

EXPERT WITNESS REPORT

Of

Richard Clayton Trotter, BBA., JD.

- **Experience and Qualification**

1. My name is Richard Clayton Trotter. I am currently Associate Professor of Business Administration at the University of Alaska At Anchorage. I am not speaking on behalf of the University; I am making this expert witness report as a private individual.

2. I was born in Houston, Texas in 1950, where I attended Memorial High School. The first University I attended was Southwestern University in Georgetown, Texas in 1968; in 1969 I transferred to the University of Texas to complete my undergraduate studies and graduated from UT in 1973 with a Bachelor's of Business Administration. I continued my education at the University of Texas in the School of Law from 1973 to 1976. I graduated from the University Of Texas School Of Law on May 22, 1976 and was licensed by the Supreme Court of the state of Texas as an Attorney and Counselor at Law on the 1st day of November 1976.

3. After graduation from law school, I was employed by the Honorable John H. Wood, Jr., United States District Judge for the Western District of Texas, as a Law Clerk and briefing attorney. For two years, as Judge Wood's law clerk, I was responsible to the Court for preparing legal documentation for the Court associated with the proceedings in the United States District Court. For one year, I was responsible as the Law clerk for the court for all the criminal matters before the court, the next year I was responsible for all the civil actions before the court. During that time I worked on the widest possible variety of cases involving Federal law, including antitrust, patent and trademark issues and other civil matters.

4. Assistant United States Attorney Jim Kerr moved my admission to the district court before Judge John H. Wood, Jr., on the 28th day of March 1978, and I was admitted to the Federal Bar.

5. While serving the United States District Court I received my letter of acceptance to the University of Oxford, England for a course of study leading to a Masters of Literature in Management Studies. I resigned from the position with Judge Wood and in 1978 I traveled to Oxford with my family to attend the University of Oxford.

6. On May 29, 1979, Judge John H. Wood, Jr., was assassinated by a murderer hired by drug dealers as he left his apartment to go to work. As a result of his assassination, I left the Oxford before completing my degree, but I did complete my thesis at Oxford on The Foreign Corrupt Practices Act of 1977, a version of the thesis was subsequently published as *The Foreign Corrupt Practices Act: Interpretation and Compliance* with CCH, about the same time I was offered employment as Corporate Counsel at General Mills, Inc. which I accepted.

7. I worked for General Mills before beginning a teaching career at Texas Tech University in Lubbock, Texas where I taught in the College of Business, the Texas Tech School of Law and on one occasion in the Texas Tech Health Sciences Center in the College of Medicine. I taught at Texas Tech for a total of six years and during that period for one year, in 1986, I taught at Regent University School Of Law and was one of seven Founding Professors of that institution.

8. In 1988, Mr. James LaVoy Branton, of the Law firm of Branton and Hall in San Antonio, Texas moved my admission to the United States Supreme Court I obtained my license in the Supreme Court of United States of America on the 11 January, 1988.

9. I am a former member of the College of The State Bar of Texas, and a former member of the Association of Trial Lawyers Of America.

10. In 1989, I began teaching at Trinity University in San Antonio, Texas and practiced Law with the firm of Branton and Hall, I taught at Trinity for 11 years until the year 2000, when I became General Counsel of the Justice Foundation in San Antonio Texas. I am the author or co-author of numerous legal articles, including,

11. *“And Nothing But the Truth—Auditors as Expert Witnesses,” Internal Auditor;*

12. *“Accountant’s Professional Liability: Treble Damages Against CPAs?”*

Today’s CPA Magazine;

13. *“Of Outhouses and the Freedom of the Press,” The Police Journal;*

14. *“Ethical Problems in the Legal Profession,” Journal of the Legal Profession;*

15. *“The Public Accounting Litigation Wars: Will Expert Systems Lead the Next Assault?” Jurimetrics;* and,

16. *“Bhopal, India and Union Carbide Corporation – The Second Tragedy.” The Journal of Business Ethics.*

17. And a book co-authored with Professor William T. Burke, III, entitled *“Lone Star Law.”*

18. I am admitted to practice in Texas, the United States District Courts for the Western and Northern District of Texas, the Fifth and Seventh United States Circuit Courts of Appeals and the United States Supreme Court. I am past President of the Southern Business Law Association and formerly a member of the American Business Law Association. I am a member of the State Bar of Texas and Phi Beta Delta, the Honorary Society of International Scholars. I

have addressed audiences at the University of Portugal in Lisbon and at the Norman Manley School of Law at the University of the West Indies in Jamaica.

