What learning
25 standards are you describing there?

1 A I don't have the document in front of me. The first one
2 deals with to be able to read, to write, to communicate
3 effectively in a variety of situations.

4 The second deals with, amongst other things, civics
5 and with being able to participate -- there's reference to
6 participatory democracy.

7 The third, as I recall, deals with problem-solving,
8 being able to take a lot of data with some sort of rational
9 analysis, considered analysis, and come up with reasoned
10 judgments.

11 Q And these are four goals that are listed in state statute?

12 A That is correct. Whether I -- excuse me.

13 Q No. Go ahead if you wanted to clarify or expand upon your
14 answer.

15 A That document in particular refers to standards, and I
16 think that although the word "goals" appears there, in my
17 opinion what the State has laid out are standards that all
18 students need to reach that are made more specific by the
19 time we get to the EALRs and then beyond down further and
20 further in detail which we can talk about.

21 Although it says goals there, we sometimes at least
22 in common parlance we can speak of we have mission
23 statements, we have goal statements, we have objectives.
24 Goals often are thought of as something that we might try
25 to reach in some time later on. My interpretation of that

1 document is that they are indeed referring to standards.

2 Q Even though they don't use the word "standards" in the
3 statute?

4 A I recall the word "standards" somewhere on that page.

5 Q In the statute itself?

6 A I can't tell you for sure.

7 Q Okay. But you do recall that the statute speaks of those
8 four items as goals?

9 A Yes.

10 Q And do you recall that that statute that talks about those
11 four goals talks about the opportunities that are to be
12 provided Washington students?

13 A I do not.

14 Q You do not. Okay. Do you believe that if those goals are
15 in fact standards that Washington has set, that Washington
16 in effect has guaranteed that all of its public school K-12
17 students will attain those standards?

18 MR. AHEARNE: I'm sure you weren't asking for a
19 legal conclusion, but I'll object to the extent you are.

20 MR. CLARK: You're correct on the first point,
21 and I appreciate the objection, but I'm not asking for a
22 legal conclusion, no.

23 A Could you repeat the question?

24 Q (By Mr. Clark) Sure. Do you believe, based on your
25 understanding of the statute, that as the four goals that

1 you interpret as standards, do you believe if they are
2 standards then the State of Washington in effect is
3 guaranteeing that all public K-12 students will attain
4 those standards?

5 MR. AHEARNE: Same as before.

6 A That is the guarantee any more than what it says in the
7 constitution about providing ample education for all
8 students. Whether that guarantee's acted on is another
9 question.

10 I believe that, based on my long familiarity with
11 education and schooling in this state, that that guarantee
12 has been acted on for some students, but by no means for
13 all.

14 Q (By Mr. Clark) Okay. So just to clarify, you believe that
15 Washington guarantees that all public K-12 students will
16 attain the standards that are contained in that statute?

17 A Yes.

18 Q And it is your belief, I believe based on your --

19 MR. AHEARNE: I don't want to keep interrupting,
20 but could I assume throughout this that you're not asking
21 for a legal conclusion?

22 MR. CLARK: Sure, Tom, because I'm not.

23 MR. AHEARNE: So that way I won't have to object
24 every time. Okay.

25 MR. CLARK: And, you know, to achieve some

1 symmetry, I'll just assume you have that objection to a
2 question to the extent that I might be, but of course I'm
3 not. So we understand each other.

4 MR. AHEARNE: I'm sorry. Go ahead.

5 A If I may say, I'm in no position to offer a legal opinion.

6 Q (By Mr. Clark) I understand. You have no legal training,
7 do you?

8 A I have none.

9 Q All right.

10 A I can offer my interpretation of what I see as an attempt
11 and how that attempt is being acted upon and the results of
12 those acts.

13 Q All right. I take it from one of your prior answers that
14 you believe that Washington is providing -- is following
15 through, rather, on its guarantee to some students, but not
16 all?

17 A That's correct.

18 Q Which students, and I don't mean individuals, if you could
19 categorize them by some sort of group-identifying factor
20 that would be sufficient, but which students do you believe
21 that Washington is not following through on the guarantee
22 that all students will reach state standards?

23 A Many African-American students, many Hispanic students,
24 many Native American students, many Pacific Islander
25 students, many students coming from low income families. I

1 say many and not all.

2 Q Okay.

3 A Nor am I implying that any group that I did not mention,
4 that all members of that group were doing well in school
5 and were picking up all the knowledge and skills necessary.

6 Q In connection with this case or for use in this case,
7 rather, have you done any analysis of achievement levels of
8 students in different ethnic minorities or achievement
9 levels for students who come from families that have low
10 incomes?

11 A I did not since last November, when they first started
12 retaining me, I did not then go to any of the test score
13 data on WASL or anywhere else that I could have.

14 I have been involved in looking at differential
15 achievement levels in this state for a long time, but I did
16 not do anything specific in the way of seeking information
17 or analyzing data pertaining to differential student
18 achievement from November on.

19 Q Well, let me ask it this way. What use, if any, have you
20 made of whatever information you've gathered over time with
21 regard to the performance of students from minority groups
22 or students from low income backgrounds, what use, if any,
23 have you made of what you've learned about those students
24 and their performance in connection with your work in this
25 case?

1 A My professional opinions, based on my scholarly research
2 and on my professional experience, have been formed for
3 some time. I'm having a difficult time quite figuring out
4 where you're going with this question in terms of what use
5 have I made.

6 My conclusion is, as it always has been, that
7 education is of critical importance for the survival and
8 sustenance of a healthy, authentic democracy and that all
9 citizens need to have the knowledge and skills necessary to
10 participate authentically and effectively in that
11 democracy.

12 At the same time I have known professionally for a
13 long time that for many people that knowledge and those
14 skills have not been attained in our public schools.

15 Q Are you going to render such an opinion at trial in this
16 case?

17 A I am.

18 Q All right. And what basis do you have for the opinion that
19 all students are not acquiring through the K-12 public
20 school system the knowledge and skills necessary to
21 participate in our democracy?

22 A I have looked at dropout rates. I have looked at test
23 scores. I have been involved in research projects going
24 back to 1971, where I have specifically asked and
25 interviewed hundreds and hundreds of students regarding

1 these matters of knowledge and skills necessary for
2 participating effectively in a democracy.

3 Q Any other bases upon which you've rendered that opinion?

4 A None that I can think of right now.

5 Q All right. It is your opinion that the State of Washington
6 does not provide its students with the knowledge and
7 skills -- all students with the knowledge and skills
8 necessary to participate in our democracy; is that correct?

9 A That is correct.

10 Q Okay. And what relationship, if any, is there between the
11 way Washington has structured K-12 public education and the
12 deficiencies that you perceive in Washington's education
13 system?

14 A I don't quite know what you mean by structure. There's
15 curriculum structure, there's financial structure, there's
16 legal structure.

17 Q Okay. I'm talking about the structure you described
18 earlier that starts, you know, at the state level, say,
19 with OSPI, the 295 school districts, the School Board
20 superintendent, the schools that function underneath, you
21 know, the administration that's set up and reports to the
22 superintendent.

23 I'm asking is there any relationship as you see it
24 between the deficiencies you find in our public education
25 system in training its citizens to be good citizens in a

1 democracy, is there any relationship between that issue and
2 the way Washington structures K-12 education?

3 A Not to the best of my knowledge.

4 Q In your opinion, is there a relationship between the
5 deficiency that you see in the Washington K-12 public
6 school system and the curriculum that Washington schools
7 teach its students?

8 A Not in the curriculum as stated.

9 Q All right. What do you mean then by not in the curriculum
10 as stated?

11 A If all schools were doing what they should be doing, they
12 would be following standards, the goals, the EALRs, and we
13 would find that all students were indeed getting the proper
14 knowledge and skills.

15 Q Do you believe then that the schools are not following the
16 standards and EALRs in the curriculum that they impart to
17 their students?

18 A In part.

19 Q What do you base that upon?

20 A My observations in schools. You can have a class, say, in
21 American Government where you can have the EALRs, you can
22 go into that school, you can say, What are you doing in
23 this class that is specifically pertaining to the learning
24 objectives and so forth, and the teacher or the principal
25 or superintendent can say, We are doing this, this, this

1 and this, and it might be working for some of the children
2 in that class, but it is not working for all of the
3 children in that class.

4 Q And that's based on your observations of Washington schools
5 over the years?

6 A That's correct.

7 Q What else is it based upon? For example, is it based upon
8 test scores?

9 A You can infer from test scores again that if we look at the
10 difference in test scores if you just break it out,
11 disaggregate your data in terms of the five standard racial
12 or ethnic groups or wealthy kids and less wealthy kids as
13 usually the surrogate variable here is reduced and free
14 lunch, you can see over the years that there have been vast
15 differences in achievement level.

16 Those differences have been recognized by every
17 district that I have worked with, including Seattle, and
18 every superintendent who comes in to say a school district
19 like Seattle for the last many years that I've been
20 following this, which goes back again to the '70s, has
21 explicitly talked about in effect the achievement gap, I
22 think we can reasonably infer that some students are not
23 gaining the knowledge and skills necessary.

