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**Reporter's Verbatim Report of Proceedings, August 31, 2009,
Volume I, Session 1 of 2 [Pages 1-126] 07-2-02323-2**

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

MATHEW AND STEPHANIE McCLEARY on)
 their own behalf and on behalf of)
 KELSEY and CARTER McCLEARY, their)
 two children in Washington's public)
 schools; ROBERT AND PATTY VENEMA,) SUPREME COURT
 on their own behalf and on behalf) NO. 84362-7
 of HALIE AND 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,) CASE NO.
)
 VERSUS) 07-2-02323-2SEA
)
 STATE OF WASHINGTON,)
 RESPONDENT.)

Proceedings Before Honorable JOHN P. ERLICK

KING COUNTY COURTHOUSE
SEATTLE, WASHINGTON

DATED: AUGUST 31, 2009
Volume I, Session 1 of 2

A P P E A R A N C E S:

FOR THE PETITIONER:

BY: THOMAS F. AHEARNE, ESQ.,
CHRISTOPHER G. EMCH, ESQ.,
EDMUND ROBB, ESQ.

FOR THE RESPONDENT:

BY: WILLIAM G. CLARK, ESQ.,
CARRIE L. BASHAW, ESQ.

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P R O C E E D I N G S
(Open court.)

THE BAILIFF: All rise, court is in session. The Honorable Jon R. Erlick in the State of Washington in and for the King County.

THE COURT: Good morning. Please be seated.

We are here on the matter of record of Matthew and Stephanie McCleary et al., versus the State of Washington. This is King County case number 07-2-02323-2 SEA.

We are here for the first day of trial. For our record, I am going to request that all counsel please identify themselves. We will begin with the petitioner counsel on my right, Mr. Ahearne.

MR. AHEARNE: Tom Ahearne for the petitioner.

MR. EMCH: Christopher Emch for the petitioner.

MR. ROBB: Edmund Robb for the petitioner.

MS. BASHAW: Carrie Bashaw for the State.

MR. CLARK: Good morning, Your Honor. Bill Clark representing the respondent, the State.

THE COURT: Mr. Clark, thank you.

1 Counsel, we did meet for a pretrial
2 conference previously and addressed as many as
3 pretrial issues that we could at that time.

4 Are there additional pretrial issues that
5 should be addressed before we begin with the opening
6 statements on the behalf of counsel?

7 Mr. Ahearne, anything from your group?

8 MR. AHEARNE: Not that I can think of, your
9 Honor.

10 MR. CLARK: Nothing from the respondent
11 either, your Honor.

12 THE COURT: All right.

13 I have read your trial briefs. I have
14 looked at your proposed findings and conclusions. And
15 I have read some of the other material including
16 looked at the prior case addressing some of these
17 issues of the Seattle School District case.

18 How would counsel like to proceed?

19 Do you want to make an opening statement,
20 Mr. Ahearne?

21 MR. AHEARNE: Yes, your Honor.

22 THE COURT: All right. Why don't we
23 proceed at this time.

24 MR. AHEARNE: Good morning.

25 For the record, I am Tom Ahearne at Foster

1 Pepper for the petitioners.

2 I would like to spend about 40 or 45
3 minutes going through what we believe the evidence
4 will show in this case -- or since your Honor is
5 keeping this by 10th of an hour between 42 minutes and
6 48 minutes.

7 THE COURT: Thank you, counsel.

8 MR. AHEARNE: The evidence will show what
9 people work on the front lines of the education of our
10 States see year after year after year after year.

11 When all is said and done, the evidence
12 will be that the simple and straightforward truth:
13 The respondent is not amply providing for the actual
14 education of all children residing within the State.

15 That fundamental fact will confirm that the
16 respondent is not complying with its paramount duty to
17 make ample provision of the education of all children.

18 This Court will hear from Stephanie
19 McCleary, a mom from Jefferson County. She is here
20 today with her son, Carter and her daughter, Kelsey,
21 tested -- Stephanie will testify about what she sees
22 as a mom with two children in our State's public
23 schools. She will testify about what she sees as a
24 parent, active in fund raising and levy campaigns to
25 raise money needed by her public schools.

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1 She will testify as a staff worker as to
2 the administrative and personnel offices at one of our
3 State's school districts.

4 Stephanie McCleary was 13, when the Seattle
5 School District decision was entered. When we filed
6 this suit, her daughter was 13. The evidence will
7 show that an entire generation has passed without the
8 State complying with Article IX, Section I.

9 The Court will also hear from Patty Venema,
10 another one of the petitioners. She is a mom from the
11 Snohomish County. She is here with her son, Robbie,
12 and her daughter, Halie.

13 Patty Venema will testify as she sees
14 schools as a mom with two children in our State's
15 public schools and a parent active volunteer with our
16 schools and active in fund raising a levy campaign to
17 raise needed money for our public schools. Patty
18 Venema will testify she was in high school, when the
19 Supreme Court made its decision in the Seattle School
20 District. When we filed the suit, her daughter,
21 Halie, was in high school.

22 The evidence will show, an entire
23 generation has passed while the State has studied
24 issues and made promises that still not complied with
25 its paramount duty under the constitution.

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1 This Court will hear from James Kelly and
2 of the Seattle Urban League and the Mike Blair of the
3 Chimacum School District, who are the president and
4 the vice president for the Network for Excellence in
5 Washington Schools, education in Washington State --
6 NEWS is the Urban League, PTA center, Special-Ed
7 Coalition.

8 It includes school districts of all state
9 and demographics, from all across the State ranging
10 from Pasco, Yakima, Spokane and Moses Lake on the east
11 side of the mountains and School Districts from the
12 Olympic peninsula, Whatcom County, Clark County and
13 Seattle. It also includes the teachers and the
14 educational locals in those School District as well as
15 the Washington Education Association, which represents
16 over 78,000 teachers and teach who teach in the 295
17 School District.

18 This Court will also hear from
19 superintendents of various focus districts, for this
20 case, which includes the superintendents Colville and
21 Yakima, two of the schools district who were chosen by
22 the State, as well the two focus potential districts
23 in this suit. They will explain what they see year
24 after year after year in the districts of our State.

25 This Court will also hear from the State

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1 own education personnel, officials at the office of
2 the superintendent of public instruction, members of
3 various education Task Forces and studies that the
4 State has done over the years, the State current
5 superintendent of public instruction, and the public
6 superintendent of public instruction before him, and
7 the superintendent of public instruction before her.

8 They will explain what they have seen and
9 what they have learned over their years and years of
10 service in this State.

11 The testimony and the exhibits introduced
12 by and through these witnesses will show that the
13 Court should grant all four parts in the four-part
14 remedy that the petitioner seek in this case.

15 This case begins with Trial Exhibit 1,
16 which is Article IX, Section I of our State
17 constitution that provides:

18 "The paramount duty of the State to make
19 ample provision for the education of all children
20 residing within its borders."

21 The first part of the remedy we seek in
22 this case is the declaratory judgment as to what
23 paramount means, ample means, and all means.

24 The evidence in this case will show that
25 with respect to the paramount, it has an established

1 meaning in our State. It is the highest rank that is
2 superior to all over, preeminent and supreme.

3 Paramount is not a synonym for important.
4 The evidence will show that the State not only knows
5 what that definition is, but appreciates why paramount
6 is so important.

7 For example, the paramount duty study that
8 the State did back in 1985 explains the importance of
9 education in our society and simply stated this
10 country will relies upon an educated populous for its
11 very existence. The security and well being of each
12 citizens depends upon the forward participation of
13 each over other, concerns of the nation's place in
14 world affairs, as important as they are, pale in the
15 light, as of the realization that without the educated
16 citizens it cannot survive without the democracy. It
17 was with this vision of the utility of education that
18 the framers of the constitution had in mind, when they
19 identified it as the paramount duty.

20 The evidence will show not only what the
21 word paramount means, but the State has known and
22 acknowledge and accepted that meaning for years.

23 Ample, the evidence will show that ample
24 has an established meaning in our State, more than
25 just adequate, not a synonym of barely enough or

1 trying to eke by.

2 The State current Superintendent of Public
3 Instruction, in some his deposition gave an example of
4 what that word ample means.

5 He said: "If you are the mayor of a town,
6 would you rather have an adequate water supply for
7 your citizens or an ample water supply? You would
8 rather have an ample water supply, because ample is
9 more than adequate."

10 All, all has an established meaning in our
11 State it is each and every one of -- it is not a
12 synonym for lots of or most. The State's documents,
13 which will be introduced throughout the trial
14 repeatedly confirmed that the knowledge and the skills
15 in the State's standards are the knowledge and skills
16 that all children must know.

17 Not lots of kids, not most kids, but the
18 State's own documents refer to all and that is exactly
19 what our constitution states.

20 With respect to the first remedy, we
21 referred in the declaratory judgment to paramount,
22 ample and all the evidence will confirm our entitled
23 to that relief.

24 The part two of our remedy we seek, the
25 declaratory judgment on what the word education means

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1 in our constitution. Education has an established
2 meaning in the our State, it began in the Seattle
3 School District case that your Honor mentioned in the
4 beginning of the trial.

5 The Seattle School District our Supreme
6 Court emphasized the knowledge and skills students
7 need to compete in the today's economy and
8 meaningfully participate in our democracy. That is
9 knowledge and skills -- that is from Exhibit trial --
10 Exhibit 2, which is the portion of the Seattle School
11 District decision that lays that out. It is a long
12 quote, but it is central to this case, because it is
13 the foundation for what that word education means in
14 our State.

15 Our Supreme Court held that the State's
16 constitutional duty goes beyond mere reading, writing
17 and arithmetic. It also embraces broad educational
18 opportunities needed in the contemporary setting to
19 equip our children for their role as citizens, and as
20 potential competitors in today's market, as well as in
21 the marketplace of ideas.

22 Education place a critical role in a free
23 society. It must prepare our children to participate
24 intelligently and effectively in our open political
25 system to insure the system survival. It must prepare

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1 them to exercise their First Amendment freedoms both
2 as sources and receivers of information.

3 And it must prepare them to be able to
4 inquire, to study, to evaluate and to gain maturity
5 and understanding.

6 The constitutional right to have the State,
7 the constitutional right is what the Supreme Court,
8 the constitutional right to make the ample provision
9 of education of all resident children would be hollow,
10 indeed if the possessor of that right could not
11 compete adequately in our open political system in the
12 labor market or in the marketplace of ideas.

13 The Supreme Court went on to hold that the
14 effective teaching of these essential skills make up
15 the minimum, *minimum*, *italics*, *bold*, by the Supreme
16 Court, the minimum of education that is constitutional
17 required.

18 This State's own Supreme Court, therefore,
19 held that the minimum of that word education,
20 constitutional required is more than just reading,
21 writing arithmetic. It also includes the effective
22 teaching of the skills that are needed to equip
23 children for their roles in citizens, equipped them to
24 compete in today's economy, could prepare them to
25 meaningfully participate in our democracy, to prepare

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1 them to exercise their first amendment freedoms and
2 prepare to compete in the open political system in the
3 labor market and in the marketplace of ideas.

4 The second milestone in that word education
5 in our State was in 1993, with the passage of House
6 Bill 1209, which further specified the knowledge and
7 the skills that students need to compete in today's
8 economy, and meaningfully participate in our
9 democracy. Those are the four substantive paragraphs
10 in House Bill 1209.

11 They identify the skills as read with
12 comprehension, write effectively, and communicate
13 successfully in a variety of ways and settings with a
14 variety of audiences; two, know and apply core
15 concepts and principles of mathematics, social
16 physical and life sciences, civics and history,
17 including different cultures, and participation in the
18 representative government, geography, arts, health and
19 fitness; third, thinking analytically, logically and
20 creatively and teaching kids to integrate their
21 experience and knowledge to form reasoned judgments
22 and solve problems; fourth, understanding the
23 importance of work and finance and how performance
24 effort, and decision directly affect the future career
25 and educational opportunities.

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1 This is the further specification of the
2 substantive content the knowledge and the skills of
3 the State has established that all children need to
4 know to effective will compete in the economy and
5 participate in our democracy.

6 The next milestone was in the 1990s
7 following the passage of House Bill 1209, the State's
8 adoption, the essential academic learning
9 requirements. Further specifying the knowledge and
10 the skills that the students need to compete in
11 today's economy and meaningfully participate in our
12 democracy.

13 There is another trial exhibit Essential
14 Academic Learning Requirements of the State of
15 Washington. It is important to note that these are
16 Washington State standards. These aren't national
17 standards or testing on national tests. Washington
18 State has its own standards that it has adopted. What
19 is also crucial Washington identifies them as
20 Essential Academic Learning Requirements.

21 The language of these standards are not
22 optional academic learning suggestions. The State
23 themselves calls them Essential Academic Learning
24 Requirements. The State recognizes that and describes
25 them in this way. The Essential Academic Learning

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1 Requirements for all content areas were initially
2 developed beginning with the basic Education Act of
3 1993; that is House Bill 1209.

4 These standards define what all students
5 should know and be able to do the each grade level.
6 What all students should be able to know and do at
7 each grade level.

8 These Essential Academic Learning
9 Requirements have nine parts. Your Honor is reading
10 the old pleadings in the case. There were originally
11 eight. Now there are nine, but there have always been
12 reading, mathematics, science, writing, communication,
13 social studies -- which groups together civics,
14 economics, geography and history -- the arts, health
15 and fitness, and then the 9th now educational
16 technology.

17 In our State, education means the knowledge
18 of skills that are defined by the Supreme Court in the
19 trial Exhibit 2, by the four substantive paragraphs of
20 House Bill 1209, and Washington State's Essential
21 Academic Learning Requirements, which then brings us
22 then to part three of the remedy received declaratory
23 judgment only as to the word education means the
24 substance.

25 But paramount, part 3, is a simple

1 question: Is the State satisfying its paramount duty
2 to make ample provision for the education of all
3 children, as this Court defines those terms?

4 The evidence will show that the answer is
5 no. This Court will hear from the superintendents of
6 various focus districts. Your Honor understands, from
7 the briefing, both sides have submitted that the way,
8 that we came about the potential of 13 for the focus
9 districts. I would like to quickly go through four of
10 those, because there are demographic and they show a
11 variety of what we are going to be showing.

12 The first is the Chimacum School District
13 out on the peninsula. The Chimacum School District
14 has about 4100 students, 41 percent have free or
15 reduced lunch, has 10 percent minority, covers about
16 100 square miles in Jefferson County. Their buses
17 travel a quarter million miles every year transporting
18 students to and from schools, including the students
19 from Irondale, Gardiner, Glen Cove, Paradise Bay,
20 Leland, Shine, Chimacum, Nordland, Port Gamble,
21 Hadlock and Fort Ludlow.

22 The superintendent from Chimacum will
23 testify as to what it takes to run his schools. If
24 you are going to operate his School District, we will
25 need to have a path first. You need to have

1 buildings.

2 Based on the most recent audited financial
3 statements of the School District, which is the 2007,
4 2008, F-196s, the amount of money that Chimacum pays
5 every year for its buildings every year is more than
6 \$2.1 million.

7 You add on top of that classroom teaching,
8 just classroom teaching, that is another \$5.7 million.
9 Pupil transportation over a quarter million miles that
10 I mentioned, \$1.3 million.