19. After open enrollment charter schools became available, when the 1995 Legislature of the State of Texas created them, I was one of the original incorporators and Founding Board members, of the John H. Wood Jr. Charter School in San Antonio, Texas in 1998. Because of my work in Federal Court, where I observed that many of the individuals being sentenced to long prison terms in the Federal penitentiary system had started their criminal careers as juveniles. As juveniles, often their initial offenses were not particularly serious, but because of their choices and the nature of our system they wind up eventually going to the Federal penitentiary. I believed that a charter school could be established that could avoid the terrific human waste and terrible societal expense associated with long-term incarceration. The original vision of The John H Wood Jr. Charter School was to intervene at an early age with juvenile offenders and provide alternative educational opportunities in a manner that would prevent those types of long-term outcomes in the lives of so many. Because of my relationship with the family of Judge Wood, I asked the Wood family to allow use of his name for the school and they agreed. The school has now expanded to become the John H. Wood, Jr. Public Charter District serving 550 students with campuses in multiple communities, including Afton Oaks in San Antonio, Hays County, Garza County, Granbury, Rockdale and San Marcos.

20. Perhaps the best way to describe what the school has become is to refer to the letter posted on the District's website by the Superintendent, which may be found at <http://woodcharter.com/>

21. "Greetings,

The first campus of John H. Wood opened in the fall of 1998. Originally serving approximately 30 students, our enrollment has grown to over 550. Our school has changed names and locations, but the one thing that has not changed is our dedication and love for all at-risk students.

On our six campuses our faculty and staff offer students a challenging core curriculum with an accelerated academic focus in a supportive, structured environment, inspiring in them the belief for a better life — a life worth living. We know that many students who do not succeed in a traditional school setting can fall behind and miss the chance to lead a successful, productive life. Our goal is to give this opportunity back to each student: to inspire full potential, encourage self-discipline, and affirm self-worth. We want each of our students to believe they have the power to create a life worth living.

Sincerely,

Bruce Rockstroh

Superintendent

John H. Wood, Jr. Public Charter District”

22. While I am no longer directly involved with the district I am quite pleased that the mission and vision of the institution has apparently been carried forward in appropriate way.

23. One thing that has not been pleasing is the way that the original incorporators and founders of the charter school were forced out by increasing regulation of the schools which caused more of the educational establishment to take over, making the school much less innovative and effective.

24. As General Counsel of The Justice Foundation, I was a lecturer for the Justice Foundation training school Board members when the Foundation was an approved provider of the required School Board member training.

25. From 1995 until 2001, I was a school board member elected to the Blanco school board in that capacity I became intimately involved with the legal, economic, tax, employment, and other regulatory constraints placed on School Boards by the regulatory environment within the State of Texas. I was also a member of the Texas Association of School Boards, also known TASB, and I attended required school board training mandated by the Texas Education Agency during my tenure as a school board member in Blanco, Texas.

26. From 2000 to the present, I have served as the General Counsel of The Justice Foundation, formerly the Texas Justice Foundation, though since 2010 I have not received a salary from the Foundation, and have served in a pro bono capacity only. I have co-authored articles on education in Texas, two of which are:

- ***“Hostility or Neutrality? Faith-Based Schools and Tax-Funded Tuition: A GI Bill For Kids”***, Allan E. Parker, Jr. and R. Clayton Trotter, George Mason University Civil Rights Law Journal, Volume 10, Number 1, Winter 1999/Spring 2000, pp. 83-106.
- ***“Hostility or Neutrality? The Constitutional Case for Faith-Based Private Vouchers”***, Allan Parker and R. Clayton Trotter, Texas Education Review, Volume 1, Number 1, Spring 2000, pp. 47-55.