24 Q All right. With regard to the achievement gap that you've
25 just identified, in your observation has that achievement

1 gap grown less over time?

2 A Not significantly, to the best of my knowledge, and I have
3 been looking at those data since 1971 or so.

4 Q When was the last time you looked at such data?

5 A I can't recall. Some time this year. I follow a great
6 deal of education news around this country. I can't keep
7 up with everything.

8 I look at the national assessment of educational
9 progress. I look at what various states are doing,
10 including this state, in terms of are we making any
11 progress.

12 You can find sometimes that on a given state it looks
13 like fourth-grade African-American students have made
14 greater gains in reading scores on whatever statewide tests
15 were being used in that state, all part of related to No
16 Child Left Behind and the efforts that each state are
17 supposed to make regarding the achievement differential, if
18 you will.

19 Q Are you aware of any states in the U.S. that do not have an
20 achievement gap for, say, its minority students?

21 A No.

22 Q Are you aware of any state in the U.S. that does not have
23 an achievement gap when it comes to its public school
24 students from low income families?

25 A No.

1 Q Do you have some understanding as to how Washington does,
2 how Washington's performance in the area of the minority
3 achievement gap compares to other states' experience?

4 A I have not looked at those data specifically.

5 Q Is that also true with regard to Washington's comparative
6 performance with respect to students from low income
7 families?

8 A Yes.

9 Q In doing your analysis for this case and reaching your
10 opinions, what relationship, if any, did you determine
11 exists between the way Washington funds K-12 public schools
12 and the failure to educate all students to participate in
13 their democracy?

14 A I have not done specific research as to the method of
15 funding and what happens in terms of educational outcomes.
16 We can make some inferences or we can at least observe that
17 there are some districts that are far wealthier than other
18 districts.

19 We can infer that where they are able to, wealthy
20 people living in wealthy districts are quite happy to vote
21 themselves higher taxes. You can find that in this state.
22 We can look all around the country, you'll find that.

23 So I think there is some relationship between funding
24 and outcomes, but whether we're talking about how you fund
25 is yet a different question.

1 Q All right. Have you reached any conclusion or opinion
2 about a relationship, if any, between how much funding
3 Washington provides for K-12 public schools and the failure
4 to provide an education to all K-12 public students that
5 will allow them to participate in their democracy?

6 A No.

7 Q Are you familiar with the phrase "basic education"?

8 A Yes.

9 Q What does basic education mean to you as it applies to the
10 State of Washington?

11 MR. AHEARNE: Just so I'm clear, my legal
12 conclusion, objection. And your explanation applies
13 throughout?

14 MR. CLARK: Yes.

15 MR. AHEARNE: Okay.

16 MR. CLARK: Yes.

17 Q (By Mr. Clark) Do you have the question in mind?

18 A Could you please repeat?

19 Q Sure. What do you understand the phrase "basic education"
20 to mean in the context of the State of Washington?

21 A As I generally understand it, we refer to that part of
22 education which the state says is important for all
23 children that would include basic skills, for example,
24 reading and writing. It has not up to this point, to the
25 best of my knowledge, included, for example, what we

1 generally refer to as gifted education.

2 So we can make some distinctions I think the State
3 has, and this is where, to my understanding, going way back
4 a long time, going back to the '70s, and the whole notion
5 of what would be considered basic education in common
6 schools that the State would in effect take responsibility
7 for, fiduciary responsibility and monetary responsibility,
8 in many of those court cases, as I recall them, centered
9 around what was considered basic education and what was
10 considered ancillary and up to a local education agency
11 that we should provide.

12 Q What, if any, relationship is there between the opinions
13 that you will render in our case and basic education as you
14 understand it to pertain to Washington?

15 A My professional opinion will state that given the
16 importance of the knowledge and skills again related to
17 participating authentically and effectively in a democracy,
18 given that importance, given that critical relationship and
19 given the necessity that we have all students provided with
20 that knowledge and those skills, it is indeed the paramount
21 duty of the state to make that part of basic education.
22 That's not a local option for school districts.

23 Q Let me ask you this then. What courses must a student
24 receive in order to prepare the student to participate in a
25 healthy, authentic democracy?

1 A I think that what is within ballpark is what is stated in
2 the EALRs and then further down in the grade level
3 expectations and the GLEs.

4 I don't know whether I would want to say right now
5 that I could prescribe that every student have American
6 Government in eleventh-grade or Washington State History in
7 the ninth-grade, I'm not prepared to do that now.

8 Q Okay. Let me ask you, give you an example. Education in
9 arithmetic and mathematics, is that necessary in your
10 opinion to produce students who can participate in a
11 healthy, authentic democracy?

12 A Absolutely.

13 Q So the curriculum needs, as you see them, in order to
14 prepare our students to participate in their democracy
15 would include more than civics or history or social
16 studies-type classes?

17 A That's correct.

18 Q It would include reading and writing and arithmetic, for
19 example?

20 A Yes.

21 Q Would it include physical education?

22 A I know in classic terms we can talk about a sound mind and
23 a sound body, but I would not particularly think that that
24 is as critical as the other things that you have talked
25 about.

1 Q How about sciences?

2 A Absolutely.

3 Q Foreign languages?

4 A Perhaps less so.

5 Q How about extracurricular activities?

6 A I believe the State should encourage extracurricular
7 activities. And here I could, if I may, go back, and I
8 know you want to get to them later, to the 12 conditions
9 for a healthy democracy.

10 The first three of the conditions that I have
11 concluded are vital deal with trust, exchange and social
12 capital, how people are going to work with each other in
13 situations where they can maintain their identity as an
14 individual but work together as a group, whether it's in a
15 neighborhood association, a PTA or what have you.

16 These sort of working together, this sort of social
17 capital of how can we work together for some common good
18 are critical to have those knowledge and skills.
19 Extracurricular activities in a school are directly related
20 to development of social capital or at least can be.

21 Q In performing your analysis in this case and reaching your
22 conclusions, did you find anything deficient about the
23 standards as you've described them?

24 A I thought the standards were again within ballpark. I did
25 not have any principal objection to the standards, per se.

1 Q All right. You've mentioned the Essential Academic
2 Learning Requirements, colloquially referred to as the
3 EALRs.

4 In doing your work in this case, do you believe the
5 EALRs are deficient in any way?

6 A Again, I think they're within range. I think they're
7 within ballpark.

8 Q How about the grade level expectations you referred to
9 earlier, is there anything deficient about them as far as
10 your work and opinions are concerned?

11 A No. Again -- I'm sorry. Again within ballpark. There
12 might be some things that one might want to argue about
13 here and there, but generally speaking.

14 Q Generally speaking, the standards, the EALRs and the GLEs
15 are okay?

16 A That's correct.

17 Q We have the standards, the EALRs, the GLEs, and we have
18 results that are not what they should be, as far as you're
19 concerned, in producing an educated service in re that can
20 participate in a healthy, authentic democracy.

21 Correct me if I'm wrong, but am I to conclude then
22 that if the standards and EALRs and GLEs are okay and yet
23 the performance is not what it should be, it is the
24 carrying out of the standards, the EALRs, the GLEs and
25 perhaps the curriculum that is lacking in Washington

1 schools?

2 A That is correct.. At least for some students. Again you
3 can have a classroom, you can have a teacher and you have
4 30 kids, 25 kids in that room and for some students it
5 works, for others it does not.

6 Q Now I take it from your earlier testimony that you believe
7 that the public schools are an important, say, essential
8 vehicle whereby our school children become educated
9 citizens who can participate in a healthy, authentic
10 democracy; correct?

11 A Correct.

12 Q What role do you believe the student's family has in
13 preparing them, educating them, as it were, to be an active
14 participant in a healthy, authentic democracy?

15 A The family, the parents or the guardians, have a role in
16 helping to support the schools, helping to encourage their
17 children to understand that going to school and learning in
18 school is of critical importance.

19 Q You do not believe, do you, then that the public schools
20 are the only vehicle whereby we can continually generate
21 generations of educated citizens who can participate in a
22 healthy democracy?

23 A They are the only vehicle in a sense that public schools
24 are called common schools for a reason. We need to have
25 learning that is common to all. Those 12 conditions that

1 we can get to later, there needs to be some common
2 understanding of what those conditions mean and how they
3 are to be enacted.

4 Q Okay.

5 A Now it's possible that we can talk about home-schooling or
6 in some respects learning about some of those conditions in
7 other societal agencies, but the common public schools are
8 the only vehicle that I know of to ensure that all students
9 learn.

10 Q You mentioned home-schooling. So there are alternatives to
11 public schools that families can select to educate their
12 children; correct?

13 A Yes.

14 Q What responsibility does the State of Washington have, for
15 example, to ensure that home-schooled children get a
16 sufficient education to become citizens in a healthy,
17 authentic democracy?

18 A The same responsibility they have for all children.

19 Q How about families that elect to send their children to
20 private schools, what responsibility does Washington have
21 with regard to those students?

22 A The same responsibility.

23 Q Okay. Do you believe that Washington has a financial
24 responsibility to provide the education necessary to create
25 citizens able to participate in a healthy, authentic

1 democracy?

