

Judge's In Court Order for the Appointment of a Master
November 20, 2002-

The attorneys in this case have done a skillful and professional job representing their clients and I mean no criticism of them when I say that the time we have spent handling Lapwai's safety issues have pointed out the inadequacies of traditional trial methods in dealing with a case as unusual as this. A traditional litigation approach to this case will cost too much and take too long. It is not reasonable to spend another decade and millions of dollars on lawyers for both sides and experts for both sides when there is a tool available to cut costs and focus on the most serious problems first. The Court is going to appoint a special remedial master to narrow our focus to real and serious safety problems and the most cost effective method to fix them. The use of a neutral master will give the court and the legislature current, accurate information on what is wrong and what it will cost to fix dangerous conditions. Instead of spending money in court, money can be freed up to be spent on fixing schools.

We are in the remedy phase of this proceeding. There is no question that the Idaho Constitution squarely places the responsibility for establishing a system of schools that provide a safe environment conducive to learning on the Idaho legislature. After over ten years going back and forth between the trial level and the appellate level, the Supreme Court directed the trial court to hold a trial to determine if the current funding system was adequate. At the close of the trial, the overwhelming evidence was that the legislature's system of school funding does not provide the means for local school districts to fund facilities that provide safe schools. It is the legislature's job to establish the necessary funding system. This court's job is to see that the requirements of the Idaho Constitution are met in the meantime. The court has the authority under the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence "to exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, and (2) avoid needless consumption of time. I.R.E. 611.. .." The court also has the authority to appoint a special remedial master. 1.R.C.P.53. While the court will resolve critical factual disputes, the use of the special remedial master will allow us to prioritize our time by focusing on the most serious problems first.

This is an unusual case. As the State itself has pointed out and as has become very clear, if we continue to approach this case by going through several hundred schools in court spending days on each, a style used in less massive litigation, it could take another decade and millions of dollars. The resources we have consumed on Lapwai illustrate the limitations of the traditional trial method. There is no question that Lapwai has some very serious safety issues. We have spent considerable time looking at pictures of crumbling, aging buildings with all sorts of problems, some major, some minor. Yet, both sides agree that looking at pictures will not give anyone an accurate understanding of the real safety problems of any particular school nor will it tell us how to fix the problem in the most cost-efficient way possible. We have spent trial time on matters which are not disputed. Both sides have flagged serious safety problems.

The master estimates that giving an accurate picture of the life safety problems in schools and identifying possible solutions will cost about \$400,000. It may cost more. Even if it does cost more, it will cost substantially less to use a master than to follow the trial approach we have been utilizing. The State has estimated that it will need \$1.7 million dollars per year just to present its views using the traditional litigation method. The cost savings of using a master are substantial. Taxpayer money should go towards fixing schools not litigation. We need to know what schools have serious problems and what is the cheapest, most efficient way to fix them.

While the use of a master is not a common approach in litigation, masters are often used to provide technical expertise on issues before the courts. Masters are commonly used in business litigation as a way of focusing a dispute and reducing the cost of litigation. Experts on both sides of this case agree that the services of a skilled architect are needed to meaningfully evaluate school safety. The use of a master will allow us to prioritize our efforts so that we focus first on the most serious problems with the gravest potential threats to school children.

I am going to appoint Charles Hummel to act as the Court's special remedial master in this case. He will be asked to look at schools using the approach the legislature itself did in the 1993 Needs Assessment Report focusing on safety issues, not overcrowding, not some wish list. He will be asked first to look at the 351 schools the legislative study concluded had serious problems. He will be asked to focus on the most serious problems first. If he identifies a safety risk to students, I want to know the most practical, most cost-efficient solution. If a situation is gravely dangerous to students, it is going to be immediately addressed by the court. The rest of

the trial time used in this case is going to be spent on whatever real disputes there are about the existence of a hazard and the most cost-effective way to deal with it. It is time to prioritize these proceedings and deal with the most serious problems first. The Court will get current accurate information about dangerous conditions in the schools and so will the legislature.

The master won't be able to perform his tasks overnight but he will be able to provide current, accurate, meaningful information at significantly less expense, years before the current litigation approach will yield any useful result. He will enable us to focus our time and resources on the most critical problems first.

A detailed written decision outlining my conclusion that this is the exceptional case in which the use of a special master is absolutely required and a detailed order of referral will be issued as soon as possible.