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TARLTON  
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CAUSE NO. 362,516

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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

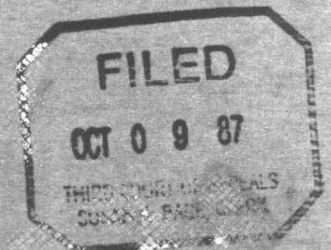
FILED  
IN SUPREME COURT  
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk  
By \_\_\_\_\_ Deputy

STATEMENT OF FACTS

VOLUME XXX OF XLVI



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TAKEN MARCH 23, 1987

MONICA ROSS WEIDMANN

Official Court Reporter  
250th Judicial District Court

Travis County Courthouse • Austin, Texas 78701

CAUSE NO. 362, 516

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL > IN THE 250TH JUDICIAL  
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>  
>  
VS. > DISTRICT COURT OF  
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>  
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:

MR. ALBERT H. KAUFFMAN and MS. NORMA V. CANTU,  
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201 N. St. Mary's Street, San Antonio, Texas 78205.

-and-

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Cambridge, MA 02138

-and-

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ATTORNEYS FOR THE PLAINTIFFS

## 1 APPEARANCES CONT'D

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4 Attorneys at Law, 323 Congress, Suite 300,  
Austin, Texas 78701

5 -and-

6 MR. DAVID R. RICHARDS, with the law firm  
7 of RICHARDS & DURST, Attorneys at Law, 600 West  
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9 ATTORNEYS FOR THE PLAINTIFF-INTERVENORS

10 MR. KEVIN THOMAS O'HANLON, Assistant  
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13 MR. DAVID THOMPSON, Office of Legal Services,  
14 Texas Education Agency, General Counsel, 1701 N.  
Congress, Austin, Texas 78701

15 ATTORNEYS FOR THE DEFENDANTS

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17 MR. JIM TURNER and MR. TIMOTHY L. HALL,  
18 with the law firm of HUGHES & LUCE, Attorneys  
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78701

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21 MR. ROBERT E. LUNA, MR. EARL LUNA, and  
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

18 BE IT REMEMBERED that on this the 23rd day of March,  
19 1987, the foregoing entitled and numbered cause came on  
20 for trial before the said Honorable Court, Honorable  
21 Harley Clark, Judge Presiding, whereupon the following  
22 proceedings were had, to-wit:  
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1 (Defendant-Intervenors' Exhibit Nos.  
2 (22 and 23 marked for identification.

3 THE COURT: Where are we?

4 MR. R. LUNA: Your Honor, I believe this  
5 morning, Defendant-Intervenors are going to put on  
6 some witnesses.

7 THE COURT: Okay. That will be fine.

8 MR. R. LUNA: At this time, with the  
9 Court's permission, we'll call Dr. Walberg to the  
10 stand.

11 THE COURT: All right.

12 MR. R. LUNA: He has not been sworn, Your  
13 Honor.

14 MR. HERBERT J. WALBERG,  
15 was called as a witness, and after having been first duly  
16 sworn, testified as follows, to-wit:

17 DIRECT EXAMINATION

18 BY MR. R. LUNA:

19 Q. Would you state your name for the record, please?

20 A. My name is Herbert J. Walberg.

21 Q. Where do you reside, Dr. Walberg?

22 A. In Oak Park, Illinois.

23 Q. What is your occupation?

24 A. I'm a research professor of education at the  
25 University of Illinois in Chicago.

1 Q. How long have you been employed at that university?

2 A. Since 1970.

3 Q. Would you describe your educational background,  
4 please?

5 A. I have a bachelor's degree from Chicago State  
6 University, a master's degree in education,  
7 educational research, from the University of  
8 Illinois, Urbana, and I have a Ph.D in educational  
9 psychology from the University of Chicago.

10 Q. Dr. Walberg, have you had any kind of teaching  
11 experience?

12 A. Yes, I have.

13 Q. Would you describe that, please?

14 A. Well, I had some teaching experience in elementary  
15 schools when I was a graduate student. And then I  
16 taught at Chicago State University. I did lecturing  
17 at various universities around the country by  
18 invitation. I was an assistant professor of  
19 education at Harvard University. And I've been an  
20 associate to research professor for the last 17 years  
21 at the University of Illinois in Chicago.

22 Q. How long were you an instructor at Harvard?

23 A. I was an instructor there for -- actually assistant  
24 professor for three and a half years.

25 Q. Do you ever do any lecturing?

1 A. Yes, I do.

2 Q. To what kind of groups do you lecture?

3 A. I've lectured to research associations around the  
4 United States, to ministries of education officials  
5 in foreign countries, Japan, Holland, Sweden,  
6 Australia. I've given talks to various federal  
7 groups in the United States Department of Education.  
8 I've also talked to superintendents, principals,  
9 teachers, and other similar groups.

10 Q. Do you do research work as well as lectures, Dr.  
11 Walberg?

12 A. Yes, I do.

13 Q. Have you won any kind of academic awards for your  
14 research?

15 A. Yes, I have.

16 Q. Would you describe those, please?

17 A. Well, I was made a fellow of the American Association  
18 For The Advancement Of Science for educational  
19 research. I won the prize last year of the American  
20 Education Research Association for the best synthesis  
21 of educational research on educational efficiency or  
22 educational productivity. I've won -- I was given an  
23 award by the Jewish community and the country of  
24 Israel for advice that I had given them on how to  
25 improve their educational efficiency and

1 productivity. Also from Loyola University, a  
2 catholic university in Chicago awarded me a prize  
3 several years ago.

4 Q. Have you either written any textbooks or edited any  
5 textbooks?

6 A. Yes, I have.

7 Q. How many of them? Would you describe them briefly?

8 A. I've written or edited approximately 27 books and  
9 they're all on the general topic of how to improve  
10 educational effectiveness or educational efficiency  
11 or, I use the term for efficiency, productivity. And  
12 these books have looked mostly at kindergarten  
13 through high school years, elementary and secondary  
14 education, and they focused on what educators can do  
15 to improve the efficiency and effectiveness of  
16 education.

17 Q. Do you write any articles in addition to your  
18 textbooks?

19 A. Yes, I have.

20 Q. How many articles have you written?

21 A. Approximately 270.

22 Q. Could you describe briefly the types of publications  
23 those articles might appear in?

24 A. Most of the articles have appeared in the journals of  
25 the American Psychological Association or the

1 American Educational Research Association and similar  
2 journals. These are so-called scientific referee  
3 journals in which one has to submit and have other  
4 scientists interested in the same kinds of questions  
5 review them to be sure of their validity and so on,  
6 and based and published over the last 20 years or so,  
7 and they've been on the same topic that my books have  
8 been on.

9 Q. Have you ever served as a consultant?

10 A. Yes, I have.

11 Q. And would you give an example of the type of people  
12 who asked you or institutions that asked you to be a  
13 consultant?

14 A. Well, I was asked by North Texas State University, it  
15 might have been about 18 months ago, to give talks to  
16 superintendents, principals and teachers on how to  
17 improve learning effectiveness and efficiency in  
18 Texas. But I've also been invited by the government  
19 of Sweden on -- I lectured on the subject in  
20 Australia. Also, the Dutch Ministry of Education  
21 asked me to give advice. And also, the United States  
22 Department of Education in various states around the  
23 country have asked me to indicate what kinds of  
24 things they could do to improve educational  
25 effectiveness and efficiency.



1 Q. I'll now show you what's been marked  
2 Defendant-Intervenors' Exhibit No. 22 and ask you if  
3 you can identify that.

4 A. Yes, this is my curriculum vitae.

5 Q. Was that prepared by you?

6 A. Yes, it was.

7 MR. R. LUNA: I think counsel has a copy of  
8 Defendant-Intervenors' Exhibit 22, Your Honor, and we  
9 ask for it to be admitted.

10 MR. ROOS: No objection.

11 MR. GRAY: Unless it's been changed since  
12 his deposition. .

13 I assume it's not been changed?

14 We have no objection, Your Honor.

15 THE COURT: All right. It will be  
16 admitted.

17 (Defendant-Intervenors' Exhibit No. 22 admitted.)

18 BY MR. R. LUNA:

19 Q. Dr. Walberg, you mentioned that you did some research  
20 in addition to your teaching and lecturing. What are  
21 the main areas of your academic research and, for  
22 that matter, your main areas of instruction as well?

23 A. My main areas of academic interest are educational  
24 psychology and statistics. I'm particularly  
25 interested in what causes greater amounts of learning

1 in school, what I call the educational productivity.  
2 And by learning I mean, namely, standardized tests of  
3 educational achievement that would be given in the  
4 standard elementary and secondary schools. These  
5 would be tests of reading, writing, mathematics. In  
6 the secondary school, physics, chemistry, civics,  
7 history, the essential school subjects as indicated  
8 by standardized tests, but it also includes tests  
9 that are not only made up by publishers around the  
10 country, the so-called national standardized tests.  
11 But many states in the United States have had a  
12 strong focus on improving achievement for the last,  
13 oh, five years or so. And so, many states, for  
14 example, Texas, have developed such tests as TEAMS  
15 and TABS. And in Illinois, we've had various tests  
16 that have been developed to put a sharper focus on  
17 learning in schools and to discover what kinds of  
18 things would improve learning as much as possible.

19 Q. The description that you've just given us, would that  
20 encompass the term educational psychology?

21 A. Yes. Excuse me. I wouldn't want to say that  
22 encompasses all of educational psychology, but that  
23 is my particular specialization within the field of  
24 educational psychology.

25 Q. Now, your degrees, of course, or your Ph.D is in

1 educational psychology. Are you an expert in the  
2 field of finance?

3 A. No, I'm not.

4 Q. You mentioned the term "learning," what do you mean  
5 by learning?

6 A. Well, you can say that the main function of the  
7 schools is to teach and the main purpose of teaching  
8 is learning, so that there has been this, I think,  
9 re-recognition of the fact that in the United States  
10 we need to focus a greater degree of our energies and  
11 we have to bring about a greater degree of  
12 effectiveness and efficiency in bringing about  
13 learning. This might be indexed in lots of different  
14 ways, but basically what I'm talking about, it has  
15 to do with test achievement that states and educators  
16 have recognized as exceedingly important for  
17 educators to focus on.

18 Q. So that learning is the chief purpose of the schools,  
19 I think you said?

20 A. Yes.

21 Q. And the way you measure that is through test  
22 achievement?

23 A. Yes.

24 Q. Is there any concern nationally today about learning  
25 in our country?

1 A. I would say that there is probably more concern today  
2 than there has been in any other time in this  
3 Century. The United States Commission on Excellence  
4 in Education was appointed by the United States  
5 Secretary. Then, Secretary Terrel Bell came out with  
6 a report called "A Nation At Risk." And that report  
7 indicated that the test scores in the United States  
8 were not what they should be and that the United  
9 States' test scores compared very unfavorably with  
10 the similar test scores in other countries,  
11 particularly Japan. So, this report got a very large  
12 amount of publicity. It was reproduced a great  
13 number of times and a great amount of publicity was  
14 given to it. So, I think that there has been this  
15 very sharp focus.

16 Q. Are there any other publications or studies that have  
17 raised the same concern?

18 A. Yes. I'd say although "A Nation At Risk," which was  
19 a national report done by the Commission on  
20 Excellence was, perhaps, the first and the most  
21 important.

22 The National Governors Association got the 50  
23 governors of the United States together and they  
24 focused on some of the main -- the same kinds of  
25 things, calling for better achievement in schools,

1 and also looking at the possible consequences of  
2 higher achievement for higher economic growth for the  
3 United States.

4 Other groups have looked into this, such as the  
5 National Science Foundation, The International  
6 Reading Association. And there has been, perhaps, a  
7 dozen national reports.

8 Of course, individual states around the country  
9 have also issued various kinds of reports. And  
10 there's been a considerable amount of educational  
11 reform since about 1983 and 1984.

12 Q. Now, you've mentioned states, are local communities  
13 or local school districts attempting to do anything  
14 about it?

15 A. Yes, I would say that because of the national  
16 leadership and these national reform reports, both  
17 states and local communities are focusing on those  
18 things that they can do to increase learning and  
19 learning efficiency.

20 Q. Dr. Walberg, do we really have to be concerned about  
21 learning?

22 A. I think we do. Of course, I don't think that this is  
23 necessarily completely a scientific matter, but it's  
24 a question of what the public wants to do over those  
25 that have legally constituted authority, such as

1 states legislators, legislatures and local school  
2 districts. And I think that they are calling for  
3 increased achievement. And I think educators need to  
4 respond to those kinds of initiatives and demands for  
5 reform of schools.

6 Q. Based upon your research and your years of study in  
7 this field, have you formulated any kind of causes,  
8 you might say the chief causes, for academic learning  
9 in schools?

10 A. Yes, I have.

11 Q. What would that consist of?

12 A. Well, I feel that because of the considerable amount  
13 of research, that the main determinants, the things  
14 that really make the most difference, add up to nine  
15 factors. And some of these we can do a lot about and  
16 some of these we can do relatively less about. The  
17 first set of these is what I call student aptitude.  
18 And this can be indexed by prior achievement.  
19 Students that do well in first grade are likely to do  
20 well in third grade, and if the child is reading well  
21 in the seventh grade, they'll do well in a later  
22 grade. And we can index this often by achievement  
23 tests in reading, mathematics and other school  
24 subjects.

25 Another aspect of aptitude is not so much

1 ability, but the child's motivation. Some children  
2 are willing to persevere for a longer period of time  
3 and pay -- give a hundred percent of their attention  
4 to what's going on and to do homework and other kinds  
5 of things that are helpful to them. Sometimes this  
6 is associated with self-concept, of the high  
7 self-regard on the part of the individual child. So  
8 motivation is very important.

9 The third aspect of aptitude is the child's  
10 age. Other things being equal, older children are  
11 generally going to have a greater degree of learning  
12 than younger children. So this is what I would say  
13 is the first set of aptitude consisting of ability,  
14 motivation and age.

15 Q. All right. Those three you have described as  
16 aptitude?

17 A. Yes.

18 Q. Does instruction have anything to do with it?

19 A. Yes. Instruction is the thing that we can do the  
20 most about in education. And there are two aspects  
21 of it. The first aspect -- a great deal of attention  
22 was called to this by "A Nation At Risk," and that is  
23 sometimes called, in educational jargon, time on task  
24 or the amount of time that the child studies. This  
25 can be indexed in many different ways, but this is

1 the essential principle. It may have to do with a  
2 number of hours of homework, the length of the school  
3 day, the number of days per year. For example, it's  
4 -- in the United States, there is usually about 180  
5 days per school year; whereas in Japan there are 240  
6 days, a relatively short summer vacation and Saturday  
7 school.

8 Also, another way to look at this is summer  
9 school, which many states are adding, and preschool,  
10 kindergarten, full-day kindergarten, and so on. But  
11 the essential principle is the amount of time the  
12 children spend studying; the more time they spend, the  
13 more they're likely to learn.

14 The second aspect of instruction might be  
15 called its rigor or its quality. And this has to do  
16 with the fact that some teaching methods work far  
17 more effectively than other teaching methods. This  
18 includes, for example, the rigor of instruction that  
19 we set. For example, Calculus is a much more  
20 rigorous subject than consumer mathematics in high  
21 school. But it's not only the rigor of the content,  
22 but the methods by which it's presented. For  
23 example, we have -- direct instruction has proven to  
24 be quite effective if it's efficiently done. This  
25 has to do with good presentations and lessons, having



1 the lesson targeted on exactly what the child needs,  
2 a review, an effective presentation with points  
3 easily seen by the child, having seat work and  
4 homework, and then continuous review.

5 But there are other methods of instruction that  
6 are also quite effective, such as master learning,  
7 cooperative learning and other techniques that have  
8 proven themselves to be much more efficient than the  
9 usual classroom procedures.

10 Q. What about the classroom, itself, the psychological  
11 environment surrounding your students?

12 A. Well, I mentioned two aspects of instruction, so  
13 we're up to five -- what I consider the five factors.  
14 The other, as you say, is the psychological  
15 environment. And the first aspect of that might be  
16 called the climate or morale. And the research on  
17 this came out of the military and business in the  
18 1950s and '60s and it's now been found that the  
19 same kinds of things apply in classrooms. When the  
20 children like each other, when the class is cohesive  
21 and the children look forward to going to it, when  
22 they feel that they are a part of it, when they are  
23 treated not necessarily well but equally within the  
24 class, that there isn't favoritism or cliques or some  
25 students being treated better than others. Just as

1       this has been found effective in military units and  
2       business corporations, it's also been found if  
3       there's a good climate and good morale in the class  
4       the children learn more, particularly -- and I would  
5       say most of the things that I've been talking about  
6       have to do with cognitive achievement, that is,  
7       indexed by standardized tests. But a cohesive class  
8       with a good climate also tends to increase interest  
9       in the subject and the tendency for children to keep  
10      studying after the course is over.

11   Q.   Does the home environment have anything to do with  
12       education?

13   A.   Yes. Here I would say that I'm not talking about  
14       social economic status, social class, or race. But I  
15       sometimes like to use the term the curriculum of the  
16       home. I've calculated the number of hours the  
17       children actually spend in school of the waking hours  
18       in the first 18 years of life and only 13 percent of  
19       the time is spent in school. 87 percent of the time  
20       is spent outside of school when children are awake.  
21       This means that the qualities of home life have  
22       extremely important, highly influential effects on  
23       what children learn. This has to do more  
24       specifically with reading to the child when the child  
25       is young, having the child read to the parents,

1 taking the child to museums, taking the child to  
2 libraries, being sure that they're monitoring  
3 television so that they don't spend too much time on  
4 it or watching with the child and discussing good  
5 programs with the child, attempting to build the  
6 child's vocabulary. And then there is some  
7 old-fashioned virtues, too, such as love and  
8 affection and stability. And this whole curriculum  
9 of the home is extremely important in determining how  
10 much children learn in school and outside of school.

11 Q. Is that something that our educational systems have  
12 any control over?

13 A. Well, I would say that they don't have complete  
14 control, but they have some control. And at the turn  
15 of the century when people lived in small  
16 communities, there was a very close relationship  
17 between the teachers and the parents, and teachers  
18 used to, oh, have dinner in the parents' homes and be  
19 very -- extremely well acquainted with them. We live  
20 in a more mobile society today and we've sort of  
21 broken those ties. But today, a number of school  
22 systems around the country are developing what are  
23 called parental programs. And these might be in  
24 suburban areas, but they are also in poor areas,  
25 rural areas and urban areas. And what they have done

1 is bring the parents into the school and inform them  
2 about the school curriculum. And in some cases, they  
3 have given them material so that they can work with  
4 their children at home tutoring them. They might  
5 give them lists of cultural opportunities in the  
6 community, such as museums and activities that they  
7 could work with their children at home. These  
8 programs, initiated by school folks in working  
9 closely with parents, have had a very good record of  
10 success in promoting educational achievement.

11 Q. What about the child's peer group outside of the  
12 school, does that have any effect on education?

13 A. Yes, it does. On an average, it's the weakest, but  
14 along junior high school and the middle or the middle  
15 schools, around sixth through eighth grade, the peer  
16 group, the adolescent group, becomes much more  
17 powerful. Before that, it's more the home that has a  
18 big effect. But a number of studies have indicated  
19 and I think it's obvious enough, too, that there is  
20 sometimes called an adolescent subculture where the  
21 children are really more interested in the peer group  
22 of their own age. And if they're with other children  
23 that are interested in school and are achieving well,  
24 it's had some effect, particularly in the -- after  
25 junior high school and in senior high school.

1           Although, as I say, this is the weakest factor. And  
2           sometimes schools can't do very much about it because  
3           -- and I'm talking here about the outside-of-school  
4           peer group.

5       Q.   Dr. Walberg, how do you come to the conclusion that  
6           these nine causes are the chief causes of the  
7           educational process in our country?

8       A.   I didn't mention that I -- could I --

9       Q.   Yes, sir, please do. I'm sorry.

10      A.   If I make this complete, just for the sake of  
11           completeness, before I answer that question. The  
12           ninth factor is the mass media. And the one that has  
13           been most thoroughly analyzed is television. And  
14           this is exceedingly important because the largest  
15           surveys have indicated that high school sophomores  
16           and seniors -- and the biggest survey that was ever  
17           done, high school and beyond study, indicated that  
18           high school sophomores and seniors were watching 28  
19           hours of television per week. And if you calculate  
20           the number of hours in school, you say that there are  
21           six hours per day, there might be 30 hours a week in  
22           school and 28 hours watching television. And so,  
23           there is a great deal of concern that television may  
24           be injurious to the child's performance and it would  
25           be better for children, for example, to do homework

1 or other educationally constructed activities.

2 I don't want to call too much attention to this  
3 because it's shown a weak, negative effect. And I  
4 also would say, too, that some television can be  
5 good, watching the news, good science programs and so  
6 on. But many psychologists believe that American  
7 school children are watching too much of it, it's  
8 passive and it's not completely in the child's  
9 interest.

10 Q. All right. Let me review these nine to make sure  
11 that I've got them all then. One was ability or  
12 prior achievement?

13 A. Uh-huh.

14 Q. Two was motivation?

15 A. Yes.

16 Q. Three was age or development?

17 A. Uh-huh.

18 Q. Four was amount of time spent learning?

19 A. Uh-huh.

20 Q. Five was quality or teaching methods?

21 A. Uh-huh.

22 Q. Six was classroom climate? Seven was home  
23 environment? Eight was outside peer group?

24 A. Uh-huh.

25 Q. And the ninth one that you just mentioned was mass

1 media --

2 A. That's correct.

3 Q. -- particularly television?

4 A. Yes.

5 Q. All right. Now that you have formulated these nine  
6 reasons, how did you reach that conclusion?

7 A. Well, in the last ten years or so, two things have  
8 been very eventful, in my opinion, in educational  
9 research. There have been a very large number of  
10 statistical and other kinds of studies that have been  
11 conducted, really beginning around the year 1910, but  
12 in the last 20 or 30 years, there have been many more  
13 studies conducted, in fact, there have been  
14 thousands. And before five or ten years ago, people  
15 had not brought these studies together. They  
16 tentative -- although they were published in referee  
17 journals and scientific journals, they didn't bring  
18 the studies together. So, a number of investigators  
19 in various parts of the country and different  
20 universities began synthesizing statistically these  
21 studies to say what would really make the most --  
22 what would do the most to increase achievement. And  
23 so, when these studies were synthesized, they  
24 indicated that some things worked extremely well and  
25 were very consistently effective and other things

1        didn't seem to make much difference at all.

2        So one -- and I should say that this kind of  
3        study that I have been describing is similar to  
4        studies that are made of drugs, for example. To test  
5        the efficacy of a drug, you have an experimental  
6        group and you have a control group, and you want to  
7        give the duly proposed drug to one group and see if  
8        it really is more effective than the other group.

9        And this has also been used in the field of  
10       agriculture, which has demonstrated tremendously  
11       increasing productivity and efficiency, because there  
12       have been experiments as to what kind of tillage  
13       might be used, how much irrigation, and so on.

14       So the general idea is the scientific  
15       experiment, where you are contrasting one group that  
16       gets a certain kind of treatment in question and  
17       comparing it with an alternative treatment or a  
18       control group.

19       Now, the other large basis for coming to these  
20       conclusions, aside from random -- what I would call  
21       experiments or randomized field trials are  
22       large-scale studies that might be called surveys.  
23       One of them, for example, is high school and beyond  
24       that tested 58,000 sophomores and seniors throughout  
25       the United States.



1           Another one was -- sometimes it's called the  
2           Coleman Report, and this was commissioned by the  
3           United States Congress, and it tested more than  
4           600,000 school children in and around the United  
5           States in the elementary and the secondary school  
6           years. And it attempted to link statistically the  
7           test scores of these children to the characteristics  
8           of their schools, what kind of teaching was going on,  
9           what was the size of the school, the size of the  
10          district, the financial spending and other kinds of  
11          indicators.

12          The other -- maybe just one other example I  
13          would give of that, which I think is also very  
14          revealing, is done by the International Association  
15          For The Evaluation Of Educational Achievement. And  
16          this is the group that we sometimes read about in the  
17          newspapers which tests on comparable tests that are  
18          translated into the language of about, currently,  
19          about 50 countries throughout the world. Tests are  
20          given in these countries in the language of the  
21          country in science, mathematics and foreign languages  
22          and other subjects and comparisons are made to find  
23          out which countries are doing the best. So the  
24          sources of these conclusions that I've been -- as  
25          you've asked me, are from these small-scale

1 experimental studies, but then large-scale  
2 statistical surveys.

3 Q. So everyone in education might have opinions on  
4 various things but, as with your background in  
5 statistics and so forth, you have attempted to go  
6 through and make measurable studies of these various  
7 elements, is that right?

8 A. Yes. And you could say that these are empirical  
9 studies or factual studies and they don't necessarily  
10 confirm opinions, often they can reverse opinions.  
11 And we've tried to take a factual point of view  
12 rather than simply looking at schools and coming up  
13 with opinions.

14 Q. Have you written any articles summarizing these nine  
15 elements for more and better productivity in American  
16 schools?

17 A. Yes, I have.

18 Q. All right. What was the name of one of your  
19 articles?

20 A. It's The Improving -- I'm not sure I can get the  
21 exact title. It's "Improving The Productivity Of  
22 American Schools," I believe is the best --

23 Q. I hand you what's been marked Defendant-Intervenors'  
24 Exhibit No. 23.

25 A. Yes, the title is "Improving The Productivity Of

1 American Schools."

2 Q. What year did you write this particular article?

3 A. This was published in 1984 and I wrote it about six  
4 months before that.

5 Q. Okay.

6 MR. R. LUNA: Your Honor, this has been --  
7 a copy of this exhibit has been given to opposing  
8 counsel and we ask that it be admitted into evidence  
9 at this time.

10 MR. ROOS: Your Honor, we would like to  
11 reserve objections on this. We've just seen it in  
12 the last five minutes or so.

13 THE COURT: How much time do you want?

14 MR. ROOS: Well, we would like time to  
15 review it, sir, to see if there's hearsay in it. And  
16 obviously, the gentleman is here and the whole  
17 document, itself, is hearsay, but there may be  
18 hearsay on hearsay. And we haven't had a real  
19 opportunity to review it. And until we have a break,  
20 we really won't have an opportunity to do so.

21 THE COURT: Okay. I think that's how I've  
22 been treating everybody. Well, we won't have it in  
23 evidence, but we need to go on and probably talk  
24 about this, maybe not to argue about what's in it.

25 MR. E. LUNA: So we could talk about it,

1           Your Honor, could it be admitted in evidence subject  
2           to being reconsidered after he has made any  
3           objections, if any?

4                   THE COURT: Well, I don't see the -- I  
5           don't see that this has to be in evidence before he  
6           can talk about what's in it. He wrote it, so ...

7                   MR. GRAY: That's absolutely correct, Your  
8           Honor.

9                   THE COURT: Okay. We'll just hold it and  
10          y'all reintroduce it or reoffer it after morning  
11          break, but we can go ahead and talk about this  
12          subject.

13                   MR. R. LUNA: Fine.

14                   THE COURT: I mean, we've already been  
15          talking about the subject.

16                   MR. R. LUNA: For the most part it just  
17          summarizes his conclusion. I think we've already  
18          been over most of it.

19          BY MR. R. LUNA:

20          Q.     Dr. Walberg, are there any other conclusions or  
21                elements of your study in regard to I.Q. scores or  
22                anything else which should be pointed out to the  
23                Court that you have discovered as a part of your  
24                studies and testing in these areas?

25          A.     Well, I would say that I've hit the main points. And

1 all I would have to add to it is that there are a  
2 number of specific techniques which we can go over  
3 that -- some are much more effective than others.  
4 And this has gone in some greater detail than the  
5 article, itself, and I would be happy to discuss any  
6 of them.

7 Q. Well, let me ask you about a couple of things that  
8 perhaps have come up during the course of this trial.  
9 And this article you published back in 1984, did you  
10 say?

11 A. That's correct.

12 Q. Have you had any studies which attempted to measure  
13 the effect, for example, of computer assisted  
14 instruction? The subject of computers has been  
15 mentioned on several occasions in this case.

16 A. Yes, I have synthesized work on computer assisted  
17 instruction.

18 Q. What have your studies shown about computers and  
19 their use in the classrooms?

20 A. It shows that computer assisted instruction is  
21 superior, but it is not one of the bigger or biggest  
22 effects. It's, I would say, a mediocre effect. It  
23 has an effect size of about .24, but there are many  
24 other techniques that are much more powerful.

25 Q. All right. What is the most important technique?

1 A. Well, I'd say that the one that has had the biggest  
2 effect on instruction is reinforcement. That's  
3 indicated in my Figure 3 in the paper. And it  
4 indicates that children who are reinforced or  
5 rewarded or somehow signaled when they make good  
6 progress, that has a very beneficial effect on  
7 learning. So if we can let children know when  
8 they're correct and when they're not correct and give  
9 them some encouragement for good performance, it's  
10 has a very good effect on how much they learn.

11 Q. All right. Would you describe -- beside the word  
12 "reinforcement" you have an effect of 1.17, and then  
13 beside that "size" with some X's there. Would you  
14 please explain what those mean?

15 A. That's just a numerical index in Figure 3 of how big  
16 the effect is, and that's the biggest effect that  
17 we've uncovered.

18 THE COURT: Which is?

19 THE WITNESS: For reinforcement. That's at  
20 the top, it's the first one in Figure 3 on Page 24.

21 BY MR. R. LUNA:

22 Q. Down in the last column -- you're looking at Page 24?

23 A. Yes.

24 Q. In the last column it says "size," what do those X's  
25 mean?

1 A. That's just an index of how large the effect is  
2 compared to the other effect. And this has more X's  
3 so it means that it's a bigger effect, 1.17.

4 Q. Okay. What was the second most important  
5 instructional quality your studies have shown?

6 A. Acceleration.

7 Q. What is that?

8 A. That means that children who are tested and those  
9 that do extremely well on tests are given accelerated  
10 instruction, more difficult instruction than other  
11 children. Often it means even taking them out  
12 of their regular class and even out of their regular  
13 school. And when those children are compared to  
14 children of equal ability, it's been found that they  
15 learn considerably more because their instruction is  
16 more demanding and it's more accelerated.

17 Q. The third item you have on your list there says  
18 "reading training." Would you describe that?

19 A. Yes. Reading training is a technique that -- it's  
20 been found that many elementary school children and  
21 high school children and, for that matter, college  
22 students are not able to adapt the pace of their  
23 reading. Sometimes we have very simple material that  
24 can be read at a very quick rate and other times it  
25 may be very difficult material, scientific or legal

1 or some other material that is difficult to read.  
2 And so, if you're going to be an efficient reader,  
3 you need to adapt the speed of the reading to the  
4 difficult material or else, your purpose, sometimes  
5 you may want to be skimming something and other times  
6 you may be wanting to read it at great depth. When  
7 children and college students are trained to do this,  
8 it's been found it has a very large effect on how  
9 well they can read.

10 THE COURT: Excuse me. Are you going to  
11 ask him anything more about the reading method?

12 MR. R. LUNA: No, sir.

13 EXAMINATION

14 BY THE COURT:

15 Q. I take it, within the world of educators, there are  
16 more than one way to teach children to read?

17 A. Yes.

18 Q. And what you mean by this reading training means  
19 which method they are taught?

20 A. In particular, Your Honor, it has to do with whether  
21 you train them to read quickly and then changing  
22 their pace to fit the material, but it's also true  
23 that there are other -- one greatly disputed method  
24 is phonics, for example, versus the whole word, and  
25 that's been a matter of great debate in this century.



1 Q. I hear the debate about phonics and the whole word  
2 and that sort of thing.

3 A. Yes.

4 Q. And I hear the debate about you shouldn't teach  
5 children to read out loud because that teaches them  
6 -- when they're reading to themselves, they say the  
7 words over in their head and they can't read any  
8 faster, for example, than they can talk?

9 A. Uh-huh.

10 Q. All right. So are there schools, for example --  
11 you've heard about Evelyn Wood?

12 A. Yes, I have.

13 Q. I don't know if she's good or bad or otherwise, but I  
14 think she thinks that you should not teach a child to  
15 say the word over in their head when they're reading.  
16 Well, are there some schools that teach a child to  
17 read along the lines that she would advocate?

18 A. Well, I think some of her methods have probably been  
19 somewhat useful to people. Some people don't know  
20 how to skim very well. But it's also been said that  
21 the graduate of the Evelyn Wood's school read 700  
22 pages of crime and punishment and when that person  
23 was asked about its meaning he said, "I think it was  
24 something about Russia." So it indicated that if you  
25 read too fast, you're not going to get the true

1           comprehension you need. So, I think the Evelyn Wood  
2           method is not really used as much in elementary and  
3           secondary schools. But there is, in some instances,  
4           some schools that teach this method of adapting. And  
5           this has been highly effective, because children do  
6           need to learn how to do that.

7       Q.   What grade would they be taught various methods of  
8           reading?

9       A.   Well, this could be really -- adaptive reading can be  
10          taught in any grade level, say, beginning certainly  
11          in third grade. And some -- it's also been found  
12          that some college students need to be taught this  
13          specific skill. And there are laboratories, for  
14          example, in colleges that -- when students haven't  
15          learned to do this in high school and elementary  
16          school, they find great benefits in teaching even  
17          older people to do this.

18      Q.   I think that Evelyn Wood advocates seem to think that  
19            you can learn how to read fast.

20      A.   Uh-huh.

21      Q.   Not just skim --

22      A.   Yes.

23      Q.   -- but get the whole meat. In other words, you have  
24            to know where the commas are and know the heart of  
25            the language, itself.

1 A. Yes.

2 Q. Do you think that's right?

3 A. Well, I'm mostly familiar with research in schools  
4 and colleges and universities. And Evelyn Wood is  
5 more of a commercial firm and I don't think that  
6 they've had independent evaluations. I think that  
7 they've made these claims, and the claims may be  
8 true, but I don't know of any really definitive  
9 research on that subject.

10 Q. Okay. Let me ask you this. Do most schools teach  
11 you to read by standing up and -- by word recognition  
12 and by having the children stand up and either read  
13 out loud or read along if somebody else is reading.  
14 Do most schools teach it that way?

15 A. Yes, I think that you will find that most schools,  
16 they use those two techniques. And there is --  
17 sometimes it's called the word attack skills or the  
18 phonics method, and that has shown something of an  
19 edge. If children learn how to do, for example, the  
20 ch consonant blend, particularly in the early years  
21 of kindergarten through about the second or third  
22 grade, it's been found more beneficial than the whole  
23 word method. But it's only a slight edge, it's not  
24 an overwhelming one.

25 THE COURT: Okay. I'm sorry. Thank you.

## DIRECT EXAMINATION (RESUMED)

BY MR. R. LUNA:

Q. Your fourth element is titled "Q's And Feedback."  
What is that and how does feedback differ from reinforcement?

A. Feedback is used when a child makes a mistake. As I indicated earlier, when a child makes progress, it's important the child be rewarded or reinforced. This could be gold stars or just be a signal of recognition or some encouragement. But if the child makes a mistake, the child needs feedback. It might need an alternative method; it may have to have the mistake pointed out to the child so that the child can correct and remedy the mistake.

Q's, which is matched with that, has to do with the targeting of instruction on exactly what the child needs. Jean Piaget was a famous Swiss psychologist and he said that it is inefficient -- that's P-I-A-G-E-T -- said that it was inefficient to teach children things that they already know, but it's also inefficient to teach things that they can't yet learn. And so the extent to which the Q's and the lessons are given, targeted on exactly what the child needs, is beneficial to the child.

Q. What about science mastery learning?

1 A. Mastery learning -- I should say why science has been  
2 picked out here. The National Science Foundation  
3 gets specific grants because they are concerned about  
4 science achievement in the United States, which  
5 compares unfavorably with science achievement in  
6 other countries, particularly Japan, and so they've  
7 commissioned syntheses of this nature. And that's  
8 why science is set out specifically here.

9           Mastery learning combines reinforcement Q's and  
10 feedback together into a system. And it's been found  
11 in science that it has had quite a large effect,  
12 although it has a large effect in other subjects  
13 also.

14 Q. Your next item is cooperative learning. What is  
15 that?

16 A. This was developed at John Hopkins University and the  
17 University of Minnesota, and it attempts to delegate  
18 some of the authority of the teacher to small groups  
19 within the class. So if there were 25 students  
20 within the class, the teacher might break them into  
21 groups of five, and these children would work  
22 together.

23           One problem with conventional instruction is  
24 there's one teacher and that teacher might talk to 25  
25 students, but the students wouldn't get as much

1 chance to speak and discuss things with one another.  
2 So, if you have these small groups, they can work  
3 together, tutor each other. It could even, however,  
4 be called competitive learning because the groups  
5 cooperate, the children within the group cooperate  
6 with one another. And their grade is based on the  
7 average of the group. But they compete with other  
8 groups within the class. So you're sort of having a  
9 blend of cooperative learning within the group  
10 competing with other students -- other groups within  
11 the class.

12 Q. Would you describe reading experiments, which you  
13 listed as .60?

14 A. This was what was the thing that I was referring to  
15 earlier when the Judge asked me about reading. What  
16 these reading experiments have indicated is that when  
17 teachers are asked to participate in innovative  
18 programs -- and as the Judge said, there are many  
19 different ways of teaching reading. What was found  
20 was that there was a slight edge for phonics or word  
21 attack skills. But the biggest differences and the  
22 biggest benefits had to do with the fact that the  
23 teachers were in an experiment. And this seemed to  
24 benefit them, because someone was paying attention to  
25 them and they were signaling that reading is

1           important. And so, being in an experimental reading  
2           group as opposed to being in a controlled group, had  
3           a greatly beneficial effect on how much the children  
4           learned in these groups.

5       Q.   What about personalized instruction?

6       A.   Personalized instruction is used more at the college  
7           level, but it is also used in -- in fact, most of the  
8           things that I'm talking about here are elementary and  
9           secondary education, but this one is also used in  
10          college. And it is very much like mastery learning  
11          in which children are given a test to find out how  
12          much they know.

13                I indicated earlier the nine factors, that  
14           prior achievement is very important. And so, to  
15           avoid teaching things to children that they already  
16           know, you give this test to diagnose what they know  
17           and then you give them instruction specifically  
18           geared to what that child needs to know. And then,  
19           the children are given enough time to learn it and  
20           they master that subject. And they are given a post  
21           test, a test afterwards, or diagnostic test to see if  
22           they've mastered the material. If they have, they  
23           are reinforced; if they haven't, they're given  
24           corrective feedback and they're given more time.

25       Q.   The next item drops down to a .45 on your scale.

1           Now, where are we and would you describe your scale  
2           in terms of the equality and effect on learning at  
3           this point?

4   A.   Well, I would say that we're still -- it's a little  
5           bit arbitrary to say where the line is drawn, but I  
6           would say the things that we've discussed so far are  
7           very big effects. Now we're getting into things that  
8           I would say would be moderate effects, they're  
9           moderately effective, more effective than  
10          conventional instruction.

11   Q.   All right. And the first one, then, would be  
12          adoptive instruction. What is that?

13   A.   It's adaptive instruction. And this is a technique  
14          for having whole group instruction where the teacher  
15          gives direct instruction, but there is also small  
16          group work. And it combines some of the elements of  
17          the other things that I've already mentioned.

18   Q.   What about tutoring?

19   A.   Tutoring is the usual -- tutoring sometimes is done  
20          by teachers and sometimes it's done by volunteers --  
21          a volunteer such as parents or people in the  
22          community that want to help out the schools.

23                I think a very interesting one is -- it's  
24                called pair tutoring in which some of the brighter  
25                children or those that are already good achievers are



1 tutoring the ones that are not quite so good. And  
2 the benefit of this is very much like adaptive  
3 instruction and mastery learning. The tutor, either  
4 with one other child or a couple of other children,  
5 can target the instruction on exactly what that child  
6 needs as opposed to trying to deal with a whole group  
7 that may have varying abilities. What's been found  
8 about this pair tutoring is that the child that's  
9 doing the tutoring seems to benefit just as much as  
10 the one that's being tutored. Because it's been said  
11 if you want to teach something -- or rather if you  
12 want to learn something, you should teach it. That  
13 means you have to get it in your own mind and  
14 organize it. So this has sort of a double whammy  
15 effect in benefiting the student tutor as well as the  
16 child that's being tutored.

17 Q. How about individualized science?

18 A. These are programs similar to the ones that I've  
19 mentioned earlier, but they have focused more on the  
20 child working alone. Many of these other ones that  
21 I've already discussed, you have a whole group or a  
22 small group. But here we're talking about  
23 independent learning and the child going off on  
24 individual projects or being given specific  
25 individual assignments.

1 Q. And higher order questions?

2 A. This is just -- I'm sorry for this psychological  
3 jargon, but it's basically Socratic questioning. It  
4 means asking a difficult question, a profound  
5 question, as opposed to a superficial or a merely  
6 factual question which the child is repeating what  
7 the teacher said or repeating what is in the book.  
8 It causes the child to express something in his own  
9 language. And so it's thought to -- it's sort of a  
10 higher process skill. And these have had quite good  
11 effects.