2 A Yes.

3 Q Do you believe that financial obligation extends to
4 children who come from families that elect to home-school
5 their children?

6 A I don't understand the question.

7 Q What financial responsibility, if any, do you believe the
8 State of Washington has to students who come from families
9 who opt to home-school their children?

10 A Again this is not an area of expertise of mine. I could
11 offer you my personal opinion.

12 Q But it's not your personal opinion that you're bringing to
13 bare in this case, is it?

14 A No.

15 Q Let me ask you the question in a related context. What
16 financial responsibility, if any, do you believe that the
17 State of Washington has to students whose families elect to
18 send them to private schools, not public schools?

19 A I don't see that they have a financial responsibility.
20 They have a responsibility to make sure that the students
21 again learn the knowledge and skills.

22 Q Okay. In doing your work in connection with this case, did
23 you review again the Seattle School District versus State
24 opinion that you referred to earlier in your testimony?

25 A Briefly, in part.

1 Q Are you familiar with Judge Doran, spelled D-O-R-A-N? Did
2 you review any decisions by Judge Doran that relate to
3 public K-12 education other than the first case of Seattle
4 School District versus State?

5 A Doran 1 and Doran 2?

6 Q Yes.

7 A No.

8 Q Did you review Doran 3 which relates in general to special
9 education?

10 A No.

11 Q Have you reviewed any of the more recent court decisions,
12 Tunstall versus Bergeson, for example, or McGowan versus
13 State or Brown versus State? Do those ring a bell at all
14 as part of the work you've done in this case?

15 A I did not review any of those cases.

16 Q Are you familiar with the fairly recent trial court
17 decision involving a suit by the Federal Way School
18 District against the State, did you review that in
19 connection with your work in this case?

20 A No.

21 Q In 2007, there was a trial court decision in a case called
22 School District Alliance For Special Education versus State
23 out of Thurston County. Did you review that trial court
24 decision?

25 A No.

1 Q There was an appeal from that decision. Did you review the
2 appellate decision of School District Alliance For Special
3 Education versus State?

4 A No.

5 Q So I take it then it's the first Seattle School District
6 versus State case that came out in the late 1970s that is
7 the decision of our courts anyway that you have reviewed
8 and factored into your analysis in this case?

9 A I factored it into my analysis. I did not review it
10 thoroughly. I factored it into my analysis in concluding
11 that there is reasonable congruence between my professional
12 opinion about what is necessary, again the importance in
13 the role the schools play in a democracy in developing
14 Democratic citizenry.

15 MR. CLARK: All right. Let's take a brief break
16 at this point.

17 (Recessed at 10:12 a.m.)

18 (Reconvened at 10:19 a.m.)

19 MR. CLARK: Let's resume.

20 Q (By Mr. Clark) I apologize if I'm being repetitive, but
21 it's really a question now designed to launch us into more
22 particulars.

23 What areas of expertise are you bringing to this
24 case? How would you describe the area or areas of
25 expertise you're applying in our case?

1 A The area of expertise that I have deals with again the
2 importance in the role that education plays in a democracy
3 and the creation of a Democratic citizenry, that is based
4 on my scholarly work, my research and my length-related
5 professional experience.

6 Q Have you completed your answer?

7 A Yes.

8 Q And that is the area of expertise that you bring to this
9 case?

10 A That is correct.

11 Q I may need your counsel to look on with you, because I'm
12 trying not to give new numbers to old exhibits that have
13 already been introduced, but I'll place before you what was
14 previously marked as Exhibit 444 to I believe the David
15 Conley deposition.

16 And this is a letter of May 15, 2009, to me from the
17 Foster Pepper firm that describes or provides information
18 with regard to a number of individuals and it includes you,
19 Professor Soder, on page 5. So I'll direct your attention
20 to that.

21 As a preliminary question, however, have you ever
22 seen this document before, Exhibit 444?

23 A No, I have not.

24 Q Could you briefly review the information that's provided
25 under your name at the bottom of page 5 and over onto

1 page 6 for me, please, and then let me know when you've had
2 a chance to look at it?

3 (Pause in proceedings.)

4 A Okay.

5 Q (By Mr. Clark) This lists on page 5 of Exhibit 444, this
6 lists a number of documents or pieces of information you're
7 considering.

8 I want to start with the first one, Washington Learns
9 Report. And I think you earlier testified doing some
10 review of the Washington Learns Report in connection with
11 your work in the case?

12 A That's correct.

13 Q I'm going to provide you with my only copy that I brought
14 today of Exhibit 6 to our case and marked in the deposition
15 of Terry Bergeson some time ago, and I'll ask you to
16 familiarize yourself enough with Exhibit 6 to tell me
17 whether or not that appears to be the Washington Learns
18 Report that you reviewed in connection with your work in
19 this case.

20 A It is.

21 Q Had you reviewed the Washington Learns Report prior to your
22 involvement in this case?

23 A Briefly.

24 Q Okay. On what occasion did you first review it?

25 A I don't recall.

1 Q Okay. Did you review it in connection with this case from
2 cover to cover?

3 A No.

4 Q Were there particular sections to which you brought your
5 attention?

6 A I glanced through the document to familiarize myself with
7 it, to remind myself of what is there.

8 Q Okay. As you sit here today, are there any sections of the
9 Washington Learns Report that were of particular
10 significance to the work you have done in this case?

11 A There was nothing of particular significance.

12 Q Okay. Back to Exhibit 444. I'll just take that out of
13 your way. Another document identified on the bottom of
14 page 5 is the Final Report Of The Joint Task Force On Basic
15 Education.

16 I'm going to provide you with a copy of what was
17 marked as Exhibit 114 in our depositions. And my first
18 question is, does this appear to be a copy of the Final
19 Report Of The Basic Ed. Task Force that you apparently
20 considered in connection with your work in this case?

21 A Yes.

22 Q Again, did you review the final report, a copy of which is
23 Exhibit 114, from cover to cover?

24 A I read the entire document, yes.

25 Q Were there any portions of the document that you took into

1 account particularly for your analysis in this case?

2 A No.

3 Q Did you form any opinion as to whether or not the report
4 and recommendation of the task force envisions a program of
5 education and education funding for Washington schools that
6 will have some effect on the deficiencies that you found in
7 our public school system with regard to creating educated
8 citizens?

9 A I've read thousands of reports such as this literally.
10 This report I did not find anything that particularly
11 pertained to my testimony in my area of expertise and my
12 professional opinions and conclusions.

13 Q If we go back to Exhibit 444, the Foster Pepper letter.
14 I'll take 114 back from you. Over on page 6, Item 3 of
15 page 6 of Exhibit 444 states that you considered documents,
16 testimony and evidence produced -- being produced, rather,
17 in discovery by the State and the 13 focused districts.

18 My question is, other than the documents that are
19 specifically referred to in this list, what other documents
20 have you reviewed to do your analysis and form your
21 opinions in this case?

22 A I really need to understand what No. 3 is talking about and
23 what you are talking about. I have reviewed, in
24 preparation for my testimony, my own work going way back a
25 long ways.

1 Q Okay.

2 A But I haven't -- unless you put another document in front
3 of me, I don't know what documents you would be talking
4 about.

5 Q Okay. I think I understand, and it actually alerts me to
6 something in my question that I could have been clearer
7 about. So let me ask it again and ask it hopefully in a
8 more proper fashion this way.

9 Other than the documents that are, say, specifically
10 listed on pages 5 and 6 of Exhibit 444 and other than the
11 number of scholarly works and research that you have done
12 over the years, are there any other documents that you're
13 aware of today that you used to conduct your analysis or
14 reach your opinions in this case?

15 A No.

16 Q Item No. 3 on page 6 of Exhibit 444 makes reference to
17 testimony produced in discovery by the State and the 13
18 focused districts.

19 Have you reviewed any testimony to prepare you in
20 this case?

21 A No.

22 Q There's a reference in paragraph 3 on page 6 of Exhibit 444
23 to evidence being produced in discovery. Do you have any
24 idea what evidence is being referred to as something you
25 reviewed to prepare you for this case?

1 A I have not reviewed any other evidence.

2 Q Do you understand what the reference to 13 focused
3 districts is?

4 A I would assume that that, if I go back to the amended
5 petition, that that's what it's referring to, but I don't
6 know for sure.

7 Q All right. Other than perhaps a reference to some
8 districts referred to in the amended petition, does the
9 reference to 13 focused districts have any significance to
10 you?

11 A No.

12 Q All right. Item No. 4 on page 6 of Exhibit 444 identifies
13 legislation relating to basic education, including HB 1209
14 and HB 2261.

15 Let me place before you what was marked as Exhibit 4
16 in the Terry Bergeson deposition, the cover page of which
17 identifies it as engrossed bill or what we refer to as
18 HB 1209.

19 Have you seen a document such as Exhibit 4 that
20 purports to relate to Exhibit 1209 before?

21 A Yes.

22 Q When was the last time that you reviewed such a document?

23 A I reviewed this document several days ago in preparation
24 for this deposition, but I'm familiar with the document
25 before then in general terms about the emergence of basic

1 education and what happened in the state.

