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THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE

2 NEWTON UNIFIED SCHOOL DISTRICT)
 3 NUMBER 373, et al.,)
 -----Plaintiffs,)
 4 vs.)
 5 STATE OF KANSAS, et al.,) Case No.
 -----Defendants.) 90-CV-2406
 6 UNIFIED SCHOOL DISTRICT NO. 229,)
 7 et al.,)
 -----Plaintiffs,)
 8 vs.) Case No.
 9 STATE OF KANSAS, et al.,) 90-CV-1099
 -----Defendants.)
 10 UNIFIED SCHOOL DISTRICT NO. 244,)
 11 COPPEY COUNTY, et al.,)
 -----Plaintiffs,)
 12 vs.) Case No.
 13 STATE OF KANSAS, et al.,) 90-CV-1175
 -----Defendants.)
 14 UNIFIED SCHOOL DISTRICT NO. 217,)
 15 ROLLA, KANSAS, et al.,)
 -----Plaintiffs,)
 16 vs.) Case No.
 17 STATE OF KANSAS, et al.,) 92 CV 1202
 -----Defendants.)

VOLUME III
TRANSCRIPT
OF

PROCEEDINGS,

23 held on the 30th day of June, 1993, commencing at
the hour of 9:00 a.m. at the Shawnee County
24 Courthouse, Topeka, Shawnee County, Kansas,
before the Honorable Marla J. Luckert.

25 CURTIS, SCHLOETZER, HEDBERG, FOSTER & ASSOCIATES
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EX. 136

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I N D E X

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E X H I B I T S			
Exhibit No.	Identified	Offered	Admitted
1305	790	826	827
1308	767	826	827
1309	774	--	779
2001	828	828	829
2005	830	831	832
2016	830	830	830
5136	978	978	978

22 Certificate----- 1071

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1 THE COURT: Mr. Perry, you may call
 2 your first witness. For the record, I will note
 3 that appearances today are the same as they were
 4 yesterday for all parties. Mr. Hamill.

5 MR. HAMILL: If it please the Court, we
 6 are going to-- our first witness is Senator
 7 Bogina. I understand that's out of order, but
 8 due to his schedule we're going to call him
 9 first. Senator Bogina.

10 SENATOR AUGUST BOGINA, JR.,
 11 called as a witness on behalf of the Burlington
 12 Plaintiffs, having been first duly sworn by the
 13 reporter, testified under oath as follows:

DIRECT EXAMINATION

14 BY MR. HAMILL:

15 Q. Please state your name and address.
 16 A. August Bogina, Jr. Home address, 5747

18 Richards Circle, Shawnee, Kansas.

19 Q. And do you hold public office?

20 A. Yes.

21 Q. And what is that office, sir?

22 A. I am Senator for the 10th Senatorial

23 District in Kansas, Johnson County.

24 Q. In addition to public office, what is

25 your employment?

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1 A. I am president of a consulting
 2 engineering firm, Bogina, Hawley and Fyock
 3 located also in Shawnee, Kansas.

4 Q. Could you give us a brief description
 5 of your education.

6 A. I'm a graduate of Kansas State
 7 University, Bachelor of Science in Engineering in
 8 January of 1950.

9 Q. How long have you served in the Kansas
 10 Senate?

11 A. I've been in the Senate since election
 12 in 1900. I've been 13 terms in the Senate.

13 Q. And prior to being elected as a state
 14 Senator, did you hold state office as well?

15 A. I was in the House of Representatives
 16 for six years.

17 Q. You were first elected then to the
 18 State legislature in about 1974, is that correct?

19 A. The election of 1974, yes, sir.

20 Q. And you've served continuously either
 21 in the House of Representatives or in the Senate
 22 since that time?

23 A. Yes, sir.

24 Q. While in the Senate have you held any--
 25 have you served on any committees?

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1 A. Yes, quite a few.

2 MR. HAMILL: If it please the Court, we
 3 have previously identified, and I believe the
 4 parties have stipulated to, Senator Bogina's
 5 resume which is Exhibit 1308, and I believe
 6 that's been made into evidence by agreement of
 7 the parties.

8 THE COURT: The record will reflect
 9 that.

10 MR. RUPE: Your Honor, we haven't--
 11 that was the question I raised the other day in
 12 the stipulated exhibits. They were stipulated to
 13 between two parties, between Burlington and the
 14 State, I think. I don't think the rest of us
 15 have stipulated to that. I'd like to review it
 16 before I stipulate to it.

17 THE COURT: I'm sorry, I understood our
 18 discussion to be the other day to the stipulated
 19 facts. I didn't understand it really between
 20 exhibits.

21 MR. GALLAGHER: That was between Blue
 22 Valley and the State.

23 MR. HAMILL: For the purpose of this.

24 MR. RUPE: We have not-- I understand
 25 that we have not stipulated to Burlington's
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1 exhibits.

2 THE COURT: Okay.

3 MR. HAMILL: Well, Your Honor, I don't

4 want to get into an exhibit discussion, but it

5 was my understanding that all of the 1000 series

6 exhibits were agreed to and stipulated to by all

parties.

MR. RUPE: I'm sorry, 1000 exhibits I did not understand were your exhibits, but if this is from the 1000 exhibits, we have stipulated to it, Tom. I apologize.

THE COURT: It's 1003.

MR. HAMILL: It's 1308.

MR. RUPE: Sorry.

MR. HAMILL: And really it's being offered simply to speed up these proceedings.

Q. (BY MR. HAMILL) Senator, in order to shorten this somewhat, let me ask you, are you currently a chairman of the Ways and Means Committee?

A. The Senate Ways and Means Committee, yes, sir.

Q. Do you also serve as vice chairman of the Governmental Organization Committee?

A. Yes.

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Q. Would you tell us a little bit about the Senate Ways and Means Committee, what that committee does.

A. The main purpose and responsibility of the Ways and Means Committee is the development of the expenditures for the State of Kansas, the entire expenditures, both state general fund and other funds, and apportionment or appropriation of those dollars to the various agencies.

Q. And what is the purpose or function of the Governmental Organization Committee that you are the vice chairman of?

A. Generally speaking, the Governmental Organization Committee does review and make recommendations to the legislature on bills dealing with various governmental entities and various cities, other quasi-municipal type of agencies.

Q. Sir, do you also chair the House-Senate Conference Committee?

A. Yes.

Q. And what is the purpose of that committee?

A. Those committees resolve the differences in most cases-- well, in all cases
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the differences between the House and Senate in the various appropriations that each body passes.

Q. Okay. Do you also serve on the Finance Council?

A. Yes, as a part of my duties and responsibilities as chairman of the Ways and Means Committee, I am a member of the State Finance Council.

Q. Now, what is the purpose of the State Finance Council?

A. The Financial Council acts for the legislature when the legislature is not in session dealing with financial matters, whether it be tort claims or any other type of items, and we can act on items that are specifically not refused or denied by the legislature.

Q. Sir, do you also chair the Legislature Budget Committee?

A. It's an alternating type of committee. Yes, I have chaired it. I chaired it during the even-- during even years. During the odd years a member of the House of Representatives chairs it.

Q. And what's the purpose of that committee, sir?

25 A. That committee, during the interim when CURTIS, SCHLOETZER, HEDBERG, FOSTER & ASSOCIATES
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1 the legislature is not in session, reviews the
2 finances and the financial structure of the State
3 of Kansas, the various expenditures that the
4 State is undergoing or that they are realizing
5 during the balance of the year when the
6 legislature is not in session.

7 Q. Okay. In addition, sir, do you also
8 serve on the School District Finance and Quality
9 Performance Committee?

10 A. Yes, I do.

11 Q. And what is the-- what is that
12 committee and what does it do?

13 A. That is a statutory committee that was
14 established by the school finance law that's
15 currently in effect and it is to monitor the
16 performance of that act, the performance of the
17 educational system in order to determine the
18 relative quality of education that we are
19 receiving for the dollars we are spending.
20 Q. And the act that that particular
21 committee is concerned with is the new School
22 Finance Act that is the subject matter of this
23 lawsuit, is that correct?

24 A. The one that was passed last year, yes,
25 sir.

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1 Q. Yes.

2 A. Last session.

3 Q. Sir, in your years of service in the
4 Kansas legislature have you become familiar with
5 the history of school finance legislation?

6 A. Yes.

7 Q. Were you familiar with the old SDEA?

8 A. Yes.

9 Q. The old formula?

10 A. Yes.

11 Q. Could you describe, was that a formula
12 that was created over a long period of time,
13 short period of time or how did that come into
14 existence?

15 A. That was developed prior to my entering
16 into the legislature, immediately prior actually,
17 and it was developed over a course of years, my
18 recollection three years, and studied at great
19 length trying to develop the best school finance
20 formula possible that would provide an
21 educational opportunity to our students in Kansas
22 and also to be fair in the financing of our
23 schools.

24 Q. And you indicated it was developed
25 before you came into the legislature and you

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1 can--

2 A. Immediately before.

3 Q. Excuse me?

4 A. Immediately before I entered the
5 legislature.

6 Q. So just before 1974?

7 A. Yes.

8 Q. And is that the school finance formula
9 that was in existence until the act was changed
10 two sessions ago?

11 A. Yes.

12 Q. Are you familiar with the circumstances
13 surrounding the development of the new act?

14 A. I am familiar how it was developed in
15 my opinion, yes.

16 Q. Over what period of time did the-- did
17 the Senate, and to your knowledge the entire
18 legislature, debate, consider the new act which I
19 believe is being referred to in this courtroom as
20 the School Finance Act or the SFA?

21 A. The-- there was a study committee or
22 commission appointed by the governor to develop
23 some recommendations. Subsequent to that time at
24 the beginning of the 1992 session the House and
25 Senate Education Committee held some hearings. I
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1 consider them kind of a circus type of hearings
2 compared to legislative activity, and then a
3 formula was developed, presented to the House of
4 Representatives and then to the Senate and
5 ultimately the bill that's currently law was
6 passed --

7 Q. Okay.

8 A. -- in a very short period of time
9 comparatively speaking.

10 Q. That was going to be my question. In
11 your opinion the passage of this act, the SFA,
12 did that occur in a short period of time?

13 A. My opinion, substantive legislation,
14 this issue, it was passed in a very short period
15 of time.

16 Q. And I want to ask you some questions
17 about the history of funding of education in the
18 State of Kansas, and to assist in my questioning,
19 I'm going to hand you what has been previously
20 identified as Exhibit 1309.

21 MR. HAMILL: Again, Your Honor, that is
22 one of the exhibits that I believe all parties
23 have stipulated to.

24 THE COURT: All right.

25 MR. RUPE: Your Honor-- Tom, I'm sorry,
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1 but the 1300 series, the Burlington series has
2 some items that we did not stipulate to on that
3 and I've checked with both co-counsel and they
4 don't recall stipulating to anything other than
5 the first page of this exhibit list which is 1000
6 through--

7 MR. RUPP: Your Honor, there's this
8 exhibit list that says stipulated exhibits used
9 by all parties. The first page is produced by
10 the State of Kansas. All the parties have
11 stipulated to that. The second page was produced
12 by the State of Kansas and I think-- and those
13 budgets, those are things that we stipulate to.
14 Burlington stipulated exhibits are things that
15 apparently Burlington has produced and they have
16 listed them as stipulated exhibits. None of
17 those have been stipulated to by us. That's the
18 1300 series. The 1400 series I understand are
19 exhibits that were produced by Mr. Gallagher and
20 the State and that was in their original 6000
21 series and we agreed to stipulate to those as
22 well as the 1500 series, so we're in a situation
23 where Burlington made out this stipulated exhibit
24 list and put down that its 1300 series exhibits
25 were stipulated exhibits. We do not and have not
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1 stipulated to those. That is their list. They
2 put down that these exhibits were stipulated to.

3 The exhibit that he just handed the witness is
4 something that they have not provided to us,
5 although we may possibly have a copy of it
6 somewhere in our files, so I just want the record
7 to be clear on that.

8 MR. RUPE: This gets back to why we
9 wanted everyone to exchange their exhibits in
10 advance. That was not done. So if we have to
11 look at them one at a time, Tom, I'm sorry, but
12 that's the way we need to do it because I'm not
13 going to wholesale stipulate to everything you
14 have marked.

15 MR. PERRY: Judge, so the record is
16 clear, Your Honor, everybody-- every exhibit on
17 this list has been made available to the
18 parties. We started this list way before we
19 started the trial and we couldn't get a response,
20 for whatever it's worth. If we have got to admit
21 them, we have got to admit them.

22 THE COURT: Well, we can deal with the
23 whole list at a different point perhaps more
24 efficiently, but I do recall discussion that
25 anything in the legislative record or that had
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1 been presented to the legislature would be
2 included in those stipulated exhibits. I don't
3 know if that's the category of this document or
4 not.

5 MR. RUPP: Those documents that you
6 just referred to were provided to us by Mr.
7 Gallagher and we stipulated to those and they're
8 in that first page.

9 THE COURT: If you could just show them
10 a copy.

11 MR. HAMILL: I just handed them-- do
12 you have a copy of it? I just sent it down to
13 you.

14 MR. RUPE: It didn't make it.

15 MR. VRATIL: Your Honor, for the
16 record, the Blue Valley plaintiffs will stipulate
17 to all of the exhibits in the 1300 series.

18 THE COURT: All right.

19 MR. POPKIN: For the record, I thought
20 we already had, so I'll do it again.

21 MR. VRATIL: I thought we had too.

22 MR. RUPP: We just-- we need to see
23 them. If we see them at a break or something, we
24 can resolve this, we can get on with the trial,
25 but that's just something that needs to be--
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1 MR. HAMILL: We don't have-- this isn't
2 going to be a big issue. I've got this exhibit
3 and one other exhibit and they're documents that
4 are similar to ones you've seen when Dale Dennis
5 testified. I don't think there's going to be any
6 surprise here.

7 MR. RUPP: Just let us see it and we'll
8 be fine.

9 MR. RUPE: As soon as we get a copy of
10 it. Tom, is this-- this is a June 1, '93,
11 publication.

12 MR. PERRY: That was made available to
13 us by Mr. Bogina last week. We faxed it to
14 everybody. He gave it to us last Tuesday, I
15 believe it was, and if the-- well, whether you
16 got-- okay, I'm not going to get into that. The
17 source of that document is the Kansas Legislative
18 Research. Senator Bogina can attest to that.
19 It's got numbers that you've seen from Dale
20 Dennis's office that's in a different format.

21 MR. HAMILL: It's simply an update of
what Dale Dennis testified to earlier, more
current information.

MR. RUPE: No problem.
MR. HAMILL: Thank you.

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1 MR. RUPE: No objection.
2 THE COURT: For the record, we'll show
3 the admission of 1309.

4 Q. (BY MR. HAMILL) Senator Bogina, I
5 believe you have Exhibit 1309 in front of you, is
6 that correct?

7 A. Yes.

8 Q. And are you able to identify that
9 exhibit, sir?

10 A. The document as prepared by the Kansas
11 Legislative Research Department on June 1, 1993.

12 Q. And what is the document?

13 A. It's a tabulation of the dollars that
14 are required to finance the School District
15 Finance Act. It has actual expenditures for
16 '91-92, estimated for '92-93 and estimated for
17 '93-94 school years.

18 Q. And the first page, if I understand
19 your testimony, is the actual and estimated
20 financial information for the funding of the
21 school districts for the state for '91-92 through
22 '93-94?

23 A. That is correct.

24 MR. RUPE: Your Honor, I'm going to
25 interrupt. I'm sorry. I gave my-- I had the
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1 original I handed back to you. We're being asked
2 questions about a document I don't have in front
3 of me and I'd like to be able to follow it. Is
4 there an extra copy I can have?

5 MR. HAMILL: We Faxed them out last
6 week. Does the Court desire we take a break
7 here?

8 THE COURT: I was going to say is there
9 another line of questions or does this-- is there
10 any chain of-- I don't want to make you skip if
11 it doesn't work because it may take a few
12 minutes.

13 MR. POPKIN: It won't take all that
14 long to make a copy.

15 MR. HAMILL: It's the foundation of
16 where we're going.

17 THE COURT: It will because we have to
18 get keys and everything.

19 MR. POPKIN: I see.

20 THE COURT: So let's just take a
21 five-minute break and maybe-- if you know the
22 other exhibit that you'll be using, see if we can
23 deal with it.

(THEREUPON, a recess was had
from 9:30 until 9:35 a.m.)

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1 THE COURT: Call the Court to order
2 again. Mr. Hamill, if you would proceed.

3 MR. HAMILL: Thank you, Your Honor.

4 Q. (BY MR. HAMILL) Senator, let me
5 redirect your attention to Exhibit 1309. I
6 believe you had described the first page of the
7 exhibit?

8 A. Yes. The exhibit was prepared by the
9 Kansas Legislative Research Department on June 1,

10 1993, and it designates and depicts the
11 expenditures that were actual for the school
12 districts-- the state portion of the expenditures
13 that were actual for '91-92 and estimated for
14 '93-- '92-93 and estimated for '93-94. It also
15 has the increases both in dollars and percentage
16 at the far right-hand side.

17 Q. Okay. On that first page there is a
18 section that deals with total state aid. Do you
19 see that about two-thirds of the way down?

20 A. Yes.

21 Q. And does the exhibit reflect-- does
22 that portion reflect the total increase in the
23 amount of state funding of education?

