

182

121

THE WEST VIRGINIA PAULEY V. BAILEY DECISION:

AN HISTORICAL PERSPECTIVE

by

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(ABSTRACT)

In 1979, the West Virginia Supreme Court remanded to the trial court the highly controversial Pauley v. Bailey decision. Subsequently, the trial court judge, Arthur Recht, following the specific instructions of the Supreme Court, ruled the public school finance system unconstitutional. Justice Recht ordered the West Virginia Legislature to develop a state system for funding the public schools that would comply with the constitutional mandate to provide a system of public schools that was "thorough and efficient" (West Virginia Constitution Art. 13 Section 1). Thus, West Virginia joined six other states that have ruled their state systems for financing public schools violative of their respective state constitutions. The purpose of this study was to identify the historical circumstances affecting the public school finance system which ultimately led to the Pauley decision. In addition, the study traced and chronicled the legislative and judicial attempts to implement Pauley through the end of the West Virginia Legislature in 1984.

Dedication

I dedicate this study to my wife,
 , without whose assistance I could not have
completed this study.

Acknowledgements

I am indebted to many individuals who have helped me during my years of study at Virginia Tech. I am sincerely grateful for the support and encouragement of my family: my mother _____, my sons, _____, and my wife _____. Their encouragement, support, and assistance made it possible for me to bring this study to fruition.

I am especially indebted to _____ and _____ who served as my advisors. Dr. Salmon _____ served as chairman of my dissertation committee. To him I owe a special thanks for his guidance, patience, understanding, and direction. I also thank Dr. David Alexander, Dr. Wayne Worner, Dr. Thomas Hunt, and Dr. Roy Truby, the members of my committee who helped direct the completion of this study. In addition, I wish to thank the participants interviewed. Their cooperation and information made it possible for me to realize this study. Three other people need acknowledgement for their assistance.

_____ transcribed the interviews, _____ did my first draft typing, and _____ typed the final manuscript.

There were many others who extended to me assistance, patience, direction, information, and encouragement. It is impossible to recognize each of these individuals, but each played an important part in completing this study.

TABLE OF CONTENTS

		Page
ABSTRACT		ii
DEDICATION		iii
ACKNOWLEDGEMENTS		iv
 CHAPTER		
I	Introduction	1
	Review of Fiscal Equalization Cases.	3
	Problem and Purpose of Study	12
	Pauley v. Bailey: Origin of Litigation.	13
	Study Methodology.	14
	Characteristics of Historical Methodology.	16
	Methodological Structure	18
	The Interview Model.	19
	Interview Participants	21
	Limitations of the Study	22
	Procedures of the Study.	24
	Organization of the Study.	24
II	Pauley v. Bailey	33
	Introduction - West Virginia's View of Equity.	33
	The Original Pauley, et al. v. Bailey, et. al. Kanawha County Circuit Civil Action No. 75-1268	34
	The Court's Definition of Thorough and Efficient	38
	The Court's Definition of Thorough and Efficient As Applied to Pauley v. Kelly	39
	Contributing Factors: Role of State Tax Commission in Property Tax Assessment.	49
	Problem of Property Assessment	50
	Contributing Factors: West Virginia State School Aid Formula.	52
	Contributing Factors: Disparity of Per-Pupil Expenditure	55
III	The Participants and the Interview Information	63
	Introduction	63
	The Interview Process.	63
	Chronology of the Pauley Cases	64

	Initial Motivation of the Plaintiffs	64
	Seeking Legal Actions.	65
	Researching the Case	66
	Views of Action of Financing of West Virginia Public Schools	67
	Participant's Roles: 1975-1982.	68
	Pauley v. Kelly: Original Complaint	69
	Thorough and Efficient Defined	70
	Pauley v. Bailey	71
	The Recht Decision	72
	The Master Plan.	73
	Role of Legislative and Executive Branches Prior to Pauley v. Kelly.	77
	Projecting Equity.	79
	Resolutions.	82
	Summary of Interview with Judge Recht, Presiding Judge	89
IV	West Virginia's Attempt to Meet Thorough and Efficient	101
	Introduction	101
	Supplemental Order	102
	Appeals Attempted.	103
	Reported Groundwork for Master Plan.	106
	Developing the Master Plan	107
	The Master Plan Developed by West Virginia's Department of Education.	113
	The Master Plan: West Virginia State Tax Commissioner	119
	The Legislative Response to Pauley v. Bailey	123
	Senate Bill 15	124
	Senate Bill 131.	126
	House Bill 1731.	130
	Senate Joint Resolution 4.	131
V	Conclusions and Findings.	139
	Background of Study	139
	Pauley v Bailey: Findings.	144
	Tax Equity.	145
	Balancing the Branches of Government.	147
	Extent of Funds Expended After Pauley v. Bailey.	149
	Distinguishing Factors.	150
	Motivation for the Initial Action	151
	Changes Resulting From Pauley v. Bailey.	153
	Questions Raised and As Yet Unanswered.	158

BIBLIOGRAPHY 163
APPENDIX 169
VITA

LIST OF TABLES

Table	Page
1. West Virginia Basic Resources Per Pupil Expenditures 1975-76	58
2. Summation of Interviews.	85

CHAPTER I

Introduction

Throughout the history of education in the United States one finds most significant political issues eventually have become judicial ones.¹ But the means by which issues are conceived and developed are often quite different. The idea of fiscal equity in the state systems of public elementary and secondary education can be traced to academia. Strayer (1923) first advocated the theory of fiscal equity in the Report of the Education Finance Inquiry Commission.² Although the kernel of the idea of fiscal equity was addressed by Cubberley prior to 1920, Strayer and Haig gave impetus to fiscal equity with the introduction of the minimum foundation program concept in 1923.

Ten years later, Mort (1933) noted the power to tax rests with the legislature, not the local taxing unit. Developing this idea, Mort kept alive the issue of fiscal equity of available financial resources. Mort (1933) proposed:

The true criterion of the relative ability of local units to pay for education is the ability to pay under the taxing system established by the state rather than the ability to pay under an ideal taxing system.³ (p. 169)

The notion that the geographical location of children should not make a difference as to the quality of education they receive has not always been the issue of litigation of

equalization of educational opportunity. Some of the litigation has involved civil rights; some has involved the rights of special-need students, while still other litigation has focused upon the issue of compulsory attendance.⁴ This chapter, however, confines itself to litigation involving the fiscal equalization of public elementary and secondary financial systems.

During the 1960's, public school finance litigation changed direction in its form, moving from the aggrieved taxpayer to a challenge of the method of distributing funds, because many public school finance systems allowed considerable variance in financial resources per pupil. It had long been recognized by both citizens and professional educators that the quality of public schools depended on the child's geographical location in many states.⁵

Throughout the country, courts have applied various approaches to review challenges to the methods used by states in financing public elementary and secondary education. Initially, the fiscal equalization cases focused primarily upon fiscal disparities among school districts. Plaintiffs based their cases upon the equal protection clauses of the federal and state constitutions. Later, some of the challenges were based upon whether adequate education services were being provided.⁶

Review of Fiscal Equalization Cases

The first state fiscal equalization case to gain national attention was Serrano v. Priest in which the California Supreme Court in 1971 ruled the method of funding public education unconstitutional. A portion of the court's decision was based upon the state's equal protection clause which was being violated because the state school finance system made the quality of education a function of the wealth of the local school district.⁷

The precedent for recent school finance reform may be found in Serrano (1971). In the original decision, the court ruled on the basis of the equal protection clause of the California Constitution and provisions in that constitution related to education. The court further declared that education was a fundamental interest and was protected by the constitution.⁸

In 1973 the United States Supreme Court in San Antonio Independent School District v. Rodriguez held that the right to an education is not a guaranteed right under the United States Constitution. The plaintiff contended the Texas method for financing public schools violated the equal protection clause of the federal constitution because the school finance system relied upon local property taxes as a source of revenue.

The United States Supreme Court in Rodriguez ruled that the Texas system was a rational approach to school finance and did not operate to the disadvantage of any clearly identified class of citizens. Although the Texas system had recognized deficiencies, the court found the school finance plan a reasonable means of accomplishing the state interest of maintaining local control of educational decisions while providing a minimum educational program for all districts.⁹

It became evident that the courts were being called upon to interpret the legality of the school finance systems of the states. The Serrano decision generated a number of Rodriguez-type cases in state and federal courts.¹⁰ The violation of the education articles of the state constitutions served as the approach for litigation in some states.

In the original Robinson v. Cahill decision of 1973, the court declined to base its holding upon the equal protection guarantee of state constitutions due to the potential impact the ruling could have on other governmental services.¹¹ Instead, the court interpreted the constitutional provision, mandating the establishment of a "thorough and efficient system of free schools" which placed an obligation on the state legislature to provide educational opportunities to equip children for citizenship and employment in contemporary society.¹²

In a similar action, the Supreme Court of Connecticut in Horton v. Meskill (1977) found the financing system of the elementary and secondary schools to be unconstitutional.¹³ As a result of the court's finding, the Connecticut Legislature in 1979 enacted legislation in an attempt to achieve equity in education. The constitutionality of the new plan was challenged in 1984. The plaintiffs stated that not only the 1979 school finance legislation, but also subsequent enactments, were unconstitutional. The post-1979 enactment included phasing in state funding at a lower level and slower rate than originally determined, substituting three-year old data for two-year old data for calculation purpose. The trial court and Supreme Court found the original 1979 plan constitutional but disagreed on the post-1979 amendment. Subsequently, the Supreme Court remanded the case back to the lower court. The lower court was instructed to review the amendment in relation to a three-pronged test established by the Supreme Court.¹⁴

In 1974 the Washington Supreme Court addressed the issue of financing public elementary and secondary schools and ruled the Washington public school finance system constitutional in Northshore School District No. 417 v. Kinnear.¹⁵ The court partially reversed itself four years later in Seattle School District No. 1 of King County v.

State and ruled that the state foundation program was unconstitutional as applied to Seattle. In the 1978 decision, "the court did not focus its attention on disparities among Washington school districts except as caused by the reliance of many school districts on special excess funding for discharging their duty to provide a basic education."¹⁶ By design, special excess funding was supposed to supplement basic education programs for all children. The higher court agreed with the lower court's opinion that "state funding was insufficient to provide for any of the suggested definitions of basic education or a basic program of education."¹⁷

In Wyoming, Washakie County School District No. 1 v. Herschler (1980), and in Arkansas, Dupree v. Alma District No. 30 (1983), the courts followed the earlier decision of Serrano v. Priest. In Wyoming, the plaintiffs sought relief from alleged inequities in the state school funding system and asked that the system of funding be declared unconstitutional because it denied equal educational opportunity.¹⁸ In Arkansas, the court declared the public school finance system relied extensively upon the local tax base of the individual school districts.¹⁹ In both decisions, the courts based their decisions and findings upon the equal protection clauses and education articles of the respective constitutions of Wyoming and Arkansas.

However, a review of the fiscal equalization cases will show that the courts have not been consistent in their rulings on the question of the constitutionality of state finance laws that permitted unequal expenditure of funds among school districts. Nevertheless, school finance reform, initiated by the Serrano decision, continued during the 1970's even though the judiciary in some states found that some school finance systems were constitutional.

The litigation on Levittown v. Nyquist started in 1974 when the board of education of twenty-seven school districts and several students sought a judgment declaring the New York public school finance system unconstitutional.²⁰ Subsequently, boards of education of four of the state's five largest cities (New York City, Buffalo, Rochester, and Syracuse) became intervenor plaintiffs in the suit. Both groups of plaintiffs based their complaints on the state and federal equal protection guarantee and the state constitution's educational clauses.²¹

In 1978, a lower New York court declared the New York school finance system unconstitutional. The court ordered the state to provide a more defensible finance program within a reasonable period of time under court order enjoining the education system of the state.²²

The court found that the New York system of financing education failed in its obligation to give "all the state's

school children the opportunity to acquire at least those basic skills necessary to function in a democratic society."²³

In reversing the lower court, the highest appellate court of New York in Levittown v. Nyquist held that (1) the existing provision for state aid to finance public education did not violate the equal protection clauses of either the state or federal constitutions, and (2) the education article of the state constitution requiring the legislature to provide for maintenance and support of a system of free common schools was being met in New York.²⁴ Following the Rodriguez precedent, the court indicated that equal protection guarantees could be satisfied as long as a minimally adequate education was being provided for all children even though there were significant inequalities in the availability of financial support for local districts.²⁵ Noting that decisions regarding the allocation of public funds were matters peculiarly appropriate for state legislatures, the court indicated reluctance to override those decisions by mandating an even higher priority for education in the absence of gross and glaring inadequacy, something not shown to exist in consequence of the present state financing system.²⁶

Another setback of the Rodriguez-type litigation followed a court case in Ohio in 1979. The Ohio Supreme

Court held that the Ohio school finance system was constitutional.²⁷ The Ohio system of public school finance was challenged as unconstitutional on the basis the system violated the "thorough and efficient" and "equal protection" clauses of the Ohio Constitution in the 1979 Board of Education of City School District of City of Cincinnati v. Walter decision. The Ohio Supreme Court, after a lengthy review of the historical development of local control of Ohio public schools, decided the rational basis for supporting the present school finance system was the need to maintain traditional local control.²⁸

The second issue reviewed by the Ohio court was whether the Ohio school finance system violated the Ohio constitutional provision of "thorough and efficient." The court found no school district in the state of Ohio was totally starved for funds. While the court recognized that legislative discretion is not absolute, wide discretionary powers for the legislature were necessary. The Ohio public school finance system was ruled as "thorough and efficient."²⁹

The lower court of Georgia in Thomas v. Stewart found the state public school finance system was unconstitutional under the equal protection clause of the Georgia Constitution. Due to the Georgia public school aid program, the court agreed with the lower court that the foundation

program largely ignored the dramatic difference in taxable wealth among school districts.³⁰ However, in 1981 the Georgia Supreme Court in McDaniel v. Thomas reversed the lower court's ruling that the Georgia system of financing public education violated the equal protection clause of the state constitution. The court found the Georgia system of financing education was a rational relationship to the legislature's state purpose, namely, to provide basic education funding for the children of the state. The Supreme Court agreed with the lower court's finding that the Georgia Constitution did not restrict local school districts' officials from doing what they could to improve the quality of education. The Georgia Constitution did not require the state to equalize educational opportunities between districts.³¹

In Lujan v. Colorado State Board of Education, the plaintiffs challenged the financing of Colorado public schools claiming violation of the education clause of the state constitution. They alleged that the due process and equal protection clause of the state constitution and the equal protection clause of the Fourteenth Amendment of the United State Constitution were violated by the state system of financing public education.³²

The trial court in Colorado declared that the state's school finance system violated the equal protection clause

of the federal and state constitution and violated the state constitution mandate for the provision of a "thorough and uniform" system of public schools. The trial court further declared the state method of capital outlay financing invalid.³³ On appeal, the Colorado Supreme Court held that the state's school finance plan did not violate the education articles of the state constitution nor did it deny students equal protection of the law.³⁴

In Hornbeck v. Somerset County Board of Education, the Maryland Court of Appeals, the state's highest court, overturned a lower court's decision and ruled the Maryland scheme for financing public education was constitutional. Although the lower court found the Maryland system unconstitutional and mandated mathematical equality in per-student spending among school districts, the state high court in 1983 upheld the school finance system. While the court declined to hold that education was a fundamental right under the Maryland Constitution, it did acknowledge that there were problems in the system but noted that demand for reform must be addressed to the state legislature.³⁵

Change in judicial interpretation of state education clauses became apparent nationally with the series of school finance cases in New Jersey. At first the issue appeared to be fiscal disparity because of an excessive reliance on local property taxes for schools. A later direction became

evident in education programs whose output represented the essence of a thorough and efficient system of public education. This shift in concern from fiscal equity to educational adequacy was found in Pauley v. Kelly.³⁶

In Pauley, the West Virginia Supreme Court of Appeals held that the Kanawha Circuit Court improperly dismissed the plaintiffs' complaints which alleged that the West Virginia school finance plan violated the state constitution's thorough and efficient education article and equal protection clause. The court remanded the case for further evidence and development.³⁷

Problem and Purpose of Study

The problem stemmed from the action of the West Virginia Supreme Court when it remanded to the trial court the action of the controversial Pauley v. Kelly decision. Subsequently, the trial court Judge Arthur Recht, following the specific instructions of Supreme Court Chief Justice Harshbarger, conducted a forty-day trial.

Judge Recht ruled the public school finance system in West Virginia unconstitutional. He further found the West Virginia Legislature had failed to develop a state system for funding the public schools that would comply with the constitutional requirement to provide a thorough and efficient system of public schools for every student in the elementary and secondary schools of West Virginia as defined by the court.

West Virginia joined other states that had ruled their state systems for financing public schools violated the state constitutions. While much has been written about the Pauley decision regarding its implementation and long-term fiscal implications, little attention has been given to the historical circumstances which preceded the litigation. The purpose of the study was to identify the historical circumstances which led ultimately to the Pauley decision. In addition the study traced and chronicled the legislative and judicial attempts to implement Pauley v. Bailey through the close of the West Virginia Legislature 1984.

Pauley v. Bailey: Origin of Litigation

The plaintiffs sought a declaration of relief specifying that they had been denied a thorough and efficient system of public education as stated in West Virginia Constitution of 1872, contained in Article XII, Section I. The plaintiffs also cited violation of Article III, Sections 10 and 17, resulting in discriminatory classification in the educational financial system.³⁸

Brought by five parents of children attending public schools in Lincoln County, West Virginia, this class action, on behalf of other students in Lincoln County schools, was filed under the West Virginia Rules for Civil Procedures.³⁹ Although the complaint did not attempt to encompass all public school students in West Virginia, the original action

was amended to include all such children. Pauley, et al., v. Bailey, et al. was amended to include the Treasurer of the State of West Virginia, the Auditor of the State, the members of the State Board of Education, the State Superintendent of Schools, the State Tax Commissioner, Lincoln County Board of Education, Superintendent of Lincoln County Schools, and the County Assessor.⁴⁰

The Kanawha County Court determined in Pauley, et al., v. Kelly, et al. that the West Virginia Legislature had not provided by general law a thorough and efficient system of free schools because it failed to:

- a. Define and establish standards of a high quality system of education.
- b. Guarantee to each child enrolled in free public elementary and secondary schools that these standards would be implemented because adequate financing was not available.⁴¹

The court further found the system of financing public elementary and secondary education throughout the State created discriminatory classifications which could not stand constitutional scrutiny because the State could not demonstrate some compelling state interest to justify the unequal classification.⁴²

Study Methodology

Education history composition or synthesis includes the mechanical problems of documentation, the logical problems of relative importance and arrangement of topic, and the

theoretical or philosophical problems of interpretation. Historical research qualifies as a science in the sense that its method of inquiry is critical and objective and that the results are accepted as organized knowledge by a consensus of trained investigators.⁴³

Historical research cannot recall the action of the past to reproduce the famous scenes of history for the stage of today. Therefore, the historian must reach the elusive past through documentation and remains or apply a new social theory or evidence. Therefore, it is essential to give appropriate emphasis to all causal factors or forces in a synthetic or eclectic treatment of data rather than to follow narrowly a single school of interpretation that might exclude some part of the evidence. At times political activities may be related to history. G. R. Elton writes, "Political history is the study of that dynamic activity in the past which has direct relevance to the organizational aspects of society."⁴⁴ Political history is concerned with those activities which arise because men create, maintain, transform, and destroy their social structures. Dynamic activities depend upon the presence of force; the force applicable to political action is power. Power constitutes the essential theme of political history.⁴⁵

Another approach to historical research is the classification of education history into two major emphases.

According to Good (1972), "descriptive historians attempt to recount the particular event or selection in its own unique settings," whereas "theoretical historians try to find in their subject matter a basis for comparison classification, interpretation or generalization."⁴⁶ The historian may be in both groups at the same time.

History as a record is relative to the extent it often borrows shape and color from the subjective medium through which it passes.⁴⁷ Furthermore, the objective facts perhaps are never reproduced in their full range of authentic details. It would be folly to leap to the conclusion that nothing can be known absolutely about the historical past. History as record is part absolute and part relative.⁴⁸

The history of education is concerned with the transmission and transformation of culture over a period of time. Dealing with those points at which the leaders and the populace have met and interacted, the historian is concerned with precision and focus and will seek answers to specific questions to determine who promoted the issue, what leaders thought about the issue, and what actually happened.⁴⁹

Characteristics of Historical Methodology

The events of history joined together by relation of cause and effect are a principle which the normal person accepts without demur. Theoretically, one can attempt to

question the principle; practically, one has to proceed on the assumption that the description of the event is truthfully depicted. The natural tendency of the historian to seek the why of the event or happening is irresistible.⁵⁰

History, after all, is nothing but the distinct knowledge of actual happenings, the correct evaluation of the available testimony, the correct connection of the seemingly unrelated and often contradictory material to establish the actual order of events found in each case. History is such an infinite simplicity of principle and such an infinite diversity of application that every theory turns out to be either trivial or transcendental.⁵¹

One of the characteristics of delineating historical research is extending, correcting and verifying knowledge, a major purpose of this research work.⁵² A second characteristic of historical research is the dependency of the researcher upon the synthesis of facts or small-scale generalization and interpretation. In this study, no attempt was made to develop universal law or philosophy of education history.

History works on the principle of its material, not directly as the biologist or chemist works on his specimen in the laboratory, but indirectly through the medium of traces left in past happenings. Education history, the human story, has to deal with the self-determining agent--man--as the basis of prediction.⁵³

Statutory law and case law, or common law, as a source of illustration extend the historical approach beyond education history to legal research of societal issues. In the legal sense, historical research helps to clarify the dynamics of changes and those social forces which have helped to bring about the changes through the courts.⁵⁴ ✓

In order to understand the happenings of the past in education, the researcher must comprehend the conditions of the ex post facto methodology. When the education researcher is seeking to explain a phenomenon that has already occurred, he is confronted with the fact that he did not have any real control of the possible cause.

Kerlinger (1973) clearly defines ex post facto research as a "systematic empirical inquiry in which the scientist does not have direct control of independent variables because their manifestations have already occurred or because they are inherently non-manipulative."⁵⁵ When ex post facto research is applied, direct control of the independent variables is not possible; the researcher cannot control the experimental manipulation or random assignment, an inherent weakness of ex post facto research.

Methodological Structure

Classification of the sources used in this document is as follows: legislation, court decisions and records, school and educational records, educational publications,

non-educational documents, and interviews of major participants involved in Pauley v. Bailey.

Primarily, the secondary sources used in this study included unpublished notes of two of the participants.⁵⁶ The researcher used these sources for a variety of purposes including, but not limited to, an introduction to this study.

The last step was to conduct the synthesis of the research. Using the approach of the historical chronicle, the researcher compiled facts as stated in the timeline of this project to show particular tendencies and causations. These then became the basis for a broad generalization subsequently used for purposes of explanation and interpretation.⁵⁷

The Interview Model

The interview was semi-structured. Some of the information was obtained by asking a series of structured questions. Occasionally, the interviewer found it necessary to follow up responses with further probing in order to obtain more complete data.⁵⁸ The use of semi-structured interviews offered the advantage of being reasonably objective while still permitting a more thorough examination of the reasons behind these opinions.⁵⁹

The semi-structured approach has proven generally more appropriate for interview studies in education. It provides

a desirable combination of objectivity and depth and permits gathering data that could not be successfully obtained by any other approach.⁶⁰

The interview method was selected over the questionnaire survey because some information could be secured only through face-to-face contact with the participants. This includes primary data about opinions and attitudes as well as personal or confidential information.⁶¹ The interviewer could then follow up leads and clues in a manner not possible by means of an instrument totally prepared in advance. Quite appropriate in historical, experimental, and case studies, this method also permitted the researcher to determine the truth of the answer and the things that may have been left unsaid.⁶²

The researcher developed supplementary questions for each major character as they related directly to his/her role in the case based upon an unfolding series of subordinate questions posited by Barzun and Graff (1977).

1. What does it state?
2. Who is its author or maker?
3. What is the relation in time and space between the author and the information, overt or implied, that is conveyed by object?
4. How does the statement compare with other statements on the same point?

5. What does the researcher know independently about the author and his credibility?⁶³

These questions allowed the researcher to develop the specially designed questionnaire for each of the participants. The issues addressed in the questions were determined by the specific role the participant played in the Pauley action.

The interview format was so structured as to develop chronologically the role each major participant played in the development of the problem. The information gathered from the interview was cross-checked with available documents and written records. The interview was taped with permission; each participant was aware that there was no confidentiality. The remarks of the participants were stated as part of this research project to be used by the researcher and/or others.

Interview Participants

The participants in the interview process were selected according to their primary roles and assigned responsibilities in Pauley v. Bailey. These active participants included the following: attorney for plaintiff, plaintiff, defendants and judges. Only the positions held by the participants during the actual court action were considered. No attempt was made to adjust the data if a participant changed roles or positions following

the date of the initial action. When asked to participate, all respondents did so cooperatively. The questions asked the respondents during the interview are found in Chapter III, page 98.

Justice Sam R. Harshbarger became knowledgeable due to his role as Presiding Judge of the West Virginia Supreme Court. However, Justice Harshbarger did not hear the case, and he expressed his perceptions from the view of researcher, observer, and presiding Judge of the West Virginia Supreme Court. Judge Arthur Recht, Circuit Court Judge of the First Judicial Circuit, was asked by Harshbarger to hear Pauley v. Bailey.⁶⁴

Questions developed for Judge Recht encompassed specific aspects of the case pertinent to a historical study. His participation as trial judge required that his interview be structured somewhat differently from those of the other participants. The set of separate questions for Judge Recht appears on pages 273-274.

Limitations of the Study

This study served as a vehicle for the historical chronicle of the events affecting Pauley v. Bailey from 1975 to the close of the legislative session in 1984. The study should not be considered a technical document. For example, there was no analysis of the political framework in which the legal action took place. Further, no effort was made to

analyze the legal findings of the court. Although pressure groups were recognized in the interest of historical accuracy, no effort to determine their effects on the outcome of the findings or results was made. No attempt to establish or develop universal law or philosophy was made in this research project.

The purpose of the study was to identify the historical circumstances affecting the public school finance system which led ultimately to the findings of the Pauley decision. The study traced the actions of the West Virginia State Board of Education, the West Virginia Legislature, and judicial action to implement Pauley through the completion of the West Virginia Legislature in 1984.

The study concentrated on the information available and placed the events in chronological order. An attempt was made to unify the information gleaned from major participants to verify the actual happenings and to make these happenings as clear as possible. The human reactions of the participants were considered a part of the study.

An attempt was made to reach the past through the documents, respondent's memories, and ancillary information. A study of all aspects of Pauley, however, would have been too voluminous a task for one person to accomplish in a limited period of time.

Procedures of the Study

The techniques utilized in this study included skills derived from historical research and applied to the Pauley v. Bailey case. The purpose of the study was to identify the historical circumstances relating to the West Virginia public school finance system which led ultimately to the Pauley decision. Essentially, the study procedures were accomplished through completion of the following two steps:

Step I. Search of sources relating in particular to Pauley v. Kelly was conducted. It was necessary to determine the parameters of the case and what might have possibly influenced it.

Step II. Questions for the interviews were developed by utilizing information obtained from the review of secondary materials.

Organization of the Study

The study is structured in five chapters.

Chapter I: Introduction. Review of fiscal equalization cases, problem and purpose of study, origin of litigation, study methodology, characteristic of historical methodology, methodological structure, interview model, interview participants, limitations of the study and procedures of the study.

Chapter II: Pauley v. Bailey. Introduction, generation of the study, contributing factors, extent of fiscal inequity, disparity of funds expended in 1975, description of school aid formulae, and judicial appeals.

Chapter III: The Major Participants in Pauley v. Bailey. Introduction, interview process, list of interviews, general questions, specific questions, chronology of events according to participants, and narration of Judge Arthur Recht's participation.

Chapter IV: West Virginia's Attempt to Meet Thorough and Efficient. Supplemental Order, reported groundwork for Master Plan, Master Plan, Senate Bill 15, House Bill 1731, and Senate Joint Resolution 4.

Chapter V: Conclusions and Findings, Extent of Funds Expended After Pauley v. Bailey, influence of Pauley v. Bailey, balance of governmental branches, tax equity, distinguishing factors, and conclusion.

Major Participants

James P. Clark	Former President of West Virginia State Board of Education 1982-83 Charleston, W. Va.
Sam R. Harshbarger	Chief Justice West Virginia Supreme Court Milton, W. Va.
Daniel F. Hedges	Attorney for Plaintiff Charleston, W. Va.
Charles McCann	Former Principal, Harts High School, Lincoln County, W. Va. Superintendent of Lincoln County, W. Va. Hamlin, W. Va.
Janet Pauley	Plaintiff, Parent Sod, Lincoln County, W. Va.
Arthur M. Recht	Special Judge, Circuit Court of Kanawha County Wheeling, W. Va.
Herschel H. Rose, III	Former State Tax Commissioner of West Virginia Charleston, W. Va.
Lyle Sattes	Chairman, House of Delegates Education Committee Charleston, W. Va.
James C. Smith	Assistant State Superintendent of West Virginia School Finance and Administration Charleston, W. Va.
Dr. Daniel Taylor	State Superintendent of West Virginia Schools, 1971-1979 New York, NY
Dr. Roy Truby	State Superintendent of West Virginia Schools Charleston, W. Va.

Notes

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CHAPTER II

Pauley v. Bailey

Introduction: West Virginia's View of Equity

Finding an equitable means of distributing resources for education is difficult; it is difficult to define, and more specifically to apply. Burrup and Brimley came close to describing West Virginia's view of equity by observing that providing equal dollar input for unequal students produces unequal results. If a state system of public elementary and secondary education is to afford everyone equal probability of success according to one's needs, then equal facilities, teaching skills and curriculum are not the answer. Additional resources must be made available to students with varying needs and handicaps.¹

Resource allocation in public education is complicated by the number of official and unofficial bodies that contribute to decision making in our decentralized system. At the local level, the school system itself usually has considerable power in determining how instructional expenditures are to be allocated. But in most states, the amount of funding itself is decided elsewhere. Local funds are also supplemented by state subsidies, so the role of the governor and the state legislature must also be considered. At each of these levels, various pressure groups attempt to influence the allocation of education resources in their favor.²

The Original Pauley et al. v. Bailey et al.
Kanawha County Circuit Civil Action No. 75-1268

In 1975, the plaintiffs from Lincoln County, West Virginia, filed for a declaratory judgment in the circuit court of Kanawha County, West Virginia, on behalf of themselves and all children residing in Lincoln County. Their contention and plea for relief, based on Article XII, Section 1, of the West Virginia Constitution stated, "The Legislature shall provide by general law for a thorough and efficient system of free common schools."³

The Kanawha County Circuit Court dismissed the complaint, which stated the Lincoln County School system was inadequate when compared to other counties such as Ohio, Marshall, Kanawha, and Brooke. On February 20, 1979, the West Virginia Supreme Court of Appeals reversed the Kanawha County Circuit Court's decision and remanded Pauley v. Kelly to the trial court for further evidence. John H. Kelly, the State Treasurer, was listed first among the several defendants and the case became known as Pauley v. Kelly. Later when Larrie Bailey replaced Kelly as Treasurer, the case was retitled Pauley v. Bailey.⁴

The Supreme Court of Appeals provided guidance to the lower court by declaring the following:

1. Education is a fundamental constitutional right in West Virginia.

2. Because education is a fundamental constitutional right, any discriminatory classification found in the educational financing system cannot stand unless the State can demonstrate some compelling state interest to justify the unequal classification because of the equal protection provision of the state constitution.
3. The "thorough and efficient clause" (Article XII, Section 1) requires the legislature to develop a high quality system of education which includes high quality state standards.
4. The "thorough and efficient clause" is defined as the best education expertise allows the mind, body and social morality of its charges and prepares them for useful and happy occupations, recreation and citizenship, and does so economically.
5. The legally recognized elements in this definition of "thorough and efficient" education are the development in every child to his or her capacity of: (1) literacy, (2) mathematics, (3) knowledge of government, (4) self-knowledge and knowledge of the total environment, (5) work training and advanced academic training, (6) recreational pursuits, (7) interest in all creative arts, (8) social ethics. Also implicit are supportive services of the physical facilities, instructional materials and personnel, and careful state and local supervision to prevent waste and monitor pupil-teacher competency.
6. The West Virginia Constitution makes the funding of education second in priority only to payment of the state debt and ahead of every other state function.⁵ (p. 4)

The Supreme Court also held that the existing educational system must be tested by the high quality educational standards to be determined by the lower court. Other areas to be considered on remand included the state's foundation program for financing the public schools, tax

revenues, property appraisal system, state school building fund, and the State's administrative role including the State Board of Education and county boards of education.

Justice Harshbarger in his reversal and remand of Pauley v. Kelly recognized the Fourteenth Amendment in the federal constitution gives no equal protection rights to children seeking education equality. However, he concluded that a state is not constrained by the federal constitutional standard but must examine its own constitution to determine its educational standards. The Supreme Court relied upon similar analyses made by other state courts, in particular Horton v. Meskill, 172 Conn 615, 376 A. 2d 359 (1977) and Robinson v. Cahill, 62 N.J. 473, 303 A. 2d 273 (1973). The court stated that it may interpret the West Virginia Constitution to require higher standards of protection than afforded by comparable federal constitution standards.⁶

In addition, Harshbarger questioned the absence of a uniformly accepted definition of the concept of fiscal equity in the funding of public elementary and secondary education. He observed one must contend that equity is the dream of an idealist; it is a term so complex that it virtually defies a singular definition.⁷ The stated goals of a particular state legislature may be in opposition to the desires of various interest groups. In the absence of

directives or mandates from the courts, a state legislature may find itself unable to achieve fiscal equity, and thus unable to deliver a thorough and efficient system of public elementary and secondary education.

The concept of fiscal equity in school finance is a goal of considerable vintage; the definition is varied and changing because no single acceptable operational definition of fiscal equity exists. The federal court referred the issue of fiscal equity to the states and asked that the issue be tailored in the legislative process of individual states instead of adopting standards that were inappropriate for state policies.⁸

The precedent for defining fiscal equity is found in Serrano (1971) by the California Supreme Court. The court declared that education was a fundamental interest for pupils and was to be protected by the state constitution. A principal point was the level of funding for a child's education should not be dependent upon the wealth of the local school district. Secondly, per pupil spending did not have to be equal.⁹

Educational provisions of state constitutions typically refer to a free system of public elementary and secondary education maintained by the state. Some states, in addition, provide a "thorough and efficient system" of education. This "thorough and efficient" clause served as

the basis of Robinson v. Cahill 1973 in New Jersey, and, in conjunction with the equal protection clause, ultimately served as the basis of the Pauley v. Bailey case in West Virginia.¹⁰

The Court's Definition of Thorough and Efficient

Although some fifteen states have a constitutional requirement to provide a thorough and efficient public elementary and secondary education, the state of Ohio has been credited with the first use of the words "thorough and efficient" to describe the education system mandate to be established by its legislature.¹¹

In Pauley v. Kelly, Judge Smith found it necessary to examine the dialogue of the framers of the West Virginia constitution to try to search for their intent as they prepared to launch the new state. West Virginia was the third state to incorporate the thorough and efficient mandate into its laws. During the "convention to frame a constitution for the proposed new State of Kanawha" which convened in Wheeling on November 26, 1861, after one week of debate, the delegates received the first of several educational articles. The result was the following provision:

The legislature shall provide, as soon as practical, for the establishment of a thorough and efficient system of free schools. They shall provide for the support of such schools by appropriating thereto the interest of the invested funds.¹² (p. 60-61)

In the initial action of Pauley v. Kelly, Judge Smith attempted to ascertain whether or not the education system of West Virginia was indeed thorough and efficient. The trial court in Pauley v. Kelly was asked to decide whether the state financing system was so deficient that in certain county school districts, such as Lincoln, it failed to provide a thorough and efficient system of education. The court chose to make no definitive judgment on this point because it lacked any suitable standard to set the core value of a thorough and efficient education system.¹³

The Court Definition of Thorough and Efficient
As Applied to Pauley v. Kelly

As a direct outgrowth of the Pauley, et al., v. Kelly, et al., the court in Pauley v. Bailey raised a series of questions relating to the establishment of a thorough and efficient system of schools. The term "thorough and efficient" was defined in Pauley et al. v. Bailey, et al.¹⁴

In order to provide a thorough and efficient system of public elementary and secondary education throughout the state, the Recht Court found that specific standards of high quality education and resources to provide for these standards were necessary. Such standards should address curriculum, personnel, facilities, and materials and equipment required of all programs and support services. Further, the county school districts had to have the

capability to attract and retain high quality staff of sufficient number to perform the educational tasks. They had to provide high quality, well-maintained educational facilities, with sufficient space for all subject areas and services. Materials such as high quality textbooks and instructional supplies in sufficient quantity for each student were to be included.¹⁵

Each county school district needed to be able to develop programs of study so that students might reach their potential. Educational support service had to be available for all students, when they needed these services at their education setting. Transportation systems in each county school district had to be available and sufficient to meet the needs of each student.

The West Virginia State Department of Education functioned within a framework upon which each county school district could build educational improvements and programs relevant to its needs and resources. This existing policy was a restatement of general principles already existing in statutes and West Virginia Board of Education policy. The present policy, however, did not address the kind of educational offerings and services needed for a thorough and efficient system of education.¹⁶

With thorough and efficient defined, Judge Recht conducted a non-jury trial which commenced on August 10,

1981, and continued for approximately forty (40) days. The Recht Court, with strict adherence to issues resulting from Pauley v. Kelly, summarized them in question form:

1. What are suitable standards to seal the core values of a thorough and efficient educational system?
2. Do Lincoln County schools specifically, and the public schools of West Virginia generally, meet these standards of a thorough and efficient educational system?
3. Have the equal protection requirements in terms of equality of substantive educational offerings been met?
4. Does the system of financing public education in West Virginia violate the constitutional guarantees of equal protection in providing a thorough and efficient system of free schools?
5. Do the appraisal and assessment practices in West Virginia comply with constitutional and statutory requirements?
6. Are all state and local offices, agencies, and departments including but not limited to State Board of Education, State Superintendent of Schools, Tax Commissioner of the State of West Virginia, local county board of education, local superintendent of schools, and local assessors, performing their constitutional and statutory responsibilities?¹⁷ (p. 8)

These six questions provided a framework for the court as it rendered its opinions, findings and conclusions.

