

3-87-190-EV

CAUSE NO. 362,516

C 8353

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

IN THE 250TH JUDICIAL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk

By _____ Deputy

STATEMENT OF FACTS

VOLUME XIX OF XLVI



TAKEN FEBRUARY 19, 1987

AFFILIATED REPORTERS

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CAUSE NO. 362, 516

EDGEWOOD INDEPENDENT SCHOOL > IN THE 250TH JUDICIAL
DISTRICT, ET AL >
>
>
VS. > DISTRICT COURT OF
>
>
>
WILLIAM KIRBY, ET AL > TRAVIS COUNTY, TEXAS

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

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5 the law firm of HUTCHISON, PRICE, BOYLE & BROOKS,
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7
8
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10 ATTORNEYS FOR THE DEFENDANT-INTERVENORS
11
12
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15
16

17 BE IT REMEMBERED that on this the 19th day of February,
18 1987, the foregoing entitled and numbered cause came on
19 for trial before the said Honorable Court, Honorable
20 Harley Clark, Judge Presiding, whereupon the following
21 proceedings were had, to-wit:
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FEBRUARY 19, 1987

MORNING SESSION

MR. O'HANLON: Judge, for the Court's information, Mr. Richards checked and the TSTA case that you did was n.r.e. at the same time yesterday.

MR. RICHARDS: Yes. That is my impression.

THE COURT:: The TCAT case was n.r.e.?

MR. O'HANLON: Yes.

MR. RICHARDS: Affirmed by the Court of Appeals, n.r.e.

THE COURT: That's good enough.

MR. KAUFFMAN: Your Honor, we have, I think, a very pleasant announcement to make. In addition to, of course, calling our next witness, after talking about it among ourselves and hearing the Court's schedule, we have decided there is a very good chance that we will rest today by the end of the day. So we have whittled away at our witness list since this part took a bit longer than we had expected.

So I just wanted to tell the defense counsel they well might have to start in the morning.

THE COURT: Okay. I appreciate you giving them a day's notice.

MR. RICHARDS: That would be true of the

1 Plaintiff-Intervenors also, Your Honor.

2 MR. KAUFFMAN: Your Honor, the Plaintiffs
3 call Dr. Jose Cardenas.

4 DR. JOSE CARDENAS
5 was called as a witness, and after having been first duly
6 sworn, testified as follows, to-wit:

7 DIRECT EXAMINATION

8 BY MR. KAUFFMAN:

9 Q. Will you state your full name and address for the
10 record, sir.

11 A. Jose Cardenas, 5903 Seneca Drive, San Antonio, Texas.

12 Q. Dr. Cardenas, how are you presently employed?

13 A. I am the director of Intercultural Development
14 Research Association in San Antonio, Texas.

15 Q. That is the IDRA that Dr. Zamoro works for?

16 A. That's right.

17 Q. Dr. Cardenas, where did you grow up?

18 A. I grew up in Laredo, Texas.

19 Q. What is your educational background?

20 A. I attended school in Laredo, Texas, graduated from
21 Martin High School in Laredo.

22 In 1946, I went to the University of Texas at
23 Austin, got a B.A. degree in 1950.

24 In 1955, I got a Master's degree in education
25 from our Lady of the Lake University in San Antonio.

1 Around 1965, I received a Doctorate degree from
2 the University of Texas at Austin.

3 Q. Dr. Cardenas, I want to talk to you a bit about your
4 experience in public schools in the State of Texas.
5 Have you been a teacher in public schools?

6 A. Yes, at the elementary, junior high, and high school
7 level in public schools in the State of Texas.

8 Q. Have you been a supervisor, vice principal, any
9 administrative positions?

10 A. I was vice principal of a high school, I was
11 principal of an elementary school, and I was
12 superintendent of schools.

13 Q. When you were superintendent of schools, what
14 district were you superintendent of?

15 A. The Edgewood Independent School District in San
16 Antonio.

17 Q. You were the superintendent of Edgewood during the
18 time of the Rodriguez litigation?

19 A. That's right, sir.

20 Q. Dr. Cardenas, have you taught at the college level,
21 and if so, what positions?

22 A. I taught at St. Mary's University for six years, from
23 1961 through 1967. The last three years I was
24 chairman of the education department.

25 Since then, I have done adjunct professor

1 teaching in a number of universities; the University
2 of Texas here in Austin on four different occasions.

3 I am currently teaching a class in the doctoral
4 superintendency program at the University of Texas at
5 Austin.

6 On several occasions, I have taught classes at
7 the University of Texas at San Antonio, and I have
8 either taught classes or participated as a member of
9 committees for doctoral students at the University of
10 Massachusetts at Amherst, Chicago State University,
11 San Diego State University.

12 Q. When you were at St. Mary's, you said you were
13 chairman of the education department. That's the
14 department that educates teachers and administrators
15 for public schools?

16 A. That is right.

17 Q. Presently, you said you were teaching at the
18 University of Texas at San Antonio?

19 A. Both the University of Texas at San Antonio and the
20 University of Texas at Austin.

21 Q. What do you teach at The University of Texas at
22 Austin?

23 A. It is a special issues course in administrative
24 issues in the public schools in the team teaching
25 situation with some other faculty members from the

1 department of educational administration.

2 Q. What are you teaching at the University of Texas at
3 San Antonio?

4 A. School finance.

5 Q. Concentrating or considering Texas school finance, I
6 think?

7 A. Well, with a strong emphasis on Texas school finance,
8 yes, sir.

9 Q. Dr. Cardenas, have you served on any national boards
10 or committees in the area of education?

11 A. Yes, sir. I have served on many, many national
12 boards and committees.

13 Q. Can you give us an example of one or two of those in
14 the area of anything related to school finance for a
15 moment?

16 A. I've been a member of the Board of the Institute for
17 Finance in Government in Stanford University with
18 Hank Levin (Phon.). I've been a member of the
19 Board of Manpower Development Research Corporation
20 in New York City. I've been a member of the Board
21 of the Institute for Senate for Research in
22 Vocational Education at Ohio State University. Then
23 I have been on numerous committees and groups with
24 the Ford Foundation and the Carnegie.
25 Foundation in areas of school finance as well as I

1 have done some work for Rockefeller and some other
2 foundations.

3 Q. Dr. Cardenas, is it fair to say, then, for at least
4 the last 35 years you've been involved in the area of
5 public school and public school administration?

6 A. Yes, sir.

7 Q. I guess all of that time has been in Texas, is that
8 right?

9 A. All of that time has been in Texas with the exception
10 of two years in Korea in the United States Army.

11 Q. Dr. Cardenas, have you at one time worked in the area
12 of curriculum development, and if so, where?

13 A. I have on two occasions worked in curriculum
14 development or the whole area of research and
15 development.

16 1967 through 1969 I was employed by the
17 Southwest Educational Development Laboratory here in
18 Austin in research and development.

19 Since 1973, at IDRA, I have been working in the
20 area of research and development.

21 Q. Let's talk for a moment about IDRA. You are the
22 executive director of the organization?

23 A. That's right, sir.

24 Q. The first and only, so to speak?

25 A. First and only, right. The best.

1 Q. Okay. Can you tell the Court something about the
2 major divisions at IDRA and what they do?

3 A. There are four major divisions. One is research and
4 evaluation. We conduct research studies. We do
5 evaluations both internally and externally, several
6 at the request of school systems, universities, other
7 groups, and some of them for special purposes.

8 The second area or component is materials
9 development. We have developed materials for special
10 populations mostly, and general populations, also,
11 which includes the development of an early childhood
12 education program which is being used nationwide.
13 We've done materials development for Houston School
14 District, for Dallas, a number of school systems, and
15 we have also developed some for big corporations,
16 such as Hartford Graves Divinovich Corporation
17 (Phon.), a fairly extensive number of materials in
18 special areas social studies and so forth.

19 We are currently doing something in rapid
20 transport for the City of Dallas and some other
21 cities.

22 The third division is training. We do
23 extensive training of teachers, teacher aides, in
24 some cases parents, school board members, and
25 administrators.

1 The fourth area is dissemination. We publish
2 and disseminate information pertinent to education
3 and the improvement of educational opportunities in
4 schools.

5 Q. In the research and evaluation division, I'm sure you
6 have several employees who work for you in that
7 division.

8 A. That's right. There are currently about six people
9 in the department of research and evaluation.

10 Q. Do those persons, research and evaluation, what
11 percentage of their time is spent researching and
12 evaluating public schools in the State of Texas, do
13 you think?

14 A. Almost 100 percent. With the exception of
15 institutions of higher education, most of it is doing
16 research in the public schools or outcomes of the
17 public schools.

18 Q. When you say research and evaluation, what sort of
19 things do you research and evaluate? Give us an
20 example or two.

21 A. Educational opportunities, performance of students.
22 We have just completed a very, very extensive study
23 of dropouts in the State of Texas under contract
24 through the Texas Department of Community Affairs and
25 the Texas Education Agency, which included the

1 magnitude of school dropouts, the cost to the state,
2 long range of school dropouts, and also programs in
3 schools that are aimed at reducing school dropouts.

4 Q. Has your research and evaluation division worked in
5 large wealthier districts like Houston and Dallas as
6 well as large poor districts like Brownsville and
7 rich and poor, small districts, rich and poor, large
8 districts?

9 A. Yes, sir. In the State of Texas, I think we have
10 worked with several hundred school districts either
11 in research and evaluation or training or materials
12 development including wealthy school districts and
13 including some poor districts, very poor school
14 districts.

15 Q. Do you, as the executive director, review the work of
16 your staff or is it discussed at staff meetings or do
17 you review capacity --

18 A. Yes, sir.

19 Q. In terms of materials development, have you also
20 developed materials for both rich and poor districts
21 in the State of Texas?

22 A. Yes, sir.

23 Q. You said you developed materials for special
24 populations. What sort of special populations are
25 you talking about?

1 A. The three most common types of special populations
2 we've developed materials for are limited English
3 proficient children, including Spanish-speaking
4 children, Vietnamese, and some other groups that
5 we've worked with. We have developed materials for
6 economically disadvantaged children. We have done a
7 lot of materials development for minority
8 populations.

9 Q. Minority populations would include Mexican-American?

10 A. Mexican-American, Black, Native American.

11 Q. In the area of training, have your staff been
12 involved in training in both wealthy and poor
13 districts in the State of Texas?

14 A. Yes, sir.

15 Q. Okay. About how many districts do you think your
16 staff has worked in during the last 13 years of IDRA?

17 A. 300, 400 school districts.

18 Q. In the State of Texas?

19 A. In the State of Texas. That's directly. Indirectly,
20 perhaps a larger number than that.

21 Q. This training, what sort of training does your staff
22 do?

23 A. As I mentioned, some of the training is directed to
24 teacher training for being able to cope with the
25 unique problems of atypical school populations,

1 including characteristics of the population, special
2 learning styles, cultural differences, language
3 differences, special techniques of reading in both
4 native language and in English language, a variety of
5 different types of activities.

6 We have done a lot of training of school board
7 members and also administrators in assessing the
8 needs of the school districts, and then developing
9 responses which address those needs.

10 Q. In terms of your funding, I know through the years
11 you have received a good amount of federal funding to
12 provide these services to school districts?

13 A. I have received a good amount of federal funding to
14 provide these services.

15 Q. Do you now also provide services to districts that
16 pay you to come in and do these services?

17 A. Yes. Actually there are four methods of funding
18 activities. One of them is from contracts with the
19 federal government or other government institutions.
20 We have received funding from foundations, also. The
21 third has been corporate funding. We are receiving
22 funds from large corporations interested in some of
23 the work we're doing. Then the fourth is having a
24 contractual relationship with a school district to
25 provide the training that they specify.

1 Q. Okay. So under that relationship, then, a school
2 district in Texas will hire a member of your staff to
3 come in and train them in the area of teacher
4 evaluation or early childhood education, that sort of
5 issue?

6 A. Yes, sir.

7 Q. Do you, as executive director, review the training
8 activities of your staff both to train your trainers
9 as well as to review with them what they have found
10 out during their training experiences?

11 A. Yes, sir.

12 Q. In the area of dissemination and information, I think
13 you have a newsletter. Is that a monthly newsletter?

14 A. It is published monthly ten months out of the year.

15 Q. It is sent to every school district in the State of
16 Texas?

17 A. Yes, sir.

18 Q. Dr. Cardenas, have you testified before any
19 committees or the Texas Legislature or Congress?

20 A. Yes, sir, both of them.

21 Q. Okay. What sort of issues have you testified on?

22 A. School finance, property taxation, bilingual
23 education, minority education, innovative programs.

24 Q. Dr. Cardenas, in the area of school finance, did IDRA
25 do a fairly lengthy study of Texas school finance and

1 other state school finance sometime in the late '70s?

2 A. Yes, sir.

3 Q. Tell us about that study, what it covered.

4 A. In the late '70s --

5 Q. I guess it was the Peveto study?

6 A. Yes. Mostly it was the relationship between school
7 finance in the State of Texas and tax wealth status
8 of school districts and types of educational
9 opportunities which students receive. We did
10 correlations between the wealth of a school district
11 and minority enrollments. We did correlations
12 between wealth of school district and poverty
13 children in those school districts, and then looked
14 at some aspects of education, including quality of
15 teachers in school districts of different wealth
16 levels.

17 Q. Do you remember at the time what the relationship was
18 between wealth of districts and Mexican-American
19 population of the districts?

20 A. There was a correlation between the two, in general.
21 Low wealth school districts had higher numbers of
22 Mexican-Americans in those low wealth school
23 districts. The reverse was true, the high wealth
24 school districts had a smaller number of
25 Mexican-Americans or percentage of Mexican-Americans.

1 Q. Do you remember the relationship between wealth of
2 districts and percent of low income students or
3 families in those districts?

4 A. Again, there was a relationship. The wealth of
5 school districts -- low wealth school districts had
6 higher numbers of low income children, and higher
7 wealth school districts had lower numbers of high
8 wealth children.

9 Q. At the present time, do those same relationships hold
10 that wealthier districts have comparatively fewer
11 Mexican-American and low wealth students and that
12 poorer districts have comparatively more
13 Mexican-Americans and low wealth students?

14 A. The relationship in the latest data available still
15 holds. In general, low wealth school districts have
16 higher concentrations of Mexican-American students;
17 low wealth school districts have higher
18 concentrations of poor students.

19 Q. Dr. Cardenas, have you testified in any courts
20 regarding issues of equal educational opportunity?

21 A. I have testified in many court cases regarding equal
22 educational opportunity.

23 Q. If we can just mention, I guess, a few of those. Did
24 you testify in a case in Denver or San Francisco?
25 Give us the major ones.

Keys verses Denver (Phon.), Lauw versus Nichel
(Phon.). In San Francisco, I did not testify. I was
consultant to the Department of Justice. In U.S.
versus Texas, Bakersfield, Tucson, El Paso, Houston,
Dallas, Chicago.

Q. San Felipe, Del Rio (Phon.)?

A. San Felipe, Del Rio.

Q. Don't forget San Felipe, please.

I guess there are other cases as well where you
have either testified or consulted with persons
involved in court cases involving equal educational
opportunity?

A. Yes, sir. Probably over 60 such cases.

Q. Dr. Cardenas, I know you were the superintendent of
Edgewood district for a while. It might embarrass
you to say this, but are there any schools in
Edgewood named Cardenas?

A. Yes, sir. There is a Jose Cardenas School in the
Edgewood school district.

Q. Is it elementary, junior high, what is it?

A. It is elementary and being used right now for
severely handicapped children.

Q. That's named after you?

A. Yes, sir.

MR. KAUFFMAN: Your Honor, I would like to

1 introduce as an exhibit Dr. Cardenas' vita.

2 Q. Dr. Cardenas, is this an up-to-date description of
3 your educational background and professional and
4 personal experience?

5 A. Yes, sir. It is.

6 MR. KAUFFMAN: This is Plaintiffs' Exhibit
7 94, Your Honor, and I move that it be admitted.

8 MR. O'HANLON: No objection, Your Honor.

9 THE COURT: It will be admitted.

10 (P Plaintiffs' Exhibit No. 94 admitted.)

11 BY MR. KAUFFMAN:

12 Q. Dr. Cardenas, during your work involving the public
13 school systems of the State of Texas, have you
14 reviewed the relationship, if any, between teacher
15 quality and the wealth of districts that hire those
16 teachers?

17 A. Yes, sir.

18 Q. What have you found to be that relationship?

19 A. In general, the school districts that have lowest
20 wealth have less experience, less trained in terms of
21 degrees and certificates, and less paid
22 schoolteachers.

23 Q. During your work in public schools of Texas during
24 the last 30 years, have you found any relationship
25 between the quality of administrators and support

1 staff in districts and the wealth of the districts
2 that hire those staffs?

3 A. Yes, sir.

4 Q. What is that relationship?

5 A. In general, the higher wealth school districts have
6 higher qualified, higher trained, better paid
7 administrative staff.

8 Q. Have you found any relationship between the number of
9 teachers that low wealth districts can hire for their
10 children versus the number of teachers that high
11 wealth teachers can hire for their children?

12 A. Yes, sir. In fact, analysis of enrichment funds
13 utilized by high wealth school districts indicates
14 that perhaps teachers' salaries and -- well,
15 certainly teachers' salaries and extra teacher units
16 were the two dominant places where the money was
17 expended. In general, the higher the wealth of the
18 school district, the lower the pupil/teacher ratio.

19 Q. What about your opinion on facilities in low wealth
20 versus high wealth districts? During your time in
21 your personal experience as well as work with your
22 staff and review of literature in the State of Texas,
23 have you come to any conclusion on the comparative
24 quality of facilities in low wealth versus high
25 wealth districts?

1 A. Yes, sir. In general, the higher the wealth of the
2 school district, the better the quality of the
3 facilities available to the students in those
4 districts.

5 Q. Now, these factors that we've talked about here,
6 teacher quality, teacher numbers, administrative
7 support quality, facility quality, in your opinion,
8 do those have any affect on the education that can be
9 offered to kids in those districts?

10 A. Definitely. I think all of them are related to the
11 quality of education which can be offered to the
12 children.

13 Q. Dr. Cardenas, I would like to talk with you today
14 about any special problems that low income children
15 have in public schools and any special problems that
16 Mexican-American children have in public schools.

17 First, I would like to concentrate on low
18 income. If you have students that come from below
19 poverty level families, do they bring with them any
20 special requirements or needs to public schools?

21 A. Yes, sir.

22 Q. Can you describe for us what those needs might be.

23 A. Many of the children, most of the children that are
24 raised in poverty homes have non-academic oriented
25 parents, a few economically successful role models.

1 There is a marked absence of media in the home, less
2 television, less radio. There are less publications,
3 including newspapers, magazines, journals,
4 encyclopedias, books, so forth. You usually have
5 higher child-to-adult ratios, which means less
6 interaction. Then you have some different
7 developmental patterns which are the result of this.
8 You have a lower level of audio discrimination
9 ability, a lower level of visual discrimination
10 ability.

11 In general, you could say that a child that is
12 raised in this type of a home has a handicap which
13 the school can and must eliminate by special types of
14 activities that are not required for children in
15 middle class and upper class homes.

16 Q. For a school district to provide those special
17 activities, are there any fiscal implications for
18 providing those activities?

19 A. In terms of physical facilities?

20 Q. Not physical, fiscal. I'm sorry. Money application.

21 A. Yes. I think that the standard method of finance in
22 schools must make an allowance for excessive amounts
23 of money in excess of -- in fact, for a middle class
24 kid in order to provide the types of training,
25 experiences, teachers that are required to handle the

1 characteristics of this population.

2 Q. Okay. What are some of the things that cost money
3 that districts must do in order to provide an
4 education for those low income children?

5 A. Special teacher training, special materials, smaller
6 pupil/teacher ratios, supplemental materials, in some
7 cases, instructional materials specifically designed
8 for that type of a population.

9 Q. In terms of those instructional materials, I know the
10 State of Texas provides textbooks for third graders.
11 If a district has in the third grade 60 or 70 percent
12 low income kids in the third grade, are they, as a
13 result, going to be required to have any extra
14 materials past the textbooks for the third grades?

15 A. The State of Texas very seldom provides any
16 additional state textbook materials. Such materials
17 have to be purchased by the school district for the
18 specific target population over and beyond the Texas
19 textbook program.

20 Q. In your experience, have you found any patterns of
21 the teachers available to teach low income kids in
22 the school districts of the State of Texas?

23 A. I think that there is a pattern that teachers that
24 teach these kinds of kids first receive very little
25 training for this type of instruction in the state

1 teacher training programs; that is, the state
2 approved teacher training programs.

3 Second, I think that they're very much a
4 category of new teachers.

5 Third, I think that they're very low in both
6 experience and training.

7 Q. These qualities of the teachers that you mentioned,
8 do those cause any extra financial burdens on the
9 school districts that have these low income children?

10 A. Definitely. I think that much of the training for
11 teaching special populations has to be undertaken by
12 the school district itself, and an extensive amount
13 of in-service training or pre-service training has to
14 be afforded to those teachers and usually it is at
15 school district expense.

16 Q. Dr. Cardenas, as far as the education of
17 Mexican-American children in the public schools is
18 concerned, in general do Mexican-American children
19 bring to districts any characteristics or qualities
20 that require the districts to spend additional funds?

21 A. Yes, sir. I think that there are language
22 characteristics of kids, limited English proficiency
23 in many, many cases, certainly some cultural
24 characteristics that require some kind of an
25 intervention by the school over and above the regular

1 instructional program.

2 Q. Now, these language characteristics you're talking
3 about, what are those characteristics and what are
4 the financial implications of educating those
5 children?

6 A. The characteristics is lack of English language
7 proficiency. In order to provide a program that
8 responds to this, usually you have to have, in some
9 cases, specialized teachers that have special
10 training to provide these services, the pupil/teacher
11 ratio, pupil-adult ratio has to be smaller, requires
12 an extensive amount of language modeling, it requires
13 personnel that are specially skilled in teaching
14 English as a second language to school age children,
15 it requires special audio/visual equipment, it
16 requires supplemental instructional materials, it
17 requires supplemental testing materials.

18 Q. Now, we have talked about those Mexican-American
19 children who are of limited English proficiency.
20 What is your opinion on the percentage of
21 Mexican-American children in the state who have
22 limited English proficiency?

23 A. Of the minority population over the years, that has
24 held fairly constant. About one-half of all language
25 minority children are limited English proficient.

1 THE COURT: Excuse me. Say that again,
2 please.

3 THE WITNESS: One-half of language minority
4 children are limited English proficient. That means,
5 of the Mexican-American population in the State of
6 Texas, about one-half of them are limited English
7 proficient.

8 THE COURT: Okay.

9 BY MR. KAUFFMAN:

10 Q. For those half of the Mexican-American children who
11 are not of limited English proficiency, do they bring
12 with them any social or personal characteristics that
13 might require additional funding at the local levels?

14 A. Yes. Even though they may have minimum proficiency
15 in English, in many cases, language characteristics
16 and cultural characteristics may require additional
17 services from the school.

18 Q. Well, what are some of those characteristics that
19 might require additional services from the school?

20 A. Well, some of them may have accents that we would
21 want to eliminate, others may have proficiency in one
22 aspect, such as speaking the language but not reading
23 the language, and may require some type of
24 educational service.

25 Q. Has it been your experience, then, that as a whole,

1 the Mexican-American community is one that might
2 require more rather than less money spent on them to
3 provide them equal educational opportunity?

4 A. Yes, sir.

5 MR. O'HANLON: Objection, Your Honor, to
6 this line of questioning. If we're claiming an
7 entitlement by virtue of race, that is in and of
8 itself unconstitutional. That is discrimination
9 specifically on the basis of race which is in and of
10 itself violative of Article I, Section 3 and Article
11 I, Section 3(a) of the Texas Constitution.

12 MR. KAUFFMAN: Well, Your Honor, I think
13 the point is that he has said that Mexican-American
14 children tend to live in low wealth districts and if
15 they have extra costs associated with them, then it
16 is to their special disadvantage if they are in
17 districts that can afford to spend less on them. I
18 don't think there is any claim here that they,
19 because of race, deserve anything that would violate
20 Article I, Section 3.

21 I don't quite understand the objection past
22 that point.

23 Dr. Cardenas has testified that
24 Mexican-American children tend to live in low wealth
25 districts. He has testified that they have extra

1 costs associated with educating them. I'm just
2 asking him, well, to combine those two factors, in
3 effect.

4 MR. O'HANLON: What I'm saying is, to the
5 extent that they're basing an entitlement on race,
6 that is in and of itself a per se violation of the
7 Texas Constitution as well as the United States
8 Constitution.

9 THE COURT: Is that the purpose of these
10 questions?

11 MR. KAUFFMAN: No, Your Honor. I'm not
12 trying to say there is a per se entitlement because
13 of race, no.

14 THE COURT: Okay.

15 BY MR. KAUFFMAN:

16 Q. Dr. Cardenas, I guess at least from your time of
17 working in Edgewood, are you familiar with the
18 problems that low wealth districts face in trying to
19 afford an education and to provide an education for
20 their students?

21 A. Yes, sir, very much so.

22 Q. Have you from time to time spoken before or supported
23 when asked legislation regarding school finance in
24 the State of Texas?

25 A. Yes, sir.

1 Q. I think you told me that at the beginning of the
2 Rodriguez litigation in '69 or so that the state took
3 the position that if you gave the state time, they
4 would equalize the school finance system.

5 A. Yes, sir. Certainly during the trial of Rodriguez,
6 the state indicated consistently that they were not
7 opposed to the equalization of school finance, but
8 objected mostly to such equalization being imposed by
9 the courts. There was ample testimony presented in
10 Rodriguez that if the state was allowed to pursue
11 without interference from the courts, that we would
12 see a fully equalized system of education in the
13 State of Texas.

14 Q. Has that occurred yet?

15 A. No, sir.

16 MR. R. LUNA: Objection, Your Honor. At
17 this point in time, if we're going to go into some
18 obscure conversation that occurred almost 20 years
19 ago, certainly that would be hearsay as to these
20 parties, and we would object to that.

21 THE COURT: Well --

22 MR. KAUFFMAN: Your Honor, Dr. Cardenas was
23 there and if it was hearsay -- personally, I don't
24 think it is, but if it was, it's an admission of a
25 party opponent. It was the State of Texas --

1 THE COURT: Well, I'm not sure that that
2 was brought out clearly in the question and/or the
3 answer. So for the moment, I think I'll sustain.

4 MR. KAUFFMAN: Okay.

5 BY MR. KAUFFMAN:

6 Q. Dr. Cardenas, did you have a chance to attend some of
7 the hearings in the Rodriguez trial?

8 A. Yes, sir.

9 Q. Were there attorneys or representatives of the State
10 of Texas at that trial?

11 A. Yes, sir.

12 Q. Did the attorneys or the representatives speak about
13 the intentions of the state to equalize education?

14 MR. TURNER: Objection, Your Honor, to
15 that. I think the record in that case is the best
16 evidence of what went on in that case, and to have it
17 related secondhand, even though the witness was
18 present, I think it is not the best evidence of
19 whatever the state's position might have been.

20 THE COURT: Best evidence is the objection?
21 That is your objection?

22 MR. TURNER: My objection.

23 MR. O'HANLON: 44.11 precludes the use of
24 admissions by -- Article 44.11 in Vernon's Annotated
25 Texas Statutes as a matter of law precludes assistant

1 attorneys general from making admissions that are
2 binding upon the State of Texas. It just absolutely
3 precludes it, in the first place.

4 In the second place, it's irrelevant because
5 once again, the way I think we do business in this
6 state is when we're talking about passing laws, we've
7 got to go to the Legislature and they're the ones
8 that have to decide what laws are passed.

9 So what an individual says they think is going
10 to happen in the state is purely irrelevant because
11 what happens is that the Legislature has to rule on
12 things, they have to write bills and they've got to
13 pass them.

14 I think that we talked about this in the first
15 couple of days of trial. There is one way to
16 determine legislative intent and that's to look at
17 the official records of the proceedings before the
18 Texas Legislature.

19 MR. R. LUNA: We renew our hearsay
20 objections as well, and relevancy. If some
21 conversation occurred almost 20 years ago in a
22 federal case, surely it's not binding upon these
23 groups of defendants in this case who had no part of
24 that.

25 THE COURT: All right. I'll overrule the

1 best evidence objection.

2 As to relevancy, it seems to me like the
3 Defendants and Defendant-Intervenors have been
4 showing through their questions and their arguments
5 that at least because of House Bill 72, the state was
6 moving towards so-called equality, and that this
7 would show good faith and that sort of thing on the
8 part of the state. So maybe the counter of that
9 would be relevant. As to this Article -- was it
10 44.11?

11 MR. O'HANLON: Yes.

12 THE COURT: I've always been mystified by
13 that one. You all use that when you want to and not
14 when you don't want to.

15 MR. KAUFFMAN: Does that mean we never have
16 to believe what Mr. O'Hanlon says? We'll stipulate
17 to that.

18 MR. RICHARDS: His fingers are permanently
19 crossed.

20 THE COURT: I don't know about that one.

21 MR. KAUFFMAN: Well, let me ask one more
22 question.

23 BY MR. KAUFFMAN:

24 Q. Was it just the state attorney general or was it a
25 state official that said that?

1 A. There were legislators, superintendents of schools,
2 state officials, and certainly attorneys who made
3 those statements.

4 Q. Okay.

5 MR. O'HANLON: Your Honor, once again, what
6 we're dealing with here is a legislative record.
7 There is a way to prove that up. If you want to
8 glean what the intent of the Legislature is -- and
9 that's what we're talking about here, since they've
10 got to write statutes and make the appropriations.
11 The way to prove that up and the only way to prove
12 that up is through the legislative record.

13 MR. KAUFFMAN: Your Honor, if that's true,
14 I move to strike all of the cross-examinations of the
15 Defendants for the last month where they've been
16 asking people about, "Don't you agree the legislators
17 are in good faith? Why do you think they do that?
18 Do you think the legislators would do this? Didn't
19 the legislators raise this to do that?" I mean, that
20 has been -- although the Defendants made these
21 objections at our first witness, they've since then
22 entered the fray with every witness we have about
23 legislative intent. They opened the door. We have
24 the right to walk through.

25 MR. DEATHERAGE: Your Honor, I believe that

1 testimony that came in about legislative intent was
2 offered by the Plaintiffs and was allowed in over
3 objection of Defendants.

4 MR. TURNER: Your Honor, I would again
5 suggest, as Mr. Luna did, that for this witness to
6 testify as to what people said in the Rodriguez case
7 is hearsay. There is a correct way to see what that
8 record says if it is relevant. I would join the
9 attorney general. I'm not sure where the relevance
10 of something said 20 years ago by anyone is in terms
11 of trying this lawsuit today. But to have a witness
12 take the witness stand and testify as to what he
13 heard people say in the trial 20 years ago that there
14 is actually a record of and that if it's relevant, we
15 can read it, seems to go a little far field, to me.

16 THE COURT: Okay. I think it has general
17 relevancy and I'm not sure that Article 44.11 -- is
18 that it?

19 MR. O'HANLON: Uh-huh.

20 THE COURT: I would think -- although it's
21 been a while since I looked at 44.11 -- that 44.11 is
22 talking about the attorney general or his assistants
23 binding the state -- as an example, binding the state
24 in the sense that the state can't get out of it. I
25 think it means that kind of action.

1 I'm not sure it would apply to admissions
2 against interest. Something that was said prior and
3 is used against a certain position the state is
4 taking currently in the sense that those prior
5 statements don't bind the state to a particular
6 action thereafter, I think that's what that statute
7 really is getting at.

8 I will overrule all the objections. However,
9 I'm going to limit the admission of this testimony.
10 Assuming it comes from -- that he is going to repeat
11 what state officials said, I'm going to limit that
12 evidence being admissible only against the state and
13 not the Defendant-Intervenors.

14 BY MR. KAUFFMAN:

15 Q. Dr. Cardenas, since the time of the hearings that
16 we've now discussed, have you or members of your
17 staff appeared to offer testimony concerning or pull
18 together materials and sent to the Legislature
19 materials about school finance in Texas?

20 A. After the decision of Rodriguez in 1973, which was
21 issued in March of 1973, I submitted my resignation
22 as superintendent of schools to establish an
23 organization that would do research and provide
24 technical assistance to the State of Texas for the
25 implementation of the reform legislation to equalize

1 school finance resources in the State of Texas and
2 have provided information to the Legislature and
3 other agencies in the 1973 session, '75, '77, '79,
4 '81, '83, '85 and '87, and all the special sessions
5 in between.

6 Q. The material that you or your staff submitted
7 regarded the equity of the school finance system in
8 Texas?

9 A. Yes, sir.

10 Q. So you have not hidden behind the log on your
11 objections to the school finance system in Texas?

12 A. I don't understand that question.

13 Q. You have not kept secret your objections to the
14 school finance system in Texas?

15 A. No, sir.

16 Q. Let's go back a little bit to IDRA. Was one of the
17 reasons for the founding of IDRA to deal with the
18 issue of equity of school finance in Texas?

19 A. Yes, sir.

20 Q. Have you, during most of the time that IDRA has
21 existed, had at least one full-time staff member
22 working on school finance issues in Texas?

23 A. Yes.

24 Q. Have you also had full-time staff members working on
25 issues of property tax equity in the State of Texas?

1 A. Yes, sir, until very recent years when that component
2 became an independent entity, now known as the Equity
3 Center.

4 Q. Dr. Cardenas, during this period of time, I guess
5 going back at least to 1969, when you have been
6 involved in issues of school finance equity in Texas,
7 has the State of Texas reached school finance equity
8 yet?

9 A. No, sir.

10 Q. During that time, has there been any pattern that you
11 have noticed in your conversations or review of
12 literature produced by the State of Texas of any
13 promises to cure the problem?

14 MR. O'HANLON: Objection, Your Honor. That
15 is not a proper predicate. I need to know his
16 sources.

17 THE COURT: I think that's right. I'll
18 sustain.

19 MR. KAUFFMAN: Okay.

20 BY MR. KAUFFMAN:

21 Q. Dr. Cardenas, when you testified from time to time or
22 when your staff testified, did they receive any
23 reaction from these various legislative committees?

24 A. Yes, sir.

25 Q. Generally, what have those reactions been?

1 MR. O'HANLON: Objection, Your Honor. The
2 way of proving that up is through the testimony in
3 the committee record.

4 THE COURT: I'll overrule.

5 BY MR. KAUFFMAN:

6 Q. You may answer that.

7 A. In general, I think that the testimony was well
8 received and there was a lot of concern. However, in
9 most cases, there was very little reform activity
10 brought about during that specific session of the
11 Legislature.

12 Q. Very little reform being brought about, has that been
13 the pattern during the sessions?

14 A. Yes, sir. The only time that we saw almost any
15 significant amount of reform was in the House Bill
16 72, in that portion of House Bill 72, in the 1984
17 special session of the Legislature.

18 Q. At the present time, has the State of Texas reached
19 equity in school finance?

20 A. No, sir.

21 Q. Dr. Cardenas, have you come to any conclusions on the
22 effects of the system of school finance in Texas and
23 whether they deny equal educational opportunity to
24 children who attend low wealth school districts in
25 the State of Texas?

1 A. Yes, sir.

2 Q. What is that opinion?

3 A. I'm convinced that and I'm of the opinion that the
4 inequities in school finance has led to a denial of
5 equal educational opportunity to children living in
6 low wealth school districts in the State of Texas.

7 Q. Have you, based on your years of experience and
8 review of literature and work with staff, come to any
9 conclusions on whether the system of school finance
10 in Texas even to this day continues to deny equal
11 educational opportunity to children attending low
12 wealth districts?

13 A. I'm of the opinion that even today the system of
14 school finance in the State of Texas denies equal
15 educational opportunity to children in low wealth
16 school districts.

17 Q. Dr. Cardenas, what about the effects of the school
18 finance system on what we might call atypical
19 populations, like low income children,
20 Mexican-American children? Have you come to any
21 conclusion on whether the school finance system
22 denies to these children an equal educational
23 opportunity when those children are attending low
24 wealth school districts in the State of Texas?

25 A. Yes, sir. I think that the impact on low wealth

1 school districts and those of minority children, low
2 income children in low wealth school districts has
3 been more severe than the general population.

4 Q. By more severe, you mean they have suffered more from
5 the school finance system?

6 A. That's right, sir.

7 Q. Well, now, you've given us your opinions on these
8 subjects. What effect does that have on the kids
9 that go through the schools?

10 A. Well, I think that there is diminished performance in
11 terms of achievement, I think that increased
12 dropouts, I think that there is subsequent lesser
13 enrollment in college and pursuing academic studies,
14 I think it is handicapping in terms of employment and
15 certainly handicapping in terms of quality of life,
16 and I think it has a detrimental effect upon those
17 children in subsequent years throughout their whole
18 life.

19 MR. KAUFFMAN: I pass the witness, Your
20 Honor.

21 CROSS EXAMINATION

22 BY MR. O'HANLON:

23 Q. Dr. Cardenas, do you think the Edgewood Independent
24 School District could raise its tax rate to \$1.04?

25 A. Do I think that the Edgewood School District could

1 raise its rate to \$1.04 per \$100.00 evaluation? Yes,
2 sir.

3 Q. Okay. Have you been in Edgewood to see the effects
4 of House Bill 72 in that school district?

5 A. Yes, sir. I am operating several programs in the
6 Edgewood School District right now.

7 Q. Is it fair to say that the Edgewood Independent
8 School District received a substantial sum of money
9 from House Bill 72?

10 A. Yes, sir.

11 Q. How did they spend it?

12 A. I think there was expenditures in almost all
13 classifications of functions.

14 Q. So essentially, they significantly expended their
15 program offerings?

16 A. Some in program offerings, some in teachers'
17 salaries, some in reduced pupil/teacher ratios
18 required by House Bill 72, some in special education
19 and some in bilingual education and education of the
20 disadvantaged.

21 Q. Okay. When you say that you've looked at information
22 with respect to correlations of wealth, have you
23 looked at Dr. Harris' (Phon.) work?

24 A. I have seen some printouts from Dr. Harris, yes.
25 From the University of Texas at San Antonio?

1 Q. Yes, sir.

2 A. Yes.

3 Q. Would it surprise you that if you look at
4 correlations, that for example dropouts are
5 correlated with wealth? That is, that the wealthier
6 the district the higher the dropout rate?

7 A. I have seen no studies from Dr. Harris that correlate
8 dropouts with anything. I have done some studies
9 myself in the correlation between dropout and taxable
10 wealth and have come to the conclusion that the
11 higher the wealth of the school district, the lower
12 the dropout rate.

13 Q. Okay. So you disagree with Dr. Harris' finding?

14 A. I am not familiar with Dr. Harris' reports.

15 MR. KAUFFMAN: Your Honor, I object. Dr.
16 Harris' findings are not in the record and I disagree
17 with his description of Dr. Harris' findings anyway.
18 But whatever it is, they're not in the record.

19 THE COURT: Sustain.

20 MR. O'HANLON: May I take a break? I've
21 got them out in the hall.

22 THE COURT: Got who?

23 MR. O'HANLON: I've got the documents.
24 These were prepared for this litigation.

25 THE COURT: Okay.

1 MR. O'HANLON: While I kind of look this
2 up, could I ask Mr. Turner to proceed and then I can
3 probably move it along a bit faster.

4 THE COURT: All right.

5 CROSS EXAMINATION

6 BY MR. TURNER:

7 Q. Dr. Cardenas, when we talk about special problems of
8 students with special needs, such as proficiency in
9 the English language, what kind of state and federal
10 programs are there presently in law that are directed
11 to try to meet some of those needs?

12 A. Well, there is a state program which allows one-tenth
13 of 1 percent of the adjusted basic allowance
14 allocation as additional funds for providing language
15 responsive programs. At the federal level, there are
16 a few programs left, not very many in the State of
17 Texas, that do provide for some pilot studies or
18 basic studies in bilingual education.

19 Q. Have you been involved in any of those federal
20 programs?

21 A. Yes, sir.

22 Q. Give us an idea of what type of programs we're
23 talking about that come from the federal level.

24 A. Well, there is a training program in which
25 individuals wanting to train as bilingual or English

1 as a second language teachers may receive fellowships
2 or stipends to participate in those programs, but
3 then you have programs that are provided for the
4 school districts, a limited number of school
5 districts, to operate a bilingual program for a
6 portion of the school population at federal expense.

7 Q. Aren't there some summer programs provided in state
8 law that try to address this problem of English
9 deficiency, language --

10 A. Some school districts operate summer programs. I'm
11 not sure the state law makes any provision for summer
12 programs for limited English proficient children.

13 Q. Tell me how those programs work when they're
14 implemented in the school district. What do they do?

15 A. What programs?

16 Q. The LEP programs.

17 A. Well, they are usually of two types. One of them is
18 an emphasis on the acquisition of English as a second
19 language. The other could be a bilingual program in
20 which the student continues learning in the native
21 language at the same time learning the English
22 language and then subsequently makes a transition to
23 the English language.

24 Q. Now, were those kinds of programs in existence before
25 House Bill 72 passed?

1 A. Yes, sir.

2 Q. Were they reemphasized when House Bill 72 was passed?

3 A. They continued receiving funding, yes.

4 Q. Was that funding from both the state and the federal
5 level?

6 A. I don't think that federal resources have anything to
7 do with House Bill 72.

8 Q. Well, I understand that. But the programs that
9 you're speaking of are funded dually from the state
10 and the federal level?

11 A. There has been a big diminishing of the federal
12 effort in bilingual education in support for
13 bilingual education. There was a provision in House
14 Bill 72 for continued funding of bilingual education.

15 Q. What did House Bill 72 do in the kindergarten and
16 pre-kindergarten area that represented a change from
17 what was going on before House Bill 72 passed?

18 A. I believe House Bill 72 made a provision for -- a
19 program for four-year-old children for either
20 economically disadvantaged or limited English
21 proficient, and it does provide a kindergarten
22 program.

23 Q. Have you been able to see that four-year-old program
24 work in any of the districts that you're familiar
25 with?

1 A. Yes, I have.

2 Q. What's your evaluation of the contribution that that
3 four-year-old program has been able to make?

4 A. I think it's a very valuable contribution to the
5 education of atypical children.

6 Q. Dr. Cardenas, you mentioned that your organization
7 IDRA, that you formed after you stepped down as
8 superintendent at Edgewood, did research in property
9 tax issues?

10 A. Yes, sir.

11 Q. You did that until, did you say, the Equity Center --
12 that that component broke off and became the Equity
13 Center?

14 A. That's right, sir.

15 Q. Do you work closely with the Equity Center on issues
16 such as your organization is interested in?

17 A. Yes, some.

18 MR. TURNER: I'll pass the witness, Your
19 Honor.

20 THE COURT: Okay. Do you want some more
21 time? We can keep passing.

22 MR. O'HANLON: Yes. I would just as soon --

23 THE COURT: Have more time?

24 MR. O'HANLON: Actually, Your Honor, I'm
25 going to pass the witness. We've got a statistician

1 that can explain some of these probably a little bit
2 better than I can do it through cross-examination.

3 CROSS EXAMINATION

4 BY MS. MILFORD:

5 Q. Dr. Cardenas, you have used the term throughout your
6 testimony of Mexican-American students, minority
7 students, and language impaired students. Are you
8 testifying as to all minority students, or when you
9 use the term minority are you only referring to
10 Mexican-American students?

11 A. In different parts of the testimony, I've referred to
12 different segments of the population. I have never
13 used the word English impaired or language impaired.
14 I have never used that term.

15 Q. I think you said limited English --

16 A. Proficient.

17 Q. Yes. Do your studies reflect what percentage of
18 students are language impaired in school districts
19 above the average state wealth of 250,000 per student
20 and what percentage of the students below the state
21 wealth are limited English proficient?

22 A. I really don't know. We have not observed any
23 differences regardless of the wealth of a school
24 district, a number of limited English proficient
25 children. I would assume, if I had to guess, that

1 minority children -- language minority children in a
2 very high wealth school district probably have more
3 English language skills than they do in low wealth
4 school districts.

5 Q. But you don't know the answer to my question, what
6 percentage exist in each category, is that correct?

7 A. I could not give you a percentage other than saying
8 that many of your new arrivals following the
9 immigration cluster hypothesis seem to congregate in
10 the low wealth school districts.

11 Q. Would you rank Vietnamese immigrant arrivals in the
12 limited English proficiency category?

13 A. Depending on whether he can speak English or not.

14 Q. Presuming they can't speak English, new arrivals --

15 A. Then he would be limited English proficient.

16 Q. What school districts are they prone to be going to?

17 A. Any school district. They are scattered all over the
18 State of Texas.

19 Q. Do you have any studies reflecting which school
20 districts they are found in?

21 A. I have seen some data. I think there are some school
22 districts in the Gulf Coast area of Texas that have
23 high numbers of Asian-American populations.

24 Q. Are there not also equally high numbers of the
25 Asian-American population in the urban school

1 districts such as the Dallas, the Richardson, the
2 Plano, the Carrollton-Farmers Branch Independent
3 School Districts?

4 A. Not to my knowledge, no.

5 Q. Are you saying they are not there or you don't know?

6 A. I don't know.

7 Q. You don't know.

8 A. The only school district that I know -- well, I
9 really don't know.

10 Q. You don't know. Can you please give me the
11 statistics that support your conclusion that there
12 are more Hispanic students in the low wealth school
13 districts than there are in the high wealth school
14 districts? Can you give me what percentage of the
15 students in school districts having a property value
16 of 250,000 per ADA over and under are Hispanic
17 students?

18 A. I can't classify people. I would need a computer to
19 go ahead and get a printout of certain
20 classifications of people. I do know, for instance,
21 that if you take one-fourth of the school districts
22 enrolling -- if you take the school districts
23 enrolling one-fourth of the children, and those
24 school districts are at the lowest property wealth --
25 in other words, the one-fourth poorest school

1 districts in Texas -- that the Hispanic enrollment is
2 about 60 percent.

3 Q. Do you know what the Hispanic enrollment is in the
4 remainder of the school districts in the State of
5 Texas?

6 A. It diminishes. As tax wealth increases, you have a
7 diminishing with the exception of two urban centers,
8 Houston and Dallas.

9 Q. Houston and Dallas would not be classified as
10 property poor school districts, would they?

11 A. No.

12 Q. Do you know what their minority enrollment is in
13 either of those school districts?

14 A. Yes. I believe in Houston, the minority enrollment
15 approximates 50 percent.

16 Q. What about in Dallas?

17 A. I would assume somewhere around the 50 percent level,
18 also.

19 Q. This enrollment would include Hispanics also, would
20 it not?

21 A. Hispanics are a type of minority student, yes.

22 Q. So you are including them within the term minority
23 enrollment?

24 A. Yes, ma'am.

25 Q. So Dr. Cardenas, while minority students or Hispanic

1 students may be found in the low wealth district,
2 they may also be found quite heavily in the high
3 wealth districts also, may they not?

4 A. The concentration is highest in the low wealth school
5 district. They go 94 percent minority. The 5
6 percent of the poorest school districts in Texas --
7 the enrolling 5 percent of the children in the
8 poorest school districts of Texas have 94 percent
9 minority populations. Neither Houston or Dallas come
10 anywhere close to that concentration of minority
11 populations.

12 Q. But the numbers or the ADA enrollment of the large
13 urban school districts that hide behind minority
14 populations such as Dallas and Houston, the total
15 numbers would be larger than the actual numbers in
16 the low wealth school districts, would they not?

17 A. Probably not. If you look at the Rio Grande Valley,
18 no, I don't think Houston would have more --

19 Q. Combined?

20 A. -- Hispanics than the Rio Grande Valley does.

21 Q. Houston, Dallas, the large urban schools that do have
22 a minority population, if you took their total
23 numbers combined, they would at least come close, if
24 not exceed?

25 A. Well, I think San Antonio and the Valley would

1 probably have a higher number.

2 Q. Do you know the answer to the question, Dr. Cardenas?

3 A. I can give a professional opinion.

4 Q. Your opinion is --

5 A. That San Antonio and the Valley probably have higher
6 Hispanic concentrations, total number, than Houston
7 and Dallas combined.

