Mark Tallman: My name is Mark Tallman. I've worked for the Kansas Association of School Boards on educational issues since 1990, primarily as a lobbyist, also as a researcher, writer, and communicator. I'm conducting this interview with Alan Rupe on behalf of the Kansas Oral History Project, a not-for-profit corporation created for the purpose of interviewing former legislators and other significant leaders in state government, particularly those who served from the 1960s through 2010. The interviews will be accessible to researchers, educators, and the public through the KOHP website, which is ksoralhistory.org and also the Kansas Historical Society and the State Library. Transcriptions are made possible by generous donors. Dave Heinemann is the videographer today.

Today, we're going to be turning our attention to the issue of school finance and school finance litigation. Alan Rupe has been involved in virtually the entire modern era, representing plaintiffs in this area. We're going to even maybe talk a little bit before that, but I think it's pretty clear, anyone that has followed state government knows that these issues have not only affected how schools are funded but other aspects of education policy and have certainly had an influence on the politics of the state.

Also, probably a bit of a disclaimer, this is my opportunity to interview him. I have been on the other end of this under his questioning in some of these cases before. I don't know if he remembers. I remember very vividly. So, Alan, why don't we just start before kind of plunging into this area, just a little bit of your background, where you grew up, your path into the law, and I guess as I kind of mentioned before what made you want to grow up and become a school finance litigator.

Alan Rupe: Well, I think above anything else, I've always wanted to be a trial lawyer. When I grew up, it was the era of *Perry Mason* and culminated when I was a teenager with To Kill A Mockingbird. I can remember as a child growing up—a friend of mine, John Mize, his dad was a trial lawyer. A lot of people in my age group went to law school because they enjoyed *Perry Mason* and To Kill A Mockingbird. I was inspired by watching John Mize's dad, Jim Mize, a trial lawyer watch *Perry Mason*.

MT: I see.

AR: I decided that was for me, and I was lucky enough to pursue the only career I ever wanted.

MT: That's great. You grew up in Salina.

AR: I grew up in Salina, home of Cozy Inn, the best burger in the world. I can attest to that. Class of 1968, Salina High School. It's now Central.

So, I graduated from Washburn Law School. I ended up in western Kansas for a brief period of time and then started in Wichita, Kansas and ultimately handled employment law, which was the gateway to—this may not sound like it connects, but it does—the gateway to school finance.

Starting in about 1978, I had my own firm at one time, I started doing employment work for cities, counties, and school districts. In 1988, I tried a lawsuit to Judge Sam Crow. He was in Wichita at that time, a federal case representing the Newton School District. We got an excellent result. We won the trial, and the attorney for the Newton School District called me after the trial and said, "I like the way you work. Did you ever think about suing the state of Kansas?" and I said, "For what?" And he said, "For adequate and equitable funding of school education." I told him I didn't know anything about that, but if it involved suing the state of Kansas, count me in.

MT: You were willing to learn.

AR: I was willing to learn. And John Robb was the attorney. And John Robb and I have been partners in the school finance cases since he called me in the middle of 1989.

MT: We're going to kind of talk about those different waves of I guess at least three major cases. Just as you may know, I went to work for KASB in 1990. So, it looks like you had a little bit of a start on me on that end of things, but I've been kind of watching these cases ever since then. Hopefully, we will not have too much insider jargon here so people can understand what's going on.

AR: You probably had more knowledge of education and school funding in 1990 than I did in the first five or six years.

MT: It was a long, learning curve. I can assure you and not having a legal background. Maybe we should step back just a little bit before we kind of begin where you and John Robb and the districts that you were involved with kind of started. Maybe kind of help me remember, help our viewers understand the context of school finance. I think you used the term, "Would you want to sue the state over adequate funding, equitable funding? How did those terms develop, and kind of where were we as a state kind of in the late eighties, going into the early nineties?"

AR: The big issue that preceded my involvement, there'd been a case out of San Antonio that the United States Supreme Court decided and then there had been a case—I believe Dave Waxse was involved, the Caldwell case out of Johnson County. Those cases focused on constitutional law under the federal constitution and the state constitution and created allegations of a violation of the constitution through funding, the Equal Protection clause of both the state and federal constitution. So, it was basically an argument that some schools received without a rational basis, some schools received more funding than other schools without the constitutional measuring stick of a rational basis.

