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**Reporter's Verbatim Report of Proceedings, September 24, 2009,
Volume XV, Session 1 of 4 [Pages 3207-3281] 07-2-02323-2**

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3 MATHEW AND STEPHANIE McCLEARY on)
 their own behalf and on behalf of)
 4 KELSEY and CARTER McCLEARY, their)
 two children in Washington's public)
 5 schools; ROBERT AND PATTY VENEMA,) SUPREME COURT
 on their own behalf and on behalf)
 6 of HALIE AND ROBBIE VENEMA, their)
 two children in Washington's public)
 7 schools; and NETWORK FOR EXCELLENCE) NO. 84362-7
 IN WASHINGTON SCHOOLS, ("NEWS"), a)
 8 state-wide coalition of community)
 groups, public school districts,)
 9 and education organizations,)
 PETITIONERS,) CASE NO.
 10)
 VERSUS) 07-2-02323-2SEA
 11)
 STATE OF WASHINGTON,)
 12 RESPONDENT.)

13 -----
 Proceedings Before Honorable JOHN P. ERLICK
 14 -----

15 KING COUNTY COURTHOUSE
 SEATTLE, WASHINGTON

16 DATED: SEPTEMBER 24, 2009
 17 Volume XV, Session 1 of 4

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

19
 20 FOR THE PETITIONERS:

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

24 FOR THE RESPONDENT:

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

1 P R O C E E D I N G S

2

3 (Open court.)

4 THE BAILIFF: All rise. Court is in
5 session. The Honorable John P. Erlick presiding in
6 the Superior Court in the State of Washington in and
7 for King County.

8 THE COURT: Good morning. Please be
9 seated.

10 We are back on the record in the matter of
11 McCleary versus The State of Washington. This is King
12 County cause number 07-2-02323-2 SEA.

13 Yesterday we had a witness out of order
14 from the respondent's case-in-chief. Are we returning
15 to the petitioners' case-in-chief?

16 MR. AHEARNE: Yes, your Honor.

17 THE COURT: Mr. Ahearne, who would -- first
18 of all, any preliminary matters before we move
19 directly to the testimony?

20 Very good.

21 MR. CLARK: Actually, your Honor, I am a
22 little slow in standing up on Thursday.

23 It is not necessarily a preliminary matter.
24 We have an expert coming in from out of town this
25 morning to testify this afternoon.

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

1 In light of what happened with yesterday --
2 the discussion about the admission of Exhibit 1536 --
3 this witness, Dr. Armor, worked in tandem with
4 Dr. Hanushek and there are materials -- I don't know
5 if necessarily they are in this exhibit, but I think
6 that we will have a similar issue and a similar bone
7 of contention about him.

8 THE COURT: Which exhibit is it in?

9 MR. AHEARNE: It is the PowerPoint that
10 Dr. Hanushek used in his testimony yesterday.

11 Your Honor told us --

12 THE COURT: Are you talking about Trial
13 Exhibit 1536?

14 MR. CLARK: Yes.

15 THE COURT: Your expert today is going to
16 rely on Exhibit 1536.

17 MR. CLARK: I am sorry, the answer to that
18 is no.

19 I thought that there was some material in
20 here that Dr. Armor was going to rely upon.

21 THE COURT: All right.

22 MR. CLARK: In any event, if, your Honor,
23 just for the sake of certainty, so we know, we have
24 got this offered.

25 If your Honor continues to take it under

1 advisement, not should rule on anything, then at least
2 we will know that. But there is no witness through
3 which to offer this exhibit right now.

4 The petitioners' witness wouldn't be
5 appropriate to offer it in his testimony. If you
6 could just let us know what you are thinking, I guess.

7 THE COURT: I didn't rule?

8 MR. CLARK: Actually, your Honor, with the
9 remarks were: "We have" -- your 4 o'clock was late.
10 You said, "we will discuss it tomorrow," I believe is
11 what you said.

12 MR. AHEARNE: Your Honor, my strong
13 preference would be that we discuss it when Mr. Emch
14 is here.

15 THE COURT: I think that is fair, because
16 this was Mr. Emch's issue.

17 MR. AHEARNE: Mr. Emch is going to be the
18 attorney handling Dr. Armor, which is their other
19 witness coming in out of order.

20 THE COURT: All right.

21 So before Dr. Armor testifies, I will make
22 a ruling. I am not going to make any comments at all
23 on Exhibit 1536. I would prefer to have Mr. Emch here
24 so that he is prepared to respond, but I will make a
25 ruling before that.

1 MR. CLARK: Your Honor, do you want to
2 retain further discussion about it?

3 I appreciate Mr. Emch being here, that's
4 fine.

5 Do we anticipate that they will -- I have
6 got to confess, your Honor, if you are going to rule
7 adverse to us on this issue, we would like the
8 opportunity to submit a pocket brief on it to --
9 unfortunately the delay out the discovery issues,
10 because it is a discovery -- it is almost amounts to
11 sanction, if you are excluding the testimony.

12 THE COURT: Well, it is.

13 Let's be clear. I didn't exclude any
14 testimony.

15 MR. CLARK: All right.

16 THE COURT: From --

17 MR. CLARK: -- Dr. Hanushek.

18 THE COURT: Thank you.

19 I didn't exclude any of his testimony. So
20 there is no prejudice to the respondent. Consistent
21 with that ruling, I would not -- I can't imagine I
22 would exclude any testimony of Dr. Armor.

23 Although, I did indicate that I was letting
24 the petitioners, either move to strike or show me that
25 there was some new evidence that was being sprung on

1 petitioners that they were not previously aware of.

2 That is the test for me. The test is
3 prejudice.

4 MR. CLARK: All right.

5 THE COURT: So, Mr. Ahearne --

6 MR. AHEARNE: My understanding was that you
7 weren't -- you were letting the witness testify fully.

8 THE COURT: Yes.

9 MR. AHEARNE: Then after this is all done,
10 entertain the issue about whether anything should be
11 stricken, and entertain whether the exhibit that was
12 talked about, should actually be admitted or not.

13 THE COURT: That is correct.

14 MR. AHEARNE: If that is, I would just
15 repeat what the State says, if you are going to rule
16 adverse to us, we would like to have a chance to
17 submit a pocket brief as well.

18 THE COURT: I never let one side submit
19 pocket briefs. If I allow pocket briefs, it is both
20 sides.

21 MR. AHEARNE: I understand that.

22 THE COURT: You know, I would prefer
23 Mr. Emch were here, but let me make a general
24 statement.

25 Please be seated, counsel.

1 I mentioned this before. I realize that I
2 was under some time constraints because of the 4
3 o'clock hearing.

4 But, again, it is very frustrating for both
5 counsel and the Court, when there are late
6 disclosures. It completely undermines the discovery
7 process.

8 The Court of Appeals, however, have also
9 made clear that the exclusion of the witnesses and the
10 testimony is discretionary, but it is really a
11 sanction of last resort.

12 What I typically do is give -- allow last
13 minute depositions and things like that. The other
14 consideration here, it is almost a counter-balancing
15 consideration; that is, in my position, you know, more
16 information is better.

17 Now, that more information should not be to
18 the detriment of any party or either party, because
19 they are ill prepared or unprepared to cross-examine a
20 witness, because they didn't have information
21 previously.

22 I mean, there is supposed to be a level
23 playing field coming into the courtroom. But, you
24 know, the more information that I can get, the greater
25 assistance it is to me.

1 I have been pretty liberal, if you will, in
2 allowing information in. One of the reasons that I
3 have done that is that I am the trier of fact.

4 I think that I know how much weight to give
5 to the information. The prime example of that is
6 Exhibits 1 and 2.

7 To me, you know, we could have a very nice
8 academic arguments over whether or not it is the
9 statement of the law.

10 But the reality is, I am going to be
11 reading the contents and Exhibit 1 and Exhibit 2,
12 whether they are exhibits or argued as law. I know
13 what those things are. I am just giving that by a way
14 of an example.

15 Dr. Hanushek's testimony, in particular,
16 1536, raises a different issue. That is why I am
17 wrestling -- and again I will wait for Mr. Emch.

18 But the question for me is if the content
19 was provided, and this is used for, essentially,
20 illustrative purposes, then I am less concerned with
21 what is ostensibly a late disclosure.

22 By way of an example, to digest Mister --
23 Dr. Hanushek's testimony, it is that scientific
24 studies, or empirical studies show that additional
25 funding does not necessarily, in and of itself,

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1 translate into greater student performance or
2 achievement. That is his thesis. Then he backs it up
3 with a bunch of empirical evidence, SAT scores, WASL
4 and NAEP scores.

5 If the petitioners didn't have those
6 charts, one could argue, "yes, there is some
7 prejudice, because they didn't have the nice
8 illustrations."

9 But I would have to go back and look at
10 Dr. Hanushek's deposition to see if he made
11 disclosures about the basis of his opinion on the one
12 hand, and secondly, his position was -- "well,
13 Mr. Emch didn't ask him. Don't ask, don't tell,
14 policy.