8 Q. But this is your opinion and not based on any
9 specific research or fact or numbers?

10 A. It is an expert opinion based on working with those
11 school districts and the data.

12 MS. MILFORD: No further questions.

13 MR. DEATHERAGE: I have no questions.

14 MR. KAUFFMAN: We have nothing further.

15 THE COURT: I have a few.

16 EXAMINATION

17 BY THE COURT:

18 Q. Do you know how many minority students there are in
19 Texas, a rough idea?

20 A. I would estimate something like right under
21 1,000,000; about 900,000.

22 Q. Okay.

23 A. I'm sorry. Including Black, Mexican-American and
24 Hispanic, it would probably be one and a quarter
25 million, closer to one and a quarter million.

1 Q. I want to ask you about your activities about
2 informing the Legislature of what you see as
3 disparities and the inequalities in the system since
4 Rodriguez. You went through that rather quickly.

5 Since Rodriguez, up until now, can you tell me
6 about what activities you or your organization has
7 engaged in to inform the Legislature of what you see
8 the situation to be.

9 A. Most of the communication with the Legislature has
10 been in terms of technical information, data, that
11 has been provided to the Legislature.

12 Q. Tell me how it's been provided.

13 A. They have meetings of the various committees,
14 certainly the Education Committee, sometimes
15 subcommittees of the Legislature, in some cases the
16 Appropriations Committee, and then they have other
17 groups such as the caucuses, the Hispanic caucus, the
18 Black caucus, and we have been requested by those to
19 provide information on school finances in the State
20 of Texas.

21 Q. But let me ask you this: Have you been involved in
22 informing the Legislature about what you perceive the
23 financial situation to be? Have you personally been
24 involved with informing the Legislature, either by
25 going there in person or testifying before interim

1 committees or commissions --

2 A. Yes, sir.

3 Q. -- since Rodriguez, up until now?

4 A. Yes, sir. Also, we publish a newsletter that
5 contains information about school finance in Texas
6 and actually have written or published over 100
7 articles. These are also mailed to every legislator
8 in the State of Texas. As well as formally being in
9 committees, either myself or members of the staff
10 testified.

11 Q. Have any legislators from areas that have, say, their
12 districts are made up of middle to higher wealth
13 school districts, have any of them ever visited some
14 of the school districts that are low wealth that you
15 know of?

16 A. Not to my knowledge, sir.

17 Q. Okay.

18 A. One exception. There were hearings that were
19 conducted right after Rodriguez and there was a
20 number of legislators that attended the hearings at
21 some of the -- in fact, they were held, some of them,
22 in the Edgewood School District, but I really do not
23 remember the composition of the members of the
24 committee. I could assume there may have been some
25 legislators there that represented medium or high

1 wealth school districts.

2 I do not remember a single case of a legislator
3 from a medium or high wealth school district making a
4 specific visit to a school district that was low
5 wealth.

6 Q. Well, if this problem has existed since Rodriguez,
7 why haven't those who are interested in school
8 finance equity, as you call it, why haven't you been
9 successful in getting your views across to the
10 Legislature and seeing a more equitable distribution
11 of finance? Why haven't you had success?

12 A. A number of bills have been introduced at every
13 session of the Legislature. However, as Mr. Craig
14 Foster testified yesterday, they have not had the
15 political power to bring about this type of change in
16 the Legislature.

17 Q. Well, if there is inequity, then why wouldn't the
18 districts that have moderate to substantial wealth,
19 if there is inequities, as you say, why wouldn't they
20 be willing to help you?

21 A. Because the school districts that have moderate and
22 high wealth would rather let the system remain as it
23 is because they have a favored position in the system
24 as it is right now.

25 Q. So to change the system up until now, let's say, have

1 you been able to get the votes to change the system?

2 A. Minor changes have been made in the system and there
3 has been some provisions made which are reformatory;
4 however, not to the extent that we can say that the
5 problem has been eliminated.

6 Q. What do you think it would take to eliminate the
7 problem, as you say?

8 A. I think that there are many, many options available
9 to the State of Texas and the state can consider its
10 options. Certainly, in my opinion, the State of
11 Texas provides money for education in two forms. One
12 of them is by levying taxes, and then distributing it
13 to the school districts. The second form which
14 provides money is by giving school districts taxing
15 power and the power to collect and utilize taxes for
16 education.

17 I think that it is possible that the State of
18 Texas could take an extreme position and remove the
19 power of school districts who collect and levy taxes
20 and put the whole system strictly on a state funded
21 basis. This would make it a state funded system of
22 education. Certainly it is within the power of the
23 State of Texas to do so.

24 The State of Texas could look for intermediate
25 taxing units or the creation of intermediate taxing

1 units that would allow a broader tax base. One of
2 the problems is the type of tax base that we have.

3 There are other forms of taxation that are used
4 in other states that provide more funds, including
5 more progressive types of taxes, both at the state
6 and local level which provide more funds for
7 education. I think that consolidation of school
8 districts, though I'm generally not in favor of
9 creating huge school districts, I think that
10 consolidation of school districts, some consolidation
11 would provide increased tax bases. So it is a
12 question of equalizing the tax base for the various
13 school districts in the state.

14 Q. Well, a proposal has been put forth here that
15 equalization or a move towards equalization could
16 occur, given the law as it is now, but that -- and
17 not change the law so much as change the amount of
18 money that the Legislature would decide upon equals a
19 quality education, and then having more money as a
20 result of that, and maybe one or two other decisions
21 that the Legislature in its discretion can make that
22 would make more money flow to poor districts as
23 opposed to those districts that have greater tax
24 wealth. But those decisions would still rest with
25 the Legislature every couple of years when they were

1 dealing with this matter. How do you feel about
2 that?

3 A. I think that a guaranteed yield, which I have not
4 mentioned yet, is a very good way of being able to
5 provide money for low wealth school districts. That
6 is, that if you set a tax rate and the Legislature
7 guarantees the yield, it would mean that the higher
8 wealth school districts would have less funds, but
9 certainly the low wealth school districts would have
10 more. I would certainly --

11 Q. I think what I'm getting at is, rather than
12 specifics, is if you leave substantial discretion to
13 the Legislature about setting figures that would
14 result in more money flowing to the poor districts,
15 how do you feel about leaving that discretion with
16 the Legislature?

17 A. Well, in the past, the Legislature has not met that
18 responsibility. I'm doubtful that the Legislature is
19 going to equalize educational opportunity in terms of
20 school finance equity in the State of Texas.

21 Q. Well, let me say this now. You seem to be saying to
22 me since Rodriguez and before, it was not politically
23 feasible to equalize, right?

24 A. That's right.

25 Q. Now, what makes you think it is going to be

1 politically feasible in the future if you can devise
2 a system that if the Legislature arrives at certain
3 figures for certain formulas or certain amounts that
4 equalization will occur, but what makes you or
5 anybody else think that the Legislature is going to
6 do that henceforth if they haven't done it in the
7 past?

8 A. Well, I would hope that the courts would force the
9 Legislature to do so and establish a plan which is
10 equitable in the State of Texas. This certainly has
11 happened --

12 Q. My point is, if that plan means that a court has to
13 decide a certain ratio or a certain amount, as an
14 example, a certain amount of money that equals a
15 quality education, then that means that the court is
16 the legislator, that the Court is taking that
17 discretion away from the Legislature. Do you
18 understand what I'm saying?

19 A. Yes, sir. That is something that historically has
20 happened on many occasions.

21 Q. Well --

22 A. If I may respond to a previous question, Your Honor.
23 I think it is possible to set up an equitable system
24 of finance in the State of Texas with a
25 self-adjusting mechanism. This has happened in many

1 types of legislation in which you have an automatic
2 adjusting mechanism in it that would require the
3 Legislature to set rates on an annual or biannual
4 basis.

5 Social Security, for instance, has a
6 self-adjusting mechanism, and though occasionally
7 Congress may make adjustments to the adjusted
8 mechanism, it does procede for an extended number of
9 years with automatic adjustments being made, the cost
10 of living allowance, which is allowed in Social
11 Security.

12 It is feasible to design a plan here in the
13 State of Texas that would establish an equitable
14 system of school finance and build a self-adjusted
15 mechanism that would gear adjustments to property
16 changes, property value changes, of cost of education
17 changes. I even think that there is the technical
18 competency here in the State of Texas to do so.

19 THE COURT: Anymore questions?

20 MR. KAUFFMAN: No, Your Honor.

21 MR. O'HANLON: No.

22 EXAMINATION (RESUMED)

23 BY THE COURT:

24 Q. Would you happen to have any figures about the
25 numbers of low wealth districts, say, in San Antonio

1 and south?

2 A. In San Antonio, I believe that there are only three
3 school districts that are above the state average.
4 For the most part, almost all school districts south
5 of San Antonio are low wealth school districts, with
6 the exception of some small districts such as Santa
7 Gertrudis or perhaps Juno, which have small numbers
8 of students. Almost all the rest are low wealth
9 school districts.

10 Q. Okay. How many students are we talking about in San
11 Antonio and south?

12 A. San Antonio and south, we're talking about, oh, I
13 imagine we're talking at least perhaps a million
14 students -- I'm sorry -- 700,000 students or
15 something like that.

16 Q. Okay. I understand you are doing that off the top of
17 your head. You can probably verify that with a
18 little bit closer investigation.

19 A. Yes, sir.

20 THE COURT: Any other questions?

21 MR. O'HANLON: No.

22 THE COURT: You may step down, sir.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Are you going to let him be
25 excused?

1 MR. KAUFFMAN: Yes, sir.

2 THE COURT: You may be excused.

3 (Witness excused.)

4 MR. KAUFFMAN: Your Honor, we now would
5 like to introduce some exhibits into the record. I
6 just gave these to counsel for Defendants this
7 morning at the beginning of the day, so if there are
8 objections to some of them, we'll try to deal with
9 them at a later time. I think there will be no
10 objections to most of them.

11 This will be Plaintiffs' Exhibit No. 1, Your
12 Honor. It is called Atlas of Texas of Public School
13 Districts. It is a county-by-county breakdown of
14 every county in the State of Texas with the districts
15 in those counties. I just opened up to one page, I
16 came up with Grayson County. In this way, the Court
17 can see the actual configurations of every district
18 in the State of Texas. Plaintiffs' Exhibit 1.

19 You might notice that the outlines of those
20 districts is somewhat akin to the artwork I think
21 that your daughter has done for you.

22 But that's Plaintiffs' Exhibit 1, and it's a
23 state document created by TEA. We have agreed with
24 counsel for TEA that since the time of the publishing
25 of this document in September '83, which I think it

1 is the latest one available, there might have been
2 changes, and we will accept an amendment of the
3 exhibit to reflect whatever TEA wants to as far as
4 whatever changes have occurred in those districts
5 since 1983.

6 THE COURT: Any objection to this?

7 MR. O'HANLON: No, Your Honor.

8 I think that's the most current actual
9 compilation. There have been some, but I don't think
10 we've ever -- the state has compiled those in another
11 document. So I would just -- there have been some
12 changes. I don't think anything, since we're trying
13 a statewide case, that would significantly impact the
14 outcome of this case.

15 MR. KAUFFMAN: I think that's right, Your
16 Honor.

17 Some of the districts, Your Honor, that have
18 been discussed in here during the case, for instance,
19 the San Elizario District is County No. 71. I'm not
20 sure there are page numbers here, but if you'll look
21 at the bottom right-hand corner to 71, you can see
22 two pages involving El Paso County. You can see the
23 relationship of San Elizario to its surrounding
24 districts, as well as Socorro and its surrounding
25 districts, as well as the outline of the Ysleta

1 District and its interesting configuration.

2 Also, of course, there is Harris County. We
3 had a witness from North Forest who discussed Harris
4 County. You can see the relation of North Forest ISD
5 to the other districts in that county. So that is
6 Plaintiffs' Exhibit 1.

7 THE COURT: No objection to 1, right?

8 MR. O'HANLON: No objection.

9 THE COURT: It will be admitted.

10 (Plaintiffs' Exhibit No. 1 admitted.)

11 THE COURT: Is this your exhibit here?

12 MR. KAUFFMAN: Yes, Your Honor. That will
13 be the Court's exhibit. I didn't put a mark on it.
14 It will be Plaintiffs' Exhibit 1.

15 MR. GRAY: If the Court would like an extra
16 copy --

17 THE COURT: Well, I don't think so. That's
18 probably expensive.

19 MR. KAUFFMAN: Your Honor, Plaintiffs'
20 Exhibit No. 8 is something called the Texas School
21 Directory. It's also a publication of the Texas
22 Education Agency.

23 We offer this to show the Court the actual
24 schools in each district in the State of Texas with
25 their student populations, as well as personnel in

1 those districts. It has each county in the state in
2 the back. It has some descriptions of the board
3 compositions. And in the far back of the book, it
4 has a description of the staff, the administrative
5 staff of the various districts.

6 We do not offer it to the extent that it talks
7 about property values because we have other evidence
8 to that affect. So we offer it, except for the
9 property values in there. We don't want to give
10 conflicting evidence to the Court.

11 THE COURT: 8.

12 MR. TURNER: Let me flip through it, Your
13 Honor. I don't think I've looked at this before.

14 MR. R. LUNA: Your Honor, I'm not sure what
15 we're accomplishing by starting to load up the record
16 with miscellaneous maps and records and so forth. If
17 there is something in here of particular importance --
18 and I got a whole box full. It looks like someone
19 emptied a closet of exhibits over here that we're
20 going to talk about in a minute, so I guess my
21 question is I'm curious to where it is we are going
22 with this. If it's cumulative, we've already got
23 evidence in the record. It appears to me it's merely
24 cumulative of other documents that are already in
25 there.

1 MR. KAUFFMAN: Of course, it is not
2 cumulative. We have no other document that tells the
3 Court what schools are in every district in the
4 state, what the configuration is. As a matter of
5 fact, it's an issue that's been discussed in some
6 detail during cross-examination.

7 In terms of the Court looking at the statewide
8 system, the information is relevant to what the
9 statewide system is like, what any combination of
10 districts in terms of taxing authorities might be
11 like, what the various configurations of the
12 districts are. I mean, I agree it's very basic
13 information, but it's certainly relevant and it's not
14 cumulative.

15 MR. O'HANLON: I would caution in '85-'86,
16 there is a newer document. I'm not telling him how
17 to try his lawsuit, but there is a newer document
18 that's been published.

19 MR. KAUFFMAN: If it was just published,
20 we'll have no objection to adding that, if it's an
21 '86-'87. This is '85-'86, which are the same years
22 as our data, which is the reason why we used it.

23 MR. TURNER: I'm not sure I understand what
24 the relevance of this book is.

25 MR. GRAY: The relevance of the book from

1 our point of view is it shows the Court the number of
2 schools in each school district, the number of
3 principals, staff, the whole basic information about
4 every school district in this state, just as the maps
5 show the configuration that the Legislature has
6 chosen to design every school district in this state.

7 MR. DEATHERAGE: Now, I'm going to object
8 to that statement. That's not an accurate
9 characterization of how these school districts are
10 created. If you're inferring that the Legislature
11 established these boundary lines, that's a
12 misrepresentation, Counsel, and you know it.

13 MR. GRAY: Excuse me. They are creations
14 of whoever created them and that's what they look
15 like, and that's our purpose.

16 THE COURT: I'll overrule. We will have 1
17 and 8 in evidence. It may be cumulative, 8, but --

18 (Plaintiffs' Exhibit No. 8 admitted.)

19 MR. KAUFFMAN: Your Honor, I would now like
20 to introduce Exhibit No. 9, Plaintiffs' Exhibit No.
21 9. Plaintiffs' Exhibit No. 9 is the ranking of
22 school districts in the state by wealth per pupil.
23 It is a TEA document. It's wealth per pupil for the
24 '84-'85 school year. It is just to -- although we're
25 dealing with '85-'86 on a constitutionality, we have

1 had historical discussions about developments of
2 school district changes in property values, and this
3 will show what, according to the TEA, what the
4 ranking of districts in the state according to
5 property wealth per student was for '84-'85 school
6 year, Plaintiffs' Exhibit No. 9.

7 We move that be admitted.

8 MR. O'HANLON: I don't have any objection.

9 MR. TURNER: Is this information that we're
10 putting in the record because it forms the basis of
11 Mr. Foster's analysis? This is the TEA data from
12 which he worked?

13 THE COURT: He says this is '84-'85. He
14 just wants it in there because there has been some
15 discussion about '84-'85.

16 MR. KAUFFMAN: That's correct, Your Honor.

17 MR. TURNER: We have no objection, Your
18 Honor.

19 THE COURT: 9 will be admitted.

20 (Plaintiffs' Exhibit No. 9 admitted.)

21 MR. KAUFFMAN: Your Honor, Plaintiffs'
22 Exhibit No. 10 is the Texas Program Cost Differential
23 Study of March 8, 1985. It was the predecessor to
24 the Accountable Cost Study. Mr. Foster talked about
25 it in his testimony yesterday.

1 The relevance of this is to show that there --
2 at least during the 1985 session of the Legislature,
3 there were certain numbers available related to the
4 setting of the basic allotment and setting of the
5 program cost. Again, it is a state document under
6 seal. I've learned a good deal of evidence lately,
7 Your Honor. I just want to show that one off. It's
8 Plaintiffs' Exhibit No. 10.

9 THE COURT: Any objection to 10?

10 MR. O'HANLON: No, Your Honor.

11 THE COURT: It will be admitted.

12 (P Plaintiffs' Exhibit No. 10 admitted.)

13 MR. KAUFFMAN: Your Honor, Plaintiffs'
14 Exhibit 13 is Senate Bill 4, which was introduced
15 June 8, 1984. It is the senate bill that includes
16 the numbers that Mr. Foster testified about as far as
17 the setting of the basic allotment at what would have
18 been, I think, \$1,750.00 per student in daily
19 membership, which is eighteen hundred and something
20 in terms of students in average daily attendance.
21 Let me make sure I have the numbers right.

22 MR. O'HANLON: Actually, Your Honor, that
23 is not all that's in Senate Bill 4. That's not all
24 of it.

25 MR. TURNER: Well, Your Honor, I'm not sure

1 we can tell from this that this is Senate Bill 4 that
2 was introduced. This could have been a bill that
3 somebody had drawn up, planned to introduce, and
4 didn't. There is no clerk's certificate on it from
5 having been filed with the clerk of the secretary of
6 the senate. So this could be some legislator's draft
7 that a legislative counsel prepared for him.

8 MR. R. LUNA: In fact, on Page 38 of the
9 bill, there are handwritten notations on the bill in
10 the middle of the page.

11 MR. KAUFFMAN: Yes, Your Honor. That was
12 not in the original bill. That was mine, and I
13 apologize. Let me explain that. That was what I was
14 looking for.

15 The setting in this proposed statute was
16 \$1,715.00 a school year for students in average daily
17 membership, which relates to \$1,842.00 for students
18 in average daily attendance. Both Dr. Hooker and Mr.
19 Foster discussed those numbers with the Court.

20 I understand about the seal, and I would offer
21 it. If it is objected to, I would reserve the right
22 to come back with a properly sealed and delivered
23 document, if there is an objection to it.

24 MR. R. LUNA: We do object.

25 THE COURT: There seems to be objection, so

1 it will not be admitted.

2 MR. KAUFFMAN: Yes, sir.

3 Your Honor, Plaintiffs' Exhibit 14 is the
4 presentation to the SCOPE Committee made by Mr.
5 Foster -- excuse me. I think it was actually made by
6 Mr. Kirkpatrick November 16, 1983. It was filed with
7 the records of the SCOPE Committee. It is
8 Plaintiffs' Exhibit 14. It was testified to by Mr.
9 Foster as far as his presentation or the presentation
10 of Mr. Kirkpatrick of the Equity Center.

11 MR. TURNER: Mr. Kauffman, are you saying
12 this is the document that Dr. Kirkpatrick used to
13 make his presentation to who?

14 MR. KAUFFMAN: To the SCOPE Committee on
15 November 16, 1983.

16 MR. TURNER: Well, I thought we had
17 something in the record earlier that had reflected a
18 presentation document that Dr. Kirkpatrick had used,
19 because I remember distinctly down in the body of it,
20 it made some reference to the Equity Center support,
21 such and such, and we brought that to the Court's
22 attention.

23 MR. KAUFFMAN: I do recall that.

24 MR. TURNER: Are you saying this is an
25 additional document in addition to that presentation

1 outline that you had in evidence earlier?

2 MR. KAUFFMAN: Yes. It is an additional
3 document, not the same document. This was presented
4 by the Equity Center to the SCOPE Committee during
5 its earlier hearings in November of 1983.

6 THE COURT: This was presented to the SCOPE
7 Committee.

8 MR. KAUFFMAN: To the SCOPE Committee.

9 THE COURT: The one you're talking about
10 was presented, I think, to --

11 MR. KAUFFMAN: To the Legislature.

12 THE COURT: -- a senate committee.

13 MR. TURNER: That's right. So this is a
14 different document.

15 THE COURT: This was presented -- as I
16 understand it, this was presented to the SCOPE
17 Committee.

18 MR. KAUFFMAN: That's correct, Your Honor.

19 MR. R. LUNA: We object to this document,
20 Your Honor, Defendant-Intervenors, as being hearsay
21 as to us.

22 MR. KAUFFMAN: Your Honor, we'll offer it
23 as to the state then, since it was presented to a
24 state set committee, the SCOPE Committee, and not as
25 to the Defendant-Intervenors.

1 THE COURT: Mr. O'Hanlon, what are you
2 saying to it now?

3 MR. O'HANLON: I've never seen it before,
4 but I'm not sure of the purpose of the offer.

5 THE COURT: Okay. I'll take that as a
6 relevancy objection. Do you want to explain the
7 relevancy now?

8 MR. KAUFFMAN: Yes, Your Honor. We would
9 like to show that there was in the public domain as
10 presented to the SCOPE Committee these sort of
11 figures and analyses as early as November 1983 by the
12 Equity Center on behalf, in that case, on behalf of
13 its membership, which included low wealth districts.

14 Again, there have been allegations, at least,
15 that people were not presenting their points of view,
16 not presenting the problem clearly to the
17 Legislature, and we wanted to show that, in fact,
18 that's not the case. The problem was being presented
19 very clearly to public committees in the State of
20 Texas. Dr. Cardenas has talked about presentations
21 over many, many years. This relates to the process
22 that led to the passage of House Bill 72.

23 MR. O'HANLON: Again, what's relevant to
24 passage of legislation is what's in the official
25 record. I know the SCOPE Committee report was in the

1 official record. Unless there is -- I mean, they can
2 prove it up if they can show that it was shown to
3 somebody in the Legislature. But other than that, I
4 fail to see its relevancy.

5 THE COURT: Okay. I'll sustain. 14 will
6 not be admitted.

7 MR. KAUFFMAN: Your Honor, may I then try
8 to offer 14 for a different purpose? Can I offer 14
9 as a description of the school finance system
10 existing during the '83-'84 school year as a
11 historical measure? There have been in this case
12 many references to the changes from before to after
13 House Bill 72, and we certainly agree there were
14 changes, but we wanted to show the Court what the
15 system looked like in '83-'84.

16 MR. O'HANLON: He's going to have to prove
17 that up. He can't just assert that. I haven't had
18 the opportunity to examine the document, and
19 obviously the best evidence of what the school system
20 looked like or the school finance system are the
21 statutes themselves, not somebody else's analysis of
22 them.

23 THE COURT: I'll sustain.

24 MR. KAUFFMAN: Your Honor, maybe I'll do
25 better on the next one.

1 I would like to show you Plaintiffs' Exhibit
2 15.

3 MR. R. LUNA: I don't think so, but --

4 MR. KAUFFMAN: Plaintiffs' Exhibit 15 is an
5 article from the IDRA newsletter. Dr. Cardenas just
6 testified here about the IDRA newsletter. This is
7 something called "School Finance Equity, The
8 Challenge and The Chance Revived" by Albert Cortez,
9 who is a member of the IDRA staff working in the area
10 of school finance. This is an article in January
11 1983 which gives some historical information about
12 school finance in Texas and about "The Challenge and
13 The Chance" study.

14 MR. R. LUNA: Our objection as to this
15 particular document, Your Honor, is first of all it
16 is nothing more than an article. They have several
17 articles they are about to introduce that Albert
18 Cortez is not available for us to cross-examine. It
19 is an article from 1983. We object both on hearsay
20 grounds, as well as relevancy grounds.

21 THE COURT: Sustain.

22 MR. KAUFFMAN: Okay. Can I at least try
23 one more time?

24 THE COURT: You can try all you want.

25 MR. KAUFFMAN: Okay. This was some of the

1 information that was sent to all of the legislators
2 in the State of Texas that Dr. Cardenas has testified
3 about earlier. Of course, I suppose I could -- I
4 guess I can't anymore. He is gone.

5 THE COURT: Is this Plaintiffs' 16?

6 MR. KAUFFMAN: This is Plaintiffs' 15 we're
7 talking about, Your Honor. That was the one that
8 received the objection.

9 THE COURT: Well, no, I sustained the
10 objection to 15. Do you have another one there?

11 MR. KAUFFMAN: Yes, sir. Plaintiffs'
12 Exhibit 16 is a description of the property value per
13 student in the State of Texas for the '82-'83 school
14 year. Again, for historical purposes, it's a TEA
15 document put out by their division of information
16 analysis.

17 Again, it will give you some historical
18 perspective on the pattern of wealth per pupil in the
19 state in some earlier years, in this case, '82-'83.

20 THE COURT: What do you say to 16? It is a
21 TEA --

22 MR. O'HANLON: We have no objection.

23 THE COURT: It will be admitted, 16.

24 (Plaintiffs' Exhibit No. 16 admitted.)

25 MR. KAUFFMAN: Your Honor, Plaintiffs'

1 Exhibits 17 and 18 are a set of exhibits, part of the
2 study that Dr. Cardenas talked about regarding school
3 finance in Texas.

4 Plaintiffs' Exhibit 17 is Volume 7 of that
5 study by Robert Brischetto called "A Statistical Note
6 on a New Case for Discrimination in Texas School
7 Finance."

8 Plaintiffs' Exhibit 18 is one of the sections
9 of Dr. Brischetto's study Volume 2 called " The
10 Impact of Texas' 1975 School Finance Reform on Poor
11 and Minority Children."

12 These documents, for once, I know have been
13 provided to the Defendants in this case about a month
14 or two ago. The TEA actually has these documents in
15 their files in their library.

16 I would like to offer them again for the
17 historical information on school finance in Texas in
18 the late 1970s.

19 MR. O'HANLON: Objection, hearsay.

20 Same thing with the newsletter.

21 THE COURT: Let me look at that for a
22 moment.

23 MR. R. LUNA: We further object on the
24 grounds that the date 1979 is not relevant if offered
25 for historical perspective. We've already had a

1 historian on the stand. These can only be cumulative
2 because they are hearsay. We don't have an
3 opportunity to cross-examine.

4 MR. TURNER: We join in that, Your Honor.

5 THE COURT: I'll sustain.

6 MR. KAUFFMAN: All right. Let me go on. I
7 see a pattern here.

8 THE COURT: Consistent, if not correct.
9 That's my motto.

10 MR. KAUFFMAN: Plaintiffs' Exhibit 20 is a
11 study by John Augenblick and Kathleen Adams entitled
12 "An Analysis of the Impact of Changes in the
13 Funding of Elementary/Secondary Education in Texas,
14 1974/75 to 1977/78."

15 Again, it is a historical study. In this case,
16 I think it was supported by funds of the Texas
17 Legislative Commission on Public School Finance and
18 in a study that was chartered by the Education
19 Commission of the state and the Texas Legislative
20 Commission on Public School Finance.

21 MR. TURNER: Same objection, Your Honor.

22 THE COURT: It is hearsay?

23 MR. O'HANLON: Uh-huh.

24 THE COURT: Sustained.

25 MR. KAUFFMAN: All right. Your Honor,

1 Plaintiffs' Exhibit No. 21 is a report -- this is an
2 actual report of a senate committee of the State of
3 Texas called "A Report of the Joint Senate Interim
4 Committee to Study Public School Finance."

5 I want to make sure I get the right date of
6 this study. It was 1973, and it was a report of a
7 senate committee in the State of Texas called Public
8 School Finance. It involves issues in Texas public
9 school finance before 1975.

10 MR. O'HANLON: It is not a report of the
11 senate committee, it is a report of Peat, Marwick,
12 Mitchell & Company to a senate committee.

13 This is hearsay.

14 MR. KAUFFMAN: Your Honor, as a matter of
15 fact, I think that the letter is just some
16 introductory material, but the report itself was
17 adopted by the senate committee.

18 MR. R. LUNA: We don't have any objection
19 to the senate report, but we do object to this as
20 hearsay.

21 MR. O'HANLON: I would have to check to see
22 if it was adopted by the senate committee.

23 THE COURT: What was adopted? The report?

24 MR. O'HANLON: Yes. It is certainly not
25 self-authenticating. Its existence is not

1 self-authenticating.

2 THE COURT: Okay. I'll sustain. Not
3 self-authenticating.

4 MR. KAUFFMAN: All right. Plaintiffs'
5 Exhibit No. 22 is a report by the Texas Research
6 League. Is Mr. Barnes here? Yes, he is.
7 Plaintiffs' Exhibit 22 is called "Texas Public School
8 Finance, A Majority of Exceptions," dated November
9 1972.

10 It was presented to the State of Texas by the
11 Texas Research League which is not a state agency,
12 but is a private, nonprofit research agency doing
13 work in the area of school finance in Texas.

14 MR. O'HANLON: Same objection.

15 THE COURT: Sustained. We're going to stop
16 for break.

17 (Short break.)

18 MR. KAUFFMAN: I have three more exhibits.
19 It appears that I'm going to get the same objections,
20 but I would like to proffer them, if I could.

21 THE COURT: All right.

22 MR. KAUFFMAN: Exhibit 23 is a publication
23 of the U. S. Commission on Civil Rights in 1972
24 entitled "Mexican-American Education in Texas, A
25 Function of Wealth."

1 It is a federally published document. I
2 suppose it does not need to be authenticated, but I
3 am sure there will be objections as to relevancy.

4 MR. TURNER: We do have that objection,
5 Your Honor.

6 THE COURT: Which objection?

7 MR. TURNER: As to relevancy. I'm not sure
8 -- we've talked about it being a document under seal.
9 I'm not sure that it is. It looks like some kind of
10 a report without any seal or authentication on it.
11 But it is a 1972 report and we think relevancy alone
12 would be sufficient to --

13 MS. MILFORD: We will add a hearsay
14 objection to that too, Your Honor. The author is not
15 here for cross-examination purposes.

16 THE COURT: Sustain.

17 MR. KAUFFMAN: Your Honor, can I at least
18 try?

19 THE COURT: I don't know how you can get
20 around hearsay, but you can at least try.

21 MR. KAUFFMAN: Okay. Sure.

22 Again, from my evidence lessons yesterday, I
23 think that this is a public record or report of the
24 U.S. Commission on Civil Rights. The job of the U.S.
25 Commission on Civil Rights was to report on civil

1 rights issues affecting the United States, and
2 therefore, I suppose it does fit under Rule 803.8 as
3 an exception to the hearsay rule, which says
4 "Records, reports, statements or detailed
5 compilations in any form of public offices or
6 agencies setting forth (b) matters observed pursuant
7 to the duty imposed by law as to which matters there
8 was a duty to report."

9 The duty of the U. S. Commission on Civil
10 Rights was to report on civil rights issues, and this
11 is a report of the U. S. Commission on Civil Rights.

12 That would apply both to Plaintiffs' Exhibit 23
13 and Plaintiffs' Exhibit 24 which is entitled
14 "Inequality in School Financing, The Role of the
15 Law."

16 MR. RICHARDS: In that connection, Your
17 Honor, I was with the commission at one time. Their
18 specific statutory responsibility under the statute
19 is to periodically examine the state of civil rights
20 in the United States and make reports to Congress of
21 their findings and recommendations. It would be
22 pursuant to that authority that these reports were
23 prepared.

24 THE COURT: Let me get all the objections.
25 He is now offering 23 and 24. They're both U. S.

1 Commission on Civil Rights reports or studies.

2 MR. TURNER: Your Honor, we think the same
3 objections apply. As we look through this document
4 itself, it's clear that it's a report that, in part,
5 at least -- I don't know what all of it does, but in
6 part, it is a commentary on the Minimum Foundation
7 Program concept and a chapter on the local fund
8 assignment. It doesn't show in the report who
9 authored this section.

10 There is also a chapter on supplementing the
11 Minimum Foundation Program, and all of these relate
12 specifically, if I'm reading it here, to the Texas
13 system as it existed, I suppose, in 1972. I may be
14 missing a chapter here. Somewhere in here, I'm sure
15 it will tell us who actually prepared this study.

16 MR. KAUFFMAN: Yes, it does. On Page 4,
17 under acknowledgements.

18 MR. TURNER: Evidently, Your Honor, this is
19 some report of the Mexican-American Education Study
20 Committee. It appears to be an advisory committee in
21 the Office of Civil Rights program and policy.

22 So again, I think, Your Honor, what we're
23 looking at here is an advisory report submitted to a
24 government agency which then in turn turned around
25 and published the report. I don't believe it

1 purports to be any conclusions of the commission, but
2 merely a report of an advisory group to the
3 commission, as such, even though I don't see a seal
4 or anything on it. But again, I think we're dealing
5 with advisory committee reports just like we've been
6 objecting to the advisory committee reports that have
7 gone to the Legislature.

8 So we should, I think, have the opportunity --
9 on reports of this nature have the opportunity to
10 cross-examine whoever wrote it, and again it's a 1972
11 document that appears to analyze the Texas system at
12 that time.

13 THE COURT: Okay. I'm not so much worried
14 about the relevancy. I think a history of this same
15 sort of alleged discrimination, I think that's
16 relevant. But I don't know about authentication and
17 hearsay.

18 MS. MILFORD: We would submit that it's the
19 same type document that was excluded in spite of --
20 like the TEAMS document that was excluded in spite of
21 the quoted exception to the hearsay rule.

22 THE COURT: Okay. Anything else to say?

23 MR. KAUFFMAN: Yes, Your Honor.

24 As far as the committee, the normal process of
25 the U.S. Commission on Civil Rights is to set up

1 committees to work with its staff when preparing
2 reports. This is a report of the U.S. Commission on
3 Civil Rights, and they have given the members of that
4 committee so that would be known. This is part of a
5 four-part or five-part study on Civil Rights called --
6 in fact, on Page 6 it says "This report is the fourth
7 of a series on Mexican-American education in the
8 Southwest by the U. S. Commission on Civil Rights."
9 That's who published it.

10 As far as authenticity, it is a publication of
11 the U. S. Government Printing Office. It says four
12 times it is a U. S. Commission on Civil Rights study.
13 It does not have a seal on it. I don't know whether
14 the U. S. Commission on Civil Rights has its own
15 seal.

16 So we would again say that it is authentic
17 under -- I guess that was Rule 902 as to its -- well,
18 it's authentic under 902 Self-Authentication of
19 Domestic Public Documents either under seal or not
20 under seal, 902(1) and 902(2). We think it is not
21 hearsay under Rule 803(8) of the State Rules of
22 Evidence.

23 I have been involved in at least -- I guess at
24 least 20 cases involving civil rights of
25 Mexican-Americans, and these reports have been in

1 almost, I think, every one of them.

2 MR. O'HANLON: It seems to me like we might
3 have worn them out under those circumstances, Judge.

4 I would submit that what is sauce for the goose
5 is sauce for the gander. As I recall yesterday when
6 we were offering Exhibit 26, the Plaintiffs objected
7 to commentary as opposed to statistics, and I think
8 this report is almost completely commentary. So I
9 think we ought to have the same sort of rulings.

10 MR. KAUFFMAN: It is commentary. It is not
11 written by the Plaintiffs, though. Theirs was
12 written by the Defendants.

13 MR. TURNER: Your Honor, when you look at
14 24, there is a chapter in there that sort of reads
15 like a legal brief; citing cases, analyzing cases --

16 THE COURT: I'll sustain.

17 MR. KAUFFMAN: All right, Your Honor. I'll
18 go on.

19 Plaintiffs' Exhibit 25 and Plaintiffs' Exhibit
20 26 are reports called "The Challenge and The Chance,"
21 which are reports of the Governor's Committee on
22 Public School Education. They were testified to, I
23 think, by Dr. Hooker and Dr. Walker. They have
24 become a sort of an important part of history of
25 school finance in the State of Texas. I remember

1 during Dr. Kirby's deposition or I think it was Mr.
2 Moak's deposition, they stated these documents were
3 the best summary of the issues before them at that
4 time. As I recall, I think Mr. Moak, who is the
5 deputy commissioner of TEA, was on the staff when
6 this study was written. His name is on the second
7 page. But that is the report.

8 MR. O'HANLON: I don't object to it.

9 MR. R. LUNA: We object on the grounds of
10 both hearsay and relevancy since this is a 1969
11 report, as to the Defendant-Intervenors, Your Honor.

12 MR. KAUFFMAN: We offer it as to the State
13 Defendant then, as least. I'm not sure whether we
14 have heard objections from the other --

15 MR. TURNER: I join in the objection.

16 THE COURT: 25 --

17 MR. KAUFFMAN: 25 and 26, Your Honor, the
18 two-part study, "The Challenge and The Chance."

19 THE COURT: Those two will be admitted as
20 to the Defendant, but not the Defendant-Intervenors.

21 MR. KAUFFMAN: Yes, sir.

22 Your Honor, that's all we have by the
23 Plaintiffs in terms of exhibits. I think that the
24 Plaintiff-Intervenors want to reurge.

25 (Plaintiffs' Exhibit Nos. 25 and 26 admitted.)

1 MR. RICHARDS: We have indicated we were
2 resting subject to the photograph issue. I thought I
3 understood from our colloquy yesterday at least as to
4 the photographs which were not offered for comparison
5 purposes, but really simply conditions in certain
6 school districts that Mr. Pogue's authentication of
7 them was sufficient.

8 So we would reoffer at this time Plaintiffs'
9 304-A through 304-F, which are photographs of South
10 San Antonio Junior High; Exhibits 303-A through
11 303-C, which is Dwight Middle School in south San
12 Antonio; Exhibits 303-D through 303-G, which is
13 Athens Elementary of south San Antonio; Exhibits
14 305-A through 305-U, which are photographs of the
15 Southside Junior High at Southside School District;
16 305-V through 305-X, which are photographs of Pearce
17 Elementary in the Southside system; Exhibits 308-A
18 through 308-Z, which are photographs of Edgewood High
19 School in the Edgewood School District; and 309-A
20 through 309-M, which are photographs of Gardendale
21 Elementary of Edgewood Independent School District;
22 and Exhibits 311-A through 311-J, which are Annie S.
23 Putegnat Elementary of Brownsville ISD; 307-A through
24 307-G, photographs of Clearwater Elementary of
25 Brownsville; Exhibits 312-A through 312-J, which are

1 photographs of Central Intermediate in Brownsville;
2 and 306-A through 306-I; El Jardin Elementary in
3 Brownsville.

4 These have been authenticated by the
5 photographer and he has testified previously that
6 they accurately reflect conditions on the dates he
7 was there and took the pictures, and the record
8 contains the dates the photographs were taken by his
9 testimony. So we would reoffer these photographs at
10 this time, not for making any comparison purposes,
11 but simply to show conditions as they existed on
12 those occasions at those schools as enumerated.

13 MR. R. LUNA: We, of course, again reurge
14 all of our objections to the same photographs.

15 In addition, these are merely to show the
16 conditions of the poor districts and they are an
17 improper attempt to bolster testimony that is already
18 in the record of these districts and conditions they
19 have described.

20 Furthermore, again, there has been no attempt
21 to be selective or to show the condition of the
22 districts, only of a specific hole in the wall or
23 whatever else the photographs may contain. As such,
24 they are not relevant to anything that is before the
25 Court in terms of the school years we've been

1 discussing, and the particular photographer is not
2 able to explain the course of conditions surrounding
3 the particular events which they supposedly depict,
4 such as whether or not those conditions existed
5 before or in the process of being repaired or what
6 caused the conditions that may be shown.

7 As such, for all those reasons, they are simply
8 not relevant.

9 MR. TURNER: We also join in that, Your
10 Honor. Again, I think it's an effort to put
11 photographs into the record that are intended and
12 designed to show some selected examples of the
13 poorest conditions they could find within the
14 districts that they represent. It's going to, in
15 effect, we think, duplicate some of the actual
16 testimony that's been from the witness stand.

17 We think it also is prejudicial in the effect
18 that since it's a selection that they made of
19 buildings that are in poor condition, in essence, if
20 it is admitted and the prejudicial quality of it
21 doesn't outweigh its contributions in the case, then
22 we'll be forced to go out and take pictures and look
23 at what the other buildings were like and take those
24 pictures.

25 We don't believe it adds anything to the case

1 and that even though it may depict a building in
2 question on the day the picture was taken, I've
3 observed the pictures and there are some things about
4 those pictures that one would want to inquire about
5 after having viewed them. One picture showed a scene
6 between two buildings and it looks like just a bunch
7 of boards and all kind of things laying around and
8 you have the impression from looking at the picture
9 that this is the way they keep their campus down
10 there. Yet looking at it closer, you might say well,
11 maybe there was construction going on around there
12 and those 2-by-4s laying out there represent that.

13 So again, we would urge our objections that we
14 urged the other day.

15 THE COURT: What I was worried about the
16 other day was a selective comparison which I thought
17 could be prejudicial, and where I think there is not
18 a basis for saying that if there are photographs of
19 just the poor school districts, then I think they can
20 select what they want to show of that without having
21 shiny photographs of the wealthy districts. It's the
22 comparison, I think, that leads to the inflammation.
23 So I will overrule. We will have the photographs in
24 evidence.

25

1
2 (Plaintiffs' Exhibit Nos. 303-A
3 (through 303-C, 303-D through 303-G,
4 (304-A through 304-F, 306-A through
5 (306-I, 305-A through 305-U, 305-V
6 (through 305-X, 307-A through 307-G,
7 (308-A through 308-Z, 309-A through
8 (309-M, 311-A through 311-J, 312-A
9 (through 312-J admitted.)

10 MR. RICHARDS: Your Honor, in the sense of
11 resting in this connection, we are going to ask Mr.
12 Pogue to go take additional photographs and we will
13 be reoffering in the future at some convenient time
14 for the parties and the Court, assuming we're still
15 going, some of the photographs that were previously
16 excluded to satisfy the comparison objection.

17 THE COURT: Okay.

18 MR. R. LUNA: Your Honor, if any of those
19 photographs that have just been admitted have the
20 running commentary, we will again object to those. I
21 didn't check the specific ones. If they do, of
22 course, we object to that.

23 THE COURT: There's some writing on the
24 back of the photographs, is that what you're saying?

25 MR. R. LUNA: Yes, sir. On many of them.

1 I don't know whether the specific ones --

2 MR. RICHARDS: We don't offer them to offer
3 writing. We'll have the witness back and if the
4 writing can be proved up through him at the time,
5 fine. Otherwise, we are offering just the
6 photographs without the commentary at this time. I
7 think it's only on a few, as a matter of fact.

8 MS. MILFORD: The writing on the back would
9 be pure hearsay.

10 MR. RICHARDS: I agree with that. We're
11 not offering that, as I say. We will re-call him
12 down the line. To the extent we want to prove up the
13 writings, at that time, we will.

14 MS. MILFORD: Their editorial comments
15 "Science classroom showing water damage," specify --

16 MR. RICHARDS: I just said we are not
17 offering that at this time. I thought I made myself
18 clear.

19 MR. GRAY: If you want to read them into
20 the record, that's fine.

21 THE COURT: They will be admitted, but not
22 the back-side commentary.

23 MR. R. LUNA: Could we ask that the
24 back-side be whited out or otherwise eliminated? If
25 it comes into evidence with that commentary on it, it

1 may as well have come in anyway.

2 THE COURT: That's the usual procedure.

3 MR. GRAY: Your Honor, we will do so if --
4 we would like the leeway to wait until we call Mr.
5 Pogue back and go into that and he can prove up much
6 of the stuff because all it says is what it shows.
7 But if we don't prove it up, we'll white it out.

8 MR. R. LUNA: I don't have any objection to
9 that so long as they withdraw their submission of
10 those exhibits at this time and ask the Court to hold
11 their ruling until Mr. Pogue shows up again.

12 MR. RICHARDS: The Court has already ruled
13 and ruled them admissible. I think the Court within
14 his own power could probably be entrusted not to take
15 into account matters which he has ruled not to be
16 admitted. I would think you would trust the Court
17 that far in this particular instance.

18 MR. R. LUNA: Your Honor, the only thing
19 we're concerned about is that we have clearly
20 objectionable matter coming into the record which
21 they say they want to prove up later. Those
22 particular objections we made the other day to many
23 of those photographs, the Court, I think at that
24 time, made it clear that those were not admissible.
25 Counsel needs to either, one, remove that from those

1 photographs at this time, or two, withdraw the
2 photographs from evidence until a witness can prove
3 it up.

4 THE COURT: Consistent, if not correct.
5 The way I have been doing this for nine and a half
6 years is that if you want to offer evidence now, part
7 of it admissible, part of it not, then you've got to
8 white out or black out that part which is not
9 admissible now. If you want to wait and prove it up
10 later, you can do so. So I think Mr. Luna's comment
11 is in keeping with the way I've done things in the
12 past. I will stick with that.

13 MR. RICHARDS: I'm not sure how many --
14 most of them don't have comments on them.

15 MR. GRAY: We'll white them out.

16 THE COURT: Okay.

17 MR. GRAY: Plaintiff-Intervenors' subject
18 to re-calling Mr. Pogue at the appropriate time and
19 subject to reoffering the exhibit that was Senate
20 Bill 4 that will be with the clerk's appropriate
21 seal, rest.

22 MR. KAUFFMAN: Also, subject to the same
23 limitations, the Plaintiffs rest, except, Your Honor,
24 if I may, I would like to retain the opportunity to
25 further authenticate my historical exhibits, if I can

1 do so, especially those to which we have witnesses
2 that can come and testify. That would be, I guess,
3 Mr. Foster as to his report, Mr. Brischetto as to his
4 report.

5 THE COURT: All right. I think we
6 understand.

7 MR. KAUFFMAN: Other than that, we rest,
8 Your Honor.

9 PLAINTIFFS REST

10 MR. O'HANLON: Two things, Judge. We're
11 going to move for -- I never know what to call it.
12 In federal court, you call it a motion for
13 involuntary dismissal. If we had a jury, I'd call it
14 a motion for judgment n.o.v. But in a bench trial in
15 state court, I'm not exactly sure what to call it.
16 We're going to move for judgment at this time for the
17 failure of the Plaintiffs and Plaintiff-Intervenors
18 to prove the case which constitutes a violation.

19 With respect to ongoing in this case, if I can
20 make a confession first -- and my fingers aren't
21 crossed behind my back -- we got kind of caught with
22 our shorts down, to be honest with you. We thought
23 the Plaintiffs and the Plaintiff-Intervenors were
24 going to go a little bit longer. Our statistical
25 people are all out of state right now and probably

1 won't be back until sometime tomorrow.

2 With respect to a potential proceeding at some
3 point in the future, it seems to me to be a fruitful
4 endeavor to discuss serially the issues that have
5 been raised and not raised and see if we can get the
6 Court to rule on some of them. Of course, we would
7 hope that you would grant it as to the whole case,
8 but even if you granted it to certain aspects of the
9 case, we'll be in a better position to constrain the
10 testimony that we're going to have to do in response
11 to the allegations that are raised.

12 THE COURT: Okay.

13 MR. O'HANLON: We would request the
14 opportunity at your discretion to argue the legal
15 aspects of what we have heard so far.

16 THE COURT: Okay.

17 MR. TURNER: Your Honor, we join in that in
18 the sense that we also, based on the witness list
19 we've been furnished early on, anticipated there was
20 several weeks left.

21 I might suggest, Your Honor, that if we could
22 have maybe the afternoon to prepare our arguments on
23 the motion for judgment and argue that to the Court
24 tomorrow and fully develop our position with regard
25 to the law, that that might give us an opportunity to

1 clarify the issues in the case and to move forward
2 more efficiently in the trial, because it seems very
3 apparent that the action of the Plaintiffs in resting
4 today enables, from all I know about the witnesses
5 that are going to be called, to finish the case
6 before the Court's suggested date of March 6.

7 MR. O'HANLON: I would submit that
8 especially if we can cut some of the issues out of
9 this case that we don't think have been raised, our
10 response would be significantly shorter than this
11 rather lengthy witness list we had prepared when we
12 weren't sure exactly what the evidence was going to
13 be.