11 You add on top of that, librarians,
12 counselors, safety, basically the non-classroom
13 instructional staff, you add on to top of that school
14 building administration, principals, vice principals,
15 you add on top of that utilities, insurance, legal
16 compliance, HR and the superintendent office, things
17 like that. You add on top of that the so-called
18 extra-curricular activities, the academic competition,
19 the arts competition and the sports competition and
20 the food services that the school provides, it comes
21 to \$12.4 million.

22 Actually some of these numbers are
23 understated, like the school buildings is more than
24 \$12.4 million.

25 Now, compared to that, the State has

1 identified in this case, the dollar amount that the
2 State states it costs to provide the constitutionally
3 required basic education to every child residing in
4 the Chimacum School District that amount is \$6.2
5 million. This is the program funding formula amount
6 that the State provides.

7 The State's position is that \$6.2 million
8 amply provides for the education of all children
9 within the Chimacum School District. Now at trial the
10 State may point out that, "you know, we actually add
11 more money that is not part of what we call basic adds
12 to take away at any time like the I-78 money they will
13 raise it to 7.3."

14 The State will point out that the feds
15 chipped in money as well put it in the federal money,
16 it raises it up to 8.5. That is still leaves a
17 substantial gap. The gap, that gap is filled with
18 local levies, and then local fees and donations.

19 Local levies, the exact thing that the
20 Seattle School District decision three ago said this
21 Court, this district could not be forced to rely upon
22 to offer their education.

23 Other problem is that that money in the
24 middle the enough or the cushion can fall away the
25 testimony will be that the 728 money for example this

1 past year substantially fell away, which just drops
2 down the amount of money available to the School
3 District. Other money, like the COLA money sometimes
4 isn't there.

5 The federal stimulus money might disappear
6 that makes the gap even broader. The program funding
7 formula though produce the 6.2 million, which the
8 State says is all that is constitutional required.
9 This is ample. The evidence will show that that is
10 not ample.

11 Whether it is a full cushion of federal and
12 Non-Basic Ed dollars or not the picture remains the
13 same substantial gap, substantial reliance on the
14 local levies. The State may argue that, "well, that
15 12.4 is enough. It is providing too much."

16 Let's look at some of the State's own
17 documents. The evidence one of the documents will be,
18 the flyer that describes, the Essential Academic
19 Learning Requirements, which states that those
20 requirements specify the skills and the knowledge in
21 core subjects areas that all students are expected to
22 master as they move to through Washington public
23 schools, all students. That same flyer describes the
24 Washington assessment of student learning, which is
25 explains that is assessment system to measure whether

1 students were meeting those learning standards.

2 It goes on to tell the people of the State
3 of Washington that it is one of the most rigorous and
4 reliable assessment of the student achievement in the
5 country.

6 Well, let's look at what does the State
7 rigorous and reliable assessment of student
8 achievement show, with respect to the education,
9 received by the State's children in Chimacum School
10 District.

11 It shows that 55 percent fail the State's
12 own science standards for 10th grade. These are the
13 standards that the State has set that all 10th graders
14 must know to compete in the economy. And 59 percent
15 fail the State's math standard. 22 percent fail the
16 State's reading standards, and 18 percent fail to
17 graduate with their peers.

18 The evidence will show that the \$12.4
19 million that the Chimacum actual dollar costs that is
20 not ample. That is not ample, that is simply what
21 district is able to scrape up.

22 The evidence will show that the 6.2 amount
23 that the State says is all our constitution requires
24 clearly is not ample.

25 Second example -- I can go through these

1 more quickly now, because I have laid the ground-work
2 -- is Colville. Colville School District is
3 approximately two thousand kids in a 550 square mile
4 area in the rural northeast corner of our state.
5 Their buses travel over 300,000 miles every year
6 transporting kids to and from school. It includes the
7 communities of Omak, Hardell, Picco City, Echo,
8 Colville and Union Creek.

9 In Colville, the most recent audited
10 financial statements will show a similar pattern. The
11 school buildings, they spend more than \$1.6 million.
12 Classroom teaching this is based on the 2007 -- the
13 classroom teaching is over 10.9. Pupil
14 transportation, non-classroom teaching, school
15 buildings administration, utilities, electricity,
16 water, et cetera, insurance, the so-called extra-
17 curricular and food service that brings the total to
18 \$18.8 million. Actually, more than \$18.8 million.
19 The actual on the grounds costs of running the
20 Colville School District.

21 The State in this case says that the dollar
22 amount that the State is, the dollar costs to provide
23 the constitutionally required basic education for
24 every single child residing in Colville is \$12.7
25 million, that is their sworn interrogatory answers.

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1 The State might point to the fact that we
2 also get some additional money that we can take away
3 at any time like the 728 money that brings it up to
4 15.3, the fed chipped in some money that brings it up
5 to 16.8. That still leaves the gap, the gap that
6 local levies and local fees and donations have to
7 fill.

8 The exact kinds of funding that the Seattle
9 School District held that the constitution not allow
10 district to have rely upon to provide education to
11 their kids.

12 Again, that funding isn't stable or
13 dependable either, because that cushion, the federal
14 money and the State non-spend money is sometimes there
15 is sometimes not. It is not a stable and dependable
16 source of revenue or funding for the districts.

17 Now, what is the State's reversible
18 reliable achieve assessment show in the Colville? It
19 shows that the 58 percent of the Colville students
20 fail the State's science standard -- the State's
21 standard. 48 percent fail the State's math standard.
22 16 percent fail the State's reading standard. 13
23 percent fail to graduate with their peers. 13 percent
24 is what the State's experts say is a great number. 13
25 percent of your kids not graduating with your peers is

1 a great number.

2 The evidence will show that the 18.8
3 million is not ample. Those aren't the ample
4 resources to education, educate all of the children in
5 the Colville School District. The 12.7 million, that
6 is the program formula funding amount in the State
7 definition, is clearly not ample.

8 Second to the last ample example is Yakima
9 Yakima is a school districts of over 14,000 children,
10 80 percent low income and more than 70 percent are
11 minorities.

12 Yakima School District covers 25 square
13 mile area. Their buses travel over half a million
14 miles transporting their students to and from school.
15 It is urban center the Yakima valley. Yakima
16 superintendent will testify and base similarly on the
17 2008 they spend over \$15 million just to have the
18 school buildings, \$87 million on classroom teaching,
19 pupil transportation, librarians, school
20 administration, utilities, et cetera, the so-called
21 extra curricular activities and the food service \$147
22 million is the actual dollar costs.

23 Actually, more than 147, because some of
24 these numbers are understated. 147 million is the
25 actual dollar costs of operating the Yakima School

1 District.

2 The State's sworn interrogatory answer in
3 this case says \$80 million, amply funds the education
4 of all children residing in the Yakima School
5 District.

6 The State may argue that they have grants
7 and there is COLA money and I-728 that raises the
8 total funding to 106. The State argue that the Feds
9 chip in a chunk that raises it to 130. That still
10 leaves that gap, the local levies, have -- the Yakima
11 School District has to rely on the local levies to
12 fund the education that it tries to provide its
13 students.

14 That cushion also is not reliable. It is
15 not dependable. It goes up and down. It is not as
16 stable and dependable source of funding for the Yakima
17 School District.

18 What does the State most rigorous and
19 reliable assessment of student achieve show for Yakima
20 79 percent fail the science standards. 77 percent
21 fail in the math standard -- 3 in four students don't
22 know the math, that the State say that they have to
23 know; 4 out of 5 students in Yakima County that the
24 State says that all students should know, 31 percent
25 fail the reading standards -- one in three don't know

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1 the reading that the State says are essential for all
2 student to know; 25 percent fail to graduate with
3 their peers.

4 If you are a Latino student in Yakima, it
5 is even worse -- 87 percent under the State's own
6 testing fail the State's science standards, 85 percent
7 fail the math -- State's own standards, 34 percent
8 fail the State own reading standards.

9 The evidence will show the 147 million that
10 Yakima is able to scrape together does not provide
11 ample resources to educate all children in its
12 district. The evidence will clearly show that the 80
13 million program funding formula that the State says is
14 all the constitution requires, clearly, is not ample.

15 The last example is here close to us in the
16 Puget Sound is the Edmonds School District. Edmonds
17 is over 21,000 students about one quarter low income
18 about a third minority. It covers 36-square mile area
19 in the Seattle-Everett metropolitan area, including,
20 Briar, Montlake Terrace, Lynwood, Woodinville, Edmonds
21 and various unincorporated portions of Snohomish
22 County. It bus es travel over 1.5 million miles every
23 year transporting students to and from school.

24 The superintendent of Edmonds will testify
25 to operate his school district in that same year --

1 the last audited financial statement -- costs over \$37
2 million just for school buildings alone. Actually,
3 when you get that it is substantially more than the 37
4 million -- but at least the 37 million. Classroom
5 teaching 108 million, add again the same layers with
6 the pupil transportation, the non-classroom
7 instructions, librarians, counselors, et cetera,
8 school buildings administration, principals, utilities
9 insurance, the district-wide expenses, the so-called
10 extra curricular and food service, 208 million,
11 actually more than 208 million is the actual dollar
12 costs of operating the Edmonds School District.

13 The State's sworn interrogatory answer says
14 it is 108 million is all that is really needed.

15 108 million is amply providing for the
16 education of every single one of those over 21,000
17 children the Edmonds School District. The State may
18 argue that, well, Edmonds gets additional State money
19 that raises it to 126. It gets additional federal
20 money raises it to 138. But Edmonds is still left to
21 rely on the local levies, local fees and donation to
22 fill that gap.

23 But the local levies precisely what that
24 Seattle School District decision 30 years ago held,
25 School District do not need to rely upon providing the

1 education to their children under Article IX Section I
2 of our constitution.

3 The evidence will also show that this
4 middle funding of the State, which isn't part of their
5 program funding formula is not stable and dependable,
6 regardless of whether there is a larger cushion some
7 years or like this year coming up, where the State
8 made substantial cuts in what it calls non-basic Ed
9 funding, whether it is small, there is always that
10 gap.

11 Now what in Edmonds -- what does the State
12 most reliable assessment of the student achievement
13 show 55 percent fail the science standards, 46
14 percent, almost half fail the math standard. The
15 State has said that all children must know to
16 effectively compete in our economy and participate in
17 our democracy, 13 percent fail the State's reading
18 standard and 25 percent fail to graduate with their
19 peers.

20 If you are in Edmonds, if you are a low
21 --low income student it is even worse: 71 percent
22 fail the State science standard, 68 percent fail the
23 State math standard, and 22 percent fail the State
24 reading standard.

25 The evidence will show that the 208 million

1 that the Edmonds is able to scrape, by plus additional
2 funds, is not ample to provide an education to all of
3 the over 21,000 students in the Edmonds School
4 District. The evidence will show that the 108 that
5 the State says it is programmed funding formula
6 provides is not ample.

7 The Court will also hear from the State
8 itself. The Capital Building Law, the State own
9 documents from the Office of the Superintendent of
10 Public Instruction; the State -- State underfunding is
11 not disputed. That is outside of this courtroom.

12 Three examples, first, salaries. The
13 State's own documents show that the average salary
14 that a School District pays its instructional staff
15 teachers, 58,000, for the State funds 50.

16 Average salary for a classified staff --
17 that is everything from bus drivers to janitors to
18 maintenance people to IT tech people average salary
19 36,000, the State funds 30 thousand.

20 Administrator, those are basically the CEO
21 and CFO of each School District the average salary of
22 the School District has to pay 96,000, the State base
23 amount is 57,000. Although that the State does pay
24 certain districts more based on the grandfathering
25 snapshot that was taken back in the late '70s or early

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1 '80s that we will get into the evidence.

2 Another second example of the three is
3 building maintenance, the evidence will show that the
4 State own documents, the State funding covers 58
5 percent of the facilities maintenance expense that the
6 School District incur. The trend is going in the
7 wrong direction, the State's own documents.

8 Last example, supplies and equipment what
9 people call the NERCS, non-employee related costs, the
10 textbooks, the computers, the things that aren't the
11 employment payments, the insurance, the utilities,
12 things like that. The State's own documents will show
13 that this School District spend over 500 million more
14 than the State funds, another superintendent of public
15 instruction presentation to the public.

16 Few examples on this. Technology, State
17 own evidence shows that the average School District
18 spends \$136 per kid on technology, the State funds
19 less than half. The utilities, average School
20 District \$252 per kid, the State funds less than half.

21 Insurance, average cost to the School
22 District is 59 dollars. The State funds less than
23 half.

24 Curriculum, average cost to the School
25 District, \$92 per kid; the State funds less than half.

1 What is important here, the State's own
2 document points this out this is the State's School
3 District usually have an eight-year cycle. That is
4 what the State provides the State provides for a 18
5 year turn-around cycle -- that means that a child born
6 today under the State funding, could have the exact
7 same history book, textbook, English book that a high
8 school senior has today. That is a 18-year turn-
9 around cycle.

10 Now what does the State's rigorous reliable
11 assessment of the student achievement show? It shows
12 that the 64 percent state-wide of the Washington
13 student, fail the stand science standards, 55 percent
14 fail the math standards that the State said is
15 essential for all kids to know, 21 percent fail
16 Washington reading standards the standards that the
17 State itself says that all kids must know; and 28
18 percent fail to graduate with their peers. This is
19 graduating from high school.

20 Even though that the State is changing its
21 WASL, the reason for the change the superintendent
22 Borden will explain the reasons, are based on the
23 costs, the belief that the WASL system costs too much,
24 takes too much time, isn't prompt enough in its
25 response, isn't able to be used as a diagnostic tool.

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1 The WASL has been what the State has said
2 is the most rigorous and reliable achievement of the
3 State own testing of its own standards confirms that
4 our State is failing.

5 If you happen to be one of the members of
6 the have-nots of our State it is even worse. If your
7 a white -- again, another State document, another one
8 of their presentation. The State does a lot of slide
9 shows, PowerPoint presentations to the public and this
10 slide 5 of 15. I, frankly, have used a lot of the
11 State own Power Points. This is one that the State is
12 explaining if you are a white student, passing the
13 reading and writing and math sections of the WASL --
14 you have 69 percent of the white students pass -- if
15 you are an African American, it is 36 percent, and
16 Latino, or the State calls it Hispanic, 40 percent.

17 If you are not low income, 73 percent of
18 our students pass. If you are low income, it is down
19 to 45 percent -- English language learner -- ELL
20 stands for, you are down to 42 percent. The State
21 document show that over the pass 34 years, the haves
22 continue to have and the have not continue to have
23 not.

24 With respect to the part three that the
25 remedy that we see in the state yes or no, meeting the

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1 paramount duty to amply provide the education for all
2 children in the State, the simple yes or no in our
3 evidence. The evidence will show the State is not
4 complying with its paramount duty, which is why we are
5 standing here today.

6 Which then raises the fourth part of the
7 remedy we seek, which is should the Court enforce the
8 constitution, which brings is back to the petition
9 that we originally filed for declaratory judgment that
10 does enforce our constitution.

11 One of the things that the State points out
12 is that -- you know we just filed this 2 1/2 years
13 ago. That is not very much time. But the evidence
14 will show that 2007 is not the timeframe that we
15 started with.

16 1978 is the timeframe where the State was
17 first put on notice with the Seattle School District
18 decision, that is what its duty was under the
19 constitution, the knowledge and the skills that the
20 State Supreme Court laid out, that more than reading
21 and writing and arithmetic paragraph, that the
22 essential skills that you need to compete in today's
23 economy and participate in our democracy.

