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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

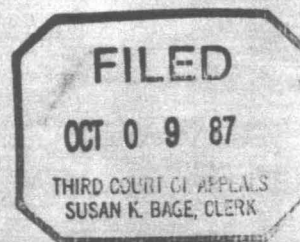
JUN 21 1989

JOHN T. ADAMS, Clerk

STATEMENT OF FACTS

By \_\_\_\_\_ Deputy

VOLUME XXVIII OF XLVI



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**AFFILIATED REPORTERS**

Computer Aided Transcription

805 West 10th, Suite 301 • Austin, Texas 78701

(512) 478-2752

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

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## STATEMENT OF FACTS

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BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

---

## APPEARANCES:

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ATTORNEYS FOR THE PLAINTIFFS

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15 ATTORNEYS FOR THE DEFENDANTS

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19 78701

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MS. MARY MILFORD, with the Law Office of EARL  
22 LUNA, P.C., 2416 LTV Tower, Dallas, Texas 75201

23 -and-

24 MR. JIM DEATHERAGE, Attorney at Law,  
1311 W. Irving Blvd., Irving, Texas 75061

25 -and-

1 APPEARANCES CONT'D

2  
3 MR. KENNETH C. DIPPEL, MR. JOHN BOYLE,  
4 MR. RAY HUTCHISON, and MR. ROBERT F. BROWN, with  
5 the law firm of HUTCHISON, PRICE, BOYLE & BROOKS,  
6 Attorneys at Law, 3900 First City Center,

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16  
17 ATTORNEYS FOR THE DEFENDANT-INTERVENORS

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20  
21 BE IT REMEMBERED that on this the 4th day of March,  
22 1987, the foregoing entitled and numbered cause came on  
23 for trial before the said Honorable Court, Honorable  
24 Harley Clark, Judge Presiding, whereupon the following  
25 proceedings were had, to-wit:



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1 MARCH 4, 1987

2 THE COURT: Here we go.

3 MR. LYNN MOAK,

4 was recalled as a witness, and after having been reminded  
5 that he was still under oath, testified as follows, to-wit:

6 CROSS EXAMINATION (RESUMED)

7 BY MR. GRAY:

8 Q. Mr. Moak, as we broke last evening, I had asked you  
9 to get in front of you Defendants' Exhibit No. 62.

10 A. Yes.

11 Q. What I'm going to do is look at that, and also  
12 Defendants' 33, so you might want to get both of  
13 those. 62 won't be long. I just want to make sure I  
14 understand it.

15 A. 33?

16 Q. Yes, sir. It's the printout of the  
17 Defendant-Intervenor districts.

18 A. Yes.

19 Q. Now, are you with me?

20 A. Yes.

21 Q. As I understand 62, when you look at the affect of  
22 taxable property in the districts, looking at all  
23 districts, the overwhelming affect on revenue that's  
24 available to be spent on pupils is, in fact, the  
25 property tax base, correct? This is before you

1           exclude any districts.

2       A.   Table 1 indicates that that's the most explanatory  
3           variable, yes.

4       Q.   And again, Table 3 confirms that as well, right,  
5           other local revenue?

6       A.   Again, when all districts are taken into account,  
7           yes.

8       Q.   To reduce that disparity or by cutting out certain  
9           districts, you reduce the impact that property values  
10          have, correct?

11      A.   That's correct.

12      Q.   That is the affect of Tables 2 and 4, when you cut  
13          out districts at the 423,000-plus range, right?

14      A.   That's correct.

15      Q.   Did I understand your testimony yesterday was that  
16          districts that were at this 423,000-plus range were  
17          so wealthy that that was an anomaly and they skewed  
18          or clouded the entire picture for the whole state; is  
19          that basically correct?

20      A.   I don't think I said they were an anomaly, but the  
21          dramatic degree to which the data varies with and  
22          without them -- and not only in this analysis, but in  
23          any number of other analyses -- suggests that they  
24          operate in a manner or constitute a set of districts  
25          that clearly operate with a different set of

1 financial bases than all other districts in the state  
2 do.

3 Q. Am I correct in understanding that there is 180 of  
4 such districts?

5 A. If you use the 423,565 cutoff, yes.

6 Q. Now, what district is at the \$423,565.00 per pupil  
7 tax base? What district is that?

8 A. I don't have the rank orders in front of me.

9 Q. Let me show you Exhibit 214 so you can verify that  
10 it's Dallas.

11 A. I'm sorry. I didn't prepare this exhibit, so I  
12 wouldn't be in a position to say that this exhibit is  
13 exactly the same data which we utilized in these  
14 analyses.

15 Q. Well, look at what has already been introduced as  
16 Exhibit 214 and tell me what is the taxable wealth  
17 per tax base per pupil of Dallas Independent School  
18 District.

19 A. According to this printout, it's 423,565.

20 Q. Which is the exact number that's referenced on your  
21 Exhibit 62, right?

22 A. Well, 62 references districts above that level, yes.

23 Q. Looking at 214, is there any other district in the  
24 state that has that exact tax base?

25 A. No, there's not.

1 Q. Okay. Now, these 180 districts that are so wealthy  
2 they cloud the picture, how many of them does the  
3 state give state revenue to for funding schools in  
4 any form or fashion?

5 A. I assume all of them.

6 Q. So although they are all so wealthy they cloud the  
7 picture, the state still gives all 180 of them some  
8 state revenue, correct?

9 A. Yes, sir. Any number of the exhibits that I  
10 presented, but particularly one that analyzed general  
11 operating fund revenues, would support that.

12 Q. How many of this 180 gets state revenue over and  
13 above the available school fund, which I believe you  
14 talked about yesterday as being \$280.00 per pupil or  
15 so last year and somewhat less than that this year?

16 A. I don't know the exact number.

17 Q. You know that there are 74 budget balanced districts,  
18 right?

19 A. That's correct.

20 Q. So of this 180, we know that there is at least 106  
21 that are getting money out of the Foundation School  
22 Program itself, correct?

23 A. Yes. If you take all of the numbers which I  
24 indicated, including textbooks and teacher retirement  
25 costs, I assume all these districts are getting money

1           in excess of the available school fund.

2       Q.   Okay. Well, we know that all 180 are getting  
3           available school fund money, and you've just said all  
4           180 are, in fact, getting money beyond the available  
5           school fund.

6                   How many of the districts are actually  
7           participating in the Foundation School Program  
8           distribution of dollars? We know that's to be at  
9           least 106 of this 180, correct?

10      A.   I consider all of them to be participating in the  
11           Foundation School Program.

12      Q.   Okay.

13      A.   But if I understand your question, there are some  
14           number of these districts that -- I would assume from  
15           the data that is here that about 73 of these  
16           districts would be budget balanced districts.

17      Q.   So --

18      A.   74, rather.

19      Q.   So we're talking about 106-plus districts of this 180  
20           that are actually full participants in the Foundation  
21           School Program just like Socorro and Ysleta and other  
22           poorer districts with just the amount of money that  
23           they get is different depending on their wealth,  
24           right?

25      A.   That's true. I consider all the -- from our



1 perspective, I'm saying I consider all districts to  
2 be participating in the Foundation School Program,  
3 even if they're budget balanced, but I understood  
4 your question to be whether they receive revenue from  
5 the Foundation School fund in excess of the available  
6 school fund.

7 Q. Now, if you were to look at Defendants' 33 and turn  
8 to Page 5 of that, where you have Carrollton-Farmers  
9 Branch, one of the Intervenor's that's represented by  
10 Mr. Luna?

11 A. Yes.

12 Q. Carrollton-Farmers Branch is one of these 180  
13 districts that is so wealthy they skew or cloud the  
14 picture, correct?

15 A. Well, I assume they were. This is not based on the  
16 same values or the same year being that this does not  
17 present '85-'86 data, but I assume they were one of  
18 those districts.

19 Q. They have a wealth approximating 500,000 per ADA,  
20 right?

21 A. Yes.

22 Q. Tell me, based on this, how much total state money  
23 does Carrollton-Farmers Branch or did  
24 Carrollton-Farmers Branch receive or are receiving in  
25 '86-'87 based on this printout?

1 A. \$7,012,900.00.

2 Q. So despite the fact that they are so wealthy that  
3 they cloud the picture and, in fact, were excluded by  
4 your own exhibit because they were so wealthy they  
5 clouded the picture, they nevertheless get over \$7  
6 million in state aid?

7 A. In 1986-'87, that's what they received.

8 Q. And literally, if I went --

9 A. That is total state aid that is inclusive of the  
10 available school fund and the transition money that  
11 runs out.

12 Q. Why don't we look at Mr. Turner's client, Eanes. Can  
13 you find them for me? If I find it before you, I'll  
14 tell you what page.

15 A. Page 41.

16 Q. Thank you, sir.

17 Now, the Eanes School District, likewise, is  
18 one of the districts that is so wealthy that they  
19 cloud the picture, and because they were so wealthy,  
20 the state, in its exhibits, chose to exclude them  
21 from the calculation because they were --

22 A. Excuse me, Mr. Gray. The state included them in  
23 their exhibits. The state excluded them in their  
24 exhibits. The data was not presented --

25 Q. On Tables 2 and 4, I believe, where, as I understand

1           the tenor of your testimony, it is more realistic to  
2           look at these tables because they exclude these  
3           wealthy districts out there that are clouding the  
4           real picture.

5       A.   They present the picture without those districts and  
6           lend support to the conclusion drawn from many  
7           tables, but there are a set of districts that operate  
8           in the manner I described with relatively low state  
9           aid.

10      Q.   Okay. Again, tell me how much total state money the  
11           Eanes district got.

12      A.   In 1986-'87, they were shown to be receiving  
13           \$1,853,900.00, of which \$1,050,700.00 was from the  
14           available school fund.

15      Q.   So they are this year projected to receive  
16           approximately \$2 million in state aid?

17      A.   That's correct.

18      Q.   I assume, without going through each of these one at  
19           a time, that kind of situation, I will find it on  
20           each of these 180 districts that were deemed to be so  
21           wealthy that they clouded the real picture,  
22           nevertheless, we will see literally millions and  
23           millions of state dollars going to those districts,  
24           do we not?

25      A.   I would prefer to discuss the precise amount that is

1           going to them as opposed to characterizing it in that  
2           fashion.

3       Q.   Well, just tell me, will we find them millions of  
4           dollars --

5       A.   \$78,798,000.00 would be involved.

6       Q.   Okay. Again, that happens -- and that is if the  
7           state had chosen to set a number that they thought  
8           was too wealthy to cloud the picture, instead of that  
9           greater than 423,565, if it had set it at  
10          \$423,564.00, that would include Dallas, by the  
11          state's own numbers, right?

12      A.   If it had been at a lower level, it would have  
13          included Dallas, yes.

14      Q.   If it had been at a lower level of 25 cents, it would  
15          have included Dallas, right?

16      A.   The level was chosen on the basis of looking at 5  
17          percent of the students. It also would have been  
18          more than 5 percent of the students if it had  
19          included Dallas.

20      Q.   My question to you was, if it had been lowered by the  
21          number the state --

22      A.   Clearly, Mr. Gray, if it had been lowered by a penny --

23      Q.   It would have included Dallas.

24      A.   -- it would have included Dallas, or even a tenth of  
25          a cent.

1 Q. That would have picked up how many additional state  
2 dollars over and above this 78 million that are  
3 flowing to wealthy districts, how much additional  
4 state money would add to that 78 million you just  
5 described?

6 A. I don't have that information available to me right  
7 at the moment. I believe you will find it in the  
8 folder you just picked up.

9 Q. That's what I'm going to get for you.

10 A. County District 57.95.

11 Q. Let me hand it to you so you'll have it available.  
12 That would pick up an additional \$105 million,  
13 correct?

14 A. Yes.

15 Q. So am I correct, then, in stating that if the state  
16 had set the number at which it chose wealth-wise to  
17 be so wealthy it clouded the picture at one-tenth of  
18 one penny less than it set, it would show that there  
19 is right at 180-plus million state dollars flowing to  
20 those wealthy districts who are so wealthy that they  
21 cloud the picture?

22 A. Well, the data was not analyzed from the -- I've  
23 testified that the analysis for that data of that set  
24 of districts and the problems associated with that  
25 set of districts was drawn from an analysis which was

1 carried forward consistently through the data.

2 I haven't analyzed the data with Dallas in that  
3 group. I don't know what the structure would be with  
4 Dallas in that group or whether it would --

5 Q. My question to you, sir, was merely to make sure my  
6 mathematics of adding 105 million --

7 A. I'm saying that I don't know with Dallas in the group  
8 that -- looking at the averages that are associated,  
9 whether I characterize them as being an anomaly, or  
10 being a different set of districts, or being a  
11 problem set of districts, or being the type of  
12 districts that operate with substantially different  
13 rules. I cannot testify that beyond anything as to  
14 the fact that we analyzed a set of 180 districts that  
15 were over 423,000. I agree that if it is less than  
16 that, it would include Dallas. I agree with how much  
17 state aid is associated with Dallas. But beyond  
18 that, I would prefer not to characterize that with  
19 Dallas in, that you get the same conclusions as with  
20 Dallas out.

21 Q. Okay. So let me rephrase the question, then.

22 If the number the state had chosen to be the  
23 wealthy number, so wealthy that it clouded the  
24 picture, was reduced by a fraction of a penny, the  
25 net effect of that would be that you would see that

1           those districts that were above that limit were  
2           getting \$180 million of state aid, correct -- plus,  
3           \$180 million-plus in state aid? I'm merely asking  
4           you to add the Dallas 105 --

5           A.    I'm simply saying I would --

6                       MR. O'HANLON:  What he is merely doing,  
7           Your Honor, is arguing with the witness at this  
8           point.

9                       MR. GRAY:  I'm asking a very direct  
10          question.

11                      MR. O'HANLON:  That's been asked and  
12          answered.

13                      THE COURT:  Well, we'll let him ask him  
14          again and get it straight.

15          BY MR. GRAY:

16          Q.    All that I'm asking you is, if the number was set  
17                instead of at 423,565, but was set at just a penny  
18                below that, how much state aid would be going to  
19                districts that had wealth that exceeded 423,564.99?

20          A.    I don't have that number for 1985-'86.  I gave you  
21                the number for 1985-'86.  You asked me to look at a  
22                number for 1986-'87 for Dallas.  I assume it would be  
23                somewhat comparable.

24                      My problem with your description was the notion  
25                that this level was pre-chosen in this analysis.  It

1 was not pre-chosen as a number for analysis. It grew  
2 from the analysis that we did. It grew from the same  
3 types of analysis that were undertaken by a number of  
4 studies that were indicated here.

5 Q. I'm merely asking you if it had been a penny less  
6 than what it was, how much state aid would we see  
7 flowing to districts who had wealth above that level?

8 A. I'm saying I don't have a precise number, but if you  
9 take the 1985-'86 number for the districts from  
10 Exhibit 51, it was 78,798,000 for those 180  
11 districts, and you would add to that whatever the  
12 state aid was for Dallas.

13 Q. Can you give me an approximation? We know that the  
14 Dallas in '86-'87 is 105-plus million.

15 A. Well, assuming that it had been \$105 million in the  
16 prior year, that would be \$183 million.

17 Q. Okay. Thank you, sir.

18 Now, will you turn to the Accountable Cost  
19 Study, which has been introduced into evidence as  
20 Exhibit 212?

21 A. Yes.

22 Q. Before we get there, you characterized, did you not,  
23 the state finance system as being an incentive-based  
24 system, one which encourages local taxpayers to raise  
25 taxes to fund education, correct?



1 A. Not in a formal classification, but I believe I  
2 testified to the effect it operates with many of the  
3 characteristics of an incentive system.

4 Q. Now, if you will turn to -- I want to ask you briefly  
5 some questions about the Accountable Cost Study --  
6 some of your charts to make sure I fully understand.  
7 I'm on Page 20, Table 4. I'm looking at specifically  
8 Model 10, 11, 12 and 13.

9 A. Yes.

10 Q. Am I correct in understanding that Model 10 and 11 is  
11 a comparison of property wealthy districts versus  
12 property poor districts that have approximately the  
13 same ADA?

14 A. Yes.

15 Q. When you look at that, you see that the property  
16 wealthy districts are expending approximately \$800.00  
17 more per child than the poor districts.

18 A. That's what this analysis would indicate, yes.

19 Q. Then if you look at Models 12 and 13, you again see a  
20 comparison of rich versus poor or property wealthy  
21 versus property poor expenditures compared to a  
22 different ADA than the two districts that we just  
23 compared, right?

24 A. Yes. Districts less than 500 students.

25 Q. And on that, you see that the property rich districts

1 are spending 3,948 per ADA, compared to the property  
2 poor at 2,471 per ADA, correct?

3 A. Yes.

4 Q. Which shows you an approximately \$1,500.00 difference  
5 or \$1,500.00 more is being spent on students that are  
6 in the property wealthy districts than are in the  
7 property poor districts on that model, correct?

8 A. That's correct.

9 Q. Now, if you were to turn and go to Table 6 on Page  
10 23, looking at your cluster analysis --

11 A. Yes.

12 Q. -- and I'm correct in stating, am I not, that Cluster  
13 1 and Cluster 2 are property poor districts?

14 A. Relatively so, yes.

15 Q. Cluster 3 is the mid-level districts in wealth,  
16 right?

17 A. Yes.

18 Q. And Cluster 4 and Cluster 5 are property wealthy  
19 districts, correct?

20 A. Yes.

21 Q. If you were to look, then, across the board average  
22 teacher salary, if you were to compare Cluster 1 and  
23 Cluster 2, the poor districts, compared to Cluster 4  
24 and Cluster 5, the wealthy districts, you will see  
25 that there is at least \$1,000.00 difference in

1 average teacher salary and it ranges up to almost  
2 3,000, correct?

3 A. I'm not sure about the 3,000, but there is a  
4 different -- as numerous other data indicates, there  
5 are differences between an average teacher's salary  
6 between these types of districts.

7 Q. Property wealthy districts pay teachers more than  
8 property poor districts, right?

9 A. The average salary in property wealthy districts is  
10 generally higher than that of property poor  
11 districts.

12 Q. If you looked over at the next column, "Standard Per  
13 Pupil Expenditure," you would see again that the  
14 property poor districts across the board on average  
15 are spending less per child than Clusters 4 and 5,  
16 being your property wealthy districts.

17 A. Yes.

18 Q. If you were to make the next comparison on payroll  
19 cost, likewise you see the same situation that on  
20 average, property poor districts have less payroll  
21 cost, less smaller salaries than your property rich  
22 districts, correct?

23 A. Yes.

24 Q. If you make the same comparison on total  
25 instructional cost, you see the same thing, that

1 property poor districts spend less on whole or on  
2 average on instructional cost than their counterparts  
3 in the property wealthy districts?

4 A. These are out of the 640 districts. I just want to  
5 characterize this as opposed to the general  
6 characterization of taking all property poor  
7 districts and all property rich districts.

8 But the answer to your question is yes. It's  
9 property rich and property poor within these 640  
10 districts, and it was done by a particular cluster  
11 analysis in which every district was forced into one  
12 of these categories.

13 Q. Well, we know that the 400 or so districts that are  
14 not included in this analysis, those are districts  
15 who had to have waivers and whatever who couldn't  
16 even meet one standard or another of TEA, right?

17 A. Many of which were property rich.

18 Q. The vast majority were property poor.

19 A. I have no analysis of that. I know in looking at the  
20 list of districts that there are -- I would not  
21 assume there was any pattern with regard to wealth or  
22 the absence of it in that list.

23 Q. We'll get to that in a second when I talk to you on  
24 waivers.

25 Again, if you look at the relationship of

1 instructional-related services, you see the same  
2 trend, do you not, that the property poor spend less  
3 than the property wealthy?

4 A. Yes.

5 Q. Again, you see the same relationship when you look at  
6 pupil services?

7 A. Yes.

8 Q. The same relationship when look at general  
9 administration?

10 A. Getting very close, but yes.

11 Q. And across the board, you see in every single  
12 category that the property poor either pay less or  
13 spend less than their counterparts in the property  
14 wealthy on average?

15 A. Yes.

16 Q. In fact, if you look at total expenditure column, you  
17 see that the property poor districts, Cluster 1 and  
18 Cluster 2, both pay less than the state average or  
19 expend less than the state average, correct?

20 A. The average of those 640 districts, yes.

21 Q. The property wealthy districts both spend more than  
22 the state average, correct?

23 A. Yes.

24 Q. Now, if we go to Table 8, which is a comparison of  
25 the same type of thing for quality districts, we see

1 the same scenario, do we not?

2 A. Interestingly enough, we do.

3 Q. Again, if you go all the way across to the total  
4 expenditure column, without going through each and  
5 every item, you will see that the property poor  
6 districts spend less than their counterparts in the  
7 property wealthy districts?

8 A. Among these districts that have been identified as  
9 offering quality programs, the property poor  
10 districts do spend less than the property wealthy  
11 districts.

12 Q. And in fact, the property wealthy districts spend  
13 higher than the state average, while the property  
14 poor districts spend below the state average for  
15 these districts, correct?

16 A. Correct.

17 Q. Now, let me turn your attention to Table 17 on Page  
18 40, and look in the middle of that page under the  
19 wealth headings.

20 A. Yes.

21 Q. The title of this table is "Class Size Waiver  
22 Information," correct?

23 A. Yes, for 1985-'86.

24 Q. This is dealing with the pre-K waivers and K to 2  
25 waivers, right?

1 A. That's correct.

2 Q. Now, to put things in perspective, if you look at the  
3 two poorest groups of wealth, we established  
4 yesterday that that's right at 500,000 kids, correct?

5 A. Yes.

6 Q. And if you look at the two richest categories of  
7 wealth, we established yesterday that that's slightly  
8 higher than 420,000 kids, correct?

9 A. Yes.

10 Q. Now, on pre-K waivers, there are -- and check my math --  
11 I see that 41 waivers were granted in the two poorest  
12 categories of wealth; am I correct?

13 A. Yes. 41 districts received waivers; 165 did not.

14 Q. 8 districts in the wealthy category received waivers  
15 in the two wealthy categories, right?

16 A. 8 districts requested and received waivers. The  
17 difference between that and 206 did not equal --

18 Q. So if we look at the pre-K waivers on a wealth  
19 category, you see that an overwhelming number of the  
20 pre-K waivers were granted to the poor districts  
21 compared to the two wealthiest districts, right?

22 A. You see a much larger number of waivers being granted  
23 to the poor districts than to the wealthier  
24 districts, if that's what you're asking, when you  
25 look at those two groups.

1           That does not constitute an analysis of what  
2           their needs were or what the reasons for those  
3           waivers were.

4       Q.   That's right. And if you go over to the K to 2  
5           waivers, you see that the trend continues, that there  
6           are a set -- in the two poorest categories involving  
7           right at half a million children, there are 72  
8           districts that asked for and got waivers compared to  
9           17 in the two wealthiest categories of districts,  
10          correct?

11       A.   Yes. As is typical with such information, 17 versus  
12           72 shows the same variation as 134 versus 189, which  
13           are the number of districts that did not receive  
14           waivers.

15       Q.   Now, if you go to Page 42 on Table 18, you see on the  
16           number of elementary schools that the two poorest  
17           categories had 46 elementary schools that needed to  
18           be built, correct?

19       A.   This was in response to -- the data here is in  
20           response to a questionnaire that was sent out by the  
21           Public Utilities Commission or a phone survey that  
22           was conducted by the Public Utilities Commission on  
23           facilities built in response to House Bill 72. In  
24           the two poorest groups, 46 districts of the 208  
25           indicated that they had built elementary schools in



1 response to the provisions of House Bill 72.

2 Q. While only 18 in the two wealthiest categories,  
3 correct?

4 A. That's correct.

5 Q. On middle schools, if you compare the two poorest to  
6 the two wealthiest, you see that the middle school  
7 number is 28 compared to five, correct?

8 A. Correct.

9 Q. High schools, you see it is 16 compared to eight.  
10 Again, the comparison of poor districts versus  
11 wealthy districts, correct?

12 A. Correct.

13 Q. Other facilities is 58 compared to 31, correct?

14 A. Correct.

15 Q. On numbers of classrooms added, a comparison of the  
16 two poorest to the two wealthiest is 166 to 33,  
17 correct?

18 A. Yes.

19 Q. Now, go to Table 20 on Page 45, and under the column  
20 titled "TEA Waiver Information, Number of K Through  
21 2nd Grade Classrooms," and again if you compare the  
22 two poorest sets of districts compared to the two  
23 wealthiest sets of districts, you see that 487 of the  
24 districts in the poorest two columns, those two  
25 poorest, got waivers compared to only 58 in the two

1           wealthiest, correct?

2       A.    I'm sorry. I got the waivers, but not the -- I mean,  
3           they indicated the need to -- I believe that means  
4           they indicated the need to add 487 classrooms versus  
5           the need to add 58 classrooms in those districts  
6           receiving waivers.

7       Q.    Okay. In any event, the ratio you're looking at is  
8           487 in the poor to 58 in the wealthy, correct?

9       A.    I'm not sure that the ratio -- if you say that's a  
10          ratio, I don't think it means any -- I'm not at all  
11          sure what you mean by -- if you're trying to draw any  
12          meaningful ratio. The data does clearly show 487  
13          classrooms were needed for those 72 districts  
14          receiving waivers for K-2 versus 58 classrooms for  
15          those 17 districts receiving waivers in the top two  
16          groups.

17      Q.    Now, turn to Table 24 on Page 49 and look at the  
18          column titled, "Total Cost of New Classrooms." Again,  
19          if you compare the two poorest sets of districts with  
20          the 480 some-odd thousand children, compared to the  
21          two wealthiest sets of districts with 420 some-odd  
22          thousand children, you see that the cost of  
23          classrooms -- the new classrooms in the poor  
24          districts was right at \$10 million, correct?

25      A.    Yes.

1 Q. And the cost in the wealthy districts was just barely  
2 \$4 million, correct?

3 A. That's what the data indicates, yes.

4 Q. A ratio of almost two and a half times, correct?

5 A. There is a ratio between the \$10 million number and  
6 the \$4 million number of two and a half.

7 Q. Thank you.

8 Now, if you will turn to Exhibit No. 37, Page  
9 12 of that.

10 A. 37?

11 Q. Yes, sir.

12 A. This is the one by district type.

13 Q. Yes, sir. The first page is major urban.

14 A. Yes.

15 Q. Now, I believe it's Mr. Luna, it could be Mr. Turner,  
16 have maintained the position that the fast-growing  
17 suburban districts tend to be, on average, wealthy  
18 districts who have wealth substantially above the  
19 state property average such that they could be the  
20 most hurt by any equalization scheme. Those are my  
21 words, not theirs.

22 But my question to you is, if you look on Page  
23 12, using the state's category of suburban  
24 fast-growing districts, what is their percent of  
25 wealth? Are they above or below the state average?

1 A. Below the state average.

2 Q. So if the impression had been left that they were  
3 above the state average, that is an error, correct?

4 A. If that was the impression that was left, then the  
5 definition of fast-growing districts was identical  
6 between what we're utilizing and what somebody else  
7 may have been utilizing in testimony or conversation  
8 that, I'm not aware of.

9 Q. Okay. Now, on Exhibit 38 --

10 A. Yes.

11 Q. -- I just want to ask you a few questions to  
12 understand the equalization aid and how many  
13 districts are or are not taxing at the maximum rate  
14 in order to qualify for equalization.

15 Am I correct in looking under on the right-hand  
16 side of that page, about, I don't know, maybe a  
17 quarter of the way down, there is the word  
18 "equalization aid"?

19 A. Yes.

20 Q. Am I correct in reading that to say that of the very  
21 poorest districts, those that have property under  
22 87,371, there are 106 districts who would be eligible  
23 for equalization aid?

24 A. That's correct.

25 Q. Of those, how many are taxing at the maximum rate

1           necessary to get all of that equalization aid?

2       A.    90.

3       Q.    So that is right at 90 percent, give or take, of  
4           those poor districts are indeed taxing at the maximum  
5           rate to get it, correct?

6       A.    90 out of 106 are taxing at that.

7       Q.    Okay. Now --

8       A.    85 percent.

9       Q.    Pardon?

10      A.    85 percent.

11      Q.    85 percent.

12                   I believe there has been testimony in the  
13           record that that -- what tax rate is necessary to do  
14           that, do you know?

15      A.    Well, it's roughly a 52 cent maintenance rate. It's  
16           a rate that is calculated in a relatively strange way  
17           under law. It's not really a tax rate, but a  
18           mathematical calculation called a tax rate. My  
19           memory is not exact as to what those two rates are.  
20           It is either somewhere around 52 cents as a  
21           maintenance rate, and somewhere around 72 cents, I  
22           think, is perhaps a little higher as a total tax  
23           rate.

24      Q.    Looking at the second page of that same exhibit that  
25           is broken down for those districts that are above

1           87,371 per child, but less than 105,654?

2       A.    Yes.

3       Q.    Looking at the same information, you see that there  
4           are 106 districts in that category that could get  
5           equalization aid and 96 of them are taxing at the  
6           maximum tax effort to get every bit they can,  
7           correct?

8       A.    Yes.

9       Q.    That ratio is obviously higher than the 85 percent  
10          that we saw in the poorest districts, right?

11      A.    91 percent.

12      Q.    Okay. Now, I take it that it's safe to assume that  
13          the overwhelming majority of poor districts that have  
14          to tax at a maximum tax rate to get equalization aid  
15          are indeed taxing at or above that rate, correct?

16      A.    Yes. I believe that we had entered information  
17          through another exhibit that gave the state totals,  
18          but the number of districts that were eligible for  
19          versus the number of districts that were taxing at.

20                But it's certainly true that a large percentage  
21          of the districts that are eligible for equalization  
22          aid do tax at sufficiently higher rates in order to  
23          receive the maximum amount.

24      Q.    Okay. Now, let me ask you briefly a few questions  
25          about your Exhibit 44.

1                   We see, just doing some rough, rough  
2                   mathematics, that the poorest districts in the state  
3                   are taxing on average at 19 cents higher than the  
4                   richest districts, correct? The difference between  
5                   69 cents and 50 cents?

6       A.    You're referring now to -- I'm sorry -- you've been  
7            using poorest in the first two groups and the richest  
8            in the top two groups. Now, you're doing just the  
9            top group to bottom group.

10   Q.   I'm going to do the very poorest compared to the very  
11           richest, and then the next poorest compared to the  
12           next richest.

13                   But first, looking at the very poorest, you see  
14                   they're taxing at 19 cents higher than their  
15                   counterparts, who happen to be equally rich as they  
16                   are poor, right?

17   A.    No. I don't know about equally rich as they are  
18           poor, but the difference between 69 and 50 cents is  
19           19 cents, yes.

20   Q.    And likewise, if you look at the second category of  
21           poorest compared to the second richest group of  
22           districts, the poorest are taxing on average at a  
23           rate 9 cents higher than their counterparts in the  
24           second richest category of districts, correct?

25   A.    Yes.

1 Q. Yet, if you go back to your exhibit dealing with  
2 total expenditures per ADA, you see that -- which is  
3 Exhibit No. 47 -- you see that the effect of the  
4 poorest districts taxing at 19 cents higher than  
5 their counterparts in the richest districts is that  
6 they're able to raise \$3,617.00 by that process --  
7 you want to look at my copy or --

8 A. No, I know what you're -- you're taking 1986-'87 tax  
9 rates and comparing them to 1985-'86 data, and I'm  
10 not going to say there is a difference -- there is  
11 certainly some relationship and the patterns may well  
12 be similar for 1985-'86, but I have a problem with  
13 characterizing that you're taking the difference in  
14 tax rates for 1986-'87, and you're talking about  
15 1985-'86 revenues.

16 Q. Let me ask you this way. You believe, do you not,  
17 that the 69 cent tax rate in the poorest districts,  
18 those districts that have property value of under  
19 \$87,371.00 per child, the revenue across the board  
20 that that raises that those districts have to have  
21 available to spend on the children living in those  
22 districts is substantially less than what is raised  
23 by their wealthy counterparts at a 50 cent tax rate  
24 in the wealthiest group of districts?

25 A. I believe a variety of data that I presented would --



1 both in general fund expenditures and in total  
2 Budgeted information, has indicated that there is a  
3 significant difference between the poorest districts  
4 and the wealthiest districts, yes.

5 Q. So that is an example of where the poorest districts  
6 are taxing higher than their wealthy counterparts,  
7 and yet, their ability to raise and spend money on  
8 their children is that they have less money available  
9 to be spent on their children compared to their  
10 wealthy counterparts, correct?

11 A. Yes. I consider a good deal of what we've been  
12 discussing as self-evident from the information.

13 But I don't think that I have testified in any  
14 way that there were equal dollars for equal tax  
15 effort being spent in the poorest districts versus  
16 the wealthiest districts. I would not contend that.

17 Q. Okay. If you likewise compare the second group of  
18 poorest districts compared to the second wealthiest  
19 group of districts, you see the exact same pattern,  
20 correct?

21 A. Well, that's true. But I think when you're comparing  
22 the second wealthiest group to the second poorest  
23 group or in any one of these group comparisons, that  
24 it's worth exactly what you're doing. You're  
25 comparing 106 districts to 106 districts. You're not

1 looking at all the characteristics that are involved.

2 If you make a comparison of the tax effort for  
3 the poorest districts versus the second wealthiest  
4 districts, you end up with the same tax rate. So  
5 there is a variety of different data involved here.

6 But if you make the comparison of the 106  
7 districts that are in the second poorest group to the  
8 106 districts in the second richest group, then your  
9 analysis is correct.

10 Q. That's because we have this substantial variation in  
11 tax bases from one district to another, correct?

12 A. That's one of the reasons that those differences  
13 exist. There are some other reasons as well,  
14 especially with regard to debt service and capital  
15 outlay expenditures.

16 Q. Now, you mentioned in your direct testimony that  
17 Florida is an example of a state that has countywide  
18 school districts, correct?

19 A. Yes. Florida does have countywide school districts.

20 Q. I assume you will agree with me that if the State of  
21 Texas had countywide school districts, to a very  
22 large degree, the disparity that we see out there  
23 between wealthy districts and poor districts would be  
24 substantially erased?

25

1           MR. O'HANLON: Again, Your Honor, I object.  
2           This is outside the scope of their pleadings. I  
3           don't think we need to get into the argument again  
4           with respect to -- but they have not raised  
5           consolidation, they have not raised the issue of the  
6           statutes, they haven't plead violation of the  
7           Constitution by virtue of the statutes that deal with  
8           consolidation of districts.

9           THE COURT: Yes, sir.

10          MR. GRAY: Your Honor, we have been  
11          strongly encouraged by both the state and the  
12          Defendant-Intervenors to bring forward evidence and  
13          testimony showing possible remedies and we are at  
14          this point in time doing just that.

15          We have already had substantial testimony  
16          dealing with regional authorities and we've already  
17          introduced into evidence the maps of the existing  
18          school districts, data showing their existing ADA,  
19          data showing their existing tax base.

20          This witness is eminently familiar with all of  
21          that. I'm merely going to establish through this  
22          witness that indeed, the disparities that you see out  
23          there would, in fact, be reduced if you were looking  
24          at it on a countywide basis.

25          MR. O'HANLON: The problem that I've got,

1 Your Honor, is to the extent that they've got to  
2 plead something. They've got to plead that -- the  
3 Rules of Civil Procedure require that they plead  
4 issues and challenges. I believe it is 21 of the  
5 Texas Education Code deals with consolidation of  
6 districts. The statutory authority -- Chapter 19,  
7 excuse me -- deals with consolidation.

8 There are special statutes that created some of  
9 the independent school districts by special law.  
10 Those are in the statutes. We're entitled to some  
11 kind of notice to the extent they are asking this  
12 Court to -- they came into the court asking the Court  
13 to fix the financing system. They have had some  
14 difficulty with respect to that.

15 Now, they want to say "Well, let's forget the  
16 financing system, let's consolidate all the districts  
17 in the state." Now, that is not in their pleadings.  
18 Let's go down to countywide districts. That's not in  
19 their pleadings. That doesn't have anything to do  
20 with the financing system. That's something else  
21 entirely.

22 That's a separate chapter of the Education  
23 Code, and it deals with a lot of other statutes that  
24 could have been specifically plead and we are  
25 objecting to deal with that in this case. We are

1 here to try the school financing system, Chapter 16  
2 of the Education Code. That's what we think we are  
3 trying.

4 MR. TURNER: Your Honor, in addition to the  
5 fact that consolidation was never plead, there has,  
6 to my recollection, never been a representative of  
7 any Plaintiff that has done anything other than  
8 disavow interest in consolidation. I don't recall  
9 any of the witnesses that were called by the  
10 Plaintiffs suggesting they were urging the Court to  
11 proceed with consolidation.

12 As I recall, we made a special effort to ask  
13 each of the superintendents representing the  
14 Plaintiffs that were on the witness stand, as well as  
15 the individual Plaintiffs, what they thought about  
16 and would they support consolidation. As I recall,  
17 we didn't have any support voiced from the Plaintiffs  
18 for that option.

19 MR. GRAY: Your Honor, we are not  
20 advocating consolidation for governance purposes. We  
21 have, though, thrown out as an option, as a potential  
22 remedy, some form of tax base consolidation. We are  
23 going to establish through this witness, like we had  
24 to establish through other witnesses, the affects of  
25 these things. I mean, I feel like I'm caught in the

1       awkward situation where they object when I don't  
2       attempt to show remedies, and now when I am  
3       attempting to show remedies, they are also objecting.

4               MR. R. LUNA: Well, I can be a little bit  
5       more specific in regard to the witnesses because I  
6       specifically asked Craig Foster when he was on the  
7       stand which of the districts he had discussed  
8       consolidation of taxing jurisdictions with. He gave  
9       me three. Of those, two of them, he said, thought --  
10      since they'd never heard of it before -- would  
11      consider it and one thought that maybe it was a good  
12      idea.

13             Therefore, we are on no notice from the  
14      pleadings that that's a plan advocated by the  
15      Plaintiffs. While putting on their case, they don't  
16      have a single witness who advocates that plan, other  
17      than, of course, them tossing it out periodically as  
18      a possible remedy.

19             Again, we simply object to all of that.  
20      Otherwise, our presentation would have to be  
21      considerably different and all those districts who  
22      would have to be consolidated under such a program  
23      would certainly need an opportunity to present their  
24      evidence for this Court.

25             MR. O'HANLON: That's the problem with the

1 notice. In the first place, countywide equalization,  
2 what Mr. Gray seeks at least on a countywide basis,  
3 exists in this state and has existed in this state.  
4 I misspoke the other day when I said it was the 30s,  
5 it was modified in the 30s. It was originally  
6 created in 1923. It's been on the books ever since  
7 that time. That statute exists and it has existed  
8 since 1923 in substantially the same form.

9 So we have got a notice problem. I concur with  
10 Mr. Luna's statement that if we're going to  
11 consolidate all these districts and we're going to  
12 take away their taxing authority, then they ought to  
13 be here. They ought to be here to state a position.  
14 They are necessary parties when that happens.

15 When we're going to say, "We are going to take  
16 away your power to tax and we're going to give it to  
17 somebody else," some chimerical authority that we  
18 haven't even fleshed out or doesn't even know how  
19 it's going to operate or how it's going to exist,  
20 then I think under due process, they get to be here  
21 to state an opinion and to take a position with  
22 respect to whether or not they want that.

23 MR. GRAY: Judge, in response to Mr.  
24 Turner's own questions of this witness yesterday,  
25 they talked about the Connally Commission in the maps

1           that were drawn that were primarily countywide maps.

2           This witness responded that that was done  
3           primarily because it would make districts that were  
4           large enough to be more cost efficient and two, it  
5           had the side beneficial effect of equalizing tax  
6           bases to some extent. That was brought in in direct  
7           testimony.

8           Here I am, trying to cross-examine the  
9           witness about testimony that has already been brought  
10          in in direct, and they are objecting.

11          MR. TURNER: Well, Your Honor, it's the  
12          burden of the Plaintiffs to plead and prove their  
13          case.

14          I think it would be highly unusual if this case  
15          resulted at this level or some higher level in some  
16          reference to consolidation when it was never plead by  
17          the Plaintiffs and when they never presented a  
18          witness that asked for it. In fact, the witnesses  
19          that appeared disavowed any support or interest in  
20          it.

21          Clearly, the Plaintiffs' attorneys may have  
22          some thoughts on that, but if their clients are not  
23          asking for the relief, haven't plead for the relief  
24          and don't testify in favor of the relief, I can  
25          hardly see how we can end up with some Court ruling



1 at some level that would speak or suggest that that  
2 was some option or remedy if we were not to prevail  
3 on the merits.

4 MR. KAUFFMAN: Your Honor, if I may, first  
5 of all, the superintendent of San Elizario did  
6 testify that he wanted to consolidate. He went to  
7 two or three districts and asked them and they didn't  
8 want to take him on, but he would have been happy  
9 about the idea.

10 The other witnesses we have produced have  
11 certainly said that if you had some way to have a  
12 group of districts join in the benefits of the  
13 property taxes that accrue from the wealthy  
14 districts, that they would certainly be in favor of  
15 that.

16 In addition, our pleadings constantly talk  
17 about the Texas school financing system. They are  
18 not directed only to Chapter 16. They talk about the  
19 Texas school financing system.

20 There is a specific allegation in the complaint  
21 related to this issue. Paragraph 88 says "This  
22 disparate and random allocation of wealth is enforced  
23 and allowed to continue by the Texas school financing  
24 system. It results in a tremendous disparity in  
25 resources available for the education of the children

1 of this state."

2 So it certainly has been plead. It's already  
3 been talked about in the record. So we would join in  
4 Counsel's effort to get his question answered.

5 MR. O'HANLON: There is a difference  
6 between a recital in a paragraph as an assertion of  
7 facts and a pleading for cause of action for which  
8 you seek relief. They have not plead any of this  
9 matter as a cause of action for which they seek  
10 relief.

11 They merely are referring to recitals when  
12 they're going through a rough allocation or a rough  
13 statement of the facts in the case. That's  
14 different. You've got to plead for relief and they  
15 did, very specifically. And none of this stuff is  
16 included. Consolidation, regional taxing  
17 authorities, none of this stuff is included in their  
18 prayer.

19 MR. TURNER: Your Honor, it doesn't seem  
20 too overly burdensome to think that if you came into  
21 court with a lawsuit of this magnitude and you wanted  
22 consolidation of school districts, that you would  
23 mention the word in your pleadings.

24 THE COURT: Have they asked for some sort  
25 of relief?

1                   MR. TURNER: They want a restructuring of  
2                   our financial system. Our formulas, I assume, are  
3                   not devised just to their liking and in their  
4                   judgment, is not equitable.

5                   We have tried to produce witnesses that have  
6                   shown that the financing system and formulas we have  
7                   in place are equitable. They have offered testimony  
8                   to the contrary.

9                   But as far as any request for consolidation of  
10                  school districts -- and as I say, it would have been  
11                  very easy. It seems self-evident that if you want  
12                  consolidation, to mention that word somewhere in your  
13                  lengthy pleadings would have not been too overly  
14                  burdensome to put the Defendant on notice that this  
15                  was going to be a trial that involved the issue of  
16                  consolidation. They brought it up from time to time  
17                  and began to mention it and we started having to deal  
18                  with it. But it's never been plead and it certainly  
19                  would have been very easy in the pleadings of this  
20                  nature to have somewhere in there the word  
21                  "consolidation."

