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**Reporter's Verbatim Report of Proceedings, Monday, September
14, 2009, Volume VIII--Session 1 of 4 [Pages 1544-1620]
07-2-02323-2**

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR KING COUNTY

3

4 MATHEW and STEPHANIE McCLEARY,)
 on their own behalf and on)
 5 behalf of KELSEY and CARTER)
 McCLEARY, their two children in) SUPREME COURT OF WA
 6 Washington's public schools;) No. 84362-7
 ROBERT and PATTY VENEMA, on their)
 7 own behalf and on behalf of HALIE)
 and ROBBIE VENEMA, their two)
 8 children in Washington's)
 public schools; and NETWORK)
 9 FOR EXCELLENCE IN WASHINGTON)
 SCHOOLS ("NEWS"), a state-wide)
 10 coalition of community groups,)
 public school districts, and)
 11 education organizations,)
)
 12 Petitioners,) KING COUNTY CAUSE
) No. 07-2-02323-2 SEA
 13 vs.)
)
 14 STATE OF WASHINGTON,)
)
 15 Respondent.)

16

17 REPORTER'S VERBATIM REPORT OF PROCEEDINGS

18 --oOo--

19 MONDAY, SEPTEMBER 14, 2009
 20 VOLUME VIII - Session 1 of 4

21 --oOo--

22 Heard before the Honorable John P. Erlick, at King
 23 County Courthouse, 516 Third Avenue, Room W-1060,
 24 Seattle, Washington.

25 --oOo--

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

--oOo--

THOMAS F. AHEARNE, CHRISTOPHER G. EMCH, and
EDMUND W. ROBB, Attorneys at Law, appearing on behalf
of the Petitioners;

WILLIAM G. CLARK and CARRIE L. BASHAW, Assistant
Attorney Generals, appearing on behalf of the
Respondent.

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MONDAY, SEPTEMBER 14, 2009 - Morning Session

DANIEL GRIMM

Direct by Mr. Ahearne

1551

Recess - change in court reporters

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1 SEATTLE, WASHINGTON

2 MONDAY, SEPTEMBER 14, 2009

3 MORNING SESSION - 9:00 A.M.

4 --oOo--

5 THE COURT: Good morning. Please be seated.

6 We are back on the record in the matter
7 of McCleary versus State of Washington. This is King
8 County cause number 07-2-02323-2 Seattle, and we
9 continue with petitioner's case in chief.

10 And, Mr. Ahearne, are we proceeding with
11 the same witness or are we taking witnesses out of
12 order?

13 MR. AHEARNE: Well, we finished -- concluded
14 with Assistant Superintendent Priddy on Friday.

15 THE COURT: Right.

16 MR. AHEARNE: The state reserved their cross
17 for their case in chief.

18 THE COURT: Okay. That's right.

19 MR. AHEARNE: Ms. Priddy is off for now but
20 not excused.

21 THE COURT: Okay. And then Ms. Jones also
22 has been postponed; is that correct?

23 MR. AHEARNE: Correct.

24 THE COURT: Okay.

25 MR. AHEARNE: I will TRI to work out the

1 scheduling issues.

2 THE COURT: All right. Very good. So would
3 you like to call -- first of all, are there any
4 preliminary matters from either side?

5 MR. AHEARNE: Not from our side, Your Honor.

6 THE COURT: Okay. Mr. Clark?

7 MR. CLARK: No, Your Honor.

8 THE COURT: Okay. Thank you.

9 Mr. Ahearne, if you would like to call
10 petitioner's next witness then.

11 MR. AHEARNE: Petitioners call the Chairman
12 of the State Basic Education Finance Task Force, Dan
13 Grimm.

14 THE COURT: Okay. Representative Grimm.

15 THE WITNESS: Former.

16 THE COURT: Well, I think once you're an
17 elected official, always an elected official.

18 THE WITNESS: True for senators.

19 THE COURT: That's quite all right.

20 (Witness sworn in by the court.)

21 THE COURT: Representative Grimm, if you
22 would, for the record, state your full name, spell for
23 us your last name, and give us your contact address.

24 THE WITNESS: Daniel K. Grimm, G-R-I-M-M. My
25 contact address is 26 10th Street Court SE in Puyallup,

1 98374.

2 THE COURT: You've got the fair coming up
3 soon.

4 THE WITNESS: It's already on.

5 THE COURT: It's there.

6 THE WITNESS: Yes.

7 THE COURT: All right. Mr. Ahearne.

8 DANIEL GRIMM,

9 called as a witness herein, having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. AHEARNE:

13 Q. Good morning.

14 A. Good morning.

15 Q. Remember we've met before during your
16 deposition, correct?

17 A. Correct.

18 Q. And Mr. Clark was representing you in that
19 deposition, oh, ages ago now, right?

20 A. Yes.

21 Q. If I could ask you to turn to Trial Exhibit
22 129, please. I have one quick question.

23 That is Senate Bill 5627, correct?

24 A. Yes.

25 Q. If I can ask you to turn to what's numbered

1 as page two at the bottom. It's actually the third
2 page of the exhibit.

3 On Line 14, it says, "Subsection (2) The Joint
4 Task Force on Basic Education Finance shall consist of
5 14 members." And then under (a) it says, "A chair of
6 the Task Force with experience with Washington finance
7 issues, including knowledge of the K-12 funding
8 formulas, appointed by the Governor."

9 Do you see that?

10 A. Yes.

11 Q. And are you that person with experience and
12 knowledge appointed by the Governor?

13 A. In the opinion of the Governor, apparently
14 so.

15 Q. So that's you, though.

16 A. Yes.

17 Q. Could you please briefly outline your
18 education and work from high school on, briefly.

19 A. I graduated from Puyallup High School in
20 1967. I attended the University of Washington for two
21 years, from 1967 to 1969. I transferred to Columbia
22 University where I graduated with a BA in English
23 Literature in 1971.

24 I attended a couple of other universities,
25 such as Uppsala University in Uppsala, Sweden. And

1 then my first substantive job was as a research analyst
2 for the House Higher Education Committee of the
3 Washington State House of Representatives.

4 I then was elected State Representative from
5 the 25th Legislature --

6 Q. If I could interrupt you.

7 Were you director of OPR for a while?

8 A. Yes, I was, for a year and a half.

9 Q. All right.

10 A. When I was elected in 1976, I then took
11 office in 1977. After six years as a legislator in a
12 number of different capacities, I became the Chairman
13 of the House Ways & Means Committee, which is
14 responsible for all financial, budgetary, revenue, and
15 capital construction matters that came before the
16 Washington State House of Representatives.

17 Then in 1988 --

18 Q. Actually, if I could interrupt for a second.

19 In the House of Representatives, you served
20 six terms?

21 A. Yes.

22 Q. And your first term, did you hold any sort of
23 position?

24 A. Yes, I was the Assistant Majority Whip.

25 Q. Could you please tell us, what is the

1 responsibility of a whip?

2 A. Make sure people are --

3 Q. Politely.

4 A. Make sure voting members of the House are on
5 the Floor when the time comes to vote and that they
6 vote the way they have indicated on certain matters.

7 Q. Okay. And then that's for your first term,
8 correct?

9 A. Yes.

10 Q. Second term, did you have a committee
11 chairmanship?

12 A. Yes. I was the Chairman of the House Higher
13 Education Committee.

14 Q. Third term, what position did you have?

15 A. I was the elected Chairman of the House
16 Democratic Caucus, which was the minority caucus at
17 that time.

18 Q. And, briefly, what does that job entail?

19 A. Well, you preside over caucus meetings where
20 issues are discussed in private, off of the Floor of
21 the House. Other than that, you're a member of the
22 leadership team that helps develop policy initiatives,
23 and determines what issues should be considered and/or
24 potentially passed by the House.

25 Q. Okay. And then your fourth, fifth, and sixth

1 terms, that's when you were the Chair of the Ways &
2 Means Committee you were discussing?

3 A. Correct.

4 Q. Okay. And you were then -- you were elected
5 in '70 -- your first term was '77, correct?

6 A. Yes.

7 Q. So you were in the House then when the
8 special session was called that passed the Basic
9 Education Act in, I think it was, June of 1977,
10 correct?

11 A. Yes.

12 Q. And that was after Judge Dorn had issued his
13 trial court decision in January of 1977, correct?

14 A. That's my memory. I rely upon your
15 knowledge. That would be greater than mine.

16 Q. Okay. I had interrupted. Going now into
17 being elected as treasurer.

18 A. I apologize. I was trying to be brief.

19 I was elected --

20 Q. Actually, I was a little upset that you
21 weren't getting the grief I get from talking too fast.

22 A. She offered a remonstrance.

23 I was elected to State Treasurer in 1988 and
24 assumed office in January of 1989. I served as State
25 Treasurer for eight years, and then I retired from the

1 office. I didn't run again eight years later in 1996.
2 And since then I have been in the private sector.

