

TESTIMONY MONTROY CASE 2003

MR. RUPE: Next witness is Senator Christine Downey.

CHRISTINE DOWNEY-SCHMIDT, called as a witness on behalf of the plaintiffs, was duly sworn and testified under oath as follows:

DIRECT EXAMINATION

THE COURT: Good afternoon.

A. Hi.

THE COURT: Would you please pull that microphone and point it towards yourself? There you go, thank you.

BY MR. RUPE:

Q. Tell us your name and occupation, please.

A. My name is Christine Downey-Schmidt, and I'm currently serving as a state senator in District 31, Harvey County and the northeast corner of Sedgwick County.

Q. And tell us your educational background, if you would, please.

A. My undergraduate degree is in elementary education from WSU, and my master's degree is in educational administration and supervision from WSU.

Q. And when were you elected to the Kansas legislature?

A. The election was 1992 and I began serving in '93.

Q. All right. Between the time you obtained your degree and 1993 as the bookends here, and explain to the judge what you did between those bookends.

A. Okay. Um, I taught preschool in New Mexico and also in Germany, and then I finished my undergraduate degree in elementary ed and taught for eight years at Aridge (sp.) Elementary and six years at Santa Fe Middle School in Newton, Kansas, and at that time, I also was teaching at Bethel College as an adjunct professor in the education department.

Q. Okay. And with regard to the schools you mentioned, they are in the Newton school system?

A. That's correct, except for the preschools in New Mexico and Germany.

Q. Okay. Um, with regard to the Kansas legislature, when you were first in the legislature, the -- the SDFQPA had already been adopted as law; is that right?

A. Correct.

Q. I'd like for you to discuss -- well, and in terms of your knowledge of SDFQPA, take a look at Exhibit 136, which is testimony from Senator Bogina. There you go, and I want to ask you about this EXHIBIT that is in evidence and take a look at page 788.

A. Page numbers are at the bottom?

Q. Well, they're about -- there are several pages on a

page.

A. Oh, I see.

Q. So go to 788, and then read to 790. What I want to ask you about are the references to the black hole; do you see that?

A. I do not, but I have a page number that starts 842.

Q. That's because this one is not complete.

MR. ROBB: Mine's highlighted.

BY MR. RUPE:

Q. Well, if you can turn around and look at the screen, I'll just put it up in front of you here, and the question is, my eyes are -- there we go. Um, it refers to the term the black hole; do you see that?

A. Yes.

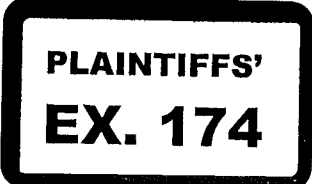
Q. And Senator Bogina was asked, "And what does that mean to you?" And his answer was: "The governor, in her budget message at the beginning of the 1993 session, she may not have been the first person to label it as such, but she in that message noted that the black hole in the education funding stream 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." Are you familiar with that term in the sense of education funding?

A. I have, I've heard -- I mean, I've read this document before and seen it referred to. Um, and that was a period of time when we did not add any funding to the base per pupil.

Q. Okay. So the black hole referred to what?

A. The gap that would be created by not continuing to fund.

Q. Okay. And then over on page -- let me back this off a second. Over on page 802, Senator Bogina was asked: "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 kind of increases in funding that have occurred in the past and are currently being projected in the exhibit that you previously discussed?" And his answer was, "I believe not." The question was: "And I believe you indicated if the legislature doesn't fully fund the budget for the elementary education, that then the districts share proportionately in the underfunding; is that correct?" Answer: "On a per pupil basis." Then the question was: "I want to ask you a little bit, Senator, about the budget mechanism being dictated or required of each of the local school districts to determine their



1 budgets, and I'm referring to the basic state aid per
2 pupil, \$3600. Let's talk about that first. What was
3 the source of that figure in the legislature?" And his
4 answer was: "In my opinion, it was an auction," and
5 then said, "It had no basis in fact -- later on it had
6 no basis in fact whatever, and they found \$3600." My
7 question is, to your knowledge, has there ever been a
8 cost study of the base budget per pupil in terms of
9 analyzing the costs before Augenblick & Myers?