22                  MR. GRAY: Judge, all we have asked for is  
23                  a declaratory judgment that the existing method of  
24                  financing public schools is unconstitutional, and  
25                  two, an injunction to enjoin the existing operation

1 of the unconstitutional system.

2 We have from the start maintained the position  
3 that whatever remedy, if we got that far, was  
4 appropriate, we hoped that the Legislature would  
5 first be able to address it and resolve it through  
6 the legislative process. We have been forced at the  
7 objections of the Defendants to come forward with  
8 proposed remedies. It was Mr. Turner, himself, who  
9 stood up and said, "Judge, this is absolutely crazy.  
10 They are hiding the ball. They won't come forward  
11 and show anything."

12 Now, when we start coming to show anything, it  
13 is the same Mr. Turner standing up and saying,  
14 "Judge, don't let them show it."

15 What do we do?

16 MR. O'HANLON: I'll tell you what, if I can  
17 respond briefly, Mr. Gray said it. He is saying that  
18 the system of school finance, that is Chapter 16, is  
19 unconstitutional, that the system of delivery of  
20 state aid is unconstitutional. He doesn't say that  
21 the tolerance of independent school districts in this  
22 state is, in and of itself, unconstitutional.

23 We thought we were here defending the system of  
24 allocation of state aid, assuming Texas as a given.  
25 If we start talking about rational basis for the

1 creation of district lines and you can redo things  
2 according to wealth because there is not a rational  
3 basis -- there is not a line in this state, a county  
4 line, a municipal line, or anything else that when  
5 you get right down to it, is not drawn just because  
6 of the unique circumstances that occurred at the time  
7 those lines were drawn.

8 Surveyors went out and shot lines and picked  
9 rivers and things for county districts. Let's do  
10 away with those, too, at the same time. We are  
11 entitled to some notice that what this lawsuit is  
12 about is not about the school finance system. It's  
13 the state's tolerance of independent school  
14 districts.

15 THE COURT: Well, that may be part of it.

16 MR. O'HANLON: It's not plead that way.  
17 What we are here defending is the system of  
18 distribution of state aid and given the circumstances  
19 under which it is distributed. That is, that the  
20 existence of the school districts in this state,  
21 which is a given, because they have not attacked the  
22 existence of the independent school districts and  
23 have to, for any one they are attacking, I submit,  
24 have to bring them into court to defend themselves.

25 But they didn't do that. They sued the state,

1       saying -- and remember now, we had this argument  
2       about whether or not they are even proper parties to  
3       this lawsuit, the school districts. And they said,  
4       "No, we are proper parties because we are independent  
5       and we levy taxes and we can sue the state because we  
6       have an independent existence and can sue the state."

7       Now, they're saying we can do away with the  
8       other school districts in this state and just  
9       eliminate them or take away powers. But they are not  
10      independent, they are part of the state.

11      So they can't have it both ways. If you're  
12      going to eliminate something or take away powers from  
13      a governmental agency, I think it's fair that they be  
14      brought into court and they be given some notice of  
15      what's happening to them.

16      Their pleadings simply do not discuss this  
17      issue. It's totally kind of a blind side that we've  
18      gotten into and it has gained some momentum through  
19      the case. We're objecting to it because it's not  
20      raised, and we're not in a position to defend it.

21      MR. TURNER: Your Honor, I certainly don't  
22      think we need to lose sight of the fact that on this  
23      side, we have always contended that school districts  
24      are not a proper party to this suit. We all, I  
25      think, understand school districts don't have any

1           rights under the equal protection clause.

2           But what I think has happened here, Your Honor,  
3           is that the Plaintiffs have come into this case and  
4           perhaps I might suggest that the absence of pleadings  
5           regarding consolidation and regional tax authorities  
6           are not there because of the absence of any support  
7           that was exhibited from the witness stand for those  
8           suggestions.

9           So we have school districts coming into court  
10          wanting more state aid to flow their way, not asking  
11          for consolidation, not knowing anything about,  
12          evidently, regional tax authorities. We get in the  
13          middle of the lawsuit and all of a sudden, those  
14          ideas begin to be talked about by the attorneys on  
15          the other side. And somehow, we are supposed to  
16          envision the possibility of ending up with a lawsuit  
17          that results in some -- if we were to find our system  
18          unconstitutional -- some kind of consolidation order  
19          or suggestion or some kind of regional tax authority  
20          idea, when, in fact, we never were put on notice  
21          that's what this lawsuit was about.

22          So we think it needs to be made, I think, very  
23          clear that this idea of these forms of relief which,  
24          I suppose, in the course of this trial have been  
25          bantered about, perhaps even generated some interest

1           on the part of the Court, were never plead, and  
2           really are -- the testimony we have heard about them  
3           primarily has come as the result of lawyers talking  
4           back and forth about the concepts.

5           So we would object to any suggestion that any  
6           kind of testimony along that regard for that relief  
7           is appropriate when it has never been plead.

8           MR. O'HANLON: The problem here is the  
9           punishment has got to fit the crime if they're  
10          seeking injunctive relief. If the underlying problem  
11          is the existence of school districts in their present  
12          configuration of boundaries in the case, that's fine.  
13          Let's try that issue. Stand up. Let's have  
14          pleadings, let's have discovery, let's get the  
15          parties in here whose oxes are going to be gored, all  
16          the school districts that are potentially going to be  
17          consolidated, and let's hear from them and see what  
18          their position is, as well.

19          But this method of just coming out of the blue  
20          sky and saying "Well, we can consolidate all these  
21          districts and no problem, we can solve all these  
22          problems," the school districts aren't on notice of  
23          this. The ones who are going to be --

24          THE COURT: Was every school district in  
25          the State of Texas part of the Rodriguez case? No.



1 MR. O'HANLON: Rodriguez, the issue was not  
2 consolidation. As originally filed it was, and all  
3 the districts in San Antonio were a party to that.

4 THE COURT: But there were going to be a  
5 lot of people's oxes gored on account of Rodriguez  
6 that were not in that lawsuit.

7 I just can't see that every time you try a  
8 constitutional question that everyone that is going  
9 to be affected has to be in the lawsuit. I mean,  
10 you'd have to have everybody in the State of Texas in  
11 all those kinds of lawsuits.

12 MR. O'HANLON: There's a way to do that.  
13 There is the class action requirement rules of --

14 THE COURT: Okay.

15 MR. R. LUNA: The Court's exactly right.  
16 In fact, that's in the pleadings, that's in the  
17 prayer that this be declared a class action, but it  
18 never was.

19 Those parties are not properly before the  
20 Court. And again, I don't know how many times this  
21 has been we've objected, but again, we strenuously  
22 object to any consideration of those issues at this  
23 point in time.

24 THE COURT: Which issues?

25 MR. R. LUNA: Of consolidation of school

1 districts, both districts into other districts, or  
2 any consideration of countywide districts, or any  
3 idea or concept of a regional taxing authority,  
4 anything which was not specifically set out in the  
5 prayer involved in this case. And the prayer in this  
6 case speaks directly to the system of school  
7 financing under Chapter 16.

8 THE COURT: Well, you all sit down. Let me  
9 tell you what I've been doing sitting up here the  
10 last month.

11 It seemed like the first couple of days we  
12 argued about this problem, about whether we were  
13 going to have a truncated trial, that sort of thing,  
14 and assuming that the Plaintiffs were to prevail on  
15 the merits, the merits trial and then some sort of  
16 remedies trial sometime maybe somewhere off in the  
17 future, perhaps, that sort of thing.

18 But after the first couple of days of trial, we  
19 were up in Judge Cofer's courtroom, as I recall, I  
20 indicated that as least out of some natural human  
21 curiosity, a judge might, before he set something as  
22 old and monumental as the current finance system  
23 aside, might want to have some idea what was going to  
24 come behind. That's just human nature. I don't know  
25 if that's the law, but that's human nature. I

1 indicted to everybody that's sort of how I felt about  
2 it.

3 So the Plaintiffs have sort of introduced  
4 evidence about potential changes because, I guess, to  
5 massage me in that way, although they may not really  
6 want to try their lawsuit that way. So there may  
7 have been some evidence coming in mainly from the  
8 Plaintiffs and maybe partly in response by the  
9 Defendants on account of that glimpse into my need  
10 that I gave you all.

11 Also it seems to me, I may be wrong in my  
12 constitutional analysis, but it seems to me like that  
13 if you're fixing -- if a lawsuit is designed to set  
14 aside a system, that if it's not required in law,  
15 then it certainly is natural in terms of human nature  
16 to take a look at how things could be set up to  
17 operate in a constitutional manner.

18 Like, in the Sullivan case, they were talking  
19 about that University Interscholastic League rule as  
20 being too narrow. Well, they didn't go into an  
21 analysis of what rule could supplant that rule, but  
22 it's implied that the Texas Supreme Court could see  
23 that number one, in their opinion, that rule was too  
24 narrow. And they could see that a rule broader, so  
25 it would be less harsh, could be written. If it was

1 impossible to do it, they probably wouldn't have held  
2 that rule to be unconstitutional, if it was  
3 impossible to do it otherwise. They knew that it  
4 could be written in a different way. They did not  
5 have to analyze a specific different rule. They knew  
6 it was within the capacity of humans to write a  
7 broader rule to fit whatever they thought would be  
8 more appropriate.

9 It seems like when you're analyzing these kinds  
10 of problems, it's nice to have something to compare  
11 the rationality of the current system to. I don't  
12 know if that's required, but if it isn't required,  
13 then it makes sense, anyway. So that's the reason  
14 I've been letting you all explore all of these  
15 various alternatives, from my standpoint.

16 Now, it seems like once you get over here, and  
17 if the Plaintiffs were to prevail on liability, I  
18 suppose one way to go at it would be for a Court not  
19 to mandate any sort of instant remedy. One way to go  
20 at it might be to let the Legislature work on it.  
21 But if their remedy were not acceptable to the  
22 Plaintiffs, I suppose the Plaintiffs would be back in  
23 here on a remedy stage.

24 As I recall, Mr. O'Hanlon, during our earlier  
25 discussions, was urging the Court, even if the Court

1 didn't prescribe to any specific remedies, certainly  
2 was urging on the Court to set out some guidelines  
3 for the Legislature assuming that liability was  
4 established.

5 I talk in terms of liabilities and remedies. I  
6 know that's not exactly right.

7 So I've been sitting here listening to two  
8 things. One, I've been listening to whether or not  
9 the system is unconstitutional. And second, I've  
10 been sitting here struggling with, well, how are we  
11 going to go about doing this better, assuming that  
12 the current system is not constitutional? There have  
13 been two things going on in me at one time. So I  
14 find all of it very interesting and, from my  
15 standpoint, necessary.

16 Now, I don't know if they specifically plead  
17 that or not. That is, you know, a potential remedy  
18 as consolidation, either of school districts  
19 themselves or creation of these taxing authorities.  
20 I don't know if they plead that specifically.

21 But it seems to me like that if there is a  
22 problem with the system, it is because there is great  
23 independence at both ends of the stick. There is a  
24 lot of independence in these school districts as to  
25 what they can do with their money and how much money

1       they can get their hands on, assuming they've got  
2       taxpayers.    So there's a lot of independence there.  
3       There's a lot of independence over on the state side.

4               The state can decide how much money they're  
5       going to put into these school districts and where  
6       that money comes from.   Then they can tie strings to  
7       it.   So there is a lot of independence on both ends  
8       of it.

9               Because of the way that the school districts  
10       grew up in history, and what has happened in the  
11       state since probably the creation of most of these in  
12       terms of how the wealth has changed, there exists the  
13       potentiality for some school districts to have  
14       considerable capacity to provide for themselves and  
15       there is less capacity on the part of many others.

16              So it would seem that if you're a person who  
17       has been given the burden of trying to figure out  
18       what's the best way to go about this, if you do  
19       anything, then it would seem logical to explore all  
20       the avenues of change to see if any of them come out  
21       very satisfactory.

22              So I have let evidence about this sort of thing  
23       come in even though it may not have been specifically  
24       plead, and even though it may not be exactly in line  
25       with the Plaintiffs' game plan, so to speak.   The way

1 I've been approaching it, I've been approaching it  
2 very general, not as specific as Defendants would  
3 want me to at this stage with these objections, that  
4 if you attack the system, part of the system is the  
5 fact that there are independent school districts out  
6 there that can tax and spend the money as they see  
7 fit. That is part of the system. At least that's  
8 how I've been looking at it.

9 The other part of the system is that the state  
10 can tax and raise money and prescribe law as to how  
11 the state is going to send its money and to whom and  
12 under what circumstances and under what amounts. So  
13 you have to balance and you have to look at those two  
14 things to see how it is working.

15 So when you focus on the school districts  
16 themselves, and you see that there are, in fact,  
17 districts that have considerable wealth and there are  
18 districts that don't, and you combine with that fact  
19 that they are independent, they can do pretty much  
20 with that wealth what they want, if you combine that  
21 fact with the potential legal need for equality, then  
22 that becomes part of the system.

23 To get the system to fit right under the law,  
24 assuming equality is necessary and desirable, then  
25 you have to look at that part of it, and

1 consolidation becomes a potential remedy of a  
2 defective system, considering that it is. I haven't  
3 made my mind up.

4 So I'm sitting here listening to it all. I  
5 don't particularly want to be narrowed down on  
6 account of some supposed defect in pleadings,  
7 particularly if really the thrust of the Plaintiffs'  
8 case is that the system, taking into consideration  
9 the combinations that I have just indicated, is what  
10 they are mainly driving at. Okay?

11 MR. O'HANLON: Two things. One is, if  
12 they're seeking consolidation, let them plead it, let  
13 them have the trial amendment -- we've got a two-week  
14 break coming up -- if that's what they want.

15 Second place, that analysis kind of puts the  
16 state in an impossible position in that on the one  
17 hand, you're saying independent school districts,  
18 which are not in the control of the state, and then  
19 you're making the state responsible for their  
20 conduct.

21 THE COURT: Okay.

22 MR. O'HANLON: So that we've got -- if  
23 they're part of the state, then they shouldn't be  
24 here suing us. They are not entitled to under  
25 equitable estoppel.



1           If they're independent, then the state  
2           shouldn't be responsible solely for their action, and  
3           they should be held accountable for their own action,  
4           their own provision of education and what they are  
5           doing on an independent district-by-district basis.

6           So the combination of those viewpoints kind of  
7           puts us in an impossible situation. And like I said,  
8           if they are interested in consolidation as a remedy,  
9           then let's have it in the pleadings and we'll consent  
10          to a trial amendment.

11           MR. R. LUNA: I'm not sure that we would  
12          necessarily consent to a trial amendment. But  
13          setting that issue aside, Your Honor, I think the  
14          point is well taken Mr. O'Hanlon just made, plus the  
15          fact that if the Plaintiff districts are interested  
16          in voluntary consolidation, that statute already  
17          exists. They can do that, and they could have been  
18          doing it for years under a different type of system  
19          if they wanted to do it voluntarily.

20           Now, I know the Court, in its explanation, has  
21          made a distinction between what it is considering, I  
22          think, for information and perhaps what has been  
23          plead. The Court may have tied the knot there at the  
24          end saying that it might order something, though that  
25          has not been plead.

1 I guess my question is, and this goes to the  
2 part of perhaps our disagreement, and that is, that  
3 since the Plaintiffs have not plead for any kind of  
4 consolidation, and have not presented any witnesses  
5 asking for consolidation as we understand the Court's  
6 explanation, the Court may very well consider  
7 ordering forced consolidation against the wishes of  
8 the Plaintiffs and over the objections of the  
9 Defendants.

10 Was that a correct understanding of what the  
11 Court just said?

12 THE COURT: I think I'm going to keep my  
13 counsel to myself right at the moment.

14 MR. RICHARDS: I just want to say, Your  
15 Honor, I think you have correctly characterized our  
16 position on how it's necessary to look at the overall  
17 scheme to determine the constitutionality of it. And  
18 that's been precisely our theory from the outset and,  
19 I think, in everything we've said and filed.

20 MR. O'HANLON: Our response is they can put  
21 up or shut up. If they want consolidation, we'll  
22 consent on behalf of the state right now, the trial  
23 amendment will go out and we'll do some work over the  
24 two weeks the Court is taking off and we'll come back  
25 ready to try that issue, if that's the relief they're

1           seeking. At least as far as the state is concerned,  
2           we'll consent to a trial amendment right now, if  
3           that's what they want.

4                   THE COURT: Are you asking me or telling  
5           them or what?

6                   MR. O'HANLON: Well, you know, if they want  
7           it, let's have it in the pleadings and have it out  
8           there in the relief they're seeking. If not, let's  
9           forget about it. That was the basis of my whole  
10          objection and I've gone one step farther and said if  
11          they want a trial amendment and they want to try this  
12          as part of the issue in the case, I'll consent to it  
13          right now.

14                   THE COURT: Let me ask you this. If the  
15          decision is that the current system is constitutional  
16          and goes up -- we'll say that decision is affirmed,  
17          then we're through, right? Everybody just keeps  
18          doing what they are doing.

19                   If the decision is made that the current system  
20          is not constitutional and goes up and that's  
21          affirmed, then what?

22                   MR. O'HANLON: Well, the only way the state  
23          can distribute aid to the school districts is to  
24          write another statute for its distribution and pass  
25          an appropriation act. Then it becomes an independent

1 statute. We don't get to a, quote, "remedy" stage  
2 because we've got a new statute and we are back to  
3 ground zero, if we write a new statute.

4 So this whole thing about remedies is kind of  
5 artificial because we cannot distribute state aid  
6 unless we have a statutory scheme for the  
7 distribution of that aid that governs the  
8 distribution.

9 So we can't hold it in suspense, if you follow  
10 my logic, if we're going to send the money out to the  
11 school districts. So the State Legislature is going  
12 to have to pass a new statute and then we're back to  
13 ground zero.

14 MR. RICHARDS: "School districts are but  
15 subdivisions of the state government organized for  
16 convenience in exercising the governmental function  
17 of establishing and maintaining public free schools  
18 for the benefit of the people."

19 That's the Texas law.

20 THE COURT: Okay. I'm not having a lot of  
21 trouble with that. The state gives school districts  
22 a lot of independence. I don't have any problem with  
23 that.

24 Well, let me focus over here. Assuming that  
25 the system is held to be unconstitutional and that is

1 affirmed, the Court's say that -- well, let's suppose  
2 this Court says that. What are you going to ask me  
3 to do?

4 MR. GRAY: We are going to ask you to enter  
5 findings of fact and conclusions of law to that  
6 effect.

7 THE COURT: On liability.

8 MR. GRAY: On liability --

9 THE COURT: And then what?

10 MR. GRAY: -- and to enjoin the further  
11 operation of this unconstitutional system given some  
12 period of leeway so that a phase-in, a new system  
13 could come forward.

14 THE COURT: What are you going to include  
15 in the system?

16 MR. GRAY: What are we going to include in  
17 the system?

18 THE COURT: Yes. What do you call -- what  
19 is part of the system?

20 MR. GRAY: The system, as we call it, is  
21 the entire methodology by which money, state and  
22 local money, gets to being spent on school kids.

23 THE COURT: And that includes?

24 MR. GRAY: That includes general revenue,  
25 it includes state and local taxes, it includes local

1 boundary lines, it includes the entire gambit of the  
2 methodology by which the state, as a whole, fulfills  
3 its constitutional mandated function of providing  
4 free schools.

5 THE COURT: Okay.

6 MR. GRAY: What we had hoped, and the  
7 reason we tried to address this as a liability phase  
8 first, remedy phase second, is we had hoped that we  
9 would be in a position to have the system declared  
10 unconstitutional, have some broad guidelines provided  
11 to the Legislature on what a constitutional system  
12 could and should look like, but not mandate any  
13 specific option that they would have to address, have  
14 the Court continue to maintain jurisdiction over the  
15 "system," quote/unquote, and if the Legislature came  
16 forward with an improved, different or whatever  
17 system, have the new system that they proposed to  
18 replace the old unconstitutional system, have it  
19 judged on its merits.

20 And if all parties and the Court said "This now  
21 meets the constitutional standards," we all go home.

22 If it does not meet the constitutional  
23 standards, the new system, in the eyes of the Court  
24 or either of the Plaintiffs obviously, what we would  
25 then proceed with litigating is, does what they

1 proposed as the new system meet constitutional  
2 standards.

3 THE COURT: Okay. If you draw a findings  
4 of fact and so on, I suppose there would be findings  
5 that would indicate the reason that the system was  
6 held to be inadequate or inappropriate, right?

7 MR. GRAY: That's right.

8 THE COURT: Those findings would include  
9 the way that current law sets up school districts by  
10 geography, by independence in terms of taxing, and by  
11 the fact that there is substantial disparity in tax  
12 wealth, right?

13 MR. GRAY: That's right.

14 But it would go forward to say that if the  
15 state wants to continue to have these giant  
16 disparities in tax base out there, then the state  
17 needs to make up that difference with state general  
18 revenue sources such that poor District A is not  
19 penalized or the students in it are not penalized  
20 just because they happen to live in a poor district.

21 I mean, you don't have to throw out all the  
22 districts. You can equalize if the state's willing  
23 to take it upon itself to make up the difference. So  
24 all the options are still available.

25 What we have out there is the state is saying,

1 "We are going to tolerate and embrace and endorse  
2 these wide disparities and two, we're not going to  
3 make up the difference." That's the current situation  
4 we have.

5 We're saying they get to pick and choose, but  
6 they can't let it continue as it is.

7 MR. O'HANLON: We're saying, if the problem  
8 they seek to address is the state's tolerance of  
9 these -- I guess embracement, I didn't know that we  
10 had embraced the property wealth districts, but if it  
11 is the tolerance, the fact that the state allows  
12 these districts to exist, let it be plead. Let that  
13 be part of their cause of action. Let them have a  
14 trial amendment and let's defend that.

15 They haven't done it. They haven't plead that.  
16 They said that the system of school finance -- now,  
17 that means something to us, that means Chapter 16, in  
18 essence.

19 So now that we've got that problem and we're  
20 going to have a two-week hiatus, let them plead it if  
21 that's what they want. If they want consolidation,  
22 if that's the source of the problem, let it be plead  
23 and let us defend it in the normal course of  
24 litigation, if it's the existence of those lines.

25 A simple question, shouldn't we ask them



1           whether they want a trial amendment to include that  
2           within this lawsuit? That's what I'm asking. If  
3           we're going to defend it, I want to be put on some  
4           notice of it.

5                   THE COURT: When you say "defend it,"  
6           define "it."

7                   MR. O'HANLON: I'm here to defend the  
8           system of distribution of state aid. I'm not here to  
9           defend the tax effort of any given district. I'm  
10          here to defend the system of state aid that it has a  
11          rational basis and it accounts for all the variations  
12          as best as it can, given the level of appropriation  
13          which is exclusively the legislative determination.

14                  Now, if it is something else that is the cause  
15          of the problem, and that's the school finance system,  
16          if it is something else outside the finance system,  
17          that is, is that the provisions of the Education Code  
18          that allow for the creation of districts, or it is  
19          the special statutes.

20                  I'm not asking that they plead each -- find the  
21          statute number for each special statute for each  
22          district that was created in the state, but that's  
23          something entirely different. That goes to the  
24          formation of districts and not their system of  
25          finance. They are different things.

1           The system of finance takes the districts as a  
2           given and attempts to distribute state aid pursuant  
3           to the Foundation Program in a particular manner to  
4           meet particular needs. That's what we are here  
5           defending.

6           If we're talking about districts and whether or  
7           not they should be allowed to exist in their present  
8           configuration, that's something different. We want  
9           that plead, if that's what they want.

10           MR. R. LUNA: If I can make one  
11           observation, Your Honor. I think I know where the  
12           Plaintiffs' attorneys are going.

13           I'm going to make a personal observation here  
14           that under an equal protection analysis, the cases  
15           are very clear. Territorial uniformity is not  
16           required. Individual tax rates by taxing  
17           jurisdictions is allowed. There is no question. The  
18           U. S. Supreme Court has already spoken on that.

19           The only way the Plaintiffs can get legally to  
20           their objective is by getting somehow to a state  
21           system of some kind. They've got to get it away from  
22           the individualized system that we now have, or  
23           legally they can never get to where they have to get  
24           to prevail in this lawsuit.

25           The problem they have is that their own clients

1 do not agree with that consolidation method or any  
2 other method to raise this up to a state system. I  
3 think if, in fact, what we're talking about is  
4 consolidating these districts and redrawing those  
5 lines, we have exactly 1,064 school superintendents,  
6 boards of trustees, and interested members of those  
7 communities that would need to be notified during  
8 this two-week break if this Court is considering  
9 that.

10 I think that they will have a new interest in  
11 participating in this trial and perhaps even  
12 communicating with their own counsel, if that's what  
13 this case is all about, because I'm convinced at this  
14 time that none of the people in the State of Texas  
15 realize that that's what is going on in this case and  
16 certainly have not been told that by their own legal  
17 counsel. But legally, that's the only way their  
18 lawyers can get to the point where they can prevail  
19 in this case.

20 MR. O'HANLON: That's why we want a trial  
21 amendment so we can notify the districts, quite  
22 frankly, of this matter. And we'll undertake to  
23 notify them. We will send out the notice, if that's  
24 where we are going with this lawsuit.

25 MR. RICHARDS: I think counsel is just

1        playing dog in the manger. They have known what this  
2        lawsuit is about from the beginning. We've said  
3        every time it has come up, the state system of  
4        finance, it's a state function, it's clearly a state  
5        program. It is not a local function at all under the  
6        Constitution.

7                MR. GRAY: The Constitution talks about an  
8        efficient state system.

9                MR. RICHARDS: That's what we're dealing  
10       with. Obviously, it's an ingredient of that to the  
11       extent that the state has chosen to rely on local  
12       property tax base and cast indisparities in it,  
13       that's part of the system.

14               We have never -- you understand, as you have  
15       already indicated, the Defendants are the ones who  
16       want to pull us in and talk about remedy. We say the  
17       Court has to look at the entire system. I think the  
18       Court understands that and clearly Defendants'  
19       counsel understands that. Our arguments are apparent  
20       from everything we've written and everything we've  
21       said. Part of that system is the property disparity  
22       that's created and in the result impact both on taxes  
23       and on educational product. We don't think we need a  
24       trial amendment. We think our pleadings are clear  
25       where we're going. They now understand where we're

1 going and they can notify anybody they want to, I'd  
2 say.

3 MR. O'HANLON: The problem here is that  
4 again, the question is a different question. They're  
5 certainly related. The question is, given the level  
6 of appropriation, which is an exclusive legislative  
7 determination, and I don't think anybody has argued  
8 that this Court can order the Legislature to  
9 appropriate a fix on the money or increase its  
10 appropriation, that given this level of  
11 appropriation, does the system of distribution of  
12 that state aid meet constitutional scrutiny under  
13 whatever case, rational basis or compelling interest.

14 THE COURT: He is saying that the  
15 distribution of state aid is local taxes.

16 MR. O'HANLON: No. I think he is saying  
17 local taxes are state taxes.

18 THE COURT: Yes.

19 MR. O'HANLON: Well, if he does, then they  
20 are unconstitutional under Article VIII, Section  
21 1(e).

22 The most recent constitutional amendment I  
23 think that we've got in this state is a preclusion on  
24 statewide ad valorem taxes.

25 Now, if you're going to rule that that is the

1 case, then you've just made ad valorem taxes  
2 unconstitutional.

3 THE COURT: Well, I think what Mr. Richards  
4 is saying and the Plaintiffs are saying is that the  
5 state system of financing includes independent school  
6 districts which have a lot of discretion about how  
7 much money they raise and how they spend it. That is  
8 part of the state system.

9 MR. O'HANLON: It's part of the  
10 Constitution. It's not something that the state has  
11 jumped out there and set up. Article VII, Section 3  
12 specifically contemplates that power.

13 THE COURT: Okay.

14 MR. RICHARDS: The state Constitution  
15 didn't configure the districts, and that's what we  
16 said from the beginning. They are configured by the  
17 Legislature as part of their overall system of  
18 distribution of state money for educational purposes.  
19 And that's the attack.

20 MR. O'HANLON: That's not what their  
21 pleadings say. That's not the attack in their  
22 pleadings. If that's what their attack is, why are  
23 they objecting to a trial amendment to make that  
24 clear? I've consented to it.

25 If that's the case, let's write it down and

1           let's see so I can look at something in writing as to  
2           what their claim is so I have something I can defend  
3           against.

4                       MR. GRAY: We have never and still do not  
5           come forward to this Court proposing a specific  
6           remedy. We are the ones who resisted coming forward  
7           with a specific remedy. All we want is a declaration  
8           that the current system fails to meet constitutional  
9           standards and should be enjoined.

10                      It is the Defendants who have drug us into this  
11           fight, screaming and yelling. And now that we are  
12           coming forward and coming up with options, they're  
13           the ones that are now standing up and saying, "Uh-oh,  
14           we didn't think of all these options that they're  
15           thinking of, so don't talk about options any more."  
16           That's the context in which this whole thing got  
17           started.

18                      MR. O'HANLON: Let me ask you this: What  
19           is the injunction? Are you going to enjoin -- and  
20           this maybe crystalizes it -- are you going to enjoin  
21           the distribution of state aid? Are you going to  
22           enjoin the operation of these school districts?  
23           Because if it goes back to the district lines, if the  
24           punishment is going to fit the crime, you are going  
25           to have to enjoin -- your injunction is going to have

1 to say, "No, we don't have any more district lines,"  
2 and that's fine, if that's what we're trying.

3 I just want to be put on some formal notice of  
4 it and am giving them the opportunity to plead the  
5 problem, not the remedy. Let's just have the  
6 problem. If the problem is the existence of these  
7 school districts, let's have that as a cause of  
8 action in this case. Let's add a cause of action and  
9 say the state's tolerance of these district lines,  
10 given the great wealth disparities, is violative of  
11 equal protection or it doesn't meet rational basis or  
12 something like that. That is not a cause of action  
13 in this case. We are offering them an opportunity to  
14 bring it in, if that's what they want to do.

15 THE COURT: Why else have the Plaintiffs  
16 spent weeks showing the disparity of wealth,  
17 disparity in tax rates, and disparity in expenditures  
18 if that's not part of their case? That is, the  
19 permission by the state for these independent school  
20 districts to exist in the way they have for decades.  
21 If that's not part of their case, why have they been  
22 spending weeks doing that?

23 MR. O'HANLON: I had thought that the  
24 purpose here was whether or not we could find a way  
25 of redressing this problem within the finance system;



1           that is, should we put caps on it, should we give  
2           more state aid to the poor districts.

3           THE COURT: Okay. Well, I suppose that a  
4           way to get at disparity would be caps, and then I  
5           suppose there would be a way to get at it by how much  
6           money the Legislature every two years puts in. Let's  
7           call that appropriations. That would be a way to do  
8           it.

9           Then another way may be to equalize tax bases  
10          within a school district, either under some sort of  
11          guaranteed system or in actuality.

12          Can anybody else think of a way, a broad  
13          general way to get at it?

14          MR. TURNER: We can do the formulas like  
15          Mr. Foster proposed in the computer run that we asked  
16          him to produce.

17          THE COURT: Well, but that's  
18          appropriations.

19          MR. O'HANLON: No.

20          MR. TURNER: No.

21          MR. O'HANLON: There's two then. I think  
22          they're separate. One is the level of -- they're  
23          separate. One is the level of appropriations. The  
24          other would be formulating distribution at a given  
25          appropriation level.

1 MR. THOMPSON: How much money is there and  
2 how is it divided.

3 THE WITNESS: You have to separate that to  
4 some extent between facilities. How to provide  
5 facilities and how to provide operating costs.

6 THE COURT: Okay. So you say there is a  
7 fourth option with formulas? Is that Mr. Foster's  
8 idea?

9 MR. O'HANLON: Yes.

10 MR. THOMPSON: That's the way the current  
11 Foundation Program works.

12 THE COURT: Well, I see that in a way as  
13 appropriation, because that leaves a lot of  
14 discretion to the Legislature.

15 But when you said "appropriation," what did you  
16 mean?

17 MR. O'HANLON: The level of appropriation.

18 THE COURT: Okay.

19 MR. O'HANLON: And two, then related but  
20 separate issue is formulate distribution. If you  
21 recall the little computer deal that I drew up and  
22 went through with Mr. Foster about how we can change  
23 distribution a little bit and what kind of impact  
24 that might have. And that's a little bit different.  
25 There are certain things that we can do, given a

1 specific level of appropriation. So they are  
2 somewhat related, but they're different.

3 THE COURT: Okay. But the formulas would  
4 tell us how the money is to be appropriated.

5 MR. THOMPSON: How it is to be distributed.

6 THE COURT: How it is to be distributed.

7 MR. THOMPSON: Then the Legislature  
8 appropriates it.

9 THE COURT: Okay.

10 Well, if those are our three or four options,  
11 assuming that the current system is not  
12 constitutional, then we have had a lot of evidence  
13 already on what I call Foster's idea. I guess, you  
14 know, caps, you don't have to do a lot of talking  
15 about that. It is sort of like the Supreme Court can  
16 imagine itself writing a different rule than the rule  
17 the UIL has. So there is no big point to have  
18 evidence about that rule in the trial court.

19 So the other one is -- and we have talked about  
20 one or two of those, and we don't need to talk about  
21 caps because anybody can figure that out. So now we  
22 have talked about all of them except about changing  
23 tax bases, either imaginary, such as tax bases that  
24 would be supplied by the Legislature but not in  
25 actuality or actual tax bases being changed, and

1       that's when you get to talking about consolidation.  
2       So we have talked about all of these remedies.

3                    You thought that the only one they wanted to  
4                    change was what we call the formula appropriation  
5                    system; is that right?

6 MR. O'HANLON: Yes.

7 THE COURT: Okay. During break time, get  
8 your pleadings out that would indicate to me if you  
9 think they have been fairly notified that one of the  
10 potential remedies would be this changing of the  
11 districts so that it will equalize tax bases. When I  
12 get back in here, then you can read me the parts of  
13 your various pleadings that would indicate to me what  
14 you think gave them notice that that was a potential  
15 remedy to fix the problem as you see it. Then I will  
16 simply judge that. Then we'll see where we go from  
17 there.

18	(Morning break.)
----	------------------

19 MR. O'HANLON: Judge, before we get  
20 started, briefly, one other option I think we ought  
21 to include as a separate component is facilities  
22 financing bond indebtedness, whether to include it or  
23 not and how to deal with it, because I think that's a  
24 separate category.

25 THE COURT: Including the state program,

1           you mean?

2                   MR. O'HANLON: Uh-huh.

3                   THE COURT: Okay.

4                   MR. KAUFFMAN: Your Honor, in answer to the  
5 Court's question, we have gone through our pleadings  
6 and found the parts of our Plaintiffs' Second Amended  
7 Petition which are, we think, most directed to the  
8 Court's concern. I'm reading from the Plaintiffs'  
9 Second Amended Petition --

10                  MR. O'HANLON: Excuse me. The Third  
11 Amended Petition is the active pleading in this case.

12                  MR. KAUFFMAN: I don't think I have the  
13 Third Amended Petition.

14                  Your Honor, there is no difference except we  
15 added two school districts. Every word is exactly  
16 right off the word processor.

17                  THE COURT: You follow him along and see if  
18 he doesn't --

19                  MR. O'HANLON: Okay. I can do that, but  
20 the Second isn't the active pleading in this case.

21                  MR. KAUFFMAN: The first paragraph,  
22 introduction, "These Plaintiffs bring this action to  
23 require the state to make permanent changes in the  
24 system of financing public schools in the state in  
25 order to conform the state's financing system to the

1 dictates of the State Constitution and laws, public  
2 policy, and fairness."

3 MR. R. LUNA: Now, is this to put us on  
4 notice of consolidation? Is that what he's reading?

5 MR. GRAY: Let him finish his offer,  
6 please.

7 MR. KAUFFMAN: You're going to be well  
8 noticed by the end.

9 THE COURT: What you're doing is answering  
10 my question; that is, letting them know in your  
11 pleadings those parts of your pleadings that  
12 would give them notice that a potential remedy would  
13 be consolidation.

14 MR. KAUFFMAN: Yes, Your Honor. That's  
15 what I'm trying to do. I think the fact that we've  
16 asked the state to make permanent changes in the  
17 system is of some relevance here.

18 THE COURT: Okay.

19 MR. KAUFFMAN: In Paragraph 3, we say "The  
20 fortuitous circumstances of the residents of their  
21 parents, rather than their individual abilities,  
22 efforts, or aspirations, controls the quality of the  
23 education these children can receive."

24 That's in the introduction.

25 THE COURT: Okay.

1                   MR. KAUFFMAN: In Paragraph 50, "Defendant  
2                   State of Texas, through its branches, creates,  
3                   maintains and finances the state portion of the  
4                   public school system of the State of Texas."

5                   Paragraph 53: "In fact, and as used in this  
6                   petition, local property tax funds or monies are" --

7                   MR. O'HANLON: That's 55 in the Third  
8                   Amended --

9                   MR. KAUFFMAN: Okay. I'll add to it.

10                  Paragraph 55: "In fact, and as used in this  
11                  petition, local property tax funds or" -- that's O-R --  
12                  "monies are locally administered state taxes that are  
13                  levied and expended based on the portion of the  
14                  taxable property in the state that is located within  
15                  the local school districts boundaries."

16                  Paragraph 84, a section of our complaint, Your  
17                  Honor, which is entitled this: "Unconstitutionality  
18                  of Statutory System of School Finance in Texas."

19                  Paragraph 84: "The wealth of school districts"  
20                  -- I would like to point out, this is our first  
21                  paragraph under that section talking about the  
22                  unconstitutionality -- "The wealth of school  
23                  districts in Texas is measured by the ratio of their  
24                  taxable property wealth to the number of students in  
25                  average daily attendance in the district. This ratio

1 is described as the wealth per student of the  
2 district. There is a phenomenal disparity between  
3 the wealthiest and poorest districts.

4 The wealthiest district in Texas has almost \$13  
5 million of property per student, while the poorest  
6 district has less than \$20,000 of wealth per student.  
7 The wealthiest district has about 650 times as much  
8 wealth per student to tax to provide an education for  
9 its students as the poorest district does."

10 Paragraph 85: "The 100 richest districts in  
11 the state have 1.4 percent of the students in the  
12 state and 8.7 percent of the taxable wealth in the  
13 state. At the other end of the spectrum, the 100  
14 poorest districts in the state have 12.3 percent of  
15 the students in the state and only 3.6 percent of the  
16 wealth in the state."

17 Paragraph 86: "There are almost three million  
18 students attending the public schools in Texas. The  
19 one-half million students who go to school in the  
20 property richest school districts in the state go to  
21 school in districts with 37.1 percent of the state's  
22 property wealth. The one-half million students in  
23 the state who go to school in the property poorest  
24 districts in the state go to school in districts with  
25 5.4 percent of the state's wealth."



1           Paragraph 87: "The one million students who go  
2           to school in the property richest districts of the  
3           state go to districts with 59.5 percent of the  
4           state's wealth. The one million children who go to  
5           school in the property poorest districts of the state  
6           go to school in districts with 16.1 percent of the  
7           state's wealth."

8           Paragraph 87, which summarizes the last  
9           paragraphs regarding school district wealth: "This  
10          disparate and random allocation of wealth is enforced  
11          and allowed to continue by the Texas school financing  
12          system. It results in a tremendous disparity in  
13          resources available for the education of the children  
14          of the state."

15          Paragraph 92: "After all adjustments,  
16          allotments and indicies are applied, the Texas school  
17          finance system promotes and allows a gross difference  
18          between the ability of property wealthy and property  
19          poor districts and the families within those  
20          districts to provide for the education of their  
21          children."

22          Paragraph 101: "The current school finance  
23          system is applied to and superimposed on a system  
24          which has historically discriminated against property  
25          poor districts in those districts' efforts to build

1 buildings, buy equipment, hire personnel, establish  
2 programs, and build their communities. Only  
3 additional and redirected funding of the system can  
4 compensate for such historical inequities."

5 Paragraph 116: "In all instances where the  
6 state allocates money to or expends money on behalf  
7 of school districts without requiring that the  
8 district share the corresponding cost in proportion  
9 to their taxable property wealth, the state money  
10 that would otherwise be available for enhancing the  
11 fiscal resources of property poor districts is being  
12 consumed by property rich districts."

13 Paragraph 118: "The school finance system of  
14 Texas contains numerous other examples of formulas,  
15 statutes, policies and practices that deny equal  
16 rights to students, parents, and taxpayers in  
17 property poor school districts, and deny all  
18 Plaintiffs a fair and efficient public school  
19 education."

20 We then have our causes of action, each of  
21 which, Your Honor, incorporates by reference all of  
22 the factual allegations I've just read into the  
23 record.

24 Under our first cause of action, we say, "The  
25 present and past school finance system has

1       constituted and continues to constitute a breach of  
2       the state's constitutional and statutory duty to  
3       provide Plaintiffs an efficient system of public free  
4       schools."

5               The second cause of action, we again  
6       incorporate all the facts. We say, "Defendants'  
7       school finance system violates Article I, Section 3  
8       by discriminating between Plaintiffs taxpayers,  
9       parents and school children in property poor school  
10      districts and their counterparts in property wealthy  
11      districts on the basis of property wealth."

12              The third cause of action, we again incorporate  
13      all the facts and we allege a violation, again, of  
14      equal protection talking about the Defendants in this  
15      case.

16              The fourth cause of action again incorporates  
17      all the facts, saying that the Defendants, which of  
18      course includes the Governor, the Head of the  
19      Department of Education, the Attorney General and the  
20      Comptroller. "Defendants have violated Article I,  
21      Section 3 and 3(a) of the Texas Constitution in that  
22      the state public school finance system deprives  
23      Mexican American students and students in low  
24      property wealth districts of equal rights or equality  
25      under the law."

1           The fifth cause of action again incorporates  
2           all the facts. It talks about the Defendants and the  
3           Texas school finance system.

4           The sixth cause of action again incorporates  
5           all the facts. It relates to the equal and uniform  
6           provision of the Constitution. "Notwithstanding that  
7           the state has attempted to delegate at least part of  
8           this duty to local school districts, the duty remains  
9           clearly and wholly with the state."

10          In our prayer, we seek a declaratory judgment  
11          that the Texas school financing system, and we're  
12          talking here, we say, "The Texas Education Code,  
13          Section 16, et al., violates the State Constitution  
14          and other state laws and public policy.

15          We seek a preliminary and permanent injunction  
16          enjoining Defendants from maintaining any school  
17          finance system which violates the State Constitution  
18          and requiring the state to compensate for the  
19          violations of the Texas State Constitution in the  
20          past."

21          The third paragraph of the prayer, "A permanent  
22          injunction to require Defendants to design, implement  
23          and maintain a constitutional system of public school  
24          finance."

25          The last part of our prayer, Section 7, we ask

1       for "Any other relief that the Court may find  
2       appropriate and necessary to remedy the effects of  
3       Defendants' present or past school finance system."

4               So our argument is that the Defendants here are  
5       clearly on notice of the depth of our concerns, the  
6       fact that the school district boundaries and the  
7       taxable wealth within those boundaries is a major  
8       part of the problem.