3 Q. Could you outline just generally what the
4 State Treasurer does.

5 A. The State Treasurer manages all short-term
6 liquid cash instruments for the state and also provides
7 for the implementation and administration of the
8 state's payroll. Those are probably the two major
9 responsibilities.

10 Also responsible for the management of a
11 local government investment pool, which is a voluntary
12 collection of assets from local governments in the
13 state, cities, counties, school districts, et cetera.

14 Q. Okay. And then after you left the
15 Treasurer's Office, generally what did you do?

16 A. Well, I went into the private sector, and for
17 two years I worked as a consultant for a number of
18 different interests including a long-haul garbage
19 company, for a firm that --

20 Q. Is that with Bangco?

21 A. Yes -- that did -- I worked for another
22 firm -- had a contract with another firm that provided
23 performance audit services to public pension funds
24 called Independent Fiduciary Services. I had other
25 small contracts. And I did that for about two years.

1 And, after two years, I became an employee of
2 a European private equity firm, Doughty Hanson &
3 Company.

4 Q. And that's where you're currently employed
5 now?

6 A. That is correct.

7 Q. Okay. And have you -- throughout the course
8 of this time, have you also been involved in any civic
9 or volunteer type of activities?

10 A. Yes. I am currently the president of the
11 Washington State Historical Society, Board of
12 Directors. I had previously been the chairman of a
13 non-profit board that managed residential care for
14 people who have developmental disabilities,
15 specifically autism. I've done a number of other civic
16 related -- I served on the Puyallup Planning Commission
17 for eight or nine years.

18 Q. Okay. If I could ask you to turn to Trial
19 Exhibit 127, please.

20 You had mentioned the Washington State
21 Historical Society.

22 Is this the Annual Report, the 2007 Annual
23 Report, of the Washington Historical Society and then
24 some additional pages from the society's webpage?

25 A. It appears to be, yes, as I recall it.

1 Q. Okay. And do you recognize this from your
2 deposition, this package of papers here?

3 A. Yes.

4 Q. And could you briefly explain what is the
5 Washington State Historical Society.

6 A. The Washington State Historical Society is a
7 non-profit entity that's recognized in state statute.
8 It is operated as a state agency, but it is also a
9 501(c)(3) non-profit organization, and it acts as the
10 primary repository and interpreter of historic --
11 Washington state historical artifacts, ephemera,
12 documents, photographs, et cetera. And, as I said, it
13 provides interpretive exhibits and also programs, for
14 instance, for students so that they can learn more
15 about the history of the State of Washington, but also
16 for everyone who visits the museum and also in online
17 computer programs.

18 Q. And why does the Washington State Historical
19 Society believe it's important for students to know
20 Washington history?

21 A. For the same reason that education,
22 generally, is good. The more one knows about one's
23 community, about one's history, about one's culture,
24 the better able one is to exercise good judgment in the
25 conduct of civic affairs.

1 Q. And you mentioned the museum. Where is the
2 museum?

3 A. It is on Pacific Avenue in Tacoma.

4 Q. Is that something schools have field trips to
5 and things like that?

6 A. Yes.

7 Q. Do you think that's an important part of
8 learning the history of Washington, the field trips?

9 A. Yes.

10 Q. And if I could ask you to turn to -- I don't
11 think its pages are numbered, so it will be, counting
12 from the back, the fifth page from the back that says,
13 Facing Washington.

14 Do you see that?

15 A. I don't -- from the back?

16 THE COURT: From the back of 127.

17 THE WITNESS: No, I'm not seeing it. I see
18 it now, yes.

19 BY MR. AHEARNE:

20 Q. Facing Washington. Right under that is,
21 About the Project.

22 Do you see that?

23 A. I see Curriculum Guide.

24 Q. Just those lines.

25 A. Yes.

1 Q. And then the second paragraph down it says,
2 "The Washington State Historical Society provided a
3 detailed curriculum guide incorporating the Essential
4 Learning Requirements for Washington schools mandated
5 by the legislature in 1993."

6 Do you see that?

7 A. Yes.

8 Q. Is that referring to House Bill 1209?

9 A. Presumably.

10 Q. Okay. And then the curriculum guide that
11 follows is the curriculum guide on the following two
12 pages is what's being referred to there?

13 A. Yes.

14 Q. Okay. If I could ask you to please turn to
15 Exhibit 128, please?

16 THE COURT: Counsel, I'm sorry. Could we
17 back up for just a second? Where were you just reading
18 from about the curriculum guide?

19 MR. AHEARNE: My copy of the exhibit is the
20 fifth page from the back, it says, Facing Washington.

21 THE COURT: Correct.

22 MR. AHEARNE: The second full paragraph down.

23 THE COURT: Yes.

24 MR. AHEARNE: "Washington State Historical
25 Society provided a detailed curriculum guide

1 incorporating the Essential Learning Requirements for
2 Washington schools mandated by the legislature in
3 1993."

4 Is the one in your notebook different
5 than the one I have?

6 THE WITNESS: It may be out of order. I'm
7 not sure.

8 THE COURT: I think we have --

9 MR. AHEARNE: Your Honor, turn one back --
10 no, one page further.

11 THE COURT: Okay.

12 MR. AHEARNE: Are we set then?

13 THE COURT: We are. Thank you.

14 MR. AHEARNE: And then the page that Your
15 Honor was on after that curriculum guide, that's the
16 curriculum guide that I asked about.

17 THE COURT: Thank you.

18 BY MR. AHEARNE:

19 Q. If I could ask you to turn to page 128,
20 please. That's House Resolution Number 2007-4624
21 passed in February of '07, correct?

22 A. Yes.

23 Q. If I could ask you to look at the first,
24 Whereas, clause where it says, "Washington History Day
25 is a yearlong educational program that empowers

1 teachers to improve history education, so that every
2 citizen has historical understanding and skills to be
3 an active and engaged citizen."

4 Do you see that?

5 A. Yes, with the correction that where you said
6 citizen, it said student.

7 Q. Okay. Thank you.

8 A. You're welcome.

9 Q. And then is Washington History Day something
10 that the Historical Society's involved in?

11 A. Yes.

12 Q. Could you briefly explain what the Historical
13 Society does with respect to Washington History Day?

14 A. I don't know all of the details because I'm a
15 board member, not a staff member. But the history day
16 project includes a focus and emphasis on programs and
17 instructional materials provided to teachers. It's a
18 focal point of what is really an on-going yearlong
19 program.

20 Q. And is it part of the Historical Society's
21 belief -- strike that. Is it part of your belief that
22 every student needs the historical understanding and
23 skills to be an active and engaged citizen?

24 A. They certainly would benefit from it. I
25 would submit need, yes.

1 MR. AHEARNE: Okay. Your Honor, at this time
2 I'd like to move to admit Trial Exhibit 127 and 128,
3 please.

4 THE COURT: Exhibit 127 is offered.

5 MR. CLARK: No objection, Your Honor.

6 THE COURT: 127 is admitted.

7 EXHIBIT ADMITTED

8 THE COURT: Exhibit 128 is offered.

9 MR. CLARK: No objection.

10 THE COURT: Exhibit 128 is admitted.

11 EXHIBIT ADMITTED

12 BY MR. AHEARNE:

13 Q. If I could please ask you to turn to Trial
14 Exhibit 126, please. And could you identify what
15 Exhibit 126 is briefly.

16 A. 126, based on a cursory review of the first
17 page of the exhibit, it is the first page or a copy of
18 the first page of an Interim Report of the Temporary
19 Committee on Educational Policy Structure and
20 Management, known at the time as the 3609 Commission
21 because that was the bill number of the legislation
22 that created this group.

23 Q. Okay. And how would you refer to this group,
24 as the commission, the committee? What shorthand
25 should I use?

1 A. Whichever you prefer. I don't recall what it
2 was called. Committee is generic.

3 Q. Committee. Okay.

4 And you said the first page. The following
5 pages are the rest of the report though, right?

6 A. Yes, it appears to be.

7 Q. Okay. And then this first page is a letter
8 from a Fred Haley. Who's Fred Haley?

9 A. The late Fred Haley was the chairman of this
10 3609 Committee.

11 Q. Okay. And his letter states in the second
12 paragraph, "The Committee conducted research, reviewed
13 the literature, retained consultants, and held more
14 than 50 meetings in all regions of the state in the
15 development of this report."

16 Is that a fair incapsulation of the process
17 you all went through?

18 A. Yes. It was extensive.

19 Q. And with respect to K-12 education, was the
20 3609 Committee's assignment similar, different, or the
21 same as the Basic Education Finance Task Force's
22 assignment?

23 A. As I recall -- and I was a member of both --
24 they were basically the same.

25 MR. AHEARNE: Okay. Your Honor, I'd move to

1 admit Trial Exhibit 126.