10 A. Not that I'm aware of.

11 Q. And do you agree that the base budget per pupil as
12 arrived at as described by Senator Bogina was an
13 option?

14 MR. BILES: Objection, your Honor, she testified
15 she wasn't a member of the legislature at that time.
16 It can't possibly have foundation.

17 THE COURT: I sustain it on that.

18 BY MR. RUPE:

19 Q. Well, let me ask you what your knowledge was. Do you
20 have any knowledge as to how the original base budget
21 per pupil under SDFQPA was arrived at?

22 A. At the time this legislation was passed, I was a
23 teacher, so we were aware of the political maneuverings
24 that went on to achieve this. But more than that, when
25 I was elected --

1 MR. BILES: Excuse me, your Honor, we're going too
2 far here, and the question -- it's not -- her answer
3 is not responsive to the question.

4 MR. RUPE: I'm trying to establish the ve
5 foundation he said I didn't have.

6 THE COURT: Yes, you may finish your
7 answer.

8 A. And after I was elected and appointed to the education
9 committee, I obviously questioned what we had and how
10 it came to be developed, and this was very much the
11 story that I was told, is that it was a political point
12 at which votes were obtained to -- for passage of the
13 formula.

14 MR. WELTZ: Object, your Honor, it's nonresponsive.
15 I'd move to strike. It's hearsay.

16 THE COURT: Sustained, it's hearsay.

17 BY MR. RUPE:

18 Q. In your role in the legislature, you have been on the
19 education committee?

20 A. Correct.

21 Q. And in the education committee, have you ever become
22 aware from whatever source of anything other than
23 politics that drove the base budget per pupil in
24 SDFQPA?

25 A. On the senate floor, no. Within our education

1 committee, we attempted to obtain information from
2 school personnel about the actual costs they were
3 incurring, but we never got any substantive response on
4 the senate floor to that question.

5 Q. Okay. And in the education committee, in analyzing the
6 formula, did you ever obtain any information about how
7 the original \$3600 budget per pupil was arrived at
8 other than this option?

9 A. Well, yes, we heard information from staff that
10 indicated that districts were suggesting to send in the
11 amounts of money they were currently spending, and then
12 my understanding from staff was that LOB was included
13 as a hold harmless provision, and -- because some folks
14 weren't going to vote for that formula unless they were
15 allowed to spend what they were currently spending. So
16 that was added in as part of the formula, and then the
17 low enrollment was -- weighting was put in to be able to
18 garner -- as well as being justifiable for some
19 expenses that districts incur, but also because it was
20 part of the process to get agreement.

21 Q. All right. Was there -- and now I want to include the
22 period of time in which you were in the legislature
23 subsequent to the passage of SDFQPA in the early
24 nineties. Up to Augenblick & Myers, had there ever
25 been any factual empirical basis offered for the costs

1 of the suitable education?

2 A. No, and that's exactly why we could not reach
3 agreement, because those of us that were maintaining
4 that more dollars were needed to fund the education
5 adequately were in arguments with those people who felt
6 we were already funding too much, because we couldn't
7 agree on what should be included in a suitable
8 education, and that's why we authorized the study.

9 Q. And with regard to a cost analysis of say bilingual
10 weighting, has there ever been a cost analysis of what
11 it costs to educate the kids?

12 A. No.

13 Q. Concerning that rate?

14 A. No.

15 Q. And the same question with regard to vocational
16 education.

17 A. Not that I know.

18 Q. And the same question with regard to low weighting
19 waiting?

20 A. No, other than the general premise that size efficiency
21 is a theory, but nothing that I've seen.

22 Q. What about new facilities weighting?

23 A. No, other than the general philosophy that it costs
24 money to open a new school.

25 Q. Okay. Would you discuss with me -- let me make sure

1 the record's clear on your background since election to
 2 the legislature. What has been your role in the
 3 legislature since you were elected in '92, taking
 4 office in '93?

5 A. Well, I'm an assistant majority leader and minority
 6 whip, and -- did I say majority leader? I think that
 7 was a slip, minority leader and minority whip, and I've
 8 been -- this is the seventh year as a ranking minority
 9 member on the education committee.

10 Q. All right. Do you hold any other positions as of today
 11 on any other committees?

12 A. Yes, I think as of yesterday I'm the ranking member on
 13 ways and means committee, filling in for the absence of
 14 Senator Feliciano, and I also serve on natural
 15 resources and agriculture.