MT: Again, I'm going to probably oversimplify a little history, so I want you to help make this more specific, but at least part of what triggered all of this was the historical reliance in most states including Kansas on local property taxes, which were becoming increasingly unequal in terms of the resources that you could raise at a similar tax rate. Is that a fair way of explaining it?

AR: That's a fair way of explaining it, and it explains the disparity in the funding because the property tax was all zip code dependent, and because it relied on where you may own property and the value of the property that you owned, school districts that had high wealth within their

 

district got the rewards, and districts that had low wealth in their districts got the punishment of not having finances equal to the other school districts.

MT: So, the issue becomes—you use the term, "how much the district receives," to a large extent, it was how much a district could raise because the state role tended to be, again in Kansas and the other states, fairly minor in Kansas and most states, provided some degree of state aid, but again, I know when I went to work in 1990, one of our goals was to get the state to pay half of the cost because we were well below that. So, if you're a district that has relatively low wealth per pupil, which could happen for any number of reasons, you either couldn't raise the money or would have to have an extremely, a disproportionately high mill levy to raise an equal amount of money.

AR: What you're tagging by way of wealth disparity was what was argued as a violation of the equal protection clause of both the state and federal constitution.

MT: And that's key at the state level because, again as I'm remembering, you help out, part of that early decision was to state that there is not a federal right to an education, but there is an equal protection for people, and at the state level in Kansas and most states where there specifically is a mention of education as a state function, that becomes even more important.

AR: That's correct. After the call from John Robb, we ended up in a group called SEEK [Schools for Equitable Education in Kansas]. We ended up filing a lawsuit along with a lot of other districts and other organizations on behalf of the school kids. You always have to sue the state in Shawnee County. That's the law. So, we filed Mock vs. the State of Kansas in Shawnee County courts.

MT: And as you indicated, there were several things happening at that time. Of course, we need to remember this: one of the issues was that the state was going through what was kind of often called a property tax crisis, having to do with the way property was assessed. There was a lot of frustration over property taxes anyway, and the state was trying to struggle with how to do that. Part of the reason, part of that tie-up—the state really was not adding any more state aid under the old system. Again, maybe we're not doing this in the right order, when you entered this, we actually were under a system called the School District Equalization Act, which was designed to help equalize, but your contention was that it wasn't working very well.

AR: No. It paid some school districts based on the formula a considerable amount more than other school districts, and it tended to be the mid-sized school districts in the Mock years, in the early 1990s, the mid-sized districts that kind of got squished between the wealth of the smaller districts and the much larger Blue Valleys of the education system.

MT: I think I want to clarify one other thing. Although the state had adopted this School District Equalization Act, the SDEA, in I believe 1975, after Caldwell, in response to Caldwell, but that case had not gone to the Kansas Supreme Court. The legislature basically I guess looked at those facts—I don't even remember what the district court ruling might have been, but they basically said, "Well, we need to do something."

 

So, that is what they did in fact pass this system designed to—"Equalization" is in its name. So we were operating under a law that had been passed to solve a case, but the Supreme Court hadn't really ruled, right?

AR: And didn't get a chance for a while.

MT: Right.

AR: Mock was assigned to Judge Terry Bullock, and Judge Terry Bullock conducted some discovery, exchanging information among plaintiffs and the defendant, and ultimately ordered a mediation among all the interest holders, not just the litigants, but among all the interest holders, and it was held at the Supreme Court building, and introductory remarks from the Chief Justice. Then an effort was made—there were some interesting—the session couldn't start until Governor [Joan] Finney and then Attorney General Bob Stephan—one wouldn't enter until the other one had. So, it was delayed somewhat by—

MT: Protocol issues.

AR: Protocol. That's a nice way to describe it. It was delayed by protocol and ended up with almost all of the litigants and the interest holders agreeing to redo the formula in a way that established a base state aid and then had add-ons based on need. So, those were called "weights." The formula that was adopted, the SDFQPA [School District Finance and Quality Performance Act], was a system that really addressed the disparities in the wealth, and it was a product of hard work of a lot of the school districts.

Mock ultimately—it was never decided by the Supreme Court. The result of Mock was legislation that was adopted with a whole new school finance system. All of the litigants agreed to dismiss the case except one, and that was Newton. We proceeded in litigation that through the years morphed from Mock to USD #229 vs. the State of Kansas.