A major problem which emerged during the analysis of the testimony was the delineation of the relative role and function of the State Board of Education and that of the boards of education in the fifty-five county school districts. The court determined the direct responsibility

of a county school board is to "control and manage all of the schools and school interests for all school activities."¹⁸

The Recht Court did not find the defendants' interpretations of their duties and responsibilities, vis-a-vis local boards, to be persuasive to the performance of their responsibility.¹⁹ In its findings, the Recht Court, citing Ohio Valley Contractors v. the Board of Education of Wetzel County, et al., W. Va. 284 SE 2d, 374 (1982), maintained the role of the counties to be an effective vehicle to help provide a thorough and efficient school system. In order for county school districts to carry out this role, however, the Legislature had to adopt standards of a high quality system of education and provide resources to guarantee that these standards were being implemented.²⁰ The vehicle for this implementation certainly should be the county boards of education. However, without standards and available resources, the county school districts would be rendered impotent to carry out their delegated responsibilities.²¹

Referring to West Virginia Code, Ch. 55, Art. 13, Sec. 1 et seq., the Recht Court concluded:

The state's duty to provide a thorough and efficient education is imposed by Article XII, Section I of the West Virginia Constitution which provides: The Legislature shall provide by general law for a thorough and efficient system of free schools.²² (p. 7)

The Recht Court interpreted the Constitution mandating the Legislature to provide a high quality public elementary and secondary school system. The court observed:

The mandatory requirements of a thorough and efficient system of free schools found in the West Virginia Constitution, Article XII, Section I, demonstrates that education is a fundamental constitutional right in this State. Because education is a fundamental constitutional right, the equal protection guarantees of Article III, Sections 10 and 17 of the West Virginia Constitution demand equitable financing of the state's educational system.²³ (p. 212)

In addition, equal protection requires fiscal equity in substantive educational offerings and results. The State has a legal duty to provide equal educational opportunities by allocating resources to county school districts according to substantially related educational needs and costs. Since equality in substantive educational offerings is guaranteed by the constitution's equal protection guarantee, only available resources, not other factors, would determine the effectiveness of the total educational program.²⁴

In dealing with equal means of determining need among the various counties, Recht stated:

Equal means that all factors contributing to differences in curriculum needs and costs among counties including concentrations of educationally disadvantaged and culturally isolated students; differences in concentrations of children needing services to address specific handicapping conditions; differences in the need for vocational education programs must be incorporated into the financing structure. The State has a legal duty to insure that school systems with greater educational needs and costs receive sufficient educational resources to meet those needs so that

all children with similar needs are treated
equally and receive a high quality education.²⁵
(p. 217)

Recht determined the current system of school finance prevented Lincoln County School District and many other poor county school districts from providing educational programs and services necessary to meet the thorough and efficient system of education provision. Because of inadequate financial resources, not one single instructional program in Lincoln County School District met the test of thorough and efficient requirements as established by the court. In his summation, Recht declared, "The West Virginia school finance system thus violates the requirements of Article XII, Section 1 and Article III, Sections 10 and 17 of the West Virginia Constitution."²⁶

Recht also observed the reliance on locally funded excess levies to provide educational programs essential to a thorough and efficient system of education violated Article XII, Section I, of the West Virginia Constitution because the amount of revenue, raised through the excess levy provision and based upon the local property wealth of the county and dependent upon voter approval, varied dramatically among the county school districts. County school districts that were unable to pass an excess levy could not fund high quality programs. Many other county school districts were unable to provide high quality

programs because even a 100 percent levy was inadequate to meet the educational needs. Because West Virginia is responsible for providing a thorough and efficient system of education, it could not make fulfillment of this responsibility dependent either on the ability to pass excess levies or the amount of money raised by excess levies.²⁷

The Recht Court concluded that the system of financing public schools in West Virginia was unconstitutional in that it violated provisions of Article XII, Section 1, of the Constitution, for the legislature had not provided for a "thorough and efficient" system of free schools. The court found further violations of the provisions of Article III, Sections 10 and 17, related to equal protection on the basis that the system permitted discriminatory classifications in financing educational offerings.²⁸

Evidence showed that all West Virginia county school districts were woefully inadequate when compared to high quality educational standards. Vast differences among school districts were found to exist in educational opportunities provided in the state. Recht found Lincoln County schools to be inadequate in all areas - curriculum, personnel, facilities, and material and equipment.

In Recht's opinion, the disparities and inadequacies in the West Virginia schools were the product of the then

current school financing system. The two principal faults of the system were its inability to fund facility construction and its lack of consideration of excess levies in the computation of the amount of local support for schools.

To remedy the unconstitutionality of the state school system, Recht ordered the appointment of a "commissioner" to "devise a master plan" to address the issues of educational standards, resources to fund the standards, and public taxation. The plan was to be developed under the direction of the Commissioner and would require the assistance of the legislature, administration, and other bodies necessary to implement every component of a thorough and efficient and equal educational system, which included ingredients of high quality standards and resources necessary to guarantee deliverance of the system to every public school student in the State.²⁹

The State Tax Commissioner was ordered to develop a plan to provide the mandate of Article X, Section 1, of the State Constitution; there must be identical treatment in the valuation of all species of property within West Virginia. According to Recht, the Tax Commissioner was not fulfilling his constitutional duties as set in Article II, Section 5 and West Virginia Code, Ch. 11, Art. 1, Sec. 1. In particular, he had failed to see that the constitutional

mandates of equal and uniform taxation and equal taxation among species of property (Article X, Section 1) were enforced. The State Tax Commissioner had to provide remedial action for the many deficiencies in the findings of the court.³⁰

In Judge Recht's opinion the State Tax Commissioner was vested with extremely broad enforcement and penalty powers over county assessors, but no commissioner had taken any legal action or ordered a reassessment.³¹ Effective and uniform tax appraisals and assessments required centralized management and administration from the State Tax Department. No formulae, standards or guidelines for assessment had been furnished to assessors, and there was no procedure for updating appraisals of property values.³²

On the basis of the testimony heard by Recht, county school districts generally were not meeting all of the high quality standards. The Recht Court determined that the failure to meet high quality standards was not the result of inefficiency or a failure to comply with state statutes.³³

The Recht Court held that the equal protection provision of the State Constitution required equity in both substantive educational offerings and results. The State had a legal duty to provide equal educational opportunity by allocating resources to the county school districts according to educational criteria based upon needs and

costs. The court further held that all direct and indirect costs must be included in the state financial structure. The inequities and inadequacies resulting from the use of the excess levies to fund public education had to be eliminated.³⁴ Under no circumstances would the funding system rely on excess levies to raise more than an insignificant amount of revenue for West Virginia public schools.

It became the duty of the State Board of Education to provide a grievance procedure and remedy at the state level for citizens to pursue grievances against members of county boards of education and county superintendents or other administrative officials when they fail to provide elements of a high quality education where resources are provided or for violations of any other legal duty.³⁵

Plans for implementing the findings of the court were to be submitted and would be evaluated according to the high quality standards recognized in the Recht opinion. The Recht Court would continue jurisdiction of all further proceedings necessary to insure the implementation of the approved plan by the appropriate state and county officials.³⁶

Contributing Factors: Role of State Tax
Commission in Property Tax Assessment

Whatever method the legislature used to reform the school finance system, it had to address the problem with the property tax system. Recht declared, "No county in the state is assessing property adequately. Current appraisals are at a fraction of actual market value throughout the state."³⁷

Recht observed, "Effective and uniform tax appraisals and assessment require centralized management and administration from the State Tax Department."³⁸ Leadership and direction in the area of property taxation had to come from the state level where the resources were available.

The legislature had used its constitutional authority to vest the Tax Commissioner with specific power to supervise and correct action taken by county officials in the assessment procedure. West Virginia Code 6-9-1 designates the State Tax Commissioner as the "chief inspector and supervisor of public offices." It is the duty of the Tax Commissioner "to see that the laws concerning the assessment and collections of all taxes and levies ... are faithfully enforced" according to West Virginia Code 11-1-2 (1974 Replacement Vol.).³⁹ The statute also orders the Commissioner to "give such information and require [underlining added] such action as will tend to produce full and just assessments throughout the state."⁴⁰

Problem of Property Assessment

Property tax administration involved a number of state and county government officials in valuation of personal and real property, along with their other administrative duties. These duties were carried out by the State Tax Department, State Board of Public Works, county assessors, and county commissioners.

Throughout the history of West Virginia there existed the problem of deriving a method for the equitable application of property tax to all taxpayers within the limitations of the classification scheme. The State Tax Department had failed to direct the training of assessors and to prepare guidelines for county commissioners and their staffs in carrying out their technical and administrative responsibilities as they related to property tax administration.⁴¹

From the time West Virginia first became a state in 1863, the appraisal and assessment of property taxes had been a continuing issue. The State Constitution borrowed the description of the role of the State Tax Commissioner from the Constitution of the Virginia Commonwealth.

In 1872, the people of the state of West Virginia adopted a new constitution in which the taxation provision became Article 10, Section 1, of the West Virginia Constitution. This provision declared:

. . . taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property for which a tax may be collected shall be taxed higher than any other species of property of equal value.⁴² (p. 2)

In 1932, the people of West Virginia amended Article 10, Section 1, by ratifying what was popularly called the "Tax Limitation Amendment." Both then and now most of the revenue produced from property taxes is used to finance public schools. Therefore, statutory provisions relating to public school financing have direct implication for property taxation.

The West Virginia Legislature in 1958 adopted Article 9A, Chapter 18, of the code relating to public school financing. Section II of Article 9A provided for computation of a county school district's share of school financing and also contained provisions relating to the appraisal and assessment of property. The statute required the State Tax Commissioner to appraise all non-utility real and personal tax in each county based upon its "true and actual value." This appraisal presumably was to be completed by 1967 and was to be yearly updated.⁴³

On May 11, 1982, Recht's order found the state method of funding the public elementary and secondary schools unconstitutional and laid a fair amount of culpability for the inadequate finances available for education on an

outdated and inadequate appraisal and assessment system. Also at fault was the State Tax Department for failure to enforce proper assessment.

Contributing Factors: West Virginia State School Aid Formulae

The school aid formula in effect at the rendering of Pauley v. Bailey differed significantly from that which created the situation leading to this action. The state school aid formula, known as the Superintendents' Formula and classified as a foundation program aid, was adopted in 1951 and remained in effect until 1972. This formula was divided into four funding components: (1) salary, (2) transportation, (3) other current expenses, and (4) local programs. This formula was designed to fiscally compensate local school districts for variations in individual needs, sizes, and geographical circumstances. A required local share was based upon assessed valuation of property taxes in each county school system.⁴⁴

In 1972, the West Virginia Legislature implemented a new state school aid formula, also classified as a foundation program, which contained twelve steps and ten basic components. The first and largest step of the formula provided for a net allowance for professional educators at a maximum ratio of fifty-five professional educators per one thousand students. The second step of the formula provided

the state to fund the number of service personnel employed by the county school district at the time the formula went into effect in 1972. Allowing for fixed charges on the salary paid in steps one and two, step three helped the county school districts defray the costs of social security, workman's compensation, and unemployment insurance premiums.⁴⁵ Step four dealt with the cost of transportation, less the cost of drivers' salaries, and provided 80 percent of all transportation costs based upon a two-year deferred funding. For step five, each county received an allowance for administrative costs. Step six provided an allowance for other current expenses which was designed to provide funds for utility costs, building repairs, substitutes, personnel, and teaching supplies and materials. The seventh step of the formula, referred to as National Attainment, was designed to help low fiscal capacity districts to reach the national average for per-pupil expenditure. Step eight was a total of all the previous steps, or the sum of the first seven parts of the formula. The ninth step, referred to as the local share, was the required local contribution mandated by the State and was subtracted from the guaranteed foundation program which yielded the total basic state aid reported in line ten. Other major provisions included an allowance for the replacement of school buses at a ratio of 10 percent of the

total value of the preceding years, fleet replacement cost and insurance on the school bus fleet. The formula also provided an incentive for increasing the number of professional personnel. In addition, one provision made it possible to staff multi-county vocational schools outside the home county, and charge a portion of the professional educators to the county pupil-teacher ratio, provided by step one of the state school aid formula.

Three major changes were made to the West Virginia state school aid formula during its first nine years in use. The first change came in 1979 when step two was rewritten to allow each county school district to receive state reimbursement for service personnel not to exceed thirty-four per thousand students. It further made provision for staff improvement components to help those school districts which had not reached the 34 per thousand ratio. A second major provision was initiated in 1979 when step seven was zeroed-out for a year.⁴⁶ The funds in step seven were redistributed to step six which made it possible to begin the implementation of Senate Bill 15 passed by the West Virginia Legislature in 1981. Provisions of Senate Bill No. 15, passed May 11, 1981, reduced the amount local boards of education retained from the real and personal property tax and shifted the funds to the state government for redistribution to county boards of education having the

lower average expenditure per pupil. In the opinion of many, the action creating step 7 was a legislative attempt to prevent action by the court.⁴⁷

Contributing Factors: Disparity of Per-Pupil Expenditures

The complaint in Pauley v. Bailey centered on the varying amounts of per pupil expenditures made by county school districts which resulted from the disparity of wealth among the various counties. This created unequal educational opportunities for students throughout the state. The revenues for financing education during 1975-1976 came from two sources, West Virginia state government and local county tax levies.

The State of West Virginia provided 56.3 percent of public elementary and secondary expenditures with the remaining expenditures derived from locally required levies or special operating levies. West Virginia expenditures from local property taxes by county school districts during 1975-76 were derived from required levy sources. Grant County school system expended the greatest amount from regular, or required, levies at \$420.29 per pupil, while Lincoln County expended only \$72.13 per student, the least amount of any county school district in the state. On the average, a county school district in the state expended \$145.77 per pupil.⁴⁸

Due to considerable variance in fiscal capacity, the forty-five school systems with special operating levies during 1975-76 expended varying amounts per pupil. With the passage of a special operating levy by a majority of voters, Grant County expended the greatest amount of any school district in West Virginia, at \$357.30 per pupil. In contrast, Lincoln County, through voter approval, expended only \$72.13 per pupil, the least amount in the State. On an average for the State, \$140.38 per pupil was expended for the forty-five school districts with special operating levies. Ten school districts had no special levies in effect in 1975-76.⁴⁹

In 1975-76 the West Virginia state school aid formula appropriated funds based upon the number of students enrolled in each school district. The state appropriation from the school aid formula was the greatest for Pendleton County school district, allowing it to expend \$749.53 per pupil. The county school district receiving the least appropriation from the state school aid formula was Grant County school district which recorded an expenditure of \$440.15 per pupil. Of the 55 school districts, Lincoln County school district ranked twentieth from the top and expended \$608.44 per pupil. The average school district in the State expended \$579.46 per pupil.⁵⁰

In the calculation of state aid plus regular levy funds, Pendleton County expended the greatest amount, \$860.75 per student. Lincoln County was fifty-third of the 55 school systems, and expended \$680.27 per student. The statewide average expenditure was \$725.23 per student.⁵¹ By calculating the state aid plus total property tax incorporating the special operating levy, Grant County expended the greatest amount at \$1,217.00 per student. Lincoln County, ranked forty-ninth, expended \$752.40 per student. The statewide average per pupil expended was \$865.61.⁵²

TABLE 1

West Virginia Basic Resources Per Pupil Expenditure 1975-76

Highest State Aid	High Expenditure Per-Pupil	School District with Low Local Levy	State-Wide Average
Pendleton County Schools	Grant County Schools	Lincoln County Schools	State-Wide Average
No Special Levy	Special Local Levy	Special Local Levy	Special Local Levy
\$00.00	\$357.30	\$72.13	\$140.38
Required Local Levy	Required Local Levy	Required Local Levy	Required Local Levy
\$111.22	\$420.29	\$72.13	\$145.77
Received State Aid Per-Pupil	Received State Aid Per-Pupil	Received State Aid Per-Pupil	Received State Aid Per-Pupil
\$749.53	\$440.15	\$608.27	\$579.46
Total per Pupil Expenditure			
\$860.75	\$1,217.74	\$752.13	\$865.61

The West Virginia State School Aid Formula is composed of four basic components:

1. An amount raised from local levy on real and personal property.
2. The state foundation aid which is money the State pays out of general revenue funds to the counties based on a formula composed of seven components.
3. State supplemental benefits.
4. Amount raised locally by special levy by vote of the people in each county. (School Law WV 1980 11-8-16).

Developed From "Trends in School Finance," Charleston, West Virginia: (West Virginia Department of Education 1976)

Notes

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2. John D. Owen, School Inequality and the Welfare State. Baltimore, Maryland: The Johns Hopkin University Press, 1974, p. 32.
3. Pauley et al. v. Kelly et al., No. 14036, Kanawha County, Charleston, W. Va., p. 11.
4. Roy Truby, "Pauley v. Bailey and the West Virginia Master Plan," Phi Delta Kappan. Vol. 15, No. 4, Dec., 1983, p. 284.
5. Thomas McNeel, "A Summary of the Development and Contents of a Master Plan for Public Education in West Virginia." Paper presented at a meeting of League of Women Voters, Sisterville, W. Va., August, 1983.
6. Ibid., p. 7.
7. Burrup and Brimley, op. cit., p. 124.
8. K. Forbis Jordan and Mary P. McKeown, "Equity in Financing Public Elementary and Secondary Schools" as cited in James W. Guthrie (Ed.), School Finance Policies and Practices the 1980's: A Decade of Conflict (Cambridge, Massachusetts: Ballinger Publishing Co., 1980), p. 124.
9. Ibid., p. 112.
10. Ibid.

11. Debates and Proceedings of the First Constitutional Convention of West Virginia: 1861-1863 as cited in Pauley v. Kelly, No. 14036, Opinion of Justice Harshbarger.

12. Tom C. Miller, et al., Who Owns West Virginia: Vol. 1 (Huntington, Huntington Publishing Co., 1975), p. 60-61 as cited in Pauley v. Kelly, No. 14036, Opinion of Justice Harshbarger.

13. Pauley v. Kelly, op. cit., p. 39.

14. Ibid., p. 8.

15. Ibid., p. 9.

16. Ibid., p. 99.

17. Pauley v. Kelly, 255 SE 2d 859. 878 (cited in Pauley v. Bailey, p. 8).

18. Pauley v. Bailey, op. cit., p. 4-5.

19. Ibid., p. 5.

20. Pauley v. Kelly, op. cit., p. 6.

21. Pauley v. Bailey, op. cit., p. 7.

22. Ibid.

23. Pauley v. Bailey, op. cit., p. 212.

24. Pauley v. Kelly, as cited in Pauley v. Bailey, p. 217.

25. Pauley v. Bailey, op. cit., p. 217.

26. Ibid., p. 218.

27. Ibid., p. 219.

28. Pauley v. Bailey, op. cit., p. 212.

29. Ibid., p. 237.
30. Ibid., p. 226
31. McNeel, op. cit.
32. Pauley v. Bailey, op. cit., p. 194.
33. Ibid., p. 104.
34. Ibid., p. 163.
35. Ibid., p. 243.
36. Ibid., p. 237.
37. Ibid., p. 220-221.
38. Thomas McNeel, "A Summary of the Development and Contents of a Master Plan for Public Education in West Virginia," op. cit., p. 4.
39. Ibid.
40. State Ex Rel. Hershel H. Rose, State Tax Commission, et al. vs. M. M. Jack Fewe, Assessor, et al., 295 SE 2d 689, 1982, p. 7.
41. A Tax Study for West Virginia in the 1980's, West Virginia Tax Study Commission, Charleston, WV, 1984, p. 80.
42. Pauley v. Bailey, op. cit., p.2.
43. Ray Killen as President, Logan County Board v. Logan County Commissioner et al., 294 SE 2d 434 (1982), p. 2.
44. Personal interview with William Hamilton, former State Deputy Superintendent of Schools, Charleston, West Virginia, June 13, 1985.
45. W.Va. Code 18-9A-4, 1972.

46. W.Va. Code 18-9A-10, 1979.
47. W.Va. Code 18-9A-9, 1981.
48. "Trends in School Finance," (Charleston, W. Va: West Virginia Department of Education, 1976), p. 10.
49. Ibid.
50. Ibid., p. 10.
51. Ibid., p. 12.
52. Ibid., p. 12.

CHAPTER III

The Participants and the Interview Information

Introduction

The interview process included collecting, collating, and interpreting information from the participants in the action. This chapter is primarily a chronological reconstruction and comparison of information covering the time period between the fall of 1972 and the close of the West Virginia Legislature in 1984. It proved impossible to draw a common conclusion from the answers to the questions asked of the participants, excluding those directed to Judge Recht. This is due in part to the variety of roles participants played. (See p. 98, Chapter III, for questions.) In an attempt to present an overview of the data, the researcher separated the responses of all major characters, charting them to show the variety of answers given by the respondents.

The Interview Process

Each person was contacted several weeks prior to the requested interview date. The researcher explained the reasons and the method for the interview process. In some cases, in response to their requests, respondents were furnished copies of the questions in advance. Each interview was taped with the respondent's permission.

Immediately after each interview, a stenographer transcribed the information in its entirety. (See appendix, p. 170.)

Chronology of the Pauley Cases

Initial Motivation of the Plaintiffs

The intent of this chapter was to develop a historical record of what happened and, if possible, why it happened as viewed by the participants. From the perspective of an observer of the Lincoln County schools in the fall of 1972, there did not appear to be any imminent public issue. But there was a major problem at one of the elementary schools; the septic system was allowing sewage to come to the surface of the play area of the McCorkle School. In an effort to correct this situation, Janet Pauley, eventually the plaintiff in the suit and mother of two of the children named in the suit, attended a Parent Teacher Association meeting and discovered other problems. Pauley explained:

I went to the P.T.A. meeting that Friday night and found several problems at the school, including broken desks and broken windows. My two sons were in a class with only ten textbooks for the twenty-three students in their class.

My husband and I had just spent eleven years in Indiana, so we were told by our neighbors on our return to Lincoln County not to cause trouble. I went to Hamlin, the county seat, the week following the P.T.A. meeting, and was informed by the school officials that there was no money to make the necessary repairs to our school.

A few days after my visit to Hamlin, the school officials came to McCorkle School and started to run a pipe from the sewage tank to the

stream. I called the state health officials and had this action stopped. From that point on, there was animosity toward me by the school [officials]. The principal came to my door and told me if I came back on the school property, he would have me arrested.

The threat by school officials seemed to evolve from Pauley's efforts to seek answers and solutions to the problems of the Lincoln county schools, in particular the problem concerning the septic system. After searching for answers from teachers, administrators, and county board members, she became frustrated and contacted state officials. The activities of Mrs. Pauley led to a coalition of parents of students in Lincoln County School System. The parents of students in Lincoln County Schools were familiar with involvement in school-related activities. In fact, over the years, parents had offered donations to pay for materials for the upkeep of the schools. However, only five parents became involved in the coalition with Mrs. Pauley, who had to encourage them to step out and take action. According to Mrs. Pauley, much confusion as to what was really taking place ensued so that even Pauley did not know exactly what was happening.

Seeking Legal Actions

Believing she and the other plaintiffs had no other recourse, early in 1973, Pauley went to the office of Daniel Hedges, Appalachian Legal Aid Attorney, to explain the

circumstances of her concern for the situation at McCorkle School. Hedges informed her that if anything were going to be done about this problem and problems of other children, it had to be done through the state courts. West Virginia had two constitutional mandates that seemed to provide a possible remedy. Article 12, Section 1 of the State Constitution contained the thorough and efficient mandate, while Article III, Sections 10 and 17 proffered the equal protection mandate.

Prior to this time, Hedges had been following the progress, or lack of progress in some states, of the litigation dealing with fiscal equity in other states. In Hedges' opinion, the issue in West Virginia, however, was different. Whereas some states had several hundred school districts, West Virginia had only fifty-five: thus, Hedges believed that the disparity from district to district was not as great.

Researching the Case

After meeting with his clients, Hedges began researching the case, putting together a complaint and gathering materials for the upcoming trial. After filing the case in April 1975, Hedges had to develop more factual data by visiting schools, interviewing personnel, acquiring documents, and making comparisons.

At this time, Charles McCann, who would eventually become superintendent of the Lincoln County school system, was principal of Hart High School. McCann was approached by Hedges to conduct a survey of needs in the classroom in the high school, which was one of the schools in Lincoln County with a disproportionately high number of students receiving free and reduced lunches. The survey conducted by McCann and his teachers was an attempt to determine how well the facility and programs met specific standards prepared by Hedges. This served as McCann's introduction to a case, which until this point, was known to him only as gossip.

Views of Action on Financing of
West Virginia Public Schools

How then was the Pauley v. Kelly action as it related to the financing of the public schools of West Virginia in 1975 perceived by those characters who participated in it? At this point in time, probably only Hedges was aware of its full consequences. Hedges seemingly had the foresight to comprehend the full impact of a favorable judicial decision and the possible court-ordered remedies. He alone seemed to understand all aspects of the case. Pauley perceived the action simply as a means to obtain sufficient resources to operate properly the schools in Lincoln County. Her main concern was for improved sanitary and physical conditions of the school so that her children would benefit.

McCann, who would become a consultant in the case, perceived that something was wrong on the local level or the state level in the system for providing funds for public elementary and secondary education. McCann hoped that a favorable decision would result in additional money in order to do the small things necessary in his school.

Another participant in the action was Daniel Taylor, then State Superintendent of West Virginia Schools. Prior to this action, Taylor and Hedges had discussed the educational problems and circumstances surrounding the West Virginia school system during the 1970's. In particular, they discussed financing public schools and the inequities which existed because of inequities inherent in West Virginia law. They began to look at the question of inequity based upon differences in property value as a consequence of what had happened in the Serrano case in California and the Rodriguez case in Texas. Taylor observed that it was this issue which Pauley and the other plaintiffs became interested in testing in West Virginia.

Participants' Roles: 1975-1982

Once the case was filed in 1975, the roles of the major participants changed, with the exception of that of attorney Hedges. As noted earlier, Pauley acknowledged she did not fully understand the case or the final decision. She mainly was aware that the case had boosted the morale of her children.

In July 1979, Roy Truby replaced Daniel Taylor as State Superintendent of West Virginia Schools. At that time, Pauley v. Kelly was pending. Because Truby was new to the State and not completely familiar with the West Virginia public school finance system, he named his newly-appointed assistant, James Smith, to coordinate the Department of Education's response to the action. Smith, who had been a superintendent in one of the larger counties, saw the case as a way to improve West Virginia education. However, he found himself serving as the main witness for the State and developing, to a large extent, most of the defense relating to state finance. The magnitude of the 1975 complaint became evident as Smith observed the testimony in the court.

Attorney Hedges, as counsel for the plaintiff, did not experience a change in role in the Pauley v. Bailey action. The only person involved in every stage of the case, Hedges' participation did not substantially change from 1975 to 1982. During this period, he put together information to make a factual presentation. The issue was presented to the State Supreme Court and argued in the fall of 1978.

Pauley v. Kelly: The Original Complaint

There was some question concerning Judge Smith's opinion of February 20, 1979. He issued his opinion finding there was a denial of a thorough and efficient education and denial of equal protection. He found for the plaintiffs in

factual issues and on legal issues, but he then dismissed the case. Attorney Hedges suggested that the case may have been dismissed because it needed to go to the Supreme Court in order to obtain a detailed resolution of its complex and comprehensive legal issues. Smith ~~granted~~ the motion to dismiss the suit but the West Virginia Supreme Court reversed and recognized that the granting of the motion to dismiss was procedurally incorrect.

After the reversal of Judge Smith's opinion, the direction of the case changed dramatically. At that time, the West Virginia Supreme Court began developing specific directions as to how to deal with Pauley v. Bailey. In particular, the duties of the State Legislature in providing for education according to the constitutional mandates as set forth in the thorough and efficient mandate and the equal protection mandate were articulated.

Thorough and Efficient Defined

Once the case was appealed to the West Virginia State Supreme Court, Justice Sam Harshbarger was assigned to the case to write it. After approximately eleven months, Harshbarger arrived at a definition of thorough and efficient which was based in part upon the Jeffersonian principle that democracy and freedom depend upon an educated electorate. He observed that it was vital to a continuation of the government that the population be educated,

particularly in the case of West Virginia where there tends to be an economic domination by powers which historically have been unconcerned about education. After determining that the maintenance of a democratic society depends upon an educated citizenry, he considered what the end product of a public school education should be and what was necessary for children to be able to do after they had completed schooling. Harshbarger discussed rulings of other cases dealing with the thorough and efficient standard, and once written, the West Virginia Supreme Court accepted the Harshbarger version precisely as presented. From Harshbarger's definition sprang the rest of the direction to the courts to determine whether or not the legislature had been meeting the thorough and efficient mandate of the West Virginia constitution.

Pauley v. Bailey

The State Supreme Court was then faced with the choice of referring the case to an appointed special master or a circuit judge. Determining the latter was the preferred choice, the court decided that the case should be tried by a circuit court judge in Kanawha County, the court of original jurisdiction. However, due to an exhaustive court schedule of Kanawha County judges, Judge Arthur Recht from Ohio County was asked to hear the case as a member of the Kanawha County Court.

Harshbarger's definition of a thorough and efficient education was presented to Judge Recht in the West Virginia Supreme Court's charge to him. Recht was directed to take expert testimony and measure it by the definition of thorough and efficient given to him. In addition, he was to hear testimony concerning the educational system which then existed in West Virginia and measure it against Harshbarger's definition.

The trial, which would take approximately 40 days, went from August 10 through December of 1981. The court heard testimony from approximately 115 witnesses and considered approximately 1,200 exhibits. This voluminous testimony allowed the court to assess the West Virginia system of funding public elementary and secondary education and to measure it against what should exist under the thorough and efficient definition established by Justice Harshbarger. The finding was that there did not exist in West Virginia "the best that the state of education expertise allows." Thus, the court had to determine the reason for the failure and found the method of financing public elementary and secondary education throughout the State at fault.

The Recht Decision

On May 11, 1982, the Recht Court issued its detailed 244 page opinion declaring the system of education in West Virginia unconstitutional in terms of the inadequacies of

the substance of educational offerings as well as the equity in educational offerings of opportunity. In addition there existed an inadequacy in the State's property assessment appraisal efforts. Immediately labeled the "Recht Decision" by the press and many educational leaders, the opinion was received with both enthusiasm and apprehension. The emotional impact of the opinion and its reception seemed to disturb Recht. He resented the label "Recht Decision" and suggested it was something he would change if he possibly could. He protested that any judge who was given the charge he received and listened to the same testimony would have arrived at the same opinion.¹

The Master Plan

The next step, taken by Recht, was to develop a plan for public education which would be presented to the Legislature to serve as a blueprint for further legislative action. Also, a special commission, working under the aegis of the Court, needed to be appointed which would be in charge of carrying out the principles set forth in Pauley v. Bailey, based upon the law and evidence established in the case. Recht stated the most logical department or person to do this was the State Department of Education, the State Superintendent of Schools, and the State Board of Education because of their constitutional obligations to carry out the thorough and efficient system of free schools.

In July of 1982, the State Department of Education, through State Superintendent Roy Truby, officially announced they were no longer taking an adversarial role in the case. Truby and the State Board of Education removed themselves as defendants and determined they would not appeal any portion of Pauley v. Bailey. According to Recht, the next logical step was the appointment of the State Board of Education as the Special Commissioner. It was not, according to him, a compromise. It was simply something that should have been done initially if it could have been done.

The plan, or blueprint as Recht labeled it, would eventually be entitled the master plan. Recht's original decision, according to Truby, offered somewhat utopian standards. Compounded with those standards was a limited timeframe of three months to develop a plan which, according to Truby, should have developed over a one to two year period. This limitation was the result of the coercion of the attorney for the plaintiffs who wanted the document in time for the present legislature to act upon. Chaired by Thomas McNeel, work on the plan began with three individuals sharing the responsibilities: James Smith was in charge of the finance section, James Gladwell the facilities and services, and John Pisapia the educational standards. Under these four men a committee of 95 struggled to meet the December 15, 1982, deadline. Recognizing the ultimate

adoption of the master plan was a legislative function, Recht noted the Court did not have the power or authority to demand that the legislature adopt this plan. Eventually, however, the master plan was approved by a memorandum opinion dated January 5, 1983.

At this point, a crucial question became evident. To what extent was the master plan a viable solution to resolving the original complaint? The responses of the various participants ranged from enthusiasm for a document which went beyond addressing the original complaint to that of a document which provided only a direction for improvement. Both Daniel Hedges, attorney for the plaintiffs, and Lyle Sattes, Chairman of the House Education Committee, had certain reservations. Hedges observed that the master plan lacked specific detail necessary to rectify all the problems addressed in the original complaint. He acknowledged that the master plan coupled with the court's opinion of May 11, 1982, provided a blueprint to solve the glaring inadequacies of the Lincoln County School District as well as similar county school districts of West Virginia. Sattes observed that the master plan gave direction to developing a really fine educational system. It also had much information to offer and provided laudable goals and logical approaches for dealing with many of the problems in education. His biggest concern seemed to be that the master

plan might be construed as the only approach, and he praised Recht's common sense observation that it was only one approach, only one plan of several possible alternatives. In addition, Sattes proposed that the master plan would not necessarily be the best approach to solving all the problems facing public elementary and secondary education in West Virginia. James Smith, one of the major architects of the plan, however, suggested it went beyond the original complaint. Since it was an attempt to take the input side of the order and have outcome references as part of it, Smith proposed that the master plan allowed state leaders to affect education with these inputs, and expect certain things at its conclusion, including a comprehensive evaluation.

probably the most conservative assessment of the master plan was made by Truby, who observed the master plan really tempered the initial decision. Initially viewing the standards in the original decision as utopian, Truby applauded Recht's latitude in allowing the State Department of Education to develop a master plan, which Recht observed, met with remarkable fidelity the original intent of the examples of high quality standards in Pauley v. Bailey. The master plan was then embellished into the final order; thus Recht recognized that the master plan had to be a "living, breathing document" and that the standards were subject to

change. The consensus of the participants appears to support Truby's final appraisal that the master plan in and of itself was not a viable solution, but when it was finally translated into State Board of Education policy, it became one.

Role of Legislative and Executive
Branches Prior to Pauley v. Kelly

In retrospect, as the events of the case progressed, one question seemed to become more and more evident. Why had not the legislative and executive branches of government been more responsive to the question of equal financing of the public schools of West Virginia prior to Pauley v. Kelly? No easy answer to this question existed. Four issues, however, emerged: local control vs. central control; disinclination of a legislature to be revolutionary; politics; and equal financing vs. adequate financing. According to Daniel Taylor, former State Superintendent of Schools, traditionally there existed a strong sentiment toward local control of education. With local control, local support, and differences in local wealth available to finance education, the end result was a considerable variance in educational opportunities among the county school districts. In support of this view, Hershel Rose, former State Tax Commissioner, proffered that many West Virginians desired control of decisions concerning

education at the county level. Indeed, he found it a legitimate reaction that people were disinclined to see their local levies being sent to other areas of the state. Taylor also observed inequity of educational opportunities had been accepted as a given reality of local control. With this perception in mind, the legislature appeared to be content with the status-quo. Indeed, unless some compelling reason or new court order took place, the legislature was not inclined to be revolutionary. There seemed to be a question as to why the issue of equal financing was primarily the responsibility of the legislative branch and not the executive branch. For several years, legislators had tried to address the inequities of the school finance system, but had achieved little success. It was partly just the process of politics. Legislatures respond to political influences. Therefore, counties who did not have significant political influence did not get legislative action. The constituency of the Pauley v. Kelly plaintiffs had little political clout. Finally, as Daniel Hedges perceived the basic issue, the primary question in West Virginia was not equal financing of West Virginia schools, but that of adequate financing of West Virginia's school systems. Hedges noted West Virginia had not really been that deficient in equal financing when compared to other states. In Hedge's opinion, the entire state historically

has been inadequately financed. The Recht decision found that no county school district totally met the level of adequacy that was dictated by constitutional standards. Indeed, the question of equality was second to that of adequacy. Lyle Sattes, concurring with Hedges' observations, suggested a match-up of school public school finance systems in the United States would find West Virginia considered to be one of the most of the equitable systems prior to Pauley v. Kelly. Admitting he was unsure why the members of the legislative and executive branches were not more responsive to equal financing beforehand, he disagreed partially with the court ruling that the financing system was unconstitutional. As to the response or lack of response of the governmental officials to the question of fiscal equity, he observed the politics of equity then were very difficult to put across in the legislature as it had always been. Thus it was evident these four factors combined to prevent a simple answer to the question of the lack of response of the legislative and executive branches.

Projecting Equity

Were the projected end results of the court decision going to remove the inequities in funding of public education in West Virginia? For the most part, the participants interviewed answered this question in the affirmative. However, there was guarded optimism, in most

cases, because of political opposition to the various means of establishing equity in West Virginia schools. On the basis of his own study of the finance structure of education in West Virginia at that time, Lyle Sattes concluded the inequities in the areas of local levies, excess levies and school facilities were rather substantial. Ultimately, most of the inequities could only be solved by dealing with statewide politics. It was impossible to remove inequities without balancing power among the various geographical areas of the State. Sattes recommended that the legislation should be designed to improve the lower school systems without dragging down the better school systems. In this way, some of the political opposition could be eliminated. From his perspective, Sattes concluded the projected end results ultimately would remove these inequities, but it would require the consent of the people to deal with the total solution of the excess levy problem.

Hershel Rose addressed this question from a property tax standpoint. Pauley v. Kelly and Killen v. Logan County Commission provided a means of increasing fiscal equity by raising funds for public elementary and secondary education from property taxes. Equity might be achieved because Pauley v. Bailey mandated equality in funding for school boards from the elimination of special excess levies on the county level. This equity would be achieved, however, at

great expense to a substantial portion of funding now available to local school boards. Rose believed equity could be achieved if the county boards were required to charge the excess levy revenue against their state aid. The result of people voting higher levies on themselves would be the demise of the double excess levies. This, in turn, would result in a greater equity of funding but at a much lower level than was available from property taxes.

Acknowledging that a total solution to inequities does not exist, Truby observed that the projected end results would remove the inequities in salary. Two steps had already been taken to eliminate salary inequity. If the third step could be taken, 95 percent salary equity could be reached; then about 70 percent of the excess levies would be equalized.² A large part of the total picture, according to Truby, was equalizing money for school facilities in order to meet high quality standards. An approach was needed to develop a plan to address the need for an additional 800 million dollars for construction of school facilities.

From the standpoint of the participants, the final decision on whether or not the projected end results of the master plan were going to remove the inequities in funding of public elementary and secondary education in West Virginia ultimately rested with the voters of the State of West Virginia.

Resolutions

Probably one of the most provocative questions asked in the interview process dealt with the extent the original complaint had been resolved. The answers were varied. From the viewpoint of the plaintiff, Pauley observed the resolution was a long way from being completed. Her positive observation was that politicians were now a little more interested in the case than they were when she first started the suit. Hedges, her attorney, was more optimistic. He believed the original complaint had been comprehensively addressed by the May 11, 1982, decision. Much effort had been made to try to address the implementation, although it might be a 10 year process.

Harshbarger indicated during his interview that only in a minimal way had the original complaint been resolved. Part of the problem, as he perceived it, was the dismal vision and leadership in West Virginia during this time.³

Both James Smith and Roy Truby concurred that the solution to the original complaint had not been realized fully. Truby proposed it was impossible to say equal educational opportunities currently exist. He clarified that he was not talking about equal results: equal results could never be guaranteed in the State. The greater issue seemed to be equal educational opportunities, and the State was not even close to providing equal educational

opportunities between the county school districts. Some positive results needed to be noted, however. Smith observed that more people were now at ease with the definition of a thorough and efficient system of public education. The thorough and efficient definition taken by Recht created a statewide recognition of what must be done. In his assessment, Smith pointed out the legislature addressed funding of public schools and committed 29 million dollars to salary equity. In addition, during the past four years, the legislature had funded fully each salary raise in the school aid formula.

Perhaps these actions of the legislature were a result of their education from Pauley v. Bailey. Lyle Sattes observed that the House Education Committee "educated" a lot of its members of the legislature. In particular, Truby was helpful because he discussed in great detail the moral issue of students in one area of the state having fewer resources spent on their education than those spent on students in other parts of the State. Sattes further suggested that the legislature look at this to some extent as a moral question which needed to be resolved.

James Clark, President of the State Board, based his response to the master plan upon the fact that much of it had been implemented where funding had been possible. At first, of course, the things which did not cost anything

were addressed by the legislature. In addition, there was effective improvement in moving toward equity in teacher salaries. He proposed that as the money became available, other things would be adopted.

Probably the most objective response to this question came from Rose, who observed he could answer only from the perspective of property tax administration. As a result of Pauley v. Bailey, as well as Killen v. Logan County, the State was experiencing a statewide reappraisal of all property. Much money was spent on the goal of creating a statewide equalization in the valuation of property, and a goal was within reach. Rose concluded if that was what the original complaint was about in the beginning, then the two court cases and the passage of the 1982 property tax limitation, and subsequent reappraisal, had provided the State with a means of providing statewide equalization in the value of property.