24 Remember 1978 Stephanie McCleary was 13.
25 Her daughter was 13, when we filed this suit. Patty

1 Venema was in high school. Her daughter was in high
2 school, when we filed this suit, the community group,
3 the public School District and the education
4 organizations, the leaders in those groups were
5 starting their careers back in 1978.

6 Now they are in -- you will hear throughout
7 the course of the trial nearing the ends of their
8 careers, or some of them are retired already and
9 unfortunately some of them have even passed on.

10 The State other defenses, let's look to the
11 future, 2018, we have passed the bill, 2261, that will
12 solve everything. This time we mean it. We are
13 really going to solve the problem. Give us until
14 2018.

15 But, Kelsey will be in her mid 20s by then.
16 2018 it won't be Stephanie and Stephanie daughters.
17 It would be Stephanie grandkids, who would see that.
18 Halie, in the mid 20s, they would be grandkids --
19 Patty Venema grandkids.

20 Over the past 30 years since the Seattle
21 School District decision the State has had years and
22 years of good intentions. I am sure when these
23 witnesses were on the stand talking about 2261, some
24 of the Task Force members, and the members happen to
25 be legislature they will convey that they are sincere.

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1 The State has had 30 years of good intentions.

2 Go back to Governor Dan Edmonds at the
3 Seattle School District decision, back in the late
4 1970, now it is important to provide long-term
5 consistent and dependable financing for education.

6 Dixie Lee Ray in her State of address to
7 the citizens of the State of Washington says: "We
8 have already delayed too long. Full funding in K-12
9 is mandated by the courts. We should do it now.

10 Governor John Spellman, in his statement to
11 the citizens of the State in his statement of the
12 address: "We must finish the work of meeting our
13 mandate to provide fully of the basic education."

14 Governor Gary Locke in the 90, "it is not
15 enough to tell parents that our schools will do better
16 next year. Last year students need help now. Tell
17 the parents that the State will do better in 2018.

18 Governor Gregoire, in the closed report in
19 2006 in the Washington learned studies said, "it is
20 time, three years ago, it is time for the bold
21 purposeful action. It is time to make some big
22 changes in Washington education. It is time to get to
23 work." The past governors of our State and past
24 representatives of our State have had good intentions.

25 They have also done a lot of studies. The

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1 fact just since 1990 the State has done over 100 K-12
2 finance studies, some of the evidence will show some
3 of these studies -- one is the paramount study from
4 1985 that report one of the alarming fact that that
5 report called out is "Washington student drop-out rate
6 has escalated to the rate that 1 in 4, 9th grader will
7 not present at graduation, 29 percent failure to
8 graduate from the school at the same rate that we have
9 now. Another problem is that employers are relating
10 experiences with graduates unable to read simple
11 operating instructions. That is what the crisis that
12 we were in back in 1985.

13 The State 1992 the Governor Council For
14 Education Reform and Funding, 1992, that Council
15 reported that for over a year it listened hundreds of
16 parents education and business leaders they told us
17 that too many of our young people leave the school
18 without the school - without the skills that they need
19 to master the skills that they need to face the
20 challenges in life.

21 Later on, the State Joint Legislative Audit
22 and Review Committee, K-12, kindergarten through 12th
23 grade. That study stated beginning in the 1980 - 1981
24 school year the legislature established the statutory
25 commitment to fund the transportation of eligible

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1 student to and from school at 100 percent or as close
2 thereto as reasonably possible.

3 1980s, a statutory commitment, a lot like
4 2261 is supposed to be. That report found that to and
5 from pupil transportation expenditures, that the
6 School District actually pay, exceeded State revenue,
7 the State -- that the State fund between 92 and 114
8 million. In the 2004 and 2005 school year, 25 years
9 after the statutory was to fund it 100 percent for as
10 close thereto as possible. The State itself finds
11 that it is under-funding 92 to 114 million every year,
12 the State own documents show that the trends going in
13 the wrong direction.

14 2005-2006 it was 120 million, 2006-2007,
15 107 million, another study by the State is the
16 Washington Learns Report.

17 Now Washington Learns Report found that
18 right now in Washington, this is November of 2006,
19 only 74 percent of ninth graders graduate from high
20 school with their peers. That is 74 percent, that is,
21 you know, one in four don't graduate the same crisis
22 that the State was talking about in 1985 in the
23 paramount duty study.

24 Notes that nearly one quarter of employers
25 report difficulty finding qualified job applicants

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1 with occupation specific skills. That the same kinds
2 of problem that the paramount duty study reported.

3 Washington notes that 60 percent of the
4 black and Hispanics of students graduate with from
5 high school with their peers. That gap is still
6 there.

7 The younger working age population is less
8 educated than their older counterparts. The trend in
9 Washington is going the wrong way. That is where the
10 Washington Learned Reports found.

11 The last report, the final report of the
12 Joint Task Force on basic education finance. This
13 report was released in January of this year, this was
14 the 18-month plus Task Force that looked into our
15 schools and what is needed to amply provide kids an
16 education for today's economy, teach them the
17 knowledge and the skills that they need to compete in
18 the today's economy and participate in our democracy.

19 It made recommendations as to what needed
20 to be done, and determined that the total increase in
21 funding to do what needs to be done is estimated at
22 approximately 7.5, 8.3 and 10.1 billion per biennium.

23 The State own final report on the basic
24 education finance confirms that the State knows how to
25 cost out how much it costs to amply provide an

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1 education for all children, has even come up with
2 recently its own estimates.

3 Over the 30 years of good intentions, not
4 much has happened, other than studying and promising,
5 which brings us to the fourth part of the remedy that
6 we seek.

7 This Court's decision we are requesting as
8 the fourth part of our four-part remedy that the State
9 order -- that the Court Order the State to promptly
10 complete two steps towards curing its current
11 violation of its paramount duty under our State
12 constitution:

13 One, establish the actual cost of amply
14 providing all Washington children with the education
15 that is mandated by this Court's interpretation of
16 Article IX and Section I.

17 And two, establish how the respondent will
18 fully fund that actual cost with stable and dependable
19 State sources, as the Seattle School District decision
20 required over 30 years ago.

21 This case ends the same place that it
22 began, Article IX, Section I:

23 "It is the paramount duty much the State to
24 make ample provision of for the education of all
25 children residing within its borders."

1 Paramount means paramount, ample means
2 ample, all kids means all kids. The evidence will
3 show several things.

4 The evidence will show that 30 years of
5 studying, and work groups and promises is too long.
6 The evidence will show that this Court should uphold
7 the paramount right that Article IX and Section I
8 grants to every child in this State by enforcing the
9 paramount duty that Article IX imposes upon the
10 respondents State.

11 The evidence will confirm that this Court
12 should do that by entering the four-part remedy that
13 the petitioners seek, first declaratory judgment that
14 paramount ample and all mean exactly what they say.
15 So that the respondent can no longer skirt its duty by
16 claiming that they mean anything less.

17 Second, that this evidence will show that
18 this Court should enter a declaratory judgment that
19 the education promised by Article IX Section I is not
20 the equivalent of a prison sentence that is measured
21 in terms of time served or seek time for program
22 funding formulas or equation, but education means
23 substance.

24 It is the basic knowledge and skills that
25 our kids need to compete in today's society and

1 participate in our democracy. The basic knowledge and
2 skills that the State Supreme Court that laid out in
3 the Seattle School District decision in the fourth sub
4 section paragraphs of the 1209 and the State own
5 Essential Academic Learning Requirements.

6 Third, the evidence will show that this
7 Court should enforce the constitution by entering the
8 declaratory judgment that the State is not complying
9 with Article IX, Section I.

10 So that the respondent can no longer stall
11 by claiming that it is fully complying with Article
12 IX, Section I.

13 Fourth, that the Court should enter the
14 evidence will show, that the Court should enter that
15 narrowly tailored enforcement order that the
16 petitioner seek that requires the State to take a two
17 long overdue first steps towards complying with
18 Article IX, Section I; that the 10 steps that the
19 State is promising to take for the past 30 years.
20 That is what the evidence will show.

21 Thank you very much.

22 THE COURT: Mr. Ahearne, thank you.

23 Mr. Clark, would you like to present on
24 behalf of the State?

25 MR. CLARK: Yes, your Honor. Thank you.

1 THE COURT: Thank you.

2 MR. CLARK: Thank you, your Honor.

3 Good morning. My name is Bill Clark,
4 assistant attorney general with the State of
5 Washington.

6 With me today at counsel table is assistant
7 Attorney General Carrie Bashaw. In our courtroom
8 today our number of State agency representatives, whom
9 I will not introduce, but who will, in large measure,
10 appears as witnesses in the case and I will introduce
11 them at that time.

12 Your Honor, suffice it to say that it is a
13 lot of public interest in this most important case.

14 Your Honor, this case concerns the
15 constitutional sufficiency of Washington provision of
16 the financial resources for public schools in grades
17 kindergarten through 12th grade.

18 The petitioners' extraordinary remedy
19 requesting judicial intervention in the ongoing
20 education reform process that Mr. Ahearne alerted to
21 in his proceedings this morning, that is being carried
22 about under the auspices of House Bill 2261.

23 As you heard from Mr. Ahearne, that the
24 petitioners in this case asked for a series of
25 declaratory rulings about the definition of terms and

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1 Article IX, Section I, above the definition of the
2 basic education that is found in our State's statutes
3 that the State must make provision for, about the
4 State's compliance with the Article IX constitutional
5 obligation and regarding the remedy that the
6 petitioners want the Court to impose, if the Court
7 finds that the State is not complying with the Article
8 IX duty.

9 Of the four requested declaratory rulings,
10 your Honor, only the issues of compliance with the
11 Article IX definition, the third point in
12 Mr. Ahearne's presentation, and the remedy, the fourth
13 point of his presentation, will require evidentiary
14 development.

15 As to the first issue, the definition of
16 the terms of Article IX, Section I have already been
17 established in the 1978 cases of Seattle School
18 District versus the State.

19 We don't really need testimony as to what
20 terms like paramount, ample, all and education means.
21 Because the Supreme Court has already defined that for
22 us. With regard to the nature of the duty, your
23 Honor, that was also settled over 30 years ago and in
24 Seattle School District versus the State, when the
25 Court held that Article IX, Section I requires that

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1 the State define fully fund and reform a basic
2 education for all Washington's children.

3 Whether the statute cited by the
4 petitioners, HB 1209, which was codified in RCW 28
5 A.150.210 is a definition of the content of the basic
6 education is really a legal issue.

7 So, while your Honor may hear testimony
8 about the definition of terms and the substance of the
9 statutory definition of a program of basic education,
10 when all is said and done, it really doesn't need that
11 testimony because the Court has defined both of those
12 issues for us.

13 It is important to note, too, that the
14 petitioners don't contest the validity, or the
15 sufficiency of the definition of basic education in
16 the statute. They don't challenge any statutes in
17 this case at all.

18 Therefore, the evidence in this case will
19 tend to go in four related and yet distinct
20 categories.

21 What is the current statutory program and
22 the current statutory funding mechanisms for basic
23 education?

24 Two, what statutory improvements and
25 reforms have been made to that program, basic

1 education from 1992 until the present.

2 The reason why 1992 is significant, your
3 Honor, is because the evidence will show that it was
4 in that year, that the transition from what was called
5 the seat base system of education in Washington on a
6 performance based system of education actually began
7 to occur.

8 The third point that the evidence will
9 revolve around are the statutory reforms that have
10 been enacted into law, and in recent years, the
11 Washington Learns Study the efforts of the basic
12 education Task Force that resulted in a comprehensive
13 report and recommendation issued just this January,
14 and House Bill 2261, the legislation that was passed
15 in the most recent legislative session in the response
16 to the basic Ed Task Force report.

17 The fourth area of evidence that this Court
18 will hear is one that Mr. Ahearne only alluded to very
19 briefly; that is, what the local and national experts
20 retained by both sides to testify in this case have to
21 say about three very important matters.

22 One, the relationship, if any, between
23 increased funding levels, because -- let's not kid
24 ourselves, your Honor -- increased fund is what the
25 petitioners really want in this case -- really want

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1 with their remedy the relationship between the
2 increased education and better outcomes.

3 The second issues is the converse of that
4 proposition. The lack of a relationship between low
5 student achievement and funding inadequacy.

6 Finally, the lack of a systemic positive
7 relationship between the improved student achievement
8 and funding for popular interventions, like early
9 learning, or prekindergarten schooling, like reduced
10 class size or increased teacher compensation.

11 The State, your Honor, believes that this
12 evidence will convince the Court that the State
13 process of making provision for basic education is an
14 evolving complex time and resource and intensive
15 process that is ongoing now, and frankly, does not
16 require judicial intervention, or any of the
17 declaratory rulings that the petitioners' request.

18 Let me talk first about the current
19 statutory program of basic education. This is where
20 we will see if I get to quit my daytime any time soon.
21 I guess I will hang on to it.

22 Your Honor, it is important to understand
23 in this case, you don't need evidence of it so much as
24 the simple look at the statute.

25 The evidence will show that the entire

1 system basic education, your Honor, was created,
2 defined, funded has been operated and reformed
3 entirely through State statutes and regulations.

4 The first we list up there is the basic
5 Education Act of 1977; which Mr. Ahearne discussed in
6 his opening statements. It appears in RCW 28 A
7 chapter 150. It provides a definition, a program,
8 declares that it provides full funding through a
9 principal funding mechanism for basic education, which
10 is known as the general allocation for the basic
11 education allocation.

12 It is important to know, your Honor, the
13 evidence that will show that the BEA, as it is
14 colloquially called the basic education allocation,
15 the core funding that is provided by the State for
16 every Washington student in all 295 School District in
17 the State.

18 Augmenting the basic Education Act are
19 other statutory provisions that relate to other parts
20 of the program of basic education.

21 For special education in RCW 28 A 155, we
22 provide an incremental amount of funding for students
23 with special needs; that is, in addition to the basic
24 allocation that every one of those students gets.

25 For students that are struggling in school,

1 that is Learning Assistance Program that is codified
2 in RCW 28.A.165. That is an incremental amount of
3 funding that is provided to districts so that they can
4 give special attention and special education the
5 services, not special education in the term use above,
6 but designed instruction, designed to help students
7 who are struggling with academics.

8 Next so that the English language learners
9 or transitional bilingual, because the evidence will
10 show that we are becoming an increasingly more
11 ethnically diverse State as time goes on. The State
12 has statute that provides additional funding to
13 districts to conduct special instruction for their
14 non-English speaking students.

15 The last component of basic education, your
16 Honor, is found in the statutes that provides some
17 funding for pupil transportation; that is, in RCW 18
18 A.160. The basic Education Act and the statutes
19 outlined in point B there together comprise the
20 definition and full funding of basic education.

21 Now, how is that carried out, your Honor?

22 It is carried in State statutes.
23 Everything is carried out in State statutes, when it
24 comes to the basic education.

25 Every year the State enacts annual

1 appropriations acts through which the sums of money --
2 and they are in the billions of dollars every year --
3 are appropriated for basic education.

4 Last but not least, as a statutory base for
5 basic education, is that the reformed to basic
6 education and there have been reforms carried out in
7 the 30 years, since the passage the basic Education
8 Act, they have been accomplished through State laws,
9 like House Bill 1209, like House Bill 2261, the recent
10 reforms to basic education in our State.