2 THE COURT: 126 is offered.

3 MR. CLARK: No objection, Your Honor.

4 THE COURT: 126 is admitted.

5 EXHIBIT ADMITTED

6 BY MR. AHEARNE:

7 Q. If I can please ask you to turn to Trial
8 Exhibit 125.

9 Is this the Final Report that eventually came
10 out of the 3609 Commission?

11 A. It appears to be, yes.

12 Q. If I could ask you to please turn to Arabic
13 page 2 of the bottom left-hand corner.

14 A. Yes.

15 Q. And, actually before I get into that. You
16 were a member of the 3609 Commission, correct?

17 A. Yes.

18 Q. And, generally, what kinds of people were
19 members or involved in this commission? Can you just
20 give the court a rough outline? All legislators, a mix
21 of everything, what?

22 A. A mix of everything that would have, what I
23 would call, stakeholder groups that were legislators,
24 representatives of -- at least one representative of
25 the school board, community leaders, such as Fred

1 Haley.

2 Q. And moving then to page two, the third
3 paragraph down it states, "Washington student dropout
4 rate has escalated to the point that one in four 9th
5 graders will not be present at graduation."

6 Do you see that?

7 A. Yes, I do.

8 Q. Was that a concern to the 3609 Commission?

9 A. As I recall, yes, it was.

10 Q. And why is that? Why's that matter?

11 A. Well, it's difficult for one to derive
12 benefit from educational programs unless one is in
13 attendance and has the opportunity to demonstrate
14 command at the fact that they've learned. Attendance
15 is an essential element, generally, of the ability to
16 learn.

17 Q. And the following paragraph that begins with
18 "beyond," do you see that?

19 A. Yes, I do.

20 Q. Then the second sentence there's a --
21 "Education operates in many contexts; perhaps most
22 important is the civic. Simply stated, this country
23 relies upon an educated populace for its very
24 existence."

25 Do you see that?

1 A. Yes, I do.

2 Q. Was that a concern or an important factor to
3 the 3609 Commission?

4 A. Yes.

5 Q. Why is that?

6 A. Because -- my memory of the discussion was
7 that there are two imperatives for education, one is an
8 economic imperative creating people who are prepared to
9 assume a productive role in the economy, and that
10 there's a second, which is to be a knowledgeable,
11 engaged citizen and that that would entail a
12 familiarity with an understanding of the history of the
13 country, the history of the local -- the state and our
14 local jurisdictions.

15 Q. Okay. If I could ask you to turn to page 13,
16 please. And near the bottom of the page, there's a
17 section heading that says, Core Competencies and
18 Graduation Requirements.

19 Do you see that?

20 A. Yes, I do.

21 Q. Then on the next page, fourth bullet down, it
22 states, "All high school students, whether their
23 intentions include further education or immediate
24 employment, need to master the core competencies by the
25 conclusion of their high school career."

1 Do you see that?

2 A. Yes, I do.

3 Q. Why was the -- or why did the 3609 Commission
4 come to that conclusion that it had to be all students
5 instead of lots?

6 A. Well, I don't remember the conversation
7 specifically so it would be a reconstruction on my
8 part, but it would be consistent with the tenor of the
9 discussions that we had and testimony that we received
10 that it is aspirational that the opportunity should be
11 provided and that the more the better and all would be
12 better than more.

13 Q. Okay. And when you say opportunity, do you
14 mean a realistic effective kind of opportunity?

15 A. Yes.

16 Q. If I could ask you to turn to page 16.
17 There's a section heading about a third of the way
18 down, Foreign Languages.

19 Do you see that?

20 A. Yes.

21 Q. Could you briefly explain how foreign
22 languages played into what the commission was
23 recommending?

24 A. I don't recall.

25 Q. Okay. But it would be stated here in this

1 report.

2 A. This would be an accurate reflection at my
3 memory.

4 Q. All right. And so if I can ask you to turn
5 to page 18, please, under counseling.

6 A. Yes.

7 Q. And the first sentence says, "It is
8 regrettable that the position and importance of
9 counseling in the schools have diminished in recent
10 years."

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you have a recollection as to what the
14 concern was there with respect to counseling or what
15 counseling's important?

16 A. No, I don't specifically.

17 Q. A long time ago.

18 A. Yes.

19 Q. Okay. Just got a few more questions then on
20 page 36. There under Earlier Childhood Education
21 there's a booklet that says, "The state should fund
22 preschool opportunities or programs for children
23 considered to be disadvantaged by virtue of family
24 income below the official federal poverty level."

25 Do you see that?

1 A. Yes, I do.

2 Q. Do you recall what the basis was in the 3609
3 Commission for its recommendation on early learning?

4 A. Yes, I do have a recollection of this
5 conversation, and it was refreshed during the
6 proceedings of the Joint Task Force that I recently
7 chaired. The arguments and the discussion were
8 basically the same.

9 Q. And what are -- if you can incapsulate, what
10 are the arguments or basis for that?

11 A. The argument is that the single greatest
12 correlation between performance -- academic performance
13 and achievement is income, family income, that the
14 higher the income, the higher the tendency to perform.
15 The lower the income, family income, the poorer the
16 performance, as a general rule -- as a rule.

17 And the premise is that the earlier one can
18 identify children from low income families and provide
19 them with educational opportunities, the more likely
20 they are to be able to have the state and the school
21 system compensate for the problems associated with low
22 income and the inability to develop facility and
23 academic command of subject matter.

24 Q. If I can ask you to turn to page 58, please.
25 At the top of the page it says, Continuing Professional

1 Development, and the first sentence says, "Continuing
2 professional development programs are vital to the
3 maintenance of a vigorous, informed, and enthusiastic
4 teacher corps."

5 Do you see that?

6 A. Yes, I do.

7 Q. And then on page 59, the first bullet, the
8 recommendation is, "The school year for teachers should
9 be increased from 180 to 190 days to accommodate the
10 development and conduct of building-based improvement
11 plans and planned programs of continuing professional
12 development in each district."

13 Do you see that?

14 A. Yes, I do.

15 Q. All right. These 10 days between 180 and
16 190, are those what's referred to today, commonly, as
17 learning improvement days?

18 A. I guess so. I'm not sure about the changes
19 in terminology.

20 Q. Okay. What was the purpose for these 10 days
21 then?

22 A. The ostensible purpose was to provide
23 districts an opportunity to improve teacher knowledge
24 and skills so that they could become better teachers.

25 Q. And the commission was recommending that 10

1 days be added to the 180-day school year to accomplish
2 that?

3 A. Yes.

4 Q. If I could ask you to please turn to page 96,
5 please. It says Partial List of Committee
6 Consultants.

7 Do you see that?

8 A. Yes.

9 Q. Could you briefly outline the process that
10 the 3609 Commission went through to chose their
11 consultants -- or, I mean, how did that work?

12 A. My memory is that significant latitude and
13 discretion was granted to the Executive Director
14 Dr. William Chance. My assumption is that contracts
15 let by Dr. Chance were probably approved pro forma by
16 the 3609 Commission. But I don't recall the commission
17 being involved in an interviewing process, a bidding
18 process.

19 Q. And I noticed near the bottom of the list is
20 an Allan Odden.

21 Do you see that?

22 A. Yes.

23 Q. Is that the Odden from the Picus and Odden
24 studies that were later done for Washington Learns?

25 A. It's certainly spelled the same way.

1 Q. Do you have any doubt that it's the same
2 person?

3 A. No, I have no doubt.

4 Q. Okay. And then starting on page 97, there's
5 a list of committee speakers that goes on for several
6 pages.

7 Just out of curiosity, if you'd turn to page
8 98. About an inch and a half down there's a James
9 Monasmith from Colville High School.

10 Do you see that?

11 A. Yes.

12 Q. You don't, by chance, remember what James
13 Monasmith from Colville spoke to the commission about.

14 A. No, I do not.

15 Q. Okay. Then one last memory test on page
16 101. About an inch from the bottom, there's a Gloria
17 De Martinez from the Yakima School District.

18 Do you see that?

19 A. Yes.

20 Q. You don't recall what she talked about to the
21 commission, do you?

22 A. No, I do not.

23 Q. From the Yakima -- okay.

24 If I could ask you to please turn to page
25 91. And that's Senate Bill 3609 that created the 3609

1 Commission that produced this report; is that correct?

2 A. Yes.

3 Q. It looks like that was passed in the 1982
4 Special Session, it says in the upper right-hand corner
5 there?

6 A. That's what it says, and that is my memory.

7 Q. Okay. I'd like to fast forward 25 years and
8 go back to Exhibit 129, please.

9 Is Exhibit 129 the Senate Bill that created
10 the Task Force that produced the Basic Education
11 Finance Task Force Report?