Table II
SUMMATION OF INTERVIEWS

<u>Major Participant</u>	<u>Question</u>	<u>Question</u>
	I. Initially how did you perceive the <u>Pauley v. Kelly</u> action as it relates to the financing of the public schools of WV in 1975?	II. What was your role in the initial stages of the <u>Pauley v. Kelly</u> action?
Mrs Janet Pauley	To try to help our schools Things were poor	Parent Plaintiff
Dr. Daniel Taylor	Crucial Important With long-term consequences	Met and discussed problems with Daniel Hedges. Looked at the question of inequity based on property taxes.
Daniel Hedges	The issue of equity Equal protection	Attorney for the Plaintiff
Dr. Roy Truby	Negative; beyond neutrality	No role
James C. Smith	Potential for a new era	No role
Lyle Sattes	Laudible goal Unrealistic goal	No role
Charles McCann	Fantastic situation	Helped gather data for the original case
Herschel H. Rose	No comment. I was a student in 1975	No role
James P. Clark	A horrendous amount of money	No role
Sam R. Harshbarger	Potential for dramatic effect Very carefully	Assigned to write the case

TABLE II (Cont'd.)

<u>Major Participant</u>	<u>Question</u>	<u>Question</u>
	III. As it relates to the <u>Pauley</u> case, to what extent did your role change 1975-1982?	IV. Are the projected end results going to remove the inequities in funding?
Mrs. Janet Pauley	Same. Parent Plaintiff I can see very little change here.	There have been some.
Dr. Daniel Taylor	Left the State Superintendent of School of West Virginia to Harvard University. Then to the US Office of Education.	Hopefully
Daniel Hedges	Attorney for the Plaintiff	Hopefully
Dr. Roy Truby	Became State Superintendent of Schools	We have already taken steps to eliminate salary inequity.
James C. Smith	County Superintendent Defense witness for the State	We must find a way to create equity. We won't achieve total equity.
Lyle Sattes	Citizen House of Delegates Chairman of House Education Committee	I guess that depends on who's projecting the end results.
Charles McCann	Principal - Hart High School, Superintendent of Lincoln County Schools	If the order from Judge Recht was followed.
Herschel H. Rose	Student Attorney State Tax Commissioner	I think from a property tax standpoint. Provide a means of equity
James P. Clark	Became a member and President State Board of Education	I think they'll move it a lot closer than it was.
Sam R. Harshbarger	Became Chief Justice - West Virginia Supreme Court	Certainly it's entirely possible to remove the inequities.

TABLE II (Cont'd.)

<u>Major Participant</u>	<u>Question</u>	<u>Question</u>
	V. To what extent is the Master Plan a viable solution to resolving the original complaint?	VI. Why do you believe the legislature and executive branch were not more responsive to equity finance of the public school prior to the <u>Pauley v. Kelly</u> ?
Mrs. Janet Pauley	I think so	There were more political power in Kanawha County than there was in Lincoln County.
Dr. Daniel Taylor	I have not followed the development of the Master Plan	The very function of history allows for development of a nonawareness of the inequity that the historical pattern enforced.
Daniel Hedges	The Master Plan isn't-- doesn't have all the details for how.	It partly is just the process of politics.
Dr. Roy Truby	I think the Master Plan really tempered the original decision.	You have to remember that the one study showed that West Virginia was second in terms of equity just prior to <u>Pauley v. Kelly</u> .
James C. Smith	I think the Master Plan goes beyond addressing the original complaint.	It had to say they weren't. Again that reference point from where I am today is different maybe from 1975.
Lyle Sattes	I think that the Master Plan carried out in the way originally envisioned would not necessarily be the best approach.	When you match up school jurisdiction in the US you find WV was considered one of the most equal.
Charles McCann	I think the Master Plan spells out really well how the problem should be solved.	I guess I view it that the power base exists where the money is.
Herschel H. Rose	I think it's viable in terms of setting goals to recognize certain things.	I think that there's a basic desire in WV that there be local control over certain aspects of government.
James P. Clark	It seems to me it's probable	We commit a high percentage of our per capita income to education.
Sam R. Harshbarger	The Master Plan is a good goal.	Legislatures respond to political influences.

TABLE II (Cont'd.)

<u>Major Participant</u>	<u>Question</u>
	VII. To what extent has the original complaint been resolved?
Mrs. Janet Pauley	The only think I can really mention is I think the politicians are a little bit more interested in what it was than when I started.
Dr. Daniel Taylor	I really don't have any idea.
Daniel Hedges	I think the original complaint has been well addressed by the May 11, 1982, court decision.
Dr. Roy Truby	I think we are down the road, but we are a long way from really resolving the complaint.
James C. Smith	From my opinion and my point of view, the solution to the original complaint has not been resolved yet.
Lyle Sattes	I think we've moved in the direction of solving the original complaint, but obviously we haven't succeeded.
Charles McCann	I think the only thing that I think's been resolved that made a difference is the first step in the equalization of pay.
Herschel H. Rose	But nevertheless the goal of creating statewide equalization in the valuation of property is within reach.
James P. Clark	We have the Master Plan and have implemented a lot of it where funding has been possible.
Sam R. Harshbarger	Minimally

Summary of Interview with
Arthur Recht, Presiding Judge

No narrative of the events pertaining to the Pauley v. Bailey action would be complete without the observations of Arthur Recht, presiding judge of the court case. In an interview on April 19, 1985, Recht responded to a series of questions which were pertinent to the case and which only he could fully answer. In order to benefit more completely from this interview, the reader is encouraged to read the complete document which appears in the appendix, page 170.

In the initial question, Recht was asked to determine to what extent Pauley v. Bailey significantly differed from other opinions relating to the financing of public elementary and secondary education. Observing that fiscal equalization lawsuits had their genesis in the late 1960's, Recht pointed out that in any discussion of Pauley v. Bailey and Pauley v. Kelly, the focus must be on the thorough and efficient clause, a constitutional provision peculiar to West Virginia and approximately 10 other states, which directs the legislature by general law to provide for a thorough and efficient system of free schools. The uniqueness of Pauley v. Bailey, however, was that where other cases were trying to determine whether or not there was parity within a given state where the financing of public education was concerned, this case revolved around the thorough and efficient clause of the Constitution in

addition to a specific definition of that clause by Justice Harshbarger in Pauley v. Kelly. As far as Recht could determine when his opinion was actually published in May, 1982, no other appellate court had defined what a thorough and efficient system of free schools would be in the same terms provided by Harshbarger. Although other states where similar cases were pending had similar constitutional provisions, no state ever reached the same conclusion which appeared in Pauley v. Bailey. According to Recht, the sole difference between the cases in other states and Pauley v. Bailey was the explicit definition which determined that thorough and efficient meant "the best the state of education expertise allows the minds, bodies, and social morality."⁴

In order to more fully understand the action in the initial stages, Recht was asked why the Supreme Court of West Virginia remanded the case after giving direction. In response, Recht provided a brief outline of the events prior to his charge from Harshbarger. He observed this was primarily a procedural problem. The contours of the case itself on remand would be developed so that it would provide some direction to both the trial judge and the attorneys.

Questioned about the charges to him from Justice Harshbarger, Recht reflected there were three aspects that had to be considered. First, he had to take testimony from

expert witnesses to measure Harshbarger's definition of a thorough and effective system of schools as defined in Pauley, et al v. Kelly, et al. Further, what already existed in West Virginia had to be measured against that definition in order to determine whether or not there was a disparity. Finally, if a disparity did exist, then reasons for these differences were to be addressed.

Indeed, the finding was made that the best that the state of education expertise allows did not exist in West Virginia. The reason for the disparity, according to Recht, was the method of financing of public education throughout the state. He observed that there was no parity within the state and that none of the 55 counties measured up to the definition established by Harshbarger.

While discussing the quality of education, Recht also commented on his decision to address only equity of input. The determination of whether or not there is a correlation between infusion of money and quality of education was probably the most difficult issue that was developed during the case. Because he only addressed what was presented during the course of the trial, his opinion suggested that a correlation between this infusion of money and financial support for education was a critical ingredient for a high quality system of education. The preponderance of the evidence supplied by what Recht considered to be some of the

best and brightest individuals throughout the United States required this conclusion.

Recht was in total control of the situation after the charge was made and the decision rendered, but, in a surprise move, he named the State Superintendent of Schools and the State Board of Education in lieu of the appointment of a commissioner, a move many felt was a compromise. In response to this charge, Recht proffered the most agonizing aspect of Pauley v. Bailey resulted after the opinion was rendered. If indeed, the best the state of education expertise allows did not exist in West Virginia, then why did it not? What was to be the next step? Recht perceived the best way to coalesce what was in the opinion itself was to translate that into a plan which could be presented to the legislature so they have a recommended plan of action. Then all those interested in public education in the State would be brought together to prepare a master plan which would serve as a blueprint for further legislative action. Although some thought this special commissioner was going to be an education czar, Recht named the State Superintendent and State Board, once they abandoned any appeal of the decision, because it was their constitutional obligation to carry out the thorough and efficient system of free schools. Recht did not consider this move to be a compromise. In the opinion of Recht, the State Superintendent and the State

Board were not responsible principally for the revision of the tax reforms. In a further clarification of the term "tax reform," Recht observed Pauley v. Bailey simply recognized that all species of real and personal property were not being taxed at the true and actual value as required by the state constitution and related statutes. Pauley v. Bailey simply emphasized what was already law in the State and did not suggest specific changes.

Immediately after the opinion was written, the State Tax Commissioner, Herschel H. Rose, embarked upon a program to assure that all classifications of real and personal property would be taxed at true and actual value which did require the appraisal or reappraisal of real property.

Recht was then asked why he addressed the property tax as the future funding of public education and not income or sales tax or a combination of wealth factors. Recht observed there must be other resources adopted for the funding of public education beyond real and personal property taxes if there was to be a thorough and efficient system of education throughout the State. If this occurred, all resources then must be used to augment or supplement what was available on a county level.

At this point, the next question seemed to be a logical one. How were poor county school districts expected to become educationally equal if no allowances were made for

some equal starting point. Although not addressing this question directly, Recht observed that relying exclusively upon the same resources which have been available since 1872 would result in a perpetuation of the problem. There had to be a rather creative and ingenious method adopted so that all results were on parity. Although there were several good county school districts in the State, they did not measure up to what the testimony determined was the best available. It was perverse to suggest that these county school districts be reduced to bring them in parity with other areas of the state. Those good school districts simply had a less arduous journey to travel. Recht concluded that Pauley v. Bailey did not support parity in mediocrity.

A crucial question evolved from the previous discussion. If indeed there were glaring inequities, why did Recht not mandate a timetable in his proceedings? Recht began his response by alluding to a confrontation which might exist among the judicial, legislative and executive branches of government. Once the legislature had the master plan, they should not be put under a stopwatch to have to raise the money to implement the master plan. In addition, they should be given every opportunity to implement the master plan itself. It was inappropriate for the judicial branch of government at the outset to establish a timetable

prior to the time that the legislature was given an opportunity to act. Beyond this, Recht would not respond, claiming it was inappropriate to make any further comments; it would be up to the judge who was assigned to supervise the implementation.

Another area addressed by the Recht Court for bringing about greater equalization was the present school aid formula in West Virginia. When asked if this formula could be amended sufficiently to implement instructions of the court, Recht labeled this formula as extremely complex with a rather archaic set of rules truly understood by just a very few individuals. As long as there was a reliance upon the county excess levies to support education throughout the state, there existed a built-in disparity which could not be addressed adequately even with the best formula. Once the issue of excess levies in a statewide case could be addressed, however, the school aid finance formula which then existed could be used. In addition, the formula needed to be augmented with a facility finance concept, because there were four aspects to public education as developed by the evidence: personnel, curriculum, materials and supplies, and equipment and facilities. There was a symbiotic relationship between all four of those elements that go into a high quality system of education.

One of the most crucial questions presented to Recht related to the role of the State Tax Commissioner and how his role had changed as a result of Pauley v. Bailey decision. Recht clarified what had become in some documents a somewhat critical view of the State Tax Commissioner. He stated the State Tax Commissioner had a mandate to rely upon in exercising his authority in regard to property taxes. The statutes were clear, but this was not intended as a criticism of the individual who was in office at the time of the opinion. According to Recht, Tax Commissioner Rose did an outstanding job, but did not possess an adequate staff to fulfill statutory obligations. Following the Recht decision, a new focus in the role of the State Tax Commissioner emerged as the person who worked with various county assessors. As a result, there was a greater understanding and greater interchange of information between the 55 assessors and the State Tax Commissioner.

The final question pertaining to inequity presented to Recht involved how much inequity should exist among a state's school districts before the court becomes involved. After some deliberation, Recht responded that the issue was the responsibility of all the branches of government. The sole duty of the judicial branch, in Recht's opinion, was to react to a case which is before it based upon evidence and the law. If, however, the law had been established and the

evidence indicated there was no compliance with the law as it was established, then it is the responsibility of the court to enforce its opinion. Recht further indicated that one could not either qualitatively or quantitatively state with any precision the level of equity obtained. It would have to be based upon the evidence and to the extent the court's order was being carried out.

The two-hour interview with Arthur Recht concluded with presentation of a somewhat philosophical question. When asked how he thought historians would look at Pauley v. Bailey, he responded he hoped the opinion would be viewed as the product of a judge who objectively sat through 60 days of testimony, listened to numerous expert witnesses, examined thousands of exhibits and determined that the evidence required the findings and inclusions of law which were set forth in Pauley v. Bailey. According to Recht, Pauley v. Bailey should not be viewed as a personal memorial but only an attempt to comply with the law and evidence presented to the court.

QUESTIONS FOR ALL MAJOR PARTICIPANTS

1. Initially, how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools of West Virginia in 1975?
2. What was your role in the initial stages of the Pauley v. Kelly action?
3. As it relates to the Pauley cases, to what extent did your role change between 1975 and 1982?
4. Are the projected end results going to remove the inequities in funding of public education in West Virginia?
5. To what extent is the master plan a viable solution to resolve the original complaint?
6. Why do you believe the legislative and the executive branches were not more responsive to the question of equal financing of the public schools prior to the Pauley v. Kelly case?
7. To what extent has the original complaint been resolved?

INTERVIEW SCHEDULE: MAJOR PARTICIPANTS

Clark, James P. March 21, 1985	Former President of West Virginia State Board of Education 1982-83 Charleston, W. Va.
Harshbarger, Sam R. March 14, 1985	Chief Justice West Virginia Supreme Court Milton, W. Va.
Hedges, Daniel February 6, 1985	Attorney for Plaintiff Charleston, W. Va.
McCann, Charles May 1, 1985	Former Principal Harts High School, Lincoln County, W. Va. Superintendent of Lincoln County, W. Va. Hamlin, W. Va.
Pauley, Janet June 1, 1985	Plaintiff parent Sod, Lincoln County, W. Va.
Reht, Arthur M. April 19, 1985	Presiding Judge, Ohio County Wheeling, W. Va.
Rose, Herschel H. January 30, 1985	Former State Tax Commissioner of West Virginia Charleston, W. Va.
Sattes, Lyle March 6, 1985	Chairman, House of Delegates Education Committee Charleston, W. Va.
Smith, James C. December 14, 1984	Assistant State Superintendent of West Virginia School Finance and Administration Charleston, W. Va.
Taylor, Daniel Dr. March 26, 1985	State Superintendent of West Virginia Schools, 1971-1979 New York, NY
Truby, Roy Dr. January 8, 1985	State Superintendent of West Virginia Schools Charleston, WV

Notes

1. Personal interview with Arthur Recht, presiding Judge, Pauley v. Bailey, Wheeling, West Virginia, April 19, 1985.
2. Personal interview with Roy Truby, State Superintendent of West Virginia schools, Charleston, West Virginia, January 8, 1985.
3. Personal interview with Sam R. Harshbarger, Chief Justice, West Virginia Supreme Court, Milton, West Virginia, March 14, 1985.
4. Pauley et al. v. Bailey et al., Civil Action No. 75-1268, Kanawha County, W. Va., p. 8.

CHAPTER IV

West Virginia Attempts to Meet Thorough and Efficient

Introduction

In his original opinion, Judge Recht recognized that the far-reaching reform mandated by this decision could not be directed suitably by the court. The idea of appointing a commissioner, a person with knowledge, background, and experience in the areas addressed appeared in the opinion. This commissioner would work under the aegis of the court. After a meeting with the president of the West Virginia State Board of Education, and Roy Truby, Superintendent of Schools and representatives of Governor J. Rockefeller, Recht appointed the West Virginia State Board of Education to serve as commissioner once it had removed itself from an adversarial role in the case.

Truby, the State Board of Education, and the State Department of Education asked to be allowed to develop the master plan. Determining that the State Board of Education was indeed in the best position to coordinate such a plan, Recht agreed, and the court retained continuing jurisdiction of all proceedings necessary to insure the development of the master plan.

Supplemental Order

A supplemental opinion issued May 27, 1982, according to Recht, was necessary because much more credit or discredit was associated with the trial judge personally than with the opinion itself. The conclusions of law were a result of interpretation of the Constitution of West Virginia, certain West Virginia statutes and existing case law:

In regard to the development of the high quality education standards, ... the commissioner is to work with the representatives of the Legislative and Executive branches and all other interested parties to prepare a master plan for consideration by the legislature and other state and local boards of education.¹ (p. 3)

In his supplemental order, Recht reiterated the legally recognized elements of a thorough and efficient system of education for children in West Virginia. The judge stated that it was constitutionally imperative that the legislature provide for a thorough and efficient system of free schools by general law; it was a judicial function to determine if this legislative responsibility was being exercised in compliance with the language of the Constitution.

Based upon the testimony of experts, the evidence showed that according to the definitions and guidelines established by the West Virginia Supreme Court in Pauley et al. v. Kelly, et al., the legislature had not provided a thorough and efficient system of free schools. However, the

Recht Court was sure that the members of the legislature would follow their oaths in upholding this constitutional requirement.²

The Recht Court determined that no education standards and/or a proposal to deliver those standards had ever existed in the public elementary and secondary schools in West Virginia. However, it was ultimately a legislative function to adopt or not adopt the master plan. Whatever the legislature did could be measured only by the existing constitutional standards when the matter would again be considered.³

Appeals Attempted

No state official successfully challenged the Recht decision, although a great deal of rhetoric appeared in the press. On May 20, 1982, State Attorney's General Chauncey Browning asked that a special legislative session be called to enact an amendment to overturn the effects of the recent ruling of the Lincoln County school case.⁴ Browning indicated that he believed that Judge Recht was going to move the matter forward as fast as possible. Calling Recht's opinion an outrageous intrusion by the court into the legislative and executive branches of state government, Browning charged that the court had exceeded its authority.⁵

Governor J. Rockefeller, on the other hand, voiced his concern of the decision regarding the difficulty in

obtaining the necessary revenue. In a news conference, Rockefeller noted the fundamental issue was cost and estimated the decision would cost \$750 million.⁶ Prior to June 14, 1982, the governor had not taken a position concerning the case; he stated he wanted to continue to study the decision several more weeks before he would do so.⁷

Superintendent of Lincoln County schools, Charles McCann, and the Lincoln County Board of Education were named in the lawsuit originally filed by parents of Lincoln County school students. Neither party at the county level, however, expressed a desire to appeal the case; furthermore, they manifested sympathy for the plaintiffs. Meeting in Romney, West Virginia, June 8, 1982, the West Virginia State Board of Education chose not to appeal the ruling. State Treasurer Larrie Bailey, also named in the case, announced he would not appeal the decision of the court.⁸

The only appeal to be filed was that of a group of parents headed by Linda Martin on behalf of the West Virginia Education Project. This group represented a nonprofit organization consisting of representatives of parent groups, community organizations, professional educators, and other citizens throughout West Virginia.

The appeal by Martin stated the petitioner was one of only 19 lay persons appointed to the committee of 99 and

that the committee was dominated and controlled by the State Superintendent of Schools and defendant State Board of Education and persons directly or indirectly employed by them. Counsel for the plaintiffs, Daniel F. Hedges, participated in appointing committee members and did not question the domination and control by the defendants. The appeal also stated Roy Truby, West Virginia State Superintendent of Schools, presented Judge Recht with a document termed "A Master Plan for Public Education," bearing the name of the West Virginia State Board of Education. According to Martin, a proposal for West Virginia's education inadequacies mandated by a suit which took seven years to resolve, was defeated in only seven days by the defendants in the case.⁹ Martin argued:

It's unheard of for the defendants in a lawsuit to be given the chance to write the final order. We feel that parents and not politicians and school administrators must be at the heart of the solution.¹⁰

In December, Judge Recht rejected the plea of Martin and the Education Project, noting the group's request was not timely and that members could have voiced their opinions during public hearings.¹¹

On January 5, 1983, Martin, representing the Education Project, petitioned the West Virginia Supreme Court of Appeals for relief from a final order of the Circuit Court of Kanawha County, West Virginia, made and entered in Civil

Action No. 75-1268, on January 5, 1983, denying petitioners motion to intervene as a party plaintiff. The court chose not to intervene as requested by Martin.

Reported Groundwork of the Master Plan

Judge Recht, in his supplemental order, attempted to clarify misunderstandings of the role of the commissioner who was to work with the representatives of the legislative and executive branches and all other interested parties. This clarification of any misunderstandings resulted in the groundwork for the preparation of a master plan for consideration by the legislature and other state and local boards of education.

The judge also emphasized:

that this court on remand was required to give legislatively established existing standards great weight. However, as noted, there exists no current valid legislative value which establishes a high quality education standard based upon the testimony offered.¹² (p. 7)

In his supplemental opinion, Judge Recht determined to make clear that the master plan was a proposal, a suggestion, which would conform to the guidelines, based upon testimony and established at the request of the West Virginia Supreme Court. He noted his court did not have the power, authority, or jurisdiction to demand that the West Virginia Legislature adopt this particular plan or any other single piece of legislation. It was therefore the

responsibility of the legislature to follow its authority in fulfilling their constitutional requirements.

Developing the Master Plan

The State Superintendent of Schools and the State Board of Education, having abandoned any appeal of the decision of the court in this matter, requested on August 11, 1982, that the court permit them to form a responsible committee under the aegis of the court and to develop a master plan in accordance with the prior order of the court entered May 24, 1982, and May 27, 1982, in lieu of the immediate appointment of a commissioner as described in the decision and order.

The order stipulated:

that with respect to the development of those parts of the master plan relating to standards, proposals for educational financing and proposals for facility construction finances, the State Superintendent of Schools, the State Board of Education and plaintiffs under the supervision and control of this court agree upon a responsible committee including their own representatives, the State Department of Education, plaintiffs, subject area specialists for each area, major education groups, and such other person as deemed necessary and appropriate together with participation of and/or coordination with the legislature of the State of West Virginia. That the participation and/or coordination with various members of the legislature as both the House of Delegates and the Senate shall select, shall not be construed as preempting any ultimate legislative prerogative in regard to the master plan so developed.¹³ (p. 2)

Judge Recht ordered further that the plaintiffs and the State Superintendent of Schools report to the court on or before the 15th day of each month relative to the progress

of each area of the plan, and that the plan should be submitted to the court on or before December 15, 1982. At this time the court would review the plan, readying it for legislative consideration during the 1983 session.

Recht also ordered that the appointment of a commissioner, as described in the Order of May 29, 1982, be deferred so the State Superintendent of Schools and State Board of Education could have the opportunity to develop the master plan.

In his order of September 1, 1982, Recht further clarified the representative areas of the participants:

major educational groups, including but not limited to: the West Virginia Association of School Administrators; West Virginia Secondary School Principals Association; West Virginia State Reading Council; West Virginia Association of Supervisors; West Virginia Education Association; West Virginia State Congress of Parents and Teachers; West Virginia School Board Association; the West Virginia Board of Regents; the West Virginia Association of School Service Personnel; and such other persons as deemed necessary and appropriate, together with the participation of coordination with the State Legislature of West Virginia.¹⁴ (p. 3)

Recht's orders were well defined and were accepted by most parties, in particular the State Department of Education, the State Board of Education, the State Tax Commissioner, and the State Treasurer. These individuals were basically in agreement with Recht after his order had been clarified. The lone government official who spoke in opposition to Recht's clarified order was Attorney General

Chauncey H. Browning. He opposed the manner in which the Judge and the courts had intruded into areas he felt belonged to the elected representatives of the State according to the State Constitution. In essence, argued Browning, the court superceded its authority granted to the legislative and executive branches of government. Browning's opposition was voiced during a newspaper interview on September 14, 1982, in which he proposed there was no precedent for Judge Recht's actions, especially that of shelving his plan to appoint a commissioner to implement a new education system.¹⁵

Following the agreement with the court and State Board of Education, on September 16, 1982, to develop a master plan for West Virginia education, Roy Truby announced the composition of the committee of 95 members assigned the responsibility to develop a master plan for upgrading West Virginia public schools. Expressing an obvious concern about the quality of a plan developed under such time constraints, Truby determined it was an enormous undertaking to meet the December 15, 1982, deadline imposed by Judge Recht in his September 1, 1982, order. He explained that three subcommittees to study educational standards, school facilities, and school finance were working on their own schedules. These committees working separately would work to meet the target date.

Complying with the court order, Truby announced that the committee for the development of the master plan would be headed by Deputy State School Superintendent, Thomas McNeel. Truby also explained that each member of the committee had been approved by the State Board of Education and Daniel Hedges, attorney for the plaintiffs.¹⁶

The Committee would seldom meet in its entirety but would be divided into three subcommittees, each headed by an assistant state school superintendent. Included were Finance Commissioner Arnold T. Margolin, Tax Commissioner Herschel Rose, parents, and lay citizens. Prior to their initial meeting, Bob E. Myers, acting as an individual member of the State Board of Education, sent an emotional letter in support of the development of a master plan to all members of the West Virginia education task force. Myers wrote:

You are undertaking the most important governmental job that has occurred in West Virginia in decades, perhaps the most important ever. The course you set, the direction that evolves from your work, will affect the children and through them all of us for years to come.

Judge Recht's mandate to you is to reform education in West Virginia.¹⁷ (p. 1)

In his meeting with the Pauley v. Bailey Advisory Committee, Truby charged the three subcommittees to develop a master plan which should contain:

1. Suggested suitable high quality standards to set the core values of a thorough and efficient education system.

2. Suggested timetables when the standards should or could be in effect.
3. Suggested methods by which the resources to guarantee the delivery of the standards will be provided.¹⁸ (p. 1)

The function of the advisory committee was to review, react to and recommend matters related to Pauley v. Bailey regarding a master plan for education in West Virginia. They were also to provide a forum to hear concerns of lay citizens, parents, and students as the master plan was being developed.

The education standards subcommittee was divided into four areas of responsibility. First, the subcommittee recommended high quality standards in thirteen curricular areas under the leadership of the State Department of Education. Second, they suggested a timetable for adoption and implementation of standards to be incorporated in the master plan. Third, they considered the effectiveness of services delivery and suggested some possible alternative methods. Finally, the subcommittee addressed school evaluation and classification, emphasizing consumer protection for students. A subcommittee for school facilities and ancillary services was to consider two tasks. Recommending high quality standards for school facilities and transportation along with health and food services was the initial task. Subsequently the school facilities and ancillary services subcommittee was to provide

recommendations to the State Superintendent and State Board of Education for methods of funding the additional school facilities.

A subcommittee on school finance was to provide recommendations for amending the school finance system to make it compatible with the equal protection aspect of Pauley v. Bailey. The members were to consider alternatives for utilizing excess levies for salaries, textbooks, and other necessities which would become the basis for high quality education. In addition, they were to suggest the resources necessary to implement the high quality education found in Pauley v. Bailey decision, and recommend a salary schedule to address areas of critical shortages.

The initial meeting of the Pauley v. Bailey Advisory Subcommittee was held Wednesday, September 22, 1982, at the Conference Center at Ripley, West Virginia. At this public meeting, interest groups and individuals representing the educational community were encouraged to provide their input. Thomas McNeel determined that their input would be helpful in the development of a master plan for improving public elementary and secondary education in West Virginia. Later, McNeel evaluated all written and oral comments received by the Advisory Subcommittee. The comments in general were supportive of the establishment of the committee and its work in developing a master plan.¹⁹

Between September 22, 1982, and December 1, 1982, a period of seventy days, each of the Pauley v. Bailey Advisory Subcommittee members was actively involved in the development of an educational plan designed to provide for high quality educational standards and facilities and for an equitable method of financing the public elementary and secondary schools of West Virginia. Members of the committee gave freely of their time, their services, and their expertise to develop an educational opportunity for public school children of West Virginia.²⁰

The Master Plan Developed by West Virginia Department of Education

Recht's Court held that the master plan should contain: (1) suitable high quality standards to set the core value of a thorough and efficient public elementary and secondary education system; (2) timetables within these standards; (3) methods which provide resources to guarantee the delivery of these standards; (4) accountability measures to assure the public that a thorough and efficient system of public elementary and secondary education was being provided students enrolled in the public schools of West Virginia.

The primary purposes of the master plan were to improve the quality of learning and teaching in West Virginia public elementary and secondary schools and to assure all public school students equal educational opportunities.²¹ Factors

affecting student achievement were of particular concern and included whenever appropriate. The best educational and research practices were also included to make the plan sound and practical.

Responsibilities of the West Virginia Legislature, West Virginia Board of Education, county boards of education, regional education service agencies and institutions of higher education were defined in the master plan. The State Board of Education established policies for the development of learner outcomes, teacher-administrator effectiveness, and proper evaluation of students, staff, school, and school districts. In addition, the State Board established provisions with specific evaluation criteria by which a school and its personnel became eligible for financial incentives.

General provisions of the plan provided that each public school in West Virginia would have a school advisory council composed of parents and lay citizens. In order to improve better school-community relations, an advisory council composed of parents and lay citizens was established at the county level. One provision of the master plan allowed for the establishment of a petition procedure for students or citizens to appeal whenever they felt that the county school district was not providing the elements of a thorough and efficient system of education or when a school

official was not carrying out a legally bound duty.²² To make this appeal procedure a reality, the West Virginia State Board of Education adopted Policy S7211, Appeals Procedures for Citizens on August 12, 1983.²³

The bulk of the master plan, however, evolved around the educational programs in the state. The guiding principle for learning was that each student would have the opportunity to achieve mastery of these specified learner outcomes. Standards for the basic curriculum were divided into requirements for early, middle and adolescent education. Also, specific standards were established for general education, vocational-technical adult education, exceptional students programs, special purpose education, and support programs.²⁴

The concept of learner outcomes was integrated into the standards defined as the knowledge, skills and/or attitudes that a teacher expected the student to acquire as a result of instruction within an area of study.²⁵

The master plan also included standards for the following support services: library media centers, counseling and guidance, social services and attendance, psychological services, transportation, food services, and school health services. Implementation on an equitable basis provided support services which were essential to public elementary and secondary education.

School facility standards, including building sizes, lighting and ventilation requirements, mandated that each county school district submit and annually amend a master plan for educational facilities. Under this comprehensive plan all existing school facilities were evaluated to meet the standards. In addition, the school facilities standards recommended a statewide method of financing school facility needs. Recommended were increased involvement of the State Department of Education and the establishment of a State School Building Authority which would be responsible for determining and prioritizing school facility needs.

A major goal of the master plan was an equitable system of financing public elementary and secondary schools of West Virginia which would meet the constitutional requirement for a thorough and efficient system that satisfied the equal protection mandates.²⁶ In order to facilitate the statutory changes recommended by the school finance subcommittee, several existing statutes had to be amended or repealed. To achieve a constitutionally acceptable proposal, the following areas needed to be addressed. Salary differences from county to county were largely a result of differences in county wealth and heavy reliance upon excess levy funds. The portions of the state school aid formula, presently called step six in the Pauley v. Bailey opinion, was unconstitutional in that it failed to fund fully current expenses.

New court-required standards would require the legislature to appropriate start-up costs of each standard to fully implement the program in the local county. The allocations then could be made to the county school districts on the basis of individual need for implementation of standards.

The finance subcommittee recognized that the public schools of West Virginia could not immediately curtail the funding received from local excess levies on property taxes. The use of these funds derived from local excess levies had to be altered to adjust the wealth disparity among the county school districts that led to unequal funding of education. Excess local levies needed to be maintained and fully redistributed throughout the state. In view of the time frame, the subcommittee recommended:

A statewide 100 percent excess levy should be offered to the voters as soon as possible so that the wealth disparities among the counties can be minimized by funding on a statewide basis instead of county basis. The statewide excess levy can be expected to displace and eliminate reliance on the local levies over a period of years and should do much to equalize educational funding in the West Virginia Public Schools.²⁷ (p. 337)

The total cost of implementing the master plan was a cause of concern; however, the finance subcommittee estimated only part of the cost for implementation. The adjusted formula was estimated to cost the state about 220 million dollars more per year. The present formula cost the

state about 550 million dollars for 1982-83, which did not reflect money expended for school facilities. Also, the revised formula did not include funds needed to remodel or build new facilities, nor did it reflect the cost of implementing the standards for education or support services.

On March 4, 1983, the Recht Court issued its final order incorporating education programming and financing contained in the master plan, which incorporated the constitutionally required standards for public elementary and secondary education in West Virginia. Specifically, the court found:

The Plan adopts a comprehensive description of standards for a high quality system of education necessary to establish a foundation for learning in West Virginia Schools, which may be construed as a recommendation to the legislature as an example of a thorough and efficient system as defined in Pauley v. Kelly, supra.

The plan is structured in a manner to address the critical deficiencies which require remedial action in (1) establishing the standards of a high quality system of education, using as a guide the four components of that system: curriculum, personnel, facilities, and materials and equipment and (2) the financing of a thorough and efficient system of education.

In regard to the education standards, this court finds that, while there may be some disparity between the findings and conclusions heretofore entered, they incorporated to a large degree, adequate blueprints for legislative action in terms of curriculum, personnel, facilities, material and equipment.²⁸ (p. 3)

The Recht Court, however, refused to establish a specific timetable for implementation. Instead, it ordered that a constitutional system be provided "at the earliest practical time."²⁹ In the final order Recht did not separate those issues relating to financing and those relating to general administration. Specifically, the court did not order state officials to conform to the educational standards set forth in the master plan or to carry out the administrative duties delineated for defendants in conformity with these standards.

The Master Plan:
West Virginia State Tax Commissioner

The role of the State Tax Commissioner and the manner in which he discharged his duties became a focal point in Judge Recht's opinion. On the basis of the testimony, Judge Recht determined historically the Commissioner had been lacking in performance and had been irresponsible. Further, he specified the direction his department should be pursuing.

In his Supplemental Opinion of May 27, 1982, Judge Recht stated testimony indicated all parcels of property were not being taxed at current true and actual values as required by the law of the State of West Virginia. Article X, Section 1 of the West Virginia Constitution declared that "taxation shall be equal and uniform throughout the State

and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law."³⁰ (Pauley v. Bailey, p. 208) The testimony revealed that the State Tax Commissioner was not fulfilling his statutory duty in assuring that all parcels of property, both utility and non-utility, were being taxed at actual value because of the failure of the Tax Commissioner to give the necessary guidance and direction to local assessors and the Board of Public Works.³¹

In addition, Recht proffered his Supplemental Opinion should help local assessors in their statutory roles in working with the State Tax Commissioner to receive proper guidance and direction. Recht charged that only State Tax Commissioner Rose knew why he had never taken any legal action to correct the varying assessment ratios among the several counties. Earlier, the role of the Tax Commissioner clearly had been defined by Judge Smith. In Pauley, et al. v. Kelly, et al. supra., the Tax Commissioner was vested with vast power to proceed and enforce the provisions of West Virginia Code, Chapter 18, Article 9A, Sec. 11.³²

Later, Recht found that though all counties were not assessing their property adequately, the fault did not rest with the local assessor. That portion of the State Tax Commissioner's office responsible for local property tax function was the local government relation division.³³

The Recht Court indicated that the failure of the State Tax Commissioner to perform his duty effectively was a historical one resulting from a passive disregard to duties in the area of real and personal property tax assessments. The crux of the failure of the State Tax Commissioner to discharge his duties effectively could be traced back to 1958. The West Virginia Legislature in 1958 provided for a statewide property appraisal program which was to be administered at the state level by the State Tax Commissioner. In order to carry out this program, the State Tax Commissioner was authorized to employ professional appraisal firms and such assistance as available appropriations would permit.³⁴

A review of the 1958 statute resulted in several observations. The Recht Court determined there had been no appraisal by the State Tax Commissioner of active coal mining interests in twelve counties, and no appraisal of timber reserves or limestone, clay, oil, or gas producing properties. Recht further observed the appraisals in West Virginia were not updated annually by the State Tax Commissioner and were not at market value. Also, no routine procedures for updating residential and commercial real property appraisals existed.

According to Recht, the State Tax Commissioner needed to recognize that effective ad valorem tax administration

required leadership and direction from the state level. A primary reason for assessments not being at market value was the lack of meaningful guidance from the State Tax Commissioner.

Thus, on December 15, 1982, the West Virginia Tax Department delivered a plan to Judge Recht in response to his order to devise a plan for correcting department deficiencies. The plan offered:

an integrated property tax administrating system which will provide an equal and uniform system of taxation among the counties. The plan envisions a system that ultimately will depend on the 55 county assessors to distribute forms asking taxpayers to list all their property and instruct them how to compute the proper appraisal of their property. The plan sets a schedule for a statewide reappraisal of all classes of property beginning with the initial mapping this March and ending with a complete appraisal September 1985. A computer network would tie all 55 counties assessor's offices with a center computer in the State Tax Department.³⁵ (p. 82)

In response to this plan presented to Judge Recht, Daniel Hedges, one of five lawyers for the plaintiffs, complained the plan was sadly deficient in details. Hedges argued according to the master plan that the objective of the State Tax Commissioner was not to do anything for the next three years. He further insisted that the State Tax Commissioner had the prerogative to put into effect new rules governing the appraisal of income-producing property such as oil and gas lands. Hedges contended that "appraisal formulas included in the plan severely underestimates the

actual values of those lands."³⁶ He then asked that Rose be directed to prepare valuation guides, taxpayer forms, and guidelines for taxpayers to get access to property tax returns of others whose assessment they wished to challenge. Judge Recht then gave the State Tax Department a week to respond to Hedges' criticisms.

As a result of Hedges' criticisms, Recht mandated State Tax Commissioner Rose to develop a plan which would provide the remedy to correct taxation deficiencies. The remedy would address not just the office of the State Tax Commissioner but also that of the role, procedures, and methods of the county tax assessor and county commissioner. As a result of this action, the legislature would need to appropriate 34 million dollars to pay for reappraisal of the majority of real property in the entire state. Judge Recht gave the State Tax Commissioner 90 days to develop a plan to set up a timetable for implementation. Recht cited 13 areas to be addressed where the appraisal techniques were questionable, improper or non-existent.³⁷

The Legislative Response to Pauley v. Bailey

Realizing that the courts were reviewing the financing of the West Virginia public elementary and secondary schools, the leadership of the West Virginia Legislature, with the assistance of the West Virginia State Department of Education, and the support of Governor Rockefeller,

developed and implemented a series of legislative actions. In an attempt to stave off the court or soften its actions, the following four pieces of legislation were enacted during the early 1980's.