15 That is why I prefer the federal rules,
16 which we don't have in the State Court. The federal
17 rules are lay down rules. You purge yourself of all
18 of the information that you have.

19 I happen to like that rule. I happen also
20 not to be a federal judge, so I am stuck with the
21 State rules.

22 So, I mean, those are my thoughts. I am
23 very empathetic to whatever side feels that it is
24 prejudiced with the consequences of a late disclosure.

25 But again, I want to be able to digest what

1 I think is information that may be of value or
2 assistance to my fact finding, and, obviously my legal
3 conclusions, but more on the fact finding side,
4 because that is more what these witnesses are
5 testifying to.

6 So those are my thoughts.

7 Again, in terms of Dr. Armor, I would
8 probably take -- I would like to make a ruling on
9 Exhibit 1536 before he testifies as to whether it is
10 admissible or not.

11 But even if I don't, I don't think that it
12 is going to affect his ability to testify, because I
13 will treat him identically to Dr. Hanushek and
14 allowing his testimony.

15 I just want to give counsel -- I was trial
16 attorney for 20 years. I know what it is like to sit
17 there and kind of look at the rules and all of that.

18 But I get to, you know, I have the luxury
19 here and looking at the big picture, particularly as
20 the fact finder, and as I stated, I think that I will
21 give appropriate weight.

22 Charts are great, but they are not facts.
23 They are just charts. They are illustrations. The
24 facts are the facts.

25 When it comes to statistical studies, they

1 are not facts. They are statistics. I wrote an
2 article about statistics.

3 My thesis was, "you can do whatever you
4 want with statistics." That is the only thing that I
5 remember from my statistics class.

6 MR. CLARK: I don't want to make this
7 longer, but maybe I could express two brief thoughts.

8 One, if it would help, both opposing
9 counsel and the Court, we would offer the exhibit for
10 illustrative purposes and remove the substantive
11 aspect of it from the contention of the argument.

12 The other thing that I think would help,
13 your Honor, is we are trying to get Dr. Armor on and
14 off this afternoon.

15 We have been very good about estimating.
16 Our estimates have been universally bad throughout the
17 case.

18 I would request if we are going to have a
19 motion to strike testimony as to any witness, that
20 that would be made known for the record. But we do it
21 on briefing and arguing it as a motion, as it should
22 have been in limine, I think, and move on with the
23 testimony, in light of what you just said. So we can
24 keep the flow of the trial going.

25 I will say that we are not terribly

1 interested in getting more days added to the trial
2 schedule.

3 I don't think that Mr. Ahearne would object
4 to that either.

5 THE COURT: You would rather not have the
6 extra days.

7 MR. CLARK: Not have any more days.

8 MR. AHEARNE: I want those days that we
9 have got, don't give those up.

10 MR. CLARK: Not the ones that we have
11 but --

12 THE COURT: Those are it. That is it.
13 That is all I have got.

14 MR. CLARK: Thank you.

15 But I would make those suggestions, if we
16 would offer it for illustrative purposes, I believe
17 that we can make the same offer with regard to
18 Dr. Armor's power points, or whatever.

19 THE COURT: Are Dr. Armor's PowerPoint
20 different than Exhibit 1536?

21 MR. CLARK: Yes.

22 THE COURT: They are?

23 All right, that is what I wasn't clear.

24 MR. AHEARNE: I think -- my understanding
25 of what is going to happen, when Mr. Emch gets here

1 with Mr. Armor this afternoon, is that he has a set of
2 power points, but we have a similar issue.

3 THE COURT: Right.

4 MR. AHEARNE: They will have the same
5 position and we will have the same position, also, in
6 the interest of time since he is flying in and we are
7 interrupting Dr. Brossoit for the State's expert to
8 testify.

9 I have the same interest in just making
10 sure that he flies out only once. And so I am fine
11 with doing the same way that we did Dr. Hanushek,
12 which is they are going to go through the exhibit
13 while he is here.

14 He is going to say what he is going to say
15 what he is going to say while he is here.

16 Once after cross examination and we
17 determine what the facts are, what did you know and
18 when did you know it, et cetera, then we can resolve
19 the issue of whether there is anything that should be
20 stricken and whether the exhibit should be admitted.

21 But I think that we can resolve that after
22 the testimony, as opposed to having a little fight
23 ahead of time.

24 THE COURT: Let's do that to reserve trial
25 time. I think that is that is important here. I will

1 also monitor my 4 o'clock, to see if we can readjust
2 that in case we run over.

3 I don't know if we can or not. I have a
4 pretrial conference in another matter at 4 o'clock.

5 All right. I think that we are ready to
6 proceed.

7 What happened with those additional days.
8 I am the presiding officer on a Judicial Conduct
9 Commission Case. That case got continued until
10 February of next year.

11 So as a result, I had Marci juggle another
12 case that was trailing yours and pushed that back a
13 week. That gave us a few extra days.

14 MR. AHEARNE: Thank you, your Honor.

15 THE COURT: That is how we ended up with
16 more time.

17 Petitioners' next witness.

18 MR. AHEARNE: Petitioners would like to
19 call Dr. Nicholas Brossoit, the superintendent of the
20 Edmonds School District.

21 THE COURT: Dr. Brossoit, please come to
22 the witness stand.

23 NICHOLAS BROSSOIT,

24 Having been first duly sworn,

25 Testified as follows:

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1 THE COURT: Dr. Brossoit, for the record,
2 would you please state your full name, spell for us
3 your last name and give us your contact address.

4 THE WITNESS: I am Nick Brossoit, B-R-O-S-
5 S-O-I-T. I reside at 6529-200th Street Southwest,
6 number 202, Lynnwood, Washington 98036.

7 THE COURT: All right. Thank you.

8 Mr. Ahearne.

9 DIRECT EXAMINATION

10

11 BY MR. AHEARNE:

12 Q. Good morning.

13 A. Good morning.

14 Q. Finally.

15 I apologize for having you sit through the Mary
16 Jean Ryan day and the Dr. Hanushek day. So I will
17 sort of launch right in what is your current job?

18 A. I work as the superintendent of the Edmond
19 School District.

20 Q. How long have you been there?

21 A. This is now my sixth year as a superintendent.

22 Q. Would you explain to the Court what your
23 responsibilities are with respect to being the
24 superintendent?

25 A. Well, as a superintendent, you are responsible

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1 for everything. You report to the elected board of
2 directors.

3 Probably the easiest example would be to think
4 of it as a chief executive officer for the School
5 District in terms of in charge of all operations. I
6 report to the elected board of directors.

7 Q. What was your job before you were the
8 superintendent of the Edmonds School District?

9 A. I was superintendent in the Tumwater School
10 District for 10 years. So that puts me as a
11 superintendent for 16 years.

12 Q. Approximately, how many students were at the
13 Tumwater School District at that time?

14 A. Tumwater School District was approximately
15 6,000 students.

16 Q. What were your responsibilities as the
17 superintendent of the Tumwater School District for
18 those 10 years?

19 A. Those would be the same.

20 Q. What was your job before that?

21 A. Prior to that, I worked as assistant
22 superintendent in the Burlington Edison School
23 District for two years, director of secondary programs
24 for one year, high school assistant principal for four
25 years, for a total of 7 in the Burlington Edison

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1 School District.

2 Q. Where is the Burlington Edison School District
3 in relation to Seattle?

4 A. If you think of Skagit County and Mt. Vernon
5 just cross over the bridge. That is the Burlington
6 Edison School District going north on I-5.

7 Q. When you said that you were the director of
8 secondary programs, what does that mean?

9 A. Responsible for secondary schools and any
10 programs related and that happened or functioned in
11 the secondary system.

12 Q. What is the secondary school?

13 A. Pretty much everything above elementary. It
14 depends where you draw the line, for the most part it
15 is grades 7 through 12.

16 Q. What was your job before that?

17 A. Prior to working in the Burlington Edison
18 School District, I work in the Peninsula School
19 District as a high school teacher, a social studies
20 teacher, and I coached football and baseball.

21 Q. How long were you there?

22 A. I was in that capacity for four years.

23 Q. Did you work in any school districts before
24 that?

25 A. Yes.

1 I got my under-graduate degree in December of
2 1983. Then what would have been the second half of
3 that school year, or the spring of 1984, I worked in a
4 middle school with the Franklin Pierce School District
5 replacing a teacher who had a medical leave. It was a
6 full-time substitute position and that was my very
7 first official full-time job.

8 Q. What level was that?

9 A. That was 7th grade.

10 Q. What subject was that?

11 A. It was reading and geography.

12 Q. Where did you grow up?

13 A. I was born and raised in Ephrata, Washington.

14 I have lived in Washington, my whole life.

15 Q. Is that where you went did you go to the public
16 schools at Ephrata?

17 A. I started out at the Catholic schools, St. Rose
18 Elementary School, until the first two weeks of sixth
19 grade. Some things happened in my family life, I
20 transferred to the public school system.