12 A. Yes, it appears to be.

13 Q. And like the 3609 Commission, did the Basic
14 Ed Task Force hold numerous meetings and hear from a
15 variety of witnesses?

16 A. Yes.

17 Q. And could you briefly outline the process
18 that the Basic Education Finance Task Force went
19 through to produce its Final Report?

20 A. We conducted a number of hearings or
21 presentations and a few public hearings, which anyone
22 who wished to testify could, and several people did.
23 But, for the most part, the meetings we convened were
24 devoted to presentations from individuals who had some
25 expertise in specific areas of common school education.

1 Q. If I could interrupt.

2 When you say common schools, is that the
3 state public schools?

4 A. The public K-12 public school system.

5 Q. Okay.

6 A. We had a number of meetings where
7 presentations were made by individuals who are
8 recognized for their expertise in education matters.
9 And then subsequent -- during, but mainly subsequent,
10 to the public hearings and the presentations, the Task
11 Force conducted a number of meetings, some quite long,
12 to develop specific recommendations.

13 Q. And when you referred to presentations by
14 people with expertise, how are those people selected?
15 Were they -- was it you -- as a chair, were you trying
16 to get information from all perspectives or just one
17 perspective? What's the process that was gone through?

18 A. Well, I wanted to provide an opportunity for
19 the broadest and deepest possible ray of information to
20 be presented to the Task Force. It was somewhat
21 limited in the ability to do so. Most of the people
22 who were very interested and had developed an expertise
23 had previously established themselves and had
24 previously established firm positions on most of the
25 issues.

1 So I don't know that it was as broadly based
2 or as varied as one might prefer, but I did the best I
3 could. And the way in which I did that is I asked
4 Roxanne Lieb, the Executive Director of the Washington
5 State Institute for Public Policy, to identify people
6 who could present information, and then I pretty much
7 left it to her discretion to determine who and when.

8 Q. And what is the Washington State Institute
9 for Public Policy?

10 A. It's a small research office which was
11 previously, and may still be, affiliated with the
12 Evergreen State College. When it was created, it was
13 affiliated with the Evergreen State College. But it
14 really operates as a research arm for the Washington
15 State Legislature. And while they -- and they were
16 assigned in Senate Bill 5627 administrative
17 responsibility and some recommendation responsibility
18 and authority for policies pertaining to education
19 funding, which is in this legislation.

20 Q. Okay. And did the research arm of the
21 legislature, Washington State Institute of Public
22 Policy provide data information studies to the Task
23 Force?

24 A. They did. Much of what they did was a review
25 of existing research. I think they did conduct or

1 contracted for some independent research as well.

2 Q. Okay. And did the research and the
3 presentations and the work the Task Force did then
4 result in a Final Report that was based on -- based on
5 research and study?

6 A. Senate Bill 5627 explicitly assigned the Task
7 Force the responsibility of basing its recommendations
8 upon the best available research.

9 Q. Did the Task Force do that?

10 A. In the opinion of Task Force members, I
11 believe so, yes.

12 Q. Okay. If I could ask you to turn to Exhibit
13 140, please.

14 Is Exhibit 140 a collection of the agendas
15 and various minutes from Task Force meetings?

16 A. It appears to be, yes.

17 MR. AHEARNE: Okay. Your Honor, we move to
18 admit Trial Exhibit 140.

19 THE COURT: 140 is offered.

20 MR. CLARK: No objection.

21 THE COURT: 140 is admitted.

22 EXHIBIT ADMITTED

23 BY MR. AHEARNE:

24 Q. Could you just briefly explain, what's the
25 general process that was gone through to create the

1 agendas and the minutes? Who did it, you know --

2 A. The actual administrative process was under
3 the jurisdiction of Roxanne Lieb. I'm responsible
4 ultimately for all agendas as the Chairman of the Task
5 Force, but I felt quite comfortable delegating the
6 day-to-day authority to Roxanne. And there were
7 instances when I revised the agenda following her
8 recommendation to me, but very few.

9 Q. Okay. If I could ask you to turn to Trial
10 Exhibit 124, please.

11 Is Exhibit 124 the Final Report of the Joint
12 Task Force on Basic Education Finance?

13 A. Yes, it appears to be so.

14 Q. If I could ask you to turn then to the
15 January 14, 2009 transmittal letter signed by you in
16 the front.

17 Do you see that?

18 A. Yes.

19 Q. Is this your transmittal letter to the
20 Governor, Lieutenant Governor, and Speaker as the chair
21 of Basic Ed Finance Task Force?

22 A. Yes, it is.

23 Q. Is this then similar to the letter that
24 Chairman Haley sent with that 3609 Commission
25 transmitting the report to the Governor, the Lieutenant

1 Governor, and Speaker?

2 A. In form, probably. I don't -- I haven't seen
3 it. I'm not sure about the substance, but, in form,
4 yes.

5 Q. And as the first paragraph of your letter
6 states, "As required by Senate Bill 5627, I am
7 submitting the Final Report of the Joint Task Force on
8 Basic Education Finance."

9 Do you see that?

10 A. Yes.

11 Q. And would I be correct, then, in assuming
12 that the Final Report is the result of the work that
13 was called for in Senate Bill 5627?

14 A. Fundamentally, yes, although the Task Force
15 members are able to exercise discretion, so it would be
16 up to each of them to determine whether, in their
17 opinion, their recommendations and decisions are based
18 upon research or some other source of information.

19 Q. And there was a -- before the Final Report
20 was done, there was a vote, correct?

21 A. Yes.

22 Q. And were there any dissenting votes against
23 adopting the Final Report?

24 A. No.

25 Q. All right. If I can ask you to look on the

1 left-hand side, Members, Dan Grimm, Chair,
2 Superintendent of Public Instruction, the Director of
3 the Governor's Executive Policy Office.

4 Do you see that list of members there?

5 A. Yes, I do.

6 Q. And then there are also alternative --
7 alternates Kathy Heigh and Fred Jarrett.

8 Do you see that?

9 A. Yes, I do.

10 Q. And were the alternates as active, less
11 active, more active than the members themselves?

12 A. Their level of activity was comparable to
13 those who were among the most active. They were more
14 active than a few members of the Task Force, but they
15 were very active participants.

16 Q. Okay. As a practical matter, the fact that
17 they're alternates, they participate equally with the
18 12 members?

19 A. Yes.

20 Q. Then I also see it says, Staff to the Task
21 Force and then it lists Roxanne Lieb and several
22 others.

23 Is this the Washington State Institute for
24 Public Policy that you were referring to?

25 A. Yes.

1 Q. And did the state provide any other experts
2 or consultants to the Task Force as well?

3 A. When you say the state, the Senate Bill 5627
4 included an appropriation that allowed for the
5 institute to contract for services, research services,
6 and there were research services provided for the
7 institute and to us.

8 Q. Okay. Would Mr. Goldhaber be one of them?

9 A. Yes, Professor Goldhaber.

10 Q. Lori Taylor would be another?

11 A. Yes.

12 Q. And Jill Severn would be another one?

13 A. Yes.

14 Q. Okay. And were they hired then by the
15 Washington State Institute or selected by Washington
16 State Institute of Public Policy to provide you with
17 information, or was it something that you, as Chair,
18 selected? I'm trying to figure out the process to pick
19 out the consultants.

20 A. The process for selecting consultants was
21 left to the discretion of the executive director of the
22 institute.

23 Q. Okay. And then there were others that made
24 presentations as well, for example, Jennifer Priddy
25 made presentations to you?

1 A. Yes, a number of presentations.

2 Q. And how would you characterize her knowledge
3 about how K-12 is funded and the programs that they
4 fund?

5 A. She would be, if not the foremost expert and
6 most knowledgeable individual on state education
7 finance matters, she would certainly be among the
8 most -- those with the most expertise and knowledge.

9 Q. Okay. And that second paragraph of your
10 transmittal letter, you state, "Developing educational
11 finance and related policy recommendations has been
12 every bit as challenging as it is essential to the
13 future of our state."

14 Do you see that?

15 A. Yes, I do.

16 Q. Why is developing educational finance and
17 related policy recommendations essential to the future
18 of our state?

19 A. For the same reasons that I offered in answer
20 to previous questions, that education is really
21 essential to good self-government and to our ability to
22 thrive economically.

23 Q. Okay. If I can ask you to turn to page,
24 Roman numeral ii, please. The last paragraph states,
25 "The Task Force recommends a specific program of

1 education based on its broad review of education
2 research."

3 Do you see that phrase?

4 A. Yes, I do.

5 Q. As the Program of Education Task Force is
6 recommending what is outlined on the following two
7 pages, Roman numeral iii and Roman numeral iv?

8 A. Yes.

9 Q. And is it then the more detailed presentation
10 of that program is what's then on pages five through 21
11 of the report?

12 A. Yes.

13 Q. Okay. If I could ask you to turn to page
14 Arabic 1, please -- or, actually, I apologize. Sorry.
15 I already covered that.