In addition to my professional legal experience at the Justice Foundation with Texas school systems, and my School Board experience as a board member of the Blanco Independent School District schools, and my experience as a college professor, I am also blessed to be the father of eight children and the adoptive father of three children. I have had extensive experience as a parent with a number of educational systems, including but not limited to the Texas public schools. I have had my children as students in public schools in San Antonio and

Blanco, private schools in San Antonio and my wife and I are now home schooling four children in cooperation with a favorable public school system here in Alaska. Of my 7 children that reached the age of 18 all graduated from high school, except my adopted daughter Rachel from Haiti who was not under my care prior to her 17th birthday, she is in college working on a GED. Altogether my children have obtained 9 college degrees. Five of my 7 children have obtained college degrees, one obtained three bachelor's degrees and then joined the United States Marine Corps, two have obtained master's degrees and two have obtained bachelor's degrees. Only one of my children decided not to go to college and joined the Army. He was killed in action in Iraq. My youngest children are presently residing with us in Alaska.. So I claim experience and expertise in the education of children of all ages, which is not merely intellectual, legal or academic, it is experiential and personal. Not only professional, but in life dealing with schools and children.

II. Expert Opinion

Based on the last 36 years of my personal experience educating children and professional experience representing the clients of the Justice Foundation, my years of study on the issues of management and economics, and in my personal expert opinion, I believe that the Texas System of Public Free Schools is constitutionally inefficient as a matter of fact because of inherent structural defects.

It is my opinion that the current system of public schools is not “constitutionally efficient.”

27. In my opinion, the current system is constitutionally inefficient as a matter of fact, because the current system is a government-controlled monopoly and monopolies are inherently inefficient and run for the benefit of the monopolies stakeholders rather than the

consumer. This opinion is based on my training in economics at University of Texas and Oxford University as well as practical observation of monetary systems in the United States and throughout the world over the last forty-four years, including Communism in the former Soviet Union and socialism in the United Kingdom while I was a student at Oxford.

28. The term ‘efficiency’ throughout my report is intended to mean ***“effective or productive results and connotes the use of resources so as to produce results.” Edgewood I, 777 S.W. 2d at 395.(emphasis mine)*** The high cost of remediation, and the excessive number of students who enroll in college but who are clearly unprepared for college work is clear and convincing evidence of structural inefficiency of the system. An efficient system would not require such massive remediation. As a professor at Texas Tech, I was present at a faculty meeting when the Administration announced at a Faculty Convocation that there were large numbers of students that had been accepted to the University, because they had graduated from Texas high schools that could not do college level work in math or english. Therefore, the Administration was going to expect all the members of those faculties to take on additional remedial sections of math and english to bring the students up to speed to do college level work. The State of Texas was paying twice to educate those students.

29. The present Texas public school system is a government controlled monopoly. The simplest definition of monopoly is an economic system in which the means of production are controlled by a single provider which enables that provider to reap what are known as “monopoly profits”. For example, during the era of the “trusts” of the late 1900’s when Mr. John D. Rockefeller’s Standard Oil Trust controlled 95% of the crude oil refining capacity of the United States, there developed in the United States what is now considered to be the classic view of a “monopoly” - a large business enterprise that was able to achieve “monopoly profits” by

controlling an entire sector of the economy. Along with that view came a visceral and appropriate aversion and even hatred of “combinations and conspiracies” like Standard Oil which were able to dictate the price of oil to the producers at the well head and dictate the price of the gasoline at the pump to the consumers. In his work critical of Rockefeller published in 1904, , “*John D. Rockefeller and his Career*” Silas Hubbard wrote;

“Hatred of monopoly is inbred in the American people. It was an inherited hatred. And yet in a single generation, in defiance of law and precedent, Mr. Rockefeller built up a world-wide monopoly. The laws of the states and the Constitution United States failed to stop him. He has had is imitators until almost every necessity and luxury of life is in the hands of a monopolist. Between the consumer and the producer stands the middleman, who grinds the one and squeezes the other. He is the unnecessary middleman. The butcher is the necessary middleman. But when the unnecessary middleman comes along and fixes the price at which the butcher must buy his beef and fixes the price at which consumer must pay for his beef, we have the beginning of intolerable tyranny. And yet this system is growing hourly and daily“

30. The “hatred of monopoly” which Mr. Hubbard described, was forged into a Federal criminal statutory structure based on the Sherman and Clayton Acts, making “every contract combination and conspiracy in restraint of trade criminal and punishable by fines and

imprisonment.” The language of Section 1 and Section 2 of the Sherman Anti-Trust act is as follows;

The Sherman Antitrust Act (1890)

Section 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

Section 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

31. A complete discussion of the ambit of the anti-trust laws is beyond the scope of my testimony herein and obviously state run entities are exempt from the anti-trust laws, but **the fact is that the public schools in Texas are a monopoly**. They are a monopoly which cannot be prosecuted under the antitrust laws, because they are shrouded with governmental authority but they are a monopoly nonetheless. Although a legal challenge to their monopoly status might be difficult, historians could certainly show that the current public school monopoly is inconsistent with the system our founders put into place following the 1876 Constitution.