21 Then I stayed in the public school system
22 through the balance of high school.

23 Q. Then did you go to college?

24 A. I did.

25 Q. Where did you go?

1 A. I graduated from Ephrata High School. I had a
2 football scholarship I started out at WSU, going to
3 school and playing football.

4 You want to hear that story? How much through
5 the college do you want to go?

6 Q. We will talk about that in a second. I am
7 trying to outline briefly your path that you have
8 traveled.

9 WSU on a football scholarship, and did you
10 finish at WSU?

11 A. No.

12 Having grown up in Ephrata and going to Pullman,
13 I wanted a few more experiences. I was facing the
14 question of what should I do with myself at that age.

15 I didn't have the kind of support that you would
16 normally have from your family or your home. I was
17 really trying to sort this out on my own.

18 So a friend and I, basically left WSU in March,
19 March 15th of my freshman year -- we went to Seattle
20 and lived in the basement of his aunt's house.

21 We walked the docks at fisherman's wharf. I on
22 got a 36 foot fish halibut boat and went from Seattle
23 to Kodiak, Alaska and worked as a commercial fisherman
24 as a while -- just trying to get experience and
25 figuring out what I wanted to do.

1 It is odd to give up the football scholarship,
2 but there is the central part of me, if I don't feel
3 like something is right, I don't feel connected to it,
4 I can't stay with it.

5 I was real successful with school and football
6 at WSU. Most people look at it and they can't
7 understand how I would leave it, but it didn't feel
8 right.

9 Any way, some life experiences fishing and then
10 I came back and I tried some more school. I still
11 just didn't feel right. I didn't know what I was
12 wanting to do. It was hard getting traction on
13 that --

14 Q. After were you the commercial fisherman, did
15 you have any other jobs before you went to school?

16 A. Yes, northern steel, labor jobs, then I tried
17 school again for another half of a year. Then also,
18 left at the end of that spring.

19 Then I ended up working at Boeing painting jet
20 foils -- when they made jet foils. I moved to the
21 commercial airline division to painting airplanes.

22 Then I went back to college at PLU in Tacoma.
23 That is where I got traction in terms of my career.

24 Q. When did you get a degree from PLU?

25 A. I did. I graduated from 1983 with a Bachelor

1 of Arts in Education. That is where I figured out
2 what I wanted to do and why.

3 Q. Then what is your -- did you get a degree after
4 that, you got a BA in education?

5 A. Right.

6 I got a Bachelor's of Arts in Education in 1983.
7 The rules for certification in those days, when you
8 are a teacher, you needed to get a fifth year. So I
9 combined the courses for my fifth year with a Master's
10 in Education Administration also from PLU. It was
11 about '86, I believe, when I earned my master's
12 degree.

13 I was working at that point, obviously, as a
14 teacher getting my master's and my fifth year. So
15 then I had my principals' credential and a master's in
16 Education Administration in the mid to the late '80s.

17 Q. What does principals' credentials mean?

18 A. There is different criteria.

19 You have a teacher's certificate, a certificate
20 to teach. Then you go back for additional schooling
21 and training to get principal's credentials training
22 to go to school in the administrator in the school
23 Washington.

24 Q. These credentials that you are talking about
25 they are Washington State Credentials?

1 A. Correct.

2 Q. Did you proceed with any further education
3 after you got your master's usual, your teaching
4 credentials from the State and then your principal's
5 credentials from the State?

6 A. Right.

7 As I, about the time that I had earned my
8 principal's credentials, I had had four years of
9 teaching, I also applied for high school system
10 assistant principal positions.

11 I was successful in being hired into the
12 Burlington Edison School District, as an assistant
13 principal.

14 About two years after I was in the high school,
15 the superintendent came to me and said, "Nick, you
16 need to go back and get your doctorate. You need to
17 be a superintendent."

18 In that instance, The Board was actually willing
19 to pay for a percentage of my cost to get a doctorate.

20 But I had just finished my master's. It wasn't
21 my vision for my life at that time to be a
22 superintendent. I couldn't really tell you what they
23 did at that point, either.

24 So I just said, "thank you, but, no, I just want
25 to be a high school administrator and I will start a

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1 family and kind of a different place in my life."

2 Then he came back the next year and he said,
3 "no, Nick, you really need to do this." So I talked
4 to -- I sort of developed people in my life that I use
5 as a sounding board, because, again, I didn't have
6 that from my family.

7 I just talked to people that I use as kind of a
8 surrogate parents and advisors, everybody suggested
9 that I really should go back and take advantage of the
10 opportunity to get the doctorate.

11 So I went to Seattle University and completed
12 the requirements to earn my doctorate, as well as my
13 superintendent's credentials.

14 That was during the time that I was at the
15 Burlington Edison School District. But also
16 professionally, I had moved from being a high school
17 administrator to moving to work in the district
18 office.

19 And then did my internship and had about three
20 years as a district level administrator in Burlington
21 Edison, before I left and applied for my first
22 superintendent's job.

23 Q. What -- was your doctorate in any particular
24 subject?

25 A. The doctorate title is Educational Leadership.

1 But that includes pretty in-depth classes on, you
2 know, research, educational research, the educational
3 issues of every kind, the psychology, and the support
4 for students and student learning, change in
5 organizations, leadership variables and organizations.
6 Just all kinds of literature about schools and
7 education.

8 Q. You had mentioned superintendent credentials;
9 what is that?

10 A. Just as there are credentials to be a teacher,
11 who is certified or a principal, there is also
12 credentials, that you have to have to be certified to
13 work as a superintendent in the State of Washington.

14 Q. All right.

15 Why did you go into education?

16 A. You know, there is probably a short answer to
17 that question. There is some background, or a basis
18 for it, that I could provide. I want to be respectful
19 to the Court's time, as I have sat here for two days.

20 I guess I would want to know how much do you
21 want to know as to why?

22 Q. Why don't you give me the short answer, then I
23 will ask you, "what is the background?"

24 A. The short answer is I wanted to spend my life
25 and my energy, and my talent and my passion doing

1 something that I believed makes a positive difference
2 in the lives of other people, primarily kids.

3 Q. What led you to that conclusion or that
4 decision?

5 A. I will share, but in doing so, I want to be
6 respectful to people in my family. I am not trying to
7 garner sympathy or play violin music in response to
8 the question. But probably does provide some context
9 for my life.

10 My parents divorced when I was 11.

11 I remember sitting in my bedroom listening to
12 them fight down the hall. It wasn't just a verbal
13 fight. That is a hard thing to go through, when you
14 are a kid.

15 After that, my dad was gone. My mom started
16 abusing alcohol pretty heavily. I had a brother, who
17 dropped out of school and was doing drugs.

18 I had another one, who had mental health issues
19 and end up having to be incarcerated and required by a
20 judge to take medication in order to be okay.

21 I had a sister who got stuck up in a religious
22 commune.

23 The two oldest siblings had left.

24 I was also -- based on one member of my family,
25 being 11, I was physically and sexually abused by some

1 member of my family.

2 I didn't feel like I could say anything to my
3 mom, because she was just barely holding it together
4 and dad was gone.

5 So I am dealing with all of this stuff. It
6 wasn't until I got physically big enough that I
7 couldn't win the fight with the person in my family,
8 who was abusing, but I could inflict enough damage
9 that he would back off.

10 So I was going through these experiences as a
11 kid. I mean, some of them you just -- it would have
12 kept Jerry Springer programming going for three weeks,
13 if you were to have been in my family.

14 But I remember one day in particular -- was an
15 evening, actually -- my mom came home from the bars
16 and I was probably about 12 at this point. She was
17 drunk and those are the days when you have the glass
18 contact lenses.

19 So I had to get her in the house and there is
20 this guy trying to follow her in. He wouldn't, wasn't
21 stopping. I had to basically with a baseball bat keep
22 him out of the house and get my mom into the house,
23 take her contact lenses out. Get her put to bed, make
24 sure that the house is secure.

25 Shortly after that, she left for two weeks. All

1 of the other siblings were pretty much out of the
2 house by now. I didn't know where she was.

3 Now I was going to Ephrata Junior High School.
4 I didn't know who to talk to. I didn't know what I
5 was supposed to do.

6 I felt like if I said anything to anybody, I was
7 going to get my family in trouble, at least my mom.

8 So it is a pretty interesting thing to navigate
9 your life and your school system -- and just
10 existing -- when you are 12, 13 years-old and you
11 don't have what should be the normal support
12 structures in place.

13 Now, at age 50, with all of the education
14 experiences I have, I look back and I can see what I
15 went through.

16 And so to answer your question, why did I go
17 into education, because Marty O'Brian, my 7th grade PE
18 teacher pulled me into his office and we sat down.