9               We are again saying that we are just asking for  
10      a finding of unconstitutionality of the system. And  
11      I think as Mr. Gray said, and I just support his  
12      comments, we would just ask that the Court declare  
13      the system unconstitutional, set forth some broad  
14      parameters of what standards a system must meet, the  
15      broadest possible ones, and then leave it to the  
16      state to come forward with whatever remedy they might  
17      propose.

18              To some extent, the arguments about the  
19      constitutionality of those various remedies is in a  
20      way a third step removed; which is, we are saying the  
21      state should come forward with remedies.

22              The state has then asked us, "Why don't you  
23      suggest remedies?" We have suggested remedies, and we  
24      have to some extent tried to show that these remedies  
25      would be within the Constitution.

1           In this case the idea, if necessary, if the  
2           Legislature were to so adopt it, of some  
3           consolidation of districts or even regional taxing  
4           authorities or major changes in the distribution of  
5           the state funds, all those we feel are within the  
6           Constitution and can be done.

7           Therefore, I think that just goes, if any, it's  
8           a burden we don't feel we have. But since I think  
9           the Court and the Defendants have asked us to pursue  
10          the matter, to assume we have that burden, all we  
11          have to show is that there are possible remedies and  
12          that those remedies will not violate the  
13          Constitution.

14                 MR. RICHARDS: Our pleadings are somewhat  
15                 similar. We make the same allegations of property  
16                 disparity between districts. In Paragraph 82 we  
17                 allege under our allegations of unconstitutionality,  
18                 "This disparate and random allocation of wealth is  
19                 reinforced and perpetuated by the Texas school  
20                 financing system. The tremendous disparity in  
21                 resources available for education of children in this  
22                 state has produced school districts which, because of  
23                 funding deficiencies, are unable to provide the basic  
24                 and suitable educational program required by the  
25                 State Constitution, while property rich school

1 districts not only provide basic and suitable, but in  
2 many instances, offer significantly enriched  
3 programs."

4 Under our causes of action, the first cause of  
5 action in which we allege, including Article I,  
6 Section 3 of the Texas Constitution, "The present and  
7 past school finance system has constituted and  
8 continues to constitute a breach of the state's  
9 constitutional and statutory duty as set out above to  
10 provide children who reside in property poor school  
11 districts, as is their fundamental right, a basic and  
12 structural program substantially equal to any similar  
13 child despite varying local property values."

14 The third cause of action under the taxation  
15 provisions of Article VIII, "The school financing  
16 scheme allows property wealthy school districts to  
17 tax at substantially lower rates to provide for a  
18 basic and suitable education for their children.  
19 Conversely, property poor school districts are  
20 required to tax at substantially higher rates, only  
21 to fall short of the state mandated duty to provide a  
22 basic and suitable education."

23 The fourth cause of action, Article I, Section  
24 19, "The state requires all school districts in Texas  
25 to meet a variety of minimum standards such as those

1       cited for curriculum. The state then imposes a  
2       school financing scheme which makes the  
3       implementation of these mandatory and uniform  
4       standards dependent upon local property values. This  
5       method of funding bears no relation to the  
6       educational needs and wants of local school district  
7       children."

8               The sixth cause of action, Article I, Section  
9       3, "Defendants' school financing system violates  
10      Article I, Section 3 by discriminating between  
11      Plaintiff-Intervenors, taxpayers, parents and school  
12      children in property poor school districts and their  
13      counterparts in property wealthy districts on the  
14      basis of property wealth."

15             The seventh cause of action -- again, all these  
16      incorporated as the Plaintiffs, the factual  
17      allegations which we have, "Defendants have violated,  
18      are violating and continue to violate Article I,  
19      Section 3 of the Texas Constitution by denying  
20      Plaintiff-Intervenors' property poor school districts  
21      the same rights, privileges and benefits accorded to  
22      property wealthy districts pursuant to the  
23      Defendants' school finance system. This denial  
24      results in denial of equal rights of the students  
25      within these property poor school districts, the



1 parents and taxpayers in the districts and the  
2 districts themselves."

3 We, too, have asked by way of remedy, a  
4 permanent injunction requiring Defendants to design,  
5 implement and maintain a constitutional system of  
6 public school finance. A retention of jurisdiction  
7 until the Court's order is properly implemented.

8 Mr. O'Hanlon said he was not on fair notice. I  
9 thought that we were raising something about the  
10 state school finance system as a whole, and I think  
11 very clearly our pleadings focus really on nothing  
12 other than the inequities and unconstitutionality  
13 that results in the undue reliance on the property  
14 wealth of local school districts.

15 We still are in the posture, as are the  
16 Plaintiffs, as we have not sought at this stage of  
17 the proceeding and never sought for this Court at  
18 this stage of the proceeding to fashion a specific  
19 remedy of any kind other than a declaration of  
20 unconstitutionality and an injunction, if the Court  
21 thought it appropriate, requiring the state to come  
22 back and try to come forward with something that met  
23 constitutional mandate.

24 We have, as we explained, I think, when the  
25 case began, this was precisely the remedy the

1 three-judge court in Rodriguez imposed. And that's  
2 exactly the way we attempted to fashion our own  
3 arguments; that is, in effect, an injunction which  
4 began to operate in the future only if some  
5 satisfactory plan did not come forward.

6 Obviously, the only reason for injunctive  
7 relief here, and I think part of what the parties are  
8 facing with, if there is a grant or denial of  
9 injunctive relief, presumably that triggers an  
10 immediate appeal to the Texas Supreme Court, and I  
11 would assume on both sides that just because it's  
12 ultimately got to get there, that we spoke in terms  
13 of injunctive relief.

14 The slower course is declaratory relief. And  
15 if the Court chooses to rule with us and decide to  
16 give us declaratory judgment only, obviously we would  
17 be perfectly happy with that.

18 Thank you.

19 MR. O'HANLON: The problem that we've got,  
20 Your Honor, is their prayer. I will read you the  
21 prayer. Nowhere in their pleadings do they define  
22 the school finance system except for Paragraph 1 of  
23 their prayer. And they both do it in the exact same  
24 language.

25 Their first prayer for relief is "a declaratory

1 judgment that the Texas school financing system  
2 heretofore never defined, but (Texas Education Code,  
3 Section 1601, et seq., et al.) violates the State  
4 Constitution and other state laws and public policy."

5 That's the problem. That they mention other  
6 things in their fact pleading, it doesn't put us on  
7 notice of what they're seeking. What they're seeking  
8 here specifically is a redress of the Texas school  
9 financing system, which they themselves have defined  
10 as Texas Education Code, Article 1601, et seq.

11 That's what we thought we were defending. It  
12 is set forth that way in the Plaintiffs' Third  
13 Amended Petition and it's been that way since their  
14 First Amended Petition. It's set the same way in the  
15 Plaintiff-Intervenors' petition in the exact same  
16 language.

17 Then they ask for an injunction enjoining  
18 Defendants from maintaining any school finance  
19 system.

20 Again, the definition --

21 MR. RICHARDS: Which violates the State  
22 Constitution. Why don't you read it all, Mr.  
23 O'Hanlon, to be fair.

24 MR. O'HANLON: Any system which violates  
25 the State Constitution. That's fine.

1           But with the definition here, where I'm talking  
2           about, is the only place they define "school  
3           financing system" is their first paragraph of their  
4           prayer, which is specifically defined as Texas  
5           Education Code, Section 1601. Both of them do it.

6           MR. KAUFFMAN: Et seq., et al.

7           MR. O'HANLON: That's right. That's  
8           exactly what it says.

9           We thought that we were defending 1601, et  
10          cet., Chapter 16 of the Texas Education Code. That's  
11          what we thought we were here trying. That's the  
12          basis of our reliance right here is that definition  
13          in their prayer. And they talk about the school  
14          financing system throughout their pleadings without  
15          defining it other than in this one specific location.

16          That's why we think that we are trying the  
17          system, the distribution of state aid and whether it  
18          sufficiently compensates for the variation in  
19          property wealth, not the variation in property wealth  
20          in and of itself. That's why we're not on notice.

21          MR. KAUFFMAN: Very quickly, Your Honor.

22          If there is any ambiguity there, there were not  
23          interrogatories from the Defendants asking us whether  
24          we were attacking any other statutes. There was no  
25          discovery by them asking us that. We feel it is

1 clear from the pleadings that we're talking about the  
2 entire system.

3 MR. R. LUNA: Well, if I can address that  
4 just briefly, Your Honor.

5 It's very clear, if anyone looks at the Texas  
6 Education Code rather than their pleadings, that they  
7 couldn't possibly mean what counsel just said.

8 Chapter 16, when you thumb through it, has all  
9 the sections in it we have been discussing, all the  
10 formula allocations, everything we have talked about.  
11 But now, when you leave Chapter 16, if we have been  
12 talking about Chapter 19 -- when you go to Chapter 19  
13 and take a look at it, this doesn't even look like  
14 the Texas financing system. This starts out with how  
15 to consolidate school districts. It sets up how you  
16 do a petition, how you turn and give it to the county  
17 judge, how an election is set up, how an election is  
18 held, and whether or not the election must be by  
19 school districts or by counties and so forth. The  
20 entire procedure is there.

21 In fact, it finally comes and concludes in  
22 there, in Section 19.081, is a whole section on the  
23 creation of countywide independent school districts.

24 As I said earlier, what they are now seeking  
25 seems a little strange because the procedures, if

1       they want to form a countywide school district, Your  
2       Honor, are already there. In fact, there are  
3       countywide school districts in Texas.

4               So it seems somewhat inconsistent to ask us to  
5       do something which they, themselves, can already do.

6               Therefore, the word "consolidation" in Chapter  
7       19 is simply not a part of any of these pleadings.

8               THE COURT: Chapter 17, 18 what are they  
9       talking about?

10              MR. R. LUNA: 17, Your Honor, let me take  
11       quick look at it. County Administration is the title  
12       of Chapter 17. It basically goes under the managment  
13       of the county governing board, elections in counties  
14       of two million or more, powers and duties and county  
15       school superintendent, what his powers and  
16       authorities are.

17              Chapter 18 --

18              MR. O'HANLON: Countywide Equalization,  
19       County Unit System.

20              MR. R. LUNA: Yes. It's entitled  
21       Countywide Equalization Fund, County Unit System of  
22       Equalization Taxation. Then we move to Chapter 19,  
23       which is clearly a management section and has nothing  
24       whatsoever to do with those functions.

25              So in the definitions that have been given here

1           in the pleadings by the Plaintiffs, there is no way  
2           on earth that these Defendants could be on notice  
3           that they intend and are asking the Court to change  
4           the boundaries of these school districts.

5                   MR. O'HANLON: Your Honor, the issue here  
6           is not whether or not somehow they are going to be  
7           cut off. I'm willing to consent if they're willing  
8           to plead for this additional thing. They may want to  
9           take advantage of this two-week hiatus for them to  
10          amend their pleadings to include that.

11                   So it's not like they're going to be cut off.  
12          We may have to expand the scope of this trial a  
13          little bit to deal with things, but it's not a  
14          situation where I am trying to mouse trap them.

15                   I'm simply trying to say that if they are going  
16          to plead it, let's have it in the pleadings so we can  
17          deal with it as a matter of pleadings.

18                   MR. RICHARDS: I would like to respond to  
19          one of Mr. O'Hanlon's characterizations about our  
20          pleading.

21                   He said nowhere do we allege what the Texas  
22          finance system is. Paragraph 49, the first paragraph  
23          under facts, "The school finance system in Texas is  
24          funded by local, state and federal sources. Local  
25          and state funds make up almost the entire budgets of

1           local school districts."

2           From there, we moved into the allegations. He  
3           said we described the finance system as being  
4           unconstitutional and I think it is perfectly apparent  
5           to anyone who was on fair notice of our attack.

6           Thank you.

7           MR. TURNER: Your Honor, I still submit to  
8           the Court that there is no mention of the word  
9           "consolidation" anywhere in any of these pleadings.  
10          There's no mention of anything other than the fact  
11          that there are districts out there of disparate  
12          wealth, which we all know to be the case. We all  
13          know from the evidence offered in this trial that the  
14          very purpose for the creation of the Minimum  
15          Foundation Program back in the '20s when those  
16          original fellows thought the idea up was to have some  
17          kind of system that would offset the disparities in  
18          wealth.

19          So to have it mentioned in the pleadings that  
20          there is disparity of wealth is simply to say that,  
21          in their judgment, the school finance system, Section  
22          16 of the Education Code, doesn't go far enough in  
23          removing those disparities or offsetting those  
24          disparities.

25          Of course, we're contending in this trial that



1           it does and, of course, they're contending it doesn't  
2           and the system is not equitable.

3           Mr. Foster presented to us one way to  
4           manipulate the formulas and do what he said would  
5           create greater equity. We tried to point out the  
6           problems of that and why the Legislature didn't  
7           consider that to be a rational action and why it did  
8           what it did.

9           But it would have been simple enough to put the  
10          word "consolidation" or "alter boundary lines" or  
11          something to put us on notice that this was a lawsuit  
12          about changing the district lines.

13          We all know from the beginning there is  
14          disparate wealth. That's why we have a Minimum  
15          Foundation Program and that's why we've tried to make  
16          it work so we can offset those.

17          So there hasn't been any notice here, Your  
18          Honor.

19          I submit to you again, there is not any ground  
20          swell out there that I've seen or heard anywhere for  
21          consolidating school districts. If we end up after  
22          trying this case with some suggestion that there  
23          ought to be some conclusion reached by this Court, or  
24          some finding that it is the existence of school  
25          district lines and disparate wealth that creates an

1           unconstitutional system, then they've gotten more  
2           than they've plead, and more than their clients  
3           wanted. What their clients want is to say there are  
4           disparities in wealth and the state formulas and  
5           funding hadn't gone far enough to equalize  
6           educational opportunity.

7                   THE COURT: Okay. I suppose, Mr. O'Hanlon,  
8           when I was fussing at you about why do you think they  
9           have been spending three or four weeks on disparity,  
10          I suppose that they needed to spend three or four  
11          weeks on disparity to get them to support findings of  
12          unconstitutionality, and I suppose that same evidence  
13          could be used by way of directing a remedy, and I  
14          guess that same evidence could go and would be  
15          appropriate for one of two remedies; that is, a  
16          change in the formulas as per something like Foster's  
17          ideas accompanied by appropriations that would  
18          circumvent the need, according to their theory, of  
19          redistricting.

20                 But also that same evidence could be used, if a  
21          Court or a Legislature was not inclined to change the  
22          formulas and/or the appropriation, it could also use  
23          the same evidence as showing a need for  
24          redistricting.

25                 So maybe I was fussing at you, Mr. O'Hanlon, a

1 little quick because probably it goes to at least  
2 three different aspects of the case -- two different  
3 aspects -- and under the remedy aspect, maybe two  
4 different remedies.

5 MR. O'HANLON: If I can just point  
6 something out real briefly.

7 The problem we've got here is a real problem  
8 involving practical remedies or solutions to this.  
9 The problem we're faced with on behalf of the  
10 Legislature is that while consolidation is an  
11 enticing kind of notion, it is not doable politically  
12 because none of the districts in this state, by and  
13 large, want to be consolidated. They all have their  
14 own identities and they all want to keep going, as  
15 the evidence in this case has indicated.

16 The problem, though, that we have is that every  
17 time the idea comes up at the Legislature, and it was  
18 considered by an interim committee between the 69th  
19 and 70th session of the Legislature as a possibility  
20 to increase efficiency in government, it's rejected  
21 because there is so much of a ground swell of opinion  
22 against it.

23 Therefore, it is not doable from a political  
24 point of view.

25 So if the Court is going to consider that as a

1       remedy, then it's got to consider the practicalities  
2       and the wishes of the districts that are going to be  
3       absolutely affected by it. That's what we're saying,  
4       is that we have to be playing this on the same field  
5       that the Legislature has been playing on, not on some  
6       theoretical plane that it might work a set of numbers  
7       a little bit better, but considering the real,  
8       honest-to-goodness wishes of the school districts,  
9       the parents, the administrators and teachers that  
10      exist out there in the State of Texas, their will,  
11      their decisions have to be -- and what they want out  
12      of the school finance system must be taken into  
13      consideration.

14               That's why we think that notice is required so  
15      we can offer that opportunity.

16               MR. RICHARDS: We had this discussion, Your  
17      Honor, two months before this trial started. You and  
18      I and Mr. O'Hanlon had this very discussion when we  
19      talked about remedy. And Mr. O'Hanlon talked about  
20      consolidation at that time and said all these other  
21      districts have to be in here.

22               That was the whole scheme when we started  
23      talking about this case in October, that we were not  
24      going to pursue a remedy of that nature at this stage  
25      of the game. If and when that ever became

1       appropriate, everybody gets notice and gets to come  
2       in. But that was literally the conversation that  
3       took place when you and I and Mr. O'Hanlon, I think,  
4       in October when this case was first set down for  
5       trial.

6               He raised this question then. I responded at  
7       that time we were not seeking any kind of remedy of  
8       that nature or were not seeking any remedy at this  
9       stage or remedy of that nature. And we proceeded on  
10      the assumption that we were going to do just what our  
11      pleading contemplated. And we haven't moved off that  
12      one jot or tittle since that time.

13             If we ever reached a remedy phase of this,  
14      heaven knows -- in terms of specific court order  
15      remedy of a kind that they now raise as a specter, I  
16      would assume that notice should be given at that  
17      stage of the game if we ever got there, but we're not  
18      there and we don't purport to get there at this  
19      stage.

20             MR. O'HANLON: Mr. Richards is correct. If  
21      we're talking about consolidation -- and I still  
22      maintain the position that the districts become  
23      necessary parties to this lawsuit at that point. But  
24      it isn't fair to say that, when we're talking about  
25      the constitutionality of the financing system, to

1 pull out consolidation and say it is not fair because  
2 you didn't consolidate, and then to jump back behind  
3 the bush and say "Well, but we weren't really asking  
4 for that. That's remedy."

5 So the punishment has to fit the crime. If the  
6 system is unconstitutional, if it doesn't  
7 sufficiently overcome the property wealth  
8 differentials that are in evidence in the case, then  
9 it, itself, may be held unconstitutional.

10 But you can't jump out and say, "Well, it's  
11 unconstitutional because you haven't consolidated  
12 districts," and then jump back and say, "Well, we're  
13 not really asking for consolidation of districts."

14 So if consolidation -- if the constitutionality  
15 of the system is going to be litigated over its  
16 failure to force consolidation, to force a better  
17 distribution of wealth, then those districts, I  
18 maintain, still consistently since from before this  
19 trial, become necessary parties in this litigation.

20 MR. TURNER: Your Honor, I think that  
21 perhaps one of the fundamental reasons that we're  
22 going through this discussion is that I think the  
23 basic principle of seeking judicial relief is that  
24 you come into court with a live client who wants  
25 something and asks for it.

1           We don't have a system where the citizen comes  
2           in and asks for redress, asks for relief, and then  
3           some theoretician or some lawyer or somebody else  
4           gets to talking about, "Here's what we're going to do  
5           for you. Here's the way we're going to remedy the  
6           problem that you brought to us," when the client is  
7           not asking for it.

8           I think the reason we are where we are right  
9           now is because of the problem I think this Court can  
10          see. And that is, what would happen if this Court  
11          held our system to be unconstitutional and made some  
12          findings, the case went on up and we found out that  
13          ultimately the case was talking about, writing about,  
14          suggesting consolidation when, in fact, none of the  
15          Plaintiffs in this lawsuit, to my knowledge, have  
16          plead it and none of them have testified in favor of  
17          it.

18          I think we all know on both sides of this table  
19          there is no interest in the subject on the part of  
20          school districts in this state. It's not something  
21          that's been on the table and seriously discussed in  
22          the legislative process. The Connally Committee was  
23          the last time it was really looked at closely and it  
24          was rejected.

25          So we're coming to the courthouse, kind of

1        laying it out there and generating some interest,  
2        which anyone would have looking at the system  
3        objectively, and suggesting to the Court maybe that's  
4        where you ought to go, but the Plaintiffs are saying,  
5        "We don't want to plead it," and they haven't plead  
6        it.

7                When they're invited by the state to amend  
8        their pleadings, which we would think they're not  
9        entitled to do, but the state says they will consent,  
10       and then they don't take him up on it, there is  
11       something fundamental here that goes beyond what we  
12       usually find in trying a lawsuit.

13               So I think it is incumbent upon us to see where  
14       we're going and what might come out and ask ourselves  
15       if the Plaintiffs in this case aren't asking for that  
16       and the Defendants haven't been on notice that that's  
17       what this lawsuit is about, something is wrong with  
18       the way we are trying this lawsuit.

19               Again, I submit to you, Your Honor, that the  
20       formula adjustments can change the distribution of  
21       state aid. And every witness, every expert will tell  
22       you that.

23               We are submitting to you that the present  
24       formula is rational, it is generated by a rational  
25       process, that it is rational, that it is



1 constitutional. The other side is saying, "No, it's  
2 not."

3 I think the only thing they've plead is some  
4 kind of forced change in those formulas that would  
5 force a greater movement toward, as Dr. Verstegen  
6 said, absolute equity, which we all know we don't  
7 ever find, but they're wanting us to move closer than  
8 the Legislature is providing currently.

9 THE COURT: Give me the objection again.

10 MR. O'HANLON: I'm going to search back --  
11 well, to the question. The question is, I believe,  
12 was the question about could we equalize by  
13 consolidating on a countywide basis.

14 My objection is, it is not relevant because it  
15 is not germane to an issue that is before the Court  
16 based on any kind of live pleadings and therefore is  
17 not relevant to any consideration before the Court.

18 MR. GRAY: A shorthanded response is that  
19 they raised this very point with this very witness in  
20 their direct examination of this witness, both for --  
21 I know prior to Monday when they had him on the stand  
22 and Monday afternoon when he came on, and he was on  
23 for two hours talking about this very purpose. They  
24 started off with his redistricting experience and  
25 went through counties and went through regional

1           taxing authorities and elicited all sorts of opinions  
2           from this witness about whether it was practical or  
3           not practical, this, that and the other.

4           I'm merely following up on testimony that they,  
5           themselves, elicited from this witness on their  
6           direct examination of this witness.

7           MR. O'HANLON: My response is, it is still  
8           not germane to any issue before the Court at this  
9           time.

10          THE COURT: Okay. I'm going to overrule.

11          We're going to have lunch now. See you at 2:00  
12          o'clock.

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(Lunch recess.)

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## AFTERNOON SESSION

1  
2 THE COURT: Well, I guess all of you know  
3 where we stand now.

4 MR. O'HANLON: It is with some trepidation,  
5 Your Honor, that I feel compelled to ask the Court  
6 the basis of its ruling.

7 THE COURT: You ought to be scared asking  
8 me that.

9 MR. O'HANLON: It actually is a serious  
10 consideration because we are trying to decide on  
11 whether or not we are going to feel compelled to  
12 bring a bunch of testimony with respect to issues of  
13 redistricting.

14 THE COURT: Okay. Usually the way I handle  
15 these kinds of questions is ignore them. But maybe  
16 it would be better to talk a little bit. Here is  
17 what I foresee.

18 If no liability is established, we have no  
19 problem. If liability is established, then what I  
20 foresee right now happening is that we'll do findings  
21 of fact. We'll lay out some reasons for it.  
22 Probably inherent in those reasons will be maybe a  
23 direct or indirect tip-off as to what the Court's  
24 thinking as to the potential remedy. Maybe not. But  
25 maybe so.

1           There could be -- we could talk about this.  
2           There could be a place in the findings of fact and  
3           conclusions and/or the judgment. There could be a  
4           place as to recommendations. But it seems to me like  
5           that the recommendations would probably be just as  
6           well served by findings of what is wrong as to how to  
7           remedy. Then let's let the chips fall where they  
8           will. I don't know what the Legislature will do.

9           So maybe we don't get to a specific  
10          Court-ordered remedy at this stage of the game. See?  
11          I should think that either because we want to lay out  
12          a few guidelines in order to be not dictatorial but  
13          perhaps helpful to the Legislature. Or in finding  
14          facts, the Legislature can use those findings to give  
15          them some direction and guidance as to what the Court  
16          thought. Then that would serve as a guideline. I  
17          don't know which way we are going to go with that.  
18          But I am not inclined to be -- assuming there is  
19          liability -- I'm not inclined to be -- at this stage  
20          of the game, I would not be inclined to be dictative.

21                 MR. O'HANLON: The question --

22                 THE COURT: But I am certainly willing to  
23                 be very specific in my findings, and they can put two  
24                 and two together.

25                 MR. O'HANLON: What I am curious about and

1           am I defending, then, the district lines, or am I  
2           just defending the allocation -- given those  
3           districts lines, am I defending the allocation of  
4           state dollars?

5                   THE COURT: I think what you are defending  
6           is how the districts as they are now organized works  
7           in tandem with the state scheme as you call it. You  
8           know, it comes across on account of House Bill 72 to  
9           maybe some more pieces of legislation. That's what  
10          you are defending, I think. How they work on each  
11          other. What the Legislature hasn't done or needs to  
12          do to make those two come together, if we get to that  
13          place. That's assuming liability.

14                  MR. O'HANLON: Okay. I understand that.  
15          So what we're talking about, I think, then is the --  
16          given the district lines, whether the allocation of  
17          state resources is sufficient.

18                  THE COURT: I don't think we want to have a  
19          full-blown trial on the pros and cons of regional  
20          taxing authorities or consolidation at this stage of  
21          the game. I don't think we want to do that.

22                  MR. O'HANLON: I certainly don't want to do  
23          it.

24                  MR. RICHARDS: But I don't think Mr.  
25          O'Hanlon has accurately stated what the Court said.

1           And I don't think Mr. O'Hanlon has accurately stated  
2           what we said. So I wouldn't want him to come back  
3           and quote it back to you or to us in the record about  
4           what you just said or what we've been saying.

5                   THE COURT: How do you think he is saying  
6           it --

7                   MR. RICHARDS: Well, I think he just said  
8           given the district lines, is the state money  
9           sufficient to do the purpose, which I don't think is  
10          what we have been saying or what the Court's been  
11          saying. And maybe I misunderstood Mr. O'Hanlon, but  
12          I don't want us to get into some claim of surprise  
13          now after all of this this morning.

14                  You said what we say; that is, you have to look --  
15          you look at the total picture, and one piece of that  
16          is how the district lines are configured and the  
17          property wealth within those districts and how that  
18          works in tandem with the state appropriation funding  
19          of money, and you look at the total and what is the  
20          result of it. That's what we are saying. I think  
21          that's what the Court just said. I'm not sure that's  
22          what Mr. O'Hanlon said. But I don't want him to be  
23          misled by something.

24                  MR. O'HANLON: Well, the problem I have is  
25          that if that is the case, then we are defending the

1 district lines. If that's the case -- that's what I  
2 am trying to get clear, is that if somehow, drawn  
3 within this lawsuit, is the issue of whether the  
4 state should tolerate the existence of the variations  
5 in this state, then we are -- the only remedy for  
6 that is to redraw lines. I mean, we simply can't  
7 order districts to get wealthier or get poorer. So  
8 that if that is an issue in the case, the state's  
9 tolerance of these, then we are into the rational  
10 basis in line drawing.

11 THE COURT: Well, it seems like that if the  
12 system is held to be unconstitutional, it would mean  
13 that what has happened is that by history, there has  
14 grown up the tradition of the state putting money in  
15 and that by history, there has grown up these myriad  
16 districts of varying wealth. And those two things  
17 working together, assuming an unconstitutionality,  
18 has to work in a way that all students get an equal  
19 shot.

20 Now, what the Legislature does in response to  
21 that, I don't know. They may change formulas and  
22 appropriations. I suppose one way to go at it would  
23 be to redistrict. I don't know what they will do.  
24 But I suppose they'll do something. Then when they  
25 do something, I suppose the Plaintiffs are going to

1 look at it and say, "This is not satisfactory." And  
2 as I understand it, the way they have this thing  
3 structured, they may come back. I suppose we would  
4 have to have a hearing on that, whether or not that's  
5 appropriate.

6 This is sort of along the lines you are talking  
7 about. Retry the whole thing again. Maybe so. That  
8 seems to be the way they want to go at it. That's --  
9 I think that I am willing to go at it that way and  
10 not require -- I think I'm willing not to require  
11 extensive evidence on remedies prior to the issuance  
12 of any order, assuming that we cross the bridge on  
13 liability.

14 MR. O'HANLON: Okay. Let me possibly  
15 rephrase this. For purposes of an equal protection  
16 case, which is one of the three of their six-count  
17 cause of action, you have a rational basis test,  
18 theoretically, or even a compelling interest, either  
19 one. There is still a state action requirement for  
20 any kind of equal protection. There has to be a  
21 classification.

22 Now, what I am asking, I suppose, in an equal  
23 protection analysis, are we considering the existence  
24 of district boundaries as being an active  
25 classification? In which case, we are, once again,



1       trying the district lines. Now, if we are not  
2       considering those lines as the active classification  
3       due to historical development so that there isn't any  
4       state action here, then we are trying simply the  
5       distribution of state aid. But if we are going back  
6       to the tolerance or the continued tolerance of these  
7       line, that incapture varying wealth, if that is the  
8       state action that we hold up to scrutiny, then the  
9       case gets longer again. We have to get into all  
10      that.

11               So what I am trying to determine is whether or  
12      not -- what state action am I defending from your  
13      point of view? Am I defending the classification  
14      system that's set out in Chapter 16 of the Education  
15      Code, which takes the wealth as a given and attempts  
16      to accommodate that as best it can? Or are we going  
17      back to a more fundamental level and saying, "No, the  
18      classification system that is the genesis of the  
19      entire problem is the existence of district  
20      boundaries?"

21               That's what I am inquiring, is that either one,  
22      I guess, under some theory could be state action and,  
23      therefore, give rise to an equal protection type  
24      claim. And I had thought that we were defending the  
25      state action in setting out the formulas and not

1 going back to the genesis, which is the district  
2 lines themselves. Do you follow --

3 THE COURT: I believe I do.

4 MR. O'HANLON: That's what I am trying to  
5 inquire, which --

6 THE COURT: Which what?

7 MR. O'HANLON: Which of those state  
8 actions, from the Court's perspective, are we  
9 defending here?

10 THE COURT: Well, why does Texas have a  
11 Foundation School Program with weights in favor of  
12 poor districts?

13 MR. O'HANLON: To accommodate or compensate  
14 for the varying lack of wealth.

15 THE COURT: Okay. And under the current  
16 system, if the districts are allowed to exist with  
17 the lines they have now, you still have that problem,  
18 right? So you wouldn't need a Foundation School  
19 Program weight in favor of poor districts if all  
20 students had the same tax base. You wouldn't need  
21 that, right? But you don't have that. So now the  
22 question is, well, is the state finance system, you  
23 know, the formulas and the appropriations, is it  
24 adequate to offset that? That's the fact question  
25 I've been wrestling with. If it is determined that

1 is not adequate, then you have two things you can do.  
2 You can either change the formulas and the  
3 appropriations and/or you can change the lines.

4 MR. O'HANLON: But what I am saying, I  
5 suppose, is that are we to take the varying wealth  
6 disparities as a given due to historical reasons or  
7 is that the state action? In other words, before you  
8 can have an equal protection --

9 THE COURT: It is both. It takes two.  
10 Takes two things. I think the Plaintiffs are saying  
11 two things. Look, we have this system that allows  
12 for wide disparity of wealth. And then we have a  
13 system that's trying to make up for that. And they  
14 are saying that the combination of those two  
15 situations is what is unconstitutional. You have to  
16 have both or they have no case.

17 MR. O'HANLON: Well, the point is is that,  
18 again, the Foundation School Program, given the level  
19 of disparities in the state -- and I don't think  
20 there is any mystery here. I mean, we are never  
21 going to get there -- with the Foundation School  
22 Program, there is not enough money to make up --  
23 there is not enough money in this state to make up  
24 for the fact that some districts have \$14 million  
25 worth of wealth. We cannot -- I mean, theoretically,

1 I suppose, we could, but as a practical matter -- and  
2 the Plaintiffs aren't even arguing that the state can  
3 or should raise \$19,000.00 per student because one  
4 district does.

5 So once again, I suppose there is some level of  
6 adequacy that we have to -- becomes encumbent in  
7 there. But the problem here is that we have kind of  
8 shifted in this case from a defense of the system, at  
9 least as I understand the pleadings, in which they  
10 are saying that given these disparities in wealth,  
11 the state system, the distribution of aid, doesn't do  
12 enough to an issue that says the system, the  
13 existence of these disparities, makes it impossible.

14 Now, we had not thought that we were defending  
15 the existence of various districts and, in fact, Mr.  
16 Richards was correct. When that came up before  
17 trial, I had said that I thought we would have a  
18 problem if we get into that because we have necessary  
19 parties that won't be before the Court. That is, the  
20 districts themselves become necessary parties under  
21 that kind of analysis if you are attacking their  
22 existence.

23 So the problem that I have got is that, am I  
24 defending -- given the existence of these districts  
25 and a level of appropriation, which I think we all

1           agree, the courts can't order a higher level of  
2           appropriation, so given these two things, is the  
3           state distributing -- does the state's system of  
4           distribution of aid account for, given this level of  
5           appropriation, as best it can the disparities. Or  
6           are we saying if we are not doing that, then we are  
7           trying in some respect to tolerance of these  
8           disparities, which is a different lawsuit than I had  
9           thought that we were here to defend.

10                   THE COURT: Anybody want to talk to that  
11           over here?

12                   MR. RICHARDS: I can't believe that Mr.  
13           O'Hanlon is now finding this to be a different  
14           lawsuit. It is the lawsuit it was when we started.  
15           Every question has pointed in the same direction.  
16           Very clearly state action is involved because the  
17           Legislature -- school districts are the creature of  
18           the state. That is state action. To the extent the  
19           Legislature has created and maintained districts  
20           produces the property wealth disparities that now  
21           exist in the system and to the extent that denies  
22           equal protection or otherwise violates the  
23           Constitution, is very much a part of the lawsuit,  
24           just as the Court has said. And you don't pull it  
25           apart and look at it one piece at a time. You look

1 at it in its totality. That's what we have been  
2 doing. That's what all the exhibits we put in on the  
3 first two days of this trial were about, is what  
4 happened in districts because of the vast property  
5 wealth disparities, both in terms of funding levels,  
6 taxation burden and everything else.

7 So if that answers Mr. O'Hanlon's question, I  
8 think it is the same thing the Court is saying. And  
9 how he chooses to defend it, I think, is his  
10 responsibility.

11 MR. O'HANLON: What I am trying to  
12 determine is that am I defending the existence of  
13 1,064 districts out there? I think -- and the reason  
14 I say that is, is that as I understand my task here,  
15 is to defend the state's school finance system. The  
16 districts themselves can and should be in the  
17 position of defending their existence. They are  
18 allowed to change borders, there's a whole elaborate  
19 set of provisions for consolidation and things that  
20 they do on their own. And if it is the existence of  
21 these districts which are independent, which are  
22 allowed to exist and to raise taxes and to govern  
23 themselves and to spend money, then if they have to  
24 prove their own reason for existence, then they  
25 should be in here to do that.

1           The state's task, what I understand from the  
2           pleadings and the prayer, is that given this, is the  
3           state's distribution of state aid through the  
4           Foundation School Program equitable under the  
5           circumstances. That's the level of appropriation and  
6           the disparities that exist out there. Now, if we  
7           have to step back and say that, no, what we need to  
8           look at is whether or not we should even tolerate  
9           this many districts. That's an enormous difference.  
10          That's a different set of statutes. That's a  
11          different set of interested parties. This whole vast  
12          array of political subdivisions like -- that exist in  
13          the state that have their own interest and that they  
14          should be in here in a position -- if it is their  
15          existence that is the issue, then they should be all  
16          put on notice and given the opportunity to come in  
17          here and to defend themselves.

18                 That's the problem that I have got. We don't  
19                 want to be put in the position -- independent school  
20                 districts come and go by operation of state statutes.  
21                 No question they exist under state statutes. But  
22                 their existence, their borders and their ability to  
23                 change and to consolidate and split up is a matter of  
24                 local control. It is a matter that they are  
25                 specifically authorized to do under statute. Once

1       having created this system by which they can, then it  
2       is their -- I would submit it is their obligation,  
3       the district's obligation, to show they should be in  
4       existence or not be in existence, not the state's.

5               We have created a system that allows a whole  
6       lot of flexibility, if you understand the  
7       distinction. We are here trying to defend, given  
8       that, the system of distribution of state aid, not  
9       the existence of or nonexistence of any particular  
10      accounting because the Legislature has specifically  
11      given that freedom to political subdivisions that are  
12      specifically authorized to sue and be sued in their  
13      own name.

14             As we are well aware, we have some districts on  
15      both sides of this lawsuit. And I think it is clear  
16      that nobody thought that we were going to get into  
17      these issues of consolidation and the line drawing  
18      when we started this lawsuit.

19             MR. TURNER: Your Honor, there are  
20      districts, when we had that period of a week or so to  
21      get districts to intervene in this lawsuit, that made  
22      the conscious decision not to join because they said,  
23      "Well, I can't see how this lawsuit will hurt us.  
24      We're budget balanced. Can't get any more from the  
25      state anyway except what the Constitution says we



1           get. What does this lawsuit have to do with us?"

2           What we are seeing here now is that if we do  
3           view this lawsuit, even though we contend that it  
4           hasn't been plead, hadn't put us on notice, but that  
5           since these two things do work together, that the  
6           Plaintiffs are coming in here attacking either one  
7           that will take to accomplish the end result they  
8           seek, either modify the lines or change the state  
9           formulas. And if they take the position that either  
10          one is okay, we'll take either one you give us, then  
11          it does change the nature of this case because not  
12          only are we then placed in the position of having to  
13          show that there is a rational basis for the system of  
14          finance, the formulas that are in place, and I  
15          suppose do what we have tried to do, contrast what we  
16          have in place with what alternative they might lay  
17          out for finance formulas and why the Legislature did  
18          act rationally in putting this system in place. We  
19          then have to also show why there is a rational basis  
20          for the district lines. Thus far we haven't spent  
21          any time on that.

22                I do recognize that Mr. Gray said, in the very  
23                opening argument, that the disparity wealth, this  
24                isn't rational. And, of course, we took that as  
25                agrumment and not proof. But it is not rational.

1 well, it is not rational unless you have a state  
2 system interposed on it to compensate for those  
3 disparities. But if, in fact, we are saying that  
4 even when you interpose state formulas over it, that  
5 still that manipulating formulas is not what they are  
6 talking about. But they want to go further and say  
7 let's have the Court free to move district lines,  
8 even though this Court would say to us, "I don't know  
9 that I will make any specific order and I may just do  
10 what the Plaintiffs suggest and kind of lay it over  
11 there." In terms of what they have asked for and what  
12 they have come into Court requesting, you are not so  
13 limited.

14 And so in terms of the statute and makeup of  
15 this lawsuit, even though you might say, "Well, if I  
16 hold it is unconstitutional, I believe I will just  
17 refer it over," you still have the power based on --  
18 you know, assuming their pleadings cover  
19 consolidation, you have the power to make some orders  
20 and make rulings in that regard and say some things  
21 about it. If that's the case, then it seems  
22 encumbent upon us, if that's what this lawsuit is  
23 about, to show the rational basis for the creation of  
24 school districts as they now exist in Texas. So if  
25 you review it under the equal protection standards

1       that we believe you should review it, you can have  
2       some basis for holding that the system that we have,  
3       both the district configurations and formulas, that  
4       there is a rational basis for that system that's in  
5       place.

6               And of course, the thrust of our testimony,  
7       Your Honor, has been, as you heard Mr. Moak and Dr.  
8       Verstegen, is that the state has taken the position  
9       that the obligation here is to provide a basic  
10      adequate education, not that we have a burden of  
11      showing that no matter how much you want to spend,  
12      that it is all going to come out equal, because we  
13      all know there is not a state in the union except  
14      Hawaii that could guarantee that, because as long as  
15      there's no caps, districts can always spend more. If  
16      they want to line their halls with gold and they can  
17      afford it, I guess they can do it. Now, we contend  
18      that doesn't affect educational opportunity or  
19      adequacy to have gold-lined halls, but under our  
20      system as it exists, that's all that is possible.

21              So when Dr. Verstegen says we're looking for  
22      absolute equity, she's talking about absolute equity  
23      in the sense of equal dollars. The plaintiffs have  
24      talked a lot about dollars here. And I guess if you  
25      put that burden on us of showing that we ought to

1        have absolute equity in dollars no matter how much  
2        anybody spends, then the system that we have out  
3        there can't work. We can't have school districts.  
4        Just need a state system. But we believe we have  
5        shown that there is adequate basic education provided  
6        in this state on an equitable basis. And even though  
7        there are disparities of spending level, adequate  
8        basic education is being provided by the system we  
9        have in place.

10        So I guess we just need to know, even though we  
11        were pushing the Plaintiffs to amend their pleading,  
12        if the Court is thinking in terms of, as one would  
13        logically think, that these things could work in  
14        tandem and that it is within the purview of this  
15        court or some higher court to center in on  
16        consolidation as being the way it has to go to bring  
17        about constitutionality, if you find it not to be,  
18        then we have to pursue our case at this point in time  
19        and show -- and put some evidence in the record to  
20        show the rationality of the system, which thus far I  
21        think we have ignored.

22        MR. O'HANLON: The distinction here is that  
23        the state's -- I don't want to defend the existence  
24        of a budget balanced district. The state does what  
25        it can to -- other than the constitutional money,

1           they don't get any money other than the way we  
2           interpret the Constitution they are entitled to, as a  
3           matter of constitutional law. Beyond that, they can  
4           raise and spend what they want. The state system has  
5           not put them out of existence. But similarly, it has  
6           gone about as far as it can go without amending the  
7           Constitution. And I don't think you can say that a  
8           constitutional amendment is constitutionally required  
9           to deal with those. Now, beyond that point, it is  
10          the district's responsibility to defend their  
11          existence, not the state's, because they are  
12          independent political subdivisions and if their  
13          existence is in question, they should be put on  
14          notice of that and be allowed to come in here and  
15          defend it.

16                   THE COURT: What are you asking me?

17                   MR. O'HANLON: What are we trying?

18                   THE COURT: Anybody want to say anything  
19          over here?

20                   MR. RICHARDS: I think we have said it,  
21          Your Honor. School districts are subdivisions of  
22          state government organized for convenience and  
23          exercise of governmental function, establishing and  
24          maintaining public free schools for the benefit of  
25          the people. This is a state function. School

1 district lines are created by the state, maintained  
2 by the state and are chosen to utilize them, and the  
3 property value within them is part of their overall  
4 funding system. That's part of the system.

5 We have said we are not seeking this Court to  
6 enter any order consolidating. We are not seeking  
7 anything at this stage other than a declaration or  
8 appropriate injunctive relief as to the  
9 constitutionality of the system. Part of that system  
10 is, of course, the fact that it does rely in large  
11 measure upon local tax base and the inequalities that  
12 flow from that. That's our case. If they can defend  
13 the rationality of the system and they want to do  
14 that, I think that's up to them to decide.

15 MR. O'HANLON: Perhaps to restate may  
16 crystalize this problem. The state -- as Mr. Moak  
17 testified, the state system of school finance is the  
18 Foundation School Program, all its component  
19 elements, and --

20 MR. RICHARDS: That's not our view of it.  
21 Let's be clear. We do not view that to be the state  
22 public school finance system. So I -- if you are  
23 trying to estop us by that statement --

24 MR. O'HANLON: I'm not.

25 MR. RICHARDS: Okay, fine.

1                   MR. O'HANLON: The state system is the  
2                   Foundation School Program and all its component  
3                   elements. The state tolerates local enrichment  
4                   including the equalization enrichment allotment. The  
5                   state tolerates districts to raise and spend  
6                   additional funds beyond that. That's a local  
7                   district decision.