16 So how about page four, Arabic 4, please.

17 At the top it says Basic Education
18 Definition. Are you on that page?

19 A. Yes.

20 Q. Then under Key Ideas has four bullets, and
21 above it it says, "Current law also calls for students
22 to learn the skills to:" And then "Read with
23 comprehension, write effectively." Next bullet, "Know
24 and apply core concepts." Third bullet, "Think
25 analytically, logically." Fourth, "Understand the

1 importance of work and finance," et cetera.

2 Do you see those bullets?

3 A. Yes, I do.

4 Q. Are those the skills identified in House Bill
5 1209?

6 A. That's my memory, yes.

7 Q. If I could ask you to turn to page five,
8 please. The third paragraph down, last few lines, it
9 says "preschool for three- and four-year olds so they
10 can begin public school at the same starting line as
11 their peers."

12 Do you see that?

13 A. Yes, I do.

14 Q. Was the reasoning for the Task Force,
15 including the preschool for three- and four-year olds,
16 similar to the reasoning you explained with the 3609
17 Commission?

18 A. Yes.

19 Q. If I could ask you to turn to pages eight
20 through 10, please.

21 Are these tables on pages eight through 10
22 the staffing levels, and especially with respect to the
23 NERC's, the funding levels the Task Force concluded
24 were needed for the state's public schools?

25 A. Yes.

1 Q. Okay. Ask you to please turn to page 14.
2 Under Earlier Learning and then under Key Ideas it
3 says, "The Task Force believes that an important
4 purpose of public education is to help equalize
5 opportunities for children from all demographic and
6 income groups."

7 Do you see that?

8 A. Yes, I do.

9 Q. What's meant by equalizing opportunities?

10 A. The premise is that children from higher-
11 income families are exposed to both parents and others
12 that provide a richer learning experience for a
13 developing intellect than is true of lower-income
14 families. And so targeting educational opportunities,
15 services to those lower-income students -- students
16 from lower-income families would compensate for the
17 dearth of exposure that they have and would provide
18 them with experiences comparable to what students from
19 higher-income families would have at the time they
20 enter kindergarten.

21 Q. And then in that same paragraph, the last
22 sentence, "Today students from low-income families are
23 likely to start kindergarten behind their peers, and
24 many are never able to catch up."

25 Do you see that?

1 A. Yes, I do.

2 Q. Is that based on the presentations and the
3 research that was presented to the Task Force in the
4 course of your proceedings?

5 A. Yes, it was.

6 Q. If I could ask you to turn to page 15,
7 please. Under School Employee Compensation, under the
8 Task Force Recommendation, the first sentence says,
9 "School employee compensation should be sufficient to
10 attract and retain highly competent teachers and other
11 school staff."

12 Do you see that?

13 A. Yes, I do.

14 Q. I'd like to take just one example of school
15 staff -- school administrators.

16 With respect to school administrators, does
17 the state fund the actual salary that the schools pay
18 for public school administrators?

19 A. No.

20 Q. Is it close?

21 A. No.

22 Q. From your experience, why is that?

23 A. A lack of political will on the part of
24 legislators.

25 Q. What do you mean by that?

1 A. Highly-paid public employees are often an
2 object of scorn and derision by the general public.
3 Legislators often -- many legislators are often
4 concerned that if they were to actually acknowledge
5 what it costs to hire a superintendent or other highly-
6 paid, highly-qualified staff, whether it's in the
7 common school system or in the state government
8 generally, that they will be criticized for that by the
9 voters in the districts that elected them.

10 They prefer to avoid that criticism if they
11 can do so without adversely affecting the ability to
12 attract and retain those staff. And given that there
13 is -- is local access to revenue and/or money can be
14 diverted from one allocation to the next, there is
15 sufficient resources provided to each and every school
16 district to pay their superintendents and other highly-
17 qualified staff at any level they so choose. So the
18 decision on the part of legislators is, we will do a
19 low number so that we don't become unpopular with the
20 general population, and, yet, the school districts will
21 be able to hire and pay for the staff they need, and
22 they can take the heat for the salaries.

23 Q. And that extra money needed to actually pay
24 the market salary, that's paid for with, for example,
25 local levy funds?

1 A. It could be. It's just that all money is
2 fungible -- virtually all money is fungible at the
3 local level, so whether it comes from building
4 maintenance or local levies, it's difficult to
5 determine.

6 Q. Okay. And you said virtually all moneys are
7 fungible, but a lot of money has strings. Like,
8 federal money, does that have strings attached to it?

9 A. Yes. That would be the classy example of the
10 grant money from the federal government which has
11 significant limitations on the objects, the expenditure
12 it can be used for.

13 Q. Okay. Now, if I understood correctly, one of
14 the proposals you were advocating was the state doing a
15 salary survey to determine what the actual market rate
16 was for various school district jobs; is that correct?

17 A. Yes. And, if I remember correctly, the final
18 recommendation includes reference to a salary survey.

19 Q. And does the state do salary surveys for
20 other types of employees, other than school district
21 employees?

22 A. Yes. Conducts regular and very comprehensive
23 salary surveys for traditional state employees.

24 Q. Did the Task Force reach any conclusions on
25 whether there's a shortage of qualified math, science,

1 special ed, bilingual teachers in Washington?

2 A. Evidence was presented and there was no
3 dispute offered, either publicly or from any informed
4 source or from any member of the Task Force, indicating
5 that there is a shortage of qualified math, science,
6 and other categories of teachers, specifically, special
7 education in some instances, in some districts.

8 Q. Okay. Would that also include bilingual ed?

9 A. Yes. Like I said, there were a number of
10 categories, and it varied sometimes from district to
11 district.

12 Q. Okay. You've also -- part of the making up
13 the difference between the state's program funding
14 formula amount then, for example, teacher salaries is
15 TRI pay; is that correct?

16 A. Yes.

17 Q. And you've made comments along the lines of
18 the state's position on TRI pay being disingenuous?

19 A. Yes.

20 Q. Can you explain what you mean by that?

21 A. I'll try. It is a complex matter.

22 For several years, back in the late '70s and
23 earlier '80s, the state provided very modest salary
24 increases for teachers. Teachers and local school
25 officials argued that there should be increased

1 opportunities for salary increases for many school
2 districts, and successfully argued, and the legislature
3 enacted legislation called TRI, which stands for Time,
4 Responsibilities, and Incentives. When it was
5 introduced, it was TRIP, Time, Responsibility,
6 Incentives, and Performance. The P for performance was
7 dropped, TRI was enacted, and what it allowed and
8 authorized was for local school districts to use
9 locally derived revenues from local levy property taxes
10 for salary increases. Ostensively associated with and
11 justified by increased time on task, additional
12 responsibilities, or the rather ambiguous, an incentive
13 to improve performance.

14 And language was inserted which asserted that
15 none of these expenditures can be used for basic
16 education.

17 Q. Now, when you say basic education, you mean
18 the basic education program?

19 A. Correct. And it's disingenuous because it
20 does. There is no separation de facto. There may be
21 disure but de facto -- that money is all just salary
22 increases, and I would contend that if you had
23 testimony from teachers from all across the state who
24 would get paid different salaries, based upon TRI in
25 many instances, that their descriptions of their job

1 duties, time, and incentives would be identical.

2 Q. Okay. If I could ask you to turn to page 24
3 of the Final Report.

4 Cost Estimate. Do you see that?

5 A. Yes.

6 Q. And there's a range of costs for the Task
7 Force proposal on this page, correct?

8 A. Yes.

9 Q. And did the Task Force hear any study or
10 evidence or presentation that contended the state's
11 K-12 system is not underfunded?

12 A. Not that I recall.

13 Q. Okay.

14 A. I don't -- if somebody said something, it
15 would have been brief and limited.

16 Q. Okay. And the cost estimate is 7.4, does
17 that include school building or school facility
18 construction costs as well?

19 A. To the best of my understanding, no.

20 Q. Did the Task Force deal with the construction
21 cost issue?

22 A. No. Well, we had a presentation on the work
23 of another committee that was delegated the
24 responsibility by the legislature to analyze the Common
25 School Capital Construction Program. They made a

1 presentation to us, but we took no action on it and did
2 not consider any policies relating to it, preferring to
3 defer to them.

4 Q. All right. Okay. So it's just -- so I'm
5 clear, the Basic Ed Task Force Final Report does not
6 deal with school construction. That was in another
7 Task Force or group.

8 A. That is correct.

9 Q. Would the similar be true with
10 transportation, that was with another group, pupil
11 transportation?

12 A. Yes.

13 Q. And so the cost estimate on the Basic Ed Task
14 Force does not include pupil transportation costs.

15 A. That's my understanding.

16 Q. If I could ask you to please turn to --
17 actually, I'm going to ask you to turn to C-8. But
18 before we get there, we should probably go to page
19 C-3. And that's a cover letter that you had sent, C-3
20 to C-6, correct?