19 And he had knew some of the story of what was
20 going on in my life. He said, "Nick, stuff is
21 happening to you, that shouldn't happen. I can't
22 change that. But you can use your power of choice to
23 make different choices with what you do with your
24 life. You can have a different outcome."

25 I was hanging out. I didn't do drugs, even

1 during all of that time -- I was hanging out with kids
2 that were pretty much on the edge of that, because
3 those gangs, or those groups, accepted me without any
4 pretense.

5 Whereas, the, quote, good kids had a different
6 stigma about them. I was broken and damaged somehow,
7 so they wouldn't accept me the same way.

8 But in any event, this teacher and coach, I
9 don't know why, but he reached out to me and,
10 basically, said that my life didn't have to be the way
11 that it had gone for people in the family that I was
12 born into.

13 If I would just use my power of choice
14 differently. I got into sports pretty aggressively.
15 That was a real outlet for me. Because I was
16 incredibly angry at that time in my life, about what I
17 felt was a pretty unfair situation.

18 So sports was an incredible hold and a venue for
19 me to stay in school, which I did. So, any way, you
20 know, I won't tell you more of this stuff, but getting
21 through high school and getting the scholarship was a
22 way for me to get out of town, literally.

23 I got luggage for graduation. I don't think it
24 was an accident. I went to school. And so then I am
25 at 23, having some other life experiences -- or

1 actually early 20s. I am at PLU.

2 I just sat back and I just thought about what is
3 something that would be meaningful to do with my life
4 and that would be to do -- to give my life to working
5 in public education, because I felt my life was saved
6 by teachers and coaches, who reached out to me in the
7 system.

8 I thought, "well, what a noble thing to do."

9 So my jobs have changed for -- in public
10 education, but my reason for being in public education
11 has been the same throughout.

12 Q. If I could switch gears a little.

13 Let's talk about the school districts that you
14 are currently the superintendent of and ask you to
15 look at Exhibit 676, please.

16 A. I am losing my hair and my eyesight, and
17 something else that I can't remember.

18 Q. This one, this is the one that is Exhibit 676.
19 It is a little confusing.

20 When you are looking at the exhibit, the number
21 is actually the document behind the tab, because some
22 of the exhibits have a different number stamped on
23 them.

24 A. All right.

25 Q. So Exhibit 676 is a map. If you could please

1 just point out to the Court where on the map that the
2 Edmonds School District is?

3 A. Well, I am looking at it, and I am pointing it
4 out to the Court.

5 What do you mean by that.

6 Q. To the judge, when I say the Court, I mean his
7 honor?

8 A. If I hold it back far enough, right there
9 (indicating).

10 THE COURT: All right. Thank you.

11 BY MR. AHEARNE:

12 Q. What communities are within the school
13 districts boundaries of Edmonds?

14 A. The title of the Edmonds School District is
15 really confusing. It is called Edmonds School
16 District, it includes City of Woodway, Mount Lake
17 Terrace, Edmonds, Lynnwood, Briar, and some
18 unincorporated portions of Snohomish County.

19 Q. Those are all within the geographic boundary?

20 A. Right; all of that is included in our
21 boundaries of the Edmonds School District.

22 Q. Approximately, how many students are in the
23 district?

24 A. We are just over 20,000.

25 Q. Do they all speak English?

1 A. No.

2 In fact, the last I checked we have 85 different
3 languages -- languages other than English that are
4 represented in our schools by our students.

5 Q. Does that have any impact on the school
6 districts' operations?

7 A. That is huge impact, in terms of the system's
8 ability to communicate with students, literally, and
9 their families.

10 Many of the students' family don't speak English
11 at all. The students come to us with not academically
12 proficient levels of English, which is a longer story.
13 But it is significant challenge academically
14 proficient level of English, what do you mean by
15 "academically proficient"?

16 There are people who are not literate in their
17 native language.

18 To be academically proficient in English, for a
19 lot of the families that come to us, can take three to
20 four years.

21 In order to be competitive and to test
22 accurately with respect to the assessments that we
23 have, it takes, really, intensive support and
24 assistance in the English language to be academically
25 proficient.

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1 So one of the concerns that we have, just in
2 terms of our challenge, in terms of educating
3 students, is that the language barrier -- if you look
4 at the impact of the poverty and language, and in
5 terms of the student learning, those are the two most
6 profound challenges that any public educator faces.

7 Q. You mentioned the low income as well.

8 Approximately, how many of the students in your
9 district are Free-And-Reduced Price Lunch?

10 A. It should be an easy answer, but I have to
11 explain. If you look at the SPI table, its looks like
12 it is 20 percent.

13 But we have looked that the -- in particular
14 from most recently the software of the food services
15 program uses to account for the Free and Reduced Lunch
16 and the way that it communicates with the State's data
17 bank there is actually been an error. The real number
18 for Free and Reduced Lunch for our district is 30
19 percent not 20 percent.

20 That is being corrected.

21 But it requires the system at SPI to go in and
22 change the data -- it wasn't just our School District
23 there are other school districts that use the same
24 software that have the same problem.

25 To answer the question, Free and Reduced Lunch

1 data-wise, it looks like 30 percent, but the real
2 number is probably higher than that.

3 Q. Why do you say that?

4 A. We will -- we have families that would be
5 embarrassed to share that information, particularly at
6 the secondary level, there is a stigma in the minds of
7 some kids.

8 They are uncomfortable they are not wearing the
9 latest shoes, let alone having the association with
10 their family. Income is an issue in terms of status
11 in our society, with respect to the student in school,
12 in particular.

13 Q. As superintendent of the Edmonds School
14 District, what would be your estimate of the
15 approximate percentage of kids in your district that
16 are low income?

17 A. At least a third.

18 Q. Approximately, how many of your students are
19 minorities?

20 A. It is also about a third.

21 Q. Does the student being, for example, low
22 income, does that have any impact on the operations of
23 the School District?

24 A. When you say operations, do you mean the
25 challenge, or the task of educating all student to be

1 at or above standard, or do you mean just conducting
2 the day.

3 Q. Let's take it one at a time.

4 Let's address the first one that you mentioned.

5 A. With respect to the low income?

6 Q. Yes, sir.

7 A. It is profound.

8 In fact, probably one of the things that -- I
9 don't think that people understand the weight of it,
10 is when we talk about all students -- where we talk
11 about the students in the schools -- in our minds we
12 have only those students that we have thought of, or
13 that we have experienced, maybe we think about, when
14 we went to school what it was like, or, you know, what
15 we see on TV. We have the picture in our head.

16 So, I have experienced, myself, in person,
17 situations with families and with students that are
18 profound in terms of economics and the opportunities
19 that does and doesn't support for students to learn.

20 I would like to share a couple of those maybe to
21 illustrate.

22 Q. All right.

23 A. Actually, I did a home visit. There was an
24 Elementary and a middle school aged -- three kids,
25 actually, in a household that weren't coming to

1 school.

2 I went out with the probation officer, who is
3 connected to the middle school-aged student. I went
4 to the house and I visited.

5 We got to the house and the dirt in the front
6 yard actually made a ramp that went up on the concrete
7 steps into the house. There was no door. The front
8 door was not even on the hinges. It was just set off
9 to the side.

10 The dirt went into the entry way and the carpet,
11 which is more like an astro-turf carpet, had been worn
12 out in the rain. It just flowed right into the house.
13 The kids were there. The three kids were there.

14 The probation officer had asked the oldest,
15 "where is your mother?"

16 They said, "we don't know. She is gone." It
17 had been about a -- three days.

18 The kids were pretty, you know, dirty as far as
19 the condition of their face and clothing. They were
20 clothed, but not real well.

21 So we asked them, "what have you been eating?
22 Do you have food?"

23 They said, "yes, we have got food. It is in the
24 kitchen."

25 We go into the kitchen and look in the

1 refrigerator and the cupboard, there was nothing
2 there.

3 There was only, what was left of about a five
4 pound bag of white sugar. There was about a third of
5 a bag of a sugar left, the white granulated sugar.
6 That is what the kids had been eating for three days.

7 I say that in terms of, you know, who are the
8 kids who come to school?

9 What are some of the challenges of the public
10 you school system to educate these kids?

11 You know, coming to school, getting food at
12 school would be the only healthy meal that these kids
13 would get.

14 It turned out that their mom was some kind of a
15 call girl, or escort, or whatever language that you
16 want to use. I am not making a judgment about her.

17 I am just making a commentary that that kind of
18 a parental support, there wasn't some warm cozy place
19 for the kids to do their homework in this house.

20 There wasn't proper nutrition. There wasn't
21 proper supervision. There wasn't proper support. Yet
22 these kids would come to school.

23 Then another kid -- I was teaching US history at
24 Peninsula High School. Dave Weller, the principal,
25 came to my classroom, "Nick, here is -- you are

1 marking David as present" -- which was the student's
2 name. "You are marking him as present, so you must be
3 making a mistake."