8                   Now, it is the unequal distribution of that  
9                   \$801 million conceivably of other funds above the  
10                  Foundation School Program that is really the area of  
11                  dispute in this case; whether districts should be  
12                  allowed to spend or what we do about local enrichment  
13                  above state levels. That's really what we are  
14                  talking about. That's the differential.

15                 Now, the question then becomes is that the  
16                 state doesn't raise that money. The districts raise  
17                 that money. The state program, although it tolerates  
18                 the raising of that money, that's not a state  
19                 decision. It is not something that the state as an  
20                 entity deals with. That's the district's. And if  
21                 that's the issue in this case, that expenditure above  
22                 the line of the state program, then the districts  
23                 that do that, and their relative ability to do that,  
24                 should be -- those districts should be in the  
25                 lawsuit, not the state, because the state doesn't do

1           it.

2           It is outside the levels -- when we look at the  
3           statistical analysis, we can look at expenditures as  
4           a gross measure. But the state program, I think  
5           everybody will concede, is fairly well distributed  
6           throughout the state. That's what we think we are  
7           defending here. If we are not talking about that, if  
8           we are talking about something that districts -- then  
9           those districts as independent political subdivisions  
10          should be brought into this case.

11          It's what Mr. Richards said, that it is somehow  
12          different because the state tolerates them to exist.  
13          Well, the state tolerates the City of Austin to  
14          exist, too. Does that mean that if somebody has a  
15          personal injury case against the City of Austin, that  
16          they can just sue the state because the state  
17          tolerates the City of Austin, their existence as  
18          well? That is, to make that argument is to argue  
19          that any political subdivision, which is anything  
20          that the state tolerates its existence as a local  
21          unit of government, that we can just go ahead and sue  
22          the state and forget the local unit of government.  
23          That's the argument.

24                 MR. R. LUNA: If I might add one other  
25          element that's not been discussed, Your Honor. You



1           probably heard more about this already than you  
2           really wanted to. But the important matter, I think,  
3           in regard to the individual elements is right now, I  
4           think we are all assuming, of course, that all  
5           districts are the same across the state. We might  
6           adjust lines, might not adjust lines. But in  
7           actuality when the Court begins to deal with specific  
8           school districts, the Court is going to discover that  
9           many of those districts are under federal court  
10          orders, desegregation orders, other orders in regard  
11          to voter's rights problems. And those specific  
12          courts who have ongoing jurisdictions for those  
13          districts, for example, like Federal Judge Sanders in  
14          the Dallas Independent School District, I'm not sure  
15          that we would be able ever to adjust the lines or  
16          remove any property from that district or consolidate  
17          or do anything without somehow involving that federal  
18          court and other federal courts. And many of the  
19          districts are under a different kind of court order.

20                So whenever we begin to talk about specific  
21          school districts, we are going to discover there are  
22          a lot of unique problems that right now are not out  
23          on the table for the Court's consideration. That's  
24          the reason we think that we would -- if this does  
25          become more of an issue in terms of consolidation

1        rather than merely an academic exercise for the Court  
2        to consider as various potential remedies and if  
3        we're going to get down to specifics, then I think it  
4        is very important that the individual districts do be  
5        notified of that and have a chance to come in and  
6        explain to this Court what their specific problems  
7        are because of it.

8                THE COURT: Well, then that argument would  
9        work that all this theory there is about changing the  
10       lines under these statutes doesn't exist.

11               MR. R. LUNA: No. Those are voluntary  
12       requirements in there, and they voluntarily do that  
13       provided that certain court orders are not affected  
14       in the process.

15               Now, for example, before you can do anything  
16       with the Dallas Independent School District lines,  
17       Judge Sanders would have to be contacted, of course.  
18       There would have to be hearings on it and he would  
19       have to be convinced that there would be nothing in  
20       that process that would violate any of his orders.

21               There was, for example, this past year, an  
22       attempt by the City of Farmers Branch to set up its  
23       own municipal school district within the  
24       Carrollton-Farmers Branch Independent School  
25       District. Part of that went over into the different --

1 well, I forget the exact specifics there -- but at  
2 any rate, it also involved the City of Dallas and  
3 somehow got involved with the Judge Sanders  
4 desegregation case. He immediately set down a  
5 hearing on a motion by the NAACP, as I recall,  
6 because that election was about to be held. And the  
7 motions were simply that there could not be an  
8 election to be held for a removal and creation of a  
9 different school district creating all sorts of  
10 problems the federal court wanted to hear about  
11 before it would allow anything, you know, to be  
12 initiated in that regard.

13 So whatever matters we begin to do here, even  
14 though they might be allowed by law, will simply need  
15 to be examined in other hearings in other forms.

16 MR. O'HANLON: Just for further  
17 clarification, there are 56 or 57 court-ordered  
18 desegregation plans in effect right now in the State  
19 of Texas, the last count that I had. I think I'm  
20 responsible for the State's position in all of them.

21 Perhaps one other view of this \$801 million, it  
22 is in the case -- or is our view of the case as to  
23 whether or not, given the system of finance, it is  
24 wise to tolerate local enrichment, and therefore,  
25 caps may be appropriate or inappropriate and as a way

1 of equalizing. I think Mr. Walker -- Dr. Walker  
2 called it equalizing down. Whether or not that's an  
3 appropriate remedy within -- that's something that  
4 the finance system can do to equalize expenditures.  
5 I think that's fairly before the Court. But if we're  
6 talking about going back to the base -- we thought we  
7 were litigating levels of expenditures, not the  
8 existence of the entities that allow this diversity  
9 to exist.

10 THE COURT: Well, it seems to me like --  
11 again, I'm going to repeat myself, and then I'm going  
12 to hush -- that you need a Foundation School Program  
13 because there is disparity. And it seems to me like  
14 that you can remedy disparity if some court or the  
15 Legislature takes in mind to cause it or to do it by  
16 changing their formulas that what you call the state  
17 finance system operates under. You can probably make  
18 up for that disparity that way. Or you can eliminate  
19 disparity. And to eliminate disparity, it seems to  
20 me like you are going to have to change the lines.

21 Now, if this Court doesn't get involved in  
22 fashioning a state system, then I don't know that I  
23 have to worry about that. But if the system, which  
24 includes 1,064 school districts with different  
25 student populations and vastly different tax bases,

1           if that system, run in connection with a state  
2           program, as you call it, Mr. O'Hanlon, to make up for  
3           those disparities, if that total system fails  
4           constitutional muster, then some change is going to  
5           have to be made.

6           The Plaintiffs are suggesting let the  
7           Legislature take a whack at that first. And if that  
8           doesn't prove out, maybe some court is going to have  
9           to do that. But it seems to me like that your worry  
10          about bringing in school districts that would be  
11          affected, at least at this stage of the game, you  
12          seem to be over worried about it. But I'm not going  
13          to tell you how to run your business. But I don't  
14          know what you can do right now by how those lines are  
15          drawn.

16                 MR. O'HANLON: Well --

17                 MR. TURNER: Your, Honor, one thing I might  
18          say about worrying about those lines. Let's say this  
19          Court held the system to be unconstitutional and you  
20          did take a position of restraint but you did order  
21          the injunction and gave the Legislature some time.  
22          Then as Mr. Gray suggested this morning, once the  
23          Legislature acts, this Court has jurisdiction, and  
24          you come back and get to look at what they have done.  
25          And that puts you right in the middle -- if they have

1           done a bunch of consolidation or -- you know, you're  
2           right in the middle of it.

3           THE COURT: Well, but if the Legislature  
4           does consolidation, the only -- there is no attack  
5           against their right to do so. The only attack would  
6           be if they have inappropriately done it, like in  
7           apportionment cases having to do with the election of  
8           officials.

9           MR. TURNER: I guess the issue might come  
10          down to what this Court or higher court would say  
11          that urged them in that direction, because the issue  
12          we raised when this lawsuit started when we suggested  
13          that school districts aren't protected under the  
14          equal protection clause and, therefore, they  
15          shouldn't be plaintiffs in this lawsuit. And there  
16          are some individual plaintiffs. So we sort of said,  
17          "Well, you know, the lawsuit is going to be tried the  
18          same way. What's the big deal?"

19          We further now have -- if we say consolidation  
20          is an issue, we have school districts coming into  
21          this Court attacking their own lines, their own  
22          existence, and I don't think that we can find any  
23          situation where a unit of government created by the  
24          Legislature is able to come into court and challenge  
25          its existence or its boundaries or its jurisdictional

1 limits. That's -- I don't think we have ever done  
2 that.

3 Now, in this case, we sort of let this all  
4 slide because we said, "Well, it is going to be the  
5 same kind of case in terms of what is heard up here,"  
6 and if we are just talking about financing formulas,  
7 perhaps that is so. But when we get over into this  
8 consolidation issue, it seems that we are allowing  
9 school districts to say their own lines are improper,  
10 and they're creatures of the Legislature, they were  
11 created by legislative act.

12 So, I guess, if the Plaintiffs have convinced  
13 the Court that these things work in tandem,  
14 therefore, anything is game in terms of attack or  
15 potential remedy, even without them amending their  
16 pleadings, they are, in effect, having consolidation  
17 a viable issue in this lawsuit and therefore, I  
18 guess, it's now our burden to proceed under that  
19 assumption and develop our side of the case in  
20 accordance therewith.

21 MR. O'HANLON: To step back, if I can --  
22 there are two issues of classification in this case  
23 and --

24 THE COURT: Just one minute. I don't know  
25 that the Plaintiffs have convinced me so far -- as I

1 understand it, that's the whole purpose of -- or a  
2 major purpose of the Foundation School Program is to  
3 make up for those disparities that have been allowed  
4 to exist. I think everybody says that; not only in  
5 Texas, other states, too.

6 MR. TURNER: I guess I misstated myself. I  
7 recognize what you're saying there. I guess what I  
8 meant to say is that if the case is postured to where  
9 merely changing those formulas is not enough in terms  
10 of what the Plaintiffs are trying to do if they think  
11 it is unconstitutional, then we do have the issue --  
12 consolidation is really the only other option out  
13 here.

14 THE COURT: I don't know. It seems to me  
15 like that you get down to potential ways to remedy,  
16 change the formulas and the appropriation or you  
17 change the lines. I mean, it seems to me like it is  
18 as simple as that. It seems to me like what's been  
19 going on in this state for a very long time is that  
20 everyone has been dodging changing those lines.

21 MR. TURNER: That's probably true. And I  
22 guess that's why we feel surprised by -- that this is  
23 an issue, because it is our firm conviction that the  
24 Plaintiff school districts on that side of the room  
25 are not urging consolidation. And it seems like



1       somebody has to ask for it for a Court to end up  
2       granting that kind of relief.  Somebody has to want  
3       it.

4               THE COURT:  But as I understand it, we are  
5       really not having -- in this hearing that we started  
6       some weeks ago, we are not really having a hearing on  
7       liability and remedies.

8               MR. TURNER:  Well, they wanted it that way.  
9       We never understood it that way.  The Court obviously  
10      had discretion as to what kind of orders it enters.  
11      But as far as the case itself, being by order divided  
12      into two sections or anything, we proceeded that  
13      anything could happen.  And we just operated within  
14      the parameters of what we thought the pleadings were  
15      and what the parties on the other side of the room  
16      were asking for.  And, therefore, presumably the way  
17      the case would have to be dealt with was the  
18      pleadings and what they are requesting.

19              We understand why it's nice to be in a position  
20      on the Plaintiffs' side, sort of saying, you know,  
21      "Judge, we don't want to ask for it, and we know the  
22      reasons are obvious because our clients don't want  
23      it, but we are going to slip it out there to you  
24      anyway."  I just don't think that's the way the  
25      lawsuit ought to be tried.

1                   MR. O'HANLON: Let's go back to a  
2 discussion briefly about the liability issue. When  
3 you are talking about an equal protection lawsuit,  
4 the gravamen of that suit is a system of  
5 classification. That's the issue.

6                   THE COURT: Classification or what else?

7                   MR. O'HANLON: Does the state  
8 classification of individuals violate their rights to  
9 equal protection? Has the state made a  
10 classification that violates equal protection? I  
11 think that's the issue.

12                  THE COURT: Okay.

13                  MR. O'HANLON: Now, the state -- inherent  
14 in this issue, in the school finance context, is two  
15 separate and distinct notions of classification. One  
16 classification is the distribution of state aid, and  
17 is there a rational basis.

18                  Now, when we are looking at the distribution of  
19 state aid and that system of classification, how do  
20 we distribute state aid? Well, we distribute it  
21 disproportionately. We could, I suppose, on some  
22 theoretical basis, issue state aid to each student on  
23 a per capita basis. Now, that's equal. We don't do  
24 that. We distribute state aid in a method to account  
25 for the problems with another set of classifications.

1           So the state aid attempts to make up for this other  
2           classification, which are district lines.

3           THE COURT: Why doesn't it do it on a per  
4           capita basis?

5           MR. O'HANLON: It doesn't do it on a per  
6           capita basis because of the existence of this other  
7           classification system; that is, district lines.

8           THE COURT: It doesn't do it on a per  
9           capita basis because it doesn't want to redistrict.

10          MR. O'HANLON: That's correct.

11          THE COURT: That's right.

12          MR. O'HANLON: Now, if that's the case,  
13          then we have to consider -- then if that's the case,  
14          then the district lines become the classification  
15          that is the real focus of the litigation. This is  
16          why we are saying we are somewhat surprised by this  
17          term.

18                 Now, inherent in that, if we're talking about  
19          doing away with districts, we're talking about other  
20          interests besides just the districts. We're talking  
21          about debt holders, the people that hold all the  
22          bonds of the districts and how are those people going  
23          to get paid, things of that nature. There's a whole  
24          huge notion of other things that if we get into that,  
25          are going to -- we're going to have to explain and

1 try within the context of this lawsuit, if this is  
2 the classification that we are here to defend.

3 We had thought that we were accepting this  
4 classification as a given because of their specific  
5 allegation that they were only challenging -- their  
6 definition of school finance system is 1601 et. seq.  
7 and that taking the district lines as a given, is  
8 there a rational basis or a compelling interest for  
9 the distribution of state aid in the classification  
10 which is the distribution system, 1601 et. seq.?

11 Can we explain a rational basis for treating  
12 students differently based on the wealth in their  
13 districts? Can we say there is a rational basis for  
14 giving kids in poor districts more money? Certainly  
15 we think we can, and we thought we'd been presenting  
16 evidence to the Court to account for that.

17 But when you start talking about this other  
18 classification system, which is separate and we  
19 didn't think was in this lawsuit, then you have a  
20 whole myriad of other interests and other parties  
21 that become necessary, because if you start dealing  
22 with that, you are dealing with political  
23 subdivisions, which are independent, have the right  
24 to sue and be sued, you're talking about bond  
25 holders. I mean, Texas has issued more debt than any

1           other state in the nation. Far and away the biggest  
2           issuer of bonds for public school construction. Much  
3           larger than New York, which is the second largest.

4           So we have got those interests that are going  
5           to have to be accounted for and how we're going to  
6           deal with those and what we're going to do with the  
7           bonds and how we're going to assure that they get  
8           paid off and things of that nature. So that  
9           complicates -- that changes the nature of the suit.

10          We are not then defending this classification  
11          system, the distribution. We are now defending the  
12          existence of the lines, which is a separate and  
13          distinct notion, at least to us, because it is set up  
14          under a different statutory scheme and they are given  
15          independence to make a judgment in there and,  
16          therefore, become necessary parties to the  
17          litigation. That's our problem here. If we do that,  
18          we have a whole lot of other competing interests and  
19          parties and things of that nature.

20                 THE COURT: Anybody want to say anything to  
21          that over here?

22                 MR. KAUFFMAN: No, Your Honor.

23                 MR. GRAY: I'm ready to proceed, Your  
24          Honor.

25                 THE COURT: Okay. Well, here we go.

## CROSS EXAMINATION (RESUMED)

1  
2 BY MR. GRAY:

3 Q. Mr. Moak, at the time --

4 MR. O'HANLON: I still don't have an  
5 answer. I mean, which classification system are --

6 THE COURT: Well, do you all care to tell?

7 MR. RICHARDS: I think we have answered  
8 every time he's asked it. Part of the classification  
9 is the configuration of districts and wealth and  
10 disparities inherent in them. He knows it. They  
11 cross-examined every Plaintiffs' witness on  
12 consolidation that's been on this stand, and I can't  
13 believe that -- it is not credible to have him now  
14 say they never thought about it. I mean, it just  
15 doesn't make any sense.

16 MR. O'HANLON: Then I'm curious as to why  
17 they will not amend their pleadings even though  
18 offered to include that within the scope of the  
19 relief they seek in this lawsuit.

20 MR. RICHARDS: Because we don't seek that  
21 relief, and we've said that a dozen times, too. I  
22 just -- I don't know. I think this is just game  
23 playing with the Court for some reason which now  
24 doesn't seem to make any sense. We've been as clear  
25 as we can be about it.

1                   MR. O'HANLON: If they don't seek the  
2 relief, why is it an issue in this lawsuit?

3                   MR. RICHARDS: The relief we seek is what  
4 we said, a declaration of the system as  
5 unconstitutional; a court injunction against the  
6 system, which we think we're entitled to frame, our  
7 prayer for relief. That's a plaintiff's privilege  
8 and that's the way we plead it.

9                   We've indicated that we assume, just as the  
10 Court has indicated, just as all the parties have  
11 indicated, that's total relief. If you enjoin it,  
12 the Legislature has a chance to come back. If they  
13 don't satisfy it, then we go back at it. If  
14 consolidation becomes a potential remedy at that  
15 stage, everybody gets a chance to intervene it then  
16 and whack that one out. I assume we'll never reach  
17 that stage. That's pretty clear what we said -- this  
18 is a little dishonest with the Court. This is  
19 precisely the conversation we had with Mr. O'Hanlon  
20 in October when he raised this very issue. And I  
21 think this is silly.

22                   MR. O'HANLON: I told him then, as I am  
23 telling you now, that if we're talking about that  
24 second step, which is district lines, that we are  
25 without a whole lot of necessary parties. And we

1 would move for continuance of this Court and to bring  
2 those necessary parties into this lawsuit.

3 THE COURT: Okay. I'll overrule.

4 MR. GRAY: May I proceed, Your Honor?

5 CROSS EXAMINATION (RESUMED)

6 BY MR. GRAY:

7 Q. Mr. Moak, when I last questioned you, I was getting  
8 ready to -- raised the comments you made in direct  
9 examination that Florida had countywide school  
10 districts. Do you recall where we are?

11 A. Yes, I recall saying Florida had countywide  
12 districts.

13 Q. Now, we know --

14 MR. O'HANLON: One more thing on that. May  
15 I have a running bill of exceptions to this --  
16 running bill of objection to this whole line of  
17 testimony.

18 THE COURT: To questions and answers about  
19 consolidation?

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

21 THE COURT: Okay. I think I understand  
22 your position, and I think I would know when they are  
23 asking questions about consolidation, so I don't see  
24 any reason why you shouldn't have a running  
25 exception.



1 MR. O'HANLON: Thank you.

2 THE COURT: That will be for all the  
3 Defendants and Defendant-Intervenors.

4 BY MR. GRAY:

5 Q. Now, we know in Texas, Mr. Moak, that under the  
6 current district lines, the property value per  
7 student ranges from slightly more than 21,000 per  
8 child up to in excess of 14 million per child,  
9 correct?

10 A. Yes.

11 Q. That is right at a ratio of 700-to-1, correct?

12 A. I haven't calculated it recently but, yes, I assume  
13 that.

14 Q. And I assume if you -- that ratio, that gap,  
15 700-to-1, would to some extent be closed -- the  
16 disparities that we currently see out there would to  
17 some extent be closed if we were to look at the  
18 counties as opposed to these 1,064 districts with the  
19 disparities in property value that we know exist,  
20 correct?

21 A. Yes. Probably to the range of roughly 150-to-1.

22 Q. And if you were to then go further and look at the  
23 range of disparity based upon the existing 20 service  
24 center regions that the Texas Education Agency  
25 currently has and currently administers, you could

1           get that range by looking at your Defendants' Exhibit  
2           42, could you not?

3   A.   Yes.

4   Q.   And you would see in that, that that would get you  
5       reduced the range of disparity from the existing  
6       700-to-1 county at 150-to-1 all the way down to  
7       approximately 5-to-1, correct?

8   A.   If you're taking all this in the discussion of simply  
9       what disparities would be, yes. If you look at those  
10      sets of numbers, you come out to about 5-to-1.

11   Q.   And you and I have had enough experience drawing or  
12      helping draw House, Senate and congressional lines to  
13      know that if you wanted to draw new lines, you could  
14      get that ratio to 1-to-1, correct?

15   A.   No.

16   Q.   You do not believe you could have -- draw districts  
17      in this size of equal property value?

18   A.   Of 20 districts?

19   Q.   Of five districts or four districts, whatever number  
20      you wanted more than one --

21   A.   I thought you were saying within 20 districts.

22   Q.   No. You could draw districts that were of equal  
23      value, could you not, sir?

24   A.   I'm assuming if you did not place a number of  
25      districts that I could come up with that, that is

1 different than drawing Senate and congressional  
2 districts. I have the relative pleasure of never  
3 having had to draw a House district yet.

4 Q. So the answer to my question is that we could draw  
5 districts that had equal property value in this state  
6 if that was the game plan, correct?

7 A. Yes.

8 Q. Okay. Now --

9 A. But if you're only dealing with a very small number  
10 of districts.

11 Q. The current basic allotment is \$1350.00, correct?

12 A. Yes.

13 Q. And the current weights that are in the law, you  
14 recall, do you not, that at your deposition, I asked  
15 you to describe for me the study that was done to  
16 address educational cost that verified the current  
17 weights and the current basic allotment of 1350?

18 A. I'm sorry. I don't precisely recall. I recall that  
19 we had a discussion of 1350. I don't precisely  
20 recall the question that you are referring to.

21 Q. Let me ask this way. The bottom line is there was no  
22 study.

23 MR. O'HANLON: Objection, Your Honor. This  
24 is not germane to anything in the pleadings before  
25 the Court as well. The weights are not an issue in

1           this case. The relative distribution of grant --  
2           relative entitlement of the weights is not an issue  
3           in this case. It is not plead.

4           MR. GRAY: Your Honor, we're talking about  
5           the basic allotment and the weights using his own  
6           limited view of what this case is all about, which  
7           obviously we don't agree with, is there a rational  
8           basis for what they did there, or is that a strict  
9           scrutiny. I'm going to establish through this  
10          witness that there was no study, no plan, no nothing.

11          THE COURT: Okay.

12          MR. O'HANLON: And that's not in -- the  
13          weights, in and of themselves, are not an element of  
14          this lawsuit. Their independent assessment or  
15          analysis of whether they in some objective sense are  
16          high enough or low enough is not plead.

17          THE COURT: I'm going to overrule.

18 BY MR. GRAY:

19 Q. I'll just ask my question again. There was no study  
20     done that determined that the cost of a regular  
21     education program was \$1350.00 for the basic  
22     allotment and there was no study done to determine  
23     what each of the individual weights should be at the  
24     time they were established by the Legislature,  
25     correct, Mr. Moak?

1 A. Well, the numbers had a variety of -- were not simply  
2 pulled from the air. They had a variety of different  
3 kinds of origins. I believe I indicated to you  
4 earlier that there was not a formal study done which  
5 underlay the kind of quality control level that I  
6 considered appropriate -- that underlay either the  
7 weights or the basic allotment at the time it was  
8 enacted.

9 Q. And, in fact, I asked you that very question, and you  
10 said, "I know of no such study." Correct?

11 A. Yes, within the definition -- as I said, they have  
12 bases. But when I refer to study, I was referring to  
13 a study similar to this kind of study we were doing  
14 for the 1985-'86 accountable cost study, for example.

15 Q. When you said that you knew of no such study that  
16 would deal with the educational -- the real  
17 educational cost, I went forward and said, "If there  
18 had been such a study, you would have known about it,  
19 would you, correct? And you answered, "I think I  
20 would have. I was an intimate player," or words to  
21 that effect, correct?

22 A. That's correct.

23 Q. Okay. Now, if you will, turn to Defendants' Exhibit  
24 No. 50, which is the two-page chart. You need to  
25 have it in front of you. Let me see if I can help

1           you. I put it in that stack yesterday.

2       A.    There it is.

3       Q.    Now, look on the second page of that, which is -- as  
4           I understand your testimony, this is the same table  
5           that's on Page 6 of the accountable cost study?

6       A.    Yes.

7       Q.    And looking at the standard program number and the  
8           quality program number for the years '87-'88,  
9           '88-'89, the two numbers that were plugged in were  
10          what the Accountable Cost Committee found to be the  
11          cost of a standard program in '85-'86, correct?

12      A.    Those were what the Accountable Cost Committee, among  
13          the options that were presented on the first page  
14          when presented to it, chose to include in this  
15          analysis. The options on the first page were all  
16          presented to them. They chose these specific  
17          numbers.

18      Q.    And the 2414 for standard and the 2725 for quality  
19          was, in fact, the actual cost of each of those  
20          programs that was determined by -- or the options  
21          picked by the Accountable Cost Committee for the  
22          '85-'86 school year?

23      A.    That's correct.

24      Q.    And when you or the Accountable Cost Committee staff  
25          projected what the basic allotment should be using

1           those two numbers -- and let's just use the 2725 --  
2           for future years, you started with the cost was 2725  
3           in '85-'86, right?

4       A.    Yes.

5       Q.    And then you added to that any additional cost that  
6           either was anticipated statutorily-wise or because of  
7           inflation that would bring it current from '85-'86 up  
8           to whichever year you were talking about, correct?

9       A.    That's correct.

10      Q.    And that process led to the figure that is in these  
11           charts under total average annual cost, and it's for  
12           '88-'89, quality program was 3303. See where I am?

13      A.    Yes.

14      Q.    And then using that number, you discounted or backed  
15           out the equalization enrichment aid and the PDI small  
16           school aid, correct?

17      A.    Yes.

18      Q.    And when you backed that out, that left you with what  
19           your analysis told you should be the basic allotment  
20           for that year, correct?

21      A.    Yes. These were decisions that were made by the  
22           committee as to what was included and excluded and  
23           adjusted and so on. They weren't part of a formal  
24           research effort necessarily, but we did supply the  
25           numbers and give them the options as to which ones to

1 pick.

2 Q. Okay. Now, let me, if I may, look at the first  
3 column in this chart that is blank and run you  
4 through the exact same -- or not blank, but the first  
5 lines are blank -- run you through the exact same  
6 analysis for '85-'86 that we just went through  
7 step-by-step for future years. Do you follow with me  
8 so far?

9 A. Yes.

10 Q. Okay. Now, on this chart that was introduced, the  
11 annual cost under current law is blank, but we know  
12 that the Accountable Cost Committee found that cost  
13 for a quality program in '85-'86 to actually be 2725,  
14 correct?

15 A. They found 2725 in districts that had TEAMS scores at  
16 16 -- in the top 16 percent of those districts they  
17 looked at. Labeled that a quality program.

18 Q. And the next addition that would go there is the new  
19 law mandates for years three and four, which  
20 obviously for the current law, '85-'86, is zero  
21 because you don't go to three and four in '85-'86,  
22 correct?

23 A. Well, Mr. Gray, under current law, '85-'86, the  
24 reason that number is blank is because it wasn't  
25 appropriate to fill it in. You've asked me whether



1           2725 was the number that they determined for a  
2           specific purpose, but I testified the other day as to  
3           what the appropriate way to get back under the  
4           Foundation Program law would be to what in '85-'86  
5           comparable annual cost under the current Foundation  
6           Program law was.

7       Q.   Well, I understand that you started from the bottom  
8           and worked to the top. And I want to work it through  
9           the same methodology that you did for all future  
10          years.

11     A.   I'm saying the current law refers to the Foundation  
12          Program. As you're well aware, the Foundation  
13          Program never supported a 2725 -- has not supported a  
14          2725 program for the regular education program. I'm  
15          simply saying I agree to whatever mathematical  
16          calculations you want to go through. But I want to  
17          make it clear that under current law that isn't the  
18          purpose of the current law column, and I believe that  
19          I have testified -- I don't want to cause concern  
20          over the fact that -- I believe I testified that the  
21          appropriate number for '85-'86 annual cost under  
22          current law the other day was about \$2200.00. And  
23          I'm not -- I don't want any misunderstanding that I'm  
24          changing what I believe the appropriate number to  
25          fill in under '85-'86 annual cost is.

1 Q. I understand. What you did the other day was, you  
2 started with the law that says the basic allotment is  
3 1350, and you worked backwards to find out what the  
4 cost -- what a 1350 basic allotment would tell you  
5 the cost was, correct?

6 A. And then I made the adjustments for the educational  
7 improvement fund and the experienced teacher  
8 allotments to get to a \$2200.00 cost.

9 Q. Okay. Now, what I want to do is take the Accountable  
10 Cost Committee's study, and they found in '85-'86,  
11 the cost of a quality program was indeed 2725,  
12 correct?

13 A. They found a cost in a set of districts that they  
14 chose to call a quality program, yes.

15 Q. So let's start with the 2725. Let's work from what  
16 we know the cost -- or what the Accountable Cost  
17 Committee found it to be, down to what the basic  
18 allotment results as opposed to writing down an  
19 arbitrary basic allotment and working backwards and  
20 saying poof, here's the cost. Do you follow what I  
21 want to do?

22 A. Yes.

23 Q. Okay. Now, the next -- on your chart, the next  
24 addition was any extra cost of expanding House Bill  
25 72 to grades three and four, and in '85-'86, that was

1           zero, right?

2   A.    Yes.

3   Q.    The next thing that you have on your chart is  
4           inflation and, obviously, there is zero inflation  
5           associated with the '85-'86 year itself, correct?

6   A.    Yes.

7   Q.    And the next thing you have on the chart is salary  
8           schedule, and there was no increased mandated salary  
9           schedule in '85-'86, correct?

10   A.    That's correct.

11   Q.    And then what you do is you total all those three  
12          things in every other column, correct?

13   A.    Yes.

14   Q.    And if we total them all on this column, that comes  
15          out to a total average annual cost of 2725?

16   A.    I certainly hope so.

17   Q.    That math I can do. Now, you then discounted that  
18          cost for equalization aid, correct?

19   A.    That's correct.

20   Q.    And equalization aid is 1.3, right?

21   A.    Yes.

22   Q.    Calculate for me how much I discount 2725 for  
23          equalization aid.

24   A.    \$629.00, if I discounted it by 30 percent. If that's  
25          what you're working back -- I assume you're working

1 back to what kind of basic allotment we had that  
2 supported a 2725 number.

3 Q. Right. I want to use the exact same methodology for  
4 '85-'86 that you did use for '87-'88 and '88-'89.

5 A. The next time it will be \$314.00.

6 Q. And you discount them for PDI and small \$314.00?

7 A. Yes.

8 Q. Now, before we total this, this is the identical  
9 process that you used as staff for the Accountable  
10 Cost Committee to show what the basic allotment  
11 should be for years '87-'88 and for years '88-'89,  
12 correct?

13 A. Yes. It would -- given the fact that the State Board  
14 of Education had already made up its mind about some  
15 recommendations, there were a couple of other  
16 adjustments which we might have made but we did not  
17 make for those future years because of the Board's  
18 recommendations that were forthcoming with respect to  
19 the educational improvement fund and the experienced  
20 teacher.

21 Q. Now, finish out the mathematics for me. What does --  
22 using the same methodology that you did use for  
23 '87-'88 and '88-'89, what does this same methodology  
24 show you the basic allotment should have been for  
25 '85-'86?

1 A. It doesn't -- the number 1782, I wish to clarify the  
2 point that that -- it is not logical that you use the  
3 same methodology, that there would be an additional  
4 adjustment which would serve to reduce the 1782 by  
5 not a large amount, but by somewhat.

6 Q. So if the mathematics works out to 1782 -- and this  
7 is using starting from what the Accountable Cost  
8 Committee determined the actual cost of a quality  
9 program in '85-'86 was, correct?

10 A. I have testified what the basis of the 2725 was a  
11 number of times.

12 Q. And we've used the exact same methodology that the  
13 staff used for -- and that you testified to -- for  
14 years '87-'88 and '88-'89 to determine what the basic  
15 allotment in those future years should be, correct?

16 A. Despite the fact it's inappropriate in 1985-'86.

17 Q. Now, using the same methodology, if we subtract 1350  
18 from the 1782, how much of a shortfall in the basic  
19 allotment do we develop?

20 A. Difference between the numbers is \$432.00.

21 Q. So if you had chosen to use the same -- and I use you  
22 in the generic sense -- if staff had chosen to use  
23 the same methodology to show what the basic allotment  
24 should be for '85-'86 that it did for '87-'88 and for  
25 '88-'89, we would see that the 1350 was, indeed,

1           \$432.00 short, if you use the same methodology that  
2           you used for future years, correct?

3           A.   That's correct.

4           Q.   Okay. Now, if you will, look at your exhibits 52 --  
5           51, 52 and 53. And I can probably run through these  
6           pretty fast.

7           A.   Okay.

8           Q.   Now, the -- you went through a whole line, and I  
9           forget how long the questioning was on these three  
10          exhibits, but I'm correct, am I not, in stating that  
11          what they deal with is this deals with nothing more  
12          than the Foundation School Program, correct?

13          A.   That's correct.

14          Q.   And there has been a good bit of testimony -- some  
15          before your time and, I think, in fact, some during  
16          your time -- about this is what we have referred to  
17          as the small box. And in the world out there, there  
18          is a bigger box that includes the Foundation Program  
19          but there's other in additional expenditures that  
20          districts are actually spending outside of what you  
21          have shown on 51, 52 and 53, correct?

22          A.   I dealt with additional revenues available to spend  
23          as opposed to expenditures, but, yes.

24          Q.   Okay. And we, in fact, have introduced a chart, that  
25          is Plaintiffs' 107, that shows the range of

1 expenditures over and above the Foundation School  
2 Program. Foundation School Program stops here, and  
3 all these lines that are above the very base line,  
4 those are all expenditures that aren't even dealt  
5 with in your 51, 52 and 53 at all, correct?

6 A. Well, insofar as the chart and the data on which the  
7 chart was based, it was not calculated by me. I  
8 don't have a basis on which to make a specific  
9 judgment about that data.

10 Q. I am not asking you to bless the data. I'm just  
11 asking you to make sure that my understanding is that  
12 your 51, 52 and 53, if I were to tell you that this  
13 bottom line, running here at the very bottom, that  
14 everybody -- you know, that's the Foundation Program  
15 and all these expenditures above it are expenditures  
16 outside the Foundation Program. Assume with me that  
17 that's the testimony and that's the basis upon which  
18 these exhibits have been introduced.

19 MR. O'HANLON: Objection. That isn't the  
20 testimony that we contest that notion of what the  
21 Foundation School Program is. We think it's  
22 considerably higher than that because we, as the  
23 statute envisions, included equalization as part of  
24 the Foundation School Program. So he is assuming --  
25 he's asking the witness to assume his version. If

1        we're talking about a hypothetical situation for  
2        purposes -- but he's saying it as if that is  
3        uncontested in this case and it is not.

4        BY MR. GRAY:

5        Q.     Assume my version then.    First, let me ask you this.  
6        I assume --

7        A.     What question am I responding to?

8        Q.     I'll put it in better perspective.    You and I both  
9        know that districts spend money out there that is  
10       over and above the Foundation School program,  
11       correct?

12      A.     Yes.    And I have submitted another exhibit other than  
13       the ones you are referring to, my analysis of the  
14       levels of those revenues.

15      Q.     Right.    And your analysis shows it is 800 million,  
16       and Dr. Kirby and Dr. Walker's analysis shows it's  
17       2.9 billion, correct?

18      A.     I don't know what Dr. Kirby and Dr. Walker's analysis  
19       shows.

20      Q.     Okay.    Well, look on Page 43 of their book, which is  
21       also Exhibit 235.    I will read to you where it says,  
22       "Although 2.09 billion will go toward the statewide  
23       local share, at least 2.9 billion more will be  
24       expended from local tax dollars and unequalized  
25       spending."



1 A. Can you finish the sentence, please.

2 Q. "Including debt service payments."

3 A. Yes.

4 Q. Okay. So --

5 A. I disagree with that number, but I wanted to -- one  
6 of the differences is debt service payments. There  
7 are additional disagreements between the authors of  
8 the book and me as far as how to analyze this issue.

9 Q. And in your 800 million figure, you don't have any  
10 debt service, correct?

11 A. There's probably a small amount of that which is  
12 expended for debt service but -- or a small amount of  
13 the general fund which is expended for debt service,  
14 but very little in terms of the major revenues for  
15 that purpose.

16 Q. In fact, in your general analysis and in your general  
17 testimony, you pretty much have put buildings and  
18 debt service and things like that aside and have left  
19 it out of the equation to a large extent, correct?

20 A. Yes. I have testified that it would be inappropriate  
21 to analyze them on that basis, and that's one of my  
22 disagreements with the analysis that is on the chart  
23 there before you.

24 Q. Okay. Now, whether or not we choose to analyze it  
25 according to your suggested methodology or the

1 authors of the books suggested methodology, we know  
2 that there is indeed a substantial sum of money out  
3 there that is being spent by districts over and above  
4 the Foundation School Program, right?

5 A. Yes.

6 Q. And that spending is indeed totally unequalized,  
7 right?

8 A. Let me -- well, substantial sum of money, if a  
9 substantial sum -- I believe you earlier at one time  
10 said that substantial meant in excess of 50 percent.  
11 I would just like to -- when you were discussing  
12 16.001 with me, substantial in this case does not  
13 mean over 50 percent. It's more in conformance with  
14 what my view of 16.001 intended.

15 Q. Assume with me that -- the tenor of my question that  
16 substantial to me -- well, there is a lot of stuff  
17 that's substantial to me -- but 800 million is sure  
18 substantial to me and 2.9 billion is real substantial  
19 to me. Will you assume that with me?

20 MR. O'HANLON: I won't assume with that  
21 because substantial yesterday meant 50 percent. Now  
22 2.9 billion is substantially below his yesterday's  
23 definition of substantial.

24 THE COURT: Well, we'll let Mr. Gray try  
25 and work his way out of this.

1 BY MR. GRAY:

2 Q. The net effect is that you see that there are large  
3 amounts of money that are spent over and above the  
4 Foundation Program, correct?

5 A. Yes. My analysis of the \$801 million is in terms of  
6 revenue available over the Foundation Program  
7 equaling, if I remember my data correctly, about 8  
8 percent of total general fund revenues.

9 Q. And on Defendants' Exhibit 55 -- while you're getting  
10 55, I'll ask you a general question because I think  
11 you testified to this yesterday, that these other  
12 local revenues over and above the Foundation Program,  
13 that is indeed a function of the property district's  
14 wealth, right, the property wealth in a particular  
15 district?

16 A. When you say a function, I believe I indicated there  
17 was a high degree of relationship between wealth and  
18 the level of that funding available, yes.

19 Q. Okay. And using -- are you at 55 with me?

20 A. Yes.

21 Q. Using your lower number, the 800 million number as  
22 opposed to Dr. Kirby and Dr. Walker's 2.9 billion  
23 number, you see on the wealth -- again, focusing at  
24 the wealth, that that -- the poorest district spends  
25 \$24.00 per child over and above the Foundation

1       Program, am I reading that right, for other local  
2       enrichment or other local revenue?

3       A.   You continue to say spend. I continue to say  
4       revenue. And, I guess, we just have an understanding  
5       you're going to say spend, and I'll say revenue.

6       Q.   They have the money?

7       A.   Right.

8       Q.   And the wealthiest district has \$1900.00?

9       A.   Wealthiest group.

10      Q.   Wealthiest group compared to the \$24.00 that the  
11      poorest group has?

12      A.   Yes.

13      Q.   And if you look at the next category on wealth, you  
14      see that it's \$104.00 that the poor district has, or  
15      the poor districts have, compared to \$513.00 that the  
16      wealthy -- second wealthiest group of districts have,  
17      correct?

18      A.   Yes.

19      Q.   And that pattern continues all the way down up until  
20      the middle, right?

21      A.   I'm sorry?

22      Q.   Well, the pattern of that -- the pattern that the  
23      wealthy districts have more to spend than the poor  
24      districts, that continues for the top half of the  
25      wealth compared to the bottom half of the wealth?

1 A. You are referring to just the column under local  
2 revenues?

3 Q. Yes, sir.

4 A. Yes.

5 Q. And in fact, if you look at the category where you  
6 indeed showed what the bottom half in wealth have to  
7 spend compared to the top half in wealth to spend,  
8 you see that it is \$143.00 per child for the 1.7-plus  
9 million children that live in the poorest half of the  
10 state compared to \$475.00 per child for the 1.1  
11 million or so children that live in the richest half  
12 of the state, correct?

13 A. Yes.

14 Q. And to a large extent, that explains why you see on  
15 the total revenue columns at the end those same large  
16 disparities between what is available to be spent on  
17 children in poor districts compared to children in  
18 rich districts, right?

19 A. Other than characterizing -- I'm not sure that I  
20 follow in all cases the analysis you have gone  
21 through, the characterization of large variations.  
22 Some of the variations are large and some of them are  
23 not.

24 Q. Okay. The numbers will speak for themselves. Now,  
25 the -- I want to go back to you -- you have your

1 calculator handy, don't you? The 180 districts that  
2 we talked about at the beginning of your testimony  
3 today that were so wealthy that they skewed the whole  
4 picture --

5 A. Yes. I did not say they were so wealthy that they  
6 skewed the whole picture but --

7 Q. They were so wealthy that you -- someone chose to  
8 leave them out of the analysis at least in part,  
9 correct?

10 A. Analyzed the data with and without them to determine  
11 if there was a difference, yes.

12 Q. What percent of the total state's districts are that  
13 anomaly?

14 A. 17 percent.

15 Q. So what we have is, we have a state system where --  
16 based upon your testimony, at least -- 17 percent of  
17 the districts that are within the state system are so  
18 wealthy that their data and statistics and everything  
19 else cloud the picture. Is that an accurate  
20 statement?

21 A. Yes. 17 percent of the districts, less than 5  
22 percent of the students.

23 Q. Now, Mr. Turner asked you some questions in response  
24 to Exhibit No. 63, which was the regression analysis  
25 showing TEAMS scores, I believe, on -- and how low

1 income and minority students did or -- those, again,  
2 are my words, but I interpreted -- well, let me let  
3 you get to 63 before I ask you any questions.

4 A. Okay.

5 Q. Are you with me?

6 A. Yes.

7 Q. And as I understand your testimony dealing with 63,  
8 the -- in your judgment at least, the greatest  
9 predictor of how a district will do on its TEAMS  
10 scores is looking at how many low income students and  
11 how many minority students it has in its student  
12 population?

13 A. Not just my judgment, but -- the set of statistics  
14 clearly indicates that.

15 Q. I take it from that you draw the conclusion that low  
16 income students and minority students need greater  
17 educational opportunities or a greater work in the  
18 educational process to come up to and be able to  
19 compete successfully with their more affluent,  
20 non-minority counterparts?