2 I have been a resident of this state other than from
3 '61 to '67, and so this is part of my own professional
4 experience.

5 I mean, this is what we talk about one way or -- not
6 this specific document, Exhibit 4, but education and what's
7 going on in the state and education politics, education
8 funding and what's happening.

9 I mean, I'm over in Miller Hall at the University of
10 Washington, you know, we talk about these things a lot,
11 that doesn't make me an expert in all of that.

12 Q Okay. Do you recall that you reviewed Exhibit 4 or a copy
13 of it to prepare you for your deposition in this case?

14 A Yes. I indicated I referred to this several days ago. I
15 reviewed it, yes.

16 Q I wanted to be clear that "this" was this document.

17 A Yes.

18 Q Could you hand it back to me, please?

19 A Sure.

20 Q I have a question about something inside which I thought I
21 had posted it, but I guess I did not.

22 What I want to draw your attention to is page 2 of
23 Exhibit 4, at least that's what the page number is at the
24 bottom of the page. It says, Part 1 Student Learning
25 Goals, Section 101.

1 And I apologize, but as you read that and turn it
2 over to page 3, which you'll need to do, it is an
3 interlineated copy, but you've reviewed it fairly recently
4 so you probably are used to that.

5 What I would like you to do is to focus on the four
6 enumerated items that are there, and are those the goals
7 outlined in the document that you have previously referred
8 to in your testimony as learning standards in the State of
9 Washington? And please feel free to read them in order to
10 answer my question.

11 A I believe these have been somewhat amended, particularly
12 No. 2.

13 Q I think you're correct in that regard, and indeed I was
14 going to ask you if you were aware that there had been some
15 changes.

16 A There was some minor changes in that one. I think, as I
17 recall, I believe one, three and four have not changed, but
18 there were some changes to two in terms of multi-cultural
19 education and Democratic participation or participation in
20 representative government, to the best of my knowledge.

21 Q But those are the four standards even if No. 2, for
22 example, has been amended or modified subsequent to
23 HB 1209; is that correct?

24 A That's what I believe, yes.

25 Q Let me take it back. Thank you.

1 I want to hand it back to you again, but I'm still
2 referring to Section 101 of HB 1209 as rendered in
3 Exhibit 4. I pointed out to you and asked you to read it
4 for purposes of discussing the four enumerated items on
5 page 3.

6 My question now is, in your reading of Section 101,
7 do you see the use of the word "standard" anywhere in that
8 section?

9 A No.

10 Q You do see, however, the reference to the word "goals" or
11 "goal"?

12 A Certainly.

13 Q And you also see the word "opportunity" that's used in
14 Section 101; correct? It's probably on page 2.

15 A Sure. Well, no. It's on page 3 and it's line 3.

16 Q Okay. And what does it state with regard to opportunity?

17 A "Shall provide students with the opportunity."

18 Q All right. I apologize for having to hand this back and
19 forth, but I only brought the one copy.

20 A Okay.

21 Q In fact, on page 3 the language specifically in HB 1209 is
22 that the goal of the Basic Education Act -- I'm going to
23 have to kind of read along with you -- for the schools of
24 the State of Washington set forth in this chapter shall be
25 to provide students with the opportunity to -- and then I

1 believe with the interlineations it goes on to state the
2 four goals; correct?

3 A That's correct.

4 Q Back to Exhibit 444, there is a reference to HB 2261 in
5 paragraph 4. And I'm going to place before you a copy of
6 what was marked as Exhibit 425 in our case, which is a copy
7 of HB 2261, I believe, as enacted by the Legislature and as
8 it existed after action by the governor as well.

9 And my question is -- it's a lengthy document. My
10 question is, did you review that document or perhaps
11 another version of HB 2261 to prepare you for your work in
12 this case?

13 A Briefly.

14 Q Briefly? Were there any particular portions of that
15 Exhibit 425 that you focused upon to do your analysis in
16 this case?

17 A No.

18 Q Did you form an opinion about 2261 that you intend to
19 render in this case as result of your review of it?

20 A No.

21 Q How, if at all, did your consideration of HB 2261 affect
22 your analysis or your opinions in the case?

23 A Not my professional opinion.

24 Q The last item in 444 on page 6 is Item 5 that says
25 Washington's Essential Academic Learning Requirements, and

1 I believe you stated that you considered the social studies
2 EALRs in connection with your work in this case?

3 A That's correct.

4 Q Did you consider any of the others?

5 A I reviewed them.

6 Q Did you pay more attention to the social studies than the
7 others? Did they all, you know, merit your equal
8 attention?

9 A I looked carefully at all of them. I looked particularly
10 carefully at social studies because that's logically where
11 you would expect a lot of the attention to be focused, not
12 all of the attention, but a lot of it is going to be in
13 social studies.

14 Q And when you say all of the attention -- not all of it,
15 rather, but most of the attention you expect to be focused
16 in that area, when you say focused in that area, is that
17 because that is the closest of the EALRs to the expertise
18 that you bring to this case?

19 A It's -- I'm sorry. It's closest to the objective of making
20 sure that all students learn knowledge and skills
21 pertaining to effective participation in a democracy.

22 Q Now in Exhibit 444 on page 6, after the five enumerated
23 items there is a citation to three publications which you
24 were either an author of or an editor for or both.

25 Do you see those references there?

1 A I do.

2 Q What use, if any, did you make of the language of
3 leadership publication that's referred to here?

4 A I reviewed -- what use in terms of my expert testimony?

5 Q Yes.

6 A I reviewed my book, particularly Chapter 4 which deals with
7 the context of leadership, and that context is not
8 surprisingly that my argument in this book is that
9 leadership in a democracy or free society is necessarily
10 different in many respects than leadership in a non-free or
11 non-Democratic society.

12 As a part of what I concluded as reported in that
13 chapter is that critical again to a democracy, a healthy
14 democracy, is an educated citizenry, thus I concluded that
15 leaders, all leaders, not just educational leaders or
16 would-be principals or superintendents, need to have as a
17 major focus the effectiveness of education in whatever
18 state they happen to be in.

19 I reviewed in that chapter, presented in that chapter
20 the same set of necessary conditions for a democracy that
21 we have talked about earlier and I presume we will some
22 more.

23 Q Those are the 12 conditions?

24 A The 12 conditions necessary for a healthy democracy I
25 discuss in brief in that Chapter 4 of Language Of

1 Leadership.

2 Q Other than Chapter 4 that you've just described, were there
3 any other portions of the language of leadership that were
4 of particular import to your analysis in this case?

5 A It's my own book.

6 Q Yes. But you mentioned Chapter 4. You drew my attention
7 to Chapter 4.

8 A Well, I draw your attention to Chapter 4 because that's
9 where I have in plain fact discussed the 12 conditions
10 necessary for a democracy.

11 What the book is talking about in larger terms deals
12 with the ethics and the ecology of rhetoric and the
13 importance of words, the importance of grounds for which we
14 wish to make claims and thus how we talk with each other in
15 a free society, not just leaders, but everyone, and thus
16 goes back to one of the conditions that I have referred to
17 again and that is the need and a respect for civil
18 discourse which is one of the 12.

19 Part of that civil discourse is related to the ethics
20 and the ecology of rhetoric, which I discuss in this book.

21 Q How about on Exhibit 444 on page 6, Developing Democratic
22 Character In The Young. What impact, if any, did that work
23 by you and others have in your work connected with this
24 case?

25 A The conclusions that I have in particularly my chapter in

1 that book that I edited with two colleagues, as indicated
2 in what you have there, I had Chapter 10 which again
3 presents the 12 conditions necessary for a democracy and
4 the conclusion that the only place that these conditions
5 which necessarily have to be learned because they're not
6 known from birth, that the only effective place they can be
7 learned in a democracy is in the common public schools. So
8 in preparation for my testimony, I of course reviewed my
9 own writing.

10 Q How about with regard to the third publication on page 6 of
11 Exhibit 444, what impact or use did you make of democracy,
12 education in the schools in connection with your work in
13 this case?

14 A This was a book that I edited. I had the concluding
15 chapter titled something about teaching the teachers of the
16 people, and it discusses the role of teachers in preparing
17 students to be effective citizens in a democracy.

18 So rather than talking about education in general
19 with schools, this chapter deals with what do teachers need
20 to know and how should they best be prepared in order to
21 ensure that all teachers are able to fulfill their
22 responsibilities in teaching all children about these 12
23 conditions and how to be effective citizens.

24 Q What role, if any, did your evaluation of how Washington --
25 I guess the Washington schools of higher education instruct

1 people on becoming teachers, did that have any impact or
2 effect on your analysis or conclusions in this case?

3 A I have for a number of years taught in our teacher
4 preparation classes in our program and what I teach deals
5 with what it means to be a teacher in a democracy, how
6 being a teacher in a democracy is different than being a
7 teacher in a dictatorship, that forms the basis of the
8 courses that I taught in teacher education.