14 MR. R. LUNA: All the Defendant-Intervenors
15 join in that motion, too.

16 THE COURT: Okay. I don't see anything is
17 wrong with that. Anybody over here think anything
18 wrong with that?

19 MR. GRAY: We're flexible, Your Honor.
20 Given the Court's comment yesterday of the Court's
21 schedule, we huddled last night and are trying to do
22 everything we can to move this case along.

23 THE COURT: Okay. Well, you want to meet
24 again then tomorrow morning, is that the idea?

25 MR. O'HANLON: Yes, Your Honor.

1 With the Court's indulgence, what I would
2 suggest is rather than attempt to debate the entire
3 case side to side, that we'll sit down and agree kind
4 of after we have a break to an agenda and see if we
5 can't deal with them in discrete issues at a time. I
6 think it will make the argument go a little better.

7 MR. RICHARDS: All I would like to do is
8 just agree on the outer limit of how much time it is
9 going to take. If we could just get some agreement
10 about how long we are going to devote to the process,
11 I think that's fine.

12 MR. O'HANLON: I would be inclined to spend
13 as much time as the Court is willing to give us.
14 They're complex issues, they're difficult to deal
15 with, and I think the legal analysis at this time
16 might prove very helpful.

17 MR. TURNER: What I was, I guess, hoping
18 and suggesting is that we might spend the day
19 tomorrow arguing the case and start the testimony
20 again Monday, if necessary, to give the Court the
21 weekend for which to consider the arguments and
22 motion for judgment.

23 THE COURT: Okay. All right. Let's devote
24 tomorrow to either discussion or study and we won't
25 try to have evidence. That will give you time to get

1 yourselves organized in both respects. I don't mind
2 that at all.

3 I don't know how long the arguments will take,
4 Mr. Richards, but even if they don't take the whole
5 day, there are other things all of us can use the
6 time for. So let's do it that way. That's
7 satisfactory to me.

8 So then I will see you all in the morning at
9 9:00 o'clock.

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15 (Proceedings adjourned
16 until February 20, 1987.)
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3-87-190-0V

CAUSE NO. 362,516

C 8353

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

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IN THE 250TH JUDICIAL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk
Deputy

STATEMENT OF FACTS

VOLUME XX OF XLVI

By _____



TAKEN FEBRUARY 20, 1987

AFFILIATED REPORTERS

Computer Aided Transcription

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(512) 478-2752

CAUSE NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL > IN THE 250TH JUDICIAL
DISTRICT, ET AL >
>
>
> DISTRICT COURT OF
>
>
>
WILLIAM KIRBY, ET AL > TRAVIS COUNTY, TEXAS

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

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16

17 BE IT REMEMBERED that on this the 20th day of
18 February, 1987, the foregoing entitled and numbered
19 cause came on for trial before the said Honorable Court,
20 Honorable Harley Clark, Judge Presiding, whereupon the
21 following proceedings were had, to-wit:
22
23
24
25

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1 FEBRUARY 20, 1987

2 MORNING SESSION

3 THE COURT: Good morning.

4 Are you going to lead off, Mr. O'Hanlon?

5 MR. O'HANLON: Your Honor, Mr. Turner is
6 going to lead off and discuss standards of review and
7 things of that nature.

8 Mr. Deatherage is going to discuss some of the
9 constitutional developments in the history of -- some
10 of the things that went into the development of the
11 constitutional history of the constitutional
12 provisions we're dealing with.

13 Mr. Luna is going to talk about equal taxation,
14 and I'm going to wrap it up.

15 THE COURT: Okay.

16 Mr. Turner, the floor is yours.

17 DEFENDANTS' MOTION FOR JUDGMENT

18 MR. TURNER: Your Honor, we've been in this
19 trial now for -- I guess it's been over four weeks
20 and we've heard a lot of testimony, basically
21 testimony that's designed to show from the
22 Plaintiffs' point of view inequities in the present
23 system of school finance in Texas.

24 The Court is well aware that the lawsuit that
25 we're engaged in now was filed prior to the time the

1 Legislature convened in special session in 1984 and
2 enacted House Bill 72.

3 In terms of the evidence that we have heard
4 thus far, I think it perhaps can best be illustrated
5 and perhaps summarized in an example that was
6 developed just a few days ago when questions by those
7 of us on the defense side of the table pressed the
8 Plaintiffs to reveal to us what it is they are really
9 trying to secure out of this lawsuit, at which time
10 the Plaintiffs revealed what they denominated and
11 labeled an option -- we called it a proposal -- by
12 Mr. Craig Foster who was one of the principle if not
13 the principle witness for the Plaintiff.

14 This proposal, I think, tells a story that
15 perhaps places this case in context better than any
16 other story that could be told in that it illustrates
17 the impact of one suggestion made by Plaintiffs to
18 remedy the problems that they see in the Texas system
19 by suggesting that a change in state formulas and a
20 redistribution of state aid could be affected in this
21 state which, by taking the example of Harris County,
22 would cause the districts on the left side of that
23 Defendant-Intervenors' Exhibit No. 21 to lose \$218
24 million, while at the time of exacting that price
25 from those school districts would net to the school

1 districts in Harris County on the right side of the
2 chart only \$30 million.

3 The Court will recall testimony by the
4 superintendent of the North Forest School District in
5 this trial, a witness called by the Plaintiffs, who
6 stated that after the enactment of House Bill 72, his
7 school district received an additional \$10.5 million
8 in state aid. He further testified that under the
9 second year of House Bill 72, that figure dropped a
10 little bit to \$9.5 million. But on average, the
11 North Forest School District, as a result of the
12 actions of the State Legislature, gained \$10 million
13 in state aid.

14 As Exhibit 21 illustrates, North Forest, even
15 under the proposal or option laid out before this
16 Court by the Plaintiffs, would only gain North Forest
17 additional \$11 million. What we think the exhibit
18 illustrates to the Court is that if we presume that
19 the Plaintiffs are entirely correct and that to
20 achieve a high degree of equity in this state, North
21 Forest could be deemed to need another \$11 million.

22 We submit to the Court that House Bill 72, as
23 enacted by the State Legislature, moved significantly
24 in that direction of providing equity to a school
25 district in the position of North Forest.

1 If we worked backward, we could see that it
2 would obviously be the Plaintiffs' position that
3 prior to the enactment of House Bill 72, since North
4 Forest got \$10.5 million and they say they need 11
5 more, the Plaintiffs would, I suppose, be saying to
6 us that before House Bill 72 was enacted, North
7 Forest should get another \$21 million.

8 If that be the position the Plaintiffs would
9 take in this case, we submit to you that the
10 Legislature of the State of Texas moved halfway there
11 when it enacted House Bill 72, and we think that that
12 shows a significant and substantial amount of good
13 faith on the part of the Texas Legislature in trying
14 to bring about equity in the school finance system in
15 Texas.

16 We think there are ample reasons to show why
17 the Texas Legislature would, in moving toward equity,
18 not enact a scheme which would have the effect, as
19 Foster Proposal No. 1, which would cause districts in
20 Harris County listed on the left side of the page to
21 lose \$218 million in the process and have those
22 districts suffer the repercussions of forced
23 increases in taxes or cuts in services in education
24 to bring about the plan that the Plaintiffs would
25 advocate.

1 We also noted that when we examined that plan
2 carefully, that in order for the Austin Independent
3 School District to continue funding education at its
4 current levels, Austin would have to increase its
5 taxes by approximately 50 percent. Even when they
6 did that, to enact the Plaintiffs' proposal, still,
7 Austin would not be spending at the same level that
8 it is today because the Plaintiffs submit in their
9 analysis that Austin is spending more money today
10 than they need to to achieve this theoretical quality
11 level of education.

12 But, Your Honor, we submit to you that this
13 case comes before you in light of the tremendous
14 progress that the Texas Legislature made when it
15 passed House Bill 72 and reforms the financing scheme
16 that are provided by the State of Texas. It was in
17 that financing scheme that weighting for bilingual
18 students, that weighting for compensatory education,
19 that pre-kindergarten and all of the other programs
20 that have been mentioned from this witness stand were
21 put in place which have operated to the substantial
22 benefit of trying to provide a quality or adequate
23 education for the Plaintiffs that have brought this
24 lawsuit.

25 We turn, I think, now in this closing or in

1 this Motion for Judgment to an analysis of what the
2 law is in this case. We think that by examining the
3 law that should guide this Court, the Defendants are
4 in a position to move for judgment and the Court
5 should be in a position to be able to look favorably
6 upon that motion.

7 We know a few things from reviewing current
8 state law that will guide this Court. In the case of
9 Spring Branch versus Stamos decided by the Texas
10 Supreme Court on July 10, 1985, the Supreme Court of
11 Texas said first of all that the burden is on the
12 party attacking the constitutionality of an act of
13 the Legislature. So as a beginning point, we know
14 from existing state law that the burden is on the
15 Plaintiffs to attack the constitutionality of this
16 act of the Legislature.

17 We also know directly from the Stamos case that
18 there is a presumption in favor of the
19 constitutionality of an act of the Legislature.
20 Stamos was the case, as the Court is well aware, that
21 challenged the constitutionality of the No Pass/No
22 Play rule. The Supreme Court of Texas upheld that
23 rule and in the process made some observations that
24 we think we all agree with.

25 For example, the court said, "It has long been

1 recognized that education plays an important role in
2 the maintenance of our democratic society. The
3 Constitution leaves to the Legislature alone the
4 determinations of which methods, restrictions and
5 regulations are necessary and appropriate to carry
6 out this duty so long as that determination is not no
7 arbitrary as to violate the constitutional rights of
8 Texas citizens."

9 In Stamos, when the court wrote that language,
10 it cited the case of Mumme v. Marrs, a 1931 case
11 which we think marks the status of the current state
12 law and was thus reaffirmed by the Texas Supreme
13 Court in the Stamos case.

14 In approaching this case in light of the law as
15 set out in Stamos, it is recognized, I think, by both
16 sides in this lawsuit that we must work our way
17 through an equal protection analysis. As the Court
18 is aware, there are three tiers of scrutiny that can
19 be found by a review of the cases across this
20 country.

21 The first standard of review that we are all
22 aware of is the standard of strict scrutiny. That
23 standard is applied in equal protection analysis when
24 there is either a suspect classification involved, or
25 there is a fundamental right implicated. Strict

1 scrutiny, if found to exist, that standard is found
2 to be appropriate, requires the state to show a
3 compelling state interest as being furthered by the
4 law.

5 The other standard of review that is commonly
6 followed in other jurisdictions and we submit to you,
7 Your Honor, is the law of Texas, and that is the
8 rational basis scrutiny. This is applied when there
9 is no suspect classification involved and no
10 fundamental right implicated in all of the
11 jurisdictions.

12 We further submit that the law of Mumme v.
13 Marrs and of Stamos would say that this is the test
14 to be appropriately applied by this Court.

15 When we have a rational basis scrutiny, the
16 cases make it very clear that the state must show a
17 reasonable or rational relationship between the
18 classifications made and a legitimate state purpose.

19 There is a third level of scrutiny that we find
20 mentioned in very few cases, which we might call an
21 intermediate level of scrutiny or mid-tier. That
22 analysis is not too well developed and it has
23 certainly not been dealt with or mentioned in any
24 form or fashion under any Texas case. But under that
25 scrutiny, it appears that what the state must be

1 pursuing to establish these classifications is a
2 substantial state interest rather than a compelling
3 state interest as is the standard under strict
4 scrutiny.

5 Accepting the fact that Texas has never adopted
6 an intermediate level of scrutiny, nor has a mid-tier
7 kind of review ever been applied by any state to the
8 type of case that we have before us, we think that
9 the first step that this Court must take is making a
10 decision as to whether or not strict scrutiny should
11 apply or whether the rational basis test, which is
12 the law of *Mumme v. Marrs* and of *Stamos* and is
13 referred to in *Stamos*, should be the standard review
14 accepted by this Court.

15 Of course, that requires the Court to first
16 ask the question: Is education a fundamental
17 interest? We remind the Court that fundamental
18 interest is a word of legal art, cannot be determined
19 simply by opening a dictionary and defining
20 fundamental. Fundamental is a word of art and is
21 well defined in cases. Or is there a suspect
22 classification involved in this case? If so, the
23 state, of course, would have to have evidence or
24 there would have to be evidence before the Court to
25 show a compelling state interest for the system we

1 have in place.

2 If we do not find a fundamental interest or a
3 suspect classification, the question is whether, in
4 the words of the Supreme Court of the United States
5 in San Antonio versus Rodriguez, the question
6 is: Is the Texas system with its conceded
7 imperfections, as the Court stated in Rodriguez,
8 nevertheless, does it bear some rational relationship
9 to a legitimate state purpose?

10 We submit to you, Your Honor, that there is no
11 real evidence here of a suspect classification, and
12 so we think the primary duty for the Court would be
13 to determine whether or not education is a
14 fundamental interest.

15 Plaintiffs have rested much of their hopes on
16 this Court finding a fundamental interest on the
17 language that we find in the United States Supreme
18 Court decision in Rodriguez. In that case, the Court
19 says, and I quote, "The key to discovering whether
20 education is fundamental is not to be found in
21 comparisons of the relative societal significance of
22 education as opposed to subsistence or housing nor is
23 it to be found by weighing whether education is as
24 important as the right to travel. Rather, the answer
25 lies in assessing whether there is a right to

1 education explicitly or implicitly guaranteed by the
2 Constitution."

3 Very clearly, Your Honor, this language, which
4 the Plaintiffs like to point to in their argument, is
5 language which is referring to the Federal
6 Constitution. So equal protection analysis under the
7 Federal Constitution requires the federal court to
8 determine whether or not education or any right is
9 fundamental simply by assessing whether or not it is
10 explicitly or implicitly guaranteed by the Federal
11 Constitution.

12 A majority of the cases decided in various
13 state supreme courts have rejected any attempt by
14 plaintiffs in those lawsuits to apply this type of
15 analysis to a state constitution. State and federal
16 constitutions are different. A federal constitution
17 or our Federal Constitution is a document of limited
18 powers, unlike state constitutions. State
19 constitutions contain many legislation-type or like
20 provisions.

21 Our Texas Constitution is one of the best
22 examples, I suppose, of that, being an extremely
23 lengthy document which contains many things that many
24 constitutional observers have said could properly be
25 placed in statutory form.

1 In Olsen versus State (Phon.), a supreme court
2 decision in the State of Oregon, the court there had
3 this to say. "We share" -- referring to New Jersey,
4 the Cahill (Phon.) case -- "We share New Jersey's
5 opinion that this approach of categorizing an
6 interest as a fundamental or non-fundamental interest
7 and deciding this issue upon the basis of whether the
8 interest is explicitly or implicitly guaranteed by
9 the Constitution is not a helpful method of analysis.
10 This particularly is true in Oregon where many laws
11 which are usually considered legislation are inserted
12 in the Constitution."

13 We submit that that analysis made by the
14 Supreme Court of Oregon is equally appropriate to the
15 Texas Constitution.

16 THE COURT: How does that help you?

17 MR. TURNER: Well, first, the way it helps
18 us, Your Honor, is you get across the suggestion that
19 is being made here by Plaintiffs and was made early
20 on in some of these other state court decisions that
21 the test in their state court was the test expressed
22 in the United States Supreme Court case of Rodriguez.
23 That is, the U. S. Supreme Court simply said the test
24 is just whether we find it mentioned explicitly or
25 implicitly in our Constitution. If we find it, then

1 it is fundamental.

2 What these more recent state court cases have
3 said to us is that that analysis is not appropriate
4 in terms of determining what kind of interests are
5 fundamental when we are looking at state
6 constitutions.

7 THE COURT: Because state constitutions
8 often have the flavor and character of ordinary
9 legislation. Is that the idea?

10 MR. TURNER: That's right, and because the
11 Federal Constitution is a document of limited powers.
12 I have a list here that I would like to give the
13 Court -- actually it's two lists -- of the decisions
14 that have been decided and we have researched and
15 have been decided by other supreme courts in other
16 states.

17 One of the sheets -- I believe it is the top
18 one there that I gave to you, Your Honor -- is a
19 chronological listing, and the second one is a
20 listing which simply divides the cases into two
21 groups. The top group of cases are those which would
22 hold education to be a fundamental right or hold in
23 those states that their education finance system
24 violated equal protection, and the cases on the
25 bottom half of the page are those state court

1 decisions where the education was not determined to
2 be a fundamental right and where the system was held
3 not to violate equal protection.

4 You can see from the display of the cases that
5 there are more state court decisions which have held
6 education not to be a fundamental right than there
7 are those that have held it to be a fundamental
8 right. If you will look at the chronological
9 listing, what you will see is that the decisions in
10 those states that held education to be a fundamental
11 right are closer in time to the United States Supreme
12 Court decision in Rodriguez than those cases which
13 have held education not to be a fundamental right.

14 As the Court is well aware, when we use that
15 word "fundamental," we are using a word of legal art.
16 We all acknowledge on both sides of this lawsuit that
17 education is a very important service and the
18 provision of education is of utmost importance in any
19 state.

20 But fundamental right analysis, we submit, Your
21 Honor, has not been accepted. In fact, no case in
22 the last five years where this issue has been
23 litigated in other states has held that education is
24 a fundamental right.

25 On the chart, I have shown the Court the

1 language of the appropriate state constitution that
2 relates to the requirement in that constitution for
3 the legislature to provide a system of education.
4 You can see, Your Honor, the variations in language.
5 Most of those, as the Court will note, are very
6 similar to the kind of language that we find in our
7 own Constitution, which says that the Legislature has
8 the duty to establish and make under our Texas
9 Constitution, make suitable provision for the support
10 and maintenance of an efficient system of public
11 education. So the word "suitable and efficient," as
12 the Court will note, are found quite commonly in the
13 constitutions of these other states.

14 Another reason that we believe that fundamental
15 right analysis is not appropriate under our State
16 Constitution is because if the Court were to adopt a
17 fundamental right analysis and because education is
18 mentioned in our State Constitution, all sorts of
19 governmental activities would be called into
20 question. I have prepared just a list -- and this
21 certainly does not intend to be exhaustive -- but I
22 have prepared a list of just some of the things that
23 we find mentioned in our Texas Constitution.

24 In the case of Robinson versus Cahill, the
25 Supreme Court of New Jersey had this to say, and I

1 want to read this to the Court. The court said, "It
2 must be evident that the rudimentary scheme of local
3 government is implicated by the proposition that the
4 equal protection clause dictates statewide
5 uniformity. This is so unless it can be said that
6 the equal protection clause holds education to be a
7 thing apart from other essential services which also
8 depend upon local legislative decision with respect
9 to the dollar amount to be invested. As to any
10 service to which equal protection is found to apply,
11 it would follow that if the monies are raised by
12 local taxation in a way which permits a different
13 dollar expenditure for affected resident, the program
14 is invalid as to the beneficiary unless a state aid
15 program fills in the gap. It would then follow that
16 a state aid program which did not neutralize local
17 inequalities would itself deny equal protection as to
18 the beneficiaries. Although it is not urged upon us
19 that every federal statute must abide by that
20 precept, we see no reason why that constitutional
21 mandate would not also prevail at the federal level
22 if the basic premise is sound."

23 The Court Supreme Court of New Jersey was
24 suggesting by that statement that if we adopt
25 fundamental right analysis because we find the

1 language mentioned in our Constitution, and if this
2 then thereby implicates all other government services
3 and functions mentioned in the Constitution, then we
4 have opened a Pandora's Box in that every government
5 service that is mentioned must be rendered in an
6 equal and uniform dollar amount. And, of course,
7 that is a road that we think this Court would be
8 cautious to begin to travel down.

9 A majority of the cases, as I mentioned, have
10 not called education a fundamental right, even though
11 all of those state constitutions have language in
12 them that call for some type of thorough or efficient
13 or suitable education system to be established by the
14 State Legislature. It seems clear to us that the
15 weight of authority and the best and soundest
16 reasoning dictates the conclusion that while
17 important, education is not a fundamental right for
18 purposes of equal protection analysis.

19 If we get to that point and if the Court gets
20 to that point, the only remaining issue for equal
21 protection analysis is for the Court to determine
22 whether or not the Texas system is rationally related
23 to a legitimate state interest.

24 We submit to you, Your Honor, that if the Court
25 agrees with us that the Texas law, *Mumme v. Marrs*,

1 and Stamos, does not require a finding that education
2 is a fundamental right, and if the Court, in its own
3 judgment, determines that fundamental right analysis
4 is not the appropriate way to look and analyze our
5 equal protection clause, then we submit to you that
6 if you are to that point, the evidence which has been
7 presented by the Plaintiffs over the course of the
8 last four weeks amply demonstrates that there is a
9 rational basis between the -- or that the system of
10 public school finance is rationally related to a
11 legitimate state purpose.

12 The question of a legitimate state interest and
13 the rational relationship of our public school
14 finance system was addressed in the Rodriguez case in
15 1971. Rodriguez specifically held that local control
16 was a legitimate state interest rationally related to
17 the Texas system of public school finance.

18 In holding that local control was a legitimate
19 state interest, we submit that the United States
20 Supreme Court rejected the very arguments that the
21 Plaintiffs have brought before this Court.

22 Plaintiffs in Rodriguez allege that local
23 control was greater in some districts than others.
24 The Plaintiffs in this case allege that local control
25 was greater in some districts than others.

1 Specifically, the Plaintiffs in Rodriguez
2 alleged that poor districts had less control than
3 rich ones. But the Supreme Court in Rodriguez had
4 this to say, and I quote, "While it is no doubt true
5 that reliance on local property taxation for school
6 revenues provides less freedom of choice with respect
7 to expenditures for some districts than for others,
8 the existence of some inequality in the manner in
9 which the state's rationale is achieved is not alone
10 a sufficient basis for striking down the entire
11 system."

12 The court in Rodriguez also noted, and I quote,
13 "It is also well to remember that even those
14 districts that have reduced ability to make free
15 decisions with respect to how much they spend on
16 education still retain under the present system a
17 large measure of authority as to how available funds
18 will be allocated. They further enjoy the power to
19 make numerous other decisions with respect to the
20 operations of schools."

21 The court in Rodriguez concluded by stating,
22 "The people of Texas may be justified in believing
23 that other systems of school financing which place
24 more of the financial responsibility in the hands of
25 the state will result in a comparable lessening of

1 desired local autonomy."

2 In other words, the court in Rodriguez found
3 after finding that education was not a fundamental
4 interest, the Court in Rodriguez found that local
5 control was a rational basis for the system -- for
6 having the system that Texas has in place.

7 We submit to you that when you compare the
8 state of education and education finance in Texas
9 today to what was in existence at the time of the
10 Rodriguez case, that it is very apparent that Texas
11 has made great progress toward equity since that
12 time.

13 So we submit to you that this case was decided
14 by the United States Supreme Court favorably to the
15 Defendants on the basis of the rational basis
16 analysis.

17 We submit to you that while this Court has the
18 freedom to make a judgment to the contrary, we submit
19 that that decision on those state of facts should be
20 very persuasive to this Court if this Court chooses
21 the standard of rational basis review, which we
22 believe was the appropriate standard for the Court to
23 select.

24 For just a brief moment, I would like to review
25 some of the testimony that came from this witness

1 stand primarily through cross-examination that
2 indicates that local control is a legitimate state
3 interest.

4 Almost without exception, every witness that
5 stepped on the witness stand that Plaintiffs called,
6 both parents, superintendents, and experts,
7 acknowledged the importance and the desirability of
8 the maintenance of local control. Mr. Foster
9 acknowledged another very legitimate interest that
10 the State Legislature had at the time it enacted the
11 present school financing scheme, and that is, he
12 acknowledged that there would be a disruptive effect
13 brought about by the sudden loss of funds as would
14 occur under the Foster Proposal No. 1, and also
15 acknowledged that the Legislature was acting
16 rationally. When it enacted House Bill 72, it put in
17 place some formulas to provide some temporary relief
18 to the shift that occurred in state funding at that
19 time. So clearly the Legislature is rational when it
20 enacts a financing scheme that moves toward equity,
21 but at the same time, acknowledges that the
22 disruptive effects that may be brought about by
23 sudden shifts is something that is worthy and
24 rational and reasonable for them to consider.

25 Another rational basis for the Legislature's

1 action in passing House Bill 72 was the impact on
2 taxpayers, the economic impact, if you will, of
3 rapidly escalating tax rates. As I mentioned
4 earlier, under one of the options here proposed by
5 the Plaintiffs, tax rates in the Austin Independent
6 School District would have to go up approximately 50
7 percent in order to maintain what the Plaintiffs'
8 witness, Mr. Foster, defined to maintain a quality
9 level of education. He admitted that even if they
10 did that, they wouldn't be spending as much as they
11 are spending today.

12 So we think it's clearly rational for the
13 Legislature, when passing a school finance scheme, to
14 analyze the impact upon taxpayers. Mr. Foster
15 himself acknowledged to me that it's not always the
16 absolute rate of taxation that is important to a
17 taxpayer, but the amount of increase from any given
18 level that he must undergo as a result of the action
19 of the Legislature or local school board. So we
20 submit that also is a rational basis for the action
21 of the Legislature.

22 Also, it was pointed out by Mr. Foster that if
23 you enacted this option by pursuing this proposal,
24 that the number of budget balanced districts in this
25 state would increase by approximately, I believe he

1 said, 125 to 135. And upon further examination, he
2 acknowledged that Austin and Houston and Dallas would
3 become budget balanced districts. Of course, as the
4 Court is aware, if a district is budget balanced,
5 that means the only state aid they are going to
6 receive is that state aid that is required to be paid
7 to them under the Constitution being an allocation on
8 a per capita or per student basis from the available
9 school fund.

10 So we submit to you, Your Honor, that when the
11 Legislature moves toward equity, it is rational for
12 the Legislature to understand that if we get into a
13 position in Texas by structuring formulas, accepting
14 a given amount of state appropriations, if we
15 structure formulas that makes Houston and Dallas and
16 Austin, as well as all the other districts, the other
17 135 that he would make budget balanced, if we make
18 them budget balanced, that there is going to be in
19 the State House a lessening interest in
20 appropriations for education, because legislators
21 from Travis County, legislators from the Houston
22 area, legislators from the Dallas area and from these
23 approximately 125 or thirty or thirty-five other
24 budget balanced districts that would be added to the
25 list of 85 that currently exist in law will not have

1 any interest in trying to appropriate money that
2 their constituents will not benefit from.

3 We think it is highly rational for a
4 Legislature, in moving toward equity, to acknowledge
5 that, to recognize that, and to balance that in terms
6 of trying to enact an equitable school finance
7 system.

8 THE COURT: So you would say that if the
9 Foster plan were law, that there would be more
10 legislators than exist now that would be not
11 interested in using the money that would be freed up
12 on account of an increase in the number of budget
13 balanced districts. There would be more legislators
14 with less interest in using that freed up money to
15 have it go to poorer districts. Instead, there would
16 be a temptation by those legislators not much to care
17 about that and maybe want to spend the money on
18 something else.

19 MR. TURNER: That's correct, Your Honor.
20 We think when we look at a proposal like this one
21 that results in losses of the scope that we're
22 talking about -- for example, Houston Independent
23 School District under that option would lose \$145
24 million. Not only would we just have a general
25 lessening of interest on the part of those

1 legislators from that area to increase funding, we
2 would probably have a backlash affect as a result of
3 seeing that kind of system forced upon them.

4 When we look at the Foster proposal in its
5 entirety, when we add Fort Worth, Dallas, Austin, and
6 Houston losses under that proposal, there is \$280
7 million that flows out of those four districts.

8 So we would submit, Your Honor, that the
9 Legislature has a rational basis when moving toward
10 equity to acknowledge the kinds of impacts that would
11 naturally occur.

12 It may not be in the record, but I think we all
13 acknowledge that public education today is under
14 extreme attack. We in this country have an
15 obligation and a duty to maintain a strong system of
16 public education because if we run our local citizens
17 out of the public education system and into private
18 education, we know ultimately that we're all going to
19 suffer.

20 We submit to you that the parents of those
21 children in those districts who have to undergo those
22 kinds of losses and face the question as they would
23 in Austin of do we raise our tax rates 50 percent or
24 do we cut back on the quality and level of
25 programming that we have in the Austin District, may

1 find that some of them -- school board members may
2 say, "We just can't raise taxes that much." And if
3 they make that decision, we're going to see a mass
4 exodus from public education to private education
5 because those parents who could afford it are going
6 to try to find the very best for their children.

7 We've heard parents from four school districts
8 express sentiments from this witness stand for the
9 last several weeks, which I submit would be identical
10 to the kinds of sentiments that would be expressed by
11 any parent were we to put them on the witness stand,
12 because invariably, we have national trend in this
13 country to look toward higher and higher quality of
14 education. Our expectations throughout our history
15 have changed.

16 Dr. Walker testified for some length about the
17 attitudes that we had in this state when our
18 Constitution was written about education, about the
19 clear understanding of the drafters of that
20 Constitution that it was the duty of the parents in
21 any given area to provide a building and if they did,
22 then they qualify to receive some state aid. But
23 those attitudes have changed, and they'll continue to
24 change.

25 I submit to you that as we move continually

1 toward equity -- and I submit to you, Your Honor, the
2 record is clear here that the State of Texas and the
3 Texas Legislature has continually moved toward
4 equity. Any setbacks that have been referred to by
5 the Plaintiffs are not actions of the State
6 Legislature that brought them about, but merely the
7 natural course of events, as school boards and as
8 parents in those districts that are spread around
9 this state have continually strived to try to provide
10 the best that they can for their children.

11 So the Legislature, I submit to you, has made
12 great progress, and it's rational for the Legislature
13 to evaluate these kinds of impacts when making a
14 decision.

15 In summary, Your Honor, I think that a reading
16 of any of the cases will suggest to the Court -- the
17 recent cases -- will suggest to the Court that under
18 Texas law, you should reject the fundamental interest
19 analysis that has been suggested by the Plaintiffs.

20 We think the reasons for that are not only
21 found under our existing case law, but they're also
22 found in the logic of the decisions that have been
23 written in the other states, the most recent
24 decisions which have rejected the finding that
25 education is a fundamental interest. If you do that,

1 you're left with a determination as to whether or not
2 there is a rational basis for the system which we
3 have in place.

4 We submit there is ample evidence in the record
5 to show that rational basis. We think when viewed in
6 light of the tremendous progress, that every witness,
7 as I recall, except perhaps Mr. Foster, acknowledged
8 was great progress, a great step forward when the
9 Legislature enacted House Bill 72. When viewed in
10 light of where we are in Texas, we submit to you that
11 motions for judgment by this Court should be granted
12 at this time.

13 Thank you, Your Honor.

14 THE COURT: Thank you. I appreciate it
15 very much.

16 A question. We have heard from a Dr. Billy Don
17 Walker the history of how we got here from there,
18 about the organization of school districts and the
19 constitutional history of it, and how early on in the
20 state, the state made the decision to have most of
21 the money that went into school districts come from
22 local districts probably for a variety of reasons.
23 One, that the state didn't have at the early stages
24 much tax revenue of its own and maybe wanted to leave
25 the decision about taxation for schools on the local

1 level for a variety of reasons. Maybe one of them
2 being that the Legislature 90 or 100 years ago didn't
3 want to tax just like it doesn't want to tax now, and
4 would rather leave that off to somebody else. So for
5 100 years, we sort of floated along with that type of
6 system to where we get to a place now where we have
7 the wherewithall, as well as the interest -- we have
8 the wherewithall to discover there is differences and
9 the interest is certainly there by a substantial
10 number of people to want to funnel more money into
11 districts that have less wealth.

12 Now, almost because of an accident of history,
13 we are in this situation today. Now, the politics of
14 it may be as you say, but now, when the courts talk
15 about a rational reason to leave the legislation
16 alone, for the courts to leave legislation alone and
17 not interfere with it by holding it unconstitutional
18 for one reason or another, when the courts are
19 talking about rationality, are they talking about
20 that it makes rational political sense to leave it
21 alone or are they talking about rationality, using
22 that word rationality, in some other sense, other
23 than it doesn't make political sense to do it
24 otherwise. You see, because it has never made
25 political sense to do it otherwise -- that I can tell

1 from the evidence that I have heard on the witness
2 stand by way of history. It has never made any sense
3 to do it any other way than the way we have done it.

4 My question to you is: Is that the kind of test
5 that the courts are talking about when they're
6 talking about the courts' scrutinizing a system or a
7 statute for its rationality? Are they talking about
8 politics, just the sheer politics of the situation?

9 MR. TURNER: Your Honor, I suppose I would
10 suggest to you that any time we start trying to say
11 is it politics, whether it is politics or not, it's
12 going to be in the mind of the beholder.

13 For that reason, I would submit that probably
14 the duty upon this Court is to use its own sound
15 judgment, which may differ from someone else's, but
16 to use this Court's own sound judgment as to whether
17 or not you think there is a rational basis for what
18 the Legislature did.

19 I would submit to you that it was a rational
20 basis for the Legislature to enact House Bill 72
21 financing proposal as opposed to what we might call
22 in the Plaintiffs' term, moving all the way, and
23 instead of getting North Forest the ten million, get
24 them on up with 11 more. But I submit to you it was
25 rational for the Legislature to look at the potential

1 impact upon taxpayers in these districts that would
2 lose state aid under this proposal, and to say that
3 in terms of fairness, that taxpayers don't need their
4 school taxes to be increased 50 percent at one time
5 anymore than it's helpful to increase anything in
6 their cost of living 50 percent, and that it is
7 rational not to put school boards in the position of
8 having to cut programs or make that kind of difficult
9 choice of raising tax rates 50 percent.

10 I submit to you that those on the other side of
11 this case might say, "Oh, that's just politics
12 because that legislator doesn't want to do that
13 because he'll lose votes if he forces that kind of
14 tax rate on his people and it's just politics." So to
15 some that might be politics; but to others, I think
16 there is a rational basis and a reasonable basis --
17 we say rational and reasonable, these cases use it
18 interchangeably -- there is a reasonable basis for
19 considering that. If that went into the thinking at
20 the time, then the system that was devised is a
21 rational one.

22 So I think the Court, rather than -- I don't
23 know that we can ever say this factor is political.
24 You know, you could say local control, you know,
25 there is an interest in local control because we

1 believe in this state, and I think it has been
2 testified by several witnesses from the witness
3 stand, that it's important for taxpayers and for
4 parents to be involved in the education of the
5 children within their district, that somehow that
6 taxpayer involvement and that parental involvement
7 strengthens the quality of education. One way we get
8 that in Texas is we require local taxpayers to make a
9 contribution out of their back pocket to that system,
10 and when they do that, they watch closer as to what's
11 going on within that school.

12 We submit that that testimony has been offered
13 from the witness stand as being a motivating factor,
14 and that is what the Legislature, I think, looks to
15 when it says, "We believe that local control is
16 important." We believe that fostering that
17 involvement, fostering that participation is
18 essential and that if we move to a system where all
19 funds come from Austin and nobody locally has to make
20 a contribution, all decisions then, likewise, I
21 believe, it's felt, begin to flow from Austin. I
22 think the belief is widely held that interest and
23 involvement on the part of the local parents and
24 local taxpayers begin to diminish.

25 So I submit to you that's a rational basis, but

1 I think it's going to have to be the Court's decision
2 as to what reasonable basis -- whether the reasons
3 that we're talking about that have been elicited from
4 the witness stand thus far are reasonable and
5 rational basis for the system as in place.

6 Keep in mind, once the Court finds there is a
7 reasonable and rational basis for the system in
8 place, then the Court is not put to the burden of
9 then turning and saying, "Is the system equitable?
10 Is the system fair?" The Court is then put in the
11 position of saying, "If the Legislature in its
12 prerogative," -- as the words were used in *Mumme v.*
13 *Marrs* -- "determines that there is a rational and
14 reasonable basis, then it's up to the Legislature to
15 control the structure and financing of a system of
16 public education." And only if you don't find any
17 reasonable or rational basis, as the Supreme Court in
18 *Rodriguez* said, which held that there was a rational
19 basis based on the element of local control, the
20 principle of local control, the Texas system, in
21 spite of its inequities, would still be upheld.

22 I would suggest to you, Your Honor, as you look
23 at the cases decided in other states, you'll find
24 another element present that, perhaps though maybe
25 not in pure legal terms, influences the choice of a

1 standard, but I think every court that has ever
2 considered public school finance in any state has
3 probably done the same thing that this Court has done
4 when it began to hear the evidence and we argued over
5 whether or not you were supposed to hear the
6 remedies. The Court expressed probably a commonly
7 held opinion of any jurist and that is, "I would kind
8 of like to see where we're going." I think we've seen
9 at least one example of where the Plaintiffs would
10 suggest that we're going, and I think we can see the
11 shortcomings of that kind of proposal.

12 Mr. Foster, on the witness stand, Your Honor,
13 was quite insistent that he held the view that the
14 Legislature could never move beyond this point. I
15 submit to you, Your Honor, that the evidence that has
16 been presented from this witness stand by the
17 Plaintiffs has shown a consistent record of progress.
18 In fact, in 1984, in the special session that enacted
19 House Bill 72, we saw significant substantial
20 progress toward equity in this state. I think that
21 as you review the cases, you will note that in a
22 state where we have that kind of progress in place
23 and that kind of movement by the Legislature, the
24 courts have shown great reluctance to move in to
25 declare that unconstitutional.

1 In Connecticut, from one of the cases cited,
2 the Court found the system to be unconstitutional.
3 They found the fundamental right to exist, and I read
4 that case and it was very interesting because what
5 they were doing in Connecticut is providing state
6 funds. The Legislature had a formula that provided
7 the same dollar amount per ADA for everybody in the
8 state. It has been a long time since Texas ever
9 looked at any system like that.

10 In fact, in Mumme v. Marrs, the very facts of
11 that case was a challenge to one of the early
12 attempts by the Texas Legislature to enact rural aid
13 that the Legislature had appropriated for that year
14 and in some previous years, actually; aid to rural
15 school districts because they felt like that there
16 were inequities out there that needed to be
17 addressed.

18 So we are not in a posture today, Your Honor,
19 where just because we're in modern times, there are
20 inequities. I mean, we have seen the differences --
21 as Dr. Walker testified, in the early days there were
22 what he called lighthouse school districts in the
23 urban areas and people noticed them and they wanted
24 that out in their area. So the Legislature enacted
25 rural aid.

1 In Mumme v. Marrs that was written in 1931,
2 it's interesting -- I thought I might share this with
3 the Court as to what the court saw Texas to be like
4 in 1931. It said, "Texas is a large state with
5 approximately 265,000 square miles of territory, much
6 of it sparsely populated. Its lands are not equally
7 productive, and the taxable wealth of its communities
8 exist in great inequality. The type of school which
9 any community can have must depend upon the
10 population of the community, productivity of the soil
11 and generally its taxable wealth."

12 That comment, of course, was not essential to
13 the holding of the court, which went on to uphold the
14 Rural Aid Act, which provided additional equalization
15 aid to the rural districts. But it does show you
16 that these disparities and these problems are not
17 something that have just come upon us in recent
18 times. These problems have been with us.

19 I submit to you that ever since the Texas
20 Legislature began to enact the first rural aid to
21 education legislation, on right up through House Bill
22 72, we have a record in Texas of progress. I submit
23 to you that in light of that background and in light
24 of what the law, we think, of Texas is, that you
25 should reject the fundamental right analysis, that

1 you should determine that the rational basis test is
2 the one you must apply, and we think if you come to
3 that point, that you're now in a position to make a
4 ruling and grant the Defendants' Motion for Judgment.

5 THE COURT: All right, sir. Thank you very
6 much.

7 Mr. Deatherage?

8 MR. DEATHERAGE: One of the problems that
9 we're dealing with is language used over 100 years
10 ago by the framers of Article VII of our Constitution
11 and trying to interpret and apply that language in
12 today's world. We must deal with the words they used
13 and how they interpreted them at the time.

14 One of the traditional methods of interpreting
15 constitutional and statutory provision defining
16 judicial definition of such language is not only
17 using the cases -- and we have hardly any dealing
18 with Article VII, Section 1, and none dealing with an
19 efficient system of public schools -- is to look at
20 the history of the debates and the constitutional
21 provisions and proceedings that went before the
22 adoption of the particular section.

23 In our brief in support of the Defendants'
24 Motion for Summary Judgment, we have called to the
25 Court's attention numerous of those debates and we

1 would again refer the Court to those in trying to
2 understand how Article VII, Section 1, as it exists
3 today, developed.

4 Another method is reliable extrajudicial
5 commentary. The only authoritative commentary on the
6 Texas Constitution we know about was a work published
7 by a participating agency, the Texas Constitutional
8 Revision Commission of 1973, the Constitutional
9 Convention of 1974, the Texas Advisory Commission on
10 Intergovernmental Relations and the Texas Legislative
11 Council, a two volume work on the Constitution of the
12 State of Texas, an Annotated and Comparative
13 Analysis.

14 I have copied from the section on education --
15 Bob, take that to the Court -- a copy for the Court's
16 review if it doesn't have this work in its library.
17 I would like to quote from some of the provisions
18 dealing with Article VII, Section 1 beginning with
19 the historical development of the Constitution that
20 we have today.

21 "The Constitution of 1836 contained a rather
22 indefinite provision directing the Congress as soon
23 as circumstances will permit to provide by law a
24 general system of education. The Republic passed no
25 legislation to enable the creation of a state

1 supported school system, though it did provide
2 liberal land grants to counties for the establishment
3 of public schools. But land was abundant and
4 inexpensive, so public schools could not subsist on
5 land alone, and only one school was established under
6 the Republic's land grant policy.

7 During that period, private schools carried the
8 burden of education in Texas. Beginning in the
9 1840s, a caldron of discordant views on education
10 alternately simmered and bubbled in Texas influencing
11 the shape of the public education system throughout
12 the remainder of the century.

13 The education article in the Constitution of
14 1845 reflected an attempt to accommodate the various
15 philosophies of education, some irreconcilable as it
16 is today, held by the New Texas Americans. One camp,
17 which included German immigrants, felt that the state
18 should provide free public education for all.
19 Southern aristocrats believed that except for aid to
20 indigents, education was an entirely private
21 function, while many other Anglos and Puritan
22 concepts under which both church and state shared the
23 responsibility for education. Such conceptual
24 diversity accounted for the rather puzzling provision
25 for two types of schools, public and free.

1 Section 1 of the '45 Constitution was similar
2 to the present Section 1 directing the Legislature to
3 make suitable provision for the support and
4 maintenance of public schools.

5 Very little change occurred until 1869. The
6 reconstruction Constitution of 1869 was explicit in
7 its mandate to the Legislature to establish a system
8 of public free schools for the gratuitous instruction
9 of all the inhabitants of this state between the ages
10 of six and 18 years.

11 The education system envisioned under the 1869
12 Constitution, though idealistic, was a radical
13 departure from the traditional private voluntary
14 system that had characterized Texas education up to
15 that point. It was based upon the contemporary
16 northern model with compulsory attendance,
17 centralized administration and school taxes.

18 Most Texans of the period who viewed this
19 Republican inspired and administered program as a
20 tyrannical invasion of their cherished liberty.

21 This first attempt to provide a comprehensive
22 free public school system provided financial ruin for
23 Texas struggling to recover from the ravages of war.
24 And by 1875, the state had accumulated a school debt
25 of over \$4 million.

1 But that year the Democrats had regained
2 control of the Legislature and set about to correct
3 the evils perpetrated by the Republican regime."

4 Dr. Walker, in his work that has been put in
5 evidence, summarizes the 1869 Constitution to mandate
6 permissive attendance, compulsory attendance, strong
7 central education agency, ten-month school year in
8 each district and local taxes for school houses.

9 In 1876, that elaborate and compulsory
10 educational system was thrown out by the people of
11 Texas. Perhaps the 1869 Constitution did create a
12 fundamental right in Texas until 1876. If it did,
13 the people changed its mind and did away with it. In
14 1876, it only provided less than \$2.00 per pupil for
15 funding, no compulsory attendance, no funding for
16 facilities, decentralized state education authority,
17 community schools, and for the first time, the word
18 efficient appears in our Constitution.

19 A study of the constitutional history and the
20 use of that word and the authoritative commentary
21 indicate that efficient is not a grant of a certain
22 level of quality, but rather is a restriction on the
23 level of quality and implied tax burdens that the
24 state may provide.

25 In reality, according to this commentary and

1 these authorities, the education article was not a
2 mandate to establish an efficient public free school
3 system at all, but was intended rather as a
4 restrictive document to prevent establishment of an
5 elaborate and expensive system.

6 In the author's comment -- through these
7 commentaries, the author comments that public
8 education is not considered a core or fundamental
9 element, but the command to educate children is a
10 generally accepted good government provision. This
11 constitutional expression is largely auditory
12 reflecting a desire to give some direction and moral
13 guidance in an area deemed preeminently important to
14 the public welfare.

15 Whatever the framers in 1876 thought about
16 education, they did want it cheap. They did not want
17 it elaborate, and wanted it determined by each
18 individual group of people, such as the community
19 schools. If they wanted a school, as Dr. Walker
20 testified, they could go to the county judge and if
21 they could show him they had a building and had a
22 teacher, they could have a school. The people at
23 that time knew that school districts would be
24 different, that there would be different money and
25 wealth in school districts. They knew it, they

1 wanted it, and they wanted to keep it that way.

2 We submit that the Plaintiffs have not
3 established by any competent evidence nor by any
4 authority that education in this state is a
5 fundamental interest, and the history of 1876 shows
6 to the contrary.

7 We move the Court to grant Defendants' Motion
8 for Judgment.

9 Thank you.

10 MR. R. LUNA: Your Honor, the Plaintiff
11 school districts in this case can almost be
12 analogized to a chain smoker who has developed a lung
13 problem and has seen his doctor. His doctor asked
14 him, "Why do you keep smoking? There are studies out
15 to say you shouldn't smoke. You know you shouldn't
16 smoke, so why do you?" And he has an explanation that
17 perhaps is not satisfactory to his physician, but
18 nevertheless, he continues to smoke, but tells his
19 doctor that in order to cure his health problems, he
20 needs money to join a health spa, money to do other
21 things that might improve his health, but the
22 physician nevertheless tells him, "No matter what you
23 do, you're not going to cure your problem until you
24 stop smoking." Yet the patient refuses. That's the
25 patient's option.

1 In this case, we don't have anyone with a lung
2 problem, but we do have school districts who have a
3 problem and those are the poor districts on that side
4 of the courtroom. They have come to this Court and
5 they have their own doctors. In this case, it's not
6 a medical doctor, it's a doctor of education, the
7 ones who have taken this stand, the ones called by
8 the Plaintiffs themselves, their own physicians. And
9 in discussing the economic health of those school
10 districts, those doctors of education have told the
11 patient one thing. "You're after equity in
12 education, but it can't be achieved because there's a
13 major problem, and that major problem is, two-thirds
14 of the school districts in this state are too small.
15 You've got to have economies of scale rather than
16 diseconomies of scale. You know that. There have
17 been studies on it just like there have been lung
18 studies, and that study was a governor's study in
19 1968. You know that because I'm your physician and
20 I'm telling you that. Now that you know that there
21 are studies telling you you need to consolidate these
22 small districts, and now that the studies are out,
23 I'm telling you why don't you."

24 Superintendent after superintendent has simply
25 told the Court, "We don't want to consolidate for a

1 variety of reasons, including local pride, interest
2 in local control, and so forth." All of those reasons
3 may not be acceptable to their own physicians,
4 physicians called by the Plaintiffs in this case. It
5 is ironic, of course, that the ones who perhaps have
6 a medical problem in regard to smoking are the ones
7 who sometimes complain about the quality of the air.

8 In this case, the Plaintiffs, while they
9 complain about lack of state funding, as much funding
10 as they would like, are the very ones who receive the
11 largest percentage of their cost in the Foundation
12 Program from the state.

13 For example, in Plaintiffs Exhibit No. 205,
14 those districts that are under \$100,000.00 of market
15 value per ADA are the ones that receive 92.1 percent
16 of their Foundation Program costs from the state. On
17 the other hand, of those other property wealthy
18 districts, the over \$500,000.00 category, receive
19 less than -- or receive approximately 20.6 percent of
20 their budget from the state. So percentage-wise,
21 they are receiving a significant portion of their
22 budgets from the state, 92.1 percent, and yet,
23 they're telling this Court, "That's not enough, we
24 need additional funds."