21 A. I have the basic view that the educational system  
22 should, in fact, concentrate a great deal of effort  
23 on students in general from low income families,  
24 students who do not perform well, students who are  
25 minority students who do not perform well.

1 Q. But I mean --

2 A. Just -- but this analysis does not say that. This  
3 analysis simply says what a statistical relationship  
4 is.

5 Q. That's right.

6 A. And it does not say where one should concentrate  
7 educational dollars. It does not say where one  
8 should concentrate educational resources of either a  
9 financial or non-financial type.

10 Q. Well, based upon your personal views and your  
11 knowledge of the regression analysis that's shown in  
12 63, I take it that you have the opinion that if you  
13 are going to design a system of education and you are  
14 going to stray from the -- from equal dollars going  
15 to all students to fulfill this educational system,  
16 that you would be of the opinion that more dollars  
17 ought to be spent on the minority low income students  
18 as opposed to their more wealthy non-minority  
19 counterparts as opposed to vice versa?

20 MR. O'HANLON: Objection, Your Honor. That  
21 question has as its genesis an illegal premise; that  
22 is, that we need to discriminate on the basis of  
23 race, which is proscribed specifically by Article I,  
24 Section 3, of the Texas Constitution and Article I,  
25 Section 3(a).



1 MR. GRAY: I'm merely asking him -- I  
2 believe it is abundantly clear that this system does  
3 just the opposite. That it -- for whatever reason  
4 the state has chosen to shortchange the low income  
5 minority students and give the more affluent  
6 districts which have, by the state's own exhibits,  
7 less minorities and less low income pupils in them,  
8 the greater dollars. And I'm merely asking him if he  
9 was designing the system that had to flip-flop one or  
10 the other, how would he design it.

11 MR. O'HANLON: Then actually that's an  
12 intentional mischaracterization of the evidence. The  
13 evidence is that there is a relatively random  
14 distribution of state aid in the state or relatively  
15 random distribution of concentration of minority  
16 pupils in the State of Texas. That doesn't speak to  
17 the objection. The objection is that we cannot  
18 design constitutionally a system that flows money to  
19 people or that does anything to people on account of  
20 their race. It is specifically prohibited by both  
21 the State and the Federal Constitution.

22 THE COURT: Okay. I'll sustain. We'll  
23 stop for afternoon break.

24 (Plaintiff-Intervenors' Exhibit  
25 (No. 239 marked.

(Incamera discussion off the record.)

(Proceedings recessed until March 5, 1987.)

3-87-190-CV

CAUSE NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL  
DISTRICT, ET AL

IN THE 250TH JUDICIAL

C 8353

VS.

DISTRICT COURT OF

WILLIAM KIRBY, ET AL

TRAVIS COUNTY, TEXAS

FILED  
IN SUPREME COURT  
OF TEXAS

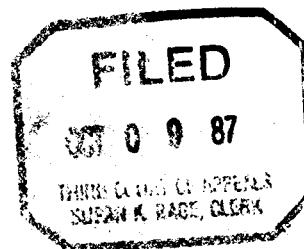
JUN 21 1989

STATEMENT OF FACTS

JOHN T. ADAMS, Clerk

By \_\_\_\_\_ Deputy

VOLUME XXIX OF XLVI



TAKEN MARCH 5, 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

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## STATEMENT OF FACTS

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BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

---

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7  
8  
9  
10  
11  
12  
13  
14  
15  
16

17 BE IT REMEMBERED that on this the 5th day of March,  
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:  
22  
23  
24  
25

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## MS. LIBBY LANCASTER

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## MS. GLORIA ZAMORA

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## MR. LEONARD VALVERDE

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## MR. JOHN SAWYER, III

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MR. HAROLD HAWKINS

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## DR. FRANK W. LUTZ

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## MR. CRAIG FOSTER

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## MR. ALAN POGUE

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## MR. ALLEN BOYD

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## DR. RICHARD KIRKPATRICK

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## MR. DAN LONG

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## MR. RUBEN ESQUIVEL

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## DR. DAN LONG

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DR. VICTORIA BERGIN

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DR. ARTHUR E. WISE

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DR. ARTHUR E. WISE

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## DR. JAMES WARD

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## MR. ALBERT CORTEZ

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1 MARCH 5, 1987

2 THE COURT: Here we go.

3 MR. LYNN MOAK

4 was recalled as a witness, and after having been reminded  
5 he was still under oath, testified as follows, to-wit:

6 CROSS EXAMINATION (RESUMED)

7 BY MR. GRAY:

8 Q. Mr. Moak, during your direct testimony in response to  
9 questions by Mr. Turner on the afternoon session of  
10 March 3rd, which was last Wednesday, do you recall  
11 that when we came back in about 2:30 he started  
12 asking you about the Connally Committee and the study  
13 the Connally Committee did and things of that sort?

14 A. Yes.

15 Q. One of the questions that he asked and you responded  
16 to was that, in fact, part of the Connally Committee  
17 report as a supplement was indeed a group of maps  
18 that were recommended by the Connally Committee as  
19 what the consolidated district maps that they were  
20 recommending would look like, correct?

21 A. Yes. They provided for local variation to those  
22 maps, but they did create that series of maps.

23 Q. Let me hand you what I have had marked as Exhibit  
24 239, which is a photocopy. You have, I know, before  
25 you the original of that exhibit or an original of

1           that exhibit and ask you if that is indeed the maps  
2           that you were referring to in response to Mr.  
3           Turner's questions?

4 | A. Yes, it is.

5 Q. Now, I note, if you will, the original has blue lines  
6 on some parts of it around existing districts and  
7 tell me what the blue lines are compared to what the  
8 black lines are.

9 A. The black lines were the school districts as they  
10 existed in the late 1960s. According to the Texas  
11 Education Agency maps, the blue lines were the  
12 proposed lines of the consolidated districts by the  
13 Governor's Committee's recommendations.

14 Q. If you will see, for example, on our copy, if we're  
15 just looking at Page 14 on the same one, on the  
16 photocopy, the blue obviously does not come through  
17 because it's a Xerox, correct?

18 A. That's correct.

19 Q. But you can tell if you look real carefully, I  
20 suppose, you can see where there is what appears to  
21 be a line drawn over some existing black lines and if  
22 the photocopy had copied in blue that would be the  
23 blue line, right?

24      A.      Yes.

25 MR. GRAY: Your Honor, I have already

1 discussed this with opposing counsel. We, at this  
2 time, would offer Exhibit 239 and would also propose  
3 to in the courtroom have one of our paralegals or  
4 people working with us in the courtroom actually take  
5 a Marks-a-lot with Mr. Moak's original and draw on  
6 the Court's copy the blue lines since they did not  
7 photocopy and we'll have it available. The original  
8 will also be available to make sure we have done so  
9 in an accurate manner. Exhibit 239 is the maps that  
10 go with the Connally Commission report and that  
11 report has already been -- Volumes 1 and 2, I  
12 believe, have both already been introduced in  
13 evidence by the state.

14 MR. O'HANLON: We have no objection either  
15 to the predicate or the procedures for modifying the  
16 exhibit. We do maintain our running objection to the  
17 issue of redistricting or redrawing the line.

18 THE COURT: So the record will understand,  
19 the Court doesn't necessarily believe that  
20 redistricting is an issue in this phase of the case  
21 to the extent that the Court is going to fashion any  
22 sort of remedy assuming liability as we've been  
23 calling it. So the Court really doesn't consider  
24 redistricting an issue in the case, but Mr. O'Hanlon  
25 may have his running exception, if he wants it.

1 MR. R. LUNA: Your Honor, for the  
2 Defendant-Intervenors, we have not been consulted by  
3 counsel and we do have several objections, one of  
4 which, of course, is relevancy. Another one is  
5 hearsay. We do object to it on that basis.

6 THE COURT: Relevancy. Okay. I'll  
7 overrule that.

8 Hearsay --

9 MR. GRAY: Your Honor, this is a state  
10 document. It is part of a document that's already  
11 been introduced into evidence without objection,  
12 Volumes 1 and 2, and this is the remainder of the  
13 document. As I understand the rules of evidence, if  
14 a part comes in, the other side is entitled to offer  
15 the document in its entirety and that's what we are  
16 doing.

17 THE COURT: I'll overrule.

18 239 will be in evidence.

19 (Plaintiff-Intervenors'  
20 Exhibit No. 239 admitted.)

21 MR. GRAY: Thank you, Mr. Moak. I have no  
22 further questions.

23 MR. KAUFFMAN: Your Honor, I have no  
24 questions.

25

## REDIRECT EXAMINATION

BY MR. THOMPSON:

Q. Mr. Moak, Mr. Gray asked you a series of questions yesterday regarding 16.001 of the Texas Education Code. Do you remember that discussion?

A. I think it was the day before yesterday, but yes.

Q. Okay. Are you also familiar with Section 16.002 of the Texas Education Code?

A. In general terms.

Q. Would you read Section 16.002, please, including the title of the section?

A. "The purpose of the Foundation School Program set forth in this chapter is to guarantee that each school district in the state has adequate resources to provide each eligible student a basic instructional program suitable to his educational needs."

Q. Do you believe the Foundation School Program that is contained within the state financing system in Chapter 16 meets that purpose statement?

A. Yes, I do.

Q. Do you believe that purpose statement and the provisions following it must be read in concert with 16.001 to give full meaning to 16.001?

A. I think the two in combination described at the

1           outset of the chapter of the Education Code relative  
2           to the Foundation Program provide a comprehensive  
3           statement as to the purpose of the Foundation  
4           Program.

5       Q.    But it might be misleading to take either one of them  
6           in isolation?

7       A.    As I say, I think the two together provide a  
8           comprehensive basis.

9       Q.    Okay. Mr. Moak, Mr. Gray also asked you a series of  
10           questions -- again, I believe it was day before  
11           yesterday -- regarding equal educational opportunity.  
12           Do you remember those discussions?

13      A.    Yes.

14      Q.    How did you understand Mr. Gray to be defining equal  
15           opportunity in those discussions?

16      A.    He seemed to be defining them in terms of equal cost  
17           or equal revenues exclusively.

18      Q.    Do you believe that that is an accurate definition of  
19           equal educational opportunity? Is it a definition  
20           that you would use?

21      A.    No, it is not.

22      Q.    Would you please define equal educational opportunity  
23           as you believe it should more properly be defined.

24      A.    I'm sure I have a comprehensive definition, but let  
25           me give it some of the aspects that I believe are

1 associated with that term.

2 I believe that it is a term that would relate  
3 to the overall provision of an educational program  
4 that provided the individual student with the  
5 opportunity for an educational program geared to  
6 needs and serve the needs of that individual student.

7 That would go beyond the -- rather than being  
8 simply a single dimensional definition, that would  
9 incorporate the entire realm of what type of  
10 education, what manner of education was being  
11 provided the student, by whom it was being provided,  
12 and what education was being provided the student.  
13 It perhaps would not go to some of the other  
14 functions that are somewhat ancillary to the revenue  
15 question when we deal with the expenditures or  
16 revenues for plant operation, plant maintenance, for  
17 general administration, the many kinds of different  
18 purposes to which school revenues are put.

19 Q. Do you believe that the Foundation School Program as  
20 it is structured in Chapter 16 largely meets this  
21 broader definition of equal educational opportunity  
22 as you understand it?

23 A. Well, the Foundation Program is a program and its  
24 ultimate purpose is designed to send money. In that  
25 sense, I don't believe the Foundation School Program



1 or any particular device that's associated with  
2 purely how to transmit dollars or how to allocate  
3 dollars is associated with equal educational  
4 opportunity.

5 A program which has factors in it such as the  
6 Foundation School Program has is probably necessary  
7 ultimately for the provision of the opportunity, but  
8 the concept goes way beyond the concept of dollars.

9 Q. Okay. So we can't just look at money when we're  
10 talking about equal education opportunity.

11 A. I do not believe so.

12 Q. Okay. Mr. Moak, I believe you have made the  
13 distinction several times in your testimony, both on  
14 direct and on cross-examination, that we should not  
15 analyze operating costs and debt service from the  
16 same point of view, is that correct?

17 A. Yes, it is.

18 Q. Would you please explain the difference as you  
19 perceive it between how we should analyze operating  
20 costs and how we should analyze debt service?

21 A. Well, operating costs have the relative advantage of  
22 being a recurring budgetary decision in which one can  
23 make -- within certain limitations make judgments on  
24 a year-to-year basis as to what one might spend or  
25 the revenue one might raise. So you can look at

1 adjustments in revenue or adjustments in the ability  
2 to raise revenue and rather directly relate these to  
3 operating revenues, general fund revenues, whatever  
4 one wants to talk as an expenditure basis from.

5 The treatment of debt service expenditures or  
6 debt service revenues and the revenues primarily used  
7 for capital facilities, to treat them on the same  
8 basis as if they were annual cost or simply an annual  
9 budgetary decision presents a rather misleading  
10 impression of how to conduct that type of analysis  
11 and what the basis of those numbers are.

12 Debt service expenditures are specifically  
13 related to the patterns and task of the issuance of  
14 debt by the school district and the conditions under  
15 which that debt was issued.

16 There is no fundamental ability by the district  
17 to vary the number within a given year. The debt  
18 that is outstanding is already there. The conditions  
19 for its payment are already in place. So to take a  
20 debt service number and try to add it to or treat it  
21 in identical fashion as an operating expenditure  
22 number is, in my judgment, inappropriate.

23 In the same fashion, the capital facilities or  
24 capital outlay numbers to the extent that they are  
25 drawn from bond revenues also reflect a series of

1 decisions not simply made during that particular  
2 year.

3 During the course of the funds that are  
4 budgeted by a district for capital facilities for a  
5 particular year, whether it be 1985-'86 or any other  
6 year, are largely, at least in their initial purpose,  
7 actually from bond proceeds which have already been  
8 sold, are already in the bank and are waiting to be  
9 expended. This is shown by the fact that almost all  
10 of the proposed 1985-'86 expenditures which are  
11 listed for capital outlay are not from bonds proposed  
12 to be sold during the year, but are from balances  
13 already in hand in the capital project fund.

14 So again, for a particular year, the treatment  
15 of that particular data in a manner similar to  
16 operating costs is inappropriate. I think an  
17 entirely different construct is needed if you're going  
18 to look at the issues of capital outlay and  
19 facilities and equity.

20 One might consider -- I do not claim that all  
21 this data exists, but one might look at such factors  
22 as what kind of standardized depreciation factors one  
23 should allow to each school district's facilities and  
24 plant, taking into account assessments of condition  
25 of the physical plant, future needs of the physical

1 plant.

2 Again, the fact that one district has a debt  
3 service of \$500.00 per pupil and another district has  
4 a debt service of \$200.00 per pupil tells me  
5 absolutely nothing. It's the same thing if a  
6 district has \$1,000.00 per pupil of capital outlay  
7 scheduled for this year and another district has no  
8 capital outlay scheduled for this year also tells me  
9 nothing.

10 You have to undertake a more complete analysis.  
11 It has to be time sensitive in the sense that it  
12 probably has to go over a number of years, and it has  
13 to be sensitive to what the conditions of the  
14 physical plant are that's on hand.

15 I have not seen an analysis in Texas that has  
16 ever undertaken what I consider to be an appropriate  
17 analysis of financing of capital outlays and debt.  
18 One can discuss, in terms of school finance formulas,  
19 formulas which might apply to the future issuance of  
20 debt, but to apply these automatically in the manner  
21 similar to operating costs to the past issuance of  
22 debt is, in my judgment, totally inappropriate.

23 Q. So if Dr. Hooker or Mr. Foster or some other witness  
24 in this case had testified that we ought to just take  
25 the average annual debt expenditure and add it on to

1           our maintenance and operations expenditures to come  
2           up with a new Foundation School Program number, would  
3           you agree with that basis of approaching the issue?

4       A.    No, I would not.

5       Q.    Do you think that can be misleading?

6       A.    Well, I'm not sure what it tells you.  I mean, I  
7           certainly don't think that in the process of  
8           designing a school finance proposal in a legislative  
9           sense that that would survive more than a few minutes  
10          as a -- it's well recognized these are separated.  
11          The Texas statutes separate them.  The tax rates are  
12          separated.  The provisions for issuance of debt are  
13          clearly laid out and extremely complex.  The whole  
14          relationship of what this money would be used for,  
15          how it could be used, what its relationship to  
16          pledges of debt would be, it would require the  
17          separation of the issue from the moment the  
18          legislative consideration began.

19                So I think it comes out as kind of a quick --  
20           it seems to me to be an attempt to provide a quick  
21           indicator or a quick concept of something that is far  
22           more -- a quick answer, if you will, to something  
23           that becomes far more complex in actual application.

24       Q.    So you're not aware of any research basis or  
25           methodology that would support simply adding that and

1           creating a beefed up Foundation Program through that  
2           process?

3           A.    No, I'm not.

4           Q.    Mr. Moak, I am handing you Plaintiffs' Exhibit 212,  
5           the accountable cost report which we discussed  
6           earlier. If you would turn to Page 40 of that  
7           material, please. I believe Mr. Gray asked you a  
8           series of questions about the information that is  
9           depicted on this page with regard to class size  
10          waivers, do you recall that discussion?

11          A.    Yes, I do.

12          Q.    First of all, what kind of research was done in the  
13          area of class size waivers during the accountable  
14          cost study?

15          A.    Information from Texas Education Agency files on  
16          applications for waivers were taken by the staff and  
17          placed in the data base and were analyzed according  
18          to a series of district characteristics and related  
19          kinds of -- compared with related information from  
20          the Public Utilities Commission to ascertain what  
21          some of the patterns of construction had been in the  
22          immediate and what some of the patterns of the  
23          waivers have been in the immediate time period of  
24          1985-'86.

25          Q.    Mr. Moak, let's talk for just a moment about what a

1 waiver is. Now, when you get a waiver, does that  
2 mean you can do anything you want to do from a  
3 district standpoint?

4 A. Well, the waiver system created under the provisions  
5 of statute under House Bill 72 was set up by the  
6 Education Agency in a fairly constrictive manner that  
7 districts were to, if they were going to operate any  
8 classes in excess of 22-to-1, in either  
9 pre-kindergarten, kindergarten or grades 1 and 2,  
10 they were to file a waiver application with TEA. I  
11 emphasize any classes in the sense that in many  
12 cases, a school district might have most classes  
13 under 22-to-1, but not have all classes under  
14 22-to-1, but they would be -- I mean, their average  
15 might even be under 22-to-1, but they would still  
16 have to file a waiver request.

17 Secondly, that the waiver request had to be  
18 accompanied by indications of a plan being in  
19 operation in the district to cure that over time and  
20 it had to be renewed on a six-months basis, once a  
21 semester, effectively. So we have had -- the waiver  
22 information given in the accountable cost report  
23 represented the fall of 1985 information.

24 There was additional information for the fall --  
25 for the spring of '86. There was additional

1 information for the fall of '86. There will be  
2 additional information. The number of the waivers is  
3 declining consistently during that time period and so  
4 this indicates certainly that there is -- and the  
5 waivers -- I'm sorry -- the waiver policy is set up  
6 as a maximum three-year waiver. So effectively, a  
7 waiver, if it's granted, actually has to be reapplied  
8 for every six months, and has a maximum life from the  
9 initial granting to the end of three years.

10 Q. So a waiver is a short duration. It's a one semester  
11 waiver to begin with and a maximum life of no more  
12 than three years?

13 A. Yes. It can be applied for on the basis of either  
14 needed classrooms or needed teachers.

15 Q. Am I correct that the school year we're in right now,  
16 the 1986-'87 school year, is the third school year  
17 from the implementation of House Bill 72?

18 A. It is, but it's the second school year from the  
19 implementation of the waivers.

20 Q. Okay. So there is one more year after this year in  
21 which districts could conceivably qualify for  
22 waivers?

23 A. Yes, it is.

24 Q. Okay. But observing the trends in the request for  
25 waivers, do you anticipate that the number will



1 continue to decline through the remainder of this  
2 year and into next year?

3 A. Yes, I would anticipate it would.

4 Q. Okay. Mr. Moak, as you look at the information  
5 that's depicted here and the other information  
6 regarding waivers that you've alluded to, what  
7 conclusions do you draw from that information?

8 A. Well, in general terms, it appears to me that the  
9 information first of all is indicative of a  
10 wide-spread degree of declines to the 22-to-1 ceiling  
11 regardless of type of district. I know of no class  
12 of districts in any of the analyses presented, for  
13 instance, in which a majority of the districts  
14 require waivers.

15 Most districts in most circumstances, there was  
16 not a waiver applied for nor a waiver granted.

17 Secondly, it indicates that the districts were  
18 able in the information contained from a survey on  
19 Page 49, the districts were able -- again, many  
20 districts were able to finance without any apparent  
21 undue burden, whatever costs were necessary to  
22 implement 22-to-1, that the additional payroll costs  
23 and the additional classrooms needed were financed in  
24 1985-'86 for most districts, based on the survey data  
25 that we received.

1           That was a pattern, again, which did not apply  
2           to any particular type of district, but rather that  
3           it simply was a pattern of compliance with state law  
4           and districts did, in fact, undertake the necessary  
5           expenditures whether they were for operations or  
6           whether they were for new or renovated classrooms in  
7           order to meet the compliance requirements.

8       Q.   Mr. Moak, the set of maps that were just introduced  
9           as Plaintiff-Intervenors' Exhibit 239 from the COPSE  
10          study, are you familiar with those maps?

11       A.   Yes, I am.

12       Q.   Are you generally familiar with the makeup of the  
13          districts that are included on the different pages of  
14          those maps?

15       A.   Let me reconsider a question and the answer to a  
16          question I just gave as to whether I was familiar  
17          with them.

18       Q.   Okay.

19       A.   The concept of the way in which I testified I'm  
20          familiar with a great deal of material, it is that  
21          I'm familiar in general terms with the fact they  
22          exist.

23       Q.   Okay.

24       A.   It's been a good 15 years since I opened the book --

25       Q.   Okay.

1 A. -- so I wouldn't claim familiarity with the maps  
2 themselves.

3 Q. So it's not a document you have reviewed recently, is  
4 that --

5 A. I glanced at it for the first time in years a few  
6 days ago.

7 Q. Okay. Think back to the time when you were familiar  
8 with those maps, perhaps around the time that they  
9 were originally prepared. I believe you originally  
10 testified that the purpose for that particular  
11 recommendation of the COPSE study was to increase  
12 efficiency with a collateral benefit being to  
13 eliminate some tax haven districts, is that correct?

14 A. Yes.

15 Q. Was there any pretense or expectation that those  
16 restructured districts would result in equal tax  
17 basis per student?

18 A. No, there was not.

19 Q. Was that something that was considered during the  
20 COPSE study?

21 A. No, it was not.

22 Q. Do you believe that at that time, that it would have  
23 been feasible to try to restructure districts and  
24 come up with equal taxes basis per student?

25 A. In terms of restructuring of normal operating

1 districts, I don't believe that it was feasible at  
2 that time and I don't believe it's feasible today.

3 Q. You just referred to normal operating districts as  
4 apparently a qualification. Would you please explain  
5 what you mean by that.

6 A. There has been discussion in the case -- yesterday, I  
7 believe I testified that it would be possible with a  
8 very small number of districts if one were simply  
9 seeking -- if one's sole function was to seek equal  
10 wealth per student or per student unit or whatever  
11 one's measure was amongst a very small number of  
12 districts, such as less than ten, that it would be  
13 possible to draw those lines. However, I'm not  
14 associated with that process with that variation of  
15 normal operating of school districts, but rather  
16 simply the geographical territories that happened to  
17 have equal revenue per pupil or equal tax base per  
18 pupil for the given year in which you draw them.

19 Q. Did I understand you that you don't believe you could  
20 accomplish that today, either?

21 A. That's correct.

22 Q. Okay. Mr. Gray asked you a series of questions  
23 regarding the issue of consolidation. Do you recall  
24 that discussion?

25 A. A few questions, yes.

1 Q. I believe he asked you if we went with countywide  
2 consolidation, would that reduce the range of  
3 disparity. I believe that your response was that it  
4 could get it down to around 150-to-1, is that  
5 correct?

6 A. Yes.

7 Q. Was there a later question along the lines of could  
8 we get the ratio down to close to 1-to-1?

9 A. Yes.

10 Q. Did I understand you correctly that you thought we  
11 might approach that with a very small number of  
12 districts?

13 A. Yes.

14 Q. Well, let me ask you, would 20 districts be a small  
15 enough number of districts?

16 A. The qualification that the study hasn't been done as  
17 a number of other things in this particular area have  
18 not been done. But the study hasn't been done, but I  
19 think 20 would be too many to try to come up with  
20 equal tax base per pupil.

21 Q. Would 15 be too many?

22 A. I tend to think 15 would probably be too many.

23 Q. Do you think ten would be too many?

24 A. Somewhere at ten or below would be what you would  
25 have to work with.

1 Q. Why don't we just have one?

2 A. Well, I don't have an answer.

3 Q. Okay. I suspected that you wouldn't.

4 Even if we could equalize tax basis through  
5 some process, are they going to stay equalized?

6 A. Not without annual redrawing of -- and then, they  
7 would always be -- I mean, much in the same way as  
8 the redistricting process. They would be out of date  
9 in the sense that they would be impossible to draw  
10 them equal for the current year. You would have to  
11 have a year or two lag time in terms of data in order  
12 to draw the districts.

13 Q. Even at best, we're working on old information, is  
14 that what I hear you saying?

15 A. Yes.

16 Q. Okay. So if we were to elevate equal tax basis to a  
17 preeminent position over other important goals in  
18 education, whatever boundaries we have we would have  
19 to redraw on an annual basis?

20 A. Well, if you use the premise that whenever  
21 information became available that you would need to  
22 redraw the boundaries, I assume you would. If you  
23 use the same premise in essence we use in  
24 redistricting when new population data becomes  
25 available, then you redistrict, quote. Since we do

1       annual studies of property value and if we continue  
2       to do annual studies of property value, I would  
3       assume that we would make adjustments on an annual  
4       basis.

5       Q.   Given some of the inherent difficulties in  
6       restructuring the world of school districts that come  
7       up with equal tax basis per student, is a function of  
8       the Foundation Program to come in on top of this  
9       disparate tax base and provide for more equalized  
10      opportunities to provide the basic program that's  
11      alluded to in 16.002?

12     A.   Yes. I believe the Foundation Program has two  
13     fundamental purposes. One fundamental purpose is the  
14     provision of a basic or an adequate educational --  
15     amount of revenue necessary for a basic or an  
16     adequate education program. And the second is to  
17     compensate for local variations in wealth.

18     Q.   Do you believe that the Foundation School Program  
19     substantially accommodates or compensates for those  
20     disparities in local wealth?

21     A.   As I believe I've testified to a very substantial  
22     degree, it does compensate for local variations in  
23     wealth.

24     Q.   Mr. Moak, I believe you had a discussion with Mr.  
25     Gray about the origin of the weights that are

1 included in the current Foundation School Program.

2 Do you recall that discussion?

3 A. Yes, I do.

4 Q. I think Mr. Gray said there wasn't a study, was  
5 there? Do you recall that statement?

6 A. I believe Mr. Gray asked me if there was a study and  
7 I indicated there was not.

8 Q. Okay. Did I understand you to be distinguishing  
9 between what you would regard as a formal research  
10 study and other information?

11 A. Yes. The weights were simply not drawn out of the  
12 air, but there was not a formal study at the time.

13 Q. So were you simply meaning to convey to Mr. Gray that  
14 there wasn't a formal research study in the classic  
15 sense of that term for the weights?

16 A. I indicated during the deposition and I indicated  
17 again yesterday that that was the case, yes.

18 Q. But these numbers were not just created out of old  
19 cloth, is that correct?

20 A. That's correct.

21 Q. There was information that was available that was  
22 used to develop the weights, is that correct?

23 A. Well, it is my understanding there was some  
24 information that was used to develop the weights.  
25 The only one that I was personally aware of was the



1 weight of 1.45 for vocational education which I  
2 developed.

3 Q. Mr. Moak, during a discussion of some of the exhibits  
4 that you have previously discussed, and I would refer  
5 particularly to Defendants' Exhibit 62, and I would  
6 particularly direct your attention to Table 2 of that  
7 exhibit. Am I correct that this is the table that  
8 simply analyzes the relationship between a dependent  
9 variable of general fund revenue and a series of  
10 independent variables with the exclusion of  
11 district's wealth per pupil above \$423,565.00?

12 A. Yes. General fund revenue per pupil.

13 Q. In his discussion of this particular exhibit with  
14 you, Mr. Gray continued to refer to that \$423,565.00  
15 figure as the number the state chose. Did you, in  
16 fact, choose a number as a cutoff? Did you  
17 specifically choose a dollar amount --

18 A. No.

19 Q. -- as the cutoff for that printout? What was the  
20 basis for that exclusion?

21 A. As indicated in some of the earlier exhibits, we had  
22 used a methodology which had been used in several  
23 other presentations before the Court to group  
24 districts according to the percentage of total  
25 students involved. We started with the bottom 5

1 percent of the districts and bottom 5 percent of the  
2 students, and then the next 30 percent, and then the  
3 second 30 percent, then the third 30 percent, and at  
4 that point, we reached a cutoff of a number of  
5 \$423,565.00 and the last group of districts and  
6 students slightly less than 5 percent fell into that  
7 top group.

8 Again, following methodology that had been  
9 followed by others, we did not choose to try to cut  
10 districts to come to absolute or even numbers, but  
11 rather took the district that -- as we built that  
12 same scenario, took the district that took the next  
13 highest step. So 423,565 was the value for that  
14 third group of 30 percent of the students. It  
15 became, therefore, the floor for the top group.

16 Q. But you backed into that number by first of all  
17 determining that it was 5 percent of the students  
18 that you were interested in for purposes of this  
19 analysis?

20 MR. RICHARDS: Objection. That's not what  
21 he testified to. He came from the bottom up.

22 A. I testified we came from the bottom up rather than  
23 the top down following the methodology used by others  
24 as well.

25 Q. Okay. Are you aware of other witnesses that have

1           used a similar methodology in this trial?

2       A.   I am under the impression that Mr. Foster's  
3           methodology used something similar. I haven't  
4           discussed with Mr. Foster precisely how he made his  
5           selection, from bottom up or top down or what, but  
6           certainly when data was presented it regarded both, I  
7           think, groups of districts in terms of 5 percent of  
8           the students and 10 percent of the students and 20  
9           percent of the students, that they were not exact  
10          groups, that they ran into the same problem of  
11          establishing a cutoff point and utilizing whatever  
12          cutoff point was established in a ranking for that  
13          purpose.

14       Q.   Mr. Moak, if you would again look at the accountable  
15           cost study, the exhibit that you have before you, if  
16           you would look on Page 23, Table 6. I believe in a  
17           discussion of this table with Mr. Gray, you noted  
18           that there were variations between the clusters of  
19           districts, and the clusters are basically reflecting  
20           groups of districts that are clustered on the basis  
21           of their wealth, is that correct?

22       A.   Wealth and tax effort.

23       Q.   Okay. Wealth and tax effort.

24       A.   Yes. I do recall that discussion.

25       Q.   Okay. But in this particular table, is it important

1 to note that again, we're not looking at all the  
2 districts in the state?

3 A. Yes, it is. I mean, this is based upon -- this table  
4 dealing with all districts as well as the next table  
5 dealing with the so-called quality districts is based  
6 upon the concept that these districts are already  
7 offering adequate programs. So in many ways, the  
8 fact that the -- since the programs were judged all  
9 to be adequate, there is some suggestion from the  
10 data that the state averages of \$2,466.00, as is  
11 contained in other committee analyses, are not  
12 necessary for the provision of an adequate  
13 educational program. In fact, it can be offered at  
14 substantially less.

15 Clusters 1 and 2 on this table provide adequate  
16 programs in the \$2,000.00 level, which is analogous  
17 to the minimum program level established by the  
18 accountable cost study as contained on Page 20, as an  
19 example.

20 So at the same time, at the top end of the  
21 scale, the average program cost is shown as \$2,773.00  
22 for the districts classified as property wealthy with  
23 low tax effort. This level is actually above the  
24 average level of the districts that were identified  
25 as quality districts.

1           But it's interesting to note the relationship  
2           between the quality districts and all districts.  
3           It's interesting also to note that the research tends  
4           to come together around the fact that actually the  
5           level required for a minimum program that meets all  
6           the adequate standards is actually much closer to the  
7           \$2,000.00 level than to any other number when you  
8           look through this.

9           Q.    So when we're looking at any of this data, we're  
10           looking at data for districts that meet all of the  
11           standards that were set through the accreditation  
12           process, they don't have any waivers, and they're  
13           getting good TEAMS scores?

14          A.    That's correct.

15          Q.    So we're looking at districts that are offering  
16           adequate programs?

17          A.    Yes.

18                   MR. KAUFFMAN:   Excuse me.   I object to the  
19           good TEAMS scores.   You mean other than the bottom 16  
20           percent?

21          BY MR. THOMPSON:

22          Q.    Mr. Moak, in this order, are we looking at districts  
23           with TEAMS scores that are not more than one standard  
24           deviation below the average?

25          A.    Below the mean, right.

1 Q. Below the mean?

2 A. Yes, we are.

3 Q. Thank you.

4 Mr. Moak, if you would compare Table 6 and  
5 Table 8 just for a moment on Pages 23 and 25. Does  
6 it surprise you that for Cluster 1 on Page 23 that  
7 the total expenditure is \$2,030.00 and that on Table  
8 8 on Page 25 for Cluster 1, which are the quality  
9 programs as defined within this report, the total  
10 expenditure per Cluster 1 is \$1,966.00?

11 A. I would confess that only recently has it come to my  
12 attention when you asked the question. I noticed it  
13 a few moments ago myself. I don't know that it  
14 surprises me.

15 The particular reason that it doesn't really  
16 surprise me or that any such relationship would not  
17 surprise me is that when we looked at a more formal  
18 statistical analysis of the relationship between  
19 TEAMS scores and other factors, that we did not find  
20 expenditures to be a significant variable at all, and  
21 since expenditures were not a significant variable in  
22 terms of the variation between -- the variation in  
23 TEAMS scores, I would not be at all surprised to find  
24 that there are districts that spend less money, lower  
25 amounts of money who have better TEAMS scores than

1 districts that spend higher amounts of money.

2       So in this particular case of these districts  
3 that we're looking at the districts on Table 8 with  
4 very high TEAMS scores and comparing them to average  
5 districts that still meet -- not average districts  
6 really, but somewhat above average districts in TEAMS  
7 scores as a result of their overall nature, I'm not  
8 surprised to find a cost relationship of the type  
9 that's associated here with Cluster 1.

10       Again, it supports the basic concept that an  
11 adequate education program is in -- that a basic  
12 educational program that meets all the standards, and  
13 in this case, even occurs in districts with high  
14 TEAMS scores, can be found at the \$2,000.00 level.

15 Q. Mr. Moak, if you would turn to Page 6 of the report  
16 for just a moment to Table 1. I believe Mr. Gray  
17 asked you a series of questions regarding computing  
18 what in his words the basic allotment should have  
19 been for the 1985-'86 school year. Do you recall  
20 that discussion?

21 A. We went through a series of calculations that started  
22 with the premise that what the basic allotment would  
23 have been if you were seeking to have come at the  
24 outcome of a total average annual cost of \$2,725.00.  
25 I recall that, yes.

1 Q. Is that the discussion that is portrayed by the chart  
2 that's on the board here?

3 A. Yes, it is.

4 Q. In that particular approach, you started with the  
5 number of 2,725 and backed down from it?

6 A. That's correct.

7 Q. Did I understand you correctly that you did not agree  
8 with that methodology?

9 A. I indicated there was a significant problem with both  
10 the use of that column for -- the original discussion  
11 took place, I believe, in the concept of filling in  
12 the blanks and the column for current law. We seemed  
13 to then go to the discussion of what would happen if  
14 you started with the 2,725 number. I had a problem  
15 with respect to treatment of the 2,725 number with  
16 regard to -- which did not produce a tremendously  
17 different result, but does produce a different result  
18 with regard to the educational improvement fund and  
19 the experienced teacher allotments and the failure to  
20 adjust the 2,725 first of all for the fact that those  
21 elements exist in the Foundation School Program.

22 Q. Okay. So this particular chart, the \$432.00  
23 shortfall of the basic allotment Mr. Gray arrived at  
24 is his number, not your number?

25 A. That's correct.



1 MR. THOMPSON: No further questions, Your  
2 Honor.

3 MR. TURNER: I have no questions.

4 RECROSS EXAMINATION

5 BY MR. R. LUNA:

6 Q. I have one or two questions for you.

7 In regard to the maps that have been handed to  
8 you from the Connally Commission study, I believe  
9 your testimony was that there was a great amount of  
10 public outcry and concern over that study and perhaps  
11 even those maps, is that right?

12 A. I think these maps specifically would focus on rather  
13 a major amount of discussion and concern, yes.

14 Q. All right. That concern came from who, if you  
15 recall? Was it legislators or parents or educators  
16 or who?

17 A. Well, if I recall, it was primarily in the context of  
18 what kind of mail we received, I guess. It was  
19 widespread involving all of those types of  
20 individuals, as well as educators, parents, taxpayers --

21 MR. GRAY: Exxon.

22 BY MR. R. LUNA:

23 Q. So you had some concern from virtually every element  
24 of the community including the educational field, is  
25 that right?

1 A. Yes.

2 I recall no direct commentary from Exxon.

3 Q. I would like to read you a part of a footnote from  
4 the United States Supreme Court's decision in the  
5 Rodriguez case, and I would like to ask you whether  
6 or not you agree or disagree with their assessment of  
7 this particular concept.

8 The court is talking about the fact on Page  
9 1307 of their decision that the jurisdictional  
10 boundaries are inevitably arbitrary and it goes on to  
11 say that it is inevitable that some localities are  
12 going to be blessed with more taxable assets than  
13 others.

14 In its Footnote 109, the court cites a  
15 number of authorities and sets out the following  
16 language: "Unless a local community, through  
17 its school board, has some control over the purse,  
18 there can be real little feeling in the community  
19 that the schools are, in fact, local schools," citing  
20 "How, Anatomy of a Revolution" dated 1971.

21 From another publication, they cite this:

22 "It is an axiom of American politics that control and  
23 power follow money," citing R. Hutchison's "State  
24 Administered Locally Shared Taxes" and dated 1931.  
25 "State administration of taxation is the first step

1           toward state control of the function supported by  
2           these taxes," end of quotation.

3           Then the court states the following:

4           "Irrespective of whether one regards such prospects  
5           as detrimental or whether he agrees that the  
6           consequence is inevitable, it certainly cannot be  
7           doubted that there is a rational basis for this  
8           concern on the part of parents, educators and  
9           legislators."

10           Would you agree or disagree with that  
11           assessment?

12       A.   Based in general terms on the experience I've had  
13           within the state, I would tend to agree with that  
14           assessment, the assessment as stated in that last  
15           summary remark, not necessarily the individual  
16           quotations, both.

17       Q.   In your opinion, is there any perfect solution to the  
18           educational finance system in Texas to totally  
19           equalize everything that is achievable as a  
20           practical matter?

21       A.   I don't think there is a perfect solution, no.

22       Q.   Based upon the studies that have been done and  
23           comparisons to other states, do you consider the  
24           approach that Texas is taking at this time with the  
25           procedure that has been laying before this Court as

1 an enlightened approach?

2 A. I'm not sure. You would have to help me with  
3 enlightened.

4 Q. Is it one that has been developed after a lot of  
5 study and input from legislators and developed with  
6 as much expertise as we can perhaps put into the  
7 process?

8 A. If you're asking me, does the system have a proper  
9 predicate and proper basis and is it designed on a  
10 basic set of principles, the answer is yes. There is  
11 some part of your last statement that suggested  
12 perhaps that it was not possible to improve the  
13 system or that the system was at its ultimate, and I  
14 would not be able to agree with that in terms of  
15 either what the board I work for position is or what  
16 my personal evaluation is.

17 Q. No one has maintained it is a perfect system, is that  
18 right?

19 A. No, not that I'm aware of.

20 MR. R. LUNA: Thank you. Pass the witness.

21 MR. GRAY: Just one question, Your Honor.

22 RECROSS EXAMINATION

23 BY MR. GRAY:

24 Q. Mr. Moak, I may have taken this down wrong or  
25 whatever, but on the waiver question, Mr. Thompson

1       asked you if you would expect the numbers of waivers  
2       to continue to decline, and I marked down your answer  
3       was yes, but I believe that was an error.

4               With the increase of class size going to grades  
5       3 and 4, is it still your testimony that you expect  
6       the numbers of waivers requested and the numbers  
7       granted to decline?

8       A.    I was referring to the waivers granted for pre-K and  
9       kindergarten and grades 1 and 2. With respect to the  
10       waiver system for grades 3 and 4, there has been no  
11       determination as to what kind of waiver system would  
12       be put in place, if any waiver system would be put in  
13       place for grades 3 and 4, so I wouldn't be in a  
14       position to make a judgment as to what its future  
15       would be.

16       Q.    Let me ask you this. Let me read a quote to you.  
17       "The final section of the draft discusses several  
18       problems that have come to light since the class size  
19       restrictions took effect. These include the required  
20       processing of large numbers of waivers and the fact  
21       that those numbers can be expected to increase  
22       sharply when the restrictions extend to grades 3 and  
23       4."

24               Would you be able to identify the author of  
25       that quote?

1 A. No, I wouldn't.

2 Q. Would it surprise you it is the commissioner of  
3 education, William Kirby, who wrote this two weeks  
4 ago?

5 A. No. This is still assuming that the waiver system  
6 that is in place for grades K, 1 and 2 is carried  
7 forward, which is the commissioner's option. I'm not  
8 aware he has made any decisions as to what type of  
9 waiver system to carry forward.

10 I acknowledge that is a letter signed by Dr.  
11 Kirby, yes.

12 Q. And it's dated February 13, 1987?

13 A. Yes.

14 Q. So as of at least two weeks ago, the commissioner of  
15 education was projecting that the number of waivers  
16 needed was going to be increasing sharply, correct?

17 A. He did project that on the assumption that the waiver  
18 system was carried forward.

19 As I say -- but to clarify my testimony, my  
20 testimony was with regard to waivers that are  
21 currently in place, and the continuing decline of  
22 those number of waivers, I would expect.

23 Q. I understand.

24 Thank you, sir.

25 MR. GRAY: I have no further questions,

1 Your Honor.

2 MR. KAUFFMAN: Nothing, Your Honor.

3 MR. O'HANLON: That's it.

4 THE COURT: Let me ask you a few things,  
5 please.

6 EXAMINATION

7 BY THE COURT:

8 Q. You indicated that it might be possible to redistrict  
9 and make the districts come out where they had an  
10 equal tax base, but that would mean that there would  
11 be only a small number of districts. You said that  
12 with some conviction. What makes you think so?

13 A. Well, essentially what the concentrations of wealth  
14 are in the state, if you look at the 20 service  
15 centers, there is one of those service centers with a  
16 property value in the range of \$86,000.00. There's  
17 another of those service centers with an average  
18 property value in the range of \$430,000.00.

19 The problems of trying to design districts that  
20 would be used for taxing or any other purpose, I  
21 think, would -- taking into account the kinds of  
22 disparities and concentration of wealth versus the  
23 disparities in concentrations of students that we  
24 have, would make it a very difficult process and  
25 would require a very small number of districts to do

1           it in. That is without judgment of formally  
2           attempting it.

