

Number range CHAPTER0001

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

4
5 JOHN F. KNIGHT, JR. And ALEASE
6 S. SIMS, et al., individually and
7 On behalf of others similarly
8 Situated,
9 Plaintiffs and Plaintiffs-Intervenors,

10
11 CIVIL ACTION NO:
12 CV-83-M-1676-S

13 UNITED STATES OF AMERICA,
14
15 Plaintiff-Intervenor,

16 Vs.

17 THE STATE OF ALABAMA, et al.,

18
19 DEPOSITION OF DR. ED RICHARDSON
20 The Deposition of DR. ED RICHARDSON was
21 taken before Kimberly B. Garrett, CSR, RPR,
22 on Tuesday, April 13, 2004, at Auburn
23 University, 107 Samford Hall, President's
24 Conference Room, Auburn, Alabama, commencing
25 at 2:00 p.m., pursuant to the stipulations
26 set forth herein:

0002

1 A P P E A R A N C E S

2
3 APPEARING FOR THE PLAINTIFFS,
4 John F. Knight, Jr., and
5 Alease S. Sims:

6 LAW OFFICE OF JAMES U. BLACKSHER

7 BY: Mr. James U. Blacksher
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9 Birmingham, Alabama 35203

10 APPEARING FOR THE PLAINTIFFS,
11 The United States Of America:

12 DEPARTMENT OF JUSTICE

13 BY: Ms. Pauline Miller

12 950 Pennsylvania Avenue, N. W.
13 Washington, D.C. 20530

14 APPEARING FOR THE DEFENDANT:

15 ADAMS AND REESE/LANGE SIMPSON
16 BY: Mr. John B. Tally, Jr.
17 2100 3rd Avenue North, Suite 1100
18 Birmingham, Alabama 35203

19 APPEARING FOR THE UNIVERSITY OF ALABAMA

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22 BY: Mr. Gary C. Smith
23 1530 3rd Avenue South
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24 Birmingham, Alabama 35294-0108

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Reported By:

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Kimberly B. Garrett,
Certified Shorthand Reporter
Registered Professional Reporter

23

0004

1

I N D E X

2

3 EXAMINATION OF DR. ED RICHARDSON

4

EXAMINATION BY: PAGE NUMBER

5

6 Mr. Blacksher.....9

Mr. Tally.....113

7 Mr. Blacksher.....115

8

9

E X H I B I T S

10

11 Plaintiff's Exhibit No. 28.....12

12 Plaintiff's Exhibit No. 29.....15

13 Plaintiff's Exhibit No. 30.....30

14 Plaintiff's Exhibit No. 31.....37

15 Plaintiff's Exhibit No. 32..... 37

16 Plaintiff's Exhibit No. 33.....42

17 Plaintiff's Exhibit No. 34.....47

18 Plaintiff's Exhibit No. 35.....49

19 Plaintiff's Exhibit No. 36.....54

20 Plaintiff's Exhibit No. 37.....58

21 Plaintiff's Exhibit No. 38.....74

22 Plaintiff's Exhibit No. 39.....76

23 Plaintiff's Exhibit No. 40.....80

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3 Plaintiff's Exhibit No. 41.....90

4 Plaintiff's Exhibit No. 42.....92

5 Plaintiff's Exhibit No. 43.....95

6 Plaintiff's Exhibit No. 44.....103

7 Plaintiff's Exhibit No. 45.....104

8 Plaintiff's Exhibit No. 46.....105

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11 CERTIFICATE OF REPORTER.....119

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0006

1 S T I P U L A T I O N S

2

3 IT IS STIPULATED AND AGREED by and
4 between the parties through their
5 respective counsel, that the deposition of
6 DR. ED. RICHARDSON be taken before KIMBERLY
7 B. GARRETT, Certified Shorthand Reporter,
8 and Notary Public, State of Alabama at
9 Large, at 107 Samford Hall, Auburn
10 University, Auburn, Alabama on Tuesday,
11 April 13, 2004.

12

13 IT IS FURTHER STIPULATED AND AGREED
14 that the signature to and the reading of
15 the deposition by the witness is waived,
16 the deposition to have the same force and
17 effect as if full compliance had been with
18 all laws and rules of Court relating to the
19 taking of depositions.

20

21 IT IS FURTHER STIPULATED AND AGREED
22 that is shall not be necessary for any
23 objections to be made by counsel to any

0007

1 questions, except as to the form or leading
2 questions, and that counsel for the parties
3 may make objections and assign grounds at
4 the time of the trial, or at the time said
5 deposition is offered in evidence, or prior
6 thereto.

7

8 IT IS FURTHER STIPULATED AND AGREED
9 that notice of filing of the deposition by
10 the Commissioner is waived.

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0008

1 DR. ED RICHARDSON
2 after having been first duly sworn under
3 oath, was examined and testified as follows:

4 COURT REPORTER: Would you
5 like the usual stipulations?

6 MR. BLACKSHER: That's
7 fine.

8 MR. BOYD: Yes. I don't
9 know what we are going to do about
10 reading and signing yet.

11 COURT REPORTER: Okay.

12 MR. BLACKSHER: This is a
13 trial deposition and, as I said
14 yesterday, under Rule 32(d),
15 objections to the relevance and
16 materiality still can be made at
17 trial unless it could have been
18 cured during the deposition. So
19 if there is some issue that I can
20 cure, then I need to cure it.
21 Whatever that means. I don't
22 anticipate any problems with that.

23

0009

1 EXAMINATION BY MR. BLACKSHER:

2 Q. Dr. Richardson, give your full
3 name and residence address, please.

4 A. My name is Ed Richardson. I
5 currently reside at 430 South College Street
6 in Auburn.

7 Q. And you are currently president of
8 Auburn University?

9 A. Yes. I was appointed interim
10 president on January the 26th of this year.

11 Q. And before that you were
12 superintendent of Education for Alabama?

13 A. State superintendent of Education.
14 I started in '95, October of '95, and resigned
15 to take this position.

16 Q. Was it '95 you became state
17 superintendent?

18 A. Sure was, yeah. Eight and a half
19 years.

20 Q. I thought it was further back than
21 that.

22 A. Yeah. A lot of people thought it
23 was longer than that.

0010

1 Q. Do you understand that the matter
2 we are here on today is Knight versus Alabama,
3 and specifically the challenge that the
4 Plaintiffs have made to Alabama's property tax
5 system?

6 A. I do.

7 Q. I'll ask you some questions.
8 First of all, this will overlap, but generally
9 I'm going to focus on higher ed. and then I'm
10 going to ask some questions that come under
11 your experience as state superintendent with
12 K-12.

13 A. Well, again, just so we are
14 together, you have made it clear that the role
15 of state superintendent had a clear assignment
16 legal responsibility. And I have been here
17 ten weeks as president. So, I mean, I just
18 felt like I'm having to speak from two
19 different positions in this regard. So if you
20 are asking me as state superintendent, then I
21 would feel more comfortable. But ...

22 Q. I'm sure you don't -- I'm not
23 going to ask you that much about Auburn or the

0011

1 business at Auburn except what you have
2 already said.

3 A. Okay.

4 MR. ARMSTRONG: Just make
5 clear what capacity you are asking
6 the questions so that it's clear
7 if you are asking him in his
8 capacity of president of Auburn
9 University versus superintendent.

10 Q. Well, all of the questions are now
11 asked in your capacity as Auburn president.

12 A. Okay. Very good.

13 Q. I'm just pointing out that the way
14 I organized this new column, some experiences
15 you had in your other life.

16 A. Sure. I expect that.

17 Q. And I have used a number of
18 newspaper articles. I think some of them may
19 have been supplied to you in advance, that are
20 just beginning points for talking about
21 things.

22 The first issue I want to raise
23 with you is the increasing tuition at Alabama
0012

1 public universities.

2 MR. BOYD: Polly, can you
3 hear?

4 MS. MILLER: Yes. I'm
5 fine, thanks.

6

7 (Whereupon, Plaintiff's Exhibit
8 Number 28 was marked for identification.)

9

10 Q. All right. In a document, a
11 newspaper article I have marked as Exhibit 28,
12 which is captioned, "Tuition May Surge,
13 Richardson Says." This is dated April 8, '04.
14 So it's a recent article.

15 A. I must have been speaking to the
16 Birmingham Rotary Club, I believe.

17 Q. It is by Thomas Spencer of The
18 Birmingham News. It begins: "The State must
19 spend its higher education money more wisely
20 or tuition at Alabama colleges and
21 universities will eventually climb out of
22 reach for most, Auburn University interim
23 president Ed Richardson said."

0013

1 Was that at the Rotary Club?

2 A. Yes. It was Birmingham Rotary
3 Club. That is exactly a major concern of
4 mine.

5 Q. And then you are quoted as saying
6 as follows: "Tuition at some point will reach
7 the level where the average person can't
8 attend."

9 A. That is a concern of mine, yes.

10 Q. Now, when you say an average
11 person, could you be more specific about
12 income levels or financial resources?

13 A. Sure. If you are in the 40 to
14 50,000 range, even now you are looking at the
15 tuition that you would find at major colleges,
16 you can almost assume there will be some level
17 of indebtedness upon exiting the institution.
18 What I'm most concerned about is that about
19 half our counties have an average per capita
20 income of about 20,000. So when I say average
21 I'm certainly not talking about ability. I'm
22 talking about, really, the financial status of
23 the parents. So anywhere in that 40, 50,000,
0014

1 as tuition goes up eight, ten, 12 percent a
2 year, get that going for eight or ten years,
3 then you are going to see many of those
4 parents unable to send their children to
5 college, in my view.

6 Q. Now, as things are now, have you
7 been here long enough to get a handle on the
8 kind of financial packages that Auburn
9 University puts together for low or middle
10 income students when they come?

11 A. I wouldn't say I could speak
12 definitively. I'm aware of some. What I'm
13 most pleased with is that the board of
14 trustees, through their own -- the general
15 fund fashioned a package of \$2 million
16 scholarship. That's \$5,000 a year for four
17 years. So it's a total of 20,000 for a number
18 of students that -- whatever that 2 million
19 would equate to. I guess that's about 100 or
20 so. And the intent there was to supplement.
21 They had to meet certain requirements,
22 academic requirements.

23 But they also chose, the board of
0015

1 trustees did, to include about a third of the
2 scholarships in schools that are currently
3 experiencing academic difficulty. So it was
4 a reflection of that financial strain that
5 many parents are following. I am not familiar
6 with many of the other, I'm sure federal,
7 support and programs that might be available

8 to students.

9

10 (Whereupon, Plaintiff's Exhibit
11 Number 29 was marked for identification.)

12

13 Q. Okay. I have marked as Exhibit 29
14 some excerpts I printed off of the State
15 Department of Education's website. Do you
16 recognize the annual reports that are on the
17 State Department's website?

18 A. I do.

19 Q. Let me see if I can call your
20 attention to what I wanted to refer to in
21 particular. On page 19 of this excerpt is a
22 list of academic watch schools?

23 A. Yes.

0016

1 Q. Is that the category of schools
2 you were referring to just now when you said
3 that?

4 A. That is correct. That's exactly
5 correct.

6 Q. What are academic watch schools
7 now?

8 A. These are schools who had less
9 than 80 percent of their graduates passing the
10 high school graduation exam. That's a slight
11 change of what previous standards otherwise,
12 but -- so what you are saying is that that's
13 about a 20 percent failure rate at least.

14 And when we identified them as
15 academic watch, then we sent specialists in to
16 assist them to see what was going on
17 academically that would keep the student from
18 passing the graduation exam. The average
19 rate in the state was about 92 percent
20 passage.