25 The Court has given the Plaintiffs over five

1 weeks to bring all of the facts to the Court to
2 explain why this patient needs the remedy that they
3 seek. The Court has also been very patient in
4 listening to all of those witnesses and to all the
5 testimony and evidence, and the Plaintiffs have now
6 rested. But the only thing the Plaintiffs have
7 proven is that they don't like the wording of the
8 Texas Constitution. Beyond that, they have
9 established nothing for this Court to decide, and
10 thus, it is proper for this Court to grant judgment
11 for these Defendants.

12 If we could, let's go specifically through some
13 of their logic. The six causes of action that the
14 Plaintiffs have in their case is that the current
15 method of school financing is a violation of Article
16 VIII, Section 1, of the Texas Constitution. We need
17 to examine their approach very carefully. Article
18 VIII, Section 1, says very simply, "Taxation shall be
19 equal and uniform." The Plaintiffs set that out in
20 their petition. Article VIII, Section 1(e) also
21 states that, "No state ad valorem taxes shall be
22 levied within this state."

23 Now, in our analysis of those two sections, we
24 really are going to look at three things: How taxes
25 are levied, the application of the rule, and the

1 wealth of the political subdivisions. The Plaintiffs
2 allege, of course, that the property wealthy
3 districts can tax at lower rates, provide a basic
4 education; and conversely, the property poor
5 districts are required to tax at higher rates, but
6 get less money.

7 Well, first of all, we need to start with the
8 levy. When we say that taxation shall be equal and
9 uniform, what are we talking about? We're talking
10 about the actual application or the levy and
11 collection of those taxes.

12 Now, when we talk about equal levies are we
13 talking about equal across the state, or equal local
14 taxes? Clearly, we're not talking about a state ad
15 valorem tax because Article VIII, Section 1(e), says
16 there is no state ad valorem tax. So we're not
17 talking about state taxes. That only leaves local.

18 Now, in examination of local taxes, first of
19 all it has its authority in Article VII, Section 3,
20 of the Constitution, which gives a local school
21 district authority to levy that ad valorem tax. That
22 says, "The Legislature may authorize an additional ad
23 valorem tax to be levied and collected within all
24 school districts heretofore formed or hereafter
25 formed for the further maintenance of public free

1 schools and for the erection and equipment of school
2 buildings thereon."

3 This particular case which sets out that
4 portion of the statute is Mainley versus Trustees of
5 Conroe ISD (Phon.), a 1939 case out of the Court of
6 Civil Appeals where the Supreme Court held the
7 judgment was correct. The court there said, "Thus,
8 there is an expressed constitutional mandate to the
9 trustees of an independent school district to levy
10 and collect an ad valorem tax (a) for the maintenance
11 of the public free schools of the district and (b)
12 for the erection and equipment of school buildings in
13 the district." So there is our authority for the
14 local tax. So clearly, we have our base laid that
15 the district can levy that tax.

16 Now, the next question, then, would become:
17 Must that tax be equal between two districts? And
18 the answer to that is no. The case of Wheeler
19 versus City of Brownsville is a Supreme Court of Texas
20 case decided in 1949. This case analyzes Article VIII,
21 Section 1, exactly what we're talking about here. The
22 case basically holds as follows: "The rule with
23 respect to equality and uniformity is as follows: So
24 long as the tax for the payment of the bonds" -- and
25 this case involved bonds -- "is uniformly levied on

1 all taxable property in the district which issues the
2 bonds, and which bonds are to be paid by such tax,
3 the constitutional requirement of equality and
4 uniformity is observed."

5 So Wheeler points out that the concern is
6 whether or not they are levied equally within the
7 taxing jurisdiction.

8 The next question might be that there -- as the
9 Plaintiffs would argue -- is that even though there
10 is equal application of a tax, say, within the
11 Socorro District, an equal application of a tax
12 within the Dallas District, that there are certain
13 inequities resulting from the application of that
14 rule because the application gets a different result
15 in Socorro than in the Dallas Independent School
16 District.

17 The Wheeler case goes on to discuss the
18 application of the rule. The Supreme Court said
19 there, "Inequities resulting from the application of
20 this rule are not a ground for unconstitutionality.
21 To hold that each person must receive the same
22 benefit as another may from the expenditures of money
23 raised by taxation would be to hold that the law
24 required an impossibility, for in the very nature of
25 things, some persons will derive greater pecuniary

1 benefit from the expenditure of money for strictly
2 public purposes than will others. In fact, some may
3 receive no benefit whatever, while others may and
4 will be directly benefitted. Certainly a legislative
5 adjustment of those inequities would involve no
6 concern with the constitutional rule under
7 consideration."

8 The Plaintiffs then would argue after we have
9 discussed levy and the application that there is an
10 inequity which results from the wealth of political
11 subdivisions. That has pretty much been laid to rest
12 in the Rodriguez case. The United States Supreme
13 Court addressed those issues and pretty much the same
14 complaints were aired there as we have heard in this
15 courtroom. When I read the language in the Rodriguez
16 case, I think the Court will see a lot of language
17 that could almost have come from this witness stand.

18 The U. S. Supreme Court says, "Appellees
19 further urge that the Texas system is
20 unconstitutionally arbitrary because it allows the
21 availability of local taxable resources to turn on
22 happenstance."

23 They see no justification for a system that
24 allows, as they contend, "The quality of education to
25 fluctuate on the basis of the fortuitous positioning

1 of the boundary lines of political subdivisions and
2 the location of valuable commercial and industrial
3 property, but any scheme of local taxation, indeed
4 the very existence of identifiable local governmental
5 units, requires the establishment of jurisdictional
6 boundaries that are inevitably arbitrary. It is
7 equally inevitable that some localities are going to
8 be blessed with more taxable assets than others."

9 And the court then gives a footnote, and in the
10 footnote, it says, "This court has never doubted the
11 propriety of maintaining political subdivisions
12 within the states and has never found in the equal
13 protection clause any per se rule of territorial
14 uniformity," and gives citations. When it really
15 comes down to it, that's what the Plaintiffs are
16 urging on this Court, territorial uniformity.

17 The Court goes on to say, "It has simply never
18 been within the constitutional prerogative of this
19 court to nullify statewide measures for financing
20 public services merely because the burdens or
21 benefits fall unevenly depending upon the relative
22 wealth of the political subdivisions in which
23 citizens live." That's exactly the argument, Item No.
24 3, the Plaintiffs have urged on this Court throughout
25 this trial. The U. S. Supreme Court appears to have

1 addressed it very directly in discussing burdens and
2 benefits.

3 The Plaintiffs might also argue with the Court,
4 well, factually, if there are two districts who levy
5 the same tax rate but they receive different
6 benefits, then that is, in itself inequitable. And
7 factually, there is a good example. There is an
8 example of Dallas Independent School District, which
9 has a true rate of 54 cents, and Edgewood, which has
10 a true rate of 56 cents. In there, we have
11 essentially the same tax rate, but the Plaintiffs
12 would argue again different results.

13 The case of Weber versus City of Sachse
14 (Phon.), which is a Court of Appeals case out of
15 Dallas in 1979, goes into a situation which is very
16 similar to that. The City of Sachse is in an
17 unincorporated area of Dallas County, and in that
18 case, they pay the same county taxes as the residents
19 of the city, but they complained that they didn't get
20 the same county police protection and raised an equal
21 protection argument. "We pay the same taxes as you,
22 but we don't get the same police protection."

23 The court held the following: Equal protection
24 does not entitle every citizen to receive equal
25 benefits. There's that word again. The U. S.

1 Supreme Court has used it, the Dallas Court has used
2 it, and essentially, that's what the Plaintiffs are
3 saying, "We are not getting equal benefits." Every
4 citizen is not entitled to receive equal benefits
5 each time government money is spent. Such a standard
6 would make almost all government spending programs
7 unconstitutional.

8 "Absent some invidious discrimination, based on
9 a suspect classification such as race or sex, the
10 equal protection clauses of both the Texas and United
11 States Constitutions require only that the county
12 government have a rational basis for providing
13 different levels of law enforcement services in these
14 areas of Dallas County," and again cites Mumme versus
15 Marrs.

16 The court holds that portion of the judgment
17 requiring the provision and funding of a particular
18 level of law enforcement to plaintiffs is beyond this
19 court's power to grant, and cites a number of cases,
20 including some from the Texas Commission of Appeals.

21 Then having examined the constitutional claims
22 directly that the Plaintiffs have raised and
23 hopefully showing by application of the case law to
24 the facts which they have presented that this is not
25 a constitutional question, it simply does not get

1 there by the facts that have been presented here
2 under the current status of the cases. If this is
3 not a constitutional issue that they have brought to
4 the Court, what is it? They have said that they've
5 got a problem. They are looking for a cure. The
6 answer is very simple, and that is, it's a
7 legislative problem. It's a matter for the State
8 Legislature several blocks away. It is not a matter
9 for this Court.

10 House Bill 72, about which they complain, was
11 passed by the Legislature, can be amended by the
12 Legislature, and can even be abolished by the
13 Legislature. Many of the witnesses were asked, "Have
14 you raised these suggestions that you're bringing to
15 this Court before the Texas Legislature," and they
16 said no. Well, there should be some question about
17 why they're here in this courtroom if they're not a
18 few blocks away addressing the Legislature to see if
19 they can meet with their concerns. Their answer
20 we've heard, "But the Legislature refuses to make our
21 requested changes," so the Plaintiffs then come to
22 this Court. But because the Legislature may not do
23 everything these parties want to do, does that really
24 make it a matter for this Court? Obviously
25 constitutionally, it does not.

1 Furthermore, in a case with which this Court is
2 familiar, the case of Mutchler versus Texas
3 Department of Public Safety (Phon.), a case decided
4 by the Court of Appeals of Austin in 1984, the DPS
5 was complaining that they had a bill passed for
6 overtime pay for their officers.

7 In 1977, the Legislature passed that bill,
8 which is called House Bill 151, now codified as
9 Vernon's Article 44.13, Section 17(a), but the fiscal
10 note which accompanied the legislation contained the
11 statement that an annual appropriation of over \$4
12 million would be required to implement and fund
13 Article 44.13, and the Legislature has never seen fit
14 to fund the law. The DPS brought suit looking for
15 the money to fund the law.

16 The Court held that there were two independent
17 prerequisites to meet before state funds may be
18 expended. One, there must be not only the statutory
19 authorization creating the program, but two, there
20 must also be a specific legislative appropriation.

21 The Plaintiffs have claimed, "We don't have the
22 money to go with some sections of House Bill 72. The
23 Court in the Mutchler case concluded, "While the
24 members of this court are not unsympathetic to the
25 cause advocated so persuasively by the appellants,

1 the time-honored principle of separations of powers
2 prohibits us from doing what the Legislature has
3 refused to do. Therefore, we must affirm the
4 judgment of the trial court which declared that an
5 appellee was not violating the provisions of Article
6 44.13 by refusing to transfer surplus funds to pay
7 for supplemental paid benefits."

8 The Plaintiffs have asked for certain remedies.
9 Dr. Billy Walker has stated that one of the remedies
10 is you must consolidate your smallest districts. The
11 Plaintiffs simply have got to clean house first to
12 show that they, themselves, are truly interested in
13 moving toward equity.

14 The only thing that they have proved thus far
15 is that in spite of the provisions of the Texas
16 Constitution, which the present law meets, the
17 Plaintiffs don't like the Texas Constitution. Their
18 remedies then, Your Honor, are not in this Court, but
19 are in the pink granite building with the dome on it.
20 They're in the wrong location, and for that reason,
21 these Defendants are entitled to judgment as a matter
22 of law.

23 THE COURT: Thank you very much.

24 We'll stop for morning break, and we'll get
25 started up again at ten till.

(Morning break.)

THE COURT: All right, sir.

MR. O'HANLON: If the Court will recall the testimony of Dr. Walker, Dr. Walker characterized the system or the history of school finance in this state as one of intermittent crisis and reaction to that crisis.

I am reminded of Greek mythology with respect to that. It's a theoretical applicability to this case and an old tale known as the Myth of Sisyphus. The Sisyphus I was trying to remember this morning, I think, is somehow lost in obscurity, but the punishment was interesting, which was for all of time, to roll a rock up a hill that he would never quite make it to the top of, and then when he would get close to the top, it would roll back down. I think that captures the flavor of what we're dealing with here.

In our particular analogy, it's a group of folks that are rolling that rock up the hill, and that's the Texas Legislature. The Plaintiffs in this case are unhappy with the effort of the Texas Legislature and would have this Court knock it down the hill. There is a way to do that. The way to do that is through a constitutional amendment. Give the

1 voters of the state the opportunity to knock it down
2 the hill.

3 Alternatively, short of knocking it down the
4 hill, the Plaintiffs are asking this Court to assume
5 the burden of the Legislature and through the use of
6 trial, presentation of evidence, to go through the
7 same considerations that the Legislature must go
8 through in deciding both a distribution of state aid
9 and its appropriate level of funding, and they're
10 asking the Court to shoulder that rock and to set, as
11 a matter, and to decide as a question of fact
12 supplanting the Legislature the amount of aid that is
13 appropriate and its relative distribution.

14 The Court asked questions about how we go about
15 doing that without having that rock come down, in
16 essence, when you get close to the top of the hill.
17 I submit to you that it cannot be done, that what
18 they're placing the Court in the position of is in
19 the same position that the Legislature would be in,
20 which is the perpetual task of rolling that rock to
21 the top of the hill, only to see it come rolling back
22 down and having to start the task once again.

23 When we talk about school finance, when we talk
24 about issues with respect to funding, we are
25 constrained by the constitutional provisions that

1 these gentlemen have spoken of. We are constrained
2 by the state's inability to raise taxes on a
3 statewide basis from ad valorem sources. That
4 responsibility was specifically delegated to the
5 local independent school districts by constitutional
6 article. As Dr. Walker testified, the state, through
7 its history in the development of the constitutional
8 and taxing provisions in this state, although it
9 originally participated in ad valorem taxes, has come
10 to the position that ad valorem taxes would no longer
11 be a source of state revenue so as to free that
12 potential source of revenue for the local districts,
13 cities and political subdivisions in this state.

14 The Legislature's task, then, since the
15 constitutional amendment of 1918, which for the first
16 time allowed the appropriation of general revenue
17 funds, is to level that hill that we talked about to
18 the best they can. The question before this Court is
19 whether they have done so. There is no entitlement
20 under our notions of separation of powers to an
21 absolute level of appropriation. The Mutchler case
22 and some of the cases that were cited make that
23 perfectly clear to the Court. I don't think there is
24 any reasonable dispute about that issue in this case.

25 The Legislature has decided that they would

1 appropriate the sum of \$5 billion on an annual basis
2 for the provision of public education. To put that
3 in some context, the annual appropriation of the
4 state for all services is approximately \$18 billion.
5 So a substantial portion of the state's revenues,
6 despite the early historical hesitancy for the state
7 to fund, goes into public education at this time.
8 This is not due to constitutional constraints, but
9 the collective judgment of the Legislature of this
10 state over time that have decided that it is
11 appropriate, that it is right, that it is just, to
12 spend substantial sums of the general revenues for
13 the provision of education to the citizens of this
14 state.

15 The Legislature has acted responsibly in this
16 respect. That it has not succeeded in its entirety
17 is more a measure of the enormity of the task than it
18 is the will of the people involved. When we are
19 talking about appropriations, we have that as a
20 constant. The question we then need to ask is, and
21 the Court asked about a rational basis, is the
22 distribution of state aid, given this level of
23 appropriation, appropriate? Is there a rational
24 basis for it or, indeed, is there a compelling
25 interest that requires this relative distribution of

1 aid?

2 Looking through some of the testimony in this
3 case in response to some questions, Mr. Foster
4 himself had this to say. "I think I have mentioned
5 this before, and it is one of the things that the
6 Equity Center was extremely supportive of. Even
7 though we didn't support the amounts of money that
8 were involved, it is sort of like it is better to
9 have an effective mechanism in place than not to have
10 it at all, even if initially it doesn't produce
11 fiscal equity. At least it has -- the machinery is
12 there. If you put enough money into machinery, it
13 will work. So we have moved away with 72, from that
14 just flat grant type of system." Those are Mr.
15 Foster's words. Those are not mine.

16 I submit to the Court that House Bill 72 was a
17 radical departure from the way that we have funded
18 education heretofore in this state. The fact that
19 the Foundation School Program is set at \$1,350.00 is
20 a measure both of some constraints by virtue of the
21 absolute level of appropriation, plus the exchange of
22 competing notions and competing interests that led to
23 some of the other provisions. If we took, for
24 example, the gross kinds of formulas that we have
25 talked about, if we decided to maximize the

1 Foundation School Program given that current level of
2 Foundation School Program appropriation, and given
3 the old two-thirds/one-third split that has
4 historically been some kind of a target, two-thirds
5 state, one-third being local, we could raise the
6 Foundation School Program to \$2,500.00 a child with
7 our same level of appropriation. However, we would
8 have to eliminate all the other programs that --
9 interests the Legislature sought to redress through
10 the funding formulas. We would have to eliminate the
11 price -- and I submit to the Court that the existence
12 -- I understand the formula is complex -- but the
13 existence of the various complex formulas that we
14 have in this state is the best evidence of a rational
15 basis or even a compelling interest for the
16 particular statutes.

17 What has the Legislature wrought? It may have
18 wrought a system with a \$1,350.00 basic allotment,
19 but it has also taken into account a number of other
20 interests that the evidence in this case indicates
21 are important considerations to the provision of
22 education in this state. It has set aside an
23 allotment for compensatory education, additional
24 funding for kids that are hard to serve. We can
25 argue that it is insufficient, but given the level of

1 appropriation, if it is insufficient the only way
2 that we can further accommodate is to pull the money
3 from another program.

4 We have provided an allotment for vocational
5 education, for bilingual education, for education of
6 the handicapped. The Legislature has provided a
7 price differential index, which attempts to account
8 for real differences in costs in the operation of
9 districts in this state. It has provided for a
10 career ladder in an effort to increase the competency
11 of teachers in this state and to provide a positive
12 incentive to stay in the teaching profession. It has
13 provided for education of the gifted and talented.
14 So with -- and all these formulas that we have talked
15 about in connection -- in the context of this case
16 evidences a real intent of the Legislature to deal
17 with real world, actual problems that are encountered
18 by districts out in the field.

19 The Legislature has not provided for
20 facilities. Is it constitutionally mandated? I
21 think it is very clear that it is not. But the
22 Legislature did provide for the first time a broad
23 based study of facilities by -- from which
24 information they could look at things, they could
25 make determinations, they could see the needs in the

1 state. That they have not yet acted upon it is
2 premature. The study was just completed. That they
3 may not be able to act upon it in this session when
4 there are a myriad of competing interests for state
5 dollars, does not say that we are condemned to the
6 present system.

7 So when we look at all the competing interests,
8 I think it is clear that the Legislature has acted
9 rationally; in fact, that they have addressed
10 compelling interests in making the determinations
11 that they have.

12 We have been offered plans to make -- I think
13 we had at one point called them secret plans, in
14 connection with this trial. Two stand out. Mr.
15 Foster's proposal or option that Mr. Turner spoke
16 about earlier. The other is some notion of a
17 regional taxing authority. Let's look at regional
18 taxing authorities briefly and what we are likely to
19 encounter in the real world when we talk about those
20 kinds of issues.

21 Is it reasonable when we look at regional
22 taxing authorities to consider the possibility that
23 Dallas County would be one? Dallas County comprises
24 approximately 10 percent of the scholastic population
25 in this state. Is it reasonable to assume that

1 Harris County would be one? Harris County comprises
2 approximately 15 percent of the scholastic population
3 of the state. Given the numbers and the
4 distributions we're talking about, I think it is
5 reasonable to look at those within that context.

6 So we go out and we create a regional taxing
7 authority. With what result? We have new state
8 action involved in the creation of a political
9 entity. What happens to the desegregation suits in
10 Dallas and Houston? We have created a governmental
11 entity that taxes equally, but that in turn funds
12 schools within the district, this larger district.
13 Now it is going to fund them equally. It is going to
14 provide dollars on an equal basis to these districts
15 within this taxing authority. Does it start to sound
16 like the separate but equal doctrine that was assured
17 by the Supreme Court in Brown v. Board of Education?
18 I submit that it does.

19 So have we -- in an effort to solve a problem,
20 do we not in turn create a substantially larger
21 problem, and the rock that we discussed earlier gets
22 larger, not smaller. How will we tell the students
23 in these consolidated districts, these taxing
24 authorities, that it is okay to go to a minority
25 school because it is now equal? Have we not violated

1 the principle that has been in law since 1954?

2 Quick fixes don't often work and generally
3 create more problems than they solve. It is not an
4 easy process. It is not -- there are no simple
5 answers. Higher level of appropriations, which Dr.
6 Walker said is the only way -- state appropriations --
7 which Dr. Walker said is the only way to achieve true
8 equity, are not available at this time, and given the
9 economic circumstances in the state, are not likely
10 to be for at least another biennium. Is that a
11 legitimate concern of the Texas Legislature?
12 Certainly it is.

13 Is there any evidence in this record that
14 indicates that the Legislature is not concerned about
15 these issues? That the Legislature has not been
16 moving in the direction of achieving the goal that
17 the Plaintiffs in this case seek? I think an
18 examination of the record indicates that the
19 Legislature is acting responsibly within the realm of
20 real legitimate constraints. Certainly it is easy to
21 say that the Court is without restraints. But don't
22 we put the Court's into the business of taking over
23 the educational system? And as my father told me a
24 little adage when I was growing up, I had thought
25 that he who pays the piper calls the tune.

1 It is the Legislature, the elected
2 representatives of the people in this state, that
3 have to -- has to pay the piper. And they have
4 called the tune with House Bill 72. Nobody is going
5 to argue. I'm not going to argue that it is a
6 perfect system. It is not. But it is a moving
7 target at the same time. If we enshrine it in
8 constitutional law, today's solution may be
9 tomorrow's problem.

10 We are asking this Court at this time to grant
11 a judgment in this case at the close of the
12 Plaintiffs' case. Is there a reason, does it make
13 sense, to grant it at this point in time? I submit
14 to the Court that it does. At this point in the
15 case, the Plaintiffs have described very well the
16 problems that are faced by the poorer districts in
17 this state.

18 They have made their best case. But they have
19 made their best case against a state of law in the
20 State of Texas, which says, according to the Supreme
21 Court of Texas in *Mumme v. Marrs*, that the
22 legislative judgment, legislative determinations of
23 methods, restrictions and regulations is final,
24 except when so arbitrary as to be violative of the
25 constitutional rights of the citizen. The classic

1 rational basis test. The case has been reaffirmed
2 numerous times. I submit to you that not only the
3 holdings but the reasoning employed by the Supreme
4 Court is as fresh and appropriate today as it was
5 then. So we are playing out this scene against a
6 constitutional background that constrains the courts.

7 The Plaintiffs are asking this Court to
8 overrule that case, to find a fundamental right. I
9 submit to the Court that a wiser course of action
10 would be to grant the judgment at this point, to find
11 that you are constrained by the Constitution and by
12 the prior holdings in Texas cases. And to send the
13 case up to the appellate process. If we are wrong,
14 if Article VII, Section 1, creates a fundamental
15 right, and the Supreme Court, where this case is
16 surely bound, decides that a new method of analysis
17 is appropriate, the Supreme Court will surely
18 explicate and expound on that method of analysis and
19 tell us what the appropriate standard would be. The
20 case will then come back for us to defend, if it does
21 come back, against that standard so that this Court
22 as a trial judge can weigh the facts against a new
23 standard if the Supreme Court finds a new standard is
24 appropriate.

25 To do otherwise is to force the state into the

1 position of defending a suit against a chimera or a
2 shadow. We are up here defending based on what we
3 understand to be the constitutional law as it exists.
4 The Plaintiffs in this case are attempting to define
5 some new constitutional law. But until there is a
6 ruling, it is hard to defend against that. So the
7 wiser course of action, I submit, is to follow the
8 existing law, and if it is wrong, the Supreme Court
9 will tell us, but they will be reversing themselves.
10 They won't be asking you to reverse the Supreme
11 Court. Then we can come back and if it -- if there
12 is a problem, we can try it against that new
13 standard.

14 Now, is this going to delay the implementation?
15 Is it going to cause a retrial? I submit to you that
16 it is not. The Plaintiffs in this case have
17 consistently said that we need to bifurcate this
18 trial anyway, that we need to try the case to set the
19 standard, and to allow the Legislature a chance to
20 operate against this new standard. It is unlikely
21 that if the Supreme Court writes a standard and
22 explicates with some detail the problems that they
23 have at the current time, that the Legislature will
24 remain galvanized, that the Legislature will ignore
25 what the Supreme Court does. So are we not talking

1 about exactly what the Plaintiffs have had in mind
2 the entire time?

3 Is it necessary for the final resolution of
4 this case at this time to spend weeks more in setting
5 forth the state system and how it operates? Don't we
6 know enough right now for the Court to rule? I
7 submit to the Court that on the record that we have,
8 given the constraints, given the historical
9 development of the Texas Constitution and of the
10 statutes that the Legislature has designed to
11 implement those constitutional provisions, that the
12 State of Texas, through Chapter 16, meets the
13 constitutional standards.

14 So there should be nothing else that is
15 necessary at this particular time. And based on
16 that, we move for judgment.

17 THE COURT: You say there is competing
18 interest for state dollars. Would you care to
19 suggest one that is more important to our future than
20 education?

21 MR. O'HANLON: Yes, Your Honor, I will.

22 THE COURT: Okay.

23 MR. O'HANLON: The Constitution envisions
24 the creation of hospital districts. Life is at least
25 -- life itself is an interest that could compete with

1 education. With respect to the prisons, the
2 discussion of the relative rights of the citizens to
3 be free from people on -- criminals on the street is
4 important. It may not be unless you're a victim, but
5 if you're a victim, it is of considerable importance.

6 The Legislature is debating and considering
7 right now economic legislation and funding to improve
8 the conditions in South Texas that we have
9 substantially heard. And to improve the economic lot
10 of those citizens in the state without -- and we have
11 heard -- and it ties in nicely because we have heard
12 lots of testimony about how the family background is
13 in itself one of the key elements in education.

14 So there are a myriad of competing interests
15 that claim legitimate entitlement to state dollars.
16 The whole administration of our system of welfare in
17 this state, half the cost of which is borne by the
18 state for administration, is an important
19 consideration.

20 THE COURT: Is there a move under foot in
21 the Legislature to sponsor a constitutional amendment
22 prohibiting income tax?

23 MR. O'HANLON: I believe there is a bill
24 in. I am not sure of the exact status of it with
25 respect to committees or what its likely prospect is

1 for passage.

2 THE COURT: Okay. Thank you. Any reply
3 over here?

4 MR. KAUFFMAN: Yes, Your Honor. May it
5 please the Court, I would like to talk a minute about
6 the standard of review that the Court has before it
7 on Defendants' motions at this time, talk something
8 about the facts of the case, which have not been
9 really been considered much to date, and then go over
10 briefly our causes of action in the case and try to
11 get through as quickly as I can. Actually, I think
12 we have a very straightfoward matter here.

13 What you have before you is a motion for
14 judgment by the Defendants. And even though the
15 motion for judgment is before the Court, sitting as
16 the fact finder, the same standard applies as in a
17 motion for instructed verdict in a jury trial. That
18 means, according to Jones v. Tarrant County, 1982,
19 Texas Supreme Court case, that the evidence is to be
20 considered in the light most favorable to the
21 Plaintiff, disregarding all contrary evidence and
22 inferences, and if there is any evidence of probative
23 force on any theory of recovery, the issue must go to
24 the jury. As Jones v. Tarrant County and in three
25 Court of Civil Appeals cases, it is stated that the

1 same standard must be applied by the Court sitting as
2 the fact finder.

3 In other words, we do not have before us at
4 this time a motion on which the Court must weigh all
5 of the evidence and make all of its inferences and
6 make a decision. But if there is any probative force
7 to the -- any theory of recovery put forward by the
8 Plaintiffs in this case, the Court must deny the
9 Defendants' motions and the Court of Civil Appeals
10 cases are Meyers v. Ford Motor Credit Company, a 1981
11 case and Kennedy v. Kennedy, a 1981 case also.

12 As far as the standards that we have before us,
13 and the facts before us, I guess a very important
14 thing has been forgotten in the argument today, and
15 that is we are talking about kids that go to school
16 in the State of Texas, and we are talking about
17 hundreds of thousands of kids on one end that are
18 getting hurt by this system and hundreds of thousands
19 on the other that are being greatly benefited by the
20 system. It is a system which the State Legislature
21 has set up and the State Legislature enforces and the
22 State Legislature allows to continue. I guess that
23 is what we consider to be the basis of the problem.

24 All of this worry about rich districts having
25 to raise their taxes, about pushing stones up hills,

1 about trying to do away with radical Republicans in
2 the 1867 Constitution, doesn't really have much to do
3 with what's going on now. What we are really looking
4 at is an equal protection case and we are talking
5 about people on one end and people on the other and
6 how the state does not classify them fairly. That
7 has to be the basis of our argument and is one on
8 which we will surely prevail.

9 If we want to talk a little bit about the facts
10 of the case, Mr. Foster spent a long time doing that.
11 I just want to summarize what we consider the four or
12 five most important points. That the wealth per
13 student in the districts in the state ranges from
14 21,000 to 14 and a half million dollars per pupil.
15 Those are districts which have been set up under the
16 state legislative system of settings up districts.
17 They are not districts which are guaranteed by the
18 Constitution. But we didn't just look at one
19 district or another. We tried to show the Court what
20 happens when you compare hundreds of thousands of
21 kids to hundreds of thousands of kids.

22 If you look at the children going to the 5
23 percent -- 5 percent of the children in the state,
24 they have \$44,000.00 to tax to educate. If you look
25 at the 5 percent on the other end, they have almost

1 \$800,000.00 to educate them. That's the money that's
2 spent on the facilities. That's the money that's
3 spent on extra teachers. That's the money that's
4 spent on extra educational offerings. It is a system
5 which is allowed in the state.

6 You can go farther. You can look at 20 percent
7 of the children in the state. This is over half a
8 million kids. Kids who live in Texas. Kids who are
9 citizens of this state. They have \$75,000.00 to
10 spend on them as far as their property wealth per
11 child. The 20 percent at the other end, represented
12 by counsel on the other side, have almost \$500,000.00
13 of property to spend on them. We are not longer
14 talking about a few kids here and a few kids there.
15 We are talking about almost half the kids in the
16 state. If look at them, this half gets it bad and
17 this half gets it good. And this violates equal
18 protection as far as we are concerned.

19 We can look at expenditures per student. After
20 you work through all of these state formulas that the
21 state is bragging about, what really happens when it
22 gets out there? What is really spent on the kids?
23 What education do they get? In terms of expenditures
24 per student in this state, it goes from \$1,060.00 per
25 student unit that Mr. Foster talked about to 9,500,

1 and that is when you take in all the formulas, all
2 the weights. If you look at it in gross terms, just
3 straight money per kid, it goes from around 2,000 to
4 around \$20,000.00. Some kids are worth 20,000 to the
5 state. Some are worth two.

6 Again, you can look at large numbers of
7 children. You can look at the children in the lowest
8 5 percent. 5 percent of the kids we are working on
9 here, they have \$1,540.00 per student unit spent on
10 them. The top five, 3,374. More than twice as much
11 is spent on them even when you count their special
12 needs. If you go to the 20 percent, the range is
13 \$1,700.00 to \$2,900.00. \$1,100.00 more. Again, that
14 is per student unit. In real dollars it is \$2,700.00
15 to \$4,200.00. \$1,500.00 difference. 20 percent of
16 the kids in the state have \$1,500.00 more spent on
17 them than the 20 percent over here. That \$1,500.00
18 really means something.

19 We have put on evidence through our experts
20 that those dollars do mean something to kids in terms
21 of the education they get, in terms of the
22 opportunities of their districts to afford an
23 education for their children and in terms of their
24 future progress in this state.

25 Now, what do people pay for what they get? The

1 tax rates range from eight cents to \$1.55. Now
2 remember, all of these are taxpayers of the State of
3 Texas, not of different states. They are all
4 taxpayers of the State of Texas working under the
5 state educational system. Some pay eight cents,
6 others pay \$1.55. As a matter of fact, the ones who
7 pay eight cents get more than the ones who spend
8 \$1.55. Those are by districts that are allowed and
9 created by the State of Texas Legislature.

10 Again, we did not look at individual districts
11 alone. We tried again to show the Court what happens
12 when you look at large numbers of students. Again,
13 students with equal protection rights, hopefully,
14 guaranteed by the State Constitution. 5 percent
15 here, people in the richest districts, their tax rate
16 is 34 cents. 5 percent here, \$1.12. You can look at
17 20 percent. 20 percent of the kids in the state live
18 in districts where their parents have to pay 46
19 cents. 20 percent live in districts where their
20 parents have to pay 95 cents. More than twice as
21 much, and they're getting less by spending more.

22 These are families, there are people, they are
23 in the State of Texas, they're all working under the
24 system and this is one the state is defending here.

25 If you look at wealth, look at the wealth of

1 districts and how much you can afford spend that way.
2 We have done that also. If you look at the children
3 who live in the poorest 5 percent, 5 percent of the
4 kids, they have around \$2,800.00 to spend on them.
5 At the top it is \$4,700.00. Now, we are talking
6 about 150,000 human beings here and 150,000 human
7 beings here, and the state says that this group is
8 worth almost twice as much as to them as this group.
9 If equal protection means something, it can't mean
10 that.

11 If you look at 20 percent of the kids in the
12 state, the kids in the wealthier districts, the 20
13 percent wealthier districts have 4,000 spent on them
14 and poorest is 2,900. \$1,100.00 difference. That is
15 \$1,100.00 which is very important to improve those
16 facilities, to buy more teachers, to get better
17 teachers, to buy more materials, even once in a while
18 to buy a planetarium or two. So it is not lack of
19 effort that causes this problem. The evidence is
20 undisputed that the people in the poor districts
21 spend as much or more in terms of tax rates than the
22 people in the wealthy districts. The evidence is
23 also undisputed that they get less for it and they
24 get much less for it.

25 We also looked at the expenditures, what they

1 call the Foundation School Program. That is the --
2 what the state at least has said is some sort of
3 minimum amount. Well, first of all, every district
4 in the state -- almost every district -- spends more
5 than that, so obviously the parents think you have to
6 spend more than that. But in the lowest 5 percent,
7 those children have about \$500.00 above that amount
8 spent on them, and the richest 5 percent, \$2,600.00
9 more of enrichment for their children. Their
10 children are apparently worth more to the state than
11 the 5 percent at the other end.

12 If you look at Exhibit 107, that's what this
13 shows. At the right, you have the rich districts.
14 At the left, you have the poor districts. Who has
15 extra amounts to try to do something for their
16 children and who don't? 107 is as clear as can be.

17 Now, let's look a what these people in the poor
18 districts have to do to try to improve themselves, to
19 try to get more enrichment, to try to be equal to the
20 folks at the other end the courtroom here. And the
21 poorest 5 percent, they have to have a 37 cent tax
22 rate for every \$100.00 they raise. Top 5 percent,
23 about two cents. Now, that is to raise the extra
24 \$100.00 they need to make up the difference. Again,
25 this is not one district. This is 150,000 kids here.

1 Their parents have to spend 37 cents to raise 100
2 bucks for them to get any additional money. This is
3 another 150,000 kids in the State of Texas. Their
4 parents have to pay two cents. Those are districts
5 that are created and allowed by the State of Texas.
6 I think it is understandable why the Defendants did
7 not concentrate on the facts of the case.

8 Now, let's talk about what these things mean to
9 people. Dr. Cardenas testified yesterday, based on
10 his 30 years of experience, that the system of school
11 finance in Texas has denied equal educational
12 opportunity for children in the state. He says that
13 the system continues to deny equal protection now
14 under House Bill 72. He said for atypical
15 populations, which he includes as low income and
16 Mexican-American kids in this example, that denial of
17 equal educational opportunities is even worse and
18 that is because of the school finance system in the
19 state. He said that the school finance system has a
20 negative impact. It hurts kids in terms of their
21 ability to learn, their ability to master basic
22 skills, their ability to acquire salable skills and
23 further education for them.

24 We can look at what Dr. Walker and Dr. Kirby,
25 the commissioner of education, in their book,

1 Plaintiffs Exhibit, I think, 235, they said these
2 things about school finance. They said, "Education
3 is a fundamental interest of the state, and the State
4 has both the authority and the responsibility for
5 education, including the methods of raising revenues
6 and allocating funds for schools. Moreover, all
7 school property is state property. All school funds
8 are state funds. And all school taxes are state
9 taxes."

10 They are also said, "The public education of a
11 child should not depend upon wealth other than the
12 wealth of the state as a whole. That is, the quality
13 of a child's education in terms of fiscal input
14 should not be a function of the wealth of his
15 parents, his neighbors or the school district." Now,
16 that is what the Defendants in this case have said,
17 along with Dr. Walker in their book.

18 We also heard the other experts in the case
19 talk about the inability of the poor districts to
20 provide adequate education for their children or
21 equal educational opportunity for their children.
22 Facilities, we have heard testimony by people who
23 live in the districts and try to go to school in
24 those buildings and the superintendents who try to
25 conduct school in those buildings, and it is clear

1 that there are major problems in the poor districts.
2 The two expert studies talked about the tremendous
3 amount of money that will be needed to raise
4 buildings up to standards to account for the new
5 laws. And that, again, I want to make clear, is on
6 top of the already existing debt the districts must
7 pay. That money is going to have to come out of the
8 tax rates that we have on Exhibit 108. The low
9 wealth districts will not be able to meet that.

10 Going briefly into the legal arguments in our
11 case and the causes of action that we have stated in
12 our complaint. We have stated that Article VII is
13 being violated by the State of Texas, that the state
14 is not providing an adequate education. That's also
15 what Dr. Cardenas said, that's what Dr. Hooker said.
16 Mr. Foster has said that is true, based upon the
17 study by the State of Texas of the committee of the
18 State of Texas. And I think that the Court, by
19 listening to the testimony of people like Mr. Boyd
20 from San Elizario, who says they can't offer
21 calculus, can't offer geometry, can't offer foreign
22 languages, can't offer extra English, can't offer
23 what you need to go to college in today's world and
24 can't even offer -- in his opinion, can't offer
25 adequately what you need to be a general transcript

1 person; that the system is simply not adequate.

2 In terms of equal protection, there has been
3 some review of the standards of equal protection
4 here. We argue that education is a fundamental right
5 in the State of Texas. It is of paramount importance
6 in this state. The constitutional history that we
7 have gone into here, if anything, shows it has always
8 been a concern of the state. It has always been in
9 the State Constitution. And Article VII, Section 1,
10 is very clear. It says, "The general diffusion of
11 knowledge is essential to the preservation of
12 liberties and the rights of the people, and it is
13 duty of the Legislature to make suitable provisions
14 for support and maintenance of an efficient system of
15 public free schools."

16 Webster's Dictionary does say that essential --
17 one synonym for essential is fundamental. Now, we
18 are not basing our whole case on that, I admit. But
19 I think in common sense terms the State Legislature
20 has said that a diffusion of knowledge is essential
21 to liberty in this state. If there is any
22 fundamental right under the Texas Constitution it
23 must be education.

24 Now, we have talked about Rodriguez. Sometimes
25 the Defendants want to talk about it. Sometimes they

1 don't. In terms of what it did say, it said if
2 education is a fundamental right, the state loses.
3 There is no compelling state interest in this formula
4 system. The State Attorney General, Jim Mattox has
5 said the same thing in his opinion, Page 261 of Jim
6 Mattox 80, I think is the number.

7 MR. GRAY: 60. Here it is.

8 MR. KAUFFMAN: 60. Excuse me.

9 He said, "Unlike the Federal Constitution, the
10 Texas Constitution does explicitly provide a right to
11 an education. Accordingly, if in determining whether
12 an asserted right is fundamental under our
13 Constitution, our courts would apply the same tests
14 used by courts in determining whether rights are
15 fundamental under the Federal Constitution, than the
16 right to education would, under the Texas
17 Constitution, have to be deemed fundamental."

18 Now, Mr. Turner, in his argument, said that --
19 I think it was a case from West Virginia -- I don't
20 think it was West Virginia -- Michigan or something --
21 said that just because it's in the Constitution,
22 doesn't mean it is fundamental. You have to look at
23 Texas law. But the Stamos case, Page 560, says
24 "Fundamental rights have their genesis in the express
25 and complied protections of personal liberty

1 recognized in federal and state constitutions."

2 The Texas courts have also said that the State
3 Constitution of Texas must be interpreted by state
4 courts in this state, and that they are not limited
5 by the federal pronouncements on equal protection
6 unless the state itself is denying equal protection
7 here. What they are saying is that this Court can
8 apply a standard of equal protection based upon the
9 Texas Constitution, and that is exactly what Whitworth
10 v. Bynum held, the Guest Statute case.

11 Now, if we wanted to interpret the Constitution
12 in terms of 1869, the way Mr. Deatherage wanted to,
13 then the whole Texas education system would be
14 unconstitutional. It is centrally controlled. There
15 is a good amount of state money spent on it. Local
16 control has certainly been decimated under the
17 system. And under that theory, anyone in the state
18 could attack the present school system and declare it
19 unconstitutional and go back to one-room schools. We
20 just can't believe that's that what equal protection
21 means in today's world.

22 We have also argued in terms of equal
23 protection, different groups that are impacted. The
24 parents are impacted in terms of what they get for
25 their kids for the money. The districts are impacted

1 in terms of what they can offer under the Texas
2 system. But the children themselves are impacted.
3 They themselves are denied equal protection under the
4 system.

5 I want to talk a little bit and concentrate on
6 the children. If you have a child in a district, and
7 the Supreme Court talked about this in Doe v. Plyler,
8 the alien school children case, even if that
9 child's parents have been bad people, even if they,
10 in the case of Doe v. Plyler, have somehow violated the
11 law by coming to the United States, those children
12 still have a right to an education.

13 Even if a child was unlucky enough to be born
14 in San Elizario or in Socorro or North Forest or the
15 poor districts in the state, they still are citizens
16 of the state and deserve an education. Even worse,
17 if they happen to live in a district that doesn't
18 want to tax much, if you are in a poor district that
19 also doesn't want tax, you suffer double. You suffer
20 because the state does not account for your rights as
21 a kid, and you suffer more because your own district
22 has not accounted for your rights as a kid. But the
23 children themselves must have their own rights, and
24 that is what was established in Doe v. Plyler.

25 The next cause of action we have related to the

1 special problems of Mexican-Americans and the poor in
2 this state. Dr. Cardenas testified about the clear
3 pattern that the poor districts have more
4 Mexican-Americans and have more poor children.

5 He also talked about how these children have
6 extra needs, not just the same as the rest of the
7 state, but even extra needs and that they suffer even
8 more if their districts cannot provide those programs
9 for them. There was more -- we had a lot of other
10 testimony about that as well from the school
11 superintendents who talked about the extra problems
12 and the extra costs associated with educating those
13 children.

14 Dr. Cardenas testified that if you look at this
15 bottom 5 percent we've been talking about, 94 percent
16 of those kids are Mexican-American. It is 30 percent
17 for the state as a whole. If you look at the 25
18 percent of the kids in the poorest districts, 60
19 percent of those are Mexican-American.

20 I would like to talk briefly about how some
21 other states have dealt with this problem. I think
22 Mr. Turner talked something about some other cases.
23 In 1983, the Arkansas Supreme Court, certainly not a
24 Supreme Court noted for its judicial activism, found
25 its state finance system unconstitutional. It said,

1 "Where some districts supply the barest necessities
2 and others have programs generously endowed, the
3 requirements of the Constitution are not met. Equal
4 protection is not addressed to minimal sufficiency,
5 but rather to the unjustifiable inequities."

6 They also dealt with this issue about the
7 apparent allowance of local ad valorem taxation by
8 districts. There is a similar thing in Arkansas. It
9 says in their Constitution local districts can raise
10 ad valorem taxes. The Arkansas Supreme Court said,
11 "The constitutional provision that specifically
12 authorizes local districts to levy school taxes in no
13 way implies that that section authorizes a system in
14 violation of the requirement of equal protection."

15 The Arkansas Supreme Court further said,
16 "Ultimately, the responsibility for maintaining a
17 general, suitable and efficient school system falls
18 upon the state. Whether the state acts directly or
19 imposes the role upon the local government, the end
20 product must be what the Constitution commands. When
21 a district falls short of the constitutional
22 requirements, whatever the reason for the violation,
23 it is the state's obligation to rectify it by
24 compelling the local government to act or by meeting
25 its continuing obligation itself."

1 Now, in Arkansas, they talked a little about
2 the facts of that case and the decision, of course.
3 And in fact, the state in Arkansas provides more of
4 the revenues for education than does the state in
5 Texas. Arkansas has 52 percent. I think in Texas it
6 is about 47 percent. But the ultimate issue is they
7 talked about the range of expenditures in their
8 state. Now, I want you to remember this record is
9 about ten years old, so the numbers are lower, but we
10 wanted to talk about the numbers.

11 The highest and lowest revenues per pupil in
12 that year in Arkansas, the highest was 2,378 and the
13 lowest was 873. Now, that's about 3-to-1. In Texas
14 it is 10-to-1. They talked about the 95th and the
15 5th percentiles. At the 95th percentile, it was
16 around \$1,600.00. At the 5th percentile, it was
17 around \$900.00. In Texas it's a similar ratio,
18 95th-to-5th percentile.

19 They talked about the average valuation of
20 property from 74,000 to 2,000, a ratio, I guess, of
21 37-to-1. In Texas it is 650-to-1 in terms of the way
22 the districts are drawn. So the facts of that case,
23 which shocked the Arkansas Supreme Court, are
24 certainly not as strong as the ones we have here, and
25 that Supreme Court found it clearly unconstitutional.

1 Now, there have been cases dealing with school
2 finance both before and after Rodriguez certainly,
3 and after Rodriguez there was a movement, a fear, I
4 guess, by the advocates of equal opportunity that all
5 of the states would be afraid to do anything. They
6 would read the U. S. Supreme Court case and decide
7 that they would have to interpret their state
8 constitutions in exactly the same manner, and
9 therefore, that would be the end to school finance
10 reform.

11 Well, the courts have not done that. The
12 courts have said they must interpret their state
13 constitutions under their own state standards, and
14 they have continued to find school finance systems
15 unconstitutional. The Arkansas case is one example
16 of that.

17 Now, about half the cases have gone one way and
18 half the cases have gone another. We are not arguing
19 with that. But each of the cases dealt with the
20 facts. Each of the cases looked at their state
21 constitutions and each of the cases looked at the
22 effect it has on the taxpayers and on the school
23 districts, and most important, on the children.
24 That's what we are asking the Court to do in this
25 case.

1 Thank you, Your Honor.

2 THE COURT: All right, sir.

3 MR. RICHARDS: May it please the Court, I
4 will try not to be duplicative, but I had a few
5 things I wanted to say. I wanted to reiterate our
6 view about what school districts are in Texas. This
7 is the statement of what I think we can treat as a
8 Texas Supreme court, it is an error refused case, in
9 Lee versus Leonard.

10 "School districts are but subdivisions of the
11 state government, organized for convenience in
12 exercising the governmental function of establishing
13 and maintaining public free schools for the benefit
14 of the people. School trustees are public officers
15 whose powers are under control of the Legislature."

16 Seems quite clear that the state cannot escape
17 responsibility for what results from configuration of
18 the school districts it has created, maintained and
19 given responsibility for sharing -- I guess, sharing
20 the responsibility for, it is charging the public
21 education function of Texas. This Plaintiffs'
22 Exhibit 102 graphically shows where the inequity
23 starts. It starts in property values of this
24 magnitude -- differentiations of this magnitude --
25 across the districts of the state from poor to

1 wealthy. And it is not as if there is anything about
2 these school districts that lends itself any
3 credibility, rationality or otherwise.