24 A. Yes, it does. It's the state general
25 fund, the state aid on the first line and there's
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1 several other funds that the State participates
2 in with the school districts and it is designated
3 as Footnote G, it's at the end of the page, and
4 that describes the distribution made in calendar
5 year 1981 due to difficulties.

6 Q. Well, on Page 1 which are the figures
7 for '91-92 and '92-93 and then the estimates for
8 '93-94, is that correct?

9 A. Yes, yes.

10 Q. And the total state aid in 1991 and
11 '92, is that the figure reflected of
12 961,771,000?

13 A. \$961,771,000 because this is in
14 thousands of dollars.

15 Q. Right. And so was that the total state
16 aid provided the State of Kansas for education in
17 that year, that school year?

18 A. From the State, yes, sir.

19 Q. And does the exhibit reflect the
20 estimated increases for the next two fiscal
21 years?

22 A. Yes.

23 Q. And what is the estimated increase in
24 between 1991-92 and '93-94?

25 A. Between '91-92 and '92-93 it's \$243
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1 million increase and there's another 388,548--
2 \$582,000 increase between '92-93 '93-94.

3 Q. And then the total for those-- total
4 increase then for those two additional years is a
5 total of 631,849,000, is that correct?

6 A. 849,000, yes.

7 Q. There's a number to the right of that.
8 What does that number represent, 65.7?

9 A. 65.7 percent increase.

10 Q. Okay. The next group of figures down
11 is entitled Enrollment K-12 (3). What is that?

12 A. That's K through 12 school districts;
13 in other words, kindergarten through to 12th
14 grade or high school. (3) is a footnote that's
15 explained on the back. (3) is in 1978 six
16 special levies that were eliminated and they were

17 all merged into one fund. It's just an
18 explanation of that K through 12 enrollment--
19 enrollment numbers in that first line, the FTE
20 enrollment, full-time equivalent enrollment as of
21 September 20 of a given year. That is the date
22 when all the student enrollments are measured.

23 Q. That's the 424,737?

24 A. Yes.

25 Q. For the year '91-92?

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1 A. Yes.
 2 Q. And then the other two columns to the
 3 right are projected increases?
 4 A. Yes.
 5 Q. And the figure at the far right column
 6 of 3.6, what is that?
 7 A. 3.6 percent increase in the FTE.
 8 Q. And that is a projection, is it not?
 9 A. Yes.
 10 Q. The final column or short grouping
 11 there entitled Certified Employees, you see that
 12 below it?
 13 A. Yes.
 14 Q. What is that depicting?
 15 A. That indicates the number of employees
 16 that the school districts had in their employment
 17 both-- in all the years that we are discussing.
 18 Q. Okay. And if we follow on across to
 19 the right then, do we get a projected increase in
 20 employees by the school districts of 6.4?
 21 A. 6.4 percent, yes, sir.
 22 Q. So according to this document,
 23 enrollment is projected to increase 3.6 and
 24 school employees are projected to increase 6.4
 25 percent?
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1 A. Yes.
 2 Q. And I think you've previously indicated
 3 the level of state funding is projected to
 4 increase by 65.7 percent, is that correct?
 5 A. Yes.
 6 Q. I'd like to direct your attention to
 7 Pages-- they're not numbered, the next two
 8 pages-- actually the next three pages of that
 9 exhibit and ask you if you could identify to the
 10 Court what those pages are?
 11 A. A document also prepared by Legislative
 12 Research Department on June 1 and it's a
 13 historical reference-- recognition of state aid
 14 as funding of the state school-- or schools by
 15 the State from 1972-73 school year through
 16 1991-92 school year, which is a 20-year
 17 historical view.
 18 Q. Very well. Then let me direct your
 19 attention to what is actually marked at the top
 20 of the page as Page 3 of that exhibit. Do you
 21 see where I am? No. 3 at the top and it is the
 22 third page, ironic.
 23 A. The third page of the appendix, I
 24 believe.
 25 Q. Yes. Again, I'm going to go down about
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1 two-thirds of the way down where it says total
 2 state aid, that section of the exhibit.
 3 A. Yes.
 4 Q. And in the far right column, if I
 5 understand, the last two columns are the total
 6 dollar increase for these various categories
 7 during this period of 10 years?
 8 A. 20 years.
 9 Q. I'm sorry, 20 years, yes. And in
 10 addition then the far-- the furthest column on
 11 the right is the percentage of increase --
 12 A. Yes.
 13 Q. -- is that correct? And for the state
 14 general fund, what is the figure on that far
 15 right, 605.9? What is that?
 16 A. The state-- the general-- the state

17 general fund proportion or payment to the schools
 18 for operation is increased over 20 years
 19 \$819,075,000 or 605.9 percent.
 20 Q. Okay. And dropping down to enrollment
 21 K through 12 again, does that show a decline in
 22 student enrollment?
 23 A. In the past 20 years the student
 24 enrollment has declined 51,795 students.
 25 Q. And as a percentage decrease, is that a
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1 10.9 percent decrease?
 2 A. Yes, 10.9 percent decrease over 20
 3 years.
 4 Q. And then again, the last item on that
 5 page is the certified employees?
 6 A. Yes.
 7 Q. And do I understand that during this
 8 20-year period the number of employees is
 9 increased by 4,919?
 10 A. Yes.
 11 Q. And then the percentage of increase
 12 would be the 16.7 percent?
 13 A. Yes.
 14 Q. Is there-- how is this information
 15 helpful to you as a Senator and to other
 16 legislators in grappling with this educational
 17 funding issue?
 18 A. This Senator uses that as a measure of
 19 our-- the results that we expect, anticipate from
 20 funding of education K through 12. That
 21 indicates we have reduced our student population
 22 FTE and we have increased employees dramatically
 23 and we have very, very dramatically increased
 24 state support of our educational system.
 25 Q. What is your view of the ability of the
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1 state legislature of the future to continue to
 2 fund education in the manner that is being
 3 projected in this exhibit?
 4 A. As part of my responsibility, I believe
 5 it's that I must make projections into the future
 6 as to the ability of the State of Kansas to
 7 sustain and support all facets of our
 8 government. I believe the current formula will
 9 create and cause difficulties, extreme
 10 difficulties in the future to adequately fund our
 11 entire state government.
 12 Q. Why is that, sir?
 13 A. For several reasons. One of them is
 14 the State of Kansas is the basic now supplier of
 15 money for education and it-- it determines-- the
 16 State determines the level of funding, it
 17 determines how it's to be spent and why it is to
 18 be spent. The pressures caused by those
 19 determinations are going to be very severe on our
 20 budgetary process in the future, and we have
 21 several other problems that are inherent in this
 22 particular act that will cause us-- I mean us,
 23 the legislature, grave concern in the very near
 24 future.
 25 Q. You mentioned various pressures. Are
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1 you suggesting there are pressures other than
 2 just education?
 3 A. Oh, absolutely. There are many
 4 pressures on the budgetary process other than
 5 education.

Q. Are you familiar with the term "the black hole"?

A. Yes.

Q. What does that mean? What does that mean to you?

A. The governor in her budget message at the beginning of the 1993 session, she may not have been the first person to label it as such, but she, in that message noted the black hole in the education funding stream that will occur in 1995 which must be addressed in the 1994 legislative session. And it was her designation of that problem as a black hole and I've heard others discuss it or call it that also.

MR. HAMILL: If it please the Court, I want to hand the witness at this time what has been marked as Exhibit 1305. I believe everybody has seen that.

Q. (BY MR. HAMILL) Senator, are you able to identify that document?

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A. This is a document that was prepared towards the end of the legislative session, actually on April 8, 1993, and there was a cooperative effort by the Kansas Legislative Research Department and the State Department of Education. They prepared this for our consideration and our review and discussion during the final days of the session.

Q. Is there anything in that document, sir, that helps you perhaps illustrate the black hole issue that you've previously mentioned?

A. Yes. It's the ability to fund next year, and I'm talking about '95-'96 or fiscal year 1996 budget for education, which by statute is required to fund the various aspects of it, required to provide the funds for them.

Q. Okay. In that document, the first column is entitled Estimate 1992-93?

A. Yes.

Q. And the first grouping of numbers are under the general category of revenues and several lines down is a category unspent balance last prior year?

A. Yes.

Q. And to the right of that in the first
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column is a figure of 194,950,000. Do you know what that is?

A. Yes. It's the amount of money that I say the formula stole from the various school districts. That's my terminology because I believe that's exactly what it was. When this proposal was originally presented to the legislature, that estimate was \$179 million. In actuality it was \$194,950,000. That was a one-time acquisition of dollars to the formula.

Q. How did the State acquire that?

A. They just-- the school districts, whatever funds they had on hand as of June 30, 1992, that amount of money was deducted from the next budgetary amount of dollars that would be available for the school district, they took it and used it in the formula, if I could.

Q. And this may not be a very good characterization, but did the State then take those locally raised funds that were raised by the local districts and use that to fund the 1991-92 state education fund?

A. For the entire formula statewide, the

24 answer is yes.

25 Q. And so that's how the State was able to
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1 fund the total figure there-- the subtotal of
2 879,213,000. Of that they simply grabbed the 94
3 million that had been raised previously in the
4 local districts through whatever mill levies they
5 were utilizing at the time, is that correct?

A. It was part of the funding portion of the school district, yes.

Q. Now, to the immediate right then of that same column we see projected '93-'94, we see projected '94-'95 and there are zeros?

A. You only steal it once.

Q. And how will the State make up that difference?

A. It must come from other funding sources, primarily the state general fund or the taxpayers of Kansas.

Q. Is there anything about the method of collecting the property tax revenue under the new statute that causes you concern?

A. Yes. That's another part of the black hole that the governor described that appears. When the formula was originally developed, they anticipated that the property taxes in general would be paid by December 20. That doesn't happen. There are a lot of taxes in process and
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1 in progress. In fact, some people don't pay
2 their property taxes until they appeal them and
3 those property taxes come in later, and that's
4 approximately a hundred million dollars that
5 will-- that was a shortfall that attacks the
6 funding stream next year. That's part of the
7 cause of the black hole.

Q. Okay. Do you believe that there's going to be a shortfall in the funding of the school budgets for the state next year?

A. There's going to be a shortfall in the state funding of all areas next year. I assure anyone who's interested there will be.

Q. What will be the effect under this new formula on each of the school districts in the state of that shortfall?

A. The formula was changed during the 1993 session to stipulate that if there is a shortfall in the dollars available for education, all school districts share equally in that shortfall on a per pupil basis. That was a change that was enacted this session.

Q. Okay. We have been hearing throughout the trial about this basic state aid per pupil of \$3,600. The sharing, would that be through a
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1 reduction in that figure, is that what you're
2 saying?

A. That is correct.

Q. And under the formula, the basis of the 5 local school budgets is the-- their enrollment 6 times that number, is that correct?

A. The adjusted enrollment times that number, yes.

Q. So it is your belief, sir, that there will be a shortfall in the next session?

A. There will be a shortfall in the state funds. If the legislature chooses to fully fund

13 education, then something else will suffer
14 because the overall dollar figures available to
15 the state based upon projections of the experts,
16 not this Senator, indicate there is a shortfall
17 of approximately \$59 million next session.

18 Q. Okay. So if I understand your
19 testimony, if the state legislature, according to
20 these experts' projections that are being made at
21 the present time, if there is a shortfall of 59
22 million, then in order to fully fund education in
23 the State of Kansas, the legislature in its
24 collective wisdom will have to take \$59 million
25 from some one or another state funded projects?

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1 A. Or raise taxes.
2 Q. Or raise taxes. This situation
3 regarding capital improvements for the local
4 school districts has changed under the new act,
5 is that correct?

6 A. Yes.
7 Q. Would you explain that to the Court,
8 please.

9 A. Yes. The State now shares in the
10 capital improvements for the local school
11 districts on a long-term basis, which I
12 personally have problems with because we have a
13 long-term indebtedness-- the State has a
14 long-term indebtedness of 20 years, 10 years,
15 whatever the bond issue term might be that the
16 local school district would enact. So the State
17 is a partner in that debt with all the school
18 districts, including prior debt that may have
19 been in force or enacted prior to the-- prior to
20 this enactment of this bill. Now, we have a
21 long-term-- we, the taxpayers of Kansas as a
22 whole have a long-term debt for school facilities
23 over which the State at this point has no
24 control.

25 Q. So at this time then under the new
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1 financing scheme, the State becomes a
2 co-guarantor, an obligor on all of this capital--
3 all of this debt for capital improvement?

4 A. Dependent upon the relative, use that
5 generically, wealth of a school district.

6 Q. Has that ever happened in your-- in
7 your experience, that the State became obligated
8 on long-term debt?

9 A. No, sir. It's always been my
10 understanding that the State could not enter into
11 long-term debt, which we prided ourself in not
12 doing in the past as a legislature.

13 Q. And is that a radical departure,
14 fundamental departure from previous funding of
15 schools?

16 MR. BILES: Your Honor-- excuse me,
17 Senator. I'm going to object at this point, Your
18 Honor. I think that we have taken the
19 examination beyond the constitutional principles
20 that are at issue in this case and what we're now
21 talking about is what's good public policy or bad
22 public policy, which is not within the purview
23 either of the evidence in the case, the issues or
24 this Court, for that matter, because it doesn't
25 matter whether it's good policy or bad policy.

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1 What matters is whether the law is

2 constitutional.

3 MR. HAMILL: Well, I think whether-- I
4 think there are a lot of things that come into
5 consideration in determining whether a law is
6 constitutional or not, and if it constitutes a
7 fundamental restructuring and change in the
8 method of financing education, then I think it's
9 something that the Court should consider.

10 THE COURT: I think this particular
11 question is one based on historical context and
12 from that viewpoint is appropriate and I'll allow
13 that particular question. Senator, I don't know
14 if you recall the question.

15 A. I don't know if I answered it or not.
16 What was the question?

17 MR. HAMILL: Why don't you read the
18 question back, please.

19 (THEREUPON, the last question was
20 read back by the reporter.)

21 A. My opinion, most definitely.

22 Q. (BY MR. HAMILL) We have talked about
23 this \$59 million projected shortfall for 1993-94
24 and you mentioned pressures on the State from
25 concerns other than state education. Are you
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1 familiar with the recent Supreme Court case
2 dealing with payments to military retirees?

3 A. Yes.

4 Q. And can you-- what effect do you
5 believe that will have on the ability of Kansas
6 to fund education in the future?

7 A. According to the plaintiffs' attorneys,
8 the impact will be approximately--

9 MR. RUPE: Your Honor, excuse me a
10 second. I'm going to interpose an objection at
11 this point. I think that is really speculative
12 as to what effect some Supreme Court decision may
13 have on something else. Speculation.

14 MR. BILES: I think I would add
15 hearsay, Your Honor. When he started out saying
16 the plaintiffs' attorneys are telling us, it's
17 clearly hearsay.

18 THE COURT: It does sound like it's
19 calling for a hearsay answer and on that basis I
20 would sustain the objection. As to the
21 speculation, I think it may or may not be
22 speculation. I don't know what the witness would
23 have, but I would say at this point there's
24 probably not sufficient foundation for the
25 question.

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1 Q. (BY MR. HAMILL) Senator, has any--
2 have anybody in the state, state agencies,
3 attempted to quantify-- let me back that up. The
4 State of Kansas and the legislature are well
5 aware of this case, are they not?

6 A. Yes.

7 Q. And why have they followed this case?

8 A. Because of the potential of a major
9 loss or major payment of our state general fund
10 revenues to satisfy that case.

11 Q. Without getting into the legalese and
12 the legal theories, what do you understand an
13 adverse outcome to the State would cause to
14 happen?

15 A. Any payment whatsoever to satisfy that
16 or any case will profoundly impact the \$59
17 million shortfall we already discussed. It
18 merely adds to that shortfall.