21 Q. Academic watch is determined
22 entirely by the pass/fail rate on the exit
23 examination?

0017

1 A. On graduation, that's correct.
2 See, you can't graduate if you don't pass the
3 exam.

4 Q. All right. It doesn't have --
5 there is no components of, say, scores on the
6 Stanford or some other test?

7 A. The previous tests they used to --
8 to take. Now, in terms of -- obviously these
9 are all high schools, and of course they don't
10 take the Stanford test. They only take the
11 graduation exam itself.

12 Q. I didn't know that.

13 A. Yeah. It changed about two or
14 three years ago. Before, the Stanford
15 Achievement Test was the driving force. And
16 then when you had the Stanford still given in
17 ninth and tenth grade, it contributed to it
18 along with the graduation exam. But for the
19 last two or three years, the Stanford
20 Achievement Test is administered only in
21 grades eight down to three.

22 Q. Okay. And academic watch status
23 is not determined in any way by the kinds of

0018

1 curricula; that is, you don't use as a
2 measuring stick whether or not they are
3 offering the number of math and sciences
4 courses that the State Department requires or
5 anything of that sort?

6 A. No. There are some correlations
7 but the answer is strictly on the passing rate
8 of the grad exam.

9 Q. And you don't use a correlation
10 with local effort in terms of school funding?

11 A. We do not.

12 Q. Just wanted to be clear. That's
13 solely a function of the exit examination?

14 A. That is correct.

15 Q. Now, you said there -- is there
16 some correlation between the exit exam results
17 and these other factors I was mentioning?

18 A. Poverty.

19 Q. Say it again.

20 A. Poverty.

21 Q. And --

22 A. That's the greatest predictor of
23 low achievement whether it's Stanford or the

0019

1 graduation exam.

2 Q. And what do you base that on?

3 A. There are several standards, but
4 the one most commonly used is free and reduced
5 lunch, which indicates a relative wealth of

6 the parents. And so if you are having higher
7 percentage of people on free and reduced
8 lunches, you are more likely to be on that
9 list.

10 Q. Has the state department, in your
11 experience, actually run correlations,
12 analyses, of these factors, the reduced
13 lunch -- and eligibility for reduced lunch and
14 the academic cap?

15 A. Last year was the first year in
16 which we disaggregated test scores. And what
17 that means is you take it by race and free and
18 reduced lunch and special education. So those
19 were done and it was clear to anyone, and
20 those graphs would be available from the
21 department if you wish, but poverty was the
22 biggest indicator of low achievement.

23 Q. Okay. And in Alabama poverty also
0020

1 correlates with race to a substantial extent,
2 doesn't it?

3 A. No question.

4 MR. BLACKSHER: Butler
5 County isn't in here. Sorry about
6 that, Dave.

7 DEPONENT: Is that where
8 you are from, Butler County?

9 MR. BOYD: Greenville.

10 Q. And for the record, what I printed
11 out is the annual report for the year 2002,
12 which was the most recent one that was on your
13 website.

14 A. Okay.

15 Q. We are in the year of 2003 or 2004
16 for purposes of this report?

17 A. '03 would have been released in
18 last June. Obviously '04 wouldn't be
19 available because they are just taking the
20 tests now. So, but '03 should be available.

21 Q. So in any event, the list of
22 academic watch schools on page 19 of Exhibit
23 29 are '02 academic watch. And what I want to
0021

1 do is ask you to look down that list and tell
2 me, isn't it true that most of those schools
3 have substantial black student bodies, if not
4 majority black student bodies?

5 A. I will quickly look over those.
6 I'm confident that not only would they have
7 majority black students but the free and
8 reduced lunch would also be above average as
9 well.

10 Q. Thank you.

11 Back to Exhibit 28, which is this
12 April 8th Thomas Spencer article. It says:
13 This past Fall Auburn tuition rose 16 percent
14 to more than 4,400 annually for an in-state
15 student and trustees will consider further
16 increases this Spring.

17 Have you been here long enough to
18 form an opinion as to whether or not tuition
19 will rise again next year?

20 A. It will. Right now our tentative
21 estimate is nine percent.

22 Q. And have you formed an opinion
23 as -- about how far into the future we can

0022

1 project these tuition increases to continue?

2 A. Universities have two primary
3 sources of income. That is state allocation
4 and tuition. We met yesterday with the
5 chairman of the Senate and House money
6 committees, and we see --

7 Q. Education?

8 A. -- education. Yes. Mr. Lindsey
9 and Mr. Sanders. And it was pretty well
10 described for us that there would be no
11 increases in funding for higher education in
12 terms of meeting even the increases in health
13 care and retirement costs. So I would foresee
14 this -- and that's really based on a national
15 trend that I have been observing that the
16 likelihood of any substantial increase in
17 higher education funding is not good. So, to
18 your question, then I think the only other
19 choice you have is tuition will continue to
20 rise.

21 Q. The article, Exhibit 28 article,
22 has you saying that you expect a one percent
23 increase in state appropriation to higher ed.

0023

1 this year. Do you still expect that?

2 A. When I spoke, I did. After
3 yesterday's meeting, I don't.

4 Q. Do you think it's going to be flat
5 or --

6 A. Or a slight decrease.

7 Q. Or a slight decrease. All right.

8 And in your looking at the state
9 revenue situation, is there any other source
10 of revenues other than the famously-low
11 property tax system that could be tapped in
12 the future to reverse this trend, in your
13 opinion?

14 A. In terms of as president,
15 obviously you continually look for grants,
16 other awards where you can generate monies.
17 You look at tapping sources that are a little
18 untraditional, whether it be athletics, but
19 those -- none of those would be sufficient, so
20 you almost have to go to a major source which,
21 as you said, would be a tax source.

22 Now, when you get outside of
23 property tax and you get to sales or income,
0024

1 then you -- sales is already pretty high in
2 this state and it has a very aggressive
3 impact. So obviously there is no cap on sales
4 tax. You could go up to raise money and
5 whether that's advisable is another question.

6 Q. And income tax in Alabama, is that
7 likely to increase substantially over the near
8 future?

9 A. Based on the vote last Fall and
10 based on my conversations with legislators, I
11 do not see any likelihood of a substantial
12 increase in sales or even some of the taxes
13 commonly described as sin taxes, like
14 cigarettes.

15 (Whereupon, Fred Gray and Solomon
16 Seay join the deposition.)

17 (Whereupon, a discussion was held
18 off the record.)

19 Q. (BY MR. BLACKSHER) Dr.
20 Richardson, again, the Exhibit 28 has you
21 saying that Auburn will stick to its current
22 enrollment cap at 25,000 students; is that so?

23 A. That is what the board has

0025

1 identified several years ago. And we are over
2 23 -- we are talking about just the main

3 campus. That does not include AUM. And part
4 of the reason for making such a statement is
5 that there has been a formula developed over
6 the last 15 years by the Commission on Higher
7 Education. The legislature chooses not to
8 follow it. So it is a disincentive for
9 institutions such as Auburn that has an
10 increasing enrollment.

11 As I said publicly to the board
12 during this last meeting, our best way to
13 improve our financial condition is to cut
14 about 3000 students on the roll because we get
15 the same amount of money from the state
16 anyway. So I would say that we can -- our
17 campus is being built for about 25,000, and
18 realistically, I think that's large enough.
19 But part of that is being driven by the fact
20 it creates a financial burden.

21 Q. Explain to me what feature -- are
22 you talking about the eight formula to --

23 A. Yes.

0026

1 Q. -- the original standard formula
2 for allocating -- for creating the UBR, the
3 Unified Budget Recommendation?

4 A. Yeah.

5 Q. What feature of the formula
6 penalizes you when you start adding over
7 25,000?

8 A. Well, if the formula was used,
9 that would be fine. But --

10 Q. Because it's driven by FTE?

11 A. That's right. But the legislature
12 does not use the formula, they just give you a
13 straight allocation. So as a result, the
14 institutions that are losing enrollment get
15 the same amount of money. The institutions
16 that are gaining enrollment get the same
17 amount of money. So it's a disincentive when
18 your enrollment is increasing, since the
19 formula is not used.

20 Q. So if Auburn were to get a one
21 percent increase in state appropriations this
22 year, you're saying the legislature would
23 expect that Jacksonville State and Alabama

0027

1 State would also get a one percent without

2 reference to the FTE formula?

3 A. That's correct. It would be
4 across the board in some way.

5 Q. All right. I'm going to ask you a
6 question as a college president that you may
7 not be ready to answer yet with just ten weeks
8 on the job or whatever it is.

9 A. It will take a couple more weeks
10 before I become an expert.

11 Q. Yeah. Right.
12 I want to talk about the trend,
13 the national trend, which also displays itself
14 in Alabama of student debt increasing much
15 faster than student financial aid is
16 increasing. Are you familiar with that trend?

17 A. Yes, I am.

18 Q. Have you observed that trend
19 happening here at Auburn?

20 A. Yes, I have.

21 Q. Okay. Specifically, student aid
22 in Alabama for Alabama institutions comes
23 almost entirely from the federal government;
0028

1 is that correct, or from institutional
2 budgets?

3 A. That's correct too.

4 Q. That is to say, the State of
5 Alabama does not have -- well, I think this
6 year it's allocated \$800,000 or so to the
7 need-based financial aid that ACHE
8 administers?

9 A. I believe that's correct.

10 Q. So what I want to ask you is, what
11 will be the impact on low income students and
12 their families of this -- if this trend
13 continues, that paying for college continues
14 to shift toward indebtedness and away from
15 financial aid?

16 A. It means few of them -- fewer of
17 them would be able to attend college. And
18 it's just like so many other things in that
19 regard, it's a discouragement if you see those
20 costs being so high. And in many cases the
21 poor family would not have the capacity to
22 service that debt or even to secure it.

23 Q. Speaking for the white middle
0029

1 class, I think I can attest from personal
2 experience that we are experiencing
3 substantial indebtedness for sending our own
4 children to universities and beyond. But our
5 kids keep going to universities and what I
6 want to ask you, is this option as equally
7 open to low income families as it would be to
8 those of us in the middle class, or upper
9 middle class in terms of income?

10 A. I'm not sure I understand the
11 question. Are you saying that the federal
12 monies -- I mean, that's actually --

13 Q. No. Actually I was -- it's a
14 poorly-asked question. I was really talking
15 about increasing debt. Isn't it true that
16 it's more difficult for low income families to
17 take on substantial indebtedness than it is
18 for --

19 A. No question.

20 MR. TALLY: You got lost
21 when you made it sound like you
22 were in the middle class.

23 MR. GRAY: He improved it

0030

1 when he said in the upper --

2 MR. BLACKSHER: I was
3 trying to speak collectively for
4 the people in the room.

5 (Whereupon, a discussion was held
6 off the record.)

7

8 (Whereupon, Plaintiff's Exhibit
9 Number 30 was marked for identification.)

10

11 Q. (BY MR. BLACKSHER) Exhibit 30 is
12 an article, December 5, '03, from the, I
13 believe, The Birmingham News although it just
14 says the Alabama Live website. Yeah, The
15 Birmingham News. I'm sorry. And I'll let you
16 take a look at it. It talks about Auburn
17 students having to work longer hours in order
18 to make money in order to attend school.

19 Have you seen that article before?

20 A. I have seen that article.

21 Q. Isn't it true that the cost of
22 going to universities now is at least -- at
23 least half of that cost is just for living

0031

1 expenses, not just for tuition and books and
2 fees?

3 A. It can be safe to say at least
4 half, that's correct.

5 Q. And the need-based assistance
6 that's available from Pell grants and other
7 federal direct aid, is only pegged to -- is
8 only sufficient in some case to cover tuition
9 and perhaps fees; is that correct?

10 A. That's very true.

11 Q. So low income students, even those
12 who get financial aid, would have to either
13 work or incur indebtedness in order to attend
14 school?