4 I have taken the liberty of xeroxing a couple
5 of school districts which, I think, appear in our
6 Exhibit 1, and I have written some figures on if that
7 come from Bench Marks. This happens to be Potter
8 County, Texas. The major city is Amarillo. It has
9 four school districts. The Bushland Independent
10 School District has property valuation per ADA of
11 827,800. Those numbers are written in red on your
12 map. It does not offer 12 grades of school. It has
13 292 students. Immediately adjacent to it is the
14 River Road Independent School District with 1,132
15 students trying to discharge 12 years of schooling
16 with a property valuation of \$90,088.00 per ADA.

17 Next to it is the Highland Park ISD, another
18 relatively wealthy Highland Park, doesn't offer 12
19 grades of school. Does manage to shelter, however,
20 \$1,370,000.00 of taxable wealth per ADA for 570
21 students. Amarillo, a major urban Texas area and the
22 center of that county, has a student population of
23 24,000 and a property wealth of 163,278 per ADA, some
24 \$100,000.00 below state average.

25 Whether you -- we judge this by rationality or

1 strict scrutiny, this can't survive anything. This
2 sets up for Potter County a system totally
3 inequitable, total irrational. It is a creature of
4 the State of Texas.

5 We have gotten to look a bit at Kleberg County
6 because we always talk about the Santa Gertrudis
7 Independent School District. We all agree that it
8 has a certain element of being kind of a support
9 situation, but again, these are creatures of the
10 State of Texas. In that county, we have a Santa
11 Gertrudis district, and its valuation, I think I have
12 written in red, \$13,000,276.00 and some for -- per
13 ADA. Does not purport to offer 12 grades of school.
14 Has 78 students.

15 Kingsville, immediately beside it, is trying to
16 educate at 12 grades with 5,278 students and a
17 property value of 142,988. Next to it is Ricardo
18 ISD, not offering 12 grades of school, 373 students
19 and \$144,810.00 per ADA. Next to that is Riviera,
20 399 students, 482,000 per ADA. And finally Laureles --
21 if I pronounce it right -- doesn't offer 12 grades of
22 school, 44 students and a property valuation of \$10
23 million per student.

24 Now, obviously, these are not typical of the
25 state. On the other hand, they are representative of

1 problems throughout the state created by a
2 districting scheme that suffers from that kind of
3 inequity wherever we look. This case, I think, makes
4 reapportionment look rational.

5 I have to hand the Court El Paso County. I'm
6 sorry. I didn't get it Xeroxed. The Ysleta School
7 District in El Paso County is divided into three
8 different spots. It is cut off -- and you can't tell
9 what happens there, but in any event, it is pretty
10 clear that the El Paso International Airport, which
11 probably has some property value, is part of El Paso
12 district. Then they jump up and pick up Ysleta
13 again.

14 Now, this is the districting scheme created by
15 the State of Texas, maintained by the State of Texas
16 and used as a device to fund public education. It
17 cuts across the state.

18 Webb County, Laredo, the Laredo ISD is probably
19 almost the poorest in the state, and I suspect what
20 we know about Texas, it is one in which the problems
21 are multitude. It has 21,000 students, and a
22 property valuation of 53,000 per student. It is
23 surrounded by the Webb Consolidated District with 199
24 students and a property valuation of \$4 million per
25 student.

1 Brownsville, we have photographs here of
2 Brownsville of kids literally wading to school.
3 Those are now in evidence. These are ones that got
4 in. Wading to school to their classrooms.
5 Brownsville with 30,000 students, \$50,000.00 per
6 valuation, is cheek by jowel with the Port Isabel ISD
7 with \$573.00 per student per ADA. That's the system
8 that now exists in Texas.

9 The question it seems to me that is posed is
10 can a state consistent with its obligation of equal
11 protection clause, create and maintain districts that
12 produce this kind of radical disparity in the funding
13 opportunities or the funding levels for students in
14 discharging what everyone agrees to be a state
15 responsibility in providing public education.

16 We aren't asking, I don't think, the Court to
17 overrule Mumme v. Marrs. In fact, Mumme v. Marrs is
18 to some degree just the other side of this coin. And
19 I would like to at least draw this analogy in terms
20 of Mumme v. Marrs.

21 Mumme v. Marrs is a case in which some wealthy
22 district got unhappy because the state -- or taxpayer
23 in a wealthy district -- unhappy because the state
24 was attempting through its legislative process to
25 address in some small measure these inequities. So

1 they had made special appropriations for rural
2 districts.

3 I would draw this parallel. Suppose when we
4 decided in Texas, after our voter registration
5 statute was declared unconstitutional, we decided in
6 Texas to extend the franchise, make it easier to
7 register to vote. And we said, in fact, that you
8 could register up to 30 days before an election. At
9 that particular point in our history, there was a
10 substantial movement in Texas to restrict the
11 franchise, was unhappy. People wanted to have annual
12 registration. Suppose one of those persons came into
13 court and sued and said, "It is a denial of equal
14 protection to me that you let all these people vote
15 out there." I think the Court would have said to
16 that, "We're going to look to see what the
17 Legislature did in trying to protect its fundamental
18 interest, to wit, the right to vote." That's a
19 perfectly rational thing to do. Mumme v. Marrs
20 essentially is the same thing.

21 What the Legislature was attempting to do then,
22 as we are saying it needs to do a better job of now,
23 is protect the fundamental interest of education by
24 giving some special protections to those impoverished
25 school districts. The Court quite properly applied a

1 rational analysis to that because no one was saying
2 they were being deprived of education. We are saying
3 we are being deprived. We are being deprived of the
4 fundamental right. And once you make that analysis
5 and that argument, then the scale of review or the
6 kind of review is different.

7 Whitworth v. Bynum is important -- it seems to
8 me, important in a multitude of respects. It is, as
9 the Court knows, the case which struck down the Texas
10 Guest Statute under the Texas equal protection
11 clause. It is, I suspect -- at least to my knowledge
12 and someone may correct me -- the fullest expression
13 of our Texas Supreme Court's view of how it is going
14 to go about using the equal protection clause.

15 Ironically, since Mumme v. Marrs was decided in
16 1931, in doing so they also overruled a 1931 case of
17 the Texas Supreme Court which upheld the
18 constitutionality of the Guest Statute.

19 The Court said, "When we have this kind of
20 question, we're going to look to see does the stated
21 purpose of the legislation satisfy the goals in
22 question. It does not, and we find it
23 unconstitutional." The rationality, as the Court
24 asked Mr. Turner, the rationality of this system is
25 not to be found in whether or not what is going to

1 pass the Legislature. The rationality of the system
2 or irrationality or the denial of equal protection is
3 to be found in how has the state gone about
4 discharging its admitted obligation? Has it chosen
5 means and methods which, indeed, produce the result
6 they set out to achieve?

7 The Constitution says they are supposed to set
8 out to provide an equal -- provide an efficient
9 education, insure the diffusion of knowledge in order
10 to preserve the precious liberties of the people.
11 Seems to us, at least, one look at the system, the
12 disparities it creates, the conclusion is obvious
13 whether we analyze under rationality or strict
14 scrutiny. It won't pass.

15 Let me say or try to articulate, since we have
16 been stumbling around with it for some time, the
17 corollary tax argument, and I'll see if I can say it
18 the way we see it, which is somewhat different from
19 the way Mr. Luna sees it.

20 I think we can look at the tax argument which
21 does kind of walk as a handmaiden through the other
22 part of the equal protection argument in terms of
23 denial of education. It can be analyzed as an equal
24 protection matter. It can be analyzed as not taking
25 property without due process of law. And it can be

1 analyzed, although it is much more difficult perhaps,
2 as an equally uniform matter. But it seems to me it
3 meshes nicely with the purported rationality of the
4 system in terms of local control.

5 The state says to these school districts, it
6 says to Socorro, San Elizario, or North Forest, you
7 must, despite what we say about local control, you
8 have to do these things. You have to provide 1-to-22
9 ratio. You have to provide pre-k. Or you have to
10 provide a certain level of teacher salaries. But we
11 are not going to send you the money to do it. You
12 have to go do it. So much for local control.

13 What does it mean in terms of the taxpayers?
14 What it means is, as Mr. Kauffman just said, it means
15 vastly different things to the taxpayers of those
16 districts. It means to North Forest or Socorro tax
17 rates of 25 cents per one hundred or 30 cents per one
18 hundred in order to do those very things the state
19 says you have to do.

20 Now, I think one could argue then at that
21 level, and I realize the argument becomes somewhat
22 dicey at times, however, that once the state mandates
23 it, it has done two things. It's belied the
24 existence of any true local control or rationality in
25 the system, and at the same time it has really said

1 this is our tax. This is a state ad valorem tax
2 under the guise of a local tax. And it said to the
3 taxpayers in those districts you have to do it, even
4 though it is unequal, even though, in effect, we are
5 discriminatory taxing, taking your property without
6 due process of law and denying you equal protection
7 because we are saying you must do it. We are not
8 giving you money to do it. And we have given you
9 districts like this in which to raise the money.

10 So we think the tax argument, we can win
11 without it. We do, however, think that it walks, as
12 I say, in perfect harmony with the other side of the
13 equal protection argument.

14 I leave it to Mr. Gray to wrap it up for us.

15 THE COURT: All right, sir.

16 MR. GRAY: Your Honor, I can wrap it up in
17 5 minutes or less.

18 The Court asks the question of Mr. O'Hanlon to
19 what more important interest does the state have than
20 education. His answer was prisons, welfare. That is
21 the ill that our education faults have created in the
22 past. And that's the ill that this state is going to
23 have to tolerate forever if we don't finally come to
24 grips with our educational problem.

25 We have prisons that are bursting at the seams.

1 The vast, vast majority of those people are
2 uneducated. We have thousands of people on welfare,
3 cannot get a job because they are unskilled and
4 untrained. That vicious cycle goes in year in and
5 year out. Dr. Walker testified that we have had
6 three generations now of students passed through the
7 Texas school system with the disparities of the
8 magnitude that we see today. We are working on our
9 fourth generation of Texans that are being educated
10 under a system that benefits the rich and hurts the
11 poor. What we are seeing is the rich go to college,
12 the rich get good jobs, the rich stay off welfare and
13 they don't go to prison. Yet, this other half of
14 society -- and that's what we are dealing with.

15 We are dealing with -- literally more than half
16 the school children in this state don't have those
17 benefits. Yet, the parents of those children are
18 having to tax at substantially higher rates than the
19 people who live in the wealthy districts and aren't
20 getting anywhere close to what the state has promised
21 and has guaranteed that all Texans will have.

22 That side the table takes the position, well,
23 what all Texans really mean, is all of us who happen
24 to live in our wealthy districts. That's not the
25 case. If money makes a difference, it makes a

1 difference for all. None of the wealthy districts
2 spend anywhere close to what the poor districts
3 spend. They spend substantially higher than that
4 because they know it benefits their children. We
5 don't want to hurt that. All the poor districts want
6 is the opportunity to give their children the same
7 opportunities that the wealthy districts have.

8 Now, a series of remedies have been proposed.
9 The state and wealthy districts quite typically any
10 time you have need for change, the first thing that
11 is always said is it is impossible. Whether you are
12 talking about integration of schools, whether you are
13 talking about reform of the criminal justice system,
14 whatever, the immediate defense always thrown up is,
15 it is impossible, it's going to cause the world to
16 fall and whatever.

17 Our regional tax authority concept. It doesn't
18 take away any local control. All it does is give
19 every child in the state the same opportunity for an
20 education as other children. Mr. O'Hanlon says, you
21 go to that and what do you do, you bring in a wrath
22 of new litigation. Well, what he hasn't mentioned to
23 the state or to the Court is in 1969, the Legislature
24 passed Chapter 18 of the Education Code. 18.01
25 defined the countywide equalization fund, which

1 created the county unit system, is a method by which
2 "the voters of a county may, without affecting the
3 operation of any existing school district within the
4 county, create an additional countywide school
5 district which may exercise in and for the entire
6 territory or the county the taxing power preferred on
7 school districts by Article VII, Section 3."

8 That has not created one new desegregation suit
9 in this state. And that has been the law since the
10 61st State Legislative Session in 1969, effective
11 September 1, 1969.

12 MR. O'HANLON: Actually, that was the
13 codification that's been in the law since the '30s.

14 MR. GRAY: Okay. Then I stand corrected.
15 It has been in the law since the '30s, and since the
16 '30s has not created one desegregation suit.

17 What we are saying is that the state has the
18 power and this Court has the power to do what is
19 right, which is create a circumstance where all
20 children have an equal opportunity. There may be
21 and, in fact, we think there are, many, many valid
22 reasons why for governance purposes local districts
23 ought to exist. You're closer, you have more input
24 to your local school board, and there's a lot of good
25 reasons for that. And the Legislature has seen fit

1 to keep those reasons and acknowledge those reasons.

2 But at the same time, if you're going to keep
3 these local districts like you have them, and if
4 that's what the Legislature decides to do, you have
5 to provide the resources for which the local
6 districts do their job. And the way to do it both
7 ways is to create regional taxing authorities, which
8 has been contemplated to some extent since the '30s,
9 according to Mr. O'Hanlon, and yet has never been
10 fully followed through. And it is clear that the
11 Legislature and this Court has the authority to say,
12 let's create a school district for funding purposes
13 that is equal. That is far greater than these huge
14 disparities Mr. Richards points out.

15 What we are here asking this Court, and I know
16 we are probably urging a remedy earlier than the
17 Court anticipated, but the evidence, I think, is
18 clear. I think by all the defense counsel, they even
19 acknowledge these disparities exist, they acknowledge
20 it is hurting kids, and they acknowledge there is a
21 large number of kids that are advantaged and a large
22 number of kids that are disadvantaged. And we are
23 here trying to propose a solution that fixes the
24 problem, and for better or for worse, the politics of
25 the matter are in the political eyes a rational basis

1 for anything is what gets me re-elected and what
2 keeps me from being defeated.

3 And for better or for worse, the Legislature
4 has viewed their rational purpose as it comes to
5 funding education as maintaining a political future.
6 That may indeed be a legitimate consideration that
7 individual members of the Legislature have to make in
8 assessing their political future, but it works to the
9 disadvantage of children.

10 For the reasons stated by my co-counsel, we
11 respectfully urge the motion for judgment be
12 overruled.

13 THE COURT: Any reply over here?

14 MR. O'HANLON: I have a short one.

15 THE COURT: Okay.

16 MR. O'HANLON: Your Honor, when we talk
17 about inequities in funding, we are not talking about
18 real world situations given their charts. Mr. Turner
19 developed a chart for you -- I believe it is Exhibit
20 No. -- Plaintiff-Intervenors' --
21 Defendant-Intervenors' No. 14 or something like that --
22 in which he demonstrated, according to Mr. Foster's
23 own statistical analysis, that the disparity between
24 the 5th and 95th percentile, assuming average tax
25 rate, this is assuming that the districts down here,

1 that the poor districts which do not raise their
2 taxes as demonstrated by their exhibit to the
3 statewide average -- let's assume average tax rate.
4 You will find that instead of this 10-to-1 ratio, you
5 will find the ratio is 1.44-to-1. That's the real
6 disparity in this state.

7 Now, this is ingrafted upon the system in which
8 we have a dramatic difference in wealth in this
9 state. There is no question about that. And the
10 reason why it isn't 10-to-1, as demonstrated on that
11 chart, the reason why it is 1.44-to-1 is that the
12 Legislature has provided an awful lot of money for
13 the purposes of equalizing expenditures per student
14 in the state.

15 Let's look at the facts. Let's look at the --
16 our Exhibit No. 26. Mr. Kauffman cited the
17 expenditure disparities between the 20th percentile
18 and 80th percentile. You have before you the exhibit
19 which explains educational outcomes on -- as measured
20 by test scores, and you will find if you look at the
21 difference between test scores, despite those
22 spending disparities, that there isn't much
23 difference in performance of students based on how
24 much their districts spend on them. That's the cold,
25 hard truth. And the reason why is clear.

1 There is enough money generated in the state
2 system to provide a basic education that meets the
3 requirements of Chapter 75 of the Texas Education
4 Code that defines the legislative expectations of
5 what an education requires. It is clear that the
6 people in Socorro do not have indoor tennis courts.
7 So what? Are the kids in Socorro learning something?
8 Mr. Sybert said they were.

9 They talked about that they can't hire
10 superintendents, and yet did you listen to the
11 superintendents that they put on the stand? Is Mr.
12 Sawyer incapable of running a good district? Is Dr.
13 Christian incapable of running a good district?
14 These are reasoned, careful men that are doing a
15 doggoned good job with the circumstances in which
16 they find themselves and are providing an education
17 for the kids in their districts. Certainly under
18 some difficult circumstances. There is no question
19 about that. Certainly it would be easier if we -- if
20 they had more money. But the money has to come from
21 someplace.

22 We talk about filling the prisons, and Mr. Gray
23 is right, but I submit to you that what we have is a
24 situation where the prisons are largely filled with
25 people from Dallas and Harris Countys and those are

1 precisely the districts that Mr. Foster's exhibit
2 would take all the money away from. Yet they say we
3 need to protect ourselves from our taxpayers because
4 they might not raise enough money to be adequate, but
5 yet, they are going to put Dallas and Houston and
6 Austin and Fort Worth totally at the mercy of the
7 local taxpayers because they are going to take all
8 the state aid away from them. Is that a rational
9 situation?

10 Let's think about this for a minute. We have a
11 definition of equity. Dr. Hooker said 1.15-to-1.
12 After we have done all this, assuming that Dallas
13 raises that \$1.04 basic allotment that they are
14 talking about, we still don't meet their own
15 definition of equity because we are still going to
16 have wealth disparities in excess of the ratios they
17 are talking about. So despite radically altering the
18 system of provision of education in this state, we
19 still haven't met their definition.

20 Whose responsibility is it to determine, to
21 balance the equities, to listen to the citizens of
22 the state? We are not saying that these arguments
23 are not well taken. They are. And they should be
24 repeated again and again and again in every session
25 of the Texas Legislature because they are important

1 considerations, because we do spend 51 percent, if
2 you count higher education in this state, of the
3 state's budget on education in this state. 51
4 percent. More than all other services combined. It
5 is an important interest in Texas. Whether it is
6 enough is a legislative determination.

7 The determination of the levels of funding are
8 what people elect their representatives and senators
9 to debate and to deliberate. Is it fair to take \$178
10 million from the citizens of Harris County out of
11 education, and at the same time, knowing that 28
12 percent or more of the general revenue contribution
13 from sales tax comes from that very county? Is that
14 taxpayer equity?

15 The point is that this is not an easy question.
16 It should be and by all evidence is consistently,
17 constantly debated in the Texas Legislature. The
18 existence of the studies that have been numerous over
19 the years indicates that the Legislature is
20 interested. The accountable cost study where they
21 funded a group to tell them how much they needed to
22 spend is evidence that they are working on the
23 problem.

24 It is not a situation that is -- well, I was
25 going to say it is not a situation that's going to be

1 decided overnight, and that is not true. It is not a
2 situation that is ever going to be solved because we
3 are always going to be debating about appropriateness
4 of expenditures on educational levels. And there is
5 always going to be people that are saying we are not
6 spending enough and that's good, but the choice here
7 is the form in which that debate is played and they
8 are asking the Court at the bottom line to substitute
9 its judgment for the whole deliberative process that
10 is set up by our Texas Constitution for debate of
11 these issues.

12 THE COURT: All right, sir.

13 I'll respectfully deny the Defendant and
14 Defendant-Intervenors' motions. So there won't be
15 any misunderstanding, I also deny their motions for
16 summary judgment.

17 Let the Court say that I have read all the
18 motions for summary judgment, all the briefs attached
19 thereto and I appreciate them. They were thoughtful
20 and well done. I especially enjoyed Mr. Deatherage's
21 history.

22 Shall we meet again Monday morning at 9:00
23 o'clock? Okay.

24 (Proceedings recessed
25 until February 23, 1987.)

3-87-190-CV

CAUSE NO. 362,516

C 8353

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

> IN THE 250TH JUDICIAL
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DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

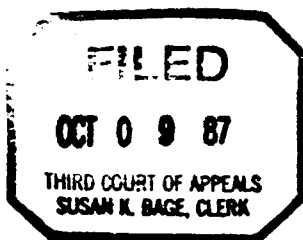
JUN 21 1989

JOHN T. ADAMS, Clerk

STATEMENT OF FACTS

Deputy

VOLUME XXI OF XLVI



TAKEN FEBRUARY 23, 1987

MONICA ROSS WEIDMANN

Official Court Reporter
250th Judicial District Court

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

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IN THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

MR. ALBERT H. KAUFFMAN and MS. NORMA V. CANTU,
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11 Attorney General, P. O. Box 12548, Austin, Texas
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12 -and-

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23 -and-

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8
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17 ATTORNEYS FOR THE DEFENDANT-INTERVENORS
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25

BE IT REMEMBERED that on this the 23rd day of
February, 1987, the foregoing entitled and numbered cause
came on for trial before the said Honorable Court,
Honorable Harley Clark, Judge Presiding, whereupon the
following proceedings were had, to-wit:

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1 February 23, 1987

2 THE COURT: All right.

3 DEFENDANTS' EVIDENCE

4 MR. THOMPSON: Your Honor, at this time,
5 we call Mr. Lynn Moak.

6 MR. LYNN M. MOAK,
7 was called as a witness, and after having been first duly
8 sworn, testified as follows, to-wit:

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q. Mr. Moak, would you please state your full name?

12 A. Lynn Martin Moak.

13 Q. Mr. Moak, would you describe your educational
14 background?

15 A. I have a bachelor's degree in government from the
16 University of Texas in Austin.

17 Q. Would you describe your professional involvement and
18 your professional history relating generally to
19 public finance and specifically to public school
20 finance?

21 A. My earliest involvement with public school finance
22 was a brief involvement with a research study at the
23 Texas Research League in the Summer of 1964,
24 involving the analysis of sample school finance data
25 that was being gathered at that time.

1 My career in this area essentially began in
2 1966, when I was employed as a research analyst for
3 the Governor's Committee on Public School Education,
4 which was a committee that had been created by the
5 Legislature in 1965 and appointed by then Governor
6 John Connally.

7 During the three-year period of that committee,
8 I performed -- served as a finance analyst and did
9 extensive research in the area of public school
10 finance and in the area of coordination of a major
11 study of property values, which really was the first
12 study that took place in property evaluation during
13 the -- in the state. Also during that time, I
14 prepared a long-range cost estimate of the Governor's
15 Committee research work and prepared various impact
16 studies for that committee.

17 When that committee completed its work in June
18 of 1969, it had reported to the Legislature, and the
19 1969 Session of the Legislature did adopt a number of
20 the recommendations of the Governor's Committee with
21 special reference to personnel recommendations and
22 salary recommendations.

23 When I left there in -- left the Governor's
24 Committee at the termination of its work in 1969, and
25 joined the Texas Research League as a research

1 analyst for the next three years.

2 During that time we performed at the Research
3 League, there were a number of studies done involving
4 public school finance as well as higher education
5 finance, financing of community junior colleges,
6 state housing policies, property taxation and
7 management accounting study, Texas Education Agency.
8 Overall, during that time period, I maintained a
9 expertise in current finance issues in the early
10 '70s.

11 From January of 1972 through December of 1974,
12 I was Director of School Finance-Special Projects as
13 part of the -- for the Texas Education Agency
14 reporting to the Office of Commissioner of Education
15 and working with the State Board of Education
16 Committee during that time period.

17 This unit was a special unit that was set up in
18 response to the lower court decision in the
19 Rodriguez, initially, in order to coordinate a
20 variety of school finance studies and school finance
21 information requests at the Education Agency and
22 throughout state government.

23 During that time period, we established in
24 concert with the Texas Research League, the first
25 major capability to analyze school finance issues and

1 to project the impact of state aid for individual
2 school districts throughout the state.

3 Also during that period, I worked with the
4 Education Agency in -- and the State Board of
5 Education in formulating the State Board of
6 Education's response to the lower court Rodriguez
7 decision, which was produced in a study that was
8 presented to the Legislature in 1973.

9 In addition, I worked during both of the 1973
10 Legislative Session -- during the 1973 Legislative
11 Session rather extensively with House and Senate
12 Public Education Committees in dealing with public
13 school finance issues that were considered in 1973.

14 I left the Education Agency in December of 1974
15 and became assistant comptroller for planning and
16 research at the Comptroller's Office of Comptroller
17 of Public Accounts. Mr. Bullock had just become
18 Comptroller of Public Accounts and asked me to become
19 the first planning research director. Effectively,
20 the first revenue director as well. Those were kind
21 of the early days in that process. At the time we
22 were even co-signing the state's revenue estimate.

23 That took me into a broader area of
24 governmental finance than I previously had been
25 involved in, and although, while I was at the

1 Comptroller's Office, we established the first
2 financial research permanent -- permanent finance,
3 permanent research office in state government, which
4 is still in the Comptroller's Office in a different
5 form today.

6 In addition, during the 1975 Legislative
7 Session, I worked with the Office of Lieutenant
8 Governor Bill Hobby in the formulation of what
9 ultimately became the school finance legislation,
10 which passed in 1975, House Bill 1126. That school
11 finance legislation, which was drafted by a couple of
12 people, including myself, was formulated in April or
13 May of 1975 and became one of the benchmark pieces of
14 legislation that was passed during the 1970's in the
15 school finance area.

16 I left the Comptroller's Office in May of 1976
17 and became Director of Research shortly thereafter
18 for the Office of Lieutenant Governor. I served
19 there six years. There were no major public finance
20 issues that took place during those years in which I
21 did not play a significant part. In the area of
22 school finance in particular, I participated in
23 studies and in drafting of legislation and in
24 resolution of issues in the 1977, 1979 and 1981
25 legislative sessions.

1 In addition, we had major public finance
2 legislation in several other areas, including
3 retirement systems and highway financing and in
4 property tax reform and relief during that time
5 period. In each of these efforts, I played a major
6 role in the development of what ultimately became
7 adopted legislation by state government.

8 In addition, during the last three -- two
9 years, I served as Research Director for the Senate
10 Committee on the whole on redistricting. This effort
11 led me to being involved in a number of court cases
12 during the late -- or early 1980's, in which I was
13 certified in State and Federal Court as an expert
14 witness in data analysis.

15 In June of 1982, I left the Lieutenant
16 Governor's Office and formed my own consulting firm.
17 During the three-year period, from 1982 to 1985, I
18 again had a number of clients in the area of public
19 finance and information systems. In particular in
20 the school finance area, I was a consultant to the
21 Office of Governor in 1983, during the first
22 legislative session of Governor White, and
23 participated in the school finance analysis performed
24 for his office during that year.

25 In 1984, I became a consultant to the Texas

1 Education Agency, to the Commissioner of Education,
2 and as a part of my consulting business. And that
3 led to a broad involvement with the Texas Education
4 Agency over the next several years in the area of
5 public financing, public information systems and
6 development of support information for House Bill 72,
7 the SCOPE Committee and implementation of the
8 reformed legislation after the Summer of 1984 when it
9 was passed.

10 When I was at the -- In addition, while I was
11 consulting for the Education Agency, I had a separate
12 consulting arrangement with the Legislative Budget
13 Office in the development of school finance analysis
14 and modeling capability for the Legislative Budget
15 Office in concert with the Education Agency.

16 On September 1, 1985, I became Deputy
17 Commissioner for Research and Information, which is a
18 position I still hold. The position of Deputy
19 Commissioner for Research and Information is
20 responsible within the Agency for a broad basis of --
21 broad number of areas, specifically, though,
22 including long-range planning, general policy
23 coordination, budget formulation, statistical
24 research studies, financial research studies and the
25 general provision of information services.

1 Q. Mr. Moak, is it fair to sum up your professional
2 background by saying that for the last 20 years, you
3 have not been just a spectator but that you have been
4 actively involved in every major school finance study
5 or legislative activity in that period?

6 A. I think it's fair to say that I've been involved in
7 most every school finance study and most every major
8 school finance issue in one fashion or another.

9 MR. THOMPSON: Okay. Can I have this
10 marked?

11 (Defendants' Exhibit No. 29 marked.)

12 Q. Mr. Moak, I'm handing you what has been marked as
13 Defendants' Exhibit 29 and ask you to identify it,
14 please?

15 A. This is my resume.

16 Q. Is it a current resume?

17 A. It is a current resume.

18 Q. Thank you.

19 MR. THOMPSON: Your Honor, we offer
20 Defendants' Exhibit 29.

21 MR. KAUFFMAN: No objection, Your Honor.

22 MR. GRAY: No objection, Your Honor.

23 THE COURT: It will be admitted.

24 (Defendants' Exhibit No. 29 admitted.)

25

1 BY MR. THOMPSON:

2 Q. Mr. Moak, given your extensive involvement in the
3 last 20 years in the development of our current
4 school finance system, I'm sure there are certain
5 high-water marks or significant events that stand out
6 in your memory, and I would ask you now to review the
7 major selling points during that period and discuss
8 the implications of those as they relate to school
9 finance.

10 A. Over the 20-year period, since mid-1960s, we've
11 changed both the focus of school finance and we've
12 changed, effectively, the players in the school
13 finance arena.

14 During the 1960s, and really before the 1960s
15 with the exception of the late '40s, the primary
16 focus of public school finance issues in Texas dealt
17 with the sole issue of teacher salaries and the
18 financing of individual teacher salaries bills.
19 Effectively, if you look at the record over the late
20 '50s and early '60s, each legislative session dealt
21 with the issue of public school finance primarily as
22 a teacher salary issue, and it was often related to
23 the size of the tax bill that was going to be passed,
24 many times featuring some form of consultation
25 between the legislature and the governor over the

1 issue.

2 The first step in changing that process really
3 began in 1965 when there was a major -- there again
4 was a major battle over public school finance
5 salaries during that time period in which the -- part
6 of the outcome was that a committee was created to be
7 appointed by Governor John Connally that was to
8 address the needs for a long-range plan for public
9 school education. And that was the Governor's
10 Committee on Public School Education. And it was
11 with this process that we began to change very much
12 the kinds of issues that we've had in public school
13 education ever since.

14 In particular, the issues that got introduced
15 by the Governor's Committee into the arena included
16 that of program adequacy; that is, the overall level
17 of the Foundation Program to support an adequate
18 education program in the state; equitable property
19 tax evaluation and administration, which at the time
20 was sadly lacking in our entire school finance system
21 with the lack of either equitable evaluation or
22 administrative practices; the need for increased
23 district flexibility from the very stringent school
24 finance formulas of the time and the need for special
25 population -- treatment of special populations in the

1 school finance arena, expecially those in the area of
2 compensatory education.

3 Although that basic agenda of the Governor's
4 Committee on Education has been adopted in many ways
5 in the years since, the Governor's Committee also
6 tried to bring up two other issues which did not
7 surface again for some years or in one case has never
8 surfaced again.

9 That is in the area -- The first area was in
10 the relationship to the overall program to
11 educational performance. After 19 -- After the study
12 of the 1960s, we did not get back to the issue of
13 educational performance in its relationship to school
14 finance until the SCOPE Committee of the 1980s.

15 In addition, the Governor's Committee on
16 Education addressed the issue of school district
17 consolidation with the more than -- submitting a plan
18 to reduce the more than 1200 districts in the state
19 down to about 350. Neither one of these issues --
20 this issue, rather, the issue of consolidation, has
21 not remained on the table over this time period.

22 The next step in the process was to -- to add
23 another issue, and that's the issue of financial
24 equity. The Governor's Committee, although it
25 recognized the problem of financial equity, really

1 did not make it the benchmark. What quickly became
2 the benchmark of financial equity took place in the
3 Rodriguez Decision in the lower courts in the early
4 1970's. In fact, as I recall, it was December 23rd,
5 1971, that we woke up and found out that our school
6 finance system was unconstitutional. Perhaps we best
7 go back and add a new issue to the arena.

8 The Rodriguez Decision, in its national
9 counterparts, respond a host of school finance
10 studies at the state and national level that dealt
11 with the basic issue of school finance equity within
12 the state for the first time rather than just dealing
13 with a central study or a single study or one or two
14 studies of the school finance.

15 By 1972, if my memory serves me right, we had
16 12 major studies of school finance taking place
17 simultaneously and begun the process of opening up
18 the arena in school finance outside of the relatively
19 narrow number of groups that had played in four to a
20 broad range of groups involved in the school finance
21 in the overall system.

22 The issue of equity to the extent it was
23 addressed in the 1970s, was primarily addressed in
24 the 1975 Legislation, which established the critical
25 elements of the -- balance of the critical elements

1 of the COPSE or Governor's Committee program dealing
2 with district flexibility, compensatory education and
3 the relationship or the need for adequate property
4 evaluation.

5 In addition to that 1975 Legislation, for the
6 first time in adopting a variation of recommendations
7 by the State Board of Education two years earlier,
8 added an equalization component to the Foundation
9 Program to provide an additional degree of flexible
10 funding above the Foundation Program base.

11 After the 1975 Legislation in which that
12 landmark -- the so-called landmark piece of
13 legislation of House Bill 1126 was passed, we then
14 shifted the focus away from these issues of adequacy
15 and equity fundamentally to the issue of inflation.
16 Essentially, we were in a period of double-digit
17 inflation.

18 During the legislative debates of that time
19 period, the primary focus was on the need for
20 providing enough state money -- and state money was
21 available -- to offset the need -- the impact of
22 double-digit inflation on school district budgets
23 throughout the state. Progress was made, however, in
24 a number of areas including retirement financing,
25 special education and some selected program areas.

1 After the -- As inflation began to cool
2 slightly during the latter '70s, it in turn had led
3 to major problems in the areas of property tax
4 administration and property tax relief. Effectively,
5 we were verging on at both the -- in most states,
6 including this one, major property tax revolt, and
7 legislative action was taken as a result.

8 The legislative response to this issue in Texas
9 was to cure the administration of the property tax by
10 adopting the Uniform Property Tax Code modifications
11 in the Constitution and also providing for
12 substantial tax relief, which was paid for by -- to a
13 substantial degree with state money. Again, this
14 issue was not an issue of equity but a new issue that
15 temporarily helped some way in the area of providing
16 money to offset property tax relief measures that
17 took place in rich districts as well as poor.

18 As we moved on into the early '80s, we had --
19 we still had inflation, but we had begun to stabilize
20 oil prices which led to increase reliance on property
21 taxes because at the state level, we did not have
22 substantial additional revenues to put into public
23 education.

24 It was also the beginning of the realization
25 that the literally billions of dollars of additional

1 money, which had been put in place in the '70s and --
2 during the '70s from state funding, had not brought
3 about a -- had not significantly changed the nature
4 of our educational system or improved educational
5 performance within the state. This is a period in
6 the early '80s, when there were a series of national
7 studies as well as some state studies that began to
8 confirm the fact that our educational system was in
9 disrepair and needed some substantial additional work
10 beyond simply adding additional dollars.

11 During the 1983 Legislative Session, we had a
12 classic confrontation, which was really similar to
13 that that I had heard about in 1965; specifically,
14 that there was again a confrontation between the
15 Governor and the Legislature, and the issue was
16 teacher salaries.

17 Governor White, during 1983, attempted to or
18 did recommend to the Legislature a measure to
19 substantially increase teacher salaries with no other
20 school finance component. This had not been
21 recommended since the days of the Governor's
22 Committee in the earlier period during the '60s.

23 So what happened in 1965 essentially came back
24 to bear in 1983. Again, there was a confrontation
25 and again, there was an unwillingness, this time with

1 the roles reversed, but there was an unwillingness to
2 create a major -- a major new tax bill and a major
3 new spending measure without some focus on
4 educational performance in overall planning. What
5 happened, in effect, again, was the same answer, that
6 in place of the Governor's Committee in the 1960s,
7 the SCOPE Committee of the 1980s, the Select
8 Committee on Public Education was created.

9 Also during this time period, several other
10 measures had come into play. In particular, we had a
11 major Curriculum Reform Bill, which is still having a
12 significant impact on public education today. There
13 was an outgrowth of the concern over -- again, over
14 educational performance in the state and the
15 uniformity of educational performance.

16 MR. RICHARDS: What page are you on now?

17 A. The SCOPE Committee, in turn, led to operating a
18 fashion which was really anything -- rather unlike
19 anything we had seen before in public education.

20 It was a joining of selected political and
21 educational communities within the state to create a
22 major reform in public education, which was both
23 broad ranged and effective. It accomplished more for
24 financial and educational reform than any action
25 probably since 1949. And although it's been less

1 noticeable at the national level than it was at the
2 -- than many other studies, it still remains today
3 apparently the single largest reform period in the
4 U.S.. It involved a broad range of basic reforms,
5 which focused on, first of all, in school finance.

6 MR. THOMPSON: I'd like to get this marked,
7 please.

8 (Defendants' Exhibit No. 30 marked.)

9 Q. Mr. Moak, I'm handing you what has been marked as
10 Defendants' Exhibit 30. I would ask you to identify
11 that. That's this page. It's entitled "Comparison
12 of State Revenue by District Wealth Categories."

13 A. This is a table prepared by my office from data at
14 the Texas Education Agency comparing state revenue by
15 district wealth category between 1983-'84 and
16 1984-'85.

17 Q. In 1983-'84, was the last year prior to the
18 implementation of House Bill 72, and in 1984-'85 was
19 the first year following implementation of House Bill
20 72?

21 A. That is correct.

22 MR. THOMPSON: Your Honor, we offer
23 Defendants' Exhibit 30.

24 MR. GRAY: No objection, Your Honor.

25 MR. KAUFFMAN: Excuse me just a second.

1 I'm sorry. On Defendants' Exhibit 30, we didn't
2 object, but we'd like to know what was in the state
3 revenue figures for '83-'84 and '84-'85. Can you
4 give us a broad description?

5 THE WITNESS: Under the accounting system
6 of the state, this would include -- which is
7 prescribed for school districts -- this would include
8 all school district -- all revenue that was
9 originated by the state and received by school
10 districts. In particular, would include all
11 Foundation Program money, all available school fund
12 money. It would as well include a number of other
13 lesser grants in addition to those.

14 MR. KAUFFMAN: Does it include textbook and
15 teacher retirement?

16 THE WITNESS: It does not include textbook
17 or teacher retirement. This is money received by the
18 district.

19 MR. THOMPSON: And it does not include any
20 federal funds either indirect or direct?

21 THE WITNESS: It includes no federal funds.

22 MR. KAUFFMAN: It also includes no federal
23 funds that are distributed by the state?

24 THE WITNESS: It does not include any
25 federal funds distributed by the state.

1 MR. THOMPSON: Do you object?

2 MR. KAUFFMAN: No. No objections.

3 THE COURT: All right. 30 will be
4 admitted.

5 (Defendants' Exhibit No. 30 admitted.)

6 BY MR. THOMPSON:

7 Q. Mr. Moak, I believe you stated a moment ago that the
8 SCOPE study and the reforms coming out of it were, in
9 many respects, the most comprehensive reforms since
10 1949.

11 I would ask you to take what has been marked as
12 Defendants' Exhibit 30, and I would ask you if this
13 portrays, at least in terms of the first year of the
14 implementation of House Bill 72, the impact of the
15 finance provisions of that Bill upon groups of school
16 districts in the State of Texas and would ask you to
17 explain that impact as represented on this exhibit?

18 A. This exhibit does represent a summary of the basic
19 financial pattern of distribution of it -- close to a
20 billion dollars of additional state aid that was
21 generated under House Bill 72.

22 Essentially, the exhibit shows ten groups of
23 districts ranged from poorest to highest. Each
24 category has an equal number of districts, or very
25 close to it, dividing up the 1,063 districts of the

1 state. We maintained those districts and looked at
2 how much state revenue they received in 1983-'84 and
3 how much state revenue they received in 1984-'85.
4 Thus, the first -- in the first category, the poorest
5 districts in 1983-'84, received \$501.1 million, the --
6 those districts in 1984 received \$766.8 million.

7 Overall, in looking at the distribution of the
8 additional money appropriated by the state, the next
9 two columns provide some guide as to that
10 distribution pattern. First, the amount of change
11 and then the percent change. Overall, the poorest
12 districts received \$265.7 million of additional state
13 aid in 1984-'85, representing a 53 percent increase
14 in state aid over that one-year time period.

15 You'll notice that as you go down that last
16 column, that percentage column, it decreases as the
17 wealth increases. And this was the hallmark of the
18 1984 legislation with regard to the distribution of
19 money, that it fundamentally was an extremely
20 equalizing measure, which contributed a very
21 substantial amount of money to those districts that
22 were below the state average in wealth while
23 contributing very little additional state money to
24 those districts above the state average in wealth.

25 So this is -- although there were many details

1 associated with the methodology for this particular
2 distribution, this does show, from audited numbers as
3 opposed to budgeted data, the actual first year
4 impact of House Bill 72 on school districts
5 throughout the state.

6 Q. Let me ask you a question just to make sure I
7 understand the numbers that are represented on this
8 particular exhibit.

9 In the next to the last column on the right, at
10 the bottom we see a "Plus 958.7". Does that mean
11 that during the first year under House Bill 72, the
12 state injected 958,700,000.00 new dollars in public
13 school finance?

14 A. It means that the state aid did increase by \$958.7
15 million in terms of increased state aid. Some of
16 that, a very small portion of that, would have taken
17 place under then existing formulas. But the great
18 majority of that was the specific result of House
19 Bill 72.

20 Q. And going back up that particular column, as I just
21 add up some of the numbers represented, I believe
22 that in the bottom five categories of districts,
23 roughly 720 million out of that 958 million was
24 focused into those groups of districts, is that
25 correct?

1 A. Do you mean in the poorest 56 percent of the
2 districts?

3 Q. Yes.

4 A. Yes, that would be correct.

5 Q. Okay. So as represented by the categories of wealth,
6 over 720 million out of the 958 million new dollars
7 went into the poorest districts in the state?

8 A. That is correct.

9 Q. Mr. Moak, I think for purposes of clarification, I
10 believe we do need to point out -- I believe this
11 information is ranked by groups of districts with
12 equal numbers of districts, and I would assume there
13 might be some variation in the numbers that reflect
14 different numbers of students in those different
15 categories?

16 A. There's substantial variations based on different
17 numbers of students. This was specifically looking
18 at various numbers of districts.

19 Q. Right.

20 A. There are substantial variations in the numbers of
21 students. Those will be contained in the later
22 exhibit.

23 Q. Thank you.

24 MR. KAUFFMAN: Just, I guess, as sort of
25 voir dire just a second here, Your Honor.

VOIR DIRE EXAMINATION

BY MR. KAUFFMAN:

Q. Mr. Moak, the Category 1, Poorest Districts, I would assume includes many more people than the Category 10, many more kids?

A. Yes. Category 10, the 106 districts at the top, contain a very -- relatively small number of students, so there are substantially more in the Category 1, yes.

Q. And the Category 1 includes a lot of large poor districts at the very bottom and, I imagine, includes more than 10 percent of the total students in the state?

A. I would have to refer to other information to determine if they contain 10 percent of the -- more than 10 percent of the students in the state. But it does contain obviously poorer districts, and there are a substantial number of students in those districts.

Q. Probably more than 10 percent of the cases?

A. I would prefer to look to the information.

Q. Okay. Sure. Your figures for the revenues, though, are not adjusted for cost in any way? I mean, they're just the straight revenue dollars sent to the districts by the state?

1 A. These are simply revenue dollars received by the
2 districts from the state.

3 Q. Okay. And they're not adjusted for the number of
4 students in the groups of districts to show whether
5 they increased or decreased from one year to the
6 other?

7 A. No, they are not.

8 DIRECT EXAMINATION (RESUMED)

9 BY MR. THOMPSON:

10 Q. Just to follow up on Mr. Kauffman's question for a
11 moment. If he is correct that there are a
12 significant number of students in that bottom
13 category, possibly even approaching 10 percent, then
14 looking in the far right-hand column on percentage
15 change, then that group, representing that particular
16 group of students, received far and away the largest
17 benefit out of the additional revenue flowed through
18 House Bill 72, is that correct?

19 A. Yes. Overall that group received 28 percent of the
20 additional revenue flowing between these two years.

21 Q. So that particular group got 28 percent of the total
22 new money and represented a 53 percent increase?

23 A. That's correct.

24 Q. Okay. Thank you.

25 MR. GRAY: Your Honor, may I ask a few

1 questions to further understand the exhibit?

2 MR. O'HANLON: Wait a minute. Can't we put
3 on our case?

4 MR. GRAY: I'll defer mine. I was just
5 trying to do it in an orderly fashion.

6 THE COURT: Well, okay. I think orderly
7 has been prescribed by the Texas Supreme Court, and
8 they say direct examination and then cross
9 examination, so it's better to do it that way. You
10 just make your notes, and we'll come on back to it
11 later on.

12 MR. GRAY: We will, Your Honor.

13 THE COURT: Okay.

14 BY MR. THOMPSON:

15 Q. Mr. Moak, you were discussing House Bill 72 as being
16 a comprehensive reexamination of the public school
17 system in the State of Texas, and obviously, there
18 were many aspects of that bill that were important in
19 addition to the finance aspects. Would you discuss
20 some of those other major reform provisions of House
21 Bill 72?

22 A. Yes. The finance aspects of House Bill 72 were -- in
23 the overall distribution -- were significant but not
24 nearly as significant in the long term perhaps as
25 many of the other provisions of the legislation.

1 Particularly, the legislation made changes in broad
2 areas of organization, programs and staffing.

3 In the organizational area, it changed,
4 fundamentally, the role of the State Board of
5 Education and the Commissioner of Education, modified
6 the State Board of Education to a temporarily
7 appointed body and then to an elected body in its own
8 districts. It set a new potential role in a number
9 of ways for regional education service centers. It
10 maintained a good deal of local capability and
11 flexibility, but it did strengthen the role of the
12 state in a number of specific areas.

13 With regard to the program content in the
14 public schools, they put a particular emphasis on
15 trying to move to the issue of educational
16 performance and of addressing specific problems that
17 had to do with educational performance in addition to
18 the overall financial problem.

19 Of special note in those, are the
20 implementation of a pre-kindergarten program for
21 educationally disadvantaged students, the
22 implementation of minimum class size ratios for
23 Grades K through 4 in order to enhance elementary
24 education, the great expansion and modification of a
25 state compensatory education program and the

1 implementation of a -- directed implementation of a
2 performance based accreditation system, which took
3 into account specific educational performance. Much
4 of educational performance, in turn, is keyed to the
5 issue to basic public school staffing.

6 The Bill, as well, looked specifically at how
7 to increase the quality of staffing and its
8 relationship to the quality of education. It did
9 this through both financial means and non-financial
10 means. Specifically, it increased salaries -- had
11 minimum salaries and also provided additional funds
12 to pay for them. Increased career ladder payments.
13 But more particularly, introduced a combination of
14 training appraisal and testing procedures, which
15 should, in the long run, have a very substantial
16 benefit to the overall quality of the education
17 profession..

18 Specifically, there were new requirements put
19 in place for major administrator training and
20 offering of programs for teacher training throughout
21 the state. There was a new process put in place for
22 the appraisal of educational performance by teachers.
23 And there was a process put in place for competency
24 testing of both those teachers already teaching and
25 coupling with earlier measures, a stricter

1 performance standard for testing teachers entering
2 the profession.

3 Q. So --

4 A. So all --

5 Q. I'm sorry. Go ahead.

6 A. So overall, this basic program of -- this was a basic
7 program that did not have just a finance component.
8 But while it had a finance component, an
9 organizational component, program component, a
10 staffing component, which was all put in the basic
11 element of how to increase educational performance,
12 as we came out of that time period.

13 Q. Let's go back and talk about one of those components
14 for just a moment. As I understand your testimony,
15 that this was a comprehensive package built around
16 the driving issue of improving performance, there
17 have been some previous mentions in this Court to the
18 accreditation system. And I would ask you briefly to
19 explain what you meant when you referred to shifting
20 to a performance based accreditation system as one of
21 the key ingredients to House Bill 72?

22 A. House Bill 72 laid out a number of standards of
23 educational performance to be examined in the
24 accreditation system. These expanded substantially
25 on rather minimal accreditation requirements, which

1 had been in place under prior statute as well as in
2 prior regulation.

3 Although not yet fully implemented, this, in
4 turn, is led to a system -- modification of the
5 system of accreditation at the Texas Education Agency
6 in which specific performance problems are the key
7 focus of the educational -- of the accreditation
8 process for the public schools.

9 In addition, in a number of areas, House Bill
10 72 shifted the state's concern from the district
11 level to the campus level. An accreditation was one
12 of these areas in which the new law mandated that
13 there be a concern at the campus level of what kind
14 of educational performance was taking place rather
15 than being simply district-wide in nature.