19 Q. Has anybody in the State attempted to

20 calculate or quantify this potential contingent obligation of the state?
 A. Yes.
 Q. And who's done that?
 A. Our legislative research.
 Q. Okay. And could you have-- have they
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 1 provided you information as a member of the legislature?
 A. Yesterday verbally, and I don't have it in writing.
 Q. What have they told you verbally?
 A. \$101 million potential.
 Q. And so I'm just asking you is this another one of those pressures that you referred to that the legislature is going to be faced with as well as the pressure to fund-- to fully fund education?
 A. Yes.
 Q. Sir, do you know the percentage of the state general budget that is allocated to education?
 MR. GALLAGHER: Senator, before you answer, can we have a clarification. Are you talking about education, public school education K through 12 or education through the regents system or community colleges?
 MR. HAMILL: Well, I wanted a yes or no and then we might go from there.
 MR. GALLAGHER: Okay.
 A. In general, yes.
 Q. (BY MR. HAMILL) Can you describe--
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 1 keeping in mind the comments by counsel, can you break it down?
 A. The major part of our general fund expenditures, which are the general tax revenues for the people of Kansas, is spent on education.
 Q. All types?
 A. Yes.
 Q. And what is that percentage?
 A. Approximately two-thirds.
 Q. Do you know the percent of increase that is being projected for education K through 12 in the upcoming fiscal year in the State of Kansas?
 A. 39 percent is my recollection.
 Q. In your opinion, Senator, based upon your experience, and particularly your involvement in the financial aspects of state government, is the state legislature going to be able to continue to fund education in the State of Kansas providing the kinds of increases in funding that have occurred in the past and are currently being projected in the exhibit that you previously discussed, 1309?
 A. I believe not.
 Q. And I believe you indicated if the
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 1 legislature doesn't fully fund the budget for elementary education, that then the districts share proportionately in the underfunding, is that correct?
 A. On a per pupil basis.
 Q. Yes, on a per pupil basis. I want to ask you a little bit, Senator, about the budget mechanisms being dictated or required of each of

9 the local school districts to determine their budgets, and I'm referring to the basic state aid per pupil of \$3,600. Let's talk about that first. What was the source of that figure in the legislature?
 A. My opinion, it was an auction.
 Q. Excuse me?
 A. An auction.
 Q. Can you explain that, please.
 A. Well, there's several numbers, \$2,900 per student, \$3,500 per student, \$3,300 per student. The proponents of this bill tried to find a number that was acceptable, it had no basis in fact whatsoever, and they found \$3,600.
 MR. GALLAGHER: Your Honor, having heard the answer, now I think I need to object to the question. I didn't perceive the question as
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 1 asking what the legislature was doing when it did that. I thought he was asking for the fact basis, what information was provided. I think the answer then he's talking about what the proponents were trying to do and I think that goes to legislative intent.
 MR. HAMILL: Your Honor, first of all, I'd like to address the Court. I think he's entitled to give his observations, even his beliefs and opinions in that regard, and I've submitted to the Court a brief on that issue. This is not an expert witness, we didn't list him as an expert witness, he's a lay witness, and as the brief points out, there's a good deal of support, not only in the statutes but in the cases, for allowing senators, representatives to come in and give their beliefs and opinions and it's really-- the issue is relevance and weight. This is not a Court tried-- this is not a jury tried case and I think that our memorandum supports the proposition that his testimony is admissible. Certainly this Court is entitled to consider his-- you know, his experience, his knowledge and give that whatever weight is required. I think-- well, it certainly puts
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 1 form-- technical rules weight over substance to say that a man of this man's credentials and background who's been involved and chaired this committee and that committee and his involvement can't come in here and testify. Now, the Court can give whatever weight the Court considers.
 MR. VRATIL: Your Honor, on behalf of the Blue Valley plaintiffs, I'd like to address the Court on this issue too because as the Court knows, it probably will affect us. We too have submitted a memorandum brief to the Court on this issue. Our position is that there are no plaintiffs in this case who are suggesting that the act is vague or ambiguous. Nobody is suggesting that this act requires construction or interpretation by the Court. We are all agreed that this act is very clear. We know exactly what the act does to us. That's not the issue before this Court and, therefore, there is no question of legislative intent. The only way you get a question of legislative intent is if the Court is called upon to interpret or construe the act. An objection based upon legislative intent is a total red herring because that's not what the cases that the State relies upon are talking
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 1 about. They are talking about legislative intent
 2 in the context of interpretation or construction
 3 of a statute. They are not talking about what an
 4 individual legislator may have intended when he
 5 or she did something or said something. That is
 6 not the legislative intent that Mr. Gallagher is
 7 talking about-- or, excuse me, that is the
 8 legislative intent that he's talking about,
 9 that's not what the Courts talked about when they
 10 are referring to legislative intent. They are
 11 talking about construction or interpretation of a
 12 statute and, therefore, we're mixing apples and
 13 oranges here and I think we need to clearly focus
 14 on what's at issue in order to resolve this
 15 question.

16 THE COURT: Mr. Gallagher.
 17 MR. GALLAGHER: Your Honor, working at
 18 it backwards, if there isn't any question of the
 19 vagueness of the statute, I guess the question
 20 then becomes why is anyone putting anything on
 21 about what the legislature was trying to do.
 22 I've read the Burlington brief. Senator Bogina
 23 has been giving us his opinion based on his-- his
 24 position and his long years of experience as
 25 chair of the Senate Finance Committee. I have no
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 1 objection to that. That's not a problem. The
 2 problem I have is, is when we're talking about
 3 specifically this act and what were individual
 4 legislators trying to do when they were trying to
 5 get it through, what were they doing. I think
 6 the cases I gave to the Court are pretty clear
 7 about that. Post-enactment comments by any
 8 legislator, I'm not picking on Senator Bogina or
 9 anybody else that's going to appear, they're just
 10 not appropriate. That's why we have the
 11 legislative history and the legislative record.
 12 I understand the cases say if the legislators
 13 want to come in and say this was the information
 14 that was put before us, that's fine; but when you
 15 get to the point that you're saying, well, this
 16 is what they were doing and why, we were having
 17 an auction or they were trying to do this, we
 18 were trading off this and that, it happens in the
 19 legislative process all the time. You'll get
 20 support-- one legislator may vote for something
 21 for no other reason than he needs a vote or she
 22 needs a vote on another bill they're trying to
 23 get through. It gets to be a pretty sticky
 24 mess. I think we need to limit it to if he wants
 25 to present what was presented to any of the
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 1 committees or on the floor, that's fine; but any
 2 interpretations of what was going on based on
 3 that information, I think it gets into the realm
 4 of legislative intent.
 5 MR. HAMILL: Well, first of all, I
 6 agree with what John Vratil said, and we have
 7 studied the legal position of the State on this
 8 issue and, of course, I'm sure the Court has
 9 looked at that as well and the cases that he
 10 cited may be quite clear. We didn't spend a lot
 11 of time studying them because, of course, none of
 12 them are from the State of Kansas so they don't
 13 really I think provide any guidance to this
 14 Court. Counsel's comment is simply that he
 15 doesn't like the testimony he's heard. I asked

16 the Senator what was considered, what was the
 17 basis, and rational basis for some of these
 18 things is a key issue; and I asked him what the
 19 basis was, and the answer may not have been
 20 pleasant in his observation, the basis. And
 21 since we had previous testimony by counsel, I
 22 will proceed and say that in his opinion the
 23 basis had nothing to do with whether that was an
 24 adequate number or not, it was how many votes can
 25 we get. And we all know that happens in the
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 1 legislature and I don't think there's anything
 2 that's going to shock this Court and we all know
 3 we're making a record in this case and how-- how
 4 that figure was arrived at is an important aspect
 5 of this case. I mean you've heard these people
 6 come in and testify this is how their budgets are
 7 set. These people said 3,600 times enrollment,
 8 bingo, go to work. He's entitled to testify what
 9 was considered in the legislature to arrive at
 10 that number and that's what he's done. Now, they
 11 may not like the answer, but it's clearly
 12 probative, and they're entitled to present
 13 reams and documents of things that were presented
 14 in support of it. This Senator's entitled to
 15 give his observation of what he thought was
 16 happening.

17 MR. GALLAGHER: I have a couple of
 18 Kansas cites for you, Judge, I've managed to dig
 19 out. One is Hand vs. State Farm Mutual Auto
 20 Insurance Company, 2 Kan. Ap. 2d 253 et. 257, and
 21 these aren't-- they don't go through the analysis
 22 as they do in the other states. This is simply a
 23 sentence out of there that says no citation. We
 24 are unaware for precedent of judicial
 25 ascertainment of legislative intent through
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 1 statements of legislators made years after the
 2 event. The other case is Hall vs. State Farm
 3 Mutual Auto Insurance Company, 8 Kan. Ap. 2d 475,
 4 and I don't have the page cite on this.
 5 Legislators' statements made years after
 6 enactment are not valid legislative history.
 7 MR. HAMILL: I think we have cited
 8 those, Your Honor, in our brief, and we're not
 9 talking about eight years, we're talking about
 10 during the debate.

11 MR. VRATIL: Your Honor, I have not
 12 read either one of those cases, but I suspect if
 13 I did and if the Court reads them, the Court will
 14 see that both of those cases were dealing with
 15 construction of a statute, interpretation of a
 16 statute. That's what the courts generally
 17 connect legislative intent with and, therefore,
 18 they are totally opposite of the situation in
 19 front of this court.

20 THE COURT: Let me-- Mr. Biles, were
 21 you ready?

22 MR. BILES: Well, for the record, Your
 23 Honor, I just want to show that the State Board
 24 joins in the objection. I'm not sure that-- even
 25 though you know that, I'm not sure we have got
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 1 that on the record. In addition, I think the law
 2 is very clear that when trying to attack the
 3 rational basis of a statute, the issue is whether
 4 there's any set facts anyway, not whether the

legislature had a set of facts; otherwise, every time you wanted to attack the rational basis of a statute, you'd have 165 potential people to bring into a courtroom. I mean that's what these rules and these principles go to where the courts say we don't listen to the perceptions of legislators after the enactment, we look at what we know and that's the legislative history.

THE COURT: I have examined the cases both from the Hand and the Hall case and other cases, and for purposes of the record, let me state perhaps a fairly lengthy ruling just so we have that into the record because in part, at least, my analysis is similar but somewhat different than what has been presented by the parties in the briefs. I think that the cases for analysis do have to be separated into the two categories; one of those cases dealing with the admissibility of the legislators' testimony when faced with an issue of statutory construction, and the second in dealing with the ascertainment

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1 of the legislative history in determining what
2 did just-- what was the course of procedure and
3 what occurred step by step and the historical
4 basis of the enactment. In either case, I think
5 the principal evidentiary issue was not so much
6 the analysis of the witness's qualifications to
7 testify, but rather is the application of
8 evidentiary standards regarding the construction
9 of a document, in the case of the statutory
10 construction, or documents in the case of the
11 legislative history and the construction of
12 those. The cases are sketchy at best, but they
13 seem to be applying an analysis of the parol
14 evidence rule in construction of documents and
15 determination of when extrinsic evidence can be
16 admitted in the construction of those documents.
17 The distinction is important in terms of whether
18 we're looking at legislative construction or
19 historical enactment in examining the focus of
20 that extrinsic evidence and when and where it can
21 be admissible. When examining the legislative
22 history to ascertain not the intent of the
23 legislature but the factors or data that was
24 presented or considered by the legislature and
25 the basis-- the factors on which it based its

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1 determination, it appears that the general rule
2 is that the legislative history or in our case
3 the Senate and House journals primarily are the
4 principal documents to be construed. But the
5 general rule is that admissions in those records
6 of the proceedings of the legislative or perhaps
7 administrative bodies may be supplied by parol
8 evidence or supplemented by parol evidence where
9 applicable statutes do not make such records the
10 only evidence of the proceedings or render
11 invalid their unrecorded proceedings. The
12 exception is that that parol evidence cannot
13 contradict the written record. An application of
14 that principle can be found at Fleming vs.
15 Ellsworth County, 119 Kan. 598 at which time they
16 were trying through parol evidence to contradict
17 the written record of minutes of an action taken
18 by the Ellsworth County Commission and the Court
19 followed that general rule, that proceedings
20 cannot be varied or contradicted by the parol or
21 extrinsic evidence. My search found no statute,
22 no rule of evidence or no construction of

23 legislative history in any case law, common law
24 rule that would limit us to looking solely at the
25 Senate or House journal. Given that, under the

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1 application of the rule, extrinsic evidence would
2 be permitted to supplement the history. When
3 faced with the construction of a statute as has
4 been noted, we're faced with the four corners of
5 the statute and we look at that and only then can
6 we begin to look at other issues of construction,
7 and there are clearly the legislative-- the rules
8 have been that legislative intent is not
9 admissible in looking at that. On the
10 legislative history side, as I indicated, the
11 extrinsic evidence seems to have been allowed in
12 cases. As you look at the case of Hand vs. State
13 Farm Mutual Auto Insurance Company at 2 Kan. Ap.
14 2d, specifically at Page 257, seems-- although
15 not in any way discussing the regressing of
16 rules, seems somewhat to give deference to that
17 and there's no statement that the statement is
18 inadmissible but rather that the statements of
19 the legislature are to be given-- are subject to
20 the weight that the trier of fact would give the
21 testimony. As you look at the case law of the
22 United States Supreme Court along that line, it
23 is consistent and those cases seem to, as one
24 might expect, give more deference if there is a
25 supplemental statutory statement or other

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1 statement by the entire legislative body with
2 progressively descending weight given to
3 statements by committees, by-- to either of the
4 Houses or with the least weight being given to
5 individuals. Factors when looking at individual
6 testimony seem to vary based on where the
7 sponsor-- whether they're in a leadership
8 position particularly relevant to that bill or to
9 its progress in the legislature under similar
10 factors. That's a long way, I think, of saying
11 that where this question is what is the basis of
12 the figure, that as phrased that question would
13 call for evidence which would fall within the
14 extrinsic evidence rule of allowing us to
15 supplement the legislative history but not
16 contradict it and give it such weight as I or--
17 frankly, in reviewing the cases, most of the
18 cases say that this is not even one where there
19 has to be a contemporaneous objection, that the
20 appellate court is in the same position as the
21 trier of fact in making this determination. But
22 setting that aside, whoever would be making that
23 weight would then be allowed to give that
24 deference as long as the question is-- the
25 question now before the Court of what is the--

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1 what was the basis, what was there, so that it is
2 limited to basically legislative history. And I
3 think even that may get into an opinion by the--
4 by the witness. In those cases it is not ruled
5 invalid, it's just a matter that goes to the
6 weight. It's a different question than asking
7 what was the intent or why did you do this. It's
8 a question of what was the proceeding or what was
9 before the legislature. Are there questions or
10 does that-- so I would overrule the objection as
11 to that question, what is the basis for the

12 figure.
 13 MR. HAMILL: If the Court would bear
 14 with me, I might ask that we read the answer
 15 back. I don't know whether he was completed. I
 16 think he has answered it, but I don't know
 17 whether it concluded his answer. Rather than go
 18 through that whole question and answer again, if
 19 you could read that back, please.
 20 (THEREUPON, the last question and
 21 answer were read back by the
 22 reporter.)
 23 Q. (BY MR. HAMILL) My only question to
 24 follow up on that is does that adequately explain
 25 your answer?
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 1 A. There was no justification as to the
 2 cost of education presented to the legislature to
 3 justify any dollar figure.
 4 Q. Okay. Let me ask you about these
 5 weighting factors, Senator, that are a part of
 6 the formula for the local school districts to
 7 determine their budget, and I would ask you the
 8 same question. What was considered-- what data,
 9 what information was considered by the
 10 legislature in connection with those factors?
 11 A. The information presented to the Senate
 12 about the weighting factors was virtually nil.
 13 They were strictly arbitrary numbers.
 14 Q. Okay. Are you familiar with the
 15 provisions of the SFA that require the local
 16 school districts to remit any unexpended funds in
 17 the fiscal year to the State of Kansas?
 18 A. At the end of the fiscal year, any
 19 balances that are remaining in the school
 20 district general fund is in essence remitted.
 21 The process is they just receive less money the
 22 next year, but the answer is yes.
 23 Q. Do you believe this is an appropriate--
 24 or do you have any concern about this provision?
 25 A. I have concern about the provision
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 1 because I believe it does not create a
 2 conservatism. In other words, they spend all the
 3 money that they have or else the State, in
 4 quotes, will take it back, so therefore there's
 5 absolutely no reason for a school district to be
 6 prudent in their expenditures.
 7 Q. We have previously looked at some
 8 financial-- historical financial numbers that
 9 indicate the increase in funding of education in
 10 the State of Kansas, have we not?
 11 A. Yes.
 12 Q. Do you think the provision we're
 13 discussing is going to allow us as a state to cut
 14 the amount-- or to level off or to be able to be
 15 frugal enough to afford to educate our children?
 16 A. Obviously we must educate our children
 17 because they're our future, but the cost under
 18 this particular formula I believe will become
 19 very difficult to attain.
 20 Q. Was there any discussion, debate in the
 21 legislature concerning inflation factors in these
 22 local school budgets?
 23 A. They were ignored.
 24 Q. And it's your understanding, is it,
 25 that the local school districts under the current
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1 formula are not allowed to account for normal
 2 inflation?
 3 A. That is correct. The only increase is
 4 for enrollment adjustments.
 5 Q. Under the old SDEA were there inflation
 6 factors?
 7 A. Yes. The legislature applied the
 8 inflation factors each year.
 9 Q. The new act, the SFA, in that act the
 10 legislature has mandated a statewide uniform mill
 11 levy, is that correct?
 12 A. Yes.
 13 Q. And for the first year it was 32 mills?
 14 A. Yes.
 15 Q. Do you believe that-- has there been
 16 any precedent in the history of funding education
 17 in the State of Kansas for that kind of funding?
 18 A. A statewide mill levy?
 19 Q. Yes.
 20 A. No.
 21 Q. Are there other statewide mill levies
 22 in the State of Kansas?
 23 A. There are two statewide mill levies
 24 that are constitutionally allowed and one of them
 25 is for the education building fund, which is one
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 1 mill levy that's governed by statute, and there's
 2 another one for the state institution building
 3 fund, state hospital, one-half mill which is also
 4 statutory. The mill levy is statutory. The
 5 ability to levy those are constitutional.
 6 Q. Explain what you mean by that.
 7 A. The stability of the two funds is in
 8 our constitution. It's provided by our
 9 constitution which allows the State of Kansas to
 10 levy property taxes.
 11 Q. Does the constitution say that the
 12 legislature can levy a mill levy?
 13 A. Yes. The amount of the mill levy is
 14 statutory.
 15 Q. But the constitution specifically
 16 states that the legislature can --
 17 A. These two.
 18 Q. -- in those two instances?
 19 A. Yes.
 20 Q. Are there any other instances in the
 21 state constitution?
 22 A. Not to my knowledge.
 23 Q. Do you believe-- let me strike that.
 24 We have exempt property throughout the State of
 25 Kansas. Are you aware of that?
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 1 A. From property taxation, yes.
 2 Q. Yes. Those are exemptions by whom?
 3 Who has the right to do that?
 4 A. Local units of government in general.
 5 Q. Now, in this new School Finance Act,
 6 how is this exempt property treated when there is
 7 a statewide mill levy mandated of 32 mills
 8 throughout the state?
 9 A. They are not taxed for the support of
 10 schools.
 11 Q. Do you have any information about the
 12 amount of the exempt property in the state?
 13 A. The total amount I do not have at my
 14 fingertips, but it equates-- at the 33 mill-- 32
 15 mills, it equates to about \$29 million in
 16 property taxes that should support our schools
 17 per year at 32 mills. 33 mills would be more
 18 than that.