15 A. That's correct.

16 Q. Have you been able to observe the
17 patterns of stop-outs and dropouts here at
18 Auburn University?

19 A. You may have to define stop-out.
20 I'm not sure I understand.

21 Q. Then in that case we do need to
22 stop and define it. You just haven't been at
23 Auburn long enough, I guess, Dr. Richardson.

0032

1 The way it was explained to me by
2 the financial aid people is that a stop-out is
3 a student who leaves school for a year or two
4 or more and then comes back.

5 A. Okay. We have had co-op students
6 and others that do that, sure.

7 Q. And in order to get enough money.
8 And then the --

9 A. Sure.

10 Q. -- dropouts don't come back.

11 A. Right. Okay.

12 Q. Now, it's also true that some
13 financial aid people refer to stop-outs as
14 students who disappear and don't go through
15 the exiting process of the university that it
16 likes to use when it knows that a student is
17 not coming back. But usually the term is the
18 first way I defined it.

19 A. Okay.

20 Q. Have you observed any of those
21 patterns here at Auburn?

22 A. Are you talking about trends in

23 that regard to stop-outs and dropouts or --
0033

1 Q. Okay. Trends or anything about,
2 for example, the percentage of students who
3 have to stop-out as opposed to going straight
4 through?

5 A. I have not observed any trends in
6 the ten weeks that I have been here in terms
7 of stop-outs. But it is a considerable
8 concern that there is a high dropout rate in
9 the freshman-sophomore year. There are
10 several reasons for that. But I think that --
11 that you would expect that to be reflective of
12 the preparation that those students received
13 while in high school.

14 Q. Now, Auburn has relatively high
15 admission standards among state universities
16 here.

17 A. Yes.

18 Q. Auburn doesn't have that many
19 remedial education courses; isn't that
20 correct?

21 A. That's right, does not have that
22 many.

23 Q. And most of your students -- your
0034

1 students are more likely to have already met
2 some preselection preparation standard before
3 they get here than, say, students at Jax State
4 or Alabama State?

5 A. I would think so. Our, after ACT,
6 we anticipate this Fall will be 25 for the
7 students entering. And the grade point is
8 about a three point which is a B average. So,
9 but there is still a question of have you
10 taken sufficient math to walk in to the --
11 mathematics seems to be the biggest
12 troubling -- the most troubling subject upon
13 entering college at any level, whether it be
14 Alabama State or Auburn.

15 Q. Go back to something you said
16 earlier about freshman and sophomore years.
17 Isn't it true that the biggest drop-off in
18 terms of dropouts occurs after the sophomore
19 years?

20 A. That's what I understand. I have
21 not seen the actual figures, but that's what I

22 have been told.

23 Q. Have you been told why that is?

0035

1 A. No. I think in some cases there
2 is difficulty in school of not making the
3 progressions, the one most often offered to
4 me. I could not attribute it back to your
5 questions as to whether finance was a problem.
6 I just don't know. I'm sure --

7 Q. Well, I didn't actually ask that
8 question, but I should, specifically whether
9 finances are --

10 A. I just don't know. Because I
11 mean, you can surmise it, but I don't know.

12 Q. Let me ask you about these new
13 scholarships the board has approved,
14 Dr. Richardson. First of all, I think it
15 was -- yeah. Here's a document I've marked as
16 32. It's an article from The Birmingham News,
17 September 1, 2001, about an Auburn trustee
18 meeting. And at the end it says -- of course
19 you sat on Auburn's board ex officio as the
20 state superintendent?

21 A. Correct.

22 Q. And it says, at the suggestion of
23 Ed Richardson, the state superintendent of

0036

1 education, Walker, President Walker, has --
2 was instructed to see if he can get 2.5
3 million of such revenues contributed
4 voluntarily for the scholarships.

5 You might want to look at that --

6 A. Yes.

7 Q. -- to refresh your memory just a
8 minute?

9 A. I do remember that.

10 Q. And what you said is that you --
11 the board has approved \$2 million for these
12 new scholarships that Auburn will offer after
13 its institutional funds?

14 A. There were two contexts involved
15 in that. First, the board had come up with
16 money for scholarships to assist students, and
17 because of the declining revenues at the
18 state, we were getting squeezed. So as a
19 result of that, we were trying to find another
20 source. I wanted to sustain the scholarship,

21 but I was not sure we could continue to offer
22 it through our general fund. So, but, yes,
23 that was what I asked them to do.

0037

1 (Whereupon, Plaintiff's Exhibit
2 Numbers 31 & 32 were marked for
3 identification.)
4

5 Q. I have got an article here that is
6 dated February the 18th, '04, again,
7 Birmingham News -- this is Exhibit 31 -- that
8 discusses your announcement of these
9 scholarships. "Auburn University will award
10 \$5,000 scholarship to 100 first-year in-state
11 students."

12 A. That's correct.

13 Q. Would you sort of summarize what
14 those scholarships provide and who will be
15 eligible to get them?

16 A. There are two levels of
17 scholarships, the same amount of money. You
18 get a \$5,000 annual scholarship if you meet
19 the ACT, which 22 was a minimum, plus a three
20 point average. And you can renew it for up to
21 four years, which would give you a total
22 possibility of \$20,000. The second level --

23 Q. Let me just interrupt you for a

0038

1 minute.

2 Not too many students graduate in
3 four years these days, though; isn't that
4 correct?

5 A. In universities? That's very
6 common that it goes longer than four years.
7 Sometimes as long as six.

8 Q. And an engineer curriculum, I
9 think is five years minimum?

10 A. Five, right.

11 Q. All right. Go ahead.

12 A. The second level of the
13 scholarships, which I did not participate in
14 the discussion but I say that simply to give
15 credit to others because I thought it was a
16 great idea, was to award, I think it was 36
17 scholarships of that 100 to students who met
18 the academic requirements but attended schools
19 that were under academic watch or having some

20 difficulty. And I really thought that would
21 serve to motivate students within that school,
22 there is hope. And so I thought it was an
23 excellent idea that the trustees had come up
0039

1 with.

2 So there are two levels, still
3 5,000, can renew it for four years. The only
4 drawback, just -- this may be more of an
5 answer than you wanted -- the first round of
6 the 100 were taken from the high schools that
7 had traditionally sent students to Auburn.
8 Since there are over 400 high schools,
9 obviously it made it difficult. And so we
10 hope to broaden that out to more schools in
11 the coming year.

12 Q. Well, first of all, we are talking
13 about 100 scholarships?

14 A. Yes.

15 Q. And 100 is a big number for me,
16 but here at Auburn with 25,000 students,
17 that's a relatively small percentage of your
18 students?

19 A. Very small. But it's just a good
20 start by the board of trustees and reflects
21 their concern.

22 Q. And it is coming out of your
23 institutional budget?

0040

1 A. Yes, it is.

2 Q. But it's a merit-based
3 scholarship, isn't it?

4 A. That's correct.

5 Q. It's not a need-based scholarship?

6 A. No. Even in a school that's under
7 academic watch, you have to meet the academic
8 standards.

9 Q. Exactly. Now, would you like to
10 give us your opinion of the pros and cons of
11 need-based versus merit-based financial aid?

12 A. Well, I again reflect my ten weeks
13 as -- tenure as president. I would say, from
14 my observation even as state superintendent
15 where I served on the trustees of nine
16 universities, that by having a merit-based, it
17 recognized students in schools that overall
18 may not be doing well, and it served to

19 motivate. So I think in that regard, since
20 this is a relatively small number, that I
21 strongly support that. I think that so often
22 low expectations is your problem at some of
23 the schools, but by "Student X" getting a
0041

1 scholarship to go to Auburn, then somebody
2 else thinks, say, hey, I can do the same
3 thing.

4 Now, if we said we had to choose
5 between one or the other and we are in
6 Alabama, then you would have to look at a
7 needs base because you are going to have more
8 students that are going to be impacted there.
9 But if you just have a needs base and they
10 come to school not prepared and they last one
11 semester or two, then I'm not sure it was a
12 wise expenditure of money or in the best
13 interest of that student. So you can talk
14 positives and negatives on both sides.

15 Q. So given those opinions, it would
16 sound like you would think that ideally a
17 university would have a mix of both need-based
18 and merit-based scholarships?

19 A. Absolutely essential.

20 Q. And in this article, the Exhibit
21 31 article -- let me see.

22 A. This looks like 32 though. Are we
23 on the --
0042

1 Q. Somewhere I saw you quoted as
2 saying that this kind of institutional budget,
3 scholarship is not really possible for some of
4 the smaller universities in Alabama. Did you
5 say that?

6 A. I can't tell you I said it but I
7 agree with it. That's true. I would say it
8 now. It would be very difficult for smaller
9 institutions with limited budgets, whose
10 tuition rates are going up too, to be able to
11 sustain scholarships of that magnitude.

12 Q. This is going to be another
13 duplicate and I'm not going to pause to look
14 for it. I'm just going to mark another one.
15

16 (Whereupon, Plaintiff's Exhibit
17 Number 33 was marked for identification.)

18

19 Q. After the defeat of the September
20 9, 2003 referendum on Amendment 1, several of
21 the university presidents in Alabama were
22 quoted in the newspaper, and Exhibit 33 is one
23 of them, as saying what impact the defeat of

0043

1 the amendment would have on higher education.
2 And one of the points that President Whit of
3 Alabama makes, University of Alabama makes
4 there, is that the University of Alabama will
5 have to continue to try to raise its faculty
6 salaries even though state appropriations are
7 not going up.

8 Is that true of Auburn as well?

9 A. Yes.

10 Q. And why is that?

11 A. Dr. Whit's opinion, University of
12 Alabama Tuscaloosa, and mine would be the
13 same, that the quality of your university is
14 dependent upon the quality of your faculty.
15 And a person that is very successful, whether
16 it be in research or instruction or outreach,
17 is an attractive commodity. Alabama salaries
18 generally are not competitive with other
19 universities, and these professors are free to
20 go nationwide.

21 Now, we have an attractive place
22 to live, and as long as that salary is
23 continuing to move up we are more likely to

0044

1 keep them even though we are behind everyone
2 else. But if it's flat for two or three years
3 and someone comes along and says -- and this
4 has happened -- your salary will be 20,
5 \$30,000 more than Auburn is paying, then we
6 lose those people and that has a great impact,
7 long-term impact, on your university.

8 Q. All right. And as President Whit
9 suggests for Alabama and Auburn, the two,
10 quote, flagship universities, that their
11 various campuses -- no arguments intended
12 here -- to compete in the faculty salary
13 market, it will mean that tuitions -- that
14 will have an effect of raising tuitions as
15 well, right?

16 A. No question. In fact, in order to

17 sustain that, that will be one of the
18 rationales offered next month, in order to
19 sustain our commitment to moving our salaries
20 to the regional average, the tuition rates
21 will have to be increased.

22 Q. But isn't it also true that
23 Alabama and Auburn have income resources
0045

1 through grants and contracts, private federal
2 monies, research grants and contracts,
3 outreach grants and contracts, that is a
4 significant source for faculty salaries as
5 well?

6 A. It can be, that's true. And it's
7 just a capacity issue. But also understanding
8 that the professors at Auburn and Alabama are
9 more likely to be attending national
10 conferences, more visible and therefore more
11 attracted to other institutions. So it puts
12 an additional burden on us. But, yes, both
13 institutions would have more capacity than
14 other institutions within the state.

15 Q. And the other institutions in the
16 state, again we have Jacksonville State and
17 Alabama State, that has 5,000, 6,000 students
18 range populations, they're not going to have
19 as many of those other resources to compensate
20 for the lack of state appropriations?