21 A. In the document that I have, it is a letter
22 to me from Glenn --

23 Q. I'm sorry. I'm sorry. You're right. It's a
24 cover letter to you, correct?

25 A. Yes, that's what I see.

1 Q. Okay. And then on C-7 is the Minority
2 Report. Starting on C-7, is that your Minority Report
3 then?

4 A. Yes, it is.

5 Q. If I could ask you then to turn to page C-8
6 of your Minority Report, third paragraph from the
7 bottom starts, "Proposing cuts in other state
8 programs."

9 Do you see that?

10 A. Yes, I do.

11 Q. Then the second line down, you have a
12 sentence that says, "The legislature has failed to fund
13 significant increases in education spending even in the
14 best of economic times."

15 Do you see that?

16 A. Yes, I do.

17 Q. Why do you note that point in your Minority
18 Report? Well, of what relevance is it?

19 A. The relevance is that, to the extent
20 additional funding is necessary to improve the quality
21 of educational opportunities, to the extent additional
22 resources are necessary, it will take an act of
23 political courage to make sure those resources are made
24 available either by cutting other objects of
25 expenditure in the budget for health care, higher

1 education, social services, corrections, et cetera, or
2 by increasing taxes -- imposing new taxes or increasing
3 existing taxes, in the absence of which, it will be
4 difficult to, if not impossible, to obtain the stated
5 goal.

6 Q. Okay. And your next sentence, "Waiting for
7 an economic recovery will force students to suffer the
8 consequences of the public school system that is
9 inadequate to prepare them for success in the 21st
10 Century."

11 Do you see that?

12 A. Yes.

13 Q. And does that relate then to your prior point
14 that you just made?

15 A. Yes.

16 Q. How?

17 A. As proposed by the Joint Task Force, the
18 implementation of this new grand scheme would be
19 deferred, at best, for several years, notwithstanding
20 the assertion that these levels of funding are
21 necessary in order to provide quality educational
22 opportunities for students, creating, therefore, a
23 notch of children for whom we say this should be done
24 but we're not willing to do it.

25 Q. Is that acceptable to you?

1 A. No.

2 Q. And cut to the chase, your Minority Report
3 suggests -- or proposes a less-costly package of
4 reforms than the full Basic Ed Task Force Report,
5 correct?

6 A. That is correct insofar as basic education is
7 concerned. But my recommendations included additional
8 funding that would significantly increase the level of
9 effort beyond that which we currently have. It simply
10 would not categorize all of it as basic.

11 Q. And is that categorized as being part of the
12 basic education programs, those funding formulas, et
13 cetera?

14 A. Yes.

15 Q. And part of your proposal, too, was
16 identifying revenue streams to pay for what you were
17 proposing, correct?

18 A. Yes.

19 Q. Okay. Do I take it that you believe that if
20 you're proposing changes you should also propose how
21 you pay for it and do it?

22 A. Seems reasonable.

23 Q. If I could ask you to turn to page C-9,
24 please.

25 There's four bullets in the middle of the

1 page, and then there's a paragraph above it that starts
2 "Richer districts."

3 Do you see that?

4 A. Yes, I do.

5 Q. And the last sentence in that paragraph says,
6 "Unable to compete, poorer districts are consigned to
7 offering chronically inequitable educational
8 opportunities."

9 Do you see that?

10 A. Yes, I do.

11 Q. What are you referring to about the
12 inequitable education opportunities?

13 A. Evidence was presented and never contradicted
14 to the Task Force. But the single most important
15 factor in the academic performance of a student and the
16 ability to learn is the quality of the teacher. And
17 poorer school districts do not have the same
18 opportunity to attract and retain qualified teachers as
19 richer school districts do, primarily because of the
20 TRI program. Although that is not exclusively the
21 source of the inequity, it really represents the major
22 source of the inequity.

23 A rich school strict could be right next door
24 geographically to a poor school district and the rich
25 school district could pay significantly more to a

1 teacher with the same qualifications as the teacher in
2 the poor district, which means the teacher in the poor
3 district, given the opportunity, is likely to migrate
4 to the richer district because of the higher pay,
5 leaving the poorer district with a poorer opportunity
6 to select qualified teachers. And this was testified
7 to rather strenuously by Dr. Betty Hyde, the
8 Superintendent of the Bremerton School District, who
9 was a member of the Task Force.

10 Q. And was there a similar type of pattern of
11 migrating from one area to another with respect to
12 less -- what's perceived as less desirable or harder-
13 teaching positions to easier teaching positions?

14 A. Yes. There was -- there were a number of
15 instances in which testimony was provided that offered
16 that all things being equal, teachers will tend to
17 migrate to the less difficult teaching assignments.

18 Q. When you say less difficult teaching
19 assignments, can you give us some examples of what you
20 mean?

21 A. Implicitly -- I don't remember anybody
22 specifying that. But, implicitly, higher-income
23 schools or school districts with fewer behavior
24 problems, greater parental involvement, a greater
25 percentage of students eager to learn because they

1 recognize the benefit that can be derived subsequently.

2 Q. If I could ask you to turn to page C-13.

3 This is part of your Minority Report as well, the
4 report that you then attached to it?

5 A. Yes. The Minority Report responded to the
6 Majority Report, and I incorporated, as part of the
7 Minority Report a separate set of recommendations
8 called Improving Student Performance.

9 Q. Okay. Your separate set of recommendations
10 starts on C-13 here?

11 A. Correct.

12 Q. Okay. If I could ask you to turn to page
13 C-15, please.

14 You've got two graphs there in your report
15 here?

16 A. Yes.

17 Q. Could you outline what the point is you're
18 making with these two charts?

19 A. The point I'm making is that, based upon
20 information that was available, that the amount --
21 excuse me, the amount of money the state spends on
22 average per pupil in the State of Washington has been
23 declining to an extent greater than is true for other
24 states.

25 Q. And when it says PPE, that's Per Pupil

1 Expenditure?

2 A. That's correct.

3 Q. What's the difference between the unadjusted
4 on the left and the adjusted on the right?

5 A. The adjustment would recognize and
6 incorporate differences in cost-of-living. It doesn't
7 cost as much to buy a home in Mississippi as it does
8 here, so you don't have to offer a school employee as
9 much money there in order to ostensibly to get a
10 comparably-qualified teacher.

11 Q. And would that same principle apply within
12 the state as well, there are regional cost differences?

13 A. Yes, sometimes significant, and that was part
14 of the research conducted by Dr. Lori Taylor, I believe
15 her name was.

16 Q. The person from Texas that was one of the
17 consultants?

18 A. Yes.

19 Q. Okay. If I could ask you to turn to page
20 C-16, please.

21 There's a chart at the top of the page.

22 Would you outline what the point you're making there
23 is?

24 A. The point of this graph is to demonstrate
25 that the level of effort by state taxpayers for K-12

1 educational opportunities is less than the average
2 level of effort for the nation as a whole.

3 Per every \$50,000 of adjusted family income,
4 they spend less on education than many other states.

5 Q. If I could ask you to look to the first
6 paragraph underneath this chart where it says, "Student
7 academic achievement is dramatically better today than
8 it was 10 years ago but has stagnated."

9 Do you see that?

10 A. Yes, I do.

11 Q. What do you base the "it has stagnated" upon?

12 A. Information presented to the Task Force by
13 two or three different sources, again, none of which
14 was contested, and seemed to be accepted as valid by a
15 number of people who would be knowledgeable, such as
16 the Superintendent of Public Instruction --

17 Q. Okay.

18 A. -- who was a member of the Task Force.

19 Q. And then when we -- just so the record's
20 clear, the Superintendent of Public Instruction that
21 was a member of Task Force was Dr. Terry Bergeson; is
22 that correct?

23 A. That is correct.

24 Q. The next sentence where it says, "The dropout
25 rate has barely budged," do you see that?

1 A. I do.

2 Q. And is the current dropout rate -- or are we
3 still at about one in four high school kids don't
4 graduate with their peers?

5 A. Now, there was evidence presented to us and
6 it might -- in fact, in some instances it's higher in
7 some school districts and certainly in some
8 subdemographic subgroups, it's much higher. That's an
9 average.

10 Q. When you say higher, you mean greater --

11 A. Greater worse, a higher dropout rate.

12 Q. And is that basically the same dropout rate
13 that we referred to back in the 3609 Commission Report?

14 A. Yes.

15 Q. If I could ask you to turn to page C-17.

16 Could you describe the point you're making
17 with this chart is.

18 A. The point of this chart is that testimony had
19 been presented to the Task Force and discussions had
20 been held among Task Force members to indicate that the
21 state, notwithstanding a lower level of effort, was
22 doing quite well regarding student performance compared
23 to the nation as a whole.