Senate Bill No. 15

Senate Bill No. 15, passed in the Legislature May 15, 1981, and put into effect July 1, 1981, provided for the repeal of several sections of the West Virginia Code which dealt with the financing of the public elementary and secondary schools. New sections of the code were added to distribute additional funds to aid county school districts with lower than average expenditures per pupil. Bill 15 also provided for computation of local shares appraised and assessment of property which provided statewide facilities, planning, and required standards for educational quality and approval of county education programs.³⁸

Many new provisions relating to Standards for Education Quality 18-9A-22 were provided. Beginning with the adoption of standards for quality public elementary and secondary education by the State Board of Education on January 1, 1982, a major provision required each county board of education to file an annual specific program plan with the State Department of Education. Their program plans, which allowed flexibility in school improvement programs structured around locally identified needs, had to meet the

minimum standards established by the State Board of Education. Standards were required also in curriculum, finance, transportation, special education, facilities, textbooks, personnel qualifications and other areas as determined by the State Board of Education who had to review the program plans annually and conduct on-site reviews of the county school districts' educational programs every fourth year.

Senate Bill 15 created major changes in the state school aid formula which concentrated on aiding county school districts having the lowest average current expenditure per pupil. An allowance to improve instructional programs provided that any increase in local share computations after the 1981-82 school year should be redistributed to the county school districts, with 20 percent allocated proportion of adjusted enrollment and 80 percent allocated to the county school districts having the lowest average current expenditure per pupil to the limit of the 80 percent in order to raise the lowest county school districts to the highest level possible. According to the provisions, a county board of education was eligible for its share of the 80 percent only if it levied the maximum regular levy rate and filed with the State Board of Education by August 1 a plan of instructional improvement which had to be approved by the State Board by September 1.

Computation of local shares provided that the rate effective in 1981-82 should be 22.5 cents per hundred dollar value of property (class 1) for purposes of computing local shares changes in the school aid formula. Effective in 1982-83, the base rate for computing the local share would increase to 55 percent of the counties property appraised valuations. This computation also provided that in 1982-83, the assessed values and ad valorem taxes should be set at no less than 60 percent at the level of appraised values as established by the State Tax Commissioner.

The bill provided for a loss reduction provision. If any county school districts' newly computed net state aid was less than that of the preceding year, the difference was allowed for five years beginning with the 1981-82 fiscal year.

Finally, the following provision was added:

No county after July 1, 1981, shall reduce the amount of money that is the difference between the existing state minimum pay scale and the county pay scale as of January 1, 1981, except that a county's pay scale may be reduced when such pay scale is provided for [sic] excess levy funds and such excess levy is not renewed.³⁹ (p. 15)

Senate Bill 131

In 1981 the West Virginia Legislature enacted 18-9A-22 which provided for standards of educational quality to be referred to as minimal standards. House Bill 131 changed those minimal standards adopted in 1981 to high quality

educational standards. It provided that the State Board of Education should establish and adopt high quality standards prior to January 1, 1985.⁴⁰

The purpose of 18-9A-22 as amended was to declare the intent of the West Virginia Legislature to provide for all children in the public elementary and secondary schools of West Virginia high quality educational standards on an equal educational basis, to provide a salary increase for teachers of \$800 per year, and to increase the experience increments by \$40 per year for public school teachers. It also increased school service personnel salaries \$44 per month, plus \$2 per month for each year of experience, and increased the maximum number of years of experience from 16 to 20. By the appropriation of the first twenty-nine million dollars of surplus funds which had accrued as of June 30, 1984, a state salary supplement for teachers and school service personnel was provided. Also provided were certain maximum salary supplements and benefits for these two groups. Each employee would receive the difference between his authorized state minimum salary and 95 percent of the maximum salary schedules prescribed in 18A-4-5a and 18A-4-5b, reduced by any amount provided by the county school district as a salary supplement for teachers and school service personnel on the first day of January of the fiscal year immediately preceding that in which the salary equity appropriation was

distributed.⁴¹ If the general revenue account did not have twenty-nine million dollars of surplus funds by June 30, 1984, then the appropriation would be available only to the extent of the total actual surplus accrued.⁴²

A county board of education could establish salary schedules which were in excess of the state minimum salary. No county salary schedule for teachers could exceed 102.5 percent of a salary which equalled the highest supplement provided by a county as of January 1, 1984. All teachers in the state would, however, be entitled to any increases in the minimum salary schedules established by the State Legislature or State Board of Education.⁴³

In establishing local salary schedules for teachers, no county board of education would reduce local funds for salaries in effect January 1, 1984, and used in supplementing the state minimum salaries unless forced to do so by the defeat of a special operating levy, loss in assessed valuation of property or events over which the county board of education had no control. Prior to reducing salaries, the county board of education must receive approval from the State Board of Education.⁴⁴

A county board of education could not establish a salary schedule for school service personnel which exceeded 102.5 percent of a schedule which incorporated a state minimum salary for school service personnel in effect July

1, 1984. This included a monthly supplement of \$205 for zero years of experience for all pay grades, and increased the monthly supplements by \$2 for each year of experience. Each service person employed was entitled to any increase in the minimum salary set for such personnel as established by the State Legislature and State Board of Education.⁴⁵

If any county board of education provided a supplement for any position on January 1, 1984, or extended the schedule beyond the maximum prescribed for such position, that county school district would be exempt from the maximum, subject to approval of the State Board of Education. But no such supplement would be increased beyond the amount received January 1, 1984.⁴⁶

For teachers and service personnel, county boards of education would provide in a uniform manner from local funds, benefits including but not limited to dental, optical, health, and income protection insurance, vacation time and retirement plans, excluding the State Teacher Retirement System. However, no county school district could expend per teacher or service employee any amount which exceeded 112 percent of the amount expended by the county school district having the highest expenditure per teacher or service personnel as of January 1, 1984. The State Board of Education would determine what benefits were authorized and whether any county school district's expenditure per

teacher or service employee exceeded the maximum prescribed. Nothing should prohibit the maintenance or result in the reduction of any benefits.

In accordance with Senate Bill 131, the State Superintendent of Schools would prepare for the West Virginia Legislature a report which would include findings, conclusions and recommendations pertaining to the benefits provided in the definition of benefit equity among the various county school districts.

House Bill 1731

House Bill 1731, which became effective July 1, 1982, was enacted to revise Sections 2 and 10, Article 9 of Chapter 18 of the West Virginia Code and to add a new section, which included allowance for the distribution of funds to improve instructional programs.

The new provisions were for the fiscal year 1982-83 only. The allocation of funds accruing from increases in total local shares would be an amount equal to one-half the total money the county school district would receive based upon adjusted enrollment, referred to as basic resources per pupil. The total money the county school districts would receive were based on adjusted enrollment and average expenditure per pupil expended by each county school district.⁴⁷

Commencing with the 1981-82 school year, funds which had accrued from the increase in local shares would be allocated on the following basis: (1) An amount equal to 20 percent to counties proportional to adjusted enrollment. (2) The remaining 80 percent to qualifying counties as determined by the "basic resources per pupil" method as directed in W.V. Code (18-9A-10).⁴⁸ The allocations to the county school districts of the 80 percent portion are to be determined on the basis of the immediately preceding school year's basic resources per pupil as directed in W.V. Code (18-9A-2).⁴⁹

Senate Joint Resolution No. 4

Senate Joint Resolution No. 4 added an amendment to the Constitution of the State of West Virginia designated Article 10-A, which related to public elementary and secondary education, economic and infrastructure development generally, and provided for a statewide excess levy of ad valorem taxes. The amended article supported the free school system throughout the entire state of West Virginia.

The opportunity to ratify or reject Amendment No. 4 to the Constitution of the State of West Virginia was submitted to the voters of the State at the general election held November 6, 1984. The major provision of the statewide excess levy was a 100 percent statewide excess levy to create quality education. Although not discussed herein, a

second major provision of the amendment was funds for roads and public works construction.

A statewide levy on the several classes of property was scheduled to begin on the first day of July, 1985. This statewide levy was in lieu of all other excess levy provisions offered by county boards of education in order to assist the state:

in meeting its obligation to provide a thorough and efficient system of free schools and equality of substantive educational opportunity for all citizens.⁵⁰

The statewide levy would be in addition to the aggregate of taxes previously authorized by Section 1 of Article 10 of the Constitution and would be in lieu of excess levies for free schools authorized by Section 1B of Article X of the Constitution. The statewide levy would replace any local excess levy for county boards of education in effect on the first day of March, 1984, and any local excess levy approved prior to such dates by a county school district. In addition, the levy was in lieu of the exercise of the power to lay such levies by local county boards of education.

The State Legislature could establish a different rate of taxes. The taxation rate to be imposed under the constitutional amendment equalled the current regular county board of levy rate on all classes of property, calculated as a 100 percent excess levy. Included in the amendment was the provision for establishing a different rate of taxes:

That the legislature, by general law, agreed to by two-thirds of the members elected to each house thereof, may establish a different rate of taxes under this section, not to exceed 100 percent thereof, which rate shall be proportionally uniform as to all property as described herein and shall be uniform throughout the state.⁵¹ (p. 3)

Expenditure of funds provided to each local board of education to replace a levy was to be replaced by this amendment until such local levies had expired, so the local boards of education would continue to have identical funds available for the same obligations as provided under the local county board of education local excess levy. Funds for a levy had been replaced by this amendment so that it would continue to receive the same amount in dollars received the final year in which such local levy would have expired. This amount might be used by such school districts for purposes approved by the West Virginia Board of Education.

Funds for such purposes as the West Virginia Legislature could prescribe were in accordance with law to effectuate a thorough and efficient system of free schools and provide fiscal equity of substantive educational opportunity for all citizens of the state.

Under the provision of the school roads and public works construction portion of the amendment, on an annual basis from fiscal year 1985 through fiscal year 2000, the legislature must appropriate from the separate fund at least

forty million dollars to be used solely for the construction, renovation or remodeling of elementary or secondary public school building or facilities, the equipping of same, and the acquisition and preparation of sites for such buildings or facilities.

Allocation of funds would be appropriated annually for the construction, renovation and remodeling of public school buildings. The legislature should first distribute to all county school districts \$20 per pupil calculated on the basis of net enrollment. These funds should be expended only for projects approved by the State Board of Education. Funds remaining for public school construction and renovation and funds appropriated for roads and water and sewer construction should be allocated, the base to be determined by the legislature to be fair and reasonable, and to include such factors as education need, population to be served, area of high unemployment, and economic development needs.⁵²

Notes

1. Pauley v. Bailey, Supplemental Opinion, Civil Action No. 75-1268, September 1, 1982, p. 3.
2. Ibid., p. 9-10.
3. Ibid., p. 8.
4. "Session on School Ruling Requested," The Wheeling Intelligencer, May 21, 1982, p. 1.
5. Ibid., p. 8.
6. Ibid., p. 1.
7. "Appealing Recht's Ruling May Split State Officials," Charleston Daily Mail, June 15, 1982, p. 1.
8. Ibid., p. 12.
9. In the Supreme Court of Appeals of West Virginia, Janet Pauley, et al, Plaintiffs v. Linda Martin, et al. v. Larrie Bailey, et al., Defendants, January 5, 1983, for appeal of final order Kanawha County Court of West Virginia.
10. "Education Group Challenges Recht Decision," Charleston Daily Mail, December 16, 1982, p. 1.
11. "Recht Says He'll Decide on School Plan This Week," The Wheeling Intelligencer, September 23, 1982, p. 2.
12. Pauley v. Bailey, op. cit., p. 7.
13. Ibid., p. 2.
14. Ibid., p. 3.
15. "Browning Won't Advise Panel on Recht's Ruling," Charleston Daily Mail, September 14, 1982, p. 1.

16. "School Committee Schedules First Meeting," Charleston Daily Mail, Sec. D., September 16, 1982, p. 1.
17. Bob E. Meyers, State Board of Education Member, Open Letter to the Members of the West Virginia Education Task Force, September 21, 1982.
18. Roy Truby, Charge by letter to Pauley v. Bailey Advisory Committee, September 22, 1982.
19. Charlotte Covender, "Educators' Remarks on Help in Developing Rechart Plan," Charleston Daily Mail, September 23, 1982.
20. Thomas McNeel, Chairman of master plan Committee, "Recommendation of the Pauley v. Bailey Advisory Committee," West Virginia Department of Education, December 1, 1982.
21. McNeel, "A Summary of Development and Contents of a Master Plan for Public Education in West Virginia," op. cit., p. 3.
22. Ibid., p. 7.
23. Policy 57211, West Virginia State Board of Education Minutes, Charleston, West Virginia, August 11, 1983.
24. McNeel, "A Summary of Development and Contents of a Master Plan for Public Education in West Virginia," op. cit., p. 7.
25. Policy 2442.01, West Virginia State Board of Education Minutes, November 11, 1983.

26. The master plan for Public Education, West Virginia Board of Education, December 28, 1982, p. 337.
27. Ibid., p. 337.
28. Pauley v. Bailey, Final Order of Judge Recht, March 4, 1983, p. 3.
29. Ibid., p. 4.
30. Pauley v. Bailey, op. cit., p. 208. (as interpreted by Recht from Killen v. Logan County Commission and Amherst Coal Corp., No. 81-P-31, January 6, 1982.)
31. Pauley v. Bailey, Supplemental Opinion, op. cit., p. 10.
32. Pauley v. Bailey, op. cit., p. 228.
33. Ibid., p. 193.
34. Ibid., p. 196.
35. Ibid., p. 82.
36. "Lincoln County Schools' Appeal to be heard by Supreme Court," Charleston Daily Mail, November 10, 1983, p. 7C.
37. Linda Comins, "Recht Vows School System Will Not Feel Reduction in Funding," Wheeling News Register, Wheeling, West Virginia, March 20, 1982, p. 1.
38. Senate Bill No. 15, (West Virginia, May 1981), p. 2.
39. Ibid., p. 15.
40. Senate Bill No. 131, (West Virginia, 1984), p. 4.
41. Ibid., p. 8-9.

42. Ibid., p. 13.
43. Ibid., p. 9-10.
44. Ibid., p. 10.
45. Ibid., p. 11.
46. Ibid., p. 12.
47. House Bill 1731, (West Virginia, 1982), p. 1.
48. Ibid., p. 4.
49. Ibid., p. 3.
50. Senate Joint Resolution No. 4, (West Virginia,
March 10, 1984), p. 2.
51. Ibid., p. 3.
52. Ibid., p. 2.

CHAPTER V

Conclusions and Findings

Background of Study

The purpose of this study was to identify the historical circumstances affecting the West Virginia public school finance system which led ultimately in 1982 to the Pauley v. Bailey decision. The intent of the study was to review the happenings which led to Pauley v. Bailey, the major results of this decision until the close of the West Virginia Legislature in 1984, and then chronicle these happenings and results.

It was difficult to find an exact starting point as to what brought about the actions leading to Pauley v. Bailey. Because there is no way to restructure what actually took place, what motivated the action, and what the actual order of events was, this difficulty exists.

The study had certain limitations. This was not an attempt to analyze the actions or reactions to Pauley. The basic intent was to compose an historical document without the extreme emotionalism which surrounded the case while the participants were still able to recall significant facts in detail. At the time of the study, no one had interviewed the major participants in the court action with the intent of assimilating this information. All that was available were documents and fragmented newspaper coverage of the events.

In addition, there was no attempt made in this study to analyze or interpret the findings of the courts. The study did not delve into the actions of individuals or pressure groups which may have attempted to determine the outcome or results of the Pauley decision.

The study traced the actions of three significant groups: the courts, the West Virginia State Board of Education, and the West Virginia Legislature. It further attempted to place these actions in a chronological order. In some cases, they were intertwined but had to be treated as separate actions. The intent of the researcher was to assimilate in one document as much of the record of Pauley v. Bailey as could be substantiated by intertwining the actions of the courts, State Board of Education, and Legislature, with the perceptions of what happened as the major participants viewed the events. The collation of all this information is an attempt to understand what happened and to make these actions as clear as possible.

Before attempting to restructure what happened, the researcher first reviewed the legal documents which served as a catalyst to develop a procedure for the study. Then actions in other states similar to Pauley were reviewed. Throughout the country, several similar cases were being litigated, including the highly publicized Serrano and Rodriguez decisions. Many of the basic issues in Pauley

could be found in Robinson v. Cahill, Horton v. Meskill, and Seattle School District No. 1 of King County v. State, and others.

The next step was to determine the participants involved in Pauley and the roles they played. Only by interviewing these people could the researcher find out what truly transpired from the participants' perceptions. The participants were selected on the basis of the significance of the roles they played in the action. The series of seven questions developed for all major participants and those developed for individual participants served to inform as well as to verify pertinent information.

The seven basic questions could be answered by all participants since the questions were based upon issues common to all. Specifically, the participants were asked how they perceived the Pauley v. Kelly action as it related to the financing of the public schools of West Virginia in 1975. Responses were mixed: they ranged from enthusiastic support to pessimism. Participants saw this action as a means for helping individual schools with small problems as well as a means for establishing a new era for financing West Virginia Schools.

The questions relating to specific roles played by the participants in the initial stage of Pauley v. Kelly as well as changing roles between 1975 and 1982 resulted in limited

responses since most of the participants changed roles in the seven-year period. However, the respondents were asked to respond to the questions from the vantage point of their initial roles in the action. In response to the question pertaining to their perceptions of the removal of the inequities in funding by the projected end results, most participants replied in the positive. However, most participants also agreed while it is possible to improve the situation, it may prove impossible to achieve absolute equity. All participants were asked to determine to what extent the master plan was a viable solution to resolving the original complaint. Most responded the master plan offered a positive approach for improving education in West Virginia.

A crucial question focused on the roles of the various branches of government in the action. When asked why the legislative and executive branches were not more responsive to the issue of equity in the financing of public schools prior to Pauley v. Kelly, the participants concurred that politics and resources were at the crux of the initial problem. The politics alluded to were not that of a bipartisan nature, but those dealing with a control of resources. The county school districts which had been able to provide the greatest sources of revenue usually had control of the legislature. It is this type of politics and

lack of resources statewide which initially generated the action resulting in Pauley v. Bailey. Finally, all participants were asked to what extent the original complaint had been resolved. A variety of answers were given because of the varied roles played. Most, however, felt there was a definite move in that direction. The participants viewed the complaint from the jobs or roles they had at the time of the action and the extent of their aspirations for the outcomes.

In retrospect, the seven questions served the purpose intended by the researcher. A variance of opinions existed and still exists today, depending on the role played by the participant at the time of the action and the role occupied by the participant currently.

The interview with Arthur Recht proved crucial to this study. This was the first interview of this nature granted by Recht who observed that it was the first interview done for the purpose of research in a non-threatening or emotional setting. Requesting the questions prior to the interview, Recht remarked he was delighted that someone was putting all the information together without emotions and politics and a summation of the study should be made available to the public.

Pauley v. Bailey: Findings

The Recht Court declared education in West Virginia was a statewide issue and not limited to a local concern. The court determined the West Virginia school finance system was unconstitutional and ordered detailed and far-reaching reforms, not only in the school financial plan, but also in the State tax system relating to the assessment of local property. It concluded that the legislature was required to provide for a thorough and efficient system of education as mandated by the State Constitution. In September 1982, Judge Recht agreed to a plan permitting the State to supervise a restructuring of the state school finance system pursuant to his ruling. His revised order placed the responsibility for compliance with a task force managed by the State Board of Education. It was evident from the findings of the Recht Court that several litigation cases which preceded Pauley v. Kelly had a significant effect on his ruling. The West Virginia Court based its findings upon the strict judicial interpretation that education is a fundamental right under the State Constitution. Strict judicial scrutiny resulted in a challenge to the West Virginia method of funding public schools.¹ The West Virginia Supreme Court, going beyond the fiscal neutrality standard used in Serrano and other fiscal equalization areas, reasoned that inequity of interdistrict resources

affected educational offerings and outcomes, and violated state equal protection requirements.

In researching Pauley v. Bailey, the Recht Court gleaned the idea of fiscal equity from Serrano (1971) and accepted the concept that the level of funding of public elementary and secondary education should not depend upon the wealth of the local school district. Judge Recht further expanded that premise when he determined that the dependence of county school districts on local excess levies was the primary cause of the failure of many county school districts to meet their educational needs.

Recht found that the requirement of a thorough and efficient system of schools imposed a duty on the State. In essence, the State had a legal duty to insure that school systems with the greatest educational needs and costs receive sufficient educational resources to meet those needs so all children with similar needs were treated equally and provided a high quality education.²

Tax Equity

Throughout this study there remained the question of property taxes and assessments. Even though real property taxes usually were paid at the same tax rate in a given county, they were not always equitable to the taxpayer because of different values placed on property when it was assessed. In addition, a question which surfaced often

during this study was to what extent taxpayers were taxed at different rates throughout the State for school financial purposes. James Smith alluded to the different values placed on property when he stated that it was difficult to place equal value on property on Cedar Creek in West Virginia, as compared to similar property on the banks of the Potomac River in West Virginia.³

The West Virginia Supreme Court held that the State must demonstrate that it made provisions for supplemental aid to flow to property-poor county school districts in such a manner that they could meet the provision of a thorough and efficient system of education for each child in West Virginia. The Supreme Court further emphasized that ultimately it was the responsibility of the State, not the individual county school districts, to guarantee that all systems receive adequate funding. Moreover, both the Supreme Court and the Recht Court focused not only on attaining equity in tax burden or resource distribution, but also to whether or not adequacy of program offerings was being provided throughout West Virginia.

The issue of property taxation emerged with the clearest direction from the action of Pauley v. Bailey. A compounding part of the financial problems of West Virginia was the inability of the State Tax Commissioner and the county tax assessors to maintain current market value of

personal and real property throughout the State. Furthermore, the value of property was not appraised uniformly by the 55 counties. The clarification of the role of the State Tax Commissioner, as related to county tax assessors, resulted from the action of the Pauley v. Bailey decision. Pauley v. Bailey reinforced the State Tax Commissioner's controlling role in regulating property tax assessment throughout the State. Methods, procedures, and timelines were established for developing tax appraisals by the county tax assessors. Thus, this action clearly defined the role of the State Tax Commissioner, county assessors, county commissioners, and circuit courts.⁴

Balancing the Branches of Government

Although the participants placed the responsibility for the failure to fund the state education system on specific office holders of the different branches of government, no state official was totally free from blame in ignoring the mandates of the West Virginia Constitution.

Lyle Sattes argued that the legislature had given sufficient resources and authority to the executive branch and the State Tax Commissioner to fulfill their duties to appraise and assess property. Herschel H. Rose charged the State Tax Commissioner was prevented from doing his job by the 55 county tax assessors. Rose further stated that the State Tax Commissioner lacked the necessary fiscal resources

and manpower to fulfill the intent of the legislature. Harshbarger felt that both the executive and legislative branches had been neglectful in carrying out their duties as they related to property assessment. Recht believed that the blame for the failure of West Virginia to provide a thorough and efficient system of public education rested not only with the legislative and executive branches of government but the judicial system itself also was partially at fault.

The Recht Court discharged what it considered to be its responsibility within the contours of Pauley, et al. v. Bailey, et al. The result was no less than a call to the legislature to reconstruct completely the entire system of public elementary and secondary education in West Virginia. The court further described the process as immensely complicated, one which could only be accomplished by the coordination of the legislative and executive branches of government at its upper levels, together with the State Board of Education and State Department of Education, the State Tax Commissioner, county school boards, county tax assessors, representatives of the plaintiffs, and representatives of interested educational groups.

In his epilogue Judge Recht stated,

"Indeed, there should have been no reason to have instituted this suit in the first instance. If the other branches of government would have over the years discharged their duty and would have set standards, these standards would now be a reality.

Despite the precise constitution mandate, individuals of government need the judicial direction to assist them in discharging their oaths. This is the genius written the concept of separation of power and judicial review."⁶

Although West case law makes education funding second in priority only to payment of the State debt, State ex rel. Board of Eduction v. Rockefeller - W.V. - 281 SE.2d 131, 135 and before every other state function, the legislature still failed to adopt legislation which would have funded adequately the public elementary and secondary schools in West Virginia.

Extent of Funds Expended
After Pauley v. Bailey

West Virginia public school per-pupil current expenditures changed during the period between 1983-84, a year following the final decision of Pauley v. Bailey. The same state school aid formula had been in effect in West Virginia with three modifications since 1972.

The amount of current funds expended per pupil increased in West Virginia during this time by \$1,219.00 per pupil. The county school district with the highest expenditure was Pleasants County with a per-pupil expenditure in 1983-84 of \$3,433.20, while Roane County expended the least at \$1,857.92. On the state average, per-pupil expenditure for public elementary and secondary pupil education was \$2,283.90 in 1983-84.

In 1975-76 county school districts provided 34.9 percent of all their per-pupil expenditures. Some eight years later, this had decreased to 27.9 percent. Meanwhile, the state increased its percentage of per-pupil expenditures from 52.4 percent in 1975-76 to 61.5 percent in 1983-84.⁷

As a result of legislative action following Pauley, 29 million dollars was granted for salary equity for the purpose of equalizing salaries for school employees up to the 50th percentile. Salary equity money and the money from step seven as an equalizing factor were the two major changes in the state school aid formula relating to per-pupil expenditures.⁸

Distinguishing Factors

Although there were similar cases and decisions in six other states to Pauley v. Bailey, there were, however, three distinct factors which made this case unique. First, the Supreme Court provided a definition of the thorough and efficient standard which appears in many state constitutions but which at times had seemed to defy definition. Justice Harshbarger's clear and precise definition of a thorough and efficient education presented a distinctly new approach for cases dealing with fiscal equity.

Second, the appointment of Arthur Recht as trial court judge proved to be an important factor. With the advantage of the Supreme Court's definition, Recht was able then to

measure testimony presented by expert witnesses. He developed a comprehensive opinion that outlined a near-ideal school system which would allow all West Virginia students to receive a near-equal education as interpreted for him by Harshbarger.⁹

Finally, in a precedent-setting move, Recht appointed Roy Truby and the West Virginia State Board of Education, two of the defendants in Pauley v. Bailey, as the commissioner under the court's direction. The naming of the State Board of Education and State Superintendent of Schools as commissioner was the third and most unusual factor.¹⁰

Motivation for the Initial Action

When one considers the far-ranging implications of Pauley v. Bailey, the elementary school children on a playground in Sod, West Virginia, seemed unlikely catalysts for such an action. Located about 24 miles south of Charleston, West Virginia, in eastern Lincoln County, the rural community of Sod is comprised of a variety of modest homes of working class people. The elementary school, built in the 1960's, and the churches in the community serve as community centers for the small community. This picturesque setting became the focal point of litigation concerning the financing of the West Virginia public elementary and secondary education system.

Janet Pauley, plaintiff and mother of these children, maintained that she was not looking for notoriety, and, in fact, seemed most uncomfortable with certain aspects of the ensuing publicity. Pauley wanted a solution to the problem of unsanitary and unsafe conditions and the lack of instructional materials in the elementary school attended by her children. Since she allowed approximately two years to pass between the initial incident and the time of filing the first court action, one would have to question the complacency of the administration of the Lincoln County school system. Why did the administration of Lincoln County allow a seemingly resolvable problem to escalate into a statewide issue? Mrs. Pauley seemed hesitant to take action until she felt there was no other way of correcting the problem.

Pauley was unaware that several influential individuals had been scrutinizing the state system of financing education in West Virginia. In particular, Daniel Hedges, who became her attorney, and Daniel Taylor, then State Superintendent of West Virginia Schools, had discussed several times the Serrano and Rodriguez actions as they related to the state school finance system in West Virginia. When Pauley approached Hedges with her complaint, the time and climate was right for such an action in West Virginia.

The state judiciary also seemed to think the time was right to restructure both the educational system and its accompanying financial system. Two spokesmen, Justice Harshbarger and Judge Recht, determined that it was appropriate to establish the groundwork for equal educational opportunity for all public elementary and secondary students in West Virginia. One of Recht's major concerns was which governmental agency ultimately was responsible for ensuring that a thorough and efficient system of education was provided West Virginia public school students. Recht resolved this concern in the "Epilogue" of Pauley v. Bailey, when he determined, "if not the judicial branch of government then who would bring together the energies and talents of West Virginia?"¹¹ The more important and urgent question for Recht, however, was when equity in West Virginia's public schools would become a reality, indicating that the children of the State was "our most precious natural resource." Recht answered this question also in the "Epilogue" of Pauley v. Bailey when he ruled that the "when [for fiscal equity] must be now."¹²

Changes Resulting From Pauley v. Bailey

It is at this point that the researcher needs to clarify his role during the Pauley action. He served as a superintendent of schools in West Virginia in both a rural setting similar to that in Lincoln County and in one of the

larger county school districts. During this period of time, he served on two committees at the request of State Superintendent Daniel Taylor between 1975 and 1979. These committees were charged to study certain aspects of the financing system of public schools in West Virginia. During this time he became aware that there was a concern statewide that the Pauley action would change the school aid formula drastically if something were not done to make the present formula more equitable. From these experiences, he was aware of the ensuing actions pertaining to the case before they became public knowledge.

He could view Recht's decision as a document which would affect all aspects of education in West Virginia. The rhetoric in Recht's "Epilogue" was inspirational: Recht believed that Pauley would indeed correct the deficiencies in the West Virginia public school system. The problem, however, was that he prescribed an ideal system without an adequate timetable and with little consideration in funding. He left to the conscience of the members of the legislature how his decision was to be implemented. They were told the financing of the educational system in West Virginia was unconstitutional, and they and the State Tax Commissioner had the power to remedy the inequities of property tax administration.

Probably the most sweeping changes resulting from Pauley occurred for the State Tax Commissioner. First, the State Tax Commissioner was required to develop a procedure for determining values yearly in real and personal properties. Pauley clearly reinforced the role of the State Tax Commissioner and minimized the political power of the 55 local tax assessors. Prior to Pauley v. Bailey, the local tax assessors had nearly total control of the assessment of property.

Another major change which resulted from Pauley was the leadership role given to the State Board of Education. The State Board were placed on a timetable and its members had to do everything possible to meet the requirements of the master plan. The State Board of Education had to set standards and these standards had to be high quality standards. Once the State Board assumed the responsibility for developing the master plan, it then had to serve in a regulatory role. Thus, the centralization of authority occurred as additional power and responsibility were placed in the hands of the State Board of Education.

Although the State Board of Education was given the authority to carry out the actions stipulated in Pauley, the West Virginia Department of Education was not given sufficient resources. The State Department of Education often had to rely upon local expertise to develop programs and implement the master plan.

Although Recht recognized that local boards of education were effective vehicles for delivering educational services, he also observed that no county school district fully met the requirements of a "thorough and efficient" system of education. As a result, the local boards of education found themselves operating under a more unified set of rules, which eliminated some of the political inconsistencies. However, the State Board of Education and local boards of education in some cases found themselves in a power struggle.

In Pauley, the State Board also was mandated to direct all local boards of education to develop parent grievance procedures at the local level. Had this vehicle been in place in 1975, the Pauley action may never have developed.

In addition, Pauley created a more equal financial system for the local boards of education. It eliminated a portion of the disparities of personnel salaries, both professional and service, in some county school districts. With the one-time salary increase from equalization funds, Lincoln County was able to stem the movement of their teachers to wealthier county school districts. Pauley also prevented wealthier county school districts from proselytizing professional personnel from poorer county school districts. Local boards of education were required to provide services for which, in some cases, they lacked

the resources or funds. With equalization of personnel salaries and assumption of greater responsibility by the state for funding the schools, some county school districts have had local excess levies fail. Local initiative has been removed as more funding responsibility has shifted to the State.

Although Pauley resulted in a greater level of fiscal equalization, there still exists a disparity in the educational opportunities for the children throughout the State. Recht did not address any means for bringing the poorest county school districts up to adequate levels. He avoided this issue, and it remains still unresolved.

Pauley has also changed the role of the local school administrators--superintendent, county staff personnel, and principals. Prior to Pauley most of the educational programs were on a county basis and implemented in various schools. Now the superintendents and their staffs will implement the state's high quality standards as well as function as educational leaders to fulfill the needs of the local communities. The principal, then, has to be responsible, within reason, for carrying out all state and local mandates.

One of the crucial issues which every local board must address is how state funds are received through Step 7 of the State School Aid Formula. With adequate Step 7 money, a

county school district can fulfill the educational requirements. However, without adequate Step 7 money, a poor county school district still cannot develop the required educational programs. According to Recht, "Step 7 was an attempt to attain equity, but in practice it fell short of its intents."¹³

Pauley then mandated both realistic and unrealistic goals, objectives and educational programs. On a positive note, working standards have been created for all. A high quality education has been prescribed for all. A timeline for the implementation of a quality curriculum has been established. Policies have been implemented to aid the poorer county school districts. Unfortunately, many regulations have been enacted, but the funding always has not followed.

Questions Raised and As Yet Unanswered

From the researcher's vantage as a West Virginia educator, several questions remain. References to political actions were evident throughout the study but were not developed in the document because of the limitations of the study. Some observations need to be made, however. During his interview, somewhat caustically, Harshbarger shared his resentment toward the then Governor of the State of West Virginia, Jay Rockefeller. Harshbarger suggested his own involvement with Pauley may have been the reason he lost his

seat as a member of the Supreme Court. In 1979 there was an attempt to stave off judicial action when some changes to the school aid formula were legislated. Also, the question as to why the defendants in the case did not choose to defend more actively themselves during litigation continues to be voiced. How the meetings between attorney Hedges and former State Superintendent Taylor affected the action also remains a mystery.

The political intrigue also may have affected the decisions made by the State Department of Education as the master plan was being developed. For example, the timeframe for the development of the master plan had political overtones. Three months seemed too unrealistic a time period for such a monumental task. Attorney Hedges, however, remained adamant, pushing for a deadline which would coincide with the convening of the session of the legislature.

Throughout the period of time the case was in the public eye, the question constantly emerged--had the judicial branch exceeded its constitutional authority? In his Epilogue, Recht implied the judicial branch of government was responsible for bringing about the necessary changes to benefit the children of West Virginia.¹⁴

Other questions need addressed before all aspects of Pauley can be understood. Has the level of fiscal equity

for children in the public elementary and secondary schools in West Virginia been improved? What political pressures affected the Pauley decision? What were the sociological aspects of the case? What are the legal ramifications of Pauley v. Bailey? How will Pauley v. Bailey affect the financing of education in the State of West Virginia in the future? These questions may prove the basis for future studies.

Notes

1. Martha M. McCarthy, Paul T. Bergman, "What Legally Constitutes An Adequate Public Education." A publication of Phi Delta Kappan. Bloomington, Indiana, 1981, p. 13.

2. Pauley v. Bailey, Civil Action No. 75-1268, Kanawha County, WV, p. 218.

3. Personal interview with James Smith, Assistant State Superintendent of West Virginia Schools, Charleston, WV, December, 1984.

4. Personal interview with Herschel H. Rose, Former West Virginia State Tax Commissioner, Charleston, WV, January 30, 1985.

5. Pauley v. Bailey, op. cit., p. 234.

6. Pauley v. Bailey, op. cit., p. 234.

7. Public Education Source Book 1985, No. 6. (Charleston, West Virginia: West Virginia Department of Education), p. 122.

8. Smith, op. cit.

9. Personal interview with Former Justice Sam Harshbarger, Milton, WV, March 14, 1985.

10. Personal interview with Dr. Roy Truby, Charleston, WV, January 8, 1985.

11. Pauley v. Bailey, op. cit., p. 238.

12. Ibid., p. 238.

13. Personal interview with Arthur Recht, Presiding Judge, Pauley v. Bailey, Wheeling, WV, April 19, 1985.

14. Pauley v. Bailey, p. 239.

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APPENDIX

INTERVIEW MAJOR CHARACTERS

Clark, James P. March 21, 1985	Former President of West Virginia State Board of Education 1982-83 Charleston, WV
Harshbarger, Sam R. March 14, 1985	Chief Justice West Virginia Supreme Court Milton, WV
Hedges, Daniel February 6, 1985	Attorney for Plaintiff Charleston, WV
McCann, Charles May 1, 1985	Former Principal Harts High School, Lincoln County, WV Superintendent of Lincoln County, WV Hamlin, WV
Pauley, Janet June 1, 1985	Plaintiff parent Sod, Lincoln County, WV
Rose, Herschel H. January 30, 1985	Former State Tax Commissioner of West Virginia Charleston, WV
Sattas, Lyle March 6, 1985	Chairman, House of Delegates Education Committee Charleston, WV
Smith, James C. December 14, 1984	Assistant State Superintendent of West Virginia School Finance and Administration Charleston, WV
Dr. Taylor, Danie March 26, 1985	Superintendent of West Virginia School 1971-1979 New York, NY
Dr. Truby, Roy January 8, 1985	Superintendent of West Virginia Schools Charleston, WV

QUESTIONS FOR ALL MAJOR CHARACTERS

1. Initially, how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools of West Virginia in 1975?
2. What was your role in the initial stages of the Pauley v. Kelly action?
3. As it relates to the Pauley cases, to what extent did your role change between 1975 and 1982?
4. Are the projected end results going to remove the inequities in funding of public education in West Virginia?
5. To what extent is the Master Plan a viable solution to resolve the original complaint?
6. Why do you believe the legislative and the executive branches were not more responsive to the question of equal financing of the public schools prior to the Pauley v. Kelly case?
7. To what extent has the original complaint been resolved?

INTERVIEW WITH JAMES A. Clark

Jack Flanigan: With me today is Mr. Clark, former president of the West Virginia Board of Education, presently an active member of the West Virginia Board of Education. Mr. Clark, thank you for joining me today and allowing me to ask you these questions. You do realize that this is being recorded?

James Clark: Yes.

Jack Flanigan: Mr. Clark, initially how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools in 1975?

James Clark: Well, when I first heard about it actually, it was very vague--it was just as a matter of fact--and I wasn't on the State Board, as a matter of fact, when I heard about it, but I heard about it, the decision, and if it were implemented it was going to cost a horrendous amount of money. I heard it somewhere. And later then, I guess my next reaction to it was I was kind of surprised that the information I got was that during the hearings the judge had had we weren't really--didn't appear to be represented as much as we probably should have been. In other words, when this thing was handed down, it became obvious that we had had the opportunity--we were told--we had the opportunity to answer and appear and everything and we didn't do it--enough, in other words. I know we did make some appearances over there, but that was my initial--maybe this is the first go 'round, okay? That--I can't remember now who was president. . . we were all surprised we had not had an opportunity to work on this thing. Then when it finally landed on us, I was really kind of amazed. I had mixed emotions. I looked at that and I read it and the first was--the first was a little bit of anger that here I thought we were doing a pretty good job with the resources we had in West Virginia and for a judge to come down and tell us about all these things that had to be done and the way that we were doing them wrong, etc. I guess my first action was one of a little bit of hostility. And then later as I looked at it, it was one of amazement because as I looked at that thing, the way it was first handed down, I just am practical enough to say there's no way we can do that. At least in the foreseeable future. And it wasn't until we had further clarifications from the judge that we began to accept the possibility of this thing being a reality and to buy into it. Our Board had some pretty--pretty strong feelings about it and I think were not at all in favor of working with it when it first came out--because it seemed to be so

preposterous. And until it was clarified that was generally the attitude.

Jack Flanigan: What was your role in the initial stages of the Pauley v. Kelly action? Did you have any role as a board member at that time?

James Clark: Well, the only role I had was I happened to be President of the Board of Education when the decision was handed down. And I had to work with--I might clarify that--you might want to check those--I was either President during the time it was handed down or shortly thereafter. And in the course of the period of time I was President of the year the plan was developed, etc.

Jack Flanigan: When did you (this is for just clarification) first come on the State Board of Education?

James Clark: My term started officially in--the term I'm serving now started in '77--but I didn't get appointed probably until I think early '78.

Jack Flanigan: As it relates to the Pauley case, to what extent did your role change between 1975 and 1982?