4 I was fairly new to teaching. I said, "no,
5 David is there every day. I am not making a mistake."

6 He said, "he has dropped out of the school five
7 weeks ago. He is not going to any of his classes and
8 you are marking him present."

9 I said, "well, he is here."

10 David was one of these kids that wore the black
11 heavy metal boots and black clothing and had the
12 collar and spiked hair and Metallica on his notebooks
13 -- actually kind of scared other kids, because of his
14 presence.

15 He was quiet. But you always sort of had this
16 question about what he was doing, when he wasn't in
17 school. He was just scary. People were scared of
18 him.

19 But he was coming to my third period US history
20 class, was regularly and he would attend he would do
21 his homework. He was getting about a C in terms of
22 his performance. He wasn't causing any problems.

23 He would participate. I teased him like I
24 teased all of the kids. To me he was just fine.

25 Any way, so that the next day David shows up,

1 the student, and then the vice principal David Weller
2 comes to the classroom and sure enough he is there.
3 The sheriff is in the front office. They come down
4 and they get David the student. They take him out to
5 the office. He doesn't come back.

6 So I go down, like later in the day, I asked the
7 vice principal, "what happened?"

8 He said, "well, he was arrested. He was
9 arrested for burglarizing houses and cars."

10 Certainly nobody here would think that that was
11 a good practice.

12 But, I said, "why?"

13 They said that, "the story is that he had wasn't
14 able to stay at his third foster home placement. He
15 was living underneath the Purdy Bridge.

16 He was burglarizing houses and cars, because
17 that is the only way that he had to feed himself.

18 They asked him, "how come you are going to third
19 period US history and not going to the rest of your
20 classes?"

21 "Because," he said that, "that was the only
22 place that I felt safe and felt normal."

23 When we talk about all students that come to the
24 school, he is part of the all that we are referring
25 to.

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1 You know, I just have to shake my head, because
2 we are so often criticized in the school system as
3 leaving kids behind.

4 And honestly, we have never wanted to leave any
5 kids behind, even before it was the law, the
6 No-Child-Left-Behind law, as if that was a surprise us
7 to the Education. Suddenly we won't leave kid behind.
8 We haven't wanted to leave kids behind ever.

9 But we are not given the support that we need to
10 address the needs of these kids have. We love them
11 all. We want to see them all reach the high standards
12 that they need that to be successful in life.

13 But we are not given the support that we need to
14 do the work, that we are expected to do and we are
15 required to do.

16 Q. Now, getting back to the Edmonds School
17 District, approximately how many bus miles do your
18 buses travel, transporting kids to and from school?

19 A. A million and a half, I think, a year, that is
20 just to and from transportation. That doesn't include
21 any other transportation.

22 Q. So we are all clear, when you say "to and
23 from," that is the transporting the kids from their
24 residences or the bus stops to school and then from
25 school back?

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1 A. Correct.

2 Q. Edmonds School District is, is that one of the
3 larger school districts in the State?

4 A. Yes. I think that we are about 10th out of
5 296. I think that we are the 10th largest.

6 Q. How many elementary schools do you have?

7 A. We had to close two, because of budget
8 reductions. We had to close two between last year and
9 this year. So currently, we operate 20 elementary
10 schools.

11 Q. How many -- you have K through 8 schools as
12 well?

13 A. We have two K through 8 schools.

14 Q. How many middle school?

15 A. Four middle school.

16 Q. How many high schools?

17 A. Five high schools, but one of those is an
18 alternative high school.

19 Q. I would like you to look at Trial Exhibit 1620,
20 please.

21 I have two notebooks with a whole bunch of
22 pictures all together without -- you will have to look
23 in the corners to find the correct document.

24 THE COURT: Which, Exhibit 1620?

25 MR. AHEARNE: Exhibit 1620, whichever one

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

1 has MUR EDMOOL in it.

2 THE COURT: All right. Thank you.

3 THE WITNESS: Mr. Ahearne, the -- Exhibit
4 1620 and I am looking at something that says "Renton"?
5 That is kind of what I wanted to ask you.

6 MR. AHEARNE: Your Honor, it appears that
7 these exhibits have been altered in some way. They
8 are now tabs. I don't know what the tabs are.

9 THE COURT: I have Exhibit 1620, and it is
10 Edmonds.

11 MR. AHEARNE: My concern is --

12 THE COURT: Does it have a volume on it?

13 MR. AHEARNE: This one is volume 29.

14 My big concern is that remember we had this
15 discussion about, whether we can admit things divvy
16 them up by School District.

17 THE COURT: Right.

18 MR. AHEARNE: There is a big objection,
19 "no, it had to be exactly the way that it was." It
20 looks like someone has put in tabs to now separate.

21 Do you know where the tabs came from.

22 MS. BASHAW: We inserted them to try to
23 make it easier for the Court to find the right
24 district.

25 MR. AHEARNE: After it was admitted as an

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1 exhibit?

2 MS. BASHAW: Well, they are just tabs for
3 ease of trying to work through the binders.

4 THE COURT: Mr. Ahearne, I think that we
5 will deal with the tabs later.

6 MR. AHEARNE: The thing is that frustrates
7 me, this is the point that I was making, "oh, no, it
8 has to be exactly the way that they submitted. "

9 Now when their case is coming up they
10 insert the tabs. We will deal with it later.

11 THE COURT: All right.

12 MS. BASHAW: Yes.

13 THE COURT: All right.

14 I think that we have the Edmonds.

15 MR. AHEARNE: I was looking at it. It
16 should say MUR EDM in the corner.

17 Now it is confusing. It looks like it
18 starts with 160 under the Edmonds tab.

19 THE COURT: I think that volume 28 has the
20 earlier Edmonds.

21 THE WITNESS: That one says Issaquah.

22 MR. AHEARNE: But the tab here says
23 "Renton."

24 THE COURT: Right, if you go to -- if you
25 want the beginning of Edmonds, it is in volume 28.

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1 So that the end of Exhibit 1620 is actually
2 in two volumes.

3 BY MR AHEARNE:

4 Q. I am now handing the witness Volume 28. I am
5 handing the witness the pictures that begin with MUR
6 EDM 001.

7 Dr. Brossoit, I will let you know that we have
8 gone through the drill with the pictures with several
9 schools districts before.

10 I am not slighting your district.

11 MS. BASHAW: I think this is inappropriate
12 to keep harping on our office, which is inappropriate,
13 about the pictures, which is what he is doing with the
14 prelude to the question.

15 THE COURT: Counsel, I didn't infer that at
16 all. I think that I didn't infer that.

17 MR. AHEARNE: I was trying to be
18 self-deprecating.

19 I have gone through these pictures pretty
20 in detail with other districts. I am going to be much
21 more abbreviated with these pictures.

22 THE COURT: That is what I inferred.

23 MS. BASHAW: My apologies.

24 THE COURT: All right.

25 Let's get back on track with the case. The

1 heat of the room has risen a little bit.

2 Let's bring the temperature down.

3 MR. AHEARNE: Very good.

4 BY MR. AHEARNE:

5 Q. If I could ask you to please turn to picture
6 number 3.

7 A. 003?

8 Q. 003. Again --

9 MR. AHEARNE: Again, your Honor, since we
10 have gone through these several times, I will be much
11 quicker with this district.

12 THE COURT: That is fine, thank you.

13 BY MR. AHEARNE:

14 Q. What is this a picture of?

15 A. This is a picture of the cafeteria at one of
16 our middle school.

17 Q. All right.

18 How does the Edmonds School District pay for
19 cafeteria or food service facilities?

20 A. When we have a bond issue that supports
21 building a school, we are able to furnish and equip
22 the school at that time.

23 So all of the major furnishings and the
24 equipment comes with the construction of the school.

25 Q. That would include, for example, the kitchen

1 facilities in picture 3?

2 A. Correct.

3 Q. Would that then include the furniture, like the
4 desk, the tables and the chairs, et cetera?

5 A. Correct.

6 Q. Would that include when you fully stock your
7 libraries, is that when you build the building?

8 A. Yes. That is really an interesting part of the
9 law, if you are interested about that.

10 But when you do a bond issue and you construct
11 the school, you are allowed to fully furnish and
12 equipment.

13 Books for the library, even basketball for PE
14 you can purchase from the bond issue, as part of the
15 furnishings and the equipment.

16 However, you can't use bond dollars to maintain
17 that after you have initially opened the building. So
18 we build the nice school and we furnish the equipment.

19 Then that is the extent to which we can use the
20 bond dollars. We have to use general funds, or other
21 sources to try to maintain it after the fact.

22 Q. All right.

23 If I could ask you to jump ahead to picture
24 number 71, which is lightening speed compared to
25 others.

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1 A. I am looking at what looks like a blue wall
2 with boards on it.

3 Q. My first question are these two smart boards?

4 A. No, one over them is just a white dry erase
5 board. Then the one that is closest in the picture is
6 what is called the smart board.