3           But it's essentially that you have -- unlike  
4           political redistricting where you have essentially  
5           one variable you start with in terms of number of  
6           people, here you have two variables, the amount of  
7           property and the number of students, and that there  
8           are simply major areas in which we have very major  
9           property values without very many students. In  
10          particular in this region, it ends up -- I believe  
11          it's probably Region 18, but it ends up with a very  
12          significant amount of property value per student  
13          versus a region such as a region that I think is the  
14          Lower Valley, which ends up with \$86,000.00 per  
15          student.

16          So if you were seeking equality or seeking  
17          something very close to equality, it's hard to draw a  
18          district out of the valley to get to enough financial  
19          resources to bring you up to something like the state  
20          average of 240,000, and it's hard to draw a district  
21          out of the Midland/Odessa area and West Texas area to  
22          get to enough students to bring you down to 240,000.

23        Q.    If there was redistricting to make all the districts  
24               have the same tax base, what provisions of House Bill  
25               72 would be inapplicable to those -- let's call them



1           super districts?

2       A.   Well, a lot of that would depend upon exactly what  
3           the powers of these new districts were and how they  
4           would operate.

5       Q.   Let's say that they operate just the same way as now  
6           except they have an equalized tax base.

7       A.   They operate as school districts or --

8       Q.   No. They operate as school districts just like now,  
9           they're just larger.

10      A.   There are a number of provisions of House Bill 72  
11           which have to do with administration. But I take it  
12           your question deals with financing, essentially.

13      Q.   Yes.

14      A.   Certainly many of the provisions of the Foundation  
15           Program would have some problem. The small district  
16           provision would start out being eliminated, I guess.

17               But what I would see essentially happening in  
18           the Foundation Program is that you would now have a  
19           local fund assignment which would be charged to each  
20           one of these major districts and that you would  
21           proceed to -- that the minimum you would have to do  
22           is just make the substitution, that you have these  
23           large districts and you would calculate state aid for  
24           those large districts. That leaves -- assuming they  
25           were administrative units, then that would leave to

1           their discretion how to divide up that money within  
2           their overall jurisdiction.

3           It would certainly mean accreditation and  
4           similar kinds of functions on our part would change  
5           drastically as to how we would go about trying to  
6           perform those functions.

7           But there are a number of other issues that I'm  
8           sure would come up in that process, but essentially  
9           that a minimum level, if you were dealing with those,  
10          you can substitute any number of districts into the  
11          formulas that are set up.

12        Q.    Okay.  If all school districts had the same tax base  
13           and if the state wanted to off load onto the  
14           individual school districts the fulfillment of  
15           certain requirements, as they did in some instances  
16           in House Bill 72, would that cause the state to put  
17           in less money into the total system?

18           I guess another way of putting it is if  
19           everybody had the same tax base, would that increase  
20           the chances that the state would have to put in less  
21           money into the total system, the idea being that if  
22           everybody had the same tax base, although everybody  
23           wouldn't have the same number of students, but if  
24           everybody had the same tax base, the state would have  
25           greater liberty to off load requirements onto the

1 school districts. Would that save the state money?

2 A. In strict application of the financing formulas, if  
3 they all had the same tax base in terms of value per  
4 student, it would reduce state costs and it would  
5 reduce state costs because of the elimination of this  
6 budget balanced feature that we went through the  
7 other day, first of all. So it would be whatever  
8 that budget balanced loss is that would be  
9 eliminated, as well as the additional money that we  
10 currently spend on small districts. So both of those  
11 features would result in a reduction in state costs,  
12 if you were dealing with these relatively few  
13 districts as funding units.

14 Q. If it would result in less cost to the state, then  
15 the state could put more back in if it chose to do  
16 so, right?

17 A. That's correct.

18 The second element in terms of the total system  
19 would be what kind of tax rate would be in effect --  
20 if these large entities were in place, what kind of  
21 tax rate would be in effect and whether that total  
22 tax rate that they adopted or if it was adopted  
23 would, in fact, lead to an increase or decrease or a  
24 change in terms of the total amount of money in the  
25 system.

1           But insofar as state money and purely just the  
2           state general revenue dollars, the condition I  
3           described works out.

4       Q.    Uh-huh.

5       A.    Now, what that means to the dynamics of the system  
6           over the years and what that means to the operation  
7           of how much money total is in the system, without  
8           some further study of it, I don't really think I or  
9           anybody else can answer that question right now.

10      Q.    Okay. I suppose you know or have heard that there is  
11           a Texas constitutional provision that the state  
12           cannot have a statewide property ad valorem tax,  
13           right?

14      A.    Yes. I was very much present when it was written as  
15           part of some of the compromises that were available.

16      Q.    So the state cannot levy even a small statewide tax  
17           with the idea in mind of using that money for  
18           equalization purposes. The state just can't do that.

19      A.    That would be my understanding. There was a small  
20           tax, as a matter of fact, that was abolished at the  
21           time that provision was written. It was then being  
22           used for higher educational finance.

23      Q.    So if the state is going to equalize on account of  
24           the disparity that exists in the current boundary  
25           lines of these school districts, it has to find the

1 money from some other place, right, because it can't  
2 do it on the basis of a statewide ad valorem tax?

3 A. To whatever extent that additional equalization cost  
4 additional money, the state has to seek additional  
5 revenue or the state has to effectively cause  
6 districts to put more money into the system without  
7 making it a statewide ad valorem tax.

8 Q. In some of these districts, there is considerable  
9 wealth?

10 A. Very considerable.

11 Q. So that wealth is not taxable by anybody, except  
12 local districts?

13 A. As the system operates today, yes.

14 Q. But if you put those into larger districts, then the  
15 larger districts would reap the benefit of that and  
16 perhaps also the state by having to put less money  
17 into the equalization process, right?

18 A. It could work that way. I'm not sure that in the  
19 long-term it does work that way, but it could work  
20 that way.

21 Q. Okay. Well, what things could one do to make it work  
22 that way in a piece of legislation?

23 A. Well, when I say in the long-term, there is no doubt  
24 that if we could get to some of the kinds of tax  
25 bases that exist and effectively -- without making

1           the state ad valorem tax -- but effectively raise the  
2           amount of revenue that that property was paying, if  
3           you will, or those taxpayers were paying for public  
4           education, that overall we would tend to increase  
5           both equity of the system and the total amount of  
6           money in the system.

7       Q.   Okay. Now, you tell me why a system that hasn't done  
8           that is efficient.

9       A.   Well, I have always been -- let me start out by  
10          saying that I have been an advocate of trying to do  
11          something about those kinds of districts for quite a  
12          number of years.

13      Q.   My question was, tell me every reason you can think  
14          of why a system that has not done that is efficient.

15      A.   One of the questions is how much difference -- if  
16          you're going to deal with the issue of efficiency,  
17          the question comes back down to, in part, how much  
18          difference will it make to do this in the total  
19          system. That is -- and I don't know exactly how much  
20          difference it will make and what the consequences are  
21          of doing that to the efficiency of operating school  
22          districts or to the efficiency of operating school  
23          programs or building programs or other kinds of  
24          efficiencies that we have incurred.

25      Q.   Is the highway department efficient, you would say?

1 A. I think the highway department's record has been  
2 mixed. I think it currently runs a very efficient  
3 operation.

4 As far as the operating efficiency of our  
5 existing system, it has been my position that our  
6 funding system operates about as efficiently as it  
7 can, given that structure of districts that's out  
8 there. If you call into account that structure of  
9 districts that's out there, I don't think that  
10 anybody can argue the premise from a financial  
11 standpoint of efficiency that the system does that.

12 One of the real problems with simply changing  
13 the formulas such as was in one of the exhibits is  
14 that you still do nothing to that top end, that if  
15 you redress the formulas and all you do is bring up  
16 the bottom end a little bit and the top end still  
17 exists in full, that if disparity is the problem,  
18 that you haven't achieved anything except to move  
19 money from one set of districts to another set of  
20 districts as far as state dollars are concerned.

21 But certainly if you're able to get to the  
22 issue of organizational lines, the financial  
23 efficiency of the system could be greatly increased  
24 and I don't think that there is much dispute over  
25 that.

1 Q. Okay. Thank you.

2 If the state falls upon hard financial times  
3 and wants to put less money into education, under the  
4 current scheme of things, is that -- and suppose the  
5 Legislature does, in fact, put less money into, let's  
6 call it into House Bill 72, is that going to  
7 necessarily cause greater disparity on what is spent  
8 on students in poor districts as opposed to wealthy  
9 districts?

10 A. It will cause some increase in disparity. The  
11 question is the methodologies employed, and we have  
12 advocated, the commissioner has advocated to the  
13 State Board and the State Board has advocated to the  
14 Legislature that if they choose to do something, that  
15 they do it in the most equitable fashion.

16 Q. What is the most equitable way? If they want to  
17 reduce and save the state money, what is the most  
18 equitable --

19 A. To change the state/local sharing formula, this  
20 one-third/two-thirds, to change it from  
21 one-third/two-thirds to a system in which it would be  
22 55 percent state and 45 percent local.

23 Q. Well, nonetheless, will that cause a greater  
24 disparity?

25 A. I'm saying that would not cause a substantially



1 greater disparity. It would cause some greater  
2 disparity simply because you're sending less state  
3 money to those poor districts.

4 Q. And the wealthy districts, if they chose to do so,  
5 could tax themselves more and make up?

6 A. That's correct.

7 Q. And then if they did that, then that would widen the  
8 disparity?

9 A. That's correct.

10 Q. Okay. Well, if there were, let's call them super  
11 districts, would the super districts be more or less  
12 prone to the fluctuations of the vicissitudes of the  
13 state's financial condition?

14 A. They would probably be less prone.

15 Q. They would be more stable, economically more stable,  
16 less dependent?

17 A. They would be less dependent. One of the long-term  
18 questions would be whether they would also tend to be  
19 stagnant. When I said that there were long-term  
20 concerns I had about whether you're going to end up  
21 with stagnation as well --

22 Q. Financial stagnation?

23 A. Yes.

24 Q. Because of what? What would cause that, do you  
25 think?

1 A. The inability to mobilize on a -- the whole question.  
2 The question that would have to be addressed is, how  
3 do you mobilize support for higher levels of  
4 educational expenditures or higher level of new  
5 educational concerns or new facilities or whatever  
6 within a super district when so much of that today is  
7 so clearly evident around the concerns within a given  
8 community.

9 There might well be mechanisms where that could  
10 be done, but that again comes down to the issue of  
11 the need for some, in my view, fairly complex thought  
12 as to how this premise would work, which none of us  
13 had the opportunity to engage in it.

14 Q. What you're saying is that in smaller districts,  
15 smaller geographical, smaller student number, smaller  
16 general population numbers like we have now, it's  
17 easier for citizens that want a better system to  
18 generate interest in having a better system and,  
19 therefore, generate a willingness on the part of the  
20 public to tax themselves somewhat more locally, is  
21 that what you're saying?

22 A. Yes.

23 Q. That would be somewhat more difficult, you think, in  
24 super districts?

25 A. Yes.

1 Q. Okay. Well, other than that concern, do you have any  
2 other about super districts? I'm talking about  
3 finances.

4 A. I understand.

5 I think the other is -- I haven't given this  
6 all the thought that ultimately it should be, but  
7 that essentially that the way in which the school  
8 finance system has improved in Texas over time,  
9 especially relative to the flow of state dollars into  
10 that system, has been essentially a ratcheting effect  
11 that I believe has been discussed both somewhat by me  
12 and by others perhaps as well, but that we have had a  
13 system under which it would go for a period of time,  
14 it becomes somewhat out of balance, the state would  
15 raise revenues to offset the imbalance.

16 You go for a period of time, we would be -- if  
17 you go into imbalance, if you go into imbalance with  
18 the super districts, I'm not sure what that does to  
19 the -- I know the dynamics would change. I don't  
20 know what they would change to, but I know the  
21 dynamics would certainly change significantly in  
22 terms of how those involved and interested and  
23 supportive of public education would address the  
24 legislative process in attempting to provide a basis  
25 under which overall we tried to make educational

1 improvement. So that's a concern, not as a negative  
2 or positive, but more as a question mark for the  
3 future.

4 My third area of concern relates specifically  
5 to this whole matter of both existing and future debt  
6 structures and ability to provide school facilities  
7 and that those -- it seems to me that the dynamics of  
8 that change substantially in the super district  
9 which, again, are not details that cannot be worked  
10 out, but ones that provide some additional thought.

11 Q. If I understand what you just said, you worry about  
12 switching to super districts about what happens to  
13 the already existing obligations, is that what you --

14 A. The already existing obligations and how you issue  
15 future obligations --

16 Q. Okay.

17 A. -- which now requires specific votes. If these are  
18 super districts and they operate like districts, they  
19 now require a specific vote of the people to  
20 authorize the issuance of debt. Are we going to try  
21 to do that on a super districtwide basis or are we  
22 going to try to do that on -- just what the  
23 mechanisms would be as to how to issue debt.

24 If the original question focused on changing  
25 the Foundation Program, of course, that doesn't

1 relate to debt service, but once you get into the  
2 debt structures, I guess because of some background  
3 in that area as well as listening to bond lawyers for  
4 some period of time, I instinctively have concerns  
5 every time we get close to that issue.

6 THE COURT: Okay. I believe that's all I  
7 want to ask now.

8 Anybody want to have one more whack at Mr. Moak  
9 before I let him go?

10 MR. HALL: Your Honor, I might ask one  
11 question.

12 CROSS EXAMINATION

13 BY MR. HALL:

14 Q. Mr. Moak, it's not clear to me and maybe you can help  
15 me to understand, assume that we have super  
16 districts, maybe ten of them. How does the money get  
17 apportioned to different localities? Is there some  
18 self-evident combination between super districts and  
19 how the money gets apportioned?

20 A. No, there's not. There's not a self-evident way.  
21 That's one of the questions that would have to be  
22 resolved as to assuming that you had centralized  
23 collection of this money. Now, what happens to the  
24 money and how do you flow it back or what do you do.

25 In the context of the question I think we were

1        discussing in the last few minutes, the question has  
2        been if these super districts were actually whole  
3        districts, if they were whole operating districts, it  
4        would operate presumably in the same -- they would  
5        adopt a budget, they would allocate money in the same  
6        way that all other districts currently operate.

7        Q.    But do you see any differences between a budget  
8        adopted by a board that is very close in proximity to  
9        the populace that it serves and a large super  
10       district?

11       A.    Well, without a whole lot of answers about what kind  
12       of board it is and how the board is chosen and what  
13       kind of -- I mean, essentially it seems to me what we  
14       would move towards if we did that is that we would,  
15       in essence, deal with regional school districts.

16                If we dealt with regional school districts,  
17       just as you have in large urban districts today,  
18       there are questions of what is your governing  
19       structure above the board level or the central  
20       administration level. We would have a whole set of  
21       questions that would have to be resolved either  
22       within each regional district or by the state as to  
23       what kind of administrative practice would take  
24       place, what kind of fund allocation process, a whole  
25       lot of other factors. We would be in a different --

1           if these were to operate in that fashion, there are a  
2           vast number of questions that we would have to take  
3           under consideration if they were to operate as  
4           operating districts.

5       Q.    On this question of how much would be saved by the  
6           state if we had some super districts, I know you  
7           weren't able to give any sort of definite answer, but  
8           I'm not sure if I understood what kinds of major  
9           areas there would be savings in. Did I understand  
10          you correctly that you would save what has been  
11          called here before the loss to budget balanced  
12          districts?

13       A.   Yes.

14       Q.   Am I recalling correctly that figure was something  
15          around 91 million --

16                       MR. GRAY: You've got two different  
17          figures. It's 65,491 or somewhere in between or  
18          maybe --

19       A.   I had a number for the particular school year, but  
20          it's a number of -- I think for the purposes of the  
21          example, you're talking about a number of less than  
22          100 million, given the present Foundation Program  
23          formulas.

24       Q.   Now, is that the primary savings that we're talking  
25          about or is there something else in addition?

1 A. Well, if we were doing this as operating districts,  
2 the \$150 million or so, \$158 million that we have in  
3 the Foundation Program for small district formulas,  
4 districts of less than 1,600, if they did not exist,  
5 well then, presumably that adjustment would disappear  
6 unless it was replaced by some other adjustment.

7 I guess then there would also be a question --  
8 and that's properly raised, because I haven't thought  
9 about that before -- but it would be a question of  
10 how the whole equalization aid program would work,  
11 which is now geared to the premise that there are a  
12 large number of districts out there with a large  
13 amount of money operating and that you presumably --  
14 it would certainly cost less if the formulas weren't  
15 changed.

16 But again, I think what I'm giving evidence of  
17 is the lack of full exploration to all the elements  
18 that would take place. The system of school finance  
19 for the Foundation Program we have in operation is  
20 one that was created with certainly a premise that  
21 there are going to be a wide number of districts with  
22 a lot of variation in value and a lot of variation in  
23 types of districts, and also that a 1,063 districts  
24 was far too many districts for the state to go in and  
25 hold to certain kinds of rigorous controls in return



1           for the use of that money for a variety of different  
2           purposes which I'm involved in every day.

3           I have always said that I would love to be in a  
4           similar position in trying to do the job I do in a  
5           state like Florida with 58 school districts. If I  
6           could have a half a dozen school districts to work  
7           with, I'm sure we would be looking at a whole  
8           different set of working relationships than I do with  
9           1,000.

10           MR. HALL: I don't have any other  
11           questions.

12           MR. THOMPSON: I have one.

13           FURTHER REDIRECT EXAMINATION

14           BY MR. THOMPSON:

15           Q. Mr. Moak, are you aware of research that seems to  
16           indicate that disparities within a district between  
17           campuses are frequently as great as disparities  
18           between districts?

19           A. Well, I think I have seen data to that general  
20           effect. We've also had the opportunity -- there has  
21           been the opportunity with some of the data that we  
22           produced recently to look at some variation of that.  
23           There certainly is very often wide variation within a  
24           district, especially a large district in terms of the  
25           variation in resources utilized in individual

1 campuses, and that's been a challenge.

2 One of the challenges in school finance that we  
3 haven't spent a great deal of time on in Texas, but I  
4 think some substantial time has been spent in other  
5 locations getting down to the questions of not just  
6 state money at that point, but the value of PTA  
7 contributions and -- not just state and local money,  
8 but the value of PTA contributions and a whole role  
9 of different kinds of services between campuses.

10 Q. Does this disparity between campuses tend to increase  
11 as the number of campuses within a district  
12 increases?

13 A. I really couldn't answer that as to whether it does  
14 or not.

15 Q. Okay. If we were going to go to a system with a  
16 handful of regional super districts and equalize tax  
17 basis at those levels just for those super entities,  
18 isn't it quite likely or possible that there would  
19 still be a high degree of disparity between entities  
20 within those super districts?

21 A. I assume there would be. I'm not sure what the  
22 entity -- I mean, as we discuss it at the moment, the  
23 question becomes what the entities would be. There  
24 is a lot of presumption to be -- a lot of presumption  
25 that the entities would not be the same entities as

1        simply exists currently for school district purposes  
2        because that would not -- if the present boundaries  
3        have irrational patterns to them, it would certainly  
4        not be worthwhile to continue the present boundaries  
5        if you were operating within a super district.

6                If many of the operating efficiencies which are  
7        currently lost by the creation of small districts and  
8        the continuance of small districts and small  
9        campuses, presumably would be readdressed in the  
10       concept of a super district.

11               So if that simply becomes an operating  
12       district, well, I would assume there would be  
13       disparities that would also take into account and  
14       have to look at exactly how the allocation process of  
15       money and of other educational resources would work.

16       Q.       So we could create a handful of these super districts  
17       and conceivably equalize between them and the state  
18       could congratulate itself on a job well done and  
19       there would still be a lot of disparity at the level  
20       at which education is provided to students?

21       A.       Again, depending on the rules on which they were set  
22       up.

23       Q.       We're talking about a whole different concept of  
24       education in some respects, aren't we?

25       A.       Well, we're talking about something that it seems to

1 me to go far beyond the school finance system. We're  
2 well into the school administration, the  
3 administration of public education as how it is  
4 currently practiced and how it has been practiced for  
5 many years and moving in an entirely different  
6 direction in terms of what the style of  
7 administration would be.

8 MR. THOMPSON: No more questions.

9 MR. R. LUNA: Your Honor, these questions  
10 raised one more question here with me. I would like  
11 to ask Mr. Moak about it, because I suddenly think  
12 that I see a large flaw in what we're discussing.

13 FURTHER RECROSS EXAMINATION

14 BY MR. R. LUNA:

15 Q. Mr. Moak, if we merge all of the school districts  
16 into a super district as we're talking about for  
17 taxing purposes only --

18 A. I'm sorry. We haven't described for taxing purposes  
19 only. Go ahead. I apologize.

20 Q. Let me make a distinction here. Let's assume, as the  
21 Judge has suggested, districts continue to operate in  
22 the same manner that they are operating now, but only  
23 the tax basis of these districts are merged. Are you  
24 with me so far? We have a regional taxing authority,  
25 in effect?

1 A. Well, okay.

2 Q. Now, assuming that for a moment, and we don't  
3 actually eliminate school districts, but they  
4 continue to operate, and they all have an equalized  
5 tax base, the question then becomes if we have 300  
6 school districts in a super region, each of who needs  
7 funds, and those funds have been collected on this  
8 regional basis somehow, and each one of them then  
9 goes to the governing board for their allocation of  
10 funds, just as many departments would go to the  
11 commissioner's court requesting funds with budget.

12 Now, if we divide all of the funds on a per  
13 capita basis, that's one thing. But if on the other  
14 hand, the authority that's distributing the funds  
15 decides to distribute them on some other basis and  
16 let's say for example that all of the funds that are  
17 raised on an equalized tax basis in the Dallas region  
18 go to Dallas, we really haven't equalized anything  
19 for those districts that didn't get those funds. In  
20 other words, there has to be some mechanism in place  
21 to make sure that the distribution as well as the  
22 collections is suitable.

23 A. I mean, I would think that a distribution on a per  
24 student basis was inequitable because it didn't take  
25 into account the needs of the students, and our whole

1 system of the Foundation Program is built on the  
2 premise that students have differential needs. So I  
3 wouldn't agree that a per student basis was  
4 equitable, first of all.

5 But secondly, yes, the distribution system, if  
6 money is centrally collected and centrally disbursed,  
7 the obvious question of under what budgetary  
8 authority and through what budgetary process that is  
9 done and to what units that is done is highly  
10 appropriate as a matter for additional research and  
11 discussion, because I don't know what would happen.  
12 There is not a basis to say what would happen as I  
13 would understand what it ought to be or even that, in  
14 fact, these are only for financial purposes, if I  
15 understand the Court's question. But --

16 MR. R. LUNA: Okay. Pass the witness.

17 MR. GRAY: We have nothing further, Your  
18 Honor.

19 FURTHER EXAMINATION

20 BY THE COURT:

21 Q. If the current system allows for widely ranging tax  
22 bases in terms of wealth, and if the current system  
23 permits at least some difference in spending on the  
24 students, please tell me every benefit the state gets  
25 out of that.

1 A. Every little benefit that the state gets out of the  
2 existing system operating in that fashion?

3 Q. Yes.

4 A. When you say spending per student, you are saying in  
5 terms of the kind of revenue analysis we've been  
6 through? You're not talking about types of students,  
7 but just students in wealthy districts versus  
8 students in poor districts?

9 Q. Yes. What benefit --

10 A. As opposed to special education students versus  
11 compensatory education students?

12 Q. What benefit does the state get out of allowing a  
13 system to exist where the school districts have  
14 substantially widely varying tax bases and where the  
15 money spent per student varies according to the  
16 district? What benefit does the state get out of  
17 that kind of system?

18 A. The primary one is probably an oft-used phrase  
19 without a good definition, but the primary one  
20 probably begins with local control of the public  
21 schools and that does not justify every variation by  
22 any means, I think, either in expenditures or in tax  
23 base. But the local control issue, at least in my  
24 belief, is a real issue. That community support  
25 issue is a real issue that has an impact upon the

1           quality of education that's afforded. So that  
2           essentially would be my major justification to their --  
3           or a major problem that it would seem to me that one  
4           has to be careful not to eliminate.

5       Q.    Let me narrow my question. What benefit does the  
6           state get from allowing a system where the various  
7           school districts with the greatest property wealth do  
8           and have the opportunity to spend more on their  
9           students? What does the state get out of that?

10     A.    I don't think that what the state gets in total is  
11           whatever the sum product of its educational system  
12           is. But in terms of that particular class of  
13           districts which I consider are raising a significant  
14           amount of revenue more than balanced districts, that  
15           top 5 percent of the students, I can't point to a  
16           specific benefit that the state receives from those  
17           districts having a higher level.

18                   THE COURT: Okay. Any more questions?

19                   Thank you very much. We will be stopping.  
20           We'll start up again at five after.

21                                   (Morning break.)

22                   MR. O'HANLON: Your Honor, we have a  
23           proposal to proceed. Once again, we've kind of  
24           gotten off at least from what we had thought and  
25           where we were heading in this lawsuit. Now, we've



1 got a couple of superintendents here. We were  
2 inclined to call Dr. Kirkpatrick, who's the  
3 superintendent of the Copperas Cove Independent  
4 School District and is one of the Plaintiffs in this  
5 case to talk about local control issues and things of  
6 that nature.

7 Then we propose, and we've discussed it with  
8 co-counsel, to stand down and to take a harder look  
9 at this and some other evidence and testimony that we  
10 might need to try to widdle this down and then come  
11 back after the two week break.

12 MR. GRAY: We've told Mr. O'Hanlon that we  
13 will accommodate -- from our point of view, we will  
14 accommodate his needs and concerns as best we can.  
15 We are at the Court's pleasure, obviously, and we're  
16 prepared to do whatever is in the Court's wisdom.  
17 Mr. O'Hanlon asked us yesterday to have three of our  
18 superintendents available today if need be and we  
19 have brought them in from out of town. But we don't  
20 mind bringing them back in from out of town some  
21 other day. We're prepared to cross-examine any  
22 witness he wants to call.

23 THE COURT: Tell me what you want to do  
24 now.

25 MR. O'HANLON: Talk about some of the

1 issues that the Court brought up with respect to  
2 local control and how districts actually operate and  
3 budget internally from campus to campus and things of  
4 that nature, and then to, in essence, recess until we  
5 come back from two weeks. That will give us some  
6 time to look about where our case is going and what  
7 kind of evidence we think we need to put on with  
8 respect to this consolidation issue and things of  
9 that nature.

10 MR. GRAY: We want to be accommodating to  
11 both Mr. O'Hanlon and the Court. At the same time,  
12 we want to bring this trial to a conclusion someday  
13 sometime.

14 MR. O'HANLON: For example, there are a  
15 number of studies. Dr. Rossmiller, who we have  
16 identified as an equity expert in this case, has done  
17 a lot of work with respect to intra-districts  
18 expenditures. One of the problems we have is that  
19 his studies indicate that there is as much of a  
20 problem with expenditures within districts as there  
21 is from district to district to district. If we're  
22 talking about creating some kind of real large  
23 district, whether or not we've solved equity from a  
24 student's perspective and things of that nature.

25 Now, what we'd like the break to do is try and --

1           until it took this turn, we were not going to talk  
2           about that. But since we've taken that turn, I think  
3           it may be important to focus on some of the problems  
4           that we know are out there with respect to creating  
5           just larger entities and things of that nature. If  
6           we organize, I think we can do it in a quicker  
7           fashion than if we have to start doing it piecemeal.

8                     MR. GRAY: We just want to conclude the  
9           trial. For what it's worth, I tend to think that Mr.  
10          O'Hanlon is overreacting or maybe that may not be the  
11          right word. But as I understand the relief we have  
12          asked for, assuming we should prevail, which I know  
13          is not necessarily an accurate assumption, that all  
14          that we've asked is that the current system be  
15          declared unconstitutional and an injunction issued  
16          forthwith proceeding with that. We have not asked  
17          for nor are we advocating a specific remedy to this  
18          court at this time.

19                    MR. O'HANLON: Once again, I must claim  
20          somewhat surprise by the turn that this case has  
21          taken. With respect to whether or not we have to  
22          defend the existence of 1,000 districts versus some  
23          proposal to reduce it down to less than ten. We  
24          simply were unaware that that was going to be an  
25          issue in this case. Given that surprise, we're

1 looking for a little more time, and we're only  
2 talking about one day, maybe a day and a half to  
3 organize our thoughts on that and present the Court  
4 some evidence.

5 The kinds of problems that you had a  
6 conversation with Mr. Moak about doing that kind of  
7 thing are going to bear some thought and  
8 consideration so we can give the Court our best  
9 assessment and judgment about the problems that we  
10 may be creating by attempting to solve one. I'm not  
11 sure that two weeks is going to give us the time to  
12 provide absolute answers, but at least it's going to  
13 give us time to give some more considered judgment to  
14 it and to think about it in a little more depth than  
15 we have had overnight.

16 THE COURT: Well, you all correct me if I'm  
17 wrong, but it seems to me like that I only have to  
18 decide two things. I've got to decide the law first  
19 about the constitutional issue, particularly about  
20 fundamental right, and the other equal protection  
21 theories that the Plaintiffs have put forth. Then,  
22 depending on how I decide that, I have to decide if  
23 there are facts that would cause the finance system,  
24 as they have defined it and as I have tried to define  
25 it, is unconstitutional, assuming that I decide

1           they're correct on the law.

2           Now, as I understand what I'm going to do, I'm  
3           not going to be fashioning any remedies. That, to  
4           me, seems like that's the only place this  
5           consolidation thing would come forth.

6           So again for the record, I don't see that  
7           consolidation is an issue. I will have to confess, I  
8           may have scared Mr. O'Hanlon, but sitting here and  
9           listening to all this stuff, my imagination ranges  
10          pretty wide and far, as does my curiosity.

11          I often, not only in this trial, but in other  
12          trials, take the liberty of asking witnesses about  
13          things that I am interested in that may not  
14          necessarily be absolutely relevant to the case. I  
15          have asked cement contractors what's the best formula  
16          for waterproof cement and that doesn't have anything  
17          to do with the case. I ask because I'm interested in  
18          that.

19          Now, I've sort of been poking around about this  
20          consolidation thing because I do believe that one of  
21          the major problems is the disparity in the tax base.  
22          I suppose that there is two ways to solve that. One  
23          is redistricting, and the other is by these formulas  
24          and appropriations on an every two year basis. I  
25          think I understand that. I was just sort of poking

1           around the ashes to see if I could have some  
2           understanding or a feel about consolidation.

3           But I don't think it's an issue, as Mr.  
4           O'Hanlon seems to insist, in this phase of the case.  
5           So you can do it. I'm not going to stop you from  
6           doing what you want to do, probably. But I'm not  
7           agreeing that that is an issue in this phase of the  
8           case.

9           MR. O'HANLON: I understand.

10          THE COURT: I want you to clearly  
11          understand that.

12          MR. O'HANLON: Well, if I can make an  
13          inquiry once again. When we're talking about the  
14          school finance system, walking in and I think I was,  
15          with respect to the pleadings and whatnot, I was  
16          somewhat misled.

17          When they talk about the school finance system,  
18          they talked about the distribution of state aid  
19          pursuant to Chapter 16 of the Texas Education Code.  
20          If we are now encompassing on a broader aspect the  
21          school finance system as including local enrichment  
22          funds and things that are raised outside the scope of  
23          Chapter 16, then I'm surprised about that. We're  
24          talking about something of which the state -- I  
25          thought we were going to defend the state system, and

1 we view the state system as Chapter 16 and how it  
2 intermeshes and whether there's a basis to overcome --  
3 what we thought this trial was about was whether or  
4 not the state has done a sufficient job to overcome  
5 the disparities that exist by virtue of the local  
6 disparities in wealth among the districts. What  
7 we're going to determine is whether or not the state  
8 has done enough.

9 Now, we didn't think that we were going to try  
10 whether the state should tolerate those disparities.  
11 I think that's where we've kind of gone to. We're  
12 surprised by that. We truly are. We need to give  
13 some thought and some consideration. We need to run  
14 some computer models to see whether certain things  
15 can be done and things of that nature, rather than  
16 just shooting from the hip and trying to make  
17 judgments about what could be done with respect to  
18 that.

19 We think that the fact that it's been  
20 considered a number of times and been abandoned is  
21 some evidence that the Legislature has looked at it  
22 as recently as the last interim session.

23 THE COURT: Maybe I missed the point, but  
24 it seems to me like a major reason that this state  
25 and other states have Foundation School Programs is

1           because of the wealth disparity --

2                       MR. O'HANLON: That's correct.

3                       THE COURT: -- and you can't talk about one  
4           without talking about the other. It is the  
5           combination of revenues and expenditures that you  
6           look at. I just can't imagine how you -- and I don't  
7           believe it's true -- that you could not have  
8           understood that everybody in this case is going to be  
9           looking at the total system, because it's the total  
10          system that leads the need for the Foundation School  
11          Program or a major reason that the Foundation School  
12          Program is in place anyway. So I don't see what your  
13          problem is.

14                      MR. O'HANLON: Well, the problem is that  
15          we've tended to look at this case from an expenditure  
16          point of view. We've looked at the way the state  
17          expends funds out in the districts and how the  
18          districts spend funds. We are now going back to the  
19          revenue side in some respects by looking at district  
20          lines and we're talking in some respects how do they  
21          raise money, what can we do to enhance the revenue  
22          flow or something of that nature, which is really is  
23          a completely different way of looking at things than  
24          we were prepared to come in here and do. We were  
25          looking at expenditures, how we spend money in the



1 state to overcome this --

2 THE COURT: Correct me if I'm wrong. Is it  
3 absolutely legally irrelevant to have evidence in  
4 this stage of the case as to ways that a state might  
5 go about this different from the way it is to show  
6 irrationality of the way it is going about it? Does  
7 that make sense or not?

8 MR. GRAY: Yes, sir.

9 THE COURT: Well, that doesn't mean that  
10 that is an issue in the sense that a decision has to  
11 be made about which system we will operate under  
12 next, but it does bear some relevance as to whether  
13 or not the current system is rational if you can  
14 devise and have evidence about other systems that  
15 make either more or at least equal sense.

16 MR. HALL: Your Honor, I'm only concerned  
17 about a comment that the Court made in terms of  
18 whether or not Mr. O'Hanlon would be able to go into  
19 these matters about consolidation. It seems to me  
20 that what you have just stated concerning the  
21 relevance of that kind of information is crucial. I  
22 mean, this is an equal protection challenge. If the  
23 challenge is to the classification that includes the  
24 boundaries as well as the classifications in Chapter  
25 16, then one of the state's burdens is going to be to

1 demonstrate either that there is a compelling state  
2 interest or a rational basis for that classification.

3 So we've got to demonstrate that the  
4 consolidation is not an alternative to show that  
5 there was a rational basis for this system.

6 THE COURT: Is there anything else?

7 MR. GRAY: No, sir. With all due respect  
8 to Mr. O'Hanlon, I think much of what he said  
9 yesterday and today is flat out bologne, but that's  
10 my personal opinion. We have rehashed this now for  
11 almost two days. We want to be accommodating to him  
12 and we want to be accommodating to the Court. We  
13 want to try and conclude this lawsuit just as soon as  
14 we possibly can. I guess I have nothing else to add.

15 MR. O'HANLON: If I can respond to that  
16 briefly. It's not flat out bologne. We're talking  
17 about no less -- if the Court's questions have any  
18 inclination about what the Court is interested in,  
19 we're talking about nothing less than a radical  
20 reconstruction of the state system.

21 If we're talking about -- and I'm not trying to  
22 say that you prejudged the case or anything of that  
23 nature, but if we're talking about going from a  
24 system of 1,063 school districts to a system of ten  
25 or less, we're talking about a radical -- the whole

1       notion is a radical reconstruction of the whole  
2       system of education. It requires administrative  
3       changes, it requires structural changes, it requires  
4       a major change in the relationship that the citizens  
5       in this state -- to their individual school and  
6       administration on up the line, how we raise money,  
7       how we spend money, and to say that where we have  
8       gotten off into this kind of thing is bologne is  
9       absurd.

10               The fact that I'm concerned because this case  
11       has taken a turn and want to take a little bit of  
12       time and look at these kinds of considerations, I  
13       don't think it bologne at all.

14               We walked into this case not thinking that we  
15       were trying district lines as requiring proof with  
16       respect to a rational basis. We were looking at  
17       expenditures and how we go about accounting for and  
18       dealing with expenditures, not whether or not the  
19       lines are rational or not. If we have to go on that,  
20       we're going to have to look at 1,063 school districts  
21       individually to determine whether there was a  
22       rational basis for the creation of those lines.

23               THE COURT: Was or is.

24               Yes, sir?

25               MR. KAUFFMAN: Your Honor, if I may. We,

1 of course, would like to accommodate counsel in terms  
2 of giving him extra time and we're also caught in the  
3 constraint of wanting to finish trying the case and  
4 we hate to waste a day and a half of trial time,  
5 which is what we're looking at.

6 Again, we would leave it to the Court. We're  
7 willing to stay here and cross-examine whoever they  
8 put up as witnesses. I guess in order to accommodate  
9 Mr. O'Hanlon's concern, we would certainly not object  
10 if they go ahead and put on evidence for the next day  
11 and a half and then bring on further evidence after  
12 the two-week period regarding any new issues that  
13 they would like, if that's the concern.

14 I think what Mr. O'Hanlon is concerned about is  
15 if he goes on with his case and he has to rest  
16 tomorrow, does that mean he can never bring on  
17 evidence on these other issues, and I don't think we  
18 would object to him coming back during the case if  
19 some of the Defendant-Intervenors are putting on  
20 other evidence, so whichever way.

21 I mean, I would expect -- just to be honest  
22 among the attorneys -- if I had a need to have a day  
23 off and whatever, I would expect him to respect that  
24 and join with me. But we are also here at the  
25 Court's convenience and we're here through tomorrow

1           afternoon at 5:00 o'clock if you want us.

2                   MR. O'HANLON: My concern is that I would  
3 like to think about this for a little bit.

4                   THE COURT: Okay. Just so the record will  
5 know, I may ask questions, number one, out of  
6 personal curiosity. And secondly, it seems to me  
7 like that if you're looking at a system and you know  
8 what you've got, whether you like it or not, whether  
9 it's good or not, whether it's equitable or not,  
10 whether its imperfection should be tolerated on  
11 account of other reasons, it seems to me like it pays  
12 to at least summarily look at the possibility of  
13 other systems. It is either going to make the system  
14 you've got look good or not. That has been my major  
15 interest in exploring, through questions, some of  
16 these other ideas.

17                   Again, for the record, I don't think at this  
18 stage of the game that consolidation is an issue.  
19 Perhaps the rationality of the maintenance of the  
20 lines as they exist now would be relevant in this  
21 proceeding at this time.

22                   Okay. That's as far as I can go with that. So  
23 now what do you want to do?

24                   MR. O'HANLON: Well, in response to some of  
25 the local control issues that -- to follow up on some

1 of the stuff, I would like to call Richard  
2 Kirkpatrick, and then I'd like to adjourn for two  
3 weeks.

4 THE COURT: Okay.

5 MR. GRAY: We're easy.

6 THE COURT: Okay. So am I.

7 MR. RICHARD KIRKPATRICK

8 was called as a witness, and after having been first duly  
9 sworn, testified as follows, to-wit:

10 DIRECT EXAMINATION

11 BY MR. O'HANLON:

12 Q. Would you state your full name, please, sir?

13 A. Richard M. Kirkpatrick.

14 Q. How are you employed?

15 A. Superintendent of schools in the Copperas Cove  
16 Independent School District.

17 Q. Is your school district a Plaintiff in this case?

18 A. We are a Plaintiff-Intervenor.

19 Q. Okay. Could you detail for the Court your  
20 educational employment history, please, sir?

21 A. I was first employed as a teacher, a coach in the San  
22 Antonio Independent School District in 1965. In  
23 1970, I went into a position as a consultant for the  
24 school district to assist in one of the three large  
25 areas of that school district in integration, in a

1       role as a troubleshooter for three high schools, six  
2       junior high schools and about 22 elementary schools,  
3       served in that role for about eight months and then  
4       was made director of personnel for the San Antonio  
5       Independent School District from 1971 to '75.

6               At that time, I was selected to be in what is  
7       called the cooperative superintendency program where  
8       I pursued a doctoral degree at the University of  
9       Texas and worked full-time at the Texas Education  
10      Agency in a variety of roles.

11             In June of 1977, I began the role as  
12      superintendent of the Seguin Independent School  
13      District, served in that capacity until 1981 when I  
14      moved to the Copperas Cove Independent School  
15      District as superintendent.

16   Q.   Have you been in that capacity since?

17   A.   Yes.

18   Q.   Could you give us your educational background?

19   A.   I have a Bachelor of Arts degree from the University  
20      of Texas with a major in Russian and a minor in  
21      English. I have a Master of Education degree from  
22      Our Lady of the Lake University in San Antonio, then  
23      a Doctorate of Philosophy with a specialization in  
24      education administration from the University of  
25      Texas.

- 1 Q. Okay. I notice looking at the Bench Marks for  
2 '85-'86, that your expenditures were about \$2,500.00  
3 a student?
- 4 A. Yes.
- 5 Q. Which is well below state average?
- 6 A. Yes.
- 7 Q. I notice that your test scores, your TEAMS test  
8 scores, are at state average.
- 9 A. Approximately.
- 10 Q. Okay. What is your approximate wealth per ADA in the  
11 district?
- 12 A. \$74,000.00 per student.
- 13 Q. So you operate a poor district?
- 14 A. Yes.
- 15 Q. Okay. But you've been able to maintain test scores  
16 in your district at the state average?
- 17 A. Yes.
- 18 Q. Do you have a bunch of wealthy kids in your district?
- 19 A. Very few.
- 20 Q. Okay. Do you have a middle class, lower middle class  
21 kind of --
- 22 A. Lower middle class, upper lower class.
- 23 Q. Okay. So demographically, the income in your  
24 district is below average, would you say, for the  
25 state?



1 A. Yes.

2 Q. Okay. Dr. Kirkpatrick, what is local control? We've  
3 heard the term banning about.

4 A. Of course, the State of Texas has established and  
5 lets operate the local independent school districts.  
6 The voters in each local independent school district  
7 elect a board of trustees, seven to nine members.  
8 Those responsibilities and roles and limitations of  
9 the boards of trustees are spelled out in law very  
10 carefully.

11 That board of trustees then selects a  
12 superintendent as chief executive officer. It  
13 charges him with the responsibility of developing  
14 budgets for their consideration, bringing forward  
15 personnel recommendations for their consideration,  
16 recommending changes in improvements in the  
17 operations of the school district. The  
18 decision-making responsibility rests with the elected  
19 board of trustees.

20 Q. Okay. Geographically, how big is your district?

21 A. 67 square miles.

22 Q. When you're talking about your board of trustees, I  
23 assume they are elected from within the district?

24 A. Yes.

25 Q. By virtue of the size and the election process, I

1           assume that they know a great deal about needs and  
2           wants of the citizens within the district.