James Clark: Well, of course, I had no knowledge at all except a little hearsay here and there in the locker rooms at the YMCA down to one with a little bit of knowledge having heard that it had been decided but turned over then to the Supreme Court. The Supreme Court then remanding it back and it was just something that we knew was there but it really didn't pose much of a threat. I don't know whether everybody thought maybe it might go away or what but then [we] really [started] becoming actively involved in it when it did come down. And [we're] trying to chart a course of a procedure that would be acceptable to everybody.

Jack Flanigan: Are the projected end results going to remove the inequities in the funding of the public schools in West Virginia in your opinion?

James Clark: Well, I think that they'll move it a lot closer than it was. I don't think anything will remove all of the inequities, but certainly that eventually when the money is available and the funding is available, I think it will--go a long ways toward doing that very thing.

Jack Flanigan: To what extent is the Master Plan a viable solution to resolving the original complaint?

James Clark: Well, it seems to me it's probably--it's probably the only way it could be done. I don't--you know, I've often heard there's nothing more unequal than equal treatment of unequal people, but that's what we're striving for; at least equal opportunity. I don't ever think we'll ever be able to treat everybody equally, and I don't think everybody will ever have an equal opportunity, but at least to have the opportunity to receive an education; that's what we're trying to do; and it may never get completely as to what they originally wanted to do, I don't know.

Jack Flanigan: Why do you believe the Legislature and the executive branch were not more responsive to the question of equity of financing the public schools prior to the Pauley v. Kelly case?

James Clark: I think probably we're--historically we're a poor state and I still read that we commit a high percentage of our per capita income to education--higher than many states--we're in the top--I know it's in the top third--maybe higher than that. And I think you have a certain practical element there that just said, hey, we're not going to be able to do all the things that we need to do, and maybe it was the inertia of the position that until this thing happened, you know, we started looking around for ways to accomplish what it wants us to do.

Jack Flanigan: To what extent has the original complaint been resolved in your opinion?

James Clark: Well, of course we have the Master Plan. We have implemented a lot of it. We've implemented quite a bit of it where funding has been possible. Of course we started--we started tackling the things that didn't cost anything first; and here we find ourselves with a brand new plan for excellence when we had one of the darkest times in our state's financial history. So we started at the right end of the spectrum trying to implement things that didn't cost us a lot of money. Since then we have been effective also at spending some money, you know, with equity in teachers' salaries, and we've been able to move towards equity there and are a lot closer to it than we were. I think as the money becomes available we'll see the other things adopted.

Jack Flanigan: Mr. Clark, thank you for answering the original questions. The four questions now relate to information that maybe only you will ever have knowledge of. What role did the State Board of Education play when you met with Judge Recht and removed the State Board as an adversary in the Pauley v. Bailey decision?

James Clark: Okay, to go back with what we talked about before, we had some people on the Board that--well, we were divided; some people wanted to, you know, fight it, and some people wanted to go along, and some people didn't know what to do. So we decided we better go up and talk to the judge. My chief concern was the fact that he was going to try to put in a commissar--some sort of an overseer, and I felt that that would in essence cause us to be derelict in our duties. We have a constitutional responsibility for education in this state of West Virginia and I felt if he put in a czar, or whatever you want to call it, to oversee this plan then they would be usurping our authority. And I felt number one, there's going to be legal problems there. I also felt that the State Department of Education had the credibility of the Legislature, and the Governor, and largely with the superintendents; and if there's any one player or any one individual that could bring all three players together, it was the State Department through the State Board of Education. So we set up a meeting with the judge and flew up to meet with him, Roy Truby, and I, and Duke McDaniel, and the Tax Commissioner. We told him at that meeting we'd removed ourselves from an adversarial role and would like to be very much considered-- we wanted to do the job right in the Master Plan; and that's how it happened and he--I don't think before that meeting--I don't think he was aware that we were not adversarial. And I think that clarified the way for him to go ahead and appoint us to do the job rather than bring in somebody that would probably, in my opinion, would have had a hard time pulling all those players together. I didn't think anybody had that ability or knowledge to do it really, except the State.

Jack Flanigan: How active a role did the State Board of Education play in the development of the Master Plan?

James Clark: Well, I think it was a very active role. Of course probably one of the most important things we did was pick the committee--at least through the Department--and the committee that was to develop guidelines and suggestions for the State Board. And there's some things we wanted and some things that we didn't want; and of course when you pick a committee they have to be free to perform and we allowed them to do that. We made very few changes in it after they brought it back to us; but we did meet ongoing with them, and as they were moving through the process we felt it was up to us to exert some influence. We didn't have any time and we had--just couldn't afford the luxury of bringing this thing back and forth several times because the judge wouldn't give us the time we wanted.

Jack Flanigan: Who determined the steps of equalization that would be initiated and carried out?

James Clark: Well, that's--that was the State Board--the committee made the recommendations back to them--through the Department to the Board and the Board accepted those.

Jack Flanigan: Why was the 90-day period imposed for the development of the Master Plan?

James Clark: Well, we certainly told the judge that that wasn't enough time, and realistically it wasn't. But the judge had a lot of pressures; and I think probably that the plaintiff's attorney was one of the moving factors in--as I recall at that meeting the judge was leaning towards giving us more time, and the plaintiff's attorney was effective in convincing the judge they didn't want to delay it any longer because it could miss the forthcoming session of Legislature.

Jack Flanigan: Mr. Clark, are there any thoughts that you would like to share? Is there anything in closing this interview that you'd like to put in the record?

James Clark: Well, yes sir, I would. I'd like to say that I think the plan has come an awful long way from the time the judge first put it out to the time he explained what he was talking about; a couple times he gave us a chance to get into it, and I think it's a wonderful road map for education in West Virginia--I really do believe it; but I--also I've often said that I think it will only be as good as all of us make it; and the climate we've had in the past two or three years for education has been--has been really good. It's on the front burners--on the forefront, and I would encourage all the members of the educational family to try and put away some of their prejudices and differences and turf fights and battles and get behind this thing; and it's got the potential of really being a great thing for education in West Virginia, but it has to be supported by the community.

INDIVIDUAL QUESTIONS FOR JAMES A. CLARK,
FORMER PRESIDENT, WEST VIRGINIA STATE BOARD OF EDUCATION

1. What role did the State Board of Education play when you met with Judge Recht and removed the State Board as an adversary in the Pauley v. Bailey Decision?
2. How active a role did the State Board of Education play in the development of the Master Plan?
3. Who determined how the steps of equalization would be initiated and carried out?
4. Why was a 90-day period imposed for the development of the Master Plan?

INTERVIEW WITH SAM A. HARSHBARGER
FORMER CHIEF JUSTICE

Jack Flanigan: Today is the 14th of March, 1985 and with me in Milton, West Virginia, is the former Chief Justice of the West Virginia Supreme Court of Appeals, Mr. Harshbarger. Mr. Harshbarger graciously has agreed to answer basic questions that relate to his role and function; then I've asked him to make any comments for the record. Mr. Harshbarger, initially, how did you perceive the Pauley v. Kelly action as it relates to the financing of the public schools of West Virginia in 1975?

Mr. Harshbarger: It came to court in December, 1977, and my first acquaintanceship with it was just two months before that in October when the petition for appeal was granted--by the court. That was the first year I was on the court and we had knowledge that this action was pending in the circuit court in Kanawha County and had known the results of that proceeding; and when it came it was expected. And the court granted the appeal, and then we heard the arguments and, as I recall, in the January term of 1978 we started the work on the case. It continued for, I think, 11 months--the preparation of the opinion. We perceived it as having the potential for a dramatic effect upon financing of public education in West Virginia and dealt with the question very, very carefully and thoroughly for that very reason.

Jack Flanigan: What was your initial role in the Pauley v. Kelly action? I think you just spoke to that briefly. Would you care to elaborate?

Mr. Harshbarger: I was assigned to write the case.

Jack Flanigan: Would you like to share some of the research that went into your initial action of this case?

Mr. Harshbarger: The main problem was for the court to decide whether the thorough and efficient clause of the West Virginia Constitution was a standard by which activities of the Legislature--statutes passed as a result of those activities--could be measured or whether that clause in the constitution was just a sort of a "we hope you will" type of injunction by the founding fathers of the State to determine whether the thorough and efficient education clause was something that was enforceable by courts and not just "we hope you will have a good school system" type of thing. It was necessary, I thought, to review every case in the country from every state that had such a clause in its constitution. And that's what I did. And put those

together in a draft opinion which was circulated to the court, and the court was convinced that indeed the thorough and efficient clause was one that established a mandate to the Legislature and was not merely an empty phrase. From that touchstone then sprang the rest of the opinion, which was that a court, a lower court, or trial court, should review the status of financing of West Virginia schools and see if, in fact, the Legislature had been abiding by the constitutional mandate.

Jack Flanigan: As it relates to the Pauley case, to what extent did your role change between the initial action in '75 until the decision was rendered in '82?

Mr. Harshbarger: It really didn't change.

Jack Flanigan: Are the projected end results to remove the inequities in funding of public education--the end results that you all have handed down--are they really going to remove the inequities? Do you feel the mechanics are there to remove the inequities as you viewed it from the court?

Mr. Harshbarger: Certainly, it's entirely possible to remove the inequities. Whether it will be done remains to be seen. The state that has had a similar experience most nearly to ours is New Jersey and that court had three different opportunities to write--in their case Estelle Robinson v. Cahill, Number One, Number Two, and Number Three, as I recall. And each time what New Jersey did was to make the statement that that was an unconstitutional method of financing under the New Jersey thorough and efficient clause which was similar to ours--almost identical. And then after that the Legislature proceeded to try to remedy that inequity--forthwith--it proceeded rather quickly. But another case by the same style came to the New Jersey court, and it found that the Legislature had not accomplished that, and then ordered that there be action to remedy those inequities. As I recall, it finally came back in a posture that was satisfactory to the New Jersey court. We had a step that New Jersey did not. We had the factfinding which produced the Recht opinion and left it then to the Legislature to proceed from that.

Jack Flanigan: To what extent is the Master Plan a viable solution to resolving the original complaint?

Mr. Harshbarger: Well, the Master Plan is a goal. Certainly if it were implemented it would, from all I know about it, solve the problem. But goals and achievements are two different things, sometimes, and I have no idea what our Legislature's going to do about implementing the Master

Plan. I think the State Board of Education is doing its best with the money it has available.

Jack Flanigan: Why do you believe the Legislature and the executive branch were not more responsive to the question of equal financing of the public schools in West Virginia prior to Pauley v. Kelly?

Mr. Harshbarger: ... or after. Well first, the counties that had the most inefficient school systems and were the most poorly financed, were counties with little political clout. Legislatures respond to political influence and these counties had none. Not only did the counties not have the type of clout that gets legislative action, but the constituency that Pauley v. Kelly was aimed at, which is that the children of the state have no clout unless that have a spokesman. I would say that the organization of teachers in West Virginia, looking back on it now, did not comprehend a problem beyond salaries for teachers. And the counties that had the most clout with teachers organizations were getting along very well. Ohio County, Kanawha, Cabell, Wood, Monogalia, Harrison, the larger counties in the state, more populous, the 20 or so of the 55 that have a large percentage of our population, were not all that badly financed and were not being pinched, you see. So the teachers' organizations which would have been pushing, could have been pushing all along for remedies for these situations in smaller, poorer counties, was not responsive to that and there was very little--to my recollection, as a citizen--there was very little push for equalization of teacher pay throughout the State. I can't remember whenever it was--before Pauley v. Kelly. And even since then, I'm not sure there has been that much.

Jack Flanigan: To what extent has the original complain been resolved in your opinion?

Mr. Harshbarger: Minimally.

Jack Flanigan: Are there any parts of it that have been addressed more than others?

Mr. Harshbarger: Teacher pay--which is good. I have nothing against that. I really don't; but, my gracious me, the facilities problem is enormous in these poorer counties. There are several things wrong with the notion that it's alright to build inferior facilities in which to teach children. The first exposure that young citizens have to their government in any meaningful way is in the school system. And it dominates the formative years of a young citizen's life. If the school system does not

attract--offer--to the citizen, young citizen, in those years from five until eighteen, approximately, in the public system, if the government does not show that it is caring and concerned about them as people by offering them decent and as a matter of fact high standard places in which to attend school, then the impression that the young citizen gets is that the government is no more responsive than anyone else to "my needs" in this state. In many of those counties, the children are products of homes that are impoverished just as the county is, you know. After all, the lack of wealth of geographical areas translates to a lack of wealth of the people in it. And poor children coming into buildings that would be a good subject for demolition derbies start off with the notion that the government is just about as bad as everything else is, you know, because that is their--what they see in government.

During this period of time when Pauley v. Kelly had been extant, my own children (I have two sons) were with their mother who in 1973 and 1974 was in Blacksburg getting her Masters in Economics, in Home Economics, and Family Relations. They were going to Blacksburg public schools. And then she went on to State College Pennsylvania to get her Doctorate and spend four year. They [my sons] were in state college schools, and at the time, the Governor of West Virginia reacting to Recht's opinion, which followed Pauley v. Kelly and was in response to Pauley v. Kelly was calling a special session of the Legislature of West Virginia to decry and downgrade and attack the Recht decision as being outrageous. The Governor said it was outrageous, you see. John Davidson Rockefeller, IV was saying it was outrageous. My children were then--one of them was in Brown University and the other one with his mother in Ithica, New York; and the Ithica public schools were in the alternative high school, which my younger son was attending, he was offered the broadest range of academic opportunities including going to Cornell if he wanted to. And when the Governor said that it was outrageous that Arthur Recht should suggest that the best education minds of the country that had testified in his case thought that children of my younger son's age--which is 16, 17, 18,--could learn about nature and backpacking, all these things in school, my son was having a day a week during the wintertime skiing! Took the whole school! Taught them a lifelong activity, you see. And that in the state of the naivete of John Davidson Rockefeller, IV. The vision and leadership in West Virginia during this period of time has been a dismal one to what we could have had. He, the Governor, the leader of the State, in a response to Arthur Recht's case, said--why, it's outrageous to think that children could be taught foreign languages in elementary school. And I've known that since I was a little

boy that that was the best time to learn languages. You know?! So you see, the before and after--the Recht decision has been unpopular.

Jack Flanigan: The unpopularity of it, though, rests with whom?

Mr. Harshbarger: With the Governor.

Jack Flanigan: With the Governor?

Mr. Harshbarger: And the leaders of the Legislature, too--some of them.

Jack Flanigan: To share the answers to this question so far, six people have given pretty much the very same response. They've all been very consistent in the response that the politics of the case indicate that the larger school districts were operating fairly well.

Mr. Harshbarger, I'd like to ask you four questions that relate maybe more to the court than you, but since you're the one answering, if I use the term you it may mean the court. You alluded earlier to the research for the thorough and efficient education portion of our Constitution. It is my understanding that you all developed a definition of a thorough and efficient education and presented it to Judge Recht in your charge to him.

Mr. Harshbarger: Yes.

Jack Flanigan: Could you share with us where and how that definition was developed?

Mr. Harshbarger: Well, I developed that. It was by thinking about it.

Jack Flanigan: Would you like to elaborate a little? I think it would be most interesting for someone in years to come to realize how you put that together.

Mr. Harshbarger: Well, you'll have to give me a few moments.

Jack Flanigan: Okay, we'll just take a pause here.

Mr. Harshbarger, if you would, please share with us your thoughts of the development of the definition of thorough and efficient which is used in the case.

Mr. Harshbarger: Well, I first thought about the Jeffersonian principle that democracy and freedom depend upon an educated electorate, and it was vital to a continuation of our government that our population be educated, particularly that of such states as ours where there tends to be an economic domination by powers that could care less about education decisions. You'll notice that I mentioned something to that effect in the opinion and even footnoted an article that was written by a reporter from the Huntington Paper by the name of Tom Miller--a series of articles that he was awarded some prizes for entitled "Who Owns West Virginia?" But anyhow, the maintenance of a democratic society depends upon having an educated citizenry. I think that's currently popular now, too. People talk about that a lot. These things seem to go in cycles. Anyhow, and then I thought what does a child want--what would I want my child to be able to do when he got through school? What should school be doing for him? And meshed those thoughts with the various types of cases that have been cited around the country dealing with education where the thorough and efficient standard has been used and developed that definition. I think it's necessary for children to be able to cipher, figure, to be able to read, to have social graces, to have hopefully been taught lifelong athletic skills that they can enjoy for recreation, and to have enough understanding of civility to be participants in democratic government--and that's pretty much the core.

Jack Flanigan: How long did it take you to evolve that decision? I know you've done a lot of research and a lot of reading.

Mr. Harshbarger: The whole decision?

Jack Flanigan: Or the definition. Did it take you long?

Mr. Harshbarger: When I got to that point, I just wrote that down. I don't think the court revised a word of it. I know it didn't.

Jack Flanigan: You alluded earlier in our discussion to the decision of the court to give directions in the case to Judge Recht. Would you explain why the court proceeded as it did in handing it to a lower court for hearing?

Mr. Harshbarger: Well, we have no--we had a choice really; all appellate courts have choices in these matters. Federal courts like to refer cases such as this to masters. They appoint what they call a special master who takes evidence and then presents that--and then maybe oversees the result

of his findings. As a matter of fact, in one of the federal education cases, I do believe, there was some--a master appointed. We have no facilities for taking evidence ourselves, of course, as an appellate court. And so we have to have somebody who sits there and listens to witnesses and makes findings of fact and conclusions of law based upon what those witnesses say. And instead of having a master do it, we decided to have one of our circuit judges do it, which is as good or better, and the place to do it we thought was in Kanawha County where this case arose. The Kanawha County Court judges--circuit court judges--were all very busy so we asked Judge Recht to come down from Ohio County and do it. And he sat as a circuit judge of Kanawha County by special appointment to take the evidence in this case.

Jack Flanigan: You've spent a lot of time and done a lot of research. In your opinion, how much inequity should exist before the court becomes involved in a case such as Pauley v. Bailey?

Mr. Harshbarger: Oh, that's almost impossible to answer. I think--Judge Neeley would disagree with me--Judge Neeley would think that, as he wrote in his dissent, that this is an area that the court should not travel in. He was the one dissenting vote. Oddly enough he voted for the First Amendment--or was prepared to vote for it; but he changed his mind before--I mean the first draft came--the very long one, but then he changed his mind about it as he has mentioned in one of his books--he did that. And that's true. But he felt it was an area in which the courts had no business. I think that the majority of the court, however, felt that there comes a place, indescribable though it might be, where courts must step in to see that the Constitution is obeyed.

Jack Flanigan: In other words, you feel very comfortable in this case that the court did not go beyond it's neutrality any further than it should have?

Mr. Harshbarger: We cannot be neutral as far as the enforcement of constitutional rights. There's no such thing as neutrality about the Constitution.

Jack Flanigan: Well, this was something that was spoken to, as you are well aware of.

Mr. Harshbarger: Oh yes. Other states have felt that way.

Jack Flanigan: In your opinion, how does the Pauley v. Bailey decision differ from other opinions of the same nature in other states during the same time period?

Mr. Harshbarger: It tracks New Jersey. I understand that subsequent to this case other states have not--other state courts have not chosen to follow. Of course the United States Supreme Court in Rodriguez failed to enforce any equal protection standard for education saying that it was not a federal right. Interestingly enough, President Gee at the University [West Virginia] was the clerk for the judge who wrote Rodriguez, and I happened to be perusing the notes of a speech he gave, or the transcript of the speech he gave, up at the West Virginia Bar Association, which was what we call the social bar that meets at the Greenbrier as opposed to the working bar which meets at the Ramada Inn somewhere or other. Gee was talking to them and he thought we'd gone too far. That was he--he had been instrumental in formulating Rodriguez, when the United States Supreme Court said we can't do anything about disparity in education. But of course he wasn't working with the West Virginia Constitution; he was working with the federal constitution in which nowhere is mentioned education.

Jack Flanigan: Mr. Harshbarger, consider the statements by the Governor, the Attorney General, and the Tax Commissioner on any challenge to the decision. Do you remember any comments, anything you'd like to note about reactions to their comments about a challenge. Was there a challenge to the decision that they raised as public officials?

Mr. Harshbarger: They challenged the case in the press a great deal. The Attorney General at that time was Chauncey Browning. Now General Browning introduced no witness in the 40 days of hearings--not one. And yet when Arthur Recht distilled the evidence before him into an opinion--which is what he did really, you know. None of his opinion was generated by Arthur Recht. It was generated by the witnesses from the educational community. When his opinion came down, Browning attacked it as being horrible--outrageous--just terrible--couldn't afford it--this state can never have a school system like that. And the Governor followed that particular tract.

Jack Flanigan: Was there ever a legal challenge?

Mr. Harshbarger: No.

Jack Flanigan: I wanted the record to show that no one came forward.

Mr. Harshbarger: There's no place to challenge it. There's not a federal constitutional question here. So the state comes. . .

Jack Flanigan: Well, basically the press had stated and you clarified this--that the Attorney General was going to make an appeal.

Mr. Harshbarger: No place he could appeal to. But of course they challenged it the only way that they could and the most effective way and that was by public opinion. You know there was a--the Governor called a special session of Legislature to deal with it. The court was perceived as being--the court and Arthur Recht were perceived as being--enemies by the leadership of the state; but oddly enough, you know, there is, I think, a relatively clear connection between the response of those people and the general status of West Virginia. And that stems primarily from--that connection was primarily through, once again, and I hope I don't sound paranoid about this, but if it is paranoid, it's a paranoia that has extended to the beginning of our state--even the constitutional framers. The first Constitution, 1863, recognized that the great land owners of West Virginia were going to oppose education because it costs money and money is taxes. Violently opposed to it. Chauncey Browning was the spokesman for them and so was John Davidson Rockefeller, VI. But I have--maybe--far too much idealism to be comfortable in that type of surrounding. I do believe that when it comes to education of children that every resource must be turned to that--first. As a matter of fact our Constitution says that. And those people knew what they were talking about. They knew that thousands upon thousands upon thousands of West Virginia acres were owned by people of New York City at the time of the Civil War. Coal had been discovered in this state a century before and thousands of acres had been bought; and they knew that there was going to be difficulty in financing schools because those people exerted enormous pressure; and it is still present and our more enlightened industries, our chemical industries and such, where they are we have great schools, you know. We have the schools in Kanawha County--that are good even on national comparisons. But where we have coal mines we got lousy schools.

Jack Flanigan: Mr. Harshbarger, are there any thoughts that you'd like to share for the record? Is there anything you'd like to add?

Mr. Harshbarger: Yes.

Jack Flanigan: I know that I certainly could not tap your thoughts when I prepared the questions. I did try to--because it has certainly filled in a missing part I did not have.

Mr. Harshbarger: Well, West Virginia is not an enlightened society except spotably. There's very little nobility in our leadership; or in the past there has not been. We have a "go-along" and a "get-along" state. It's a shame that a child by reason of the accident of its place of birth cannot in this state, in this tiny part of America, be educated to his capacity to take his place in the country and in the world. But that's the way it is now and, in my opinion, and I'm not speaking from rancor or anything else, I'm just speaking from--in appreciation of the way politics and power are in this state--that's the way it will continue until the coal mines wear out, and the people move out and there is left only the residue of the population and political input that comes from Kanawha Valley, the Ohio Valley, the Eastern Panhandle. That's the way we are.

INDIVIDUAL QUESTIONS FOR JUDGE SAM R. HARSHBARGER,
CHIEF JUSTICE WEST VIRGINIA SUPREME COURT OF APPEALS

1. What served as the basis for your definition of a thorough and efficient education as presented in the charge to Judge Arthur Recht?
2. Why did you and the court give direction to the case but then did not choose to hear it?
3. How much inequity should exist before the court becomes involved?
4. How does Pauley v. Bailey differ from other legal opinions in other states?

INTERVIEW WITH DANIEL HEDGES,
ATTORNEY FOR PLAINTIFF

Jack Flanigan: February 6, 1985. With me today is Mr. Hedges, the attorney who has been representing from the very beginning Mrs. Pauley in the Pauley v. Kelly decision. I would like to thank Mr. Hedges for taking the time and extend to him, after the interview, the opportunity to edit the comments if he so desires. Mr. Hedges, I know that you have been the individual who, from the very beginning, initiated some of the pleadings in this case. I respect you for your creativity and initiative because I have read several of the cases that preceded this one, and I think that somewhere along the line your imagination, your creativity, or your training and background have entered into this. You made it possible for this case to come out somewhat differently from the others that preceded you. So, just for the record I would like for you to know I do have a great deal of respect for your legal ability. Initially, how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools in 1975?

Daniel Hedges: Well, Mrs. Pauley came in--and I can't remember if it was in '73 or '74--and explained the circumstances; at that time there was litigation in other states dealing with equity issues--equity issues among school districts and how people and different school districts in those cases--in the states--were tried fiscally. And of course the problem is a little bit different in the other state--in other states--in the sense that most states have a lot more in numbers in school districts than West Virginia does--West Virginia only having 55. There are thousands in some states. But the issue was solely an equity issue preceding a federal court. The question was whether or not the financial base in a particular school district as compared with another school district in the same state--other school districts--denied the protection as afforded by the United States Constitution. And there were some very striking contrasts in other states. I don't know that I can remember the figures, but I have some recollection that there were some Beverly Hills in which the school districts had \$12,000 per pupil to spend and compared to some very poor districts in which there were poor and small districts in which they had \$100 or \$200 per pupil to spend. And this was the type of variety that existed in some states primarily rising out of the fact that not only the poverty of the districts but the fact that they were so small. West Virginia didn't have near the disparity district to district that some of these other states did because our districts are larger and because West Virginia was at that time, and remains to be so

today, to considerable extent, although certainly not as bad as it was in 1970-71, poor all over. We don't have any Beverly Hills in West Virginia, so we don't have--didn't have then--any school districts that were spending \$12,000 per pupil and it's liable to be a long time before we have anything like that--or never. So, at that time it was a questions of looking at the equity; and I pursued looking at a lot of the other litigation--seeing what direction it was going and it was--it proceeded to the United States Supreme Court. And--and I don't remember the date--somewhere in the--it would be easy to look up in the United States report--the Rodriguez Case that was handed down sometime--some short period of time--before this suit was initiated saying that there was no--in a 5 to 4 decision--that it was not a denial of equal protection, and probably one of the most tragic things that ever happened in education in the United States was decided by that 5 to 4 decision. Because it meant that in those states that don't really care about that--we have districts that go on spending--poor districts that are providing very little education for those children. But, anyway, then it meant that in West Virginia, if anything was going to be done about her problem and the problem of the other children that it had to be done through the state courts. And West had a--had constitutional mandates that seemed to provide a remedy, the one being the thorough efficient mandate in Article 12, Section 1, of the State Constitution, and the other being an equal protection mandate--that contained in Article 3, Sections 10 and 17 of the State Constitution. Those two constitutional mandates are the backdrop of the whole thing and they mean two very different things. The thorough and efficient mandate, you'll see as you read through the court's opinion of May 1982, guarantees as the Court later articulated, an education, state of the art education to children in the state, and that means there is a standard of adequacy in the State Constitution--a standard of adequacy is some sort of a--of an absolute type of standard that in terms of inputs--state educational resource inputs have to measure up to. The protection--let me back up a minute. So the thorough and efficient mandate is a standard in which the education--educational inputs have to meet, notwithstanding what's provided anywhere else doesn't have anything to do with comparison between one district and another and has only to do with measuring up against a standard which educational experts and the court has articulated as what that thorough and efficient standard is. Now that contrasts with the protection standard which is a discrimination type of standard--the state providing something for one child and not providing something for another child--that's a discrimination type of standard--that's the equal protection standard that's set

forth in Article 3, Sections 10 and 17 of the State Constitution and those are very different--the one being a comparison standard, the other being--the former being--an adequacy standard, and the latter being a comparison standard. So those served as the backdrop of initiating the case.

Jack Flanigan: The equal protection clause is slightly alluded to in the writing--that's all--it's very seldom ever mentioned. The thorough and efficient mandate is what everyone writes about. So really, as I mentioned, your answer opened certain door to look through as I go through it.

Daniel Hedges: The protection standard probably isn't as important as the thorough and efficient standard or the adequacy standard because you could meet the protection standard by providing one dollar per pupil to each child; but you can't do that with the thorough and efficient standard--but they are both very important--it's not to say that one is more important than another, but in a technical sense whenever you use the term equity you're using the term that applies to the equal protection standard. Equity in a specific sense here means comparison of one child's situation against another's. So--and a lot of the immediate attention of recent date has been given to a comparison of what a child in one county is getting compared to what a child in another county is getting; but that's not the only thing that's going on in this case, and people should not lose sight of the fact that this decision is not directed towards taking away anything from any child in any country, but from guaranteeing a high quality education to every child; and so from that standpoint the adequacy standard is certainly much more important.

Jack Flanigan: What was your role in the initial stages of the case?

Daniel Hedges: Well, I don't know what you mean by the initial stage. I met with the client. I started researching the issues and putting together a complaint; putting together the materials that needed to be put together in the investigation in order to file the case and to file--the case was filed if I can recall correctly, in April of 1975, but I'm not that certain without looking at the files. And then we had to start developing factual data--more factual data--I mean, we certainly had something before we started but we had to develop more by visiting schools, talking to personnel, getting documents, doing comparisons--that type of thing in order to put the case together. We started that in '75-'76. We had our first argument on the case in '77.

Jack Flanigan: As it relates to the case, has there been any change in your role from 1975 to 1982?

Daniel Hedges: Well, in terms of my former role as counsel for the plaintiff class, the main plaintiffs as well as the plaintiff class, that role has not changed--I mean it's been that former role during that period of time to the extent that it--that the question asked in--the difference in activities that have been pursued during that period of time certainly has substantially differed from '75 to '82. From '75 to '77 we were putting together the initial information in order to make a factual presentation to the court on a motion for some rejudgment which was done in 1977. Then there was a--these are recalled from memory--I can give you a--there's a little bit of chronological backdrop in the front of this argument here which picked up some more of that, but I'll give you a copy of that. It still doesn't have much of the chronological backdrop that looking through the pleadings does--that's what you'll need to do--get that. But of course the direction of the case changed dramatically in '79 when the court issued its opinion--the Supreme Court issued its first opinion because that directed the courts specifically in how to deal with this case. Anyway, so in '77 we had our initial arguments before Judge Robert J. Smith down in Court Room Number 2, Kanawha County Court House, and I can find that date in the records someplace on our motion for some rejudgment on the issues that have been presented by affidavit. And then after some period, months, the judge issued his opinion finding that there was a denial of thorough efficient education and denial of equal protection, and finding for the plaintiffs on the factual issues and on the legal issues, but then dismissing the case. Primarily for the reason, it seems to me, without attempting to second guess the judge--he didn't articulate that--that the case needed to go to the Supreme Court to get a detailed resolution of the legal issues because it was a very comprehensive case and needed a direction. And I guess that opinion was issued in--I'm not sure if it was issued in '77 or '78; we can check the file on that--then the issue is presented to the Supreme Court in '78 and argued in the fall of '78 as I recall. And in 1979--February 20, 1979--then the Supreme Court issued its comprehensive opinion in the Pauley v. Kelly --if you got that opinion--dealing with the detailed articulation of what the duties of the State were in providing for education--articulating the court's--the constitutional mandates as set forth in the thorough efficient mandate and the equal protection mandate. Do you have a copy of that?

Jack Flanigan: I don't have a copy of this one, no.

Daniel Hedges: I think you need that because--let me go back--that really details the--a slip opinion--that was the type version of what had been published in the books. Then that articulated everything that had to be done by the trial court in looking at the educational system now. Then we proceeded through an exhaustive trial in 1981--are you wanting this kind of background?

Jack Flanigan: Oh yes, that's what I want. I want from you as much as I can get because you have more than anybody else. That's why I really appreciate you taking your time.

Daniel Hedges: We met at a pre-trial conference; the last pre-trial conference in early August or in July--wait now--no, in June of '81 we had a pre-trial conference, the last pre-trial conference, and then on--the trial was scheduled to begin on August 10 of '81 in the Kanawha County Court House, which it did, and then the trial went from August 10 through December of 1981. There were--the plaintiffs had 75 witnesses, and I could give you the precise number--there were about 1,200 exhibits. The defendants had some witnesses too, and I don't have the number they had, and they had probably 30 or 40 witnesses. It proceeded through December. The plaintiffs had about 900 exhibits and the remaining 300 or so exhibits were the defendants--or 1,200 exhibits. Then on May 11, 1982, the court issues its detailed opinion declaring the system unconstitutional in terms of the inadequacy of the substance of educational offerings as well as the equity in educational offerings of opportunity and thirdly the adequacy of the state's assessment appraisal efforts, which was the other area detailed by the Supreme Court that the court had to get into. You might want to refer to the factual background set forth in this brief--petition dated July 21, 1984--which will give you maybe a summary of what happened. And that went--takes you through the fact that the issues--the educational issues--were then presented to the Supreme Court, made several motions for--then the court--I mean the state presented their Master Plan. Then that was approved by a memorandum opinion dated January 5, 1983. Except that it disapproved the timetable and disapproved the failure to have a grievance procedure preparation in children and families included into the Master Plan. Maybe I should make you a copy of that opinion, too. That opinion then, subsequent to that--actually during the middle of that between May of 1981 and January of '82, the court in its initial opinion had ordered that there be appointed a commission. The State came back and said that they were willing to--they had decided to abandon--this is the state educational defense--abandon appeal on the matters and on that basis the judge said that he would then permit

the department to develop the Master Plan together with a panel of citizens rather than having the commissioner do it, and deferred the appointment of the commissioner. Then sometime--and I'll have to check the date on that--sometime in the spring or summer maybe--'83--we went to Court--we appealed to the March 4 order of '83 on the basis that it didn't cover all the issues. It didn't specifically deal with the State Department of Education's implementation of the standards of the high quality educational standards which were guaranteed by Article 12, Section, 1, the thorough efficient education clause; and Article 12, Section 2, the duty of supervision of free schools in the State Department--in the State Board of Education. It didn't specifically deal with implementation of those standards. So we appealed that; the state abandoned the appeal of the basic order of May 11, 1982; the court set it for argument; it was argued in October of '84; and then the court issued its opinion in December 12, 1984, affirming the decision of the Circuit Court of Kanawha County by Judge Recht in the basic May 11 opinion, but finding for the plaintiffs on the failure of the--and reversing on this minor point--on the failure of the--minor in the sense of the overall matter but minor in the sense of the duty that it imposed on the State Board--to immediately implement into policy the standards of a high quality education as articulated by the court in the--its opinion and in the Master Plan for purposes of on-site reviews of the counties in meeting high quality educational standards. And remanding to the circuit court for the purpose of determining when there would be implementation of--coming up with any timetables--for the implementation of the entire decision.

Jack Flanigan: Are the projected and results going to remove the inequities in funding of the public schools in West Virginia?

Daniel Hedges: Well, one thing, of course, we look into the--we should look at that question because again there's this whole issue of inequities versus adequacy and we shouldn't lose sight of adequacy. Of course, if you're using the term inequities in sort of a generic sense, inequity to a specific child would mean an inadequate resources to provide an absolute standard what is necessary. So whatever you mean by that--will the decision result--I guess you're asking me for some sort of supposition as to whether or not the decision will result in correction of the inadequacies and the inequities--hopefully.

Jack Flanigan: To what extent is the Master Plan a viable solution to resolving the original complaint?

Daniel Hedges: Well, the Master Plan isn't--doesn't have all the detail in it; it doesn't have the detail for how; it doesn't have all the detail for the facilities; it doesn't have some of the other details; and of course it's always subject to modification if the state educational defendants come back in and ask for a modification along certain lines--that's always possible too. But the court's opinion of May 11, 1982, together with the Master Plan, certainly provided a road map to solve the plaintiff's original complaint of inadequate educational offerings in Lincoln County as well as other parts of the State on behalf of the whole class.

Jack Flanigan: Why do you believe that the Legislature and the executive branch were not more responsive to the question of equal funding of the public schools prior to the Pauley v. Kelly case?

Daniel Hedges: Well, again we're back to this question of equal, and equal financing is not the primary question in West Virginia--it's adequate financing. I'm not sure why it's primarily the responsibility of the legislative branch and not the executive branch, but it seems that--they've tried to address it at various times over a period of years and it's partly just the process of politics--I mean the--West Virginia was never that bad off in equal financing when you compared it to other states. It was a question that the whole State was not being adequately financed more than anything else. I mean the court decision found that no county measured up totally to the level of adequacy that was dictated by the constitutional standards. So I think that being the case, the question of equality was second to the question of adequacy but--and they had tried to address it at various times--but it's a question of getting that vote. If you get--if you're from a particular county as a representative and what you're getting in that county is not so bad, you're not too anxious to do something that is going to make your position--your county's position--not any better than it was compared to giving something to some other county. So I suppose in terms of just the question of pure equality it's a question of protecting your own turf if you're representative of a particular county; and you need a substantial majority to get a change to something that is as complicated as school funding. It certainly is one of the most, if not the most, complicated issue that people have to finance. When those packages go through there, very few people understand what it's doing to them and they're really scared of what it's doing to their own constituents. So it's easy to see--I mean its complicated nature is certainly part of the problem.

Jack Flanigan: To what extent has the original complaint been resolved?

Daniel Hedges: Resolved by the court decision or resolved by the legislative action that has followed the court decision?

Jack Flanigan: I would like you to address both of them, if you would.

Daniel Hedges: Well, I think the original complaint has been well addressed by the May 11, 1982, court decision--comprehensively addressed. I think that what has happened since then certainly--I mean, we've had some efforts, and we seem to be moving at some sort of a pace to attempt to try to address the implementation, but that's going to be probably a 10 year process. Hopefully it's not any longer than that.

Jack Flanigan: The three questions that remain are primarily for you as an attorney. Basically, what makes the Pauley v. Kelly and Pauley v. Bailey opinions significantly different from other legal opinions relating to public school finance?

Daniel Hedges: Legal opinions in other states?

Jack Flanigan: Yes.

Daniel Hedges: I think that most of the ones in the other states have attempted to address merely the question of equality even though a couple of the others attempt to address adequacy, and that's what a thorough efficient standard's about--adequacy--that's what it says--a thorough education for every child. I think that this opinion has attempted to comprehensively address that issue by detailing the core elements of a high quality education in a way that no other--that none other of the court opinions have.

Jack Flanigan: The present school aid formula has been in effect in West Virginia since 1972. Do you feel after working with it for a period of time it can be sufficiently brought about to make the changes that are necessary to meet the adequacy approach or equalization as the court might look at it?

Daniel Hedges: Of course, the present formula was amended in '81--and I mean it's substantially the '72 formula, but it was amended in '81; but the primary problems, insofar as educational financing in West Virginia, are not in the formula--the most important problem is the problem

surrounding the excess levy and all that it engenders. And, of course you can read--I assume you've got the May 11 opinion--and all the details--just go into the details that are set forth in there in the description of the excess levy and that type of thing and you'll see what I mean, and that is the primary problem that's--that needs to be addressed first--it engenders--it causes poor education--educationally poor decisions that have to be made in order to get basic funding through the use of excess levy. It is a county's ability to provide a quality education to getting a levy passed every five years. Basic things in a levy that should be guaranteed and not up to the whim of the voters. And so that problem is--if you're using the term formula in the generic sense--then that includes the excess levy problem and the facility financing problem, but if you're using it in the specific sense, the excess levy problem, number one and the facility problem, number two, are--cause more of a problem than a formula per se. If we dealt with those two problems only a few minor adjustments in the formula would be necessary to accomplish what the court's opinion dealt with. The facility financing--as I'm sure you're aware--is meeting those resources from the state level to assure that each county has adequate facilities to--and spaces--educational spaces--to revive the type of programming that the description of a high quality education demands.