16 Q. So is it fair to say that the performance based
17 accreditation model instructs the Texas Education
18 Agency, through its accreditation process, to focus
19 on product and not just process as it evaluates the
20 schools of the State of Texas?

21 A. I think -- I believe it is fair to say that, and it
22 is fair to say that that's the direction in which the
23 Texas Education Agency staff has moved.

24 Q. And that is just one manifestation of the broader
25 emphasis on performance that was the key central

1 issue in House Bill 72 as you perceive it?

2 A. That's correct.

3 Q. Thank you.

4 I'm sorry to interrupt you. Please continue.

5 A. Within the House Bill 72 framework, there was also
6 well laid out the basic concept that reforms should
7 not stop at the point of House Bill 72 but should go
8 on. This was done in a number of factors in
9 particular areas such as the accountable cost study,
10 the directions to provide accountable cost data to
11 the Legislature, continuing work on the price
12 differential index, continuing work on
13 recommendations by the State Board of Education to
14 the Legislature.

15 To date, the board has implemented most of the
16 provisions of House Bill 72, and this has included
17 some of the -- some very substantial projects that
18 have led to assessments of where we stand with
19 respect to educational quality and where we stand
20 with respect to educational improving and goals for
21 the future.

22 Overall, this program of House Bill 72, in its
23 features that relate to educational productivity in
24 the future, are as -- perhaps as important as what
25 was done at the time. So far this has led to the

1 adoption by the State Board of Education of the first
2 comprehensive long-range plan for public education,
3 which was called for under the statute and has also
4 led to budget recommendations by the State Board of
5 Education and other legislative recommendations to
6 the coming session of the Legislature.

7 (Defendants' Exhibit No. 31 marked.)

8 Q. Mr. Moak, I'm handing you what has been marked as
9 Defendants' Exhibit No. 31. It is a chart entitled
10 "Receipts and disbursements. Receipts by source,"
11 and I would ask you to identify that document?

12 A. This was -- is a document that was originally created
13 for presentation to a legislative committee that
14 would show the source of federal state or the amounts
15 of federal state and local revenue and other receipts
16 which have been contained in public education over
17 the time period 1976-'77 through last year of
18 1985-'86.

19 Q. Thank you.

20 MR. THOMPSON: Your Honor, we offer
21 Defendants' Exhibit No. 31.

22 MR. KAUFFMAN: Your Honor, may I take him
23 on voir dire for a second on the exhibit?

24 THE COURT: Okay.
25

VOIR DIRE EXAMINATION

BY MR. KAUFFMAN:

Q. Mr. Moak, on the percent federal of total receipts --

A. Yes, sir.

Q. Do those total receipts include the bond receipts?

A. Your question related to percent federal total of receipts?

Q. Yes, uh-huh.

A. Yes, they do in contrast to percent federal of total revenue down at the bottom where they do not.

Q. Okay. And the same with percent -- state of total receipts, percent local total receipts, those are the percentages of the numbers on the total receipts?

A. That's correct.

Q. Thank you.

MR. KAUFFMAN: We have no objection.

MR. RICHARDS: I just have one question to make sure I understand. On other receipts bonds, I take it -- Could you explain that? I may have missed that entirely, Mr. Moak.

THE WITNESS: This includes the revenue -- the receipts, rather, that districts raise from the sale of bonds.

MR. RICHARDS: It includes that. Does it include anything other than that, I guess is my

1 question?

2 THE WITNESS: Very small amounts of
3 borrowed funds, sale of property.

4 MR. RICHARDS: Okay.

5 THE WITNESS: But it is almost exclusively
6 bonds, sale bonds.

7 MR. RICHARDS: Thank you. We have no
8 objection.

9 THE COURT: All right. 31 will be
10 admitted.

11 (Defendants' Exhibit No. 31 admitted.)

12 DIRECT EXAMINATION (RESUMED)

13 BY MR. THOMPSON:

14 Q. Mr. Moak, you have discussed in your historical
15 overview the evolution of concurrent finance system
16 from the time of the State's response to Rodriguez,
17 which I gather was House Bill 1126, passed in 1975,
18 through and including House Bill 72, roughly ten
19 years later, which was a response to the SCOPE
20 Committee.

21 Does the exhibit before you accurately portray
22 the various revenue and receipt figures for that
23 decade in public school finance?

24 A. Yes, it does.

25 Q. One question I would ask for a clarification. I

1 presume there are another set of zeros that are
2 admitted for these particular numbers?

3 A. I'm sorry. Yes, all of these numbers are in
4 thousands of dollars.

5 Q. Okay. So for purposes of clarification, if under
6 receipts and disbursements, receipts by source, if it
7 said all numbers in thousands, that would clarify the
8 numbers that are presented on this particular chart?

9 A. Yes, it would.

10 Q. And this particular exhibit clearly delineates
11 federal revenue, state revenue and local revenue so
12 that you're able to look at this piece of information
13 and to discern the relative roles of those various
14 sources in terms of contributing to the support of
15 public schools in Texas?

16 A. Yes, and this -- this information includes not only
17 those revenues which are received by local districts,
18 but includes all revenues utilized in public
19 education in Texas.

20 Q. Okay.

21 A. Public elementary and secondary education in Texas.
22 I'm sorry.

23 Q. Excluding higher education?

24 A. That's correct.

25 Q. Mr. Moak, as you look at this exhibit and the

1 evolution of those numbers over that period of time,
2 what conclusions do you draw from this information?

3 A. Well, this exhibit, and a similar information which
4 has been developed in the past, has been indicative
5 of the remarkable stability of the state and local
6 relationship which has taken place in Texas, really
7 not only for the past ten years, but for more closer
8 to the past 30 years, of essentially relatively
9 little change despite very substantial growth in both
10 state and local revenue. Relatively little change
11 between the individual percentage components.
12 Federal revenue, at one time a fairly significant
13 component, has slipped considerably by not growing as
14 fast as state and local revenue have.

15 So the first conclusion really relates to the
16 great stability of the financing pattern that we have
17 in Texas despite many versions of various school
18 finance bills and many versions of various changes in
19 property tax administration and property tax loss.

20 The second conclusion that I would tend to draw
21 from this is the -- in combination with other
22 information -- is essentially some comments on the
23 pattern in which the state has tended to increase its
24 revenue and the resulting relationships with local
25 revenue. If you look at the 1977-'78 state aid --

1 state revenue column --

2 Q. And which column is that on this exhibit?

3 A. Under state revenue and down in the bottom set of
4 numbers where it would be on the total revenue.

5 Q. Okay. Percent of total revenue?

6 A. Well, just total dollars for the moment.

7 Q. Okay.

8 A. There was a very significant increase in state aid
9 between the 1976-'77 year and the 1977-'78 year.
10 This was the result of passage in 1977 of a major
11 school finance bill. Would note that you have
12 relatively little increase then between '77-'78 and
13 '78-'79.

14 The state has had a pattern over the years of
15 placing most of the money in the first year of the
16 biennium in most of the school finance bills and then
17 simply continuing that process for the second year.
18 This is essential because the state exists in a
19 biennial financing pattern in which it is far more
20 efficient to try to have about the same level of
21 expenditure each year of the biennium.

22 It does, however, put additional pressure on
23 the local property tax because it means that the
24 increases in the cost of education very often have to
25 be made up by the local property tax in that second

1 year of the biennium since school districts are
2 operating on an annual budget assignment. And this
3 can be seen in a number of points in this state but
4 especially is seen again in 1977-'78 as opposed to
5 1978-'79. It was a modest increase in each year of
6 property tax revenue despite the fact that there was
7 a greater increase in the state revenue that took
8 place over this time period.

9 The net result of this shows up in this -- in
10 these percentages which can drift up and down
11 dependent upon major infusions of state money or the
12 lack of state money in a particular year, whereas,
13 the property tax revenue and other local revenues
14 continue to grow at a relatively constant rate.

15 Of some particular note to those who were
16 involved in the passage of House Bill 72 and the
17 concerns that took place at the time, and one of some
18 troubles we look forward to the future in work we
19 will be presenting this week to the state
20 Legislature, the percentage that state revenue is of
21 total revenue, is fairly low by 1985-'86, which is
22 only the second year of the implementation of House
23 Bill 72. If one projects this forward, it is going
24 to continue to decline and rapidly could be at a low
25 end during this entire decade if action is not taken

1 in this current session of the Legislature.

2 So we would -- we feel that this historic
3 relationship is one which would serve the state well
4 of a rough balance of between state and local revenue
5 and would -- part of the recommendations of the State
6 Board of Education are addressed towards continuing
7 this balanced relationship between state and local
8 revenue as we move forward into the latter part of
9 the 1980's.

10 Q. So as we look at this document, it reflects the
11 stability of a financial base for public school
12 finance that is dependent roughly equally from state
13 sources and from local sources, and is it fair to say
14 that it represents the dynamism of both of those
15 sources of revenue over time? I note that they've
16 both grown in roughly equivalent proportions.

17 A. One of the oft-told comments about property taxes
18 that has been said over the last 20 years is that it
19 was dying. The stability in the growth of the local
20 revenue in Texas has indicated that the local
21 property tax is alive and well and continuing to be a
22 major source of financing government within the state
23 and should continue to be so, given that basic growth
24 and support that it's contributed to public
25 education.

1 Q. Just looking at this exhibit for the '85-'86 year, I
2 note that local revenues, and I presume that's local
3 property tax revenues, are in excess of \$5.5 billion.
4 Given your historical background and familiarity with
5 the general financing structure of the State of
6 Texas, are there any revenue sources that are readily
7 available that would replace or subsidize that \$5.5
8 billion amount represented by local property taxes?

9 A. A substantial portion of that is local property
10 taxes. There are a number of fees and other --
11 interest earnings and other revenue there.

12 Q. Okay.

13 A. But given where we stand today, I would not see any
14 particular revenue measure or revenue source other
15 than the personal income tax that could contribute a
16 \$5 billion replacement revenue if one should move
17 away from dependence on the local property tax.

18 THE COURT: Can I butt in here?

19 MR. THOMPSON: Please do, Your Honor.

20 THE COURT: Check with Mr. O'Hanlon there
21 and see if he'll let me.

22 MR. O'HANLON: No objection, Your Honor.

23 THE COURT: Did I hear you say that there
24 is a trend now for the state money to be going down?
25 Did you just say that?

1 THE WITNESS: If we do not -- if we do not
2 increase state revenue, if we do not make further
3 modification in House Bill 72, as we move on through
4 a time period, there will not be a significant
5 increase in state revenue, and we will tend to see a
6 decline in that percentage state as a -- the
7 percentage state of -- the percentage the state
8 revenue is of total revenue.

9 THE COURT: Okay. And the State Board is
10 anxious about that, and they want some change?

11 THE WITNESS: Yes, sir.

12 THE COURT: What change?

13 THE WITNESS: They have made
14 recommendations to the Legislature calling for some
15 \$2 billion of additional state revenue over the next
16 biennium.

17 THE COURT: I know, but you said some
18 change in House Bill 72. What change?

19 THE WITNESS: The specific changes that
20 they recommend are increasing the basic allotment
21 from \$1350.00 to -- I'm sorry -- \$1350.00 the first
22 year and about \$1600.00 the second year, increasing
23 money for career-ladder payments, increasing funding
24 for bilingual education --

25 THE COURT: Okay. Because the career

1 ladder, it has escalating steps, right, in terms of
2 pay?

3 THE WITNESS: That is correct.

4 THE COURT: And if the state doesn't put
5 more into it, more of that burden falls on the
6 locals?

7 THE WITNESS: That is correct. There are a
8 series of measures within House Bill 72, if not
9 funded, you will have an increased demand in local
10 revenue to pay for them.

11 THE COURT: Okay. Thank you very much.

12 MR. THOMPSON: Any time, Your Honor.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION (RESUMED)

15 BY MR. THOMPSON:

16 Q. To follow up on that for just a moment, Mr. Moak, as
17 you were discussing the numbers reflected on the
18 bottom portion of this particular exhibit and looking
19 at that relationship between state and local
20 revenues, you noted that push-pull effect that the
21 state percentage tends to go up in the first year
22 after an appropriation and then it tends to fall off
23 in the second year following an appropriation and
24 perhaps that creates the drive for the next round of
25 appropriation.

1 Is it fair over this period of time to say that
2 the state has been responsive in terms of injecting
3 new money into the public school finance, given its
4 recognition of that particular pattern?

5 A. I think the state has -- the state has clearly
6 increased its commitment to public school education
7 very substantially over this time period. That's
8 been in recognition of a number of different factors.
9 A significant one of those factors has been that when
10 reliance on the property tax reaches -- begins to
11 reach certain levels, the state has a tendency to
12 react to it for a variety of reasons.

13 Overall, though, the state system is a system
14 that is -- that is very much balanced on the concept
15 of there being a strong local revenue component to
16 draw upon. Texas is not a state in which the only
17 mechanism to increase its public school expenditures
18 that takes place solely in the area of the state aid
19 formula. Rather a number of the mandates and
20 concerns, not just in current law but going back over
21 the last 20 years, we have a system which tends to be
22 an incentive-based system, which tends to, in
23 essence, provide incentives to the school districts
24 to increase their financial support through the
25 financing of various state mandates or to attract

1 more state money. And this system is -- through
2 various forms and various types, has been in place
3 for many years.

4 One of the elements of that comes out in this
5 -- in this biennial pattern of financing versus an
6 annual pattern of financing. Another element of it
7 comes out through the pattern of financing, such as
8 creating a career ladder system with future costs to
9 it or creating a teacher salary system with future
10 costs to it or a classroom size limitation with
11 future costs. So each one of these have a tendency
12 to demand additional total money into public school
13 education which tends to be divided ultimately
14 between state and local revenue sources.

15 Q. So historically the interrelationship -- and we will
16 look at the specific formulas in more detail later --
17 but this relationship between the state and local
18 revenue sources, it's been a system that has over
19 time increased the level of support from both of
20 those two sources while maintaining a reasonably
21 stable reliance upon each as a basis of supporting
22 education?

23 A. That's correct.

24 Q. Okay.

25 THE COURT: Let's stop there for morning

1 break, and we'll get started up again at 11:00, okay?

2 (Morning recess.)

3 DIRECT EXAMINATION (RESUMED)

4 BY MR. THOMPSON:

5 Q. Mr. Moak, in your historical overview, you've
6 mentioned a number of important issues that held sway
7 at various times during the last 20 years, and I
8 would like to go back and touch on some of those and
9 ask your opinion about what the Legislature has done
10 to address some of those particular concerns and find
11 out where we are today on some of those important
12 issues that you've identified in that period.

13 First of all, I believe you stated that prior
14 to the Governor's Committee on Public School
15 Education report that historically salaries had been
16 the principal issue that was discussed in connection
17 with public school finance. What has been done to
18 address that concern? Where do we stand today with
19 regard to that particular issue?

20 A. Well, we've changed the nature of that quite a bit.
21 We essentially have shifted most of the salary
22 decisions, other than those of the basic career
23 ladder system, largely from the state arena down to
24 the local district level. The state is much more
25 involved today and in providing programmatic support

1 to districts and allowing much more local district
2 flexibility on the payment of salaries and the
3 payment of salary schedules.

4 So I say that the exception of this is the
5 career ladder system in which a system that is
6 predicated on the -- on changing from the old salary
7 structure, which was degree and experienced based and
8 had a wide number of categories of different types of
9 personnel, to a salary structure which is -- which
10 operates primarily and first of all from the
11 performance of the teacher rather than operating from
12 the degree or the experience base of the teacher.

13 Q. Are you familiar with something historically known as
14 the classroom-teacher unit system or CTU system?

15 A. Yes, I am.

16 Q. Okay. What was the CTU system?

17 A. Prior to 1975 -- for the period 1949 to 1975 actually --
18 we had a system under which school districts earned
19 classroom-teacher units. For every so many students,
20 one would get eligibility for classroom-teacher
21 units, or for every so many classroom-teacher units,
22 you get eligibility for supervisor or counselor, and
23 on up to its hierarchical series that essentially
24 specify on an individual staffing level what kind of
25 staffing the state would pay for by a very -- at a

1 very substantial level of degree, how many
2 supervisors and counselors would the state pay for,
3 how many support personnel, how many teachers, at one
4 time how many aids. So that was the system that was
5 in place that made up the bulk of the Foundation
6 Program up to 1975.

7 Q. And was that a fairly rigid prescriptive system of
8 providing for funding for staff that was state
9 directed?

10 A. It was both very rigid and it had a good many
11 problems with equity because of its -- that intended
12 to pay for only those personnel that the district
13 could attract.

14 Q. Okay. And are you familiar with something known as
15 the personnel unit or PU system?

16 A. Yes, I am.

17 Q. What is the PU system? When did it come into play?

18 A. Well, it was first recommended by the Governor's
19 Committee on Public School Education, in a variation
20 on it, at least. Was recommended in 1969. It was
21 adopted by the Legislature in 1965 to replace the --
22 '75 to replace the -- this classroom-teacher unit
23 system. And it provided, still with a broad variety
24 of personnel, but it provided the district
25 effectively choice as to what kinds of personnel it

1 would hire rather than forcing them into a particular
2 staffing pattern in order to earn Foundation funds.

3 Q. And that PU system in turn was abolished by House
4 Bill 72 in 1984?

5 A. Yes, it was.

6 Q. So is it your opinion over that 20-year period of
7 history, that at least in the area of salaries as an
8 issue, the trend has been toward giving local
9 districts more flexibility to make management
10 decisions with regard to staffing and dictating less
11 of the staffing pattern specifically from the state
12 from the funding formulas?

13 A. I believe that's correct. I believe we made great
14 progress in moving to a system in which the local
15 district has a great deal more choice as to how to
16 utilize its resources than under the Foundation
17 Program than it did 20 years ago or even ten years
18 ago.

19 Q. Another issue that you've mentioned as being an
20 important consideration during this period of
21 history, particularly in the immediate period
22 following the Rodriguez Decision, are the issues of
23 adequacy and equity.

24 Where do we stand on those issues in your
25 opinion? How has the state responded to those

1 concerns during the last ten-year period?

2 A. Well, the response up to the passage of House Bill 72
3 on either issue but especially on the equity issue,
4 was not a substantial -- was not a record of
5 substantial progress. Not by specific action to
6 create an inequitable system but by addressing the
7 issues of inflation, by addressing the issues of
8 property tax relief, we've created a fairly severe
9 problem with regard to equity by the early 1980's.

10 House Bill 72 made major progress on both
11 equity and adequacy in terms of defining in statute a
12 Foundation Program, which as an analysis to be
13 presented later, we'll go through, but basically
14 defining a Foundation Program that, in my judgment,
15 is a reasonably adequate Foundation Program and
16 assuring a reasonable degree of equity in the
17 adoption of that Foundation Program.

18 Q. You've mentioned the issues of property tax relief
19 and property tax reform that were particularly
20 important during the late '70s and perhaps even into
21 the early '80s. How has the Legislature addressed to
22 those concerns?

23 A. Well, the property tax reform issue was substantially
24 addressed by a combination of changes in the state
25 Constitution clarifying the nature of taxable

1 property and by changes in state statute creating a
2 uniform appraisal system on a county-wide basis. So
3 that issue is largely one today that is -- although,
4 it is certainly not perfectly cured, has been
5 substantially improved by actions of the Constitution
6 and -- by actions amending the Constitution and
7 modifying the statute.

8 The issue of property tax relief, which was so
9 prevalent in the late 1970s, is still an issue today
10 certainly and perhaps may well become more of an
11 issue as we go through the current time period,
12 especially if additional state revenue is not
13 forthcoming. The overall property tax relief -- you
14 get some guide to this by what's happening today in
15 the legislative process. And I guess we've had more
16 bills recently introduced than I've seen in quite a
17 while on increasing the homestead exemption than
18 we've had for some time. And this is some indication
19 of some potential problems in the area of property
20 tax relief in the future.

21 But up to this point, the actions of the '70s --
22 late '70s and early '80s were sufficient to address
23 property tax relief issues and we -- they're not a
24 major item on the agenda now, although they well
25 could become so in the future.

1 Q. And were the reforms in the property tax system that
2 were undertaken by the Legislature and also by the
3 voters of the State of Texas through constitutional
4 amendments, important steps to continue a move toward
5 equity? Were those important preludes to the
6 advances that were included in House Bill 72?

7 A. Well, I think they were in several respects. From an
8 administrative standpoint, certainly the utilization
9 of the kind of information that we have today in
10 which we require annual estimates of the taxable
11 value of property would be near impossible without
12 the kind of administrative reform we had.

13 Secondly, we had a period throughout the 19 --
14 much of the 1970s in which the -- we had two major
15 problems in our property tax base. One of them most
16 particularly was that we could not -- if we're going
17 to define an equitable school finance system in
18 relationship to taxable property value, we had large
19 amounts of taxable property value that effectively
20 could not be taxed within the local political
21 structures that took place. These included
22 agricultural land throughout the state and certain
23 classes of intangible personal property.

24 With the elimination of the intangible personal
25 property from the tax base by constitutional action

1 and the modification of the agricultural land
2 evaluation to an income basis as opposed to a market
3 value basis, we created an environment in which it
4 was possible to really begin to utilize the
5 information that we had available, especially with --
6 frankly, within the political arena, that it had
7 become possible to consider a school finance bill
8 like House Bill 72 for the first time without having
9 major adverse impacts on agricultural land.

10 Q. And you mentioned intangible property also as being a
11 particular concern. What exactly was the concern
12 with regard to taxation of intangible property?

13 A. Well, prior to the action by the -- under the
14 Constitution, as I understand it, that it had been
15 the interpretation that all property was taxable.
16 And yet it was not being taxed. The problem of
17 discovery of intangible personal property and
18 location insidious was simply beyond the capability
19 of an individual local tax administrator to try to
20 deal with.

21 And so we had a situation rather inherently
22 that we had, on one hand, a tax base and a defined
23 tax base in the Constitution, and on the other hand,
24 a total inability to measure that tax base or to use
25 it within the distribution for state funds for public

1 education. And so the modification with regard to
2 intangible personal property provided us with a
3 realistic base of taxable property for the
4 distribution of state school aid.

5 Q. Okay. Is it fair to sum up by saying that looking
6 back over this period of history, that there have
7 been a number of issues that have come to the fore as
8 being of principal concern at various points during
9 this period and that those issues have largely been
10 addressed, in turn, by the Legislature or by the
11 Legislature in cooperation with the people of the
12 state through constitutional action?

13 A. Most of the issues which ran through that time period
14 have been effectively addressed either by House Bill
15 72 or by other items of legislation during that time
16 period.

17 Q. So we have, looking over this several decade period,
18 a history of responsiveness to these issues as they
19 have arisen?

20 A. There have certainly been responsiveness. The speed
21 with which they have been resolved has varied
22 substantially from time to time, but there has been a
23 responsive pattern over this time period of the major
24 issues as I've seen them within public education
25 finance.

1 Let's talk about House Bill 72 in a little bit more
2 detail. As I understand your testimony, as we look
3 at these issues that have held sway, the principal
4 issue of concern to the Legislature in House Bill 72
5 was the broad concern over educational performance.
6 And I would like to ask you about some of the
7 specific components within House Bill 72 and ask you
8 to describe how you believe those particular
9 components relate to and support that commitment to
10 improving educational performance.

11 We've already talked about an accreditation
12 system that is a performance-based accreditation
13 system as being one of the key changes that was
14 implemented through House Bill 72. I would like to
15 ask you about your opinions based on the information
16 you have reviewed with regard to the pre-kindergarten
17 program and its relationship to that commitment to
18 performance?

19 A. Texas has adopted the only state funded
20 pre-kindergarten program in the United States. And
21 it did so as part of a rather basic program thrust
22 that has been recognized by such diverse groups as
23 the Counsel for Economic Development. That it was
24 fundamentally important that we increase our
25 attention to the pre-kindergarten educational level

1 in order to increase overall educational performance
2 within the state.

3 In terms of exact results of the
4 pre-kindergarten program as we currently have it in
5 place, it has been too early to indicate whether, in
6 fact, we will have increased performance. But again,
7 a series of national studies and national policy
8 statements have widely supported the concept that
9 implementation of pre-kindergarten for the
10 disadvantaged is a meaningful step forward. As a
11 recommendation -- one of those recommendations, which
12 was with us for a long time before we implemented, it
13 was a recommendation to the Governor's Committee that
14 in 1969, that by 1980, a pre-kindergarten program
15 would be put in place for the disadvantaged.

16 And so it follows along the lines of
17 well-established research, which is more than a
18 decade old, as to what our needs are in this area for
19 increased educational performance.

20 THE COURT: May I ask a question?

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Did you say that the state is
23 paying for the pre-kindergarten for the
24 disadvantaged?

25 THE WITNESS: Yes. There is a specific

1 formula under the Foundation Program for support for
2 pre-kindergarten for the disadvantaged.

3 THE COURT: And the disadvantaged would be
4 language-impaired students maybe?

5 THE WITNESS: Language-impaired -- it's a
6 combination of language and income standards --
7 language or income standards.

8 THE COURT: Well, does the state pay for it
9 completely, for a complete program or just some?

10 THE WITNESS: The state pays -- has a basic
11 allotment for pre-kindergarten program and it pays a
12 share of that cost based upon the -- essentially the
13 wealth of the district. So for a poor school
14 district will receive proportionately more money than
15 a wealthier school district specifically for the
16 support of pre-kindergarten.

17 THE COURT: Okay.

18 THE WITNESS: It does not pay for the total
19 cost in any district.

20 THE COURT: Okay.

21 DIRECT EXAMINATION (RESUMED)

22 BY MR. THOMPSON:

23 Q. And did I understand you correctly that this is the
24 only such state program in the entire United States?

25 A. I'm informed that we have the only program that is in

1 operation --

2 Q. Okay.

3 A. -- at the state level.

4 Q. Let's talk about class size. There has been
5 considerable discussion in this Court regarding the
6 -- both the burden of the class size requirement but
7 also the importance of the class size requirement as
8 a progressive measure that was included within House
9 Bill 72.

10 I would ask you to discuss from your
11 perspective the importance of that particular
12 component of House Bill 72 and again how it relates
13 to the broader issue of the educational performance
14 and quality?

15 A. The class size limitation, which was designed to
16 focus additional resources again on the early primary
17 grades, arose out of a fundamental concern that it
18 was at this stage in the educational process that the
19 educational gap between rich and poor or the
20 educational gap that's associated with minorities
21 began to be very -- began to be very substantive.

22 The exact class size, the exact number for
23 class size is not clear from any major research base
24 at which point you make a cheap -- but certainly
25 there was a major reduction in class sizes under

1 House Bill 72, and there has been a major focusing of
2 priorities on the early elementary grades.

3 The reports that, as I understand them, as
4 they're received from the field by the Education
5 Agency, are extremely positive, especially in terms
6 of teacher attitudes and parental attitudes about the
7 effectiveness of these programs. Again, we have not
8 had the opportunity yet to make a formal assessment
9 of these, but we have in mechanism -- we have in
10 place mechanisms under House Bill 72, which we
11 believe we will be able to make specific mechanisms
12 at both the first and third grade level as to the
13 impact of the lower class size over time.

14 Q. In your discussion, you just referred to a focus of
15 House Bill 72 on the elementary grades. Is that
16 something that carries through House Bill 72? Are
17 there numerous factors in House Bill 72 that indicate
18 a performance -- a focus upon the elementary grades
19 as a place to intervene in the public school system
20 and to put a particular emphasis in those areas?

21 A. Well, I think there are some other elements, but
22 these are the two major ones.

23 Q. Okay.

24 A. Pre-kindergarten and class size. It is the
25 recommendation of the State Board of Education that

1 additional priorities are to be placed in these areas
2 and specific funding be directed towards -- specific
3 state funding, Foundation Program funding, be
4 directed towards additional support for districts in
5 these areas.

6 Q. You mentioned earlier compensatory education as being
7 a major component included within the finance
8 provisions of House Bill 72. Who qualifies for
9 compensatory education? Or how does the district
10 qualify for funding for compensatory education?

11 A. Compensatory education funds currently are allocated
12 on the basis of a measure of family -- a measure of
13 income effectively. Students qualifying for a free
14 and reduced lunch programs, which is an income based
15 standard, are counted in each district and utilized
16 as a basis for the allocation of state compensatory
17 education funds for the support of compensatory and
18 remedial education programs at the district level.

19 Q. Is it fair to say that comp. ed. was increased
20 percentagewise more than any of the other major
21 funding components by House Bill 72?

22 A. The state -- the Foundation Program for compensatory
23 education involvement was increased dramatically
24 under House Bill 72 and, again, has moved to one of
25 the largest single state compensatory educational

1 programs currently operating within the United
2 States.

3 Q. And what is the relationship of that increased
4 funding for compensatory education in your opinion to
5 the broader House Bill 72 goal of improving
6 performance and quality?

7 A. Well, a number of studies, including ours, suggests
8 that the major problem within -- the major
9 contributor to poor educational performance has to do
10 with family income or family background, and this
11 becomes targeted money in effect, targeted money to
12 those districts that are most in need of the funds to
13 conduct additional compensatory and remedial
14 programs. They're not being conducted today under a
15 significant degree of state standards, but currently
16 the Legislative Budget Office has major legislative
17 recommendations, with whom we're working -- with
18 which we're working, on focusing this money even more
19 specifically to those students specifically
20 identified in need of services.

21 Q. So is it fair to say that the area of House Bill 72
22 that received the greatest percentage increase in
23 funding was the area that the research indicates is
24 most related to student performance and outcomes?

25 A. Yes, it is.

1 Q. Thank you. Let's talk about some of the other
2 important aspects of House Bill 72. Certainly one
3 aspect that has received considerable discussion is
4 the career ladder program. And I would ask you,
5 first of all, to briefly explain the career ladder
6 program as you perceive it and what the purpose for
7 that program is?

8 A. The career ladder program, as adopted by House Bill
9 72, is essentially a four-step program in which
10 teachers qualify for additional salaries, supplements
11 and additional levels of certification, based upon
12 their performance in the classroom, additional
13 training received, and years of experience within the
14 school system.

15 There are a variety of levels, but currently we
16 have implemented Level 1, which is the beginning
17 level, and Level 2, which is the first stage of
18 financial supplement. Level 3 is due to be
19 implemented next year and Level 4 about three years
20 after that. Level 4 will actually get to a concept
21 beyond the issues of increased training and
22 educational performance. The Level 4 supplement
23 would deal with the passage of a specific master
24 teacher examination and a change in the duties of the
25 teacher into a more supervisory capacity.

1 All of this follows a good deal of national
2 research which has been done in terms of how to go
3 about modifying and changing the teaching profession
4 and moving towards a system under which there is
5 enhanced instructional responsibility for the master
6 teacher and that the -- that this provides an
7 alternative avenue, if you will, for the quality
8 teacher to have a significant level of income without
9 moving into school administration as an alternative.

10 Q. So is it your perception that one of the purposes of
11 the career ladder was to reduce the impact of what, I
12 think, probably is known as the upper-out syndrome
13 where teachers frequently feel an obligation to move
14 into administration simply for financial reasons and
15 that part of the purpose of the career ladder
16 component was to address that particular situation?

17 A. Certainly is expressed in the recommendation and
18 research for the SCOPE Committee. That is the case.
19 I still have some concern over the amount of the
20 salaries involved and the amount of the salary
21 supplement involved, as well as concerns over being
22 able to provide sufficient financial -- sufficient
23 finance for districts to implement this program. But
24 in -- I believe it is, in fact, addressed at that
25 issue of keeping the quality teacher in the classroom

1 as opposed to trying to move them into
2 administration.

3 Q. Another key element of House Bill 72 was the mandate
4 for a statewide uniform appraisal system. Would you
5 briefly describe the law as you understand it and the
6 purpose of that particular feature of House Bill 72?

7 A. Again, Texas was breaking new grounds, a ground that
8 had not been well broken before in this area.
9 Essentially, a mandate for the largest uniform
10 appraisal system of teachers in the United States was
11 placed in House Bill 72. It took time to begin the
12 implementation of that. In fact, this semester is
13 the first semester in which the system is actually
14 fully in place.

15 The system, from a statutory standpoint, was
16 initially set up in connection with the career ladder
17 system for evaluating performance in order to move
18 under the career ladder. However, through a
19 combination of both the statutory language and the
20 actions of the State Board, the system has been
21 modified into one which focuses on not only the
22 performance for career ladder purposes but also
23 focuses on the basic determination of what is
24 necessary to improve the teaching of the individual
25 teacher.

1 A self-appraisal is done by the teacher, a
2 performance evaluation is done, a program to address
3 any deficiencies, a professional growth plan is put
4 in place, so the system has all of the components of
5 major evaluation systems in terms of being aimed at
6 improving teacher performance geared to specific
7 educational criteria. In effect, geared to what the
8 research has shown as being the best teaching
9 techniques to be utilized by the individual teacher.

10 Q. And what is the relationship in your mind of that
11 statutory requirement to develop a uniform appraisal
12 system again to the broader issue of educational
13 performance in quality that was, in your testimony,
14 the central focus of House Bill 72?

15 A. I think it has several purposes. One purpose is that
16 it's one of the series of mechanisms which is
17 designed to -- if you will, prevent the incompetent --
18 the person who is not competent of teaching from
19 being in the teaching profession. It is linked, for
20 instance, performance on the appraisal system is
21 linked to the extension of contracts beyond the
22 probationary status.

23 Another way in which it is linked to
24 performance, though, really has to do with the
25 increase in effective teaching tools, through these

1 developmental growth plans, through the
2 self-appraisal, that we can look directly to the
3 relationship that these -- the increase in use of
4 valid teaching tools should bring about in overall
5 educational performance.

6 Some have advocated, in fact, that the teacher
7 appraisal system be based solely on the educational
8 performance of students, and although many are in
9 favor of this concept, the problems of measurement
10 really have made it prohibitively expensive to keep
11 it really entertained. But it is felt very strongly
12 by our staff and by those who have been involved on
13 an advisory basis to us, that the characteristics of
14 teaching that have been placed in this appraisal
15 instrument are those that are best designed to bring
16 about an improved educational performance of
17 students.

18 Q. Let's talk about testing. That is certainly an
19 aspect of House Bill 72 which has gotten a lot of
20 attention. There are two major types of testing
21 perhaps that we can talk about. One is testing for
22 students and the second is the testing of currently
23 certified administrators and teachers.

24 Let's talk about students for a moment. What
25 were the components in House Bill 72 that related to

1 the testing of students?

2 A. Well, House Bill 72 expanded upon a testing of a
3 program which had been placed since 1980 and created
4 a basic skills testing program at grades one, three,
5 five, seven, nine and eleven or, in effect,
6 alternative grades, in reading and writing and
7 mathematics at each one of those areas -- in each one
8 of those grades for every student in the state.

9 Part of my functional responsibility at the
10 Education Agency is the supervision of that program,
11 and it's one of the largest and most successful
12 testing programs in the United States.

13 The overall intent of the -- the overall
14 purpose of the changes that were put in place in
15 House Bill 72 I think were critical in two respects.
16 One was as the test was more broadly based -- there's
17 three respects. One was the test was more broadly
18 based and administered to a far larger number of
19 students at more regular intervals.

20 The second was the implementation of a program
21 under which passage of the 11th grade test was
22 necessary prior to high school graduation, prior to
23 the granting of a diploma. And so students have been
24 tested and retested on these basic skills in order to
25 reach a satisfactory level prior to graduation this

1 spring, which will be the first graduating class that
2 has come under this system. The -- those two --
3 essentially, those two areas were two of the major
4 changes.

5 A third one, which was encouraged under House
6 Bill 72 through several sessions, had to do with the
7 use of the testing information. Previously the test
8 information was all -- even at a district or a campus
9 level -- was all but confidential. Essentially, the
10 information was not made available in any general way
11 to the public at large or to the school body at
12 large.

13 What has happened under House Bill 72 is that,
14 first, we had to take the test that we were
15 administering in Texas and convert it to a national
16 norm so we could look at where is educational
17 performance -- where is the educational performance
18 of Texas students relative to the nation as a whole.

19 And secondly, we were effectively directed to
20 publish that information and utilize that
21 information. And that program has been in place --
22 Now we have released information at the campus level;
23 we have released information at the district level.
24 There is clear, indefinite indication that the public
25 use of this information, which was encouraged by

1 House Bill 72, is having a major motivational force
2 on districts who have low scores trying to bring up
3 their scores, trying to undertake the improvement
4 programs. And we're beginning to see the results of
5 that in this years's test administration of what's
6 happened to our 11th grade testing scores as we've
7 seen that the districts that have the lowest test
8 scores a year ago are now bringing them up
9 significantly over what they had before.

10 Q. Okay. Let's talk about the testing of administrators
11 and teachers. What was the purpose of that
12 particular component of House Bill 72 and how does it
13 relate to the central issue of educational
14 performance and quality?

15 A. Under the provisions of House Bill 72, effectively
16 contain provisions for two types of testing, one of
17 which has been undertaken and one of which has not
18 been, for current teachers and administrators. The
19 one which has, commonly known as TECAT, is a test of
20 basic skills of all teachers and administrators -- of
21 all certified personnel.

22 The test that has not been undertaken is a
23 subject matter competency test in the specific field
24 of teaching or administration. Certainly the aim of
25 the program has been to try to eliminate those

1 personnel who effectively should not be in the
2 classroom by the elimination of the personnel not --
3 by the elimination of those personnel. The
4 presumption certainly is that educational performance
5 is enhanced.

6 With regard to the subject matter testing, it
7 has been felt that the appraisal system would be an
8 effective replacement for this and the State Board of
9 Education has recommended that that section of law be
10 amended to remove the requirement for competency
11 testing of all teachers and administrators, although
12 it's retained for all personnel who are entering into
13 a new certification.

14 Q. Let's talk about one other minor issue of House Bill
15 72 that has gotten some attention and that's what is
16 commonly known as the No Pass/No Play Requirement.

17 In your opinion, what was the purpose of that
18 particular feature in the Bill and what is its
19 relationship to educational quality?

20 A. Well, I believe the purpose, as stated by many, was
21 to provide an incentive for increased educational
22 performance. The -- through the requirement that
23 students to participate in extracurricular activities
24 had to achieve passing grade levels.

25 It's effect and its impact has not been

1 measured in a major research study that I'm aware of
2 or any research study that I'm aware of, but it
3 certainly was an area in which the intent of the
4 Legislature was reasonably clear and the research
5 that laid behind that going in was to increase
6 educational performance overall.

7 Q. Another component of House Bill 72 was the mandatory
8 tutoring program that districts are required to offer
9 to students. Would you please discuss that program
10 and what the purpose of it was with relating again to
11 educational performance?

12 A. Well, again, this program, and it's associated with
13 compensatory education, gave districts various
14 options, but it was effectively addressed to the --
15 to the concept that districts in need of -- specific
16 need of remedial services.

17 I guess the national literature today has found
18 a new word for this, these students at risk for a
19 variety of reasons, but these students at risk
20 deserve specific attention by the district prior to
21 becoming in such trouble that they've dropped out or
22 become severely academically deficient. And so their
23 tutoring programs are one example of a number of
24 different programs which are in place throughout the
25 state aimed at overall educational performance.

1 Q. Are there other major components of House Bill 72
2 that in your opinion relate to that central concern
3 about educational performance and quality other than
4 the ones that we've just discussed?

5 A. I think we've discussed all of the major ones --

6 Q. Okay.

7 A. -- that are keyed to educational performance. There
8 are certainly provisions within the law that -- other
9 provisions within the law that relate to it, but
10 those are the ones within House Bill 72. There have
11 been some additional ones that have been put in place
12 by other statutes as well, mostly prior to House Bill
13 72, that operate as a package.

14 Q. So as I hear what you're saying, when we look and
15 talk about House Bill 72, we're not just talking
16 about a finance bill, but we're talking about an
17 extremely comprehensive reformed piece of
18 legislation. And if there is a common theme that
19 runs throughout all of those issues or all of those
20 components, it is this focus on educational
21 performance, quality outcome and accountability, is
22 that correct?

23 A. That is correct. The financial equity is certainly a
24 -- I could not say that financial equity is not a
25 significant portion of House Bill 72.

1 Q. Right.

2 A. But it in no means was a major focus in the Bill as a
3 whole or in our administration of it today or the
4 school districts' responses to it today.

5 Q. In your opinion, when you look at all of these
6 different components of House Bill 72 with their
7 central focus on performance and in some of them it
8 may be too early to draw specific conclusions, but
9 taken as a package, is it your opinion that the bill,
10 as a whole, is working to improve the performance and
11 the quality of the education that students receive in
12 Texas?

13 A. Certainly the indications that we receive, and it is
14 early, as you say, but certainly the indications that
15 we receive in terms of what's happening to our 11th
16 graders, what's happening to the educational
17 performance of districts that have been below par,
18 what happens in our accreditation districts, all of
19 these indicators build towards the fact that we have
20 enhanced educational performance in the state under
21 the ruling of House Bill 72 of the programs and
22 services that are involved.

23 Comprehensive evaluation and measurement
24 studies take time to do, and we're just beyond the
25 benchmark period of beginning to assess where we are

1 today as -- in comparison to where we might be in the
2 future. But the educational experts within the
3 Educational Agency, the State Board of Education, do
4 feel that we made significant progress and are having
5 significant results in comparison to the time period
6 prior to House Bill 72.

7 Q. Mr. Moak, we spent a lot of time talking about House
8 Bill 72 and its focus on improving performance and
9 quality of education in Texas. I would like to just
10 briefly go back and pick up two bills that were
11 enacted by the Legislature prior to House Bill 72 but
12 perhaps that may fit into that broader pattern of
13 concerns.

14 I would, first of all, ask you if you're
15 familiar with Senate Bill 50, that was passed in
16 1981, sponsored by Senator Farabee, relating to the
17 testing of future teachers moving into the schools of
18 the State of Texas?

19 A. Yes, I am. I apologize. I wasn't certain of the
20 bill number, but, yes, I am.

21 MR. KAUFFMAN: What was it?

22 MR. THOMPSON: Senate Bill 50.

23 Q. Is the Education Agency also working to implement
24 programs pursuant to that piece of legislation to --
25 that affect the quality of future teachers moving

1 into the schools of the State of Texas?

2 A. Yes. We have developed, with a wide range of help
3 and outside contractors as well as internal work, a
4 large battery of tests in individual subject matter
5 areas -- many of which are currently being
6 administered, the balance of which will be adopted
7 this spring -- to test the competency scales, both on
8 a subject matter basis and on a teaching skills basis
9 of teachers either entering the profession or seeking
10 a new certification. And so teachers who were in one
11 specific area who were seeking a certification in
12 another area, are retested even though they were
13 already teachers.

14 There are a wide variety of tests involved, but
15 overall it is clear by the rates that are involved,
16 that we are preventing a number of people from --
17 number one, that we are preventing a number of people
18 from entering the profession who are not skilled
19 sufficiently in their -- either in their teaching
20 skills or in their subject matter testing area from
21 those testing results we have thus far.

22 In addition, the test is designed such that
23 remedial action can be taken by the college student
24 to -- or the teacher to improve their skills up to a
25 passing level. And we feel the program is being

1 successful in both regards in terms of overall
2 enhancement of the teaching profession and thus its
3 relationship to educational performance of the
4 students.

5 Q. Do you view that particular piece of legislation and
6 how it is being implemented as being supportive of
7 the efforts that were undertaken in House Bill 72 in
8 that regard?

9 A. Very much so. I think it was -- I do not distinguish
10 it in any fashion from the same motivations that were
11 in House Bill 72 really as being one which was geared
12 to and specifically oriented towards the improvement
13 of the teaching profession with an emphasis on the
14 increased educational teaching performance.

15 Q. One other bill that perhaps fits in this pattern, I
16 would like to ask you about, is House Bill 246, also
17 passed in 1981, the sponsor being Representative
18 Haley, relating to the curriculum offered in the
19 public schools of this State. Are you familiar with
20 that bill?

21 A. Yes, I am.

22 Q. What has the Agency done to implement that particular
23 piece of legislation, and how does it fit into this
24 pattern of focus on the quality and outcome?

25 A. House Bill 246 removed from the statutes a wide

1 variety of prior law, effectively, that had to deal
2 with the content of the curriculum; to place a
3 directive on the State Board of Education to create a
4 uniform curriculum for offering in the public schools
5 to replace this kind of a hodgepodge that had grown
6 up over time of curriculum standards, as I understand
7 it.

8 This section is not under my direct
9 administration, but my strong impression is that the
10 Agency has accomplished that through the adoption of --
11 in the State Board through the adoption of a uniform
12 curriculum set of rules that put in place the
13 essential elements in each subject area which
14 students are expected to learn. Again this overall,
15 as far as a set of standards go, should assist us in
16 moving towards increased educational performance.

17 Q. As the Agency has developed the student tests,
18 commonly known as the TEAMS Exams, that were mandated
19 by House Bill 72, has the Agency and the staff under
20 your direction taken those curriculum elements of
21 that earlier piece of legislation into consideration
22 in building the tests?

23 A. Yes, within the areas being tested, those curriculum
24 elements are directly related to the items utilized
25 in the test for analysis -- for both testing and

1 analysis purposes.

2 Q. So we have put into effect a comprehensive uniform
3 curriculum in Texas, and these state administered
4 testing instruments for students are geared back to
5 that comprehensive curriculum?

6 A. They draw from that comprehensive curriculum. The
7 curriculum is broader than the test.

8 Q. Okay.

9 MR. THOMPSON: Your Honor, for the benefit
10 of the Court, we have prepared an outline of the
11 specific areas that Mr. Moak plans to cover in his
12 testimony.

13 THE COURT: Okay.

14 MR. THOMPSON: We have completed No. 1 on
15 that particular outline. We're a few minutes early,
16 but I would suggest this might be a good time to
17 break before we move into an overview of the total
18 state support system.

19 THE COURT: Okay.

20 MR. KAUFFMAN: We have no objection.

21 THE COURT: All right. Let me see.

22 Will you tell me how the State Board of
23 Education is now selected?

24 THE WITNESS: Yes. There are 15 members of
25 the State Board of Education. They were selected

1 from -- they are from 15 districts prescribed in law.
2 They were selected by the governor -- by Governor
3 Mark White, from panels of three members per district
4 that were recommended to him by a group known as the
5 Legislative Education Board, which is composed of the
6 lieutenant governor and the speaker and various
7 members of the Legislature. It is in place until
8 1980 -- January of 1989, when the elected State Board
9 of Education will take office.

10 THE COURT: There will be someone elected
11 from these 15 districts?

12 THE WITNESS: Yes. The disticts were drawn
13 and have been approved as election districts under
14 the Voting Rights Act.

15 THE COURT: Okay.

16 MR. R. LUNA: May I explain to the Court, I
17 don't know whether you're aware or not, that prior to
18 the appointment of these 15 members, they were
19 elected.

20 THE COURT: Yeah.

21 Okay. We'll stop for lunch, and we'll start up
22 again at 2:00. Some of y'all may get the word that
23 some of the judges are leaving to go to the Central
24 Texas Judicial Conference up in Wichita Falls
25 beginning Wednesday. I've scratched my plans to go

1 to that. So I'm going to be here all week with you
2 all.

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6 (Lunch recess)
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(Discussion off the record.)

DIRECT EXAMINATION (RESUMED)

BY MR. THOMPSON:

Q. Mr. Moak, just prior to noon, we finished a discussion of the historical analysis of the development of the school finance system as we currently have it in the State of Texas. And I would like to shift gears with you a little bit now.

We've had a lot of discussion in the last several weeks about the overall state support system for public education, but we have not had a comprehensive detailed explanation of that support system.

MR. THOMPSON: I'd like to have this marked as 32.

(Defendants' Exhibit No. 32 marked.)

Q. I'm handing you what has been marked as Defendants' Exhibit 32 and ask you to identify that document.

A. These are materials that were a portion of the total package of materials that was presented to the State Board of Education in November of 1986 just prior to their adoption of their budget recommendations for 1987 and 1988. Specifically, this is the material that relates to, what in state budget terms is, is Budget Level 3, which is a current law of funding

1 level, without changing in statute, in other words.

2 Q. These documents were used by the State Board of
3 Education in development of their recommendations to
4 the Legislature?

5 A. That is correct, they were.

6 Q. And these documents, as a package, contain a
7 comprehensive explanation of the state school finance
8 system as it exists in Texas?