MT: And that, several years after the law was passed in '92, really became when the Supreme Court actually did issue a final a ruling which started to articulate some of the principles that were then carried on in further litigation. Is that correct?

AR: That's correct. In the #229 litigation, we tried it to—Judge Bullock had turned loose of it after the legislation was adopted, and the remaining litigation was assigned to then Judge of Shawnee County District Court Marla Luckert. Judge Luckert and a whole raft of other lawyers and parties jumped into the lawsuit. Judge Luckert took issue with the weights and the base and argued that those were the result of politics in how those were set and not based on any rational educational purpose. Of course, the rational educational purpose was a morphing of what we had talked about a few minutes ago by way of the equal protection clause. She declared it to be unconstitutional.

The state of Kansas appealed that decision, the #229 decision was really since the beginning of what we've been talking about was the first opportunity for the Kansas Supreme Court to address the school funding issue. And in their ruling, the focus went from rational educational

 

opportunity to just a rational basis analysis, and the court ruled that Judge Luckert was wrong to concentrate on educational purpose. That it absolutely was a function of the legislature to devise the school formula, and the Supreme Court decided not to tinker with it. So they reversed her decision and entered a judgment for the state.

MT: A couple of things I might mention. That kind of created a pause for some years before things picked up again, but I think just again for kind of historical purpose, the SDEA was about providing additional help to lower-wealth districts, and it actually did place some caps on how much you could spend. The formula adopted in 1992 became controversial for several reasons. One, it set a minimum mill levy, which continues to this day, 2025, that every district had to pay, which meant in some cases, districts experienced increases in their mill levy, their property tax burden. And it placed, it then sort of substituted this—you would cap your budget, but you had a lot of flexibility to a base amount plus weightings plus an equalized local option budget tier.

But even with that, some districts opposed that kind of absolute cap on how much they could spend. Other districts experienced an enormous increase in what they would be able to spend was actually even phased in a little was part of how the legislature—so there was certainly controversy over it, but some of the main things that it did was narrow the range in mill levy and at least for many districts narrow the range in spending.

AR: Absolutely. Justice Kay McFarland looked at what you just explained. We thought we had really good proof of the disparity in education funding among our client school districts and other school districts. It was easily explained as no rational educational purpose for that difference. But Justice Kay McFarland indicated that "plain common sense" explained the disparity, and the case was dismissed, and a judgment entered for the state.

MT: One other thing that I guess I'm always reminded again as a young new lobbyist and what this all meant, in order to get this passed by the legislature—and it might be worth noting as we're going to talk about other cases, the legislature was not commanded to do this by the Supreme Court. They looked at the preliminary ruling and the facts and basically said, "We want to try to fix it" and managed in a divided, Republican-controlled Senate, a narrowly Democratic-controlled House, a Democratic governor to somehow come up with a plan that did that.

But part of what—at least my recollection—helped sell it for some legislators was what I think we might now call it "reform" or "accountability." With this piece, there was some directions on changes in accreditation. There were requirements for testing to take place, some things like a longer school year, if I remember correctly. So, some of this was not just responding to some of these equity issues, but perhaps we could say maybe a larger state role in some education policy issues as well.

AR: No question about it. You really capsulized the political aspect of the formula. It reminded me—I don't want to fast forward through what we're going to talk about—but the one thing that has happened in every school finance case is that process that you just described, the politicking in order to get it passed. And school finance luckily has been successful in increasing through the years but only by the narrowest of margins. It is always just barely making progress and improving.

 

MT: So, that's kind of—by the mid-nineties, the Supreme Court had upheld that basic framework. The State Board was busily implementing some of those reform issues. Local school boards, we often talked about kind of their role changed from—superintendents from managing the mill levy to "The state kind of tells you what you're going to have. You've got to decide how to spend it." So, that was a bit of a change in even what happened at the local level, and that went on for several years. Then what happened?

AR: The #229 decision was decided in the mid-1990s, 1995. We filed Montoy vs. the State of Kansas at the very end of 1999. Here's what we did. When you lose a case—this is part of the contribution of a trial lawyer coming to the table—most of the school finance stuff had been handled by experts and people with really solid education finance knowledge. But I said, and John agreed, I said, "Let's go back and look at what caused us to lose and figure out if there's a different way that we can approach this."