24 Q. When you say lower level of effort, you mean
25 lower funding?

1 A. That's correct.

2 -- was doing quite well compared to the
3 nation as a whole. And a similar argument was made, if
4 I remember correctly, in testimony by the
5 representative of the Washington Education Association,
6 that that was evidenced -- that the school districts
7 and the personnel, teachers, have done exemplary work
8 with comparatively, relatively limited resources.

9 What this graph is intended to show, or this
10 chart, is that that's not a function of excellence in
11 the school system or a level of effort on the part of
12 all participants but, really, a function of the
13 demographics. We have more higher-income people in
14 this state who pull the average up and we have fewer
15 lower-income people who pull the average down.

16 So, adjusted for demographics, our
17 performance is really pretty average.

18 Q. Again, when you were saying level of effort,
19 you mean level of funding?

20 A. Yes. I will often refer to level of effort
21 as a euphemism for funding. I apologize.

22 Q. And, based on your education experience and
23 your work as Chair of the Task Force, is Washington
24 K-12 performance average at best?

25 A. As indicated by the NAEP, it is average.

1 Q. Okay.

2 A. Demographically adjusted.

3 Q. And on this graph when you say, "Most student
4 subgroups don't outperform their U.S. peers," do you
5 see that?

6 A. Yes.

7 Q. Are those subgroups the ethnicity subgroups
8 that are listed across the top of your chart there?

9 A. Yes.

10 Q. Based on your experience and your work on the
11 Task Force, do you believe that Washington students are
12 falling behind international standards?

13 A. I'm not able to determine that. I don't
14 remember there being any evidence presented. I do
15 believe there was testimony presented that that's
16 likely the case, and certainly is probably the case in
17 some instances for the nation as a whole, but I don't
18 remember any evidence being presented.

19 Q. Okay. C-23 of your report. Third paragraph
20 down.

21 You're talking about "A Certificate of
22 Academic Achievement --" do you see that?

23 A. Yes, I do.

24 Q. -- You say "will prepare students for family-
25 wage jobs and the responsibilities of community

1 citizenship."

2 Do you see that?

3 A. Yes, I do.

4 Q. What are you referring to as a family-wage
5 job, and why is that important, if it is?

6 A. Well, family-wage job is important because it
7 allows people to own their own home, to be established
8 in the community, and not be concerned about where
9 their next meal is going to come from, or clothing or
10 shelter, so that they have an opportunity to be more
11 actively engaged in community affairs.

12 So that's what I'm referring to with regard
13 to the family-wage job.

14 Q. Okay. With respect to "the responsibility of
15 community citizenship," what are you referring to?

16 A. As I've responded to previous questions and
17 the latter half of the answer to the last question,
18 it's so that people can be more engaged and offer
19 better judgments about affairs that are involved in
20 this in a democracy.

21 Q. Is that part of the education that's
22 necessary to meaningfully participate in the democracy?

23 A. Another way of saying it, yes.

24 Q. If I could ask you to turn to page C-32,
25 please.

1 On the Non-Employer Related Costs, the
2 NERC's, your recommendation in your report is "The
3 state should increase the allocation for NERC's to
4 1,223 per student and adjust the allocation for
5 inflation in succeeding years. The increase would
6 recognize actual average district expenditures for
7 major Non-Employee Related Costs and improve allocation
8 for items such as library books and computers."

9 Do you see that?

10 A. Yes, I do.

11 Q. Now, the Task Force -- the Final Report
12 recommended a lower amount for NERC's, increasing it
13 only to \$1,086, correct?

14 A. That's my memory.

15 Q. And why were you proposing a higher number
16 for NERC's?

17 A. Primarily to provide for shorter life spans
18 for textbooks and materials, such as computers.

19 Q. When you say shorter life span, what do you
20 mean?

21 A. I don't remember the specifics, but I
22 remember Jennifer Priddy, the Deputy Director of
23 Superintendent of Public Instruction, had explained
24 what the life cycle was -- or the replacement cycle for
25 textbooks for a school district, and I do not remember

1 the specifics, but it struck me as being longer than
2 prudent.

3 And so I wanted to incorporate sufficient
4 funding, such that they could renew books and computing
5 equipment, et cetera, more frequently than has been the
6 case in current uncodified long budgets, as well as
7 more than was recommended by the majority members of
8 the Task Force.

9 Q. Okay. Just so I'm clear, when you were
10 talking about life span then, you're talking about
11 just more -- having more current books and computers?

12 A. Yes.

13 Q. If I could ask you to turn to page C-35,
14 please, entitled Bibliography.

15 Would you just summarize what the -- I don't
16 want you to go through every single source, but what
17 was the reason for listing these sources? Are these
18 the ones you relied on, you found credible, or what?

19 A. These are the sources upon which I relied for
20 specific observations or statements of what I perceived
21 as fact. It was recommended by Roxanne Lieb that it be
22 included so that people would not be left with the
23 impression that I was just thinking out loud and that
24 these were unfounded observations, that there was, in
25 fact, a body of work upon which I've extrapolated my

1 recommendations.

2 There's very little in what I'm proposing or
3 have proposed that's original. Some of the
4 applications may be original to the State of
5 Washington, but everything that I've come up with has
6 really been dealt with and/or proposed and/or
7 researched previously, and this is a list of the
8 individuals upon whom I primarily relied.

9 Q. Okay. And these are all sources that you
10 found credible?

11 A. Yes, at least for the information that I
12 used.

13 Q. Okay.

14 A. They may have produced other things in parts
15 of these documents with which I would have disagreed.

16 Q. Okay. And I notice about two-thirds of the
17 way down, there's a Miller, W. (1975). Do you see
18 that? Is that the Wally Miller Report?

19 A. Yes, it is.

20 Q. Could you briefly explain what the Wally
21 Miller Report was?

22 A. The legislature knew in the early, mid-'70s
23 that we had a problem with school funding. It really
24 didn't take Judge Dorn to tell us that. He did it and
25 explained it very well and clarified it for everyone

1 involved, but the problem had been identified much
2 earlier. And there were a number of legislators very
3 actively advocating and engaged in developing proposals
4 to improve the system and making it more general and
5 uniform, intriguingly consistent with Judge Dorn's
6 decision that was affirmed by the Supreme Court.

7 And the process of trying to determine what
8 that funding should be, there were numerous discussions
9 about, well, what is it that we want education to do so
10 that we can cost out -- or determine the cost of what
11 it will take to achieve that. And it became obvious to
12 the people involved at the time, that that was going to
13 be a very difficult task. So there was a shortcut that
14 was developed, and it was, just accept what they're
15 doing out there. You can adjust it, and it was.
16 Districts that never had levies, for instance, were
17 taken out of the mix. But, in essence, what Wally
18 Miller did on a contract with the legislature was,
19 among other things and primarily, to look at, not the
20 validity of what the educational system -- public
21 school system was doing, but just what was it doing and
22 how much was it spending to do it, and accept that as,
23 if not a valid, at least acceptable.

24 And then the decision was made subsequently
25 to provide that level of funding, which was basically

1 the same as it had always been, but to replace local
2 levy money with state money.

3 And Wally Miller's the one that wrote that
4 report.

5 Q. Is this the report that, in essence, looked
6 at -- you took out some districts that never passed a
7 levy.

8 A. Correct.

9 Q. You looked at what were the districts
10 actually paying, basically took that snapshot and
11 freeze that?

12 A. Uh-huh. Yes.

13 Q. And some districts were actually paying more,
14 for example, for salaries than others because -- well,
15 for whatever reasons, right?

16 A. Yes. The disparities were often very
17 significant.

18 Q. Is that the source of what is now the
19 grandfathering issue we have today?

20 A. Well, when the legislature in 1977 said we
21 need to make this general and uniform, there were those
22 who advocated let's go to the level for everyone that
23 has been attained by the top two school districts in
24 the state at the time, which were Seattle and Bellevue,
25 if I remember exactly --

1 Q. Everett maybe?

2 A. -- at least large school districts.

3 Q. Or Everett maybe?

4 A. Well, Everett on salaries.

5 Q. Okay. All right.

6 A. But when you knock out a few of the really
7 small school districts that are out-lyers, the two
8 largest school districts with the overall most generous
9 per-student expenditure level were Seattle and
10 Bellevue.

11 And so the initial consensus was why not just
12 bring everyone up to that level. Upon reflection,
13 there was a Jennifer Priddy, not the Jennifer Priddy,
14 but somebody who said, and that will cost you X, and
15 the response to that was let's do something else.

16 And the something else was to pick a level of
17 funding that would make most school districts quite
18 happy because it would be more than they had received
19 previously from the state, but would not achieve the
20 level of overall student expenditures for Seattle,
21 Bellevue, and some other school districts.