19 Q. So around \$30 million of state property
that is being--

A. Private property that is not being
taxed for support of schools.

3 Q. And if it were being taxed if it were
24 not exempt, it would raise an additional 29 or 30
25 million --

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1 A. Yes.

2 Q. -- at the 32 mill rate?

3 A. Yes.

4 Q. Do you have any-- is there information
5 available to you in the legislature as to the
6 location of this exempt property?

7 A. Yes. Approximately 90 percent of it is
8 in five counties.

9 Q. So the other --

10 A. Hundred.

11 Q. -- hundred counties have the remainder?

12 A. Yes.

13 Q. Was this an item discussed in the
14 legislature?

15 A. Yes.

16 Q. Senator, taking into account the
17 mechanics of this financing scheme that we have
18 previously discussed, the weighting factor, the
19 base state aid per pupil of \$3,600, the other
20 things you've referred to about spending all the
21 money or returning it to the state, the exempt
22 property, the statewide mandated 32 mills, do you
23 believe that this is an appropriate-- let me
24 strike that. Do you believe this is a change
25 from the way that we funded education in the

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1 State of Kansas over the past 20 plus years?

2 A. A change? Yes.

3 Q. Do you think it's an appropriate
4 change?

5 A. No.

6 Q. Why not?

7 A. The statewide mill levy for one, loss
8 of local control. I'm not of the learned
9 profession, but my reading of Article 6 does not
10 provide the State of Kansas with absolute control
11 over school districts. It's the responsibility
12 of local elected school board members, that
13 particular item. The weighting factors, which
14 are strictly-- I think can be proven arbitrary,
15 and we have some indications of that because
16 they're in the process of trying to renovate
17 those or change those to a great degree; the
18 method of providing funds in the original-- the
19 act, the additional monies that were raised. So
20 for a whole raft of reasons I believe it is not
21 proper.

22 Q. Do you believe that this is a
23 fundamental restructuring of the way that we
24 educate our children?

25 A. The way we fund the education system,
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1 yes.

2 Q. Let me ask you about demand transfers
as it relates to this particular act, the School
Finance Act.

3 A. A demand transfer is an amount of money
6 that is demanded by the statute to be transferred
7 to a special fund. There was a demand transfer

8 in the act.

9 Q. There was in the initial act?

10 A. In the act that was passed in '92.

11 Q. Okay. Do you believe that that was an
12 appropriate mechanism?

13 A. It was unworkable and I think it was
14 two subject matters in one bill.

15 Q. Explain what you mean by that, sir.

16 A. My understanding of the constitution on
17 the operation of the legislature, you can only
18 have one subject matter in a given statute in a
19 bill. Very clearly, beyond I think a shadow of a
20 doubt, there are two subject matters in this
21 bill. One of them is funding of schools, the
22 other one is levying taxes, and it's very
23 readable.

24 MR. GALLAGHER: Your Honor, I guess I
25 didn't perceive the question as calling for that
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1 answer, so after the fact I'm objecting on the
2 basis that it's-- he's given a legal conclusion.

3 THE COURT: The Court will note that
4 that was a legal conclusion.

5 Q. (BY MR. HAMILL) Senator, why was there
6 a demand transfer put into the act as opposed to
7 a normal way of proceeding or some other way of
8 proceeding?

9 A. The fear was that some people would
10 vote for the act to receive free money, then not
11 vote to pay for it. That is exactly why it was
12 done.

13 Q. They wouldn't vote to pay for it; in
14 other words, they wouldn't vote for a tax
15 increase?

16 A. That is correct.

17 Q. And this mechanism somehow-- this
18 demand transfer somehow alleviated that concern?

19 A. An unworkable demand transfer, which
20 was changed this session.

21 Q. Why was it un-- in your opinion-- well,
22 wait a minute. It was changed, is that right?

23 A. Yes.

24 Q. Why was it changed as far as you know?

25 A. It was changed because the act called
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1 for the Secretary of Revenue to certify on June
2 17 the amount of dollars collected by this tax
3 increase, and it is impossible physically to do
4 that on June 17 or any time because in order to
5 do that, it is necessary to file two income tax
6 forms, because there was income taxes raised and
7 only that amount of increased income tax was a
8 demand transfer. So in order for the Secretary
9 of Revenue to make that determination, everybody
10 in the State of Kansas must file two forms, which
11 was not done. The State does not have the
12 facilities to calculate two tax forms for every
13 filer, so it is impossible for the Secretary of
14 Revenue to make that certification on any given
15 year, and so this year at the request of the
16 people, I introduced a bill to change it.

17 Q. Wasn't it known back when the act was
18 passed and it had this demand transfer in it that
19 it wasn't workable?

20 A. I was told those same comments at that
21 particular time, yes.

22 Q. And notwithstanding that, the demand
23 transfer was included in the bill?

24 A. That is correct.

25 Q. And that's a gimmick to say that

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1 there's not a tax increase, is that correct?
2 A. It was a method of providing a tax
3 increase.
4 Q. Without calling it a tax increase?
5 A. I believe it was called a tax
6 increase. There's no question about it, it was a
7 tax-- \$349,000,000 tax increase.
8 Q. Is that what it was?
9 A. Yes. It was projected to be that
10 amount. It did not equal that amount.
11 Q. What's it equal, do you know?
12 A. That's an indeterminate because the
13 Department of Revenue cannot tell us what the
14 income tax increase is or was. Another item is
15 the sales tax on services was supposed to
16 generate \$39.9 million. The last calculation I
17 had, it generated \$7 million.
18 MR. HAMILL: Could I have a minute,
19 Your Honor?
20 THE COURT: Yes.
21 MR. HAMILL: If I've not done so, Your
22 Honor, I believe I have, I would move the
23 admission of the exhibits previously identified,
24 1305 and 1308 and 1309.
25 THE COURT: Some of those had been
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1 admitted, 1309 specifically, but are there any
2 objections?
3 MR. RUPE: No, Your Honor.
4 MR. GALLAGHER: No, Your Honor.
5 THE COURT: The Court would note the
6 admission of 1305, 1308 and 1309.
7 MR. HAMILL: No further questions at
8 this time.
9 THE COURT: Let's take a 10-minute
10 recess and recess until 10 minutes till the
11 hour.
12 (THEREUPON, a recess was had
13 from 10:42 a.m. until 10:55 a.m.)
14 THE COURT: Mr. Vratil.
15 MR. VRATIL: Thank you, Your Honor.
16 CROSS EXAMINATION
17 BY MR. VRATIL:
18 Q. Senator Bogina, my name is John Vratil,
19 I'm one of the attorneys for the Blue Valley
20 plaintiffs in this case. I have some documents
21 that I would like to share with you and ask you
22 to identify.
23 MR. VRATIL: For purposes of the Court
24 and other counsel, these are Exhibits 2001, 2005
25 and 2016. May I approach the witness, Your
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1 Honor?
2 THE COURT: Yes, you may.
3 Q. (BY MR. VRATIL) Senator, I'm going to
4 hand you what has been marked in this case as
5 Exhibit 2001 and ask you if you can identify that
6 document?
7 A. It's a copy from what we call a statute
8 book, K.S.A. book and it deals with the School
9 District Equalization Act.
10 Q. Okay. And also attached to that, would
11 you look towards the end, do you find amendments
12 to that act through 1991 that are contained in
13 the statutory supplement book?
14 A. Yes, I-- it's hard to differentiate

15 between the statute-- I mean the supplement and
16 the book itself, but yes, it would appear to be
17 that.

18 MR. VRATIL: Your Honor, we would offer
19 Exhibit 2001.

20 THE COURT: Any objections?

21 MR. RUPE: No objection.

22 MR. POPKIN: None.

23 MR. GALLAGHER: I do, Judge. I'm not--
24 the SDEA was first enacted I think in '73. Is
25 that from the most recent statute book?

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1 MR. VRATIL: Yes, it is.

2 MR. GALLAGHER: Okay. Does it contain
3 all of the-- I mean our statutory supplement will
4 have provisions simply disappear when new books
5 are published and the statute books are thrown
6 out. There are provisions that we may-- you're
7 not able to find unless you have the supplement.
8 Did you add those so you have the entire SDEA?

9 MR. VRATIL: No. I'm offering this
10 only to show the form of the SDEA immediately
11 prior to adoption of the act in question and
12 repeal of the SDEA.

13 MR. GALLAGHER: Okay. So all-- the
14 only thing we're introducing here is the SDEA as
15 it existed prior to the enactment of the School
16 Finance Act?

17 MR. VRATIL: Immediately prior to.

18 MR. GALLAGHER: As long as the record
19 is clear on that, I don't have any objection.

20 MR. BILES: None, Your Honor.

21 THE COURT: The Court will admit 2001.

22 Q. (BY MR. VRATIL) Senator Bogina, I'm
23 going to hand you next what has been marked as
24 Exhibit 2016 and ask you if you can identify that
25 document?

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1 A. A copy from the Kansas Register of
2 House Bill 2505, Pages 694 through 699 which
3 would indicate is the entire House Bill 2505.

4 Q. Is House Bill 2505 the legislation
5 which you referred to in your prior testimony
6 which made certain changes to the School Finance
7 Act, including the elimination of the demand
8 transfer or what is sometimes referred to as
9 earmarking of the increased tax revenue?

10 A. Yes. This was a-- the 1993 session
11 enactment.

12 MR. VRATIL: Blue Valley would offer
13 Exhibit 2016.

14 THE COURT: Any objections?

15 MR. HAMILL: No objection.

16 MR. POPKIN: No objection.

17 MR. GALLAGHER: No objection.

18 MR. BILES: None.

19 THE COURT: 2016 will be admitted.

20 Q. (BY MR. VRATIL) Finally, Senator, I'm
21 going to hand you what has been marked as Exhibit
22 2005 and ask you if you can identify that
23 exhibit?

24 A. It's a copy of a publication called
25 Kansas Tax Facts on the top which is a

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1 publication that's prepared by our Legislative
2 Research Department and it would indicate it's
3 the entire 1992 edition of the Kansas Tax Facts.

Now, each year our research department adds to the basic Kansas Tax Facts amendments that were enacted during that year. This is the 1992 session enactments and changes to the Kansas Tax Facts.

Q. Has a similar publication for 1993 yet been published?
A. No, it has not. In November of the year, generally speaking, is when the Tax Facts--
Q. This is the latest version of that publication then?

A. To the best of my knowledge, yes.
Q. Thank you.

MR. VRATIL: We'd offer Exhibit 2016.
THE COURT: 2005.

MR. VRATIL: Or 2005, Your Honor.

MR. PERRY: No objection.

MR. POPKIN: No objection.

MR. RUPE: No objection.

MR. GALLAGHER: No objection, Your

Honor.

MR. BILES: No, Your Honor.

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THE COURT: 2005 will be admitted.
Q. (BY MR. VRATIL) Senator, you testified on direct examination that approximately two-thirds of the Kansas state general fund budget went for education. I want to follow up on that a little bit. Can you tell me how much of the Kansas general fund budget goes for higher education exclusive of K through 12?

A. Approximately 10 percent, possibly a little more.

Q. And with a little quick mathematics, can I rightfully conclude that approximately 57 percent of the Kansas general fund budget then goes for K through 12 education?

A. What you call general education, yes.

Q. Would you characterize those sums as significant in Kansas finance?

A. Very significant.

Q. Why does so much money go towards education in this state?

A. I think Kansas is a believer in funding education and providing a good education system for our students.

Q. Is that a recent phenomena or has that been historically true since the birth of this

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state?

A. The intent has been historically true.

Q. From your knowledge of the people of this state, do they also place a high value on education?

A. Yes.

Q. Can you give us any examples to illustrate your conclusion to that effect?

A. I believe the population as a whole have been very supportive of education based upon the fact their ability in many cases to levy taxes upon themselves for that purpose, and that has been very evident in the past because the local units, local school boards who are elected by the local people levy those taxes and they were accepted by those people or else the school board would have been rejected. So they have been supportive in that regard. They have been supportive in building of schools. They have been supportive in the various parent-teacher organizations and so on, so I just think as a

whole spectrum the people of Kansas are very supportive of education for our young people.

Q. If you know, has the Kansas

constitution from the beginning had a section
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devoted to education?

A. Article 6 in my understanding has been there from, yes, from the inception of the constitution.

Q. Article 6 was amended in 1966, was it not?

A. That is correct.

Q. In adopting those amendments, the people of Kansas reaffirmed their belief that education is a significant-- of significant interest to them in terms of state government?

A. Yes, I believe so.

Q. Would you turn your attention to Exhibit 1309 which I hope is still in front of you. That's the document that you identified and testified from when Mr. Hamill was asking you questions. Do you have that in front of you?

A. Yes, I do.

Q. I'd like for you to look about

two-thirds down the first page where it says total state aid.

A. Yes.

Q. Actually turn to the third page, same category, where it shows state general fund for the years 1972-73 and then through on subsequent
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pages 1991-92.

A. Yes.

Q. Do those figures reflect that with the exception of two years, there has been an increase in state general fund expenditures for education each year for that 20-year period of time?

A. Yes.

Q. What two years are the exceptions?

A. '91-92 is one, one exception, there's a reduction from 996 million to 954 million, and the 1986-87 school year which was a reduction from the previous year from 715 million to 699 million.

Q. You were in the legislature in '86-87, were you not?

A. Yes.

Q. Can you provide the Court with a reason as to why funding for education was reduced in that year?

A. Because a severe shortfall in revenues.

Q. And you were also in the legislature in 1991-92, were you not?

A. Yes.

Q. Can you provide the Court with an

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expectation of why funding for education, that's K-12-- or is it K-12?

A. K through 12, yes.

Q. Why was that reduced by over \$12 million in 1991-92?

A. Same reason.

Q. A shortfall in state funds?

A. That's correct.

Q. Would you describe those two years, and specifically I'm referring to '91-92, as an

11 aberration in the history of state funding of
12 education?

13 A. Yes, they are an aberration because
14 they're the only two years in the last 20 that
15 there's been a reduction from the year previous,
16 the previous year.

17 Q. Now, if one were relying on data
18 concerning funding for education, either
19 budgetary data or expenditure data, would it be
20 prudent and appropriate to rely on data from a
21 year that is an aberration in the history of the
22 state?

23 A. Logic would tell you no.

24 Q. And 1991-92 was one of those years?

25 A. Yes.

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1 Q. So if the evidence in this case
2 indicates that the legislature relied upon budget
3 data or expenditure data for schools in 1991-92,
4 you would say that logic indicates that's not
5 appropriate?

6 A. Correct.

7 Q. I'd like for you to turn your attention
8 now to the School District Equalization Act and
9 the last few years that it was in effect. We
10 heard testimony yesterday that the School
11 District Equalization Act was based upon a
12 concept of power equalization. Do you agree with
13 that?

14 A. Yes.

15 Q. And can you tell us what your
16 understanding of that concept is?

17 A. The power equalization was a
18 multi-faceted type of calculation, and the
19 primary component of that was district wealth and
20 students, district wealth and students. And the
21 result was that the poorer the district in total
22 district wealth, which included the ability to
23 tax as well as income to a great degree in years
24 past, the less district wealth meant an increase
25 of state aid or state support to that particular

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1 school district. So in common terms, the poorer
2 the district, the more money they received from
3 the State.

4 Q. In my words, I would say the concept of
5 that formula was an attempt to equalize --

6 A. The burden of education.

7 Q. -- the burden of educational
8 expenditures?

9 A. That is correct.

10 Q. And the ability to spend among all
11 school districts?

12 A. That is correct.

13 Q. Now, if a school finance formula based
14 upon the power equalization concept is not funded
15 at an appropriate level, is it able to achieve
16 its intended purpose?

17 A. No. The intent of the formula would be
18 negated if it is not adequately funded.

19 Q. Can you tell us why an inadequately
20 funded power equalization formula does not
21 achieve its intended purpose?

22 A. Because those school districts that are
23 less able to support themselves without
24 sufficient funds in their overall budget are then
25 required to levy considerable higher mill levies,

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1 in other words, the local ability to pay, and in
2 general they cannot pay because they do not have
3 the valuation that would be necessary to provide
4 a reasonable local support amount; so in order
5 to-- the funding is-- in order to have
6 equalization, the funding area from the state is
7 most important in that entire formula.

8 Q. During the last three years that the
9 School District Equalization Act was in effect,
10 was it funded by the Kansas legislature at a
11 level which enabled that formula to achieve its
12 intended purpose?