And John pulled out the comments from Judge Bullock early on in the Mock decision and comments from Judge Luckert and surprisingly from my team that put together a battle plan in 1990. We decided in Montoy that we were going to move the focus of the litigation from the equal protection clause—we didn't give up on that—from the equal protection clause to the Finance Article, Article 6 Section 6, and focus on what Judge Bullock had called "adequate school funding."

As a footnote, we also pursued the equal protection clause by filing in federal court, Robinson v. the State of Kansas, but the Montoy litigation really in state court focused on the finance article. And we made the argument that if you want to improve as the constitution requires with regard to education, continuous improvement, if you're going to do that, then you need to pay what it cost. And we focused on the Kansas legislature not funding education to an adequate level. That was what we tried initially in Montoy.

Montoy was assigned to Judge Bullock. I can still remember a lawyer, Maureen George. My memory is it was right before trial in Montoy. I can remember her walking into my office—We had no email in those days. It was good old fax.—with a fax, and she said to me, "Bullock just dismissed our case."

What? In about a two-sentence order, Judge Bullock dismissed all our hard work on Montoy, focusing on adequacy and indicated, citing the #229 case, this is a function of the legislature, not the courts.

MT: Yes, if I remember that ruling and kind of the way we were interpreting it at the time, he basically said, "The Supreme Court has said this is okay. So, it's okay." But then you then had the opportunity to try to appeal that decision.

AR: And we did. We appealed it to the Kansas Supreme Court, and they issued one of I think one of the best opinions of all times, not only in school funding but just the matter of construction of an opinion. It was an opinion that posed certain questions to the trial court and

 

said, “These questions need to be answered in order to understand what the plaintiffs are saying about inadequate funding, Article 6 Section 6, and equal protection.

MT: Essentially, and again tell me if I’m wrong. My layperson recollection was they essentially said, “Just because we found it constitutional five years ago does not mean that there may not have been changes since then, and the plaintiffs have the opportunity to essentially say, ‘It might have been acceptable then. It is not acceptable now based on the additional evidence we’re bringing forward.’”

AR: Exactly. That’s exactly what happened. The Supreme Court sent it back to Judge Bullock for trial. People talk about Judge Bullock as if he had always been of the opinion that schools were underfunded and needed to have—there was a huge criticism of Judge Bullock. On our team when we went to trial on Montoy, finally, we were concerned about Judge Bullock. He had dismissed the case *sua sponte*, meaning he didn’t ask anybody before he did it. He just did it. He had dismissed our case, and we had to go to the Supreme Court in order to get him to try it.

When John and I walked into the courtroom to try the Montoy case, we had been at a pretrial just a few weeks before, and Judge Bullock had said to the team, to John and I, “This trial is not going to—there’s not a jury here. This is a trial of the bench, and I assume what you’re going to do is give me a couple of expert reports, cross-examine the experts, and this trial should last a couple of days.” I still remember thinking about Maureen George with the dismissal in hand, and I said, “Judge, it’s my job to persuade you. I don’t know that I can do that with just experts, and I don’t know that I can do it in a couple of days. We’re going to need a long time for this trial because there’s a lot to cover.” And he I think reluctantly relented, and we agreed to have more than a couple of days set aside.

When I walked into the courtroom to start the case, I had in my briefcase a motion to disqualify him because I thought he was trying to ramrod us into a quick trial, affirmation that it’s the legislature’s function. There’s no constitutional violation as long as the legislature says what it says. We were worried about that.

Our first witness was from my alma mater, Salina school system, Marilyn Green was her name. She was a curriculum director. She was absolutely one of the best witnesses I could, anybody could have put on the stand. It was during her examination that we explained how a third of the kids in Kansas were not making it, couldn’t do the math, couldn’t score on the assessment test, and that we were leaving a third of the kids of Kansas behind.

I still remember as Marilyn Green was explaining it to Judge Bullock, it was like watching a juror finally click with what the evidence is. After her testimony, the proof of inadequate funding and inadequate education because of the inadequate funding really became crystallized as we moved through the case.