32. The public schools control 95% of the students in Texas. If the Justice Department could apply the classic tests of “market concentration” like the Herfindahl–Hirschman Index to the public schools in Texas, the result would be a finding that the schools are a highly concentrated monopoly market. The Herfindahl index (also known as Herfindahl–Hirschman Index, or HHI) is a measure of the size of firms in relation to the industry and an indicator of the amount of competition among them. Named after economists Orris C. Herfindahl and Albert O. Hirschman, it is an economic concept widely applied in antitrust law. It is defined as the sum of the squares of the market shares of the 50 largest firms (or summed over all the firms if there are fewer than 50) within the industry, where the market shares are expressed as fractions. The result is proportional to the average market share, weighted by market share. As such, it can range from 0 to 1.0, moving from a huge number of very small firms to a single monopolistic producer. Increases in the Herfindahl index generally indicate a decrease in competition and an increase of market power, whereas decreases indicate the opposite.

33. In the case of the Texas Public Schools if the 95% of the market in terms of students enrolled is squared the result is .9025 plus the square of the private schools share of the market .05 squared .0025 you would get a HHI of .9050 indicating a highly concentrated monopoly market situation. In short, by any classic measure of market power the public schools of Texas are a monopoly.

34. The public schools have other indicia of monopoly, they allocate territories into districts, thereby allocating customers among them.

35. As a practical matter the “independent” school boards have interlocking directories through TASB. As one who has attended Texas Association of School Board meetings and watched the members of that organization voting in unison for policies that benefit

the educational hierarchy often at the expense of students, the reality of the educational monopoly in Texas could not be more apparent. Add to that the state laws along with regulations promulgated by The Texas Education Agency creating an almost seamless regulatory environment, enforced across the state and the setting of wages for teachers almost uniformly across the state, and the enormous control over the textbook market that such unity and centralization of control in the hands of the few public officials, truly rivals the “market power” of any late 1800s robber baron monopoly. There are what I consider to be “myths” of “local control by independent school boards” and of the “the independent school board Trustee” an elected member of the local community looking out for the student. As a freshman school board member in the Blanco Independent School District, I was given a four volume set of the state “regulations and guidelines” of the Texas Education Code and Regulations. Each volume was 3-4 inches thick. This was all for what was a “volunteer” “unpaid” position on the local school board. I had run without opposition in the election and was entering the position with the desire to serve my community and better the educational opportunities of my own children in the local school district. Most of our time at school board meetings consisted of being told by the professional superintendent of schools (who was by the way the most highly paid individual in Blanco County at the time) what the regulations told us we could do or not do. And other than pass on the tax rate to be charged the citizens of Blanco, Texas we hardly had any independent action taken by the board. As a parent with 6 children in the district, and as a college professor, I longed as a school board member for a way to get better teachers and remove teachers that almost everyone in town knew were not good teachers, but the protections written into the law for teachers made it almost impossible to do so. Additionally, the state salary schedule and state imposed teacher pay raises made effective resource allocation a local impossibility.

36. The public school consumer that is unfortunate enough to be caught in a failing school district, and without the funds to enable the purchase of a private education, has only one option and that is to move into a more successful district. Most Texans are simply not able to do either and are therefore “captive consumers” of an inefficient, monopolistic and failing system. Never was a consumer so well controlled by Standard Oil. Likewise, if your child is assigned to a poor performing teacher’s classroom, what can you do other than pay twice for a private school education for your child? Monopolies do not need to respond to consumer needs instead, they respond to the needs of the institution itself.