11 There is nothing about basic education,
12 your Honor, that is not in a State statute or
13 regulation. And, therefore, the evidence in this case
14 has to be concerned about what the statutes give us,
15 because what statutes give us and what the
16 constitution give us, really don't need evidence.
17 They are what they are. They say what they say.

18 The evidence will show that how Washington
19 bills its biennial budget to pay for K-12 budgeted
20 schools, the budget is for anticipated costs for basic
21 and non-basic education programs. That the ultimate
22 decision makers and what amounts fund basic education
23 are the legislature, and the governor, not OSPI, not
24 the School District, not the petitioners in this case,
25 but the legislature and the governor.

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1 The process over the 30-plus year history
2 since the basic Education Act was passed has seen
3 funding grow from just under a billion dollars a year
4 in 1979, your Honor, to over \$7 billion in 2008.

5 That is a lot of money, your Honor, and the
6 evidence will show that consistently, basic education
7 funding, K-12 education funding by the State is a
8 substantial part of the State's budget, ranging in
9 between 40 and 50 percent of the State expenditures,
10 greater than any other single social program that the
11 State funds.

12 The evidence will also show that the State
13 has always pursued a policy that puts basic education
14 funding first in priority. It does not allow cuts to
15 basic education, even in the worse of economic times.
16 That has always funded basic education at higher
17 levels of amounts than any other single program that
18 the State funds.

19 Next, your Honor, the evidence will show
20 that locally provided funds and federal funds are an
21 entirely appropriate part of funding for K-12 schools
22 in the State of Washington.

23 These State statutes, your Honor, the basic
24 Education Act in particular, provide minimum ratios of
25 staff to students, and funding formula for that staff

1 and for the non-staff components of what is needed to
2 provide basic education.

3 School districts are left with flexibility,
4 within statutory imposed limits, to raise and use
5 local funds to provide for more staff than the State
6 fund for basic education, to provide for more services
7 and programs than what the State provides, to provide
8 more compensation to its staff -- particularly its
9 instructional staff than State funds call for and
10 State statutes provide.

11 Washington is a local controlled State,
12 your Honor. You will hear that phrase repeatedly in
13 this case, which means that the funding that the State
14 provides for basic education is provided for
15 allocation purposes and within certain limits that the
16 districts are free to spend it as they see fit, as
17 long as they provide the minimum staff and
18 non-employee related costs, based on the ratios that
19 are in the statute.

20 Other than the minimum they are required to
21 provide with the basic education funding, they are
22 perfectly free and lawfully entitled to do more.

23 But a critical component of that local
24 control is that local funds must not be used for basic
25 education purposes.

1 I don't have it on the slide, your Honor.
2 It was the thought that I had this morning, there
3 wasn't time to create one. But the statute referred
4 to is RCW 28 A.400.200 subsection 4. That statute
5 provides, your Honor, that school districts are free
6 through their locally negotiated collective bargaining
7 agreements to provide supplemental pay, time
8 responsibility and incentive pay of some times called
9 or referred to as TRI pay.

10 But they are forbidden in that statute to
11 provide that money to provide that money for the
12 teachers to provide what are basic education services
13 that the State funding is intended to provide.

14 So that the information, for example, that
15 Mr. Ahearne has displayed this morning for the four
16 focus districts, the teaching components of the costs
17 of the districts operating, this is shown in each of
18 those four districts through the cross examination
19 includes not only the base salary that the State
20 provides as the basic education allocation for
21 teaching in that district, it includes the
22 supplemental pay and TRI pay that the districts pay
23 over and above.

24 In the circumstances of the Chimacum school
25 Districts, every teacher in the district gets trial

1 exhibits, or supplemental compensation above the base.
2 When you break that down by what is State funded and
3 locally funded you see local control and evidence,
4 your Honor, but you also see a tremendously amount of
5 locally compensated, according to law, is not to be
6 used to provide basic education services.

7 So that the evidence, indeed, will show
8 that there is the fair amount of local funding that
9 goes into our K-12 schools in these districts, but
10 that is not the same as proof of State under funding
11 of basic education.

12 Finally, the evidence will show with regard
13 to the current system that the academic proponents of
14 the Washington student to see what kind of achievement
15 levels have come from the current system the WASL
16 results will be in evidence, your Honor, while
17 Mr. Ahearne focused on math and science, reading and
18 writing have tauted towards graduation in our State
19 since the class of 2008 graduated, with that class and
20 with the class of 2009 the passage rate on what are
21 the only WASLs required to graduate was over 90
22 percent.

23 Math and science need improvement, to be
24 sure, but they are trending better. We do have an
25 Achievement Gap for achievement in the State and by

1 that phrase is meant that there are segments of the
2 population -- some ethnic minorities, some more that
3 are from low income families that do not achieve --
4 excuse me, do not achieve as well as their majority
5 population counterparts, but that is also trending
6 better.

7 With regard to science, your Honor, of the
8 four subjects that where Mr. Ahearne presentation this
9 morning about the four districts indicated the most
10 improvements needed, that science WASL was only
11 introduced back in 2005.

12 We are only getting the first results from
13 the first round of WASL science tests. We are working
14 on improving them. The first round of reading and
15 writing weren't that encouraging either. But they
16 have been trending better and they have gotten better
17 than I just eluded in my opening of greater than 90
18 percent of the last two graduating classes.

19 Your Honor, we need to talk about the
20 transition from the seat-time education performance
21 base, the Court will hear a lot of the testimony about
22 the reforms that happened with the reforms of 1209.

23 The seat base education system, your Honor,
24 was a grade-by-grade progression over 12 years, the
25 system that I went through in another state.

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1 It, in our State of Washington, seat based
2 meant a 12-year progression to the graduation with
3 locally imposed standards and local measures of
4 student progress.

5 What would ultimately culminate in the
6 graduation. The performance based system that this
7 State began a transition to back in 1992 changes the
8 focus.

9 There is still a grade-by-grade progression
10 from kindergarten to 12th grade, but it is according
11 to state-wide standard, state-wide assessments of the
12 student progress along the way and students must pass
13 an assessment because that in part will determine
14 whether the student graduates and that assessment that
15 counts towards graduation is customarily given in the
16 sophomore year of high school.

17 But there are more than one chance to pass
18 the WASL, your Honor, a failure to the first time
19 around doesn't fail you forever. You get the chance
20 to retake, and as the evidence will show, while the
21 WASL regime has been in place there have been
22 alternative to that assessment that will allow the
23 student to graduate.

24 The evidence will confirm, your Honor, that
25 transition began in 1992 with a launch of the Governor

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1 Council of Education and Reform Financing. It was
2 followed in 1993 by an enactment of House Bill 1209,
3 which is codified in 288 A.150.210.

4 This slide, which I glossed over in my
5 presentation, again relates to the growth and the
6 State funding per student exceeding two commonly used
7 measures of inflation, as you see the implicit price
8 deflator is the red line, the consumer price index
9 adjusted it is the larger dotted black line, but
10 overall the State funding per student was shown from
11 1980 when it was \$1,761 per student to \$6,237 in the
12 last year represented by the chart, which I believe is
13 2007.

14 This chart is not as light as I would like
15 it to be, but it is legible. This shows the K-12
16 system enrollment versus the employment to adult staff
17 in the last 26 years. As your Honor might be able to
18 see, this is the percent of growth in students at 37.7
19 percent, the blue line is in that period of time.

20 The red line is a 54.3 percent growth in
21 the amount of the teachers that are employed in the
22 school districts.

23 The green line shows that in the 26 years
24 of this chart concerns employment of all adults in the
25 system has grown by 67.8 percent. That is important,

1 your Honor.

2 Because funding in the State, the basic
3 allocation is driven by a per student allocation, the
4 more students that you have the more basic Education
5 allocation funding that you get the fewer students
6 that you get the less of the basic education
7 allocation that you get.

8 This will show you that overtime the growth
9 in the costs in the districts are experiencing, is in
10 the employment area. Staff costs for education, your
11 Honor, are between 80 and 85 percent with non-staff
12 costs being the balance of education spending.

13 So it is not hard to understand why
14 district expenditures over this period of time have
15 grown remarkably, when you see that the adults in the
16 system have far-out stripped the growth in the student
17 enrollment.

18 I shall proceed now, your Honor.

19 Your Honor, this is the slide that I should
20 have gone to when I broke in my prepared remarks
21 there, because a lot of what you are going to receive
22 in evidence in this case will concern whether or not
23 the State has, indeed, been dragging its feet for 30
24 years.

25 We submit, your Honor, that with regard to

1 this exhibit, and there is a State document to which
2 there is no objection been raised that will supply
3 each of the points in this chronology.

4 And I am not going to over them, and I am
5 not going to treat it as a like an eye chart, your
6 Honor, because I know that it is very busy. It is
7 busy nature. It is an indication that there has been
8 precious little foot dragging going on here. They may
9 not like the upshot and the result and the current
10 status of it, but we have been working hard at this
11 problem.

12 Why wouldn't we? We don't dispute it is
13 the paramount duty. But we do dispute that we have
14 been doing nothing but twiddling our thumbs for 30
15 years.

16 Some of this I had highlighted in red, so I
17 could specially emphasize it the first line that has a
18 remembered light is E HB 1209 passes. The reason why
19 I highlighted that is to show where in the timeline
20 1209 occurs. That is the provision codified in the
21 State law that contains the four goals, the four
22 paragraphs that Mr. Ahearne alluded to, our statement
23 of goals that were amended into the State statute to
24 replace the four goals that were in the State statutes
25 since 1977.

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1 So in 1993 we really didn't amend that
2 statute to do anything revolutionary or new.
3 Certainly not because a decision 15 years earlier had
4 told the State to do something. We did that because
5 we were transitioning from the seat-time education
6 system to a performance based one.

7 Far from the inference that the petitioners
8 in this case want to draw, that 1209 effected an
9 immediate seat change, that changed things from A to Z
10 but didn't provide any funding for it, the evidence
11 will show that HB 1209 was intended to be and,
12 therefore, was a time-consuming process.

13 A process that would be implemented, in
14 fact, under its own terms, no earlier than in time for
15 the 2000, 2001 school year.

16 The evidence will show that the Essential
17 Academic Learning Requirements, or as their
18 colloquially called EARL's, E-A-L-R apostrophe S, were
19 not in place in the 1990s, if you look at the 1995
20 year, first EARLs were adopted in 1995 if you look at
21 the bottom entry for 199 an in red assessment
22 development begins.

23 What is a reference to, your Honor, is that
24 in order to test whether the students were getting the
25 education contemplated by the EARL's we had to develop

1 the tests scores first. The development of the WASL
2 assessment meant developing the test that you had to
3 test as it were to make sure that it was a valid
4 assessment, then you had to implement it, not all at
5 once not so that a council at once, but in a staggered
6 matter.

7 You will see that in 1997 the fourth grade
8 reading, writing and math assessments were first made
9 mandatory. 1997 was the first time that any testing
10 for WASL began under the regime put into place by
11 House Bill 1209.

12 If you look at the entry for the year 2000,
13 your Honor, you will see in red highlight, we have the
14 indication that 7th and 10th grade reading, writing,
15 math and learning assessments -- excuse me, listening
16 assessment mandatory.

17 2000 was, indeed, the year that 7th and
18 10th grade WASL testing in those three areas began, as
19 we know from the briefing and from both openings this
20 morning there was a science WASL that is included in
21 the battery of testing; and in 2004, you will see our
22 timeline, in red, the 8th and 10th grade science
23 assessments were required.

24 So the full battery of all four WASL tests,
25 in all grades tested wasn't even fully implemented

1 until 2004. That is why I said earlier in my opening
2 that the science WASL results, while not as
3 encouraging as they should be, are the first battery
4 of test that is were administered there.

5 I don't think that I will get much argument
6 about how difficult science can be. It is going to
7 take some time before those come up, but, your Honor,
8 evidence that students are struggling in one of four
9 areas -- two of four areas -- perhaps in all four
10 areas, is not in and of itself evidence that the State
11 is not providing enough funding.

12 The evidence will also show, your Honor,
13 that in addition to these reforms that were passed,
14 this State did provide funding to effectuate and help
15 with the transition to the performance based system.

16 We tried for hours yesterday, your Honor,
17 to make this more legible. The problem is, again, it
18 is very busy. There are a lot of years. There are a
19 lot of funded programs that are represented in the
20 left-hand margin. As you can see from the progression
21 of the colors and the amounts, there is, there are
22 streams of fund ing that the State is providing to
23 effectuate this transition from seat-base to
24 performance-based.

25 I have to add right from the start, your

1 Honor, that these additional amounts, they are
2 additional amounts.

3 This is in addition to the billions of
4 dollars that the State is continually providing
5 throughout this timeframe for K-12 education in every
6 year. So this is transitional funding, your Honor.

7 The lowest line is the most substantial of
8 it of all. The lowest line is for student achievement
9 fund to school districts under Initiative 728.

10 Initiative 728, the evidence will show, was
11 an initiative from the people that was passed that
12 provided State money for things, such as, reducing
13 class size and other purposes that were contained in
14 the initiative.

15 While it is considered non-basic education
16 funding currently by the State that will change as
17 2261 is carried out. As can you see, the funding
18 screen for that began in about 2001 and it is hundreds
19 of million of dollars of additional State funding that
20 is being provided pursuant to that initiative.

21 Your Honor, throughout the 1990s the
22 legislative received reports that its statutes
23 required State agencies to submit about the
24 transition, about the transitional funding, and about
25 the reforms themselves on the previous slide and how

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1 things were going.

2 These reports were consolidated into one
3 that was submitted on behalf of OSPI, on behalf of the
4 Commission on the Student Learning, which was set up
5 by House Bill 1209 to develop the WASL, to develop the
6 EALRs, the State Board of Education.

7 These reports are all devoid of any
8 suggestion that the process was taking too much time,
9 that the process was beset by innumerable studies or
10 that the process was not sufficiently funded, your
11 Honor.

12 As I say, that the first comprehensive WASL
13 results were available in 2005. Those results did
14 indicate that some students were struggling
15 particularly student from ethnic minorities and
16 students from families with low incomes.

17 The State knew that there was work to do to
18 produce student outcomes. That leads us in time, your
19 Honor, to the Washington Learns and Basic Task Force
20 efforts.

21 In the 2005 legislative session Governor
22 Gregoire called for the establishment of a
23 comprehensive review of Washington Education System
24 from preschool to K-12 to higher education. The
25 process was statutorily created. It took 16 months

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1 and it was organized into three advisory committees:
2 One for each level of education, one for early
3 learning, one for K-12, one for higher education.

4 Outside consultants were obtained in
5 connection with this study to create what would be a
6 new enhance the structure in funding for basic
7 education in Washington. It was called "making the
8 transitions to a world class system."

9 The consultants built prototype models for
10 staffing elementary and middle and high schools that a
11 process that was replicated by the Basic Education
12 Task Force, not identically, but certainly in terms of
13 all of the component parts.

14 Numerous meetings took place around the
15 State as features for the new system and proposal for
16 reforming the education took place.

17 The process wrapped up in November of 2006
18 with the issuance of a final report. That report
19 called for additional funding, in fact, significant
20 additional funding, but it also called for the
21 strategic reallocation of the substantial funding that
22 was already being provide d by the State.