21 A. They will not. Jacksonville
22 State -- I met with the president yesterday
23 when we were in the legislature -- anticipates
0046

1 that their tuition will go up about 14
2 percent. I don't know the exact number for
3 Alabama State but it was in the low 20's if I
4 remember correctly this past year. So it was
5 a very significant increase in tuition for
6 Alabama State.

7 So that's the -- if the state
8 funds are flat and inadequate and then the
9 only other choice is tuition, they are faced
10 with the same pressures that Alabama and
11 Auburn will be faced with because their
12 professors and they -- both of those
13 institutions have some great examples, and
14 they are going to be very attractive elsewhere
15 and so they are going to have to continue to

16 raise their tuition.

17 Q. But isn't it true if the trend
18 continues of flat state appropriations and the
19 institutions, large or small, having to look
20 to other sources in order to compete for
21 faculty, that the trend should be a two-tier
22 type of faculty situation where the flagships
23 have much higher paid faculty than the other
0047

1 institutions?

2 A. That is correct now, for the most
3 part.

4 Q. That condition exists to some
5 extent now?

6 A. It does, and would widen in future
7 years.

8 Q. And would widen. Okay. Thank
9 you.

10
11 (Whereupon, Plaintiff's Exhibit
12 Number 34 was marked for identification.)
13

14 Q. I want to put in the record a
15 letter to the editor that you wrote, you
16 authored. Again, this will be The Birmingham
17 News, February 22, '04. Do you recognize
18 that?

19 A. Yes. That appeared in all the
20 major papers around the state.

21 Q. Right. Okay. Let's see if
22 there is anything I need to ask you about
23 that.

0048

1 You say: "In spite of those who
2 have publicly stated (apparently without
3 checking the facts) that Auburn's fund-raising
4 efforts have been hurt, contributions have
5 actually increased."

6 So one of the sources I didn't
7 mention of traditional funding, other than
8 state appropriations, is private giving?

9 A. Yes. That's where we are
10 campaigning at this time and it will be the
11 largest campaign that Auburn has ever entered
12 into. Part of it is being driven by the issue
13 that we previously discussed.

14 Q. Let me ask you some questions

15 about the Alabama PACT program, P-A-C-T
16 program. You are familiar with that?

17 A. Yes, I am.

18 Q. Now, we were talking about
19 merit-based versus need-based financial aid or
20 scholarships, however you want to call it.

21 The PACT program is neither of those things;
22 is that correct?

23 A. That's correct.

0049

1 Q. But what is the PACT program?

2 A. Basically what it does, it allows
3 a parent to put in a set of money, an amount
4 of money, at an early age, and then once
5 that's fully paid, then whatever the tuition
6 turns out to be when the child enters college,
7 will be -- tuition and fees would be taken
8 care of. So it's basically an opportunity for
9 parents to invest in the college education of
10 their children by making an investment early
11 on. Then the PACT board invests that money,
12 and of course then, hopefully, has enough
13 money to take care of all of that. The
14 current interest rates obviously are putting a
15 real bind on everything.

16 Q. You mean the investment return
17 rates?

18 A. Investment return. And they also
19 keep some available for interest as well.

20

21 (Whereupon, Plaintiff's Exhibit
22 Number 35 was marked for identification.)

23

0050

1 Q. I have marked as Exhibit 35 an
2 editorial out of what, Montgomery Advertiser,
3 talking about PACT. And what I want to call
4 your attention to is a statement here that the
5 lump sum cost of a PACT contract for an infant
6 this year, December 6, 2003, was \$15,528, a
7 quote, whopping \$3,913 higher than in 2002.

8 A. Yes.

9 Q. And the \$15,000 cost of the
10 contract is for an infant that would be, I
11 guess, a year or less? I don't know what --

12 A. That's the way I would interpret
13 it.

14 Q. Yeah. And that's like buying a
15 state-subsidized annuity for the child's
16 education?

17 A. That's very similar, yes.

18 Q. And it would provide what kind of
19 a payout?

20 A. Well, now, for instance, if this
21 infant -- parents of this infant invested
22 \$15,528 this year, it is saying that any
23 public institution in the state, that whatever
0051

1 the tuition and fees would be, is that this
2 PACT would pay for those. In other words, no
3 matter how high it goes up, this amount,
4 including the investment, hopefully, that you
5 would be able to reap from that by having it
6 17 or 18 years. Should cover all of the
7 tuition and fees for any public institution
8 within the state.

9 Q. For how many years?

10 A. I think it's four years, if I
11 remember correctly. And I'm not sure about
12 that. I think it is four years. The PACT
13 covers four years of tuition and required
14 fees. So, yes, that's in the article.

15 Q. Dr. Richardson, in your opinion
16 does underfunding of the K-12 public school
17 system in Alabama have any impact on access to
18 higher education?

19 A. It does.

20 Q. In general terms would you explain
21 why you think it does?

22 A. I would give you two examples.
23 One of the provisions that's made available to
0052

1 the state superintendent of education, that if
2 a school is not doing well academically it
3 allows for the state superintendent to
4 intervene or to take over. The schools that
5 we had to intervene and take over were fit
6 into the poverty definition, high free and
7 reduced lunch and that sort of thing.

8 The second example that I would
9 give is that the -- would you repeat your
10 question?

11 Q. How underfunding K-12 impacts
12 access to higher education.

13 A. What we have found is that based
14 on disaggregation of test scores, that the
15 most critical variable in terms of success in
16 school is poverty. In other words, higher
17 poverty, less success. And what we have found
18 are for students that are in schools that are
19 not well funded, they do not have access to
20 advanced classes that would be required to
21 have a good chance of success at Jacksonville
22 or Alabama State or Auburn. So all of those
23 contribute to a high probability of lack of

0053

1 success.

2 Q. Okay. So there were two things I
3 heard in those examples. The first example
4 was a correlation between poverty and
5 underfunding of schools and school districts,
6 a correlation with poor performance, poor
7 academic performance?

8 A. There are obviously exceptions.
9 You have many able and capable students, but
10 when you look at the school as a whole and you
11 take all the schools that fit into that, then
12 you can make a reasonable prediction that they
13 would have great difficulty in any type of
14 higher education environment where academics
15 was a priority.

16 Q. And the second example was a ...

17 A. Intervention.

18 Q. Now I have lost my thought.
19 Forgot what your second example was.

20 A. The first one dealt with
21 disaggregated test scoring and the other one
22 was intervention.

23 Q. Would be intervention, right.

0054

1 A. Right.

2 Q. Oh, I'm sorry. The curriculum.

3 A. Yeah. That was a third.

4 Q. Was that third?

5 A. What you have are schools that
6 have good local funding would be able to offer
7 advanced placement courses, foreign language
8 courses, higher level math, and in many cases
9 the classes would be smaller and offered on a
10 regular basis. So those students then would
11 be able to take four years of aggressive

12 mathematics. As I previously mentioned,
13 mathematics seems to be the subject that
14 creates most problems for students.

15 So I would just say that the
16 schools with less funding are less able to
17 offer advanced courses that would be
18 instrumental in a student's success in
19 college.

20

21 (Whereupon, Plaintiff's Exhibit
22 Number 36 was marked for identification.)

23

0055

1 Q. I have marked as Exhibit 36 an
2 article -- I haven't figured -- it comes off,
3 again, Alabama Live, but I can't figure out
4 which newspaper. The caption is: "Mixed Bag,
5 there's a Reason Schools Struggle To
6 Maintain." It's dated January 12, '04.

7 A. Who is the reporter?

8 Q. It doesn't --

9 A. Doesn't say the reporter?

10 Q. Doesn't say.

11 A. I see.

12 Q. So it might even be -- it's
13 probably an editorial.

14 Anyway, what I want to refer to,
15 it represents in the middle here that Alabama
16 spent \$6.593 per student according to
17 Education Week -- this is on the K-12 system
18 now that it's talking about -- compared to the
19 national average of 7,376. It goes on to say,
20 that figure takes into account the regional
21 cost of living and used budget figures -- used
22 budget figures from the 2000-2001 school year.
23 Then it goes on to say, "According to the

0056

1 State Department of Education, the state
2 actually spent \$5,908 per student per year."

3 A. That's correct.

4 Q. Do you remember being contacted
5 about those figures? You were still the state
6 superintendent.

7 A. I was contacted by Education Week.
8 I would not have offered those specific
9 figures but I could have provided them through
10 someone else in my department. But the figure

11 that we actually spend is in the 5,000 range,
12 and the 6500 is only reflective of taking into
13 consideration cost of living. Of course that
14 varies within the state as well, although that
15 would be a state average.

16 (Whereupon, a discussion was held
17 off the record.)

18 Q. (BY MR. BLACKSHER) Before we
19 leave the -- I remembered a question that I
20 needed to ask you about financial aid in
21 higher education.

22 Georgia has the so-called HOPE
23 scholarship program?

0057

1 A. It does.

2 Q. Now, that's been in the news
3 because the legislature over there, the
4 Georgia Assembly, is having trouble keeping it
5 funded. But that's a scholarship program.
6 That's not like Alabama's PACT system?

7 A. No. If you meet a certain grade
8 point average -- and I think they have raised
9 that recently, it was a C. I think they may
10 have moved it up to a B. If you attended a
11 Georgia high school, then that's part of the
12 lottery proceeds, then you could get the HOPE
13 scholarship in any public institution within
14 the state.

15 Q. So that is a state-funded
16 merit-based scholarship program?

17 A. Yes.

18 Q. Alabama has neither a state-funded
19 merit-based scholarship, except what the
20 institutional budgets provide, nor a
21 state-funded need-based scholarship program?

22 A. I'm not aware of either example.

23

0058

1 (Whereupon, Plaintiff's Exhibit
2 Number 37 was marked for identification.)

3
4 Q. I have marked as Exhibit 37 an
5 article out of the Montgomery Advertiser,
6 September 12, 2003, in which you are quoted as
7 talking about textbooks for K-12. If you want
8 to refresh your memory about that.

9 A. No. I'm quite familiar with that.

10 Q. All right. Well, tell us what
11 impact the lack of state appropriations has
12 had for the textbooks, provision of textbooks,
13 in the K-12 system just this year?

14 A. There was a provision made about
15 three years ago, that in order to avoid a
16 layoffs of personnel, that you could use line
17 item money, such as textbook money along with
18 some other examples, and as a result we had --
19 we have 100 and -- I think we have 128 school
20 systems now, or 129 perhaps, but 80 of that
21 number used its textbook monies to some degree
22 to avoid layoffs. In fact, we have had
23 several school systems, 20 some-odd if I
0059

1 remember correctly, that had not purchased
2 textbooks in three years.

3 Now, you have to keep in mind,
4 what's the problem. Well, they have kept the
5 textbooks they have for six years already, so
6 you add three more years on top of that. So
7 you have got textbooks you have been using for
8 nine years. Obviously the condition is bad,
9 pages missing, and in some cases dated, you
10 know, like science and social studies. So
11 that was a tremendous impact, had a tremendous
12 impact, and it was reflective of school
13 systems that had low local support as well.
14 Therefore, the state didn't provide it.

15 Q. What was the line that the state
16 legislature provided, was it a separate line?

17 A. It's a separate line item for
18 textbooks. We had traditionally gotten \$52.50
19 per student. This year it's like \$7.35 or
20 something like that. The actual cost to
21 furnish a child in Alabama a textbook is about
22 \$80 each. So even if they got 52.50, many
23 locals were having to find additional monies
0060

1 to provide students with the new textbook
2 every six years.