9 So there is again a very direct relationship between
10 what my testimony will be regarding a relationship between
11 democracy in schools and the need for all children to learn
12 these things about the knowledge and skills again, and thus
13 I did not consult my particular syllabi to prepare for my
14 testimony. Again, this is what I have been doing for
15 decades.

16 Q Okay. Let me see if I can ask that question a better way.

17 I take it from a review of some of your works that at
18 least one area you have focused on in your research and
19 analysis, not necessarily with this case, but one area
20 you've looked into is the teaching of teachers, if I can
21 call it that; is that correct?

22 A That's correct.

23 Q And this morning you identified early on the deficiency you
24 perceive in the way Washington provides education to public
25 K-12 students to prepare them to be effective participants

1 in our democracy and you, you know, believe that the State
2 is deficient in that regard in that it provides that type
3 of education to some, but not all; is that correct?

4 A That's correct.

5 Q Is there something that Washington is not doing correctly,
6 in your opinion, with regard to the teaching and training
7 of teachers that pertains to the deficient performance you
8 found for Washington and its K-12 public schools?

9 A I believe that we have a great deal of room for improvement
10 in how we prepare teachers, yes.

11 Q When you say in how we prepare teachers, are you referring
12 to the instruction that potential teachers receive at
13 universities or colleges?

14 A I don't know what you mean by instruction I receive.

15 Q Okay. Way back when I may have considered being a teacher
16 and I knew I had to go to college and get a degree, you
17 know, to advance that goal, so I would go to school and
18 take some instruction.

19 My question is, do you perceive that Washington is
20 not doing something that it should be with regard to the
21 course of instruction that potential teachers receive at
22 universities and colleges?

23 A I do.

24 Q And what is it that you perceive that Washington is not
25 doing that it should be doing in that regard?

1 A I think it needs to do better in helping to ensure that the
2 people who are certified to teach in this state are more
3 familiar than they tend to be now with the functioning of
4 democracy, they are more familiar than they are with what
5 it takes to make sure that all children learn and
6 particularly that they learn all that they need to know
7 about knowledge and skills about democracy.

8 Not all teachers. I have taught in teacher ed. and
9 there are some people who will go out there, will become
10 certified that I have full confidence in.

11 There are others that I feel that they are perfectly
12 competent to do the work in their subject area, but I have
13 some concerns as to whether they have fully recognized
14 their responsibilities for preparing the young, as the
15 title of one of those books says, Developing Democratic
16 Character In The Young.

17 Q What is it that Washington is failing to do with regard to
18 teacher certification that you believe it should do to
19 achieve what you believe Washington should achieve in
20 teacher certification?

21 A I don't know specifically whether I could answer that
22 question right now. I'm basing my comments here and my
23 responses on my own observations of the people I've worked
24 with in teacher education as students, the teachers that I
25 have worked with out in Washington schools.

1 Q And I take it then from that last answer that, while you
2 have observed that there are deficiencies or problems with
3 the way Washington certifies teachers that will go into its
4 public school classrooms, you have not considered as part
5 of your work in this case what Washington could do to, you
6 know, cure those problems or deficiencies?

7 A Not specifically.

8 Q Have you considered generally what Washington could do
9 better in that regard?

10 A I'm sorry. I should have not even said not specifically.
11 My testimony is not based in any particular -- I used that
12 word again, is not based on what Washington should do. I
13 have not done research on what they should do in terms of
14 certification.

15 Again, I have been in Miller Hall a long time. I
16 talk with many people. We worry about this a great deal in
17 terms of -- and I do not wish to make light of these
18 questions in teacher education.

19 I have spent particularly since 1985 in dealing with
20 teacher education. I claim some expertise in that area,
21 it's extremely complex. We have a great deal to continue
22 to sort through in terms of what variable should we look
23 for when we admit people to a teacher education program,
24 what do we think we can do within the time that we have any
25 more than when you were thinking about becoming a teacher,

1 you knew then that it was only going to be a one, one and a
2 half year program at most, and then what do we need to do
3 in working with new teachers once they're out there in the
4 field so we can make sure that we don't have half of them
5 leaving within five years as in the case in many states,
6 not so much here. We do better in terms of retention, but
7 it's a serious, serious problem.

8 Q And what you've just described as an issue with teacher
9 retention, you know, that you observe nationally and it may
10 not be as a particular problem in Washington as it is
11 elsewhere, in your observation are you attributing to the
12 failure to retain these teachers an inability on their part
13 to teach effectively or frustration at being a teacher?
14 What do you ascribe the inability for those teachers to be
15 retained as? Why is that?

16 A Despite our best efforts, we find that sometimes people go
17 into teaching who are simply not meant to be, that has
18 changed in recent years.

19 The average age of people going into teaching is
20 about 28 years old now, and that is because people are
21 making career changes, they wanted to do something else and
22 realized that they really wanted to teach.

23 Nonetheless, there are still people who think that
24 because they love kids or want to do whatever with kids in
25 schools, they go into that particular profession and find

1 after several years of experience that it's just not meant
2 for them.

3 In other cases we have to realize much more than we
4 do the real difficulties involved in being a teacher is
5 serious, serious hard work at all levels. You're very
6 vulnerable. You're on point all day, every day.

7 You are dealing with kids who are coming to school
8 not all with the same levels of preparation by any means,
9 and you are faced with tremendous challenges. You are also
10 faced -- tell me when you wish me to stop here.

11 Q No, no.

12 A I'm trying to answer your question, but I'm trying to do as
13 best as I can.

14 Q And I appreciate that, Professor. I'm not staying silent
15 because I have a problem with the length or caliber of your
16 answer. I'm just letting you, you know, give me your
17 answer until you stop so I don't interrupt you, that's all.

18 A Can I continue then?

19 Q Yes, please.

20 A Teachers are also faced with rather, if not constantly,
21 pretty constantly changing demands in programs with new
22 superintendents. The average tenure for an urban school
23 superintendent is about three years, that's a pretty high
24 level of turnover.

25 I was talking recently with a Seattle high school

1 principal who said that her greatest difficulty and why she
2 is so discouraged, even after these many years where you
3 think you would get used to it, is that she said here in
4 Seattle we are always in a ramp-up mode, we are never
5 taking anything and developing it over time.

6 So what happens to many teachers is that they start
7 working for a school district doing the best they can and
8 they find that two years later there is another set of
9 expectations which might actually be the same old
10 expectations, but now it's new language.

11 Seattle went from achievement gap to
12 disproportionality and now back to achievement gap, et
13 cetera, et cetera.

14 In one of my books in "The Language Of Leadership," I
15 have a section in there on the culture of administrative
16 succession and transition. It's not simply that leaders
17 change. It's that there is a culture, there are rules for
18 how leaders come in.

19 Superintendents come in and say, to use an example of
20 schools, and they feel that no matter what has gone on
21 before, there is a strong tendency to want to show that
22 they are in charge, so there are new programs or at least
23 new names.

24 Teachers sit there and watch year after year with the
25 change of superintendents, change of principals, where

1 somebody comes in and says, "Now this is the way we are
2 going to do things."

3 And after a while teachers either leave or they kick
4 into a passive-aggressive mode because whatever is here now
5 probably won't be here two years from now, that gets many
6 teachers very discouraged.

7 Q As part of your work in this case, did you analyze teacher
8 recruitment and retention issues in the State of
9 Washington?

10 A No.

11 Q As part of your analysis in this case and in reaching your
12 opinions in this case, did you consider how much funding
13 the State of Washington is providing to school districts in
14 the state?

15 A This time I will say not specifically.

16 Q Okay.

17 A I did not.

18 Q And why do you say not specifically then as opposed to
19 simply no?

20 A Any time we want to think of delivery of educational
21 systems, we have to recognize there is no such thing as a
22 free lunch.

23 We always have to be concerned about money, money
24 issues, funding issues, where it's going to come from, the
25 need for stable long-term funding, which is always a

1 threat, that's one of the reasons that we tried to think
2 about levies and maybe we ought to get away from the
3 special levies the districts were having to face year after
4 year and how much it cost to do that.

5 I have thought about these matters in general terms
6 that if 180 days is what we say, well, okay, we have to
7 entertain the possibility that maybe it needs to be more
8 than that, we need to think about funding perhaps for
9 summer school.

10 There is a tremendous amount of research out there on
11 what happens to the drop-off in learning and the lack of
12 retention when we stop in late May or early June and start
13 again in September.

14 There's also substantial research that suggests that
15 poor kids and minority kids tend to not pick up again as
16 quickly as other kids.

17 So there needs to be, I think, some attention paid
18 when we talk about the issues that I and many people are
19 concerned about to issues of funding, length of the school
20 day, length of the school year.

21 I know that in general and I can't deny that I would
22 not have that in the back of my head somewhere, but in
23 terms of my particular expert testimony in this matter, I
24 did not consider that.

25 Q As part of your work in this case, did you consider what

1 levels of funding from the state might be necessary to cure
2 the deficiency that you perceive due to your area of
3 expertise as applied to this case?

4 A No, I did not.

5 Q In doing your analysis and reaching your conclusions in
6 this case, did you consider changes that you believe ought
7 to be made to the curriculum that Washington schools teach
8 in public K-12 schools, did you consider changes in
9 curriculum as part of your analysis in this case?