16 Q. Okay. Now, have you been on the education committee
 17 since your election in '93?

18 A. I have.

19 Q. All right. And would you discuss with me the changes
 20 you have observed in the legislature in SDFOPA?

21 A. Yes. Obviously, we've changed the base per pupil, 3600
 22 to the current amount, and the first few years, we did
 23 not add money, and then over the last few years, we've
 24 added somewhere from \$25 per pupil per year to \$50 per
 25 pupil, except for '02, when we added 20, and then due

1 to the governor allotments, 27 was taken away.

2 Q. So have there been other changes?

3 A. Yes. The low enrollment weighting was originally set
 4 for schools below 1900 and we've reduced that, I
 5 believe, to 1725 under the philosophy that most of us
 6 felt that the 1900 was set too high, and so we intended
 7 to roll that down. We also instituted a correlation
 8 weighting, which was designed to deal with some of the
 9 inequities in funding for the fourth enrollment -- the
 10 old fourth enrollment and mid-sized large schools. We
 11 funded that for several years, but it has not been
 12 funded additionally in recent years.

13 Q. Has there ever been a cost study as to how much
 14 correlation weighting is necessary?

15 A. No, the attempt that we made was to take what other
 16 sized schools were spending and what mid-sized schools
 17 were spending and find the difference and see if we
 18 couldn't get better point of equity.

19 Q. Do you have an opinion on whether that is adequately
 20 funded at the level it's currently at?

21 A. I'm very concerned about the level of funding where
 22 it's currently at.

23 Q. Meaning it's too much or too little?

24 A. I think the small schools have the money they need. I
 25 don't think we want to take it away from them, but I

1 certainly don't believe that the mid-sized and large
 2 schools are being funded adequately.

3 Q. All right. With regard to decreasing enrollment, were
 4 there changes in decreasing enrollment?

5 A. Yes, school districts were struggling terribly with
 6 declining enrollment numbers, so in an effort to give
 7 them an administrative tool to give them some
 8 flexibility in their budgeting process, we allowed them
 9 to take the average of the last three years. There were
 10 several different pieces of legislation, but that's the
 11 current situation.

12 Q. All right. Now, have there been changes in at-risk?

13 A. Oh, minor. We started with a five percent and I
 14 believe we're up to 10 percent, and um, this is
 15 terribly inadequate, because this is --

16 THE COURT: Excuse me, five percent of
 17 what?

18 A. Of the base budget. These dollars are designed to pay
 19 the excess costs for at-risk students, and at the very
 20 minimum, we ought to be increasing it by 25 percent
 21 additional dollars for -- to deal with these
 22 difficulties.

23 BY MR. RUPE:

24 Q. Are you aware, and I'll just put up Exhibit 137, which
 25 is a Kansas school finance publication by Allen Auden,

1 and I'm going to turn to page 4 of that document and
 2 put on the overhead here behind you. Are you aware
 3 that Allen Auden, in 1991, recommended the funding to
 4 be at -- on at-risk to be .25?

5 A. No, I wasn't aware of this, but I certainly would agree
 6 with it, and it's probably way behind.

7 Q. All right. What about new schools weighting? Has
 8 there been a new facilities weighting factor?

9 A. Yes, there were very strong cases made for, um,
 10 additional costs of opening new schools, and we
 11 indicated that schools would have to be at the 25
 12 percent LOB level before they could access these
 13 additional dollars. So in other words, they'd have to
 14 be putting in everything they could at the local level,
 15 but they could access an additional tax levy for those
 16 costs.

17 Q. And discuss with me any changes in special education.
 18 We've heard a little bit about a move that was designed
 19 to increase the LOB, and tell me what your recollection
 20 of that is.