3       A.   Well, I think that knowledge grows the longer they  
4           serve on the school board. I think many times a  
5           person is elected to the school board with a  
6           relatively small amount of knowledge of the role and  
7           responsibility of a member of the board of trustees  
8           and with a small amount of knowledge about the way  
9           school boards and local school districts operate,  
10          about the pressures and the needs and so forth.

11       Q.   Okay. Is it fair to say that they get a lot of input  
12           from the citizens of the community as well as just  
13           formal training?

14       A.   Well, certainly. Citizens typically express to a  
15           board of trustees when they come to them when they're  
16           unhappy about something, when they're unhappy about  
17           the way their child is treated, when they're unhappy  
18           about the program they're in, when they're unhappy  
19           about the kind of facility their child is in. They  
20           let them know.

21       Q.   Okay. Is that kind of contact and interaction  
22           important for the operation of a school district?

23       A.   In our democratic society, I think so, yes. The more  
24           informed that any elected official is about the needs  
25           and wants of his constituents, the better armed he or

1 she is to make the decision that would maintain  
2 morale and maintain a positive image of that entity.

3 Q. Is that in any way related to the size, the  
4 accessibility and size of the district?

5 In other words, are the citizens in your  
6 opinion as likely to have that kind of close contact  
7 in a district, say, your size versus a district that  
8 would be a fifth of the geographic area of the state?

9 A. Well, I think the answer is obvious. The sheer  
10 numbers. A very small school district with an  
11 electorate of 200 voters would have greater access to  
12 the seven elected officials than if you had an  
13 electorate of two million people and still elected  
14 seven people. The 200 would have greater access to  
15 the person they elected to express their points of  
16 view than would the two million to the seven.

17 Q. Okay. Well, let's talk a little bit about the role  
18 of the board of trustees. We've heard about Chapter  
19 75 and we've talked about some of that in this case.  
20 There is a lot of independence, is there not, in the  
21 district to design its program within the parameters  
22 or to fill in the blanks in Chapter 75 to design  
23 programs to work on special problems within the  
24 community?

25 MR. GRAY: Excuse me. Are you asking that

1           generically all districts as opposed to --

2                   MR. O'HANLON: Well, your district.

3                   MR. GRAY: -- without economic concerns is  
4           what I'm asking.

5 BY MR. O'HANLON:

6 Q.   With respect to your district. You've got a lot of  
7       flexibility to --

8 A.   Well, I think that there is a much diminished  
9       flexibility on the part of local districts to design  
10      educational programs in its broad parameters as a  
11      result of Chapter 75 and as a result of some of the  
12      things in House Bill 72 where the curriculum laid out  
13      by the state has much greater specificity than  
14      anything we had ever seen before, where the kinds of  
15      courses, programs that you must offer as a minimum to  
16      be accredited are laid out in much greater  
17      specificity. The kinds of things that you can  
18      reasonably do in terms of going beyond that are  
19      somewhat limited.

20                   In terms of -- let me stop there.

21 Q.   Okay. Well, let me ask it another way. Is the way  
22      you go about educating the kids in your district the  
23      same as the way, say, the Austin Independent School  
24      District goes about educating the kids in their  
25      district?

1 A. We have some major differences. There is some  
2 autonomy in how you implement a philosophy of  
3 instruction and a philosophy of teaching and a  
4 philosophy of dealing with children, and a philosophy  
5 of testing. You still have that kind of local  
6 control. Ours probably varies considerably from most  
7 of the practices around the state.

8 Q. Could you kind of explain that for us, how that  
9 operates?

10 A. Let's take the issue of testing in a classroom to  
11 determine whether or not a student has mastered the  
12 objectives of a given unit. Traditionally teachers  
13 teach and then at some point they make a decision  
14 that now is the time to test to see whether the  
15 students have mastered the material. They administer  
16 the test, they grade it. If they get some kind of a  
17 semblance of what they wanted -- in other words, if  
18 there is a bell curve distribution of grades and  
19 that's acceptable to them, then they go on to the  
20 next unit.

21 Our manner of doing things is called various  
22 things, but mostly philosophy of mastery learning.  
23 We teach, we give a formative assessment or a  
24 practice test, whatever you want to call it, to  
25 determine two things, whether the teacher has taught

1 the material well, whether the students, as a whole,  
2 have mastered the material, and how each student has  
3 performed. It serves as diagnostic information for  
4 the teacher.

5 Rather than recording the grade and going on,  
6 if the results are good or bad, we go back and  
7 reteach the students who failed to demonstrate  
8 mastery on the test and to extend those who did into  
9 higher order thinking skills.

10 We do that for a period of maybe perhaps a  
11 couple of days and then we come back and give a  
12 summative examination. The results on that kind of  
13 examination are significantly higher than would be  
14 the result on that single shot opportunity  
15 examination that's traditional.

16 That explains to a great extent some of our  
17 test scores with respect to the money we spend.

18 Q. Okay. So I take it by your explanation that you've  
19 kind of taken with respect to how you go about  
20 educating kids a somewhat of a non-traditional  
21 approach?

22 A. Yes.

23 Q. And that your district is free to experiment with  
24 that, if you make the decision and your principals  
25 and your board of trustees?

1 A. Yes.

2 Q. Is that kind of diversity in terms of ability to  
3 experiment with different kinds of pedagogical  
4 theories and approaches to education helpful to  
5 education as a whole within the state?

6 A. Well, it's helpful in this respect, that we are able  
7 to do what the research tells us is the most optimum  
8 way to reach high degrees of student learning.

9 By the same token, the system allows for a  
10 district to do much less than that and it doesn't  
11 really foster or encourage or push districts to do  
12 what the research tells us is the appropriate way to  
13 go about bringing about higher degrees of learning.

14 Q. I assume that there is in this state a fairly healthy  
15 exchange among superintendents and educational staff  
16 of ideas and information that come as a result of  
17 various approaches to teaching and learning in the  
18 state?

19 A. Yes.

20 Q. Is that kind of exchange healthy?

21 A. Certainly.

22 Q. Okay. As the units get bigger, does that kind of  
23 ability to experiment diminish somewhat?

24 A. That particular thing does not diminish. That  
25 particular ability would not diminish. If a board of

1 trustees and an administrative staff had that same  
2 kind of philosophy, they could implement that same  
3 philosophy in any size school district.

4 Q. No, I understand that. But it's not likely -- I  
5 mean, your board of trustees wouldn't let you  
6 probably do something in one set of schools and  
7 something different in another set of schools if it  
8 was as fundamental as the basic approach to teaching.

9 A. What you're saying is, if the elected board of  
10 trustees determined that one particular style of  
11 teaching, curriculum approach, is superior to all  
12 others, would they allow differences in the schools?

13 In other words, would they allow inferior kinds  
14 of approaches to be used? I would think they would  
15 not.

16 Q. Okay. What I'm asking is, because we've got 1,063  
17 districts in the state, and we've got that many  
18 school boards and presumably that many approaches or  
19 any combination of approaches to education, that we  
20 allow a lot of experimentation in the way that we go  
21 about educating kids in the state?

22 A. We allow a lot of experimentation. We allow a lot of  
23 stagnation, also.

24 Q. Okay. But the people that experiment, the innovators --  
25 and I assume your district is one of the innovators --



1           has the opportunity to share that information with  
2           other districts and people get to look at how your  
3           district is doing?

4       A.    Sure.

5       Q.    If you can demonstrate an advancement, I assume there  
6           is a lot of people that would tend to copy the way  
7           you go about taking that approach?

8       A.    That's true.

9       Q.    Okay. Is that healthy for education, do you think,  
10          that kind of ability to innovate and experiment?

11      A.    Well, it's healthy on the one hand. The frustrations  
12          involved with the present system is that we have  
13          gotten more sophisticated where we're able to do  
14          about as much as we can with the dollars that we  
15          have.

16                When we see how much further we could go with  
17          additional dollars, it becomes awfully frustrating  
18          because you know where you need to go and you don't  
19          have the wherewithal -- you don't have the local  
20          control to go forward with it. It becomes very  
21          frustrating.

22      Q.    Okay. If we looked to making a super district -- are  
23          you in favor of consolidation? Let me ask you that  
24          to start off with. Would you like to be consolidated  
25          with every other district in Region 12?

1 A. In other words, Copperas Cove Independent School  
2 District would no longer exist and we would be the  
3 Region 12 school district? Would I like that? No.

4 Q. Why not?

5 A. Well, I think it presents a number of different kinds  
6 of problems. I think that -- frankly, I haven't  
7 studied that issue. I'm sure there would be some  
8 advantages and disadvantages.

9 I would have to say this, Mr. O'Hanlon. If  
10 such a consolidation would raise the educational  
11 opportunity for substantial numbers of kids in that  
12 district, that super district, I think it's something  
13 that our board of trustees would have to look at.  
14 Obviously, it doesn't take a genius to realize that  
15 the larger you get, the less responsive the system  
16 can be to individual constituents of that entity.

17 Q. Okay. Now, when we talk about making a super  
18 district out of Region 12, looking at this Bench  
19 Marks, Region 12 in its entirety averages \$147,000.00  
20 of market value per ADA, which still puts you all  
21 below --

22 A. Well below average.

23 Q. Okay. Now, if we made a bigger district and we  
24 combined you with Region 13, which has \$319,000.00  
25 per ADA, that would get us kind of in the ballpark of

1           an average, assuming -- and I haven't added up the  
2           ADA in the two, but assuming equal ADA between the  
3           two regions. Do you follow me so far?

4   A.    Yes.

5   Q.    Well, if we did that, Austin is in Region 13, is it  
6           not?

7   A.    Yes.

8   Q.    I assume because of their population density, they  
9           would rather likely command substantial control of  
10          the board of trustees of that --

11   A.    If there was a one man/one vote kind of election, I'm  
12          sure they would.

13   Q.    Okay. Do you think a board in Austin is going to be  
14          as well atuned to the needs and conditions within  
15          Copperas Cove as your board that is elected locally?

16   A.    No, they would not.

17   Q.    Okay. Is that an important kind of consideration to  
18          weigh into the factor?

19   A.    Yes.

20   Q.    Why?

21   A.    Well, as I previously stated, if you combine Region  
22          12 and 13 into one super school district and you  
23          continued a board of trustees with seven members,  
24          then they would be elected by a much larger  
25          constituency. Sheer limitations of time would limit

1           their ability to respond to individual constituent  
2           concerns.

3           A parent who wanted to call a member of the  
4           board of trustees and complain about the way Miss  
5           Jones' 1st grade class treated her daughter  
6           yesterday, I don't think they would be able to do  
7           that.

8           Of course, that kind of thing doesn't happen  
9           now in our larger districts to any great extent.  
10          Those constituents simply don't have access to the  
11          members of the board of trustees as they do in  
12          smaller districts.

13       Q.   Now, you said something about --

14       A.   That can be good or bad, you know.

15       Q.   I understand.

16           Now, you said something about increasing the  
17           educational opportunity, and if it did, that the  
18           board would have to consider it. If consolidation is --

19       A.   Yes.

20       Q.   From that, I take it, you can't merely say that  
21           increasing a tax base increases the educational  
22           opportunity, does it?

23       A.   I don't know, Mr. O'Hanlon. I haven't studied this  
24           issue.

25       Q.   Okay. Let's talk about the town of Copperas Cove a

1           little bit. Approximately how big is it?

2       A.   25,000.

3       Q.   Okay. Is it fair to say that the town is proud of  
4           the school district?

5       A.   Yes.

6       Q.   Okay. Is that an important consideration?

7       A.   To what?

8       Q.   To the structure of the town itself. Is a good  
9           school district an important component of the town of  
10          Copperas Cove itself?

11      A.   Are you saying, does the community as a whole  
12          consider its public schools important and take pride  
13          in the achievements of its students?

14      Q.   Uh-huh.

15      A.   Yes, it does.

16      Q.   By making a super district, don't we lose some of  
17          that?

18      A.   I don't know. You would still have schools in  
19          Copperas Cove. The individuals could still take  
20          pride in the accomplishments of its students.

21      Q.   Copperas Cove has its high school, correct?

22      A.   Yes.

23      Q.   Okay. There is a lot of pride in the high school,  
24          itself?

25      A.   Yes.

1 Q. By making a super district, I guess if we're adding  
2 12 and 13, it's Region 12 and a half's high school  
3 rather than the town's high school?

4 A. I think it would still be Copperas Cove's high  
5 school.

6 Q. You don't think you might be creating and  
7 dehumanizing it a little bit by spreading it out?

8 MR. GRAY: Are you assuming that the  
9 students in Austin and Copperas Cove would go to high  
10 school in Copperas Cove?

11 MR. O'HANLON: No, sir. I'm trying to --

12 Mr. GRAY: You're not talking about one  
13 high school in this region, obviously.

14 MR. O'HANLON: No, sir. I'm trying to  
15 explore the relationship between an independent  
16 school district in the town in which it is located  
17 and how those interplay with each other.

18 THE COURT: I understand that.

19 A. Would you restate your question?

20 Q. Yes. Do you think we might be losing something here  
21 if we create this vast regional set, that is, kind of  
22 not in control, where you can't meet your trustee  
23 down at the barbershop or something of that nature?

24 A. Okay. Let me phrase the question the way I think  
25 you're asking it.

1 Q. Okay.

2 A. Are you saying that, would the citizens of Copperas  
3 Cove still be able to exert influence over the kind  
4 of high school that they want if we were in a large  
5 super district? The answer is no, they could not.  
6 They would not be able to -- a seven member board of  
7 trustees in a very large district could not respond  
8 as well to the individual needs and desires that  
9 constituents of Copperas Cove Independent School  
10 District as their local board of trustees as they  
11 have now.

12 Q. Okay. The rules for that school, I assume, would be  
13 made, I don't know, let's say, in Austin, because  
14 that's the biggest town in this combination of  
15 regions and wouldn't be as responsive to citizen  
16 input and things of that nature, would they?

17 A. Well, you would still have a democratic process, I  
18 assume. There would still be opportunity for  
19 citizens to present their points of view. I don't  
20 think it could be as responsive to individual  
21 differences among communities and among schools as  
22 the present system is.

23 Q. Okay. Could you tell us a little bit about who your  
24 trustees are, what kind of occupations they have,  
25 what they do in your community?

1 A. The board president is a housewife who also is a  
2 former teacher, former public schoolteacher, teaches  
3 two courses at Central Texas College now.

4 The vice-president is the owner of a local Ford  
5 agency.

6 The secretary of the board, her husband and she  
7 work in a fairly large, family-owned by their family,  
8 furniture store.

9 The other board members, one works for the  
10 city, I guess you could say lower mid-management type  
11 of position. One is a home designer, not an  
12 architect, but he designs homes. One owns a very  
13 small independent automobile garage. And the other  
14 is employed at Central Texas College as a curriculum  
15 specialist.

16 Q. Okay. Do these folks by and large have substantial  
17 roots within your community?

18 A. Yes.

19 Q. Is it important that that happens?

20 A. Would you make your question more explicit?

21 Q. Do you think it's important that people that are on  
22 the school board have roots within the community and  
23 be able to assess and know the problems?

24 A. Well, I think voters tend to elect people who have  
25 those characteristics, yes.



1 Q. Why do you think that happens?

2 A. Why does one vote for a school board candidate who  
3 has roots in the community and who has demonstrated  
4 concern for the community? I think the answer is  
5 obvious.

6 Q. So is it fair to say that local control is a real  
7 concern in schools today? That communities such as  
8 yours have a real interest in maintaining control  
9 over their own school system?

10 A. Yes.

11 Q. Okay. Are the values with respect to -- my father  
12 told me never to talk about religion and politics  
13 publicly -- but religion and politics the same in  
14 your town as they would be, say, in Austin?

15 A. I'm sure there would be some similarities and some  
16 differences.

17 Q. Okay. But the size of the community does have some  
18 kind of influence on values and things of that  
19 nature, do they not?

20 A. I'm not a sociologist, but I assume there would be  
21 some differences as a result of size.

22 Q. Do you think it's important that a school district  
23 reflect and maintain and reinforce the social values  
24 of the community?

25 A. Well, I would say it depends upon what those social

1 values are. We have had social values in the past  
2 that held Hispanics and Blacks up as second-class  
3 citizens and they establish schools to exclude those  
4 people from equal educational opportunity. In that  
5 respect, local control was extremely bad.

6 Q. Okay. Would you say that that's the case in all  
7 instances or do you cite that as an example?

8 A. That's an example.

9 Q. Okay. You would admit that the values, possibly the  
10 outlook on life is a bit different in your community  
11 than it is in Austin?

12 A. I don't think it's substantially different.

13 Q. Do you think it would make any difference then if the  
14 people in Austin were deciding the values and --  
15 well, let me step back a second.

16 Values are a part of the educational process,  
17 the incocation of a value system is an important part  
18 of the educational process, is it not?

19 A. If you mean values in terms of general morality,  
20 honesty and kindness and integrity and that kind of  
21 thing, yes.

22 Q. Okay. And focus on community?

23 A. What do you mean?

24 Q. Well, does your school attempt to reflect in its  
25 educational process the values of the community of

1           Copperas Cove?

2       A.    In respect to those broad values that I specified,  
3           yes.

4       Q.    Okay.

5       A.    But I think the community of Austin also values  
6           honesty and integrity.

7       Q.    No. I understand that. But what I'm saying is that  
8           there are differences between big cities and towns  
9           and small towns in the way they assess life in  
10          general, don't you think?

11      A.    Well, I'm sure there are.

12      Q.    Okay. Do you think it's important that the  
13           educational process in some ways be able to reflect  
14           those kinds of differences in values?

15      A.    If you could define for me a little bit better what  
16           you mean by the values of those communities.

17      Q.    Well, let me go at it another way. Does a big city  
18           high school run the same way as a small town high  
19           school?

20      A.    Well, Copperas Cove High School has almost 1,600  
21           students. It's larger than some of the high schools  
22           in the Austin Independent School District. Sheer  
23           size alone brings about similarities and  
24           dissimilarities, I think.

25      Q.    Uh-huh.

1 A. Could you be a little bit more specific?

2 Q. Yes. Let's talk about program offerings. Are the  
3 program offerings going to be the same, for example,  
4 in your high school as they are in a big city high  
5 school?

6 A. It would depend more on the wealth of the school than  
7 small city versus urban in terms of the kinds of  
8 programs being offered.

9 Q. Well, you know Austin High School is down here on the  
10 river, don't you?

11 A. Yes.

12 Q. You wouldn't expect them to have a substantial  
13 vocational/agricultural program, would you?

14 A. They probably do.

15 Q. You think they do?

16 A. They probably offer vocational education.

17 Q. No. Vocational/agricultural.

18 A. They probably do.

19 Q. Okay. Do you think that the program offering is  
20 going to be the same from one place to another or  
21 should be?

22 A. I think you try to structure that to meet the needs  
23 and interests of the student body you're serving,  
24 whether it's in an urban setting or a rural setting  
25 or a small town setting.

1 Q. Okay. And that some flexibility there should be  
2 retained?

3 A. Well, certainly. If you look at a large entity such  
4 as the San Antonio Independent School District that  
5 has, I think, currently nine high schools and you  
6 would find in one particular high school that they  
7 have a large vocational/agricultural program because  
8 that particular community wants that and a lot of  
9 students have that interest.

10 You go to the other side of San Antonio and  
11 they have no vocational/agricultural program because  
12 there is no interest in it among the students.

13 Q. Okay.

14 A. But that independent school district itself was able  
15 to vary its program from school to school to meet the  
16 varying needs of the students from school to school.

17 Q. Let's talk about the role of extracurricular  
18 activities, football, basketball, baseball, band, all  
19 the other kinds of things that your school offers, as  
20 a function of the town culture. Is that important to  
21 the culture of Copperas Cove?

22 A. Absolutely.

23 MR. KAUFFMAN: Are you going to kill  
24 football, too?

25 MR. O'HANLON: No. I'm trying to promote

1           it here.

2       BY MR. O'HANLON:

3       Q.    Why is that?

4       A.    Now, I think there is a difference when you compare  
5           large urban districts with smaller communities in  
6           Texas.

7                   There has been a trend, with some exceptions,  
8           that high schools in multiple high school districts  
9           that there tends to be less support from the  
10          taxpayers, from the parents, from the citizens for  
11          those kinds of programs than you find in community  
12          schools in Texas such as Copperas Cove.

13       Q.    Okay. Is it fair to say that the extracurricular  
14           activities become an important aspect of the social  
15           fabric of the local community?

16       A.    Absolutely.

17       Q.    Is that an important thing to be retained?

18       A.    Our citizens would think it would be, yes.

19       Q.    Okay. Do you?

20       A.    Do I what?

21       Q.    Do you think it ought to be retained as part of the  
22           culture of your community?

23       A.    Yes.

24       Q.    We lose some of that once we get into multi high  
25           school districts, don't we?

- 1 A. Well, I think what happens in a community such as  
2 Austin that's different from what happens in Copperas  
3 Cove -- Copperas Cove, there is one football game on  
4 Friday night. Okay? In Austin, there may be eight  
5 or nine or ten. We will tend to, with the exception  
6 of if you have a high school that's doing  
7 particularly well in sports, we will tend to, in  
8 small towns, have a greater representation of  
9 whatever its population is at the football game than  
10 you will find in a high school in an urban setting.
- 11 Q. It comes down to -- back to what we started off with  
12 in some respects, that towns tend to identify with  
13 their school districts in all respects, do they not?
- 14 A. Yes.
- 15 Q. A school district is an important and integral part  
16 of the community, itself?
- 17 A. Very much so.
- 18 Q. That's an important thing to retain, is it not?
- 19 A. Well, I think the school district in Austin, Texas,  
20 the Austin ISD, is an integral part of the fabric of  
21 the community of Austin, also.
- 22 Q. That's right. But we don't have this same identity  
23 with the Austin Independent School District in Austin  
24 that the citizens of your community have with your  
25 school district because it is local?

1 A. I'm not able to make that fine a distinction as  
2 you're trying to make. Parents of school-age  
3 children will have that same sense of desire for  
4 quality and for being involved in the Austin ISD as  
5 they would in Copperas Cove ISD. Perhaps it's the  
6 non-parent population that would tend to be more  
7 supportive of what's happening in our school system  
8 in Copperas Cove than you might see in Austin or an  
9 urban setting.

10 Q. Uh-huh. So that local identity tends to reach out  
11 just beyond the immediate interested party and out  
12 into the whole community?

13 A. Yes.

14 Q. That's really the reason why we've got so many  
15 districts in this state, isn't it, because there are  
16 so many communities in this state that have the same  
17 kinds of feelings and identity with their school  
18 system, their local school system, that your  
19 community does?

20 A. I think that's a fair assessment, yes.

21 Q. Okay. That's an important consideration to think  
22 about when we're talking about doing away with school  
23 districts, isn't it?

24 A. I think it's something that the Legislature would  
25 have to respond to, a concern that the Legislature



1 has responded to.

2 Q. There is no real clear answer on what's right or not.  
3 We may be disrupting something.

4 A. Well, I can't answer that question. I don't have a  
5 research base or knowledge to predict what the pros  
6 and cons would be of a small amount of consolidation  
7 or large taxing jurisdictions that has been discussed  
8 here. I don't know.

9 Q. Okay. But you will concede, will you not, that we  
10 run the risk of losing that identity if we're not  
11 careful between the community and its own school  
12 district.

13 A. In what way are we running the risk? By doing what  
14 are we running the risk?

15 Q. By making super districts and taking that  
16 seven-member board of trustees that has its roots in  
17 your community and because of the size of your  
18 community to the whole saying that maybe you won't  
19 have a representative on the board of trustees of  
20 this super district because your town is not big  
21 enough.

22 A. Are you asking me if under that kind of picture,  
23 where Copperas Cove would not have an elected  
24 representative to the board of trustees of a much  
25 larger district, in my opinion, would that diminish

1           the responsiveness of the governing body to the  
2           concerns and desires and wants and morays and morals  
3           of our community? Obviously, it would diminish.

4   Q.   Conceivably the other reaction, the reaction of the  
5           community at large to the wants and needs and desires  
6           of the school district as a collective entity would  
7           diminish as well, wouldn't it, because they're not  
8           going to have the direct impact dealing with a super  
9           district that they will have by dealing --

10  A.   It could be an outcome, yes.

11  Q.   Okay. That's something that needs to be considered  
12           very carefully, doesn't it, before we jump off and do  
13           something and create --

14  A.   I think the Legislature would consider those things.

15  Q.   Okay. So when you're looking at all these things, if  
16           you're looking at just doing something to raise  
17           money, you've got to look at a whole range of issues,  
18           don't you? You've got to look at how it impacts  
19           communities?

20  A.   I think the Legislature would have to look at those  
21           things, yes.

22  Q.   Do you think that the Legislature in allowing these  
23           districts to exist has looked at these things?

24  A.   Which districts specifically are you talking about?  
25           Allowing some of the tax havens to exist, that they

1 have looked at that?

2 Q. Your district.

3 A. In allowing my district to exist?

4 Q. Yes.

5 A. I'm not --

6 MR. KAUFFMAN: Your Honor, I guess I object  
7 to the predicate of the question. Is the predicate  
8 that the Legislature has the power to allow or not  
9 allow those districts to exist?

10 MR. O'HANLON: That's the assumption that  
11 counsel for the Plaintiffs have been arguing this  
12 whole time.

13 MR. GRAY: That's true.

14 MR. KAUFFMAN: Are you agreeing?

15 MR. O'HANLON: Am I agreeing? That's not  
16 proper at this point. I'm asking the question.

17 THE COURT: Okay. Go ahead.

18 BY MR. O'HANLON:

19 Q. You don't think allowing your district to exist is  
20 arbitrary or capricious or anything of that nature,  
21 do you?

22 A. I think that if one were to examine the Copperas Cove  
23 Independent School District in terms of is it a  
24 rational entity to provide education to children,  
25 that you would have to say that a rational decision

1           had been made in that particular case.

2       Q.    Okay.  How did you get to have the boundaries that  
3           your district has?

4       A.    I really don't know.

5       Q.    Okay.  Was somewhere back in --

6       A.    At some point there, you know -- what happened, there  
7           were probably, as in most parts of our state, a lot  
8           of little one-room schoolhouses that began to  
9           consolidate and boundaries were extended probably  
10          over three or four decades, probably fairly  
11          frequently until it came to be a size that seemed to  
12          make sense.  People didn't want to go any further --

13      Q.    Okay.

14      A.    -- and the Legislature approved it.  My guess is, my  
15          understanding of it, the way the statutes work is  
16          that the Legislature approved those.

17      Q.    In your experience either with Copperas Cove or with  
18          Seguine before that, have you ever been through a  
19          detachment and annexation proceeding?

20      A.    I have not.  There was a detachment and annexation  
21          proceeding between a portion of the Lampasas ISD and  
22          Copperas Cove ISD just prior to my assuming the  
23          superintendency there.  That movement is current  
24          again among some of the homeowners in that particular  
25          area that's very close to our school district.

1 Q. Could you tell us how that works and how the  
2 interests are that generate these kinds of things and  
3 the mechanics of them a little bit?

4 A. As I understand it, the outer limits, the western  
5 most limits of our school district, extend just  
6 barely outside of the city limits of Copperas Cove.  
7 We have citizens who live two miles from our high  
8 school who live in the Lampasas Independent School  
9 District, and to attend Lampasas High, they have to  
10 be transported or drive themselves 17 or 18 miles.

11 There are a number of subdivisions, if you  
12 will, rural subdivisions that are not in the city  
13 limits where the homeowners have banded together and  
14 said, "We would like to de-annex from Lampasas and  
15 attach ourselves to Copperas Cove ISD."

16 There are requirements stipulated in law that  
17 you have to have a certain percentage of those  
18 homeowners sign a petition, then they ask the  
19 commissioner's courts of both counties for permission  
20 to do that. They ask the school district's board of  
21 trustees for permission to do that. If all parties  
22 agree, then it happens, it occurs. They are detached  
23 and annexed.

24 When a party disagrees, such as Lampasas  
25 commissioner's court or Lampasas ISD disagrees, then

1           that has to be pursued further through hearings  
2           before the commissioner.

3       Q.    Okay.  So even if there is a disagreement, there is a  
4           way that it can get done if they can prove that it's  
5           in the best interest of the kids, essentially, isn't  
6           it?

7       A.   I think the best interest of the kids and the  
8           taxpayers and there are all kinds of implications for  
9           taxing authorities as well as the education of  
10          children.

11      Q.    Okay.  That's kind of an ongoing process, isn't it?  
12           That's not unusual that you would have a new  
13           subdivision, and then the districts that are involved  
14           would seek to adjust their boundaries and --

15      A.   I understand that there are several such proceedings  
16           around the state each year.

17      Q.    Okay.  So district boundaries are a dynamic and kind  
18           of a -- somewhat of a fluid thing that's going on out  
19           there all the time?

20      A.   Yes.  I think, as I said, there are a number of such  
21           proceedings probably each year before the  
22           commissioner.  I don't have any idea how many.

23      Q.    Okay.  I assume from your early statement that your  
24           district boundary was out there somewhere at the city  
25           limits?

1 A. Close to the city limits. It's not contiguous,  
2 necessarily.

3 Q. Okay. Because the city limits change over time as  
4 well?

5 A. Yes. Right.

6 Q. Okay. I assume that was because your population was  
7 inside the city limits at the time the district was  
8 created, that was rational?

9 A. Yes.

10 Q. Okay. Then if somebody moves in and happens to set  
11 up a suburb or something like that outside your  
12 district and these kids have to go 18 miles, then  
13 we're going to have to look at that. That's a fluid  
14 kind of process?

15 A. Well, I said in this particular instance, that's what  
16 has happened. The homeowners there, some seven or  
17 eight years ago, went through the process of trying  
18 to detach and annex themselves to us.

19 Q. Okay. So that's an ongoing process that happens in  
20 districts all the time, they attempt to adjust  
21 themselves to meet the exigencies of current  
22 conditions?

23 A. As I understand, there are several such proceedings  
24 in the state almost every year.

25 Q. Okay. And the state law allows that.

1 A. It establishes procedures that must be followed in  
2 order for that to happen.

3 Q. Okay.

4 THE COURT: Why don't we stop there for  
5 lunch. Why don't you all come back at 2:00 o'clock.

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(Lunch recess.)

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## AFTERNOON SESSION

THE COURT: Here we go.

## DIRECT EXAMINATION (RESUMED)

BY MR. O'HANLON:

Q. Dr. Kirkpatrick, before lunch we were talking about detachment annexation and various methodologies of changing districts. Is it fair to sum up the system that we have under current law in Texas that it's allowing a great deal of flexibility to districts in adjusting their district boundaries to meet current conditions?

A. I couldn't say there is a great deal of flexibility. As I said, there are statutes that make detachment and annexation possible, but there are some rigorous expectations that have to be met.

Q. Okay. And you have to go to the folks in both districts?

A. You have to go to the boards of trustees in both districts and to the commissioners courts.

Q. Okay. Now, does House Bill -- we were talking about small districts. Does House Bill 72, as it was passed, contain provisions that help provide additional support for small districts?

A. For districts under 1600 ADA.

Q. Okay. Did you support those provisions?

1 A. Yes, I supported them very strongly.

2 Q. Why?

3 A. The group that I worked with that's called the SCOPE  
4 Funding Group, for lack of a better term, Select  
5 Committee on Public Education, one of the early  
6 decisions that we made was how to deal with small  
7 schools. That issue was there. We determined that  
8 it was not appropriate for us to come forward with  
9 recommendations that would starve out small school  
10 districts, that that was a decision that the  
11 Legislature should make if they were going to force  
12 consolidation based upon other criteria, rather than  
13 us coming in and recommending a program that would  
14 not provide adequate opportunity for quality  
15 education in small schools.

16 Q. So that was something that was discussed and debated  
17 on how to deal with small schools, and a decision was  
18 made among you all's group to continue them as they  
19 were and save for some other time the issue of what  
20 to do about this small district?

21 A. Let me expand upon that. We had a body of research  
22 that indicated that we should try to fund schools on  
23 the basis on a campus size. As I recall, what was  
24 contained in Senate Bill 4, which was the bill that  
25 incorporated our recommendations, had a provision for

1 funding for small schools based on school size for  
2 the first couple of years and then recommended a  
3 study that would then flow funds based upon campus  
4 size.

5 Q. When you say school size --

6 A. School district size.

7 Q. Okay.

8 A. That part of it was not preserved in the final House  
9 Bill 72, as I recall.

10 Q. Okay. When you say we, were you speaking -- when you  
11 were dealing in the SCOPE Funding Group, as you call  
12 it, were you there as a representative of the Equity  
13 Center?

14 A. Yes, I was.

15 Q. So you were representing not only your own interests  
16 or those of your district but also a broader spectrum  
17 of interests that were part of this coalition?

18 A. Yes. I believe there were 160 school districts who  
19 were dues paying members of the Equity Center at that  
20 time.

21 Q. Okay. So when you say -- did the Equity Center, as  
22 far as you know, support the retention at least for  
23 House Bill 72 of special allotments to preserve small  
24 schools, small school districts?

25 A. Let me reiterate that our decision was that if the

1           Legislature wanted to force consolidation, they  
2           needed to deal with that issue in and of itself, and  
3           that we didn't want to be a part of underfunding the  
4           small school districts that existed and denying  
5           opportunity for an education to the thousands of  
6           children that live in those small districts. That  
7           was not our purpose.

8   Q.    Okay. So at least in your mind at that time, you  
9           drew a distinction between funding the formulas for  
10          distribution of state aid as a separate issue from  
11          that of consolidation?

12   A.    Yes.

13   Q.    Okay. Do you feel that way at this time, that  
14          funding and how we distribute state aid is, in fact,  
15          a different issue than whether or not we retain small  
16          districts in the form that they exist at this time?

17   A.    As long as the Legislature allows very small school  
18          districts to exist, then I think it is very important  
19          that the state's funding mechanism provides in  
20          combination with local tax base sufficient dollars to  
21          enable those school districts to provide equal  
22          educational opportunities for the children.

23   Q.    Okay. So in some respects it is a different issue;  
24          that is, that if we are going to look at  
25          consolidation, we need to look at that independently

1 in some respects of funding and how we go about it?

2 A. I'm not going to say how the Legislature should look  
3 at it. I'm just saying that if those taxing entities  
4 exist, if they are allowed to exist by the  
5 Legislature, then being an educator, I want to try to  
6 assure whatever way I can that there are sufficient  
7 dollars for them to operate appropriate educational  
8 programs for the children.

9 Q. Okay. And at least your organization's position was  
10 that we shouldn't use the financing provision as a  
11 method to force consolidation because that may create  
12 some harm to the actual students out there?

13 A. We did not want to do anything to harm the children.  
14 We made that conscious decision.

15 Q. Okay. Now, we've heard some talk in this case about  
16 regional taxing authorities. Have you ever discussed  
17 regional taxing authorities with the Legislature?

18 A. No, I haven't.

19 Q. Was that a notion in your mind when this lawsuit  
20 started?

21 A. No, it wasn't.

22 Q. Okay. When did that notion come up and how?

23 A. During Dr. Hooker's testimony was the first I heard  
24 of it.

25 Q. Okay. Do you have any notion about how those might

1 work?

2 A. No. There are all kinds of questions associated with  
3 that that I don't have any answers to.

4 Q. Okay. For example, would you think that it would be  
5 a good idea to give them -- well, let me ask you a  
6 basic question first. Do you think it's a good  
7 public policy decision to separate the taxing  
8 authority from the mechanism that distributes the  
9 fund?

10 A. I can't answer that question.

11 Q. Why not?

12 A. I don't have enough information about how the system  
13 would work.

14 Q. Okay. Let me ask you this. Is -- would you like a  
15 situation in which you, as superintendent, with  
16 programmatic control, and, I guess, a board of  
17 trustees over you had to go to the commissioner's  
18 court in your county for its funding, which did not  
19 have programmatic control?

20 A. Would I like that? No.

21 Q. Why not?

22 A. It's a laborious, long task as it is to -- for the  
23 lay people who serve on the board to come to an  
24 understanding of the -- all of the various needs and  
25 requirements for funding for the local school

1           district. To go through that process and have a  
2           board of trustees convinced that X amount of dollars  
3           needed for the program and then to have to go forward  
4           to another entity, another controlling group, to  
5           convince them of the need for that X number of  
6           dollars would just be double the work.

7   Q.    So separation of programmatic control of a district  
8           and the fiscal authority, the taxing ability, causes  
9           some problems inherent in and of itself?

10   A.   I would assume it would.

11   Q.    Okay. And truth is, those processes are intermeshed  
12           with each other in the way school districts operate  
13           right now, are they not?

14   A.   Which processes?

15   Q.    The process of defining the program that the school  
16           district intends to deliver to the children within  
17           the district and the ability to raise the funds --  
18           how much money it is going to cost and whether or not  
19           to raise the tax or to cut the program, how you  
20           balance those interests?

21   A.   Those are interwoven under the present system.

22   Q.    Okay. There is an inherent tension between those two  
23           interests, is there not?

24   A.   Decidedly so.

25   Q.    Okay. And it's --

1 A. Particularly in poor school districts where the  
2 resources don't stretch far enough to meet the needs.

3 Q. Okay. So the balancing of those competing interests  
4 is the thing that the board of trustees sets about  
5 doing when it goes through the hearing process and  
6 sets its budget and makes determinations on how to  
7 proceed with the educational task?

8 A. Yes.

9 Q. So do you have any notions about how a regional  
10 taxing authority might work?

11 A. No.

12 Q. If that regional taxing authority retains total  
13 control over the ability to tax, we have, in effect,  
14 consolidated in many respects all the districts that  
15 operate under that entity, don't we -- haven't we?

16 A. I'm not sure.

17 Q. We have given total fiscal control to that regional  
18 taxing authority?

19 A. You have given -- if they have the sole right to  
20 raise revenue and flow revenue to independent school  
21 districts and the independent school districts retain  
22 their -- the other aspects of governance, in other  
23 words, making decisions about how the money will be  
24 spent within the -- in meeting accreditation  
25 standards and other statutory obligations, and still



1           retain the right to determine who is going to do  
2           what, in other words, personnel decisions, then -- I  
3           don't know. I don't know what implications that that  
4           might have.

5       Q.    Okay. But you have lost in some respects that  
6           interplay, haven't you, in that if we have a regional  
7           taxing authority, I assume they are going to go out  
8           and set a budget for all the districts --

9       A.    Well, I'm not sure they would set a budget for all  
10          the districts.

11       Q.    Well, set a gross assignment --

12       A.    A gross assignment of funds.

13       Q.    And then the districts are going to have to make do  
14          with that gross assignment?

15       A.    And for some districts, that making do might be  
16          enhanced or diminished depending upon the current  
17          wealth situation of that district.

18       Q.    Okay. So unclear the results of doing that if --

19       A.    Unclear.

20       Q.    Okay. Now, let's assume that the regional taxing  
21          authority is a taxing entity but allows the  
22          independent school districts their own ability for  
23          local enrichment beyond that.

24       A.    Okay.

25       Q.    That recreates -- in other words, a regional taxing

1 authority is another funding source, is it not?

2 A. Under that scenario, yes.

3 Q. And the districts are free to go back to that  
4 interplay with the board about if and how much to  
5 provide for local enrichment from their own property  
6 tax base?

7 A. Well, you are describing a situation where that could  
8 work, yes.

9 Q. Okay. The problem there, is it not, is if we do  
10 that, we are back to the same equity problem in many  
11 respects in that the local independent school  
12 district's ability to enrich is still going to be  
13 based upon its own local tax base?

14 A. Well, I think that a way could be devised where the  
15 state could participate in that local enrichment to  
16 an extent. You could have a guaranteed tax base  
17 yield system, where the poorest district in a  
18 regional taxing jurisdiction would be allowed to --  
19 let's say, determined it wanted to tax itself at ten  
20 cents above what is set by the regional taxing  
21 authority, and a wealthy district -- wealthy  
22 independent district within that taxing jurisdiction  
23 also wanted to enrich at ten cents on the tax rate,  
24 obviously the wealthy district could raise more money  
25 than the poor district with that same ten-cent tax

1 rate.

2           Some way or another I believe the state could  
3 come in and support that where that ten cents in the  
4 poor district -- that poor district were willing to  
5 tax itself at ten cents, then the state could insure  
6 that that would generate through that local source  
7 and state enhancement the same amount of dollars of  
8 the wealthy district. Now, I don't know for sure how  
9 that will work, but it seems to me mechanisms like  
10 that could be established.

11 Q. How is the state going to retain fiscal control over  
12 that demand?

13 A. I don't know the answer to that.

14 Q. Okay.

15           MR. O'HANLON: May I approach the witness,  
16 Your Honor?

17           THE COURT: Yes, sir.

18 BY MR. O'HANLON:

19 Q. I'm going to make you -- Dr. Kirkpatrick, I'm going  
20 to make you superintendent of the Kingsville  
21 Independent School District for a day.

22 A. Do I get a salary increase?

23 Q. Yes, sir, for a day.

24           MR. O'HANLON: Do we have those maps?

25           MR. GRAY: I think Mr. Luna has them.

1 MR. R. LUNA: Which maps?

2 MR. GRAY: The existing maps. The existing  
3 districts.

4 THE COURT: Here we go. Kingsville  
5 Independent School District?

6 MR. O'HANLON: Yes, sir.

7 BY MR. O'HANLON:

8 Q. We just made you superintendent of the Kingsville  
9 Independent School District.

10 A. Okay.

11 Q. What I want to do is walk you through 18 -- Chapter  
12 18 of the Education Code and see whether relief might  
13 be had for the Kingsville Independent School District  
14 under the current laws as they exist in this state.

15 A. Okay.

16 Q. Are you familiar with Chapter 18?

17 A. Generally.

18 Q. Okay. Now, the difference in Chapter 18, as I  
19 understand it, is that when a vote is taken, when it  
20 is put to the citizens, it's voted on a countywide  
21 basis as opposed to district-by-district.

22 A. Vote to do what, Mr. O'Hanlon?

23 Q. To create the county unit or the equalization  
24 district.

25 A. I'll take your word for it.

1 Q. Okay. Now, that's different from consolidation or  
2 detachment or anything of that nature in which you  
3 have to have majority votes in both districts?

4 A. You have to have majority votes of the board of  
5 trustees and commissioner's court.

6 Q. That's right. So that while these districts -- let  
7 me look over your shoulder here. While the -- while  
8 some of these small districts, the Santa Gertrudis,  
9 the Ricardo, the Riviera districts might be able to  
10 resist consolidation, assuming that Kingsville is --  
11 dominates the populations of the county, which I  
12 expect it does because of the relative size of the  
13 district, they wouldn't be able to resist a creation  
14 of a countywide equalization district?

15 A. If the law and, I think, the general provision is  
16 that by a majority vote this could happen, then  
17 obviously if Kingsville has the majority voters  
18 there, they could make that decision on their own.

19 Q. That's correct. And impose this on a countywide  
20 basis against these other -- if you want to call them  
21 tax-haven districts -- against their will?

22 A. That's the way I understand it.

23 Q. Okay. So that's an additional funding source that is  
24 available to some districts that would be available  
25 to Kingsville?

1 A. Apparently it would be available to Kingsville.

2 Q. Okay. I have just made you superintendent. Would  
3 you consider that as a funding source?

4 A. Yes.

5 Q. Do you think as a superintendent that you might be  
6 able to reach out into the county and convince your  
7 people, at least the people within your district, to  
8 vote for that kind of thing if it is going to, A, put  
9 more money in your district for the expenditure of  
10 their children and, B, conceivably reduce their  
11 taxes?