MT: Am I correct in thinking that in some ways this was a—I don’t know if I would say a shift or an add-on because you had moved in the early litigation to really focusing on taxpayer equity or even funding equity. What you’re really talking about now is student outcome equity. And the

 

case is based on saying, "The system now is not—as you say, a significant group of students are not getting where they need to be."

That's kind of different. You can still look, and I think Montoy did talk about some of those other issues as far as tax rates. But the big add-on was looking at the impact on students directly, not just sort of the impact on taxpayers and the kind of implied impact that tax disparities would have on educational outcomes.

AR: Exactly. Our proof consisted of #1, boots on the ground. Teachers, we didn't put any students on, teachers, principals, superintendents, folks like Marilyn Green who had experience with kids on the frontline. The second type of proof we had was expert testimony. We had searched nationwide for somebody that would offer up opinions on school funding and the adequacy of what the legislature was spending in terms of achievement.

We ultimately landed with Bruce Baker who was at Emporia at the time then moved to KU and is now at Rutgers. Bruce Baker was absolutely instrumental in crafting the technical argument that school funding in Kansas was not adequate to achieve the outcomes that were expected. And what was expected is spelled out in our constitution in terms of continuous improvement by the Kansas legislature and the state in educational funding and achievement.

MT: If I'm remembering the constitution—I tried to memorize during all of this, Article 6, Section 1 is "the legislature shall provide a system of public schools to provide for intellectual, educational, vocational and scientific improvement," and then in the funding clause, it says, "The legislature shall make suitable provision for finance of the educational interests of the state."

So your argument had to be "The educational interests of the state are clearly showing improvement. So the legislature has to provide suitable funding." I don't know if this is the best time, but could we maybe talk a little bit—you've talked about adequate, and that's often talked about. You also mentioned equity. But the constitution says "suitable." So, what is the relationship between suitable, adequate, and equitable?

AR: In terms of suitable, the Kansas constitution does say that, but it was coupled with the word "adequacy" in all the jurisprudence going back to I think even Caldwell. That phrase made those words synonymous, and in other states, the same wording that is in our constitution had laid the groundwork for the adequacy argument. So, we relied a lot on other cases, Kansas cases, and Judge Bullock's early writings for the coupling of suitable with adequate, and they are inseparable in everybody's mind. Then, to equal protection with regard to that argument, obviously what is suitable funding or adequate funding forms the threshold for what should be equal or near-equal or equitable funding of education.

MT: So, based on all of this work, experts, testimony, the decision then comes before Judge Bullock to now again rule. What happened then?

AR: Well, he ruled in our favor. He ruled so much in our favor that the state was arguing that they wanted to appeal, but the Kansas Code of Appellate Procedure wouldn't allow the state to appeal because Judge Bullock—and I still have this hanging on my wall in my office—Judge

 

Bullock issued correspondence to all the attorneys, asking for ways in which the plaintiffs could force the legislature to comply with his order because he ordered school funding and answered the court's questions with the specificity that needed to be answered. The state could not appeal his ruling. He ordered the schools closed if the legislature did not respond with what they needed to respond to in order to make school funding adequate.

It would be like playing a football game against the team that ran the NFL and could change the rules in the middle of the game because that's what happened. The legislature devised a way to—I forget what the law says, but if someone has a school finance case in Shawnee County and there's an adverse ruling and the state wants to appeal it, no judge can stop them. So, they appealed the Montoy decision to the Supreme Court.

MT: And how did the Supreme Court respond this time?

AR: The Supreme Court, let me take a detour for a minute. One of the joys of—I always thought the Kansas legislature enjoyed being ornery. During the period of time of Montoy, I was able to enjoy the legislature really kind of fumbling around with what they were doing. I think one commentator said that we were able to beat the legislature with their own stick.

The legislature started asking for cost studies to determine what the cost of education would be. They came up with a number of different cost studies. The first was Augenblick and Myers that they commissioned. This was all during this timeframe when we were arguing inadequate funding. The study that they commissioned resulted in a finding that Kansas needed to increase educational funding by 800 million to 1.8 billion dollars in order to adequately fund education for the continuous improvement and the achievement that we had spelled out.

They didn't like that study. So they had a study done by the legislature, the legislative post audit. That study determined that there was a shortfall of about two billion dollars. They kept ordering studies that continued to tell them what the plaintiffs were telling them, and that is that education was not adequately funded.