9 A. Yes. These documents contain comprehensive
10 descriptions of both state and federal programs that
11 are administered through the Education Agency.

12 Q. With clear delineation between state support programs
13 or state local shared programs and federal programs
14 are specifically separated?

15 A. That is correct, with the exception of state support
16 for the teacher retirement system, which is not
17 included in this set of documents.

18 Q. Okay.

19 MR. THOMPSON: Your Honor, at this time we
20 offer Defendants' Exhibit 32.

21 MR. KAUFFMAN: Your Honor, we object. We
22 would like to take him on voir dire first if we
23 could?

24 THE COURT: Okay.

25

VOIR DIRE EXAMINATION

1
2 BY MR. KAUFFMAN:

3 Q. Mr. Moak, this proposed Exhibit 32 has figures in it
4 for the '87-'88 and '88-'89 school years, is that
5 correct?

6 A. That is correct.

7 Q. And are those projections of what the Legislature
8 might pass and, therefore, the state might be able to
9 spend on education?

10 A. No, that is not correct. These are projections of
11 what current law -- the application of current law
12 would call for during those years without changes in
13 statutes.

14 Q. Okay. Let me see if I can make myself clear then.
15 For the '85-'86, '86-'87 school year, what was the
16 total state funding for education -- for public
17 education during those two years?

18 A. I don't have the numbers for those two years
19 immediately at hand.

20 Q. Are your figures for '87-'88 and '88-'89, though,
21 based on a projection of what the state would spend
22 for the '87-'88, '88-'89 biennium?

23 A. Under the current provisions of statute, they are the
24 cost of the current provisions of statute carried
25 forward for '87-'88 and '88-'89.

1 Q. But these figures would only go into effect if the
2 Legislature this spring passes a bill which is not
3 yet law, is that correct?

4 A. That is correct. As I said, they were utilized by
5 the State Board of Education in development of their
6 budget requests to the Legislature.

7 Q. I understand. But the Legislature has not passed a
8 bill which funds public education for '87-'88,
9 '88-'89 at the figures which are shown in this
10 document, is that correct?

11 A. That is correct.

12 Q. Also, does this document show an increase in total
13 state funding for the '87-'88, '88-'89 biennium over
14 the '85-'86, '86-'87 biennium?

15 A. Yes, it does, in accordance with the provisions of
16 the statute.

17 Q. And what is your understanding what that increase
18 appropriation is for the '87-'88, '88-'89 biennium
19 over the previous biennium?

20 A. Well, I don't have those figures immediately at hand.
21 In terms of state funds in the neighborhood of \$430
22 million has been attributed to the cost of the state
23 share of the Foundation Program for 1987-'88, and '89
24 over the current biennium as a result of the
25 application of formulas to these projections.

1 Q. Okay. So the document, Plaintiffs' Exhibit -- excuse
2 me -- Defendants' Exhibit 32 then includes
3 projections of state funding for the '87-'88, '88-'89
4 biennium of at least \$430 million more than for the
5 previous biennium, is that correct?

6 A. It is correct that the document has a projection of
7 funding in that. That projection of funding,
8 however, I would point out, is solely the result of
9 increases in students and existing provisions of
10 statutes.

11 MR. KAUFFMAN: Your Honor, we would object
12 to the inclusion of the -- to the admission of the
13 document in that it is speculation as to what will be
14 passed in the Legislature. The issues we understand
15 it before the Court is the constitutionality of the
16 '85-'86 school finance system. To some extent, we
17 have been talking about '86-'87. But this is
18 speculation as to the next two years funding, and is
19 irrelevant on that basis, and is speculation by the
20 witness for him to testify to this document.

21 MR. THOMPSON: Your Honor, Mr. Kauffman's
22 use of the term speculation is inept. This is a
23 document that was prepared in accordance with budget
24 instructions from the Legislative Budget Office,
25 which is an official body of the State of Texas. It

1 was used as material to support the development by
2 the State Board of Education of their recommendations
3 to the Legislature. And we're not pretending that
4 the Legislature is or has appropriated these amounts
5 of money, but these are figures that are prepared in
6 accordance with specific instructions in the
7 development of the budget into the future years.

8 MR. O'HANLON: The problem that we face
9 here is that what we're trying to demonstrate to the
10 Court in addition to how the present system operates,
11 how it will operate in the future if left untouched,
12 in other words, what kind of increased costs are
13 associated with it, how it changes to the student
14 growth and things of that nature, given the exact
15 current formulas, and I think that's relevant
16 information.

17 This Court is not being asked to say that in
18 1985-'86, that the funding formulas were
19 unconstitutional and then do something about it.
20 This Court's ruling is going to be proactive, and
21 it's incumbent upon us, I think, and relevant to
22 determine how funding formulas that are in place
23 right now operate in the future.

24 MR. KAUFFMAN: Your Honor, the numbers in
25 here, I think, according to what the defense counsel

1 has said, they have no pretense that these are the
2 actual numbers, so we object to using these numbers
3 in the record for that reason.

4 It's my understanding of the testimony that
5 this implies at least a \$430 million increase of
6 funding in the next biennium. We're not saying
7 whether we agree or disagree with that. It's just
8 speculation that that will occur. The fact that it's
9 gone through the TA budget process, we do not
10 question. The fact that it's never been passed by
11 the Texas Legislature and, therefore, is not the law,
12 we do question.

13 MR. O'HANLON: Well, what's sauce for the
14 goose is sauce for the gander. They're in here
15 putting projections upon -- based on population
16 growth and things of that nature, of needs of the
17 students of Texas due to growth in population, and
18 they can project in the future and we can't. That's
19 exactly what he's arguing right now. And what we're
20 trying to demonstrate is how the system works and how
21 the system will continue to work if left untouched.
22 Certainly it would be speculative to the Legislature
23 what they might do, but it is relevant. This is not
24 a status system. It shifts money constantly. And
25 how it tends to operate over the time is relative

1 information to the Court's determination.

2 MR. TURNER: Your Honor, this is current
3 law. What these figures show is what the law will
4 expend based on the population growth that's
5 projected. So the only duty left to the Legislature
6 that would alter this is either to pass the
7 appropriations bill that funds the law, as it is, as
8 this proposes to do, or the Legislature, of course,
9 will have to eliminate some programs by changing the
10 law, such as eliminate the career ladder, or do
11 something, and that would trigger an expenditure of
12 dollars less.

13 But it's generally accepted in the legislative
14 process that if you hold on to the law that we've got
15 now and project enrollment increases, that you'll
16 have to fund this additional \$430 million, and that's
17 what these figures simply reflect.

18 MR. THOMPSON: If Mr. Kauffman wants to
19 cross examine the witness at some later point about
20 other assumptions about what may happen in the
21 future, that is certainly his prerogative. But that
22 does not have anything to do with the admissibility
23 of this document, which was prepared in accordance
24 with budget instructions from the Legislative Budget
25 Office.

1 MR. KAUFFMAN: Your Honor, it's labeled
2 "Budget Level 3, Funding Level Current Law." The
3 implication is that this is the law now and it's not
4 -- it might well be, but it's not yet and it does
5 propose an additional expenditures of \$430 million
6 for the next biennium. As I understand it, that's
7 over half a million dollars more than the governor
8 has proposed in his proposed budgets, so it's
9 speculation. And we object to it as being in the
10 record as though it were current law.

11 MR. TURNER: Well, Your Honor, it is
12 current law. It's what the law on the books now will
13 require to be expended in this state based on
14 projection of enrollment increases and student
15 population.

16 MR. KAUFFMAN: Based on projection of \$430
17 million more money.

18 MR. TURNER: We all acknowledge that if you
19 amend the law, it will remove from the law some of
20 the requirements, such as things under House Bill 72
21 that are in place, that you could reduce the demand
22 for additional funds or for these amount of funds.
23 So nobody is trying to mislead anyone with this
24 document. This is just what current law will require
25 to be spent in this state in the coming biennium.

1 And it's a working document that the
2 Legislature uses. It's the kind of information they
3 get to see if they want to keep on with what they're
4 doing now, and not retreat in any aspect of House
5 Bill 72, then they've got to raise the funds to these
6 \$430 million to keep everything in place. And we all
7 acknowledge that if they don't want to do that, they
8 could change the law and not have to appropriate that
9 much money. So it's not a misleading or speculative
10 document, it's a projection. It's a working
11 document.

12 MR. RICHARDS: May I be heard for a moment,
13 Your Honor, and I'll quit. Given the fact that the
14 state has been citing the Mutchler case, I think it's
15 clear that it takes two things to become law in
16 Texas, and that is the enactment of legislation and
17 the enactment of funding for it unless the funding
18 enacted is not law, and I think that's the problem
19 here. But until there is an appropriation to support
20 this, it is not, in fact, the future law. H.B. 72
21 stayed in effect, if it wasn't funded, it will have
22 no force and effect.

23 MR. TURNER: Well, I don't see, Your Honor,
24 how it affects the admissibility of the document for
25 the purpose to which it's intended.

1 THE COURT: Okay. Let me see if I
2 understand. Tell me what Budget Level 3 means, what
3 that lingo means again?

4 THE WITNESS: By the instructions of the
5 Governor's Budget Office and the Legislative Budget
6 Office to the State Agency, they're required to
7 present budget information at various levels.

8 Level 3 is the current law level; that is, what
9 would it take to carry forward current law under the
10 Foundation Program. Level 4, which we also
11 presented, for instance, was the State Board of
12 Education requested level, which was considerably
13 higher than this. Levels 1 and 2, which are called
14 for by budget instructions, were lower than this
15 number. But this is a standardized budget format
16 called for under the budget instructions of the
17 Legislative Budget Board as to -- on the longstanding
18 basis in public education as to what it would cost to
19 carry forward the statutory formulas of the
20 Foundation Program and other programs into the
21 future.

22 THE COURT: Does this have the same basic
23 allotment and so on as --

24 THE WITNESS: It has the same basic
25 allotment of \$1350.00. The same provision for a 33

1 percent local fund assignment, with the primary
2 driving force in this additional money that is
3 involved here, is simply that there are more students
4 involved.

5 THE COURT: Okay. I'll overrule. Here we
6 go. That, by the way, was 32?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: We'll have 32 in evidence.

9 (Defendants' Exhibit No. 32 admitted.)

10 DIRECT EXAMINATION (RESUMED)

11 BY MR. THOMPSON:

12 Q. Mr. Moak, given the discussion we just had, let's
13 take a moment and talk about the budget process that
14 was gone through to develop this particular document.
15 You have referred to instructions from the Governor's
16 Budget Office and the Legislative Budget Office that
17 are used by all agencies in the development of budget
18 doctrines. Particularly, you have referred to Level
19 1, Level 2, Level 3 and Level 4 that are developed
20 pursuant to those instructions.

21 Would you briefly explain, again, what those
22 different levels are?

23 A. The definition of the levels in various years at
24 various biennium -- in preparing requests for various
25 biennium, have differed, but in preparing requests

1 for the 1987-'88 and '88-'89 biennium, those two
2 offices came forward with the common set of budget
3 instructions to apply to state agencies. And in
4 particular, in this case, to apply to the foundation
5 -- the program budget for public education.

6 Effectively, Level 1 is a 20 percent reduction
7 from current law. Level 2 is a 10 percent reduction
8 from current law. Both of these at the bottom line.

9 Level 3 is current law carried forward. There
10 is an alternative current law Level 3a, effectively,
11 which is current -- the same bottom line total as
12 current law but changes are permitted within the
13 program structure. That is not what these numbers
14 are. These numbers are, what I indicated earlier,
15 current law carried forward.

16 And then Level 4 is any requested level of
17 funding above current law. And the State Board of
18 Education did submit a comprehensive budget package
19 involving all five of those levels.

20 Q. And these levels do represent the information that is
21 developed and submitted to the Legislature and used
22 by the Legislature in its process of developing a
23 budget for the State of Texas?

24 A. Yes. The Foundation School Program for many years
25 under the general -- has been generally characterized

1 as an automatically financed program in which the
2 add-on minimum to the Legislature, as its starting
3 point, would begin with what it would cost to
4 implement the provisions of statute to the entire
5 Foundation Program.

6 So, this has been carried forward in this set
7 of data in the traditional way as a Bench Mark for
8 the Legislature to go forward from. Data very
9 similar to these, for instance, with very little
10 change, was adopted by the Legislative Budget Board
11 in its recommendations to the current session of the
12 Legislature as a current law number carried forward.
13 So they have specifically -- data very similar to
14 these was specifically recommended by the Legislative
15 Budget Board.

16 Q. And the information we're looking at in Budget Level
17 3 assumes the existing formulas, and the only
18 significant difference is in the number of students
19 to which that might be applied?

20 A. That is correct. There are -- there are changes
21 which take place at various times in the projections
22 of students. There are also some other relatively
23 minor changes that take place with respect to some of
24 the particular elements of the financing pattern, but
25 fundamentally, it is that carried forward with these

1 projections of students.

2 MR. KAUFFMAN: Your Honor, I would object
3 to the last question, although it's already been
4 answered, I guess, as far as the only major change.
5 I think the record already shows another major change
6 in these figures is an increase of the biennial
7 budget from the Legislature, \$430 million or more.
8 So the extent of the question assumes there are no
9 other major changes. We object to the question.

10 THE COURT: Well, I'll overrule.

11 BY MR. THOMPSON:

12 Q. Mr. Moak, if you would, turn to Page Roman Numeral
13 II-1, first page of this material, which is entitled
14 "Estimated Program Funds Per Public Education Current
15 Law."

16 As I understand the material that we have, we
17 have a set of pages here running through II-1 through
18 Roman Numeral II-8. We have eight pages here that
19 provide an overview and then a little bit more
20 specifics about those estimated program funds.

21 A. That is correct.

22 Q. Okay. Let's look at that set of information, those
23 pages, one through eight, for a few moments, and I'll
24 ask you some specific questions about what this
25 information contains.

1 Look on Page 1. You find something entitled
2 "Program Totals," and under that a designation of
3 about ten specific programs. Would you briefly
4 explain each of those headings, beginning with
5 regular education, and what is included within those?

6 A. The -- each one of the major program areas that is
7 listed has one or more state or federal programs as
8 associated with it. All of this in terms of funds
9 which flow either through the Texas Education Agency
10 or are part of the overall Foundation Program
11 package.

12 The -- within each program, in terms of general
13 definitions, the detailed being supplied in the
14 balance of the report by specific program area, the
15 regular education/general purpose are those monies
16 which have a designation for either the regular
17 education program or for general purpose and overhead
18 or otherwise unallocated funding purposes.

19 Special education is for the care of students --
20 that care of education of students that are
21 determined to be in need of special education
22 services by reason of physical, emotional or mental
23 handicap.

24 Educationally disadvantaged refers to programs
25 of compensatory or remedial education intended for

1 students who are considered to be educationally
2 disadvantaged by either income or academic progress.

3 Bilingual education are programs for students
4 who are enrolled in bilingual or English as a second
5 language education programs.

6 Vocational education is for students in --
7 programs for students involved in vocational
8 education programs.

9 Gifted and talented education for students
10 involved in academically gifted programs.

11 Adult and community education involves those
12 programs which are directed at the provision of
13 community education services or adult basic education
14 by the district.

15 Child nutrition involves the support for food
16 service programs at the district level that is funded
17 through the state.

18 School transportation are those programs
19 specifically involving school transportation, funding
20 for school transportation programs by the state.

21 Instructional materials refers to programs
22 which are for the distribution of instruction
23 materials within two school districts out of state
24 funds.

25 And discretionary/agency related programs are

1 those programs over which the State Board of
2 Education has specific jurisdiction as to the nature
3 or contracting of expenditure. Therefore, a wide
4 range of purposes from ranging from testing programs
5 to research and development funds and other kinds of
6 various --

7 Q. The program entitled "Instruction Materials," is that
8 primarily textbooks?

9 A. Yes. Primarily that is the Textbook Program. It
10 does include some very limited amount of additional
11 funding for regional media centers.

12 Q. And as I understand, there is one other program that
13 benefits the public schools of the State of Texas
14 that is not reflected in this material, and that
15 relates to the teacher retirement system, is that
16 correct?

17 A. That is correct. There is a state contribution to
18 the teacher retirement system at 8 percent of covered
19 payroll that does not flow through the books of the
20 Texas Education Agency, but flows through the --
21 directly to the teacher retirement system from the
22 State Treasury, and this is generally considered as
23 being within the total funds for public school
24 education to the extent that those payrolls covered
25 are from public school education. Those figures, for

1 instance, were included in the receipts by revenue
2 source chart that we went over earlier.

3 Q. Okay. As I understand this first page that we're
4 looking at here, we're essentially looking at the
5 same information portrayed three different ways. I
6 note our bottom lines are the same across, and we're
7 looking at them by program totals and then by source
8 of funds and then by method of financing.

9 Would you explain the group of entries that are
10 under the major heading "Program Totals by Source of
11 Funds"?

12 A. Well, there we were concerned with the -- a division
13 of five -- or really four basic source of fund
14 groups, whether the program was funded from the state
15 funds only, whether the program was within the
16 Foundation Program and, therefore, covered by state
17 and local funds, whether it was a program which was
18 covered -- had both a state and a local share but
19 existed outside of the Foundation Program, whether it
20 was a federal program, and then, lastly, a small
21 amount noted for programs financed by earned federal
22 funds, which is a special category within our budget.

23 Q. And would you explain the entries under the major
24 heading "Method of Financing Summary"?

25 A. These are the figures involved by the source of the

1 financing for each one of the programs involved.

2 For federal aid, for instance, it shows for
3 1986-'87 that we anticipate almost \$701 million in
4 federal aid to flow from the federal government to
5 the Education Agency. Most of that, in turn, would
6 flow to school districts from the Agency. Small
7 amount, again, of earned federal funds.

8 About \$3.3 billion of total local funds are
9 absorbed effectively within these overall program
10 totals through the local shares of various Foundation
11 Program elements and other state local elements. And
12 then a \$5 billion estimate is provided for our
13 expectation for funds from state revenue sources.
14 This would include money for -- from a variety of
15 programs, but will be the total state dollars
16 included.

17 Q. And over on the far right-hand side under "Percentage
18 of Total," you have displayed within each of these
19 three major ways of looking at the information, the
20 percentage that's specific programs are of the total
21 amount of money?

22 A. That is correct.

23 Q. Okay. So regular education/general purpose accounts
24 for 75.03 percent total that is estimated for
25 '88-'89?

1 A. That is correct.

2 Q. Okay. Let's look at Page 2.

3 MR. KAUFFMAN: Excuse me, Your Honor, if I
4 may, the Court asked us to inform the Court whenever
5 we were talking of funds that included both state and
6 local and federal. I think the program totals on
7 Page II-1 include state, federal and local combined,
8 is that right?

9 THE WITNESS: That is correct.

10 THE COURT: Okay.

11 MR. RICHARDS: And they don't include all
12 of the local. That's just this portion of the local
13 funds that are found in the Foundation School
14 Program, is that correct?

15 THE WITNESS: Within the Foundation Program
16 or other state local programs, yes.

17 MR. RICHARDS: Well, I mean, your Exhibit
18 31, for example, shows \$11 billion in expenditures
19 for the '85-'86, and I take it that those figures
20 don't show up here because those are just local funds
21 expended over and above what are shown in this
22 program in this printout, is that right?

23 THE WITNESS: That's correct.

24 MR. RICHARDS: Okay. I don't mean -- it
25 just seems it would be easier if we understood it as

1 it went in. I don't mean to interrupt the flow.

2 MR. GRAY: He's just describing the small
3 box.

4 BY MR. THOMPSON:

5 Q. As we move into Pages 2 through 8, Mr. Moak, is it
6 correct that what we're looking at on those pages,
7 we're taking those program headings that are on the
8 top part of Page 1 under "Program Totals." For
9 example, the first one on Page 2 is regular
10 education/general purpose, and that's the first entry
11 back on Page 1 under "Program Totals." And what we're
12 doing is looking at that in more detail, analyzing
13 the specific monies within that and specifically when
14 we'll be able to identify federal monies that are
15 within each of those program areas?

16 A. You can identify by -- you recall on Page 1 there was
17 a program totals by source of funds.

18 Q. Right.

19 A. When you look at regular education/general purpose,
20 the second column indicates that source of funds with
21 a code FSP S/L or S.

22 Q. Okay.

23 A. Those key back to the codes used on Page 1 as to
24 whether the program is a Foundation School Program
25 number with state and local money, a state only

1 number, a state local number, or a federal aid
2 program.

3 Q. Okay. So on Page 1, the middle of that page, where
4 we have programs totals by source of funds, after
5 each entry, there is a parenthesis and, for example,
6 the letter S or FSP or S/L. And then on Pages 2
7 through 8, in the first column, souce of funds, those
8 are the same referenced points?

9 A. That is correct.

10 Q. Okay. So that we're able to tell the source of the
11 funds for each of these specific subprograms that
12 we're talking about?

13 A. That is correct. And in addition, that same column
14 gives the page references --

15 Q. Okay.

16 A. -- in Section C that describe in more detail each one
17 of those individual lots.

18 Q. Okay.

19 THE COURT: I think I missed what the one --
20 as the example under basic allotment is FSP-1. What
21 does the one and the three and the four and the six
22 mean?

23 THE WITNESS: One goes a little further
24 into the attachment.

25 THE COURT: Is that a page number?

1 My career in this area essentially began in
2 1966, when I was employed as a research analyst for
3 the Governor's Committee on Public School Education,
4 which was a committee that had been created by the
5 Legislature in 1965 and appointed by then Governor
6 John Connally.

7 During the three-year period of that committee,
8 I performed -- served as a finance analyst and did
9 extensive research in the area of public school
10 finance and in the area of coordination of a major
11 study of property values, which really was the first
12 study that took place in property evaluation during
13 the -- in the state. Also during that time, I
14 prepared a long-range cost estimate of the Governor's
15 Committee research work and prepared various impact
16 studies for that committee.

17 When that committee completed its work in June
18 of 1969, it had reported to the Legislature, and the
19 1969 Session of the Legislature did adopt a number of
20 the recommendations of the Governor's Committee with
21 special reference to personnel recommendations and
22 salary recommendations.

23 When I left there in -- left the Governor's
24 Committee at the termination of its work in 1969, and
25 joined the Texas Research League as a research

1 analyst for the next three years.

2 During that time we performed at the Research
3 League, there were a number of studies done involving
4 public school finance as well as higher education
5 finance, financing of community junior colleges,
6 state housing policies, property taxation and
7 management accounting study, Texas Education Agency.
8 Overall, during that time period, I maintained a
9 expertise in current finance issues in the early
10 '70s.

11 From January of 1972 through December of 1974,
12 I was Director of School Finance-Special Projects as
13 part of the -- for the Texas Education Agency
14 reporting to the Office of Commissioner of Education
15 and working with the State Board of Education
16 Committee during that time period.

17 This unit was a special unit that was set up in
18 response to the lower court decision in the
19 Rodriguez, initially, in order to coordinate a
20 variety of school finance studies and school finance
21 information requests at the Education Agency and
22 throughout state government.

23 During that time period, we established in
24 concert with the Texas Research League, the first
25 major capability to analyze school finance issues and

1 allotment which goes to districts with relative high
2 percentages of experienced teachers.

3 The equalization transition fund, a program
4 which is under general statute, is phased out at the
5 end of this year, is a program which was --
6 three-year program put into effect to partially
7 offset, at a declining rate, the losses that certain
8 school districts experienced under House Bill 72.

9 Payments to state schools is a minor program
10 involving available school fund payments to state
11 institutions.

12 The Sick Leave Program is a program designed to
13 -- that is in statute now but has not been funded for
14 this year, to pay for sick leave costs of teachers
15 and substitute replacement.

16 Incentive aid is a program that is designed to
17 pay for construction and debt service costs for
18 districts involved in the consolidation and losing
19 state money as a result of that.

20 State support to education service centers is a
21 program which flows general money to education
22 service centers for their basic purposes. These are
23 20 regional education service centers around the
24 state that provide a variety of services to school
25 districts within their region.

1 Then there are two federal programs that are
2 included, the Educational Consolidation Improvement
3 Act, Chapter 2 Funds, which cover a broad purpose of
4 general -- general aid of money which was once
5 significantly higher under federal action and now has
6 been reduced substantially but still does put some
7 money through the school districts. And then a new
8 program which flows a small amount of additional
9 money for school districts for science and math
10 enrichment under the Education for Economic Security
11 Act.

12 Those total the -- provide the total for
13 1986-'87 of \$6 billion 758 million for regular
14 education/general purpose.

15 Q. And that is the same number that is reflected back on
16 Page 1 under the heading for '86-'87 regular
17 education/general purpose?

18 A. That is correct.

19 Q. So you have provided this here on Page 2, a detailed
20 analysis separating by source of funds where that
21 figure under '86-'87, back on Page 1, comes from?

22 A. That is correct.

23 Q. Okay. And that does account or is estimated to
24 account in '88-'89 for 75 percent of the total
25 program?

1 A. Correct.

2 Q. Okay. On Page 3, we have the major heading of
3 special education, which is the second program listed
4 on Page 1. Would you briefly explain the
5 subcomponents that are included here?

6 A. The major component is the Foundation School Program
7 special allotment formula, which operates to -- with
8 adjustments for various types of special education
9 students and as well as to the price differential
10 index in small school programs to flow a substantial
11 amount of funds to school districts for general
12 special education programs as proved under the State
13 Board of Education rules and regulations.

14 In addition, there is a small amount of
15 discretionary special education funding, which is
16 currently being utilized for regional education
17 service centers in the amount of \$3 million 255
18 thousand shown on the second line.

19 There are two programs for special education
20 that operate -- state programs that operate outside
21 of the Foundation Program. These include a program
22 for visually handicapped education and a program for
23 regional day schools for the deaf. Each of these
24 programs is -- operates effectively in a way that the
25 visually -- the care of the -- the education of the

1 visually handicapped and the deaf are operated
2 outside of the Foundation Program instead of inside
3 the Foundation Program as a general matter.

4 Q. And just so I understand, these two programs are
5 located regionally around the state, and they are
6 state funded to provide services of these two groups
7 of handicapped students?

8 A. That is correct.

9 Q. Okay.

10 A. There are then four federal programs listed that
11 specifically take into account education for the
12 handicapped and the various citations are given
13 there.

14 Q. Let's talk about educationally disadvantaged, which
15 is the third program area listed. Would you explain
16 the subcomponents listed there?

17 A. Yes. The first of those is the compensatory
18 education allotment under the Foundation School
19 Program, that we discussed this morning, in which
20 funds are included in the Foundation Program of each
21 district based on the number of students qualifying
22 for free and reduced lunch programs on the basis of
23 an income standard. There is -- there is a formula
24 allocation of that amount in statute, and that is
25 also by statute directed to be reduced by the

1 administrative cost of administering the state
2 testing program which is the reference to TEAMS on
3 that line.

4 The Pre-kindergarten Program for the
5 disadvantaged, we also discussed this morning, this
6 is a state and local program involving funding for
7 the disadvantaged -- Pre-kindergarten Programs for
8 the disadvantaged throughout the state.

9 A program of -- for school community guidance
10 centers, which is designed to provide alternative
11 education settings for certain students, is a small
12 program which is funded in, I believe, about 20
13 school districts throughout the state. And then
14 there are three federal programs dealing with funding
15 for -- under Chapter 1 of the Education Consolidation
16 and Improvement Act for low-income students, for
17 migrant students and for neglected -- students from
18 neglected and delinquent families.

19 Q. Okay. The next major program listed is bilingual
20 education on Page 4. Would you explain that program
21 and the subcomponents that are listed there?

22 A. The Bilingual Education Program is designed to
23 provide additional education funds to students
24 enrolled in bilingual education or English as the
25 second language programs. The first allotment noted

1 is bilingual education allotment under the Foundation
2 Program for that purpose. There is also an allotment
3 out of state funds for a somewhat early childhood
4 limited English proficient program which is -- was
5 created under House Bill 72.

6 Two federal programs are also noted that flow
7 from -- through the Education Agency that have direct
8 relationship to bilingual education. There is, in
9 addition, a substantial amount of bilingual education
10 funding, which flows directly from the federal
11 government to the school districts, which is not
12 included in these data.

13 Q. The next major program area listed is vocational
14 education with two principle components. Would you
15 explain those two components?

16 A. The first component is component under the Foundation
17 Program for improved vocational education programs
18 operating under the rules of State Board of
19 Education.

20 The second represents the state funds for
21 elementary and secondary education under the Carl
22 Perkins Vocational Educational Act from the federal
23 government.

24 Q. Would you explain the allotment for gifted and
25 talented education?

1 A. The Foundation Program allotment for gifted and
2 talented education again works off of the account of
3 the number of students involved in that program with
4 a specific funding rate and an adjustment for the
5 price differential index and the small schools
6 formula, and is included in this data after deduction
7 of certain discretionary funds which are left to the
8 State Board of Education for summer programs and
9 institutes.

10 Q. On Page 5 under Adult and Community Education, would
11 you please explain the components listed there?

12 A. There are several programs which address adult
13 community education programs. Five of those listed
14 here are funded with state funds for adult basic --
15 adult basic and secondary education, discretionary
16 research programs within that, community education
17 programs, industrial start-up programs and
18 apprenticeship training programs.

19 Two federal programs are also included, federal
20 funds for adult basic and secondary education. And
21 the Job Training Partnership Act funds money that is
22 received through the Governor's Office.

23 Q. Under child nutrition, would you explain the
24 components listed for that program?

25 A. Child Nutrition Program is primarily a federal

1 program which supports the food service programs of
2 individual school districts. There is a state
3 support element in the amount of \$14.6 million which
4 represents mandatory matching funds for the federal
5 school lunch program and is appropriated from the
6 general revenues of the state.

7 The major two components of the program are the
8 National School Lunch Program and the National School
9 Breakfast Program. These funds flow through the
10 Education Agency and are then distributed to the
11 individual school districts, not represented here,
12 but included in certain other kinds of information
13 are some additional funds in the form of -- not
14 funds, but the value of commodities which are donated
15 directly to the school districts are not included in
16 this data.

17 Q. Okay. On Page 6, first major program listed is
18 school transportation. Would you briefly explain
19 that component?

20 A. In transportation allotment under the Foundation
21 Program, contains specific funding, effectively per
22 route mile of school -- approved school bus routes
23 running under the Foundation Program -- running
24 within the school district and reimbursed within the --
25 not reimbursed, but included within the total cost of

1 the Foundation Program for the district.

2 Q. And under instructional materials, there are two
3 major entries there. Would you explain those
4 components, please?

5 A. The Textbook Program is a program under which the
6 state purchases textbooks and then supplies those
7 textbooks directly to school -- through depositories
8 to school districts for direct use. The -- So
9 although no money actually goes to the school
10 district in this case, the individual textbooks do go
11 to the school districts and we include -- included in
12 the total. We have included the financing of the
13 program in these totals.

14 The regional media centers represents state
15 funds which flow to the regional education service
16 centers for the purchase of individual instructional
17 media in the loan program to individual school
18 districts.

19 Q. And just so I understand, the regional media center
20 is a program established in the 20 educational
21 service centers of the state and is funded by the
22 state, and it has materials that are available to the
23 districts within that particular area?

24 A. That is correct. It is funded by the state to the
25 extent that the state funds it. There are -- not on

1 a matching basis, but there are additional funds that
2 are involved in it at the local level.

3 Q. And under "Discretionary/Agency Related Programs,"
4 would you briefly explain the major components listed
5 there?

6 A. Well, as I indicated earlier, these are a range of
7 programs in which the State Board of Education has
8 essential control over the awarding of the funds
9 directly to the recipients. Sometimes these
10 recipients are school districts. Sometimes these
11 recipients are other types of recipients.

12 A number of the federal programs contain this
13 kind of discretionary allotment. The first six of
14 these, for instance, that are listed are all federal
15 programs that contain enrichment or discretionary
16 funds for the State Board of Education to utilize in
17 research or other areas.

18 The gifted and talented on the second -- The
19 top of the second page, the Gifted and Talented
20 Program, that I mentioned a moment ago, has an
21 element which is discretionary to the State Board of
22 Education, was used, for instance, this past summer
23 in operation of a Governor's School for the Gifted at
24 the University of Texas and -- but it contains funds
25 of that type under which statute allows the State

1 Board of Education to use them for discretionary
2 purposes.

3 Another federal program in adult basic
4 education with discretionary funds, there is then an
5 allocation to the State Board for computer services.
6 The money is restricted to utilization at regional
7 education service centers, but the State Board of
8 Education has broad authority on how to distribute
9 that money.

10 There is a small amount of state money made
11 available for research development and evaluation of
12 grants of a general nature, and this is included as
13 the fourth item on that page.

14 The Texas educational assessment of minimum
15 skills is the State Basic Skills Testing Program that
16 we discussed this morning, and funding for it is
17 provided under the Foundation Program. The -- there
18 is a line item funding state program for testing and
19 appraisal. This program is for the development of
20 teacher testing, specifically the basic skills test,
21 and for development of the statewide appraisal
22 system.

23 There is a line item for teacher certification
24 assessment, which is for the continued development of
25 the test utilized in the entry level testing for

1 persons applying for new certification.

2 There is a funding for Accreditation Training
3 and Curriculum Program, which the State Board of
4 Education has chosen to utilize at regional education
5 service centers.

6 And then there are two minor programs, one for
7 voluntary district education plan, which has to do
8 with the desegregation effort at Houston Independent
9 School District, and then for the Electric Pages
10 Project, which has to do with the provision of a
11 pilot program for a statewide telecommunications
12 network.

13 Q. Is it fair to say, and I realize your explanation has
14 been briefed to those subcomponents of the major
15 program areas, but is it fair to say as we've looked
16 at those materials and the specific programs and
17 subprograms that are provided for education in the
18 State of Texas, to get a picture of a highly complex
19 system with many different needs and purposes
20 recognized, and in the funding patterns, at least
21 some efforts by the Legislature, to address those
22 specific different areas of need?

23 A. The state aid system for public education, as well as
24 the federal system but in particular the state aid
25 system, has always been presented as a very complex

1 system for the purpose of addressing many different
2 individual needs that have been identified in the
3 statute. And certainly the program we have today is
4 no less complex than any we have had in the past. In
5 many ways it is more complex that -- in its
6 calculations, so it does represent a complex program
7 and one in which addresses many individual needs
8 throughout the educational system.

9 Q. Let's look just briefly at Page 8, which is entitled
10 "Memorandum Data Relating to the Program Budgets."
11 And I'm going to ask you to explain under the heading
12 of "Student Counts" what the different methodologies
13 that are represented there are?

14 A. The various program areas that utilize student counts
15 employ different types of methodologies in order to
16 count, if you will, an individual student. The core
17 of this starts out with the counting the students in
18 average daily attendance for a period of eight weeks
19 during the year, of which the highest four weeks are
20 chosen, and that develops into this number. So this
21 is saying, in effect, that we count students for
22 eight weeks, if on each district we take the four
23 highest weeks, our estimate for 1986-'87 is that
24 there will be 2,991,457 students in average daily
25 attendance. This compares to about 3. -- oh,

1 3,150,000, roughly, students enrolled in the public
2 schools at this time.

3 MR. RICHARDS: I'm sorry. That figure was
4 what, that last three million what?

5 THE WITNESS: About 3,150,000, I believe.

6 A. The term "Regular ADA" is actually calculated by
7 taking -- well, is calculated under the provisions of
8 law by taking the students on a full-time equivalent
9 basis in special education, vocational education,
10 subtracting those from average daily attendance to
11 determine the students in regular average daily
12 attendance, so the regular program average daily
13 attendance. So this is effectively a number that
14 nets out those students who are on -- involved in
15 special education and vocational education to come up
16 with a full-time equivalent number of students
17 involved in regular education.

18 Special education and vocational education,
19 I've just referenced, these are counted on the basis
20 of the determination of the number of students
21 involved in those programs on a full-time equivalent
22 basis. In effect, two vocation -- it may well take
23 two or more vocational students enrolled in a program
24 to come up with one full-time equivalent for an
25 entire day.

1 Q. Okay.

2 A. And so we have a mathematical process of determining
3 this special education students on a full-time
4 equivalent basis and a vocational education students
5 on a full-time equivalent basis.

6 In compensatory education the student count,
7 which is utilized as I mentioned this morning, is the
8 free and reduced lunch account, that we referenced
9 earlier, essentially an income measure, but this is
10 the -- was the estimate in November of the number of
11 students that would be eligible this year based on
12 free and reduced lunch programs.

13 Bilingual ESL and ADA is a student in average
14 daily attendance count that is taken at the same time
15 as the total ADA, but it is not converted to a
16 full-time equivalent basis. And so these are simply
17 the number of students participating in these
18 programs rather than being converted over to a
19 full-time equivalent.

20 MR. RICHARDS: May I ask a question, sir?
21 Is that -- on the bilingual, that's a total number of
22 students participating in the program, am I correct
23 in that?

24 THE WITNESS: That is a total number of
25 students participating in the program in average

1 daily attendance.

2 MR. RICHARDS: In average daily attendance?

3 THE WITNESS: You get a slightly higher
4 number if you're looking at total number of --
5 participating in the program.

6 THE COURT: Excuse me. May I ask a
7 question? On this compensatory student count, that's
8 for the free or reduced price lunch program?

9 THE WITNESS: Yes.

10 THE COURT: So that would be parents who
11 are at near or below the poverty -- federal poverty
12 guidelines?

13 THE WITNESS: Well, it is not as
14 restrictive of a program as the federal poverty
15 guidelines. You can get a reduced price lunch at a
16 somewhat -- I don't recall the exact income
17 standards, but they are somewhat higher than the
18 federal poverty guidelines, but it does represent an
19 income measure.

20 THE COURT: All right. So the number of
21 students, a million or more in -- that are counted
22 for the compensatory student count, means that there
23 is a million or so students that fall below a certain
24 level of, I guess, parental income that would entitle
25 them to free or reduced price lunches?

1 THE WITNESS: That's correct. And that's
2 out of about the three million students in the state.

3 MR. GRAY: One-third?

4 THE WITNESS: (Witness nodded head to the
5 affirmative.)

6 THE COURT: And you think that that level
7 is higher than the federal poverty level, but is it,
8 nonetheless, a rather low total amount of money
9 necessary for both parents to make in order to
10 qualify?

11 THE WITNESS: It is a relatively low
12 number. I would have to be in a position of bringing
13 back information with regard to the exact number, but
14 it is -- has been considered as an index for some
15 time. It is a number, which I might add, is growing.
16 This number is based on an estimate that 37 percent
17 of the total student population would be in this
18 category. Our data from this year indicates the
19 numbers up to 39 percent.

20 THE COURT: Is it up to each school to
21 figure out which of the students qualify?

22 THE WITNESS: Each school district decides
23 whether to participate in the program and then works
24 with -- is to go through a process of identification
25 of those students through a family income

1 determination.

2 THE COURT: Okay. Well, how do you find
3 that out if you're in this school district?

4 THE WITNESS: Essentially, it's a form that
5 goes home to the parents.

6 THE COURT: Okay.

7 THE WITNESS: That the -- it is distributed
8 at the opening of school to make this determination.

9 THE COURT: Okay. Thank you.

10 THE WITNESS: I should add that the
11 compensatory education student number, bilingual
12 number, and the gifted and talented number are all in
13 the total number. They're not subtracted as the
14 vocational and the special education are. And so
15 it's saying effectively that out of the 2,991,000 in
16 average daily attendance, a 1,000,080 in compensatory
17 education, 218,000 are in bilingual education,
18 104,000 are gifted and talented programs.

19 MR. RICHARDS: So you're saying it would be
20 overlapped, obviously, within those categories, is
21 what those mean?

22 THE WITNESS: In the funding formulas set
23 forward, distinguish between special education
24 students and vocational education students in which
25 they are accounted on a full-time equivalent basis

1 and subtracted from the total as opposed to those
2 programs in which deal with the add-on cost, what is
3 the additional cost beyond this -- if this student is
4 already a regular education student, how much
5 additional funding will be provided because they're a
6 compensatory student or because they're a bilingual
7 education student.

8 BY MR. THOMPSON:

9 Q. And, Mr. Moak, looking at that number of over a
10 million compensatory education students, again
11 referring back to your testimony this morning, is it,
12 again, my understanding that the Comp. Ed. Program
13 was the program that -- the major component in House
14 Bill 72 that received the greatest percentage
15 increase in funding?

16 A. Yes, that is the case. State Compensatory Education
17 Program today is in excess of \$325 million. I
18 believe it was well below a \$100 million prior to
19 House Bill 72.

20 Q. Let's move on to Page 8, the next major heading is
21 the Price Differential Index Adjustment. Now we've
22 heard the price differential index defined a number
23 of different ways so far. What is the price
24 differential index?

25 A. I would like to go to -- in a little bit perhaps --

1 Q. Okay.

2 A. -- more of an explanation of the Board. But to start
3 with, it is one of the key components of House Bill
4 72, and it is there to, under the state policy set
5 forward in Chapter 16 of the Educational Code, to
6 take account of the uncontrollable costs that occur
7 between school districts and to make adjustments in
8 their Foundation Program for the level of those
9 uncontrollable costs such that if a -- in one
10 district, if they are 20 percent higher than the
11 minimum, compared to another district which is 10
12 percent higher than the minimum in terms of costs or
13 in terms of prices that are paid for personnel within
14 that area as a result of uncontrollable factors, that
15 you take that into account in the Foundation School
16 Program.

17 Q. Okay.

18 A. It's long been urged in the literature as a major
19 element in public school financing. We are one of
20 the only -- well, perhaps two or three states now
21 that have been successful in adopting such a
22 differential index to take account of local economic
23 factors.

24 Q. Are you aware of any state that has adopted an index
25 of this nature of the magnitude that Texas has

1 adopted?

2 A. No. The -- a different kind of index, a
3 cost-of-living index was adopted in Florida some
4 years ago, but with 58 school districts all on a
5 county-wide basis, it was substantially easier to
6 calculate.

7 Q. Would you briefly explain under the major heading of
8 Price Differential Index Adjustment, again, you
9 appear to look at the information or its presented by
10 a program. Would you explain what those numbers
11 represent?

12 A. Well the price differential index applies to each one
13 of the program areas. This was a basic set of
14 information to provide how much of each of the
15 program costs, which have been represented in the
16 earlier tables, was specifically attributable to the
17 price differential index within this calculation.
18 And so that \$531.6 million of the regular education
19 basic allotment compared to a total basic allotment
20 of \$4,425,000,000.00.

21 Q. So these numbers are not an add-on to the numbers
22 that are reflected back on Page 2, but they explain
23 what portion of those numbers are attributable to the
24 PDI?

25 A. That's correct. This is simply memorandum data.

1 Q. Okay.

2 A. They're not added to the earlier data.

3 Q. This information to some extent begins the
4 explanation about how the earlier information is
5 derived?

6 A. That is correct.

7 Q. Okay. The next major heading we have is the "Small
8 Schools Adjustment." What is the small schools
9 adjustment?

10 A. Well, the 700 or so districts with less than 1600
11 students receive an adjustment based on their size
12 and district to the number of square miles in the
13 district. This is referred to here as the small
14 schools adjustment. It represents, again, the
15 additional money that -- the funds within the overall
16 program areas in the Foundation Program that are
17 specifically dedicated to small schools of less than
18 1600 students.

19 Q. And I presume this information is just like the PDI
20 information, but it is included within those earlier
21 amounts presented?

22 A. That is correct.

23 Q. Okay. And the next entry you have presented to you
24 on this particular page is "Lost to Budget Balance."
25 We've used that term some in this trial, but I'm not

1 sure it's ever been explained. What is the budget
2 balanced school district?

3 A. The term was created many years ago. I'm not sure
4 who created it. We probably should have taken the
5 opportunity during House Bill 72 to modify it, to
6 change it, but it is essentially a district in which
7 the local fund assignment, plus the available school
8 fund constitutional portion is -- equals or exceeds
9 their total eligibility under the Foundation School
10 Program.

11 For instance, visualize a district which has a
12 Foundation School Program of \$500,000.00, has a local
13 fund assignment of \$400,000.00 and an available
14 school fund apportionment of \$100,000.00, they would
15 be considered to be budget balanced in the sense that
16 the state would not owe them any additional funds.
17 Well, if no district went above that level, it would
18 not be a problem. The problem arises in districts
19 that go substantially below that level. A district --
20 same district with a \$500,000.00 Foundation School
21 Program might well have a million dollar local fund
22 assignment. It would still receive the \$100,000.00
23 available school fund payment. It now has, in
24 essence, revenues of state and local of a
25 \$1,100,000.00, and it has only a program cost of

1 \$500,000.00. And so we have, in quote, lost to that
2 district, that is, we have to make up in another
3 district with state funds, \$600,000.00.

4 Q. So when we talk about budget balanced districts,
5 those are not the only districts in Texas with
6 balanced budgets. It is simply a small group of
7 extremely wealthy districts whose calculated local
8 fund assignment exceeds their program?

9 A. The calculated local fund assignment plus their local
10 school fund allotment --

11 Q. Okay.

12 A. -- exceeds the program cost, and as a result, the
13 state has to make up the difference, if you will,
14 between that and a system which does not have any
15 such districts.

16 Q. And the final entry on this page is "Lost to Property
17 Value Decline and Reference to the Education Code,"
18 Section 16.252(e). Would you please explain what
19 that entry represents?

20 A. If a district under a special provision of the
21 Education Code 16 -- Chapter 16.252(e), if a district
22 is -- suffers a decline in property value, certified
23 effectively by the State Property Tax Board of 8
24 percent or more, they are due a special exception or
25 a special -- a special allotment of additional state

1 aid funds in the form of reduced local fund
2 assignment which enables them to receive additional
3 state aid.

4 And the case of this estimate, the estimate for
5 1986-'87, was that the state would pay \$30 million of
6 additional state funds for this purpose to offset
7 these losses in the -- in the districts -- or to
8 offset these losses in property values in districts
9 suffering that.

10 It may be interesting to note that that number
11 is -- that estimate, since November, in it's
12 submission and our current re-estimate of those
13 numbers, is up substantially and now totals some 300
14 districts in the neighborhood of \$52 million, say a
15 particular representation of what the economy is
16 doing to our school finance system.

17 MR. RICHARDS: This is an annual property
18 drop, is that what you're saying? An annual drop of
19 8 percent triggers that, is that what you're saying?

20 THE WITNESS: Yes. If they drop more than
21 8 percent, then it triggers this additional
22 allotment.

23 BY MR. THOMPSON:

24 Q. So again, what we have, looking at this information
25 presented on these pages, is a highly complex system

1 with many specific programs designed to address
2 specific purposes?

3 A. Yes. We're dealing at the simplified and to the
4 highly complex system so far.

5 Q. Okay. Mr. Moak, for purposes of understanding the
6 Foundation School Program, I would refer back to Page
7 1 of the material we just went through. I note under
8 the middle major heading there, under "Program Totals
9 by Source of Funds," the Foundation School Program
10 accounts for over 89 percent of the funds for the
11 programs as illustrated on that particular chart.

12 And I would like to spend some time with you
13 now looking at some of the specific formulas in
14 detail, how they work, how they are interrelated, and
15 some of the rationales that underly some of those
16 formulas.

17 MR. GRAY: Are you moving off of Exhibit
18 32, or do we continue working through it?

19 MR. THOMPSON: Some of the material we may
20 be talking about is included on FSP, Pages 1 through
21 17. You do have some description of the particular
22 formulas there, but Mr. Moak will also be using his
23 information in addition -- and his knowledge and
24 expertise in addition to those particular formulas.

25

1 BY MR. THOMPSON:

2 Q. Mr. Moak, are you familiar with the phrase "approved
3 program?"

4 A. Yes, I am.

5 Q. What is an approved program?

6 A. Under the Foundation School Program, funding is
7 provided by statute for approved programs; that is,
8 programs approved by the State Board of -- under the
9 State Board of Education rules in each one of the
10 basic areas. In regular education, an approved
11 program becomes, in effect, an accredited program in
12 the special program areas of special education,
13 vocational education, gifted and talented, bilingual
14 ESL and compensatory education -- Excuse me, leave
15 off compensatory education.

16 The program is a program, which has been
17 specifically approved upon application to the Texas
18 Education Agency, as a program qualifying under the
19 rules and regulations of the State Board of
20 Education. In the area of compensatory education, an
21 approved program is one operating under the general
22 statute, but there is not a specific application
23 procedure for approval.