Jack Flanigan: Are you satisfied with what has been done to make the financing of the public schools constitutional in your role as the attorney for the plaintiff?

Daniel Hedges: Well, I don't want to say that the Legislature has been sitting on its hands--it hasn't--it has been moving, but it's been at a deliberate pace. And of course it's always--hindsight's always better than foresight, but Amendment 4--the loss of Amendment 4, of course, was a big loss; but I was very dissatisfied with putting a sales tax on the ballot. I'm surprised that you could put a sales tax on the ballot and get 40 some percent of the vote. If you'd have put a sales tax on the ballot for anything but education in West Virginia you would have gotten, in my opinion, between 5 and 10 percent of the vote. But they got 40 some percent of the vote on a measure that involved education that speaks in a time of severe depression, particularly in southern West Virginia. I think that speaks very highly of the way people feel about education in West Virginia. I would just--and I think that anytime you put a sales tax on the ballot with an educational measure you're just asking for it--to be really slapped down soundly and they didn't even get that. It was beaten and not soundly. I think the Legislature should have

dealt with the facility financing mechanism through pure legislation and not attempted anything on the ballot; but it's another way of passing the buck. They could have done the same thing that they attempted through a referendum on facility financing through legislation. Set up a State Building Authority providing for the passage of--providing for the sale of bonds through legislation, dedicated the tax to pay for it and/or a sales tax to pay for it. No requirement that that be done through referendum. They could have also just dedicated a tax to pay. Now the excess--in dealing with the excess levy problem can be done also statutorily as well as by referendum, and probably if the referendum dealing with the statewide excess levy--permanent statewide excess levy had been placed on the ballot by itself it would have passed. And our old excess levy problem would have been dealt with. But that's easy to say. Hindsight--I mean when you're looking back on it--but then they, of course, did wait for May of '82 through--until the '84 legislature to do anything--they did have a special session. In the summer of '82--they could have dealt with the excess levy problem in the property tax limitation amendment which was passed in the summer of '82 and placed on the ballot in the fall of '82. And they had the '83 session to deal with these issues. But they waited until the '84 session; so--to begin dealing with these two of the most major issues; and they haven't, of course, dealt with any of the formula problems at all since the decision itself. I am somewhat dissatisfied; but again I'm not running and do not intend to run for office so it's easier said than when you have to run.

INDIVIDUAL QUESTIONS FOR DANIEL HEDGES,
ATTORNEY FOR PLAINTIFF

1. What makes the Pauley v. Kelly/Pauley v. Bailey opinion significantly different from other legal opinions regarding financing public schools?
2. Do you feel the present school aid finance formula can be amended sufficiently to bring about the instruction of the court of equalization?
3. Are you satisfied with what has been done to make the financing of the public schools constitutional?

INTERVIEW WITH CHARLES MCCANN

Jack Flanigan: With me today, the first day of May 1985, is Mr. McCann, the superintendent of Lincoln County Schools. Charlie, I'd like to thank you for taking your time to answer some questions for me. You are aware this is being recorded?

Charles McCann: Yes.

Jack Flanigan: Mr. McCann, initially how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools in 1975?

Charles McCann: Well, being on a heresay case, on first contact, of course I worked in a Lincoln County school system as a high school principal; and as I got into the case it was a fascinating situation, but it was one of those things, that, I guess being from Lincoln County, meant a great deal to me. I felt like it--the financing system, although I wasn't aware of the school aid formula and how it worked, but I felt like it--there was something wrong either on the local level or on the state level as far as it providing the amount of money that was needed for public education--would it be construction or would it be for materials or textbooks. But then--when I first came in contact with Dan Hedges, out there as a principal at Harts High School, we talked a great deal about the case quite a bit; of course he perceived it a little different than I did; he perceived it as a cure-all and of course I--I guess perceived it and related it to me as a--you know, something that could be a help. I think I probably--envisioned it as something, you know, to give us money to do the small things--I probably didn't envision and see it as the big thing it really turned out to be. It was a--I looked at it on more of a small scale I suspect. But I did look at it from a positive note I think from the very--very beginning.

Jack Flanigan: Charlie, what was your initial role in the stages of the Pauley v. Kelly action? You mentioned you were a high school principal.

Charles McCann: Well, the first contact was when I was principal at Harts High School in Lincoln County. Dan Hedges approached me to actually do a survey in the school there as far as needs--whether it be physical needs or educational needs for relating to the classroom; but we actually conducted a survey there with teachers and myself as far as trying to determine how well our facility and our program there came up to certain questions he had prepared;

and that was really the initial introduction to the case to me.

Jack Flanigan: So you were in on the ground floor, so to speak, as far as the case is concerned?

Charles McCann: I would say that was true--that was when the case was first filed; he used Harts High School as one of those schools where there were lots of kids on free reduced lunch as an outlying school, and it seemed like that he was, you know, quite interested in getting the data there I guess, to, you know--that was data that was favorable to him, anyway.

Jack Flanigan: Since the initial filing of the case, how has your role changed?

Charles McCann: Well, of course, as time has passed, coming into the office of superintendent, I feel like that the--my role has changed probably completely from the time of '75 there. I played I guess two roles; of course, I testified in court as to verification of the situations that exist out here in Lincoln County, but also I think sort of on a consultant type thing probably with Dan Hedges as problems arose or situations arose many times I think probably used Lincoln County and my office here as a sounding board to discuss those ideas and how they might affect our school system.

Jack Flanigan: Are the projected end results going to remove the inequities in the funding of the public education in West Virginia?

Charles McCann: Well, I--it would be my belief that if the order from Judge Recht was followed to a high level I believe that the majority of the inequity would be removed. I have great concern now whether they're going to be but I think if the order of Judge Recht was followed I believe that he had the wisdom and the foresight there to sketch out a plan or a map that would eventually bring all school systems up to a level that--what inequities that might exist would not be significant.

Jack Flanigan: To what extent is the Master Plan a viable solution to resolving the original complaint?

Charles McCann: Well, I think the Master Plan is--spells out real well how to--how the problem should be resolved. It may have gone just a little bit beyond what even--I'm sure it went beyond what I expected; it may have gone beyond what a lot of people expected but I think the Master Plan is

a good blueprint. I don't know it has to be the exact way to do it, but it was well designed, in my opinion, to resolve those inequities.

Jack Flanigan: Why do you believe the Legislature and the executive branches were not more responsive to the question of equity in financing the public schools prior to this case?

Charles McCann: Well, I guess I view it that the power base exists where the money is and that those counties and school systems that have the money are also those people that are in power, and they couldn't see the need, and they didn't care about the need. I don't think that--you know, very few people in the--that I've had encounters with in the legislative branch and very few of the executives or governors really care about education. I think they put up a talk and they put up a front but as far as really caring about making sure that every child in the state of West Virginia has an equal opportunity to succeed in life, I don't think there's any real desire on their part. I think their main concern is to be politically popular, and spending money in a rich county on a poor county isn't politically popular. I think that's the way they see it.

Jack Flanigan: To what extent has the original complaint been resolved in your impression of the situation?

Charles McCann: I think the only thing that has been resolved that made a difference is the first step in the equalization of pay. I feel that that was the most improved step; of course I realized that they've come...referred to a Step 7. I don't agree that that has been the solution to the problem. I don't know that I could pinpoint how they go about it--providing the necessary monies to all the counties so that every county could move forward. But the pay equity definitely isn't going in the proper direction. We just need to go ahead and fulfill that into the second and third steps.

Jack Flanigan: Charlie, those are the original questions. On the second page, here are some questions that are designed specifically for the Superintendent of Lincoln County. Has the decision in Pauley v. Kelly met the needs of the Lincoln County Schools?

Charles McCann: No, it hasn't met the needs. I think if the Master Plan was properly financed I believe that definitely the needs of Lincoln County would be met. But it has not been done as of yet. The pay equity has helped. It has helped us retain teachers--we can already see that. All

the surrounding counties where we're located are almost on an equal pay basis now. We've had people actually come back to our county that were originally from here that taught in--such as Putnam County for 10 years or so, and now they're back to their home county because pay has been equalized and--that's about it.

Jack Flanigan: Do you feel the present state school aid formula can be amended to bring about the instructions of the court in the financial equalization in the present state school aid formula?

Charles McCann: Well, the part I think is still wrong is the Step 7 [which] definitely needs more work--the equalization for instruction, the way it's set up now. I've worked on the thing and tried to get into it and understand it but the only thing I can say is the part of it now, of Step 7, does not work.

Jack Flanigan: What about the first step of equalization? Do you feel this is, as you mentioned earlier, working in one respect? Has it flowed money into anything other than salaries for Lincoln County?

Charles McCann: Well, yes, it's you know--by having the multiplier effect of Step 1 and 2 in Lincoln County, in its maximum in both categories as far as personnel, it has given us more monies there to operate on. I feel like right now the school system is in better shape than it's ever been as far as having--it's got more money now to operate on it ever has in the past. Part of it's due to the multiplier effect and in the Steps 1 and 2. Of course, Step 7 has helped Lincoln County. I don't want to leave you with the idea Step 7 has not helped Lincoln; it has helped Lincoln a great deal. I just feel like it, as far as looking at all 55 counties, where I see a problem of Step 7.

Jack Flanigan: Charlie, why was the agency initially charged in the action asked to construct the Master Plan and revise tax reforms? Do you know?

Charles McCann: No, I don't know the real answer why that--those people were picked. But my understanding is some type of political maneuvering going on in order to keep everybody, I guess, happy in a big circle that existed to start with. You know, with governor, the tax people, and the State Department of Education, I think it was, I guess, backscratching going on, or whatever. But for me to know that firsthand, I don't know that.

Jack Flanigan: Charlie, how are the poor counties expected to catch up if there's no allowance for a starting point for equality?

Charles McCann: Well, I think that--let's go back to Step 7 again. One of the problems that I have with Step 7 is it's designed to provide some equalizations for instructional monies based upon your amount of resources available. But the problem I see is if you take school system A and you take school system B and school system A has always been one of those better school systems as far as money has been concerned and having more money to operate on, and school system B has always been at the bottom end; in my opinion, you have to assume that school system A over a 20 year period has accumulated a lot more wealth in the way of buildings, in the way of textbooks, in the way of materials, and just general school system--they're better off to start with. Whereas the school systems that's been at the bottom is deprived for all these years--it's going to take them a long time to ever get things to put in an order to even compare in any form with the school system that has had the money. But the way the thing then seems to operate; if school system A [which] has had all this money for 20 years or so, would have a couple bad years as far as taxation, a plant go down or something to cause it, the valuation of the taxes to drop, then they don't wait 20 years to start getting the money; the very next year in Step 7, if the resource is available, they immediately get that money and that's--there's a big inequity because the poor school system has no way of competing if the amount of resource available from year to year is going to fluctuate and allow the school system that had it all just because of one year of taxation they dropped then they're not penalized. There's no way that you're ever going to have equity.

Jack Flanigan: Charlie, are there any thoughts or comments that you would like to add? You've worked through this now since 1975, and I know you have a vast knowledge of what's transpired and such. Are there any thoughts that you would like to share with me this afternoon?

Charles McCann: Well, I think the part that bothers me is that I hate to see the public education in the hands of the judicial branch of government. I don't think judges know what's best for public school systems. But I feel with the problem that we have before us here due to the political game that has been played and just plain old ignoring of the concern of public education, that they have left the judges no other alternative except for them to look at the decision that's been handed down by Judge Recht and see that it's been properly carried out; if it hasn't then I feel that the

judicial branch is going to have to exert whatever effort there is to make sure that this is carried out to the letter of the law.

INDIVIDUAL QUESTIONS FOR CHARLES MCCANN,
SUPERINTENDENT OF LINCOLN COUNTY SCHOOLS

1. How has the decision in Pauley v. Bailey met the needs of Lincoln County schools?
2. Do you feel the present state school aid formula can be amended to bring about the instructions of the court in financial equalization?
3. Why were the agencies initially charged in the action asked to construct the Master Plan and revise tax reforms?
4. How are the poor counties expected to catch up if there is no allowance for a starting point?

Interview with Mrs. and Mr. Pauley

Jack Flanigan: Good morning, it's the first day of June, 1985, and with me this morning are Mr. and Mrs. Pauley; both of you are aware that this conversation is being taped?

Mr. and Mrs. Pauley: Yes. Right.

Jack Flanigan: I hope that both of you will just relax and react to the questions as you feel that they pertain to you. Initially, how did you see the action of the financing of the public schools in West Virginia in 1975?

Mrs. Pauley: It was very poor at the time. When I first started getting interested in it I wasn't aware of quite the situation as it stood. I found out in my other cases that the Board of Education was not financially able to help me in any situation at that time. When I first began, we were involved in this house quite a bit because it was really bad. When I first began the first thing that took my attention was the sewer system was running over in the playground down here. The children didn't know what it was and came in and asked me to attend the P.T.A. meeting, and when I did attend that P.T.A. meeting I was really shocked, because even the principal or the teachers or no one could give me an answer to why that that septic system was running over. Then when I went to the Board of Education with it they informed me that they couldn't help me either. So I had to contact the State, and that's how I begin the whole situation of the suit. It led from that to coalition of parents in the schools. It led to a meeting with the attorney that I had that took over the case to try to discuss things that might come together to help our school and our school system, which didn't work out either. And this is how I began the whole situation.

Jack Flanigan: What year was this?

Mr. and Mrs. Pauley: It was 1972.

Jack Flanigan: And you were patient then for approximately three years?

Mrs. Pauley: Yes.

Mr. Pauley: When we moved back here from--we were out in Indiana for about 11 or 12 years and the--what she's talking about, the sewer system, that was the septic system that discharged into the top of the ground and the children were playing in it. That was their playground. And they said

they didn't have the money to put in one, and they even started to run a direct line straight from the school and discharge it into the creek. And we stopped that by the help of the Health Department. And then they were even taking up from the parent teachers--parents' donations to buy paint and all the maintenance on the school--just about everything for the school--curtains, drapes, refrigerators, deep freezes, or anything they had. They wanted--the county Board of Education wanted--the parents to support that instead of them, themselves helping, and the parents were just basically upkeeping the school....the Board of Education was just giving, you know, the manpower help to paint the schools and upkeep it.

Jack Flanigan: So there was one first thing and that was the sewer system which brought you into it.

Mrs. Pauley: Right.

Jack Flanigan: Question two. In discussing your initial role in this, you mentioned other parents--how many other parents were involved in this?

Mrs. Pauley: I was the person in the beginning; the other parents became involved later in the case. Some parents thought we were wanting money personally. After they understood what we were doing, they began to join us.

Jack Flanigan: After the ruling was made by the judge, did your role as you perceived it change any?

Mrs. Pauley: [No response]

Jack Flanigan: In other words, were you only trying to get money enough to get the schools to operate properly?

Mrs. Pauley: Yes, I can see a very little change here. We did get a multi-purpose down at McCorkle School. We did get a junior high school at Duvall where my children was attending. Other than that I can't see too many changes here in Lincoln County.

Mr. Pauley: The level--the standard of the education of the children, you know, putting them out with a diploma hasn't changed all that much. They're still giving them diplomas and putting them out down here at Griffithsville; well, all over the county, and the state, too--that you're probably aware of. Some of the children can't read; they can't write; they can't spell; or they can't even make change of their own money. They can go to a store; they can't even count out change and change their own money.

Jack Flanigan: You mentioned earlier to me about the quality of the teachers. Have you noticed any change in that?

Mr. and Mrs. Pauley: No.

Jack Flanigan: In your opinion, are the projected end results going to remove--if and when it's all brought about--the inequities in the funding of the public schools as you perceived it? Your initial action was to help your own community and it broadened as you mentioned throughout the state. Do you see this as being any change at all? You mentioned some of the small results. Do you see any of the changes coming about that you would have like to have seen?

Mr. Pauley: Well, yes, slowly, like they got gyms now where they did have outside--just basketball courts to play in; some of them have gyms now, and we got the all-purpose rooms in; some of them have cafeterias with seats in them.

Mrs. Pauley: I expect they're taking more interest in--taking more notice to--what they did not have at the time to what it's built up to now.

Mr. Pauley: The teachers--getting back to the teachers--were--they're the ones supposedly, you know, to teach the children. There are some good teachers; and why is a teacher afraid to take a test to see if they're qualified to be a teacher. To me as a construction worker, I've had to take tests throughout my career to see if I was qualified to be a pipe fitter, and I don't see where a teacher should be afraid to take a test to see if they're qualified to teach; and if they're not qualified to do their job and teach a child, get rid of them; get somebody else; there's plenty standing by willing to teach.

Jack Flanigan: You've had a chance to read the Master Plan. Do you believe it is a realistic document--the one that was prepared by the State Board of Education?

Mrs. Pauley: I think so.

Jack Flanigan: Why do you believe the Legislature and the executive branch were not more responsive to the questions of equal finances until this case was brought before the Supreme Court?

Mrs. Pauley: I'm not positively sure I understand the whole question.

Jack Flanigan: Well, basically, last year the State Legislature and the governor provided money for equity for some portions of the school. Prior to that, counties such as Lincoln did not receive maybe as much money to spend on their schools as others such as Kanawha County. Do you think that there was an underlying reason--I mean, was there anything in your mind when you--when you were here in Lincoln County and you looked across the line in Kanawha and said those children have more than my children?

Mr. Pauley: Well, there was more political power in Kanawha County than there was in Lincoln County.

Jack Flanigan: That's the one answer that everyone has given me. The person whom I've worked with asked if there has been one common answer, and I said, there has been one common answer to question six--political power--or those who have.

Mrs. Pauley: That's right.

Mr. Pauley: That's just like this case now after it's been implemented, and the way it is now. Down here in Lincoln County there's still the Board of Education members themselves playing politics, you know, trying to fire and hire teachers and employees, the school board, that will vote their way--the way they want them to vote for a certain person in the state. They just threw away 50 thousand dollars. [It] just came out in the papers, [the story] of Betty Jones, a principal of Hamlin School, [whom] they fired because she voted for who she wanted to and they fired her and she got a settlement of 50,000 dollars; plus putting back on the school payroll; and then they transferred her from Hamlin then to make it a little bit hard on her driving from Hamlin down here to McCorkle School right down the road here.

Jack Flanigan: She's your principal now?

Mr. Pauley: No, they won't let her be principal any more; that was part of it.

Mrs. Pauley: And that's our tax money.

Mr. Pauley: That was in the settlement. Throughout the 55 counties and plus that; well, they had another one--some cooks and maintenance people had voted the wrong way and they canned them down here at Hamlin, Lincoln County--canned them. Then they had to reinstate them then and give them back pay; then that's since this has been implemented, too; but it's still going on, that part of it. And if they'd

take the 55 counties that they had to reinstate teachers and back pay and attorney fees, that would go a long ways in education and supplies for the children, the betterment of their future.

Jack Flanigan: To what extent, Mrs. Pauley, do you feel the original complaint has been resolved?

Mrs. Pauley: The only thing that I can really mention is I think the politicians are a little bit more interested in what it was when I started the suit. We have got a multi-purpose room like I said. We have got the junior high which we didn't have before. A lot of the classes are not being treated the way they should be treated because they don't have an individual music class; they don't have remedial reading teachers; I could keep naming and keep naming what we do not have yet.

Jack Flanigan: In other words, you still feel that the resolution is a long way from being completed?

Mrs. Pauley: Absolutely.

Jack Flanigan: Well, the preceding are the questions that I ask all the people. I have a few questions I'd like just to ask you two specifically because they relate directly to the situation. We talked a little earlier about the reason for the case. Am I correct you don't have any children left in the schools now?

Mrs. Pauley: No.

Jack Flanigan: I have to admire you for pursuing even after that. Was there any motive--for example, do you have any grandchildren in the community? Was there any motive for your saying to Dan Hedges, I'll stay right here with you and pursue this through completion even after your own children had graduated?

Mrs. Pauley: No, we don't have any grandchildren; but I think both of our attitudes right now are basically for our neighbors and our neighbors' children. They're still human, too, and they still need the education. They still need jobs, too.

Jack Flanigan: How satisfied were you with the results of the court's decision?

Mrs. Pauley: Basically, I wasn't completely satisfied.

Jack Flanigan: Share with me what parts of it you were not satisfied with.

Mrs. Pauley: Well, I think a lot of the decision went back to the politicians, and it's basically going back exactly the way it was when it first started.

Mr. Pauley: You're raising everybody's taxes, I guess, from the way I understand it, and throwing the money right back to the same politicians to distribute it back out without implementing the whole thing on it.

Jack Flanigan: Can the present system of financing resolve inequity in the public schools? I know that's a technical question. And I know you followed it in court. Do you have enough understanding of the way the money is divided from the State to have any feelings about the present system while the funds are divided on the state level?

Mr. Pauley: Well, the way it is right now, I don't think they have that all worked out themselves, the way we understand it.

Jack Flanigan: It's quite a complicated system.

Mr. Pauley: They make it so complicated that it's taken a time [for them] to get it straightened out--get it figured out.

Jack Flanigan: The question that I really wanted you to react to, one that has been in my mind, is what was your reaction to Judge Recht's decision to place the State Superintendent and the State Board of Education in charge of the development of the Master Plan instead of the commissioner which he originally proposed? How did you react to that?

Mrs. Pauley: Like I said it went back to the politicians and it was exactly where it was at to begin with.

Jack Flanigan: Did you ever talk to the judge or anybody else about this?

Mrs. Pauley: No sir.

Jack Flanigan: Am I correct that there was a Mrs. Martin in the community who reacted to this?

Mr. Pauley: After it all went through she got on the bandwagon after, you know, the decision and everything; she didn't help implement it and get it started.

Jack Flanigan: Was she involved with you all at any time?

Mr. and Mrs. Pauley: No, no way.

Jack Flanigan: I was curious about this because I read her paper that she presented to the judge afterwards. Am I correct?

Mrs. and Mrs. Pauley: Mmmm hmmm.

Jack Flanigan: But now that was all after the fact?

Mrs. Pauley: Right.

Mr. Pauley: That's all after she [Mrs. Pauley] got it all started.

Jack Flanigan: Well, I know that Mrs. Pauley got it started, but I wondered if she had enjoined you in any way?

Mrs. Pauley: No, no way.

Jack Flanigan: Did you agree or disagree with her actions as she presented them?

Mrs. Pauley: Some of her actions were good but some I disagreed with.

Jack Flanigan: Did you feel any of her actions should have been carried through? You don't have to answer me, because it would be personal, but I was just curious because I do have a copy of her papers.

Mrs. Pauley: I'd rather not answer because a lot of my children went to her husband and really, you know, cared for him. So really, to keep down any hard feelings in any way I wouldn't like to respond.

Jack Flanigan: Are there any comments or any thoughts as we talk some 13 years later which you would like to put into the records? You mentioned to me that you had some unpleasantries. Did this change your lifestyle or anything like this? You'd mentioned to me the difficulties and I told you I was very positive about the situation.

Mrs. Pauley: The only thing--it was the kind of dreadful to come in in the evening and the telephone continuously [would] ring and you couldn't tell different reporters that you didn't have the time; that you had a life yourself to live--they didn't want to listen to that. They wanted to go over my head and come on out anyway. I didn't care to be

interviewed, I didn't care to talk to different people, but every night and every night it was a little bit much at the time. Other than that I don't think we had any difficulties living with the situation.

Jack Flanigan: Mr. Pauley?

Mr. Pauley: I feel about the same way.

Jack Flanigan: Are there any other comments you'd like to make?

Mrs. Pauley: Well, I enjoyed this. I had a good time. I think even my children enjoyed working with this suit. One of the main things that I think I enjoyed more was working with the State and seeing how they felt, you know, towards the situation. And I think basically they felt the same as I did. Even the attorneys and all had the same thought that I had.

INDIVIDUAL QUESTIONS FOR MRS. JANET PAULEY,
PLAINTIFF

1. What was your motivation for pursuing the Pauley v. Kelly action after your children completed their public school education?
2. How satisfied are you with the rendering of the court?
3. Can the present system of financing the public schools result in equity in public school education?
4. What was your reaction to Recht's decision to place the State Superintendent and the State Board of Education in charge of developing the Master Plan instead of appoint a commissioner to carry out the proposed changes as he has previously intended?

INTERVIEW WITH HERSCHEL H. ROSE,
FORMER STATE TAX COMMISSIONER

Jack Flanigan: With me today, January 30, 1985, is Herschel H. Rose, former State Tax Commissioner. Mr. Rose has had an opportunity to read the problem and I'll ask him to answer the questions for all major characters first, and then proceed with the questions that are related to him pertaining to the problem of the Pauley v. Kelly action beginning in 1975. Mr. Rose, what was your first contact with the Pauley v. Kelly case? Was it in 1975?

Mr. Rose: No, I was a student in law school in 1975. My first contact and experience with it came in December, 1980, when I began to make the transition in becoming Tax Commissioner in January of 1981. So that was really the first time I had any--the first time I was in government--the first time I had any particular knowledge about it.

Jack Flanigan: Would you briefly share with us the information as to how things have changed for you in your job or responsibilities relating to this case during the seven year period between 1975 and 1982?

Mr. Rose: I was a student at the time of the institution of the action and then practiced law privately in Fairmont, West Virginia for the period--well--[I] was a law clerk in the United States District Court in Elkins for a year and then practiced law until 1980. I think the period between December of 1980 and 1982 was a period of very substantial transition and change for the Tax Department because the case went from being one that was viewed in a relative passive mode and not much was happening to one where Judge Recht was appointed to try the case and decided to try it. And so it was very early in my term when the case went to trial, in the spring of 1981, and I participated in it both as a client having my chief legal officer in the Department serving as a special attorney general, and also as a witness in the portion of the trial dealing with property tax.

Jack Flanigan: In your opinion are the projected results of the case going to remove the inequities in funding of the public education in West Virginia?

Mr. Rose: I'll structure my--preface my answer by saying the actual money to spend in education and how it is spent and the portion of the case that dealt with that was less our concern than how the money was raised in the property tax manner. I think that from a property tax standpoint the

activities that occurred not only in the Pauley case but also in the case out of Logan County, the Roy Killen v. The Logan County Board of Education--Killen v. Logan County Commission, provides a means of increasing the equity--of raising funding for public education from property taxes. I think to the extent that the Pauley decision mandates equality in funding for school boards from the elimination of special excess levies on the county level that it may achieve an equity but at great expense of a substantial portion of the funding that's now available to local school boards. I think the same thing is accomplished if the county boards are required to charge the excess levy revenues against their state aid. I think the incentive for people voting higher levies on themselves will quickly result in the demise of double excess levies which will result in a greater equality of funding but at a much lower level than we have now at least from property taxes.

Jack Flanigan: To what extent is the Master Plan--and I'm sure you've had a chance to review it--a viable solution to resolving the original complaint?

Mr. Rose: Oh, I think it's viable in terms of setting the goals of recognizing certain things. I think it's particularly viable in teaching the public that there is a problem in West Virginia between the--I won't call them the rich and the poor counties because I don't think we have any rich counties--I think we have the poor counties and the better off counties--and the difference in the quality of education that is provided. And I think the Master Plan provides a means of at least educating the public that children in poor school districts are entitled to quality education. It's a viable plan for raising the money that's necessary, and frankly I haven't seen the revenue increasing portion of the equation proposed yet that looks like it'll work.

Jack Flanigan: Why do you believe the Legislature and the executive branch over the years were not more responsive to the question of equal funding of the public schools prior to the Pauley v. Kelly case?

Mr. Rose: I think that there's a basic desire in West Virginia that there be local control over certain aspects of government. I think that exists today and I think that can be pointed to as a major contributor to the defeat of Amendment Number 4 in November, 1984. I think that control of decisions concerning education are by many people in West Virginia desired to be made at the county level, as we have seen over the course of recent years; during my term in government, we saw the passage of Senate Bill 15, I believe

in 1981, which decreased the discretion of county boards--financial discretion of county boards relative to property tax revenues they received. We've seen the imposition of curriculum restrictions prior to the issuance of the Pauley decision that set standards for common standards across the state for what it required to graduate from high schools. And in both of those instances I think there was an arguable, legitimate reaction that people wanted those decisions to be made in Martinsburg or in Fairmont or in Parkersburg and not necessarily in Charleston. I think that we're going to see--my political prediction is we can see attempt after attempt to pass a statewide excess levy for schools and we're going to see defeat after defeat. I don't think that in the matter--as personal a matter as a child's education; as concerned as people who are parents of children about their child's education that they care much about anybody--the condition of schools outside their own county. And I don't think that people who are living in Fairmont, Clarksburg, Martinsburg, and Wheeling are inclined to see their local levies be shipped down to Pineville and to Lincoln County--that isn't the way it ought to be. I think that's the way it is and if you look at--the Gazette had an interesting break map of the state as to what counties supported the Amendment Number 4 and what counties defeated it, and as I recall there was almost a line drawn across the center of the state with the northern counties which are generally regarded as more prosperous defeating it and the southern counties which would be the beneficiaries of an equalized excess levy distribution voting for it. I think that's true now; I think that's always been the case, and I think that's a political reality that has to be dealt with in achieving equalized funding for education.

Jack Flanigan: To what extent has the original complaint of the Pauley v. Kelly case been resolved?

Mr. Rose: I could only answer that from the property tax side of it because that's really the thing I was dealing with and I'm not familiar with the original complaint as it really regarded particulars of education. In part because of Pauley but to a greater extent because of the Killen case, we are undergoing a statewide reappraisal of all property that is being performed according to methods of valuing property that were in part generated in the Pauley case. And in great part had the approval of the court in the Pauley case. I think the presumptions of the plaintiffs in the complaint were incorrect as to the effect of equalized property taxation on a statewide basis and what it would produce in property taxes for education. But, nevertheless, the goal of creating statewide equalization in the valuation

of property is within reach and has had a lot of money spent on it, and can be accomplished if we proceed over the next few years to stay on course with the reappraisal. So if that's what they were complaining about in the beginning--that property wasn't accurately valued and it wasn't uniformly assessed, the two court cases--the passage of the 1982 property tax limitation amendment and the subsequent reappraisal along with the legislation that was passed subsequent to the amendment provide us the means of doing that.

Jack Flanigan: Mr. Rose, the next four questions relate directly to the role of the State Tax Commissioner. These four questions are being asked because somewhere in the decision some allusion has been made to the responsibility or lack of responsibility of the State Tax Commissioner and you happened to hold that office at that time. If I direct them to you, it does not necessarily mean you were the person in question. Historically, I guess, we could go back to 1852 when the Commonwealth of Virginia was in session and find that there was a very similar matter that came before the Commonwealth at that time between western and eastern counties of the state. So I hope that you won't take them personally, but the intention of the four questions is to refute or to justify in some cases statements made by other participants. What has the Tax Commission done to meet the directions of the Pauley v. Bailey decision as it relates to the financing of the public schools?

Mr. Rose: As it relates to the financing of public schools through property taxes, we have been in charge of conducting a statewide reappraisal that is to a great extent, at least the methodologies that were used, particularly in the area of natural resources, based upon the recommendations of the plaintiff and the court in the Pauley case. That is, justified criticism was made of the method that the Tax Department used in valuing coal prior to the reappraisal. An income approach to valuation of inplace coal proposed by the plaintiff was generally endorsed and embraced by the court and is the method that the Tax Department and the Legislature have mandated through the approval of our regulations that we are now valuing coal. That as we have prepared and sent out tax returns we've received back the information, and within a matter of six weeks--eight weeks now--the Department, if it is able to stay on schedule, should be producing values from the reappraisal for inplace coal. The same applies to other natural resources--particularly oil and gas--a more sophisticated method of timber evaluation has been generated and is being implemented. The valuation of other types of property were very much along the lines of the issues that were raised in

the Pauley case. There are others that are unresolved or were resolved in different ways. One of the issues that was raised in the Pauley case was that banks were not properly assessed because of the statutory method by which they were entitled to be assessed. That was addressed by the Department in response to legislative mandate, and the reaction to our response was a constitutional amendment exempting intangible personal property from the property tax. That was proposed--backed substantially by the bankers, and passed overwhelmingly in November; so we no longer tax personal--intangible personal property in West Virginia for property tax purposes. There are other things that we still [tax]--that are relatively minor--at least relative to the impact that they would have on property tax revenues statewide. How the value of buildings in progress are taxed is an issue that as far as I know has not been resolved and with which the plaintiff's lawyer took issue--the statutory requirements for how that was done. The valuation for pollution control equipment in public utilities and other places and the amount of--and how it's to be valued by statute--those are things that were left unresolved when the judge--Judge Recht basically accepted the fact the voters had passed the 1982 amendment that the Constitution--the Constitution had been amended that the Legislature now had the control of how values were to be set and accepted that as a resolution of the property tax side of the Pauley case. But overall--and I think that any objective observer would say, and I think to a far greater extent than the educational side of--has been complied with and implemented--that probably 95-96 percent of all the issues that were involved in the property tax area of the Pauley case are now either resolved or in the process of being resolved through the reappraisal.

Jack Flanigan: Why was the State Tax Department not more aggressive in fulfilling its responsibilities as directed by the State Legislature?

Mr. Rose: Basically because there was, I think, a good faith dispute as to what our responsibilities were. Go back to the question the tension between state and local control of education; there's a parallel tension between state and local control of property tax evaluation--property evaluation for tax purposes. And that was whether or not the values--the tax base--i.e. the assessments, were to be controlled by the local assessor or would it be controlled by the State Tax Commissioner, and that reduced further to whether or not the appraisals that the Tax Department produced were to control or the assessments that the assessor--whether there was discretion to make adjustments in assessments at the local level. Up until the Pauley

case, Judge Recht addressed the issue in the Pauley case--a good faith reading of the role of the appraiser under 18-9A-11--and that's an educational chapter--but the provision in Chapter 18, Article 9A, Section 11 of the West Virginia code stated that the purpose of the appraisal was to assist the assessor at arriving at an assessment; and that the parameters within the--within which the assessor was to operate was that when all the state appraisals were totaled up for a class of property his appraisal--his assessments--I'm sorry, of our appraisals. There was nothing in the code; and I think a reasonable difference can be drawn that the opposite was the intention of the Legislature. There was nothing in the code that required that the assessor use a particular appraisal in appraising property. He could take the appraisal of your house and decide to assess 100 percent of it or he could take the appraisal of my house and decide to assess me at 10 percent of it. As long as his totals balanced out. And that was the objective measure of compliance with the law that the State Tax Department had for assessors. Now, the more difficult task that the Department probably should have performed in which it really didn't--did not do both, I think, historically for political reasons that there were--undoubtedly assessors are politically influential people and they are--they have the ability to influence the people who control--the higher the Tax Commissioner. But also as a matter of resources and capacity the ability to go in and really decide whether or not an assessor was complying with the constitutional requirement of equalized assessments and be able to detect that your house was assessed at some fraction of an appraisal different from mine or to be able to equate different dated appraisals so that we could see that despite the fact that you had different appraisals they were really assessing you at the same percentage of fair market value. We just didn't have people to do that and so the test the State used was the statutory test in 18-9A-11, not less than 60 percent of appraised value, not more than 100 percent. If they did that, they were complying with the code.

Jack Flanigan: Was the State Tax Department unresponsive in keeping the taxes relatively equal between counties?

Mr. Rose: To say that we were unresponsive would be to imply that somebody was calling us to do that, and I'm not sure that much before my term there was a great outcry about inter-county equalization. I do know that the legal department--legal division in our department-- researched the question of what Article 10, Section 1 of the Constitution was talking about when it talked about equal and uniform taxation. And I think that there can be an

historic legal argument made that they were talking about equal and uniform taxation within the county because it was the discreet taxing unit when this State was created. That is an obsolete conception now but nevertheless the idea--well maybe the justification is that we were incapable of guaranteeing intra-county equalization, which I think was the step that we needed to accomplish before we took the leap and said that we were going to go to intra-county equalization. We have had in the past three years legislative budget support--and I won't stand behind--I won't take the approach that we just didn't have the money to do it as the excuse; I don't think that's a legitimate excuse for not having done it. The contrast in budget is significant between what we had in 1980 and '81 and all before that, at least back to the early sixties. And what we have now for reappraisal--that is, the state has basically dedicated a sum in the neighborhood of 35 million dollars over the last three years to the Tax Department for reappraisal and that's an amount of money that is far in excess of anything that was available to maintain reappraisals prior to that. An aspect of it is financial; an aspect of it is perception of our responsibility; an aspect of it was the first-things-first attitude which is not unreasonable yet, I don't think. And I think those are at least three factors in it.

Jack Flanigan: Does the Pauley v. Kelly decision truly make a uniform effort in the direction of financing the West Virginia public schools?

Mr. Rose: Well, I don't think it does because I don't think that we're ever going to see property taxes play a major--the major role--in funding public schools in West Virginia. The Pauley case, from a legal standpoint, had problems from its inception. It required the court to do something that was beyond its power to do. And we're seeing that right now, that it proposed an ambitious plan that the Court just, at least so far, has not taken the position that it can levy taxes. But it also was premised upon what I think was probably the similar State's experiences which were primarily property tax based for funding education. West Virginia hasn't been a primarily property tax based educational system for a long time. If you look at a pie chart of where the source of education--source of funding for primary and secondary education comes from, I don't think you'd find that the majority of the money comes from the property tax. I think that half a billion dollars comes from the general revenue fund; and that's in excess of all the property taxes that are raised for all the levying bodies. So I think to answer the spirit of the question, we will have--at least we have the opportunity and the work has

been done--to have an equalized base for property taxation where a dollar's worth of property is assessed at the same percentage and then is taxed at according to the constitutional distinction among classes of property. As long as excess levies can be voted up or down there's going to be an inequity to the extent the decision is made that we don't need excess levies, then my recollection is that 100 million dollars of school funding is eliminated. And I'm going to predict that no matter who has to face that they're going to have a difficult time choosing an abstract equality against the concrete 100 million bucks.

Jack Flanigan: Mr. Rose, are there any comments or any feelings that you have that you would like to share because, as I mentioned to you earlier, this is a historical document. If there are any thoughts you'd like to add, I'd like to have them. I would appreciate any comments about the request of Judge Recht to you in the direction of the plan that he asked you to present.

Mr. Rose: Well, I think that the financing side of the Pauley case has been a complete success in terms of the court identifying problems--helping to identify solutions and then to some extent by fortuitous coincidence of other cases and other things happening saw the means to implement the solutions. And that's happened. I don't think that we could have as good a plan for reappraisal without the Pauley case because the department had the benefit of a year's education, intense effort to try to learn how to better approach evaluation of property, before the bell rang and we had to engage and embark on a reappraisal in a really very short period of time. We couldn't have brought ourselves up to speed that quickly. I think, though, that maybe to answer one of the standard questions I think that the profound question has been avoided and that is that I don't think that the citizens of West Virginia want to have equal education. People in West Virginia want to have good schools for their children and if they are--think they have good schools for their kids then that's the end of the line. And at some point when you go to plebiscite after plebiscite and referendum after referendum--that the people are the ultimate constitution, and I don't know--that may not be right--but I think that's the way it is, and I think that Amendment Number 4 confirmed that, and I think that the Legislature should propose another statewide reappraisal under the provisions of the constitutional amendment of 1982; but I'm afraid they're going to see that the same reaction's going to be "what's in it for me, what's in it for my kids?" If they don't see it--if the Legislature sweetens the pot for everybody like they tried to do in Amendment 4, there's not going to be an equalization. If

they don't, then the people who aren't getting any are not going to go for it. Tough times--running into tough actual political problems.

INDIVIDUAL QUESTIONS FOR HERSCHEL H. ROSE,
COMMISSIONER, WEST VIRGINIA STATE TAX DEPARTMENT

1. What has the State Tax Commission done to meet the direction of the Pauley v. Bailey decision as it relates to the financing of the public schools?
2. Why has the State Tax Department not been more aggressive in fulfilling their responsibilities as directed by the State Legislature?
3. Was the State Tax Department unresponsive in keeping the taxes relatively equal between counties?
4. Does the decision truly make a uniform effort in the direction the financing of West Virginia public schools is headed?