So, to your question, the Kansas Supreme Court affirmed the decision and ordered the legislature to increase school funding. It was in some people's mind a constitutional crisis, but in the final analysis, the legislature came up with what we've always called "close enough for government work," an amount that the Supreme Court deemed to be adequate and equitable.

MT: So, if I'm remembering how this played out was the Supreme Court essentially told the legislature, "Yes, you need to do something." The legislature basically put in some more money, but not a dramatic increase and asked for time to do this cost study. I believe that was the 2005 session, and then as we all gathered for the beginning of the 2006 session, if I have my times right, that is when they received in the old Supreme Court room at the Capitol, everyone there, they were walked through their own audit agency's funding. That session then began, as you say, kind of a debate over using that framework, sort of using those numbers, but how close do we actually have to get? So, for the most part, the specific numbers weren't adopted, but they were close enough that the court ultimately said yes, allowing the legislature three years to implement that increase.

 

AR: And what was I think the most important part in addition to what you've just described of the appeal to the Supreme Court was the promise by the defendants that they would increase funding to an adequate level. It was that promise that carried the day in the Montoy decision. Not to be critical of our Supreme Court, but taking the legislature's promise that they would increase funding and doing what you have described, the Supreme Court reacted by dismissing the Montoy case and not maintaining what we had advocated, which was the continuing jurisdiction of the Supreme Court in order to—what I would call parking the car in the garage, making sure that what they wanted by way of additional funding got done. It was dismissed, and Montoy was part of history at that point.

MT: That history was to lay out what my side, I guess in the lobbying advocacy community, the three-year plan was a phase-in increase in the base, an increase in weightings like the at-risk weighting to target students who needed more help because of poverty or other factors, some adjustments to local option budget authority, some increased equity aid for buildings, adding for the first time, the state would help subsidize the capital outlay budget, which is sort of a maintenance fund as opposed to bonds which had already been included in the previous decision, all laid out over a three-year period.

What I guess no one quite foresaw coming was the Great Recession of 2008, 2009. That last year, the legislature had kind of gotten close. That year, there were rescissions, and the next year as funding dropped significantly because of the recession, the legislature began a series of cuts below the committed level of Montoy.

AR: In the form of block grants. The funding dropped considerably. As the funding diminished, the appetite for litigation increased considerably. We filed the Gannon case, which was basically the Montoy case updated to then current times.

MT: I don't know whether you have the dates in front of you, but that took a long time from 2009 to ultimately I guess the legislature acting in 2017-2018, and then another phase-in. What were the stages that kind of got from the Gannon filing to legislative action to where we are today?

AR: I have a chart that shows a timeline. Montoy ended July 28, 2006, and Gannon was filed in the middle of 2010, and ultimately Gannon was dismissed. This time, the legislature after they appealed our success in Gannon, the legislature appealed it. The Kansas Supreme Court did not dismiss Gannon at the conclusion of their opinion affirming the trial court. It didn't end until just last year, February 6, 2024.

MT: Again, you can add anything or correct me. Gannon really unfolded not in a completely straight arrow because the court decided to split the adequacy and equity issues, partly because—and I'm going to probably oversimplify this, but that to some extent, equity is mostly just math. The legislature basically froze funding for certain state aid programs. As costs continued to go up, the disparities widened. You don't need a lot of experts to point out that that was happening.

 

The other side of that was continuing more on the adequacy side was back to this issue of "How much does it cost to get the results you want?" So, you had to proceed kind of on two different grounds.

AR: That's right. On a personal level, I always favored the adequacy argument because it makes sense. What does it cost to achieve an adequate education and improve it over a period of time? You can do cost studies that determine what that amount is. So, what's complicated about that? You just pay what it costs in order to make our kids' future what we want it to be through a public school system that has continuous improvement in both the achievement and in the funding. The equity piece of that gets real complicated real quick, but basically the way you've described it is the way it played out.

MT: And one of the many sessions which I guess have started to blur together in my mind, I don't know about yours is, as I think you alluded to, to be a little more specific, the legislature commissioned another cost study after Gannon and commissioned a review of previous costs studies, I guess continuing to hope to get a different answer. In fact, I think there was a feeling that they had kind of gone out looking for an expert that would give them the answer they wanted. In effect, they didn't get a better answer and ultimately—and this may be more in the weeds than our viewers want, but this has been my life as well as yours for many years, ultimately the Gannon adequacy was addressed through what was called the Montoy Safe Harbor. Would you like to explain that a little bit?