13 A. No.

14 Q. You answered very quickly. Can you
15 tell me how you know that so certainly?

16 A. During the discussion of the
17 preparation of the budgets and the
18 appropriations, we, the legislature, allocate
19 dollars to the various facets of government, and
20 the bottom line is we have-- we, the State, has X
21 dollars to spend, whatever that amount is, and we
22 allocate and appropriate throughout the various
23 agencies. The fact of the matter, I pride myself
24 in developing that allocation at the beginning of
25 the session. And if there is not sufficient

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1 money to adequately fund all aspects of
2 government, we must reduce those allocations and
3 that was done, and it was done in the school
4 finance formula as well as others, and probably
5 even more dramatically in school finance because
6 there was an ability to raise local dollars.
7 Inherent in the back of all the legislators'
8 minds is the school district had the ability to
9 make up the difference from the local taxpayers
10 where the regents cannot, for instance, use that
11 as a comparison. They do not have the ability to
12 levy property taxes. They do not have the
13 ability, flexibility to make adjustments except
14 in tuition, but they do have limits in the
15 tuition level.

16 Q. Now, evidence has been introduced in
17 this case or will be introduced that will
18 indicate that during the last few years that the
19 SDEA was in effect, there was a growing wide
20 disparity among expenditures per pupil in school
21 districts throughout the state. For example, I
22 think that evidence will show that in 1990-91
23 that variance ranged from about \$2,800 per
24 student in one school district to over \$11,000 in
25 another school district. My question to you is,
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1 was the legislature's failure to fully fund the
2 School District Equalization Act a factor which
3 contributed to that wide disparity?

4 A. The lowest spending district, the
5 formula would not have an impact on it. That was
6 strictly local choice in my opinion. They could
7 have-- that school district, and I think you're
8 talking about Mulvane, they had the ability
9 because of their district wealth to levy more
10 taxes and to raise that. They chose not to.
11 That was the local control, that was their
12 choice. Excluding that, yes, the disparity was
13 caused by failure to fully-- to adequately fund.
14 Not necessarily to fully fund, adequately fund
15 the school finance formula.

16 Q. Were there school districts other than
17 Mulvane who chose as a matter of local-choice not

10 to tax themselves at a higher rate and spend at a higher rate for local education purposes?

A. Yes.

Q. And that was their right --

A. That was their choice and their right.

23 Q. -- under the law then in effect and the 24 constitution in effect?

A. It's still their right.

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1 MR. GALLAGHER: Objection. I'm sorry,
2 Senator, I was objecting to the form when he
3 added in the constitution, he's calling for a
4 legal conclusion.

THE COURT: Sustain the objection.

6 Q. (BY MR. VRATIL) Therefore, Senator
7 Bogina, if the SDEA was not adequately funded in
8 the last three years that it was in existence,
9 would financial data concerning school district
10 expenditures for those three years accurately
11 reflect what is reasonably necessary to educate
12 students in this state?

13 A. My opinion went to the dollars that
14 would be reasonably necessary to educate students
15 is a nebulous figure. I don't know if anyone can
16 tell us what dollars are needed to reasonably or
17 at what level they should be spent. I believe
18 that's a local decision that should be reached
19 because local districts are different and
20 students are all different, as we all know who
21 have students or who have had students.

22 Q. Well, you understand that there are at
23 least some people who would disagree with you and
24 they think they can make a determination of what
is reasonably necessary to educate students?

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1 A. I recognize that.

2 Q. You stated in your testimony, and I
3 think I have this fairly close to an exact quote,
4 that the State is now the basic supplier of funds
5 for education. Do you recall that testimony?

A. Yes.

7 Q. Can you give us some examples of what
8 you were thinking of when you made that
9 statement?

10 A. Well, it's obvious just from straight
11 mathematics to take the total budget of the
12 school districts and compare that to the amount
13 that the State contributes towards that to the
14 funds of those schools and you'll readily see
15 that we are the major contributor for education
16 as a statewide funding source.

17 Q. And when the State becomes the major
18 contributor of funds to education or to hospitals
19 or to law enforcement, what in your experience
20 follows after that with respect to the exercise
21 of state control over those entities?

22 A. He who controls the money controls the
23 entire process.

24 Q. What impact would that have on local
25 control of school districts?

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1 A. Eliminate it.

2 Q. Is that a fear that you have the
3 ultimate result of the act?

A. Yes, sir.

5 Q. You also testified on the rapid
6 development of the new act and I just want to get

7 some facts from you, if I can. You mentioned
8 that the concept of the act was first developed
9 by the governor's task force. When did that task
10 force meet?

11 A. I probably can't cite the actual dates,
12 but it was in the late portion of the year,
13 latter part of-- be '91 it began and I-- I would
14 say it ended-- my recollection it ended in the
15 latter part of '91 also.

16 Q. If I tell you that evidence in this
17 case indicates that it met the latter part of
18 October, early part of November, 1991, does that
19 seem about right?

A. Yes.

21 Q. Do you know how many times that task
22 force met?

23 A. Very few in my opinion. I cannot cite
24 the actual number.

25 Q. When you say your opinion, you mean
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1 your knowledge?

A. Knowledge.

3 Q. Then you indicated that the concept was
4 further developed during hearings conducted--
5 joint hearings conducted by the House and Senate
6 Education Committees. When did those hearings
7 occur?

8 A. They proceeded after the beginning of
9 the session, and it's my recollection that they
10 had held hearings down at the Expo centre in
11 Topeka.

12 Q. And did that occur in February, 1992?

A. That would seem right, yes.

14 Q. And you indicated after that a formula
15 was developed and the bill was drafted and
16 presented to the legislature?

A. Yes.

18 Q. And this bill was--

19 A. It began in the House of
20 Representatives. A House of Representatives
21 initiated bill.

22 Q. And this bill was passed by both houses
23 of the legislature and signed by the governor in
24 May, 1992?

A. Last part of the session, yes.

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1 Q. So from late October, 1991, until May,
2 1992, is the period of time over which this bill
3 was developed, passed and implementation began?

A. Yes.

5 Q. Senator Bogina, were you present at all
6 times when House Bill 2892 was debated on the
7 floor of the Senate?

A. Yes.

9 Q. Were you present at all times when
10 Senate substitute for House Bill 2892 was debated
11 on the floor of the Senate?

A. Yes.

12 Q. And were you present at all times when
14 Senate substitute for Senate substitute for House
15 Bill 2892 was debated on the floor of the Senate?

A. Yes.

17 Q. And those are the forms through which
18 this act went during the legislative process, is
19 that correct?

A. Yes.

21 Q. During the debate on the floor Senate--
22 or the Senate floor, did you ever hear any
23 factual or empirical basis offered for the base
24 state aid per pupil of \$3,600?

25 A. Never.
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1 Q. During that debate did you ever hear
2 any factual or empirical basis offered for the
3 bilingual weighting factor of 0.27

4 A. No.

5 Q. Did you ever hear any factual or
6 empirical basis offered for the vocational
7 education weighting factor of 0.5?

8 A. No.

9 Q. Did you ever hear any factual or
10 empirical basis offered for low enrollment
11 weighting?

12 A. No.

13 Q. Did you ever hear any factual or
14 empirical basis offered for at-risk weighting of
15 0.05?

16 A. No.

17 Q. Did you ever hear any factual or
18 empirical basis offered for new facilities
19 weighting of 0.25?

20 A. No, sir.

21 Q. Never in any of the debate was any
22 factual basis or empirical basis offered for any
23 of those provisions of the act?

24 A. The only thing that was offered was a
25 dollar figure, but no justification for the need
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1 of those dollars for the purpose intended.

2 Q. When you say a dollar figure, you mean
3 what it was going to cost?

4 A. \$3,600 multiplied times that factor,
5 and that is the only discussion. It was strictly
6 dollars, had nothing to do with education.

7 Q. Was the Senate focusing upon the dollar
8 figures, the cost of this act during its debate?

9 A. Dollars were predominant in the
10 discussion.

11 Q. Are you aware of any studies done or
12 surveys made to indicate what would be reasonably
13 necessary to educate a non-special student in
14 Kansas, a regular student?

15 A. Am I aware of any of them or seen
16 them? No, I have not.

17 Q. Are you aware of any studies done or
18 surveys made to indicate what's reasonably
19 necessary to educate a bilingual student?

20 A. No.

21 Q. Or a vocational student?

22 A. No.

23 Q. Or an at-risk student? Are you aware
24 of any studies or surveys that were conducted to
25 indicate what costs are reasonably necessary to

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1 open and operate a new school facility?

2 A. Those were not presented, no.

3 Q. Are you aware of any that have ever
4 been done in the State of Kansas?

5 A. They have never been presented to me,
6 no.

7 Q. Is it customary for the legislature to
8 adopt legislation of this importance without
9 studying and doing surveys and research?

10 A. In my opinion, no.

11 Q. In your direct examination you
12 mentioned your belief that there are multiple
13 subjects in this act. As you may or may not be

14 aware, the Blue Valley plaintiffs have asserted
15 that there are at least four subjects contained
16 in this act; those are school finance formula,
17 the increase in sales and income tax, QPA and
18 adjustments to the length of the school year.
19 Now, I recognize that there are other subjects in
20 this bill too, but those four stand out in the
21 claims asserted by the Blue Valley plaintiffs.
22 If you know, can you tell us why the increase in
23 income and sales tax was included in the same
24 bill with the school finance formula?

25 A. To generate votes.

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1 Q. What do you mean to generate votes?
2 Can you explain that?

3 MR. GALLAGHER: Your Honor, I'm going
4 to make the legislative intent objection again at
5 this time.

6 THE COURT: I think that question does
7 go beyond looking at what the basis of what was
8 there as you phrased that particular question.

9 MR. VRATIL: Your Honor, as I
10 understand your ruling, it was that extrinsic
11 evidence could be offered to supplement the
12 legislative history of the act as long as it
13 didn't contradict the legislative history.

14 THE COURT: That's correct, but as I
15 understood that question, it wasn't so much as
16 what the legislative history was but this
17 legislator's belief of an attitude.

18 MR. VRATIL: Maybe I guess implicit is
19 when he testifies he's offering his belief, but
20 my question to him was why, which I think is part
21 of the legislative history.

22 MR. GALLAGHER: Well, my objection is
23 because you asked him why, you're asking for the
24 intent.

25 THE COURT: As phrased of this
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1 legislator.

2 MR. VRATIL: I guess I don't see the
3 distinction.

4 THE COURT: Well, I think that the
5 distinction is what-- the legislative history
6 versus what one person may have been trying to
7 pull into the act if that wasn't part of the
8 proceeding or the history of the act. It's a
9 distinction, I think, in terms of the attitude or
10 intent of the legislator. Maybe if you rephrase
11 the question.

12 MR. VRATIL: I'll try to rephrase the
13 question.

14 Q. (BY MR. VRATIL) When House Bill 2692
15 was originally introduced in the House of
16 Representatives, did it contain provisions
17 calling for an increase in sales and income tax?

18 A. No.

19 Q. Do you know when those provisions were
20 added to the act-- to that bill?

21 A. It was in process on the Senate side.
22 It was one of the substitutes, but I don't recall
23 exactly when.

24 Q. Okay. Why are--

25 MR. VRATIL: I'm trying to phrase the
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1 question without using the word "why," Your
2 Honor.

3 Q. (BY MR. VRATIL) Can you tell us how in
4 the history of this act income and sales tax
5 provisions came to be included within this
6 legislation?
7 A. Yes.
8 Q. Okay. Would you tell us, please.
9 A. It is common knowledge, not my opinion,
10 it is common knowledge and boasted by some
11 legislators openly that they never voted for a
12 tax increase. Not my opinion, those are actual
13 facts. And the intent of the legislation was to
14 redistribute tax dollars-- to distribute tax
15 dollars to schools that were generated by a tax
16 increase.
17 MR. GALLAGHER: Your Honor, having
18 heard the answer, since responsiveness isn't
19 really my objection, I think he asked how and I
20 think we ended up with the question being
21 answered why again.
22 Q. (BY MR. VRATIL) Can you go ahead and
23 answer the question without talking about
24 intent. I think that's the basis of--
25 A. Well, it is obvious that it was a tax
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1 increase measure and a distribution of tax
2 dollars both combined in one bill, and the tax
3 increase is entirely different than any
4 educational provision, whether it be lengthening
5 of school years or QPA or anything else, it is an
6 entirely different subject.
7 Q. Were there legislators that you are
8 aware of who would not vote for a tax increase
9 unless it included changes in the school finance
10 formula?
11 MR. GALLAGHER: Your Honor, I object.
12 He's calling for legislative intent again, why
13 they'd vote for it.
14 MR. VRATIL: No, I'm not, Your Honor.
15 I'm not calling for legislative intent at all.
16 I'm asking him for a fact.
17 THE COURT: I'll overrule the
18 objection. You may answer the question.
19 A. Yes.
20 Q. (BY MR. VRATIL) And were there
21 legislators that you were aware of who would not
22 vote for a change in the school finance formula
23 unless there was a means of funding that change
24 through tax increases?
25 A. Yes.
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1 Q. And I'll leave it to the Court to draw
2 its own conclusion. Now, were there legislators
3 that you were aware of, Senator, who would not
4 vote for a change in the school finance formula
5 unless there were school reform measures included
6 in that same bill?
7 A. Yes.
8 Q. And were there legislators that you
9 were aware of who would not vote for school
10 reform measures unless there were changes in the
11 school finance formula?
12 A. Yes.
13 Q. And during the history of this act,
14 were school reform measures amended into the act
15 to be included with the school finance
16 provisions?
17 A. Yes.
18 Q. What were those school reform
19 provisions?
20 A. The QPA that I noted earlier which is a

21 measurement of theoretically the quality of the
22 education, and I said theoretically because it's
23 not necessarily universally accepted that it will
24 do that, but that was the intent, to try to
25 determine if, quotes, we are getting our money's
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1 worth for the dollars we are spending. And that
2 was the purpose of that issue and that was to
3 pacify the people-- some people for additional
4 spending that was included in the bill.
5 Q. Were provisions of the bill which
6 extended the length of the school year also
7 considered to be school reform measures?
8 A. Yes.
9 Q. When were those provisions added to the
10 bill?
11 A. My recollection, they were in the
12 conference committee or towards the very end of
13 the process. Now, I don't recall any major
14 debate on that particular issue.
15 Q. In your direct examination you
16 testified that 90 percent of the property which
17 is exempt from property tax in this case is
18 located in five counties. Can you tell us which
19 five counties?
20 A. Sedgwick is the largest, Wyandotte
21 County is second, Shawnee, Johnson, Reno, I
22 believe. Yes, I think.
23 Q. So Wichita, School District No. 259, I
24 believe it is, located in Sedgwick County?
25 A. Yes. It may not be wholly, but major
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1 portions in Sedgwick County.
2 Q. Was the Wichita school district a major
3 beneficiary under this act?
4 A. Yes.
5 Q. Do you recall how much their state aid
6 increased in '92-93 as compared to '91-92?
7 A. No, I do not. A major amount.
8 Q. You also testified concerning demand
9 transfers. So that I can understand that better,
10 I want to ask you a few questions. It's my
11 understanding that in the School Finance Act that
12 was passed in the 1992 session there was a
13 provision that said that all additional revenue
14 generated by the increased income, sales and use
15 tax would be set aside and dedicated to fund
16 public education in Kansas, is that correct?
17 A. The statute demanded that that be
18 transferred and in short we call them demand
19 transfers.
20 Q. Okay. And I believe you testified as
21 to why that provision was included in the act.
22 Are you aware of some legislators who believed
23 that those funds needed to be dedicated to
24 education in order to avoid a constitutional
25 challenge on the basis of the constitutional
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1 provision which prohibits more than one subject
2 in a bill?
3 A. That's why it was drafted by the
4 Revisor of Statutes in that manner was an attempt
5 to--
6 Q. How do you know that?
7 A. The Revisor told us that when we-- yes,
8 this is the reason it was done that way. The
9 demand transfer they believe might circumvent

10 some other prohibition against the tax increase.

11 Q. And then you testified that in this
12 most recent legislative session, 1993, upon
13 recommendation the legislature undid or
14 eliminated that earmarking, that demand transfer
15 provision?

16 A. Yes, it was eliminated.

17 Q. If at least one reason for putting it
18 in in the first place was to try to avoid a
19 constitutional challenge on multiple subjects,
20 was that no longer a concern of the legislature?

21 A. I won't answer for anyone else, but the
22 intent was because it was unworkable in its form
23 as was originally passed and in lieu of a demand
24 transfer, it is necessary to make an
25 appropriation of sufficient dollars to satisfy
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1 the demands of the school finance formula-- or
2 the school act.

3 Q. So would you agree with me then that
4 the legislature put that demand transfer
5 provision in there in order to try to circumvent
6 the Kansas constitution and when they found out
7 it was unworkable, they eliminated it?

8 MR. GALLAGHER: Your Honor, he's
9 calling for legislative intent, I object.

10 THE COURT: Sustain the objection on
11 that question.

12 MR. VRATIL: I have no further
13 questions, Your Honor.

14 THE COURT: Mr. Popkin.

15 MR. POPKIN: Yes.

16 CROSS EXAMINATION

17 BY MR. POPKIN:

18 Q. Senator Bogina, my name is Alan Popkin
19 and I represent the nine so-called southwest
20 districts. I have a few questions for you. You
21 refer to the education article of the Kansas
22 constitution and are you familiar with that
23 portion of it, and let me read it to you, which
24 states local public schools under the general
25 supervision of the State Board of Education shall
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1 be maintained, developed and operated by locally
2 elected boards. Were you familiar with that
3 provision?