7 Q. Do most of the classrooms in the Edmonds School
8 District have smart boards?

9 A. Heavens, no.

10 Q. What is the primary source of money for
11 purchasing smart boards and technology like that?

12 A. Any technology would be a technology levy.
13 Then teachers could go out and get together either
14 grants or private donations, sometimes their own money
15 to purchase additional technology.

16 Q. You mentioned a technology levy, is that -- so
17 far in this case, we have heard about the local bonds,
18 the construction bonds, those levies.

19 We have heard about the what is sometimes called
20 M&O, maintenance and operations levies, is the
21 technology levy something different?

22 A. We have the bond issues, which sounds like it
23 has already been established.

24 What the law refers to as the maintenance and
25 operations levy, we call the program and operation s

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1 levy, because the maintenance is confusing to people,
2 because it pays for the program not just maintaining
3 things.

4 Then there is another vehicle that we use in our
5 community, that is really a function of our community
6 supporting it. Most districts in the State couldn't
7 do this, just functionally.

8 That is a technology/capital levy, it is the
9 third source of local tax dollars that we have support
10 from our community to use to purchase technology.

11 And on the capital side, we are able to make
12 other improvements in our facilities based on the
13 capital dollar.

14 It is a, not like a bond issue that last 20 or
15 30 years. It is not the program and operations levy.
16 It is the technology capital levy that, again, can be
17 in different durations. We tend to do that on a
18 four-year cycle, if we get support for it.

19 Q. When you say "get support, do you mean if you
20 can convince the voters to approve it?

21 A. Yes, it is a hard thing to do. But it is the
22 only way that we have to get resources to try to make
23 the improvements to our schools, because we don't have
24 any other sources.

25 Q. So how does Edmonds School District pay, for

1 example -- does it use the technology/capital levy for
2 the age-back type of repairs or updates?

3 A. There are certain improvements like seismic
4 upgrades, or upgrades to the science classrooms,
5 heating ventilation air conditioning, which is HVAC,
6 heavy on the heating and ventilation, and light on the
7 AC.

8 We have certain things that cost so much money,
9 we can't do that without doing the special levy for,
10 in this case, the technology capital heavy.

11 We use those dollars to make some of the major
12 improvements to our facilities that we can't do,
13 because you can't use the bond money any more.

14 You can't do it out of your program and
15 operations levy. We are not funded enough from the
16 State to deal with it. We try to create, again,
17 another way of taxing the local community to make
18 improvements in the schools.

19 Q. All right. If I could ask you to turn to
20 photograph 122, please.

21 A. All right.

22 Q. Are these computers in one of your schools?

23 A. Yes, these are computers in what is an
24 elementary classroom.

25 Q. Is this another thing that the text class

1 capital levy that you referred to pays for?

2 A. The text levy would support the purchasing of
3 technology shown in this picture.

4 Q. If I could ask you to turn to picture 131,
5 please. This appears to be playground equipment?

6 A. Right, that would be an elementary school.

7 Q. How does the Edmonds School District pay for
8 the playground equipment?

9 A. The parents groups do fund raising. They
10 generate approximately half of the dollars. Then do
11 you remember the technology capital levy that I
12 referred to?

13 We build into the capital side of that something
14 called "the partnership program." So we do have our
15 own version of the matching fund, but it is really the
16 community dollars that come to us through the capital
17 levy that we will match with the parent group, or the
18 school community that will do the fund raising effort.

19 When you see the really nice playground, it
20 generally means that we have brought together the
21 parent group through the private donations and fund
22 raising with the community supported capital levy, and
23 then matched those funds, in order to make an
24 improvement like this.

25 Q. If I could ask you to look at the photographs

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

1 133, 134, and 135, please.

2 A. All right.

3 Q. Briefly, tell the Court what are these a
4 picture of?

5 A. Well, I visit every classroom -- try to -- at
6 least once a year.

7 In 32 schools or so there is actually two
8 classrooms that I know of -- one at Madronna and one
9 at Hilltop, I believe, where the teachers have
10 actually put in their own money -- and in some cases
11 2,000 dollars or more -- to purchase additional
12 equipment, in this case, lumber to build the loft
13 area, as a little reading area for kids.

14 This appears to be one of those classrooms. I
15 don't know which school it is, if it is Hilltop or
16 Madronna.

17 Q. It is one of those two?

18 A. Yes. It is really kind of a neat structure,
19 really engaging for students.

20 But it is funded by the teacher putting in their
21 own money and maybe getting some money from the parent
22 group to go along with it.

23 Q. All right.

24 If I could ask you to turn to page or photograph
25 268, please.

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1 A. I think that I have to change books. That
2 would be the first part of this book?

3 Q. Just for the record, we are now looking at
4 volume 29.

5 A. When you said number 268?

6 Q. Yes, I think so. Yes.

7 A. All right.

8 Q. Do you have that in front you?

9 A. I have a picture of a computer.

10 Q. It looks like from this computer, your
11 computer -- your schools have internet access?

12 A. Correct. Paid for by the --

13 Q. I was going to say --

14 A. Paid for by the technology levy.

15 Q. Is that the local voter approved levy pays for
16 your internet access?

17 A. Right, the same tech levy that allows us to
18 purchase that technology actually supports the access
19 to the internet.

20 Q. Does Edmonds School District strict have any
21 sort of filtering software, or something like that, to
22 keep inappropriate stuff off when you --

23 A. We have filtering software that is also paid
24 for by the tech levy.

25 Q. If I could ask you to turn to photograph 285,

1 please.

2 A. All right.

3 Q. If we could briefly say, what is this, and how
4 did Edmonds pay for it?

5 A. If you recall, just a minute or two ago, I
6 mentioned the partnership program, where the parents
7 generate money from the school. It matches with the
8 capital levy. We do a fund raising or a matching
9 program.

10 This is like a little outside amphitheater that
11 the parents put together at the Edmonds Elementary
12 Schools.

13 If you are going down to the same campus, you
14 will find that they made a walking path and upgraded
15 the playground equipment by using that same program.

16 Q. Photographs 312, 13, 14, 15, could you briefly
17 say what this is?

18 A. 312, 13, 14, and 15?

19 Q. Yes, sir.

20 A. These are classrooms at Madronna. Madronna is
21 one of our K-8 schools.

22 Madronna, to the Edmonds School District, is
23 like Mercer Island is in terms of it is -- has a
24 choice school within our district.

25 The parent group there raises over \$50,000 a

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1 year just for that one school.

2 Q. You say 15?

3 A. 50.

4 So these are classrooms in that school that
5 are -- again -- really well done, based on teachers
6 own contributions.

7 As well as the parent group that is able, based
8 on their own influence to generate significant dollars
9 for that school.

10 Q. Photograph 333, please.

11 A. All right.

12 Q. Did you -- would you explain what this is?

13 A. This also looks like Madronna campus. This is
14 a peace pole. We have a parent, who is real
15 interested in having a peace garden in some of our
16 schools.

17 So, again, they raise money privately. They
18 approached us as to whether or not they could dedicate
19 a peace pole and a peace garden on some of our
20 campuses.

21 This is one of the things, where somebody comes
22 to us with private funds. They want to make a
23 contribution and add something to the campus, provided
24 it is safe and doesn't require a tremendous
25 maintenance -- that we don't have the ability to put

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1 additional staff towards -- we usually welcome that
2 with open arms and are appreciative of people wanting
3 to donate something to the school.

4 Q. Now, are there facilities at the Edmonds School
5 District better than those in other Washington school
6 districts that you have worked in?

7 A. Well, in general, yes. You know,
8 building-by-building you might find exceptions. But
9 we have additional sources of revenue.

10 But most school districts can't generate the
11 full maintenance and operations, or program and
12 operations levy, especially in Eastern Washington.

13 Q. If I could interrupt for a second, when you are
14 talking about what we have heard the M&O levy for
15 maintenance and operations you call it the?

16 A. We call it program and operations, but it is --

17 Q. When you say the full capacity, are you
18 referring to the levy lid?

19 A. Correct.

20 Q. Edmonds, actually, is able to hit their levy
21 lid?

22 A. Our community, even before I was there, our
23 community has supported levy lid at the max in the
24 Edmonds School District for maintenance and
25 operations, program and operations which is different

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1 ways of saying the same thing.

2 Q. That is one source?

3 A. Right.

4 But it is significant, because we are able to do
5 that at the maximum amount. Yet your question was you
6 how do we compare to other districts.

7 You go to the Eastern Washington, other than
8 just a few places, you don't find most districts to
9 get at the lid, within their respective school
10 districts. That is just on that one vehicle, that one
11 maintenance and operations levy.

12 They also find it in Southwestern Washington and
13 north, in our State. You get to Seattle, it is
14 different.

15 There tends to be, there is more affluence, and
16 the property values are higher. It is easier to
17 generate the rates per thousand to support the full
18 levy.