AR: The Kansas Supreme Court said if the legislature responds in this fashion and rolls back the funding to the Montoy levels updated for inflation, then that we will consider to be adequate. So, they kind of set the target for that.

MT: That's right. So, rather than using any new oral cost study, the legislature basically went back to saying the court accepted—we can presume that the Montoy level funding was constitutional because that's what we held, and it was not challenged. So, if you go back to there, we will presume you to be suitably funded until or unless new studies can come forward to contradict that.

AR: And the legislature helped us in one other respect, too, when they by statute, which they had to do, called for the cost study, they admitted that school funding had been inadequate. For any lawyer that looks at that, they immediately conclude that's an admission against interest. It's basically a confession that they were doing things wrong. That's what ended up then with regard to the Safe Harbor.

MT: Again, if I remember correctly, much like there was kind of a two session resolution to Montoy, the same thing kind of happened to Gannon. On the adequacy side, the legislature kind of took a half step and then came back and laid out in this case a six-year plan that was designed to theoretically get back to Gannon levels adjusted for inflation.

Now there was a lot of argument over whether they did that and how to calculate inflation. But ultimately they laid out for the legislature a plan. The legislature came back with a plan to say, "We'll get to this level. Give us a six-year phase-in. There's some money in added to account for

 

inflation over that period." That has really been kind of the last several years—I think two years ago was the final kind of installment of that plan.

AR: And to the point we talked about a little while ago, all of that was achieved by razor thin margins in both the House and the Senate, like one or two votes.

MT: Right. So, that kind of brings us in a way where we are today. You've talked about—I personally always thought it was interesting that going all the way back to the 1992 law and requiring assessments and sort of basically putting in standards that I think some legislators felt would—I don't want to say would be punitive, but basically were designed to get what they wanted from schools. That also created some of the evidence when we talk about one-third of kids not being there. It was really using those state-mandated assessments to demonstrate the disparities.

And I think that's the other point we didn't really talk about, but you may want to comment on. It wasn't merely that one-third of kids were not at Benchmark X, but there were significant disparities by different groups of students within that.

AR: Absolutely. Minorities, disabled kids. There were huge disparities within that breakdown.

MT: So that's what to some extent the legislature has continued to wrestle over, "How do we put in enough money to ultimately satisfy the court or keep schools open?" Whatever you want to say versus a lot of legislators who don't want to put in that or no dollar more and having to get those razor thin majorities that you talk about are part of all of that.

AR: Especially in the area of special education that continues to be underfunded by definition in legislation.

MT: Right. I think that was one of the Montoy changes was to set a target at 92 percent of those additional costs. We haven't been at that level since 2011, I believe, if I'm remembering right. It's now probably still in the seventies would be my guess.

AR: Yes, 70-some percent.

MT: So there certainly are still issues out there. Well, that's a whirlwind history, I guess, of school funding. First, what have I missed? Are there any kind of themes you want to pull out of that that you think are important?

AR: Let me tell you what I think are the takeaways from all of this that are positive for the future of Kansas kids. I think the development of the Article 6 Section 6 finance adequacy, suitable funding, the development of that argument I think is absolutely important for the future. The rule of law is absolutely important, and our Kansas constitution has certain requirements, and Article 6 Section 1 and Section 6.

The other thing that kind of developed through the litigation that I would point to is the notion—and it derived from our constitution—the legislature has a positive duty to act. Simply doing

 

nothing isn't going to cut it. There is a whole line of comments in all the cases we've talked about about the legislature being required by their obligation to act on improving education and improving the funding for education.

The other thing that some people may lose sight of, the three branches of government actually work, and although there's been some challenges and razor thin margins, ultimately, we have improved educational funding and improved the opportunities for our Kansas kids, and I think that's a big takeaway from this.

The other thing, I want to put in a plug for trial work because go back to the Montoy case. I think these cannot be decided, things like educational funding and achievement and a consideration of what it takes, they cannot be decided based on just expert opinions. I think the system of a trial actually works. It goes back to *ethos, pathos, and logos*. You put all that together, and you can make pretty good decisions, which is the other thing that I would suggest.