12 Q. What about diagnostic restrictive methods?

13 A. These are a little bit like some of the others that I  
14 have been describing to you, but they are not as  
15 effective as some of the others. Basically you have  
16 this idea of diagnosing what the child needs and then  
17 prescribing what the child -- I should say what the  
18 child knows and then you have a prescription for what  
19 the child -- what activities the child should engage  
20 in. This is often used in special education, not so  
21 much for deaf children and blind children but,  
22 rather, children with emotional disabilities or  
23 learning disabilities or other classifications.

24 Q. Next is individualized instruction. And how would  
25 that differ from personalized instruction, that

1           you've already discussed?

2   A.    It's not as well organized and it tends to be  
3           completely individualized. And it does not make as  
4           complete use of a diagnosis and more systematic  
5           methods that are found in personalized systems and  
6           mastery learning.

7   Q.    What about individualized mathematics?

8   A.    This is the same thing except the National Science  
9           Foundation sponsors specific syntheses of research in  
10          the fields of mathematics and science. And so  
11          there's a separate estimate here for this application  
12          in this particular field.

13   Q.    Next you have listed new science curricula.

14   A.    These came from the -- if you'll recall the Sputnik  
15          era in the late '60s when the U.S.S.R. startled the  
16          United States and the rest of the world by the  
17          satellite and there was a great amount of interest in  
18          increasing science achievement and mathematics  
19          achievement. And the federal government, through the  
20          National Science Foundation, sponsored a great number  
21          of so-called new science curricula. And they were  
22          found to have a moderately beneficial effect on  
23          science learning.

24   Q.    Describe teacher expectations.

25   A.    Teacher expectations have to do with, as the term

1 implies, expecting more from children. And it's been  
2 found when children have -- teachers have high  
3 expectations and high standards, it often helps the  
4 children more. If they expect to have good behavior  
5 and if they have high standards for academic  
6 achievement, generally the children learn more than  
7 if the teachers have low expectations and low  
8 standards.

9 Q. Item 18 we've already mentioned before, and that's  
10 computer assisted instruction, and you've given that  
11 a .24.

12 A. Uh-huh.

13 Q. Why do we hear so much about computers and their use  
14 in the classroom, do you think, if it rates so lowly  
15 on -- or much less important on your scale than these  
16 other factors?

17 A. Well, I personally think that computers have been  
18 hyped a lot by manufacturers and others. And it's  
19 true that we seem to live in a computer era, but as  
20 far as effective and efficient computers are  
21 concerned for schools, many of them are not very well  
22 integrated into the regular curriculum and many of  
23 them deal with side issues. There are many of them  
24 that are gains. Many of the -- much of the software  
25 is not well organized to help the child achieve what

1       the child should be learning in school to attain  
2       state goals or local goals. I think that perhaps in  
3       five or ten years -- I think that these are improving  
4       and so on, but right now it's not among the most  
5       effective procedures.

6   Q.   Do you think the more that we use them in schools,  
7       the better we may get at them in terms of enhancing  
8       skills?

9   A.   Well, we can't -- we can't be sure that they're going  
10       to get better, but I suspect that when the -- now  
11       we're having better software and better programs that  
12       are going to be written and I think educators are  
13       getting more experienced. What I fear is that many  
14       of these computers are winding up in closets and not  
15       being used at all, because there is a certain novelty  
16       effect. Teachers may like to get them, and it's  
17       exciting to them, and the children may like to have  
18       them for the first few weeks, but computers can also  
19       rapidly get very boring, too. So I think that we may  
20       make a lot of mistakes with them, but in the  
21       meantime, say in five or ten years, we're going to  
22       have more effective ones. This research comes from  
23       about -- well, through about 1984, so in five or ten  
24       years, we'll probably get a better picture and it may  
25       improve somewhat.

1 Q. Describe sequence lessons?

2 A. Well, this is basically the idea that an education --  
3 it's sometimes said, "First I tell them what I'm  
4 going to tell them, and then I tell them, and then I  
5 tell them what I told them." Often children are  
6 presented material without having a good idea of its  
7 sequence. If teachers point out what we studied  
8 yesterday and last week and how it relates to today's  
9 lesson, and then sometimes giving an idea of why  
10 we're studying algebra, how is it related to  
11 something that we might learn later on in life or why  
12 do we need to study American history, and getting a  
13 good idea of the chronology of events that's been  
14 found. Sequencing lessons in a logical chronological  
15 way has a moderately beneficial effect.

16 Q. What is advanced organizers?

17 A. This is pretty much the same thing that I've just  
18 described. It's -- children may have a certain  
19 understanding and knowledge of a subject matter, but  
20 if teachers can relate the new ideas that they're  
21 going to present to what the children already know  
22 and link it up in a logical way, it's an effective  
23 teaching procedure.

24 Q. The next item, new mathematics curricula, you show as  
25 a .18. Where -- is there a line somewhere or are we

1       approaching it for the bottom portion of your list?

2       A.   Well, I would say that we're in the lower six or  
3       seven here. And this is has not been -- this has  
4       been a relatively small effect. This was the new  
5       mathematics curricula. They were also associated  
6       with the post -- with the Sputnik era. And there was  
7       a great deal of experimentation with the so-called  
8       new mathematics, but it didn't have a very big effect  
9       on how much children learned. It had a better effect  
10      in conventional instruction, but it was comparatively  
11      minor compared to the others we've already talked  
12      about.

13     Q.   How about inquiry biology?

14     A.   There is a theory that science has to be taught in  
15     the way that science, real science, proceeds. And  
16     scientific investigators have to have hypotheses and  
17     they have to struggle and they have to inquire and  
18     they have to do scientific experiments. And the idea  
19     of teaching inquiry biology was that you would use  
20     the same method and putting a big emphasis on  
21     laboratory works so the children could make  
22     discoveries. And this has had some minor and  
23     positive effect, but it's not strongly more  
24     beneficial than what might be called more textbook  
25     science, where they learn it nearly as effectively

1 out of a textbook.

2 Q. What is homogeneous groups?

3 A. The idea of homogeneous groups is that you would have  
4 groups within the class and some might be faster  
5 readers and others might be moderately fast or good  
6 readers and some might be poor readers. And what the  
7 teacher would typically do is try to group them in  
8 small groups and then gear her teaching to, say,  
9 three different groups within the grade. But it's  
10 not been -- it's not been one of the bigger effects  
11 that we've found.

12 Q. Now, your next one is a little interesting. You have  
13 now listed as .09 effect of class size. Would you  
14 explain your views on class size?

15 A. Well, this came from a very large syntheses conducted  
16 by Gene Glass and Mary A. Smith of the University of  
17 Colorado. And they gathered together a great number  
18 of studies that had been done throughout the United  
19 States and Canada of class size. And they've found  
20 on balance that smaller classes seem to be slightly  
21 more effective than larger classes. However, they  
22 were criticized for their work because the effect  
23 only seemed to set in when you got below about 10  
24 students per class. And there weren't many data  
25 points, there were very few classes that are, say,



1       between about five and, at the time that the studies  
2       were done, 15. So they didn't have many studies in  
3       that range. Most of the classes were between 15 and  
4       60. And in that range, they didn't find much of an  
5       effect at all.

6               So when you got below then -- there were a few  
7       data points, as I said, between five and 15, then you  
8       got to groups of five, and these were really not -- I  
9       wouldn't call them classes, they were more like  
10      tutoring groups, and that's where you got some  
11      beneficial effects. However, some of those were  
12      subject to some question, too, because there weren't  
13      many studies even in that range, and some of them had  
14      to do more with physical education. For example,  
15      some of the estimates came from the teaching of  
16      tennis, which is not a regular academic subject. And  
17      this probably could benefit a child if they were  
18      teaching tennis to give coaching right then and  
19      there, but it might not apply to, say, mathematics or  
20      spelling.

21   Q.   The next item is programmed instruction. We have a  
22       minus .03. What does that mean?

23   A.   That means that programmed instruction actually had a  
24       more negative effect than conventional instruction.  
25       Programmed instruction was developed in the United

1 States Army and Navy during the Second World War and  
2 it was before the era of computers. These were  
3 booklets and other teaching machines that had been  
4 worked out. And these turned out to be not very  
5 effective.

6 Q. Your next to last item is called mainstream. What is  
7 that?

8 A. This was an idea that came out from the United States  
9 Department of Education that children with mildly  
10 handicapping conditions, such as emotional  
11 disabilities, learning disabilities and various kinds  
12 of problems, could be put in regular classes. And  
13 the hope was that they would be learning more than if  
14 they were isolated in special groups. And this  
15 turned out not to have a positive effect, but it's a  
16 very small negative effect.

17 Q. Lastly, you have instructional time, which is a .38.  
18 What does that mean?

19 A. Well, that is what I -- all of these things that I've  
20 been telling you about, I refer to these as quality  
21 instruction. And instructional time is my -- I guess  
22 it is the fifth factor. As I was saying earlier,  
23 it's the amount of instruction. So this may be the  
24 number of days in the school year, whether there's  
25 Saturday school, summer school, preschool, whether --

1           now, we can also consider towards the bottom of the  
2           chart, too, because there's some ambiguities to where  
3           to place some of these. But homework, for example,  
4           is a way of extending the school day, the amount of  
5           instruction.

6           So the general idea of instructional time is  
7           that the most -- what this reveals is that there is a  
8           moderate to large effect indicating that the more  
9           time children spend studying in all of the ways that  
10          I've described, the more that they will learn.

11       Q.   Now, you've mentioned homework. And in the next  
12           chart on Figure 4, you have assigned homework listed  
13           down with a factor -- an effect, that is, of .28?

14       A.   Uh-huh.

15       Q.   So that would show that, I assume, it has some  
16           effect, but not a strong effect, is that right?

17       A.   Yes. If you have assigned homework, it's an  
18           estimated effect of .25, but if it's graded, which is  
19           the largest one, it's a quite large effect, so if --  
20           teachers not only assign the homework, but if they  
21           grade it and give comments on it and they praise  
22           children for good accomplishments and correct their  
23           mistakes, it has three times -- roughly three times  
24           as big an effect as simply assigning it, because  
25           assigning it and doing it is one thing, but being

1 reinforced for it is quite a different one.

2 Q. So that falls back to reinforcement, which is your  
3 No. 1 item in Figure 3, which we've already  
4 discussed?

5 A. That's correct.

6 Q. All right. Would you discuss just generally the  
7 other items on Figure 4, such as class morale and  
8 home interventions?

9 A. Class morale is the factor that I have described to  
10 you before. That is to say when the class is  
11 cohesive, when it's satisfying, when the children  
12 look forward to going there, when they know each  
13 other well, when they're not -- when there's not a  
14 favoritism or some children being treated better than  
15 the others. When it's goal directed and  
16 businesslike, I call this good morale or good  
17 climate, this is beneficial to learning.

18 The other factors there are home interventions  
19 and home environment, that has to do with the last  
20 set of four factors that I described earlier. It's  
21 the sort of curriculum of the home, the extent to  
22 which the parents stimulate their children, have  
23 reading materials in the home to help the child,  
24 watch television with the child or monitor the  
25 child's television, discuss the programs, and

1 providing affection and so on. This is what I mean  
2 by home interventions and home environment.

3 Q. What about socioeconomic status, which you've given a  
4 .25. What is that?

5 A. This is measured in the standard sociological ways.  
6 And the three most common are the parent education,  
7 parent -- an index of the parent's prestige of  
8 occupation, and income. And as you see here, these  
9 are -- it is a positive correlation on the individual  
10 level, but it's not nearly as important as what the  
11 parents do. So it's not the financial wealth or even  
12 the degree of education, but it's the extent to which  
13 the parents stimulate the children at home through  
14 these kind of home interventions that I've been  
15 describing.

16 Q. All right. And the last two are peer group and  
17 television, both of which we've already discussed  
18 briefly?

19 A. That's correct.

20 Q. Dr. Walberg, you've mentioned that many of the things  
21 which you have studied here have come from other  
22 studies and have been measured in various ways. And  
23 you've mentioned in 1966, the first major study was  
24 the Coleman Report. And how many students did you  
25 say that it studied?

1 A. I believe that the Coleman Report, the official title  
2 of which was the "Quality of Educational Opportunity"  
3 had more than 600,000 students throughout the United  
4 States.

5 Q. How significant is this report in our educational  
6 testing system, in our history of testing for  
7 educational progress?

8 A. Well, I would say that the Coleman Report might be  
9 the most famous report that has ever been done on  
10 education because it was commissioned by the United  
11 States Congress, and it still, today, is one of the  
12 biggest social science surveys that has ever been  
13 done. And a great number of scholars got the Coleman  
14 data, which was a great mass of data on computer  
15 tapes, and analyzed it in various ways.

16 I would also say that it's a very significant  
17 report because it gained so much prominence, but it  
18 also indicated a number of things that were  
19 characteristic of schools and often measured. And  
20 what state legislatures and others were concerned  
21 about didn't seem to make much difference at all.  
22 These had to do with school facilities, teacher  
23 training, advanced degrees, the size of the school,  
24 the per student expenditures. Many of these sort of  
25 administrative and financial characteristics didn't

1        seem to be linked. Once you took into consideration  
2        socioeconomic status, they didn't seem to be linked  
3        to how much children learned in school.

4        Q. You've mentioned the term "per student expenditures,"  
5        which has been a major subject of this trial. Do the  
6        conclusions of the Coleman Report come as any kind of  
7        surprise to the educational community?

8        A. Well, I think many educators have often said that  
9        money would make a difference, but this report was  
10       reversed, the common wisdom, and it was subject to a  
11       great deal of scrutiny by other scholars. And then  
12       it stimulated a great deal of other research that  
13       began in -- there had been some other studies before,  
14       but they had been published in obscure journals and  
15       people were not really completely aware of them. But  
16       it caused such a considerable amount of publicity and  
17       so on that a great number of other studies were done  
18       throughout the United States and other countries to  
19       pursue this absence in linkage of spending and other  
20       characteristics to how much children learned in  
21       school.

22       Q. What about Harvard University, did they follow up on  
23       the Coleman Report?

24       A. Yes, they did.

25       Q. When was that?

1 A. This was approximately -- if I can look and refresh  
2 my memory here. This was in the late '60s, and  
3 Mosteller, Moynihan, Jencks and a great number of  
4 other scholars acquired a -- at Harvard, but this was  
5 also done at other universities as well -- acquired  
6 the Coleman data and carried out similar analyses of  
7 the data and came to the same conclusions.

8 Q. What about other universities, have they also tried  
9 to reevaluate the Coleman Report?

10 A. Yes, they have. There have been a number of  
11 publications on this question.

12 Q. All right. What specific ones can you think of?

13 A. Coleman, himself, was at John Hopkins at the time  
14 that he did the study and he brought the data to the  
15 University of Chicago where he did similar analyses.  
16 And in the original Mosteller and Moynihan work,  
17 there were several collaborators from other  
18 universities that looked into these questions.  
19 Educational Testing Service at Princeton, New Jersey  
20 carried out analyses, and there -- I can't think of  
21 any others offhandedly, but I know that there have  
22 been many reanalyses of the Coleman data.

23 Q. All right. Other than those universities, have you,  
24 yourself, attempted to reanalyze the Coleman data?

25 A. I have not.



1 Q. In the mid '70s, has Yale University or Columbia  
2 also attempted to take a look at that data and other  
3 data as well?

4 A. Well, there were similar studies. Richer Learning  
5 of Yale University collected original data in  
6 several cities on particularly poor children living  
7 in cities. And there were analyses that went on in  
8 Columbia, also, of similar data sets from the  
9 International Association For The Evaluation Of  
10 Educational Achievement.

11 Q. At Yale, did they look at inner-city schools in  
12 particular?

13 A. Yes, they did.

14 Q. And did that include aspects involving poor minority  
15 children?

16 A. Yes.

17 Q. What about the study at Columbia, did they find  
18 anything conclusive, one way or the other?

19 A. No, they did not.

20 Q. In the '70s or '80s, have there been any other  
21 university studies?

22 A. Yes. In 1983, Mullin and Summers of the University  
23 of Pennsylvania compiled the results of a great  
24 number of studies that had been done, including their  
25 own work that was, I believe, sponsored by the

1 Federal Reserve Bank in Philadelphia. So they looked  
2 at their own work and they compiled the work of a  
3 number of other investigators on compensatory  
4 education. This is sometimes called Title 1 or  
5 Chapter 1. And it's special allocations of extra  
6 money for districts with poor children to be spent on  
7 those children. And they found that there was no  
8 sustained effect in the studies that they had looked  
9 at.

10 Q. How much money does the Federal Compensatory  
11 Education Program involve?

12 A. Well, currently it's about 4 billion dollars a year.  
13 At the time that Mullin and Summers did their work,  
14 it was about 25 billion altogether. But I believe  
15 that up until now, there might have been about 45  
16 billion dollars spent altogether.

17 Q. So that University of Pennsylvania study concluded  
18 that there were no positive effects from spending  
19 that much money?

20 A. That's correct. Of course, I'm always talking about  
21 learning.

22 Q. Right. What about Glasman, has he done any studies?

23 A. Yes, he is the editor of the Review of Educational  
24 Research. And he published a study in that journal,  
25 it was from the University of California in Santa

1 Barbara, in which he took another compilation of  
2 these same studies. And he reached the same  
3 conclusion, that there were not linkages between such  
4 totals amount of spending, and in specific indexes  
5 such as class size, teacher experience, teacher  
6 salaries, and things of this nature.

7 Q. Who is Glasman and where does he work?

8 A. His name is Natasaly Glasman. He was the Dean at the  
9 University of California, Santa Barbara, and I  
10 believe that he is now a professor there.

11 Q. All right. What about Eric Hanushek, has he done any  
12 studies?

13 A. I would say that Eric Hanushek has done the most  
14 definitive study. He gathered together -- if I could  
15 look back at my notes here, I would get this number  
16 right.

17 Q. Where is he?

18 A. He's at the University in Rochester. And he has also  
19 been with the United States Congressional Budget  
20 Office when he was doing this study. He gathered  
21 together 130 studies that were all that he could  
22 gather looking at these various kinds of surveys and  
23 he -- this was, now, in 1981. And he concluded that  
24 there was no relationship between the amount -- the  
25 total amount spent per child and the amount that's

1       learned. Nor on specific indications such as  
2       teachers' salary -- now these would be the main  
3       components of educational spending, teacher salaries,  
4       advanced degrees, because teachers are often paid for  
5       having a master's degree or 36 hours, facility's  
6       quality, administrator quality, and so on. Then he  
7       updated that study -- it was just recently published  
8       -- and he got 17 subsequent studies that were  
9       published since 1981 and added those to his list and  
10      he came to the same conclusion.

11     Q.   Dr. Walberg, after your review of all of these  
12       studies of all of these various educators,  
13       researchers and universities, what do you conclude  
14       from all of these studies?

15     A.   Well, I conclude that these nine factors have very  
16       powerful and consistent influences on what is learned  
17       in school, especially as far as standardized  
18       achievement tests, state-made tests and the kinds of  
19       things that state legislators are trying to do.  
20       Whether we're -- on the other hand, such things as  
21       the administrative characteristics of districts,  
22       whether they're split by kindergarten through eighth  
23       grade, or they have middle schools, junior schools,  
24       or the amount of spending in total or the amount of  
25       spending on specific aspects, the principal ones of

1           which would be teacher salaries and class sizes  
2           because they are big determinants of expenditures,  
3           have had extremely inconsistent effects on how much  
4           children learn.

5   Q.   Dr. Walberg, you have described these psychological  
6       determinants of learning and now you have discussed  
7       the financial influences. How would you contrast  
8       those two types of possible influences?

9   A.   Well, I would say that the psychological ones are  
10      very plausible. And research done by psychologists  
11      and educational researchers and sociologists has been  
12      very consistent in showing the benefits of this  
13      things. On the other hand, the financial  
14      characteristics have been -- the research has been  
15      very inconclusive, very inconsistent and the -- it's  
16      not indicated that spending more money on schools  
17      would help learning.

18   Q.   At least there's no measurable proof of that fact?

19   A.   That's correct.

20   Q.   Now, so far we've been discussing studies done on a  
21      national level and the various effects at the  
22      national level. Have you been able to investigate  
23      the possible absence of any linkage between  
24      educational spending and learning achievement in the  
25      State of Texas?

1 A. Yes, I have.

2 Q. And what have you studied?

3 A. Well, the first thing I looked at was the report by  
4 Deborah Verstegen, and that was very useful to me.

5 Q. You're now referring to a document which has been  
6 admitted into evidence as Defendants' Exhibit No. 48.  
7 What portions of that document did you find seem to  
8 relate to the national standards that you're most  
9 familiar with?

10 A. Well, I would say that on several pages there are  
11 points that confirm some of the things that I have  
12 already said, but some of them were also interesting  
13 to me and so I noted them. The first thing I noticed  
14 was on Page 27, and I quote here, "The per pupil  
15 property wealth of the district was found to have  
16 little or no relationship..." -- and I'm skipping  
17 down to the bottom here -- "...to minority students  
18 as a percentage of total students."

19 Q. Where are you reading on Page 27?

20 A. It's one, two, three -- it's -- I'm not really quite  
21 sure how to count these paragraphs, but it's the  
22 paragraph beginning, I'd say, about five-eighths of  
23 the way down the page that begins "The per pupil  
24 property wealth of the district was found to have  
25 little or no relationship to the percentage of

1 minority" -- I'm sorry, "to minority students as a  
2 percentage of the total students." So it indicates  
3 that there was no tendency for minority students to  
4 be in poor districts.

5 Q. Where else in her report have you found items that  
6 were consistent with your studies?

7 A. On Page 30, and I quote -- the per pupil property  
8 wealth was also -- I'm sorry, I didn't begin my quote  
9 yet.

10 Q. Where are you on Page 30?

11 A. I said I started -- I'm a little mixed up here, I'm  
12 sorry. Let me first say that the per pupil property  
13 wealth is unrelated to -- and now I'm going to quote  
14 "experienced teacher allocation and the percentage of  
15 ninth graders passing all sections of the Texas  
16 Assessment Of Basic Skills." Also quoting, "In some,  
17 wealthy districts tend to have more revenue, but were  
18 unable to realize an experienced teaching force or  
19 higher test scores as a result of the perceived  
20 revenue advantage."

21 Q. Did you find anything else in her report?

22 A. Yes, I did. On Page 38, again quoting from the  
23 second paragraph, it says, "Variables exhibiting no  
24 relationship to the TABS or TEAMS test scores  
25 included teacher experience, M&O" -- that's, I

1 believe, maintenance and operations rate -- "and  
2 operating cost per pupils." So there was no  
3 relationship between the achievement in these  
4 districts to teacher experience, operating and  
5 maintenance expenditures and total operating costs  
6 per student.

7 Q. All right. Was there anything else in her report?

8 A. Well, the last thing that I would -- well, perhaps  
9 two other things that I would note is that Dr.  
10 Verstegen did note that local -- "school boards in  
11 Texas have traditionally enjoyed" -- I'm quoting from  
12 Page 79 -- "substantial autonomy in providing for the  
13 education of the children within their districts.  
14 This autonomy is represented among other things in  
15 naming the school districts as ISD's, independent  
16 school districts."

17 I thought that was significant. And the last  
18 point --

19 Q. Excuse me.

20 A. Yes.

21 Q. Why did you think that was significant?

22 A. Because I think that there has been a movement in the  
23 United States for states to take more initiative, and  
24 I think that this has been particularly true in  
25 Texas. But I think for the last 10 or 15 years,



1 states have been spending more money on education and  
2 taking more of a greater percentage -- contributing a  
3 greater percentage of the costs of education so that  
4 the local percentages have been going down. But  
5 also, in addition to picking up more of the financing  
6 of education, states have also taken the initiative  
7 and some autonomy away from local districts.

8 And so, in Illinois where I come from, but then  
9 -- and certainly here in Texas, and many other  
10 states, there are now statewide testing programs.  
11 There are various kinds of mandates about teacher  
12 testing, certain students in some states are -- I  
13 should say school districts are being mandated that a  
14 certain number of courses have to be taken in  
15 mathematics and English and the other essential  
16 subjects. So I thought that it was interesting that  
17 she also picked that up here and noted that the  
18 tradition in Texas has been more local autonomy,  
19 which is now shifting.

20 Q. Well, is that shift, in your opinion, good or bad and  
21 why?

22 A. I think that there are mixed -- there may be some  
23 mixed views. I think that we have a tradition in the  
24 United States -- we are one of very few countries in  
25 the world that has basically a state as the agent of

1 education, but it leaves an immense amount of local  
2 autonomy and local decision making to school  
3 districts. I think it's been our tradition to have  
4 this sort of grass-roots control so the local  
5 citizens may decide that they are going to have what  
6 they consider to be a unique school system. They may  
7 emphasize athletics or they may emphasize debate or  
8 they may choose certain characteristics that let that  
9 district be quite distinctive and autonomous.

10 And so, I think that there's been a shift over  
11 of these last -- particularly since "The Nation At  
12 Risk" where the governors and legislators around the  
13 country have been saying that there have to be state  
14 regulations, but also, correspondingly, picking up  
15 more of the expense for schools.

16 Q. Lynn Moak has entered some regressions and done some  
17 regression work for this case. Have you had a chance  
18 to study that work?

19 A. Yes, I have.

20 Q. And what did those indicate to you?

21 A. I have looked at the regressions that were given to  
22 Mr. Moak and I notice that nearly all of the variance  
23 in the achievement scores in the State of Texas were  
24 attributable to the percentage income and percentage  
25 minority in the districts. In one case it appeared

- 1           that -- now, this would be for the TEAMS scores, that  
2           the size of the district was negatively associated  
3           with how much the students learned. And this is --  
4           corresponds to studies that I, myself, have done and  
5           others have done where it's been found with other  
6           things being equal, bigger districts seem to be  
7           slightly less effective or efficient as far as  
8           achievement is concerned. So this was also found  
9           here in Mr. Moak's studies of achievement in Texas.
- 10       Q.   What studies have you done that correspond to Mr.  
11           Moak's conclusions?
- 12       A.   I have reviewed two studies that were done in  
13           Colorado and I, myself, did one of the largest  
14           studies that has ever been done. This was in the  
15           state of New Jersey which had districts that varied  
16           from as little as 35 students to -- I believe it  
17           might have been about 50,000 students in the  
18           district, and showed that the bigger the district  
19           was, the lower the achievement.
- 20       Q.   The lower the test score results?
- 21       A.   Yes.
- 22       Q.   Tell us a little bit about the New Jersey study. Who  
23           did you do that for and how long did your study take,  
24           when was it completed, and so forth?
- 25       A.   Well, I had been asked to help in the New Jersey

1 court case involving litigation among the districts  
2 there with the state. And I had worked with an  
3 employee of the state who gathered together for me  
4 all of the test scores available for the last several  
5 years in New Jersey. These would be commercial  
6 tests, the Iowa Test, the California Test, the  
7 Metropolitan Test, that are used in many schools  
8 throughout the United States, but also in New Jersey.  
9 I don't remember the exact grade levels, but it was  
10 probably something like third, fifth, seventh and  
11 ninth and eleventh corresponding with what many  
12 states do as far as testing is concerned.

13 And then, also, the state of New Jersey, like  
14 Texas, has developed state tests that they feel  
15 correspond to what is appropriate for the students to  
16 learn in their state. And I investigated  
17 statistically the relationships of these tests scores  
18 to how much students learned to their socioeconomic  
19 status, to the size of the district, and to the  
20 amount of money that was spent on average for each  
21 student in the state.

22 Q. Have you come to any conclusion as to why that  
23 statistical relationship might exist?

24 A. It was -- it's come up several times now and I can't  
25 be sure why bigger districts seem to be less

1       efficient. It would have to be a matter -- not a  
2       fact, but my opinion or speculation about it, but I  
3       do think that when organizations get too large, they  
4       have communication problems. I also think that when  
5       citizens can know the superintendent and know the  
6       principals and when the people working in the  
7       district have a better knowledge of what's going on,  
8       I should say, that in smaller districts, they can  
9       become more informed about what is happening in the  
10      district. Whereas if you take really large districts  
11      in the United States, I happen to be familiar with  
12      Chicago, for example, you'll find that there are --  
13      there's a great downtown bureaucracy with many people  
14      working and there's a great deal of confusion. And  
15      we even have, for example, districts within the  
16      district. So when it gets to be so big, I think that  
17      you lose a certain cohesiveness and morale in the  
18      district, it's just a big organization, tends to be  
19      bureaucratic and lack effective communication.

20               I can't be certain that those are the problems,  
21      but it seems now that it will come up in several  
22      large-scale studies, including the one done here in  
23      Texas.

24   Q.      So then your research is confirmed by Lynn Moak's  
25      research?

1 A. That's true.

2 Q. What about the test scores in Texas, have you had a  
3 chance to review those in comparison to the per pupil  
4 expenditures?

5 A. Yes, I saw that in -- well, I've looked at individual  
6 districts in the Benchmark, but also the statistical  
7 results of Mr. Moak indicate a very small,  
8 insignificant -- or a very small effect of average  
9 teachers' salaries, in the one case, and  
10 pupil/teacher ratios as compared to socioeconomic  
11 status and percent minority students in the district.

12 Q. I'm going to display for you, at this time, a chart  
13 with various operating expenditures in Texas showing  
14 the state average together with the 1985 TEAMS test  
15 reports in just different districts across the state.  
16 And could you describe to the Court -- first of all,  
17 does that chart accurately depict the information  
18 that's found in the Bench Marks report?

19 A. Yes, I verified the numbers in this chart against the  
20 Benchmark and they are equal except for there's -- we  
21 don't have the cents, we have the dollars there.

22 Q. All right. Generally, what does that chart show?

23 A. It shows the absence of -- well, I said earlier there  
24 was an absence of relationship -- no relationship of  
25 spending to achievement in the district, and this is

1           an example or an illustration of the absence of that  
2           relationship. Because here we have the test scores  
3           on the national -- on the statewide tests given in  
4           the districts and also the operating expenditures in  
5           each of the districts.

6                   MR. KAUFFMAN: Your Honor, if I may, I  
7           pursue an old objection I had. I think all of these  
8           total current operating expenditures include federal  
9           funds. I also object to the use.

10                   MR. O'HANLON: Your Honor, once again, the  
11           old response is that it comes out of a document that  
12           he offered into evidence.

13                   THE COURT: Okay. Thank you.

14                   MR. O'HANLON: Excuse me. Mr. Gray offered  
15           into evidence.

16           BY MR. R. LUNA:

17           Q.    Would you describe generally what that shows in  
18           relation to the line which is drawn across the middle  
19           of the document there, some scores being above the  
20           line and some scores below it?

21           A.    Mr. Luna, I'm sorry to say I can't see that very  
22           well.

23                   MR. O'HANLON: Let us hold it up.

24           A.    I would say that the districts above the line show  
25           expenditures higher than the average would -- would

1           it be possible for me to point?

2   Q.   Yes, sir.

3   A.   Above the line we have districts that are spending  
4       more than the average throughout the state. Below  
5       the line we have districts that are spending less  
6       than the average -- I'm sorry, here we have several  
7       that are spending less than the rest of the state.  
8       These have considerably more in some instances and  
9       considerably less than others. But the critical  
10      matter is that these districts have higher -- above  
11      the line, higher achievement scores, and these have  
12      lower achievement scores. And so we don't see any  
13      pattern among these different districts with respect  
14      to spending. We might take any particular ones you  
15      want to look at and compare them and compare the  
16      districts -- compare the spending with the actual  
17      achievement scores.

18   Q.   Why don't we look for a moment at Midway Independent  
19       School District, which is above the line, which would  
20       indicate here that its test scores are above the  
21       state average and compare it with, say, Edgewood ISD,  
22       which is the first Plaintiff in this case, and its  
23       expenditures and test scores, generally?

24   A.   Well, I see here that Midway has very low  
25       expenditures of \$2,600.00 and they have quite high



1 test scores. They have -- it's very much in the  
2 upper range of test scores in the state. 71, 65 and  
3 66 in math, reading and writing; whereas Edgewood is  
4 spending \$1,000.00 more and it has quite low scores.  
5 It has a 31, a 26 and a 30.

6 Q. Now, on that chart, Dallas and Houston are of  
7 comparable size in the sense that they're large urban  
8 districts with, also, large percentages of minority  
9 students in those districts. What do you see between  
10 those two school districts?

11 A. Well, I can see that their spending levels are  
12 roughly the same, just slightly more -- Houston  
13 spends just slightly more here, but it's just about  
14 comparable, a few dollars difference, but Houston  
15 scores are 50, 42 and 46; whereas Dallas scores are  
16 38, 32 and 37.

17 Q. That indicates that Houston is doing something better  
18 in terms of teaching efficiency than Dallas is?

19 A. That's what I -- I can't be certain of that because I  
20 haven't gone in and actually looked at those schools,  
21 but if we went back to the nine factors that I had  
22 told you about there, my strong hypothesis would be  
23 that they are using more effective and efficient  
24 procedures and therefore getting a lot better  
25 performance and achievement from their students than

1 in the other district.

2 Q. Dr. Walberg, we probably could look around our state  
3 and get various examples of a lot of different  
4 comparisons and, in fact, those have already been  
5 made in this Court --

6 A. Yes.

7 Q. -- over numerous weeks.

8 Going back to your experience, now, in  
9 statistics and as a statistics instructor and  
10 professor, what do you conclude from looking at the  
11 reports of Dr. Verstegen and Lynn Moak, your Review  
12 of the Bench Marks, and again in your knowledge and  
13 study on the national level.

14 A. Well, I basically conclude that the same conclusions  
15 that I've reached about national studies, about  
16 expenditure factors and also what I would call these  
17 productivity or efficiency factors are confirmed in  
18 Texas, at least in the sense that these gave examples  
19 and illustrations. Although I think that Mr. Moak's  
20 statistical analysis and Dr. Verstegen's statistical  
21 analysis prove this in a scientific sense. These are  
22 examples of the kinds of things that have been found  
23 in many national studies carried out in the United  
24 States and other countries throughout the world.

25 Q. Have you shared research with any other individuals

1 in regard to the test scores of this -- of the State  
2 of Texas? And in particular, I'm referring to Dr.  
3 Robert Jewel.

4 A. Yes, I've discussed the test scores with Dr. Jewel  
5 and looked at some of his own findings.

6 Q. After studying his research, what did you conclude  
7 from that?

8 A. I found in examining the particular districts, that  
9 he had found an absence of relationships between the  
10 two. As a matter of fact, if you take the very  
11 highest scoring districts in the state, say about the  
12 upper ten or so, they actually had lower than average  
13 spending than other districts did.

14 Q. Dr. Walberg, have you written any articles on  
15 educational productivity and efficiency?

16 A. Yes, I have.

17 Q. What do you mean by those terms?

18 A. Well, I like to use the term productivity, but by  
19 that I mean the same thing as efficiency. In order  
20 to define those terms, I would first like to define  
21 effectiveness. When I speak about effectiveness,  
22 this means that we will raise achievement scores and  
23 raise learning irrespective of costs and -- so we  
24 won't be concerned about that at all when we're  
25 talking about effectiveness.

1           On the other hand, when we're talking about  
2           efficiency or productivity, we would like to know how  
3           to raise learning while conserving scarce resources.  
4           And those might be monetary resources, financial  
5           resources. But we also need to be concerned about  
6           the scarce resource of the child's time.

7           So some methods of teaching are less efficient  
8           than others, they waste the child's time, the  
9           children could be learning more. So I take it as the  
10          ratio of effectiveness to costs as the key to  
11          efficiency. We have to -- in my opinion, when we're  
12          talking about efficiency, we have to talk not so much  
13          about spending levels, but what the schools actually  
14          do with the money that they have available to them.

15       Q.   And how do we measure that?

16       A.   We measure it by looking at the relationship between  
17          the educational test scores and the amount of money  
18          that can be spent in the district. But better yet,  
19          if we want to get indications of how to improve  
20          learning the most, in my opinion, there's a great  
21          number of quite well established techniques on very  
22          consistent research that have very high promise and,  
23          in fact, in many of the schools throughout the United  
24          States have improved learning considerably.

25       Q.   Do you know of any studies in regard to whether or

1 not poor students, that is from poor families, and  
2 whether or not they are concentrated in poor  
3 districts, that is districts that are -- can be  
4 called property poor?

5 A. Yes, I do.

6 Q. What kind of studies are those?

7 A. Well, I'm familiar with the research of Howard Nelson,  
8 who was a colleague of mine, who studied districts  
9 throughout the State of Wisconsin. And he found no  
10 relationship between the percentage of families in  
11 the district that were considered defined as poor and  
12 the property wealth in the district. This suggested,  
13 that in Wisconsin, you were equally likely to find  
14 poor children in property wealthy districts.

15 Q. Have you had any occasion to study the State of Texas  
16 and determine whether or not that same theory applied  
17 to this state?

18 A. I believe that I noticed that in Dr. Verstegen's  
19 report -- I would have to look to -- may I?

20 Q. Yes.

21 A. On Page 27 of her report, we have -- and I'll quote  
22 here, "The per pupil property wealth of the district  
23 was found to have little or no relationship..." --  
24 and I'm skipping a bit here -- "...to minority  
25 students as a percentage of total students."

1 Q. Would that be consistent, then, with Nelson's study  
2 in Wisconsin?

3 A. Yes.

4 THE COURT: Counselor, let's stop there and  
5 have a break. We'll get started up again at 11:00.  
6 Thank you very much.

7 (Morning recess.)

8 (Defendant-Intervenors' Exhibit No. 24 marked.)

9 MR. R. LUNA: Your Honor, at this time,  
10 Defendant-Intervenors would again offer their Exhibit  
11 No. 23, which is a booklet entitled "Improving The  
12 Productivity of America's Schools," and also  
13 Defendant-Intervenors' Exhibit No. 24, which is the  
14 chart Dr. Walberg has been discussing.

15 MR. KAUFFMAN: Your Honor, we have no  
16 objection to 23. We object to 24 because it includes  
17 federal funds within total current operating  
18 expenditures.

19 THE COURT: All right. They'll both be  
20 admitted. I'll take note of what you just said to me  
21 about 24.

22  
23 (Defendant-Intervenors' Exhibit

24 (Nos. 23 and 24 admitted.  
25

## DIRECT EXAMINATION (RESUMED)

BY MR. R. LUNA:

Q. Dr. Walberg, based upon your education, training and experience, have you reached any conclusion as to whether or not the inconsistent association of spending and learning in Texas is different from that in other states?

A. Yes, I have come to a conclusion, and it is not different from what other national studies have indicated.

Q. Thank you.

MR. R. LUNA: Pass the witness.

## CROSS EXAMINATION

BY MR. TURNER:

Q. Dr. Walberg, if I were to say to you that some in this lawsuit might advocate that the position taken by those of us on this side of the table is that money doesn't matter, how would you respond to a comment that money doesn't matter in the provision of education?

A. Well, I would strongly prefer to see that statement qualified, because I think that you need some minimum amount of money to have schools and for learning to take place. It's a question of diminishing returns or how much money, but even more important than that

1 is what's done with the money, the specific programs.  
2 And in order to achieve effectiveness and efficiency,  
3 I think you've got to look at the nature of the  
4 programs rather than the amount of money that's  
5 spent. But I would certainly agree that some minimum  
6 amount of money would be necessary to run schools.

7 Q. Dr. Walberg, in Texas, in our Constitution, we have a  
8 provision that calls for the legislature to provide  
9 an efficient system of public schools. And we have  
10 in Texas an equal protection clause, like many states  
11 have. We do not have anything in our Texas  
12 Constitution, to my knowledge, that uses the word  
13 "education." But in as much as this lawsuit is  
14 talking about education, I would like to ask you, if  
15 you will, from your perspective, to tell us what, in  
16 your view -- or what the alternatives are for what we  
17 mean and could mean when we talk about the provision  
18 of education. What is education?

19 A. Well, there, of course, are many different  
20 definitions, and I've used even different definitions  
21 myself in talking with various groups. But I think  
22 what is particularly distinctive about American  
23 education is that our Federal Constitution does not  
24 mention education and leaves it, basically, to the 50  
25 states. And the 50 states, in turn, leave a great



1 deal of the definition -- the goals of the education,  
2 the spending, the characteristics of the program, the  
3 hiring of the staff, the curriculum, and all of those  
4 things is divided between basically the states and  
5 the local community.

6 So I think that this constitutes what we're  
7 thinking of here, at least, in some legal sense  
8 although obviously I'm not an attorney. And this is  
9 not completely unique to the United States, but this  
10 is relatively rare in the world. Britian and France,  
11 for example, have national ministries of education  
12 where the curriculum tends to be the same throughout  
13 the whole country and much of the budget will come  
14 from the central government rather than the states  
15 and local communities.