3 Q. Is that the line that Gerald
4 Dial's Bingo For Books bill is supposed to
5 address?

6 A. It would go for textbooks, yes.
7 That's my understanding.

8 Q. Seven dollars per student, you

9 say, is what --

10 A. In this fiscal year. It's a
11 little over seven, like \$7.35 or something
12 like that.

13 Q. Now, that's --

14 A. That was designed to only cover
15 the consumable textbooks for kindergarten,
16 first, and second. Some of those books are
17 consumable, so that is where that odd number
18 came up. So those were the only ones that
19 would have received --

20 Q. You mean like the work books or
21 something?

22 A. That's right.

23 Q. Now, that's for the '03--'04

0061

1 school year that you have seven dollars per
2 student?

3 A. That's correct.

4 Q. So we don't know what it's going
5 to be because we don't have a budget yet for
6 '04-'05?

7 A. No. The legislature is really
8 starting this week to consider that.

9 Q. Now, the newspaper says that it's
10 more likely that the regular session is going
11 to pass an education budget than a general
12 fund budget, and that's because, the newspaper
13 says, that there appears to be enough money,
14 enough revenue coming in to the education
15 trust fund to patch up the education budget.

16 Do you know whether or not that's
17 so?

18 A. The growth for the education trust
19 fund has exceeded original predictions, and
20 therefore, I think K-12 education will receive
21 increases in textbooks and items like that.
22 Higher education will not receive any
23 increases of no -- probably a slight decrease.

0062

1 But there are two funds, as you know, in
2 Alabama. One of those is a general fund,
3 which includes all other agencies other than
4 education, and it's just a disaster.

5 Q. Now, the education trust fund is
6 the fund out of which all of the higher
7 education funds appropriations come; is that

8 correct?

9 A. State appropriations.

10 Q. I'm sorry. State appropriations.

11 A. That's correct.

12 Q. Not federal, not corporate or --

13 A. You have K-12, junior colleges,
14 senior colleges, Department of Youth Services,
15 things like that.

16 Q. The revenue sources for the
17 education trust fund are primarily income
18 taxes and state sales taxes; is that correct?

19 A. Those two taxes make up about 85
20 percent of the total trust fund.

21 Q. And then the rest of it are
22 license fees and a bunch of odds and ends?

23 A. Yes, that's correct.

0063

1 Q. And the income tax is by state
2 constitution dedicated mostly to K-12
3 teachers, isn't it?

4 A. And more specifically to salaries
5 for teachers.

6 Q. Salaries. I'm sorry. Correct.
7 Salaries for teacher. About what percentage
8 currently of the -- under the formula that's
9 in the state constitution? I guess the state
10 statute that enables the state constitution on
11 income tax. About what percentage of the
12 income tax, state income tax, goes to teacher
13 salaries, K-12 teacher salaries?

14 A. It's very close to -- all of the
15 income tax goes -- because that's the law.
16 Now, it varies from year to year. I don't
17 know if this is your question, but the
18 individual income tax is the largest source of
19 revenue. And the sales tax is the second
20 largest. And then corporate income tax is the
21 third largest source of revenue for the trust
22 fund.

23 Q. With respect to the income tax,

0064

1 the state constitution requires that all of it
2 that's not needed for debt service, to pay off
3 the old indebtedness of the State of Alabama,
4 does go to K-12 teacher salaries?

5 A. That's my understanding, yes.

6 Q. So higher ed. is really depending

7 upon the sales tax and the other 15 percent
8 that comes from license taxes or whatever; is
9 that correct?

10 A. For the state allocation, that is
11 correct.

12 Q. For state allocation.

13 A. Usually higher education gets
14 about 30 percent of the trust fund dollar
15 going to education. That's sort of been
16 traditional pace. There is no standard for
17 that but that's the way it's worked out.

18 Q. Well, we have got -- going to have
19 lots of data that have already been published
20 and introduced in this case showing exactly
21 what's happened.

22 A. Okay.

23 Q. The State has stipulated that

0065

1 higher ed. was getting 33 percent of the
2 education trust fund in '91 when we had the
3 first trial -- '90, '91?

4 A. It was higher, that's true.

5 Q. And it's now down between 27 and
6 28 percent, something like that?

7 A. It has -- my experience as state
8 superintendent has been anywhere from about 28
9 to 30.5. So right in there.

10 Q. My question though is, if property
11 taxes were increased, if there was property
12 tax reform and suddenly we had more property
13 tax at both state and local level, none of
14 that property tax would go directly into the
15 education trust fund, would it?

16 A. No. Not as it's currently
17 described. We have six mills of statewide
18 property tax of which three mills go into the
19 public school fund, as it's called, which is
20 separate from the education trust fund. Those
21 are monies that can be used for capital outlay
22 purposes. And the other three are for other
23 agencies. I'm just not sure what.

0066

1 So if you get local property tax,
2 that would go obviously to schools, we would
3 hope, but city and county governments also use
4 county property tax. So it just depends on
5 whatever purpose it was passed.

6 Q. Right. The three mills that goes
7 into the public school fund is for the capital
8 purposes primarily, I think?

9 A. That's correct.

10 Q. Is that available to higher ed. at
11 all?

12 A. No, it is not. Strictly K-12.

13 Q. So my question is, how would
14 increasing property taxes make the pie larger
15 so that higher ed. could benefit?

16 A. Well, there is no guarantee that
17 would occur. Now, if you are saying that is
18 our objective, then if you had statewide --

19 Q. Let me just put as a predicate to
20 the question, the objective would be to
21 increase funding for both K-12 and higher ed.?

22 A. Yes.

23 Q. Go ahead.

0067

1 A. If that being the objective then,
2 if you had a statewide property tax and you
3 designated two, three mills, each mill brings
4 in statewide revenue of about \$32 million, as
5 I last recall. And so you could say, well, we
6 are going to pass a five mill statewide
7 property tax which three would go to higher
8 education. And that would increase it by
9 \$90-something million if that's what you
10 wanted to do.

11 In terms of junior colleges and
12 senior colleges having the capacity to raise
13 property tax for their purposes, that's not
14 done in Alabama. Now, it has been done in
15 other states, so, but as it's currently
16 structured, I don't think the local property
17 tax would be of any benefits to higher
18 education at all.

19 Now, you might say then if locals
20 get more money from local sources, then does
21 that free up some money at state so it could
22 be then shifted? Obviously there are some
23 that would like for that to occur.

0068

1 Q. Okay. And at those local sources
2 you have county taxes -- if it's a county
3 school system you have got a county ad valorem
4 tax and you've got the possibility of a school

5 district and a school district property tax?

6 A. That's correct.

7 Q. Now, the county property tax --
8 obviously the school district ad valorem tax
9 would go entirely to the public school in that
10 school district; is that correct?

11 A. Yes.

12 Q. The county property tax would be
13 apportioned to schools or to other general
14 fund needs as the county authorities chose; is
15 that the way it works?

16 A. That's the way it -- for future.
17 Now, when it was originally done, there was a
18 one mill tax required of every county. You
19 know, there are several things, small things
20 like that. But if you are talking about
21 future, then a county commission could call
22 for a vote and then it could be for roads or
23 anything it so chose. Certainly schools would
0069

1 be one option.

2 Q. But across Alabama it varies from
3 county to county, from municipality to
4 municipality exactly how much a county or
5 municipal ad valorem tax goes to public
6 schools?

7 A. Great variations, yes.

8 Q. The Exhibit 37 that I just showed
9 you, article from the Montgomery Advertiser,
10 also says that September 12, 2003, three days
11 after the referendum, "cuts to technology
12 programs will involve the elimination of \$181
13 each teacher receives at the start of the
14 school year to buy software and other
15 technology supplies."

16 Was that another line?

17 A. Yeah. There actually were four or
18 five lines. You had library enhancements, you
19 had professional development, you have
20 technology, and textbooks. And teacher
21 supplies and materials. That's another one.
22 That's right. So there were separate line
23 items within the K-12 budget. And they were

0070

1 based on either a per student or per teacher
2 allocation.

3 Q. It goes on to say: "The High

4 Hopes Program form of remedial instruction for
5 students who are struggling with the Alabama
6 high school graduation exam --

7 A. Uh-huh (in the affirmative).

8 Q. -- is also losing much of its
9 funding."

10 Is that a line?

11 A. Yes, it is.

12 Q. What is the High Hopes Program?

13 A. It's a program, really, for
14 remediation. If a student takes the
15 graduation exam -- keep in mind you have to
16 pass it in sections. You have a math and
17 science and reading and so forth. And if
18 they, let's say student fails one or more of
19 the sections, then there are funds provided to
20 that school and the schools can use it as they
21 see fit. Some cases after school, sometimes
22 it's in school tutorial. The bottom line is
23 that it's designed to assist students who did

0071

1 not successfully pass the graduation exam on
2 the first take. It's been a very successful
3 program.

4 Q. Do you recall what the amount of
5 money was in that line?

6 A. Seven or eight million dollars
7 originally.

8 Q. The article goes on: "Richardson
9 said 38 of the state school systems have no
10 money in their reserve accounts right now and
11 that number is expected to grow to 70 schools
12 after the first round of cuts is completed.
13 By the 2004-05 school year the reserve funds
14 of 100 systems will likely be dry."

15 Are you accurately quoted there?

16 A. Yes.

17 Q. Tell us about the reserve funds.

18 A. It's like personal accounts, you
19 try to have some in savings for anticipated
20 difficulties. And because the state
21 superintendent has the charge to intervene or
22 take over a school for financial reasons if
23 they could not submit a budget to you that was

0072

1 in black ink, in other words, if you couldn't
2 accept red ink, and so we monitored that.

3 And we have just monitored a continual
4 decline.

5 Our schools did the very best they
6 could to keep the programs in place even --
7 this would have been the third consecutive
8 year of budget cuts. And we just -- they were
9 just eating into their reserves. They were
10 just living in hopes that something would come
11 along, such as Amendment 1, that would help
12 them to replenish that. It did not occur.

13 And in some cases with an increased cost of
14 health care and retirement costs and utility
15 costs -- utility costs had gone up 22 percent
16 in the previous two years. And so they were
17 just out of money. And they had cut in many
18 cases all of their state funded unit, so they
19 only had -- I mean all of their locally funded
20 unit, so they only had state funded units.

21 Now, you can't cut a state funded
22 teacher unit. If you do, you simply lose the
23 money, so it's at no value. So they cut

0073

1 everything else they could, and there were no
2 reserves. There were about 20 at one time
3 that could not borrow money from the banks
4 without a signed statement from the state
5 superintendent that we would ensure the
6 bank -- assure the banks that they would be
7 repaid.

8 Q. How many school systems during
9 your regime did the state superintendent take
10 over because of financial difficulties?

11 A. There are two levels of
12 intervention. The first is that we have
13 notified them that there is a major financial
14 problem and we turned -- we have a chief
15 financial officer that goes in. And then the
16 second level is when we actually take over the
17 total operations. If you take both of those
18 levels, about 16 times.

19 Q. How about the second levels?

20 A. The second level, they were about
21 eight or nine. They currently operate four
22 school systems at this time. That's Dale
23 County, Barbour County, that's Greene County,

0074

1 and -- well, it's down to three because they

2 released Bessemer just within the last couple
3 of weeks.

4 Q. You are still in court over that
5 though, aren't you?

6 A. Yes. They are still not happy
7 with me.

8 Q. I want to show you an article I'm
9 marking as 38, dated February 28, 2003,
10 Montgomery Advertiser, Cash Woes Tax Schools.

11
12 (Whereupon, Plaintiff's Exhibit
13 Number 38 was marked for identification.)

14
15 Q. Talking about your State
16 Department of Education annual report, report
17 cards?

18 A. Uh-huh (in the affirmative).

19 Q. You want to say briefly what the
20 report cards are?

21 A. We started that about six or seven
22 years ago where we issued a report card for
23 each school and school system in the state.

0075

1 We used a number of criteria and then we gave
2 them a grade from A to F based on most of
3 those criteria. It could be dealing with test
4 scores, dropout rate, local funding, a number
5 of criteria. So it was -- we issued it to
6 every parent, and we put it on our website.