19 When you get to the property poor district, less
20 commercial development the rates per thousand are
21 really high. That is why it is hard in our current
22 system for property poor districts to generate the
23 same local levies.

24 You didn't ask, but it is related the State
25 created something called Local Effort Assistance, LEA,

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1 dollars.

2 Q. I was going to follow up on that. Doesn't the
3 State equalize the levies?

4 A. In those cases where they do, it is only 20 or
5 25 percent, if you are a LEA district, you don't have
6 an equitable platform in terms of your local
7 resources. The State doesn't make that up.

8 Also, the LEA dollars fall, as the State defines
9 it fall outside of how it funds -- the funding to the
10 schools, is subject to the resources most recently it
11 is hit, because it is one of the areas that the
12 governor could cut.

13 Q. When you say "most recently hit," is that a
14 polite way of saying were cut?

15 A. Yes. It was an area that was targeted.

16 But the other vehicles, the original question,
17 so, we are different than other districts, because we
18 have the full local levy, a maintenance and operations
19 levy.

20 We also have a community that supports us with
21 the bond issue.

22 You might have noticed in the newspaper we just
23 opened the new Lynnwood High School, and we broke
24 ground on the major modernization in the Edmonds
25 Middle School. Those are proceeds from the community,

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1 because they passed the bond issue in February of
2 2006, but those aren't automatic in our district.

3 I got to Edmonds in 2004. Edmonds had tried
4 twice to pass the bond issue to replace Edmonds High
5 School in the previous eight years and wasn't able to
6 get support to do that.

7 Q. When you say "wasn't able to get support from
8 the community," meaning your bond levy failed?

9 A. The bond issue failed twice in the Edmonds
10 School District in the eight years prior to my coming
11 to replace Lynnwood High School.

12 The third vehicle is a funding source, local
13 funding source. That I don't know how many districts
14 have it. But it is more rare. That is the technology
15 capital levy.

16 It is another vehicle that we have locally that
17 produces additional dollars.

18 So it is just -- we have more local tax dollars,
19 more resources that we are able to put into our
20 system.

21 But, having said that, we don't have the same
22 amount of local resources that others have that were
23 grandfathered in above the levy lid, which you didn't
24 ask about, so I won't go there.

25 Are we done with the pictures?

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1 Q. Yes, sir.

2 What years is Edmonds most recently audited
3 financial statement for?

4 A. 2007-2008, I believe.

5 Q. Is that the F-196?

6 A. Correct.

7 Q. Who audit the financial statements for the
8 Edmonds School District?

9 A. The State of Washington, the State Auditors'
10 Office. They come to the district and they do an
11 annual audit.

12 Q. If I could hand you Exhibit 380, please.

13 Do you have Trial Exhibit 380 in front of you?

14 A. Correct.

15 The F-196 is for fiscal year 2007-2008.

16 Q. All right.

17 If I could ask you to look at the cover page.

18 Do you see that that is debt service fund?

19 A. Correct.

20 Q. What does the debt service fund pay for?

21 A. When the community passes a bond issue, we are
22 authorized to sell bonds. We sell the bonds and then
23 the debt service fund is sort of like a checkbook that
24 simply shows us receiving the tax dollars from the
25 public, and then we take those dollars to pay the

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1 principal, and the interest, on the bonds that we
2 sold. So it is just simply reflects that activity,
3 but it supports buildings.

4 Q. That is what my request is. The amounts that
5 are paid on the debt service fund, is that for the
6 capital construction of the buildings?

7 A. Correct.

8 Q. If I could ask you to turn to page 17 and that
9 is in all caps, "page: XVII" on it.

10 A. Are you using the one with page numbers on it?

11 Q. I am using the one courier font, "page 17, run
12 1146," the title is "program/activity/object report."

13 A. I am not finding it. Can you tell me what is
14 the number in the upper corner.

15 Q. It also says "TREX 000380.00000018."

16 A. Got it.

17 Q. Page 17 of the F-196, are you on that?

18 A. Yes.

19 Q. The activity, the activity codes in the middle
20 -- do you see those?

21 A. Yes, I see them.

22 Q. What is activity code, just generally, what are
23 activity codes 61 through 64 and 67 pay for?

24 A. 61 through -- little slower.

25 Q. -- through 64 and 67, what do they pay for?

1 A. Support building operations.

2 Q. Is that the costs of operating your buildings,
3 basically?

4 A. Correct.

5 Q. Does that include like the groundkeepers and
6 things like that?

7 A. Yes.

8 Q. Do they just like, the groundkeepers, like mow
9 the lawn and stuff like that?

10 A. At least.

11 I am laughing, not in a humorous way, but more
12 sarcastic. I don't mean that towards you.

13 During the days that I was in trial waiting for
14 this turn, and it was interesting as the State was
15 worried about flight arrivals times of its guests
16 witnesses, we discovered 40 razor blades that somebody
17 had planted in the bark chips under the playground
18 equipment at Briar Elementary School.

19 So our grounds crew had to go and, basically,
20 evacuating all of those chips from the Playground
21 underneath the play equipment, like you just saw the
22 pictures of.

23 They also had to inspect, because we didn't know
24 if it is domestic terror -- sometimes that is
25 happening at all of our schools -- they also had to do

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1 an inspection of all of the playgrounds to make sure
2 that it wasn't in any other place in our district.

3 So we literally had to close the playground
4 equipment and remove the bark chips, and put new bark
5 chips, in to order to make it safe for kids.

6 40 industrial razor, positioned underneath
7 swings and underneath the playground equipment in ways
8 that would injure kids.

9 Not meaning to go off on a tangent, but we talk
10 about maintenance and grounds, as those it is the
11 afterthought, some sideline run it over and cut grass.

12 They perform basic support for our system to
13 operate the school safely for students.

14 Q. All right. If I add up what is shown on the
15 F-196, the service fund payment that you described and
16 the activity codes for the operations of the school
17 buildings, adds up to then 37 million.

18 So in the year 2007-2008, with the costs were
19 actually paid by the Edmond School District for owning
20 and operating the buildings, at least \$37 million?

21 A. Yes.

22 Q. I say, I have noted at least that is capital
23 project fund on the cover page as well; correct?

24 A. Right.

25 Q. That shows a \$62 million amount?

1 A. Right.

2 Q. Was that for buildings in that particular year
3 as well?

4 A. That would be for the construction or major
5 modernization of the school, yes.

6 Q. If I could ask you to please go back to that
7 page 17 of the F-196, for activity code 27 --

8 A. All right.

9 Q. -- would you please tell me just generally what
10 is activity code 27?

11 A. That would be the expenditures based on the
12 activity for teaching staff and classroom
13 expenditures.

14 Q. Is that basically the classroom teaching
15 expenses?

16 A. Right.

17 Q. Does Edmonds -- strike that.

18 Does the State fully fund the salary amount that
19 Edmonds pays its classroom teachers?

20 A. No.

21 Q. Why do you pay more than the State funding
22 amount?

23 A. Well, in order to attract and retain, really,
24 any position -- but including teachers -- the Edmonds
25 School District has a practice, a salary practice,

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1 that we refer to as our "midpoint philosophy."

2 We take, based on the size of our district, the
3 geography of our district, we look at every job,
4 including teachers, even my job.

5 We look at every position in the district,
6 objectively, and we compare it with 10 districts. We
7 just commit, through our bargaining process, that we
8 will pay people who do those jobs the middle, or the
9 midpoint, of the comparison districts.

10 That lets people know, if they stay with us,
11 they are not going to be the highest paid. They won't
12 be the lowest paid. They will be at the midpoint. It
13 is a way to be comparative and somewhat fair in the
14 process.

15 The State doesn't fund that. The State funds us
16 differently.

17 We use, like in the case of teachers, we will
18 use a supplemental contract for additional time to pay
19 teachers the difference to keep them at midpoint.

20 We do that with all of the positions. In fact,
21 even when I came to the district, I didn't negotiate
22 my own salary. It was established by a practice that
23 had been in Edmonds before I got there, that midpoint
24 philosophy.

25 I mean, I think that it is a way of dealing with

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1 the issue, which is a hard issue to deal with.

2 Q. As superintendent of the Edmonds School
3 District, do you believe that you can attract and
4 retain competent teachers, if you paid them only the
5 State funding formula salary amount?

6 A. No, I can say that beyond just my experience as
7 an Edmonds.

8 In Edmonds we have the midpoint philosophy. In
9 the 10 years that I was at Tumwater we didn't.
10 Negotiations was open every time that it was open.

11 We tried to get to a different methodology,
12 where we would use the average of similar-sized
13 districts based on the surge data. I say this because
14 I remember the person in involved.

15 We had a year, for the financial reasons, that
16 the district didn't change its salary, compensation.

17 We had, I remember, specifically, employees, who
18 then could literally leave their house and drive to
19 Olympia and make \$5,000 more than if they went to the
20 other direction and drove to Tumwater.