23 The report also envisioned that it would
24 take 10 years, a 10-year period, to implement the new
25 staffing levels, the new programs, and the new funding

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1 levels.

2 I can't remember the witness in this case,
3 but perhaps he or she will recount the analogy for the
4 Court.

5 "Changing our education system, its
6 staffing notes, its enrollment, its programs and its
7 funding is like trying to turn an aircraft carrier on
8 a dime. It just doesn't happen overnight."

9 Washington Learns didn't quantify the
10 amount that would be needed to carry out the reforms
11 that it contemplated, but it had next steps, which
12 included a plan for recommending a design for the new
13 funding structure, as well as reformed accountability
14 measures.

15 Again, so that the State could assess
16 whether it was getting good returns on its investment.
17 All of these were to be developed by December 2008 for
18 recommendation to the legislature which then could act
19 on them in 20090 session.

20 This is Washington Learns. Washington
21 Learns also recommended a number of more immediate
22 steps that the legislature couldn't put in place
23 during the 2007 legislative session and those were all
24 enacted.

25 The 2007 legislature also passed

1 legislation creating the Basic Education Finance Task
2 Force to complete the work of Washington Learns and to
3 itself issue a comprehensive report and
4 recommendations for new funding, assistant to replace
5 the current statutory one, and as Washington Learns
6 envisioned that report was due in December of 2008.

7 If we go back to the previous slide on the
8 timeline, you will see, your Honor, that the bullet in
9 2006 indicates the final Washington Learns Report, the
10 2007 bullet in red talks about the creation of the
11 Joint Task Force.

12 In 2008, it is unhighlighted, but that is
13 the duration of time during which the basic Task Force
14 proceedings occurred and the final report did not come
15 out in December of 2008. It was about a month late.
16 It came out in January 14, 2009.

17 Lastly, but certainly not least, I will let
18 my finger do the walking here, is House Bill 2261,
19 which is establishes extensive reforms in the State
20 education system. They are being carried out now and
21 will be continued to carry out as it is implemented
22 overtime, fully, by 2008.

23 The Task Force effort took a long time.
24 There were a lot of presenters, both from the State
25 government, from local districts and by outside

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1 consultants.

2 One of the presentations was even made by
3 representatives from the petitioners, NEWS, included a
4 presentation by one of their experts, who I expect to
5 testify in the case, Dr. David Conley in the summer
6 and the fall of 2008.

7 The Task Force received and evaluated a
8 number of proposals. I believe that there were five
9 in all for reforming the K-12 financing structure,
10 including one that was based on Dr. Conley's --
11 petitioner's expert -- report, which is a cost study,
12 your Honor.

13 A cost study is something that you will
14 hear about a fair amount in this case. It is a
15 proposed exhibit in the case.

16 The proposals were evaluated and debated by
17 the Task Force and in the end the proposal that was
18 adopted was one that had been developed and sponsored
19 by the six Task Force legislative members.

20 The Dr. Conley proposal, which was provided
21 under the sponsorship of an entity called the Full
22 Funding Coalition, that Conley proposal was rejected
23 by the Task Force. It was not adopted.

24 That report, as I say was issued on January
25 14, 2009 -- the Task Force report that would be

1 received in evidence, your Honor -- concluded with a
2 number of significant observations that were important
3 to our case.

4 Yes, as Mr. Ahearne said, the total cost of
5 implementation projected increases of several billion
6 dollars per biennium, it did, indeed, do that.

7 It also said that the implementation of
8 this would take at least six years following the
9 legislature's enactment of the reform.

10 Most importantly of all, your Honor,
11 because the legislation which isn't the Task Force
12 required it, the Washington State institute for public
13 policy -- whose representatives will be here to
14 testify at trial as well -- was passed by the
15 legislation to come up with a forecast of what kind of
16 a return the State of Washington could expect to get
17 for this additional billions of dollars a year
18 increased investment in K-12 education.

19 That forecast, your Honor, predicted that
20 State student high school graduation rates would
21 improve by 9 percent from the current level of about
22 72 percent to 81 percent. But that that improvement
23 could not be expected to be realized until 14 years --
24 14 years, your Honor, after implementation of the
25 programs and the additional funding.

1 The report also contains a forecast by the
2 same agency that was also put in the legislation that
3 set up the Task Force.

4 That said, what will happen if the State
5 doesn't do anything about reform, but simply infuses
6 substantially more funding into the current basic
7 education system -- which, frankly, your Honor, the
8 evidence will show is the exact approach favored by
9 Dr. Conley, the petitioner's cost study expert?

10 In the event that we only poured more money
11 into the system and didn't enact the reforms the Task
12 Force wanted, Washington student graduation rates
13 would likely only get a 1 percent increase, a one
14 percent increase over the same after -- rather, the
15 same 4-year period of implementation that would
16 produce a 9-percent bump, if we instituted the
17 additional funding and the reforms that were called by
18 the Task Force.

19 Both forecasts, your Honor, were coaxed in
20 cautionary terms that reflect what national research
21 and the evidence will show this, what national
22 research has confirmed. It is almost a quote from the
23 report, your Honor.

24 It reflects the underlying uncertainty in
25 the expected effects of education resources, i.e.,

1 funding, on student achievement. If we go the full
2 nine yards, your Honor, with the reforms and the
3 funding, we can expect a nine percent increase after
4 14 years, if we just do the funding and no reforms, we
5 might get a one percent increase over the same
6 substantial period. This is going to take time, your
7 Honor.

8 As for the legislative enactment of 2261,
9 your Honor, the legislatures from the Task Force
10 immediately introduced bills in January of 2009 to
11 enact the programs funding and the accountability
12 measures that were in the Task Force report.

13 It was faced with vehement opposition, your
14 Honor, in particular from one of the NEWS principals
15 the Washington Education Association, opposed the
16 bills and they were subsequently withdrawn. Those
17 withdrawn bills were replaced by House Bill 2261,
18 which passed despite the continued opposition from the
19 same WEA.

20 2261, the evidence will show, took a more
21 measured approach to implementing the Task Force
22 recommendations for a new substantially enhanced
23 funding system and accountability systems.

24 And the accountability systems were
25 important, your Honor, because they would establish a

1 link between student performance and the performance
2 of the teachers in the classroom.

3 While 2261 did not include specific funding
4 levels, it put in place a 10-year program, the 10-year
5 program contemplated by Washington Learns, your Honor,
6 for developing the salary allocation models that would
7 apply to the staff, the formula that would be provided
8 for reducing the class sizes, for increased
9 compensation for school teachers, for school building
10 personnel, for Central District administrative staff,
11 as well as increased funding for the non-salary costs
12 or NERCs -- non-employee related costs as they are
13 called -- as well as relief beginning in 2013 for
14 transportation funding that the district claim that
15 they needed.

16 Last but certainly not least, there was
17 increased funding for programs for students in special
18 education for students, who need special assistance
19 like the Learning Assistance Program or the English
20 language learners program.

21 2261 established a Quality Education
22 Council, your Honor, to oversee and monitor and to
23 conduct work groups to assist in the implementation of
24 an expanded definition of basic education of increased
25 funding, of the implementation of the full-day

1 kindergarten and for a new transportation funding
2 mechanism, pupil transportation funding mechanism
3 beginning in 2013. The deadline for full
4 implementation for this is 2018.

5 On my next slide, your Honor, I just want
6 to show briefly, juxtapose six areas of concern that
7 are merged about the current system during the Task
8 Force proceedings: Salaries, health benefits for
9 staff, staffing ratios, non-employee related comps,
10 special education, LAP and bilingual, Learning
11 Assistance Program, and all six of them are addressed
12 by the provisions in 2261.

13 In the form of the compensation working
14 groups to provide the details of the enhanced salary
15 model for review, acceptance, by the legislature
16 modification of the legislature sees fit, but we have
17 that underway.

18 On staffing ratios, if the districts are
19 saying that they don't get enough State funding to
20 hire all of the staff that they hire, there is a new
21 formula for class size, planning class size,
22 particularly in the lower grades, for other building
23 staff and administrative staff.

24 In the area of non-salary costs, there is a
25 new formula for what is no longer going to be called

1 NERCS, or non-employee related costs, but
2 characterized as maintenance, supply, and operating
3 cost, MSOC.

4 That is a substantial bump in funding to
5 help districts out with those non-salary costs. The
6 enhancement on the special education is a product of
7 the special education formula, your Honor.

8 Because every special education student
9 gets 100 percent of the basic Education allocation and
10 also gets 93 percent of that basic education
11 allocation added in order to fund special education
12 programs.

13 So when you are raised the level of the
14 Basic Education allocation as 2261 will, you will
15 raise the level of funding automatically for special
16 education.

17 For Latin and bilingual there are enhanced
18 allocations for both of those programs built into
19 2261; or at least there are built into the process
20 whereby we will reach those no later than 2018.

21 Last but not least in the area of
22 transportation a new pupil transportation funding
23 formula, as authorized for implementation beginning in
24 2013.

25 As the evidence will show in the

1 transportation area, yes, indeed, there was a report
2 in 2006 that said to the State. You need to do
3 something more about pupil transportation funding.

4 Outside consultant was hired immediately
5 with legislative authorization and came in and made
6 proposals. The development of these proposals took
7 time, but they were made and the legislature at the
8 recommendation of the Office and Financial Management
9 has adopted one of the approaches that the consultant
10 recommended for implementation under 2261.

11 So each of these six areas is addressed,
12 your Honor, and show that pursuant to our Article IX,
13 Section I duty to reform basic education we are,
14 indeed, working on it.

15 We are working on it in earnest, confident
16 that it will be implemented and knowing full well that
17 it will require substantially more funding from the
18 State.

19 Last but not least, your Honor, I should
20 talk about the expert part of the case.

21 It is a substantial part of the State's
22 presentation, unfortunately, will come at the end of
23 the six-week marathon here. I want to mention it now,
24 so that it will stay fresh your Honor's mind for the
25 duration of our trial.

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1 During the trial, the Court will hear from
2 some School District superintendents, a number of
3 State officials and legislatures, all of whom are
4 concerned with the K-12 education.

5 Petitioners refer to them on the ground or
6 on the front-line experts, because some of them
7 administer school district, some of them operate and
8 some of them instruct them.

9 Much of this insider testimony and
10 documentation, however, was generated during the
11 Washington Learns and Basic Education Task Force
12 proceedings. It is important to keep that in mind,
13 your Honor, because with the instance of alleged
14 under-funding was developed with the assumption that
15 the State should accept responsibility for whatever
16 school districts were currently spending on their
17 programs. That was an assumption throughout the
18 proceedings, that the State would do that.

19 This evidence was developed in the context
20 of deliberations, your Honor, that left no doubt that
21 Washington was making a total departure from the
22 education and education funding system that exists
23 today.

24 In some respect, your Honor, you are being
25 asked to sit in judgment on something that will not

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1 exist for very much longer. But that is the nature of
2 education, your Honor. It changes, constantly.

3 So both sides have -- nobody is interested,
4 your Honor, in keeping the current system and funding
5 mechanisms around. They are going to be replaced.
6 Both sides have engaged national and local experts to
7 opine on both the current and future programs and
8 funding for Washington schools.

9 Here is a summary of what the State's
10 experts did and what they will say. Three experts
11 were retained, your Honor, one a former Washington
12 School District superintendent to conduct site visits
13 to all 13 focused school districts that both sides
14 have analyzed in this case.

15 These three experts visited over 100
16 schools, over 500 classrooms, over a multiple-week
17 period during this past spring. They toured the
18 school site, its facilities and classrooms, when
19 classes were actually underway, in order to evaluate
20 the instruction being given, the resources were
21 available to teachers, the students and
22 administrators, to see if the buildings were sound and
23 were being maintained, to see if technology,
24 computers, vocational classes, bilingual instruction,
25 laboratories, libraries, gyms, athletic fields were

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1 available and up-to-date, to evaluate whether there
2 was safety hazards or impediments to student learning
3 there or whether staff and facilities this they
4 observed were sufficiently resourced to provide
5 children with the opportunity to get a basic
6 education.

7 The conclusion of the site visit experts
8 was that the schools focused districts were in good
9 over-all condition with competent teachers were
10 engaged students.

11 But the schools and the School District
12 leadership seemed to have all of the resources
13 necessary to provide an adequate education to their
14 students.

15 Equally important, your Honor, are the
16 nationally renowned experts that we will bring in, who
17 will testify about the lack of a proven relationship
18 between student achievement and levels of spending.

19 They will opine that poor performance, your
20 Honor, is not caused by inadequate funding. They will
21 opine, your Honor, that better performance is not
22 caused by increased funding.

23 Part of their presentation will be based
24 upon the experience of our 13 Washington focused
25 districts, your Honor, what this are chart portrays is

1 in the red line is the reading scores for students in
2 the focused districts.

3 Can you see it proceeds across?

4 The line that trends from the bottom left
5 to the upper right are the expenditures that are made
6 by those districts on teachers, instructional
7 expenditures.

8 You will see trying to find a relationship
9 between the two, defies logic. Because if you look on
10 the far right, that information pertains to the Mount
11 Adams School District.

12 You will see that Mount Adams tops out and
13 in terms of the level of the funding, somewhere
14 between 8,000 and 8500 a student. Yet its results are
15 the very lowest. So we have a phenomenon here where
16 the most richly funded focused district returns the
17 poorest results of the 13.

18 On the other side, we have the Battleground
19 District, which gets a lower amount of funding than
20 Mount Adams does, but it gets better results. Then
21 there is every one in between.

22 The biggest bang for the buck appears in
23 the Royal District where funding is, you know, not
24 quite in the middle, when you span the levels from
25 Battleground to Mount Adams, but their test results

1 are best. They are the best, your Honor.

2 As our experts will opine, there is no
3 demonstrable relationship, even in the State of
4 Washington, even in our focused districts, that tells
5 you substantially increasing resources, in and of
6 itself, will get the student performance that we all
7 want to get.

8 This slide shows the math results for the
9 same districts, your Honor, arranged in the same way.
10 You will see, again, on the far right, the Mount Adams
11 District is the most richly funded, at levels of 8250
12 per student. It gets the lowest test scores of the
13 13.

14 You will see that the Battleground, on the
15 other end of the spectrum, as far as total revenues is
16 concerned, gets better results than Mount Adams.
17 While they aren't the best, they are much better
18 return on the investment as represented by this chart.

19 The best district over-all, your Honor, is
20 Issaquah, where the results for math are the highest
21 posted. You will see on the scale there that Issaquah
22 is not among the more richly funded. The Issaquah
23 line goes here.

24 This is based on the information from
25 the -- that the State gathers from the districts, your

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1 Honor, as to what money they get, what money they
2 spend and what results they get for their students.

3 Now, this lack of a relationship between
4 spending levels and outcomes for the students has
5 particular significance in evaluating the proposed
6 cost study remedy that the petitioners are advocating,
7 also, in deciding, if you are asked to decide whether
8 certain interventions or programs, like early
9 learning, like reduced class sizes and increased
10 teacher compensation, which are all intended
11 components of the future system, if you are asked to
12 declare that those are mandated, what we call
13 constitutional imperatives, the evidence will show
14 that they don't rise to that level.