16 But in a broader sense of the definition of  
17 education, certainly there -- if we want to talk even  
18 about financial spending, the United States military  
19 has very large-scale programs. I gave a talk once to  
20 the United States Naval Training Laboratories in San  
21 Diego and I learned they're spending 9 billion  
22 dollars a year on education and training programs for  
23 Navy officers and enlisted people. Also  
24 corporations, for example, have many, many training  
25 programs.

1           And if I would go back to some of the points  
2           that I made earlier, I think that much of education  
3           actually takes place in the family. One's taste,  
4           religion, political views, taste in food, many of  
5           these things are not entirely determined in the first  
6           six to ten years of life, but I think they're  
7           strongly influenced. So you can think that the  
8           family is perhaps the first educator and perhaps even  
9           the most powerful educator. So one can take sort of  
10          a narrow view of education and also think of it in  
11          broader terms as well.

12       Q.   In some of your earlier testimony, you seem to be  
13           equating in some of your analysis education to  
14           learning. Is that a fair conclusion, based on --

15       A.   Yes, as far as my research is concerned, I think that  
16           the purpose of schools is teaching and the purpose of  
17           teaching is learning. And so I equate the outcomes  
18           or the way to index the quality of education by how  
19           much is learned in school by measurable sorts of  
20           things.

21       Q.   So if we talked about an equal opportunity to an  
22           education, we could be talking about equal  
23           opportunity to learning?

24       A.   That's correct.

25       Q.   Is one way of analyzing it.

1                   And I suppose there are various other ways,  
2                   such as the -- among those being the ones that you've  
3                   mentioned about how we could look at what education  
4                   is.

5       A.   Well, I can perhaps say this, it might clarify, too,  
6            I regard these nine things that I have described here  
7            as causes of learning. But learning, itself, is -- I  
8            tend to equate with scores on tests, standardized  
9            tests or teacher-made tests or essay tests or student  
10           themes. In other words, tangible evidence of how  
11           much students have learned.

12   Q.   Would you tell me whether or not the states,  
13           themselves, have tried through various ways to define  
14           what education is?

15   A.   Yes, I would say that since "A Nation At Risk" -- and  
16           I would say the leading states in the country tend to  
17           be in the south, ranging from South and North  
18           Carolina all the way through Texas and California,  
19           have taken the lead of -- more than the rest of the  
20           country, in having their state education agencies  
21           make up tests, set the goals for learning, mandating  
22           certain courses will be taken, such as three years of  
23           English and two years of mathematics and foreign  
24           languages. So I would say there's been a lot of  
25           changes since 1983. And generally speaking, the

1 states and the governors, in particular, but also the  
2 state legislators have been taking the biggest  
3 initiatives in changing education and reforming it.

4 Q. Dr. Walberg, the Plaintiffs in this lawsuit, in their  
5 effort to make their case for equal educational  
6 opportunity, have adopted the proposition that they  
7 believe they should have the equal opportunity to tax  
8 and spend at the same level in their districts as any  
9 other district in the state. In your judgment, would  
10 the data support the conclusion that the granting or  
11 the provision of equal opportunity to spend and tax  
12 at the same level in all districts in this state  
13 result in equal education opportunity or, in the  
14 alternative, equal learning.

15 A. Well, I'm not an expert in finance, but I certainly  
16 think since spending is not a guarantee of learning,  
17 that it is not likely to bring it about. And in some  
18 respects, too, I would be fearful that if you have a  
19 certain amount of local spending in which citizens,  
20 themselves, have raised the money, that it's likely  
21 that they're going to be more careful about it. And  
22 so if, for example, the school board has to go to the  
23 citizens in a community and ask for more money, I  
24 think that the citizens may become more involved in  
25 the schools, they will tend to look more critically

1 at the programs. And I think that this sort of local  
2 autonomy and local fund raising can be beneficial in  
3 creating more efficiency within that district. But  
4 looking at the total state, that this would also, the  
5 people being more careful about conserving scarce  
6 resources and money, in particular, would be  
7 advantageous to having local revenues as well as  
8 state.

9 Q. Did I understand you to say that if -- that the  
10 dependence that we have in Texas upon raising funds  
11 at the local level, has as one of the byproducts the  
12 promotion of efficiency which is one of our  
13 constitutionally required -- one of our  
14 constitutional requirements is providing an efficient  
15 system of public schools?

16 A. I would like to say that I don't have strong evidence  
17 for this, but it is my opinion as a psychologist that  
18 people are more careful about spending their own  
19 money. If you -- if a third party is making the  
20 payment, such as an insurance company would for  
21 medical treatment -- if somebody else is paying for  
22 it, you might not hesitate at all, but if you had to  
23 pay for it out of your own pocket, you might be much  
24 more careful about it, you get much more knowledge,  
25 you say "This is really going to be effective for

1       you." And I think that's a general characteristic of  
2       human nature which would also apply to school  
3       districts. So if the local citizens have to raise  
4       that money and if the board has to go to the citizens  
5       and the staff, I think that there is a closer  
6       scrutiny and probably a more effective use of scarce  
7       resources which is what I mean by efficiency.

8       Q. Dr. Walberg, we've looked at the data on the exhibit  
9       on the chart there to your left, earlier, which I  
10      believe you stated were just examples of what the  
11      Moak's study indicated statistically, and that is  
12      that there was no relationship evident between  
13      spending per child and test scores or results per  
14      child in those districts.

15             If you were to go into another state and find  
16      that spending -- let's say we were looking at ranges  
17      like we have here and you found that spending in some  
18      group of districts below -- let's say it dropped down  
19      as low as \$1,800.00 per child.

20      A. Uh-huh.

21      Q. That in all of those districts, test scores were low,  
22      would that cause you to maybe reevaluate your view  
23      regarding the relationship between spending and test  
24      scores in that particular state for that particular  
25      level of spending?

1 A. Yes, it certainly would if there was -- if the  
2 districts that were spending less money had lower  
3 achievement scores and the ones that were spending  
4 more money had higher achievement scores, especially  
5 considering socioeconomic status, than that would be  
6 a reversal of other kinds of findings and it would  
7 cause me to think that that state evidenced that  
8 particular relationship. On the other hand, if I  
9 went to a second and a third state and found a  
10 different -- that the situation was different, then I  
11 would be less certain about it. But since so many  
12 studies have been done, not only Mr. Moak's but other  
13 -- as I indicated earlier, national studies have  
14 found these inconsistent relations, to me this is  
15 simply some examples of illustrations.

16 Q. I believe you testified just a moment ago that for  
17 the proper provision of education, there was some  
18 minimal level of spending that had to take place. If  
19 you went into a state and found what I had described  
20 just a moment ago, that spending, say, below  
21 \$1,800.00, all districts, all test scores were low,  
22 would that be, perhaps, a rough method of maybe  
23 determining that the \$1,800.00 was that threshold  
24 level of spending?

25 A. Yes, I would say that if we found any particular

1 level at which the scores suddenly plummeted, that  
2 that would be good evidence that that would be the  
3 particular point in which there were strongly  
4 diminishing returns or that you couldn't provide an  
5 effective education.

6 Q. In Texas, there is no such evidence present, is  
7 there?

8 A. I have -- what I have seen from the various reports  
9 of previous experts, I have no indication of any  
10 particular minimum in Texas.

11 Q. I take it then that all of the data that you have  
12 looked at and all of the national studies and other  
13 state studies that you have looked at, convinced you  
14 that the better view and the better opinion is that  
15 there is no demonstrable, factual, provable  
16 relationship between the level of spending and  
17 achievement or learning?

18 A. That's correct. When I look at all of the studies  
19 and what's in the normal range, but if it's -- you  
20 know, if it were \$100.00 or something like that, I  
21 would have to say probably so, but since there aren't  
22 such districts that spend so little, I don't see any  
23 consistent evidence on the relationship between  
24 spending and learning.

25 MR. TURNER: I'll pass the witness.



1 MR. O'HANLON: I have a few.

2 CROSS EXAMINATION

3 BY MR. O'HANLON:

4 Q. Dr. Walberg, are you familiar with studies that have  
5 looked at catholic and parochial education, in  
6 particular, with respect to how they go about  
7 educating kids and the results they get?

8 A. Yes, I have.

9 Q. Could you kind of explain those to the Court?

10 A. Well, one of the large sources of data about high  
11 schools in the United States is called "High School  
12 And Beyond" and it's one of the biggest studies that  
13 has been done in recent years. It has approximately  
14 58,000 sophomores and seniors, and I had referred to  
15 it earlier in my testimony. James Coleman, who had  
16 done the other very famous study, has done analyses  
17 of independent schools and parochial schools and  
18 public schools and compared the performance. And it  
19 appears that private schools in general -- I'm not  
20 talking about very elite private schools for the very  
21 wealthy, but more ordinary -- let's call it  
22 independent schools that are nonsectarian -- as well  
23 as parochial schools. And it turns out that a very  
24 large fraction of the parochial schools in the United  
25 States are Catholic. There are some Greek Orthodox,

1       there's some Lutheran and there's some Jewish  
2       schools, but the bulk of sectarian elementary and  
3       secondary schools in the United States are Catholic.

4               Those studies indicate that often the  
5       achievement levels are equally high, in some cases  
6       higher, and that children in these schools seem to  
7       have gained more in the way of -- well, the term  
8       that's used is religiosity, that is to say they have  
9       greater religious values since they studied this, so  
10      they get sort of an extra benefit from going. But  
11      the surprising thing is despite the fact when you  
12      take into consideration the social class levels of  
13      those schools that private schools, in general, and  
14      sectarian schools, in particular, provide education  
15      for as little as -- oh, let's say on an average of  
16      about half the cost.

17             Now, that seems to be the fact that has come  
18      out in a great number of these studies. It's not  
19      altogether clear why that would be the reason, but  
20      Coleman, who did this work, believes that they focus  
21      on more essential qualities of education, that is to  
22      say the standard subject areas which would be  
23      English, foreign languages, mathematics, the  
24      sciences, civics, history, art, music and physical  
25      education. And since there is a greater

1 concentration on these kind of essential subject  
2 matter rather than, oh, electives or miscellaneous  
3 courses or vocational education -- since they  
4 concentrate on these fundamental subjects, that may  
5 be one of the explanations of why they have done so  
6 well at so little cost.

7 Q. Okay. So that by -- to take that point and kind of  
8 restate it, by focusing on a course curriculum, they  
9 are able to spend, I suppose, a little more time on  
10 task and get better results even though they have  
11 lower expenditures?

12 A. That's correct.

13 Q. All right. Does that have any application with  
14 respect to public schools? Can we take that  
15 knowledge that we gained from that kind of thing and  
16 look at public schools with respect to that?

17 A. Well, of course, I've been restricting myself to the  
18 facts here in as much as I can rather than my  
19 opinions, but I would say given the fact that  
20 governors and legislators seem to be very concerned,  
21 and business people -- there have been a number of  
22 surveys in business corporations and industries of  
23 what kind of students would be best for the economy,  
24 so to speak. And if we look at what the educational  
25 reform movement has been saying, many of these

1 different groups, both public and private, have said  
2 that we have to focus on the essential subject matter  
3 and less so on these other things in which there's  
4 less evidence that it's going to do students all that  
5 much good.

6 So in a sense, I think you could draw the  
7 inference that given that this is what the public  
8 wants and what many corporations want and other --  
9 many parents seem to like this sort of thing as well,  
10 this might be one logical inference that might be  
11 drawn to focus more on the essential subjects.

12 Q. Okay. Now, because of this focus on essential  
13 subjects, kids in parochial schools are not exposed  
14 to various kinds of electives and things of that  
15 nature, I suppose?

16 A. I don't want to make an unqualified statement, but I  
17 would say, generally speaking, in many independent  
18 schools and parochial schools they have fewer  
19 electives.

20 Q. Because of that lesser exposure, are they somehow at  
21 a competitive advantage with respect to college  
22 admissions or results of college?

23 A. Many colleges and universities in the United States  
24 are moving towards requiring the essential subjects.  
25 If I look at Illinois, for example, which I'm most

1 familiar with, the state legislature wants to have  
2 three and possibly four years of English, three years  
3 of mathematics, two years of foreign languages. And  
4 so, Illinois and other states throughout the country  
5 have been putting a bigger emphasis. And so schools  
6 that are already doing and focusing on the essential  
7 subjects are going to have, as you say, a comparative  
8 advantage in continuing it, and they will have a  
9 better chance to get into selective colleges because  
10 these subjects are the ones that seem to lead to the  
11 highest scores on the Scholastic Aptitude Test. And  
12 not only higher test scores for admission to college,  
13 but some colleges also look for students who have  
14 taken courses in physics and calculus and foreign  
15 languages and they weigh them more heavily. So  
16 either public schools or private schools that provide  
17 more of that essential subject matter may give their  
18 students a better chance in college.

19 Q. Okay. So if there's been testimony in this case that  
20 says that kids are going to be at some kind of  
21 competitive advantage because they haven't had this  
22 full panoply of electives that may be available out  
23 there, that would be inconsistent with your  
24 observations?

25 A. Yes. I would say, too, that if you're -- a great

1           number of educators in the United States and, I  
2           think, generally the public, too, is very much  
3           concerned about American education because we haven't  
4           been doing the kind of job that we should. And so, I  
5           think it's just a matter of general human nature that  
6           if you're doing a whole bunch of things and not doing  
7           them better -- very well -- it would be far better to  
8           focus on the most essential things and do a really  
9           good job at that before going on to frills and things  
10          that may not be quite so necessary.

11       Q.    Okay. Just briefly, how are kids -- I don't think we  
12           have any testimony in the record -- how are kids  
13           admitted into college? What are the combination of  
14           factors that colleges use in accepting kids for  
15           admission?

16       A.    Well, probably the most -- the two criteria that are  
17           used most of all in selective colleges is the high  
18           school grade point average, which is calculated  
19           according to various formulas in which an A would be  
20           a one, a B would be a two, and these are averaged.  
21           Sometimes they're averaged across all of the courses,  
22           but sometimes they only average them for what might  
23           be called the essential courses, like English and  
24           mathematics and the ones that I have mentioned. So  
25           G.P.A., grade point average, is the first criterion.

1           Now, the second criterion that's often used in  
2   the eastern part of the country is Scholastic  
3   Aptitude Test done by Educational Testing Service at  
4   Princeton, New Jersey, is more popular. And in the  
5   midwest and in the west the American College Test,  
6   which is constructed at the University of Iowa. But  
7   either one of these tests and often some combination,  
8   one or the other or both of those, are used for  
9   selecting college students.

10   Q.   What do those two admission tests test students on?

11   A.   The Scholastic Aptitude Test is more a test of, as it  
12   implies, aptitude, and it's designed to predict how  
13   well the student will do in college. But the Iowa  
14   tests are tests of accomplishments in high school. I  
15   don't remember the exact subscores on it, but they  
16   have to do with language, mathematics, and other --  
17   what I would call more achievement than aptitude.

18   Q.   Okay. Is a child going to be at a competitive  
19   disadvantage in taking those tests because they  
20   haven't had electives or is a basic knowledge of a  
21   poor curriculum sufficient to grade -- to score well  
22   on those two college entrance tests?

23   A.   Well, it appears that essential courses lead to  
24   higher scores on both the SAT and the ACT. And to  
25   the extent to which students would take, let's say,

1 vocational courses or various kinds of electives that  
2 are not related to those kinds of things, they would  
3 suffer a disadvantage at least on the ACT test,  
4 because that truly is an achievement test. And more  
5 and more colleges are concerned these days because --  
6 about this very matter because they have to give so  
7 many remedial courses for students, although they may  
8 have a high school diploma, they've really not  
9 attained enough so they can benefit as much as they  
10 should with college courses.

11 Q. Okay. In some, would you expect -- given what you  
12 just testified to, your experience with looking, at  
13 least, the private parochial schools in the state and  
14 some of the other data that you've looked at, would  
15 you expect the level of expenditure of an independent  
16 school district to have any impact on a student's  
17 ability to enter college?

18 A. Well, I don't think that expenditures are linked to  
19 the aptitude and the achievement test scores, so I  
20 think that additional spending wouldn't necessarily  
21 help the students do better at college admission  
22 tests.

23 Q. Okay. Is it fair to say that there's an awful lot  
24 that educators in the state and in the country can do  
25 to improve or enhance educational quality without



1           increasing expenditures?

2   A.   Yes, because many of things that I have just  
3       described to you could be done in schools and they're  
4       not necessarily being done. Many of these things are  
5       proving themselves in ordinary classes in all parts  
6       of the country and, in fact, in other countries  
7       throughout the world and yet, educators are not  
8       necessarily making use of them as much as they  
9       should.

10   Q.   Okay. Is it a fair summary of some of the research  
11       that's being done out there right now and your  
12       knowledge of what the governors and various state  
13       officials are doing, that the tendency or the trend  
14       in American education right now is to explore what  
15       can be done given approximate expenditure levels at  
16       this time?

17   A.   Well, yes, I would say that because, for example, the  
18       national governors report is certainly representative  
19       of the whole country. I believe that all 50  
20       governors, in one way or another, served on that  
21       report. I believe they had their -- some of their  
22       aides coming to the meetings. And the strong message  
23       in that report was that the states throughout the  
24       United States have increased educational spending a  
25       lot in the last five or ten years. There's been a

1 great deal of financial educational reform, but now  
2 they have to look at the question of efficiency and  
3 scarce resources. And they're calling upon educators  
4 to do that.

5 MR. O'HANLON: Pass the witness.

6 CROSS EXAMINATION

7 BY MR. ROOS:

8 Q. Dr. Walberg, I'm Peter Roos, one of the Counsel for  
9 the Plaintiffs. This isn't the first time you've  
10 testified in a courtroom, is it?

11 A. That's correct.

12 Q. Indeed, you've testified a number of times in  
13 desegregation cases, have you not?

14 A. That's correct.

15 Q. And could you tell us in what cases you've testified?

16 A. I'm not sure that I can name them all, but I think I  
17 named most of them at my deposition. First was  
18 Benton Harbor; Little Rock, Arkansas; Norfolk,  
19 Virginia; St. Louis; Kansas City. I think there may  
20 have been two or three others and they don't come to  
21 mind right now.

22 Q. Baton Rouge is one of them?

23 A. Yes, Baton Rouge. I think it's in my vitae that you  
24 have.

25 Q. And in all of those cases, you testified on behalf of

1 the Defendants, did you not?

2 A. That's correct.

3 Q. And you've testified or been in the New Jersey case,  
4 have you not?

5 A. Would you repeat the question?

6 Q. Actually let me strike the question. You've been  
7 assisting in the New Jersey case, have you not, the  
8 New Jersey school finance case?

9 A. I have done a number of studies and I have been in  
10 touch with the attorneys and the state employees,  
11 yes.

12 Q. That's right. And who have you been employed by in  
13 New Jersey?

14 A. The State Department of Education and working through  
15 the state's attorneys office.

16 Q. And that case is a case involving an effort to  
17 equalize the school financing in the State of New  
18 Jersey?

19 A. I'm not sure I can capture the full flavor of it in  
20 -- if I could say this, my role in the case is  
21 similar to here. I don't know all the legal issues  
22 and all the various contentions.

23 Q. Are you being paid or were you being paid by the  
24 State of New Jersey?

25 A. Yes.

1 Q. Are you being paid here, sir?

2 A. Yes.

3 Q. How much are you being paid?

4 A. \$125.00 an hour.

5 Q. Now, Dr. Walberg, I would like to call your attention  
6 to the publication that you introduced -- that was  
7 introduced into evidence, "Improving the Productivity  
8 of America's Schools."

9 A. Yes.

10 Q. Do you have that in front of you?

11 A. No, I don't.

12 Just a second here. Okay. I have it.

13 Q. And you went through the various factors listed on  
14 Page 24. Do you have that in front of you?

15 A. Yes.

16 Q. And again, you describe those as clauses of  
17 educational learning or something to that effect?

18 A. Well, if -- let me tell you exactly how -- as I  
19 already said, the nine factors would be the general  
20 causes. And then in Figure 3, these are the specific  
21 aspects of the quality of education.

22 Q. Okay. Now, I would like to go back through those not  
23 quite as -- in quite the same detail as you did on  
24 direct. But could you in several sentences tell us  
25 what reinforcement means?

1 A. Reinforcement is an indication to the child, when the  
2 child has accomplished something, that the child has  
3 done well, it may be praise, it might be a gold star,  
4 it might simply be a signal that they've done well.

5 Q. Reinforcement. By reinforcement, you mean  
6 reinforcement by the teacher or by the school  
7 authorities, is that correct?

8 A. It could be that. It could be an aide. It could be  
9 another child, even, that reinforces.

10 Q. And this is a very important aspect of learning, I  
11 gather, in your research?

12 A. Well, I would say that it's the most effective one  
13 that we've been able to find in the various searches.

14 Q. Are there some teachers -- or in some instances in  
15 which reinforcement is given and other instances  
16 where it's not given?

17 A. Well, I think it's not a question so much of  
18 either/or, but some give more reinforcement and some  
19 give less, and some give it more effectively and some  
20 give it less effectively.

21 Q. Some give it more effectively and some give it less  
22 effectively, is that correct?

23 A. Yes, that's correct.

24 Q. And by the people who are giving it, we are talking  
25 about people who are employees of a school district,

1 is that correct?

2 A. Generally speaking, yes.

3 Q. Let's go through to the second one, acceleration.

4 Could you briefly outline what acceleration is?

5 A. Probably an example would be, a good one, started in  
6 the State of Maryland, and the John Hopkins  
7 University asked teachers to nominate the best  
8 mathematicians in their class. This might have been,  
9 I would say, the fifth grade level. And these  
10 children were given a very difficult math test. And  
11 the children that did the best of all were brought  
12 into special classes and in some cases they were even  
13 brought into special schools. A number of states  
14 around the country, North Carolina is probably one of  
15 the leading ones, are setting up these special  
16 acceleration academies for some of the brightest  
17 students in the state. And they have to get in there  
18 on the basis of nominations, but actual performance.  
19 And those students are given special instruction,  
20 rigorous instruction, and they are brought along more  
21 quickly than other students.

22 Of course, in this case, it's extremely  
23 necessary to have control groups that are equally  
24 able, so we're not just talking about comparing these  
25 bright students with ordinary students, we're

1 comparing them with other bright students who would  
2 have otherwise gone into the programs.

3 Q. In order to implement an effective acceleration  
4 program, if you will, requires people who are  
5 familiar with the research and people who have the  
6 ability to carry out an acceleration program in a  
7 successful manner, isn't that correct?

8 A. Well, I don't want to make such an unqualified  
9 statement because sometimes they have had ordinary  
10 teachers who have been trained to do this and -- so  
11 they -- and they don't necessarily have to do the  
12 research themselves or be completely acquainted with  
13 it, they can be instructed on how to do it.

14 Q. Okay. What about reading and training, sir, could  
15 you tell us what that is in a few sentences?

16 A. This is the idea that I had mentioned earlier about  
17 training students to be able to read quickly  
18 depending on the difficulty of the material or  
19 depending on their purpose, or to read more slowly  
20 when the material is difficult or when they have to  
21 understand it extremely well.

22 Q. And again, we're talking about what goes on in  
23 classrooms and schools, are we not?

24 A. Well, that's mostly what I have in mind, but it  
25 wouldn't necessarily have to be restricted to

1 schools.

2 Q. When it goes on in schools, it can go on less well or  
3 more successfully, can it not?

4 A. That's true.

5 Q. And indeed for it to go on more successfully requires  
6 people who have the ability to carry it off, does it  
7 not?

8 A. Well, you mean a -- I would say this, that there are  
9 often -- this is not -- doesn't necessarily have to  
10 be a complicated matter, and most schools have a day  
11 or two of training or inservice, or sometimes several  
12 days each year, and they can be taught to use these  
13 techniques. So I don't think it's a matter of innate  
14 ability or tremendous training in order to do it,  
15 it's just a question of putting it in place.

16 Q. Sir, there's been testimony in this courtroom that  
17 the market for teachers in the State of Texas is a  
18 competitive market. You don't have any evidence that  
19 would controvert that, do you?

20 A. I would be grateful if you would tell me what you  
21 mean by competitive.

22 Q. That various school districts recruit in schools of  
23 education for what -- for the teachers that they want  
24 to get -- attract to their school systems?

25 A. Well, I certainly think that schools have to --



1 districts have to try to get new teachers in, but  
2 it's also true that they do have certified teachers  
3 now, and so it's not as if it's 100 percent  
4 replacement. In fact, some districts that have  
5 higher salaries may have a group of people that are  
6 going to stay there and they don't have much of a  
7 recruitment problem. And then they may have people  
8 with certain rigid ways of thinking, for example.

9 Q. Listen to my question, please, sir.

10 A. Yes.

11 Q. You don't have any evidence that controverts the  
12 testimony that's already been introduced in this  
13 court that there is a competitiveness among school  
14 districts for school teachers in this state?

15 A. Well, I didn't, you know, hear the testimony, so as  
16 far as I know, there certainly would be competitive  
17 elements, I would think, but I don't have really  
18 direct evidence one way or the other.

19 Q. Would that correspond to your experience in other  
20 states?

21 A. Well, as -- I think that there are elements of  
22 competitiveness, but that can vary to some extent,  
23 too. Some districts for a while -- for example, in  
24 the State of Illinois, when the student population  
25 was going down as it was throughout the United

1 States, they were laying off considerable numbers of  
2 Teachers. So that was an example of how the  
3 competitiveness went down considerably and young  
4 teachers had a great deal of difficulty in even  
5 getting a job.

6 Q. Would it be your testimony that a teacher is a  
7 teacher is a teacher, that all teachers are  
8 interchangeable and fundable?

9 A. Most certainly not. I think that teachers can  
10 practice techniques such as the ones we've been  
11 talking about and some are much more effective than  
12 others.

13 Q. Now, with respect to attracting teachers to school  
14 districts, there's been testimony in this case that  
15 salaries play a role in getting the competitive edge  
16 for some school districts. Do you have any evidence  
17 that would controvert that, sir?

18 A. Well, I think that if you're talking about new  
19 teachers, this might be one percent or it might be  
20 five percent. It would be a relatively small amount,  
21 especially in the past when student enrollments were  
22 going down. But having teachers actually in the  
23 schools even with high salaries also means that you  
24 are going to be locked into high paid, highly  
25 experienced teachers, many of them having master's

1           degrees. And this wouldn't make it less competitive  
2           in those districts because they wouldn't be hiring as  
3           many people.

4       Q.    Maybe it's my fault, I'm not certain you are  
5           understanding my question. The question is that you  
6           don't have any evidence that -- of your own, that  
7           there is a competitiveness among school districts for  
8           teachers, do you?

9       A.    In the State of Texas?

10      Q.    In the State of Texas, yes.

11      A.    No, I just have a general knowledge of some of the  
12           problems of hiring teachers and the problems of  
13           retaining staffs.

14      Q.    And you don't have any evidence, do you, that  
15           salaries don't make a difference in the State of  
16           Texas?

17      A.    Yes, I testified earlier that I looked at the  
18           correlations in Dr. Verstegen's report that showed no  
19           relationship.

20      Q.    Salaries don't make a difference in terms of  
21           competitiveness for attracting teachers. Do you have  
22           any evidence that salaries are inconsequential in  
23           competing for teachers out of the schools of  
24           education?

25      A.    No, I don't have any evidence on that point.

1 Q. So that if there were testimony to that effect, you  
2 could not controvert that, could you?

3 A. No.

4 Q. Do you know why --

5 A. May I correct myself on one point? I think you said  
6 consequential, I think it's one consideration. There  
7 may be many other considerations such as where a  
8 person lives, the attractiveness of a district and  
9 many other things.

10 Q. Let's talk about those other considerations for a  
11 moment.

12 A. Yes.

13 Q. And I realize there are many of them.

14 A. Uh-huh.

15 Q. But one of those might well be the fact that a school  
16 district is -- has well kept modern facilities, might  
17 it not?

18 A. Yes, that might be a factor.

19 Q. That wouldn't surprise you if it was a factor, would  
20 it?

21 A. Not at all.

22 Q. If a school district happened to have lower  
23 student/teacher ratios than another district, that  
24 might also have an effect in the competitiveness for  
25 teachers, might it not?

1 A. It might, but it might not. And some teachers that I  
2 have personally interviewed and been with prefer,  
3 actually, larger classes, so we can't be certain  
4 about that factor.

5 Q. Going back to your list of things in Figure 3,  
6 without going through them in detail, most of these  
7 things require that there be teachers who have the  
8 ability to carry out these sorts of things, isn't  
9 that true?

10 A. Well, I don't think they have to be necessarily hired  
11 and having the skills ahead of time. I think these  
12 things have been instituted in many different kinds  
13 of districts throughout the United States and  
14 sometimes teachers have to be trained in order to use  
15 them or they have to have suggestions from their  
16 principal and you have to -- well, to mention one  
17 thing that's been very good for bringing this about  
18 is the effective schools movement, in which the  
19 principal is less of an executive and a manager and  
20 tends to work with the staff and become more of an  
21 instructional leader and visits the classes and gives  
22 the students -- gives the teachers hints on how to do  
23 these kinds of things.

24 THE COURT: Counselor, I'm going to stop  
25 there. We're going to be back downstairs in our

1 regular place at 2:00.

2 Do you know where that is?

3 MR. GRAY: Yes, sir.

4 (Lunch recess.)

5 THE COURT: All right, sir.

6 CROSS EXAMINATION (RESUMED)

7 BY MR. ROOS:

8 Q. Dr. Walberg, just before the break, you were about to  
9 discuss something about effective schools, about the  
10 effect of schools reasonings.

11 A. Yes.

12 Q. Do you recollect that?

13 A. Yes, I do.

14 Q. Could you give us a very brief discussion of what --  
15 a brief statement of what you were about to say?

16 A. Yes. Many of the factors that I've been commenting  
17 on today are psychological factors, and they are the  
18 immediate determinants or the immediate causes of  
19 learning; it's what teachers can do and parents can  
20 do. But within the last five or ten years, beginning  
21 in New York City, Professor Ronald Edmonds, who  
22 at that time was at Harvard University, developed  
23 this notion of effective schools, and that consisted  
24 of several features of schools that could help  
25 improve these things that I've been talking about.

1           One of the most important was the idea of the  
2           principal as an instructional leader that would help  
3           the teachers in the classroom, give them pointers on  
4           effective techniques that they could use.

5           Another was the idea of parental involvement so  
6           that the school folks, the principal and the teachers  
7           and others, would be in very close touch with the  
8           parents and keep them informed about what was going  
9           on in the school.

10          Another feature of the effective schools  
11          movement was an emphasis on testing and evaluation,  
12          to evaluate the progress that students were making.

13          So those are some of the main features. And  
14          the effective schools movement is a way of  
15          incorporating some of these instructional techniques  
16          that I've been describing to you.

17       Q.   Now, there's been testimony that's been given in this  
18             courtroom earlier on that indicated that the -- in a  
19             given school district, the pool of principals  
20             generally comes out of a pool of teachers in a given  
21             school district. Does that correspond to your  
22             experience?

23       A.   Yes, often most principals have had teaching  
24             experience.

25       Q.   And typically a principal in a given school system is

1           one who worked his way up from being a teacher in  
2           that system, isn't that correct?

3       A.    Often teacher, then vice principal, and then  
4           principal, yes.

5       Q.    So that if you -- indeed if one were at a -- assuming  
6           that there is such a thing as a competition among  
7           teachers and salary plays a role in that, if a  
8           district, in fact, was at a competitive advantage for  
9           teachers and got the teachers that it wanted, those  
10          teachers would then subsequently become the  
11          principals of the schools in that district, isn't  
12          that correct?

13      A.    Well, it's possible, but it certainly wouldn't be  
14           exclusive to that, and salary would only be one  
15           consideration.

16      Q.    Right. And one might be facilities, as you said  
17           earlier, isn't that correct?

18      A.    Yes.

19      Q.    And student/teacher ratio might play a role in it, is  
20           that correct?

21      A.    That might also play a role, yes, and distance, how  
22           far they are from their homes. Many things may bear  
23           upon that.

24      Q.    Sure. Now, I would like to briefly turn for a moment  
25           to your testimony concerning the studies that purport



1           to show that dollars don't make a difference. If I  
2           understand your testimony correctly, that most of  
3           these -- what you are trying to convey is that you  
4           must look at more than dollars in order to determine  
5           whether you're going to have an effective outcome,  
6           isn't that correct?

7       A.   Well, I should say that -- you said several things,  
8           and one is that you said "these studies purport to  
9           show." I don't think that that was my language. I  
10          think that they do show inconsistency, and I don't  
11          think that the people that did these studies were  
12          trying to prove it one way or the other, I think that  
13          these were the facts that were uncovered.

14       Q.   We'll get into that in a moment, sir.

15                But it is -- if I understood the heart of your  
16                testimony, is that indeed it is what one does with  
17                money rather than money, per se, that is likely to  
18                make a difference, is that correct?

19       A.   That's right. If I put it in my own words, it's what  
20           you do with the money that you have, not the amount  
21           -- the total amount of money that you have.

22       Q.   Now, the studies, talking generally, tend to be  
23           studies similar to the one that was on the board that  
24           correlate per pupil expenditures at a district level  
25           with achievement test scores, isn't that correct?

1 A. In the exhibit that we saw this morning --

2 Q. Yes.

3 A. -- the large exhibit? I considered that exhibit --  
4 these were examples and illustrations rather than a  
5 formal study. A formal study would be the kind that  
6 I was referring to, which would be large-scale  
7 statistical studies that will not look at just a few  
8 as examples, but they will look at the total state or  
9 the total country.

10 Q. So what we saw this morning was certainly not a  
11 study, was it?

12 A. It's not a formal study in that sense, no, it's just  
13 illustrations of a point.

14 Q. Now, let's go back to some of these studies. Rarely  
15 do they, if ever, in fact, trace the dollars to  
16 individual students, do they?

17 A. Yes, they do. Some take states as a unit of  
18 analysis, some take districts, some take how much is  
19 spent in a school within a district, and some of them  
20 have even been done on individual students to find  
21 out how much has been spent on a particular student  
22 as compared to another student.

23 Q. The studies that you were basing your testimony upon  
24 this morning, would you tell us which ones trace  
25 money into a district?

1 A. Not offhandedly. There's some -- nearly 150 or  
2 approximately 150 studies, and I can't tell you  
3 offhandedly which looked at individual students,  
4 which looked at schools and which looked at  
5 districts.

6 Q. That's what we were doing this morning by way of the  
7 example, wasn't it? We were looking at achievement  
8 test scores and dollars at a districtwide level?

9 A. Yes, those were district figures that we saw this  
10 morning, not for individual students.

11 Q. And there are a number of studies that, in fact, in  
12 various ways do the same thing that we did this  
13 morning, right?

14 A. On individual students? On schools?

15 Q. On correlating -- attempting to correlate or  
16 correlating, if you will, the amount of money spent  
17 per pupil in the district and the achievement test  
18 scores in the district as a whole?

19 A. Yes, there are many studies.

20 Q. Now, it is a fact, isn't it, that that doesn't tell  
21 us whether the money was effectively used in that  
22 district?

23 A. Well, I'm not certain that I understand the question.  
24 I mean, the money was spent on education, but it does  
25 not say whether it was spent effectively or not. In

1           order to find that out, we have to do the other types  
2           of studies that I was describing to you, more  
3           psychological studies, where they are having more  
4           time on task and using effective techniques.

5       Q.   Indeed, sir, isn't it really -- you talked about the  
6           drug test, I remember this morning something about --  
7           I can't remember how it came up, but comparing a  
8           control group and a noncontrol group.

9       A.   It's an experimental group and a control group, yes.

10      Q.   Yes, experimental group and a -- that's right.

11      A.   Uh-huh.

12      Q.   That's sort of the most basic form of scientific  
13           inquiry, isn't it, study?

14      A.   Well, it's what I would call one of the class of  
15           studies called an experimental study. They're  
16           sometimes called a randomized skill trial, and they  
17           flip a coin to find out which students go in which  
18           program and compare the progress that they made. And  
19           there's several, it could be medical treatments, and  
20           it's been used a lot in agriculture, and it's also  
21           been used in education.

22      Q.   Very rarely in education, hasn't it?

23      A.   No, it's been used quite frequently, as a matter of  
24           fact. I would say that of the total number of  
25           studies that I accumulated for the psychological

1 factors, there have been at least 2,000 experiments.

2 Q. Well, let's talk about money interventions in  
3 schools. Can you tell us one study -- or as many  
4 studies as you know, in fact, in which there was a  
5 control group and an experimental group and the  
6 dollars were put at a different level into one group  
7 and then traced as to the effects on those pupils?

8 A. Well, one study was the Higher Horizons Program in  
9 New York City which I helped to evaluate, and that  
10 put 40 million dollars extra funds into some schools  
11 in the New York City schools in an attempt to assess  
12 the effect of higher spending, smaller class sizes,  
13 enrich teachers, and so on.

14 Q. And in some schools?

15 A. Yes.

16 Q. Okay. And, indeed, when those were examined, did  
17 people hold constant -- was there an effort to hold  
18 constant for the quality of the teachers and the  
19 quality of the principal?

20 A. Well, the purpose of the study was to find out if  
21 reducing, say, class size, and this particular one,  
22 has -- whether it would affect it or not in having  
23 teachers that were especially trained. And so this  
24 was the subject of it. It wasn't held constant, in  
25 fact, it was varied to study its effect.

1 Q. So that was what you were researching there, is that  
2 correct?

3 A. Yes.

4 Q. You were not researching, per se, whether dollars  
5 made a difference in terms of achievement outcome?

6 A. Well, this is a -- in this particular -- you asked me  
7 for studies in which they trace the effective  
8 additional spending, as I understood your question.  
9 And this is -- you asked me for one example, and so  
10 I'm giving you that example.

11 Q. But, isn't it a fact that unless you, in fact, trace  
12 the dollars to a given school and to a given student,  
13 that, indeed, we don't know if those dollars went to  
14 enhance a child's education or -- and without that  
15 sort of knowledge, without, indeed, tracing the money  
16 to the individual student, you can't very well tell  
17 whether an outcome, good or bad, was affected by the  
18 money?

19 A. Well, to give you an example of what I have in mind  
20 here, I mentioned that Mullin and Summers wrote a  
21 synthesis of this research. And I believe I said  
22 there was something like 30 studies that had been  
23 done. And these were specifically studies that had  
24 taken Chapter 1 funds for poor children and spent  
25 them on specific programs for specific children in

1           the district and compared them with other children so  
2           that they had both how much money was spent and what  
3           the program was like. And so that would be an  
4           example of 28 studies of the kind that you're asking  
5           me to cite.

6       Q.   And it's your conclusion that -- how many dollars did  
7           you say were being spent annually on Chapter 1?

8       A.   Well, currently it's about four billion dollars a  
9           year in the United States.

10      Q.   And Chapter 1, which was previously Title 1, was  
11           originally enacted in 1965?

12      A.   I don't know the date that it was begun, it might  
13           have been 1965.

14      Q.   Part of the Elementary and Secondary Education Act of  
15           '65, wasn't it?

16      A.   I'm not certain of that.

17      Q.   And it has been re-enacted periodically since then,  
18           isn't that correct?

19      A.   Yes, it has.

20      Q.   And how much has been totally spent on Title 1,  
21           Chapter 1?

22      A.   I would make a rough estimate that it might be about  
23           40 billion dollars.

24      Q.   And since 1965 we've been through Congresses and  
25           presidencies of various political persuasions, have

1 we not?

2 A. That's true.

3 Q. But it has continued to be funded since 1965, if  
4 you'll assume that that's the correct date, is that  
5 correct?

6 A. Yes.

7 Q. And it's your testimony here that notwithstanding  
8 that, that this is all money that has been wasted on  
9 these poor children?

10 A. Well, I wouldn't put it in quite those terms, but we  
11 have not been able -- and as I say, the largest  
12 analysis and synthesis of all of the studies that  
13 have been made of that is Mullin and Summers, and  
14 they came to the conclusion that there were no  
15 sustained achievement tests. More recently, the  
16 United States Department of Education did another  
17 analysis of it in preparation -- I understand that's  
18 it's in -- being reconsidered now, and they also came  
19 to the same conclusion.

20 Q. Okay. Now, you indicated that the studies that you  
21 have relied upon for today's testimony correlate  
22 various things with achievement test scores, is that  
23 not correct?

24 A. That's correct, they investigate the associations.

25 Q. And it is true, however, that achievement test scores



1           only measure one of the potential outcomes of  
2           schooling, isn't that correct?

3       A.   Well, it depends on what you mean one of the  
4           potential outcomes. If you considered there are  
5           different subjects that are tested in mathematics and  
6           English and in physics and several subject matters,  
7           so it depends on what you mean by one or several.

8       Q.   Achievement test scores only test cognitive outcomes,  
9           isn't that correct?

10      A.   Well, it could be said that they may do that, but  
11           also they do reflect, as I indicated this morning,  
12           the student's motivation. And some studies have been  
13           done of the students and further interest in the  
14           subject matter and other kinds of educational  
15           outcomes as well. Some studies have looked at things  
16           that go beyond achievement.