21 A. Yes, that was probably a misguided effort, but what it
 22 was intended to do is to inflate the local general
 23 budget so that the percentage of LOB could be
 24 increased. So by putting that special -- counting that
 25 special ed money in with the general fund, it made it

1 a larger amount to take a percentage of.
 2 Q. Just out of curiosity, was there any relationship to
 3 special education in educating special education kids
 4 in that maneuver?
 5 A. I don't think specifically. We're all very aware that
 6 we're taking big costs that the federal government's
 7 not funding, but I think it was generally try to help
 8 districts out because we know that they needed the
 9 money.
 10 Q. And it allowed especially to raise more money under the
 11 LOB?
 12 A. Correct.
 13 Q. All right. Um, with regard to the mill levy, have
 14 there been changes?
 15 A. Yes, big changes. During the good times, we lowered
 16 the mill levy to 20 and brought what we thought or
 17 hoped was great property tax relief to local taxpayers.
 18 Um, it certainly cut out a great deal of revenue
 19 stream, and as it turns out, local taxes have picked up
 20 the slack, anyway, so we didn't achieve either
 21 objective.
 22 THE COURT: Now, when you say "local
 23 taxes," are you talking about ad valorem
 24 taxes that the legislature has authorized its
 25 subdivisions to make?

1 that that was put in to keep some equity in funding for
 2 schools. But shortly after, I believe, '95, that
 3 connection was removed, and so the cap continued --
 4 districts continued to move upward on the cap, but no
 5 adjustment was made on the base.
 6 Q. Okay. So rather than freezing it at 25 percent and as
 7 people increased, keeping it at 25 percent, the 25
 8 percent was allowed to float; is that an accurate
 9 description?
 10 A. Well, I think it's more a case of the 25 percent was
 11 set with the understanding that if you increase the
 12 base five percent, the cap would drop to 20 percent; if
 13 you raise the base 10 percent, the cap would drop
 14 another 10 percent in the hopes that the reliance on
 15 local money would be small and it would be the state's
 16 responsibility for the bulk of education funding.
 17 THE COURT: Now, that's my point that I
 18 didn't quite get an answer to. Um, in your
 19 mind, there is such a thing as state money
 20 and local money?
 21 A. Well, the local option budget that they're allowed to
 22 raise at an additional property tax level is on top of
 23 the per pupil allotment.
 24 THE COURT: But that is a statute
 25 authorized by the legislature --

1 A. Well, I think we felt if we could lower the mill levies
 2 for schools, then taxpayers wouldn't be paying as much,
 3 but because with the increased valuations, it took
 4 any relief that we thought that we were giving to the
 5 on property taxes. So I don't ever get any credit from
 6 my constituents for giving them a tax break, because
 7 the increased valuations made enough difference that
 8 our cut in the mill levy didn't provide any relief to
 9 them.
 10 BY MR. RUPE:
 11 Q. And there was a situation in which the state used money
 12 with the children's trust fund. What was that change?
 13 A. Well, we have the tobacco settlement money, and in our
 14 wisdom, we set it aside as a children's trust fund so
 15 that we wouldn't be spending it needlessly on other
 16 programs. But in the last few years, we've taken -- I
 17 think we're up to \$4.5 million -- out of trust fund to
 18 support general fund dollars in the four-year-old at-
 19 risk program.
 20 Q. Was there a change in the 25 percent cap in the LOB in
 21 the '95 legislature?
 22 A. Yes, and I think that's one of the things that's been
 23 more detrimental in the workability of this formula. I
 24 think it was designed for that cap to be lowered at the
 25 same percent that the base was increased, and I thought

1 A. Correct.
 2 THE COURT: -- authorizing its political
 3 subdivision to raise some more state funds in
 4 this way, is it not?
 5 A. Right, and I think my understanding is that that piece
 6 was put in not only because it's a good idea to have
 7 some local buy in, but because it was necessary for
 8 those districts who were already spending more money
 9 than would be allotted under the new formula, and they
 10 weren't going to vote for that new formula unless they
 11 had a release valve over here to raise some money
 12 locally, which many of these more wealthy districts
 13 could, to be able to at least hold themselves harmless
 14 with the new formula.
 15 BY MR. RUPE:
 16 Q. What has been your -- I'm sorry, your Honor. What has
 17 been your observation of the number of school districts
 18 that have accessed the full amount of the LOB since the
 19 adoption of SDFQEA in the early '90s?
 20 A. Well, I think if you took a list of the funding that we
 21 have provided and you took a list of the districts that
 22 have increased their LOB's each year, you'd see
 23 correlation between the lack of funding coming for base-
 24 per pupil and the increases in the local option
 25 dollars.

1 Q. Phrased another way, are you observing that money that
2 was originally designed to be extra under the local
3 option budget as now being accessed to pay necessities?