15 They are interventions that show some
16 promise, but don't always show results. They are
17 interventions that the State, indeed, intends to make
18 through 2261, with the expectation that there would be
19 beneficial results. But they are not steps that the
20 Court should intervene and order the State to take and
21 provide as basic education.

22 Because the evidence will show that while
23 they would be nice, while they would be beneficial,
24 while they may even be described by some witnesses as
25 essential, the jury is still out, your Honor, on those

1 interventions as predictors or causers of improving
2 the student out-comes.

3 Your Honor, if Dr. Conley takes the stand,
4 we will cross-examine him.

5 Whether he takes the stand or not, we will
6 provide an expert on the cost studies. We will use
7 Dr. Conley reports as an example and conclude as you
8 can tell from our briefing, that the cost study of
9 Dr. Conley and the cost study approach in general is
10 not a valid basis responsible, which our legislature
11 can make informed and rationale decision about policy
12 funding that is a flaw inherent in all cost studies.

13 With regard to the specific interventions,
14 I mentioned your Honor, I will wrap up -- I see with
15 we are running on the break time here already. The
16 evidence again will show that these interventions can
17 have positive results, but that the relationship
18 between them and student out-comes is not sufficiently
19 established that the Court should order them as
20 imperatives.

21 Your Honor, as the student achievement,
22 while we emphasize that the poorer results tend to be
23 in areas of minority and low income students, these
24 are nationally phenomenon not peculiar to Washington,
25 we are not saying as the trial brief of the petitioner

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1 suggests, that these children cannot learn or that
2 they cannot be taught or that they shouldn't have the
3 opportunities to achieve.

4 We are simply saying that poverty and other
5 issues, over which the State has no control has the
6 effect of dramatically reducing the achievement
7 levels. That means that there is work to be done.
8 But in and of itself, the poor performance of these
9 students, is not an indication that the system is
10 under-funded.

11 As I say for over-all achievement, your
12 Honor, we will show through our evidence that the only
13 test that counts for graduation student performance is
14 greater than 90 percent.

15 We will show that the graduation rates
16 traditionally have been in the 70 to 75 percent range.
17 That we are working on it. That it is consistent with
18 the national average that graduation rates have been
19 targeted by the new Superintendent of Public
20 Instruction for greater emphasis.

21 Finally, your Honor, the evidence on the
22 achievement will show that with regard to national
23 assessments, like the SAT, for example, Washington
24 student who do extremely well, ranking first in the
25 nation, in fact, on the SAT results.

1 We would submit, your Honor, that the WASL
2 results, the national measures of performance do not
3 indicate a system that is failing or low performing.
4 In fact, you will find through the evidence, your
5 Honor, that Washington with the relatively low
6 measured against the peer states expenditure per pupil
7 is getting results, better results, better results
8 than State that spend significantly more per pupil.

9 Finally, our experts analyze teacher
10 compensation, and they found that teachers are well
11 compensated in the State; that there does not appear
12 to be a phenomenon where they change districts or
13 change states to get better paying jobs or better jobs
14 with better benefits, that a substantial portion of
15 them say stay in the same district year after year
16 after year; that 92 or 93 percent of them, stay in the
17 State of Washington, even if they move to another
18 district.

19 We will show that the teachers are well
20 compensated, your Honor; that their job prospects are
21 for steady employment here and they don't leave.

22 There are two legal issues that I want to
23 mention just in passing, because they will be
24 important as the evidence comes in. One is the fact
25 that the petitioners are not challenging the

1 constitutional of any State statute or regulation.

2 As your Honor saw in our briefing, statutes
3 are permeating basic education. It doesn't exist
4 without them.

5 Our law says that the State statutes are
6 presumed constitutional, when they are challenged. If
7 the petitioner are not challenging the statutes in
8 this case, they are all conclusively presumed to be
9 constitutional.

10 It leaves me wondering, your Honor, where
11 the challenge lies. But since they are all
12 unchallenged, and all constitutional, that may affect
13 the testimony that comes in and it will certainly
14 affect our objections, at least until we hear your
15 Honor's reaction to them, to the evidence.

16 The second is with regard to the issue
17 raised by the petitioners about the admissibility of
18 the documents and the opinion testimony and we will
19 cross that bridge as we come to it, your Honor.

20 Your Honor, this is going to be a lengthy
21 trial with 50 witnesses and hundreds of exhibits. The
22 issues may appear to be simple, but the evidence will
23 show that the provision of basic education to
24 Washington K-12 student is a complex process of
25 multiple programs, funded by State local and federal

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1 governments a multi-million dollar annual investments
2 that serves a million students, employs tens of
3 thousands of staff, is administered by several state
4 agencies and carried on by 295 local school districts
5 the definition funding and reform of basic education,
6 however is not a simple matter.

7 That is why those issues are determined
8 first and foremost in our legislative and executive
9 branches, that is where they should stay.

10 This Court, of course, has the duty to
11 declare whether the program, its funding and reform
12 are constitutional.

13 But in the end, the evidence will prove the
14 wisdom of the Washington State Constitution's
15 directive that the legislature, not the courts, not
16 private parties litigating, determine the means and
17 the methods of making the provision for basic
18 education.

19 At the close of the lengthy trial, your
20 Honor, we believe that the Court will adhere to that
21 principle and apply it by dismissing the petitioner's
22 case.

23 Thank you, your Honor.

24 THE COURT: Thank you, Mr. Clark.

25 We will take our morning recess at this

1 time.

2 It will be for 15 minutes. We will resume
3 with the trial at 11:10. The Court will be in recess.

4 THE BAILIFF: All rise.

5 (Court was in recess.)

6 (Open court.)

7 THE BAILIFF: All rise. Court is back in
8 session.

9 THE COURT: Please be seated.

10 Mr. Ahearne, is the petitioners ready to
11 call their first witness?

12 MR. AHEARNE: Yes, your Honor.

13 THE COURT: All right.

14 MR. AHEARNE: We would like to call Mike
15 Blair to the stand, please.

16 THE COURT: Sir, please come up to the
17 stand.

18 MICHAEL BLAIR,

19 Having been first duly sworn,

20 Testified as follows:

21

22 THE COURT: Please be seated.

23 Sir, for the record, please state your full
24 name and spell your last name and give us your contact
25 address.

1 THE WITNESS: Michael Scott Blair,
2 B-L-A-I-R, P.O. Box 65435, Port Ludlow, Washington.

3 THE COURT: Before we proceed, just some
4 ground rules with regard to the media.

5 MR. AHEARNE: Thank you.

6 THE COURT: There are requests, first of
7 all, to have additional cameras in addition to the
8 CVS.

9 I will hear from counsel on that request .

10 MR. AHEARNE: Now?

11 THE COURT: I think that we should address
12 it now.

13 MR. AHEARNE: Your Honor, my primary
14 concern is not distracting the Court proceedings,
15 especially since we have a limited amount of time.

16 I have no objection to things that aren't
17 going to eat up, frankly, our time.

18 THE COURT: All right.

19 Mr. Clark.

20 MR. CLARK: As your Honor can see, we have
21 tight quarters. I see that they are setting up over
22 there. My concern is that the facilities in the
23 courtroom would be available first and foremost to
24 counsel and their clients. I mean, after all, that is
25 why we are here.

1 If that is not an issue, I mean --

2 THE COURT: Right.

3 MR. CLARK: -- that is all I will say.

4 THE COURT: There are empty jury seats. If
5 spectators want to seat in the jury seats, you are
6 welcome to sit in the jury seat.

7 If we are maxed out, I will deal with the
8 media issue on that basis.

9 The other issue my understanding was that
10 the request was not to have media take notes from the
11 jury box. Is that my recollection?

12 MR. AHEARNE: Yes, your Honor, from our
13 pretrial conference, having them basically sitting
14 there and staring at the witnesses --

15 THE COURT: If they are back in the jury
16 box, you are okay with that?

17 MR. AHEARNE: Yes, your Honor. I think
18 that you understand a lot of my witnesses, especially,
19 are nervous about being in the courtroom.

20 THE COURT: I understand.

21 I want to make sure that what the counsels'
22 are requests are -- we have some media that wouldn't
23 to take notes. I want to make sure that are fine with
24 them sitting with them taking notes, not on top of the
25 witness.

1 Is that all right with all counsel.

2 MR. CLARK: Yes, your Honor, it is.

3 THE COURT: All right. That is settled.

4 If there is any other issues that are raised --

5 MR. CLARK: There is one issue, is the
6 microphones, are they the court's microphone or the
7 media?

8 I am not so sure that we want our
9 discussions --

10 THE COURT: Those are the court's, I
11 believe.

12 THE BAILIFF: No, they are theirs.

13 THE COURT: FTR is not on. Those are the
14 court's, but they are not recorded. So this is being
15 reported, not recorded.

16 THE BAILIFF: They are microphones for CVN
17 on the counsel table.

18 THE COURT: All right. The media has
19 microphones. The record is not turned on. The Court
20 record is strictly the court reporter.

21 MR. CLARK: My concerns are we have an open
22 microphone on our table that is for media. I mean, I
23 speak in a low tone. I will try to keep my comments
24 from being heard. But I am uncomfortable with having
25 a media microphone at the counsel table. I can't help

1 it. That is the way that I feel.

2 VIDEO PERSONNEL: I set those up to record
3 objections or speak from behind the bench.

4 THE COURT: Apparently, the examination is
5 going to be at the podium. So I would share the same
6 concern. We always have this come up any way, when we
7 are typically microphones for our reporting.

8 So there is a concern of attorney-client
9 communications being impacted with microphones there.

10 MR. CLARK: Can we have the option to turn
11 them off?

12 VIDEO PERSONNEL: Yes, they cannot be
13 turned off from where they are. But you can
14 disconnect the cable, if you would like.

15 THE COURT: -- or just cover the
16 microphone.

17 MR. AHEARNE: Can we take it off the table
18 this morning? We will see how it works. If it
19 becomes an issue --

20 THE COURT: Let us know. I think that the
21 examination, in general, and I think that is probably
22 going to pick up the objections remotely. So let's do
23 that. We can remove the media microphones right now.

24 MR. EMCH: The microphone on the podium is
25 a microphone --

1 THE BAILIFF: We have had to have a
2 hand-held microphone for an attorney, who is soft
3 spoken. That is why that microphone is up there.

4 THE COURT: All right.

5 MR. AHEARNE: I think so.

6 THE COURT: All right. Let's proceed.

7 DIRECT EXAMINATION

8

9 BY MR. AHEARNE:

10 Q. Mr. Blair, could you please tell us what your
11 current job is?

12 A. I am the superintendent of the Chimacum School
13 District.

14 Q. How long have you been at that job?

15 A. This would be my seventh year.

16 Q. What are your responsibilities as
17 superintendent the Chimacum?

18 A. You are the CEO of the district responsible for
19 student learning for the management of the facilities,
20 the transportation, food service, you are responsible
21 for the budget, overseeing the budget. You certainly
22 answer to the school board, which is my authority.
23 You are in charge of staffing, staffing issues,
24 personnel issues. You are involved with the
25 negotiation of contracts.

1 You also involve yourself in the community as a
2 part of the school.

3 Q. What was your job before being Chimacum
4 Superintendent?

5 A. I was the superintendent the Kettle Falls
6 School District in Eastern Washington for four years.

7 Q. Approximately where is Kettle Falls?

8 A. Kettle Falls is approximately two hours north
9 of Spokane.

10 Q. What were your responsibilities when you were
11 the superintendent at Kettle Falls?

12 A. Very similar to what I described as
13 superintendent of Chimacum, again, responsible for the
14 facilities for the student learning, for the
15 negotiations for the budget staffing, personnel.

16 Q. Is your experience at Chimacum School District
17 similar to or different from the experience that you
18 have a superintendent at Kettle Falls?

19 A. I would say that one of the things that is
20 different in Eastern Washington as opposed to Western
21 Washington, I learned right away, is the difference in
22 the tax base; the difference in getting folks to
23 provide local dollars and support, the economy tended
24 in Kettle Falls to be lower.

25 There was some industry there, but I would say

1 that I noticed that that particular difference. It
2 was a little more low income or remote. Therefore, it
3 necessitated more work in terms of getting our local
4 levies passed and things like that up there, I did
5 notice that. Both communities are rural, though.

6 They are out in the country. They have great
7 citizens, generally very supportive.

8 They are blue collar folks. At Kettle Falls we
9 really didn't have a retirement community, like we do
10 in the Port Ludlow community, which is more of a
11 retirement community, wealthier community.

12 Q. In Kettle Falls did you have bond levy
13 campaigns and bond levy similar in Chimacum?

14 A. Yes, they were very similar.

15 Q. More difficult, or easier?

16 A. Yes, I indicate they are more difficult. I
17 learn a lot in Kettle Falls. That was my first
18 superintendency.

19 What I learned was that, you know, the -- to
20 pass a levy there was really a full year campaign. A
21 lot of energy involving a lot of folks. It was a
22 struggle.

23 One year we did double fail levy in Kettle
24 Falls, which means that you, the next year you lost
25 half of your local funding. In fact, we lost one

1 election by one vote.

2 I actually had folks call me up afterwards
3 asking for my forgiveness of not voting. But then you
4 learn how important, you know, talked earlier today
5 how important it is for our citizens to participate in
6 the democratic society and know what that means. I
7 learned that lesson very well in Kettle Falls.

8 Q. What was your job before Kettle Falls?

9 A. Before Kettle Falls I was with the Deer Park
10 School District and had different jobs there as a
11 consistent principal.

12 Q. If I interrupt, if you could briefly go through
13 what your jobs were at Deer Park and a brief
14 description of what your responsibilities were in each
15 job.

16 A. Sure, I can do that.

17 At Deer Park I was assistant principal, which
18 primarily is in charge of discipline in a high school.

19 I was the athletic director in charge of
20 athletics and extra curricular activities, which I
21 really call co-curricular activities.

22 I also was a start of an alternative school
23 there for high school students was the principal of
24 that alternative school.

25 Then my last two years at Deer Park I was the

1 Assistant Superintendent working with Glennis Hill,
2 superintendent.

3 Q. You mentioned co-curricular, why do you call
4 them that?

5 A. Well, co-curricular activities -- as was
6 mentioned earlier -- are those athletic competitions,
7 academic competitions, arts competitions, like music,
8 things like that, that I feel are very important part
9 of the over-all education of our students.

10 They provide that hook. They provide that
11 interest, that motivation, that keeps kids in school,
12 keeps them interested in school. I consider them co-
13 as opposed to extra- -- they are very important part
14 of the child's life in the high school.

15 Q. When you were -- where is Deer Park School
16 District, approximately?

17 A. Deer Park is about 20 minutes north of Spokane.

18 Q. Does that straddle on the county border?

19 A. Yes. Deer Park is in Spokane County and in
20 Stevens County.

21 Kettle Falls is in Stevens County and in Ferry
22 County; both of those district straddle two counties.

23 Q. When were you at Deer Park, did you teach at
24 all?

25 A. Yes, I did. I was a math teacher at Deer Park.

1 While I was there, the 16 years that I was
2 there, they developed a calculus class. I had taught
3 calculus before. So I taught calculus at Deer Park
4 for probably four to five years. Also, I got involved
5 in teaching algebra and geometry at Deer Park.

6 Q. Did you work at all in any of the at-risk
7 programs that Deer Park had?

8 A. I worked with the alternative school. We
9 didn't have a high school, that was what we call
10 Alternative High School for students, who have dropped
11 out that haven't really succeeded in the main high
12 school program.