37. Another example, a municipal power company is exempt by law from the anti-trust laws because can claim is what is called a natural monopoly position. Yet the evils of monopoly still exist, prices in municipal monopolies are higher, production is lower, and the consumer’s choice is limited to one supplier. This may be justified where a natural monopoly is concerned. **But education is not a natural monopoly**, if it were not for the power of government assigning students and compelling school attendance the market for educational services would be more like small business than a monopoly. Entry to the market would be easy; one would only have to hold oneself out as a teacher and obtain a number of students and compete for the educational dollar. There would probably be an explosion of schools, some successful some not, just as some are successful and some not today in the public system, but the system would not be producing monopoly profits for an elite few. Consumer choice and competitive forces would drive far more efficient allocation of resources, and therefore a more effective education system for Texas youth.

38. Teachers are also victims of the educational monopoly in the state of Texas; I have been blessed to be a college professor for almost 20 years during my career as a

professional. I practiced law for a decade as the general counsel of a nonprofit, not to mention 21 years of study in high school, college, law school and graduate school and yet without a special dispensation, I would not be qualified to teach in high school in Texas, because I do not have a “teaching certificate.” The monopoly dictates who may be a supplier of services to the customer. It is like a central agency certifying clerks in grocery stores and allowing the clerks only to work in company stores throughout the state where one line of grocery products are given away and a state sales tax pays for all the food, stores and clerks.

39. In my opinion, the public school system of Texas is a monopoly, with roughly the same amount of the market power and control exercised by the public schools as Rockefeller had when he held enormous power over the oil market. The public schools within Texas control 95% of the market for education and control it not for the benefit of students, but for the benefit of the administrators, lobbyists, regulators and teachers. Teachers are somewhat less benefited but nonetheless part of a system wielding “monopoly power” over Texas school children. The Texas Education Agency and the Texas Association of School Boards, along with highly paid cadre of lobbyists control the monopoly through political power, statutory and regulatory authority. And to quote one former legislator making \$300,000.00 a year as an educational lobbyist “It’s all for the children” as he lobbied representing the teachers

40. But the sum total of the legal structure is to produce “unnecessary middlemen” who dictate not only the price of education to the public through taxation, they monopolize who can and cannot teach, monopolize the product through regulation and provide a poor end product for the “monopoly profits” they obtain. By any measure the present system is inefficient except for one thing - producing enormous insider profits for those participating in the system above the level of the individual teacher. The following is a copy of an article in the Texas Tribune

indicating the salaries of the top 20 Superintendents in Texas. The average is almost \$300,000 per year for each of the top 20 Superintendents.

41. Texas Tribune Article:

Tuesday, July 24, 2012

Texas Tribune Interactive: Texas Superintendent Salaries: 2010-11

- by Matt Stiles
- Updated: March 4, 2011

Editor's note: Looking for the superintendent salaries for the 2011-2012 school year? [Click here](#) to be taken to the newer interactive.

Facing an unprecedented budget shortfall, some lawmakers are questioning whether public schools spend too much on administration — or, more specifically, administrator pay. Atop that list are Texas' superintendents, the chief executives at more than 1,000 districts statewide.

These officials are paid on average about \$108,000 a year, according to the Texas Education Agency's list of salaries from the 2010-2011 academic year. But at least two dozen are paid more than \$250,000, and not all run the largest districts. More than 50 school districts have more students than Beaumont Independent School District, for example, but its superintendent, Carrol Thomas, makes the most: \$346,000.

Use this interactive table to sort those records by salary, district enrollment and pay per student — and how each superintendent ranks. The records can also be filtered by selecting counties in the table.

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<u>Name</u>	<u>District</u>	<u>County</u>	<u>Salary</u>	<u>Salary Rank</u>	<u>Students</u>	<u>Pay Per Student</u>	<u>Rating</u>	<u>Sq. Miles</u>
Carrol Thomas	Beaumont	Jefferson	\$347,834	1	19,893	\$17	Recognized	179.2
Louis Stoerner	Alief	Harris	\$345,943	2	45,768	\$8	Recognized	39.1
Michael Hinojosa	Dallas	Dallas	\$332,832	3	157,162	\$2	Acceptable	381.3
Melody Johnson	Fort Worth	Tarrant	\$328,950	4	81,651	\$4	Acceptable	209.4
Duncan Klussmann	Spring Branch	Harris	\$309,400	5	32,948	\$9	Recognized	41.0