4 MR. BILES: Object, your Honor, leading.

5 THE COURT: Sustained.

6 A. It was --

7 BY MR. RUPE:

8 Q. Explain your last comment, if you would, please.

9 A. It was described to me that local option budget dollars
10 were for the extras that schools wanted to provide for
11 students and should have some ability to provide as an
12 individual community. It was never described to me to
13 be used for basic teacher salaries, for meeting
14 expectations of curriculum, et cetera, and my
15 understanding now is that's exactly what districts are
16 using that for.

17 Q. Would you discuss the changes that you have observed in
18 kids in the last 20 years in terms of the pressures or
19 demands of adult life today?

20 A. Well, it's a very different world in terms of
21 expectations for schools. Um, when I began teaching,
22 the philosophy was "all kids can learn," and now the
23 philosophy is "all kids will learn," so that's a very
24 great difference, and I think there was somewhat of a
25 belief that it was okay if all kids didn't learn

1 because some just couldn't, and that's totally
2 different now. That's an unacceptable philosophy. With
3 QPA, the state began to have standards for schools in
4 reading, writing, math, social studies, and there were
5 repercussions related to accreditation if they didn't
6 achieve them. Now, with the federal program, "no child
7 left behind," there are requirements for individual
8 child progress and very serious repercussions if that's
9 not achieved, so we're expecting much more out of
10 schools and students. There are now requirements for
11 the teachers, as well as the paraprofessionals. There
12 are very clear guidelines on the required parental
13 notification messages from schools, progress of the
14 students, and participation that must be created for
15 parents, and I think the greatest difference, though,
16 is the belief that all students will learn and it is
17 the school's responsibility to make that happen, and
18 that's very different from what it was 10, 20 years
19 ago.

20 Q. With regard to the adequacy of funding by the Kansas
21 legislature, do you have an understanding as to what
22 constitutes a suitable education? And let me ask you
23 to -- if you agree with this definition: That suitable
24 education is one in which we must provide all Kansas
25 students, commensurate with their natural abilities,

1 the skills necessary to understand and successfully
2 participate in the world around them, both as children
3 and later adults. With that definition in mind, as far
4 as the funding provided by the Kansas legislature, is
5 it adequate to achieve that goal currently?

6 A. I do not believe it is with the current expectations
7 set by the state and now by the federal government.

8 Q. And Dan Biles' client, the State Board of Education,
9 has recommended the acceptance of Augenblick & Myers,
10 and do you agree with the State Board of Education?

11 A. Yes, and I was proud of them for taking that position.

12 Q. Let me hand you Exhibit 14 and ask you -- this has been
13 admitted, hasn't it? And ask you to take a moment and
14 look at that. Does that show what the increase in the
15 base has been relative to inflation?

16 A. Yes, it does.

17 Q. And can you tell me if the base state aid per pupil
18 provided by the Kansas legislature has kept pace with
19 inflation?

20 A. No, it's not.

21 Q. Okay, Exhibit 19. And, um, let's get this. Give you
22 a few more exhibits to look at here. With regard to
23 Exhibit 19, can you identify Exhibit 19?

24 A. Yes, it's a summary of the amendments that have been
25 added to the school finance act.

1 Q. Along the lines of what you've previously testified to?

2 A. Correct.

3 Q. And with regard to that, does that show the yearly
4 progress of the base budget per pupil?

5 A. It does.

6 Q. And does it have explanations as to the changes in the
7 law?

8 A. Yes, on each of the correlation weightings and at-
9 risks, all of the changes that we've made.

10 Q. Okay. Look at Exhibit 29. And I asked you about the
11 State Board of Education, Mr. Biles' client, and does
12 Exhibit 29 show the amount of money requested from the
13 state general fund for fiscal years 1997 through 2004
14 by the state board?