13 I went to the superintendent and I suggested
14 that we take a look at starting an alternative school,
15 which we did do. We put the alternative school out in
16 our old wood shop, because we didn't have, you know,
17 adequate funds to keep that wood shop going. We
18 closed the wood shop down and moved that alternative
19 school into that building.

20 Q. Could you briefly describe for the Court what
21 an alternative school is?

22 A. Yes. It is alternative learning experience for
23 students.

24 The way that I looked at it, for high school
25 students, that quite often many of them had -- didn't

1 have the ability to adjust to going to six different
2 teachers, making those kinds of changes. They had a
3 lot of family issues. There was a lot of drug
4 addiction.

5 So they had dropped out and were really unlikely
6 to make it through and graduate. So the difference is
7 that you have one, it is kind of a one-room school.
8 They adjust to one that is really an advocate for
9 them.

10 They still have to meet all of the requirements
11 of the State. They have to do their work and they
12 come to school, but they are, you know, kind of a
13 one-room school house, which is a different, not as
14 challenging for many of those students.

15 Q. What was your job before Deer Park?

16 A. Before Deer Park, my family and I moved up from
17 the Los Angeles area. You know, I didn't have a job,
18 four children and a station wagon about 3,000 dollars.
19 Threw my name in the hat, and I became a detention
20 shift leader for the Spokane County juvenile detention
21 shift, working the graveyards shift for about a three
22 years. Last year I was the program coordinator for
23 the facility.

24 Q. Did that job have any relationship to your
25 education?

1 A. Yes, I think that -- I will get to my previous
2 job in a second here, which helps answer this.

3 But what I learned, on the detention shift, you
4 are basically a night life that your dealing with. So
5 you are book -- it was myself and two other staff
6 members booking children into the facility. They had
7 to be under 18.

8 The youngest child that we booked in was an 8
9 year-old for stealing cars. That was the age range.

10 What I learned was that many, many of these
11 students -- children that we booked in, particularly
12 at the age of about 14, 15 and 16 -- were, in fact,
13 high school dropouts. They were out of school.

14 It was really sad. I remember one particular
15 girl that we booked in that we booked in as a
16 prostitute at 13. She looked 25, when you book her
17 in. Once you cleaned her up, she looks 13 again. She
18 came in and out of our system. Eventually died in the
19 snow bank in Spokane.

20 I got a good feeling of what throw-away kids,
21 what ends up with their lives, what tragedies can
22 occur from that.

23 It was a good experience for me to move forward
24 in public education.

25 Q. What does public education have to do with

1 that?

2 A. My strongly hope that those that we are trying
3 to decrease that gap and provide the resources and the
4 resiliency. I think that the education is the answer
5 for those kids. It is the answer.

6 Regardless of their family situation, regardless
7 of their abilities, regardless of your color, they
8 need an education. As soon as they dropped out of the
9 system, we have lost them.

10 That was why I thought that it was important to
11 start the alternative school.

12 Q. What was your job before you worked at the
13 juvenile detention facility in Spokane?

14 A. Prior to that, as I mentioned I was in Los
15 Angeles. I worked in the private school, right next
16 to the Rose Bowl in Pasadena, California.

17 Q. How long were you there? What was your job?
18 What were your basic responsibilities?

19 A. At the school in Pasadena I was a math teacher.
20 Also, I coached a couple of sports. Then I moved from
21 there to a boys boarding school in Claremont,
22 California, called the Webb School of California.
23 Both schools I was at for four years. Both, at Webb,
24 I also became the athletic director at that school.

25 Q. Could you explain, did that, what you learned?

1 Did you learn anything in those jobs that had
2 anything to do or any relationship to your work now as
3 a superintendent at Chimacum?

4 A. Yes.

5 First, I will say that these schools were
6 college preparatory schools. The kids were very
7 wealthy. The families were very wealthy.

8 Ronald Regan's son was there. Boeing grandson
9 was there. We had very wealthy students in these
10 schools.

11 What I learned, I remember it vividly, because
12 it was my first experience in teaching. We felt that
13 it was our paramount duty to try to diversify our
14 student population. We felt that that was a very
15 important thing for our student.

16 So we had a recruiting campaign to bring in
17 students of color, particularly in the Pasadena area,
18 from the public school system. We brought these kids
19 in and quite often they would come in as third,
20 fourth, fifth, sixth graders. We went through 8th
21 grade at Chandler and 12th grade at Webb. Quite often
22 they were four or five grade levels behind. We
23 brought them in and they came in and what I learned
24 was that the resources can make a difference.

25 In a private school with resources like ours --

1 we had class sizes average around 12 to 15 student,
2 very expensive to go there.

3 We had intensive tutoring for these children.
4 We had a program that if they were to come and receive
5 the scholarship, we had parent involvement. We had a
6 person hired just to do that.

7 What we learned was that within months of
8 bringing those kids into that setting, they improved
9 two grade levels. I think that it demonstrated to me,
10 really early on in my career, that all children can
11 learn, all children can learn the high standards. You
12 need to go out there and provide those resources to
13 get them there.

14 Q. How long were you in the schools in California?

15 A. Eight years.

16 Q. What was your job before that?

17 A. Before that I was a bodily injury insurance
18 adjuster for Allstate Insurance. A great deal of my
19 day was spent in negotiating with the attorneys, which
20 was not the highlight of my day.

21 But a lot of my day was to work with victims of
22 bodily injury and try to settle a claim. So if there
23 was a dog bite, I would go out and offer money to
24 settle a claim.

25 I did that for a year and a half for Allstate.

1 I was on their management trainee program. I was
2 going to do that, but they felt that I was doing a
3 darn good job of that. They left me in there and I
4 said that I was going to become a math teacher.

5 That door opened to me because I had a college
6 degree, I learned that that was a door opener. They
7 were only taking folks at that time, who had a college
8 degree.

9 Q. You mentioned going to become a math teacher,
10 did Allstate, work have any relationship at all to
11 your career and education later on?

12 A. Well, what I learned was that math was fairly
13 important in my job, certainly reading was very
14 important, and communication was very important,
15 because I would investigate a serious accident and my
16 job was to work with the numbers, work with ratios, to
17 talk to witnesses, to develop a written assessment of
18 our liability and including those numbers and working
19 with math.

20 I provided that to my boss, who then would give
21 me the authority to settle the claim.

22 Q. Did that teach you anything that you use now in
23 your -- did that experience teach you anything that is
24 relevant to your being superintendent at Chimacum
25 right now?

1 A. I would say that I think that it is important.
2 I felt that it was important that after I left the
3 previous career, which was very short, that the
4 business community is important.

5 It is important to be aware of what is expected
6 in the business community, because I was there for a
7 year and a half.

8 Then I guess we will get to this one next, but
9 my experience in the business community let me know
10 that you need skills, particularly at that level to
11 compete and to thrive.

12 Q. You mentioned going to college -- you went to
13 college?

14 A. Yes, but I didn't say the job before the
15 college. The job before the college, your Honor, was
16 very exciting job of bill collecting in the Los
17 Angeles area, repossessing vehicles late at night.
18 That job I stayed on it six months and was very
19 anxious to leave that position.

20 Prior to that I did graduate from college.

21 Q. Before college, can you just briefly explain
22 what kind of an education did you have, briefly?

23 A. Sure, very brief.

24 I was -- a couple kids in my family. My dad was
25 enlisted man in the Navy. We traveled all over. We

1 were in Hawaii twice. We were in San Diego. We were
2 in Tacoma. We were in Springfield, Massachusetts. We
3 moved around a lot. I was in a lot of different
4 public schools. I believe that I was in three fifth
5 grades, for example.

6 Finally, we settled in a high school for my last
7 three years outside of San Diego.

8 Q. Where did you go to college?

9 A. I went to -- first, went to junior college
10 outside of San Diego called Lamar Junior College.
11 Then, from then, I went to the University of
12 Wisconsin.

13 Q. After college did you get additional degrees or
14 certificates?

15 A. I did get a master's from Whitworth College at
16 about the very young and tender age of 44. Then in
17 1999 I went to school with WSU to obtain my
18 superintendent certification and got that in 2001.

19 Q. Can you briefly describe what a superintendent
20 certification is?

21 A. What the process is you work through a
22 university and in our situation our program was a
23 cohort of the 25 individuals that went through two
24 years of study, our study was Friday evening and all
25 day Saturday, once a month, to learn and to get

1 mentored and experience the role of the superintendent
2 in the State of Washington.

3 Q. You said WSC, that is Washington State?

4 A. Yes, Washington State University.

5 Q. Any degrees or certificates beyond those?

6 A. No.

7 Q. Are you active in any education related board
8 or association?

9 A. At this time I am the president of the local
10 superintendent group in the peninsula and the Kitsap
11 peninsula, Washington Association of School
12 Administrators, and I have been with them for many
13 years.

14 Q. Can you briefly explain what the Washington
15 Association of School Administrators is?

16 A. Yes.

17 That is a group of -- an organization that is
18 involved in training. Sometimes we hookup with the
19 Principals Association to provide conferences with the
20 main goal and the main interests of helping students
21 improve learning.

22 We also have mentoring and we have our six or
23 seven hundred members are cohorts can help each other.
24 We can -- we provide leadership. We are working with
25 the State now in developing the leadership community

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1 in the State for superintendents and principals.

2 Q. You had mentioned a little earlier that you are
3 involved in board or activities in the local
4 community.

5 Can you briefly explain some of those
6 activities?

7 A. Briefly, yes, as a superintendent you do get
8 out and get involved with the community. You feel
9 that is the real link to the community.

10 Right now I am president of the United Good
11 Neighbors. United Good Neighbors is like United Way.
12 That is what we call ourselves out there.

13 I am also a member of the Chamber in Port
14 Hadlock. I am also on the board for the Substance
15 Abuse Board for the County, also on the Meth Action
16 Team in the County.

17 I think that is pretty much it for now.

18 Q. What is the Meth Action Team?

19 A. Meth Action Team is a group that is formed
20 primarily to oversee federal funding, to help
21 alleviate meth problems in your county.

22 Q. Are you an officer of the network for
23 excellence in Washington schools?

24 A. Yes, I am.

25 Q. What are you?

1 A. I am the president of that organization.

2 Q. How get involved in NEWS?

3 A. About five years ago there was a presentation
4 made to the school board. At this presentation after
5 the presentation was made our school board voted to
6 join the association.

7 So I got involved. I attended on behalf of my
8 school board that voted unanimously to participate in
9 potential litigation.

10 I attended a few of the meetings. It wasn't
11 because I left the room, but they, I made a few
12 comments, a few suggestion, as we formed our
13 organization. I was elected or selected president of
14 the organization, about four years ago.

15 Q. Who is the vice president of the organization?

16 A. James Kelly is the vice president. He is with
17 the Seattle Urban League.

18 Q. Who is the secretary of the organization?

19 A. Sarah Thornton from the Pasco School District.

20 Q. Has she also been the secretary of the
21 organization?

22 A. No, prior to her was Mike Reiley,
23 superintendent of the Bellevue Six School District.

24 Q. Why is he no longer?

25 A. Mike is deceased.

1 Q. Who is the treasurer of the organization?

2 A. The treasurer is Aimee Iverson with WEA.

3 Q. Has she also been the treasurer?

4 A. No, prior to Aimee was Jerry Painter, who is
5 now deceased.

6 Q. Could you briefly describe the types of members
7 that are in the Network For Excellence?

8 A. In the network we have the community groups, as
9 was mentioned previously, Washington State PTA, League
10 of Women Voters, American Association of League of
11 Women, the Seattle Urban League, probably 15 community
12 groups, pretty much state-wide groups. A lot of them
13 have been involved in the education, education issues
14 for many, many years.

15 We also have school districts, as was mentioned
16 before all across the State, different sizes and
17 areas. We have education associations that are the
18 education association groups of those school
19 districts.

20 We have the WEA is a member of our organization.

21 I kind of -- that kind of tells the story of who
22 we are.

23 Q. Have you reviewed in this case there was filed
24 some proposed findings and conclusions paragraph 17
25 through 93 -- give a listing of the members of the

1 NEWS and very basic information about them? Have you
2 reviewed those?

3 A. Yes, I have.

4 Q. Are those paragraphs an accurate summary of
5 those member, the group members?

6 A. Yes, they are.

7 Q. Why did NEWS bring this lawsuit against the
8 State?

9 A. NEWS looked at this, I believe all along, as
10 the last resort.

11 Prior to bringing the suit, we looked at some of
12 the work done by Washington Learns. We are just a
13 group of folks that I think are very frustrated with
14 the lack of resources to help all of our children, you
15 know, gain the knowledge and the skills that are
16 necessary to go out there and participate in the
17 democratic society.

18 I think that we have been waiting -- we have
19 been working with the State. We have been hoping and
20 we don't see results. We don't see anything
21 addressing the funding that is stabilized the funding.

22 As a group, we finally decided to vote to file
23 the suit.

24 Q. Does NEWS believe that the suit needs to be
25 maintained, even though that the House Bill 2261 is

1 passed?

2 A. I think that House Bill 2261 is a long overdue
3 first step, may not have occurred without the suit. I
4 will never know that.

5 But, again, I see 2261 as almost like putting
6 that carrot in front of a horse and getting it to go a
7 little further. It is a promise.

8 It is a 10-year implementation with the first
9 funding, I think, beginning in 2013. It has some
10 programs involved like Core 24, your Honor, which is
11 basically the number of high school credits the
12 student has to have.

13 But I am concerned, you know, the State is
14 saying that they fully fund -- I will call them Core
15 19 credits that we have now. I am worried about what
16 full funding will be for 24 credits.

17 So I just see this as an ongoing process that
18 without the help of the ruling of the Court will
19 continue to be a process rather than a result.

20 Q. Why doesn't 2261 solve the problem?

21 A. Because it is a process that just goes on. It
22 is committees. It is more committees. It is more
23 studies. You know, we have enough studies. We have
24 enough answers I think that we can move more promptly
25 than 2261 may do. I don't know what 2261 will end up

1 looking like.

2 Q. When you say it may do, what --

3 A. I don't know if the future legislature will
4 agree to that promise. I don't have confidence in
5 that. I don't know if the State will fulfill that
6 obligation.

7 I mean, it has been a lot of years since I have
8 seen those kinds of results.

9 Q. How long have you spoken English?

10 A. You know, I started out with Texas, because I
11 was born with Texas. But all my life I have spoken
12 English.

13 Q. Fair to say that you are fluent in English?

14 A. Ah-hum.

15 Q. Do you remember that Sam Irving line from the
16 Watergate Hearings, "English is my mother tongue"?

17 A. Yes, that would be my mother tongue, yes.

18 Q. I would like to hand you Exhibit 1.

19 MR. AHEARNE: May I approach, your Honor.

20 THE COURT: You may, counsel, you have
21 leave to approach your witness with that request.

22 BY MR. AHEARNE:

23 Q. Would you please read out loud what Exhibit 1
24 says?

25 A. Article IX, Section I: "It is the paramount

1 duty of the State to make ample provision for the
2 education of all children, reciting within its
3 borders, without distinction, or preference, on
4 account of race, color, cast, or sect."