10 A Not in any substantial way. As I indicated earlier, I
11 think that we're within ballpark range in terms of what the
12 curriculum looks like.

13 There are some things that I probably, if I were
14 assigned to a task force on curriculum, would have some
15 specific opinions about, but in general overall I think
16 we're within the ballpark.

17 Q Okay. Let me provide you with a copy of what was
18 previously marked as Exhibit 443 in the case. You can just
19 push that over. If you need to refer to 444, I'll just
20 leave it there.

21 Exhibit 443, for the record, is an e-mail to me from
22 Mr. Robb of the Foster Pepper firm of April 27th that lists
23 a series of individuals, much as 444 did, and describes
24 those individuals' work insofar as this case is concerned.

25 On page 6 of Exhibit 443 is an entry for Roger Soder,

1 for you, Professor. And my first question is, have you
2 ever seen a copy of Exhibit 443 before?

3 Let me change that question because you may not have
4 seen a copy of an e-mail from Edmund Robb and Bill Clark
5 before, which is what the cover page indicates.

6 My question specifically is, with regard to the
7 information that pertains to you in Exhibit 443, have you
8 seen that information before?

9 A I have seen the information, not in this form, but I have
10 seen on page 6 and 7 on through the top of page 8.

11 Q For example, let's break it down. On page 6 of Exhibit 443
12 there's a subpart A identified as the subject matters about
13 which Professor Soder is expected to testify.

14 Had you seen that specific information in this
15 document before?

16 A Yes.

17 Q Subpart B, "The substance of facts and opinions to which
18 Professor Soder is expected to testify."

19 On page 7 there are 12 conditions. Are those the 12
20 conditions you referred to generally and in some specifics
21 in your testimony earlier this morning?

22 A Yes.

23 Q And with regard to the 12 conditions necessary to support
24 and sustain a democracy in your opinion and which in your
25 opinion the public schools are essential for developing and

1 maintaining, how was it that you identified these 12
2 conditions?

3 Is this something, for example, that you've distilled
4 as a basis of your work in this area over a many year
5 period?

6 A I would say that's a fair characterization. I have been
7 doing scholarly work and research in the area of the
8 relationship of democracy in education and schools, to
9 quote the title of one of my books, for a very long time.

10 I have read widely, both in terms of what is going on
11 currently and recognizing early on, that these are in many
12 sense perennial issues.

13 So one can read Aristotle and the politics talking
14 about the function of schooling, one can read Montesquieu
15 talking about the relationship between form of schooling
16 and form of regime. So I have read very, very widely in a
17 great many of the disciplines.

18 Q Are there others who have, you know, your -- strike that.
19 Let me start over again.

20 Are there other educators whom you consider
21 authoritative who also espouse the necessity of these 12
22 conditions to a healthy democracy and focus as well on
23 whether public schools are providing them?

24 A Yes.

25 Q Who, for example?

1 A The educators at the University of Texas at El Paso, at
2 Brigham Young University, at Montclair State University,
3 and a good many others have looked at these 12, in some
4 cases have independently derived somewhat similar lists.

5 Again going back to, like I say, like Montesquieu who
6 would argue that there is a relationship between the
7 education function and the political function.

8 But currently, yes, there are a number of educators
9 in K-12 and in higher education that have talked about and
10 used these particular 12.

11 Q Okay. Are these 12 conditions, were they something that
12 you were the first one to synthesize as a result of your
13 work?

14 A I was.

15 Q Okay. And you stated that others may have similar lists,
16 if not this particular list of 12 conditions as well?

17 A That's true.

18 Q Could you give me some names of authoritative figures who
19 also espouse these 12 conditions or 12 conditions
20 substantially similar to these?

21 A There are many. Benjamin Barber, for instance, has written
22 a great deal about democracy and education.

23 Q Who, if you could do it this way, who would you consider
24 the three most authoritative? You can include yourself, I
25 don't mean to exclude you.

1 A I would include myself.

2 Q So, Roger Soder?

3 A Yes.

4 Q Would you consider, you know, Benjamin Barber to be among
5 the, say, top three?

6 A Yes.

7 Q Who else would you put in that?

8 A John Goodlad.

9 Q Of course. I recognize that name. And I'll expand it.
10 You know, I don't need a phone book. There may be a phone
11 book, you know, it may be that universal, but I'm just
12 trying to get some examples and you've given me three. Are
13 there two others that come to mind?

14 A Not particularly. I can tell you that I have worked with
15 many, many universities working in relation with K-12
16 public schools that are using my work and the work of John
17 Goodlad and my colleagues, but using specifically these 12
18 conditions to think about how they might better deliver
19 education for kids in relation to how they might better
20 prepare people how to be teachers.

21 Q Let me ask you a different question about the 12. Are
22 there any educators that you would consider to be
23 authoritative who dispute these 12 conditions as to their
24 necessity to democracy or as to the public schools being
25 the primary vehicle for ensuring that students satisfy

1 them?

2 A None that I know of.

3 Q If we look at the list of 12 conditions on page 7 of
4 Exhibit 443, based upon your analysis and consistent with
5 your opinions, how many of these conditions do you perceive
6 are lacking today in Washington citizenry?

7 A It's not how many are lacking. I don't think it's possible
8 to say that Washington citizens exhibit or understand
9 Condition 4 but not Condition 5 or what have you. I don't
10 think that I could work at it that way.

11 I think we could argue that every one of those
12 conditions is understood by some people that we could also
13 argue. I would conclude that not all conditions are
14 understood as well as they should be by all people --

15 Q Okay.

16 A -- whether adults or the youth. I cannot prioritize them
17 in a way that I think you are asking me to.

18 Q All right. What relationship do you perceive that there is
19 between those you have observed do not understand all 12
20 conditions and a failure by the State of Washington to do
21 something that the state should be doing?

22 A I don't understand the question.

23 Q Okay. To the extent that you have observed that some but
24 not all of our citizenry in the state understand these 12
25 conditions to democracy, how much do you attribute their

1 failure to understand them to, say, insufficient funding of
2 education by the State of Washington?

3 A I cannot figure out how I would attribute how much to do
4 with funding, how much to do with how they were treated in
5 school or whether these materials were addressed in the
6 particular school that they went to.

7 Q Okay.

8 A I have no idea how I could sort that out.

9 Q Okay. Let me ask you this question then. Do you have an
10 opinion as to how much more resources the State of
11 Washington should put in K-12 public education in order to
12 cure the failure to understand all these conditions by some
13 portions of our citizenry?

14 A I have no idea.

15 Q Do you have an opinion as to how Washington and its
16 citizenry shape up as to the appreciation of these 12
17 conditions versus the citizens of other states in the
18 United States?

19 A I have no basis for that opinion.

20 Q Do you have an opinion as to how the citizens of the United
21 States of America compare with other democracies in the
22 world with regard to the appreciation and understanding of
23 these 12 conditions?

24 A I have done no comparative analysis.

25 MR. CLARK: Let me have this exhibit marked,

1 please.

2 (EXHIBIT NO. 520 MARKED)

3 Q (By Mr. Clark) Exhibit 520 is your Curriculum Vitae?

4 A That's correct.

5 Q Could you take a moment or two to look it over and tell me
6 whether or not it is current today?

7 A Yes, it's current.

8 Q I went and I gave the court reporter something I had just
9 dog-eared a page on. Do you mind if I take a look at it?

10 On page 2, and I believe you alluded to this earlier
11 in an answer to one of my questions, it indicates that you
12 were Education Director for the Seattle Urban League from
13 1978 to 1983?

14 A Correct.

15 Q Do you have any current affiliation with the Seattle Urban
16 League?

17 A I do not.

18 Q Do you know James Kelly?

19 A Yes.

20 Q How long have you known him?

21 A I have known him since he became the head of what is now
22 the Urban League of King County. There was a Seattle Urban
23 League when I was working there.

24 Q Okay.

25 A And I have had conversations with him from time to time.

1 Q Have you ever had any discussions with Mr. Kelly with
2 regard to your work in this lawsuit?

3 A No.

4 Q Have you had any discussions with Mr. Kelly about the
5 lawsuit at all?

6 A No.

7 MR. CLARK: I want to take another brief
8 intermission at this point. And for ease of reference, I
9 think I'll be done in an hour from when we resume. Okay?
10 Honestly, I think I can do that. So I mean, you know, we'd
11 be going to maybe like 12:30. And everybody's stomach can
12 handle that?

13 THE WITNESS: Sure.

14 MR. CLARK: I know mine can.

15 THE WITNESS: I'm fine.

16 MR. CLARK: I mean for lunch purposes.

17 (Recessed at 11:18 a.m.)

18 (Reconvened at 11:25 a.m.)

19 MR. CLARK: Back on the record.

20 Q (By Mr. Clark) What analysis, if any, have you done,
21 Professor Soder, in connection with this case of student
22 outcomes in Washington?

23 A No specific analysis.

24 Q If we take steps in the State of Washington to try and
25 provide the education you think we need to provide to all

1 students, not just to some students, what impact, if any,
2 do you forecast that that will have on improving student
3 performance in Washington?