22 So the question then arose, well, how do we
23 keep them from being unhappy. And the way you do that
24 is you say, you have a choice. Local school districts,
25 you can live with this level or you, if you're

1 accustomed to a higher level based upon local sources
2 of revenue, feel free to continue deriving that local
3 source of revenue to get you to the level to which
4 you've historically become accustomed.

5 And that's called a grandfathering clause.

6 Q. Now, and you mentioned Seattle as having a
7 higher level.

8 A. Yes.

9 Q. Do you recall -- for example, Seattle hasn't
10 had higher level for classified employees.

11 A. Presumably. I don't remember the specifics.

12 Q. Do you recall anything about whether
13 Seattle's higher classified employee number was because
14 they actually had staff attorneys which drove up the
15 classified salary number?

16 A. I do not, but that's certainly reasonable.

17 Q. Just briefly. Wally Miller, he was at one
18 time what's now called OFM, correct?

19 A. He was the director of what at that time was
20 called the Office of Program Planning -- Program
21 Planning and Fiscal Management -- OPTNFM, yes. Program
22 Planning and Fiscal Management. Today's OFM, yes.

23 Q. You'd mentioned local levies. And in your
24 experience and your work on the Task Force, what do
25 local levies pay for today in our public schools?

1 A. I have not -- I am not familiar with nor have
2 I seen a delineation of the objects of expenditures
3 directly related to the source of revenue derived -- or
4 the revenue derived from local levies. The money is
5 fungible. Federal grant money is not and that is
6 audited by representatives of the federal government to
7 make sure it's not bled into other programs beyond an
8 acceptable indirect cost recovered for administrative
9 expenses.

10 But local levy money, it just goes into the
11 pool of cash that's available. There are some
12 delineations. There are some staff who are hired with
13 local levy money and designated as such and that is
14 separated.

15 But when it comes to salaries overall, and
16 programs, I've not seen a very extensive or detailed
17 separation of revenue and expenditures local to local
18 and state to state.

19 Q. Okay. When you refer to them, you're talking
20 about the federal restrictions, one of them being that
21 you can't let the federal money bleed into the state
22 programs.

23 Is that the supplement but not supplant --

24 A. Correct.

25 Q. -- part?

1 A. Yes. That is the term of art that's used.

2 Q. Okay. And does any of the state money have

3 strings attached to it as well, what you're allowed to
4 spend it on?

5 A. There are some mandates, some established in
6 case law, some in statute, where local districts do not
7 have flexibility and is similar with federal grants.
8 They must account for those dollars separately, and if
9 they don't account for them properly, they can lose
10 them or even be forced to remand them.

11 Q. Okay. If I could ask you to look at Trial
12 Exhibit 135, please.

13 A. Thank you.

14 MR. AHEARNE: Actually, before we move on to
15 that, Your Honor, I would move to admit the Final
16 Report of the 3609 Commission. It's Trial Exhibit
17 125.

18 MR. CLARK: No objection.

19 THE COURT: Exhibit 125 is admitted.

20 EXHIBIT ADMITTED

21 BY MR. AHEARNE:

22 Q. Do you have Trial Exhibit 135 in front of
23 you?

24 A. Yes.

25 Q. The second paragraph from the bottom -- this

1 is a memo from you to Task Force members, correct?

2 A. Yes.

3 Q. And the second paragraph from the bottom you
4 state "An educational generation ago, Governor Booth
5 Gardner had the guts to say the time had come for the
6 state to establish academic standards for our public
7 school system."

8 Do you see that?

9 A. Yes, I do.

10 Q. Are those academic standards what ended up
11 being the core provisions in House Bill 1209, read with
12 comprehension, apply core concepts to math, science, et
13 cetera?

14 A. They were instances. There may have been
15 others that the Governor had identified at the time,
16 but those in 1209 were representative of the point that
17 he was making.

18 Q. Okay. And when you say an educational
19 generation ago, what do you mean by that?

20 A. Well, an education generation is about 12 or
21 13 years, and it's been more than a generation of
22 students who have gone through the public school system
23 since House Bill 1209 was enacted and since Governor
24 Gardner made that statement, which I believe was, like,
25 1989 or something. I can't recall specifically now.

1 It's in my document.

2 Q. Oh, actually, let's go to the next
3 paragraph.

4 "At a 1989 meeting of the Washington State
5 School Directors' Association, Gardner said, 'It's the
6 status quo in education that puts us, as a nation, at
7 risk.'"

8 Do you see that?

9 A. Yes, I do.

10 Q. Based on your work with the Task Force, do
11 you believe that that status quo has changed much since
12 Governor Gardner gave that speech in 1989

13 A. With the exception of House Bill 1209, no.
14 But 1209 was a significant departure from status quo.

15 Q. And briefly how was House Bill 1209 a
16 significant departure from status quo?

17 A. Because it repudiated local control of
18 academic standards and set into place the platform for
19 establishing uniform -- general and uniform standards
20 of student achievement and school system
21 accountability.

22 Q. And those statewide standards, that's, for
23 example, the knowledge and skills that are identified
24 in House Bill 1209?

25 A. Yes.

1 Q. Okay. Did the state then develop Essential
2 Academic Learning Requirements based on that as well?

3 A. I think they're called EALR's, yes,
4 E-A-L-R-S.

5 Q. But EALR's or Essential Academic Learning
6 Requirements, we're talking about the same thing,
7 right?

8 A. Yes.

9 Q. In your deposition you used the very precise
10 technical term of art where you said things have sort
11 of gollumped along.

12 Could you explain what you mean gollumped
13 along?

14 A. Not much has changed, really, in the way of
15 funding or financing. It's structurally, basically,
16 the same as it was. I think my assessment is to become
17 a little bit more complex, the funding system, as
18 legislators accrete specific program preferences. It's
19 always popular to put in a brochure that I, as a
20 legislator, was able to get funding for a very specific
21 program. Simply increasing education funding, there's
22 not much to take credit for there. Governors do it,
23 legislators do it, and, as a result, you end up with a
24 proliferation of programs and titles that sound very
25 attractive and appealing but aren't mandated and,

1 therefore, don't really change anything for school
2 district administration.

3 So that's just -- that's what I mean by
4 gollumping along. Sometimes there's changes that
5 ostensibly make a difference but they don't really.

6 Q. And would you categorize House Bill 2261 as
7 being one of those bills that ostensibly make changes
8 but really don't make a difference?

9 A. If --my familiarity with House Bill 2261 is
10 limited. I have not read the bill. I have read a
11 digest that was available online following its
12 enactment.

13 Given my reading of that digest, and it
14 appears to be that House Bill 2261 incorporates much of
15 the intent and/or language of the legislation that was
16 drafted as a result of the Task Force Majority Report,
17 if that bill were implemented as it was enacted and did
18 so with sufficient money that real purchasing power is
19 attained at today's standard -- and the reason I add
20 that is, if you wait 20 years, there's going to be
21 price purchasing power deflation. And if there were
22 some substantive reforms in the management of the
23 common school system in this state, I believe that
24 there would be a significant improvement in the status
25 quo, but those are big conditions.

1 Q. Does 2261 provide any more funding for school
2 districts?

3 A. Well, my understanding is that it -- my
4 reading of it was that, if implemented, it would be
5 because of staffing ratio improvements primarily.

6 Q. And are there staffing ratio numbers or just
7 more work groups and commissions?

8 A. Well, it certainly doesn't impose any
9 specific standards immediately, and that's why I
10 qualified my assertion with the understanding that it's
11 ostensibly based on, and it would be a corollary of
12 the legislation that was introduced based upon the Task
13 Force recommendations.

14 So maybe I should clarify it by saying if the
15 Task Force recommendations were implemented as proposed
16 in real purchasing power dollars, and if there were
17 substantive reforms to the structure and operation of a
18 public school system, I believe that there would be
19 substantive improvement in student performance and the
20 quality of the public school system in the State of
21 Washington.

22 Q. And there's another if. If funding is
23 provided to pay for the staffing ratios improvement?

24 A. I believe that I said that, yes.

25 THE COURT: Mr. Ahearne, we're at 10:30. We

1 are going to take our morning recess at this time. 15
2 minutes. We will resume at 10:45.

3 MR. AHEARNE: Thank you, Your Honor.

4 THE WITNESS: Thank you.

5 THE COURT: Court is at recess.

6 (Whereupon a recess was taken and there was a
7 change in court reporters.)

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REPORTER'S CERTIFICATE

STATE OF WASHINGTON)) SS:
COUNTY OF KING)

I, CYNTHIA A. KENNEDY, an official reporter of the State of Washington, was appointed an official court reporter in the Superior Court of the State of Washington, County of King, on April 17, 2006, do hereby certify that the foregoing proceedings were reported by me in stenotype at the time and place herein set forth and were thereafter transcribed by computer-aided transcription under my supervision and that the same is a true and correct transcription of my stenotype notes so taken.

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

Dated: _____

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