15 A. Yes, it does.

16 Q. And those increases have ranged from 16.1 percent
17 requested to in 2004 back to 14.2 percent, correct?
18 Yes.

19 Q. And has the legislature responded with an increase to
20 the extent requested by the State Board of Education?

21 A. No, and I'm not sure I see any correlation.

22 Q. Correlation between what?

23 A. Between the request and what we granted.

24 Q. And the second page of that Exhibit 29 shows the actual
25 money spent or actual money allotted?

1 A. To the general fund, true, yes.
 2 Q. And there is no relationship, is there?
 3 A. Well, it's not visible to me.
 4 Q. And the third page of that document shows the
 5 difference; is that correct?
 6 A. Correct.
 7 Q. And in 2003, the difference was \$567 million?
 8 A. That's correct.
 9 Q. 2004, \$145 million?
 10 A. Correct.
 11 Q. Do you think that money makes a difference in how we
 12 provide for Kansas kids in education?
 13 A. Absolutely. And people say, well, you can't solve
 14 problems with money. Well, this problem you can.
 15 Achievement gap, the only thing that will solve it is
 16 money, because it buys teachers, it buys the best
 17 teachers, it buys extra time with students, buys extra
 18 equipment, supplies, so it absolutely is related.
 19 Q. You're the first state senator we've had on this stand
 20 in this case, so I want to ask you some state
 21 questions. Um, can you identify Plaintiff's Exhibit 9
 22 as showing the broken down between mid-sized and large
 23 districts in yellow and tan districts being those under
 24 1700 in size?
 25 A. Yes, that's what it shows.

1 MR. RUPE: Move for the admission of Exhibit 10.
 2 MR. BILES: No objection, your Honor.
 3 MR. WELTZ: No objection.
 4 THE COURT: Admitted.
 5 BY MR. RUPE:
 6 Q. And then finally, I want to hand you Exhibit 11 and can
 7 you identify Exhibit 11 as showing the location of the
 8 minorities where they are concentrated within the state
 9 of Kansas?
 10 A. Yes, it shows the distribution of all minority
 11 students.
 12 MR. RUPE: Move for the admission of -- I'm sorry,
 13 it's in.
 14 MR. ROBB: It's in.
 15 BY MR. RUPE:
 16 Q. Well, as a member of the education committee, but more
 17 particularly, I guess, as a teacher of kids and a
 18 person who has followed education, can you tell me if
 19 the costs of educating kids with special needs, those
 20 kids that are -- are in the achievement gap, is higher
 21 or lower than a regular classroom kid?
 22 A. Oh, absolutely higher.
 23 Q. Do you know of any rational educational cost basis for
 24 spending more money on the kids that don't have the
 25 special needs?

1 Q. Okay. And then can you identify -- let's get that one
 2 up here so we can see it. Okay. So we're on track, we
 3 have in yellow the larger in size enrollment scho
 4 districts and the tan the smaller in size by way
 5 enrollment in school districts; is that right?
 6 A. Correct.
 7 Q. And we can see the Wichita/Newton area where you are
 8 from here and then Kansas City and Topeka and Dodge
 9 City and Garden City and Junction City -- I'm sorry,
 10 and the Liberal out in the southwest part of the state
 11 in the mid- to large-size, correct?
 12 A. Correct.
 13 Q. Now, can you identify --
 14 MR. RUPE: Move for the admission of Exhibit 9.
 15 THE COURT: Admitted.
 16 BY MR. RUPE:
 17 Q. I'm going to show you Exhibit 10 and ask you if you can
 18 identify that as a map that truly and accurately
 19 represents the location of public school children
 20 throughout the state of Kansas.
 21 A. It shows the distribution.
 22 Q. Okay. And again, you can see against that distribution
 23 who are the low enrollment districts and who are the
 24 mid-sized to large districts, true?
 25 A. Um-hum, correct.

1 A. No,
 2 MR. RUPE: No other questions.
 3 THE COURT: Mr. Biles.
 4

5 CROSS EXAMINATION

6 BY MR. BILES:
 7 Q. I wasn't going to ask any questions, Senator Downey,
 8 but you said something at the end here when you were
 9 talking about money for at-risk and you said you need
 10 more money for at-risk, and you advise it buys the best
 11 teachers. What did you mean by that?
 12 A. Well, you have to recruit teachers, and you have to
 13 have a good salary to be able to recruit teachers. You
 14 have to have a good salary base to retain good
 15 teachers, and that seems to be a problem.
 16 Q. So are those districts that are paying more on average
 17 for their teachers, getting better teachers than those
 18 who are paying less on average -- let me finish the
 19 question first -- are those districts that are paying
 20 more on average for their teachers acquiring better
 21 teachers, in your judgment, than those who are payin
 22 on average less?
 23 A. No, that's too simplistic. It's a very complex
 24 situation based on the location of the school and the
 25 climate for teaching, as well as the base salary,

1 fringe benefits, so there are a lot of involvement.
2 You are going to pay for more for a teacher with
3 advanced degrees and specialty areas, but there are
4 other circumstances, of course, other than just the
5 highest paid teacher is the best. I certainly didn't
6 imply that. That would be too simple.