17      Q.   And it's important that we look beyond achievement,  
18           isn't that correct?

19      A.   Well, as I said, I believe that state legislators and  
20           school board members are really the people who need  
21           to decide on what they want from their schools. And  
22           my reading of what they want these days is that  
23           they're very, very interested in achievement and  
24           they've set that as a very, very large priority.

25      Q.   You are the author of an article in Phi Delta Kappan

1           in November of 1979 entitled "The Quiet Revolution in  
2           Educational Research," is that not correct?

3       A.    I'm not sure of the date, but the title seems  
4           correct.

5       Q.    Okay. And let me read something from it and you can  
6           tell me if this sounds like something that you wrote.  
7           At Page 182 it states that "The results" -- referring  
8           to research results -- "suggest that researchers  
9           should measure learning outcomes that go beyond  
10          achievement." Do you still agree with that?

11      A.    Well, as I mentioned this morning, I'm very  
12           interested in motivation, and I mentioned the fact  
13           that it's important for students to continue to be  
14           interested in the subject matter and continue to  
15           study, so I think motivation is important, also. I  
16           think that this climate of class and morale -- and  
17           generally my studies I've measured those things.

18      Q.    So when we are merely correlating dollar inputs to  
19           achievement test scores, all we're doing is measuring  
20           one of the important outcomes, if you will, that  
21           could result from an education, is that correct?

22      A.    Well, you use several terms, one was merely, and I'm  
23           not sure -- I think you made a statement rather than  
24           asking me a question, maybe I should have it  
25           repeated.

1 Q. Okay. There are goals of schooling and schools that  
2 go beyond mere achievement as measured by  
3 standardized achievement tests, isn't that correct?

4 A. Yes, there are goals aside from achievement.

5 Q. So that if we are correlating dollars to achievement,  
6 and assuming that there's no correlation as you've  
7 testified, that isn't the end of the inquiry as to  
8 whether those dollars made a difference, is it?

9 A. No, as a matter of fact, that's why I consider the  
10 Hanushek study a particularly important one, because  
11 Hanushek looked at other kinds of outcome such as  
12 drop-out rates and attendance and things of that  
13 nature, which are also concrete indicators that are  
14 not simply achievement, but they go beyond that in  
15 some ways.

16 Q. We will get into some Hanushek in just a second.

17 Now, when we start talking about measuring  
18 inputs and then correlating them with standardized  
19 achievement test scores, it is true, is it not, that  
20 achievement test scores do not always reflect true  
21 growth or true achievement in the students being  
22 tested, is that correct?

23 A. Well, they may or they may not. I think you have to  
24 look at specific examples. If you're evaluating --  
25 to take a somewhat absurd example, if you're

1       evaluating an English class and you gave them a test  
2       in mathematics, obviously that would be a highly  
3       inappropriate test. But suppose the state were  
4       interested in improving mathematics and English and  
5       they wanted to evaluate the progress that they had  
6       made and they identified the goals as far as that  
7       state was concerned, then I would -- I would think  
8       that that's a perfectly valid use of achievement  
9       test.

10      Q. Have you ever heard of teaching to the test, sir?

11      A. I know that term, yes.

12      Q. Could you tell the Court what teaching to the test  
13       means?

14      A. Some people believe that if you make the test so  
15       specific to what is being taught or the teacher  
16       simply teaches to the test or teaches the exact  
17       content of the test, that that is not as impressive  
18       as giving a test that is on a somewhat different  
19       subject matter. And if the test were made public or  
20       if they are -- in some ways can determine what's  
21       being taught in a school system -- in other words,  
22       the test controls what's being taught, that's  
23       essentially what it means.

24      Q. Indeed, you talked about national concern about  
25       achievement test and achievement and some of the

1       national feelings, there happens to be a number of  
2       people who are quite concerned that what we're going  
3       to end up with are people teaching to the test, that  
4       is, having the school curriculum guided by  
5       achievement test outcomes, isn't that correct?

6   A.   Well, I think some might be concerned, but others  
7       would even celebrate because if the students could do  
8       well, for example, on the TEAMS and the other tests  
9       in Texas, then I think that that would be something  
10      that would be very good because these tests reflect  
11      the state goals. And so this -- I think this is a  
12      very legitimate thing to do to --

13   Q.   Excuse me.

14   A.   I think it's a very legitimate thing to make up tests  
15      that reflect the goals of what the state is trying to  
16      do or the local district and to measure the specific  
17      progress that's been made on them.

18   Q.   If a given school district took it upon itself to  
19      teach the test, School District A, and School  
20      District B decided not to, we would end up with some  
21      differing results, would we not?

22   A.   Yes, I think that the extent to which the local  
23      school district works on things that are reflected in  
24      the tests, they're going to do better at it. Of  
25      course, they have their own test that they can use,

1           too, to demonstrate how well they've done.

2       Q.   Also, you spoke about the divergent curriculums  
3           between school districts, did you not, on your direct  
4           examination?

5       A.   Yes, I did.

6       Q.   And indeed, there are divergent curriculums between  
7           given school districts in a state the size of Texas,  
8           isn't that correct?

9       A.   I think that even in a state like Hawaii which has  
10          only one school board, I think that you would find  
11          some divergence in different schools within that  
12          district. And you would certainly find divergence in  
13          any state in the United States.

14      Q.   Uh-huh. And indeed, if the curriculum was more  
15          closely allied with a standardized achievement test  
16          score, one would expect that the students would do  
17          better on the achievement test score than if the  
18          curriculum was not so closely allied, isn't that  
19          correct?

20      A.   Well, I think -- if we're taking the example here in  
21          Texas or Illinois, where I come from, the state  
22          school board has the people in the Department of  
23          Education or they hire a commercial firm to establish  
24          the goals of -- or they give them the goals of  
25          education and they make up a test specifically

1           designed to reflect those goals. And when they  
2           evaluate local school districts, they compare them.  
3           So it's a case where the curriculums, to some extent,  
4           being fit or suited to scoring well on those tests.  
5           And this is the very purpose of state legislators.  
6           And as I was indicating this morning, many states  
7           throughout the United States are doing this very  
8           thing.

9       Q.   Have you ever conducted a study of how curriculum  
10          matches with standardized achievement tests in  
11          differing school districts in the State of Texas?

12      A.   I have not specifically compared curricula from one  
13          district to another in Texas.

14      Q.   You haven't done it at all, have you?

15      A.   Well, I think if I gave a -- to give a very strict  
16          answer to your question, yes, I did discuss this with  
17          some superintendents in Texas when I was invited to  
18          give a talk here one time. And we discussed the very  
19          matter of the fact that one district can differ from  
20          another. It wasn't a formal study, but I did  
21          certainly describe it in a formal setting.

22      Q.   And they said one district can differ from another,  
23          isn't that correct?

24      A.   Yes, I think they may have mentioned it, but I would  
25          have imagined it anyway.

1 Q. Are you familiar with a book entitled "The  
2 Determinants of Educational Outcomes" by Bridge, Judd  
3 and Moock?

4 A. Yes.

5 Q. And this is a fairly standard textbook in the area of  
6 production, function research, is that correct?

7 A. Well, I wouldn't exactly call it a textbook. I think  
8 it was a compilation synthesis of findings from a  
9 limited number of the studies that had been made of  
10 the school inputs and outputs.

11 MR. ROOS: I would like to approach the  
12 witness, Your Honor.

13 Q. I've placed in front of you Page 270 and 71 of that  
14 book that you've just described, is that correct? Is  
15 that in front of you?

16 A. Yes.

17 Q. And before you on those pages is an effort to  
18 correlate whether there were significant outcomes  
19 from differential teachers' salaries, isn't that  
20 correct?

21 A. Yes.

22 Q. And could you tell us in that synthesis that's before  
23 you, the number of positive responses, that is  
24 correlations between teachers' salaries and  
25 achievement tests outcomes that are reflected there,



1           number of pure positive findings?

2       A.   Let's see, one -- there are six.

3       Q.   Actually you found one more than I did.

4       A.   Let me recount them. Yes, there are six.

5       Q.   Okay. And how many negative findings are there, sir?

6       A.   Just pure negative?

7       Q.   Yes.

8       A.   There are no pure negative.

9       Q.   And then they also correlate nonsignificant positive  
10           and nonsignificant negative, is that correct?

11      A.   Yes.

12      Q.   Okay. And how many nonsignificant positive are  
13           there, correlations?

14      A.   There are six here.

15      Q.   Okay. And how many nonsignificant negatives are  
16           there?

17      A.   Two. So I count eight nonsignificant findings.

18      Q.   Now, you earlier discussed Eric Hanushek as being a  
19           person who is to be respected in the area of  
20           educational research, is that correct?

21      A.   I think there is one other thing that I would like to  
22           say about the title of that book. I don't think you  
23           mentioned the subtitle. May I please get the  
24           subtitle?

25      Q.   Yes, please do.

1 A. May I have the book?

2 Q. Oh, you need it?

3 A. Yes, I -- maybe you would read it to us.

4 Q. Okay. "The Impact of Family, Peers, Teachers and  
5 Schools."

6 A. Thank you.

7 Q. Thank you.

8 Okay. Are you familiar with Hanushek's book  
9 "Education and Race" published by D.C. Heath?

10 A. I looked at it many years ago and I haven't read it  
11 in recent years.

12 Q. But Hanushek, as you indicated on your direct  
13 testimony, is the sort of researcher that you have  
14 respect for, is that correct?

15 A. Well, yes, I do, but I was referring in particular to  
16 an article that he wrote in the Journal of Economic  
17 Literature.

18 Q. I would like you to --

19 MR. ROOS: I would like to approach the  
20 witness, Your Honor.

21 Q. -- read from Page 109 of that, the underlined  
22 section.

23 MR. O'HANLON: Objection, no proper  
24 predicate. He's asking the witness to read from a  
25 document that hasn't been admitted into evidence.

1 MR. ROOS: He's testifying as an expert,  
2 Your Honor. He's testified that Hanushek is the sort  
3 of person that he relies upon. Therefore, I think  
4 that he can certainly read from Hanushek's findings.  
5 He's quoted Hanushek's findings in other -- on his  
6 direct testimony. I think that contrary findings by  
7 Hanushek certainly are admissible.

8 MR. O'HANLON: Your Honor, I don't think  
9 that's a proper predicate for impeachment of an  
10 expert witness. I think he has to ask him whether he  
11 agrees with certain conclusions. Simply reading it  
12 into the record isn't --

13 MR. ROOS: Well, we'll ask him at the end  
14 whether he agrees with it.

15 THE COURT: Okay. I'll overrule.

16 BY MR. ROOS:

17 Q. Could you read that, sir?

18 A. Yes. May I say that this doesn't have the title,  
19 it's just a page.

20 Q. I will represent to you -- and if you or your counsel  
21 finds out that I misrepresented, it shall be stricken  
22 from the record -- it's Hanushek's --

23 MR. O'HANLON: Objection, Your Honor, to  
24 this predicate. If he's going to ask him to read  
25 from the article, I think we need to put in the

1 article, not one paragraph taken out of context.

2 MR. ROOS: We'll put the entire book into  
3 evidence, if the Court pleases. We would like to get  
4 this in at the moment. If the Court needs an entire  
5 book, we would be happy to purchase a number of  
6 copies and provide them.

7 THE COURT: Okay. I'll overrule.

8 A. You want me to read the first underlined sentence?

9 Q. Yes, please.

10 A. "The analyses indicate the differences among teachers  
11 have a significant impact on the achievement of  
12 students."

13 Q. And could you read the second underlined sentence?

14 A. "It also leads to the position that achievement can  
15 be altered through proper hiring of teachers and  
16 other inputs."

17 Q. And I would like to now turn from the same book to  
18 Page 113 and have you read that section that's  
19 underlined.

20 A. "The analyses here and several similar ones elsewhere  
21 support the general thesis that the more intelligent  
22 teachers on average are more effective than less  
23 intelligent teachers. This finding which is  
24 supported largely by the measures of teacher verbal  
25 facility implies that significant changes might be

1 induced by increasing teachers' salaries relative to  
2 other occupations and thus increasing the average  
3 abilities of teachers."

4 Q. And what Mr. Hanushek is saying here, of course,  
5 isn't it pretty much what you said earlier, that  
6 teachers are not teachers are not teachers. That  
7 indeed there are differences among teachers, isn't  
8 that correct?

9 A. Yes, there are differences among teachers.

10 Q. And, indeed, those differences may well, the evidence  
11 shows, have an effect on achievement outcomes, isn't  
12 that correct?

13 A. Well, I believe that what the teachers do rather than  
14 their characteristics such as experience for what  
15 they're usually paid for or the number of degrees  
16 that they have are the things that make a difference  
17 rather than the salary levels or the other things.  
18 And this last passage that you asked me to read was  
19 verbal ability. Most school districts in the United  
20 States do not hire teachers on the basis of verbal  
21 ability, they look at other sorts of things,  
22 particularly their degree level and years of  
23 experience, and that's the basis for their payments  
24 rather than I.Q. tests.

25 I also would like to add that this is only one

1 study of Hanushek. And the studies by Hanushek that  
2 he has done himself or has been accumulated are far  
3 more than a single study which, in my view, does not  
4 prove very much.

5 I also would like to add that most of the  
6 findings that you asked me to read from illustrate  
7 Hanushek's -- that is from the other book that you've  
8 showed me, Bridge, Judd and Moock, were  
9 nonsignificant. They were not significant --  
10 statistically significant.

11 Q. We found, according to your count, in the Bridge,  
12 Judd and Moock book, that there were six positive  
13 significant studies, right?

14 A. Yes, but there were eight nonsignificant ones, and  
15 the Bridge, Judd, Moock book is very limited.  
16 Hanushek has collected 150 studies and we only looked  
17 at about 10 there.

18 Q. All right.

19 MR. ROOS: Now, I would like to approach  
20 the witness, Your Honor.

21 Q. I have placed before you an article that appears in  
22 the Journal of Education and Finance in the fall of  
23 1986. Are you familiar with that journal, sir?

24 A. I've occasionally looked at it, yes, but I don't know  
25 it well.

1 Q. Would you know if one of the prior witnesses, Deborah  
2 Verstegen is on the -- is a contributor to that  
3 journal?

4 A. I don't know that as a fact.

5 Q. You don't know that as a fact.

6 Okay. I would like you initially to turn to  
7 Page 199 of this study.

8 A. Yes.

9 MR. O'HANLON: This study hasn't been  
10 identified at this point?

11 MR. ROOS: That's true, Your Honor.

12 Q. The title of this study that is before you is  
13 "Production Functions Revisited in the Context of  
14 Educational Reform" by Betty MacPhail-Wilcox and  
15 Richard King, is it not?

16 A. Yes, that's correct.

17 Q. Okay. And this was, as indicated, published in the  
18 Journal of Educational Finance in the fall of 1986,  
19 is that correct?

20 A. That's what it says here, yes.

21 Q. And that is a standard journal in the area of  
22 educational finance; would you know that?

23 A. I would say in finance and not economics.

24 Q. Okay. I would like to turn your attention to Page  
25 203 of that study. Do you have that in front of you?

1 A. Yes, I do.

2 Q. And what is represented there, sir?

3 MR. O'HANLON: Objection, Your Honor,  
4 improper predicate. I believe the predicate for --  
5 I think what he's trying to do is impeach his  
6 conclusions. I think the proper predicate is to see  
7 whether this -- if this expert recognizes this as an  
8 authoritative source and whether or not he would  
9 ascribe to the opinions or use them in connection  
10 with his testimony as an expert witness. Merely  
11 running through numbers would constitute hearsay  
12 unless this witness can testify it's the kind of  
13 source or document that he would use in connection...  
14 We haven't laid that predicate and therefore this is  
15 not admissible testimony.

16 MR. ROOS: This is precisely what he did on  
17 direct examination, went through a number of studies  
18 that -- on which he said reflected that various  
19 things didn't make a difference. And he, in fact,  
20 did not conduct any studies, himself. He reported  
21 from research findings. And what we are doing here  
22 is showing that those research findings, indeed, are  
23 not nearly as clear, indeed they tend to be to the  
24 contrary of what he's already testified to. The fact  
25 that he's already testified along this line clearly



1 permits him to be cross examined on other sorts of  
2 summaries of studies. If he wants to, on redirect,  
3 be redirected and explain these, that's something  
4 else, Your Honor.

5 MR. O'HANLON: Counsel misapprehends my  
6 objection to -- he hasn't laid the proper predicate  
7 that he recognizes this as an authoritative source,  
8 which he has got to do prior to asking him to use  
9 that and take that into account in his conclusions.  
10 So it's the predicate that we're objecting to.

11 MR. R. LUNA: Certainly he's entitled to  
12 any kind of cross examination. However, what he's  
13 done here with Dr. Walberg -- he's already said he's  
14 not an expert in the field of finance. And here he's  
15 being presented with some document from the Journal  
16 of Education and Finance with some authors that have  
17 not been identified and so forth. And he can go  
18 about it in a proper way, but this is not proper  
19 under the rules and we object.

20 MR. ROOS: Well, we will certainly identify  
21 the journals -- the authors if you wish. We are not  
22 talking about educational finance, we're talking  
23 about such things as input characteristics such as  
24 teacher characteristics and their input upon student  
25 outcomes. And that's become a highly relevant aspect

1 of what we're about here.

2 MR. TURNER: Your Honor, I think Counsel,  
3 Attorney General is still correct, this witness has  
4 not acknowledged that the article that we're  
5 referring to is a source upon which he would rely as  
6 an authoritative source. And I think Mr. Roos  
7 suggested to the Court that the weight of the  
8 research is to the contrary of what Dr. Walberg has  
9 testified and I think that needs to stand corrected.  
10 And I think if the weight of the evidence is to the  
11 contrary, the Plaintiffs in this lawsuit can produce  
12 witnesses to show that, but we think it's quite to  
13 the contrary, and that the testimony offered by Dr.  
14 Walberg and the research that he has reviewed over  
15 the years clearly indicates his testimony be the  
16 great weight of authority. So I don't think that  
17 it's appropriate for him to pick out an article that  
18 we haven't even established Dr. Walberg would rely on  
19 and then for him to cross examine him about that  
20 article.

21 THE COURT: Just a minute.

22 MR. ROOS: Your Honor, this is just exactly  
23 what they did on direct examination. What this  
24 gentleman did was give these sort of general,  
25 sweeping assumptions -- statements based upon unnamed

1           -- frequently unnamed research findings with an  
2           occasional name thrown in. We've got 113 studies  
3           showed this and 22 studies showed that, and that all  
4           came in. And that's the way they presented their  
5           case. And quite clearly, that opens up our ability  
6           to cross examine him on other studies and other  
7           summaries of studies, Your Honor.

8                   MR. O'HANLON: Your Honor, I'm not  
9           questioning whether or not they can cross examine  
10          with other studies, I'm questioning the methodology  
11          they're attempting to set about in order to do that.  
12          Before you do it, you've got to set a predicate. And  
13          that predicate is that the witness has got to  
14          recognize the source of that impeaching statement as  
15          an authoritative source upon which he would rely in  
16          conducting his business. And without that predicate,  
17          then that's not proper impeachment. It's part of the  
18          kind of thing that goes into the ability of the  
19          expert to testify about hearsay, but he's got to  
20          recognize it as the source. Otherwise we'll just  
21          bring in books from all over the place and it's not  
22          going to be helpful.

23                   MR. ROOS: Your Honor, clearly we have the  
24          ability to impeach this gentleman on the authorities  
25          that say the opposite of what he has testified to.

1                   MR. O'HANLON: I'm not questioning their  
2                   right to engage in impeachment, I'm questioning their  
3                   methodology about what they're setting about to do.  
4                   There's a way to do this. And the way to do this is  
5                   to ask the witness whether or not he recognizes that  
6                   source as authoritative in the field upon which he's  
7                   given his prior testimony. If he does, then he can  
8                   question him about those statements. If he does not,  
9                   then it's hearsay. And it is not that because the  
10                  exceptions for expert witness testimony to the  
11                  hearsay rule is precisely because the expert would  
12                  rely upon that kind of information in connection with  
13                  the task that that expert is testifying about. And  
14                  absent that predicate, it is simply not admissible.

15                 THE COURT: Here is what Rule 803 says,  
16                  hearsay exceptions. The following are not excluded  
17                  by the hearsay rule: (18) Learned Treatises. "To  
18                  the extent called to the attention of an expert  
19                  witness upon cross-examination...statements contained  
20                  in published treatises," and so on, "on a subject of  
21                  history, medicine or other science or art,  
22                  established as a reliable authority by the testimony  
23                  or admission of the witness or by other expert  
24                  testimony or by judicial notice. If admitted, the  
25                  statements may be read into evidence but may not be

1 received as exhibits."

2 Then a commentator says of that rule shortly  
3 after it was published, "Learned treatises may now be  
4 proved by one's own expert on direct examination, by  
5 other expert testimony or by judicial notice. If  
6 admitted, the statements may be read into evidence  
7 but may not be received as exhibits. Prior Texas law  
8 allowed learned treatises to be used only to cross  
9 examine an expert regarding his opinion, not as  
10 substantive evidence. Prior case law also had  
11 required that the expert being examined recognized  
12 the treatises as authoritative as a prerequisite to  
13 the use in cross examination."

14 But it sounds like that is not now a  
15 prerequisite. However the Rule 803, Parenthetical  
16 18, says that it is not -- that learned treatises are  
17 not hearsay to the extent called to the attention of  
18 an expert witness, those statements contained in  
19 learned treatises established as a reliable  
20 authority.

21 MR. TURNER: Your Honor, I think what the  
22 rule is saying is that so long as somebody has  
23 established this as a reliable authority, whether it  
24 was this witness or some other witness, then this  
25 witness can be cross examined about it. But if no

1 witness has established this as a reliable authority,  
2 and this witness does not acknowledge it to be one,  
3 then he cannot be examined about that document. So,  
4 if this witness acknowledges it to be a reliable  
5 authority or if somebody else has previously  
6 testified about this article and then used it,  
7 established it to be a reliable authority, then he  
8 can be examined about it, even if he says, "No, it's  
9 not a reliable authority." Somebody else in this  
10 courtroom established it as such, he can be examined  
11 about it. But somebody has got to, under the rule,  
12 establish that as a reliable authority. And if  
13 somebody does it, this witness or anyone else, then  
14 he can be examined about it.

15 MR. ROOS: Your Honor, if I heard the  
16 Court's reading of the rule correctly, I mean, what  
17 he had to acknowledge was, in fact, this was a  
18 learned treatise of the sort that has been accepted  
19 in the trade and, indeed, that is what has already  
20 gone by. This is the major treatise on educational  
21 finance. And his testimony as to findings contained  
22 in there certainly ought to come in, although the  
23 document, itself, will not be introduced. We will  
24 not -- if it's not permissible, we will not introduce  
25 it, although we may subsequently bring someone in.

1 MR. O'HANLON: To continue the objection,  
2 Your Honor, this is a journal. You're going to have  
3 to rely on the treatise in question. It has got to  
4 be the article, itself; not that it exists in some  
5 journal that somebody has mentioned before. And the  
6 proper predicate has not been laid for the  
7 admissibility of this evidence.

8 MR. E. LUNA: Only been identified by Mr.  
9 Roos and that's not his expertise.

10 MR. ROOS: He's already testified about  
11 this, though.

12 MR. E. LUNA: He didn't say that was an  
13 outstanding --

14 MR. ROOS: I know, I agree. I don't think  
15 that was his testimony, but he certainly testified  
16 this was a standard journal that he was familiar with  
17 concerning educational finance.

18 MR. GRAY: Your Honor, one observation. As  
19 to the journal, itself, I believe that this is the  
20 very journal that Mrs. Verstegen testified so proudly  
21 of that she was a contributing author of and went  
22 into some extent of her testimony about what this  
23 journal was all about to bolster her expertise, so to  
24 speak, because she was a contributing author of the  
25 articles in this journal. I may stand corrected, but

1           that's my recollection.

2           MR. TURNER: It's the article that we're  
3           talking about here, not the journal. A treatise has  
4           an author and we know if recognize that author as  
5           being learned or not. There's been no question  
6           asked, yet, of this witness as to whether or not he  
7           is familiar with these authors and would recognize  
8           them as experts in the field or whether he's familiar  
9           with them or knows anything about them. And, you  
10          know, we're not talking here about some journal  
11          compilation of articles over time, we're talking  
12          about an article by a real, live author. And this  
13          witness has not been asked anything about that. And  
14          I think Mr. O'Hanlon is correct, unless this witness  
15          acknowledges this article and these authors to be a  
16          reliable source, that somebody else in this trial  
17          would have had to have done that, before he can be  
18          put to the task of responding to questions about that  
19          article.

20          MR. ROOS: Being asked to testify as to the  
21          summaries of findings by experts such as Mr.  
22          Hanushek, of various people that are well-known in  
23          the field of the same sort that he relied upon on his  
24          direct testimony. And quite clearly, if the  
25          testimony is to the contrary to what he testified to,



1           then he can be asked about these summaries. And if  
2           he needs to qualify those on redirect, then that's  
3           another thing, Your Honor.

4                   MR. TURNER: He's entitled to testify about  
5           works that he's familiar with and which he's done.  
6           This work, here, we have not established that he's  
7           familiar with either the work or the author. And  
8           under the rules, it's very clear, unless he's going  
9           to acknowledge that to be a reliable source or making  
10          the kind of judgments that he, in the normal course  
11          of his work, makes, and if nobody else has  
12          acknowledged that to be a reliable treatise, then  
13          this witness should not be put to the task of being  
14          cross examined about it. Otherwise we can bring any  
15          kind of articles in here by anybody. I can write one  
16          and I guess he can be examined about it. And  
17          certainly wouldn't purport to be an expert, myself,  
18          but I guess if what Mr. Roos would ask the Court to  
19          do is permissible, then an article by me could be  
20          used to cross examine Dr. Walberg. And that's the  
21          purpose of the rule, is to try to avoid things like  
22          that.

23                   THE COURT: I think, according to this  
24          rule, if you write an article and some expert  
25          recognizes it as reliable --

1 MR. TURNER: Yes.

2 THE COURT: -- then it can come into  
3 evidence.

4 MR. TURNER: Yes, absolutely.

5 THE COURT: It can be read to the fact  
6 trier, but the article, the piece of paper itself, is  
7 not in evidence.

8 MR. TURNER: Yes, it could be read if  
9 somebody acknowledged me to be a reliable source,  
10 this witness or any other witness in this trial.

11 THE COURT: Uh-huh.

12 MR. TURNER: Here we have a new article by  
13 some author that nobody has acknowledged to be an  
14 expert and this witness is being asked to respond and  
15 to read from that article and respond to it. And  
16 until somebody, either this witness or some previous  
17 witness in this case acknowledges that article to be  
18 a reliable -- by a reliable source, then he cannot be  
19 examined about that article. Otherwise, Mr. Luna  
20 could write one, and we all know he wouldn't be an  
21 expert, and nobody has testified in this trial that  
22 he is an expert, and Mr. Roos could ask him about an  
23 article Mr. Luna wrote. And so, the purpose of the  
24 rule is to prevent things like that from happening.

25 MR. ROOS: I expect Dr. Verstegen would not

1       be publising Mr. Luna's article in her journal absent  
2       his establishing his expertise otherwise, and that's  
3       the difference between Mr. Luna writing an article --

4               MR. TURNER: Dr. Verstegen would have to  
5       acknowledge Mr. Luna's expertise, and she's been here  
6       and she's done so, and his article would be available  
7       to cross examine.

8               MR. ROOS: Her expertise is a fact --  
9       establishes partly as a result of the fact that she  
10      was the contributing editor of this journal.

11              MR. E. LUNA: Really all Mr. Roos has to do  
12      is ask him if he knows this author and relies on him,  
13      and knows this article and relies on it. If he does,  
14      he can cross examine him about it; if he doesn't,  
15      he's got to get somebody else.

16              THE COURT: You all got two things going at  
17      once here. You've got cross examination and you've  
18      got -- the rule is talking about admissibility in  
19      evidence. And the way I understand the rule is that  
20      if I can get an expert to admit that a particular  
21      treatise is reliable, then I can stand up, "See this  
22      article, expert?"

23              "Yes."

24              "Is this article written by so and so  
25      reliable?"

1 "Yes."

2 I can stand up and read all or any part of that  
3 and it's good, competent, original evidence just like  
4 an expert testified to it. Okay. That's evidence.

5 Take that aside.

6 The next question is cross examination. So you  
7 would ask a witness, "Do you agree with this  
8 statement? Answer Line 2," and the experts -- I  
9 don't think you need a predicate for that because  
10 this rule did away with that, according to this  
11 article. "Prior case law had also required that the  
12 expert be examined, recognize the treatise as  
13 authoritative as a prerequisite to its use in cross  
14 examination." That's true, that was the old rule.  
15 Before you could cross examine an expert about a  
16 statement, you had to get that expert to recognize  
17 that that work was authoritative, that's the reason  
18 we took it.

19 One of the main reasons we took depositions of  
20 experts is to get them to recognize all of the  
21 treatises that we had that had stuff in it that was  
22 good for us as authoritative, so that we could then  
23 cross examine that witness about those statements,  
24 but I don't think that rule any longer applies about  
25 cross examination.

1           I think you can cross examine, now, and you  
2       don't have to get the expert to admit that the person  
3       you are examining about, who wrote the article, is an  
4       expert or that the article or that person is  
5       authoritative. I think you can -- you can say, "Dr.  
6       Jones wrote this article," and give the title and  
7       ask, "Do you agree with this statement, yes or no?"  
8       That doesn't mean that the statement that that expert  
9       said in the article which is read to the expert on  
10      the stand is in evidence. What is in evidence is  
11      whether or not the expert on the stand agrees or  
12      disagrees. But that is an entirely different problem  
13      than what Rule 803, Parenthetical 18 is talking  
14      about, and it is now very easy to get textbooks,  
15      treatises, all sorts of documents in evidence. If  
16      your expert will admit that its authoritative, you  
17      can read the whole bloody thing into evidence. It's  
18      as easy as that. And then that becomes -- that's  
19      just like that there was an expert on the stand  
20      saying those very same words, that is in evidence.

21           So, in terms of cross examination, I don't  
22      think you have to establish that the work is  
23      reliable, using the word of the new rule, but what is  
24      in evidence is this experts', the one that is on the  
25      stand, his or her reply to whether or not he agrees

1 to that statement, not the statement. Do you all  
2 understand that?

3 MR. O'HANLON: I do but, Your Honor, what  
4 they're fixing to do is read a bunch of data from a  
5 table which is absolute pure hearsay.

6 MR. GRAY: Your Honor, it doesn't make any  
7 difference. All -- if Dr. Walberg says, "I don't  
8 agree, I don't agree, I don't agree," so be it.

9 THE COURT: Yes.

10 MR. GRAY: But the purpose of cross  
11 examination is to elicit opinions, observations, or  
12 whatever. And with the change in the rules, however  
13 many articles Mr. Roos may have, if he asked Dr.  
14 Walberg, "Author A says it's raining today, do you  
15 agree," and he says, "No," that's that. But that's  
16 what cross examination is all about.

17 THE COURT: And what is in evidence is the  
18 fact that the expert on the stand doesn't agree with  
19 that statement --

20 MR. GRAY: That's right.

21 THE COURT: -- not that the statement is in  
22 evidence.

23 MR. GRAY: And Mr. Roos, to my knowledge,  
24 has made no effort whatsoever to introduce this  
25 article or any other article as of this point in

1 time.

2 MR. O'HANLON: He's flipped to a page  
3 that's got a bunch of data in it. Now how is this  
4 witness going to know, if he hadn't ever read the  
5 article, whether or not he agrees or not with the  
6 data. If we're talking about conclusions, we may be  
7 legitimately cross examining, but if you're talking  
8 about simply reading data into evidence and ask him  
9 whether he agrees with it or not, that's ridiculous.

10 MR. ROOS: We're talking about conclusions,  
11 Your Honor.

12 MR. O'HANLON: Is that what's happening?

13 MR. GRAY: He can say "yes" or "no."

14 THE COURT: I'm not trying to judge the  
15 work of the cross examination. I think he could read  
16 -- he could ask this expert, does he agree that all  
17 schools ought to be painted red.

18 MR. O'HANLON: Well, that would hardly --

19 THE COURT: And if he says "no," that  
20 doesn't mean that the statement from which he read,  
21 that all schoolhouses ought to be painted red, is in  
22 evidence, what is in evidence is that he does not  
23 agree that all schoolhouses should be painted red.  
24 And that, according to this, you don't have to lay  
25 any of that authoritative predicate any more like you

1           used to when cross examining. You do need to lay a  
2           reliability predicate if you want the statement in  
3           evidence as if that expert were here testifying live  
4           under oath. There's a big difference.

5           So apparently, you can ask experts now if they  
6           agree with any sort of statement and not have an  
7           authoritative predicate. That's what I'm going --  
8           that's how I see it. That's what I'm going to do.  
9           That doesn't mean that it's effective cross  
10          examination, it just means it's not objectionable.

11          Here we go.

12                 MR. O'HANLON: Does that mean you are  
13           overruling my objection?

14                 THE COURT: Yes.

15                 MR. TURNER: Your Honor, maybe it needs to  
16           be appropriate for the witness, in light of your  
17           ruling, not to have to read the statement himself,  
18           but to be asked about the statement, not to read it  
19           aloud in the record.

20                 THE COURT: I believe either way would be  
21           okay, but I think it is better, since we're on cross  
22           examination, for the cross examiner to read the  
23           statement and ask if he agrees or not with that.  
24           That makes it more clear in the record that the  
25           expert is not espousing that thought. Okay. I think



1           that's best.

2 BY MR. ROOS:

3 Q.    Sir, you have before you Page 203 of the article that  
4        I previously handed to you?

5 A.    Yes, I do.

6 Q.    And that on Page 203 is a listing of studies  
7        concerning the relationship between verbal  
8        achievement of the teacher and achievement of the  
9        students, is that not correct, the first -- the first  
10       listing?

11 A.    May I have the question repeated, please?

12 Q.    On Table 1, the top part of Table 1 --

13 A.    Yes.

14 Q.    -- purports to list the number of studies that  
15        correlate verbal proficiency of teachers to student  
16        achievement outcomes?

17 A.    I have not been able to find on my copy of student  
18        achievement, perhaps you could point that out to me.

19 Q.    Well, without going through the entire article, let  
20        me just tell you that that's what this does. And in  
21        the preparatory statement --

22                   MR. O'HANLON: Objection, Your Honor, move  
23        to strike, that's irrelevant, his summary of what  
24        this article says. He can ask him a question and he  
25        can ask him whether he agrees with a statement, I

1 think that's what the Court ruled, not whether he can  
2 read titles to data, arrays, or anything of that  
3 nature. He can read him a statement or ask him a  
4 question, ask him whether he agrees with it or not.  
5 I think that's all he can do.

6 THE COURT: Well, just so I'll make things  
7 clear, if not already. It seems to me like he can  
8 say "I have in my hands an article by Dr. Jones  
9 entitled X, Y, Z. Do you find this article to be  
10 reliable?" If he says "Yes," this expert, he can  
11 stand up and read the whole article into evidence  
12 just like Dr. Jones was here testifying. If he says,  
13 "No," he can say "Do you agree with this statement  
14 from this article," and read the statement. The  
15 witness can say "Yes" or "No."

16 MR. O'HANLON: That's right.

17 THE COURT: And what is in evidence is the  
18 reply.

19 MR. O'HANLON: That's right. And that's  
20 what he's not doing. What he said is "on such and  
21 such a page, you have a table," and started to talk  
22 about that. I think what he's got to do is ask him a  
23 question rather than ask him to discuss the contents  
24 of it, because then we get into the inadmissible  
25 contents of the document, itself.

1 MR. ROOS: Let me try this over again and --

2 THE COURT: Okay. Back up and do it the  
3 way I suggested, please.

4 BY MR. ROOS:

5 Q. Let's go ahead to Page 207, sir, and let's look at  
6 the top paragraph there that draws a conclusion. Do  
7 you see the top paragraph that starts "Production and  
8 function analyses ..."?

9 A. Uh-huh.

10 Q. I will read that to you. "Production function  
11 analyses indicate the variations in teacher verbal  
12 achievement. Experience and salary are significant  
13 predictors of variation in student achievement as  
14 measured by standardized achievement test scores."  
15 Without going on, do you agree or disagree with that  
16 statement?

17 A. I disagree with the statement.

18 Q. Now, the studies that purport -- that serve as the  
19 authors predicate to making that conclusion are found  
20 at Page 203.

21 MR. O'HANLON: Objection, Your Honor, he's  
22 talking -- he's trying to get into a document that  
23 hasn't been admitted into evidence. He read him a  
24 statement and he disagreed with it and that's all of  
25 the evidence that we've got. We don't have -- we get

1 back into the predicate for that statement, which is  
2 what he can't go into unless he asks this question --  
3 unless he asks the witness whether he recognizes the  
4 reliable source, which he won't do.

5 MR. ROOS: I can certainly ask him whether  
6 he agrees with the underlying -- that the studies  
7 that underlie the author's conclusions that were just  
8 read, which he disagrees with, are studies that are  
9 respected in the field that we're talking about. And  
10 that's what I'm about to do, Your Honor.

11 THE COURT: But it's your conclusion that  
12 these studies that you've just indicated to the  
13 witness, undergirded the statement you just read to  
14 him?

15 MR. ROOS: That's correct.

16 MR. O'HANLON: Now, if he's testified --

17 THE COURT: Is that your problem?

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

19 THE COURT: I'll agree. I'll sustain.

20 BY MR. ROOS:

21 Q. You disagree with the statement that I just read on  
22 Page 207, is that correct?

23 A. Yes, and I think the author disagrees with it, too.

24 Q. Are you familiar with Hanushek's study in 1968, sir?

25 A. I don't recall it offhand.

1 Q. All right.

2 A. He's written perhaps 30 studies or so and I don't  
3 know them all.

4 Q. But Eric Hanushek, as you previously stated, is the  
5 sort of researcher who you have -- who is  
6 acknowledged in the field as being a responsible  
7 researcher?

8 A. Well, that does not mean that I endorse every study  
9 that Eric Hanushek has done. I was referring  
10 particularly to his studies that were published in  
11 the Journal of Economic Literature, which I regard as  
12 a definitive review in this field, but I certainly  
13 don't endorse every study he has done because I  
14 haven't even read all of the studies that he's done.

15 Q. Do you have any reason to believe that the listing of  
16 Mr. Hanushek as being one of the researchers relied  
17 upon by the author here is a misstatement of the  
18 facts?

19 MR. O'HANLON: Objection, Your Honor, same  
20 thing, he's gone into the content of that document  
21 rather than the agreement of whether he agrees or not  
22 with any statement he had.

23 MR. ROOS: Mr. Hanushek, he previously  
24 acknowledged, is a respected author in the field who  
25 researches in this area. And I clearly ought to be

1           able, based upon those acknowledgements, to ask him  
2           about findings of Mr. Hanushek that are contrary to  
3           his conclusions.

4                   MR. O'HANLON: But he doesn't have proof of  
5           that. What he's asking about is another author's  
6           characterization of a prior study by Hanushek.

7                   THE COURT: Okay. I'm going to sustain.

8 BY MR. ROOS:

9 Q. I would like to draw your attention to Page 209 of  
10 that same study, sir. In the middle of the page,  
11 there is a paragraph that reads as follows: "In  
12 summary, production function studies, regardless of  
13 the level of analysis, form of data aggregation or  
14 methodology suggests that teachers' verbal  
15 achievement, experience salary levels, professional  
16 preparation are significantly related to student  
17 achievement." I assume you disagree with that as  
18 well?

19 A. I not only disagree with it, from the other studies  
20 that I have seen that I considered to be much more  
21 comprehensive than this one, but the author seems to  
22 be inconsistent even with that statement at the end.

23                   He says "There is little evidence from  
24           production research that allocations of resources for  
25           these teacher purposes will yield improvements in

1 student achievement." So, the author, himself, seems  
2 to be inconsistent about this and I would be very  
3 reluctant to draw any conclusions from it.

4 Q. Let us turn to Page 215, sir.

5 The bottom paragraph there, there is a  
6 statement stating "Excluding certain studies which  
7 are" -- well, let me read the prior paragraph and  
8 then go on. It is stated "Because factor analysis is  
9 a data reduction technique" --

10 A. Excuse me, sir, I don't know where you are reading  
11 from.

12 Q. Okay. I'm reading from the last sentence in the next  
13 to last paragraph on the bottom of Page 215, sir,  
14 that starts "Because factor analysis..."

15 A. Yes, I see it.

16 Q. "Because factor analysis is a data reduction  
17 technique, interpretation of these studies may be  
18 less straightforward than in other studies. In other  
19 words, the variables derived from factor analysis are  
20 more abstract measures and thus they are subject to a  
21 wider range of interpretation."

22 The important part that I want to ask you is  
23 whether you agree with this. "Excluding these  
24 studies from the others, the data remaining in Table  
25 3 suggests that there is often a significant

1 relationship between fiscal conditions in the  
2 educational unit and student achievement levels." Do  
3 you agree that there are often significant  
4 relationship between fiscal conditions in the  
5 educational unit and student achievement levels?