7 Q. And it's on the website now?

8 A. Yes, it is.

9 Q. And the report card in this time
10 of February 2003, showed, "A tremendous gulf
11 among racial and socioeconomic groups".

12 A. That's the first year we
13 disaggregated the data and it was quite
14 apparent that occurred, yes.

15 Q. White scored in the 65th
16 percentile, Hispanics were in the 46th
17 percentile, and blacks in the 39th. Does that
18 sound about right?

19 A. That's correct, yes.

20 Q. Similarly the students receiving a
21 free or reduced-price lunch, common indicator
22 of poverty, ranked in the 40th percentile
23 while students who paid for their lunches

0076

1 scored in the 67 percentile?

2 A. Yes. That's correct.

3 MR. BLACKSHER: How we
4 doing on time?

5 MR. BOYD: Half hour.

6 (Whereupon, a discussion was held
7 off the record.)

8

9 (Whereupon, Plaintiff's Exhibit
10 Number 39 was marked for identification.)

11

12 Q. (BY MR. BLACKSHER) I have marked
13 as Exhibit 39 an article dated February 27 of
14 this year, 2004, Montgomery Advertiser, that
15 begins: "More than a third of Alabama's
16 college freshmen are not prepared for college
17 level classes and the number is rising, even
18 though high school graduation exams scores and
19 some elementary scores are improving."

20 Do you know whether or not that is
21 in fact what is occurring?

22 A. That is true.

23 Q. State's report card shows that 35

0077

1 percent of freshmen at the state's public
2 colleges and universities were enrolled in
3 remedial courses last school year.

4 Is that correct?

5 A. We worked with a software package
6 to give us some estimate as to how many
7 students had to be remediated upon leaving
8 Alabama high school. The reason that that was
9 a concern is that Alabama has the most
10 rigorous requirement for high school graduates
11 of any state in the nation. We require more
12 math and science than any other state. And
13 for us to have that level of remediation was
14 just rather shocking to me.

15 Q. Are even the poor school systems
16 able to meet your math and science
17 requirements, minimum requirements?

18 A. Oh, yes. They actually exceeded
19 my expectations. The problem is, is that you
20 have, in many cases, difficulty securing
21 teachers with advanced math certification or
22 science in some of your poor and rural --
23 rural really drives that about as much as

0078

1 anything. So they have a math teacher but it
2 may not be a math teacher with as high
3 credentials as necessary to teach an advanced
4 placement course.

5 Q. You say rural. I don't know if I
6 have got it even marked, but I thought I saw
7 an article, some national study that said that
8 Alabama rural schools were second worst in the
9 nation. Have you ever seen such a study?

10 A. I have not seen that. But I'm
11 sure that they would be in the very lowest
12 group, for the most part. There are
13 exceptions obviously.

14 Q. It quotes your successor, Joe
15 Morton, Dr. Joe Morton, as saying that "the
16 free and reduced-price lunch data which gives
17 a glimpse of how many students are living in
18 poverty is an indication of potential
19 educational road blocks."

20 That's essentially what you were
21 saying to us earlier?

22 A. That's correct. Dr. Morton is
23 clearly very familiar with the data and did a

0079

1 lot of work on it, but as he interpreted that
2 for me and as I looked at the data, the
3 summary data itself, it was quite clear. He
4 is accurately stating the situation.

5 Q. Would you just read the second --
6 this quotation mark, the direct quotation to
7 Dr. Morton that I have highlighted?

8 A. "Anybody who says the quality of
9 the State's educational system and the
10 capability of their students who do become
11 adults and achieve a high level of educational
12 attainment is not linked to economic
13 development has their head in the sand. There
14 is a direct correlation."

15 Q. In your opinion would that include
16 higher education?

17 A. Yes.

18 Q. On the third page of this article,
19 if you want to look at the highlighted parts,
20 Dr. Morton is saying that "the progress we had
21 been making on test scores..." and there had
22 been some progress, hadn't there?

23 A. Tremendous progress.

0080

1 Q. K-12.

2 A. That's true.

3 Q. And it's starting to slip. Is
4 that true?

5 A. We predicted that if the cuts
6 continued and you didn't have textbooks and
7 cut out professional development, so forth,
8 that we would -- well, and we lost a lot of
9 people that were laid off, meaning that the
10 test scores would start to decline. And that
11 has started to unravel, in my opinion, as a
12 result of those budget cuts.

13 Q. Have you looked at the report
14 published a couple of weeks ago by the Lumina
15 Foundation for Education?

16 A. I have not reviewed that report.

17 Q. Okay. I need to ask you about
18 what I'm going to mark as Exhibit 40, an
19 article dated December 7, 2003, in the
20 Montgomery Advertiser.

21

22 (Whereupon, Plaintiff's Exhibit

23 Number 40 was marked for identification.)

0081

1 Q. It says, "Nearly 79 percent of
2 Alabama's black students stay in school and
3 earn a high school diploma, the highest
4 completion rate for students compared to other
5 states that compile such figures by race, a
6 recent national court concluded."

7 Are you familiar with that report?

8 A. Yes. I'm familiar with that
9 quote.

10 Q. Nearly 79 percent of Alabama's
11 black students stay in school and earn a high
12 school diploma. Do you know whether that's an
13 accurate figure?

14 A. I could not say that that was
15 directly in the -- but he would be very close.
16 The average dropout rate this past year for
17 Alabama was like in the 14 to 15 percent
18 range. Which, by the way, is its lowest
19 dropout rate it's ever had. But I would think
20 around the 20 percent range would be accurate
21 for black students, somewhere in that range.

22 Q. Given the poverty and performance
23 correlation and the funding problems that you
0082

1 have been describing, how would you account
2 for the fact that Alabama's black students are
3 doing better in terms of completing high
4 school than blacks in other states, just take
5 credit for it?

6 A. Well, that's what administrators
7 are good at, taking credit at what other
8 people do, but you have to give teachers and
9 principals the credit. There are several --
10 there is not a one variable. You could list
11 several. I think in many -- this is just
12 based on conversations I have had, and there
13 is a growing realization that some of those
14 lower-paying jobs that a lot of people were
15 attracted to are no longer in these counties.
16 There's a growing awareness, and that's why
17 this tuition question was important, that
18 higher education levels are going to be
19 required. I think that also gives you the
20 realization that if you don't have a high
21 school diploma, even getting in the military
22 is not an option. So they just, they stick
23 with it.

0083

1 And when you say meet graduation,
2 our graduation requirements, every student has
3 to pass algebra, geometry. Every student has
4 to pass biology and physical science plus the
5 other courses that we have traditionally
6 taken. And they just focus on that. They do
7 a lot of remediation. They take great pride
8 in trying to do it. But I think the real --

9 Q. They?

10 A. The teachers and the community,
11 they just take pride in -- there is a term
12 frequently used is "walk the stage," which
13 means to get the diploma.

14 But I would say that the real
15 issue, for me at least, is to go back and look
16 at the disaggregated scores. Yes, they are
17 doing better compared to other black students
18 in the south or the region, whatever those
19 numbers are. But the scores are still too low
20 for them to have a chance in the way -- in the

21 type of jobs that are going to be required of
22 them in the future. So ...

23 Q. Or in higher education success?

0084

1 A. True. They would be less likely
2 to complete their studies, tuition aside, just
3 the rigor, because they would not have been
4 exposed to it.

5 Q. I wanted to ask you about the way
6 the State Department of Education measures
7 dropout rates. For example, the 79 percent of
8 blacks graduate, that's 79 percent of what?

9 A. There are two standards. We chose
10 about five years ago -- because every state
11 had its own standard or definition for a
12 dropout, so you couldn't compare yourself to
13 anybody because nobody was using the same
14 definition. The National Center for
15 Educational Statistics came up with a national
16 definition for dropout rate, and Alabama was
17 one of the first states to tie on to that.
18 There are about 35, or maybe even 40 now,
19 states that use that definition. So we use
20 that standard definition.

21 The other one that's frequently
22 used, and more commonly now, is graduation
23 rate. And what it means is, if you start out

0085

1 with 100 students in the ninth grade, how many
2 of them graduate four years later.

3 And in some of the schools, a
4 sixth --

5 Q. You mean an actual cohort
6 analysis?

7 A. By cohort analysis, that would be
8 a better way to put it. But with some of your
9 schools, particularly in, say, urban areas,
10 the turnover rate may be 60 percent. You may
11 see a rapid decline in enrollment. And so a
12 lot of those variables can cause the numbers
13 to be skewed.

14 Q. I'm not following the turnover
15 enrollment.

16 A. You have got 100 ninth graders.
17 That's where you start with. Depending on how
18 many graduate in the 12th grade, no matter
19 what other variables entered into it, is what

20 your graduation rate would be.

21 Q. Is it a --

22 A. See, we can't track students. We
23 don't have a social security number where we
0086

1 can say this student went to private school or
2 he went to California. He's just not there,
3 therefore, he didn't graduate.

4 Q. Well, actually you do have a
5 student unit based data -- student unit
6 database, don't you?

7 A. You have numbers for public
8 schools students, but if they are
9 home-schooled or go to private school or go
10 out of state -- if they go out of state and
11 attend school, we have no way of knowing.

12 Q. Well, the student unit database
13 that's turned over to ACHE, the Alabama
14 Commission on Higher Education, that they are
15 using now in order to --

16 A. Now, are you talking about higher
17 ed. or are you talking about K-12?

18 Q. I'm talking about Alabama
19 Commission on Higher Education.

20 A. I understand.

21 Q. Since 1998, I think -- well, the
22 Alabama passed its statute in '95 that
23 requires ACHE to track this, I believe, and
0087

1 they have a student unit database that takes
2 data, student unit data, high school
3 graduates --

4 A. Right.

5 Q. -- that the state department gives
6 to ACHE, and then ACHE uses that student unit
7 base to track them through Alabama's public
8 higher education institutions?

9 A. Yeah. Well, what I'm talking
10 about in terms of graduation was strictly
11 K-12. In other words, a ninth grade student
12 in public schools, you have 100 students, and
13 then if you have 60 graduate, then you are
14 looking at, you know, a 60 percent graduation
15 rate.

16 Q. Even if those 60 kids are
17 completely different from the 100 who
18 started--

19 A. That's right.

20 Q. -- that's the way you count them?

21 A. Or the other 40 went somewhere
22 else and graduate.

23 Q. All right. Okay. Right.

0088

1 A. That's why we use that National
2 Center for Educational Statistics in the
3 dropouts, and even that had some variables
4 because, you know, home-schooling, it's very
5 difficult to tell what's going on. You go out
6 of state, did they enter school. You might
7 say, well, eventually you may get some
8 records, a request, send us a transcript, and
9 you could say that. But it's the best
10 definition we could find and that's why we
11 agreed to it.

12 Q. I'm sorry. The one we are talking
13 about where you compare ninth grade numbers
14 with what?

15 A. To graduation.

16 Q. To graduation, not senior
17 population numbers?

18 A. No.

19 Q. Not senior class, but graduation
20 numbers?

21 A. What you had in the ninth grade.

22 Q. That is the NCES --

23 A. No, No.

0089

1 Q. Okay. Well, I misunderstood then.

2 A. Okay. The NCES has a standard in
3 terms of how many drop out on an annual basis.
4 And it usually takes the -- what you do in
5 your ninth grade. You actually say how many
6 dropped out in the ninth grade, and then you
7 make a projection for four years. In other
8 words, you are saying if two percent dropped
9 out in the ninth grade, then you would have
10 eight percent total by the time you got to the
11 12th grade.