7 MR. BILES: I have no other questions, thank you.

8 THE COURT: Mr. Weltz.

9 MR. WELTZ: Just a couple of questions.

10
11 CROSS EXAMINATION

12 BY MR. WELTZ:

13 Q. You're aware that in the Augenblick & Myers report
14 dated 2002 on ES-3 it says A and M could not find
15 evidence to support raising the average salary of
16 teachers; were you aware of this?

17 A. Well, I'm not certain. If you would read it to me
18 again, please.

19 MR. WELTZ: May I approach the witness and allow
20 her to read this?

21 A. Well, I'm not certain they were looking for evidence to
22 support raising the salary.

23 BY MR. WELTZ:

24 Q. Is that what it says, that they could not find evidence
25 to support raising the average salary of all teachers?

1 A. Well, I don't know that that was part of their charge,
2 so I'm not sure how that reflects.

3 Q. The question is, is that what it says?

4 A. Well, it does say that, yes.

5 Q. Now, personnel costs are one of the largest components
6 of education, isn't that right?

7 A. Yes.

8 Q. Now, when you were talking about getting this study,
9 you were part of the education committee, is that
10 correct?

11 A. Correct, and also part of the committee that authorized
12 the study and the definition of "suitable education"
13 for them to pursue.

14 Q. And I believe earlier you said ultimately you couldn't
15 agree on what should be included in "suitable"?

16 A. In this committee, we did agree on that.

17 Q. But it did never go to the floor, did it?

18 A. It went to the floor in the form of the bill and
19 passed.

20 Q. But not with reference to a definition of "suitable,"
21 they never voted on that, did they?

22 A. Well, yes, the direction in the law indicated what was
23 to be included in the study.

24 Q. Um, now, one last question. You indicated that from
25 the tobacco money --

1 A. Um-hum.

2 Q. -- you set up a children's trust fund?

3 A. Correct.

4 Q. Maybe I didn't understand your question, but you said
5 you took 4.5 million to use for four-year-old at-risk?

6 A. Right, the general fund responsibility.

7 Q. Well, okay. It may be. One of the purposes for the
8 tobacco money was for children, is that right, to
9 protect our children?

10 A. For specialty areas of children, enhancement.

11 Q. Is it -- four year olds aren't in school yet, are they?

12 A. No, but if we remediate problems at four years old,
13 when we get them in school they're less costly.

14 Q. Well, isn't that what a special thing would be if you
15 addressed the issue for average kids when they're four
16 years old, oftentimes that's when you can do the most
17 good before they get to school, isn't that right?

18 A. Well, 20 years ago it might have been perceived as a
19 special program. Nowadays, it's very much a required
20 expectation.

21 Q. It may be, but they're not in school yet, are they, at
22 four years old?

23 A. Well, when they're enrolled with the school district as
24 a four-year-old, they are then in school.

25 Q. The money for the trust fund, that's an inappropriate

1 use of that money to address a special need like that,
2 isn't it?

3 A. I don't think everybody believes that.

4 Q. You do, don't you?

5 A. No, I believe that's a state general fund expense that
6 should be paid for by general state taxes and that
7 additional programs that enhance early childhood
8 education, intervention, remediation can be funded with
9 that.

10 Q. So you don't think those four-year-olds should have
11 gotten that money?

12 A. That's not what I said.

13 MR. WELTZ: I have no further questions.

14
15 RE-DIRECT EXAMINATION

16 BY MR. RUPE:

17 Q. You were asked about the statute that -- the statute
18 that commissioned the study, KSA 46-1225E. Do you
19 recall passage of that law?