12 A. Of course, that would, you know, would have to be at  
13 the will of the elected board of trustees of  
14 Kingsville ISD directing me to do that.

15 Q. That's right. But, I mean, you don't have to go for  
16 this creation under Chapter 18 to the Santa Gertrudis  
17 Board of Trustees?

18 A. That's the way I understand it.

19 Q. Okay. Now, those regional districts are authorized,  
20 are they not, to tax up to \$1.00 per \$100.00  
21 valuation?

22 A. Well, \$1.50.

23 Q. I believe these are -- these are a dollar. I know it  
24 is in there somewhere.

25 A. Fifty cents in those counties with a total population

1 of 100,000 or more and \$1.00 in those counties with  
2 total population of fewer than 100,000.

3 Q. I would suspect that Kleberg County has less than  
4 100,000 people?

5 A. I would guess.

6 Q. Okay. So there could be a tax through this authority  
7 set up under Chapter 18 of up to a dollar per \$100.00  
8 valuation that would be available as an additional  
9 funding resource for the Kingsville Independent  
10 School District?

11 A. I think that's what it says.

12 Q. Okay. And then that money is distributed back to all  
13 the school districts in the county, is it not, on a  
14 per capita basis?

15 A. It says, "The funds shall be distributed to the  
16 common and independent school districts of the county  
17 on the basis of the average daily attendance for the  
18 prior year as approved by the State Department of  
19 Education."

20 Q. Okay. So what happens is that by the use of this  
21 mechanism that's available in current law, the people  
22 in Kingsville and a lot of other counties that have  
23 this particular situation could reach out and take --  
24 receive more money from the outlying districts and  
25 they turn around and flow back, because of the

1 differential in their average daily attendance and  
2 wealth differential?

3 A. The law seems to make that provision, yes.

4 Q. Okay. Does that seem like a reasonable option, as a  
5 superintendent, that you might want to pursue?

6 A. I have no idea what the politics of that might be,  
7 what the attitude of the people in Kingsville would  
8 be toward that. I have an idea what the attitude of  
9 the people in Santa Gertrudis would be and the people  
10 that own all the wealth in Santa Gertrudis and might  
11 find a contract on yourself.

12 Q. But the wealth doesn't control the ballot box, does  
13 it? If you can get out 51 percent of the voters or  
14 50.1 percent of the voters to approve that, it could  
15 be done, couldn't it?

16 A. That's my understanding.

17 Q. Okay.

18 MR. RICHARDS: That was two questions, I  
19 think, Mr. O'Hanlon.

20 BY MR. O'HANLON:

21 Q. Either one of them could be done. Either one of  
22 those two questions. You could get the votes,  
23 conceivably?

24 MR. O'HANLON: We have got -- strike that.  
25 Pass the witness.



## CROSS EXAMINATION

BY MR. R. LUNA:

Q. Dr. Kirkpatrick, I would like to ask you a few questions, if I could. I guess I'm probably one of the lawyers who works with school districts on a daily basis a lot and have a chance to see the types of decisions that have to be made by superintendents and school boards locally, and how they vary sometimes from district to district, depending upon the way the community may view certain things, and that community view is reflected through the actions the board takes and through the superintendent as their advisor.

If I could, I've just been making some lists of some things here, and let me ask you about some of these items to see if you find that these are true in your district, and if not, what similar decisions you might have had to face in the last -- let's say, in the last year or two in your district.

A. Okay.

Q. For example, do you find that the selection of what textbooks you are going to use in your school is sometimes an issue?

A. Well, yes. Every year by law, the Textbook Committee is appointed by the board of trustees and by law, the

1       superintendent is chairman of that committee, and you  
2       have a list -- let's say, you have Spanish 1 up for  
3       adoption, then there are books on the list approved  
4       by the State Board of Education from which you may  
5       make a selection. So you go through a  
6       decision-making process on that and bring forward  
7       then to the board of trustees your recommendation on  
8       the text or the texts that you wish to adopt.

9       Q. Now, I've never talked to you before today, have I?

10      A. That is true.

11      Q. But let me ask you, on your Textbook Committee, is  
12      that a committee of teachers or people in your  
13      district or is that a committee of citizens?

14      A. A committee of teachers. Usually to determine our  
15      selection for Spanish 1, using that example, we'll  
16      have Spanish teachers that will make that decision.

17      Q. Do some school districts include citizen input on  
18      their committees?

19      A. I'm not sure they do on the committees themselves.  
20      You typically make provision for citizens to inspect  
21      the textbooks and to have input in that process in  
22      some manner if they so desire.

23      Q. Do you find that the selection of textbooks varies  
24      from school district to district?

25      A. Yes.

1 Q. Let me ask you about whether or not you have seen  
2 districts have debates -- and by districts, I mean  
3 different districts -- as to whether or not they  
4 should emphasize academic programs over vocational  
5 programs?

6 A. Within a given school district?

7 Q. Yes.

8 A. Yes, there have been those kinds of debates.

9 Q. And do you find that some districts may decide to  
10 emphasize academics for those students who are going  
11 on to college whereas other districts, for example,  
12 like Socorro, the superintendent which has already  
13 testified, who may put more emphasis than the state  
14 would like on vocational programs?

15 A. Certainly. I think in each instance the local board  
16 of trustees and administrative staff tries to respond  
17 to the -- at least the perceived needs of the student  
18 bodies they serve and try to structure programs that  
19 meet those needs. Some communities that may be --  
20 may have more vocational programs, a greater variety  
21 in vocational programs than others, obviously.

22 Q. That's a decision each district has to decide, how it  
23 intends to address it?

24 A. Under the present system, that's true.

25 Q. Have you ever had an occasion where any group of

1 people in your school district believe that there was  
2 too much emphasis on agriculture and programs that  
3 come -- FFA programs or with football?

4 A. Are you saying have we had instances where the  
5 populace think you are spending too much on football  
6 and not enough on voc. ed.?

7 Q. Or any other problem in that area.

8 A. You always have those kinds of debates.

9 Q. All right. And that's an ongoing debate probably  
10 from year to year, isn't it?

11 A. Yes. Particularly, Mr. Luna, when there aren't  
12 enough dollars to go around to fund the various  
13 programs. I think you will find those kinds of  
14 debates more prevalent in districts that are  
15 underfunded where the priorities have to be  
16 established very carefully and where you have to be  
17 in a position to defend funding one program against  
18 another or usually underfunding both programs.

19 Q. What about student discipline? Have you had to adopt  
20 new policies in the last few years with respect to  
21 student discipline?

22 A. Yes, we have.

23 Q. Do you find that in that area that it might vary from  
24 district to district as to what type of punishment  
25 would be set out for violation by a student of a

1 MR. THOMPSON: No further questions, Your  
2 Honor.

3 MR. TURNER: I have no questions.

4 RECROSS EXAMINATION

5 BY MR. R. LUNA:

6 Q. I have one or two questions for you.

7 In regard to the maps that have been handed to  
8 you from the Connally Commission study, I believe  
9 your testimony was that there was a great amount of  
10 public outcry and concern over that study and perhaps  
11 even those maps, is that right?

12 A. I think these maps specifically would focus on rather  
13 a major amount of discussion and concern, yes.

14 Q. All right. That concern came from who, if you  
15 recall? Was it legislators or parents or educators  
16 or who?

17 A. Well, if I recall, it was primarily in the context of  
18 what kind of mail we received, I guess. It was  
19 widespread involving all of those types of  
20 individuals, as well as educators, parents, taxpayers --

21 MR. GRAY: Exxon.

22 BY MR. R. LUNA:

23 Q. So you had some concern from virtually every element  
24 of the community including the educational field, is  
25 that right?

1 A. Yes.

2 I recall no direct commentary from Exxon.

3 Q. I would like to read you a part of a footnote from  
4 the United States Supreme Court's decision in the  
5 Rodriguez case, and I would like to ask you whether  
6 or not you agree or disagree with their assessment of  
7 this particular concept.

8 The court is talking about the fact on Page  
9 1307 of their decision that the jurisdictional  
10 boundaries are inevitably arbitrary and it goes on to  
11 say that it is inevitable that some localities are  
12 going to be blessed with more taxable assets than  
13 others.

14 In its Footnote 109, the court cites a  
15 number of authorities and sets out the following  
16 language: "Unless a local community, through  
17 its school board, has some control over the purse,  
18 there can be real little feeling in the community  
19 that the schools are, in fact, local schools," citing  
20 "How, Anatomy of a Revolution" dated 1971.

21 From another publication, they cite this:  
22 "It is an axiom of American politics that control and  
23 power follow money," citing R. Hutchison's "State  
24 Administered Locally Shared Taxes" and dated 1931.  
25 "State administration of taxation is the first step

1           toward state control of the function supported by  
2           these taxes," end of quotation.

3           Then the court states the following:

4           "Irrespective of whether one regards such prospects  
5           as detrimental or whether he agrees that the  
6           consequence is inevitable, it certainly cannot be  
7           doubted that there is a rational basis for this  
8           concern on the part of parents, educators and  
9           legislators."

10           Would you agree or disagree with that  
11           assessment?

12       A.   Based in general terms on the experience I've had  
13           within the state, I would tend to agree with that  
14           assessment, the assessment as stated in that last  
15           summary remark, not necessarily the individual  
16           quotations, both.

17       Q.   In your opinion, is there any perfect solution to the  
18           educational finance system in Texas to totally  
19           equalize everything that is achievable as a  
20           practical matter?

21       A.   I don't think there is a perfect solution, no.

22       Q.   Based upon the studies that have been done and  
23           comparisons to other states, do you consider the  
24           approach that Texas is taking at this time with the  
25           procedure that has been laying before this Court as

1           recently because of our growth, and it's extremely  
2           hard to design the kinds of space we needed within  
3           the rather small amount of dollars that we had  
4           available.

5       Q.   And speaking of dollars, let me ask you about career  
6           ladder funding. There is a decision that districts  
7           must make in regard to the amount of dollars that's  
8           spent on the career ladder, isn't there?

9       A.   Yes.

10      Q.   And what kind of decisions are faced by each local  
11           board?

12      A.   Well, determination whether they are going to pay the  
13           teacher selected, the minimum, \$1500.00, or somewhere  
14           between there and the maximum of 2,000.

15      Q.   And --

16      A.   As well as determining whether they are going to have  
17           to establish criteria stricter than that established  
18           in the law in order to keep the number of teachers on  
19           the career ladder from exceeding the dollars  
20           available provided by the state.

21      Q.   All right. And you mentioned adopting a set of  
22           criteria, which brings to mind your school policy  
23           book.

24      A.   Yes.

25      Q.   Each district must adopt an entire set of operating



1 policies for your district, doesn't it?

2 A. Yes.

3 Q. If you could, just briefly describe to the Court the  
4 size of that have manual and how many policies are in  
5 there?

6 A. We have two volumes of our policy book, each about as  
7 thick as this stack of papers here.

8 Q. How thick is that stack of papers?

9 A. Four inches, perhaps.

10 Q. And do those policies evolve over a period of time?

11 A. Yes.

12 Q. And do they vary from district to district?

13 A. They are probably more the same now than they were a  
14 number of years ago. With the excellent service  
15 provided by the Texas Association of School Boards  
16 Policy Division, it is my understanding that most  
17 school districts have availed themselves of that  
18 service. You will find a great deal of  
19 standardization in policies and deviation in local  
20 aspects of policymaking.

21 The policy books contain virtually all of the  
22 statutes and court decisions, State Board of  
23 Education guidelines that establish directionality of  
24 a school district, what we must do and what we cannot  
25 do.

1 Q. What about your local tax rate, do you ever find that  
2 that's controversial?

3 A. Yes. Every day.

4 Q. When it comes right down to it, your district has a  
5 lot of money laying out on the table. All it has to  
6 do is tax out there. But whether or not to tax  
7 becomes the question, isn't it?

8 A. I disagree with your contention that there is a lot  
9 of money left on the table.

10 Q. All right. Let me rephrase that. Every district, of  
11 course, can raise more money by raising the tax rate,  
12 but there becomes a point beyond which it may not be  
13 politically a good idea to raise your tax rate. That  
14 level may vary from district to district.

15 A. Would you rephrase your question?

16 Q. Well, I think I was merely asking you whether or not  
17 that's another decision that your local board of  
18 trustees has to make, and that is, where to put that  
19 tax rate for your community.

20 A. I think each local board of trustees has to make that  
21 decision each year, balancing what the needs of the  
22 students are, what must be done to maintain the  
23 vitality of the educational organization and what the  
24 local citizenry will allow in terms of a tax rate.

25 Q. And as part of the local citizen input, does your

1 district hold public hearings on the budget each  
2 year?

3 A. Yes, we do.

4 Q. Citizens show up to complain about the budget?

5 A. Typically don't show up to complain about the budget.  
6 They show up to complain when we have a public  
7 hearing on setting the tax rate when there is an  
8 increase of 3 percent or more.

9 Q. Now, we've been talking a lot about your board of  
10 trustees, and does your board -- as a matter of fact,  
11 as I recall, under the Education Code, the president  
12 of the board of trustees is by law appointed as a  
13 chief financial officer of your district.

14 A. Chief budget officer, yes.

15 Q. Chief budget officer. Thank you. Of course, a lot  
16 of his work is done by the superintendent and your  
17 staff, normally, is that right?

18 A. We perform the work as outlined by the president of  
19 our board.

20 Q. Does the board meet with you to try and get the  
21 budget in shape for a public presentation at the  
22 designated hearing?

23 A. Our board will typically hold eight or ten workshop  
24 meetings on the proposed budget beginning along about  
25 the first of June, stretching probably into the

1 second week in July.

2 Q. Are these short meetings or lengthy meetings?

3 A. They're very lengthy meetings.

4 Q. Besides the budget meetings, does your board meet  
5 regularly on a monthly basis or something?

6 A. Yes, on a monthly basis.

7 Q. Is your board faced, as many boards are -- you may  
8 not have this in your community -- with hearing  
9 internal appeals by teachers, for example, filing  
10 grievances for whatever reason or perhaps even  
11 students filing appeals against some type of  
12 punishment that's been directed toward them?

13 A. That does happen. We have had rare occasions in  
14 recent years because of good management.

15 Q. How much time would you say one of your board members  
16 spends in an average year attending all of these  
17 meetings, regular meetings, budget workshops, budget  
18 hearings, public sessions and hearing all of these  
19 appeals that any of the employees and students may  
20 want to bring to the board?

21 A. Give me just a moment to think about that, and I will  
22 try to respond. Say a minimum of 200 hours a year.

23 Q. 200 hours a year. That doesn't include the time that  
24 they spend running for election to get elected to  
25 that post, I guess?

1 A. True. Or attending workshops.

2 Q. That does not include workshops?

3 A. Right. Outside of school district workshops.

4 Q. And for all of that effort and time they spend in  
5 your local community, how much money does that  
6 district trustee get paid?

7 A. Zero. They receive no compensation at all for  
8 services.

9 Q. Which brings up, I guess, a reasonable question. Why  
10 would anybody want to spend that much of their  
11 personal time toward a nonpaying job?

12 A. The trustees in our district do it because they want  
13 to serve the children of the community. I have seen  
14 in other communities people run for the board with  
15 the express purpose of keeping taxes down or firing  
16 the football coach or whatever other ax they have to  
17 grind. But that's not been the case in our school  
18 district.

19 Q. So all across Texas in these 1,064 school districts  
20 that we have, every board of trustees, would you say,  
21 is probably motivated by the same thing in general,  
22 and that is, community service?

23 A. I would say that the majority of school board members  
24 in our state are motivated by desire to serve  
25 children in the community.

1 Q. Have you ever tried to change an attendance zone  
2 within your district from school to school?

3 A. Yes, I have.

4 Q. Did you find that was somewhat controversial?

5 A. Yes.

6 Q. Why? Why is that controversial to parents?

7 A. Well, if your children have been attending one school  
8 and you would like your children to attend that  
9 school and you've been pleased and satisfied with the  
10 teachers in that school and the way the principal  
11 administers that school, then change, you are getting  
12 into the unknown. You don't know if that new school  
13 is going to provide the same quality for your child.  
14 It may be a farther trip, a longer trip to school.  
15 All kinds of variables.

16 Q. Those can be very heated meetings?

17 A. They can be very heated meetings.

18 Q. And do you think that -- we're talking now about  
19 internal attendance zones from school to school?

20 A. Yes.

21 Q. Do you think that people sometimes choose the  
22 location of their home based upon which school  
23 district they are in?

24 A. Yes. We are told frequently that people choose their  
25 homes based upon the school they want their children

1 to attend.

2 Q. Is it, therefore, surprising that to change school  
3 district lines would become controversial in the  
4 state, especially if we tried to do it on a statewide  
5 basis?

6 A. Does it seem surprising?

7 Q. Yes, sir.

8 A. No.

9 Q. Has your particular district ever been involved in a  
10 detachment proceeding?

11 A. Yes. I testified earlier that it had.

12 Q. That's right. What about a consolidation proceeding,  
13 even to your knowledge, before you got there? Are  
14 you aware of any that have been -- have occurred  
15 within your district or affecting your district?

16 A. I'm aware that probably in the '30s and '40s, there  
17 were a number of consolidations from the very small  
18 rural schools into a larger school district, yes.

19 Q. And you know that, and I recall your testimony now,  
20 that you said you were aware that in -- throughout  
21 Texas that there have been controversial issues  
22 involving whether or not certain detachments from one  
23 school district and moving into another were taking  
24 place, is that right?

25 A. Yes.

1 Q. Do you recall specifically what districts those  
2 affected?

3 A. No, I don't.

4 Q. Do you recall any occurring in Collin County this  
5 year?

6 A. No.

7 Q. Do you know Dr. Justin Wakelin (Phon.)?

8 A. Yes.

9 Q. Do you recall Frisco Independent School District and  
10 McKinney Independent School District being involved  
11 in such a controversy?

12 A. I was not aware of it. I haven't read about that  
13 one.

14 Q. At any rate, the school district lines are adjusted  
15 and moved and consolidated from time to time, and we  
16 have statutes to do all of those things and  
17 requirements in each one of those statutes?

18 A. Yes.

19 Q. When you decide to issue bonds, the term and length  
20 of those bonds, does that become an important matter  
21 for a decision by your board of trustees?

22 A. Yes.

23 Q. The superintendent of Socorro Independent School  
24 District, you may have been here when he testified,  
25 talked about he issued some interest-only bonds.



1 Have you ever heard of any district being able to  
2 issue interest-only bonds?

3 A. No, I haven't. That was the first I heard of that.

4 Q. Well, that was the first I had heard of it, too, but  
5 somehow they managed to accomplish that. And again,  
6 if you could do that -- and your district has total  
7 flexibility to structure any kind of transaction that  
8 your local board can work out with its financial  
9 advisors, don't you?

10 A. Within statute, I would presume so.

11 Q. When you stated that you had not heard of the idea of  
12 a regional taxing authority until Dr. Hooker  
13 mentioned it, I was curious. I assume that by your  
14 presence here during this trial -- you've been here  
15 quite a bit for the seven weeks, I have noticed, of  
16 this trial -- and I presume that by your interest in  
17 the legislation, that you probably maintained a  
18 fairly close contact with your attorneys in this  
19 case, haven't you?

20 A. Yes. Some.

21 Q. Has the idea been discussed of consolidating school  
22 districts or moving school lines?

23 MR. RICHARDS: With his attorneys?

24 MR. R. LUNA: Yes. Let's start off with  
25 your attorney.

1 MR. RICHARDS: Well, I think that's within  
2 attorney/client privilege.

3 MR. R. LUNA: Well, you're right. I sure  
4 don't want to involve that delicate relationship. So  
5 let me withdraw that question.

6 BY MR. R. LUNA:

7 Q. Let me ask you whether or not you have inquired or  
8 made inquiry of that issue to the State Legislature  
9 in consolidation. I know you have already answered  
10 as to the regional taxing authority.

11 A. No.

12 Q. Have you or any member of the Equity Center discussed  
13 moving lines or consolidating districts or regional  
14 taxing authority? Have you discussed it among  
15 yourselves at any time during this trial up until the  
16 discussion by Dr. Hooker?

17 A. No.

18 Q. I bet you have discussed it since then, haven't you?

19 A. The Equity Center has only had one meeting, and we  
20 were rather rudely interrupted and were not able to  
21 conduct all our business that day.

22 Q. All right. Well, then let me -- excuse me. Are you  
23 through?

24 A. Yes.

25 Q. Until it was mentioned in this trial, were you, as a

1 plaintiff in this case who had been very active and  
2 in constant touch with your attorneys and appeared in  
3 this courtroom, had you been put on notice that was  
4 going to be an issue in this case?

5 A. No.

6 Q. Thank you.

7 MR. R. LUNA: Pass the witness.

8 CROSS EXAMINATION

9 BY MR. GRAY:

10 Q. Dr. Kirkpatrick, describe for me, if you will, the --  
11 or contrast with me, is a better way of putting it --  
12 the amount of local control you, as a school district  
13 administrator, and your school district, Copperas  
14 Cove, has today compared with what it had before,  
15 what I am going to use the term generally as the  
16 House Bill 72 mandates and mandated legislation.

17 A. When you couple House Bill 72 with 246, which was the  
18 Curriculum Bill, the state has increased greatly the  
19 specificity of what school districts must do as a  
20 minimum. The broad curriculum has been defined by  
21 the state, course offerings, a number of courses  
22 required for graduating from high school. They have  
23 increased the number of courses one must take in  
24 English, science, mathematics, to graduate from high  
25 school. They have placed mandates on class size in

1 the early grades. They stipulated that you must  
2 develop discipline management programs, that we have  
3 had to use the state's teacher evaluation system. A  
4 great deal of what we must do has been stipulated by  
5 the state.

6 I happen to think most of those things are good  
7 and that our state educational system will improve as  
8 a result of most of those things.

9 Q. I take it then that if I were to ask you -- let me  
10 just ask it. Do you have as an administrator and as  
11 Copperas Cove Independent School District, does that  
12 entity have more local control today over its destiny  
13 and over how it runs its schools compared to with  
14 what it had before House Bill 72 or does it have less --

15 A. We have less.

16 Q. And is it just a little bit less or is it  
17 significantly less?

18 A. I would say significantly less.

19 Q. Now, on -- I believe Mr. O'Hanlon characterized  
20 Copperas Cove as a property poor school district.  
21 Would you agree with that characterization?

22 A. Yes.

23 Q. Tell me what the term "local control" means in  
24 relation to being a property poor school district.

25 A. We go back to the budgeting process. And let me go

1 back a little further than that. Our budgeting  
2 process really begins with a workshop meeting of our  
3 board of trustees where they do a great deal of  
4 brainstorming to come up with goals for our  
5 districts, broad directional kinds goals that they  
6 want the district to move toward. That helps  
7 establish some priorities for budgeting.

8 We go through a process then of involving our  
9 teachers and our principals and all the program  
10 directors of whatever kind in developing their own  
11 budgets, what they would like to have in their  
12 budgets in terms of financial resources. We exercise  
13 some judgment on those proposed school budgets and  
14 departmental budgets at the superintendent/assistant  
15 superintendent level. We bring those forward then to  
16 the board of trustees.

17 Without fail -- and I have never had the  
18 pleasure of serving in a wealthy school district.  
19 All of my service in schools has been in poor  
20 districts, San Antonio, Seguin, and Copperas Cove.  
21 Without fail, what we identify as needed, what we  
22 identify as desired and the cost associated with  
23 those things always exceed the dollars available. So  
24 our local control really comes in in sorting through  
25 priorities and cutting the budget back to meet the

1           dollars available.

2   Q.   Contrast that with what you know goes on in the  
3           property wealthy districts. Do they have more local  
4           control or less local control than you do as you  
5           define the term "local control"?

6   A.   Well, simply put, Mr. Gray, the more financial  
7           resources a school district has, the more local  
8           control it can exert. And the converse is true also.

9           When you identify student needs, you go through  
10          the research, you see what other bellwether school  
11          districts are doing to meet similar needs, you  
12          identify programmatic approaches to dealing with  
13          those needs and you find that you just don't have the  
14          dollars available to do it with, and you make a local  
15          decision that you just can't do it.

16          If you're a wealthy district you don't have  
17          those same kinds of constraints. I had one  
18          superintendent tell me that he never had to make a  
19          decision about a program based upon the dollars; that  
20          anything they identified that was good for kids,  
21          dollars were no object. That just sounds like a  
22          dream.

23   Q.   Now, there has been some testimony that in the  
24          educational process, dollars do not make that much of  
25          a difference as far as --

1 A. Bologne.

2 Q. -- as far as the ability to educate or provide for  
3 needs of a child.

4 A. Bologne.

5 Q. I suppose if I ask you if you agreed with that, your  
6 answer would be bologne?

7 A. Yes, sir.

8 Q. Prior to lunch, Mr. O'Hanlon took you through a  
9 series of questions talking about the people at  
10 Copperas Cove going to the football game and the  
11 ability to complain to a trustee member if Mrs. Jones  
12 -- a parent perceived that Mrs. Jones mistreated a  
13 child, things of that sort, all leading up to the  
14 questions about would you support or do you think  
15 your people would support consolidation such that the  
16 Copperas Cove School District disappeared. Let me  
17 ask you in a -- without repeating each of those  
18 questions, let me do it this way.

19 If Copperas Cove was part of a larger entity  
20 for fundraising purposes, for taxing purposes, such  
21 that the tax base of the districts were equal or  
22 certainly more equal than they currently are, yet the  
23 district continued to exist for operation purposes,  
24 you had your current board of trustees, you had the  
25 same decision-making process that you currently have

1 as far as operations, are you aware of anything  
2 within the context of that structure that would  
3 destroy community support for education within  
4 Copperas Cove?

5 A. Not as I understand the concept.

6 Q. And as you understand the concept, and granted it has  
7 not been fleshed out and it is nothing more at this  
8 stage than a concept, do you understand the concept  
9 as I have described it to you to be one that Copperas  
10 Cove's tax base, in essence, would be enhanced or  
11 enlarged such that more revenues would be generated  
12 to provide education for the children within Copperas  
13 Cove for their tax effort and yet the ongoing  
14 operations would remain the same, if that is indeed a  
15 viable alternative, do you see that that kind of  
16 thing has the potential to enhance or diminish the  
17 educational opportunity that is provided the children  
18 in Copperas Cove?

19 MR. O'HANLON: Was that a hypothetical?

20 MR. GRAY: I have asked it in the form of a  
21 hypothetical.

22 MR. O'HANLON: Okay.

23 A. Let me state the assumption as I understand it. If  
24 the Copperas Cove ISD as it is presently constituted  
25 to elect a board of trustees and its ability to make



1 decisions regarding programs and who's going to  
2 manage those programs, who's going to teach, those  
3 kinds of things, if that were kept, and through some  
4 kind of a broader tax base more funds were available  
5 to us to accomplish those goals, would that be a good  
6 thing?

7 Q. Yes, sir.

8 A. With this stipulation that there may be pros and cons  
9 that I don't even know about because I haven't  
10 studied the issue, just with those things we just  
11 said, then I think it would be a benefit to us.

12 Q. Okay.

13 MR. GRAY: I have nothing further. I pass  
14 the witness, Your Honor.

15 MR. KAUFFMAN: Nothing, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. O'HANLON:

18 Q. How do you know -- if you don't control how much --  
19 if that money is coming from somewhere else, you  
20 don't know how much money. Somebody else is  
21 controlling how much money you're going to have  
22 available for programs, aren't they?

23 A. Somebody else controls that to a great extent now.

24 Q. Well, you still have the ability to raise your -- if  
25 you need -- if you have to have a program and it

1 costs \$10,000.00 to introduce this program in your  
2 district, right now, as the system stands, you have  
3 the option of going to the board of trustees to raise  
4 the taxes to do that.

5 A. Yes. If you were talking in terms of most of the  
6 things costing just \$10,000.00, yes. But when most  
7 of the things that need to be done cost 200 or  
8 \$300,000.00 to do, and when -- Mr. O'Hanlon, when it  
9 costs you 16 cents on your tax rate to raise \$100.00  
10 extra per student, you have some severe limitations  
11 on what you can do.

12 Q. So 16 cents on your tax rate raises about 45 --  
13 \$450,000.00 in your district?

14 A. About 500,000.

15 Q. Okay. But those limitations aren't as great as if  
16 you don't have any control over whether to get that  
17 \$500,000.00, are they?

18 A. Would you rephrase your question?

19 Q. Yes. If somebody else in Austin is setting the  
20 amount of money that you get and is distributing it  
21 to you and giving you a check, then you don't have  
22 the option to raise that \$500,000.00 at all.

23 A. The premise that I answered was that under that kind  
24 of scenario that the Copperas Cove Independent School  
25 District Board of Trustees would have a greater

1 amount of revenue with which to make programmatic  
2 decisions. I said under that -- under that scenario,  
3 and we retain the other kinds of autonomies we have,  
4 then it would probably be good for our particular  
5 school district.

6 Q. In other words, what you're saying is is that  
7 regardless of the system, if you had more money, you  
8 could do more --

9 A. No, I didn't say regardless of the system. I very  
10 carefully delimited that system.

11 Q. How do you know? How do you know you're going to  
12 have more money?

13 A. Let's go back, Mr. O'Hanlon, to the question that I  
14 answered. I said that if our local board of trustees  
15 maintained autonomy with the exception of someone  
16 else would set the tax rate and raise the local  
17 revenue and that in that process there were  
18 considerably more dollars available to our board of  
19 trustees to make programmatic decisions, given those  
20 constraints and that situation only, then that would  
21 probably be better for the kids in our community and  
22 for our school district.

23 Q. But that -- what I am asking is, is that assumes you  
24 are going to have more money which --

25 A. That assumes we have more money, yes.

1 Q. And we can't assume that, can we?

2 A. I don't know.

3 MR. O'HANLON: Pass the witness.

4 MR. R. LUNA: No questions.

5 MR. GRAY: Nothing further, Your Honor.

6 EXAMINATION

7 BY THE COURT:

8 Q. Did you say you had an \$89,000.00 per student tax  
9 base now?

10 A. 74,000.

11 Q. 74,000. Would you like to have a \$250,000.00 one?

12 A. Yes, sir.

13 Q. Why? Why would you?

14 A. Well, one cent tax rate -- one cent on the tax rate  
15 on a \$74,000.00 per pupil base raises considerably  
16 fewer dollars than the one cent tax rate on a  
17 \$250,000.00 per student base.

18 Q. Well, let me say this. Mr. Moak and Dr. Verstegen  
19 seem to think that it doesn't make a lot of  
20 difference how much money school districts have. But  
21 those that don't have it seem to think it makes a  
22 difference, and those who do have it seem to think it  
23 makes a difference. What I would like to know is  
24 what difference does it make?

25 A. I'm glad you gave me that opportunity. We have heard

1       some talk, Judge, about basic quality education. I  
2       assume that what that means is the district has  
3       barely enough money to provide no-frills facilities,  
4       barely enough money to pay the state minimum wage for  
5       its teachers and the other personnel that it employs,  
6       that it barely has enough money to buy the supplies  
7       and materials that are necessary to carry on  
8       programs, that it can barely meet -- it can offer  
9       sufficient programs to barely meet accreditation  
10      standards, if that is a basic minimum program that  
11      the state wants all school districts to have, and we  
12      equate that with an equal educational opportunity,  
13      then we are missing the boat.

14               Districts that have those kinds of constraints,  
15      and there are many of them in the state, are unable  
16      to provide quality educational programs. They are  
17      unable in the long-term to provide a comparable  
18      teacher salary that will enable them to retain the  
19      good teachers that they have and to attract the  
20      better teachers who are out there applying for jobs  
21      in school districts. They are unable to build the  
22      kinds of quality facilities that really augment the  
23      educational program. They are unable to go beyond  
24      the basic minimal program offerings that districts  
25      with large tax bases have.

1           The overall quality of education and the  
2           quality of educational opportunities for children  
3           within the school district are greatly enhanced by  
4           the amount of dollars that goes above and beyond just  
5           that which it takes to meet these bare essential  
6           minimums that Mr. Moak equated to equal educational  
7           opportunity.

8       Q.    Okay.  If you had your choice, which would you rather  
9           have, have at your fingertips \$250,000.00 worth of  
10          tax property, or a promise from the State Legislature  
11          that they are going to treat you like you had  
12          \$250,000.00 worth of tax property?

13   A.    Judge, I don't know how to answer that since I don't  
14          know the mechanism by which I would be guaranteed the  
15          \$250,000.00 tax base.

16   Q.    Okay.

17   A.    I would like to have the money.

18                   THE COURT:  Okay.  No more questions.

19                   MR. O'HANLON:  I have just one follow-up  
20          question.

21                   FURTHER REDIRECT EXAMINATION

22   BY MR. O'HANLON:

23   Q.    Do you know what your TEAMS '85 test scores were?

24   A.    Okay.

25   Q.    Okay.  What are they?

- 1 A. Math, 54; reading, 49; writing, 47.
- 2 Q. I'm going to put up another set of test scores.
- 3 Those test scores aren't any better than yours, are
- 4 they?
- 5 A. Well, the writing is.
- 6 Q. Okay. But the math and reading are below yours?
- 7 A. Yes.
- 8 Q. Okay. So there is not a whole lot of difference
- 9 between those, is there?
- 10 A. Well, there is a big difference in math. There's a
- 11 small difference in reading. And there is a big
- 12 difference on the other side in writing.
- 13 Q. Okay. On balance, not that much difference?
- 14 A. Those are your words, not mine. I think that a
- 15 difference of 10 percentage points -- percentile
- 16 points is a --
- 17 Q. These are yours, so you're doing a lot better in math
- 18 and about the same difference, not as well in
- 19 writing?
- 20 A. On a minimal competency test, yes.
- 21 Q. Okay. Would you say that this district is running --
- 22 this district here is running a substantially better
- 23 program than you are running in your district?
- 24 A. There is no way to equate quality of educational
- 25 opportunity based upon minimal test scores such as

1           the nature of the TEAMS is.

2   Q.   You can't tell whether we are teaching people very  
3       well by measuring whether they can read?

4   A.   Mr. O'Hanlon, what we're talking about is enabling  
5       children to reach their potential --

6   Q.   Well, if you can read --

7                   MR. RICHARDS: Excuse me. He is entitled  
8       to answer his question, I think.

9   Q.   Okay. Excuse me.

10   A.   The potential of the children in Copperas Cove to  
11       score on -- let's take this test, the potential is  
12       considerably higher than the numbers you see  
13       represented there. If we had the opportunity to  
14       expand and enhance the programs, you would see a much  
15       greater increase in the reach of -- reaching of  
16       potential among our students than what you see there.

17   Q.   You would? So having all this property tax base  
18       would enhance your test scores?

19   A.   Having additional dollars to enable us to expand and  
20       enhance our program offerings and to do the kinds of  
21       things that we know, based upon research and where we  
22       are, the kinds of things that we need to do, yes, we  
23       could increase those tests scores.

24   Q.   Okay.

25   A.   Not only those test scores, Mr. O'Hanlon, but the



1 other measures that we have of student achievement.

2 Q. Would you say that every superintendent -- would you  
3 agree with me that every superintendent in this state  
4 would make that same judgment, virtually?

5 A. I would guess that -- well, I think as I have said,  
6 there are some who don't have budgetary restraints,  
7 that they are able to do what they want to now.

8 Q. Okay. Would it surprise you if this district here is  
9 Iraan-Sheffield?

10 A. No, that wouldn't surprise me at all.

11 Q. So that despite all their wealth and despite all the  
12 ability to enhance and enrich and to do all this  
13 other kind of stuff that money can buy, they don't  
14 have any substantially better test scores than you  
15 all do, do they?

16 A. But that doesn't mean anything, Mr. O'Hanlon. What  
17 you have to look at in terms of children reaching  
18 their potential, you have to look at their base,  
19 where they began, what their potential are, the  
20 family background, the extent to which children enter  
21 school with readiness skills. The measure of a  
22 school district, the measure of a teacher, is how far  
23 you take a group of children from where you get them  
24 toward their potential.

25 Q. But you told us that you have a relatively poor

1 district. I assume, based on all the national  
2 studies, you would agree with me that wealth --  
3 personal wealth is a great indicator of individual  
4 performance?

5 A. Say that again.

6 Q. That personal family income, the financial background  
7 of a child, is an essential measure of --

8 A. No. I would say the greater correlation is not the  
9 personal income of the family, but rather the  
10 educational level attained by the parents.

11 Q. Those tend to have a high relationship with each  
12 other?

13 A. Tend to have a high correlation.

14 Q. Okay. So either one, parental education or family  
15 income. And you have gone a long way -- based on  
16 what you said about your district, in some respects  
17 you have gone farther than Iraan-Sheffield despite  
18 your relative disparity.

19 A. We haven't begun to take those children to the  
20 potential that they have, Mr. O'Hanlon.

21 Q. Now, I'm not saying --

22 A. We are limited by the resources we have to go much  
23 farther than that.

24 Q. Do you think Iraan-Sheffield could say the same  
25 thing?

1 A. No.

2 Q. Do you think that they are intentionally not spending  
3 money on their kids?

4 A. I don't know anything about Iraan-Sheffield. I know  
5 that they are -- other than they are a wealthy  
6 district. I drove through it one time and thought I  
7 was on the other side of the moon.

8 Q. When you say the test scores aren't a good  
9 relationship, you are not saying that the ability to  
10 read is not something that we should measure as one  
11 of the essential educational outputs, are we?

12 A. The TEAMS test serves a good purpose. It does  
13 measure children's ability to perform on minimal  
14 basic skills. It does that. It does not tell us  
15 anything about the extent to which a school district  
16 or a teacher has taken the children where they were  
17 and helped them achieve their full potential.

18 We're talking about equal educational  
19 opportunity. We're talking about each district's  
20 ability to take children from where they find them to  
21 as far down the road toward reaching their potential  
22 as you possibly can.

23 Q. And that's an inherently unequal process, isn't it,  
24 because you have to take each child where you find  
25 them?

1 A. Yes, it is an unequal process, and our present system  
2 of flowing funds, based upon differing student needs,  
3 was developed with that in mind. It is certainly not  
4 perfected yet. But the establishment of the student  
5 weights for children with different educational needs  
6 is an important concept.

7 Q. And dollars aren't the only thing that go into the  
8 process, are they, the commitment of the staff?

9 A. Certainly.

10 Q. The sophistication of the program which doesn't  
11 necessarily translate to dollars?

12 A. When you say "sophistication of the program," there  
13 are many varying levels of sophistication.

14 Q. Right.

15 A. Some of which are dependent almost entirely upon  
16 dollars.

17 Q. That's right. But you are able to implement in your  
18 district what I think we can agree is an innovative  
19 and sophisticated approach to learning and assessment  
20 in your district, even given the financial  
21 constraints that you are operating under.

22 A. But we are at about 50 percent of the potential we  
23 could be toward sophisticated programs because of the  
24 lack of resources to go further.

25 Q. But isn't that always the case? Couldn't we always

1 say, as an educator, "By golly, if I had more money,  
2 I could figure out a way to improve the program, if I  
3 had more money available to me"?

4 A. That's always been the case with me because I've  
5 always been a property poor district.

6 Q. That's always been the case with virtually every  
7 educator, isn't it?

8 A. I don't know. I don't think so.

9 MR. O'HANLON: Pass the witness.

10 THE COURT: Let me ask you something.

11 EXAMINATION

12 BY THE COURT:

13 Q. In the 11th grade, a test is administered. Is that  
14 part of the TEAMS test?

15 A. The TEAMS is administered at a number of other  
16 grades.

17 Q. Yes. But in the 11th grade, what is that test  
18 called?

19 A. TEAMS means the Texas Educational Assessment Measure.

20 Q. I know that.

21 MR. GRAY: You're thinking of the exit  
22 test.

23 THE COURT: Is the exit test in the 11th  
24 grade?

25 THE WITNESS: Yes, Your Honor.

1 MR. O'HANLON: It is a TEAMS test.

2 THE WITNESS: It is an exit-level test.

3 THE COURT: Okay. What I was really trying  
4 to find out is, is there a TEAMS test in the 11th  
5 grade plus an exit test? There is not. An 11th  
6 grade test is the exit test?

7 MR. O'HANLON: It is the same test.

8 THE COURT: Okay. If I were to -- I've  
9 never seen any of those tests from the 3rd grade  
10 through the 11th. If I were to tell you that I  
11 wanted to look at a sample of those tests just to see  
12 for myself what is being tested, would I look at the  
13 exit test, or would I look at the 3rd grade or -- I  
14 think maybe I would be better off looking at the 11th  
15 grade, because I have no idea what 3rd graders are  
16 supposed to know. But I think I would have a better  
17 idea of what 11th graders are supposed to know.  
18 Don't you think I would?

19 THE WITNESS: I think so.

20 THE COURT: Okay. Somebody in the next  
21 couple of weeks get me a sample of a TEAMS test of  
22 11th graders across the state. I want to see them.

23 MR. O'HANLON: We can do two things, Your  
24 Honor. I think we do have an actual sample test. We  
25 can provide an actual exam if the Court is willing to

1 take it under the terms of the statute, either way  
2 the Court would prefer.

3 THE COURT: I would like to see what is  
4 asked of 11th graders that you all have been talking  
5 about these TEAMS tests for all this time and --

6 MR. RICHARDS: We certainly have no  
7 objection if the Court wants to take the test.

8 THE COURT: I don't want to take the test.  
9 I just want to look at it.

10 MR. O'HANLON: We can arrange that, Your  
11 Honor.

12 THE COURT: Okay. Just a minute.

13 THE WITNESS: Put Highland Park's numbers  
14 up there.

15 FURTHER EXAMINATION

16 BY THE COURT:

17 Q. I can't quite put my hands on the right word about if  
18 you are a superintendent of a property poor district,  
19 and let's suppose your TEAMS scores are good and do  
20 compare favorably even with rich districts, and the  
21 argument was made that you don't need any more money  
22 because your TEAM scores compare favorably to the  
23 property wealthy districts, there may not be one  
24 word, but it seems to me like that there is another  
25 element of education that I can't think of one word,

1 or maybe two or three words, to describe and that has  
2 to do with -- well, it has to do with opportunity and  
3 it has to do with potential.

4 I suppose that in -- that you could have a very  
5 bright student take the TEAMS test in the 11th grade,  
6 but if that student wasn't given the chance to, say,  
7 take French, if she or he wanted, or calculus, that  
8 that wouldn't be reflected in --

9 A. That would not be reflected in TEAMS.

10 Q. Or if you had a student who was only mediocre on the  
11 TEAMS test in the 11th grade who was interested in  
12 animal husbandry and you didn't have an agricultural  
13 vocational ed. course, that would be a deprivation.

14 A. Very much so.

15 Q. That wouldn't be measured in these scores.

16 MR. KAUFFMAN: Your Honor, if I may, I  
17 think one term -- I guess I have to make this in  
18 terms of a question -- would be whether the students  
19 in poor school districts have the same range of  
20 opportunities as the children in rich districts is  
21 one way the difference is described.

22 THE COURT: Okay. I don't think I will ask  
23 a question. I'll just think about it some more.

24 Thank you very much. You all have a nice day  
25 and vacation. We're not meeting tomorrow, right?



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MR. O'HANLON: Yes.

THE COURT: Okay. We will meet again.

(Proceedings were recessed  
(until March 23rd, 1987.