Terry Grier	Houston	Harris	\$300,000	6	204,245	\$1	Acceptable	300.4
Richard Middleton	North East	Bexar	\$297,105	7	66,604	\$4	Recognized	132.3
David Anthony	Cypress-Fairbanks	Harris	\$292,736	8	106,097	\$3	Recognized	187.7
Douglas Otto	Plano	Collin	\$291,717	9	55,568	\$5	Recognized	95.8
Meria Carstarphen	Austin	Travis	\$283,412	10	85,697	\$3	Acceptable	228.5
Leonard Curtis Culwell	Garland	Dallas	\$282,220	11	57,833	\$5	Recognized	93.0
Jeffrey Turner	Coppell	Dallas	\$281,945	12	10,217	\$28	Exemplary	24.8
Lorenzo Guerra Garcia	El Paso	El Paso	\$280,314	13	64,330	\$4	Recognized	208.0
Alton Frailey	Katy	Harris	\$280,000	14	60,803	\$5	Recognized	172.0
Randal Craig Shaffer	Trinity Basin Preparatory	Dallas	\$275,256	15	1,362	\$202	Recognized	
Donald Kirk	Lake Travis	Travis	\$272,427	16	6,978	\$39	Exemplary	115.4
John Henry	Galena Park	Harris	\$271,450	17	21,680	\$13	Acceptable	33.7
John Folks	Northside	Bexar	\$270,000	18	95,581	\$3	Recognized	316.7
Kay Waggoner	Richardson	Dallas	\$270,000	18	36,070	\$7	Recognized	46.0
Richard Reedy	Frisco	Collin	\$268,534	20	37,279	\$7	Exemplary	74.8

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42. Additionally the system is “constitutionally inefficient” due to excess central control. It is politically driven, top-down, bureaucratic system more easily comparable to old Soviet or Chinese style management systems (complete with “great leaps forward” – like “no child left behind”) than a free enterprise, free market system. The current system compels forced attendance by law for most students -these are truly forced “government schools”. Because entry into the school market is almost entirely limited to government schools, the people do not

have adequate choice. Because even the few suppliers in the current system are bound by intensely centralized, extensive regulations designed to provide a one size fits all model, the Texas public educational system is inherently and structurally inefficient at present. It is like saying the customer can have any car they want as long as it is a Ford, and it is black.

43. The system is constitutionally inefficient and requires correction because cash poor students and parents are not able to obtain the same educational opportunities as the wealthy in the current constitutionally inefficient system. Low-income students and parents are structurally unable to correct the system, having the least amount of political power and the least capacity to organize politically to correct the system. Twenty years ago, as a parent of 6 children that represented at the time about \$42,000 worth of tax revenue for a public school, I longed for the day that I could go into a public school and ask what the Principal and teachers would do for my children. Today my children would represent about \$60,000 in funding for a school annually. The poor parent has no say +or ability to control how those funds are spent. Imagine if the parent of a 6 children could say to school administrators “I have \$60,000 of funding for your school, if you do not help my children learn I will go to another school.” Is it not obvious that competition would improve the quality of education for the poor? In Blanco County that amount of money would be more 2.5 times the average annual salary in the community. Is it not obvious that as long as a monopolistic system is predominant that the poor will continue to get the least service.

44. Suppose one were to come to Texas from a foreign nation and conquer Texas militarily. Suppose that conquering nation were to impose an educational system that was a Soviet style - highly centralized one, requiring approval from a central authority based in the military capital for almost any action by local school officials, required every student in Texas to attend, (except the wealthy) and then imposed a curriculum that resulted in half of those student

in some areas failing and to dropping out of school. And then suppose that system cost almost three times as much to educate a child as some private schools, and the foreign nation collected that amount as taxes (“monopoly profit”) Efficient for the conquerors? Absolutely! Efficient for the conquered? Absolutely not! Monopoly is always efficient from the perspective of the monopolist.

45. That is similar to what happened in Texas after the war between-the-states. During Reconstruction a top-down militaristic school system was imposed on Texas and the 1876 Constitution in large part was a reaction to that level of state control. Unfortunately, today’s Texas has moved back towards such a centralized school system. A system where state imposed labor laws restrict local management decisions, drive employee pay decisions, determine class sizes, and generally drive the inefficient allocation of educational resources.

46. Judge John H. Wood used to say to me about cases before the Court “It all depends on whose ox is being gored.” It is time we stopped goring the children’s ox for the sake of a constitutionally inefficient educational system.

47. For the sake of the children, it is time for real efficiency.

Signed this 25th Day of July, 2012.

Richard Clayton Trotter