4 A. I quoted that provision several times.
5 Yes, I'm familiar with that.

6 Q. When did you quote that provision?

7 A. During the debate on this particular
8 bill.

9 Q. And what was your purpose in quoting
10 it?

11 A. To try to prove that the bill would
12 eliminate that particular provision or reduce it
13 to the point it would be non-usable for the local
14 districts.

15 Q. Was there any testimony or data that
16 came before the committee that pertained to this
17 constitutional obligation of locally elected
18 school boards to maintain, develop and operate
19 their systems?

20 A. You asked about a committee. I do not
21 serve on the Education Committee. If you mean
22 the full Senate.

23 Q. Before the full Senate.

24 A. No, there was not.

25 Q. Were you here in court yesterday when
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1 Dr. Guthrie testified?

2 A. No, I was not.

3 Q. Dr. Guthrie said in words or substance
4 that loss of fiscal control eviscerates local
5 control. Is that something with which you would
6 agree?

7 A. Yes, it is my concern.

8 Q. You also in your testimony, I think you
9 said he who controls the dollars controls the
10 entire process?

11 A. My words were not as elaborate as the
12 doctor's.

13 Q. I think they were pretty good. In any
14 event, have you-- was one of the concerns that
15 you were expressing on the Senate floor that
16 because this bill took away the control of the
17 dollars from the locally elected school boards
18 that local control under the constitution would
19 be gone?

20 A. Eventually it would all be eroded.

21 Q. Are you familiar-- putting aside for
22 one moment the constitution of the State of
23 Kansas, are you familiar with historically how
24 local school boards exercise local control?

25 A. Yes. My father served on a school
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1 board and I've served on parochial school boards
2 so I believe I have a working knowledge of it,
3 yes.

4 Q. And how did that operate? How did that
5 mandate that we have read in the constitution
6 operate on a local level?

7 A. Years back, the local board was
8 strictly anonymous. There was a superintendent
9 of schools in each county and they kind of
10 oversaw, but anyway they were-- they operated as
11 a local community. In fact, schools are still
12 very important to the community. They have pride
13 in each one of their schools and the school
14 boards did operate them. Eventually it
15 progressed where we have some supervision by the
16 State Board of Education, but they were-- still
17 controlled their destiny. My opinion, they do
18 not control their destiny anymore.

19 Q. Senator Bogina, you were not here, were
20 you, yesterday and the day before when some
21 citizens from southwest Kansas came here to
22 testify and told of the impact of this
23 legislation on their districts?

24 A. No, I was not.

25 Q. Some of them said that this was causing
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1 them to lose the ability to control their own
2 destiny.

3 A. I would agree with that.

4 Q. Was that one of the things that you
5 were concerned with with this bill?

6 A. Yes.

7 Q. Another one said that we have lost
8 control of our schools. Is that another thing
9 you would agree with?

10 A. I would agree with that.

11 Q. And I think a third one said that
12 Topeka now controls how our schools are run and
13 funded. Would you agree with that?

14 A. Yes, sir.

15 Q. Now I would like to deal with an
16 example of that, if I may. Yesterday one of the

17 things that Dr. Guthrie talked about is that now
there are competing pressures for dollars for
schools where otherwise there might not have
been. Do you understand what's meant by that, by
1 competing pressures?

22 A. Absolutely. I envision them every year
23 from Highway Patrol all the way down to
24 everything else are competing for those very
25 valuable dollars.

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1 Q. Education now competes with prisons or
2 Highway Patrol or hospitals or many of the other
3 functions, all of the other functions of the
4 state budget?

5 A. To a much greater degree than they did
6 before.

7 Q. And what I have had in mind is that
8 under the-- prior to the enactment of the School
9 Finance Act, if there were a shortfall in what
10 was required to fund education, could local
11 school boards, if they wanted to maintain their
12 schools and do the job they wanted, could local
13 school boards do something about that?

14 A. Yes, they could enact any mill levy
15 they saw fit up to the budget limitations that
16 were imposed by the legislature, but they could
17 exceed those budget limitations by a vote of the
18 people, so they had control of their own budget
19 and their own destiny.

20 Q. So that in one of these years where
21 there wasn't enough money to go around, if
22 somebody down in the southwest corner of the
23 state who's got a school district with two or 300
kids in it, if they want to continue to give
their kids the right kind of education, they
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1 could do something about it on the local level,
2 couldn't they?

3 A. They could have, yes.

4 Q. Now let's take a shortfall under the
5 present legislation. Would the base state aid
6 per pupil be diminished?

7 A. Yes, equally amongst all students.

8 Q. And not just \$15, it could be \$1,500 if
9 the shortfall were big enough?

10 A. Any amount is possible.

11 Q. Tell us and tell the Court what can a
12 locally elected school board now do about that?

13 A. They have the opportunity to enact a
14 local option budget, but once they reach that
15 limitation, they have absolutely nothing they can
16 do about it.

17 Q. And if using all of their local option
18 budget isn't enough, what can they do then?

19 A. Reduce expenses, period.

20 Q. Or shut their doors?

21 A. Possible, yes.

22 Q. If there's a decline in enrollment as
23 we have seen that there has historically been in
24 Kansas and if that decline hits one of these
25 little districts where there's four or 500

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1 youngsters in the whole district and they lose 10
2 or 15 percent of their kids, what happens?

3 A. The legislature enacted a declining
4 enrollment factor this year, which is another
5 factor that was added to the formula, to the

6 imperfect formula. They added that which would
7 provide the ability to pay for students that
8 didn't show up in essence, but there are
9 limitations on that also. So if they lost a
10 number, you said 15 percent, whatever it is, only
11 a certain small number of those would be included
12 in the \$3,600 base calculation.

13 Q. They'd lose funding, wouldn't they?

14 A. Yes, beyond the low-- I mean the
15 declining enrollment factor.

16 Q. And under the present law, what can a
17 locally elected school board do to control that?

18 A. Nothing.

19 Q. Under the prior legislation and all the
20 history that you're familiar with, if there was a
21 diminution in enrollment, could a locally elected
22 school board react to that?

23 A. Yes.

24 Q. Can't do it anymore, though, can they?

25 A. No.

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1 Q. What ability does a locally elected
2 school board have now to engage in long-term
3 planning, to set up long-range projects and fund
4 them out of their whatever they receive?

5 A. The long-range planning is done
6 annually at Topeka now.

7 Q. But it's done in Topeka?

8 A. That's correct. Annually, it's not a
9 long-range plan, it's one year at a time.

10 Q. If a school district down in any part
11 of the state wants to set aside money every year,
12 save it out of their budget because they want to
13 build a new classroom or buy some capital
14 equipment, some computers or update them, can
15 they do that under the new act?

16 A. Not out of the general budget because
17 it will be taken by the State.

18 Q. Is that one of the things that you were
19 concerned about when you were talking about a
20 loss of local control?

21 A. Absolutely.

22 Q. That's the so-called spend it or lose
23 it?

24 A. Yes.

25 Q. The State sweeps the accounts clean at
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1 the end of the year?

2 A. Yes.

3 Q. One of the things that Professor
4 Guthrie, Dr. Guthrie talked about yesterday as a
5 concern in this type of legislation and loss of
6 local control is the inability of the locally
7 elected school boards now to have any influence
8 and that the influence would now be in terms of
9 what dollars went for education would be reposed
10 in special interest groups, lobbyists. Do you
11 see any of that?

12 A. Potentially.

13 Q. You're familiar, are you not, with the
14 recapture provision of this act?

15 A. Yes.

16 Q. And I wanted to ask some questions
17 about that. My information is that the total
18 amount of recapture is \$14 million?

19 A. 13.4, my recollection.

20 Q. Thank you. How many school districts
21 does that come from?

22 A. Not very many. I do not know the exact
23 number. My guess would be no more than probably

24 about 15, but it could be--
 25 Q. Would you argue with 10 if I told you --
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1 A. No, I would not. 868
 2 Q. -- that that entire recapture comes
 3 from 10 school districts?
 4 A. You're probably right. It's very few,
 5 I would attest to that.
 6 Q. Would that be less than 1 percent of
 7 the entire budget --
 8 A. Yes.
 9 Q. -- of the Education Department?
 10 A. Oh, yes.
 11 Q. I'm not very good at geography
 12 generally and I stink at Kansas geography, so
 13 maybe you'll help me. Where is Sedgwick County?
 14 A. Southwest part of the state-- south
 15 central part of the State, excuse me. Right
 16 above to your right.
 17 Q. Right in here.
 18 MR. GALLAGHER: There you go.
 19 Q. (BY MR. POPKIN) Sedgwick. That's
 20 where Wichita is?
 21 A. Yes.
 22 Q. And how much-- do you know how much
 23 they remove from their property rolls?
 24 A. How much they removed from the property
 25 rolls?
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1 Q. Yeah. 869
 2 A. I do know that Boeing has \$2 billion--
 3 \$1 billion and they did then grant them another
 4 \$2 billion exemption. The total, it escapes-- I
 5 had it, I did know, but I do not know right now.
 6 Many dollars.
 7 Q. What I think you told us is that if the
 8 property in these five counties were included on
 9 the property rolls, it would be enough to
 10 generate \$29 million --
 11 A. Yes.
 12 Q. -- to \$30 million in taxes?
 13 A. At the 32 mill levy.
 14 Q. At the 32 mill levy. And where is
 15 Wyandotte?
 16 A. Upper northeast to your right. Yes, by
 17 the county line, state line. Up.
 18 Q. There we are. There's Wyandotte. And
 19 Shawnee, is that where you're from, by the way?
 20 A. No.
 21 Q. Where are you from?
 22 A. Johnson County. Right below Wyandotte
 23 County. Shawnee is right there.
 24 Q. Shawnee is there?
 25 A. Johnson is just below Wyandotte. No,
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1 to your right. Right there. 870
 2 Q. And that's where you're from?
 3 A. Yes.
 4 Q. And that's one of the counties --
 5 A. That's correct.
 6 Q. -- that exempts a great deal of
 7 property and doesn't have it on the tax roll for
 8 school tax purposes?
 9 A. That's correct. Compared to the first
 10 two, it's a piker, but that's--
 11 Q. It's only a billion or two?
 12 A. No. Factually, Your Honor, the first

13 two counties, Shawnee (sic) and Wyandotte, have I
 14 think it's 80 some percent of the exempt
 15 property. The other three have about 10
 16 percent. So the two greatest counties for
 17 exemptions are Sedgwick and Wyandotte.
 18 Q. And where is Reno County?
 19 A. It would be just northwest of
 20 Sedgwick. Right below No. 5-- yes, right there.
 21 Q. If I understand it, these counties took
 22 enough property off of the tax rolls so that
 23 there's \$29 million that's missing from the
 24 coffers, so to speak?
 25 A. At 32 mills.
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1 Q. At 32 mills. Are those counties to 871
 2 your knowledge beneficiaries of the recapture
 3 provision of the School Finance Act?
 4 A. The recapture provision, are they
 5 beneficiaries? I would-- I don't know if any one
 6 of our school districts are involved in a
 7 recapture or not. One of them might have been.
 8 Q. Well, I guess what I mean by that is do
 9 they receive money from the State, more money
 10 than they received prior to the enactment of this
 11 School Finance Act?
 12 A. Some school districts in all the
 13 counties do. I'm talking about Johnson County,
 14 I'm most familiar. They do not.
 15 Q. How about a place like Wichita,
 16 Sedgwick County, do they get more money now than
 17 they used to get?
 18 A. Absolutely.
 19 Q. And I guess some of that comes from the
 20 State, doesn't it, or it all comes from the
 21 State?
 22 A. It comes from all of us, yes.
 23 Q. So the money that's being recaptured
 24 down here from 10 school districts is being
 25 imported to Sedgwick where they have taken a
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1 billion or two off the tax rolls? 872
 2 A. Yes.
 3 MR. POPKIN: That's all the questions I
 4 have, Your Honor. Thank you very much, Senator.
 5 THE COURT: Mr. Rupe. Is the schedule
 6 such that a noon recess at this point would
 7 work?
 8 MR. HAMILL: Your Honor, we need to
 9 have him in Manhattan, Kansas, and he needs to
 10 leave here at 2:30.
 11 THE WITNESS: By two-thirty or three,
 12 Three at the latest, please.
 13 MR. RUPE: I have maybe 15, 20 minutes,
 14 a half an hour. I don't know how long you guys
 15 are going to be.
 16 MR. GALLAGHER: I'm not going to be
 17 more than 10 minutes.
 18 MR. RUPE: So I think we can break for
 19 lunch and have him out of here by 2:30 easy.
 20 THE COURT: Either that or we can take
 21 a short break now and work for an hour and take a
 22 lunch at one or something if you think that's
 23 better for him.
 24 MR. VRATIL: That's a better idea in my
 25 opinion. I'd like to do that.
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1 THE COURT: Let's just take a 10-minute 873

recess then until five after the hour.

(THEREUPON, a recess was had from 11:55 a.m. until 12:10 p.m.)

CROSS EXAMINATION

6 BY MR. RUPE:

7 Q. I'm Alan Rupe. I represent Newton,
8 Hays, Dodge City, Leavenworth, Pittsburg and
9 Winfield school districts. If I understand your
10 testimony concerning the low enrollment
11 weighting, the assignment of the figures for low
12 enrollment weighting were arbitrary?
13 A. The information provided to us, yes,
14 they were arbitrary.
15 Q. No factual basis?
16 A. No.
17 Q. No studies, compilations, research, any
18 sort of testing at all?
19 A. Not to my knowledge.
20 Q. Was the-- what was the factual basis
21 for the local option budget?
22 A. The local option budget was a pacifier
23 for those school districts that had budgets per
24 pupil higher than \$3,600.
25 Q. Was there any sort of basis for the
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1 fact it was equalized at 70-- at the 75th
2 percentile?
3 A. That was a number that was arbitrary.
4 The 75th percentile was just something somebody
5 decided might be reasonable.
6 Q. And what does that mean when we talk
7 about the 75th percentile of the local option
8 budget?
9 A. The percentile is-- as contrasted to
10 percentage, the percentile is a ranking of those
11 expenditures, in this particular case the total
12 budgets, and you pick out an area that would be
13 in your numbers, 75th in essence in rank, and
14 that's where the line was drawn in essence.
15 Q. Okay. Mr. Popkin put up some counties
16 on the Plaintiff's Exhibit 5000 here, Wyandotte,
17 Johnson, Shawnee, Sedgwick and Reno, and I have a
18 few questions. The Kansas City school district
19 which has a budget per pupil of 4,000-- excuse
20 me, total spending per pupil including LOB of
21 4,195 is in Wyandotte County, is that correct?
22 A. Kansas City school district is in
23 Wyandotte County.
24 Q. And the Shawnee Mission school district
25 which has spending of 4,310 per pupil is in
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1 Johnson County?
2 A. I'm not making comments about the
3 dollars, I'm assuming they're correct, but
4 Shawnee Mission is in Johnson County.
5 Q. And the spending of Topeka School
6 District 501 of 4,055, if that figure is correct,
7 that's in Shawnee County?
8 A. Yes, it is.
9 Q. And the Wichita school district, 259,
10 4,212, is in Sedgwick?
11 A. Yes.
12 Q. And Hutchinson, 3,813, is in Reno, is
13 that right?
14 A. Yes.
15 Q. While I'm up here, I want to talk to
16 you about school districts like Mulvane. In your
17 political experience have you become familiar
18 with a principle that I tend to call gravity, and
19 that is that in some places no matter how much

20 you want to raise taxes, the voters are going to
21 vote against that and tend to pull the spending
22 or taxation down? Is that true?
23 A. That's a local decision and local
24 option. I could understand how that could
25 happen, yes.

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1 Q. All right. Do you agree with me from
2 your political experience that this principle of
3 gravity, that in some places the voters just
4 won't raise taxes, that occurs throughout the
5 state?
6 A. In varying degrees, that's correct.
7 Q. And certainly a district like Mulvane
8 which made in your opinion a local decision not
9 to raise its taxes would be an example of that?
10 A. Yes.
11 Q. And have you noticed in your political
12 experience that the wealth of a school district
13 has something to do with whether the voters raise
14 taxes in that district?
15 A. The ability to pay is most definitely a
16 decision that the voters would make.
17 Q. Those that have the ability to pay tend
18 to be more in favor of taxes than those that
19 don't have the ability to pay. Would you agree
20 with that?
21 A. Probably a generalization.
22 Q. Was it necessary in order to pass the
23 School Finance Act to obtain-- well, let me back
24 up and ask this question starting with another
25 question. There are 104 school districts in
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1 Kansas, aren't there?
2 A. Mm-hmm, yes.
3 Q. Would you agree with the statement that
4 260 of those school districts receive low
5 enrollment weighting?
6 A. A large number do, yes.
7 Q. All right. And was it necessary in
8 order for passage of the School Finance Act for
9 legislators from areas where there were school
10 districts that received low enrollment weighting
11 to vote for the bill?
12 A. Yes. It was a consideration.
13 Q. And was there-- are you familiar with
14 the-- and it's been explained to me, I've never
15 seen it in real life, but are you familiar with
16 the procedure that when the State Department of
17 Education runs computer printouts of entitlements
18 under proposed school finance legislation that
19 every legislator grabs that printout and thumbs
20 through it and looks at their own district as the
21 first place?
22 A. Many of them do.
23 Q. Is there a political word for that or
24 does it just happen?
25 A. Well, I think probably they're
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1 interested in their local area more than they are
2 the state as a whole and so they do parochially
3 look at their, quotes, school districts.
4 Q. And when this bill passed in looking at
5 that phenomena, were legislators concerned that
6 their own school district receive approximately
7 the same amount of money they had received under
8 the previous legislation?