6 A. I think that expenditures are unlinked, unassociated  
7 with student learning.

8 Q. So you disagree with that finding?

9 A. I disagree with it, yes. It's -- also, I can see  
10 that in the same paragraph, to read this in context --

11 Q. That's fine.

12 A. -- it says "Difference in significance, that is  
13 fiscal variables, are not associated consistently  
14 with variations in the unit or level of analysis or  
15 methodology."

16 MR. ROOS: Nothing further of this witness,  
17 Your Honor.

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

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. GRAY:

22 Q. Doctor, you'll recall that I had the pleasure of  
23 taking your deposition on Saturday, January 10th, in  
24 Mr. Luna's office?

25 A. Yes, I recall that document.



1 Q. I would like to follow up with you a little bit on  
2 your testimony that you gave me on that Saturday as  
3 well as what you've given today. And as I understand  
4 the thrust of your testimony, it is that in terms of  
5 educational outputs, what kids learn or don't learn,  
6 you hold the opinion that money, using my words,  
7 doesn't make a difference, is that correct?

8 A. Well, I wouldn't want -- I wouldn't want to qualify  
9 that. Obviously you would need some money, but a  
10 limited amount within the normal range that we see in  
11 schools. We haven't been able to find an association  
12 between the amount spent and the amount learned,  
13 especially as compared to psychological factors.

14 Q. When I took your deposition, I asked you, "Could you  
15 draw the line for me? Above what level is it where  
16 money doesn't make a difference," and you responded  
17 that that was impossible. Is it still impossible,  
18 today?

19 A. Well, I think it's very difficult and, I would say,  
20 arbitrary to draw a particular line because it's very  
21 indeterminant and it would depend on what particular  
22 year it was done, and inflationary factors, costs in  
23 different parts of the country. So I think it would  
24 be arbitrary to name a single point.

25 Q. So if I was to ask you to tell me here in Texas at

1           what dollar level does money begin to not make any  
2           difference, your answer would be "I can't tell you  
3           that"?

4       A.   Well, I could say, at least, this, if it would be  
5           helpful, that I think you need this minimum amount.  
6           And if I had to strain, I once did a study that  
7           looked at state expenditures around the country and I  
8           had a range of expenditures which was about \$600.00  
9           to about \$2,000.00. Now, this was in 1970 so it was  
10          sometime ago, but at that time I didn't find any  
11          breaking point in that range where more money made  
12          some difference. That may not be completely  
13          applicable today.

14                 And the other thing you asked me about, what I  
15          came back to the last time, was the world bank  
16          figures.

17       Q.   Okay. Well, I --

18       A.   Pardon me?

19       Q.   Well, I'm not sure about the world bank. I was just  
20          asking you today if you could give us a figure.

21       A.   Yeah, I think I did indicate that -- when you asked  
22          me in the deposition about the world bank, and that  
23          may not be quite so relevant here, but that did not  
24          indicate -- that was even less spending because it  
25          would be in third world countries, and they didn't

1 find any breaking point either. So I think it would  
2 be very arbitrary to name a particular point.

3 Q. So the bottom line is you cannot give us a number  
4 above which money does not make a difference,  
5 correct?

6 A. No. That's correct.

7 Q. Okay. Now, I take it, you hold the opinion that the  
8 future of the United States of America rest in the  
9 education of our youth, correct?

10 A. Well, I think it rests partly, there's certainly  
11 other things that have to be taken into  
12 consideration, but I think it's extremely important,  
13 yes.

14 Q. And I take it that for a citizen of this country to  
15 be able to exercise their rights and their privileges  
16 under the Constitution, it is critical that we have  
17 an educated public, correct, in your judgment?

18 A. You mentioned Constitution, and obviously I'm not an  
19 authority on something like that which is a legal  
20 matter, but, yes, I think we'll have more effective  
21 citizens if they are better educated.

22 Q. And, likewise, I take it that you would agree that  
23 the ability of an individual to provide for their own  
24 selves, secure a job, provide for their family and  
25 whatever is, to a very large degree, tied to how well

1           educated they are in today's society?

2       A.   Well, I think it's possible to exaggerate that effect  
3           because there are people with bachelor's degrees that  
4           are unemployed. And I certainly would have to admit  
5           that there are many people who have not necessarily  
6           been successful in school that are successful in  
7           life. Luck comes into play to some extent. So, I  
8           think education can help, but it's not the only  
9           matter that needs to be taken into consideration.

10      Q.   Let me put it to you this way. If you were advising  
11           a group of high school students who wanted to pursue  
12           careers and get good jobs and be gainfully employed,  
13           to provide for themselves and their families, would  
14           you tell them to graduate from high school or to drop  
15           out of high school?

16      A.   I would say to graduate.

17      Q.   The reason you would say that is because education  
18           does, indeed, make a difference on how well one does  
19           in future years, correct?

20      A.   Yes, among other factors, yes.

21      Q.   Now, I asked you at your deposition a series of  
22           questions that I want to reask you today. I  
23           described for you, again, using my terminology, the  
24           Texas school finance system as being one in which it  
25           provides for or allows for tax rates that range from

1           slightly higher than eight and a half cents per  
2           hundred dollars evaluation up to tax rates that  
3           exceeded \$1.50. Do you recall that line of  
4           questioning?

5       A.   Not perfectly, but I remember a little bit about it,  
6           yes.

7       Q.   Okay. And I went on to follow up that -- or fulfill  
8           or add to that statement that the current system also  
9           has the expenditures at the range -- the eight and a  
10          half cent tax range produces expenditures -- I think  
11          \$15,000.00 plus was the number I gave you, and the  
12          \$1.50 plus tax rate produces expenditures in the  
13          \$2,500.00, \$2,600.00 range. Do you recall that also,  
14          those set of facts that I laid out before you?

15      A.   Yes, I recall you saying some things about that.

16      Q.   Okay. Now, after telling you that, I asked you if  
17           that was an educational system that, as an educator,  
18           you would be proud of, do you recall that?

19      A.   Yes.

20      Q.   And you gave me a series of verbal answers back and  
21           forth, but the bottom line was, you said you thought  
22           that was a healthy system, correct?

23      A.   Well, I do think that when you asked me about that, I  
24           pointed out that this is not my area of expertise.  
25           I'm not an expert on taxation and I'm not an expert

1 on finance.

2 Q. Well, after you gave me -- well, let me follow up.

3 A. Yes.

4 Q. Granted, you say you're not an expert in finance and  
5 taxation, but you said, did you not, that that kind  
6 of disparities, those kinds of differences, you  
7 thought were healthy -- was a healthy system,  
8 correct?

9 MR. O'HANLON: Objection, Your Honor, this  
10 is improper cross examination. Before when you  
11 suggested on a deposition he's got to show a prior  
12 inconsistent statement. You need to ask him the  
13 question directly first and then if he gets an answer  
14 inconsistent with what he said in his deposition,  
15 then he can talk about what he said in connection  
16 with that deposition.

17 MR. GRAY: I'll proceed, Your Honor. I'm  
18 just trying to move along this fast.

19 THE COURT: Okay.

20 BY MR. GRAY:

21 Q. Do you think that that system that I've just got  
22 through describing for you, one that has tax rates  
23 that vary from eight and a half cents to \$1.50 plus,  
24 and that's coupled with those rates has the overlay  
25 on top of that, that the eight and a half cent tax

1           rate produces \$15,000.00 plus to be spent on or for  
2           kids that live in those districts while the dollar  
3           plus tax rate produces expenditure levels on and for  
4           kids at \$2,500.00 or less. Do you think that's a  
5           healthy system?

6                   MR. O'HANLON: Objection, Your Honor,  
7           assumes facts not in evidence. The system -- if  
8           we're going to describe the system, we need to  
9           describe the whole system. He's talking about the  
10          extremes. And if you want to put them in that term,  
11          that's fine, but if he's talking about the system,  
12          he's forgotten approximately 1,050 districts in  
13          between those two extremes.

14                   MR. GRAY: Your Honor, all this  
15          documentation, all of these numbers are into  
16          evidence. I'm asking him about the exact question I  
17          asked him at his deposition in which he said it was  
18          healthy. If he says it's healthy again, fine. If he  
19          says it's not a healthy system, fine. But that's the  
20          way I described it at his deposition. He gave a  
21          specific answer and I'm now following up on Mr.  
22          O'Hanlon's admonition to ask the same question again  
23          and see if he gives us the same answer again, and  
24          that's what I've done.

25                   MR. O'HANLON: I believe the rules require

1           -- or allow the waiver of objections until time of  
2           trial. He's asking a question. I'm objecting to  
3           that question because he's describing -- it assumes  
4           facts not in evidence, which is the system is  
5           comprised of two groups of districts and obviously it  
6           is not. He's forgetting about a 1,050 districts.

7                     THE COURT: Okay. I'll overrule, Mr.

8           O'Hanlon.

9           BY MR. GRAY:

10          Q.    You can answer the question, sir.

11          A.    I don't particularly recall what I said at that time.  
12                I think we had a long exchange about this. And I do  
13                think that I recall that I prefaced this hypothesis  
14                as merely a personal opinion and not an expert  
15                opinion. And what I believe that I said then I would  
16                hope by now, that there are various tax rates and  
17                diversity in the districts in most states, including  
18                Texas. Some spend more and some spend less. Some  
19                spend it on particular unique and distinctive things  
20                that call forth diversity and differences among those  
21                districts, and that there are various trade-offs. If  
22                people spend more on education, they may be able to  
23                spend less on something else. And I think the fact  
24                that there are variations, in general, in educational  
25                provisions is a healthy thing.



1 Q. And in fact, what you said when I asked the specific  
2 question "So you think that having a system like I  
3 described as healthy, you described it as being  
4 healthy because if people don't like living in a poor  
5 district, they can move to a wealthy district." Do  
6 you remember that?

7 A. Yes. I think I did point out that people could move  
8 from one district to another and that's one of the  
9 values of diversity. So if some want to move to a  
10 different district, they could. They may have to go  
11 to a smaller apartment or a smaller house and they  
12 may have to make certain kinds of trade-offs. But I  
13 think it's healthy within a state to have this  
14 diversity so different people can go to the kinds of  
15 districts that they feel are best for them  
16 considering the other opportunities they have.

17 Q. So the bottom line was when we got through all of the  
18 talking back and forth, your description as to -- or  
19 saying that the district -- the system that I had  
20 described to you was healthy was because that if  
21 someone doesn't like where they are then, by golly,  
22 they ought to get up and move so they will like where  
23 they are as it pertains to schools for their kids,  
24 correct?

25 A. I think I was resisting to put it so starkly just in

1 terms of two districts, but if you consider the whole  
2 range of diversitive districts within a state, then a  
3 family may not be able to afford to move into every  
4 community. One family may have to make a bigger  
5 sacrifice than another, but to me, that's an example  
6 of choice in a democratic society which, in fact, is  
7 a good thing.

8 Q. All right. You described that in the deposition as  
9 one of the things that you liked about America is  
10 that the people do, indeed, have the freedom of  
11 movement. And if they don't like their predicament  
12 that they find themselves in vis-a-vis schools, then  
13 they -- no one is tying their leg. They're not  
14 chained to that district. They can pick up and move,  
15 correct?

16 A. Well, I wouldn't say that that's the only alternative  
17 they have. They are certainly voters and citizens  
18 and potential school board members, so if they want  
19 to stay in that district and they want to become a  
20 part of it and take a sacrifice that a school board  
21 member has to prepare themselves to be elected and to  
22 participate, then, that is another choice that we  
23 have.

24 THE COURT: Okay. We want to stop there.

25 (Afternoon recess.)

1 THE COURT: All right, sir.

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

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION (RESUMED)

5 BY MR. GRAY:

6 Q. Dr. Walberg, I know your resume was introduced into  
7 evidence and I just want to make sure I'm reading it  
8 correctly. You have never been a superintendent of a  
9 public school system, have you, sir?

10 A. I have not.

11 Q. You've never been a principal in either an elementary  
12 school, junior high school or high school in a public  
13 school system, have you?

14 A. I have not.

15 Q. And in fact, you have never even been a full-time  
16 classroom teacher in either an elementary school,  
17 high school, junior high school, public education,  
18 have you, sir?

19 A. Well, I have been a substitute teacher and I was  
20 full-time for several weeks sometimes, but I was  
21 never a regular teacher for a period of a year or  
22 more.

23 Q. So you would not fall within the ambit of  
24 practicing public education educators, rather, your  
25 ambit is research, correct?

1 A. Yes, most of my work has been on research rather than  
2 practice.

3 Q. Okay. Now, let me lay out a scenario for you and ask  
4 you --

5 A. Excuse me, maybe just for correctness on that last  
6 point, I am -- of course, I teach at university  
7 levels, so in that sense, too, I am a teacher. So I  
8 am a practitioner as a full-time job. So I would  
9 have to give that qualification to the last question  
10 you asked.

11 Q. You teach college courses at the University of  
12 Chicago, right?

13 A. At the University of Illinois in Chicago, yes.

14 Q. All right. Now, if I was to lay out a scenario for  
15 you whereby two sets of districts or two districts,  
16 one I will call wealthy, the other I will call poor,  
17 okay? And the wealthy district pays its teachers  
18 \$30,000.00 a year. Poor district pays its teachers  
19 \$20,000.00 a year. Wealthy district is able to spend  
20 \$1,500.00 a year on teaching supplies, and teaching  
21 aids; the poor district is only able to spend  
22 \$1,000.00 a year. The wealthy district is able to  
23 build a classroom facility and spend 1.5 million  
24 dollars on that facility, while the poor district is  
25 only able to raise and spend one million dollars on

1           their comparable facility. The wealthy district has  
2           a 20-to-1 classroom ratio. The poor district has a  
3           30-to-1 classroom ratio, and by that I mean students  
4           to teachers.

5           If I was to lay out that scenario for you, and  
6           in those four criteria, and in every instance, do you  
7           see that the wealthy district spends 1.5 times more  
8           than the poor district. And when it comes to the  
9           classroom-teacher ratio, the poor district has a one  
10          and a half times higher ratio than the wealthy  
11          district. You see the mathematics, right?

12       A.    Yes. Uh-huh.

13       Q.    If I was to lay that out to you, would you be of the  
14              opinion that that was fine and fair and everything  
15              was okay in those two districts and that there was no  
16              inequities in them or would you think that there was  
17              inequities in them?

18       A.    Well, I would cite as an authority on this matter the  
19              educational finance expert Dr. Richard Rossmiller.  
20              And I think that those -- that one and a  
21              half ratio that he uses would certainly fit this  
22              case. And so I don't see any particular problems  
23              with that. And I would defer to his judgment as far  
24              as educational finance is concerned.

25       Q.    But as far as your personal opinion as an educator

1           and as a researcher, having seen these kinds of  
2           disparities, you think that's just fine and dandy,  
3           that's no problem, correct?

4       A.    I think you used the term my personal opinion and my  
5           research -- as a researcher also, so...

6       Q.    Okay. Let me ask you in your personal opinion. Do  
7           you personally think that these kind of disparities  
8           are just fine and dandy?

9       A.    I don't see any particular problem with them, no.

10      Q.    Okay. Let me ask you another follow-up question on  
11           -- and again, I know I'm using my words of your  
12           testimony that money above some minimal level does  
13           not make any difference. The -- and let me put this  
14           into context. The evidence has already been  
15           introduced in any number of exhibits, I'm referring  
16           to Exhibit 216 right now, Plaintiffs' Exhibit 216, in  
17           which -- the one district that spends the lowest per  
18           student in this state is spending \$2,112.00 per  
19           student. And the district who spends the most per  
20           student in this state is spending \$19,333.00 per  
21           student. So we have a range of nine to one -- 900 to  
22           1, I guess, or nine -- whatever that is.

23                    You understand the magnitude of the range, I  
24           assume?

25      A.    Yes.

1 Q. Okay. Now, is it your testimony that you or any  
2 other teacher you wanted to pick could be just as  
3 effective and could provide the same level of  
4 educational experience to your students if you had  
5 \$2,112.00 to spend providing meaningful education  
6 compared to \$19,333.00 to spend?

7 A. Well, if I use my own language on this, I have no  
8 reason to think that the district that was spending  
9 less would do more poorly on educational  
10 examinations. And that's the way I define purposes  
11 of schooling and how to measure it. So as far as  
12 learning is concerned, I don't anticipate that it  
13 would have an impact.

14 Q. Okay. So let me make sure I'm understanding. Every  
15 other Monday in Travis County prospective jurors are  
16 summoned to the courthouse and they come straight off  
17 the voting list. It's a hodgepodge and intended to  
18 be a cross section of today's society. Invariably  
19 some people have college degrees in the jury panel;  
20 some don't have any high school education at all. It  
21 is a mixture of white, black, brown. And by that,  
22 it's -- the very purpose is it's intended to be  
23 reflective of society as a whole out there because of  
24 the goal in the legal system to have people judged by  
25 their peers.

1           Is it your testimony that if on a given Monday  
2 when we brought in one of those panels, instead of  
3 impaneling them for jury duty, you were -- they were  
4 impaneled for classroom duty. Is it your testimony  
5 that over the course of a semester, you would be just  
6 as effective educating and teaching those people if  
7 your resources were limited to \$2,100.00 per student  
8 as opposed to the \$19,000.00 plus per student?

9   A.   Let me be sure that I understand the question. Are  
10 you saying that these people were to be employed as  
11 teachers?

12   Q.   No, sir. I'm saying if these people were students,  
13 if they were designed -- if they came in to -- and  
14 were not to be impaneled as jurors, but impaneled as  
15 students. In other words, if we've got a cross  
16 section of today's society and said, "You are now a  
17 classroom, experimental classroom, for a semester."  
18 And you were to be taught typical high school  
19 curriculum and you were to go to school for a year or  
20 however long you want to take this experiment  
21 forward, is it your testimony that in the end, that  
22 those students that had \$2,100.00 or so spent on them  
23 in this experimental program would learn the same and  
24 would have the same breadth of educational experience  
25 as those that have the \$19,000.00 spent on them?



1                   MR. E. LUNA: Please the Court, we object  
2                   to that question. That is not material to anything  
3                   before this Court because he's talking about high  
4                   school graduates and people of all ages and peers  
5                   and, as we know, people who have reached age 22 don't  
6                   have access to public schools in the first place, so  
7                   that's not an appropriate question to ask as what  
8                   would happen if those people were going to high  
9                   school because those people do not go to high school.  
10                  And he's asking about some of whom have college  
11                  educations.

12                 MR. GRAY: I'll rephrase, Your Honor, I'm  
13                 not trying to quibble at that point.

14         Q.       If you just take a cross section of high school  
15                 students in Travis County, some of which will come  
16                 from affluent families, educated; some will come from  
17                 poor families, uneducated; some will be black; some  
18                 will be brown; some will be white, but it is a cross  
19                 section of the Travis County high school population.  
20                 And if you use that as a classroom, that is the pool  
21                 of students in which you're trying to educate, is it  
22                 your testimony that you, as the teacher, would be  
23                 just as effective and that the students that you  
24                 taught and went through your school would get the  
25                 same breadth of learning experience if you spend

1           \$2,112.00 per student on them as opposed to spending  
2           \$19,333.00 per student on them?

3           MR. O'HANLON: Objection. What I have a  
4           question is the breadth of educational experience.  
5           We're not here to debate what could be included in an  
6           all encompassing educational system. We're here to  
7           determine whether or not the children in this state  
8           have got access -- equal opportunity to access to a  
9           basic fundamental educational system. So the  
10          question by drawing in breadth of educational  
11          experience in some -- without some kind of definition  
12          of parameters into it is not relevant to any issue  
13          that's properly before the Court.

14          MR. GRAY: Your Honor, I beg to differ.  
15          You know, if Mr. O'Hanlon is taking the position that  
16          it's just fine for some students to have access to a  
17          minimal program that the state defines and yet other  
18          students to have access to advanced calculus and  
19          algebra and Latin and foreign languages and whatever  
20          else, if he thinks that's just fine, based upon  
21          finances, so be it, but that's not the position we're  
22          taking and we've maintained all along that there's an  
23          equal protection violation if the system, indeed,  
24          provides that kind of differences.

25          MR. O'HANLON: The position I'm taking,

1 Your Honor, is that curriculum in this state is  
2 defined pursuant to House Bill 246 which is part of  
3 the education code that we've talked about in  
4 connection with this case. Beyond that, there are  
5 further definition of scope and sequence of the  
6 educational system defined by Chapter 75 of the Texas  
7 Administrative -- 19 Texas Administrative Code,  
8 Chapter 75.

9 If the Plaintiffs are taking the position now  
10 that something should be taught out there that isn't  
11 in the curriculum, as mandated by state law and the  
12 rules implementing that state law, that has not been  
13 raised by the pleadings. They haven't raised that  
14 issue and once again we're expanding the scope of  
15 this case.

16 If they want to challenge the curriculum as not  
17 being sufficient to meet the basic educational needs,  
18 then they need to challenge the state law which  
19 implemented that curriculum. And they haven't done  
20 so in this case.

21 So the question that we need to be addressing  
22 is that since they haven't challenged that, whether  
23 or not we have enough of an education -- whether we  
24 meet the curriculum that we put out there. I think  
25 that's the issue in the case unless they want to,

1           once again, get off into something else and challenge  
2           both the curriculum in Chapter 75, which heretofore  
3           they've been unwilling to do in this lawsuit.

4                     THE COURT: I'll overrule.

5                     MR. GRAY: Thank you, Your Honor.

6 BY MR. GRAY:

7 Q.    You can answer the question, sir.

8 A.    I'm having difficulty with the question because it  
9       has two assumptions that are difficult for me to  
10      evaluate. One is you said Travis County. I am not  
11      familiar with Travis County.

12                 Secondly, you asked me if I would do this. And  
13       I don't think that under any circumstances would I,  
14       not to legally constitute a person to do this. I  
15       don't have any expertise to do it. Mine is in  
16       research in college teaching and not to run a school  
17       system, so...

18 Q.    One, you're not qualified to teach, is what you're  
19       telling me, or running a school system?

20 A.    No, you asked me to set up a school system and so on,  
21       this is certainly something that I would not even  
22       dream of doing.

23                 Secondly, you asked me about Travis County, and  
24       I don't believe I know enough about Travis County to  
25       really make -- to evaluate what you've asked me to

1       do.

2       Q.    If I was to broaden the question and say a cross  
3            section of the students in the State of Texas, do you  
4            know enough about the students in the State of Texas  
5            to have an opinion or be able to answer the question?

6       A.    Well, one of your premises was would I do this.  Now  
7            are we --

8       Q.    Or pick any superintendent you want to pick.  Pick  
9            Dr. Long, pick Dr. Winston Power from the Highland  
10           Park district.  I don't care what superintendent you  
11           pick.  Is it your testimony that a qualified  
12           superintendent who is charged with educating a cross  
13           section of high school students or students in this  
14           state can do the same job and provide the same level  
15           of educational opportunity to those students if he's  
16           given \$2,112.00 to spend on educational needs of the  
17           children or if he's given \$19,333.00 to spend on the  
18           educational needs of the students?

19      A.    I would not particularize it to those exact levels,  
20            but I think what I said earlier about the statistical  
21            analyses that has been done, plus the examples up  
22            here, indicate no relationship between the two.  So  
23            as far as I'm concerned in this hypothetical example,  
24            I would not expect to find any differences between  
25            the two, but there are many assumptions to it.  And

1 part of your question had to do with somebody setting  
2 up a school district, and that is quite different, as  
3 opposed to running a district.

4 So for districts that are now in place and have  
5 educational programs, I don't think the differences  
6 that you mentioned would make a difference in  
7 achievement.

8 Q. So, the answer is that the students who had  
9 \$19,333.00 spent on them, in your opinion, would have  
10 no more or less of a breadth of educational  
11 opportunity and would do no better or less well on  
12 measures of how much they learned than the students  
13 who had \$2,112.00 spent on them?

14 A. That's correct.

15 Q. Okay. So I take it then that -- okay.

16 Now, you're aware, are you not, that the state  
17 average for student expenditures, according to the  
18 exhibit -- and I don't know the exhibit that was  
19 marked before, but the chart up there reflects  
20 \$3,345.00 is the average expenditure.

21 A. Yes.

22 Q. And that, according to my numbers, is \$1,233.00  
23 larger than the \$2,112.00 number we were just talking  
24 about, correct?

25 MR. O'HANLON: That's not correct. One

1       includes federal funds and the other doesn't.

2       Q.   Do you know the expenditures --

3                               (Off-the-record discussion.)

4               MR. O'HANLON:   You excluded them in that,  
5       in 216.   The 3345 is out of Bench Marks.

6               MR. GRAY:   Okay.   Let's get the comparable  
7       number.

8                       May I approach the witness, Your Honor?

9               THE COURT:   Yes, sir.

10       BY MR. GRAY:

11       Q.   So the record is indeed clear, let me refer you to  
12       the same Bench Marks that I know you looked at before,  
13       it's Exhibit 205, and show you the statewide average  
14       on expenditures from state and local taxes, only.  
15       And the number on the statewide average is \$3,299.00,  
16       correct?

17       A.   I'm reading from Page 7 and I see that a statewide  
18       average in the last row on the extreme right, it says  
19       \$3,299.00.

20       Q.   Right.   And you can find this on -- if you go to 216.

21                               (Off-the-record discussion.)

22               MR. O'HANLON:   That includes I&S expenses,  
23       and we're still not adding apples and apples.

24               MR. GRAY:   Well, let's keep trying to add  
25       apples and apples.

(Off-the-record discussion.)

MR. GRAY: May I have just a moment, Your Honor?

THE COURT: Yes.

MR. GRAY: Your Honor, in order to clear up any problem, let me reapproach the way I was addressing it.

May I approach the witness again, Your Honor?

THE COURT: Yes.

BY MR. GRAY:

Q. Let me show you the Exhibit 216 in which I got the range of expenditures that we were talking about. And our numbers from the start have not considered federal funds, so these are expenditures without federal funds. And the \$2,112.00 that you can see is the district -- these are ranked according to levels of expenditures -- that spends the least up to the \$19,333.00 to the district that spends the most. And the average expenditure you can see, excluding federal funds, is \$3,290.00. Have you got me so far?

A. Yes.

Q. Okay. So, instead of using the \$3,345.00 average that included federal funds, use \$3,290.00 as the average expenditure statewide for education right now. Subtract from that \$2,112.00 --



- 1 A. Excuse me, Mr. Gray. May I have the figure that you  
2 wanted me to use again? \$3,290.00 --
- 3 Q. \$3,290.00.
- 4 A. -- is the one you would like me to use?
- 5 Q. Yes, sir.
- 6 A. All right.
- 7 Q. Which is the average expenditure statewide on an ADA  
8 basis that's already been introduced.
- 9 A. On the chart you showed me it said RADA.
- 10 Q. That's right, Refined ADA.
- 11 A. Okay.
- 12 Q. Then subtract from that \$2,112.00, which is the  
13 number figure that you just testified to, you could  
14 get the same results educationally spending that  
15 number or spending \$19,000.00, right?
- 16 A. Yes.
- 17 Q. Okay. And that gets you a differece of \$1,178.00,  
18 correct?
- 19 A. I would like to check the arithmetic, if I may.
- 20 Q. Sure. I have a calculator if you want it, if you  
21 want to do it.
- 22 A. Did you get \$1,078.00?
- 23 Q. I got \$1,178.00.
- 24 A. I'm sorry, it's \$1,178.00, you're right. Uh-huh.
- 25 Q. Okay. And so the difference -- and assume with me

1       further that there are three million, approximately,  
2       school kids in this state right now, okay?

3       A.   (Witness nodded head to the affirmative.)

4       Q.   And if you multiply three million times the \$1,178.00  
5       that is being spent on average on each of those  
6       children that, according to your testimony, may not  
7       be necessary, you see that annually the state is  
8       spending 3.5 billion dollars more on education than  
9       you think it should, correct?

10      A.   Well, I didn't say how much the state should spend.  
11      I don't think I've ever said that at all on average  
12      or any other way --

13      Q.   Well --

14      A.   -- so I can't agree with that statement.

15      Q.   Well, I assume, if you hold the opinion that by  
16      spending \$2,112.00, you can do the same kind of job  
17      and give the students the same opportunities and the  
18      same education, the same benefits as if you were  
19      spending \$19,333.00, you would assume with me, then,  
20      or will you, that you don't need to spend any more  
21      than \$2,112.00 per child to get the job done in  
22      Texas?

23      A.   Well, you said that one could assume that, but I  
24      don't necessarily assume that that's the case.

25      Q.   Okay. So you think you do need to spend more than

1           that to get the job done?

2       A.   No, I didn't say that either. I think I said several  
3           times today that I think the legally constituted  
4           authorities, the state legislature and the school  
5           districts, are in the position to decide about these  
6           things. What I'm testifying to is the relation of  
7           how much they spend to how much they learn and I  
8           don't presume to usurp the atonomy of local school  
9           districts nor the state legislature.

10       Q.   Well, what you're saying, then, is that no matter  
11           what the local school district may or may not want to  
12           do or the state legislature may or may not want to  
13           do, in your opinion, it doesn't make any difference,  
14           that they're going to get the same results by  
15           spending \$2,112.00 than they would if they spent  
16           \$19,000.00?

17       A.   Well, I think we have to consider the context here.  
18           If the money were to be reduced, it could have some  
19           harmful consequences. We talked about this before in  
20           my deposition, for example. So if they were going to  
21           reduce the funds from the average district or any  
22           district, it might cause disruption and it might  
23           cause various kinds of difficulties because people  
24           would have to be laid off and some people who are now  
25           principals would have to become teachers again and

1       they would not have as much recent experience as  
2       being teachers, so I think a reduction could, in  
3       fact, be harmful.

4       Q.    I see.  It's your position that if you don't have the  
5       money, it's not necessary in order to educate the  
6       children, but if you have the money and part of it is  
7       taken away, so that you are now at the level of those  
8       that don't have the money, it becomes harmful to the  
9       children?  Is that what you are saying?

10      A.    I would think that if there was a change in the  
11      amount of spending that took place in a district that  
12      was at \$2,000.00 or \$4,000.00 and you took \$500.00  
13      away from them or \$1,000.00 away from them, it could  
14      cause a considerable amount of disruption in the  
15      district because people would have to be laid off,  
16      they would be bumping one another from one position,  
17      and it may cause morale problems, it may be the  
18      principals would now have to become teachers again  
19      and cause, in effect, inefficiencies in the district  
20      because there was -- normally the amount of money in  
21      the last 20 years in education in most parts of the  
22      United States has gone up considerably.  So if it  
23      took a cut, no matter what its level was, it could  
24      cause some harm of the kinds that I've described.

25      Q.    Okay.  So am I correct, then, in stating that -- and

1       let's continue using the two extremes we've been  
2       talking about, that the district at \$2,112.00, that's  
3       all the money they have to spend on their children,  
4       giving them a little bit more money is not going to  
5       make any difference educationally. That's your basic  
6       premise, right?

7       A.    Yes.

8       Q.    And now if you go to the district --

9       A.    I don't want to completely say it's my premise I  
10       don't think it's an assumption, but I think this is  
11       consistent with the evidence.

12      Q.    And now, if you go to the district that's spending  
13       \$19,333.00 per child, it's your position that if you  
14       take some of that money away, you're going to hurt  
15       the education of those children, is that what you are  
16       saying?

17      A.    No, what I was attempting to say that if you take a  
18       certain amount of money, a given percentage, away  
19       from any district, whether it's poor or wealthy or  
20       high expenditures and low expenditures, it could  
21       cause harms to the district no matter what their  
22       starting point was, because the normal course of  
23       educational expenditures for the last 20 or 30 years  
24       has been an increment of several percent a year, and  
25       normally districts don't take cuts, they get

1       increases. And particularly in the last five years  
2       in many states there have been sharper increases than  
3       in the past.

4       Q. So am I correct in stating that if you had two  
5       districts that had the same number of students, both  
6       had 4,000 students. And one of those districts was  
7       spending \$15,000.00 per student. The other was  
8       spending \$2,100.00 per student. It would be your  
9       position that if you went to the wealthy district and  
10      said "Why don't you guys give a couple of thousand  
11      per students over to the poor district," so that now  
12      the poor district instead of spending \$2,100.00 is  
13      spending \$4,100.00 per student. And the wealthy  
14      district, instead of spending \$15,000.00 per student  
15      is now down to \$13,000.00 per student. Under that  
16      set of facts, you would say that that money wouldn't  
17      help the poor district any and -- by giving it to it.  
18      And by taking it away from the wealthy district,  
19      you're hurting the students in the wealthy district?  
20      Is that your position?

21               MR. TURNER: Your Honor, I'm not sure --  
22      that question, again, doesn't relate to anything  
23      that's been brought before this Court. We don't have  
24      a 4,000 student district with those numbers -- two  
25      4,000 school districts with those kinds of numbers.

1       We've got some small school districts with some  
2       higher spending per pupil, but not -- we don't have  
3       two 4,000 school districts spending that kind of  
4       variation and -- that variation of spending. And I  
5       think what Mr. Gray is trying to do here is to just  
6       keep widening the gap even though it doesn't even  
7       meet the reality of what we've got in Texas, and  
8       stretch this on out until we have districts spending,  
9       you know, 2,000 times per student than some other  
10      district, and keep asking the question "Does that  
11      make any difference."

12             And I think that's an unfair approach to try  
13      and analyze the issue, to ask this witness that kind  
14      of question.

15             MR. GRAY: Your Honor, this witness, in  
16      cross examination, has taken the position, to me,  
17      that if you don't have the money, you don't need any  
18      more money, but if they've got the money and you take  
19      some of it away, you're going to hurt them. And I  
20      was just merely laying out a hypothetical to put that  
21      in perspective and make sure I was understanding what  
22      he was saying.

23             THE COURT: Okay.

24             MR. E. LUNA: I would like to say one other  
25      thing, Your Honor. Also, he's not explaining to him

1       the law in Texas, and if you take \$2,000.00 away, if  
2       the local effort has the incentive to do it, then  
3       they can raise it back by local taxes. So it's an  
4       unfair hypothetical question that he's asking him  
5       because that's not realistic under state law unless  
6       he wants to have him assume that the law was changed  
7       so that you don't have a right on a local level to  
8       raise taxes.

9                   THE COURT: Okay. I'll overrule. Here we  
10       go.

11       BY MR. GRAY:

12       Q.     You can answer the question, sir.

13       A.     I believe that the -- taking money away from a  
14       district precipitously lowering it, no matter what  
15       its level, is likely to hurt morale, principals,  
16       teachers and others, and that may have negative  
17       consequences for school achievement because of that  
18       reason. And I think that lowering that level,  
19       whether it started at \$2,000.00 or whether it started  
20       at \$19,000.00 could have negative consequences.

21       Q.     So the answer to my question was by giving the extra  
22       \$2,000.00 to the poor district, you don't help the  
23       poor district. And, in your judgment, by taking 15  
24       -- going from \$15,000.00 to \$13,000.00 in the wealthy  
25       district, you hurt the wealthy district?



1                   MR. O'HANLON: This has been asked and  
2 answered, Your Honor.

3                   MR. GRAY: He didn't answer the question,  
4 Your Honor.

5                   MR. O'HANLON: He just did. You just asked  
6 him the exact same question and he gave you an  
7 answer. He didn't give you a yes or no answer. He  
8 explained his answer.

9                   MR. E. LUNA: Mr. O'Hanlon wants to ask the  
10 question and give the answer, too. We submit that he  
11 can ask the question, but the witness is entitled to  
12 -- so if Mr. O'Hanlon wants to declare what the  
13 answer is to this question, we submit --

14                   MR. GRAY: I think you mean Mr. Gray, but  
15 I'll let the record state Mr. O'Hanlon if you want  
16 to.

17                   MR. E. LUNA: Excuse me.

18                   THE COURT: They probably both would accept  
19 an apology.

20                   I don't find this to be objectionable. It is  
21 the repetition of the same idea of the previous  
22 question, but it's not so repetitious as to have me  
23 prevent the cross examination as it stands.

24 A. May I have the question repeated, please?

25

1 BY MR. GRAY:

2 Q. Yes, sir. In your previous answer, you told me that  
3 you thought no matter how much money a wealthy  
4 district had, taking some away from it would hurt it.  
5 You didn't say whether or not giving that money to  
6 the poor district, who didn't have it, would make any  
7 difference to the poor district. And I believe your  
8 testimony is or will be that it wouldn't make any  
9 difference if you gave extra money to the poor  
10 district, but I want you to say it.

11 A. Yes, that's correct.

12 Q. So it is your statement in the example, so that the  
13 record is very clear, that if you have a district  
14 that starts out spending \$2,000.00 per child, another  
15 district that starts out spending \$15,000.00 per  
16 child, same number of kids, and if you move  
17 \$2,000.00, just \$2,000.00, from -- so that the rich  
18 district goes from \$15,000.00 to \$13,000.00 and the  
19 poor goes from \$2,000.00 to \$4,000.00, in your  
20 judgment, that that was going to have no effect on  
21 the poor district and it's going to hurt education of  
22 the kids in the wealthy district. Is that your  
23 opinion?

24 A. Yes. And especially given the context that I've  
25 mentioned in the deposition and here, too, that I

1       consider Dr. Rossmiller's analyses adequate, so he  
2       lops off the top five percent and the bottom five  
3       percent, so these are rather extreme cases that we're  
4       talking about and, as I say, somewhat hypothetical.

5       Q.   So basically you're taking the position, are you not,  
6       given the fact that in Texas the expenditure range is  
7       \$2,100.00 up to \$19,333.00, that that's just fine and  
8       it doesn't make any difference. From your point of  
9       view, that that is -- that that's just fine?

10      A.   Well, I would go back to Dr. Rossmiller's point,  
11      which I agree with, and I think that you can find  
12      extreme cases of very high spending districts, a few  
13      of those, and a few very low spending districts, but  
14      if you talk about the normal range of districts  
15      within the 5 to 95 percent, which is, as I understand  
16      it, about one and a half times here in Texas, then  
17      that seems reasonable to me. And if there were a few  
18      outliers that may be explained by unusual  
19      circumstances of one kind or another, such as low  
20      density population or having an oil discovery or  
21      something of that nature that would make that  
22      district particularly wealthy, we're talking about  
23      rare and unusual events rather than the great bulk of  
24      the districts in Texas.

25      Q.   Now, I want to go back to you -- to the calculations

1        we were doing before, where my mathematics came up  
2        with a 3.5 billion dollar number. And what we were  
3        doing, so you and I will be on the same wavelength,  
4        was comparing the statewide average of expenditures  
5        per child according to Exhibit 216 with the \$2,112.00  
6        number, which you have already said you can do just  
7        as well with that number as with \$19,000.00, and we  
8        came up with a difference of \$1,178.00 per child.  
9        Are you with me so far?

10      A.    No, I'm not, because I think you told me the first  
11           time that it was 3.5 billion, and this time you told  
12           me 3.1 billion.

13      Q.    I'm sorry, it's 3.534 billion. I'll work you through  
14           the mathematics. The difference is \$1,178.00 per  
15           child, correct?

16      A.    Yes, we agreed on that.

17      Q.    You multiply that by three million children -- the  
18           record is there are approximately three million  
19           school children in this state. You come up with -- I  
20           can give you the precise number, but I'm rounding it  
21           off at 3.5 billion dollars a year that is being  
22           spent, that from a pure educational point of view,  
23           you don't think is necessary, correct?

24                   MR. O'HANLON: Objection, Your Honor. It  
25           carries with it the characterization of his testimony

1       that that \$2,112.00 is sufficient, and he didn't  
2       state that. He mischaracterized his own testimony.

3               MR. GRAY: He said you could do the same  
4       job with \$2,112.00 as you could with \$19,000.00.

5               MR. TURNER: Your Honor, I think what this  
6       witness has said consistently, and there is no  
7       dispute about it among any of us, that that  
8       difference in spending is not reflected in  
9       differences in learning. And I don't think this  
10      witness ever said you couldn't have a new football  
11      stadium in the richer districts or have, maybe, a  
12      nicer building in a new district when you've got more  
13      money, but his testimony all the way through has been  
14      limited to the impact upon learning as a result of  
15      expenditure levels.

16              And, Mr. Gray, to be asking these questions,  
17      you're saying it doesn't make any difference if you  
18      have \$1,000.00 more. It's misleading because you  
19      clearly might have a nicer football stadium or maybe  
20      a more expensive building or something, if you've got  
21      extreme amounts of more dollars flowing in that  
22      district.

23              MR. GRAY: I'm talking about education.

24              MR. TURNER: Well, let's make clear, then,  
25      that we're talking education, not learning.

1                   MR. GRAY: I'm just talking about what, in  
2 his opinion, is how much money is being spent in this  
3 state right now that doesn't have to be spent for  
4 education of kids. That's all I'm trying to  
5 establish.