I look at SEEK and then Schools for Fair Funding and look at the leaders in those organizations. They were the ones that helped finance the school finance litigation, and it goes back to Clark Whiting, superintendent in Newton, and it goes through a number of superintendents, meetings with all superintendents to the current Schools for Fair Funding that is led by Justin Henry.

Collective wisdom is really good. Sometimes it doesn't work so well in the Kansas legislature, but in the groups that are focused on improving education and improving funding, the collective wisdom of the group works. I think those are the important takeaways for me.

MT: I'll offer—I have no idea what ongoing work you may have or what anyone who employs me may think about things. I'm simply going to put out an observation and see if you want to bite or reflect on it a little bit. It has been striking to me in kind of watching this how people kind of have to think through in some ways what their ultimate contention is.

By that I mean, it is interesting again, speaking as an advocate how we spend a lot of our time in the legislature hearing criticisms of our public school system, and yet in trial, the state's frequent, as I've watched you before the Supreme Court and the state, frequently argued that our schools are getting great results. We shouldn't say they're underfunded because we're doing so well.

Schools are kind of in the position of usually wanting to talk about the good things that they're doing and yet at the same time have to also kind of say, "But we're not adequately funded" or "We're not suitably funded" presumably around the grounds, "Maybe we're doing well, but we could do better."

It's sort of interesting a little bit to me about how sometimes arguments come together when you have to have that debate. I've observed in some of the interviews that I've done, you talk about our continuous improvement, I've just looked at some new data, here and again, this is spring of 2025, whoever is watching this, Kansas last year set an all-time record of high graduation rate, high number of graduates, and the highest number of post-secondary credentials ever awarded by our Regent system.

 

So, on one hand, you can say, "We're following that mandate to improve," and yet we also know that there are sort of continuing demands to do better. We continue to have some students not doing as well. I guess what I'm saying what you said, I think there is from the viewpoint of education some good news, but I think most people would agree we will still have challenges, and maybe we'll see that in court in the future. I don't know.

AR: It is certainly a tension, and it's push and pull. What you've described as achievement probably speaks to the notion that the system does work, and we get there, but it's not without a lot of challenges. It would be hard to imagine how much poorer the quality of life would be today without that tension, without the advocacy that goes on, and without the collective wisdom that pushes things ultimately in the right direction.

MT: It seems to me, another thing we've talked about that I don't know, you probably talk to colleagues, other people. I know there's organizations for everything, right, and a journal and all of that around. So, I don't know how unique Kansas is, but I think there is a sense that in general Kansans really do value education, and at times when schools were saying, "We're underfunded," that was at least being backed up by I think some measures of public opinion and some political results that would argue the public was generally agreeing that maybe they didn't like what was going on. They didn't like perhaps cuts that they were seeing or whatever it may have been. So I guess there is both the litigation strategy, the legislative strategy, but ultimately the public sentiment strategy that underlies all of this.

AR: Well, credit John Robb with early on in the—I would have focused completely on the courtroom and on the courts with what the legislature was doing, but I think through the organization, Schools for Fair Funding, there has been a network of political action in addition to the litigation that has really pushed forward the results of everything. That wasn't my focus, but it was the focus of a lot of folks within the group, and good for them.

Because one of the lessons that we learned as a result of Montoy is if you declare victory and spike the ball in the endzone and turn your back on the issue, things don't get better. The legislature and politics will start moving the money away from the schools.

MT: Well, there's always limited resources. There's always all kinds of demands on it. The issue is by what process do you, what I think you've observed I believe and what others have talked about is the constitution really lays out some stands for educational funding that is not necessarily true of other programs and not necessarily true in other states, but the people of Kansas in their constitution have set out some things that have guided the courts, and that's part of how we've gotten the responses that we have.

AR: I agree with that. It's the language in the constitution that has pushed the results that we're seeing.

MT: This has been enormously enjoyable for me, I hope for our viewers they can say the same. I appreciate your letting me walk through some of my history and maybe moments of trauma over the last several decades trying to be in more of that legislative process. Any last comments? Anything we've missed?

 

AR: No. I appreciate the opportunity to go through all of this with you. It's been a lot of fun.

MT: We'll hope our viewers will feel the same way. Thank you very much as always for watching these. We appreciate it.

[End of File]