INTERVIEW WITH LYLE SATTES,
CHAIRMAN OF THE HOUSE EDUCATION COMMITTEE

Jack Flanigan: Today is March 6, 1985, and with me is Mr. Lyle Sattes, a member of the House of Delegates and Chairman of the House Education Committee. Mr. Sattes has agreed to taping his answers to the questions relating to the problem which he's read relating to the Pauley v. Kelly decision in the time period from 1975 to the close of the West Virginia Legislature in 1984. Mr. Sattes, initially how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools in 1975?

Mr. Sattes: Okay, the question of course has to do with my perception of the Pauley v. Kelly action meaning the original decision of the Supreme Court which remanded it to the circuit court for the purpose of making it a termination; and in that remand decision the Supreme Court defined what a thorough efficient system meant to the Supreme Court and they used the language the state of the art of education. That, of course, would carry in its logical conclusions, the English language means, would be that if we in fact implemented that we would have an education system at the state of the art, and of course there is no such educational system on a statewide basis anywhere. It's very hard to do that even on a small school basis assuming that unlimited resources [are available]. So as a practical matter I think that definition created some real problem. It obviously creates a desirable goal for everyone to raise a whole educational system up to the state of the art of education; and of course the state of the art changes faster than we can even make the changes anyway; so in terms of reality it is to some extent an unrealistic goal. But in any event it's a laudable goal, but it has to be put into reality in terms of how a state system is financed; and I think the reality of it is that you would never reach the state of the art, that's a practical impossibility. And so that created some problem because I think the definition was unrealistic in terms of a constitutional definition of establishing a system of free schools. I, of course, hope that we can continue to seek the--to achieve that kind of goal. But I really think it has some practical problems. It is an unrealistic definition in effect; and, like I say, it does--causes me no problems because I can work very hard to achieve that goal and that doesn't cause me any problems; but in terms of ultimately how the court views it and whether on a continual basis you're going to have counties and/or the state dragged into court because they have not achieved the state of the art, then that is an unrealistic definition. I think that

may create some long term problems that thankfully I will not be around to address--someone else can deal with; but I think they may cause some problems in the long run and that isn't necessarily beneficial to education because if after awhile the average citizen comes to the conclusion that the demands are unrealistic then it begins to cause political problems for bringing about improvements in the school system; and then you haven't really done anybody any favors by the overdramatization of the goal that you're getting, that you're seeking. If it is unrealistic and if there's continual pressure to achieve an unrealistic goal then you can begin to have some practical political problems; and we've had some of those from some of the other cases in the court.

Jack Flanigan: What was your role in the initial stages of the case?

Mr. Sattes: In the initial stages I was not a member of the Legislature so I guess you could say I had no role in the initial stages of the Pauley v. Kelly case. I was elected first to the Legislature in 1974, so my first appreciation of that came later.

Jack Flanigan: As it relates to the case, has there been any change in your role from 1975 to 1982?

Mr. Sattes: My role changed considerably between 1975 and 1982. From the time that I was elected in 1974 to the first four years of my service, I did not serve on the Education Committee; therefore I didn't deal with the day-to-day questions involved in this. My appointment to the--to be Chairman of the House Education Committee was in--at the end of 1978 so my first activity as Chairman of the Education Committee was in 1979, and that's when my role became tremendously changed. I then was confronted with the situation where this case was a major involvement in the education field; one that you had to observe and see how you felt about it because it was going to impact all the decisions that you made if you followed the court cases. I took another view to some extent in that I did my own personal analysis of the education system and the finance structure of education and drew conclusions that I thought ought to be achieved and were for the primary problems that existed. The main vehicle we used for that was the Public Education Study Commission which was already in place when I became Chairman of the House Committee; and we did some rather extensive studies with Mr. William Hamilton as our Director of our Commission. I developed my own conclusions about what I thought needed to be done. Of course, the remand decision, which is now known as the Recht decision, didn't come along until somewhat later.

Jack Flanigan: Are the projected end results going to remove the inequities in funding of the public schools in West Virginia?

Mr. Sattes: When you say the projected end results and whether they're going to remove the inequities in funding, I guess that depends on who projects the end results, and my own projection of course, as I indicated, came about by--for me personally--by my own study of the finance structure of education in West Virginia. At that time I concluded the inequities were rather substantial. There were tremendous inequities obviously in the local levy, what's called the local levy, and there were also obviously tremendous inequities by virtue of the excess levy, which were the same as the local levy exasperated by the fact that not all counties had the same level or in some cases any level of excess levy, and then the ongoing problem of facilities. The equality question there was basically that the counties which were very poor and which had not been able to raise any money or any substantial money from bonds had over the years had to construct their facilities primarily through use of laying aside current expense money. It was obvious that the poorer the county, the bigger the problem, and the inequities were ones that had built up since the State first began because it was a growing thing and it would continue to grow. The only involvement at the state level and school facilities construction was the Better School Building Amendment in 1972. It had, I will say, almost none but there was a minor provision in there that allowed for some equalization; but a lot of it was done--the monies were maximized, if you will, by matching situation which really didn't assist equality at all because the wealthy counties had no problems matching; the poor counties had extreme problems matching, and so in effect, I could even arguably say the 1972 Building--Better School Building Amendment, which was a state bond, may have exasperated the equality question. It obviously improved the quality of school facilities at some degree or some percentage in every county, but it really didn't help equity. Now that leaves us with the three problems. The local levy--when I first became chairman of the local levy, the excess levy and the school facilities; the local levy we addressed in the 1981 bill--was commonly called Senate Bill 15--and more familiarly with a lot of school administrators the Step 7 process of equalizing the local levy, which is the slow process of ultimately equalizing local levies. The excess levy is a problem that, in my judgment, ultimately can only be solved by constitutional amendment which the people accept; and the facilities question, which can be addressed in an equalization manner assuming that you have the

resources available to do it. We tried to address both of these questions by activity in the 1984 session which put on the ballot an amendment to the constitution which would have addressed both of those items, and that amendment failed. The failure of the amendment didn't mean that the problem went away. Both of those problems still exist, and I hope that we address them in a similar fashion at some time in the near future; so that from my point of view our projected results will in fact remove the inequities. You have to deal with an awful lot of internal politics in dealing with removal of inequities because those who particularly have an advantage are reluctant to give up that advantage; however, it's impossible to remove inequities without doing something like that. I took the approach with Senate Bill 15 and also with the joint resolution that put the constitutional amendment on the ballot in 1984 that in implementing legislation that we would always take the point of view of improving the lower school systems without dragging down the better school systems; and taking that approach tends to eliminate some of the political opposition to addressing the problems of inequities. If you take the position that you're going to remove the inequities immediately by taking away from those who have and giving to those who have not, then you build in some real substantial resistance that makes it impossible to deal with. And it's particularly important not to do that when you're talking about a constitutional amendment, because it requires two thirds vote in both houses to put it on the ballot and that's why it's so difficult to get those things put on the ballot. So from my particular perspective I think that the projected end results, as I see them, will in fact ultimately remove those inequities; but it requires--it will require I think the consent of the people to deal ultimately with the total solution of the excess levy problem and probably also the people. But the Legislature could do it by itself on the facilities question. So those two things, if they were to come about, as would have happened quite frankly had Amendment 4 passed, we would have been in a position of, over a period of time, really removing those inequities.

Jack Flanigan: To what extent is the Master Plan a viable solution to resolve the original complaint?

Mr. Sattes: The Master Plan. I think Judge Recht put it very well when he said the Master Plan is one approach to dealing with this--there might be many others. I have--I think the Master Plan is very helpful to me in terms of my thought processes. However, to be frank with you, I have some personal problems with parts of the Master Plan, and that would not be my choice of some of the ways to solve some of the problems we have. The Master Plan fully implemented, for instance, would add a substantial number of

professional educators to our systems, and quite frankly, I think it would be a move that would tend to decrease our capability to solve some of the other problems that require more resources. So you get into a Catch 22, if you will, situation. Is this the way you're going to address this problem and how does it affect solutions of other problems? Because I think teacher's salaries are a substantial part of our problem, and if teacher salaries are the substantial part of your problem, and if you have great deal of difficulty getting adequate money for teacher's salaries when you've got 23 thousand, what do you do if you have 26, or 27 thousand? It exacerbates that problem. So using that as one example, there are areas where I just think that the Master Plan carried out in the way it was originally envisioned would not necessarily be the best approach to solving all our problems. And like I say, that's just one example. But by and large, the Master Plan points in a direction of a really fine educational system. I think we can draw a lot of information from it, and it has many laudable goals and many very logical approaches to dealing with some of the problems in education. So I look at the Master Plan as a very good help for me in drawing conclusions, but I think I have to use my own mind about what I think is the best solution. Obviously a lot of people will disagree with me on some of those, and I'll win some and I'll lose some as far as legislative processes are concerned; but once again I think Judge Recht was exactly right. It would be a terrible idea to draw the conclusion that this is what has to be implemented because then you put some of those who are trying to improve education in the position if this is the only way we would be allowed to do, then what [happens if] we want to do [something else] because some of us really think that some of these things would be a mistake; so I think, like I say, once again, I think Judge Recht used consummate common sense when he said this is one approach to dealing with many of the problems; there are other approaches to dealing with many of the problems; there are other approaches and this is the suggested way and he used it like a plan of action that may or may not be the best plan of all facets--it is one plan. And that's the way I look at it.

Jack Flanigan: Why do you believe the legislative and executive branches were not more responsive to the question of equal financing of the public schools prior to the Pauley v. Kelly case?

Mr. Sattes: I'm not sure I know fully why; I would say that maybe the legislative executive branches weren't more responsive to equal financing beforehand. One of the peculiarities of this whole thing that's really fascinating

to me is that when you match up school jurisdictions in the United States, you would find that we were considered one of the most equitable prior to the Pauley v. Kelly case, and that's not surprising to me because the general move that we've had over the years of funding our school system [is] primarily out of general revenues at the state level which is peculiar. Most states fund it primarily from the property tax at the local level. So we have always, that is, since my involvement in the Legislature and certainly since the 1971 school aid formula bill, we have funded it primarily from the state level, and we have removed some of the inequities by virtue of doing that [within the] formula. So, when you say we're not more responsive, I'm not sure that we weren't more responsive than most jurisdictions a long time before it became something exciting to do. Now, I also say this to many people, the fact that we were one of the most equitable to some extent shows how bad the other systems really are. Our system is not, and was not then, and is not ideal now, and we would like to move it in the direction of ideal; I think had the Amendment Number 4 passed in 1984, over the next 10 or 12 years with the good leadership in the Legislature we could have had, without question, not only a good system as far as equity is concerned, but we could have dramatically effected quality so that as a full state, I would have matched our education system at the end of implementation of something like the amendment in 1984 against any as far as its equity and its quality. And obviously, a lot of people would argue with me on that because they say, well, what about other school districts? I'm saying a full state. There are school districts in some states, but we could never, if we put all of our financing into one county in this state, equal the resources available in some very small school districts, because we have a lot of states that have very small school districts with maybe even single schools that are financed by extremely wealthy small school districts, in suburbs for instance, and--but those states have extremely inequitable systems. In fact, many other states have had cases similar to ours go to the Supreme Court and had the present laws upheld when their system was nowhere near as equitable as ours. So, to some extent I agree with our court in ruling that our system is basically unconstitutional--there's no question about it; and that's the way we felt about it even before they ruled, that we had to do some things--and there's no question that we had to do some things, and we are attempting to do those. But some of the other school districts in this country are so bad that it's incredible--Georgia had their system upheld and I think their system is awful; and their Supreme Court upheld it as being relatively equitable; and ours was better than theirs before we even passed the bills in 1981. So it's a matter

of degree. As far as whether they were more responsive or why they weren't more responsive, also I think we ought to mention the Better School Building Amendment. In looking at that--when I looked at that, I tried to go back and draw some conclusions by the committee actions that were taken at that time and apparently, and I say apparently, because I wasn't involved in the actual discussion even though I happened to be close to the Legislature at that time--I had served as a staff member but on a different committee. Apparently the politics of equity then were very difficult to put across in the Legislature as they have always been, quite frankly. And the attempts that were made to do dramatic equalization in the Better School Buildings Amendment were beaten rather substantially, and ultimately the leadership in West Virginia has been very good. So, I'm not very familiar with all--who all was involved in that; I know a few of them and every time that I run into one of them that I've seen their names and in some of the actions that have taken place in the past I thank them for the work they did because it was good leadership back at the time it was done. And [it] got us out of some problems that some other states have evolved into situation where they can't solve those problems almost. [It is] Just about impossible to solve those problems.

Jack Flanigan: To what extent has the original complaint been resolved?

Mr. Sattes: The original complaint--to what extent has it been resolved? Well, I think we've moved in the direction of solving the original complaint but obviously we haven't succeeded. Once again the failure of the amendment last year precluded us from dealing with some of those things because I think they have to be dealt with--at least the excess levy wanted to solve it as a permanent solution [which] has to be done [as a] constitutional amendment. But I think the recognition is there; I think we've educated a lot of members of the Legislature about the problems; I think the outgoing state superintendent, Dr. Truby, has been very helpful in that regard because he talks a lot about the moral questions that we have to deal with in education, about the moral question of whether we have students in one area who have less resources spent on their education than others, and I think that's exactly the plain that it has to take. I think we have to get the Legislature to look at this to some extent as a moral question that we need to resolve. Part of the problem that you get into also, with being I guess the solution, is exasperated by the natural effect of doing equalization. It tends to centralize. We now have a log of buzzwords going around like equal--local control of schools, and that sort of thing, which are used

as arguments for and against equity as a practical matter. If you get to the point where you roughly equalize spending resources, then those resources obviously to some extent are set by central authority, you can hardly avoid that and of course we can move substantially in that direction and 1971--the formula did that. So I think people have to get off their own personal narrow interests and look at the broader scheme of things; and I think for instance, school administrators are beginning to do that in this state and have been doing that for maybe the past half a dozen years. And all those things to some extent are beginning to help us resolve these problems that were stated in the original complaint in the Pauley v. Kelly case.

Jack Flanigan: What has the Legislature done to make the financing of the school system meet the direction of the court?

Mr. Sattes: Once again, as I indicated, I think, to some extent, we have to determine our own interpretations. The court can rule what we do to be constitutional or unconstitutional, but we openly have to address it as a matter of fact. A little bit of problem is the Court got into the specifics and then put Judge Recht in the difficult position of saying whether they had to be done, and [whether] that was a part of a court order or not, because quite frankly it would have been bad if he had because the Legislature just wasn't going to do things that way. In any event, obviously we did deal [with this issue] in the Senate Bill 15. Quite frankly, I really think the bulk of equalization that's taken place is by virtue of the 1971 school aid formula. I think it did tremendous equalization when they first said set a 55 per thousand professional educator level; and you have to realize what was existing before that time and see what if--what effect that had. So the equity that came by virtue of that since that original formula was derived entirely by professional educators' salaries and the levels or the numbers of those which were financed were equalized by establishing a ceiling. As a matter of fact I think--when that was first enacted I don't think most legislators had any comprehension of the amount of money they were talking about or some of them would have not voted the way they did. I think the average statewide then was about a little bit above 35 per thousand at the time that they passed the 55 per thousand formula. And with every county climbing to that, substantial additional resources were put in and when they ultimately hit that level, then you had, to some extent, an equity factor. The Senate Bill 15 which was passed in 1981 began to equalize the local levy, and the way that will change ultimately I don't know. But as reappraisals go in, and without a

change, if there is no change in the language of the legislation, the local levy would, in fact, equalize probably in the next five years. It's difficult to calculate exactly what that is, but once again, if the local levy only applies 20 percent of the money coming into the school system and the court in its decision later hung up--got hung up on the fact that we equalized by charging back 22.5 cents instead of 22.95 in class one then you'd have an argument about what difference that makes; and that was really the main hook that the court used when it talked about the fact that we hadn't set up a plan to equalize the excess levies. If we would change the 22.5 to 22.95, in other words, entirely equalizing the local levy, they said that then Step 7 would, in fact, solve the problems as far as they saw it. And I think it's almost a distinction without a difference. Right now the 22.5 equalization provision leaves a little bit of money for county superintendents which I'd call some flexibility money and it's not a huge amount of money, but if we were going to strictly follow what the court asked us to do, we would change that in the school aid formula from 22.5 to 22.95. Those are the kinds of things that have been done to begin to meet what the court also determined to be financing problems. So in that respect we're meeting the directions of the court and without getting into an argument over whether we did it because the court said or we did it because we thought we should or whatever else, those have been done. Now we also in the 1984 session of the Legislature enacted a piece of legislation which provided for putting money into equity in salaries to equalize money that really comes from the excess levy. Our approach at that session of the Legislature was to provide for the long term solution of the excess levy problem by providing a statewide excess levy at a hundred percent perpetuity. The short run solution, though, was to put a substantial amount of money which ultimately ended up being 29 million dollars out of surplus in that year towards equalizing salaries by raising the bottom counties up, and that 29 million dollars did a substantial amount of equity and would have been, I guess, viewed as moving in the direction of more equitable salaries as were set forth in the Master Plan. I believe it equalized all but 18 counties--meaning that really puts a substantial amount of money into poorer rural counties--primarily ones that did have excess levies. So that also, I guess you would say, would be a move either to meet the Master Plan or whatever. So those are items that have been done to either meet the directions of the court order or move toward equity--whichever you want.

Jack Flanigan: Can the present school aid formula be amended to meet full equity?

Mr. Sattes: The present school aid formula cannot really be amended to meet full equity. It can't be done as long as the excess levy provisions are the way they are because you still leave local capability to make determinations which cannot be changed by virtue of the school aid formula. Now if we had huge sums of money we could put in there something that could equalize all excess levies and would discourage the passage of any excess levy so that ultimately, I assume, you'd get to the point where no excess levies would exist. The problem there obviously is, though, if we don't have substantial resources then if we do put into place something that discourages the passage of excess levies, that in the time period necessary for those to all cease to exist, we lose 100 and some million of dollars in school funding. So, to avoid that, we have to figure out some way to follow up on the same thing that I mentioned earlier--raise the bottom counties up in the direction of the high counties. And the only real way for there to be a permanent solution of that is something like what was in Amendment Number 4 dealing with excess levies. Whether it mandated a hundred percent or not, it could choose a lesser percentage and take a little bit of loss. It could do any of a number of scenarios like that, but you can't ultimately solve it by the school aid formula because there's local initiative capability out that we cannot address.

Jack Flanigan: Has the State Tax Department carried out the intents of the Legislature?

Mr. Sattes: As far as the State Tax Department and whether it's carried out the intent of the Legislature, it's hard for me to say because to some extent we haven't dealt with that side of it--the judiciary committee has been the one that has primarily dealt with the reappraisal questions and with the tax collection questions; and the finance committee also's gotten into that--particularly when it was involved with additional resources necessary to assist the Tax Department in doing some adequate things--some things adequately that it had not done, such as auditing and that sort of thing. So two other committees, not the education committee, had been the ones with the primary responsibility in that area. I would say, though, that when you talk about legislative intent you get into real slippery ground. When you pass a piece of legislation that calls for reappraisal based on fair market value and then later on you get into semantic arguments about what you did that mean as far as limestone was concerned, what was the legislative intent and the truth of the matter is no one in the Legislature really considered most of those specific questions so that there really is no legislative intent. A lot of people try to read into that what legislative intent was, and I think they

carried it beyond its capability in terms of how it should work. Obviously, if we pass an overall piece of legislation directing the Tax Department to do something and then if later people say, well, he's not handling this little area of that correctly, then you have to deal with legislation at that time and that will determine the legislative intent on a specific question. But I don't think that you can get into that kind of a thing as being a logical pursuit, at least, as saying what was the legislative intent on the reappraisal dealing with limestone when no one in either one of those committees ever even really considered how it dealt with that specific thing. And I think that was a problem that was laid on the Tax Commissioner's doorstep, Mr. Rose, and also, his predecessors. And I think that by and large our tax commissioners have been outstanding individuals, and I think they've done as good or better job than most of us could even expect under the circumstances, particularly at times when we were asking them to do things and were not giving them adequate resources to carry out the work product that we were requesting them to do. We in recent years have been trying to resolve that by giving them additional funds, and also we're learning some interesting things there that if we do supply some of that money they can collect a whole lot more than we need to pay them. So it's been a net positive for the State by doing that. So I think they've done the best job they can under the circumstances.

INDIVIDUAL QUESTIONS FOR LYLE SATTES,
CHAIRMAN, HOUSE EDUCATION COMMITTEE

1. What has the Legislature done to make the financing of the public schools of West Virginia meet the directions from the court?
2. Do you feel the present state school aid formula can be amended to meet the court decision for equalization?
3. Has the State Tax Department carried out the intent of the Legislature as it relates to property tax?

INTERVIEW WITH JAMES C. SMITH

Jack Flanigan: Today, December 12, 1984, I am interviewing Mr. James C. Smith, Assistant State Superintendent of Schools in charge of administration and finance. James, I would like to ask you a couple of specific questions which relate to the Master Plan. Could you tell me what was your role in the development of the Master Plan?

Mr. Smith: Jack, it's fun to get to talk about this, and it's involved a lot of my life in the last five years. In order to talk about the role I had in the Master Plan, I really need to flip back to 1981, at least, and for a minute talk about the first year I worked here when the Legislature made an attempt to get ahead of the court action, and in good faith, and in my opinion, with the best intentions tried to address the 1976 version of the Pauley v. Kelly court order that came out of the Supreme Court by readdressing the way West Virginia schools were funded. And they chose to do a new formula that year, Senate Bill 15 as I remember, and it, for the first time, picked out all the growth and the regular levy money around the state and distributed it based on resources per pupil, and make a real straightforward attempt to equate the source of money that was available in each county. Now that's happened and at this point there are 37 counties five years later that are equated on resources per pupil. At the same time the Legislature put in place a system or asked the State Board to put in place a system to monitor schools through standards. So in 1981 was really an important part of the Master Plan, even though it dated it through the court order. So the State Board developed the standards and we implemented the new funding system; and then the court order happened and in essence the court said to us it was too little too late; and nor enough and nor of high enough quality and what all that you note to identify the high quality and to give some pretty specific directions as related to funding, as related to taxation, as related to instructional curriculum standards, and different kinds of services that needed to be provided to public education. But the point the court order came in place the State Board of Education needed to, rightfully so, did impact--start impacting what the court wanted with the legislative body of government, the executive body of government. And with the court's permission then went into development of the Master Plan.

The specific role I played there was to cover a third of the work or responsibility of the development of that plan--that was the finance section; and I had a really good committee

that worked long and hard and fast because they had very little time as you know. So the development of that plan was three-fold. It had Jim Gladwell with one section, and Dr. John Pisapia with the other, and I had the other, with Dr. Thomas McNeel chairing the whole thing. And the key to high quality was centered in on John Pisapia's committee assignment, because it was there we were developing the high quality of standards. The difficult role my section of it played was to try to finance what John Pisapia's committee was putting in place. And we felt that we did that fairly effectively as it related to what we could know and understand and see at that point.

So the Master Plan gets developed and gets embellished into the court order and the next step is that the State Board begins to put in policy those things that can be funded now. So Policy 2510, the State Board action, picked up on the parts of the Master Plan, the high quality standards that we could fund now; and at the same time we built right into the monitoring model those standards that the State Board had passed. So we've made steady progress right along as it related to developing the Master Plan into policy and then implementing into practice where the dollars are available to do it. We've used the Step 7 which was the 1981 equation version of the due formula they passed that year to try to start up new high quality standards as those plans are approved from each county. So we've begun to take the existing money and put it in place with the Master Plan in mind and with high quality standards in mind. Now the role we tried to deal with in the Master Plan on finance first tried to address the additional staff that was necessary in order to carry out the high quality standards. Then it was obvious that standards in the health area and many of the service areas like social work, attendance work, special areas that hadn't been staffed in the past, would require additional staff people in order to address the Master Plan and address the high quality standards. But at the point where we finished writing that plan we simply took the lid off the 55 per thousand, and we've since fairly well agreed that that wasn't appropriate and probably would never get implemented. Nonetheless, it was a way to create the new growth that was necessary to do whatever the standards called for. Another thing we did that were significant with that Master Plan finance section was take pretty much control of the local share and totally use the local share of money to pay for the funding system. And there were two purposes in that--one was if you're going to be equal and have equity you've got to then create a circumstance that stops a rich county from getting richer and a poor county from staying poor. So that was part of the finance section to equate the local share, and the other part of it was to

readdress the local share of money in such a way that high quality of standards in a pretty uniform way started taking place in West Virginia schools. Another thing in the finance section of the Master Plan was to fully fund transportation. And we did that because of the diversity among the many counties and especially the geographic diversity where you got some counties like Hardy, as an example--it's the fifth largest county geographically in the state, with one of the smallest student populations in the state. So their transportation cost per pupil is great compared to a county like yours, Jack, in Berkeley, where in large parts are level and not separated by three or four mountain ranges. We looked at the Master Plan finance section to offset with state funding salary inequity that's already begun to take place. We also looked at a way to fill in the need for other current expense where at this point and time the state's funding 20 some million dollars for other current expense and the cost in that item is somewhere in the neighborhood of 100 million dollars. So we tried to balance that in our finance proposal so that the services and the leaky roofs and the basic purchase of books, supplies, and equipment would have enough resources in place to insure and assure that they happen.

But the role I played in the large part to sum it up as it related to the development of the Master Plan was to try to develop a finance scheme that would compliment the instructional part of the Master Plan which is high quality standards. And it's not that finance needs to ever, you know, be the driving force but instead it needs to be the supporting force behind delivering education programs to the 55 units we had. So that was our intent and it remains our intent even though there's a lot of changes taken place since we wrote the Master Plan. The next thoughts I have kind of lead me into the second question if you want to discuss it.

Jack Flanigan: Mr. Smith, can the present school financial system of the State be amended to meet the direction of the court for equalization?

Mr. Smith: Well, that's where my thoughts started running as we broke there in the tape. I think the answer to that is yes it can and more than that, yes, it must. You know we've got the challenge and the order and it simply needs done. The first attempt we made after the Master Plan was written to really start implementing ways to fund the formula and fund the basic foundation program and equate and balance the excess levies from one county to the other which is really the culprit in the inequity in that 100 and 9 million or so dollars that's derived from excess levies

across the state. Out of the whole billion dollar budget that we run, that 10 percent or so of it creates the imbalance more than any other single thing. So the attempt was made working again through the Legislature and in the large part was to their credit and to their hard work and effort.

What is known as Amendment 4 was presented to the people of West Virginia to create a 100 percent excess levy statewide that would in turn give us the option of one, having equal taxation in every county; and two, having an equal distribution of that money as related to each county running and delivering its services and delivering education program to a student. Now that amendment to the constitution failed and with its failure we are faced then with--let me add, too that that amendment had built into it the way about the money we need for the school construction, which by the way, is the largest fiscal impact that the court order has. Our best estimates are that the whole court order, and as the court orders reflect through the Master Plan, costs somewhere in the neighborhood of a billion one hundred million dollars. Now, at least 800 million of that is needs we are aware of in school construction. So the high quality standards part of it as relates to construction and supplies equipment, the general day-by-day running the school systems really doesn't demand a lot of the money compared to the demand that's on school facilities. So funding the formula to deliver the instructional program and to put the people in place to deliver the program is not the major expense. But the catch to it is that you can't do one without the other and they've got to happen step by step and hand in hand. Nonetheless, Amendment 4 failed and with its failure went the plan we had to get the money in place to do those two basic things; and that's put the facilities in place and put the high quality standards in the facilities to put the people in.

So from that point the work we've done here at the State Department with county superintendents, with school board associations, all the people that directly impact school finance, all the WVEA and school service personnel, the committees have worked in the last several months now to recommend the funding system or basic foundation system that would address the funding the high quality standards without the benefit of Amendment 4 includes some of these basic things, and it hasn't been presented to the Legislature or the State Board and as a matter of fact the State Superintendent at this date has only been briefed on it. But the basic things we are looking at now that are possible is to one, create a new growth potential in the state funding system and control it over a period of years so that

gradual growth in personnel can take place, and as gradual growth in personnel takes place you will have built into the funding formula additional money for other current expense items, for transportation, for Step 7 as relates to equity; so that you can in a systematic way at least take the cap off of things now and move into the future with potential growth, with potential state money paying for it. The other thing that's built into that as it relates to local share is that re-evaluation of property will generate several million dollars in additional local share money in the next 10, 12 years. As that money becomes available a couple things can happen with it. One, we'll continue to equate through Step 7 and as counties get the money in that step they'll need to apply the money toward high quality standards. The other would be to slow that down and use the money to pay for personnel up front. So I don't know which way that will go--it could go either way. Nonetheless, that's one way to keep the new re-evaluation money that will come to schools caught into the whole scheme of delivering educational programs in that state doing a bit of high quality standards levy.

Other things that we're looking at doing will be recommending that something happen in school construction and the first thing that pops in mind is the lottery money, however much it might be. Other things that are very real are to look at the potential of some 800 million dollars to see if there'd be a way to match those two. If you had some state money and you had a match money at the local level, obviously you created a scenario that doubles your impact and will build more buildings and secure more space for the high quality standards. Transportation will be addressed in the future funding scheme that we recommend, and it may not totally pay for it but more nearly pay for the total cost of it. We'll look at control growth in both professional and service personnel in the scheme we'll propose because many of the high quality standards relate to teacher aides which are in the service personnel block, and as you address that you've got to also make control growth and room for growth in the Step 2 of our funding system. Other major areas that will have to be addressed in the new funding system will be the continuation of salary equity. We've started the first year with 29 million dollars of that which almost brought the state up to 50 percent of equality on salary paid for similar people and similar circumstances in jobs all around the state. We will ask for the second step of that; we plan to do that in three stages. The second stage again will cost around 29 million dollars, and I am confident that will be one of the things we ask to have continued. The total cost, Jack, of what we're looking at now could be phased in in such a way that it wouldn't be a great finance burden.

If you did the whole thing at once you're talking in the neighborhood of 100 million dollars at least to fund that whole thing. But if you phase it in, you've got an opportunity to the first year to fix your transportation part, fix some things in Step 2, and a real important aspect of it is to have some start up money for high quality standards.

And, in essence, with the whole funding scheme, [we can] do what I think is happening pretty effectively across the country now in states that have had to address equity at least. They sort of walked away from a single basic foundation formula and looked at a multi-formula approach. And what we would look at and ask the Legislature to look at is the one to continue the special education formula that's outside the basic foundation. We'd want to continue that as a way of starting up vocational programs. And then create a third formula, if you will, that would refer to starting up high quality of standards so that you had a legitimate way of starting up where the need was obvious as it related to people, supplies, materials, equipment, and whatever, and then the next year after it started up it would flip into the basic foundation formula. So you in essence have a multitude of formula that all address meeting high quality standards and that the formula itself in each of all four of the cases would represent a technique to generate money and not a way of earmarking money; and that gets really important because that then lets the local school board and the local school superintendents make the decisions about where their needs are and how to best attack meeting those needs with the new money that's generated.

So, to go back and answer your question I think yes, it can be done and yes, it will cost some money, and if we space it in a reasonable amount of time, the impact on money won't bankrupt anybody and at the same time will accomplish our goals. If the role played in the first question in development of the Master Plan becomes extremely important, you know, three years later, because it got a solid impression on people just to where the intention was then, what we tried to do with Amendment 4 that didn't work, and now what still has to be done. So we're looking for other ways to address it and still trying to do it in such a way that progress continues and that we don't, you know, suddenly bankrupt the state or suddenly say that all the counties in the state that you have to have elementary guidance within a certain period of time because you couldn't find them, they wouldn't be there; and instead you gradually deal with higher education and with the state funding source and build your way into it as sensibly as possible.

Jack Flanigan: Mr. Smith, there are seven questions, the intent of which is to substantiate the facts so that we have some uniformity. As I ask you these questions, please briefly touch upon each one if it is pertinent to you. Initially, how did you perceive the Pauley v. Kelly action as it related to finances of public schools in West Virginia in 1975?

Mr. Smith: In 1975 I was a practicing county school superintendent, and I saw that court order as being the potential of a new era in education at that point. And thought, well, this is a way that dollars will have to be generated if we can ever meet the definition the court, the Supreme Court, put on thorough and efficient. So I saw it as a way to improve West Virginia education--that was my first thought. I had this cautious thought then and now that there needs to be a balance all the time between the three branches of government so that the courts suddenly aren't running the schools but instead the courts impact education. I had that little concern then and still worry about that some. That was my initial impact that this may be the opening of the door that creates new possibilities and improvements in West Virginia schools.

Jack Flanigan: Mr. Smith, did you have a role in the initial stages of the Pauley v. Kelly action? Were you involved in its initial actions in 1975?

Mr. Smith: Not really. Not in any direct way.

Jack Flanigan: Mr. Smith, as it relates to the Pauley cases, to what extent did your role change from 1975 to 1982?

Mr. Smith: Well, my job changed a lot, and as it changed from a county superintendent's role to an assistant state superintendent for finance, it just by sheer demand changed my whole lifestyle as it related to this case. The first big change was that I found myself the first year I worked at this job being the defendant witness for the state--the main witness for the state. Obviously, I wasn't real effective. Nonetheless, Willis Moore worked for me here at that time. The two of us, with attorneys from the Attorney General's office, developed most of the defense, especially as it related to the finance and equitable and inequities in finance. So, my involvement changed and my perspective changed because the magnitude of that '75 decision was suddenly greater than I'd seen it in 1975. And the greatness of it hit me early on because I could see from all the testimony in the court that there were really changes to come and that changes would be dramatic.

Jack Flanigan: Mr. Smith, are the projected end results going to remove the inequities in funding of public education in West Virginia in your opinion?

Mr. Smith: Well, in my best judgment they have to, you know; we must find a way to create perfect equity when you're dealing with 55 counties with 55 different sources of funds; and even with property re-evaluation going in place and with everybody paying 60 percent assessed to appraised with the rates applied derive at their tax dollars, you find that the house's market value--the very same home on the bank of the Kanawha River will be different than that same house on the banks of the Little Kanawha River--or Cedar Creek--or in your case, Opequon Creek. But though you still have a balance of inequitable flow of dollars coming from that tax source, then you keep an imbalance somewhere in every county as it relates to the experience level of teachers. If you find a county with maximum experience, maximum educational levels opposed to the exact same size county with a lot of new teachers, then you find yourself inequitable as it relates to the flow of state dollars. So, I'm finding it really difficult to create perfection in an equity approach. I feel like the proposal we made with Amendment 4 and with proposals we're working on now will get us to about 95 percent level of equity, though, and if we can do that, that may be really good and may be what--maybe it's the best that we can do. I say that with a little bit of reservation because when you deal with finance equity the first thing you think is a dollar's a dollar, and it's worth the same thing everywhere.

Jack Flanigan: I think you probably addressed this, but could you make a short statement. To what extent is the Master Plan a viable solution to resolve the original complaint?

Mr. Smith: Oh, I think it even goes beyond addressing the original complaint as I understand it. It led the Supreme Court to give it definition or a meaning of thorough and efficient. And the court order following that took the evidence and said if you impact education with these things you'll have that. But the Master Plan, to credit of people like Pisapia and Dr. Truby, of all people, and McNeel, tried to take the input side of the court order and also have outcomed reference as part of the Master Plan. So we not only said we'll impact education with all these inputs, but we will expect certain things at the end of it and make an attempt to measure it. So in that sense I think the Master Plan not only will address thorough and efficient education in West Virginia but also measure how well we're doing by stating the outcomes as well as the inputs. So, I'm

complimentary of the Master Plan not because I had a part in it but because it really made an attempt to not just address the Court as an issue but to go beyond it to look at West Virginia education out of our eyes and minds.

Jack Flanigan: Why do you believe that the legislative and the executive branches were not more responsive to the question of equal financing of the public schools prior to the Pauley v. Kelly case?

Mr. Smith: It's hard to say they weren't and again that reference point from where I am today is different maybe where it would have been in '75. But from what I've observed working here at the state level is that they addressed that one through a lot of research and spent a lot of money to develop a scheme for financing West Virginia schools that really didn't get off the ground. Now, they did that, you know before 1981 and that suddenly was, you know, not taking place and not getting any attention and then in 1980 and '81 we're getting closer and closer to the court case being a reality, the evidence happening, and I really think the Legislature in the best faith with the best use of the resources they had tried to put a funding formula in place. Not only did they put a funding formula in place that year they proposed a constitutional change that said you could have a 100 percent excess levy which addressed that problem of inequity. So they really have tried, in my judgment, to address the problem; and unless they process this slower than sometimes we like, the mechanical thought process has been there all along and the Alexander study that didn't get off the ground was really an attempt to look at a way to fund schools. And then in 1981 they really did it to the best of their abilities related to their resources and they got a constitutional change for a 100 percent statewide levy. The people approved that and then tax reappraisal and that whole move and the cost that's involved in that has moved right on since the court order. So in some ways it looked like they hadn't moved very much but in other ways they've made a big impact on West Virginia education because of the 1975 order.

Jack Flanigan: To what extent has the original complaint been resolved?

Mr. Smith: From my opinion and my point of view the solution to the original complaint has not been realized yet. That the mere fact that most people are at ease with the definition the court put in place in '75 of what thorough efficiency should be and the fact that the evidence that Judge Recht took and resulted in his court order complimented that has created a pretty universal or at least

a statewide recognition of what we've got to do to reach thorough efficiency. I hear very few people attacking the definition of thorough and efficient today. So, in that sense a whole lot's been accomplished, and then when you look at the fact that the West Virginia Legislature has addressed funding of public schools construction even though the amendment didn't happen something else will have to happen. They still have the problems to address and they've committed 29 million dollars to the salary equity. The past four years they've funded the formula fully. So there are many things that have occurred that's got us on the way, but the solution to thorough and efficient education in West Virginia hasn't become a reality yet and has a way to go.

INDIVIDUAL QUESTIONS FOR JAMES L. SMITH,
ASSISTANT STATE SUPERINTENDENT OF WEST VIRGINIA SCHOOLS
IN CHARGE OF FINANCES

1. What was your role in the development of the Master Plan?
2. Can the present financial system of the state be amended to meet the direction of the court for equalization?

INTERVIEW WITH DR. DANIEL TAYLOR,
FORMER STATE SUPERINTENDENT OF WEST VIRGINIA

Jack Flanigan: Today, March 26, 1985, I am interviewing Dr. Daniel Taylor, former State Superintendent of West Virginia schools. Initially, how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools of West Virginia in 1975?

Dr. Daniel Taylor: I perceived it as being a very crucial and important question that would have a long-term consequence for the financing of education in West Virginia.

Jack Flanigan: What was your role in the initial stages of the Pauley v. Kelly action?

Dr. Daniel Taylor: It is hard for me to pinpoint the precise place in which I became involved or interested in Pauley v. Kelly because Dan Hedges and I had, from the very inception of my filling the role as state superintendent of schools, a number of discussions about the educational problems and circumstances surrounding the school system during the early 70's. On a number of occasions, he and I had conversations about financing education, about the inequity that existed because of differences in laws, and about the Serrano case in California and the Rodriguez case in Texas. Prior to Pauley v. Kelly, we began to look at the question of inequity based upon differences in property values, and I think as a consequence of that happening in other parts of the country, Pauley and others became interested in testing that in West Virginia. I would have to say that I just can't pinpoint when or under what circumstances I became cognizant of Pauley v. Kelly. I had a number of conversations about the inequity and the financing of public education in the state.