9 A. Many of them wanted to receive more,
 10 Q. Do you know of anybody that wanted to
 11 receive less?
 12 A. No.
 13 Q. I want to talk to you about a couple
 14 different areas real quickly. I have an exhibit
 15 up there that I'd like to hand you that we talked
 16 about with a superintendent from the southwest
 17 school district yesterday.
 18 MR. RUPE: I'm looking at Exhibit 1417,
 19 Your Honor.
 20 Q. (BY MR. RUPE) And I want to call your
 21 attention on the overhead to Exhibit 1305 that
 22 you testified about earlier and I want to make
 23 sure I understand a couple of things. You were
 24 asked about this number on the document entitled
 25 School Finance and Quality Performance Act, an
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 1 April 8, 1993, printout and you were asked about
 2 this 194,950,000 figure on unspent balance prior
 3 year. Now, as I understand what your testimony
 4 is, is that that was money that the State
 5 captured from the local school districts that
 6 they had remaining in their bank accounts at the
 7 conclusion of the year before the implementation
 8 of the new act?
 9 A. Their unspent balances that they did
 10 have, the school districts had --
 11 Q. Okay.
 12 A. -- in total, all school districts.
 13 Q. Okay. All school districts, the total
 14 unpaid balance?
 15 A. That's correct. Unspent, unencumbered
 16 balances.
 17 Q. Unspent, unencumbered balances, all
 18 right. We heard from Superintendent Anshutz in
 19 testifying about this exhibit here in front of
 20 you, 1417, that the local school districts were
 21 allowed prior to the conclusion of the year to
 22 make certain transfers to capital outlay.
 23 A. Some, yes.
 24 Q. And I'll draw your attention to what
 25 they did in their district. They transferred
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 1 looks like about 313,000 down there.
 2 A. Number's \$313,207, yes.
 3 Q. My question to you is were there other
 4 school districts to your knowledge that did what
 5 that school district did, and that is transfer
 6 substantial amounts of money into capital outlay?
 7 A. I'm certain there were.
 8 Q. All right. Now, what I want to make
 9 sure I understand-- and this was a one-time deal
 10 that was allowed?
 11 A. Yes.
 12 Q. All right. What I want to make sure I
 13 understand is that those transfers into capital
 14 outlay in those school districts are not included
 15 in this \$194 million figure?
 16 A. That is correct.
 17 Q. Okay. So we have the \$194 million
 18 figure that was captured by the State and then in
 19 addition we have transfers into different
 20 accounts within the individual school districts?
 21 A. That's correct.
 22 Q. Do you know, is there any way to
 23 quantify how much money all the school districts
 24 transferred within their own budgets to things
 25 like capital outlay?
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 1 A. I'm certain there are. The State Board
 2 of Education probably has those values; but I
 3 don't know what they are.
 4 Q. I want to talk about your testimony
 5 where you indicated that the alternatives
 6 available to the legislature in the future will
 7 be to reduce the budget per pupil or have local
 8 school districts reduce their spending or
 9 expenditures. Would you agree that if the
 10 constitution requires the State to provide
 11 suitable financing for education, that an
 12 alternative available, whether the legislature
 13 likes it or not, is to raise taxes?
 14 A. I believe I did indicate or raise
 15 taxes.
 16 Q. Certainly the constitution can be
 17 changed, can't it?
 18 A. By a vote of the people of the
 19 legislature, two-thirds of them concurring.
 20 Q. Now I want to address the questions
 21 very briefly about these five counties and tax
 22 abatements and ask you a few questions about
 23 those. My wife's on the Sedgwick County USD 259
 24 school board, so this is as much for her as
 25 anybody else. Isn't it a fact that the local
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 1 school boards do not decide tax abatements?
 2 A. The local school board does not. Local
 3 units of government, both counties and cities,
 4 do.
 5 Q. All right. So-- and the authority for
 6 that comes from the state legislature?
 7 A. That is correct.
 8 Q. All right. So the state legislature
 9 grants the authority to those local governments,
 10 city and county, to grant those abatements?
 11 A. That is correct.
 12 Q. And the local school boards everywhere
 13 in the state have no control over that?
 14 A. That's correct.
 15 Q. All right. Now, there are situations,
 16 aren't there, where farm machinery is exempted or
 17 abated?
 18 A. Yes.
 19 Q. And there are situations-- wasn't there
 20 a big dispute over changing the value of land
 21 from one kind of value to use value?
 22 A. Yes.
 23 Q. And that benefited the farmers
 24 considerably, didn't it?
 25 A. Probably a matter of opinion, but my
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 1 opinion, yes.
 2 Q. All right. There are situations in
 3 which livestock is abated, is that correct?
 4 A. That is correct.
 5 Q. Do you know the dollars as far as the
 6 abatements on machinery, use value, livestock?
 7 A. Well, use value is not necessarily an
 8 abatement, it's a method of determining value.
 9 Livestock and farm machinery are not on the tax
 10 rolls so there are no property taxes connected
 11 with those. The value of those, no, I do not.
 12 When it was debated, we did have a number, but
 13 it's probably outdated by now and I do not have
 14 that figure.
 15 MR. RUPE: Thank you. No further

16 questions.

THE COURT: Mr. Gallagher.
MR. GALLAGHER: Thank you, Your Honor.
CROSS EXAMINATION

17 BY MR. GALLAGHER:

18 Q. Senator Bogina, I'm not sure why these
19 are up here, but USD 500 isn't the only school
20 district in Wyandotte County, is it, to your
21 knowledge?

22 A. No.

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1 Q. And Shawnee Mission isn't the only
2 school district in Johnson County?

3 A. No.

4 Q. And 501 isn't the only school district
5 in Shawnee?

6 A. No.

7 Q. And 259 isn't the only school district
8 in Sedgwick County?

9 A. No. Well, Wichita is the largest
10 school district in the State of Kansas, but parts
11 of Sedgwick County has other school districts in
12 it.

13 Q. Isn't part of Mulvane in Sedgwick
14 county?

15 A. Yes. My recollection, yes.

16 Q. And Derby?

17 A. Derby most definitely.

18 Q. Well, we can look at the map too. And
19 in Reno County, there's more than one school
20 district there?

21 A. Yes.

22 Q. Okay. In '91-92 when the amount of
state funding went down for education, that only
affected no state aid districts, didn't it, or--
I'm sorry.

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1 A. It only affected state aid districts.

2 Q. It only affected state aid districts?

3 A. That's correct.

4 Q. So if you weren't getting state aid,
5 that budget reduction really didn't hurt you any?

6 A. That's correct.

7 Q. So actually none-- under the old SDEA
8 it sounds like that the poor school districts,
9 the state aid districts, had always been in the--
10 in contention for the state funds that were
11 available?

12 A. Yes. For the state funds that were
13 available, that's correct.

14 Q. Okay. And the districts that didn't
15 need state aid weren't in contention?

16 A. That's correct.

17 Q. And what we have now is everybody's in
18 contention for them?

19 A. Everybody's affected by state aid.

20 Q. Okay. Did I understand correctly that
21 the reason you believe the SDEA was underfunded
22 those years when it was, was simply because the
23 State didn't have the money?

24 A. It was a deliberate effort to spread
25 the dollars and they did not have the money

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1 available. The \$349 million that was
2 subsequently raised by new taxes was not
3 available prior to that time.

4 Q. Sure. I mean if the State-- it

5 wouldn't bother you any if you were able to fully
6 fund state agencies and schools without raising
7 the burden on the taxpayers?

8 A. That wouldn't bother me at all. No, I
9 want to reduce the burden on taxpayers if I can.

10 Q. Sure. And it's safe to assume you
11 didn't carry House Bill 2892 on the floor of the
12 Senate?

13 A. I did not carry it. No, I did not. I
14 did have some subsequent substantive amendments
15 to it that I think would have made it much
16 better.

17 Q. Okay. And you voted against it?

18 A. Every chance I could.

19 Q. Okay. Mr. Vratil was asking you if it
20 was appropriate to use '91-92 data when the State
21 cut its contribution to the School Finance Act
22 and you said logic indicates that it wouldn't.

23 Given that it appears that the reduction in state
24 funding for education really wouldn't affect a no
25 state aid district such as Blue Valley, would

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1 logic also apply-- would you say, well, we could
2 use Blue Valley since they weren't underfunded by
3 the State?

4 MR. VRATIL: Your Honor, I'm going to
5 object to that question because it assumes a fact
6 that's not in evidence.

7 MR. GALLAGHER: Well, sorry, John, your
8 budgets are in evidence. If I've made a mistake,
9 let me know, but we have stipulated in the Blue
10 Valley budgets.

11 MR. VRATIL: Okay. And you say that
12 budget reflects whether it received-- the school
13 district received state aid? I don't believe it
14 does.

15 MR. GALLAGHER: Okay. I guess-- John,
16 are you saying that Blue Valley was a state aid
17 district?

18 MR. VRATIL: I'm saying that that is
19 possible. I don't know. You're assuming a fact
20 that is not in evidence.

21 MR. GALLAGHER: I think in the
22 legislative history among the printouts we will
23 see whether or not Blue Valley was a state aid
24 district.

25 Q. (BY MR. GALLAGHER) Senator Bogina, do
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1 you happen to know whether Blue Valley was a
2 state aid district in '91-92?

3 A. For the SDEA?

4 Q. Yes.

5 A. Yes.

6 Q. Was it?

7 A. No.

8 Q. Well, get back to my question then. As
9 far as determining whether or not it would be
10 fair to use '91-92 statistics, budget statistics
11 for Blue Valley, would the same logic apply?

12 A. It would be ridiculous to use one
13 school district for the base for anything in the
14 State of Kansas.

15 Q. Sure. Well, I understand that. But it
16 would be fair to use Blue Valley's for itself?

17 A. For itself?

18 Q. Sure.

19 A. Certainly I believe that was an
20 indication of the people, the taxpayers, the
21 citizens of Blue Valley's intent as far as their
22 educational system is concerned.

23 Q. And there were other no state aid
 24 districts in '91-92?
 25 A. Certainly.
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1 Q. And they wouldn't have been affected
 2 either by the reduction in the-- the funds that
 3 were funneled through the SDEA, is that right?

4 A. Well, in general there are other ways
 5 to compensate such as special ed, special
 6 education which I think most school districts
 7 receive. The legislature is very adept at
 8 maintaining something and reducing something
 9 else. So I would say that all school districts,
 10 including Blue Valley, in '91-92 received a
 11 decrease in total state dollars because of a
 12 reduction in special ed which was funded by the
 13 state general fund also. But in the SDEA, your
 14 question, the answer is no, it would not have
 15 been affected.

16 Q. Okay. Well, there are other ways to
 17 fund schools beside the SDEA when it was in
 18 effect?

19 A. Yes, sir.

20 Q. There was categorical aids?

21 A. Yes, sir.

22 Q. Transportation?

23 A. Yes.

24 Q. Special ed?

25 A. Those can be adjusted and are adjusted
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1 also.

2 Q. The income tax rebate was in effect
 3 then, wasn't it?

4 A. That is correct, and that was adjusted
 5 and can be adjusted.

6 Q. Okay. Do you remember, was it adjusted
 7 in '91-92?

8 A. Yes, it was reduced.

9 Q. Oh, Mr. Popkin was asking you about
 10 special interest groups in legislation. There's
 11 always been special interest groups and lobbyists
 12 dealing with you on questions of education and
 13 finance since you've been in the legislature,
 14 hasn't there?

15 A. Every citizen in Kansas has a special
 16 interest.

17 Q. Okay. So it's not anything unusual?

18 A. No.

19 MR. GALLAGHER: Thank you, Senator.
 20 That's all I have.

21 THE COURT: Mr. Biles.

22 CROSS EXAMINATION

23 BY MR. BILES:

24 Q. Senator, the-- for many years the State
 25 of Kansas has contributed dollars to the general
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1 operation of unified school districts, have they
 2 not?

3 A. Yes, sir.

4 Q. And do you believe that the State of
 5 Kansas has an interest in the delivery of
 6 educational services to the State?

7 A. Absolutely.

8 Q. And is one of those interests that the
 9 State of Kansas has to make sure that a child's
 10 education is not dependent upon the property
 11 wealth of a school district?

12 A. Would you rephrase-- ask that again,
 13 please.

14 Q. Is one of the interests-- I guess to
 15 begin with, Gus, we'd say that the State has a
 16 lot of different interests in education. What I
 17 want to know is, is one of the interests that the
 18 State has in education to make certain that a
 19 child's education is not dependent upon the
 20 wealth of the school district?

21 A. As a general statement I would say. I
 22 think it goes far beyond that because I don't
 23 think the wealth of a school district is any
 24 indication whatsoever of the dollars that were
 25 levied or could be levied by any school district
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1 ever in the history of Kansas.

2 Q. Would you also agree, Senator, that the
 3 wealth of a district does not determine the
 4 educational needs of the children in that
 5 district?

6 A. Absolutely I would agree with that.
 7 Neither do the dollars that is indicated up on
 8 the board.

9 Q. And one of the things we know about,
 10 Senator, do we not, is that across the State of
 11 Kansas there are enormous differences in the
 12 assessed valuation of school districts?

13 A. Yes.

14 Q. I believe that-- well, under the SDEA
 15 we only used to compute for 303 school districts
 16 because we left Fort Leavenworth sort of off to
 17 the side because of the bothersome nature of that
 18 particular district with federal--

19 A. Public Law 864.

20 Q. That and the fact it's not a school
 21 district,

22 A. It's on a military reservation.

23 Q. I think it's K through 8 as well, is
 24 that right?

25 A. Yes.

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1 Q. So under SDEA we had 303 school
 2 districts, and correct me if I'm wrong, but I
 3 believe the order of magnitude in assessed
 4 valuation per pupil is something like 68 to 1
 5 when you look at the difference between
 6 Burlington and Galena?

7 A. There was a large disparity, yes.

8 Q. And to make education dependent upon
 9 the property tax is going to make-- strike that.
 10 To make educational funding dependent upon the
 11 property tax, the funding is going to be
 12 vulnerable to those very high assessed-- very
 13 large discrepancies between assessed valuation
 14 per pupil?

15 A. Not necessarily.

16 Q. How so?

17 A. Mulvane. They had the lowest-- my
 18 recollection, the last year they had the lowest
 19 budget per pupil, yet their district wealth and
 20 including valuation was considerably above the
 21 low or poor districts, if you would. They had
 22 opportunity-- they have strictly a local matter
 23 that they chose to do that deliberately. Other
 24 districts chose deliberately to have lower
 25 funding. Had nothing to do with district wealth,
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had nothing to do with assessed valuation. That was their choice. I would say that the ability to raise taxes is obviously easier on high valuation per pupil districts.

Q. Right, and I agree. And one of the things I thought that the SDEA was supposed to do was to make certain that property wealth did not inappropriately interfere with the ability to raise funds in a school district by providing state aid to those districts that wanted to tax themselves in order to fund their schools.

A. We might have a somewhat different version of that particular issue. It tended to equalize the burden of providing a basic education in my opinion. An indication of that is Galena that you cited. About 65 percent of their total budget was funded by all the taxpayers of Kansas.

Q. Right. Right.

A. And that was-- they only funded 35 percent of their total budget by the local mill levy.

Q. Would you agree, Senator, that one of the interests of the State in providing for the financing of education is to break the link
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1 between property wealth and the delivery of
2 educational services?

A. I don't believe that that's a valid link and a valid break. I happen not to believe that.

Q. I don't understand why, Senator.

A. Because I still say to a great degree it's a local decision and a local effort whatever they wish to tax. And I do-- I can recognize, and I think what you're implying, is that those districts with a higher budget-- I mean valuation per pupil have the ability to provide more dollars, but it's a proven fact that-- the Legislative Post Audit Department, which is a division of our legislature, has proven that dollars have nothing to do with the quality of education. That was their study that they performed and it has nothing to do with it at all. High spending districts do not have necessarily a better education system than lower. That study is available for the public, to the public.

MR. GALLAGHER: It's an exhibit.

Q. (BY MR. BILES) It's an exhibit in this case, Senator.
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A. Okay.

Q. During the 1992 legislative session when the new law was being debated, there was a considerable amount of both support and opposition from the public made known to the legislature. Would you agree?

A. Yes.

Q. And did you personally hear both from supporters and from opponents?

A. Yes.

Q. And did those supporters and opponents provide to you the information in their possession as to support the various positions they were trying to make known?

A. Yes. And we developed-- the legislature and legislators developed their own positions also.

Q. In the many years that you've been in

19 the legislative process, Senator, both as a House
20 member and as a Senator, I believe that school
21 finance is one of the-- usually one of the last
22 issues that's taken up in a session. Is that
23 normally the case?