6                   MR. O'HANLON: And what I'm saying, Your  
7 Honor, is that this witness has never established  
8 that the \$2,112.00 figure is anything other than Mr.  
9 Gray's number. He's asking him to calculate -- he's  
10 asking him to make calculations based on a number  
11 that this witness is not ascribed to as providing  
12 anything. It's his number. Now he's describing that  
13 number to the witness. This witness has not  
14 testified with respect to anything on that \$2,112.00  
15 number. He took it as a hypothetical. Now Mr. Gray  
16 is saying, "Now that you've testified to this  
17 hypothetical, well, let's do some other things with  
18 it." But it's still a hypothetical and he's taking  
19 the witness' testimony as if he's established that  
20 number as a fact.

21                   MR. KAUFFMAN: It's in evidence.

22                   MR. GRAY: Your Honor, every number I have  
23 questioned this witness on is already into evidence.  
24 He has already said that from the child's point of  
25 view, from educational results, you can get the same

1        results spending \$2,112.00 as you can by spending  
2        \$19,333.00. And we know what the average expenditure  
3        is out there, that's already in evidence. And the  
4        difference between just the average and what he says  
5        you could get the same result by spending \$19,000.00  
6        is this \$1,178.00 figure.

7                THE COURT: All right. You may continue.  
8        I'll overrule.

9        A. I need to have the question repeated, please.

10       BY MR. GRAY:

11       Q. Sure. We have established, have we not, that the  
12       difference between what is on average being spent on  
13       children out in the State of Texas today compared  
14       with the \$2,112.00 figure, which you have said you  
15       can get the same results spending that compared to  
16       spending \$19,333.00. That difference is \$1,178.00,  
17       right?

18       A. Yes.

19       Q. And assume with me that there are approximately three  
20       million school children in this state today. And if  
21       you multiply \$1,178.00 times three million, you come  
22       up with 3.534 billion dollars that's being spent  
23       every year over and above the \$2,112.00 figure per  
24       students that you say you can get results equal to  
25       \$19,000.00, right?

1 A. Yes.

2 Q. And if you look at that on a two-year cycle, that  
3 means on every two years the state is spending over 7  
4 billion dollars more in education than, according to  
5 your analysis, they need to spend looking strictly at  
6 results for student learning, correct?

7 MR. E. LUNA: Please the Court, we object  
8 to that question. It's repetitious. He asked him  
9 that question earlier and he said that he doesn't  
10 decide for the legislature or the local school boards  
11 what they ought to spend. And he's asking him the  
12 same identical question and it's repetitious. We can  
13 stay here a week asking that same question.

14 MR. O'HANLON: What I object to is the use  
15 of the term "your analysis." That number is not  
16 supplied by his analysis. It's misleading. Mr. Gray  
17 put that number out.

18 MR. E. LUNA: If Mr. Gray is telling him  
19 that that's what it takes for a basic education in  
20 Texas, that's one thing. And that's what he's  
21 leading him to believe that that's what the figure  
22 is. Now, this witness has never said that it takes  
23 \$2,112.00 for a basic education in Texas. Mr. Gray  
24 gave him that figure in a hypothetical question and  
25 then he extrapolated to the position where he is now.



1           This witness has made no study that said it takes  
2           \$2,112.00 a year to educate a kid in any district.  
3           And Mr. Gray is extrapolating on that and we object  
4           to it.

5                       THE COURT:   Okay.   I'll overrule.

6   BY MR. GRAY:

7   Q.   My mathematics are correct, using your opinions and  
8       your analysis and looking strictly at results for  
9       children, the state is spending over 7 billion  
10      dollars every two years that it doesn't have to  
11      spend, correct?

12   A.   Well, as I said earlier, I think that this has to be  
13       a decision for the state legislature and I think it  
14       has to be a decision for local school districts.   But  
15       as far as improving learning is concerned, which is  
16       the way I approached this problem, I don't think that  
17       spending this additional funds would necessarily  
18       produce or promising to produce better achievement,  
19       especially in contrast to the psychological factors  
20       that I've already discussed.

21   Q.   Looking at it from your eyes and from your  
22       perspective and not letting the legislature and  
23       school districts make whatever decision they want to  
24       make, but you based upon your research and how you  
25       analyze things, the way I've calculated this overage

1       on spending is correct, right?

2       A.   Well, I think -- I take your arithmetic for granted  
3           that this factors out to 3.5 billion and 7 billion  
4           dollars for two years, assuming that, and I think if  
5           I had a choice of doing that or if I was asked by the  
6           legislature or other groups, which I have been asked,  
7           I would say that if you had the choice of doing that  
8           or the choice of using the kinds of programs that I  
9           described earlier, and your main interest was to  
10          increase educational achievement in Texas and the  
11          basic essential subject matter, then you would be far  
12          wiser to use these proven effective and efficient  
13          techniques rather than simply throwing more money at  
14          the problem.

15       Q.   Now, are you aware that the Commissioner of Education  
16           and the State Board of Education has -- instead of  
17           recommending that they cut education by 7 billion  
18           dollars over the next two years, have made the  
19           recommendation and statement that there's a real need  
20           out there to increase it by at least 2.4 billion?

21       A.   I'm not familiar with that, no.

22       Q.   Okay. I take it that if the state was to come to you  
23           and ask you to analyze the whole situation in the  
24           same context in which we've been analyzing it and you  
25           came to the conclusion -- well, and told them you

1           could cut seven and a half billion dollars or 7  
2           billion dollars -- No. 1, has anybody from the state  
3           asked you for your input on what is needed in public  
4           education?

5       A.    From the state?

6       Q.    Yes, sir.

7       A.    Not directly, no.

8       Q.    Okay. And I assume that you were retained by the  
9           districts I have been categorizing as the wealthy  
10          districts, but for the record, I guess they are more  
11          appropriately described as the Plaintiff-Intervenors  
12          districts -- Defendant-Intervenors districts, excuse  
13          me, those are the districts that hired you and are  
14          paying you for your services, right?

15               MR. E. LUNA: Well, we object to the  
16          wealthy districts. There are some of the districts  
17          that hired him that make less than the -- have wealth  
18          of certainly less than the state average.

19       Q.    The Defendant-Intervenor districts, they're the ones  
20           who hired you and are paying for your time and your  
21           research and whatever, correct?

22       A.    I would have to say indirectly through the law firm.

23       Q.    Mr. Luna?

24       A.    Yes.

25       Q.    Okay. And you had been involved with at least one of

1        those districts prior to this lawsuit, correct?

2        A.    Yes.

3        Q.    And that's the Highland Park District out of Dallas,  
4              right?

5        A.    Yes.

6                      MR. GRAY: I have nothing further. Thank  
7              you.

8                      REDIRECT EXAMINATION

9        BY MR. R. LUNA:

10       Q.    Dr. Walberg, I want to call your attention to a  
11              question and answer that were inquired about by Mr.  
12              Gray a little earlier in regard to your deposition.  
13              He characterized your testimony in the deposition on  
14              Page 33 as something to the effect, that if you don't  
15              like the school district you're in, you can pack up  
16              and pick up and move to another district. Would you  
17              please read the question and answer on that page,  
18              please?

19       A.    "So you think that having a system like I described  
20              is healthy?" That was the question. The answer is --

21                      "ANSWER: Well, I do think that in a free  
22              society, when we have local control, there is always  
23              going to be variation. And one variation may  
24              compensate for another kind of variation. And since  
25              we do have freedom to move around different states,

1       different communities, I think it's good in many  
2       respects.

3               I think that there are some other ideas about  
4       this as well, which I would be accepting of and, as I  
5       said, this is my personal opinion, but I think it is  
6       a good thing that we have a variety of points of view  
7       and places to live and the school districts, not only  
8       within states, but within the country."

9       Q.   Thank you. I know, Dr. Walberg, that you're not  
10       familiar with all of the communities within the State  
11       of Texas, but in following up on that, let me again  
12       refer you to the chart that was introduced here  
13       earlier in today's testimony that's been marked  
14       Defendant-Intervenors' Exhibit No. 24 which shows  
15       various test scores and so forth in Texas.

16               The Dallas Independent School District, for  
17       example, has test scores of 38, 32 and 37. Why would  
18       anyone -- based on your general knowledge and  
19       experience in psychology, why would anyone continue  
20       to live in the Dallas Independent School District  
21       with those tests scores when they could move, for  
22       example, to another district, Midway Independent  
23       School District, for example, which I'll tell you is  
24       a much smaller district in the central part of Texas  
25       with much higher test scores, 71, 65 and 66?

1 A. Well, I think that citizens vary considerably in  
2 their educational and other personal preferences and  
3 they might be able to save a little money and go to a  
4 cheaper district by going to Midway. But Dallas, for  
5 example, or Houston for that matter, some people have  
6 a strong preference for living in an urban area, or  
7 it may be that that's where the jobs are located.

8 And I am somewhat familiar, although I'm  
9 certainly not an expert on residential location, but  
10 I've often heard people who are experts on that  
11 subject say that there are three criteria for the  
12 house to buy. The first is location, the second is  
13 location and the third is location. And so people  
14 have -- may originate in a certain place and they  
15 know the community and they know the area, they may  
16 have friends and relatives there, and they're not  
17 just freely going to move around. But if they did  
18 have those kinds of preferences and they took the  
19 total preferences into consideration, education,  
20 which would be one of those possible things that they  
21 might consider, there are an -- there would be an  
22 array of choices for them, and they may very well  
23 decide to stay in Houston or Dallas because of those  
24 preferences.  
25 Q. And you don't find anything wrong with that if

1           someone chooses to stay in that particular area, do  
2           you?

3       A.    Not at all.

4       Q.    And would that same logic apply to the hiring of  
5           teachers?

6       A.    Yes.

7                       MR. R. LUNA:  Pass the witness.

8                       MR. TURNER:  I have no questions, Your  
9           Honor.

10                      MR. O'HANLON:  Nothing further.

11                      THE COURT:  Let me ask a question or two.

12                                       EXAMINATION

13       BY THE COURT:

14       Q.    Have there been any studies about private schools  
15           other than these parochial schools that you were  
16           talking about?

17       A.    Yes, there have, Your Honor.

18       Q.    What do they reveal?

19       A.    If we're not talking about the most elite and  
20           expensive private schools, but more ordinary private  
21           schools, some of which might be independent, some  
22           might be religious schools, parochial schools.  The  
23           independent schools are often able to provide  
24           education to students at a much lower cost than  
25           public schools.  It appears to be that public schools

1        have come under a great deal of federal and state  
2        regulation. And also independent schools and private  
3        schools can sometimes be more selective in the  
4        students that they take in. But it's also been found  
5        that students or, let's say, families who send their  
6        children to private schools, both parochial and  
7        independent, often have a greater interest in  
8        education. So it isn't necessarily that those  
9        schools are more efficient, but rather families  
10       select into them because they have to pay extra money  
11       to get into those schools and they can afford to be  
12       more selective.

13                So on balance, private schools generally have  
14       at least equal achievement to public schools and  
15       often they have even higher, especially if they're  
16       selective, but it may be that it's a selection rather  
17       than superior methods, may be that those children  
18       would have done well, anyway.

19       Q.       Well, outside of either religious purposes or maybe  
20       the social status purposes that some parents may have  
21       of sending their child to the private school, why  
22       would anyone send a child to a private school? What  
23       do those people seek?

24       A.       I think it's somewhat difficult to say, but often I  
25       think that many private schools provide more



1       essential education. And some public schools have  
2       had a lot of money to spend, and they tend to spend  
3       it on things that might be frills and extra electives  
4       and athletic events and things that are not really  
5       targeted on a central knowledge that students have to  
6       have. And so, I think that some people are very much  
7       concerned about their children getting a real  
8       essential education.

9               I talked about earlier about, let's say,  
10       getting into elite private universities, for example,  
11       such as the Ivy League, but there are many fine  
12       private universities throughout the country, and  
13       often they will give a special preference to students  
14       with a more, how shall I say, traditional and  
15       classical education, meaning four years of English,  
16       four years of mathematics, two or three years of  
17       foreign languages, and solid courses in science, art  
18       and music. So I think those parents often send their  
19       children to those kinds of schools to give them those  
20       kinds of advantages and recognize that they are going  
21       to get this kind of solid education that will give  
22       them an edge in getting into elite universities.

23              Also, I think I mentioned this earlier, some  
24       corporations have a preference that students would  
25       not specialize too early. And some high schools have

1 a vocational program or a business program, a sort of  
2 miscellaneous approach, and often this kind of  
3 vocational orientation where these electives are not  
4 really conducive for the employees to be successful  
5 employees. Many employers seem to be more concerned  
6 about mastery of English, writing, mathematics and so  
7 on, and they prefer to have on-the-job training, it's  
8 more relevant. I think that some parents recognize  
9 that and for that reason either send their children  
10 to public schools that are doing these things in a  
11 systematic way and providing this essential education  
12 or providing for essential -- to private schools that  
13 provide the same kind of education.

14 Q. Okay. Class size, when you were originally  
15 interrogated on direct examination, class size seems  
16 to be down low in factors that help with good test  
17 scores.

18 A. That's correct, Your Honor.

19 Q. Did you go to public schools or private schools?

20 A. I went to both.

21 Q. Both?

22 A. Yes, sir.

23 Q. Did you have smaller classes in your private school?

24 A. I'm 49 years old now, and I don't have a distinct  
25 memory, but my memory is that I went to elementary

1 school at a private school, and I believe the classes  
2 there were approximately the same size as my high  
3 school classes, which were -- which was a public  
4 school.

5 Q. Uh-huh. Okay. Do you think that most people think  
6 that class size does have something to do with what  
7 you get out of an education, that is that the larger  
8 the class size, the more likely the student is not to  
9 be involved in what is going on? Do you think most  
10 people believe that?

11 A. Well, I think educators have often said that class  
12 sizes are better, but as far as the research is  
13 concerned, it doesn't indicate that they are. And  
14 educators do have a special interest in lowering  
15 class size because it creates more teaching jobs,  
16 more supervisory jobs, and so on. I think that some  
17 parents may believe that smaller classes may be  
18 better, but others may not. Some people feel that --  
19 some teachers may feel that if you have more people  
20 there, you can get a bigger sense of participation.  
21 I think that there's probably a divided opinion on  
22 it, but probably the public thinks that there is a  
23 slight edge -- or many people in the public would  
24 think there is a slight edge for smaller classes.

25 Q. Okay. These tests that these educators administer

1       that you've been talking about, they basically  
2       measure objective skills like the ability to do math  
3       or the ability to write, punctuate, and the ability  
4       to read and comprehend and that sort of thing,  
5       correct?

6   A.   Yes, that's correct.  And also substantive knowledge,  
7       too, in physics, chemistry, civics, history, and so  
8       on.

9   Q.   Okay.  Are there any tests that are given to students  
10       that might measure their -- what I call the  
11       civilizing effect of education on people?

12  A.   Well, one kind of unusual test, one that we haven't  
13       focused on so much today, would be the capacity to  
14       write.  And some of these tests are -- rather than  
15       multiple choice tests, which are efficient and  
16       objective, but they are essay tests in which students  
17       may have to write an essay to indicate how they  
18       really comprehended, perhaps, in an original analytic  
19       way or a problem solving way some important things.

20               Also, some of the research is focused on the  
21       so-called project method.  Rather than using a test  
22       itself, the students will be given an assignment and  
23       they will produce an object of art, for example, or  
24       they might do a scientific experiment.  And that can  
25       be, also, evaluated by making ratings of it.

1           The other thing that does come to my mind is  
2           that I spoke about the classroom morale a little bit.  
3           In some respects, although I use psychological terms,  
4           cohesiveness, school direction, working together as a  
5           group in a cooperative way, might be thought to be  
6           some of the aspects of a civilizing aspect of  
7           schools.

8   Q.   Well, do you think that a function of education is to  
9           encourage the student to feel -- feel free to be  
10          creative, to feel free to be enthusiastic about a  
11          subject or, as the youngsters call it, get into a  
12          subject? Do you think an important role of education  
13          is to make a student feel like that this -- that this  
14          impulse that they have, students, to be either  
15          creative or to get into a subject or to be fascinated  
16          by a subject is a desirable impulse on the part of  
17          the student?

18   A.   Yes, I think that -- well, Alfred North Whitehead,  
19          a philosopher, once said that your learning  
20          begins when you put your school books aside. So one  
21          of the things that we need to be concerned about is  
22          gaining enthusiasm for the subject matter, continuing  
23          to study the subject after school is over, to pursue  
24          the things that you picked up in school in adult  
25          life. And I think those things are very important.

1       I also think that they go together with good mastery  
2       of the subject. I think in order to study music  
3       effectively, you need to know the scales, for  
4       example, or to pursue mathematics or science, you  
5       need a fundamental understanding of it and that would  
6       promote the kinds of enthusiasm.

7               Creativity is a bit more difficult to measure,  
8       but we do have youth contests, for example, of  
9       various kinds. And these have been studied as well,  
10      and they indicate some of the procedures that I  
11      discussed earlier, not only enhance cognitive  
12      achievement on a standardized test, but also promotes  
13      excellence.

14   Q.   And the tests that you've been talking about don't  
15       necessarily -- like in writing, you may measure how  
16       well a student can punctuate and so on, but these  
17       tests that you've been talking about don't  
18       necessarily measure that student's love for the  
19       language or for writing?

20   A.   Well, what we would usually find is that students are  
21       really able to master this to a high degree, even the  
22       mechanical parts of things, good spelling and  
23       punctuation and the mechanical qualities of writing,  
24       that they're often reasonably good writers. Even at  
25       the college level, I would say that -- and for that

1       matter in many professional schools, writing is a  
2       very difficult matter and does not really --  
3       sometimes you could say that a person is a good  
4       writer or creative writer that has a baccalaureate or  
5       a master's or a professional degree on a certain  
6       subject. So this is something that takes a lot of  
7       effort, but we rarely find people who are really  
8       excellent writers yet don't have some fundamental  
9       mastery of spelling, punctuation, mechanics and so  
10      on. So they sort of go together, and those that have  
11      one tend to have the other as well, and this is  
12      mainly a consequence of effective instruction and  
13      long hours of practice.

14    Q.   But the tests that you've talked about in your  
15          article don't necessarily measure the student's  
16          appreciation and are -- or the student's appreciation  
17          for good language?

18    A.   Well, in some respects they do, because especially at  
19          the high school level, the students might be given  
20          two passages. One might be extremely well written  
21          and have a great deal of creativity about it, and the  
22          other one might be very matter of fact and very  
23          pedestrian prose, and the students will be tested on  
24          whether they could recognize excellent writing.

25               And other tests that are used in this same way

1       they would be given, for example, a theme or an  
2       essay. Educational Testing Service, Princeton, New  
3       Jersey, for example, when they admit students at the  
4       college level often require a written essay. And  
5       they have graders who will look at these themes and  
6       essays and try to make some estimate of how good the  
7       writing actually is, whether it's -- in the first  
8       place, is it clear writing, but also, does it have a  
9       creative use of language.

10      Q.   All right, sir.

11               THE COURT: All right. We're going to let  
12      him go now.

13               MR. ROOS: Your Honor?

14               THE COURT: Yes.

15               MR. ROOS: I have just one or two questions  
16      for the witness.

17               THE COURT: All right.

18                       RE CROSS EXAMINATION

19      BY MR. ROOS:

20      Q.   You mentioned, Dr. Walberg, that various factors  
21            influence whether a parent or a person may move from  
22            one district to another, did you not?

23      A.   Yes.

24      Q.   And those may include such things as job  
25            opportunities or a number of things, isn't that



1 correct?

2 A. That's correct.

3 Q. And isn't it, in fact, a case that if a parent makes  
4 a choice to stay in a poor school district because of  
5 the sorts of considerations that you've already  
6 discussed, the child must bear the brunt of living in  
7 that district with their parent?

8 A. Well, if you're saying that the parent stays in that  
9 district, then obviously the child will have to stay  
10 in the district, too, yes.

11 Q. Thank you very much.

12 MR. ROOS: Nothing further.

13 THE COURT: All right, sir. You may step  
14 down and be excused. Thank you very much.

15 (Witness excused.)

16 THE COURT: Shall we meet again tomorrow  
17 morning at 9:00?

18 MR. GRAY: Yes, sir.

19 THE COURT: Okay. I'll see you all at that  
20 time.

21 MR. E. LUNA: Is this witness excused, Your  
22 Honor?

23 THE COURT: Yes. Thank you.

24 (Proceedings recessed

25 (until March 24, 1987.

3-87-190-EV

CAUSE NO. 362,516

C 8353

EDGEWOOD INDEPENDENT SCHOOL  
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

> IN THE 250TH JUDICIAL  
>  
>  
>  
> DISTRICT COURT OF  
>  
>  
> TRAVIS COUNTY, TEXAS

FILED  
IN SUPREME COURT  
OF TEXAS

JUN 21 1989

STATEMENT OF FACTS

VOLUME XXXI OF XLVI

JOHN T. ADAMS, Clerk  
By \_\_\_\_\_ Deputy



TAKEN MARCH 24, 1987

MONICA ROSS WEIDMANN

Official Court Reporter  
250th Judicial District Court

Travis County Courthouse • Austin, Texas 78701

CAUSE NO. 362, 516

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

---

## STATEMENT OF FACTS

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BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

---

## APPEARANCES:

MR. ALBERT H. KAUFFMAN and MS. NORMA V. CANTU,  
Attorneys at Law, 517 Petroleum Commerce Building,  
201 N. St. Mary's Street, San Antonio, Texas 78205.

-and-

MR. PETER ROOS, Attorney at Law, 2111  
Missions Street, Room 401, San Francisco, California  
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-and-

MR. CAMILO PEREZ-BUSTILLO and MR. ROGER RICE,  
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Cambridge, MA 02138

-and-

MR. RICHARD F. FAJARDO, MALDEF, Attorney at Law,  
634 South Spring Street, 11th Floor, Los Angeles,  
California 90014

ATTORNEYS FOR THE PLAINTIFFS

## 1 APPEARANCES CONT'D

2 MR. RICHARD E. GRAY III, and MR. STEVE J.  
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4 Attorneys at Law, 323 Congress, Suite 300,  
Austin, Texas 78701

5 -and-

6 MR. DAVID R. RICHARDS, with the law firm  
7 of RICHARDS & DURST, Attorneys at Law, 600 West  
8 7th Street, Austin, Texas 78701

9 ATTORNEYS FOR THE PLAINTIFF-INTERVENORS

10 MR. KEVIN THOMAS O'HANLON, Assistant  
11 Attorney General, P. O. Box 12548, Austin, Texas  
12 78711-2548

13 -and-

14 MR. DAVID THOMPSON, Office of Legal Services,  
15 Texas Education Agency, General Counsel, 1701 N.  
16 Congress, Austin, Texas 78701

17 ATTORNEYS FOR THE DEFENDANTS

18 MR. JIM TURNER and MR. TIMOTHY L. HALL,  
19 with the law firm of HUGHES & LUCE, Attorneys  
20 at Law, 1500 United Bank Tower, Austin, Texas  
21 78701

22 -and-

23 MR. ROBERT E. LUNA, MR. EARL LUNA, and  
24 MS. MARY MILFORD, with the Law Office of EARL  
25 LUNA, P.C., 2416 LTV Tower, Dallas, Texas 75201

-and-

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

-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,

7 ATTORNEYS FOR THE DEFENDANT-INTERVENORS  
8  
9  
10  
11  
12  
13  
14  
15  
16

17 BE IT REMEMBERED that on this the 24th 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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1 MARCH 24, 1987

2 THE COURT: All right, sir.

3 MR. E. LUNA: I might advise all of the  
4 parties that we have two witnesses that are here  
5 today and they're each superintendent of schools.  
6 One is superintendent of Midway and the other is the  
7 superintendent of Carrollton-Farmers Branch. And I  
8 don't know how long they're going to take, but our  
9 next witness can't be here until in the morning.

10 THE COURT: Okay.

11 MR. E. LUNA: Then that witness in the  
12 morning will be our final witness except for Dr.  
13 Ward, and Dr. Ward can't be here until April 7th. I  
14 have advised all counsel about that. He is an expert  
15 that is tied up elsewhere. And so I've advised the  
16 State so that if they have witnesses today, if we  
17 finish before the 3:30, we may give them some time  
18 back because our next witness won't be here until in  
19 the morning.

20 MR. RICHARDS: Well, I'm not too sure this  
21 case will still be going on April 7th. I don't know.  
22 I don't want to be by silence agreeing. I'm not sure  
23 what the Court's attitude is on this.

24 MR. E. LUNA: I was hoping you wouldn't  
25 agree by silence. I was hoping you would agree

1 orally.

2 MR. RICHARDS: I just don't want to let  
3 that one slide by. I don't have any idea -- from  
4 what we've heard, the Defense may rest before that  
5 date. The rest of the Defendants, I don't know.

6 MR. E. LUNA: Well, I will certainly --  
7 we'll certainly rest before that day subject to  
8 putting on that witness if the Court lets us.

9 THE COURT: Okay.

10 (Discussion off the record.)

11 MR. E. LUNA: Call Mr. Dameron.

12 MR. MARVIN DAMERON,  
13 was called as a witness, and after having been first duly  
14 sworn, testified as follows, to-wit:

15 DIRECT EXAMINATION

16 BY MR. E. LUNA:

17 Q. What is your name, please, sir?

18 A. Marvin Dameron.

19 Q. Mr. Dameron, by whom are you employed and what  
20 capacity?

21 A. Midway Independent School District, McLennan County.

22 Q. Would you tell us with relation to some others --  
23 well, first what is the county seat of McLennan  
24 County?

25 A. Waco.

1 Q. And what is the location of Midway ISD as it relates  
2 to Waco ISD. Are they contiguous?

3 A. They are.

4 Q. And would you give us the benefit of your educational  
5 background. Where did you -- first of all, where did  
6 you finish high school?

7 A. I finished high school at Midway. I attended Daniel  
8 Baker College and Howard Payne, Brownwood --  
9 Bachelor's degree. Master's degree from Baylor  
10 University. Out of Howard Payne, I went to  
11 Bruceville-Eddy as high school principal, coach, math  
12 and science teacher. I was there three years. Then  
13 I went to Midway in August of '58 as a math and  
14 science teacher and an assistant coach. After four  
15 years, I moved to elementary principal position.  
16 From there I went to junior high principal.  
17 Curriculum director after that. Assistant  
18 superintendent, the current position that I hold.  
19 And I taught in the classroom all the way from the  
20 sixth to the twelfth. I coached everything in the  
21 boys' field, also girls' basketball.

22 Q. Now, that's how many years in Midway?

23 A. Going on 30, I guess. August of '58.

24 Q. How long have you been the superintendent?

25 A. Since 1973.

1 O. Mr. Dameron, would you describe the type of school  
2 district that you have at Midway, with respect to  
3 whether or not it's an industrial area, a rural area,  
4 upper --

5 A. I would say that we were middle class community. We  
6 have some industry. We have some rural area. At one  
7 time it was mostly rural, with some industry, as I  
8 see it.

9 Q. Now, by middle class, now, how would you -- what type  
10 work do most of the people do? What do you call  
11 middle class?

12 A. Well, we have some people that work in mobile trailer  
13 factories, we have some who work with glass, and we  
14 did have quite a few people with General Tires, now  
15 phasing out. We do have some business people who  
16 live in our community, some professionals. It's a  
17 mixture of all, both blue collar and white collar.

18 Q. Do you have any minorities?

19 A. Yes, sir. We have ten percent minorities.

20 Q. Ten percent?

21 A. (Witness nodded head to the affirmative.)

22 Q. Are any of those minorities Black?

23 A. It varies from year to year. We're about three and a  
24 third Black, around three and a third  
25 Mexican-American and around three, three and a third

1 Asian. And as I said, it varies from year to year.

2 Q. Now, with respect to property values, I want to refer  
3 you to the -- what has been introduced in evidence  
4 here as the Bench Marks. And I believe it shows that  
5 our statewide average on property values is  
6 \$251,512.00. And that the average tax rate is .681.  
7 Teacher salaries, \$23,281.00; average administrative  
8 salary, \$37,784.00.

9 Now, can you see this?

10 A. Yes, sir.

11 Q. Midway, the Bench Marks shows for the year -- we're  
12 talking about the year '84-'85, here on these  
13 averages. The property values was \$238,262.00 with a  
14 .684 true tax rate. Is that the way it was?

15 A. That's correct.

16 Q. And then average teacher's salary in your district,  
17 \$21,750.00?

18 A. Correct.

19 Q. And then the average administrator's salary,  
20 \$36,430.00?

21 A. Yes, sir.

22 Q. And you'll notice that Edgewood ISD -- and by the  
23 way, you have 3,731 as of that year, ADA?

24 A. As of that year, right.

25 Q. You've got a few more than that this year?

1 A. 4,700 now.

2 Q. All right. Now, Edgewood ISD was \$14,599.00; and  
3 \$38,661.00, property values; and .563 tax rate.  
4 \$21,350.00, teacher's salary and \$32,225.00. You've  
5 noticed that in the Bench Marks, have you not?

6 A. Yes, sir.

7 Q. And then Hico -- where is that with relation to you?

8 A. It's up Highway Six northwest of us. I would say,  
9 approximately 50 miles. I'm not sure, give or take  
10 ten or so.

11 Q. All right. And they have \$101,983.00 property values  
12 with a tax rate of .636, tax rate. \$21,618.00  
13 teacher salaries and \$34,688.00 administrative  
14 salaries.

15 Now, I guess the question I would like to ask  
16 you at this point, since we have said that the  
17 teacher's -- average teacher's salary is \$23,281.00,  
18 and you pay almost \$2,000.00 less than that, you pay  
19 less than the state average, can you get teachers?

20 A. Yes, sir.

21 Q. Are you able to keep a good mix of new teachers and  
22 experienced teachers?

23 A. Yes, sir. We try to balance it.

24 Q. How do you think you're able to do that when you pay  
25 less than the state average?

- 1 A. We have good, clean facilities. We have great  
2 discipline and a dress code. They don't spend all  
3 their time having to discipline children. And as a  
4 result, have more time to spend. And they just don't  
5 have the hassles that they have in some places  
6 because of it.
- 7 Q. Don't have the hassles they do in some places?
- 8 A. Yes, sir, with the students.
- 9 Q. Do you think that is one of the things that's of  
10 interest to teachers in being in a school district?
- 11 A. Yes, sir. Also have cooperation from the  
12 administration, school board and parents.
- 13 Q. Well, how do you keep that discipline down? Do you  
14 use some of these annual funds in any particular way  
15 to keep that discipline down?
- 16 A. No, sir.
- 17 Q. How do you do it?
- 18 A. We indicate to our parents the importance of  
19 discipline, as well as our students.
- 20 Q. What do you tell them? What is the importance of  
21 discipline?
- 22 A. The importance of discipline is, if you're constantly  
23 having to correct children, the teacher loses the  
24 time that she needs with the other students. So,  
25 it's a learning process. You're stealing time from

1           the students when you're having to correct students  
2           for discipline.

3       Q.   Now, have you known of any particular problem with  
4           Hico and getting teachers? Have you known of them  
5           having any special problem?

6       A.   I'm really not familiar with that, sir.

7       Q.   Now, you have \$238,000.00, a little over it in  
8           property values, and a .684 cent true tax value,  
9           which is even a little more -- your tax rate is more  
10          than the statewide average and also considerably more  
11          than Edgewood. Why is it, that with your teachers'  
12          salaries only slightly higher than Edgewood, about  
13          \$400.00 a year higher, why do you have to have a  
14          higher tax rate than they do? Is it you have a  
15          smaller --

16      A.   Yes. We have a smaller average daily attendance, I  
17          suppose, and...

18      Q.   So, it cost some more when you have smaller --

19      A.   Yes, because some of your classes will be smaller to  
20          offer some of the courses in the curriculum area that  
21          we need.

22                               (Defendant-Intervenors' No. 25 marked.)

23                               MR. E. LUNA: Please the Court, we would  
24          offer Defendant-Intervenors' Exhibit No. 25 in  
25          evidence.



1 MR. KAUFFMAN: Your Honor, I want to  
2 continue my objection. The market value figures, of  
3 course, are based on the previous year's ADA, based  
4 on '84-'85 ADA instead of '85-'86 ADA. What else is  
5 on there? Let me see it a second.

6 The teachers' salaries and administrative  
7 salaries include federal funds as well as state  
8 funds, too. So we object to it on that basis.

9 THE COURT: I'll take note. It will be  
10 admitted.

11 (Defendant-Intervenors' Exhibit No. 25 admitted.)

12 MR. E. LUNA: By the way, I'm glad you said  
13 that.

14 BY MR. E. LUNA:

15 Q. By the way, how much federal funds do you have in  
16 your teacher's salary?

17 A. We do not accept, nor do we apply for federal funds.

18 Q. So, in these Bench Mark figures from your school  
19 district, there are no federal funds?

20 A. No.

21 Q. Now, your school district does send some students to  
22 a -- some handicapped kids to a co-op?

23 A. We have approximately three students, blind and  
24 severely hancicapped, that go into a co-op.

25 Q. Some other --

1 A. That money goes from the state, through the Texas  
2 Education Agency, to them. We never...

3 Q. So these figures we're talking about, there are no  
4 federal funds?

5 A. No federal funds.

6 Q. I would like to ask you to take a look at your  
7 expenditures in Midway ISD, \$2,600.00 per student.  
8 And Edgewood, \$3,600.00. And these test scores, 71,  
9 65 and 66. Now, is that kind of an unusual accident  
10 that year, that your test scores were that high?

11 A. No, sir, I don't think so.

12 Q. Have you had high test scores other years?

13 A. Yes, sir, we have.

14 Q. Let me ask you whether or not your school district  
15 was singled out by the TEA as one of only a few  
16 school districts in the State of Texas that didn't  
17 have a downward trend in their test scores over some  
18 period of years?

19 A. Yes, sir. We were singled out by TEA as one of eight  
20 schools -- eight school districts in the state that  
21 over four consecutive years scored well and didn't  
22 have a decline in the higher level thinking skills.

23 Q. How do you do that? What do you emphasise to keep  
24 those tests scores high?

25 A. Well, we begin with elementary schools. Reading,

1 writing, arithmetic and discipline. And we also  
2 believe that, not only in the classroom itself, but  
3 we have a highly structured physical education  
4 program which students learn from. They learn to  
5 follow instructions and directions.

6 Also, our elementary libraries are not a  
7 check-out library. We teach library skills. The  
8 children go every other day to a library. They have  
9 story-telling to create interest in reading.  
10 Teachers assign a high level of homework, a pretty  
11 heavy load, elementary through middle school. And we  
12 work with our parents on this.

13 So those are just a few of the things that we  
14 believe begins in the elementary schools. And later  
15 on, we spend a lot of time on tasks. A lot of  
16 creative writing. So we believe all of these things  
17 have created this for us.

18 Q. Well, if you've got 71, 65 and 66 test scores in  
19 math, reading and writing, effectively, why don't you  
20 spend more money than that and see if you can't raise  
21 it?

22 A. If you're doing all right -- as they say, "If it  
23 ain't broke, don't fix it." If we put more money in,  
24 possibly we could add other things that we don't  
25 need, which would be distracting from what we're

1           already doing. So we don't want to get away from  
2           that.

3       Q.    If you have another \$1,000.00 to spend on  
4           distractions, do you think maybe you could lower them  
5           down to what some of these others make in test  
6           scores?

7       A.   Well, it might. If possibly you inserted other means  
8           or other curriculum courses into the area of some  
9           other extra-curricular activities that we don't need,  
10          it could be distracting.

11      Q.    Is it your opinion that in adding other frills to it  
12           may well distract them from their academic learning  
13           and therefore lower test scores?

14      A.    It certainly can.

15      Q.    And Edgewood, in spending \$1,000.00 more than you do  
16           per student, has less than half the test scores that  
17           you have, do they not?

18      A.    According to that, yes, sir.

19      Q.    Now, in regard to the expenditures in your district,  
20           let's talk about -- let me withdraw that and ask you  
21           another question.

22                       We've had some testimony here that kids and  
23           teachers need to have a good attitude in order to  
24           have a good academic learning atmosphere. Do you  
25           agree with that?

1 A. Wholeheartedly.

2 Q. We've also had some testimony that indicates that  
3 maybe having all of them shiny new buildings might  
4 help. Do you all have shiny new buildings?

5 A. We keep them clean, but they're not new.

6 Q. They're shiny, but they're not new.

7 A. Some of them are shiny, but they aren't new. We have  
8 a good maintenance program.

9 Q. What is the oldest building that you have?

10 A. The oldest one we moved into Thanksgiving in 1950,  
11 which housed all 12 grades at that time.

12 Q. So that's about, what, 37 years old?

13 A. Yes, sir.

14 Q. Now, do you keep it up?

15 A. Yes, sir, we do.

16 Q. What do you do if you get a shingle off and a hole in  
17 the roof?

18 A. Well, we try to repair it.

19 Q. And suppose you've got a -- while the roof was off --  
20 while the hole was in the roof, suppose you get some  
21 water stain on the tile and even the floor?

22 A. We replace the tile after the roof is repaired.

23 Q. And suppose you get one like on Plaintiffs' Exhibit  
24 305, where you've got a place on the side of the  
25 building there. How do you handle that sort of

1           thing?

2       A.   Well, if that's a water stain, we try to find out  
3           where the leak is coming from, repair it and then  
4           re-do.

5       Q.   Put a little paint on it?

6       A.   Re-paint.

7       Q.   Do you do that soon after it happens or do you wait a  
8           few years?

9       A.   No, we do it immediately. We found the longer we  
10          wait, the more it costs. It's cheaper to do it as we  
11          go.

12      Q.   In regard to your next oldest building, you told us  
13          you have one in 1950. And I believe you said that  
14          was a middle school?

15      A.   It's now sixth grade center.

16      Q.   Sixth grade. What is the next oldest or next oldest  
17          building you have?

18      A.   I believe the next one was built probably about '54.  
19          Somewhere in there. '53-'54.

20      Q.   What is it?

21      A.   It is now a K through five elementary school, but  
22          we've added some on to it over the years.

23      Q.   All right. And then the next oldest?

24      A.   Next oldest, I believe would be what is now our  
25          junior high. At one time it was our high school,

1           around '63-'64, I think. I'm not exactly -- it's in  
2           the ball park.

3       Q.   All right. That one is 23 years old. What is the  
4           next one?

5       A.   The next one is our current high school in 1974.

6       Q.   And then the next one?

7       A.   I believe '76. A new elementary school. Hewitt  
8           Elementary. K through five.

9       Q.   And the next one?

10      A.   One, we just moved into this year. Spring Valley  
11         Elementary.

12                 And then we have another one, Stephenville  
13         Elementary, that for years, their students came to  
14         the Midway Independent School District and they  
15         consolidated with us a few years ago. That's now in  
16         our district. And I believe it was in the '60s when  
17         that building was built. That's Stephenville  
18         Elementary.

19      Q.   Well, now, going to school in these old buildings,  
20           does that give those kids a bad attitude?

21      A.   No, sir, because we keep them clean.

22      Q.   How about, of course, you're fortunate enough you  
23           don't have any temporary buildings, do you?

24      A.   We do have some temporary buildings.

25      Q.   Oh, you do? How many temporary buildings do you

1           have?

2       A.   Two, three, four, five, I believe.

3       Q.   We've had some testimony here that that temporary  
4           building would give kids a bad attitude about school.  
5           Now, the kids that have been making those kind of  
6           test grades have been going to school in those  
7           temporary buildings?

8       A.   They haven't complained to us. In fact, some of them  
9           like it. It's different from the other kids. They  
10          call it their building, their school. Some of the  
11          teachers even enjoy it, off by themselves. We don't  
12          have a problem.

13      Q.   Their attitude is as good as ever?

14      A.   Oh, yes.

15      Q.   What about parent involvement and PTA, do you have  
16          much interest in that in your district?

17      A.   Oh, they're highly involved. In fact, I meet with  
18          the PTA executive committee and officers once a  
19          month. They work with our teachers and with the  
20          administration, so they're highly involved.

21      Q.   Now, your classrooms, are you able to keep them down  
22          to say, under 30?

23      A.   We try. When we -- maybe sometimes at the end of the  
24          year we might get a little over that, but when we get  
25          to 29, we usually try to add another teacher to that



1 section.

2 Q. But the fact that you've had up to 29 or more in  
3 class hasn't hurt your test scores?

4 A. No, no. Now, in the -- in grades one and two, we  
5 usually try to keep that down around 22. From the  
6 third grade up, sometimes they will get around 29  
7 before we can make a change.

8 Q. You feel it might be easier on the teachers to keep  
9 the classes smaller, make their job a little easier?

10 A. Yes. Because of all of the paper grading and other  
11 things.

12 Q. Now, do you have any -- what kind of expectations do  
13 your parents have for the kids in the district? Do  
14 they encourage them to go to school and have high  
15 expectations for them?

16 A. They have extremely high expectations. Our people  
17 are very competitive. They expect them to go, they  
18 expect them to behave and they do expect their grades  
19 to be kept up for the majority of our community.

20 Q. Why do the people in your community -- you describe  
21 it as middle class and even sounds like a great deal  
22 of blue collars?