Jack Flanigan: As it relates to the Pauley cases, to what extent did your role change between 1975 and 1982?

Dr. Daniel Taylor: I left the position as state superintendent in 1979 and had no direct involvement in the case at all after that time, but I continued to follow the action after 1979. I came back to West Virginia and testified in Charleston as an expert witness. I can't recall what the exact dates were as the court ruled prior to my leaving in 1979 in order to decide upon what the requirements were.

Jack Flanigan: Are the projected end results going to remove the inequities in funding of public education in West Virginia?

Dr. Daniel Taylor: I don't know, but I know what the intent of the court was. What they wanted to implement would, in fact, require a far more equitable distribution of state funds.

Jack Flanigan: To what extent is the Master Plan a viable solution to resolve the original complaint?

Dr. Daniel Taylor: I have not followed the development of the Master Plan closely enough to determine whether or not it or any other action could resolve the original complaint. I don't feel confident enough to answer the question.

Jack Flanigan: Why do you believe the legislative and the executive branches were not more responsive to the question of equal financing of the public schools prior to the Pauley v. Kelly case?

Dr. Daniel Taylor: The very function of history allows for the development of a non-awareness of the inequity that the historical patterns enforced. There has been, for a long time, a very strong sentiment toward local control of education. If you believe in local control/local support and differences in local wealth available to finance education, the end result will have a difference in educational opportunities. Acceptance of the local control/local support existed to the extent that it flooded or clouded the consequence in terms of equitable services for all children. It is interesting in West Virginia because there hasn't been very little local control of finances since the amendment in the early 30's, and there hasn't really been all that much local ability to determine the financial resources of the local school district. I think that inequity has been accepted as a given reality of local control, and with a perception of local control, the Legislature is content with the status quo. Unless some compelling reason or new court order or perception takes place, the legislature will not be revolutionary.

Jack Flanigan: To what extent has the original complaint been resolved?

Dr. Daniel Taylor: I really don't have any idea. As with any significant event, I think it was simply the growing of perception and knowledge around the country that there were inequities in the way states valued education. State constitutions took various stands on the equity theory. Specific cases, such as Robinson v. Cabell in New Jersey, caused people in West Virginia to look at constitutional mandates which were not being met.

Jack Flanigan: What events may have precipitated the action of the Pauley v. Kelly suit?

Dr. Daniel Taylor: No particular events or actions, to my knowledge, precipitated the action by Mrs. Pauley. I'm sure the Pauleys were aware of the Robinson case in New Jersey which preceded their action in West Virginia. You would have to have the experiences of the Pauley family. There may have been a single significant straw that broke the camel's back and finally caused the family to take the action they did. I really don't know of any specific event.

Jack Flanigan: Was there any attempt to develop a state school aid formula which might have addressed equity prior to the Pauley v. Kelly decision?

Dr. Daniel Taylor: There was a serious attempt to improve equity with the change in the state school aid formula adopted by the West Virginia Legislature in 1971. The Legislature did, in fact, move in that direction because the old school aid formula had the richest counties in the state getting richer. The 1971 action of the Legislature moved in the direction of providing the poorest counties with financial support from the state, but to move in the direction of Pauley v. Kelly and to implement this are two different things. In 1975, there was big gap between the ideal and what existed at that time.

INDIVIDUAL QUESTIONS FOR DR. DANIEL TAYLOR,
FORMER WEST VIRGINIA STATE SUPERINTENDENT OF SCHOOLS

1. What events may have precipitated the action of the Pauley v. Kelly suit?
2. Was there any attempt to develop a state school aid formula which might have addressed equity prior to the Pauley v. Kelly decision?

INTERVIEW WITH DR. ROY TRUBY

Jack Flanigan: January 8, 1985. the person being interviewed is Dr. Roy Truby, the present State Superintendent of West Virginia schools. Dr. Truby, I appreciate you taking your time to meet with me this afternoon and answer the questions. You have the problem as it is stated there that relates to the Pauley v. Kelly case. Dr. Truby, I will ask you the questions that were for all major characters. Please elaborate just briefly on each one. In response to the questions that relate to you I hope you elaborate as freely as you feel possible. Initially, how did you perceive the Pauley v. Kelly action as it related to the financing of the public schools in 1975?

Dr. Truby: Initially, I perceived it with a somewhat negative attitude simply because I felt that the Court had gone beyond its traditional role and had got into the administration of the public school systems. When I first looked at the decision and I saw the specificity of the standards, my overall reaction was one of somewhat shock.

Jack Flanigan: What was your role in the initial stages of the Pauley v. Kelly action?

Dr. Truby: I had no role in the initial stages of the Pauley v. Kelly action actually begun when Daniel Taylor was State Superintendent.

Jack Flanigan: As it relates to the Pauley case, to what extent did your role change from 1975 to 1982?

Dr. Truby: Well, of course I came on board in July of 1979. I knew that the Pauley v. Kelly case, as it was called at that time, was pending. I had read the briefs and I expected that it would be forthcoming. It seemed to me that the case had the possibility of being one of the most far reaching cases in school finance in the history of the country. I was sort of anxiously awaiting a decision on the case. But after the decision came and after I read the decision, some of my concerns, of course, were alleviated when Judge Recht entered the supplemental order and then my role completely changed. He did something that was almost unprecedented--and I guess maybe even in judicial history--he appointed the defendant as Court Master. He asked me as a prior defendant and the State Board of Education to assume the role of what really is normally reserved for Court Master for someone to develop the plan or remediate the problems. From that point my role changed from being what was at least an adversarial position with

the court as a typical defendant to one in which I was working with the court to help to try to bring the other branches of government which were involved, whether it be the governor, or the Legislature, the Tax Commissioner, and the educational establishment together to try to come up with some sensible and workable solutions. So my role really did change over that period of time.

Jack Flanigan: Are the projected end results going to remove the inequities in funding of public education in West Virginia?

Dr. Truby: Well, I think so to some extent. Of course, we don't have a solution yet. We thought we had one with Amendment 4 and now that that has gone down we really have to re-evaluate our position. I think the end result will, and already has to a large extent, remove some of the inequities, even if nothing else were to happen; and I suspect something else has to happen because once the court has said, for example, that the special levies are unconstitutional, the court can't tolerate indefinitely a system which has said does not meet the constitutional test of a thorough and efficient system. But even for the sake of argument [if] they did nothing else, we have already taken steps to eliminate salary inequities. If we complete the third step, the salary equity program, we will have equalized about 70 percent of the excess levies. The State Board has another proposal to equalize monies for textbooks, materials, resources, and supplies. That's about another 13 percent of the excess levies. So we are already--already have plans to deal with about 83 percent of the excess levies. So, in effect we already are moving toward equalizing some of the excess levies. But a big part of this whole picture, of course, is equalizing money for facilities in order to meet high quality standards for school facilities. And our own survey and the survey that was later completed by Richardson Associates said that there was over 800 million dollars in facilities needs; and we still need to come up with a plan to address that and it will take a statewide approach.

Jack Flanigan: Dr. Truby, to what extent is the Master Plan a viable solution to resolving the original complaint?

Dr. Truby: I think the Master Plan really tempered the original decision when we developed or when we costed out the standards in the original decision. It appeared to us that these were utopious standards which were perhaps really not fundable in a state which has about--which ranks about sixth from the bottom in terms of per capita income. Our expenditures for education as a percentage of per capita

income, which I think maybe is the best index of effort, in that we are about eighth; and I don't think that we ever could have funded these utopious standards. But Judge Recht himself said that these are examples of high quality standards and allowed us to develop a Master Plan which we then said that the Master Plan met with remarkable fidelity the original intent of the Pauley v. Kelly decision. And of course he embellished that Master Plan into the final order and in so doing he also recognized that this had to be a living, breathing document and that the standards were subject to change, and that a standard even though it was in the Master Plan, which was part of the court order, was not a standard until it was adopted by the State Board of Education. So it provided us with the flexibility to develop what we think really is a workable plan. However, that plan was developed in three months and normally a Master Plan for education would be developed over a period of a year or two years; and so the check and balance system is that as we take high quality standards out of the Master Plan and put them into Board policy we put that through another process, which is a comment period by the Board of Education, numerous meetings with the educated people that represent the educational establishment who have to be on the firing line with these plans. So I think it--you can't say the Master Plan in and of itself is a viable solution--but I think the Master Plan as it will finally be translated into Board policy will be a viable solution.

Jack Flanigan: Why do you believe the Legislature and the executive branch were not more responsive to the question of equity funding to the public schools prior to Pauley v. Kelly?

Dr. Truby: You have to remember that the one study showed that--I think that was the study conducted by Kern Alexander, the University of Florida--that West Virginia was second in terms of equity even prior to the Pauley v. Kelly case. Now we had a disparity rate between the so called richest county and the poorest county in terms of per pupil expenditures so was unacceptable to the court, but yet if you look around even the states that touch our borders; if you look at Pennsylvania, or Maryland, or Ohio and you look at the pupil expenditures and Shaker Heights, Cleveland for example; compare that with the poorest school district in Ohio. You will find the disparity rate two or three times that which ours was prior to the case. So our formula really did a pretty good job of equalizing; it didn't go far enough. Obviously, the court said it didn't go far enough; but many aspects of the West Virginia school formula did provide a great deal of equalization and as we went to the county unit systems that in itself provided more

equalizations. So we were not in--I'm not saying everything was okay. It wasn't. The differences did affect the educational quality offered to children. We were still in a situation that--like many other states--that said as a matter of policy the educational quality the child receives depends to a large extent where the railroad tracks run, and nice homes are built, and where the power companies are built. But we were not in--we were certainly not the worse case and I think the Legislature just let us slide--procrastinated. And then after the court decision started there was that feeling, well, let's wait and see what the court says, and right before the Court actually spoke, the Legislature decided through Step 7 and through county accreditation and other ways to deal with the whole issue and try to get ahead of the courts; but I think by that time it was really too late.

Jack Flanigan: To what extent has the original Pauley v. Kelly case complaint been resolved?

Dr. Truby: I think we are down the road but we are a long way from really resolving the complaint. We can't say in this state that we have equal educational opportunity, in Mingo County with Ohio County or with Mingo County and Hancock County. And I'm not talking about equal results; I don't think we can ever guarantee equal results but I don't think we have--we are anywhere near providing equal educational opportunity between our counties.

Jack Flanigan: The next questions, Dr. Truby, are specifically designed for you and relate to your present position as State Superintendent of Schools. What was your role in the development of the Master Plan?

Dr. Truby: When I first received the Pauley v. Bailey decision--and I think I expressed earlier that I was somewhat taken back with the specificity of the standards in that plan--I then tried to determine my role in this whole decision. I asked the Attorney General to give me some legal advice. I wanted to know, for example, whether or not we could appeal certain parts of the decision and yet not be put in a position of appealing a quality education decision which was really untenable for me. For example, I wanted to know whether or not the Court Master as envisioned in the original decision treaded upon my toes constitutionally and whether or not it infringed upon the constitutional authority of the State Board of Education to supervise the public schools in West Virginia. We then decided that we wanted to meet--have the officers of the Board of Education meet with Judge Recht and discuss this before we decided--made the decision on whether or not we would

appeal. We asked Judge Recht if we could then develop the Master Plan in lieu of the Court Master. It seemed to us to bring in a Court Master whether it be someone from New York or New Jersey or someone within the state to try to bring the parties together would be really not very realistic. It seemed to us that the State Superintendent and the State Board logically, and desirably, were in the best position to bring the various parties together to try to come up with a plan. We made that clear to Judge Recht and he then said that he would consider appointing the State Superintendent and the State Board of Education as a so called master to develop the Master Plan if we made it clear that we would not appeal the decision so that we would no longer be defendants in the case. In other words, he just simply could not appoint the defendants to carry out the court's work. And so from that point I then really became the--probably the person that was most responsible for the development of the Master Plan.

Jack Flanigan: What has your office done to implement the Pauley v. Bailey decision itself?

Dr. Truby: Well, we have taken the standards in the Master Plan and begun to put them into Board Policy. We have moved some of the high quality standards into Policy 2510 and into 2320 which is county accreditation. The programmatic standards are not yet part of 2320 nor have we moved the building standards into Board Policy. The court recently said that 2320 and 2510 standing alone do not meet the criteria for a high quality system. We know that. However, we have been reluctant to move standards from the Master Plan into Board Policy that have not been funded or financed. And so, we are moving in that direction. The whole question is one of pace and speed and we will continue to be caught between the court. Mr. Daniel Hedges, who is the plaintiff in this case, is still very actively involved in this whole effort; and of course, Judge Recht has resigned; and we have a new judge, who is going to be actively involved. But we have started making progress.

Jack Flanigan: In what way is your role as State Superintendent different from that of the State Board in the implementation of the Pauley v. Bailey court ruling?

Dr. Truby: Not a lot different in that I--my job of course is to carry out the policies and enforce the regulations of the State Board of Education. And I recommend to the Board regarding those things in the Master Plan which I think are now ready for implementation. And the Board makes the decision and then it's my job to carry it through from there. But really, the Board and the State Superintendent really had to move as a team on this whole matter.

Jack Flanigan: Are you satisfied with the actions of the State Legislature to fulfill their obligations as outlined in the court's decision?

Dr. Truby: Well, I think the answer to that is certainly a qualified yes. When the division first came and the judge agreed to the Master Plan we were--that was December two years ago. I don't think anyone could have expected the Legislature to respond that quickly. Secondly, we had the highest unemployment in the country. We were in a virtual depression. The rest of the nation may have been in a recession but we had unemployment up to 20 percent. And so I think the Legislature really could not have been expected to act. Last year was the first year that they had a reasonable opportunity to respond. They funded nine out of 14 improvement programs that we submitted to them. Many of these programs were reflected in the Master Plan and they included everything from a principals' academy to funding for the computer network to funding for the teachers' test, for the teacher licensure test, and for testing the students with a criteria reference test reflecting the learner outcomes. So they put a lot of money into improvement programs that were reflected in the Master Plan. Secondly, they funded the first step in salary equity from 29 million dollars surplus. So I think they were really reaching to try to start to try to move on the decision and to try to start funding the Master Plan. In addition, they came up with Amendment 4 which subsequently was voted down; and I think Amendment 4 would have really provided the mechanism to fully fund the Master Plan. So I really can't be too critical of their efforts. Perhaps they could have accomplished some of these; certainly the excess levy could have perhaps been equalized without presenting that to the people and that was the safest way. I really can't blame them for doing that either because we still had economic problems and a number of taxes were raised in order to keep essential services from being cut further. So I think they took the easy way out but certainly I can understand.

Jack Flanigan: Can the present state school aid finance formula be amended to bring about the instructions of the court for equalization?

Dr. Truby: I think it can and probably will have to be. I don't know where we go from there but I received today a petition that will be filed in Hamlin, where the court case started, from plaintiff's attorney, Mr. Hedges. You see, in the original Pauley v. Bailey decision, the court said that the excess levies as they now existed were the primary reason for the inequities that existed. What the Court did

is, it seemed to say, okay the excess levies are unconstitutional, but rather than take 110 million dollars out of the system they gave the legislative and executive branch and educational establishment some time to work it out. Now they appear to be saying in this court order, which I haven't answered yet, that time's up or at least time will be up six months from now. And unless something is done in this session of the Legislature, we will simply declare that the excess levies are no longer a constitutional method of funding schools in West Virginia. I'm not surprised by that. The court appears to be creating a situation of where there's jeopardy where there may be creating a sense of urgency holding up their interest in this and saying that we cannot, as I said before, indefinitely accept a system once we have declared it to be unconstitutional. So I think we are right back to being a part of that struggle between the legislative, and executive, and judicial branch. So I think we have to come up with some ways to change the finance formula. Of course, one method that I'm still considering is to take a look at the excess levy as a single item and present it to the taxpayers again for a vote to deal with the whole question of taxpayer equity as well as the whole question of equity with respect to funding that's provided for students. And, as you know, the last amendment was tied in with water and sewers and a cent increase on the sales tax for school buildings. So that may be something that we will want to consider along with some other possibilities with the other possible changes in the school formula.

Jack Flanigan: How can the poor counties catch up if no allowances are made for a starting point for them to catch up? I think this is a question of many in education. How do we get Mingo to catch up with Ohio County?

Dr. Truby: I don't think the court ever intended for the counties to catch up all at once. I think that's got to be a gradual process. If we were to provide equal dollars for Mingo County, it would still take some time for them to offer or provide the kind of standards and provide the quality programs that are provided in some of our other counties. But, in the Amendment 4, there was really a way for them to catch up and with the facilities. In other words, a certain amount of the money, a small amount of the money, would be given across the board to all counties and the additional monies would be based on need. And so that really did provide for catch up provision. To some extent we had that wording in the excess levies with the monies that would be captured with reappraisal; funding would be available for high quality standards, that money would be distributed by the Board of Education although the

procedures were never really developed, and that there was at least the implication that we would factor in need as we distributed the money. So there really was a catch up provision but I don't think the court ever, ever felt that we should tell those counties that already are providing the high quality standards you have to wait until the others catch up. Because in the decision itself they talked a lot about Ohio County and they said even Ohio County does not meet the high quality standards that this court envisions for all students in the state of West Virginia. They really--Judge Recht really--said that no one is there yet. Some are close, and some have long distances to travel. But I think the distribution of money based on need and the resources provide for some catch up mechanism similar to the way that we distributed subsequent money now.

INDIVIDUAL QUESTIONS FOR ROY TRUBY,
PRESENT WEST VIRGINIA STATE SUPERINTENDENT OF SCHOOLS

1. What was your role in the development of the Master Plan?
2. What has your office done to implement the Pauley v. Bailey decision?
3. In what way is your role as State Superintendent different from that of the State Board of Education in the implementation of the Pauley v. Bailey court ruling?
4. Are you satisfied with the actions of the state legislature to fulfill their obligation as outlined in the court's decision?
5. Can the present state school aid formula be amended to bring about the instructions of the court for equalization?
6. How can the poor counties catch up if no allowances are made for a starting point?

INTERVIEW WITH JUDGE ARTHUR RECHT

Jack Flanigan: With me today is Judge Arthur Recht. Mr. Recht is a practicing attorney at the present time in the city of Wheeling, WV, and he has graciously granted me this interview. I have asked him to comment only on those questions that he feels sufficiently pertinent and which he can answer without in any way interfering with the future of the case. Mr. Recht, thank you for joining me today. You do realize that this interview is being recorded?

Judge Recht: Yes I do, and I'm very happy to be here.

Jack Flanigan: Mr. Recht, to what extent does Pauley v. Bailey significantly differ from other opinions relating to the financing of public education?

Judge Recht: In regards to these kinds of lawsuits which have really had their genesis in the early 1970's, what must be pointed out initially anytime that there is a discussion of Pauley v. Bailey and its predecessor Pauley v. Kelly is that it--the case itself--deals specifically with a constitutional provision which is peculiar to West Virginia and some other, approximately 10 other states, and it's referred to generally as a thorough and efficient clause. Basically, what the West Virginia Constitution provides is, in simplistic terms, that the Legislature shall by general law provide for a thorough and efficient system of free schools. Now, what makes Pauley v. Bailey different than some other of the public school financing cases is that it--it went off in terms of how they were somewhere, how they were determining whether or not [there] was parity within a given state insofar as public education is concerned and the financing of public education; but the Pauley v. Kelly case principally revolved around the West Virginia Constitution provision relating to providing thorough and efficient system of free schools. Then where Pauley v. Bailey expands beyond what some other cases even dealing with a thorough and efficient clause may have involved is that you have a specific definition, by Justice Harshbarger, of what is a thorough and efficient system of free schools. Basically he defined it as the best that the state of education expertise allows, which as far as I could determine at the time that the opinion that I offered was actually published in May of 1982, no other appellate court in any reported decision that I was aware of, defined what a thorough and efficient system of free schools would be in the terms that Judge Harshbarger gave. So we in West Virginia, and I as the trial court judge following my oath in office to comport with complete fidelity to what the

Supreme Court announces and pronounces as law, is that now we are dealing with a definition of thorough and efficient being the best, using the superlative sense, the best that the state education expertise allows. So I think Pauley v. Bailey, and there may have been some other cases that have been decided after Pauley v. Bailey that either have adopted a definition similar to Justice Harshbarger's, or have created one of their own. But at the same time that the opinion was written, you had opinions out of New Jersey, you had opinions out of Ohio, you had opinions out of Maryland, that had similar constitutional provisions and some of them some of those cases, even with thorough and efficient language in their constitution did not come to the same conclusion that was reached in Pauley v. Bailey, and I would have to say the reason that they didn't and how Pauley v. Bailey significantly differs is that we had a definition to establish a system of free schools within a definition of the best that the state of education expertise allows.

Jack Flanigan: Why did the Supreme Court of West Virginia remand this case after giving direction?

Judge Recht: Well, you have to understand this is more of a procedural problem that it is a subsistent issue; what happened very quickly--very quickly, is that the lawsuit was filed in 1975, filed in the Circuit Court of Kanawha County by a lady by the name of Janet Pauley on behalf of her five school age children residing in Lincoln County, West Virginia. The case was assigned to Judge Robert Smith, one of the judges of the Circuit Court of Kanawha County. Then Judge Smith granted the motion to dismiss the entire case filed on the behalf of the defendants including the Treasurer of the State of West Virginia, the State Department of Education; all various state officers were all made defendants in the case. The--there was no trial as such in the matter pending before Judge Smith. He granted the notion to dismiss based upon the pleadings in the case and based upon certain interrogatories and affidavits that were filed. But there was no trial in the traditional sense of witnesses being called, direct examination, cross examination, and the like. Then that case was appealed to the West Virginia Supreme Court of Appeals. Upon the appellate review, as I mentioned before, Justice Harshbarger defined what thorough and efficient meant; and then so that there would be no misunderstanding because the case had to be what is referred to legally as remanded for trial; because the motion to dismiss was improperly granted at the--by Judge Smith; that the contours of the case itself on remand would be developed so that it would provide some direction to both the trial judge and to the attorneys. Not only within the definition as to a thorough and efficient

system of free schools, but taking testimony as to what thorough and efficient meant in terms of expert testimony as to the best that the state of expertise allows, taking testimony as to what we have in West Virginia measured as against that definition, and taking testimony as to whether or not if there is a disparity between the definition and what we actually have in West Virginia, why is there a difference?--and within those three areas it was necessary to take considerable testimony after the--after the remand.

Jack Flanigan: How, in your opinion, does Pauley v. Bailey differ from the other legal opinions in states such as Savannah v. Priest in Levittstown in New York and Robinson v. Cahill in New Jersey?

Judge Recht: Well, I think I've touched upon basically the difference between Robinson v. Cahill and Pauley v. Bailey. The Robinson v. Cahill case is--is probably the seminal decision in this country in regard to a thorough and efficient constitutional provision. And as you probably know by the three year research, the New Jersey case was a well-written opinion. It did not define, I don't think, with the clarity that thorough and efficient meant--certainly did not define it with the--with the kind of direction that Judge Harshbarger gave to the trial judge in Pauley v. Kelly. What happened in New Jersey is that they had a classic constitutional confrontation between the judicial, the legislative, and the executive branches of government. Once there was a determination as to a lack of thorough and efficient system within the state itself, then the question is what do you do about it? We haven't reached that point yet in Pauley v. Bailey. They did reach it in Robinson v. Cahill. And it's my understanding, it was my understanding at the time that I wrote the opinion, that it still really hasn't been resolved insofar as obtaining the kind of funding that is necessary to support a thorough and efficient system of education, at least as conceptualized by the judicial branch of government. And therein lies probably the most difficult problem in dealing with public school financing cases when you have the judicial branch of government that does not have the power to raise and incorporate funds attempting to interpret the Constitution as is its constitutional charge, and then requiring certain things to be done that required the expenditure of funds, and then trying to somehow understanding how the legislative branch in government has to deal with that when they are not part of the decision making process as to what a thorough and efficient system of education should be. So you have all the--the ingredients of the classic confrontation in the--between the three branches of government; but Pauley v. Bailey basically stands on its own principal because of the

definition provided by Justice Harshbarger as to the definition of thorough and efficient system of free schools.

Jack Flanigan: Would you elaborate on the charges presented you by Justice Harshbarger?

Judge Recht: I think we touched upon that; quite basically it was to take testimony principally through expert witnesses as to what the best of the state of education expertise allows. In all fields ranging in all the various disciplines, ranging from art to foreign language, to vocational, to recreational, every aspect of public education, to take testimony and actually determine what the best of the state of education expertise would be based on the evidence. And then by a preponderance of the evidence come up with your findings of fact and conclusions of law as to what the best the state of education expertise allows. Number two, after you determine that, take testimony as to what we actually had in West Virginia and it was, it was a great volume of testimony taken from witnesses throughout the state and a variety of counties attempting to somehow be representative of all the counties in this state as to what we actually had and then measure what we actually have as against what we should have within the definitions established by Justice Harshbarger; and a finding was specifically made that we do not have in West Virginia the best that the state of education expertise allows. And then the third aspect of the charge is, if there is no similarity between what we should have and what we do have, why not?--and a determination was made that the reason was in the method of financing of public education throughout the state. Not only is there no parity within the state itself and the differential county by county basis, but the state within all 55 counties did not measure up to the definition as provided by the expert witnesses as to the best that the state of education expertise allows--and that was the charge.

Jack Flanigan: In your opinion, how much equity should exist before the court becomes involved?

Judge Recht: Well, again this addresses the issue as to the responsibilities between the judicial, legislative, and executive branches of government. The only thing that the judicial branch of government does do and should do, at least in my opinion, is to react to a case that is before it. You have to make a direct--you have to make immediate and, hopefully, you make a rational response to the case before it based upon the evidence and based upon the law. Now it is determines--if it would develop that somehow once the law has been established, then it's the court's

responsibility to enforce its opinions. So you cannot either qualitatively or quantitatively, in my judgement, state with any precision how much inequity there should be; it would have to--you couldn't respond to that in a vacuum; it would have to be based upon what evidence there would be in terms of to what extent is the court's order being carried out.

Jack Flanigan: Do you feel that the present school aid formula used in West Virginia can be amended sufficiently to bring about the instructions of the court for equalization?

Judge Recht: Well, the school aid formula that we have in West Virginia--first off it is an extremely complex formula. Rather archaic set of rules that--that truly are understood by just a very few. That is not to suggest that it is not a--an attempt and is certainly a good faith attempt to--to equalize the funding of public education throughout the state of West Virginia. However, so long as there is a reliance upon the county excess levies in which to support education throughout the 55 counties, you have a, built in a disparity that in my judgement cannot be addressed even with the best of school aid finance formula. That was stated in the--in the opinion. Inherent in the--in the county excess levy--levies you have the opportunity for disparity among the counties themselves. It was an attempt this last election to have a statewide excess levy and to somehow equalize the distribution of funds throughout the state in regard to an excess levy in that matter which I thought was a--an ingenious and proper way to approach the problem. You cannot totally eliminate excess levies because it is a provision which is confided by our Constitution. The only way to eliminate excess levies is to amend the constitution somehow. It cannot be done by--by statute. So I think once there is a--once you can address the issue of excess levies on a statewide basis, I think you can then take the school aid finance formula that we have right now. And also what we have to then--you have to augment that with a facility finance concept; because the--as was stated in the Pauley v. Bailey there are basically four aspects to public education as developed by the evidence, and that is there is personnel, curriculum, materials and supplies, and equipment and facilities. There is a symbiotic relationship between all four of those elements that go into a high quality system of education. Facility construction's extremely important. There simply is no method within the present school aid formula to address the--the type of facility construction that we need on a statewide basis. So that has to be addressed and has to be addressed, in my judgment, separately.

Jack Flanigan: To what extent are you satisfied with the efforts of the State Legislature to make the financing of the public schools constitutional at this time--I mean from when you were in control?

Judge Recht: I think there is every reasonable effort being made in what has to be recognized--we do have certain constitutional changes that have to be made and I think the Legislature is attempting to do that. They did it in this last session of the Legislature in regard to what is referred to as Amendment 4 to the Constitution. The--the voters did not pass that particular constitutional provision. I think you have to presume, and this was what was stated in the opinion, that all branches of government will discharge their oath and it--I think it may take a total commitment not only for the three branches of government but also the people in the state of West Virginia.

Jack Flanigan: Has the role of the State Tax Commissioner changed as result of the Pauley v. Bailey decision?

Judge Recht: I feel that the State Tax Commissioner now has a mandate to rely upon in terms of exercising greater authority in regard to real and personal property taxes the--the assessment and appraisal of real and personal property than they had before, even though I believe that the--that the law was in place. I think the statutes are rather clear, but I think that the State Tax Commissioner in no way with any criticism at all as to the individual who was in office at the time that the opinion was written. I think Commissioner Rose did an outstanding job, but they simply didn't have the staff with which to do a lot of the work that has been required under the statute. I think now there is a focus of attention on the role of the State Tax Commissioner as he works with or she works with the various county assessors so that there will be a greater understanding and a greater interchange of information so--between the 55 assessors and the State Tax Commissioner. So I think the role has changed, and I think not so much in terms of the law but I think of the focus of attention.

Jack Flanigan: Mr. Recht, you were in total control of the situation after the charge was made and the decision rendered; I guess one of the main questions is, why did you settle for a compromise?

Judge Recht: I presume that that question deals with the appointment of a special commissioner.

Jack Flanigan: Yes.

Judge Recht: As was initially suggested in the opinion which was published in May of 1982, the most agonizing aspect of Pauley v. Bailey, is after you make these various findings that we talked about previously insofar as defining what the best of state of education expertise allows, what we have in West Virginia, and if we don't have the best, why don't we? You make all those findings and inclusions of law that was done within roughly 200 and some pages. After you do that, what do you do next? It was thought that the best way to somehow coalesce what was in the opinion itself and to somehow translate that into a plan that could be laid before the Legislature so that they would know next what to do, would be to have a--an individual's . . . who would bring together all those interested in public education in the State of West Virginia to prepare a Master Plan which would serve as a blueprint for further legislative action. There was some thought initially that the special commissioner was going to be an education czar in the State of West Virginia, but nothing could have been farther from the truth. It was simply an individual who would act under the aegis of the court to--to prepare a Master Plan carrying out the principles set forth in Pauley v. Bailey based upon the law and the evidence established in the case. The most logical person or department to have done that would be the State Department of Education or the State Superintendent of Schools, mainly because that is their constitutional obligation. However, at the time that the opinion was written it would have been pure folly to designate the--the State Superintendent of Schools or anybody associated with the State Department of Education as the special commissioner as should have been done initially, because they were the principal defendant in the case. So I--as I have said before, it would be like the fox watching the chicken coop. And as long as they were in essence an adversary in the suit itself, what was required was somebody who was totally neutral who could work with the court and who did not take an adversarial role to what was written in Pauley v. Bailey. Just the same as a representative from the plaintiff would not have been an appropriate special commissioner nor would have been a representative from any of the defendants been an appropriate special commissioner. However, in July of 1982, the State Department of Education through Dr. Roy Truby officially announced that they were no longer taking an adversarial role in the case; they were not going to appeal any portion of Pauley v. Bailey, and with that announcement the--the next logical step has to be appointing the Department as the special commissioner as it were. In no way, in my judgement, could it be determined to be a compromise. That would not bother me; the word doesn't bother me--compromise--I think that many times it's very important; but it was not a compromise; it was something

that should have been done initially but could not have been done, and then once it could be done, it was then.

Jack Flanigan: If there was a glaring inadequacy in the inequities, why did you not mandate a timetable in the proceedings?

Judge Recht: That's--that's an excellent question, and it gets back to what was previously suggested as the confrontation that--that may exist between the judicial, legislative, and executive branches of government. It was my thought that since the Master Plan as developed and approved by the court as being in conformity with the findings and conclusions of Pauley v. Bailey that now that the Legislature has the blueprint, that they should be given the opportunity to implement the plan, that there should be no initial attempt to put the Legislature under a stop watch. And they should be given every reasonable opportunity to implement the plan itself. This is where I don't think it's appropriate for me to comment, because as to how long that will be would be up to the judge who actually is assigned to supervise the implementation of the plan. But I just didn't think it was appropriate for the judicial branch of government at the outset to establish a timetable prior to the time that the Legislature is given an opportunity to act. Once they're given that opportunity then I'm sure that the judge who is assigned the case will then determine whether or not certain timetables should or should not be established.

Jack Flanigan: You've alluded to this in part. Why were the people in the agencies who were in charge of education initially, and responsible in a large degree for the existing inequities in the area, asked to construct the Master Plan or revise the tax program?

Judge Recht: Well, I think I did touch upon the role that the State Superintendent of Schools and State Department of Education had initially in Pauley v. Bailey and then their role as stated in July of 1982 when they officially removed themselves from an adversarial role in the case. One thing that should be pointed out is that the State Department of Education and State Superintendent of School who have the constitutional responsibility to carry out the thorough and efficient system of free schools. They were not responsible principally for the revision of the--of the tax reforms as such. In terms of . . .

(Tape change)

We were talking about the role of those agencies in charge of education being asked to participate in the revision of tax reforms. Now, initially I would quarrel somewhat with the phrase tax reform. I believe the Pauley v. Bailey simply recognized that all species of real and personal property were not being taxed at the true and actual value as required by the Constitution and as required by the various statutes in the State of West Virginia. So really the word reform suggests change. The only thing that Pauley v. Bailey did was to emphasize what already was law in the State of West Virginia. However, immediately after the opinion was written, the State Tax Commissioner who at that time was Hershel Rose, Ned Rose, immediately embarked upon a program to assure that all species of real and personal property would be taxed at true and actual value, which did require the appraisal or reappraisal of real property that did require putting in what is referred to as sales ratios figures so that as soon as they--a parcel of real estate is transferred it is immediately picked up on the--on the tax records instead of a lag period of sometimes up one--sometimes one year, 18 months. There were--what Commissioner Rose did was to simply discharge his duties as required by the statutes in the Constitution of the State of West Virginia. And I thought he did a remarkable job.

Jack Flanigan: Why did you address only equity of input?

Judge Recht: As I understand that question, are we talking about the--the role of finance in regard to--to whether or not there is a correlation between infusion of money and quality of education?

Jack Flanigan: Right.

Judge Recht: That issue was undoubtedly the most difficulty issue that was developed during the course of the case. As the question is phrased why did I address it? I only addressed what was presented during the course of the trial of this matter which took approximately 60 trial days. The issue as to the correlation between money and quality of education was addressed by what I thought to be some of the best and brightest individuals throughout the United States in terms of witnesses called on both sides. The reason that the opinion suggests that there is a correlation between the infusion of money and financial support for education as a critical ingredient for high quality system of education, is that the preponderance of the evidence as supplied by a number of expert witnesses; that was their testimony, and I felt that the preponderance of the evidence required that conclusion.

Jack Flanigan: Why did you address the property tax as the future funding of public education? Why not income as a major or sales tax or combination of wealth factors?

Judge Recht: Should be. There is a serious question in terms of relying exclusively on real and personal property taxes as the measure of funding of public education. I believe it's one of the footnotes in the opinion where facility construction, for example, must be done or should be done. There was a recommendation that the State of Maryland system be adopted in regard to a statewide building commission for educational facilities in public education. There has to be other methods--other resources adopted for the funding of public education beyond real and personal property taxes if there is to be a thorough and efficient system of education throughout the State of West Virginia. So obviously sales taxes, corporate income tax, all the various forms are evident that are available to a state, are going to have to be called upon to suggest or to supplement what is available on a county level.

Jack Flanigan: I guess this is the one question, based on the decision, in which a nebulous point of view might be found. How are the poor counties expected to become educationally equal if no allowance is made for some equal starting point?

Judge Recht: Well, actually, see, this gets back to the previous question, though, in terms of if you're going to rely exclusively on real and personal property taxes plus the state aid formula which we have in place and nothing else and continue to recognize the county excess levies, and have no independent resources available for facility construction and no other resources available for other incentives in terms of curriculum personnel materials and equipment, then it will be a perpetuation of what we have had since 1872. So, obviously, there has to be a rather creative and ingenious method adopted so that all counties are--are on parity. The thing that is important about Pauley v. Bailey in regard to qualitatively measuring the various counties in terms of educational excellence stated on page 100 of the opinion is there, there was a recognition that a county such as Ohio County, Marshall County, Pleasants County; the evidence developed had in many ways a very good system in terms of measuring against the best that the state of education expertise allows. But they still did measure up; even the best that we had in the State didn't measure up to what the testimony developed the best would be. And as was stated on page 11 it would be a perverse interpretation of the opinion if the quality that those counties have achieved would somehow be reduced to bring

them on parity with other counties that would--it's not the way it should go. It's just that those counties that have achieved some degree of educational excellence have less of an arduous journey to travel in order to be the best that the state of education expertise allows. And as--as you're able to sit back and see how the commentary is made, there is a tendency possible in order to achieve parity there has to be parity in mediocrity--that is not what Pauley v. Bailey says.

Jack Flanigan: This last question is something I am sure that you've thought about, or all of us do when we do some writing that has some significance. It's only extrapolation on your part, but how do you think historians will look at it?

Judge Recht: I would only say that I would hope that anybody would look at it not only in May of 1982 but May of 2082 if we still have the same form of--of jurisprudence a hundred years from now that we have now. If that the opinion was based upon the law and the evidence, it did not have have the imprint of the personality of the author, it was not a subjective analysis in any respect. It was simply a product of a judge who sat through 60 days of testimony, listened to a number of witnesses, examined thousands of exhibits and felt that the preponderance of the evidence required the findings and facts and inclusions of law are set forth in Pauley v. Bailey. It was not designed to be a some kind of personal memorial. It was only designed to comport with the law and the evidence, and that I would think not only that I was responsible for this opinion based upon the law and the evidence, but any judge who would have tried the case would have reached the same conclusion.

Jack Flanigan: Are there any thoughts that you would like to add?

Judge Recht: Well, the only thing that I would like to say is that throughout the State of West Virginia there's been a characterization of the decision of Pauley v. Bailey as the "Recht Decision." Nothing--nothing could be farther from the truth; and if there's anything I could do to change that I would do it, even from a standpoint of possibly even changing my name. I don't think it's appropriate to have the judge's name associated with any opinion.

QUESTIONS FOR JUDGE ARTHUR RECHT,
APPOINTED PRESIDING JUDGE

1. In your opinion, what makes Pauley v. Bailey significantly different from other legal opinions relating to financing public schools which have evolved since the public education finance reform began in the early 1970's?
2. Why did the Supreme Court of West Virginia remand this case after they gave directions?
3. How, in your opinion, does Pauley v. Bailey differ from other legal opinions in other states, such as Serrano v. Priest, Levittown, New York, and Robinson v. Cahill, New Jersey?
4. Would you elaborate on the charge as presented to you by Justice Harshbarger?
5. How much inequity should exist before the court becomes involved?
6. Do you feel the present school aid finance formula can be amended sufficiently to bring about the instructions of the court for equalization?
7. To what extent are you satisfied with the efforts of the state legislature to make the financing of public schools in West Virginia constitutional?
8. Has the role of the State Tax Commissioner changed as a result of the Pauley v. Bailey decision?
9. You were in total control of the situation after the charge was first made and the decision rendered. Why did you settle for a compromise?
10. If there were such glaring inequities, why did you not mandate that a timetable be followed?
11. Why were people and agencies who were in charge of education initially and were responsible to a large degree for the existing inequities asked to construct the Master Plan and revise tax reforms?
12. Why did you address only equity of input?
13. Why did you address the property tax as a future funding of public education? Who not income as a

measure or sales tax or a combination of wealth factors?

14. How are the poor counties expected to become educationally equal if no allowance is made for some equal starting point?
15. How do you expect historians 100 years from now to view your decision on Pauley v. Bailey?

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