5 Q. Does this have any significance to you as a
6 School District superintendent?

7 A. Yes, it does.

8 Q. What is that significance?

9 A. The significance is that it is a strongly
10 worded statement that let me know that the founding
11 folks of our State considered the education of our
12 children its paramount duty and it considered that it
13 needed to provide ample provisions. It considered
14 that we can and we shall educate all children.

15 I think what that means to me as a
16 superintendent is as an agency of the State, that is
17 what I am asked to do. It is my paramount duty.

18 Q. What does the phrase "paramount duty" mean to
19 you?

20 MR. CLARK: Objection, your Honor;
21 relevance.

22 This term has been defined by our Supreme
23 Court 30 years ago. Frankly, what any witness has to
24 say in this case about the meaning of that term has to
25 be subservient to what our Supreme Court has told it

1 is.

2 MR. AHEARNE: Your Honor --

3 THE COURT: Mr. Ahearne.

4 MR. AHEARNE: A couple points.

5 Number one, that the idea that the
6 paramount education is something that is in legal
7 terms we moved on the summary judgment, the State
8 objected, "oh, no, we have to have a trial on this."

9 We are having a trial on this. What I do
10 think is relevant as the superintendent, what do the
11 words of our constitution mean to him? That is part
12 of what we are having the trial about, your Honor.

13 THE COURT: I think that there are two
14 different questions.

15 The first question is what does the term
16 paramount duty mean and that may or may not be a legal
17 issue, or a legal term that should be defined by the
18 Court, or has been defined by the Court.

19 What does the paramount duty as to in the
20 constitution mean to this witness is a different
21 inquiry.

22 I think that that is permissible. The
23 objection is overruled.

24 MR. AHEARNE: Thank you, your Honor.

25 Shall I reask the question.

1 THE COURT: The witness can answer the
2 question, if he recalls the question.

3 THE WITNESS: I recall the question.

4 THE COURT: Very good.

5 A. Paramount duty to me would mean that it is the
6 first thing that I would do. It is the most important
7 thing that I would do.

8 I have an obligation to perform this duty first
9 and foremost.

10 Q. Doesn't the State have other important duties,
11 like social services, or prisons, or things like that?

12 A. Yes, they do. They have important, important
13 matters to consider.

14 Those aren't paramount. This education is
15 paramount.

16 Q. What does the phrase "ample" mean to you as a
17 School District Superintendent?

18 A. Ample means that we are going to provide as it
19 says, provisions or resources, that are more than just
20 adequate. They are ample. They are going to provide
21 effective opportunities. They are going to provide
22 those engagements that will meet this paramount duty.
23 It is more than just getting by. It is ample.

24 Q. As a superintendent of Chimacum School
25 District, what does the phrase "all children," mean to

1 you?

2 A. Hopefully that means not only to me, but to all
3 of my staff, that all is all. We can and must bring
4 all of our children into this 21st Century.

5 We can get them to be competitive in the world
6 market. We can get them to be, to have the knowledge
7 and the skills to be competitive, but beyond reading
8 and writing. Like I said before, it is about a
9 democratic society.

10 If I had to say anything, all means that all can
11 participate in this democratic society, have those
12 knowledge and skills to do that, all children and we
13 can do it.

14 Q. Does that really mean all kids, though, or does
15 that include kids who come from bad families or low
16 income families?

17 We have achievement gaps throughout the State.
18 Can all kids meet, do you believe, the State
19 standards?

20 A. Absolutely, I believe that. As I said in my
21 previous -- my history of this, yes, we can meet these
22 standards.

23 These minimum standards. Certainly, we would
24 want a child to read with comprehension, absolutely,
25 or it is going to be difficult to participate in a

1 democratic society.

2 Q. Is that all children?

3 A. All children.

4 Q. To you, as an educator in the superintendent of
5 Chimacum, what does the word education mean to you?

6 A. Education to me -- we have worked with this for
7 many years now, not only in terms of what Mr. Clark
8 addresses the formation of the WASL and the testing of
9 those knowledge and skills, but education as Mr. Clark
10 indicated, is a performance based system now, as a
11 result of House Bill 1209, totally agree.

12 It is performance based. It is those knowledge
13 and skills that are outlined in the four paragraphs,
14 those standards and it is the essential academic
15 learning requirement that are underneath those
16 standards.

17 All our children need to have those skills, to
18 participate. That is what education means to me. It
19 is not various programs. It is those things.

20 Q. At this point --

21 MR. AHEARNE: At this point, your Honor, I
22 would like to admit Exhibit 1. I believe that there
23 is no objection.

24 THE COURT: Exhibit 1?

25 MR. CLARK: I am sorry, your Honor.

1 THE COURT: Exhibit 1 is offered.

2 MR. CLARK: No objection, your Honor.

3 THE COURT: Exhibit 1 is admitted.

4 (Exhibit No. 1 received in evidence.)

5 Q. Mr. Blair, handing you Exhibit 676, can you
6 identify what that is, please?

7 A. That is a map that shows the 295 Washington
8 K-12 school districts.

9 MR. AHEARNE: Your Honor, I would like to
10 move admit Exhibit 676. I think that there is no
11 objection.

12 MR. CLARK: No objection, your Honor.

13 THE COURT: Exhibits 676 is admitted.

14 (Exhibit No. 676 received in evidence.)

15

16 Q. Mr. Blair, could you point out where on this
17 map Chimacum is?

18 A. Yes. It is right up, just west of Seattle
19 area, the Puget Sound (indicating). If you were to
20 cross the Hood Canal Bridge, you would end up in my
21 School District.

22 So it is on the east side of the Olympic
23 peninsula.

24 Q. One of the districts in yellow here?

25 A. I am color blind. That would be a problem

1 here. I believe that it is a yellow one.

2 Q. Could you briefly point out to the Court where,
3 generally, Kettle Falls and Deer Park are that you
4 testified about earlier?

5 A. Yes.

6 If you go over to the east side of the State,
7 almost to Idaho, and you find Spokane and then pretty
8 much go directly north, you go through the towns of
9 Deer Park, about 20 minutes from Spokane, Chewelah,
10 Colville, Kettle Falls, all on Highway 395.

11 Q. Approximately, I would like to ask some
12 questions about Chimacum School District.
13 Approximately how many students are in the Chimacum
14 School District?

15 A. Approximately 1100.

16 Q. Approximately, what is the Free and Reduced
17 lunch student?

18 A. Around 40 percent free and reduced.

19 Q. Would it be fair to say that 40 percent of your
20 students are low income?

21 A. No, it would not.

22 Q. Why is that?

23 A. Prior to the loss of funding of I-728, we
24 started a full-day kindergarten program using those
25 funds.

1 One of the, what those resources allowed us to
2 do is to have a full-day kindergarten program, where
3 we only charge our free and reduced parents \$50 a
4 month to participate.

5 What we found out was that because that was a
6 tremendous advantage to those parents and their
7 children, that we had over 50 percent that qualified
8 for free and reduced with that particular class.

9 Q. Why does that indicate to you that the 40
10 percent free and reduced price is not correctly
11 stating the amount of low income kids in your
12 district?

13 A. Well, I think that the -- you know, I think
14 that rural districts, for sure, you know, they have a
15 working class. They have a sense of pride, a sense of
16 wanting to do it on their own, a former logging
17 community; pretty independent group of folks.

18 I think that it is difficult for them to
19 register for free and reduced. So I think that some
20 of them choose not to.

21 They take care of their kids. They take care of
22 their lunches and so forth to do the best that they
23 can.

24 So I am, that is speculating that this
25 particular time, it was such an advantage for them to

1 be free, to be on that, in that qualification
2 category, because it was an opportunity for their
3 children to be in a full day kindergarten program.

4 Q. Could I summarize and see if it is summarized
5 correctly. Your student population, as a whole, is 40
6 percent free and reduced price lunch?

7 A. Right.

8 Q. The year that you got a substantial subsidy for
9 all day kindergarten, it went up to 50 percent?

10 A. Yes.

11 Q. Based on what you observed in Chimacum School
12 District, do you believe that it is more than 40
13 percent of your students are low income?

14 A. I believe that it is.

15 Q. What do you believe that the approximate
16 percentage is?

17 A. I believe that it would hover around 50
18 percent.

19 Q. Approximately what percentage of the students
20 of the school are minorities?

21 A. Probably about 10 percent are minorities.

22 Q. How many schools does the Chimacum School
23 District have?

24 A. We have a K-2 school, a 3-5 school, grades 3
25 through 5, grades 6 through 8, grades 9 through 12 and

1 then we have -- I also started Alternative High School
2 at Chimacum. So we now have Alternative High School
3 also.

4 Q. Just to give the judge a very general
5 understanding of the general layout of the Chimacum
6 School District, are all five of these school
7 districts on the same campus or five different
8 locations, or what?

9 A. K-2 is its own location, its own building.
10 Grade 3 through 12 are on the same campus,
11 separated a little bit, but on the same campus.

12 Alternative High schools in a portable behind
13 the high school.

14 Q. Approximately, how many square miles is the
15 Chimacum School Districts?

16 A. About one hundred square miles.

17 Q. Approximately, how many miles do your buses
18 travel every year transporting kids to and from
19 school?

20 A. To and from about a quarter million.

21 Q. Could you briefly just name some of the
22 communities that are within the Chimacum School
23 District?

24 A. Right around where most of my students come
25 from is the community of the Irondale and Port

1 Hadlock.

2 We also have the communities that I mentioned
3 before of Port Ludlow.

4 Going further out we have Paradise Bay. We
5 have, in our community is Indian Island, which is a --
6 the Navy ammunition depot.

7 On the other side of that we have Marrstone
8 Island.

9 Then we have about 15, 17 miles out of the
10 community of Shine, out there on the water.

11 Q. Are these communities mostly blue collar, white
12 collar, a retirement or a mix?

13 A. Port Hadlock -- Irondale right around my school
14 is blue collar, a lot of my low income students would
15 come from.

16 Port Marrstone is very rural, fairly sparsely
17 populated. We do run a bus out there to pick the kids
18 up. It is fairly wealthy.

19 Port Ludlow is the wealthy retirement community.

20 Shine is property on the water; fairly expensive
21 there, too.

22 Q. What community does the most of the kids in the
23 public schools come from?

24 A. In my district they come from Port Hadlock and
25 Irondale.

1 Q. Those are the blue collar communities?

2 A. Yes.

3 Q. Approximately, do you know approximately how
4 many of the -- what percentage of the voters in the
5 Chimacum School District have children in the school
6 districts?

7 A. We have done that study. About 20, 25 percent
8 of the voters have students in our schools last time
9 we checked.

10 Q. Who are the major --

11 MR. AHEARNE: Your Honor, I have five more
12 minutes, and I can close out this topic. Would you
13 like me to proceed or should we break?

14 THE COURT: I will defer to counsel. If
15 you want to go for your five, you are welcome to do
16 that.

17 MR. AHEARNE: Thank you, your Honor.

18 BY MR. AHEARNE:

19 Q. Who are the major employers in the Chimacum
20 School District area?

21 A. Small businesses. We do have a paper mill that
22 is located in Port Townsend, just north of us.

23 The hospital employs a lot of folks, Jefferson
24 Healthcare, the hospital there. Of course, the
25 County, city government, the school system and then

Dolores A. Rawlins, RPR, CRR, CCR Official Court Reporter,

1 small businesses, some tourism.

2 Q. As the employment base changed over the years
3 at Chimacum that you have been there?

4 A. Yes, I think that it was more farming. I know
5 that there was more farming, there was logging out on
6 the peninsula. That is pretty well dried up.

7 So those two industries have definitely
8 diminished.

9 Q. Has that changed, in your experience, the kind
10 of education that kids need to receive in public
11 schools?

12 A. I think that the kind of education that our
13 kids need continually needs to deal with the
14 technology of today's world.

15 When I was at Kettle Falls, I was fortunate
16 enough to get a tour of the Boise Cascade Lumber Mill
17 up there. They used to have so many employees.

18 Now, they have shrunk that down and the
19 employees that they have technical skills and
20 technology and use computers, the same is the true at
21 the paper mill in Port Townsend. The skill level is
22 definitely increased.

23 If we send some one over there, they have to
24 have technical skills, math skills, some science to do
25 some of the evaluation of the product. All of that is

1 involved now in those kinds of industries.

2 The hospital is, I forgot to mention, I am on
3 the board that looked at health care in Jefferson
4 County. I learned about health care and I learned
5 about how that is changing, the demands and the math
6 and the science to become a nurse or to become a
7 technician.

8 A lot of it is online, the machinery, the
9 equipment, very skilled work force.

10 Q. You mentioned online, you mean like computer
11 skills and things like that?

12 A. Yes.

13 In fact, like we might send, they might send a
14 patient's injury or illness to be looked at, you know,
15 to another hospital in a land far away. They need
16 those communications skills. Right.

17 It is changing continually.

18 Q. You mentioned the mill with the high tech jobs,
19 et cetera. Is that the kind of job or the kind of
20 education that you need in the mill in your area
21 similar to how it was before?

22 A. No. I think that it is similar -- you know
23 when I graduated in 1964, you know, I could go out and
24 work in a sheet metal factory for about 3 bucks an
25 hour, which was a living wage. I didn't have to have

1 many skills.

2 In fact, if I passed the boss to change
3 something or fix something, he would say "we don't pay
4 you to think. Get back to work."

5 I think that those skills then were low skills.
6 I don't see those for our kids any more. In fact,
7 about two-thirds of the jobs had low skills for high
8 school graduates of the '60s. Now it is 10, 11, 12,
9 13 percent.

10 No, to answer your question, it has changed
11 dramatically. Our kids need an education that is
12 demanded in the skills of our employers now. That is
13 high tech. That is problem solving, critical thinking
14 skills, project management, all of those things that
15 can shrunk the economy.

16 MR. AHEARNE: Thank you, your Honor.

17 I am at the end of the Chimacum School
18 District background.

19 THE COURT: Very good. We will take our
20 noon recess at this time. We will resume at 1:30 with
21 this witness.

22 MR. AHEARNE: Yes, sir.

23 THE COURT: We will be in recess until
24 then. The Court is in recess.

25 THE CLERK: All rise. Court is in recess.
(Court was recessed.)

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I N D E X
W I T N E S S E S

MICHAEL BLAIR
DIRECT EXAMINATION 89
BY MR. AHEARNE

E X H I B I T S

Exhibit No. 1 received in evidence 115
Exhibit No. 676 received in evidence 115

1 C E R T I F I C A T E
2 REPORTER'S CERTIFICATE
3 STATE OF WASHINGTON)
4 SS:
5 COUNTY OF KING)

6 I, DOLORES A. RAWLINS, an official reporter of
7 the State of Washington, was appointed an official
8 court reporter in the Superior Court of the State of
9 Washington, County of King, on January 15, 1987, do
10 hereby certify that the foregoing proceedings were
11 reported by me in stenotype at the time and place
12 herein set forth and were thereafter transcribed by
13 computer-aided transcription under my supervision and
14 that the same is a true and correct transcription of
15 my stenotype notes so taken.

16 I further certify that I am not employed by,
17 related to, nor of counsel for any of the parties
18 named herein, nor otherwise interested in the outcome
19 of this action.

20 Dated: August 31, 2009

21

22 -----

23 DOLORES A. RAWLINS, RPR, CRR, CCR

24 King County Superior Court, Seattle, WA

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26

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Dolores A. Rawlins, RPR, CRR, CCR Official Court Reporter,