23 A. Yes.

24 Q. How can you interest them in having high expectations  
25 for their kids, when in some other school districts,

1 comparable people may not?

2 A. A lot of people know we have a reputation for having  
3 high expectations of our students. And a lot of  
4 people move there for that very reason.

5 Q. You mean people move from somewhere else to your  
6 school district because --

7 A. Not only -- some in our area, yes, they do. From out  
8 of state and other places, when they check the  
9 schools out, many of them come to our district for  
10 that reason.

11 Q. What kind of curriculum -- how would you describe  
12 your curriculum? Do you have a curriculum that is  
13 different from 346?

14 A. Oh, we stated our curriculum is traditional --  
15 traditional type in the high school. We offer honors  
16 courses and -- but we offer about the same thing that  
17 most schools our size offer.

18 Q. Let's talk about your extra-curricular activities.  
19 How new is your football stadium?

20 A. 1974.

21 Q. '74. You've got that astroturf on it?

22 A. A little bermuda grass.

23 Q. Sir?

24 A. A little bermuda grass.

25 Q. A little bermuda grass. Do you get along all right

1 without that astroturf?

2 A. Yes, sir. Don't have as many injuries.

3 Q. Now, how about track? Do you have one of those  
4 high-priced red tracks?

5 A. We've got a Black track.

6 Q. Black track. Regular old cinder track?

7 A. No, it's not a cinder. It's synthetic. It's a  
8 rubberized track.

9 Q. What about your gymnasium? Have you got a new gym?

10 A. 1974.

11 Q. '74.

12 A. At one time our -- let me go back to that track. At  
13 one time, when it was built, it had a little color on  
14 the top. It was not the true -- the true -- I want  
15 to bring that out. Way back when it was first built,  
16 it had a tiny -- where they sprayed a little color.  
17 But it didn't last, so we had to cover it with Black.  
18 I don't want to get caught in that trap.

19 Q. You know, a lot of folks think they have to have one  
20 of those high-priced colored tracks, you know that?

21 A. Yes, but ours is Black.

22 Q. Okay. You mentioned time on task. What do you mean  
23 by that?

24 A. Well, our teachers just spend a lot of time, just as  
25 it implies, just as we're saying. They spend a lot

1 of time on the subject matter, working in the area  
2 that they're supposed to be working. And just as it  
3 says, time on task.

4 Q. And how about the kids? Do they keep them working  
5 with their time on task, too?

6 A. Yes, yes, yes, sir.

7 Q. Well, how do they get them to do that? How do you  
8 get your kids to keep their time -- to spend time on  
9 task? Do you have any particular secret?

10 A. Teacher interest, teacher motivation, parent  
11 motivation.

12 Q. You say that -- let's ask about your teacher  
13 in-service training. Let's say a new teacher -- you  
14 get teachers, new teachers from colleges,  
15 universities like everybody else, don't you?

16 A. Yes, sir.

17 Q. Then after they get there, do you have any way of  
18 trying to help them be better teachers?

19 A. Yes. Our curriculum people work with these new  
20 teachers when they come in. And the older teachers  
21 usually are assigned. When I say older teachers, I'm  
22 talking about the experienced teachers, to work with  
23 those younger teachers.

24 Q. Now, you mentioned several things like the perennial  
25 expectations, time on task, discipline, parent

1 interest. How much money do you spend on those  
2 things extra?

3 A. Not anything.

4 Q. Those are things -- Now, how important are they to  
5 your educational process?

6 A. They're extremely important. It's the basis for a  
7 lot of it, of the learning process.

8 Q. Would it be fair to say that in the things that  
9 result in actual learning to the students, the extra  
10 things that you do in your school system, are those  
11 things which don't cost money?

12 A. Correct.

13 MR. E. LUNA: I pass the witness.

14 CROSS EXAMINATION

15 BY MR. O'HANLON:

16 Q. Mr. Dameron, we've heard some talk about courses that  
17 may be available, things of that nature. Could you  
18 kind of explain to me how the curriculum -- how the  
19 state-mandated curriculum in Chapter 75 guides you  
20 and then what kind of flexibility you have beyond  
21 that? Let's start off with primary. Let's start off  
22 with primary school right now. K through sixth.

23 A. Okay.

24 MR. O'HANLON: May I approach the witness,  
25 Your Honor?

1 THE COURT: Yes, sir.

2 Q. We've previously put into evidence Defendants'  
3 Exhibit No. 23. Are you familiar with this document,  
4 please, sir?

5 A. Yes, sir.

6 Q. And what is that document?

7 A. It's the State Board of Education Rules for  
8 Curriculum.

9 Q. Okay. How specific in detail does that, with respect --  
10 let's start off with primary school right now -- with  
11 respect to how you go about running your program?

12 A. Sir?

13 Q. How specific is that? We've talked about it -- we've  
14 mentioned the document, but nobody from -- none of  
15 the school folks that have testified really have  
16 gotten into talking about how it operates and how  
17 someone as a school, say, superintendent would go  
18 about administering that on a local level.

19 A. Well, our curriculum people, if I'm following you  
20 right, our curriculum people work with the principals  
21 and the teachers. We take the state guidelines as to  
22 the number of hours, number of minutes that will be  
23 taught in each area. And what is to be taught,  
24 whether it be reading, writing, arithmetic, whatever.  
25 And then we go from there. But we make sure that we

1           have whatever the state calls for in our curriculum.

2   Q.   Okay.  So the state calls for a specific time  
3       allocations for the various subject matters?

4   A.   Right.

5   Q.   How much time is left beyond that in the primary  
6       grade?

7   A.   Well, we have some after school, if people want it.  
8       But there's not much time left today for anything  
9       after the state -- after their requirements.

10  Q.   Okay.  So in first through sixth grade or K through  
11       sixth grade, the curriculum is pretty much  
12       standardized?

13  A.   Correct.

14  Q.   Okay.  At your expenditure levels, do you have enough  
15       funds to pay for the delivery of that curriculum in K  
16       through sixth?

17  A.   Yes.

18  Q.   Okay.  Now, let's talk about -- when do you start  
19       getting into theoretical time slots for electives?  
20       Do your kids -- when do your kids start actually  
21       switching classes from teacher to teacher and start  
22       taking --

23  A.   Well, we have -- in K through -- in sixth grade, some  
24       of our students change classes, but they're not  
25       electives.

1 Q. Okay.

2 A. It's for a special area such as a reading teacher or  
3 a math teacher or language arts.

4 Q. Okay.

5 A. You get into -- in the seventh and eighth grades,  
6 then you get into electives, which are not very many.  
7 That would be shop, possibly band, and that -- that's  
8 about it. We have some -- a little computer-type  
9 course in junior high, but there aren't many  
10 electives in junior high.

11 Q. Okay. How many courses is the day split up into?

12 A. How many what?

13 Q. How many time slots do you have in a day anymore in  
14 your school?

15 A. Six.

16 Q. Okay. You split up into six periods?

17 A. Six periods.

18 Q. And in junior high school, your mandatory curriculum  
19 is how many of those time slots?

20 A. I'm sorry, I have a little trouble hearing.

21 Q. Let me move over a little bit. In junior high  
22 school, your mandatory curriculum requires how many  
23 time slots?

24 A. I believe it's six or seven. I would have to go back  
25 and look.



1 Q. Okay. What courses do kids take in junior high  
2 school?

3 A. In junior high?

4 Q. Yeah.

5 A. English, math, science, social studies, basically.

6 Q. Okay. Those are all required?

7 A. Those are required.

8 Q. Are those required by your district or are they  
9 required by the state?

10 A. Required by the state.

11 Q. Okay. You may have one extra period in which a child  
12 could take an elective, or I suppose some kind of  
13 study hall?

14 A. They could take band or shop.

15 Q. Okay. In high school, do you split it up the same  
16 way?

17 A. Yes.

18 Q. Do you have six periods?

19 A. Yes.

20 Q. Okay. When you're talking about elective courses, I  
21 suppose we could talk -- how big is your high school?

22 A. Between 1,300 and 1,400 students.

23 Q. Over three years or four?

24 A. Four. Ninth through twelfth.

25 Q. Okay. It doesn't really cost any more -- I'm asking

1       you to assume a few things with me. I'm going to ask  
2       you if you had a full classroom, that you had the  
3       same ratio, 25 to 30 kids, that wanted to take  
4       instead of a calculus course, an advanced calculus  
5       course. It wouldn't cost your district any more  
6       money to offer that if you had a full classroom,  
7       would it?

8       A.    It possibly wouldn't.

9       Q.    Because you're still going to have a teacher --

10      A.    You're going to have a teacher.

11      Q.    -- in front of those class of kids. The state still  
12      provides the textbooks?

13      A.    Right.

14      Q.    So I mean, one of the problems with respect to  
15      offering electives is simply the problem of filling  
16      up a classroom, isn't it?

17      A.    That's right.

18      Q.    And if you're able to fill up a classroom, get enough  
19      interest generated in your school to fill a complete  
20      classroom, it doesn't really cost any more to offer  
21      virtually any kind of elective?

22      A.    The ones we're able to offer have been electives  
23      today because of all of the new legislation, the  
24      house bill. There's not many electives you can have  
25      in high school that wouldn't cost any more.

1 Q. Okay. For a typical high school student, could you  
2 kind of tell us what they've got to have? Let's kind  
3 of write them up. Is that all right?

4 Let's walk through -- let's take -- let's walk  
5 through each year in your school, if we can. And  
6 let's say what -- and for average freshmen, what they  
7 have to have and what they might have, what might be  
8 available in your district.

9 A. Science, math.

10 Q. Okay. Let me write them down here. This is freshman  
11 year.

12 MR. RICHARDS: Is this ninth grade we mean  
13 by that?

14 MR. O'HANLON: Yeah.

15 MR. RICHARDS: Let's put grades up there.

16 MR. O'HANLON: I hadn't been -- I wasn't  
17 aware that that had changed any. It's been awhile  
18 since I've been there.

19 BY MR. O'HANLON:

20 Q. Okay. Ninth grade. What does a ninth-grade student  
21 have to have under state law?

22 A. Math, science.

23 Q. When we're talking about math at that level, what  
24 kind of math?

25 A. It's usually an algebra or general-type math.

1 Q. Okay. Science?

2 A. Science. I believe that's physical science, I  
3 believe. Social studies, and that's history.

4 Q. That's history?

5 A. Yeah.

6 Q. English?

7 A. English, yes. And then they usually have a P.E.,  
8 physical education. And then many of them are either  
9 in band or something else.

10 Q. Okay. So you've got one elective.

11 Now, for the kids who don't have to take an  
12 elective, you've got to put them in a study hall,  
13 right? For the kids that don't want to take an  
14 elective?

15 A. Well, we really don't have any study halls, you know.

16 Q. Okay. All right. Let's do the sophomore year.

17 A. Basically the same thing there, I believe. I could  
18 be wrong in some of this. It's been awhile that I've  
19 directly worked with that, because our curriculum  
20 people work with that all the time.

21 Q. Okay. Junior and senior year?

22 A. Same, I think.

23 Q. Okay. Is math a required course at that time, in the  
24 junior year now?

25 A. I believe we do. I believe -- I wouldn't swear to

1           that.

2       Q.    Okay.

3                       MR. RICHARDS:  If he wouldn't swear to it,  
4           don't write it down, Kevin.

5                       MR. O'HANLON:  I won't.

6       A.    But I don't work directly with the curriculum and I  
7           just -- I don't work directly -- I don't work with  
8           the curriculum, so it's been awhile.

9       Q.    Let me look at Chapter 75.

10                      Okay.  As I recall, when I was in high school,  
11           you started getting a little bit of choice.  When do  
12           you do foreign languages?

13       A.    Foreign languages?  In junior years, we usually get  
14           into the foreign languages.  Some of them take it  
15           earlier.  It depends.

16       Q.    Okay.  Now, it doesn't really cost any more to do any  
17           particular language than another, does it?

18       A.    No, not if you have a full class.

19       Q.    Okay.  So the whole issue here, in terms of a  
20           district looking at its expenditures, is whether or  
21           not it can afford or whether or not it can fill a  
22           whole class?

23       A.    Right.

24                      MR. KAUFFMAN:  Your Honor, I'm a little bit  
25           too late, but I would object to leading on the last

1           two questions, at least.

2           THE COURT: All right, they're leading.

3 BY MR. O'HANLON:

4 Q. For elective courses, does the state provide  
5 textbooks?

6 A. Yes, it does.

7 Q. Okay. Have you ever been involved with the satellite  
8 system at all?

9 A. No, we haven't.

10 Q. Okay. Do you know whether or not it's available to  
11 your district should you want to pursue it?

12 A. It's available if we want to pursue it.

13 Q. Okay. How does that work, do you know?

14 A. Well, the satellite system, as I understand it, comes  
15 out of Austin or San Antonio. And it comes to the  
16 service center there in Waco, which is Region 12,  
17 which we have access to.

18 Q. Okay. Now, you said something about -- and here is  
19 the graduation requirements. And on the next page,  
20 it's the advanced high school diplomas. Do you have  
21 to offer an advanced -- does every district in the  
22 state have to offer an advanced high school diploma?

23 A. Advanced high school diploma?

24 Q. Yes, sir.

25 A. Not that I'm aware of.

1 Q. Does your district?

2 A. No.

3 Q. Okay. When you say honors courses, what's an honors  
4 course?

5 A. That is a higher level math or science course that  
6 only students with higher grades can enroll in. It's  
7 more or less of a college prep or a college course  
8 that you can -- what am I looking for, that you don't  
9 have to take when you go to college.

10 Q. Okay.

11 A. You get credit when you go to college, if you test  
12 out.

13 Q. Okay. Now, does it cost your district any more to  
14 offer honors courses?

15 A. Not if we have full classes. It could cost a little  
16 more in some areas, but I'm not aware of how much it  
17 would cost.

18 Q. Okay. Is it fair to say that once again, that with  
19 the provision of any of these -- any of these  
20 courses, that the issue is, is whether or not you can  
21 fill a class?

22 A. It's whether or not you can fill a class.

23 MR. KAUFFMAN: Objection, Your Honor.  
24 Leading question, Your Honor.

25 THE COURT: Okay, sustained. Re-ask,

1           please.

2       Q.   State whether or not if the underlying consideration  
3           is whether or not you can fill a class in terms of  
4           expenditures?

5                       MR. KAUFFMAN:  Same objection, Your Honor.

6                       THE COURT:  Sustained.

7       Q.   Is the underlying consideration --

8                       MR. KAUFFMAN:  Your Honor...

9                       THE COURT:  It's going to be leading.

10      Q.   All right.  What is the underlying --

11                      THE COURT:  Now you've got it.

12      Q.   -- on offering advanced courses and things of that  
13           nature?

14      A.   You only have so many students, and they can only get  
15           in so many classes, so if you can fill a class with a  
16           foreign language, then you don't have enough students  
17           in another area.  It really doesn't matter because  
18           you only have so many students, you only have so many  
19           periods in a day.  And I can't see where it would  
20           cost any more to offer those foreign languages -- I'm  
21           confused -- to offer those extra courses.  It  
22           wouldn't cost any more as far as I can determine.

23      Q.   Okay.  What kinds of considerations do you engage in  
24           as a superintendent, and I suppose in consultation  
25           with your curriculum folks, about whether or not to



1 offer electives. And when you decide to, what  
2 electives to offer?

3 A. We do a survey of our students each year to see what  
4 courses they would like offered. In the spring, we  
5 sit down with our principals and with the curriculum  
6 directors to try to determine what courses we would  
7 need to offer in the way of electives. For example,  
8 if we only had two students requesting Latin, we  
9 would not offer that. We would offer another course.  
10 That's what I was trying to get to awhile ago. If  
11 you don't have enough in one, it's another course.  
12 And it's the same difference.

13 Q. Okay. So that's how you try and determine your math?

14 A. That's right. That's how we determine it.

15 Q. Okay. With respect to -- by doing that, I mean, do  
16 you run into situations where -- what's the smallest  
17 class, I guess is what I want to ask, what's the  
18 smallest class that you offer in your high school  
19 enrollmentwise?

20 A. Probably around 15, possibly, and that would vary,  
21 and that would be in a physics class or some kind of  
22 an advanced math or science.

23 Q. Okay.

24 A. Honors class.

25 Q. So, in some cases you don't -- you'll go ahead and

1 spend that extra money?

2 A. Yes, because we had -- we might have, say, 25  
3 students that said that they wanted the course. And  
4 then later on after you offered it, they didn't  
5 enroll or they went another direction or they moved.  
6 So it might drop to 15 or so.

7 Q. Okay. Are you able to offer -- I take it, then, that  
8 your electives somewhat change from year to year?

9 A. No, our electives basically stay the same because we  
10 have the same demand each year for the same type  
11 course. We don't have a lot of changes in our  
12 curriculum.

13 Q. Okay. Are you able to offer at your expenditure  
14 level, which I understand is about \$2,600.00 per  
15 child?

16 A. (Witness nodded head to the affirmative.)

17 Q. Are you able to offer advanced courses and things of  
18 that nature?

19 A. Yes.

20 Q. How are your kids doing with respect to college  
21 entrance and things of that nature?

22 A. They do real well.

23 Q. Okay. Do you think that's a function of your  
24 expenditures, or is that a function of the way that  
25 you approach the educational process in your

1 district?

2 A. I think it's the way we approach it in our district.  
3 I don't think it's necessarily the expenditures.

4 MR. O'HANLON: I don't have any further  
5 questions.

6 Oh, yes I do.

7 Q. When your -- your district is subject to the  
8 accreditation process, is it not?

9 A. Right.

10 Q. And are you checked out on all of the compliances  
11 with curriculum and things of that nature?

12 A. Yes.

13 Q. Do you think that's a good system to determine how  
14 districts are doing?

15 A. Oh, yes.

16 Q. All right. Do the superintendents take the  
17 accreditation process seriously?

18 A. I do.

19 Q. All right.

20 A. In fact, several years ago, we asked for an  
21 accreditation visit. We hadn't had one in quite a  
22 while, so we asked for it.

23 Q. Okay.

24 A. Because we wanted one.

25 MR. O'HANLON: No further questions.

1 MR. TURNER: I have no questions of this  
2 witness.

3 CROSS EXAMINATION

4 BY MR. RICHARDS:

5 Q. Mr. Dameron, a few questions.

6 Mr. O'Hanlon was asking you questions just a  
7 moment ago. He had a reference to a term he used to  
8 determine full class, about if you have a full class  
9 it doesn't have any additional cost to the district.  
10 And I don't know what you meant by full class. How  
11 many people would constitute a full class?

12 A. Well, I'm talking about enough to warrant that class.

13 Q. Yeah, that's what I mean.

14 A. I'm talking about at least from 15 up.

15 Q. Okay. You had said, when you used the example of 15,  
16 that it might have dropped down to that level because  
17 some people didn't move or some people changed their  
18 mind?

19 A. Some people did move. We did this survey in the  
20 spring.

21 Q. What's your target when you do the survey? How many  
22 people -- students do you seek for an expression of  
23 interest before you would offer a classroom?

24 A. We would love to have at least 22.

25 Q. That's the target number?

1 A. If we could.

2 Q. Would that be fair to say that that's the target you  
3 would have, is 22 before you offered a class?

4 A. We would say that in some conditions or some  
5 circumstances there might be where you would have to  
6 offer it for another reason.

7 Q. But in absence of other reasons, it would be a target  
8 of 22?

9 A. Yes.

10 Q. All right. It's been a long time since I've been in  
11 public school and I was sort of -- you said you  
12 didn't have study halls. It seems to me it was part  
13 of the system in the past. I didn't know what that  
14 meant. Do you not --

15 A. We don't have study halls as such anymore.

16 Q. Is that pretty much everywhere or is that your  
17 system?

18 A. I think it's that way in a lot of school districts  
19 now.

20 Q. What does that mean in terms of how that time is  
21 utilized?

22 A. Well, other courses were added, I think, at that  
23 time.

24 Q. You said you weren't part of the satellite system.  
25 Any particular reason?

1 A. No, we just didn't feel -- don't feel the need for it  
2 right now. We usually get most of the information we  
3 need from the Texas Education Agency.

4 Q. What is the satellite system? Maybe we don't  
5 understand it fully.

6 A. They have certain types of educational programs that  
7 they televise to the school districts.

8 Some students also can, as I understand it, in  
9 the rural areas where they do not have enough  
10 teachers or enough students in a district to offer a  
11 certain course such as math or science, that they can  
12 view this and get credit for it, as I understand it.

13 Q. Is it your understanding that there's some kind of  
14 closed-circuit TV -- kind of a teaching program?

15 A. It's a teaching instrument as well as informative to  
16 the administration in other areas.

17 Q. At least one part of it is to enable students who  
18 couldn't otherwise get certain courses to take it by  
19 closed-circuit TV?

20 A. Yes.

21 Q. Does it cost the district something to get it? Is  
22 that your understanding?

23 A. I'm not aware.

24 Q. You just don't know.

25 You said that you're not as able now as you

1           used to be to offer as many electives. What did you  
2           mean by that?

3       A.    Because the state had mandated more courses, I  
4           believe in a curriculum area, and I'm not sure why.  
5           But they had to have so many courses in certain  
6           subjects and so therefore, you didn't have the extra  
7           hours or periods of a day that a student could take  
8           those extracurricular or those extra courses or  
9           elective courses.

10       Q.   Okay. Over the period of time that you've been  
11           involved in the process, have you seen tighter and  
12           tighter sort of state controls over the curriculum  
13           and what's required?

14       A.   Well, I wouldn't say that the state has more control  
15           over it. I think that they've mandated that the  
16           schools offer some of the courses that they weren't  
17           offering before.

18       Q.   Okay. There has been that change?

19       A.   Such as, in certain areas, instead of three years,  
20           four years of some courses, maybe English or math, or  
21           something like that, which has been mandated.

22       Q.   Did the requirement of going to 1-to-22 class ratio,  
23           did that have any effect on you or were you already  
24           at that ratio?

25       A.   No, it had an effect on us. That's why we had some

1 of our portable buildings and some of the other  
2 things. Because we were running probably around 25,  
3 26, maybe sometimes 27.

4 Q. All right.

5 A. So we had to move in portable buildings to take care  
6 of that.

7 Q. You had not utilized them before?

8 A. Only a couple of times or three times. Yes, we had  
9 used portable buildings before. Probably for the  
10 last ten years we've used portable buildings.

11 Q. But it required additional portable buildings in  
12 order to meet the 1-to-22?

13 A. Yes.

14 Q. Were there any other costs associated with House Bill  
15 72 that the district had to bear other than the  
16 additional buildings?

17 A. Well, on the additional buildings you have to equip  
18 those classrooms. Reword that again, please.

19 Q. As we understand it, some of the requirements of  
20 House Bill 72 were 1-to-22 ratio.

21 A. Yes, I've got you. And you said, in general, House  
22 Bill 72, is that right?

23 Q. Well, I said were there any other costs associated  
24 that were put upon the district as a result of House  
25 Bill 72 other than the 1-to-22 ratio?



1 A. Well, 75 and House Bill 72, all of those created an  
2 impact. We had higher appraisers, which created an  
3 extra expense for us; more paperwork, which created  
4 extra expense for us. So, yes, in a way it created  
5 more.

6 Q. I guess in House Bill 72 you had to get additional  
7 teachers to meet the 1-to-22 ratio as well as new  
8 classrooms, didn't you?

9 A. Yes.

10 Q. All right. What about pre-K or kindergarten, or  
11 pre-kindergarten. Now do you offer that?

12 A. We do not offer pre-kindergarten. Only early  
13 childhood for the handicapped.

14 Q. Now, is that just -- I don't know, is that just up to  
15 you all to decide whether or not you want to offer  
16 pre-K or pre-kindergarten?

17 A. Yes.

18 Q. The state doesn't make you all?

19 A. They're not making us now, because we don't have  
20 enough people to qualify for it.

21 Q. What do you mean you don't have enough people to  
22 qualify?

23 A. We have not -- I guess enough in the lower income or  
24 what -- we just haven't had enough parents to request  
25 it.

1 Q. Well, do you understand that pre-kindergarten is a  
2 program that's tied in part to how many kids you have  
3 on compensatory education?

4 A. That's right.

5 Q. Which means how many kids are below -- from poverty  
6 level, is that right?

7 A. That's right. We do not have enough that request  
8 free lunches.

9 Q. Okay. Do you have any idea what percentage of your  
10 kids are on the free lunch program?

11 A. We pay -- we pay for the free lunches. We do not  
12 accept federal money. And we really don't operate  
13 our own lunchrooms.

14 Q. Oh, you don't. How do you operate your lunchrooms?

15 A. That is, we take bids on that. It's done by a  
16 private company.

17 Q. You contract it out?

18 A. We contract it out. And we usually spend about  
19 \$7,000.00 to \$10,000.00 a year to pay for those free  
20 lunches. So how many that is, I don't know. Our  
21 contractor turns it into us.

22 Q. Now, you're going to have to talk a little history  
23 with me, because I happened to grow up in Waco.

24 A. Well, I forget a little bit of history on so many  
25 times like this curriculum area. It's been so long

1           that I've worked in it. Okay.

2       Q.    You graduated, you say, from Midway High School?

3       A.    Correct.

4       Q.    And what year was that?

5       A.    '50. May of 1950.

6       Q.    Okay. I graduated from Waco High School in May of  
7           1950.

8       A.    Did you ever play on the Waco Kids? We played Waco.

9       Q.    I was going to ask you a couple of things.

10           I'm curious. You mentioned Hewitt Elementary  
11           as part of your district, now. My recollection is, I  
12           played basketball with kids from Hewitt. Would they  
13           have gone to Waco High in the old days?

14       A.    Yes. Hewitt at that time -- they would either go to  
15           Waco High, I believe, or Lorena. And then in 1947 --  
16           Hewitt and South Bosqueville -- are you familiar with  
17           South Bosqueville?

18       Q.    Yeah.

19       A.    Consolidated to form Midway ISD, which was halfway  
20           between. And then they had their high school after  
21           '47.

22       Q.    Okay.

23       A.    But before that, prior to that -- and some of them  
24           still go to Waco High. Some of the Hewitt kids did  
25           go to Waco High.

1 Q. Speegleville kids went to Waco High in those days?

2 A. That's right. Speegleville kids could go to South  
3 Bosqueville, then later on to Midway or Waco High.

4 Q. Those are now -- Speegleville has been sometimes  
5 incorporated into --

6 A. It's in Waco's ETJ.

7 Q. In Waco's ETJ?

8 A. It's in ETJ, but it's in our school district.

9 Q. It's in your school district?

10 A. Consolidated with us.

11 Q. When was that consolidation? Roughly. I don't know.

12 A. About eight years ago. Seven.

13 Q. Have there been any other consolidations into your  
14 district other than Speegleville in recent years?

15 A. No.

16 Q. Now, your Midway district is immediately west of  
17 Waco, Waco High?

18 A. South, southwest.

19 Q. Okay. And without belaboring --

20 A. And northwest, too.

21 Q. Okay. It really kind of wraps around on the west  
22 side now, doesn't it?

23 A. Yes, sir.

24 Q. And as far as Waco was concerned, in the old days,  
25 east Waco was Black Waco, is that right?

1 A. Correct.

2 Q. Okay. And used to be all east of the Brazos River?

3 A. Right.

4 Q. Now I think it's kind of come across the river, is  
5 that right?

6 A. Right.

7 Q. Do you have any idea of the minority population of  
8 the Waco ISD at this stage?

9 A. I believe they're about 52. Now, give or take five  
10 points somewhere. Probably 52 percent minority.

11 Q. Okay.

12 A. I'm not sure.

13 Q. All right. And I had -- you had a growth figure that  
14 kind of caught me off guard. I may be wrong. The  
15 figures that Mr. Luna was giving you had a -- I  
16 thought you had an average daily attendance of 3,700.  
17 Now it's up to 4,600?

18 A. 4,700.

19 Q. 4,700? And that's over what period of time?

20 A. I guess it was in 1974, we had 1,500 students, if  
21 that will help you.

22 Q. Okay. And now you're --

23 A. 4,700.

24 Q. 4,700. But when were you 3,700? Maybe I got this  
25 number wrong.

1 A. Wait a minute. I'm sorry --

2 MR. E. LUNA: '84-'85

3 BY MR. RICHARDS:

4 Q. Yeah, Mr. Luna gave you a figure in '84-'85.

5 A. Maybe I was wrong on that. It's 3,700. I believe  
6 it's 3,700. I'm sorry.

7 Q. Okay.

8 A. Just drew a blank.

9 Q. I didn't really believe you could have dropped a  
10 thousand a year.

11 A. I'm sorry. I gave Mr. Luna the wrong information,  
12 probably. It's 3,700.

13 Q. Okay. All right. That's fine. You had said 4,700,  
14 and I thought you couldn't grow that much --

15 A. Didn't find that many kids there.

16 Q. Okay. Fine.

17 Now, in McLennan County, in this day and age,  
18 isn't a particularly wealthy county for anyone is it?

19 A. No, sir.

20 Q. Things are not --

21 A. One of the lowest in income.

22 Q. One of the lowest in the state, I guess, actually?

23 A. Yeah.

24 Q. I suppose that with the closing of the tire plant,  
25 things are not going to get better, they're going to

1           get worse. Is the tire plant in the Waco district or  
2           is that in the La Vega district?

3       A.    Mr. James -- La Vega -- I'm sorry, Waco. Waco took  
4           it. They gave it to Waco a few years ago.

5       Q.    Waco took it, is the way they've got it. All right.

6                       But at least in terms of McLennan County,  
7           Midway ISD is one of the wealthiest districts in the  
8           county for sure, is that right?

9       A.    Well, possibly.

10      Q.    Do you know?

11      A.    I guess -- yes, if you -- not comparing to Waco. The  
12           other districts we would be, yes. But then, I don't  
13           know about Waco. We would be considered that way if  
14           you took in other schools in our area, in the county.  
15           Yes, we will.

16      Q.    Well, just -- I'll confront you. Let me tell you  
17           what the figures are and see if you -- even with  
18           respect to Waco.

19                       According to Bench Marks, which is in evidence  
20           and we talk about all the time, your average property  
21           value per ADA is \$238,000.00 which is pretty close to  
22           the state average. Are you aware of either one of  
23           those figures?

24      A.    Yes.

25      Q.    Your value.

1                   Waco, itself, is \$175,000.00 --

2   A.   Yeah.

3   Q.   Which is substantially less than yours.  And of  
4       course, someplace like La Vega, where Mr. James is  
5       from, they're down to \$93,000.00 per --

6   A.   Right.

7   Q.   So you know they're substantially poorer than you  
8       are?

9   A.   Yes, I'm aware of that.

10   Q.   All right.  And although your teacher salaries may  
11       look paltry compared to Dallas, they look pretty good  
12       compared to the rest of McLennan County, don't they?  
13       Or do you know?

14   A.   I'm not sure what the other districts are paying.

15   Q.   You really don't know.  Are you aware that your  
16       teacher salaries, at least according to Bench Marks,  
17       are higher than any other district in McLennan County  
18       except one?  Would that come as a surprise?

19   A.   That's not very possibly in Waco?

20   Q.   No.  Would it surprise you that you're higher even  
21       than Waco?

22   A.   It would surprise me if we were.

23   Q.   Okay.  According to Bench Marks, which is in  
24       evidence, your average annual teacher's salary is  
25       \$21,750.00.  Is that a figure which comports with



1           your recollections?

2   A.    Yes.

3   Q.    Okay.  And that's some \$300.00 a year higher even  
4           than the Waco salaries.  Does that surprise you?

5   A.    I'm not aware.

6   Q.    The minority figures for your district, as I  
7           understand it, you say are -- or you just have  
8           approximation -- you think it's approximately 50  
9           percent Black, is that right?

10  A.    Right, because it varies from year to year.

11  Q.    Okay.

12  A.    But we are ten percent minority all the time.

13  Q.    In that minority you're including the Asian?

14  A.    Asian and Mexican-American.

15  Q.    Uh-huh.  And when you said you had a dress code -- I  
16           guess that kind of caught me -- I didn't know what  
17           you mean by that.

18  A.    Well, we believe that's part of the disciplining.  In  
19           the handbook, students are required to abide by the  
20           dress code as set out in the board policy.

21  Q.    What is that?

22  A.    Well, we believe that has an impact on discipline.  
23           When you have discipline, you have a better learning  
24           environment.

25  Q.    Okay.  What sort of items fall within a dress code?

1           They used to have hair length in them. You don't  
2           have hair length?

3       A.    We have hair length. Uh-huh.

4       Q.    That caught me by surprise there. I see.

5       A.    No shorts, no pajamas.

6       Q.    Well I -- you know, that doesn't shock me, frankly,  
7           on pajamas, but -- all right.

8       A.    But we do have a dress code.

9       Q.    And you think that is a positive factor?

10      A.    I think it's an extremely positive factor, because we  
11           feel you act like you dress. If you dress like a  
12           clown, you act like a clown, which interferes with  
13           learning.

14      Q.    Okay. And I take it from what you're telling us,  
15           that's consistent with your parental attitudes in the  
16           district, too, is that right?

17      A.    Of course the dress code is just a form of  
18           discipline, too. It teaches them to learn.

19      Q.    That's why, so we understand you then, you maintain a  
20           dress code because you consider it to be integral to  
21           the disciplinary process?

22      A.    Right.

23      Q.    And if we understood your earlier testimony, one of  
24           the things that you attribute your performance which  
25           you're proud of, too, is the fact of the discipline

1           that's maintained, is that correct?

2   A.    Yes, sir.

3                   MR. RICHARDS:  Excuse me a second, Your  
4           Honor.

5   Q.    When you said you don't check books out of your  
6           library, I didn't know what you meant by that.

7   A.    I said we're not just a check-out library.

8   Q.    I'm sorry.  I misunderstood you.  You can check them  
9           out?

10   A.   You can check them out.  But we teach library skills  
11           and story telling to create interest in learning.

12   Q.    I can remember that Midway was awfully proud, at  
13           least in early years, and I assume is still, of its  
14           athletic program?

15   A.    Yes, sir.

16   Q.    And does that take up a significant amount of  
17           emphasis on the part of the school?

18   A.    Academic comes first.

19   Q.    Okay.

20                   MR. RICHARDS:  That's all I have.  Thank  
21           you, Your Honor.

22                                   CROSS EXAMINATION

23   BY MR. KAUFFMAN:

24   Q.    Mr. Dameron, I would like to talk to you a bit about  
25           this chart.

1                   We were looking at your scores on the TEAMS  
2       test related to some other districts in the state.

3           Do you recall that?

4   A.   (Witness nodded head to the affirmative.)

5   Q.   And your scores were higher than Houston and Dallas  
6       and Socorro and Edgewood. Did you notice that, Mr.  
7       Dameron?

8   A.   Yes.

9   Q.   Are you aware that Houston and Dallas and Socorro and  
10       Edgewood are averaging roughly 80 to 85 percent  
11       minority students?

12   A.   No, I'm not aware of what the ratio is.

13   Q.   Okay. I've noticed that Highland Park ISD has even  
14       higher scores than you have. They average about, oh,  
15       ten points higher on each of the scores. Did you  
16       notice that?

17   A.   Yes.

18   Q.   Okay. And looks like Highland Park spends about  
19       \$1,500.00 more per student than you do, is that  
20       right?

21   A.   That's right.

22   Q.   So I assume that whatever frills Highland Park buys  
23       with their extra \$1,500.00 does not seem to reduce  
24       their test scores at all, is that right?

25   A.   Well, I'm not -- I'm not sure. I don't know their

1 process. I'm just concerned with ours. And I don't  
2 know what process they go through in presenting this  
3 to their students.

4 Q. All right. You're not aware then of the frills, if  
5 any, that Highland Park has --

6 A. No.

7 Q. -- that distract their students at all?

8 A. No, I have never studied Highland Park.

9 Q. You're not aware of the presentations that they use  
10 to teach their students?

11 A. No.

12 Q. Or special problems their students might have, is  
13 that right?

14 A. No, sir.

15 Q. I assume the same would apply to Edgewood. You don't  
16 know what frills they have or programs they have that  
17 might distract their students from further learning,  
18 do you?

19 A. No.

20 Q. You're not aware of the method of instruction they  
21 use or the types of students they have at Edgewood,  
22 are you?

23 A. No.

24 Q. Mr. Dameron, let me ask you some courses and see if  
25 you offer those in your school district. And if

1           you're not sure, just tell me that. But I would like  
2           to check on a few.

3                   Does your district teach Chemistry II? Do you  
4           have two years of chemistry?

5   A.    Yes.

6   Q.    Does your district teach elementary analysis and  
7           calculus every year?

8   A.    Yes.

9   Q.    Does your district teach English IV Academic British  
10          Literature?

11   A.    No. Not that I'm aware of.

12   Q.    Does your district teach three different courses of  
13          theater arts?

14   A.    Not that I'm aware of. We have -- that's beyond me.

15   Q.    Okay. Does your district teach seven different  
16          courses of French?

17   A.    No, not seven different courses.

18   Q.    Okay. How many courses in French do you have?

19   A.    We have four years of French.

20   Q.    Does your district teach three different levels of  
21          German?

22   A.    I believe so. We teach German.

23   Q.    Do you have three different years of it?

24   A.    I think so. I'm not sure.

25   Q.    Does your district teach four different levels of

1 Latin?

2 A. We teach Latin.

3 Q. And what --

4 A. I'm not sure how many levels, but we teach Latin.

5 Q. All right. Does your district teach seven different  
6 levels of Spanish?

7 A. We teach Spanish.

8 Q. Do you know how many different levels of Spanish you  
9 offer?

10 A. No.

11 Q. Does your district have any classes such as Advanced  
12 Languages IV Spanish with four children?

13 A. Pardon?

14 Q. Do you have any courses like Advanced Languages  
15 Spanish with four children in the class?

16 A. I'm not aware of it.

17 Q. Okay. Does your district teach anything like  
18 Advanced Languages IV French with six students in it?

19 A. It's possible. At one time we could have done that.  
20 I'm not sure on the numbers, because I just haven't  
21 -- I could not give you an exact --

22 Q. Okay. But your testimony now is that the smallest  
23 class you have in the high school is around 15  
24 children?

25 A. Well, the last I heard was. I'm not sure, sir. That

1           could vary from week -- we have students move in and  
2           out and we may have 21 one week and we could have 10  
3           one week. So I couldn't give you a true answer on  
4           that.

5       Q.    You talked a bit about the -- what you have to do to  
6           be able to offer a course. And I think you said you  
7           have a goal of 22 students to offer one, is that  
8           right?

9       A.    That's not a written goal, sir.

10      Q.    Sure.

11      A.    We, as administrators, principals and the curriculum  
12           people sit down and we try to come up with that. I  
13           can't say that we have that as a written goal. But  
14           administratively, that's what we look at.

15      Q.    Okay. When you were thinking of offering -- I think  
16           you said you have a Calculus I course, but not a  
17           Calculus II. Is that what you said when Mr. O'Hanlon  
18           was asking the question?

19      A.    I can't be sure on that. But we offer calculus and  
20           all of those.

21      Q.    Let's say you have a Calculus I course but not a  
22           Calculus II course. I think that's what I recall. I  
23           think Mr. O'Hanlon was asking you whether it would  
24           cost anything extra to offer Calculus II, if you  
25           could just move the students into Calculus II. Do



1       you recall that testimony?

2       A.   Yes, I recall what he said.

3       Q.   In fact, in a district like yours, though, you're  
4       going to have to go ahead and offer Calculus I  
5       anyway, aren't you?

6       A.   Yes.

7       Q.   So if you offer now and you add on a Calculus II  
8       course, that will require you to either find a new  
9       teacher to teach that course or to find some new  
10      teacher to teach that course and some other new  
11      courses, won't it?

12      A.   Not necessarily. You could already have the teachers  
13      in your system that could teach that course, that  
14      could split courses. So it's not necessary that we  
15      would have to hire a new teacher.

16      Q.   In general, though, if you're going to expand your  
17      curriculum offerings -- if you're going to offer more  
18      years of French, or more years of Latin, or more  
19      years of calculus, or more years of science, you're  
20      going to have to eventually hire some new teachers or  
21      else have smaller classrooms, aren't you?

22      A.   If we expand those classes --

23      Q.   Yes.

24      A.   -- then probably some of the other classes we're  
25      going to have to delete. So you're not going to have

1           any more teachers as I see it, now, because you add  
2           those. Because you can only have so many students,  
3           they can only take so many classes. And if you put  
4           all of these kids over in these, it takes them out of  
5           this. And therefore, you still have the same number  
6           of teachers.

7       Q.    Okay. If you did have smaller classes, though -- if  
8           you were to offer not just Calculus I but Calculus  
9           II, so some students could take Calculus I in their  
10          junior year and Calculus II in their senior year, and  
11          if you were to offer four years of French so a  
12          student could begin French in the ninth grade and  
13          take it all the way through, all the way to the  
14          fourth year, if you expand your horizons like that,  
15          even with the same number of students in your  
16          district, you're going to have to have more  
17          classrooms and more teachers, aren't you?