A. It's traditionally so because of the demand or the requirement that our ends satisfy
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1 our means or the means satisfy the ends, if you
2 would. In other words, dollars are available,
3 our ability to finance state government. Since
4 education K through 12 is one of the largest
5 single components, in fact it is the largest
6 single component of our state general fund budget
7 of the state, it is one of the expenditures that
8 is massaged in order to make ends meet.

Q. I can recall--

A. It will continue to be that way.

Q. I'm sorry, I didn't mean to interrupt you. I can recall at least one session and maybe there might have been a few others, but at least one where the legislature was able to get the school finance bill out very early and there was a great deal of hoopla about that. Do you recall that session?

A. We had dollars then.

Q. And do you recall, Senator, that school districts applauded the early-- the early passage of the school finance law?

A. Rightly so.

Q. Because that helped them do their planning and that sort of thing?

A. Yes.

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1 Q. But normally when the school finance
2 law is one of the last things to be considered in
3 the session, it has made it difficult for school
4 districts to do planning, isn't that correct?

A. This year was no exception.

Q. And over the many years it's not been an exception, it's been the case that school districts have a hard time planning because the legislature can't or doesn't address it?

A. Including this year.

Q. Including this year. And have you heard complaints from the educational community over the years about the inability of the legislature to get those budgets out earlier?

A. Yes.

Q. That has been a very difficult thing for those districts which are dependent upon the state aid component of the SDEA, is it not?

A. I'm certain that's correct.

MR. BILES: Thank you. Your Honor, I have no other questions.

THE COURT: Mr. Hamill.

MR. HAMILL: I have no further

questions.

THE COURT: Mr. Vratil.

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MR. VRATIL: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. VRATIL:

Q. Senator, Mr. Biles asked you a question to the effect does the State of Kansas have an interest in delivery of educational services to students. I want to put a little bit different

8 twist on that question. My question to you is do
 9 the people of the State of Kansas have a
 10 fundamental interest in the delivery of
 11 educational services to students?
 12 A. I believe so, yes.
 13 Q. You testified on cross examination that
 14 under the SDEA the voters had the ability to
 15 grant additional budget authority to local school
 16 districts?
 17 A. Yes.
 18 Q. Isn't it true that under that act when
 19 they voted to provide additional budget
 20 authority, that additional authority became
 21 permanent and was added to the base budget of the
 22 school district?
 23 A. Yes, and in general they paid for it.
 24 Now, there was state support for those school
 25 districts that received state aid, so there was a
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 1 Q. Yes, sir. Mr. Biles questioned you and
 2 pointed out some enormous differences in, I
 3 think, assessed property throughout the state.
 4 In fact, there's enormous differences in the
 5 culture throughout the State of Kansas, is there
 6 not?
 7 A. Yes.
 8 Q. When you go to the big cities or some
 9 of the tiny cities, the culture and the makeup
 10 and the interests is very diverse, is it not?
 11 A. Yes.
 12 Q. Enormous differences?
 13 A. My opinion, yes.
 14 Q. Is that why you have spoken so
 15 forcefully as you have today about the importance
 16 of local control?
 17 A. Part of it, yes.
 18 Q. During the examination that Mr.
 19 Gallagher had, he said special interests
 20 represented nothing new, and I guess that's
 21 accurate, is it not?
 22 A. Yes.
 23 Q. There has been lobbyists and there will
 24 be lobbyists and they'll be representing special
 25 interest groups forever?
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 1 state liability involved in those elections also.
 2 Q. But my point is, and I want you to
 3 either agree or disagree with me, unlike the
 4 protest petition provisions connected with the
 5 local option budget, under the SDEA when the
 6 voters voted to grant additional budget
 7 authority, the school district didn't have to go
 8 back to them every four years to get a renewal of
 9 that. It was permanent.
 10 A. They had the ability to plan in the
 11 future with it.
 12 Q. And my last question, I asked you if
 13 you were aware of legislators who would not vote
 14 in favor of a bill unless certain provisions were
 15 included. I forgot to include the third prong of
 16 that. I asked you about legislators who were
 17 interested in tax increases in connection with
 18 school finance formula and I asked you about
 19 legislators who were interested in the finance
 20 formula and school reforms. Are you aware of
 21 legislators who would not vote for the act-- who
 22 would not vote for an increase in taxes unless it
 23 was tied to school reform?
 24 A. Yes.
 25 Q. And are you aware of the reverse of
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 1 A. Well, I consider everyone to be a
 2 special interest group I said earlier.
 3 Q. Yes, sir. Before we had the School
 4 Finance Act in place, if money was shifted away
 5 from whatever the State was going to do for the
 6 schools, it wasn't business the same as it is
 7 today because then-- today there's nothing a
 8 local school board can do to supplement that
 9 after it's used up its local option budget, is
 10 there?
 11 A. That is correct. The operation of
 12 school districts, if there were a minor change
 13 needed as low as tenths of a mill or two mills or
 14 five mills for one year, that could be affected.
 15 The State of Kansas cannot as a legislature
 16 adjust one mill, two mills. That is not in the
 17 ability of the legislature to do that. It just
 18 cannot.
 19 Q. That's something that should be
 20 addressed by locally elected school boards?
 21 A. My opinion, yes.
 22 Q. Finally, Mr. Rupe pointed out that his
 23 wife isn't responsible for what property is
 24 exempted in Sedgwick County because she's on the
 25 school board, and that's accurate, isn't it?
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 1 that?
 2 A. Yes.
 3 Q. Okay.
 4 MR. VRATIL: I have no further
 5 questions.
 6 THE COURT: Mr. Popkin.
 7 CROSS EXAMINATION
 8 BY MR. POPKIN:
 9 Q. Well, I'm going to put a different spin
 10 on the question that Mr. Biles asked you and that
 11 Mr. Vratil asked you. Senator, do locally
 12 elected school boards have a constitutional
 13 mandate and a duty and an interest in delivering
 14 educational services to the children of the State
 15 of Kansas?
 16 MR. GALLAGHER: Your Honor, I object to
 17 the form. It's calling for a legal conclusion
 18 and it's compound.
 19 THE COURT: Sustained.
 20 Q. (BY MR. POPKIN) Well, we'll break it
 21 down. Do locally elected school boards have an
 22 interest in delivering educational services to
 23 the children of the State of Kansas?
 24 A. They are supposed to have, yes, in my
 25 opinion.

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 1 A. That's correct.
 2 Q. School boards don't make the decision
 3 about how much property is abated?
 4 A. They can offer advice, but in most
 5 cases it's ignored.
 6 Q. They don't make those decisions, they
 7 just benefit from them?
 8 A. Or lack of benefit, yes.
 9 Q. Yes. And with respect to livestock and
 10 farm machinery, my information is, and Mr. Vratil
 11 gave me this, for Boeing alone Sedgwick County
 12 has eliminated I think he said \$2 billion, \$2
 13 billion off the tax rolls?
 14 A. My recollection of the procedure is

15 when it was discussed in the Senate very loudly
 16 by me, for one, about Boeing by name, which
 17 generally we don't do, they had at one time
 18 received a billion dollars of abatement, which
 19 had been reduced to a certain extent, but
 20 immediately after that discussion the City of
 21 Wichita granted an additional \$2 billion
 22 exemption which has not been sold or developed
 23 yet, but they have the authority, as I understand
 24 the procedure, to exempt an additional \$2 billion
 25 of property from the tax rolls. That was done
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1 immediately after our debate on the school
 2 finance formula.
 3 Q. Now, I know that you don't know how
 4 much livestock has been exempted --
 5 A. I have no idea.
 6 Q. -- and how much farm machinery. Has
 7 there been \$3 billion worth of livestock
 8 exempted?
 9 A. I can't answer that. It would seem
 10 like that would be a lot.
 11 Q. A lot of bull.
 12 MR. POPKIN: I have no further
 13 questions.
 14 MR. RUPE: No further questions.
 15 THE COURT: Mr. Gallagher.
 16 MR. GALLAGHER: I don't have anything
 17 further.
 18 MR. BILES: Nothing, Your Honor.
 19 THE COURT: Mr. Hamill.
 20 MR. HAMILL: Nothing, Your Honor.
 21 MR. VRATIL: Nothing, Your Honor.
 22 THE COURT: Thank you, Senator.
 23 THE WITNESS: Thank you.
 24 THE COURT: Let's recess until two
 25 o'clock.
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1 (THEREUPON, a recess was had from
 2 12:50 p.m. until 2:05 p.m.)
 3 THE COURT: You may call your next
 4 witness.
 5 MR. PERRY: Thank you, Your Honor. Dr.
 6 Clark.
 7 LARRY DEAN CLARK,
 8 called as a witness on behalf of the Burlington
 9 Plaintiffs, having been first duly sworn by the
 10 reporter, testified under oath as follows:
 11 DIRECT EXAMINATION
 12 BY MR. PERRY:
 13 Q. Dr. Clark, could you state your full
 14 name for the record, please.
 15 A. Larry Dean Clark.
 16 Q. And where are you employed, sir?
 17 A. Burlington USD 244.
 18 Q. And what is your position there?
 19 A. I'm the superintendent of schools.
 20 Q. For the record could you give the Court
 21 and counsel a brief background of your education
 22 and your employment history, please.
 23 A. I graduated from Junction City High
 24 School in 1958, went to Kansas State University
 25 where I received a Bachelor of Science in
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1 Education in 1963, went to Emporia State
 2 University where I received a master's with an
 3 emphasis in administration in 1969, went to

4 Kansas State University in 1984 where I received
 5 a Doctor of Philosophy. I taught three years in
 6 Hastings, Nebraska, as a teacher/coach. I went
 7 to Emporia where I was an athletic director for
 8 three years, moved to Olathe where I was
 9 assistant principal for four years. I went to
 10 Kingman, Kansas, where I was principal for four
 11 years. Went back to Junction City where I was
 12 high school principal for seven years and I've
 13 currently been in Burlington as superintendent
 14 for nine years.

15 Q. All right, thank you. And you're the
 16 same person that testified at the injunctive
 17 relief hearing held on May the 25th, 1993, in
 18 front of this Court, are you not?

19 A. Yes.

20 MR. PERRY: And, Your Honor, in order
 21 to not replot ground, I would ask the Court to
 22 take notice of-- well, I'll just do this
 23 differently.

24 Q. (BY MR. PERRY) Larry, if I was to ask
 25 you the questions that I propounded to you during
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1 that injunctive relief hearing concerning the
 2 importance of local school boards' ability to
 3 have control of the amount of mills that it
 4 levies and how that control over the mills gets
 5 reflected in response to taxpayers' needs and
 6 desires and the Board's wants and the demands of
 7 the schools, would your testimony be
 8 substantially the same as it is today?

9 A. Yes.

10 Q. And do you want to add anything else to
 11 that testimony?

12 A. Not at this time.

13 MR. PERRY: With that, Your Honor, I'd
 14 like to just basically reoffer the injunctive
 15 relief hearing transcript of Dr. Clark.

16 THE COURT: Maybe it was just me, but I
 17 think you asked the question the wrong way.
 18 Rather than asking him today if he'd testify the
 19 same as he did that day, I think you asked him
 20 the other way around.

21 MR. PERRY: I'm sorry. It will make a
 22 difference.

23 Q. (BY MR. PERRY) Larry, if I was to ask
 24 you the same questions that I asked you on May
 25 the 25th today, would your testimony be
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1 substantially the same today as they were on May
 2 the 25th?

3 A. I'm going to start listening closer.
 4 Yes.

5 MR. PERRY: And with that, Your Honor,
 6 with my understanding that it's been agreed to by
 7 counsel that we won't have to replot this ground
 8 except to the extent the other counsel wish to on
 9 cross for other matters, I'm going to just kind
 10 of move on.

11 THE COURT: Okay. It's my
 12 understanding that's the agreement of counsel.
 13 There are no objections to that.

14 MR. VRATIL: No objection from Blue
 15 Valley.

16 MR. RUPE: No objection from Newton.

17 MR. POPKIN: No objection.

18 MR. GALLAGHER: None, Your Honor.

19 MR. BILES: No objection.

20 Q. (BY MR. PERRY) Larry, you've been in
 21 the courtroom since this trial has begun on

22 Monday, have you not?
 23 A. Yes.
 24 Q. And you've had an opportunity to listen
 25 to the superintendents and Board members and
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 1 other witnesses from southwest Kansas?
 2 A. Yes, I have.
 3 Q. And you were here when Senator Bogina
 4 testified this morning?
 5 A. Yes.
 6 Q. And in a general manner would you agree
 7 with the sum and substance of that testimony
 8 concerning the act's effect on the local school
 9 board's ability and specifically USD 244 school
 10 board's ability to control and maintain and
 11 operate its local public schools?
 12 A. Yes, I would.
 13 Q. Thank you. You were present then when
 14 Mrs. Hume testified that the act has destroyed
 15 the Board's ability to control the source of
 16 revenues and the expenditure of those revenues
 17 and that since her Board no longer has control of
 18 the finances, she feels that the Board does not
 19 have control. Is that-- do you remember that
 20 testimony?
 21 A. Yes, I do.
 22 Q. Would you agree with that statement?
 23 A. I sure do.
 24 Q. And would there be-- could you give the
 25 Court some specific examples of how you agree
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 1 with that statement and how it applies to USD
 2 244, please.
 3 A. Well, even with Senator Bogina, I
 4 believe that in the whole process of budgeting,
 5 not only at the district level but at the
 6 building level, the people that have control over
 7 the dollars and the expenditures and how that
 8 money is raised are the ones that have the full
 9 control.
 10 Q. The base state aid per pupil, as you
 11 know, is \$3,600?
 12 A. Yes.
 13 Q. Do you spend \$3,600 per pupil per
 14 building at USD 244?
 15 A. No.
 16 Q. Why not?
 17 A. It costs more in every district to
 18 educate students at the high school level in a
 19 science class or a vocational class than it does
 20 for a student that's in the third grade, just
 21 because of the size of the class, the supplies
 22 that are needed, so within-- within Burlington we
 23 have a disparity because we don't spend the same
 24 amount of money per student and I think that's
 25 true across the state. It's going to be very
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 1 difficult to spend an equal amount of money.
 2 They have talked about equality, equity, and
 3 that's been defined several times as equalizing
 4 or providing the same amount of money to educate
 5 kids across the State of Kansas. I think
 6 yesterday it was pointed out that equity is a
 7 concept. I really believe that in the
 8 educational context, equity is providing a
 9 monetary amount that would provide or allow
 10 progress toward meeting potential in the learning

11 environment. We recognize that that's different
 12 in Burlington. It's different across the state.
 13 Our costs per-- our expenditure per pupil ranges
 14 around \$5,000 at the current time. As you
 15 noticed yesterday, the southwestern Kansas
 16 schools range anywhere from six to \$8,000 per
 17 student. So I think there's a true indication
 18 that it costs more to educate depending on where
 19 you're at. One of the effects of this-- this
 20 act, as was mentioned yesterday, was clipping off
 21 the mountaintops. I make no apologies. I want
 22 to be a mountaintop. What I don't want to happen
 23 is to have Burlington clipped to fill in the
 24 valleys. I'm not suggesting that we take that
 25 away from other individuals, but I think a
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 1 commitment to education needs to be made so that
 2 we're bringing the lower districts, the ones in
 3 the valleys, bringing them up to the top and not
 4 necessarily clipping. I'm paid and hired to look
 5 out for the welfare and the benefit of the
 6 educational process in Burlington, and I'm going
 7 to continue to fight and do whatever I can to get
 8 the amount of money needed to educate the kids at
 9 the level that the Burlington community feels is
 10 necessary.
 11 Q. How has the act inhibited or otherwise
 12 prohibited, if it has, the Board's ability to
 13 tailor programs to meet the demands of the
 14 particular students at any grade level at the
 15 school district?
 16 A. I believe this act just in the fact
 17 that it establishes a 32 mill required levy has
 18 eliminated the Board from that process of
 19 determining the first 32 mills. I believe that
 20 the act does not involve-- did not receive any
 21 input to the developers of the act in determining
 22 what categories were developed for weighting.
 23 Those figures are arbitrary. I believe that
 24 long-range planning in the form of a local option
 25 budget is definitely hindered because of the
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 1 four-year commitment rather than under the old
 2 law, the long-term commitment. I believe that
 3 the Boards have been denied some decisions in
 4 curriculum development, in curriculum areas, and
 5 probably more importantly I believe that the act
 6 has denied local patrons the opportunity to have
 7 dialogue with elected officials that can make a
 8 difference in the local community. And by that I
 9 mean with the Boards not having any say-so, input
 10 into the first 32 mills, from that point on as a
 11 taxpayer in Burlington, if I want to make an
 12 effect, I need to call a legislator, not my local
 13 Board representative, and so I think that the act
 14 overall has had a detrimental effect on the
 15 Board's planning and development and maintaining
 16 the school district.
 17 Q. Burlington has a breakfast program,
 18 doesn't it?
 19 A. Yes. Yes, we do.
 20 Q. When was it initiated?
 21 A. We started that would have been '90-'91.
 22 Q. And why did you initiate that program?
 23 A. We felt like in visiting with the
 24 elementary teachers and principals that there was
 25 a number of students that were coming to school
 CURTIS, SCHLOETZER, HEDBERG, FOSTER & ASSOCIATES
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