12 Now, the graduation rate is simply
13 saying you had 100 warm bodies in your school
14 in the ninth grade, and how many graduated
15 four years later? Well, there could be a
16 number of variables. A plant could have
17 closed and people could have left town. So

18 that's why we stayed away from that.

19 Q. Okay. So one measure is a dropout
20 rate?

21 A. One's your graduation rate.

22 Q. And the other was the graduation
23 rate?

0090

1 A. Right.

2 Q. Are they both rates that are used
3 by NCES?

4 A. No.

5 Q. What is NCES --

6 A. Dropout.

7 Q. Just the dropout rate?

8 A. Right. Increasingly you have
9 federal legislation that "No Child Left
10 Behind," that's looking at graduation rates
11 rather than dropout rate. There are only --
12 the last count I had, there were 36 states, it
13 may have gone up, that use the NCES standard
14 for dropouts. So all 50 states are not tied
15 into it.

16

17 (Whereupon, Plaintiff's Exhibit
18 Number 41 was marked for identification.)

19

20 Q. I've marked an Exhibit 41, an
21 article out of the March 12, '04 Birmingham
22 News, that says, "Alabama is the only state in
23 the nation which estimates how many children

0091

1 might drop out by some future date instead of
2 calculating how many graduate each spring,
3 painting an overly rosy picture of diploma
4 recipients."

5 Show you the article.

6 A. Well, it's just like anything else
7 in education, you have people that have strong
8 opinions. And the best way to do is, is that
9 you simply track every student, and if that
10 student graduated in another high school,
11 fine, you would either get credit for it or
12 you at least wouldn't be penalized. It's just
13 not possible at this point. And these were
14 people who want the graduation rated. There
15 are more variables that could affect the
16 graduation rate than the dropout rate. And as

17 I said, if Alabama had determined the dropout
18 rate definition as was done six or seven years
19 ago, then I would think that would be true.
20 But the fact that we are using a nationally
21 accepted definition that at least 36 other
22 states are using the same definition, at least
23 we are using the same standard.

0092

1 Q. Why does that article say that
2 Alabama is the only state using that dropout
3 rate though? I'm confused.

4 A. It's not correct. There are 36.

5 Q. It's wrong?

6 A. It's wrong.

7 Q. Okay. Thank you.

8 A. Yeah. They have been wrong
9 before.

10 Q. The Birmingham News?

11 A. And Vicki too.

12 Q. Vicki McClure?

13 A. No. There were 17 states that
14 signed on the same year as Alabama. And as I
15 said, there were 36 and that's been a couple
16 years ago when I looked at it.

17

18 (Whereupon, Plaintiff's Exhibit
19 Number 42 was marked for identification.)

20

21 Q. Here is an editorial out of the
22 March 18, 2004 Tuscaloosa News that I want to
23 show you. And I have highlighted the parts

0093

1 that say there's no solution to state's budget
2 problems. Alabama's -- sorry. It says,
3 "There is a solution to the state's budget
4 problems. Alabama's lowest-in-the-nation
5 property taxes could be doubled..." so on and
6 so on.

7 A. Is that attributed to me?

8 Q. No, it's not. What I wanted to
9 ask you though was, do you agree with the
10 editorial's conclusions that in order to
11 reform taxes in the State the Alabama and
12 increase revenues for public services,
13 property tax reform will be required?

14 A. Yes, it clearly will be required.

15 Q. Okay. As state superintendent,

16 you, in 2002, announced something called the,
17 is it a Leap program?

18 A. Reach?

19 Q. Reach. Reach program. What was
20 that?

21 A. Because we knew that our schools
22 were not adequately funded, and I also knew
23 that coming forward and saying give us more
0094

1 money and we'll do better wouldn't sell, we
2 made a two-year study on every single aspect
3 of education's operation. All right. Just to
4 give you a couple of examples.

5 Q. K-12?

6 A. K -- no. That's right. I'm state
7 superintendent then. K-12. We went in and we
8 looked at utility bills for schools that we
9 felt were adequately heated and cooled, and
10 averaged those out. We looked at the laws on
11 the books, what does it require for special
12 education? We looked at how much it costs to
13 transport students. That was required. We
14 looked at even how much money teachers are
15 having to spend beyond the supply money that
16 they were allocated. We went out and looked
17 at bills and invoices. It took us about two
18 years. So we could tell you three years ago
19 how much it costs to meet existing state laws,
20 and to meet existing costs in Alabama. We
21 didn't compare ourselves to Tennessee or
22 anything else, just what it costs in Alabama.
23 Just to meet existing state laws and to meet

0095

1 the actual cost of operation, we would have
2 had to increase allocation by \$1.6 billion.

3

4 (Whereupon, Plaintiff's Exhibit
5 Number 43 was marked for identification.)

6

7 Q. Okay. And this article that I'm
8 showing you that I have marked as 43 is about
9 the conference, one of the Gulf Shores
10 conferences where you were -- who were you
11 talking to there, the state superintendent?

12 A. We have quarterly meetings around
13 the state, and the summer meeting is in Gulf
14 Shores. So that would have been all of the

15 school systems superintendents.

16 Q. Now --

17 A. So that was our point of
18 departure. And what we decided, obviously,
19 there is that, you know, 1.6 billion is too
20 much to ask for at one time. So we decided to
21 phase it in over a six- or seven-year period.
22 But then to hit the priorities, because in
23 some cases, just to give you an example, the

0096

1 additional cost just to meet the state law on
2 special education was over \$200 million. And
3 so what you were doing was having an unfunded
4 the state mandate which were contributing to
5 legal problems for school systems because they
6 couldn't meet the state law on special
7 education.

8 Q. Was that Reach study one that you
9 began in response to the orders in the
10 so-called "State Equity Funding Case"?

11 A. Yes.

12 Q. And what exactly was the mandate
13 the Court, the state court gave the state
14 department in that case?

15 A. Well, at the time, before the
16 supreme court ruled otherwise --

17 Q. We all know that the case is
18 essentially over now.

19 A. Right.

20 We believed that in order to go to
21 the legislature and say, what is adequacy?
22 You know, everybody has a different
23 definition, like dropout rate, it's adequate

0097

1 one place, it's not adequate somewhere else.
2 So we felt like we would just look at the
3 actual cost of what does it cost to maintain
4 the building, what does it cost to sweep the
5 floors, the whole think, and then we would
6 then go to the legislature because we felt
7 like that's eventually where we were going to
8 have to go.

9 Or, if it was picked up by an
10 appellate court, then they would say, all
11 right, we agree that adequacy is required.
12 How much does it cost in Alabama? And then we
13 could offer those numbers to support our case.

14 Q. And just for the record, the two
15 big issues in the equity funding case were
16 adequacy and equity?

17 A. That's correct.

18 Q. Adequacy being how much money
19 through resources, appropriations, and so
20 forth are available for the public schools,
21 and equity is how they were distributed?

22 A. That's correct.

23 The state funds are very

0098

1 equitable. It's really -- the local effort is
2 where you get into those inequitable problems.

3 Q. Did you take a look at what kind
4 of changes would be needed in the property tax
5 system in order to raise \$1.6 billion
6 annually?

7 A. We did not -- the answer is we did
8 look at it. I contracted with two that I
9 consider experts, Dr. Al Harvey and then
10 Dr. Jim Williams from the Public Affairs
11 Research Counsel of Alabama to look at what
12 the options were. That is, if you went up on
13 property tax by five mills, how much would it
14 generate? If you went up on sale tax, how
15 much money would it generate. So our goal in
16 the tax area was to simply look at options, if
17 1.6 over seven years was going to be required,
18 then here's a combination that could be used
19 in some way to generate those funds. So we
20 didn't just look at --

21 Q. Now, when you say -- excuse me for
22 interrupting.

23 When you said 1.6 billion over

0099

1 seven years, you mean to reach after seven
2 years an additional 1.6 billion annually?

3 A. That's correct.

4 Q. Okay.

5 A. In other words, you just ratcheted
6 it up maybe three or 400 million, then half a
7 bill the second year. Just try -- we just
8 knew that Alabama did not have the capacity to
9 raise that kind of money in one year.

10 Q. So my question was, did your
11 consultants give you any specific proposals or
12 estimates of what changes in the property tax

13 system would accomplish that?

14 A. My charge to them was to give me
15 all of the options. If you went up a half a
16 percent on the personal income tax, it would
17 generate X amount of money. If you went up
18 two mills or five mills on property tax
19 statewide, it would generate so much money.
20 So I did not ask them to look at just property
21 tax. What I asked them to do was to look at
22 it.

23 Now, to answer perhaps closer to
0100

1 your question, which tax was being greatly
2 underutilized and would be less regressive
3 than clearly the property tax. But the
4 property tax has traditionally been a local
5 tax, not a state tax.

6 Q. Right.

7 A. And so and in many cases your
8 counties are so poor that by raising property
9 tax, you don't generate sufficient money to
10 solve the problem.

11 Q. Right. And of course we all know,
12 for the record, that Amendment 1, which failed
13 to ratified by the voters last year, would
14 have only made changes in the state property
15 tax?

16 A. That's correct.

17 Q. It would not have affected any of
18 the local property taxes?

19 A. That's correct.

20 Q. So Amendment 1 would have changed
21 the classification, the assessment ratios for
22 all classifications of property to 100
23 percent, that would have only affected the

0101

1 state property tax?

2 A. Well, it would -- that's correct.
3 That is correct, yes.

4 Q. And the changes it would have made
5 in the current use formula, now, would have
6 affected the local property tax?

7 A. It would affect the local. That
8 would have stayed at the local community. And
9 of course it would have gone for any of a
10 variety of purposes, some that would be
11 education in nature and some not.

12 Q. Now, if you were to take into
13 account both state property tax -- and
14 probably not every state in the US, it --
15 probably we are in probably the minority
16 states that even have a state property tax,
17 aren't we?

18 A. Yes.

19 Q. Most property taxes are local?

20 A. Absolutely.

21 Q. And in Alabama if you combine
22 state and local, then the local property taxes
23 are the vast majority, I don't know, maybe two
0102

1 thirds of -- I don't know what the number is,
2 but it's more than the state property tax?

3 A. Oh, it would be much higher than
4 that, yes.

5 Q. Okay.

6 A. So you would have for us, just to
7 give you an example, you've got basically 96
8 million that's coming from the three mills of
9 statewide property tax, if you -- in a \$3
10 billion budget you could -- you can see.

11 Q. All right. Did your consultants
12 give you an estimate that if statewide for
13 both state property taxes and local property
14 taxes, all property was taxed at 30 -- or the
15 assessment ratios were changed to 30 percent
16 for all classifications of property, that that
17 would raise the \$1.6 billion?

18 A. I cannot speak to the exact
19 amount, but we looked at that ratio and how
20 much it would generate. I don't believe it
21 reached the 1.6. But I just don't remember
22 what the amount was. But we did look at the
23 30 percent. And I'm sure they could provide
0103

1 that information.

2 Q. You mentioned that Ira Harvey and
3 Jim Williams, and I wanted to -- I'll mark it
4 as Exhibit 44.

5

6 (Whereupon, Plaintiff's Exhibit
7 Number 44 was marked for identification.)
8

9 Q. A news article dated December 14,
10 '01, and captioned, State Education Leaders

11 Back Tax Hype.

12 (Whereupon, a discussion was held
13 off the record.)

14 Q. (BY MR. BLACKSHER) This article
15 mentioned Williams and Harvey, I believe, in
16 the middle. I think I highlighted it there.

17 A. It does.

18 Q. Now, that article uses the figure
19 of 1.7 billion. Is that just an error?

20 A. It was. It was actually like 1.62
21 or something and I guess they just rounded up,
22 But the 1.6. And frequently when you are
23 having a number of people talk about a topic,
0104

1 the number varied some from 1.2 to 1.7. But
2 the actual number was slightly above 1.6 and
3 we just rounded it off at 1.6. So this would
4 be in error for the 1.7.