4 A Could you repeat the question?

5 Q Yes. If Washington were to take steps to cure the
6 deficiencies in the education that you perceive, a
7 deficiency that relates to the ability to produce an
8 educated citizenry that meaningfully participates in our
9 democracy, if we take steps to cure the deficiencies that
10 you found in that regard, how much improved performance for
11 Washington students can we expect will occur?

12 A I can't quantify that. We would expect to find
13 improvement. We would expect to find that all students
14 would be better in terms of their knowledge and their
15 skills.

16 Q But you can't tell us quantitatively what kind of improved
17 levels of performance we can expect?

18 A No.

19 Q To the extent that you can say that we will have -- that we
20 will improve and hopefully one day attain what we want for
21 all students, how soon do you think that would be possible?

22 A I don't know.

23 Q Is it possible to achieve what you have described as what
24 our objective should be, and that is that all students are
25 educated to the point where they can meaningfully

1 participate in their democracy?

2 A Yes.

3 Q Are you aware of any state in the U.S. that has achieved
4 that?

5 A No.

6 Q Ever?

7 A I'm not aware of any.

8 Q Are you aware of any democracy in the world that has
9 achieved that?

10 A No.

11 Q But you still believe it's an attainable goal?

12 A Absolutely.

13 Q Professor Soder, what are we not doing that you believe the
14 state should be doing in order to make sure that all its
15 students receive the education they need to be meaningful
16 citizens in their democracy?

17 A Why are we not providing that or what are we not doing?

18 Q No. My question was, what are we not doing that we should
19 be doing in order to provide the education you believe our
20 students need to be meaningful participants in their
21 democracy?

22 A We are not paying attention to all kids. We are not
23 maintaining high expectations for all students. We are
24 allowing students to drop out.

25 We tend to devise schooling systems that if they work

1 for you, then fine. If they do not, well then you do not
2 get that education or you leave.

3 Q And have you considered what steps, if any, the State of
4 Washington should take to cure those deficiencies as you've
5 just described?

6 A I would imagine to take very seriously what they already
7 said that they do.

8 Q Anything in addition to that?

9 A Not at this moment.

10 Q Was it part of your assignment as it were in this case to
11 consider what steps the State of Washington must take in
12 order to cure the deficiencies you've identified?

13 A No.

14 Q Is there anything you have identified that the State of
15 Washington is doing now that it should not be doing in
16 order to achieve the goal of educating all students to be
17 effective participants in their democracy?

18 A No.

19 Q In performing your analysis and reaching your opinions in
20 this case, did you rely upon any quantitative data?

21 A I am talking about the relationship between democracy and
22 education. I have no quantitative data for that.

23 I am talking about the relationship between my
24 professional opinion about what needs to be taught or
25 addressed in terms of those 12 conditions and the

1 congruence between those and what the state says that it is
2 doing in the EALRs, et cetera, that does not depend on
3 quantitative data.

4 I have made some comments to the extent that not all
5 students are getting what we know they need to have in
6 terms of the knowledge and the skills, some of that is
7 based on quantitative data let's say in terms of
8 performance on assessment tests or achievement tests or
9 what have you.

10 Q Other than what you've described, though, quantitative data
11 really didn't enter into your analysis?

12 A No.

13 (EXHIBIT NO. 521 MARKED)

14 Q (By Mr. Clark) Professor Soder, Exhibit 521 is a two-page
15 description of information pertinent to an entity called
16 The Center For Educational Renewal.

17 Please take what opportunity you need to look at the
18 two-page document, Exhibit 521, and tell me if you've ever
19 seen it or a copy of it before.

20 A I have.

21 Q What is The Center For Education Renewal?

22 A The Center For Educational Renewal was founded in 1985 by
23 three of us that are indicated there, John Goodlad, Ken
24 Sirotnik, and myself.

25 Our purpose was to do research on the simultaneous

1 renewal of P-12 schools and the education of educators and
2 not to just write a bunch of books or reports because we
3 can always do that, but to also work with school university
4 partnerships to put into place the recommendations that we
5 were making. It's a part of the University of Washington.

6 Q Is it still a part today?

7 A Yes.

8 Q I only ask because the parenthetical dates say 1985 to
9 2008, but that doesn't mean The Center stopped doing things
10 in 2008, does it?

11 A No. I don't know how much detail you want to go into here.
12 John Goodlad will be 89 in August, his health isn't as good
13 as it should be, and after all of these many years of some
14 60 years of laboring in these vineyards, he is stepping
15 back from some of this.

16 The Center For Educational Renewal is being
17 transformed into what is called The Goodlad Center For
18 Educational Renewal.

19 Q All right. So the effort continues even if it is under a
20 different name?

21 A Yes.

22 Q Turning your attention to the third paragraph on the first
23 page of Exhibit 521 it begins with the words "The
24 simultaneous renewal agenda." Do you see where I'm
25 referring to?

1 A Yes.

2 Q Okay. In that paragraph within the sentence that is the
3 paragraph it refers to the assumption that "We will not
4 have better schools without better teachers, but we will
5 not have better teachers without better schools in which
6 teachers can learn, practice, and develop."

7 Is that also your opinion, sir?

8 A Yes.

9 Q "We will not have better schools without better teachers,"
10 the better schools that are referred to are K-12 schools?

11 A K-12.

12 Q The sentence goes on, though, about "we will not have
13 better teachers without better schools in which teachers
14 can learn, practice, and develop."

15 What are the better schools that are referred to in
16 that part of the sentence?

17 A What we meant in general, and I should know because I wrote
18 most of this, is that schools that were meeting the needs
19 of all children, not just in terms of basic skills of
20 reading, math and so forth, but helping them to become
21 better citizens in a democracy, not just the test bright
22 students or the white upper middle-class students, but
23 everyone, and here and there you can find schools that are
24 at least in part that are doing a reasonably good job at
25 that.

1 And what we were suggesting then is that if you take
2 somebody who is doing student teaching, you want to put
3 them at least in part in a school where they can see what
4 it should be about, whether it's teachers knowing
5 everybody's name of all the kids in the school, whether
6 it's whatever educational practice we say is good that they
7 have not necessarily seen.

8 If you have never seen or had any vision of what good
9 practice was in education, then you have nothing to aspire
10 to, you wouldn't even know that it exists any more than --
11 well, I think that makes my point.

12 Q Then let me just be clear then. The better schools that
13 are referred to in the second part of that sentence
14 specifically, "We will not have better teachers without
15 better schools in which teachers can learn, practice, and
16 develop," the better schools there is also a reference to
17 K-12 schools?

18 A That's correct.

19 Q It is not a reference to the schools that provide
20 instruction to the teachers to get their degrees?

21 A No.

22 Q Do you know Marguerite Roza?

23 A No.

24 Q Are you familiar with the work of Eric Hanushek?

25 A No.

1 MR. CLARK: Let's mark this, please.

2 (EXHIBIT NO. 522 MARKED)

3 Q (By Mr. Clark) I would ask you to take a moment to review
4 Exhibit 522 to your deposition, Professor Soder, and tell
5 me if you have either seen a copy of the document or are
6 familiar with the subject matter of it.

7 A Yes. I have seen it and I am familiar with the subject
8 matter.

9 Q Okay. The publication, I believe, is called "American
10 Education: Facing Up To Unspoken Assumptions;" is that
11 correct?

12 A That was the title of my article in the publication
13 Daedalus, yes.

14 Q All right. Thank you. What use, if any, did you make of
15 this article in connection with your work in this case?

16 A None.

17 Q On page 1 under the word "Abstract" it states, "Many feel
18 that the sole purpose of public education in the US is to
19 prepare students to take their role in society."

20 Do you believe that that is the sole purpose of
21 public education in the U.S.?

22 A No.

23 Q What other purposes do you believe that public education
24 serves in the United States?

25 A I think that public education helps people to learn for

1 themselves to appreciate what it means to be human. There
2 are other noninstrumental purposes for schooling other than
3 to take their role in society.

4 Q Okay. Well, let me go on. In the third sentence it
5 states, "There is also a moral and political context to
6 education that goes beyond the acquisition of information."
7 I take it you agree with that statement?

8 A Yes.

9 Q And it goes on to say, "Teachers need to be trained to
10 recognize this and education reform must include
11 simultaneous reform in both school administration and
12 teacher training."

13 What are you referring to there when you say and
14 school administration?

15 A What this abstract refers to, which was not written by me,
16 by the way.

17 Q Okay.

18 A The abstract was prepared by the Daedalus people. Because
19 I would never use the word "reform," I would use the word
20 "renewal," because I say that any more than I say for
21 Center For Educational Renewal is an ongoing process rather
22 than putting in one form to replace another.

23 I don't mean to be picky, but it's a very critical
24 point in all of this. I'm sorry. Your question deals with
25 school administration?

1 Q Yes.

2 A There is a considerable body of research out there that
3 suggests that school leadership is a critical part of what
4 happens in a school.