24 Q. Okay. But a district has to offer an approved
25 program under whatever the mechanism is that is

1 provided for a specific program in order to qualify
2 for funds?

3 A. That's correct. If a district, for instance, is
4 operating a vocational education program but has not
5 sought to have it listed as an approved program, it
6 would not be eligible to receive funding for students
7 in vocational education that are submitted to TEA.
8 They would be zeroed out and placed back in the
9 regular education program for funding purposes at a
10 lower cost and not -- not funded as vocational
11 education students.

12 Q. And this is a mechanism that is used by the state to
13 ensure that the programs available in the districts
14 come up to certain standards?

15 A. That is correct. Again, in the accreditation
16 process, that is used in one way for the regular
17 education program, and in the other areas, it's a
18 much more specific process of individual program
19 approval standards. It is a process which has been
20 one way or another in place for many years in the
21 state, but in particular under House Bill 72, it has
22 been modified again to emphasize a greater degree of
23 overall educational performance and less simply rule
24 checking and relationship to individual -- individual
25 rules or statutory provisions.

1 Q. Okay. So if a district is offering an approved
2 program in qualifying for state funds, that means
3 that that program has been subjected to comprehensive
4 review through the accreditation process or through
5 other standards and that the program offered in that
6 district meets those requirements?

7 A. That is correct.

8 Q. Okay. Mr. Moak, the state program that support
9 public education in the statutes relating to that
10 subject in Chapter 16 of the Education Code, discuss
11 some different weights for different types of
12 students. Would you explain the different weights
13 that are provided by statute, what the purpose of
14 those weights are?

15 A. Yes. If I might, it might be easier to approach the
16 board.

17 MR. THOMPSON: May we, Your Honor?

18 THE COURT: Okay. Why don't -- during
19 break, why don't you put up there what he's going to
20 be putting up there. We'll get started up again at,
21 I'll say, a quarter till.

22 (Afternoon recess.)

23 THE COURT: All right, sir.

24

25

DIRECT EXAMINATION (RESUMED)

BY MR. THOMPSON:

Q. Mr. Moak, just before the break, we had finished an overview of the state support system and we're beginning to look at the Foundation School Program in a little more detail. We've already talked about the concept of the approved programs. We've gone through the student counts as to how you determine the number of students in the different program areas. We've talked about the concept of budget balanced districts and what that represents.

And if we could continue our discussion of the Foundation School Program and, in particular, calculations that are included within it, if we could pick up the weights that are provided by statute in Chapter 16, I would ask you what those different weights are and what the purposes for those weights are?

A. The purpose of a weight, in general terms, is to take into account the additional costs of educating a child of that particular -- with that particular set of characteristics. The weights are set in statute or by formula. They are the subject of a variety of studies that are undertaken by the Texas Education Agency and the State Board of Education.

1 The first series of weights, and the most
2 complex series, is in the area of special education,
3 in which there are about 12 weights that range from
4 2.0 to 10.0. A 2.0 weight means that a student in
5 that particular category, in this case, a student in
6 a self-contained classroom who is pregnant, has a
7 weight -- is calculated on a funding basis at a 2.0,
8 saying that that student would cost twice the cost of
9 a regular education program student.

10 Q. Okay.

11 A. So if the unadjusted cost of a regular education
12 program student was \$1350.00, the -- and one had a
13 student who was all day long in a self-contained
14 setting for pregnant students, the law would fund
15 that at \$2750.00.

16 MR. RICHARDS: 27.

17 A. \$2700.00 compared to the \$1350.00 for the regular
18 student.

19 Q. Okay.

20 A. The other end of that scale, the speech therapy
21 carries a weight of 10.0. And this is not for the
22 individual student but rather, again, on a full-time
23 equivalent basis. The reason the weight is so high
24 is because a therapist will work with a very few
25 number of students at a time. And so during the

1 course of the day, the therapist might only handle
2 three or four full-time equivalent students, but that
3 full-time equivalent student would be funded at a
4 weight of 10.0 or \$13,500.00 compared to the regular
5 education program, \$1350.00.

6 Q. So within the area of special ed., we've got a range
7 of different weights that are intended to reflect the
8 cost of different instructional relationships or
9 arrangements associated with educating those
10 particular students?

11 A. That is correct.

12 Q. Okay.

13 A. In vocational education, there is a single weight of
14 1.45. In compensatory education, there is a weight
15 of .20.

16 Now, what these three programs, compensatory
17 education, bilingual education and gifted and
18 talented, are funded on the basis of -- if you recall
19 the discussion of students a moment ago -- are funded
20 on the basis of add-on weights as opposed to
21 full-time equivalent weights.

22 Q. Okay.

23 A. By this we mean that the student is already being
24 funded for a -- as a regular education student in the
25 compensatory, bilingual, and gifted and talented, and

1 this is additional money above and beyond what that
2 student would earn for -- for being a regular
3 student. So you have a weight of .20 for
4 compensatory education or 20 percent over the regular
5 education program costs, .10 or 10 percent over for
6 bilingual, and .035 or 3 1/2 percent over for gifted
7 and talented.

8 Q. And again, these weights are intended to reflect the
9 cost of educating different types of students beyond
10 the cost of the regular student?

11 A. That is correct.

12 Q. Okay. Mr. Moak, let's talk about the price
13 differential index in a little bit more detail. As I
14 understand it, the Texas Education Agency is
15 instructed by statute to provide for a price
16 differential index, and I would ask you to briefly
17 explain the types of issues that were taken into
18 consideration in the research that was done to
19 develop the price differential index.

20 A. The price differential index, which was adopted in
21 House Bill 72, with the specifications which were
22 adopted and then the State Board of Education was
23 employed to utilize both their staff, the staff of
24 the State Comptroller's Office and an advisory
25 committee, in the development of a new price

1 differential index.

2 The index currently in use was developed in the
3 Fall of 1984 under -- with the work of an advisory
4 committee to the State Board of Education. At that
5 time, I was a consultant to the Texas Education
6 Agency and worked with that committee. The index by
7 statute is designed to quote, "reflect the geographic
8 variation in resource cost due to factors beyond the
9 control of the school districts."

10 In simple terms, the committee determined that
11 the index should take into account those price
12 variations, variations in those costs factors
13 directly related to the provision of educational
14 services under the relevant part of the Foundation
15 Program, that only cost variations, clearly outside
16 the control of the districts, should be included in
17 the calculations of the index, and that the model
18 used to produce a price differential index should
19 measure the relationship between these various
20 characteristics between and among school districts.

21 To do this in 1984, what the committee worked
22 with with the staff and consultants serving the
23 committee, was to, in essence, analyze the salaries
24 of teaching personnel in the districts of the state.
25 It went through what amounted to a three-stage

1 process with a complex -- ending up with a complex
2 series of multiple regression equations, which I
3 won't try to give the details of, but try to indicate
4 the general -- the general experience with those
5 equations.

6 The first thing was that the committee looked
7 at -- they knew that there were many individual
8 characteristics of personnel that related to the
9 variations in salaries that were paid those
10 personnel. Specifically, they knew the degree and
11 experience and what grade the teacher was teaching --
12 what grade level the teacher was teaching, elementary
13 or secondary, often had an impact on the salary. So
14 they made adjustments statistically for experienced
15 degree and the grade level assignment. Now that
16 eliminated 70 percent of the variation that occurred
17 amongst teachers' salaries.

18 They then made an adjustment for both wealth
19 and for tax effort. And wealth and tax effort were --
20 when they adjusted salaries out of that -- out of
21 that data, 14 percent -- an additional 14 percent of
22 the variation was eliminated and that resulted then
23 in -- they had gotten down to what they felt were the
24 unexplained or uncontrollable characteristics
25 totaling some 15 percent.

1 They found four factors that specifically
2 identified -- had a statistical relationship to that
3 variation that was left after all of the earlier
4 adjustments. And these were the size of the district
5 in terms of the average daily attendance, the percent
6 low-income students in terms of the students
7 qualifying for a free and reduced lunch, the average
8 county wage level, and the density of the district
9 determined by the number of students per square mile.
10 They ran this through a statistical procedure and
11 effectively created a price differential index for
12 each district in the state.

13 Now this index, after adjustments, has a -- the
14 lowest set of districts, about 50 districts, have a
15 value of 1.0.

16 Q. Okay.

17 A. The highest set of districts have a value of
18 something over 1. -- about 1.22, which involves the
19 top 11 districts in the state.

20 Q. Okay. So the PDI was an effort, pursuant to
21 statutory direction, to identify and count for those
22 costs in education that are outside of the control of
23 the districts?

24 A. That is correct.

25 Q. Okay. It does not stand for pay Dallas indefinitely?

1 A. It does not stand for pay Dallas indefinitely.

2 MR. RICHARDS: Does it result in it,
3 though?

4 A. A thousand and some odd districts receive additional
5 allocations under the price differential index.

6 Q. Let's talk about how we compute the Foundation School
7 Program entitlement for particular districts in the
8 State of Texas and put all of these different complex
9 formulas in proper sequence and look at how they
10 impact each other and walk through a couple of
11 examples of how that actually works out with the
12 school districts in the State of Texas?

13 Now, do we start with our basic allotment?

14 A. Yes. Basic allotment of \$1350.00 is first divided by
15 the State Board of Education formula. Between that
16 portion of the allotment, which is determined to be
17 impacted by the price differential index and that
18 portion of the allotment which is not impacted.

19 Q. Okay. So we're going to apply the PDI to 76 percent
20 of the basic allotment and then leave 24 percent of
21 it that is -- to which the PDI is not applied?

22 A. The State Board of Education is utilizing the 76
23 percent, based on the index that it has adopted,
24 applies best to 76 percent of total costs since it is
25 strictly based on instructional payroll --

1 Q. Okay.

2 A. -- and not representative of other costs that might
3 be associated. So they applied it to 76 percent of
4 \$1350.00.

5 Q. Okay. So this 76 percent represents the percentage
6 that is attributable to payroll?

7 A. That's correct.

8 Q. Okay. And that's why the PDI is applied to that
9 percentage and not to the rest of the basic
10 allotment?

11 A. That is correct.

12 Q. Okay. And this multiplication results in what is
13 known as the adjusted basic allotment, is that
14 correct?

15 A. That is correct.

16 Q. Okay. So the first step in determining a district's
17 qualification under the Foundation School Program is
18 this particular mathematical step?

19 A. Correct.

20 Q. So if we had a sample district with a PDI of 1.10,
21 then by this formula right here, adopted by the State
22 Board of Education, the 1026 represents 76 percent of
23 the 1350 and the 324 represents 24 percent?

24 A. That's correct.

25 Q. And so we get the piece that is adjusted by the PDI

1 to be \$1,129.00 and then adding to that the 324. So
2 in this sample district, the adjusted basic allotment
3 would be \$1,453.00, is that correct?

4 A. That's correct.

5 Q. Okay. And that's the first thing we do?

6 A. Correct.

7 Q. Okay. We've talked a little bit previously about the
8 small district adjustment, and I would ask you to
9 briefly describe what that's intended to account for?

10 A. A small district adjustment is to recognize that in
11 smaller districts, in this case districts that were
12 less than 1600, higher costs occur essentially
13 because the district is small. They are forced into
14 a position in order to -- in particular, in order to
15 provide a full scale curriculum of providing lower
16 class sizes and hiring additional teachers. There is
17 a -- therefore, this formula -- the formula used here
18 is for the purpose of adjusting the basic allotment
19 or the adjusted basic allotment, if you will, for
20 small districts costs where appropriate.

21 Q. Okay. So in the same sense that the PDI is intending
22 to account for costs that are outside of the control
23 of the districts, the small district formula is
24 intended to account, if you will, for the costs
25 simply of being small?

1 A. That is correct.

2 Q. Okay. And does the formula that's provided in
3 statute differentiate based upon the size of that
4 district in terms of its area?

5 A. Yes. The formula in the statute has a distinction
6 for districts of more than 300 square miles and
7 districts less than 300 square miles.

8 Q. Okay. If we can look at a couple of examples then,
9 if we add a district -- and I won't try to lay out
10 the entire formula here -- but if we had a district
11 of 1600 students in ADA, because that is the cutoff
12 for the small district formula, they would turn out
13 to have a small district adjustment of 1.0 regardless
14 of whether they are greater or less than 300 square
15 miles?

16 A. Correct.

17 Q. Okay. And then as we move down in size and look at
18 increasingly smaller districts, if we were to look at
19 a district of a thousand, if they were less than 300
20 square miles, they would have a small district
21 adjustment of 1.15, and if they were greater than or
22 equal to 300 square miles, they would have a small
23 district adjustment of 1.24?

24 A. That's correct, based on application of the thousand
25 student size to the formulas during the extension.

1 Q. Okay. And the numbers that are illustrated here in
2 this example for 500 students and for 100 students,
3 given this break, in terms of the size of the
4 district, are computed on that same formula?

5 A. Yes, they are.

6 Q. Okay. So with our sample district, if we're trying
7 to figure out what that district's participation
8 under the Foundation School Program is, we take the
9 ADA, which was the basic allotment adjusted by the
10 PDI, and apply the small district formula to that, is
11 that correct?

12 A. That is correct.

13 Q. And that gives us the adjusted allotment?

14 A. Yes.

15 Q. Okay. So with our sample district back over there
16 with a PDI of 1.10, where we computed and came up
17 with an adjusted basic allotment of 1453, if we were
18 to take that district and then if that district had
19 500 students and if it was greater than or equal to
20 300 square miles so that we would have a small
21 district formulas or factor of 1.44, if we were to
22 take that district, then after applying the PDI and
23 their small district formula, we would come up with
24 an adjusted allotment of \$2,092.00?

25 A. That's correct.

1 Q. Okay. And then is this the point at which we apply
2 the weights that we looked at just a few moments ago
3 for the different program areas?

4 A. Yes. Now we have the base cost per student for this
5 district, and we would apply the various weights to
6 it to determine the amount per student by program
7 area.

8 Q. Okay. So in this district, this number of 2,092
9 would be for a regular student after applying PDI and
10 the small district formula but prior to applying any
11 of the weights for the special programs?

12 A. Yes.

13 Q. Okay. And is the 3.1 the average weight in the State
14 of Texas for special education students?

15 A. Yes, it is.

16 Q. Okay. So this district could have a range of
17 instructional arrangements and related costs of
18 between two and ten, but the average in the state is
19 3.1. So if they were average, then this district's
20 special ed. adjustment would be \$6,495.00?

21 A. Yes, it would.

22 Q. Okay.

23 MR. RICHARDS: Excuse me. You're saying --
24 That assumes they have three special ed. students, is
25 that what you're saying?

1 MR. THOMPSON: No. It assumes that the
2 instructional weight of the special ed. programs in
3 that district is 3.1.

4 MR. RICHARDS: Okay.

5 BY MR. THOMPSON:

6 Q. And in voc. ed., after applying the statutory weight,
7 it would be 3,033 for that program?

8 A. Yes, it would.

9 Q. And for bilingual, after applying the statutory
10 weight, it would be -- Now, this was an add-on --

11 A. This is an add-on.

12 Q. -- for bilingual? Okay. So we would add on this 209
13 to the 2,092?

14 A. That's correct.

15 Q. Okay. And likewise for comp. ed., the .2 is an
16 add-on weight?

17 A. That's correct.

18 Q. So we would add on the 418 to the 2,092?

19 A. That is correct for those students.

20 Q. Okay. And for gifted and talented students in the
21 district, it's a weight of .036, so we would add on
22 an additional \$75.00 for the students participating
23 in that program?

24 A. Correct.

25 Q. To the 2,092?

1 A. (Witness nodded head to the affirmative.)

2 Q. Mr. Moak, just for clarification, are these programs
3 exclusive or can you, for example, be classified as
4 comp. ed. and, hence, qualify for the add-on weight
5 for comp. ed. and also be qualifying for the add-on
6 weight for bilingual ed.?

7 A. In the example that you've given, that is possible.
8 You could be qualifying for both programs.
9 Effectively, however, you could not qualify -- in
10 other areas, you could not be in both programs. For
11 instance, you could not be in both special education
12 and be at the same time in the vocational education
13 program without your time being allocated.

14 Q. Okay.

15 A. But you could be both in the comp. ed. and in the
16 bilingual program.

17 Q. Okay. For the three that are add-on weights, for
18 bilingual, comp. ed., and gifted and talented, it is
19 possible to be qualifying in more than one program
20 area?

21 A. Yes, it is.

22 Q. Okay. So what do we do now? We've got our sample
23 district, and we've figured out what the add-on
24 weights are for the different kids participating in
25 the different programs. What do we do at this point?

1 A. Well, essentially, now you'll have your student
2 counts for each one of those basic program areas.
3 You multiply your student counts, by the rules we
4 went over earlier, by the amounts per student, and
5 that gives you the allotment in each one of those
6 program areas for the district as part of the
7 Foundation School Program.

8 Q. Okay. And once we've done that, once we've made that
9 multiplication, do we then add on, say, to the career
10 ladder money? Where does that come into play?

11 A. Well, prior to the calculations of their totaling up
12 for the basic Foundation Program allocation, there
13 are two other allotments -- two other additional
14 amounts of money which are added. One of those is
15 for the educational improvement fund and career
16 ladder payment, and the other is for transportation.

17 Q. Okay.

18 A. In the case of the educational improvement, career
19 ladder funding, this year the number is \$140.00 per
20 student. Last year it was \$120.00 per student. That
21 is simply times their total students in average daily
22 attendance. It is not adjusted in any way for
23 weights or price differential index or any other
24 particular variable.

25 Q. Okay.

1 A. The transportation allotment is an allotment which is
2 calculated for regular transportation as well as for
3 vocational education transportation and special
4 education transportation. It is essentially based on
5 a schedule of cost per route mile -- of student route
6 mile. That's associated with the transportation
7 system that's set in the General Appropriations Act.

8 Q. Okay. And does that formula take into account both
9 the lengths of the routes traveled and also the
10 density of students along the routes?

11 A. Yes, it does.

12 Q. Okay.

13 A. So those two allotments then are added to the
14 allotments for the district for regular education,
15 special education, vocational education,
16 compensatory, bilingual, and gifted and talented.
17 And that forms the basic cost of the Foundation
18 Program prior to adjustment for local share and
19 enrichment equalization and other factors.

20 Q. Okay. So we add all that up, and we get the
21 Foundation School Program for that district?

22 A. That is correct.

23 Q. Okay. And then we want to figure out how to split
24 the cost of that between the state and the local
25 districts, is that correct?

1 A. Correct.

2 Q. Okay. How do we do that?

3 A. Well, the statute prescribes that we take a -- the
4 total of all of those allocations for all districts
5 in the state, total them up, take one-third of the --
6 of the sum of those allocations and we charge that to
7 the local fund assignment. The balance becomes
8 initially a state share.

9 Once you charge that total to the local fund
10 assignment, you have to make an additional -- you
11 then have to take a step to provide the local fund
12 assignment for each school district. This is done by
13 dividing the local fund assignment in proportion with
14 the -- to the values that are set by the State
15 Property Tax Board for the prior school year.

16 So each district, in essence, receives their
17 share of the local share of the Foundation Program to
18 come up to an overall local share amount for each
19 district. And then the two adjustments that we
20 discussed before, the budget balance adjustment and
21 the adjustments for appeal value were made to that.

22 Q. Okay. And I understand that the adjustment for the
23 appeal of values does not affect the local fund
24 assignment of other districts, is that correct?

25 A. That is correct. You don't recalculate that

1 percentage for other districts as a result of the
2 appeal value being set. Rather, in effect, it is a
3 method that the districts with substantially high
4 property values receive substantially higher local
5 fund assignments.

6 Q. Okay. And then after applying that calculation and
7 determining the state share and the local share of
8 the program for that particular district -- Let's say
9 the district is below a 110 percent state average
10 value and hence qualifies for equalization aid, how
11 do we, at that point, apply the equalization factors?

12 A. First, we set, without regard to the 110 percent, we
13 set the total Equalization Program at 30 percent of
14 the Foundation School Program. That is adjusted
15 according to statute, for a particular calculation as
16 to what their effective tax rate is. If their tax
17 rate is not up to a specified level, in this case
18 about 52 cents for operations purposes, the -- or
19 about 62 cents for operations purposes and 75 cents
20 for total -- 75 cents for total purposes, you adjust
21 that 30 percent eligibility down --

22 Q. Okay.

23 A. -- in proportion to what it is for those rates.

24 Q. You mentioned in your testimony this morning that to
25 some extent, historically, the state school finance

1 system has operated as an incentive system. Is this
2 an example of that?

3 A. This is a very direct example of that. Much more
4 direct than some of the examples we've used in the
5 past.

6 Q. Okay.

7 A. But where the state is effectively saying that the
8 higher the tax rate up to a certain point, the higher
9 the state aid for certain types of districts.

10 Q. Okay. So we've walked through the calculation and
11 determined district's eligibility for equalization
12 aid. Then what do we do?

13 A. Then we adjust the -- we go through an additional
14 formula, which compares the district's property value
15 per student to a specified number of 110 percent of
16 the state average property value per student.

17 Q. Okay.

18 A. In effect, we're saying what percentage of the -- if
19 the district is lower than this 110 percent of state
20 average, they get a proportionate share of this
21 eligibility amount of 30 percent of the Foundation
22 Program adjusted for tax effort as additional state
23 aid.

24 Q. Okay.

25 A. Having made those two steps; that is, the calculation

1 of the relative ability compared to 110 percent of
2 state average and the calculation of their 30 percent
3 adjusted for tax effort, you multiply one times the
4 other and it produces an amount for equalization aid
5 for the district from the state sources.

6 Q. Okay. In the calculation, is the next component that
7 we look at an experienced teacher allotment?

8 A. Yes. The experienced teacher allotment is another
9 element of the Foundation Program, which is designed
10 to provide districts with -- who have average minimum
11 teachers' salaries greater than state average with
12 the additional funding.

13 Q. And let's say we had a district that, under House
14 Bill 72, lost the state aid. Is there a transition
15 program that would apply to those districts to ease
16 that loss a little bit, and is this the point in the
17 calculation at which that would come into play?

18 A. There is a temporary calculation of equalization
19 transition. I might add, each one of these -- the
20 formulas we've been discussing are covered in detail
21 in the program budget data that we discussed earlier,
22 but there is a formula for equalization transition.

23 House Bill 72 provided for a limit on
24 equalization transition, the first year in 1984-'85
25 of some \$70 million, the second year of \$35 million

1 and the third year of \$17,500,000.00. Now, we are in
2 that third year. This covers the losses from one
3 year to -- a portion of the losses in state aid from
4 one year to the next are covered by the Foundation
5 School Program equalization transition aid formula.

6 Q. But this is the last year for that particular
7 allotment?

8 A. That is true.

9 Q. Okay.

10 A. It is due to be zeroed out and, in fact, was even
11 specifically designed to be excluded by being placed
12 in nonmandatory statute to the Educational Code.

13 Q. Okay. We've discussed a little bit earlier today
14 about the state funding for the pre-kindergarten
15 program, which is apparently a fairly unique program
16 nationally.

17 At what point in the calculation for our sample
18 district would the funding for the pre-kindergarten
19 program come into play?

20 A. Well, it would come in as a separate calculation --

21 Q. Okay.

22 A. -- of aid at this point in time. It goes back and
23 picks up this adjusted allotment of \$2,092.00,
24 applies -- takes 75 percent of that, because this is
25 actually only a half day program.

1 Q. Okay.

2 A. And then adjust that times the average daily
3 attendance again of the participating
4 pre-kindergarten students. That forms a total
5 allotment for pre-kindergarten with a state and a
6 local share again. That local share is set in the
7 same relationship that the local fund assignment is
8 to the overall Foundation Program. So, essentially,
9 you have a new Foundation Program for simply
10 pre-kindergarten for the disadvantaged with its own
11 set of calculations.

12 Q. Okay. So for districts qualifying for that
13 pre-kindergarten money, a poor district would get
14 proportionately more funding from the state for the
15 program than a wealthier district, is that correct?

16 A. That is correct.

17 Q. Okay. Are there other major components of this
18 calculation for an individual district that I've
19 overlooked?

20 A. Those are the major components of the Foundation
21 Program. There are some other relatively minor
22 programs, but these are the ones that affect most
23 school districts throughout the state.

24 Q. Okay.

25 (Defendants' Exhibit No. 33 marked.)

1 Q. Mr. Moak, I'm handing you what has been marked as
2 Defendants' Exhibit No. 33, and I would ask you to
3 identify that?

4 A. This is a set of district level impact models that
5 were run as part of the Education Agency standard
6 impact model in preparation of data for the
7 Legislature, utilizing projected pupils and
8 preliminary 1986 property values for the period
9 1986-'87, 1987-'88 and 1988-'89 under current law.

10 These impact models contain a wide variety of
11 information as to the calculation of state aid for
12 each school district in the state and how they
13 standardly produced, since being jointly developed by
14 the Texas Education Agency in the Legislative Budget
15 Office in 1984.

16 Q. Okay. So when we make projections on these
17 district-by-district printouts for the next biennium,
18 we're using the same assumptions that were presented
19 earlier in the Program Level 3 documents about
20 keeping current law in place?

21 A. Yes. This is, again, with current law in place but
22 bringing this back to an estimate for the district
23 that balances close back to those aggregates of
24 current law.

25 Q. Okay. And this is based upon this model that was

1 developed jointly with the Legislative Budget Office,
2 simply an attempt to project what would happen in
3 that individual district if current law were to
4 remain in place?

5 A. That is correct.

6 MR. THOMPSON: Your Honor, at this time, we
7 offer Defendants' Exhibit 33.

8 MR. KAUFFMAN: Your Honor, we would object
9 to 33 and, I suppose, 34 as well, on the same basis
10 as our earlier objection, in that it projects '87-'88
11 and '88-'89 program on a, as yet, unpassed budget of
12 the State of Texas. Again, assuming an increase of
13 \$430 million for the biennium -- at least \$430
14 million for the biennium over previous years. And,
15 again, we would object to the use of these
16 projections.

17 MR. RICHARDS: Excuse me. I have a
18 question. This isn't all of the districts in Texas,
19 is it?

20 THE WITNESS: I'm sorry. There are two
21 sets of districts.

22 MR. RICHARDS: Exhibit 33 has just been
23 offered as a handful of districts. What do they
24 represent?

25 THE WITNESS: These districts -- those

1 districts in particular represented the
2 Defendant-Intervenor districts. The -- there's
3 another potential exhibit which are, I believe,
4 Plaintiff districts, that are also being prepared,
5 comprehensive sets of all districts.

6 MR. RICHARDS: So this wasn't prepared for
7 the legislative budget at all. This was prepared for
8 litigation, right?

9 THE WITNESS: No. It was specifically
10 prepared for legislative budget examination.
11 Tomorrow afternoon I will be presenting information
12 from these models. In terms of, yes, these
13 individual printouts of these districts, they were
14 printed for this purpose.

15 MR. RICHARDS: The purpose of this
16 litigation?

17 THE WITNESS: Of this litigation.

18 MR. RICHARDS: Yeah.

19 THE WITNESS: Other than that, the model
20 itself, the calculation of the model, the operation
21 of the model, and the runs that have been made of
22 that model during the last week, were prepared for
23 the purpose of legislative presentation to the House
24 and Senate budget committees tomorrow and Wednesday.

25 MR. THOMPSON: Mr. Moak, just for the

1 purposes of clarification, this is a standard form of
2 analysis, and the basis of analysis was not designed
3 to this litigation. This basic method of analysis to
4 present information to the Legislature would be used
5 in any circumstances, is that correct?

6 THE WITNESS: Yes. This is a standard
7 printout. These printouts are also due later to be
8 mailed to the school districts for their use in
9 developing a budget materials for this spring.

10 MR. O'HANLON: In response to the
11 objection, Your Honor, I'm quite frankly amazed.
12 First they tell us that what we're doing is arbitrary
13 and capricious and that the Legislature isn't looking
14 at all of the things that they need to look at. And
15 then when we bring to you evidence, which is an
16 attempt to portray exactly how the Legislature does
17 go about putting together a budget, they object to
18 it.

19 What we're trying to demonstrate to the Court
20 is exactly how the Legislature goes about assembling
21 the budgets with the material that they're using
22 right now. I think it's highly relevant to the
23 proceeding.

24 MR. KAUFFMAN: Well, Your Honor, it's
25 certainly not relevant to the issue of exactly what

1 state aid Andrews ISD is going to get in '87-'88.
2 It's projection. It's based on projection of what
3 the State Board hopes -- one projection of what the
4 Legislature might pass in terms of appropriations.
5 It assumes an increase of appropriations of over \$430
6 million per biennium. And, although, as we've said,
7 we're not objecting to their increasing
8 appropriations, it is a projection. And if Exhibit
9 33, Page 1, is meant to be what's going to happen to
10 Andrews ISD over the next two years, it is a
11 projection. It is speculation. And that's what
12 we're objecting to.

13 MR. O'HANLON: Well, of course it is. This
14 is part of the budget process. The appropriation
15 bill has got to be passed by the Legislature and it's
16 got to be signed by the governor and put into law.
17 We're trying to explain exactly how this process
18 goes, the documents they look at, projections that
19 they use, and the process in general by which they go
20 about setting appropriations.

21 MR. RICHARDS: My real question is just
22 what the purpose of this is. Obviously, this is not
23 material that was before the Legislature when they
24 adopted H.B. 72. And I suppose since we're
25 litigating that, I guess, H.B. 72, in its effect

1 together with the overall state program, I would not
2 consider this to have any bearing upon the
3 constitutionality of that process. But we haven't
4 been clear what the nature of the offer was.

5 MR. O'HANLON: Then I have to query as to
6 why we've heard all of this testimony for all of
7 these weeks about how we're not funding on a high
8 enough level if all we're looking back to was way
9 back then, which is already gone. If they're
10 projecting that we're not spending enough money, that
11 we need to file the Accountable Cost Committee's
12 recommendations, that we need to raise their
13 expenditures to \$2700.00 per student for the
14 Foundation School Program into the future, and then
15 we talk about the budget process, and they object to
16 it.

17 MR. RICHARDS: We're talking about the
18 legislative process in this litigation. Now we know --
19 I don't know if they're going to intend to offer all
20 of the impact models they ran before they adopted H.B.
21 72, that would have some bearing on this case. This
22 doesn't have anything to do with what was before the
23 Legislature when they adopted H.B. 72, and that's my
24 point.

25 MR. TURNER: Well, Your Honor, that's not

1 all of the case, though. The case is what is House
2 Bill 72? Is it constitutional? And all this Exhibit
3 33 is, is a normal --

4 MR. RICHARDS: You're -- Counsel, you're
5 not offering this thing. The only person who can
6 limit this offer is either Mr. O'Hanlon or Mr.
7 Thompson. All we're trying to figure out is what the
8 offer is. That's what I'm trying to understand.

9 MR. O'HANLON: We're back to the same
10 fight, Judge. We're back to the issue that --
11 they're saying -- they're challenging the level of
12 appropriation. They're saying that we haven't
13 appropriated enough money for public school finance.

14 MR. RICHARDS: I haven't heard that
15 argument made yet in this case on this side of the
16 table. That's your contention that that's our
17 argument, but I've never heard either the Plaintiff
18 or the Plaintiff-Intervenors say that's -- that is
19 the contention. Maybe that's one of the reasons we
20 need to find out why you're offering this.

21 MR. O'HANLON: I certainly have heard an
22 awful lot of testimony about the \$2700.00 level and
23 how we're underfunding education, and we could have
24 shortened this trial by about four weeks if that
25 wasn't their contention in this case.

1 THE COURT: State one more time for the
2 record why you're offering 33.

3 MR. O'HANLON: We're offering 33 to
4 demonstrate -- for several reasons. One is because
5 it's got current school year data, which is relevant
6 to these proceedings. And what we're offering it for
7 is to show -- for two reasons. One is to demonstrate
8 the effect into the future of House Bill 72 if it
9 goes unchanged, and two, is to provide the Court and
10 the record with some evidence about how the budget
11 appropriation process works and about the information
12 that's before the Legislature at the time they write
13 the appropriation bill.

14 THE COURT: Okay. And why would you want
15 the Court or the record to know that?

16 MR. O'HANLON: Well, because they're
17 arguing that the Legislature did not have a rational
18 basis for the determination of funding. And this
19 goes to demonstrate the considerations that go for
20 that purpose.

21 THE COURT: It will be overruled.
22 Objection overruled.

23 MR. THOMPSON: Thank you.

24 MR. KAUFFMAN: Your Honor, if I may. I'm
25 sorry to go back to something. But one of the things

1 he said was this is the effect of 72 if it goes
2 unchanged. And we, again, want to make our objection
3 clear to that. This assumes that House Bill 72 is
4 funded more for the next biennium than it was the
5 last biennium at 430 million or more dollars total by
6 the state, and therefore, is not unchanged. The
7 weights and the allotments might be unchanged, but
8 the state aid has increased by \$430 million.

9 MR. O'HANLON: This comes out of Mr.
10 Kauffman's basic misunderstanding of the
11 appropriations process, Your Honor. House Bill 72
12 provides a set of formulas that requires a certain
13 amount of state aid to meet the mandates. There is a
14 difference between the statutes, themselves, and the
15 appropriation. We can fund -- we can change the
16 appropriation without changing necessarily the
17 underlying statutes. And regardless of the
18 appropriation level, it's a confusion between an
19 appropriations bill, which is a special law in the
20 general laws, which are in House Bill 72.

21 MR. KAUFFMAN: Let me try to clarify. Mr.
22 Moak, if the State Legislature for the next biennium
23 authorizes exactly the same expenditures as it did
24 for the last biennium, won't the numbers on Exhibit
25 33 be different?

1 THE WITNESS: Certainly the numbers would.
2 Actually, if it did that under the provisions of
3 general statute, the only number that would change
4 would be the total state aid number with the per
5 student proration, subject to the provisions of
6 Section 16.254(d), I believe.

7 MR. KAUFFMAN: But in terms of per student
8 proration on this Exhibit 33, Andrews, the regular
9 education number in thousands for Andrews in '87-'88
10 would be lower?

11 THE WITNESS: No, it would not.

12 MR. KAUFFMAN: Okay. Why is that? Because
13 it's a rich district?

14 THE WITNESS: No. Because of the way in
15 which the statutes work.

16 MR. THOMPSON: Excuse me a moment. I
17 believe this has been admitted, and you can certainly
18 pursue that with him on cross.

19 MR. KAUFFMAN: Okay. I just wanted to
20 repeat my objection then, that this is based on
21 projections of state appropriations that have not
22 been made.

23 THE COURT: Yeah, I think we understand
24 that.

25 MR. KAUFFMAN: Okay.

1 THE COURT: I think I understand that the
2 basic reason -- at least what I thought was the basic
3 reason -- was to sort of to show that the process as
4 being one of rationality. So I'll overrule. Not
5 only the process, but the use of the formulas and so
6 on as being -- the process as well as the basic law
7 being rational, and as I understood the reason for 32
8 and 33, was that. And so I think that's relevant.
9 So I'll overrule and 33 will be in evidence as has
10 been admitted, 32.

11 MR. THOMPSON: Thank you, Your Honor.

12 THE COURT: Okay.

13 (Defendants' Exhibit No. 33 admitted.)

14 (Defendants' Exhibit No. 34 marked.)

15 BY MR. THOMPSON:

16 Q. Mr. Moak, I'm now handing you what has been marked as
17 Defendants' Exhibit No. 34, and I would ask you to
18 identify that document?

19 A. This, again, is a comprehensive printout similar to
20 Defendants' Exhibit 33 for a series of school
21 districts which, I believe, represent the Plaintiff
22 and Plaintiff-Intervenor districts in this lawsuit.

23 Q. Okay. So 33 shows the Defendant-Intervenor
24 districts, and 34 shows the Plaintiff and
25 Plaintiff-Intervenor districts in this particular

1 case?

2 A. That's correct.

3 Q. And these are merely extracted from a larger body of
4 information for all districts that was developed
5 pursuant to working with the Legislature?

6 A. That is correct.

7 Q. Okay.

8 MR. THOMPSON: Your Honor, we offer
9 Defendants' Exhibit 34.

10 MR. RICHARDS: To which we object because
11 it's selective and, I suppose, if they want to make
12 the offer, they should offer the same information for
13 all of the districts in the state. And we renew the
14 objections we made in connection with the offer of
15 Exhibit 33.

16 MR. THOMPSON: Your Honor, we'll be happy
17 to produce this information for all school districts
18 in the State of Texas. We were simply selecting
19 districts pertinent to this litigation from
20 information that's already developed in trying to
21 keep the volume of paper to a minimum, but we will
22 certainly produce the entire report for all school
23 districts in the state.

24 THE COURT: I'll overrule.

25 MR. THOMPSON: Thank you.

(Defendants' Exhibit No. 34 admitted.)

BY MR. THOMPSON:

Q. Mr. Moak, if you will look at Defendants' Exhibit 33, and again, as I understand it, this information is an impact model and it goes through much of the same calculations that we were just discussing in a little bit more general concept and works through that calculation and shows some pertinent information on a district-by-district basis, is that correct?

A. That is correct.

Q. Okay. Just in looking at a district close to the front that might indicate some of the different formulas that we've been talking about, if you would turn to Page 3, where you have displayed Plano Independent School District in Collin County, over where it says "type of district, suburban fast growing," what does that represent?

A. The -- we have a standard categorization of districts by a demographic type involving central city, other central city -- major central city, other central city, suburban stable, suburban fast growing, two nonmetropolitan classifications and a rural classification.

Q. Okay.

A. In this case, it means this is a suburban district to

1 one of the major urban areas and has a sufficiently
2 high growth rate during the past several years to
3 classify it is a fast growing district compared to
4 the suburban districts which are more stable in their
5 growth patterns.

6 Q. Okay. Let's look back over on the left-hand side of
7 the page where it says "state aid calculation." And,
8 I presume what this represents is the application of
9 those formulas, that we've talked about previously,
10 to this particular school district. I would ask you
11 to -- beginning with the line under "state aid
12 calculation" for regular educational, if you will
13 explain that calculation as it is depicted on this
14 particular page?

15 A. Well, it does follow very much the pattern we've been
16 through before. To best identify that, perhaps I can
17 utilize some other information --

18 Q. Okay.

19 A. -- that is on this same page.

20 If you go over to the right-hand side of the
21 page under student counts, there is a regular ed.
22 ADA that is listed. In the case of '86-'87, 24,462
23 students. If you go to the bottom of the page where
24 it says "cost per student", there is an adjusted
25 basic allotment of \$1568.00 per student, under "cost

1 per student" on the right-hand side.

2 So the regular education allotment under state
3 aid calculation is nothing more than the regular ADA
4 times that regular ed. adjusted basic allotment of
5 \$1568.00 per student, which gives you a
6 \$38,354,000.00 regular education program.

7 Q. Okay. So you take the 1568, which is over in the
8 lower right-hand quadrant that's derived from
9 multiplying the 1350 times the PDI for that district,
10 and it's that number times the number of students in
11 regular ed. that generates the \$38,354,000.00 number --

12 A. That is correct.

13 Q. -- in the upper left-hand column?

14 A. (Witness nodded head to the affirmative.)

15 Q. And can you do the same type of exercise for special
16 ed., voc. ed., gifted education, comp. ed., and
17 bilingual?

18 A. Yes, you can.

19 Q. Okay. So those numbers on this page are derived from
20 over -- under "student counts" on the right-hand
21 side, multiplying your cost per student, which is
22 depicted lower on the page, times the number of
23 students under the "student counts"?

24 A. That is correct.

25 Q. Okay. And when you sum all of those programs up, as

1 I see in the same manner as which we discussed the
2 calculations generally a moment ago, and you get a
3 subtotal of 43,955,000 to which you then add the
4 educational improvement and career ladder and
5 transportation money?

6 A. That's correct.

7 Q. Okay. And what information on this page then allows
8 you to compute the net LFA, which is then subtracted
9 to determine the state share?

10 A. Under the section in the middle of the right-hand
11 side, "values in computing aid," there is a number
12 for LFA property value in thousandths saying that --
13 indicating the 1980 -- for 1986-'87, the property
14 value used for the calculation of the local fund
15 assignment is \$9,486,284,000.00.

16 The -- taking Plano's percentage of the state
17 total and applying it to the state total local fund
18 assignment, gives you a net local fund assignment for
19 Plano of \$27,523,300.00, which is essentially the
20 same as saying a 29 cent tax rate times that property
21 value provides a net local fund assignment. So if
22 you take a 29 cent tax rate times the LFA property
23 value for Plano, for 1986-'87, that gives you a
24 \$27,523,000.00 local fund assignment for Plano.

25 Q. Okay. And subtracting that from your FSP gives you

1 your state share, and then as we discussed it in
2 calculations, I presume the fact that Plano gets zero
3 equalization, it means they do not qualify for state
4 equalization money?

5 A. Yes. If you look again over in the values computing
6 aid at the last item there, the percent state average
7 wealth, they have a 154 percent of state average
8 wealth. This places them above the 110 percent
9 limitation at which state aid expires.

10 Q. Okay. And I note that they do not qualify for any
11 experienced teacher allotment?

12 A. That is correct. They have a -- they're experienced
13 teacher ratio is less than the state average, and so
14 they do not qualify for any experienced teacher
15 allotment.

16 Q. Okay. So over on the right-hand side where it says
17 "values in computing aid," the second one under PDI
18 is experienced teacher salary ratio and it's depicted
19 at .9971?

20 A. Yes.

21 Q. So that number would have to be greater than 1.0 for
22 them to qualify?

23 A. It would have to be greater than 1.0 for them to
24 receive experienced teacher allotment.

25 Q. Okay. And the fact that they receive transition

1 money, back over on the left-hand side, indicates
2 that they have lost state aid as a consequence of the
3 finance provisions of House Bill 72?

4 A. Yes. If you look down at the -- just slightly down
5 the page below -- several lines below that under
6 "other financial data," you'll see that they lost
7 \$5,000,306,000.00 between 1985-'86 and 1986-'87.

8 Q. Okay.

9 A. And that resulted in them getting a transition of aid
10 allotment for 1986-'87 of \$1,516,000.00. In essence,
11 for that one year, they got \$1,516,000.00 back of the
12 \$5.3 million that they lost as a result of the action
13 and performance.

14 Q. Okay. And then finally, pre-kindergarten, that's
15 their money to participate in the state mandated
16 pre-kindergarten program?

17 A. Yes. The data indicates, under student counts, that
18 they have 33 students involved in the
19 pre-kindergarten program. They are -- that provides
20 them with a \$16,000.00 allotment for pre-kindergarten
21 after adjustment for their local share.

22 Q. Okay. So when we add those components to the state
23 share, that was computed earlier, we get their total
24 state aid of \$22,486,600.00 for the current school
25 year?

1 A. That is correct.

2 Q. Okay. If you take that total state aid line and look
3 across it to '87-'88 and then to '88-'89, according
4 to this information, in '87-'88, under current law,
5 is it correct that Plano's state aid next school year
6 would dropped to \$16,838,400.00?

7 A. That is our current estimate of what would happen in
8 Plano under those circumstances.

9 Q. Okay. So they're going to lose, under current law,
10 an additional \$5.6 million from this year to next
11 year, is that correct?

12 A. Based upon the -- that is correct, based upon the
13 values -- the preliminary reported values from the
14 State Property Tax Board that has been furnished to
15 the Agency in accordance with the law.

16 Q. Why does that happen?

17 A. Well, if you look over on their LFA property value
18 back in values computing state aid, their 1986-'87
19 value is shown as \$9,486,000,000.00. Their 1987-'88
20 value is shown as \$11,060,000,000.00. In other
21 words, they've had an increase of about a billion and
22 a half dollars in property value during this time
23 period. The state total property value did not
24 increase -- hardly increased at all.

25 Q. Okay.

1 A. The local fund assignment rate went from a little bit
2 over 29 cents to about 30 cents. So by applying a 30
3 cent rate to this new property value, they end up
4 with a local fund assignment of \$33 million compared
5 in 1987-'88 compared to \$27 million in 1986-'87.
6 That increase in local fund assignment, coupled with
7 the expiration of transition aid, results in their
8 reduction of total state aid from \$22,486,000.00 to
9 \$16,838,000.00 or a decrease is shown down below of
10 \$5,648,000.00.

11 Q. So is it fair to say, looking at that, and I
12 understand what you said about their change in
13 property value vis-a-vis the overall change of the
14 state of property values, is it fair to say that the
15 existing school finance formulas, under current law,
16 will continue to work in the future to redistribute
17 state aid as the relative values of individual
18 districts change vis-a-vis changes in the state as a
19 whole?

20 A. Very much so. The state aid that will be shifted --
21 we'll see very significant shifts in the state aid
22 overall simply as a result of the new values from
23 different types of districts. In particular, upon
24 the I-35 corridor, we have a significant decrease in --
25 a significant increase in property evaluations all up

1 and down the corridor, which is going to result in --
2 under the formulas that are currently in place, in
3 this significant decrease in state aid. Other
4 districts are having a reverse situation happening
5 and losing value. They will see significant
6 increases in state aid.

7 Q. Okay. So when we talk about the dynamic of school
8 finance, under the existing formulas, districts that
9 are increasing in property value at a rate faster
10 than the state as a whole, will tend to lose state
11 aid in districts that are either decreasing in value
12 or increasing at a rate slower than the state as a
13 whole will tend to increase in state aid, is that
14 fair?

15 A. That is true based in part, however, on what happens
16 to their numbers of students.

17 Q. Okay.

18 A. But if their wealth per student increases faster than
19 the state average, they will tend to lose state aid.

20 Q. So there is a mechanism currently in place that will
21 automatically redistribute aid as the wealth of
22 individual districts changes over time?

23 A. That's correct.

24 Q. Okay. Just for purposes of illustration, if we could
25 look for a moment at Defendants' Exhibit 34, and

1 because we picked the second page on the first one,
2 if you would turn to Page 3 on the Defendants'
3 Exhibit 34, just coincidentally, we find Edgewood
4 ISD.

5 A. In its proper county district in order to place.

6 Q. Absolutely. So if you worked down through the same
7 calculation that we just looked at for Plano ISD,
8 when we get down to the far left-hand side, about the
9 middle of the page, to total state aid, is it correct
10 that comparing the current school year to next school
11 year under current law, that Edgewood ISD, state aid
12 will increase from \$40,108,000.00 to \$42,593,000.00?

13 A. Based again on the estimate of students and property
14 values that are associated with this, yes, that is
15 correct.

16 Q. Okay. And again, is that tied -- if you look over
17 under "values used in computing aid," about the fifth
18 one down, local fund assignment property value, where
19 we see reflected the natural decrease in property
20 values for that district, is that what results in the
21 increase in state aid for that district?

22 A. Yes, along with the small increase in the number of
23 students projected.

24 Q. Okay. So once again, as we look at this information,
25 we see in place a system that will tend to

1 redistribute money automatically as the relative
2 wealth of districts change over time?

3 A. Yes. House Bill 72 is very much geared to making
4 rapid -- relatively rapid change, far more rapid than
5 has been the case in the past in adjusting for
6 evaluations and tax effort practices of individual
7 districts throughout the state.

8 Q. Okay. I believe there was another component of House
9 Bill 72 that actually put into place annual
10 evaluations of properties as opposed to biennial
11 evaluations that had taken place previously?

12 A. Yes. It put in place a system in which there would
13 be property value studies done by the State Property
14 Tax Board to determine on the uniform basis the
15 aggregate property values for each school district
16 with only a one year time lag in contrast to the two
17 and three year time lags that have been in place
18 before.

19 Q. Okay. So because of that change, the responsiveness,
20 if you will, of the system, in terms of reflecting
21 this -- an automatically moving state money around
22 based upon the property value changes, is greater
23 than it was prior to House Bill 72?

24 A. Yes, it is significantly greater. About the only way
25 you could make it even -- to do anything else to it

1 is to move it to a current year value instead of
2 using the prior year value, but this would be
3 virtually impossible from the standpoint of
4 administration to make the evaluation estimates for
5 the current year.

6 Q. Okay.

7 THE COURT: We need to stop there,
8 Counselor. We're going to stop, and I'll see you all
9 again tomorrow morning at 9:00. We'll try to go to
10 1:00, and we'll stop for the day at that time.

11
12 (Proceedings recessed until
13 (February 24, 1987.
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