21 We lost really good people in that one year,
22 because the jobs were open. These were quality
23 people. They could turn one direction and make five
24 or six thousand dollars more than going in the other
25 direction.

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1 In that School District, for any reason, you
2 sort of missed it, people are paying attention to this
3 stuff. It is present bread and butter in their
4 household. If you aren't comparative and stay on the
5 edge, people figure it out pretty quick and they go.
6 These are talented people who don't have trouble
7 finding a job.

8 They are the best and the brightest ones that
9 you want to retain. You really do have to pay
10 attention to this.

11 Fundamentally, the State doesn't give us the
12 resource that we need to be competitive.

13 Take a principal. We receive approximately from
14 this State \$57,000 per year to pay for a principal.
15 That is not even half of what it would take to be
16 competitive for a principal in our State.

17 We have to make that up locally.

18 Q. Would you hire and attract and retain competent
19 principals, if you paid only the State funding formula
20 salary amount?

21 A. No way.

22 Q. Going back to the activity code 27, with the
23 classroom teaching, does the State fund all of the
24 classroom technology that Edmonds use s in for
25 teaching in their classrooms?

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1 A. No.

2 Q. But the \$108 million then is your classroom
3 teaching?

4 A. Correct.

5 Q. If I could ask you to look at the cover of the
6 F-196, please. That is transportation vehicle fund;
7 do you see that?

8 A. Ah-hum, yes.

9 Q. Could you briefly say what that \$1.5 million
10 amount pays for?

11 A. The transportation vehicle fund is for
12 purchasing buses or major upgrades to buses. If we
13 need to replace an engine, or a transmission --
14 something that is really expensive -- it is legal to
15 use the transportation vehicle fund to do that.

16 Q. If I could ask you to turn back to that page 17
17 of the F-196, could you tell me what are activity
18 codes 51 through 59?

19 A. That is the operations of the transportation
20 system within the district.

21 Q. That is the to and from transportation we
22 talked about before?

23 A. Correct.

24 Q. So if I add those two numbers together, we have
25 got then \$9 million.

1 So is approximately \$9 million what Edmonds
2 actually paid for pupil transportation to and from in
3 the 2007-2008 school year both the transportation
4 vehicle fund and operations together?

5 A. Correct.

6 Q. This \$108 million for activity code 27, is that
7 what Edmonds actually paid for classroom teaching that
8 year?

9 A. Correct.

10 Q. If I could ask you to turn to activity Code 21
11 through 22 and then 24 through 26 -- do you see those?

12 A. You said turn to?

13 Q. I am sorry, on activity code page, which is
14 page 17 --

15 A. All right.

16 Q. -- if you could look at activity codes 21
17 through 22 and 24 through 26, could you briefly say
18 what those -- that grouping generally pays for?

19 A. Well, that would be like 22 is library. 24
20 guidance and counseling, so non-classroom support,
21 non-classroom.

22 Q. The non-classroom instruction?

23 A. Right.

24 Q. You mentioned counseling, what does counseling
25 have to do with education or operations of your

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1 schools?

2 A. I am pausing a minute.

3 Well, we can put that in context. We have, in
4 our secondary schools, approximately 350 to 370
5 students for one counselor.

6 Again, there is myths that seem to live about
7 what people do in schools. Guidance counselors are
8 believed or assumed to be just dealing with, you know,
9 scheduling and getting skids through to graduation.
10 There is certainly those things that occur.

11 But there are things that counselors do that you
12 don't hear about. You don't read them in the
13 newsletters. You don't hear about them in the
14 newspaper. You don't see them on the reader board.

15 I will give you an example. Again, when I was
16 teaching, this goes to the fourth period class around
17 lunch time, US history. I was getting ready for a
18 test that day. My class was in the classroom.

19 In Peninsula High School there is the glass
20 recesses in the door, much like there is to the
21 courtroom.

22 There was time for class to start. I looked
23 through the glass and, Dana, one of my students, a
24 great student, she was standing outside of the door, I
25 could see that she was crying.

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1 So I went over to the door and I got the class
2 started. And I went over to the door and I went over
3 to the door and I stepped outside and I said "Dana,
4 what is up?"

5 She looked at me right up at me with tears
6 streaking down from her eyes.

7 She says, "well, Mr. Brossoit, I don't know what
8 to do. I just don't know what to do."

9 And my mind is on the test, "we need to come in
10 the classroom and sit down and take your test. "

11 I don't know, just something intuitively,
12 obviously, being a guy, we are not wired to be that
13 sensitive. But something intuitively said, "look, she
14 is not ready to take the test. She is crying. She
15 needs to take a time out."

16 I said, 'why don't you go up and talk to
17 Ms. Griffin," who is the counselor.

18 She said, "okay."

19 She walks and she takes off. I did the class.
20 We do the test. It is a couple days passes. I don't
21 see Dana and then she comes back to class, smiling,
22 happy like, you know, life is good. So she is back in
23 class. She makes up the test.

24 I am just curious so I didn't want to ask Dana
25 about it. But I went and saw Mrs. Griffin.

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1 I said, "what is the deal with Dana that day?"

2 She said, "Dana had just broken up with her
3 boyfriend."

4 I said, "she was asking me, like she couldn't
5 decide what she wanted to do."

6 She said, "she was trying to decide, if she
7 should kill herself or not."

8 This is a 4 point student, who you would all
9 think you would want to babysit your kids.

10 Probably doesn't need, you know, counseling in
11 this deep sense forever and ever, going through the
12 temporary life crisis, in that moment, needed some
13 support.

14 You know, everybody in this courtroom, take a
15 few variables in your life and change it, you would be
16 at risk.

17 In the public school system, the guidance
18 counselors, not only deal with this mass process of
19 getting all of these kids through the system -- which
20 itself is a challenge -- but they are there to support
21 kids, who are either pervasively at risk or
22 temporarily at risk within the system, you know, they
23 need that support.

24 They need somebody there to help them through
25 that moment, that critical moment to be able to be

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1 successful and stay there.

2 Another thing that most recently has happened
3 with the system, is our guidance counselors are really
4 having to do a lot of work to educate students and
5 parent -- which is particularly hard when they don't
6 speak English -- just to understand what the
7 graduation requirements are from year-to-year.

8 They are trying to keep kids on track and our
9 State keeps moving the track. It is just amazing.

10 We actually have to have a document produced
11 that shows what the graduation requirements are for
12 that particular graduating class, because it has
13 changed so much.

14 I used to be able to stay that up on that
15 myself. I have to go back and look at documents, if
16 you ask what are the graduation requirements for a
17 particular case class --

18 Q. You mean, 2013 as opposed to 2012?

19 A. Right.

20 There were classes preWASL, subject to the WASL
21 and then the math requirements changed then there was
22 a project added.

23 Then the State Board of Education changed a math
24 requirement. Now we are changing from the WASL to the
25 different test. It is confusing. If you are educated

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1 English speaking, literally well-educated parent, you
2 have to really work to understand what the
3 requirements for each student are.

4 If you don't, if you are not literate, if you
5 don't speak English, not even capable in your life to
6 figure that out, you have a really hard time
7 supporting your kids.

8 The system has a really hard time making that
9 accessible to you.

10 Q. So counseling is part of then the non-classroom
11 instructional support that you are referring to in
12 those activity codes?

13 A. Yes. I am sorry to go off on it, but your
14 pushing buttons with me.

15 Q. If you look at those activity codes and add
16 them up, the \$23 million that is there, that is then
17 for your non-classroom instructional support, is that
18 the \$23 million, what Edmonds actually paid in the
19 2007-2008 school year for non-classroom instructional
20 support?

21 A. Yes.

22 Q. If I could ask you to look at activity code 23,
23 please.

24 A. All right; principal's office.

25 Q. Could you just generally describe what does

1 activity code 23 pay for?

2 A. This would be the salary and benefits for the
3 principals and assistant principals in the system.

4 Q. Would that also include their like the whatever
5 the office staff is for the principal's office?

6 I mean. It is run the building administration?

7 A. Correct.

8 Q. So that approximately is \$10 million amount is
9 what Edmonds School District actually paid for school
10 building administration in the 2007-2008 school year?

11 A. Correct.

12 THE COURT: Mr. Ahearne, we are at 10:30.
13 Why don't we recess at this point.

14 We will take our morning recess at this
15 time. We will proceed with Dr. Brossoit's testimony,
16 when we resume.

17 We will be in recess.

18 THE CLERK: All rise. Court is in recess.

19

20 (Court was recessed and Cynthia Kennedy
21 is the court reporter.)

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I N D E X

W I T N E S S E S

NICHOLAS BROSSOIT

DIRECT EXAMINATION BY MR. AHEARNE 3221

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

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

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

21 Dated: September 24, 2009

22

23

24

DOLORES A. RAWLINS, RPR, CRR, CCR

25

King County Superior Court, Seattle, WA

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