5 You need better teachers, as we keep talking about.
6 We also need better administrators. Administrators are
7 key.

8 Q Better principals?

9 A I'm sorry. Principals, yes. Superintendents, curriculum
10 folks and all the rest.

11 Q Okay.

12 A Probably here I am speaking of a lot of the action of
13 course is in schools proper and the principal plays a key
14 role there, very important role.

15 Q Okay. Professor, I assumed that you wrote this and,
16 obviously, I'm wrong. What connection then did you have
17 with regard to this particular article or abstract?

18 A Well, I said I didn't write the abstract.

19 Q Oh, okay.

20 A I wrote the article.

21 Q Then I'm wrong on two counts. I'm wrong about being wrong.

22 A This is my article.

23 Q All right. Thank you.

24 A But you submit an article to Daedalus or to many journals
25 and they have an editor who writes an abstract, and

1 sometimes they show it to you in advance and sometimes they
2 do not.

3 Q Now I completely understand what you were saying.

4 A Okay.

5 Q As I say, I made a mistake about my mistake.

6 A Maybe I wasn't clear there.

7 Q On page 2 of Exhibit 522 there's a heading entitled,
8 "Creating Centers Of Pedagogy"?

9 A Correct.

10 Q In reading this portion of the article, the Centers of
11 Pedagogy that you are referring to are K-12 schools?

12 A No.

13 Q Okay. Then, obviously, I missed that one, too. What are
14 the Centers of Pedagogy that you're referring to?

15 A It's indicated in the first sentence, 'In consideration of
16 these two fundamental claims, three major groups of people
17 must come together to form a center of pedagogy: arts and
18 sciences faculty, that is in a university, let's say, or a
19 college, a college or school of education, which is in
20 higher ed., and the K-12 faculty.' So it's three groups.

21 Q All right. I think I understand. I had highlighted the
22 language that you just cited to in your last answer and it
23 was just simply overlooked, so thank you for pointing it
24 out to me. And I believe you did answer this question, but
25 I'm going to ask it again and I apologize for doing so.

1 of testing, assessment, and accountability?"

2 My question is this, with regard to the way -- let me
3 start over. Excuse me.

4 What part, if at all, did the testing of Washington
5 students play in the work that you did in this case?

6 A Other than what I referred to earlier in terms of more data
7 coming from Washington tests that shows the achievement
8 cap.

9 Q Gap, yes.

10 A Other than that, none.

11 Q Okay. That would be the WASL?

12 A The WASL. There are other tests.

13 Q Yes. I'll name some. There are NAEP assessments, did you
14 consider those?

15 A No. Those are national. No.

16 Q National, okay. What other Washington assessments or tests
17 did you consider?

18 A None specifically. Again, I have been working in this area
19 for a long time. Washington has used various standardized
20 achievement tests over the years, you know, long before the
21 WASL was developed.

22 Q But the most recent version of the test you considered for
23 your work in this case would be the WASL?

24 A Yes. And also you can find individual school districts
25 have their own assessments, too.

1 Q All right. That answers my next question. This course
2 description or class description, rather, in the second
3 paragraph, it also mentions issues of accountability.

4 What role, if any, did issues of accountability play
5 in the work that you did in connection with this case?

6 A None.

7 MR. CLARK: Mark this document, please.

8 (EXHIBIT NO. 524 MARKED)

9 Q (By Mr. Clark) I've handed you a copy of what's been
10 marked as Exhibit 524, Professor Soder. Do you recognize
11 this document?

12 A I do.

13 Q What is, "When Words Find Their Meaning: Renewal versus
14 Reform"?

15 A This is an article that appeared in Phi Delta Kappan in
16 April 1999. It was in part of a special section. Kappan,
17 a monthly education magazine for both K-12 and higher
18 education, every once in a while has a featured theme.

19 Q All right.

20 A And I was asked if I would be the -- not only to write an
21 article but be the editor of the featured theme section.

22 Q Okay. Part of what this article addresses would be the
23 concepts of educational reform and renewal; correct?

24 A Correct.

25 Q And you touched on this in an earlier answer that you

1 distinguish between educational reform and educational
2 renewal; is that correct?

3 A Correct.

4 Q And I take it you prefer to discuss educational renewal as
5 something that's more meaningful than talking about
6 education reform; is that correct?

7 A Yes.

8 Q Now my question is this: Did your work in discussing
9 educational renewal versus educational reform play any part
10 in the work that you did in connection with our litigation?

11 A No.

12 Q Then I take it that the article that's in Exhibit 524 did
13 not factor into the analysis you conducted or the opinions
14 you reached in this case?

15 A That's correct.

16 MR. CLARK: That's all the questions I have for
17 you this morning, Professor. Again, I appreciate your
18 coming downtown to talk to me this morning. Thank you.

19 THE WITNESS: Thank you.

20 MR. AHEARNE: I've got a few follow-ups.

21 MR. CLARK: Okay.

22

23

EXAMINATION

24 BY MR. AHEARNE:

25 Q Early on in the questioning this morning you talked about

1 the goals or standards in a document that you had reviewed
2 looking through things, and I just want to -- I'm handing
3 you what is Exhibit 217.

4 MR. AHEARNE: And, Bill, I want that back
5 because that's my color copy.

6 MR. CLARK: Do you want to look on with me or do
7 you want me to come over there?

8 MR. AHEARNE: Oh, no, no. Off the record.

9 (Discussion off the record.)

10 MR. AHEARNE: Back on the record.

11 Q (By Mr. Ahearne) I'm handing you Exhibit 217 that's been
12 previously marked in this case. Is Exhibit 217 the
13 document that you were referring to about state standards?

14 A Yes.

15 Q And Mr. Clark had asked you some questions about goals as
16 opposed to standards. Where do you get the notion that
17 there are state standards from this document?

18 A It's indicated at the top of the page. It says,
19 "Washington State Standards." It says, "This page provides
20 updated documents on all learning standards."

21 Q Do you recall too when Mr. Clark on a related vein asked
22 you some questions about House Bill 1209 and the word
23 "opportunities"?

24 A Yes.

25 Q What does the word "opportunity" mean to you?

1 A For the word "opportunity" to have any serious meaning, we
2 have to distinguish between opportunity that is just there
3 superficially on the surface versus a real opportunity.

4 That is to say we can say that anybody who wants to
5 participate in X meeting is certainly welcome to do so, but
6 then it turns out that a lot of people can't find out about
7 X meeting because they don't subscribe to the one
8 publication, say the Seattle Times, where the notice of
9 that meeting was given.

10 So there's a difference between saying opportunity
11 and talking about effective opportunity.

12 Q And to you does opportunity mean an effective opportunity?

13 A Absolutely.

14 Q Okay. Mr. Clark had also asked you a question about
15 Exhibit 6 which is the Washington Learns Report, and I just
16 have a -- this is a clarification thing.

17 My notes show that you made a comment along the lines
18 of -- or Mr. Clark asked you some question about is there
19 any section that was of particular significance to your
20 opinion.

21 And my question is, is there nothing in Exhibit 6
22 that has any significance to your opinion or is it that you
23 can't recall anything looking at it right now, one way or
24 the other?

25 A The latter. I couldn't recall anything looking at it right

1 now.

2 Q Mr. Clark also asked you some questions about quantitative
3 data. And just to follow up on that, as part of your work
4 on this case, did you consider quantitative data such as
5 test scores of students?

6 A I did.

7 Q All right. And you also referenced dropout rates, is that
8 another kind of quantitative data that plays a role?

9 A Those are quantitative data.

10 Q And you had also talked about achievement gaps. Is that
11 based on quantitative data as well?

12 A It is.

13 MR. AHEARNE: That's all I have.

14 MR. CLARK: Let me think a second. I may have
15 another question or two, but I don't know yet. Let me
16 think.

17 (Pause in proceedings.)

18 MR. CLARK: No, I don't think I do. Thank you.

19 THE WITNESS: Thank you.

20 (Deposition concluded.)

21 (Signature reserved.)

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24

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C E R T I F I C A T E

I, LORRAINE M. MILLAY, a duly authorized Notary Public in and for the State of Washington, residing at Tacoma, do hereby certify:

That the foregoing deposition of ROGER P. SODER was taken before me and completed on the 26th day of June, 2009, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was, by me, duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the deposition of ROGER P. SODER and promptly serving the same upon MR. WILLIAM G. CLARK.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this 6th day of July, 2009.

/S/ LORRAINE M. MILLAY
LORRAINE M. MILLAY
NOTARY PUBLIC
STATE OF WASHINGTON
Lorraine M. Millay, CSR#23774
Notary Public in and for the State of Washington, residing at Tacoma.

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DATE: July 06, 2009

TO: Mr. William G. Clark
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104

NOTICE RE FILING OF ORIGINAL DEPOSITION

Case Name: McCleary v. State
Venue/Case No.: King, 07-2-02323-2 SEA
Deposition of: Roger P. Soder
Date taken: June 26, 2009

Enclosed is the original sealed transcript of Roger P. Soder.

The original signature page and changes, if any, received by this office will be forwarded to all counsel.

.
Lorraine M. Millay, CCR, Reporter

cc: File
Mr. Thomas F. Ahearne, Esq.