5 And you have to keep in mind, I'm
6 sure you interviewed people that are making
7 predictions on tax revenues in the future and
8 they can vary. There is a standard error of
9 measure there, so, but the 1.6 is what we
10 agreed upon.

11
12 (Whereupon, Plaintiff's Exhibit
13 Number 45 was marked for identification.)
14

15 Q. Let me show you an article, marked
16 it 45, and dated February 17, '03. This is
17 the one I think that ranked Alabama's rural
18 schools as like number two from the bottom, I
19 think. Ask you if that refreshes your memory
20 about seeing that report?

21 A. This again must be an editorial.
22 It's not attributed -- rural school and
23 community trust ..."

0105

1 Q. But you don't remember that?

2 A. No, I really don't.

3 Q. Okay.

4

5 (Whereupon, Plaintiff's Exhibit
6 Number 46 was marked for identification.)
7

8 Q. Then I want to show you what I'm
9 marking as Exhibit 46, which is a letter to

10 the editor that Bill Muse wrote, published
11 on -- let's see. This came out July 8, 2001.
12 As he exited the state he was Auburn's
13 president, correct?

14 A. That's correct, yes.

15 Q. And if you want to -- let's see.
16 How do we do this? I want to refer to some of
17 the things that Dr. Muse said as he left the
18 position you now hold, and ask you what your
19 opinions are about some of these things.

20 A. Okay.

21 Q. This is July 8, 2001. It said,
22 North Carolina -- he's going to North
23 Carolina? Where did he go?

0106

1 A. Eastern Carolinas.

2 Q. Eastern Carolinas?

3 "The North Carolinians elected a
4 series of progressive and forward-looking
5 leaders such as Luther Hodges, Terry Sanford,
6 and James Hunt. All fought hard to establish
7 and preserve a tax structure that was adequate
8 to produce the revenue needed to move the
9 state forward."

10 We can give Governor Riley some
11 credit, can't we, for having made the attempt
12 last year to do that?

13 A. Took tremendous courage for
14 someone to come in, taking a great risk, and
15 I'll always admire him. He's the only
16 governor with which I have been associated
17 that had the courage to do what he thought was
18 right.

19 Q. And when Dr. Muse was writing
20 this, of course that was before Governor Bob
21 Riley was elected, no other governor in
22 Alabama, at least in living memory, had done
23 that?

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1 A. No. There have been no increases
2 in state funding since 1972.

3 Q. Dr. Muse goes on to say as
4 follows: The investments in education -- and
5 talking about North Carolina -- were by far
6 the most farsighted. As a result of these
7 investments, the public schools and community
8 colleges were able to produce the

9 highly-trained manpower the state needed to
10 attract industry. Meanwhile, the
11 universities, through their research and the
12 creative graduates they produced spawned the
13 Research Triangle Park one of the world's top
14 high-technology centers.

15 And then he switches to Alabama,
16 And says, by contrast, "For much of the past
17 half-century, racial issues have dominated
18 politics in Alabama, significantly damaging
19 the image and reputation of the state
20 nationally and internationally."

21 I won't ask you to comment on that
22 opinion.

23 A. Okay.

0108

1 Q. And bear with me, I'm setting the
2 stage for something I can ask you.

3 He goes on to say, "Equally as
4 important, Alabama has been hampered by a tax
5 structure that is both inequitable and
6 inadequate."

7 Do you agree with that?

8 A. I do.

9 Q. Starting to sound like the
10 recitation of the creed here.

11 (Whereupon, a discussion was held
12 off the record.)

13 Q. Let's see. "It places a
14 disproportionate burden on the poor through an
15 over-reliance on sales taxes and does not
16 produce sufficient revenues to fund education,
17 both elementary and secondary and higher
18 education, on levels comparable to that of
19 other Southern states."

20 Do you disagree with that?

21 A. I do not disagree.

22 Q. He goes on to say, "I'm not
23 optimistic the change will occur in the near

0109

1 future. For change to take place, political
2 leadership will have to emerge..." so on and
3 so on. We have already talked about Governor
4 Riley there, so I won't ask you about that.

5 Then Dr. Muse says, "A critical
6 and necessary step in the process will be
7 rewriting the state's antiquated constitution

8 because so many of the obstacles to progress,
9 particularly the tax structure, are written
10 into the constitution."

11 Do you have an opinion for or
12 against that statement?

13 A. He's correct in his assessment.

14 Q. He then says, "One of the most
15 important changes needed in Alabama is a
16 substantial increase in property taxes.

17 You already indicated that you
18 agree with that?

19 A. Yes.

20 Q. He says, "Most states depend upon
21 local property taxes to pay a substantial
22 share of the cost of elementary and secondary
23 schools. In Alabama the property tax revenue

0110

1 is so low the state has to pick up the bulk of
2 the cost of the public schools from regressive
3 sales and income taxes. Since higher
4 education is funded from the same source as
5 K-12, the monies available to higher education
6 are substantially reduced."

7 Now, I take your prior testimony
8 in this deposition to substantiate that
9 opinion as well; is that correct?

10 A. That's correct.

11 Q. He then says, "If local school
12 districts were required to generate a larger
13 share of their revenues through taxes on
14 property in that district, the drain on the
15 state treasury would be lighter, allowing
16 improved support for higher education."

17 Do you agree with that?

18 A. That is one option.

19 Q. And other options would be?

20 A. That you would see increased
21 funding for K-12 to come closer to meeting the
22 adequacy requirements. So I don't think he
23 would have envisioned that increasing local

0111

1 effort. And I support that. And it would
2 help in terms of the strain on state budget.
3 But with what we read in terms of the local
4 effort that we could reasonably expect, it
5 would not generate enough money to reach what
6 we consider to be adequacy. The numbers are

7 the 1.6 billion. Remember, we started two
8 years before the vote, and so it's now four
9 years and if you just took the normal increase
10 in costs, then you are well over \$2 billion at
11 this point that it would take to reach that
12 adequacy standard by Alabama law.

13 Q. I did not read him to be saying
14 those objectives were mutually exclusive.

15 A. The role was -- I'll speak to you
16 as state superintendent.

17 Q. Right.

18 A. Okay. Was that the only way
19 higher ed. saw any hope in getting increased
20 state funding, was for local effort to go up.
21 And it does need to go up so that then they
22 would not have to have as much state funding.
23 So that was the motivation there. And that is

0112

1 an option. No question about it. It's not
2 the only option.

3 Q. In your opinion is reform of the
4 state's property tax system, Dr. Richardson,
5 practicable, consistent with sound educational
6 practices?

7 A. Yes. If other states can do it I
8 assume Alabama could do it.

9 Q. And in fact have you and other of
10 Alabama's political and educational leaders
11 acknowledged that reform of the state's
12 property tax system is practicable, is
13 consistent with sound educational practices,
14 and indeed is necessary for the educational
15 and economic future of all citizens of
16 Alabama?

17 A. That was and is my position.

18 Q. Okay.

19 MR. BLACKSHER: And the
20 reason I was reading those were
21 some of the agreed facts that --

22 MR. TALLY: Okay.

23 MR. ARMSTRONG: Does that

0113

1 about do it?

2 MR. BLACKSHER: Yes.

3 (Whereupon, a discussion was held
4 off the record.)

5 EXAMINATION BY MR. TALLY:

6 Q. Let me just ask a couple of things
7 because I'm new to this and I want to make
8 sure I understand what you said, if you all
9 give me about three minutes.

10 A. I've got time. Go right ahead.

11 Q. I'm trying to figure out if we
12 reformed the property tax system as we have
13 been talking about today, for that money to do
14 any good to higher education you would have to
15 go further. You wouldn't just raise the
16 property taxes; you would have to somehow
17 designate that money for higher education; is
18 that correct?

19 A. If you did that on the state
20 level.

21 Q. That's what I'm talking about.

22 A. That is correct, you would.

23 Q. And it sounds like, based upon my
0114

1 notes of what you said earlier, right now
2 there is not any requirement that any property
3 tax goes to the education trust fund; is that
4 correct?

5 A. That is correct. There is a
6 separate fund, called the Public School Fund.

7 Q. Right. But let's assume it did
8 go to the education trust fund, just as an
9 assumption.

10 A. Okay.

11 Q. Who then decides where that money
12 goes, how much to higher education, how much
13 to K-12 and so on?

14 A. Legislature would decide.

15 Q. All right. And would that also be
16 true as far as what part, if any, of the
17 education trust fund can be used to provide
18 need-based assistance to students, either in
19 K-12 or higher education, would that be the
20 legislature?

21 A. Yes, it would.

22 Q. So there's not just a question of
23 how much money is in the educational trust
0115

1 fund, it's a question of how the money in the
2 educational trust is apportioned; is that
3 fair?

4 A. That is fair.

5 Q. And as far as you know, those
6 decisions ultimately rest with the
7 legislature?

8 A. That is its primarily
9 responsibility.

10 Q. I think I understand it. Thank
11 you.

12 A. Okay.

13 MR. GRAY: No questions.

14 MR. BLACKSHER: I have a
15 quick follow-up on that.

16 EXAMINATION BY MR. BLACKSHER:

17 Q. Dr. Richardson, to follow on
18 John's questions about the legislature being
19 responsible for all those decisions, can we
20 agree that at present the legislature doesn't
21 have the option, for example, to increase the
22 millage on the state income tax because that's
23 in the state constitution?

0116

1 A. Takes a constitutional amendment
2 for that to occur. The only thing they could
3 do would be those that don't, like, say, a
4 sales tax or a cigarette tax or a beer tax,
5 something like that.

6 Q. And the state legislature would
7 not have the option to a change assessment
8 ratios for the four classifications of
9 property in the lid bills?

10 A. Without a constitutional
11 amendment, that's true.

12 Q. That's in the state constitution?

13 A. Yes, sir.

14 Q. And the legislature can't change
15 the current use, practice, or formula because
16 that is in the state constitution as well?

17 A. That is correct.

18 Q. And the dedication of the income
19 tax to K-12 teacher salaries is in the state
20 constitution?

21 A. That is correct. Income and
22 property are required constitutional
23 amendments.

0117

1 Q. So as the state constitution
2 presently is, there is not much the
3 legislature can do in order to reform

4 Alabama's tax system, is there?

5 A. Well, it could pass legislation
6 that would put a constitutional amendment
7 before the people dealing with those taxes.
8 That would be required. But it's still up to
9 a vote of the people.

10 Q. Well, that's what it did that last
11 year?

12 A. Yes, we tried.

13 Q. It did that last year?

14 A. Yes, that is true.

15 Unsuccessfully. But at least the legislature,
16 and the Governor, did its responsibility and
17 the people rejected it.

18 MR. BOYD: Polly, do you
19 have any questions?

20 MS. MILLER: No, I don't.

21 Thanks.

22 MR. BOYD: That's it.

23 We'll waive reading and

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1 signing.

2 (Whereupon, the preceding
3 deposition was concluded at
4 4:18 p.m.)

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REPORTER'S CERTIFICATE

2

3 STATE OF ALABAMA)
4 JEFFERSON COUNTY)

5

6 I hereby certify that the above
7 and foregoing deposition was taken down by
8 me in stenotype, and the questions and
9 answers thereto were transcribed by means of
10 computer-aided transcription, and that the
11 foregoing represents a true and correct
12 transcript of the testimony given by said
13 witness upon said hearing, to the best of my
14 ability and understanding.

15 I further certify that I am
16 neither of counsel, nor of kin to the
17 parties to the action, nor am I in anywise
18 interested in the result of said cause.

19

20

21

Kimberly B. Garrett, CSR., RPR

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My Commission expires:
March 16, 2008