20 A. No, I don't know what that is.

21 Q. Let me show you. It's the school district finance
22 evaluation statute that commissioned Augenblick &
23 Myers.

24 A. Yes.

25 Q. Okay. I want to ask you about -- I'll show it on the

1 screen behind you so everybody can see it. I want to
 2 ask you about the language of that statute, when it
 3 simply says that the evaluation shall include a
 4 thorough study of the school district financing and
 5 quality performance act with the objective of
 6 addressing inadequacies and inequities inherent in the
 7 act. Is that what the law says?
 8 A. Um, in the law that wrote the school finance law?
 9 Q. No, in the statute that commissioned Augenblick &
 10 Myers, did it say it was conducting the study for the
 11 purpose of addressing inadequacies?
 12 A. Absolutely. That was the belief of the committee
 13 members that crafted that thought.
 14 Q. And it was adopted by the Kansas legislature?
 15 A. Correct.
 16 Q. And put into the statute books as a law?
 17 A. Yes.
 18 Q. And what they said was the legislature, through the
 19 law, there are inequities and inadequacies in our
 20 system, true?
 21 A. I think that was the majority of the feeling -- the
 22 feelings of the majority.
 23 Q. Now, what has the Kansas legislature, since it made
 24 this admission against its own interest, done by way of
 25 addressing the inequities in the law?

1 A. I'm starting 21 years in Hays.
 2 Q. And during that period of time, you have seen the
 3 funding at the Hays school district from the state back
 4 through SDEA and then to the SDFQPA; is that correct?
 5 A. Yes, sir.
 6 Q. And with regard to that funding, you have been in
 7 charge of the budget for Hays for up through today?
 8 A. Yes, sir.
 9 Q. All right. I'd like you to talk to us a little bit
 10 about the capital outlay, if you would. What is the
 11 mill levy of capital outlay in Hays?
 12 A. We levy nine mills for capital outlay.
 13 Q. And with regard to the capital outlay expenses or what
 14 you're allowed to spend the capital outlay money on,
 15 what do you spend it on?
 16 A. The change when they removed the cap from capital
 17 outlay, when they allowed us to go above four mills,
 18 was -- it was almost like a salvation for the Hays
 19 school district, because we were so financially short
 20 that we could not come up with funds enough to operate.
 21 And when we moved -- when we went from four to allow us
 22 to go all the way to nine, we were able to shift some
 23 expenditures to capital outlay that normally would have
 24 come out of the general fund, and that allowed us to
 25 get by. The disadvantage for us in doing that, of

1 FRED KAUFMAN,
 2 called as a witness on behalf of
 3 the plaintiffs, was duly sworn and
 4 testified under oath as follows:

5 DIRECT EXAMINATION

6 BY MR. RUPE:
 7 Q. Tell us your name and where you live.
 8 A. I'm Fred Kaufman and I live in Hays, Kansas.
 9 Q. And what is your occupation?
 10 A. I'm a superintendent of schools of USD 489 in Hays.
 11 Q. And give us a sense of -- I think we know where Hays
 12 is, Ellis County, but give us a sense of the
 13 demographics of your district.
 14 A. We're about three hours down the interstate, we're a
 15 community that's dominated, I think, for the most part
 16 by the university, and by the hospital and 489 is also
 17 a large employer.
 18 Q. How many FTE's, do you have in your school district?
 19 A. Well, I missed Monday, but I'm hoping that we're in the
 20 area of 3,200.
 21 Q. Okay. And the Hays school district is a member of the
 22 schools for para funding; is that correct?
 23 A. Yes, sir.
 24 Q. All right. With regard to your background, how long
 25 have you been superintendent in Hays?

1 course, is all that capital outlay money comes out of
 2 the local property tax and it's not subsidized by the
 3 state in any way, but it was a big help to us because
 4 we really would have been in a lot of trouble if we
 5 hadn't been able to put that extra five mills on
 6 capital outlay.
 7 Q. With regard to the capital outlay, it had previously
 8 been at four mills?
 9 A. Yes.
 10 Q. And you're at how much?
 11 A. We're at nine this year.
 12 Q. What kind of things can you spend that capital outlay
 13 on?
 14 A. Traditionally you'd think you'd spend that on buildings
 15 and facilities. What we have been able to accomplish
 16 through that is most of our technology expenditures
 17 have been shifted to capital outlay. We lease
 18 technology, and most of that comes out of capital
 19 outlay. We also have some sophisticated technicians of
 20 one type or another, whether it be asbestos control or
 21 technology, that we're able to shift their salaries to
 22 capital outlay.
 23 Q. Are you able to use that for kids in the classroom?
 24 A. No, sir.
 25 Q. With regard to the LOB in Hays, what is the LOB?