18       A.   Not necessarily. If...

19       Q.    But not necessarily, but probably, aren't you?

20       A.    I don't know even probably. I would have to study  
21          the situation. Because you may not have to have some  
22          of the other classes or the other classrooms to be  
23          available for those courses.

24       Q.    So in other words, you have an option, then. If you  
25          wanted to expand your course offerings in things like

1 Latin and French and Spanish and advanced math, you  
2 have an option of either deleting other classes, or  
3 adding new teachers to classrooms, is that right?

4 A. Right. Now on those class sizes, too, I cannot go  
5 back -- years ago, we may have had six or eight in a  
6 class years ago. But I can't -- you know, I don't  
7 remember that, that far back. But I do know that we  
8 had talked at one time years ago about getting rid of  
9 Latin, because we only had six or eight. That's been  
10 something like eight or nine years ago, I think.

11 Q. But you're back to offering that now?

12 A. We never dropped it. As I understand it, we do offer  
13 it.

14 Q. Mr. Dameron, are you aware that there is one pretty  
15 wealthy district in your county? There's one small  
16 district, Hallsburg ISD?

17 A. Budget balanced, yes.

18 Q. Are you aware that their true tax rate is about, oh,  
19 20 cents below yours?

20 A. No, sir.

21 Q. Okay. Are you aware that their current operating  
22 expenditures are about \$1,000.00 above yours?

23 A. No.

24 Q. Okay.

25 A. I don't study those things. We just worry about our

1           own.

2       Q.   All right.  If I were to tell you that their tax rate  
3           is 20 cents lower and their expenditures are  
4           \$1,000.00 higher, do you think people in Hallsburg  
5           are getting a little more for their tax dollars than  
6           people in Midway?

7       A.   I wouldn't necessarily say so.

8       Q.   They are getting more spent per child in their  
9           district than people in Midway, aren't they?

10      A.   I don't have those figures there.

11      Q.   Assume with me the figures are correct.  That they  
12           are paying 20 cents less and getting \$1,000.00 more  
13           per child.  Okay?  Assume those with me.

14      A.   How are their test scores?

15      Q.   Well, I don't know.  They only -- they have a small  
16           number of kids --

17      A.   You have to take this into consideration that they're  
18           getting their money's worth, I think.

19      Q.   Bench Marks doesn't even give us team scores for --

20      A.   Well, you'd have to take the test scores into  
21           consideration to determine if they're getting more  
22           for their money or not.

23      Q.   Okay.  Well, let's look at Highland Park, now.  They  
24           do have higher test scores than yours, don't they?

25      A.   Yes.

1 Q. And if you'll believe for a second that Highland  
2 Park's tax rate is about 25 cents lower than yours,  
3 then they're spending \$1,500.00 more per child. They  
4 are getting more for their dollars, aren't they?

5 A. I really don't know.

6 Q. You said you'd have to look at their test scores --

7 A. Right.

8 Q. And their test scores are higher than yours, right?

9 So Highland Park is getting more for their dollar  
10 than you are for yours, is that right?

11 A. According to that, but I can't say that they're  
12 getting more as a whole. That chart, yes. But I  
13 couldn't say that they're getting more.

14 Q. Okay. What causes you concern about that? Why can't  
15 you say whether they're getting more?

16 A. Because I just don't know. I haven't studied their  
17 situation. I don't understand -- I don't know  
18 anything about the school district. I think you  
19 would have to go in and study it. There are a lot of  
20 things to determine whether you're getting your  
21 money's worth other than, you know -- but I don't  
22 know.

23 Q. Okay. Well, what are some of those things that help  
24 you determine whether you're getting your money's  
25 worth in a school district, other than test scores?

1 A. Well, I think a lot of things would come into  
2 consideration. Whether you teach the kids to be a  
3 lady or a gentleman, about life, other things that  
4 could happen.

5 Q. So lady or gentleman, sort of like citizenship  
6 skills?

7 A. Citizenship, yes --

8 Q. Future life opportunities, that sort of thing?

9 A. Yeah.

10 Q. Would you consider it important to, in terms of what  
11 a district is getting for its money, to look at what  
12 the future careers of its graduates were? What they  
13 became, murderers, superintendents, civil rights  
14 lawyers, or whatever. Would you want to look at all  
15 of that?

16 A. No.

17 Q. Okay. I mean, don't you really -- I made it --

18 A. We like --

19 MR. RICHARDS: Distinguishable.

20 A. Run that by me again, please.

21 Q. Okay. I'll admit the examples are not the best.  
22 What I'm saying is that if you look at what a  
23 district and its taxpayers are getting for their  
24 money, one of the things you want to look at is,  
25 after your kids leave your district, what do they do?

1           What do they do in college; what do they do in their  
2           later lives? Do you think those are important  
3           factors?

4   A.   Yes, we would like to have an influence on their  
5           lives later on.

6   Q.   Sure. Do you think that one way to look at what  
7           you're getting for your money's worth in a district  
8           is to look at the range of opportunities that you're  
9           giving the kids in your district, are giving them  
10          exposure to a lot of different approaches to life, a  
11          lot of different course selection, that sort of  
12          thing. Are those important characteristics to you?

13   A.   (Nodded head to the affirmative.)

14   Q.   Yes? Is the answer yes? I'm sorry, you just shook  
15          your head. The court reporter needs an answer.

16   A.   Say that one more time.

17   Q.   You feel that another way to look at what a district  
18          or its taxpayers are getting for their dollar, is to  
19          look at the range of opportunities that its students  
20          have or that its students are exposed to in a school?

21   A.   Well, I would say that we give them a good basic  
22          education that prepares them for college and for  
23          life.

24   Q.   Okay.

25   A.   That's what I would say.

1 Q. Is it also important, though, to expose the students  
2 to different approaches to life, different  
3 philosophies, different types of courses to begin to  
4 open their minds to what sort of profession they  
5 might want to pursue? Are those important factors as  
6 well?

7 A. I think it would be depend on a community.

8 Q. Do you know some communities where it would not be  
9 important to have those options presented to the  
10 students?

11 A. Possibly, but I don't know of any.

12 Q. In your district, would it be important to present  
13 all of those options for future life opportunities to  
14 the students in your district?

15 A. I think so.

16 Q. Wouldn't you say that's true in almost every district  
17 in the State of Texas?

18 A. I really don't know.

19 Q. All right. Mr. Dameron, you're certainly aware that  
20 the Texas Education Agency does accredit and monitor  
21 your district from time to time?

22 A. Right.

23 MR. KAUFFMAN: May I approach the witness,  
24 Your Honor?

25 THE COURT: Yes.



1 Q. I would like to show you what the attorney for TEA  
2 has presented with me today, which is a letter from  
3 the accreditation department of TEA to your district.  
4 Would you just leaf through that and see if it's  
5 something your district got?

6 A. Yes, we got this.

7 Q. Okay. I would like to show you the comments on Page  
8 6 of that document and see if you agree with this.  
9 That the TEA said, "The district is to be commended  
10 for providing excellent physical facilities for its  
11 students. Hallways, classrooms and offices are  
12 carpeted. Most facilities include the latest  
13 amenities which provide for an excellent school  
14 climate." Do you recall that?

15 A. Yes, sir.

16 Q. Okay. And Mr. Dameron, at this time, your district  
17 does not offer a pre-kindergarten program, is that  
18 right?

19 A. No, early childhood only.

20 Q. Okay. You've mentioned the different state  
21 requirements, that the state requires your courses,  
22 very explicitly at the elementary level and requires  
23 courses at the high school level, is that right?

24 A. Right.

25 Q. Would you say that in general, the state sets the

1 curriculum for your district?

2 A. As a whole they do.

3 Q. Okay. The options that your district has, if any,  
4 are to add on electives or other courses, is that  
5 right?

6 A. That's right.

7 Q. Okay. But as far as your local control of the  
8 district, the basic course offerings you have, the  
9 state sets that for you. The local district does  
10 not, is that right?

11 A. The state sets the basic requirements and then we add  
12 the electives as we can.

13 Q. Okay. And when you hire teachers, of course, the  
14 teachers have to meet all of the certification  
15 requirements of the State of Texas, is that right?

16 A. True.

17 Q. Now the teachers have to pass a test?

18 A. Yes.

19 Q. Incumbent teachers have to pass the TECAT and new  
20 teachers have to pass the PPST and the ExCET and all  
21 of those state tests, is that right?

22 A. True.

23 Q. So the teachers that you hire, as far as their basic  
24 requirements, that's all set by the state, too, is  
25 that right?

1 A. True.

2 Q. Okay. The number of days of school you have to have  
3 is set by the state, is that right?

4 A. Correct.

5 Q. And the number of courses in the day is set by the  
6 state as well, is that correct? You have to answer  
7 yes or no. I'm sorry.

8 A. Yes.

9 Q. I think Mr. Richards went over with you, but are you  
10 now aware that your district has the second highest  
11 teachers' salaries in McLennan County?

12 A. No. I was not aware of that.

13 Q. Okay. Do you feel that some of the new residents in  
14 Midway -- well, first of all, Midway does border  
15 right on the Waco ISD, is that right?

16 A. Some of our school district is -- oh, borders Waco  
17 ISD?

18 Q. Yes.

19 A. Yes.

20 Q. Okay. Fine. Do you feel that the Midway ISD has  
21 gained some of the residents who have left Waco  
22 because of the significant desegregation battles over  
23 in Waco?

24 A. I can't answer that at all.

25 Q. Okay.

1 A. I don't know the reasons.

2 MR. KAUFFMAN: We pass the witness, Your  
3 Honor.

4 THE COURT: Mr. Luna, they pass the  
5 witness.

6 MR. E. LUNA: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. E. LUNA:

9 Q. We have had some questions about minorities. And  
10 you've told us about ten percent minorities, some of  
11 them are Hispanics?

12 A. Yes.

13 Q. How much more does it cost you in your school  
14 district to teach those Hispanics than it does the  
15 Whites?

16 A. Not any more.

17 Q. How much more does it cost you to teach the Blacks  
18 than it does the Whites?

19 A. Not any more.

20 Q. And the Asians?

21 A. Not any more.

22 Q. But insofar as test scores are concerned, do those  
23 Blacks and Hispanics cause a drop? Do they have  
24 drops in the test scores?

25 A. No, they score equally with our White students.

1 Q. Wait a minute. You said your Hispanics and your  
2 Blacks score on the test scores on an equal basis  
3 with the Whites?

4 A. That's correct.

5 Q. How do you do that?

6 A. I really don't know. It's just, I think, an interest  
7 of the students -- of the teachers, the community,  
8 the other students. And the parents work with us and  
9 it's...

10 Q. You try to work with the families of the --

11 A. We work with the families quite a bit. And I think  
12 it's the setting.

13 Q. Working with them like --

14 A. You don't have discipline problems. And as I said  
15 earlier -- keep mentioning that that's a big part of  
16 it. But it's the motivation and interest our  
17 teachers take as well as our parents.

18 Q. Now, Hallsburg -- what's the name of it, Hallsburg?

19 MR. RICHARDS: Hallsburg.

20 Q. Is next to you in your county. And it has been  
21 pointed out here, has a considerable more wealth per  
22 student than you do. Hallsburg has got \$760,000.00  
23 plus per student where you only have \$238,000.00.

24 Now, would you like to see this Court, say,  
25 just for nothing but tax purposes, so that you would

1           have more money, more property values, consolidate  
2           Hallsburg and Midway?

3   A.    No, sir.

4   Q.    Why wouldn't you? It would give you more money.

5   A.    You would lose more local control, too.

6   Q.    Is that important to your folks?

7   A.    It's extremely important to our people.

8   Q.    Now, if we would consolidate you with some larger  
9           area, at least for tax purposes, you might even still  
10          get more money. Would you want to do that?

11   A.    No, sir. We would not. Because again, you've lost  
12          local control.

13   Q.    Now, while it's been pointed out that you're about  
14          the second highest in teachers' salaries than anybody  
15          in McLennan County -- McLennan County, the entire  
16          county, is substantially below the teachers' salaries  
17          except maybe one school district of the state  
18          average. Are you aware of that?

19   A.    Yes.

20   Q.    And you're below the state average?

21   A.    Right.

22   Q.    And do you think that the extra \$400.00 that you pay  
23          a year more than Edinburg is the thing that does the  
24          trick that causes you to be able to get teachers when  
25          they can't?

1 A. No, sir. I don't.

2 Q. You don't think it's that much difference?

3 A. No, sir.

4 Q. Now. You mentioned that there could be some other  
5 things about getting your money's worth. Different  
6 communities set different standards is what they're  
7 willing to pay for on a local level, do they not?

8 A. They do.

9 Q. And if some community decides we want to turn out a  
10 bunch of actors?

11 A. (Witness nodded head to the affirmative.)

12 Q. I guess we could spend several hundred thousand  
13 dollars on a Hollywood-type auditorium, couldn't we?

14 A. That's right.

15 Q. Have you got one like that?

16 A. No, we don't.

17 Q. Now, if somebody wants it, and if that's what they  
18 wanted and are willing to spend their money for it,  
19 they might consider it getting their money's worth.  
20 But your people don't, right?

21 A. Depends on the community. Ours don't.

22 Q. Now as you pointed out, you don't know what Highland  
23 Park spends their money on?

24 A. I have no idea.

25 Q. But by the way, do you have any inside tennis courts

1           that you maintain in your district?

2       A.    No, sir, we do not.

3       Q.    That just happens not being one of the things that  
4           your people have decided to pay for locally?

5       A.    That's right.

6       Q.    And in regard to local effort, is that important to  
7           you in education, the effort your local people are  
8           willing to put in?

9       A.    It certainly is, because it shows that they have an  
10          interest in their school.

11      Q.    Look at your tax rate. Your people pay .684 cents  
12          per hundred and Edgewood only .563 per hundred.

13                Why do you think that your folks are willing to  
14          put out more local effort on taxes than other  
15          districts, perhaps including Edgewood?

16                   MR. KAUFFMAN: Your Honor, I guess I would  
17          object, calling for speculation. He said he didn't  
18          know what happens in Edgewood, what their totals are;  
19          what their problems are.

20      Q.    Why are your folks willing to put out --

21                   MR. E. LUNA: Excuse me, are you through?

22                   MR. KAUFFMAN: I don't have a ruling yet.

23                   THE COURT: I'll overrule. You can surmise  
24          if he's got any idea.

25      Q.    Why are your folks -- according to the evidence here,



1 Edgewood only puts out a .563 per hundred local  
2 effort. And your people are willing to put out .684.  
3 Why are your people willing to spend that much money  
4 on a tax rate instead of lowering it down to about  
5 what Edgewood is?

6 A. I would think that it shows that they have more  
7 interest in and concern for the education of their  
8 children.

9 Q. Now, we've mentioned football players. And that your  
10 school has had a well balanced athletic program, too.

11 A. Right.

12 Q. But now, while these days, it happens that buying  
13 football players may be in the news, the UIL has  
14 never accused your district for spending that  
15 \$2,600.00 for anything like that, have they?

16 A. No, sir.

17 Q. You've got a reasonable conservative-type program?

18 A. Yes, sir. We do.

19 Q. Would you like to see -- in our building program,  
20 you've got some buildings that are nearly 40 years  
21 old. Would you like to see this Court take away the  
22 right and responsibility of your local folks to build  
23 your own buildings. Have the state build you some  
24 shiny new buildings, would you like to see that?

25 A. No, sir. I would not.

1 Q. Why wouldn't you?

2 A. Well again, you've lost local -- local control and --

3 Q. And you've also, though, perhaps relieved your people  
4 of having to pay as much for it as they pay now. And  
5 you might get more money from the state. Some shiny  
6 new buildings, would you like to see that?

7 A. No, sir.

8 MR. E. LUNA: Pass the witness.

9 THE COURT: Well, let's stop for morning  
10 break. We'll get started again at 11:00.

11 (Morning recess)

12 MR. O'HANLON: May I approach the witness?

13 (Defendants' Exhibit No. 65 marked.)

14 RECROSS EXAMINATION

15 BY MR. O'HANLON:

16 Q. Mr. Dameron, I hand you now what has been marked as  
17 Defendants' Exhibit No. 65. That's -- would you take  
18 a look at that?

19 That's your accreditation report that Mr.  
20 Kauffman asked you to look at --

21 A. That's right.

22 Q. -- and identify previously?

23 A. That's true.

24 Q. And that's for your district?

25 A. Yes.

1 MR. O'HANLON: We would offer Defendants'  
2 Exhibit No. 65, Your Honor.

3 MR. KAUFFMAN: No objection, Your Honor.

4 MR. RICHARDS: No objection.

5 MR. O'HANLON: All right.

6 (Defendants' Exhibit No. 65 admitted.)

7 BY MR. O'HANLON:

8 Q. On Page 6 of that report, there's a comment section.  
9 Would you read comment No. 1, please, sir?

10 A. "The monitoring team commends the strong community  
11 support for the school district. The board of  
12 trustees and the community work harmoniously in  
13 producing an excellent learning environment for the  
14 district's students. The fact that standardized  
15 achievement scores are above national norms is an  
16 indicator of the harmony of effort among parents,  
17 trustees, administrators, and teachers."

18 Q. Does it take money to achieve that harmony that's  
19 involved in there or just leadership?

20 A. It doesn't take leader --

21 MR. RICHARDS: I think that's leading, Your  
22 Honor.

23 A. Yes. It does not take money.

24 Q. Okay. Did you have a chance over the break to check  
25 on electives and such?

1 A. Yes. Throughout a four year period, our students are  
2 allowed -- take seven electives, through the four  
3 years.

4 Q. That's total. And that's what mandates the state  
5 law?

6 A. Right.

7 Q. So all of the other course offerings that are  
8 required of students are set forth in this curriculum  
9 bill?

10 A. Right.

11 Q. Okay. And the choice of those seven, is it left up  
12 to the districts?

13 A. Yes.

14 Q. Okay. And then when you go about selecting them you  
15 go through the processes that we talked about earlier  
16 about surveying students?

17 A. Surveying students -- see what the need is. If the  
18 student happens to be having difficulties. Let's say  
19 the student going into engineering, we'll say A&M for  
20 example, was having problems as a freshman, we would  
21 try to go back and look and offer an elective that  
22 would be a type of honors course that would help that  
23 child if they wanted to take that elective.

24 Q. Okay. Just to summarize a little bit, your district  
25 offers four different foreign languages?

1 A. Yes. I believe so.

2 Q. Offers drama?

3 A. Yes.

4 Q. All right. Offers four years of mathematics?

5 A. Right.

6 Q. Offers honors courses?

7 A. Yes.

8 Q. All right. And you're able to offer four years of  
9 English?

10 A. Yes.

11 Q. Honors English?

12 A. Yes.

13 Q. You're able to do that with an expenditure level of  
14 \$2,600.00 per student?

15 A. Yes.

16 Q. All right. Have you noticed that you're losing all  
17 of your teachers because of the fact that you're not  
18 paying up to statewide average?

19 A. We have a very low turnover in teachers. The only  
20 teachers we lose usually are those whose spouse is  
21 transferred or through retirement.

22 Q. Why are you able, in your opinion, to keep the  
23 teaching staff in your district?

24 A. We think it's working conditions; the cooperation of  
25 parents; no discipline problems and the

1 administrators support the teachers.

2 Q. All right. Do factors other than salary play into  
3 decisions with respect to -- individual teacher's  
4 make where they go to work and whether they stay?

5 A. In our school district, it does.

6 MR. O'HANLON: No further questions.

7 CROSS EXAMINATION

8 BY MR. TURNER:

9 Q. Mr. Dameron, does your school district or to your  
10 knowledge, do school districts generally compete  
11 statewide for teachers?

12 A. No, we don't compete statewide for teachers at all.

13 Q. What would be the factors that Mr. O'Hanlon referred  
14 to that would result in a teacher seeking employment  
15 in the Midway district?

16 A. When a teacher seeks employment in our district,  
17 usually if someone has moved to town, maybe a Baylor  
18 student has graduated from college, some of them like  
19 to move in our area. It's a growing area, suburban  
20 area, more of an openness. They like to live in that  
21 area. And for that reason, we believe that they  
22 enjoy teaching in our system, plus the conditions of  
23 the school. Is that what you were --

24 Q. Yes, sir. Mr. Dameron, I believe you just told us  
25 that when a high school student passes through the

1 four years of high school, they only have the  
2 opportunity to take seven electives. And look at  
3 that chart, I believe that worked out to one elective  
4 in the freshman year, one elective in the sophomore  
5 year and I suppose maybe two in the junior year and  
6 three in the senior year?

7 A. That's right.

8 Q. And of those seven opportunities that a student has  
9 for an elective choice, approximately how many  
10 courses do they have to choose among in your district  
11 to --

12 A. In our high school?

13 Q. Yes.

14 A. I believe we offer 53 different courses in high  
15 school. I would not swear to that, but the last  
16 account -- now, that's everything.

17 Q. All courses?

18 A. That's all courses. That's mandated by state as well  
19 as our electives. I think there are 53 different  
20 courses.

21 Q. So, a student going through high school takes five  
22 courses every year plus P.E.?

23 A. Right.

24 Q. So a student takes 20 courses out of 53 that are  
25 offered?

1 A. Right.

2 Q. And when they take let's say English in junior -- at  
3 the junior level, could they be in a regular --  
4 rather than a regular English, required English  
5 section, be in Honors English section?

6 A. They could be in an Honors English section.

7 Q. Some of these 53 that you mentioned are the required  
8 state mandated courses?

9 A. (Witness nodded head to the affirmative.)

10 Q. Others are alternatives to the state mandated  
11 required courses, in that they're honors programs?

12 A. They're honors, right.

13 Q. Then whatever is left is a pool from which they can  
14 select those seven opportunities?

15 A. Yes.

16 Q. Based on your expenditure level and your course  
17 offerings, do you believe that you're able to provide  
18 the students that graduate from your district with  
19 the kind of exposure to various alternatives that  
20 were referred to a moment ago in the cross  
21 examination of you with regard to life opportunities  
22 and exposure to those things?

23 A. Yes.

24 Q. When a school district goes through the process of  
25 determining what types of electives it should offer,



1           what are the things that, as a practical matter, come  
2           into consideration when you make those choices?

3   A.   How much it will benefit the student, what they gain  
4           from it. You know, if they're college-bound  
5           students, you know, we look at that. If someone went  
6           to vocational school, we try to look at it from that  
7           standpoint.

8   Q.   And those are the factors that you referred to  
9           earlier that would vary from community to community?

10   A.   That's right.

11   Q.   Aside from those factors that we might call community  
12           preference, what are the administrative  
13           considerations that you, as an administrator would  
14           make -- let's say the community wanted this course,  
15           what kind of administrative issues would you look at  
16           as to whether or not it was administratively  
17           reasonable to offer a course?

18   A.   First of all, we would have to look and see the  
19           demand for the course; and then the availability of a  
20           teacher; and then if there would be any cost to that.

21   Q.   And I believe you stated earlier that many times  
22           electives can be added at no cost?

23   A.   That's right. If another area, you drop something,  
24           another course.

25   Q.   And is it quite common at the high school level to

1           have teachers who would teach more than one subject  
2           area?

3       A.    In some cases, it is.  Especially -- we probably  
4           don't have as much of it now as we did, but it is  
5           quite common for them to teach in two, such as an  
6           English I or English II or a Latin I and something  
7           else.  It's common for them to go into different  
8           areas, subject matters.

9       Q.    We've had a lot of testimony in this trial, Mr.  
10           Dameron, about comparisons of property wealth per  
11           student from one district to another.  How important  
12           is that issue to you as a school administrator?

13      A.    Well, I don't think you can compare price.  It's not  
14           all that important to me.

15                       MR. TURNER:  I'll pass the witness.

16                       MR. RICHARDS:  Are you all through over  
17           there?

18                       MR. TURNER:  Yes, sir.

19                               RE CROSS EXAMINATION

20       BY MR. RICHARDS:

21      Q.    Mr. Dameron, Mr. Luna asked you about Hallsburg.  If  
22           I look at Bench Marks, which is in evidence here, it  
23           appears to me Hallsburg doesn't even offer 12 grades,  
24           are you aware of that?

25      A.    Yes, sir, I am.  I believe they're high school and

1           junior high, I believe they go to Pharr or maybe to  
2           Axtell. I'm not sure, I believe Pharr.

3   Q.    They send their junior high and high school students  
4           somewhere else?

5   A.    I believe so.

6   Q.    Do you have any idea why they've got so much wealth  
7           in that district?

8   A.    Yes, sir. Texas Power & Light has a plant there.

9   Q.    Now, you said you didn't think property wealth really  
10          didn't make -- for your district, didn't make much  
11          difference to you, is that right? I believe that's  
12          what you said.

13   A.    Well, that's what I said.

14   Q.    I think that's what Mr. Turner got you to say.

15   A.    That's what I said.

16   Q.    I think that's what he got you to say. Do you want  
17          to change that or do you want to stay with that?

18   A.    I'll stay with it.

19   Q.    Okay. Are you familiar with the La Vega school  
20          district?

21   A.    Yes, sir.

22   Q.    Do you think if you were the superintendent of the La  
23          Vega school district, there in McLennan County, that  
24          the property wealth of that district might make a  
25          difference to you?

1 A. Yes.

2 Q. You think he might be hurting out there a little bit?

3 A. Yes.

4 Q. Are you aware, are you not, that his tax rate, while  
5 yours is 68 cents, that his out in La Vega is 90  
6 cents?

7 A. I'm aware.

8 Q. Do you know why it's that rate; why it's so high?

9 A. Just because of his tax base.

10 Q. Just doesn't have any tax base. And he's also got  
11 same kind of problems anybody has got trying to run a  
12 suburban school district, doesn't he?

13 A. That's true.

14 Q. He's got a heavy Black population from spillover from  
15 east Waco, right, is that correct?

16 A. Right.

17 Q. So, if you were just deciding whose shoes you wanted  
18 to be in, would you rather be in yours or over there  
19 trying to run that La Vega district on that low tax  
20 base?

21 A. Well, again, it would depend on the working  
22 conditions in that area. I would have to study it  
23 before I would know if I wanted to be at La Vega or  
24 Midway.

25 Q. You haven't studied it?

1 A. No.

2 Q. But you do know enough about it that he's got to have  
3 a 90 cent tax rate out there?

4 A. I do know that.

5 Q. That's because he doesn't have any property value in  
6 the district?

7 A. That's right.

8 Q. Now, I'm going to ask you another question. I'm  
9 going to walk into maybe one here. I'm going to ask  
10 you about your lunch program.

11 When you say you contract it out, what does  
12 that really mean? That's a new thing to me. I've  
13 never run into that before.

14 A. Well, different food service organizations can bid on  
15 your lunchroom.

16 Q. Okay.

17 A. They take it over or they hire the employees and the  
18 insurance and we have nothing to do with it,  
19 whatsoever.

20 Q. Is there any cost to you with respect to that  
21 program?

22 A. The only thing, we pick up the free lunches.

23 Q. Yeah.

24 A. We pay for the free lunches as I mentioned earlier.

25 Q. That was, what, you said somewhere around...

1 A. Between \$7,000.00 and \$10,000.00.

2 Q. Annually. Well, I don't understand, do they pay the  
3 district to run it or do they just take it over and  
4 run it?

5 A. They take it over and run it. A lunchroom program is  
6 not supposed to make money, anyway; you're only  
7 supposed to break even.

8 Q. Uh-huh.

9 A. As long as they break even, and their lunch prices  
10 are not too high, they do a good job, it eliminates  
11 all of that worry for us.

12 Q. I understand that. Are you aware that, for example,  
13 in a district such as La Vega that runs its own  
14 program, that their annual cost per ADA, as reflected  
15 in the expenditures, is approximately \$200.00 per ADA  
16 for their lunch program. Would that come as a  
17 surprise to you?

18 A. No.

19 Q. Okay. So to the extent that you don't run a lunch  
20 program, it's at least -- your expenditures per ADA  
21 are understated by some figure, you would agree with  
22 that?

23 A. Our what now?

24 Q. Well, you've been -- Mr. O'Hanlon spent a lot of time  
25 talking about you just spend \$2,600.00 per ADA,

1 right? Well that's what you've been testifying.

2 A. Right.

3 Q. Now, that \$2,600.00 doesn't include any expenditures  
4 for a lunch program, right?

5 A. Yes, it's all --

6 Q. You don't have any lunch program expenditures?

7 A. No.

8 Q. Okay. You don't have any?

9 A. We don't have any.

10 Q. Districts that do have a lunch program, they've got  
11 lunch program expenditures, is that right?

12 A. I would suppose.

13 Q. Okay.

14 A. I don't know.

15 Q. So to the extent that you don't run a lunch program,  
16 your expenditures per ADA are understated as compared  
17 to districts such as La Vega that's got to run a  
18 lunch program?

19 A. No, I don't believe so.

20 Q. You don't believe so?

21 A. No, I don't think that would be true.

22 MR. RICHARDS: Okay. Pass the witness.

23 RECROSS EXAMINATION

24 BY MR. KAUFFMAN:

25 Q. Mr. Dameron, you were talking a little bit about the

1 test scores of your Hispanics and Blacks and Whites  
2 in the district. Do you recall that testimony?

3 A. Blacks and Whites?

4 Q. Yeah.

5 A. Right.

6 Q. And Mexican-Americans?

7 A. Right.

8 Q. I think you testified early on you had about three  
9 percent Hispanics in your district, is that right?

10 A. It varies from year to year.

11 Q. Is it around --

12 A. On the average it will be about three percent, in  
13 this case three percent.

14 Q. You have about 3,700 students in your district?

15 A. Yes.

16 Q. So, if my math is right, if you have three percent of  
17 3,700 students, you've got, I guess, about 110  
18 Hispanics students in the whole district, is that  
19 right?

20 A. I would believe so.

21 Q. That would average out to about ten per year in each  
22 grade?

23 A. I guess.

24 Q. Average?

25 A. Right.



1 Q. If it follows the normal pattern, you're probably  
2 going to have even more Hispanics in the lower grades  
3 and fewer in the higher grades, aren't you?

4 A. No, it doesn't work that way. At one time, we had  
5 more in the ninth grade than anywhere for some  
6 reason.

7 Q. So if you had more than that; you might have eleven  
8 instead of ten or something?

9 A. Yes.

10 Q. So whenever you're talking about test scores, you're  
11 basing that on about ten Mexican-Americans,  
12 Hispanics, in each one of the grades, is that right?

13 A. Right.

14 Q. Is that correct?

15 A. Right.

16 Q. Same thing for Blacks, you have about ten Blacks in  
17 each one of your grades, K through twelfth?

18 A. I would think so.

19 Q. Is that --

20 A. I don't know what grades they're in.

21 Q. Okay. But again, you have about three percent  
22 Blacks, and there's 3,700 kids --

23 A. Yes.

24 Q. And you have about 110 Blacks, so that's about ten  
25 per grade, is that right?

1 A. Right.

2 Q. Is that correct?

3 A. Right.

4 Q. You don't offer bilingual education program, do you?

5 A. No.

6 Q. Okay. So you're certainly not aware of whatever  
7 costs are associated with offering a bilingual versus  
8 not offering a bilingual education program?

9 A. I was aware of it. One time I looked at it, but I  
10 don't know what it was.

11 Q. But you don't have one now that you can base any  
12 testimony on, do you?

13 A. No. Cost of bilingual would be the cost of your  
14 teacher plus other things.

15 Q. Okay. You talked about -- a little bit about not  
16 wanting to get bigger because you might lose some  
17 local control, is that right?

18 A. No, I didn't say anything about getting bigger.

19 Q. What was it you said about consolidating?

20 A. I said if you consolidated with someone, it's  
21 possible that you'd lose local control. If you  
22 consolidated with somebody across town -- we need  
23 buildings, those people -- I'm saying you've lost  
24 control.

25 Q. Okay. That local control, that the people in the

1 community can get to the school board members and get  
2 to the district better and all of that stuff?

3 A. Correct.

4 Q. Has your district considered breaking into two  
5 districts so the people in the district could have  
6 even more local control, more close association with  
7 their school board members or administration?

8 A. It's never been presented to our board about breaking  
9 it into two districts.

10 Q. Okay. I think you talked a little bit about your  
11 district having a tax rate that was, oh, I think 12  
12 cents higher than Edgewood's true tax rate. That  
13 might show that your parents have more concern, might  
14 have more concern for their kids than the parents in  
15 Edgewood, is that right?

16 A. No, I'm not saying that, necessarily.

17 Q. All right.

18 A. I said that it shows that they have an interest, that  
19 our parents have an interest in their schools if  
20 they're willing to pay that.

21 Q. Okay.

22 A. I didn't really mean they had any more concern than  
23 Edgewood. What I'm saying is it shows that our  
24 people have an interest if they're willing to do  
25 that.

1 Q. So, you did not mean at all to say that the fact that  
2 your tax rate is higher than Edgewood means that the  
3 parents in your district have more concern for their  
4 kids than the parents in Edgewood have for their  
5 kids, did you?

6 A. I just said that our people were concerned.

7 Q. So you did not mean to make any comparisons at all,  
8 is that what you're saying?

9 A. I don't believe I said that they weren't concerned  
10 with theirs. I may have said it shows that maybe  
11 they are more concerned. I don't remember what I  
12 said.

13 Q. Okay.

14 A. What I'm saying now is, that it shows that our people  
15 have an interest.

16 Q. What you're saying now, and as Mr. Richards says,  
17 what you're going to stick with, is your tax rate  
18 shows your taxpayers have an interest in your  
19 students in their district. That you're not making  
20 any comparisons that your parents in your district  
21 have more interest in their kids than parents in some  
22 other districts have for theirs?

23 A. No, I haven't studied the situation there, so I  
24 wouldn't know how interested the parents in Edgewood  
25 are.

1 Q. Or any other district?

2 A. Or any other district. I just know what we are.  
3 It's ours I'm concerned about.

4 Q. Sure. I think you said that you offer 53 courses in  
5 the high school?

6 A. I'm not -- give or take.

7 Q. Give or take a few?

8 A. Uh-huh.

9 Q. And you have about 3,700 students?

10 A. About 3,700.

11 Q. Okay.

12 A. Please don't hold me to that 53, because I should not  
13 have mentioned that, because last count that's what I  
14 had. It could be more or less.

15 Q. Okay.

16 A. Somewhere in that area.

17 Q. 50 to 55?

18 A. Somewhere in that area.

19 Q. Is that your best understanding?

20 A. I think.

21 Q. Okay. Would it surprise you to hear that -- first  
22 let me ask you, do you know that Highland Park has  
23 about 4,000 students, about the same number you have?

24 A. Yes, yes. They're five and we're four.

25 Q. They're about the same size of a district as yours?

1 A. Yes.

2 Q. Would it surprise you that they had 93 courses in  
3 high school and you had between 50 and 55?

4 A. I just never have studied the situation. I really  
5 don't know.

6 Q. Okay.

7 A. And I may be -- again, please don't hold me to that  
8 53. I just -- that came off the top of my head.

9 Q. Mr. Dameron, you're testifying in court here. We  
10 need to be able to hold you to these things.

11 A. I know what you're saying.

12 Q. Yeah.

13 A. I understand that, but maybe I'd better retract that,  
14 if possible, that 53 because I can't remember  
15 exactly.

16 Q. Your best estimate is a range of 50 to 55?

17 A. Yes, yes. I want to be honest with you about it,  
18 that's why I kept --

19 Q. I understand. So if my understanding is correct, if  
20 Highland Park ISD -- and we can produce their  
21 curriculum --

22 A. Uh-huh.

23 Q. If they have 93 courses and you have, let's say 55,  
24 they're offering 70, 80 percent more courses than you  
25 are for about the same number of kids, is that right?

1 A. Uh-huh.

2 Q. That is correct?

3 A. Right, correct.

4 MR. KAUFFMAN: We pass the witness, Your  
5 Honor.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. E. LUNA:

8 Q. One more question. He mentioned about who had more  
9 interest in their kids. You never did testify about  
10 who had more interest in their kids, did you?

11 A. I didn't mean to, if I did.

12 Q. I think what you did say, was that your folks put out  
13 more -- that Midway was willing to put out more local  
14 tax effort. That's what you said, wasn't it?

15 A. Yes.

16 MR. KAUFFMAN: I object to the question  
17 Your Honor, as leading. Excuse me.

18 MR. E. LUNA: Pass the witness.

19 MR. KAUFFMAN: I object to the question and  
20 ask that it be struck from the record.

21 THE COURT: It's an obvious answer. I'll  
22 overrule. What's next?

23 FURTHER RECROSS EXAMINATION

24 BY MR. O'HANLON:

25 Q. Mr. Dameron, regardless of whether or not they've got

1           50 courses or 93, students are still only able to  
2           take seven electives, is that correct?

3       A.    That's exactly right.

4                   MR. O'HANLON:  No further questions.

5                   MR. KAUFFMAN:  I do have one more then, to  
6           follow up.

7                               FURTHER RECROSS EXAMINATION

8       BY MR. KAUFFMAN:

9       Q.    Would you assume, Mr. Dameron, that if I told you  
10           that the parents of Wilmer-Hutchins pay \$1.14 true  
11           tax rate, and the parents of North Forest pay \$1.12,  
12           and the parents in San Elizario pay \$1.08 in '85-'86  
13           and each of those have gone up in '86, '87 -- that  
14           those parents certainly have a lot of interest in  
15           their kids?

16      A.    I would say that they do.  They're showing local tax  
17           effort.

18                   MR. KAUFFMAN:  Pass the witness, Your  
19           Honor.

20                   MR. E. LUNA:  That's all.

21                               RECROSS EXAMINATION

22      BY MR. TURNER:

23      Q.    Mr. Dameron, I have one question.

24                   MR. RICHARDS:  You know it's a trick.

25      Q.    If we were to assume, we don't know, but if we were



1 to assume that Highland Park offers 92 courses and  
2 you offer around 50, would it be your opinion as an  
3 educator, that the offering of 90 courses as compared  
4 to 50, would provide your students with a better  
5 educational opportunity, better preparation for life,  
6 better preparation for entry into college, than what  
7 you're providing for at Midway?

8 A. No.

9 MR. TURNER: I'll pass the witness.

10 EXAMINATION

11 BY THE COURT:

12 Q. Sir, do you attribute part of your success and your  
13 highest scores to the fact that you have parents who  
14 are interested in the education and who give their  
15 children reenforcement at home and motivation to go  
16 to school?

17 A. Yes, Your Honor.

18 Q. Okay. What if you were in a school district where  
19 you had parents who did not do that? What would you,  
20 as a superintendent, want for your schools?

21 A. Well, I would do my best to get the parents to come  
22 in.

23 Q. How would you do that?

24 A. We would go with the PTA, if possible. And if not,  
25 with our teachers to try to get those parents into

1 the classroom about their own child and try to get  
2 organized. And that's what we've done in the past,  
3 and go from that point. It has to come from the  
4 teacher, the parent -- I mean her student and then  
5 the parent and then you go from there. And that's  
6 the way we've worked.

7 Q. Suppose in your school district you had 10,000  
8 minority students, is that the approach you would  
9 still take?

10 A. Yes, sir.

11 Q. Okay.

12 THE COURT: You may step down. Thank you.

13 (Witness excused.)

14 MR. E. LUNA: Call Dr. Dan Long, Your  
15 Honor.

16 DR. DAN LONG

17 was called as a witness, and after having been first duly  
18 sworn, testified as follows, to-wit:

19 DIRECT EXAMINATION

20 BY MR. E. LUNA:

21 Q. What is your name, please, sir?

22 A. Dan F. Long.

23 Q. Where are you employed and in what capacity?

24 A. I'm employed by the Carrollton-Farmers Branch  
25 Independent School District. I am superintendent of

1           that district.

2       Q.    Would you give us the benefit of your academic  
3           background beginning with where you finished high  
4           school?

5       A.    I went to Lorena High School which is in McLennan  
6           County, which --

7                   MR. RICHARDS:  Uh-oh, my Lord another one.

8       A.    Which by the way, as I understand it, is the lowest  
9           cost school district in the State of Texas at the  
10          current time.

11      Q.    By the way, were you able to pass when you went to  
12          college by coming from Lorena?

13      A.    Yes, sir, I was.

14      Q.    All right.  After you graduated from Lorena, where  
15          did you go to college?

16      A.    I went to Baylor University with a B.A. degree,  
17          Master's degree.

18      Q.    Let's talk about what year you graduated from Lorena?

19      A.    1946.

20      Q.    1946.  By the way, by the time you graduated, did  
21          Lorena even have inside plumbing?

22                   MR. RICHARDS:  I don't think they've got it  
23          today.

24      A.    Mr. Luna, at that time, they did have inside  
25          plumbing.  However, the schools that I attended

1           previously did not have inside plumbing and we had a  
2           convenience spot down the path with no running water.  
3           And attended a school that had no electricity, as  
4           well.

5       Q.   All right. Now, after you went to Baylor, with all  
6           of those problems, did you graduate?

7       A.   Yes, sir, I did.

8       Q.   All right. When did you graduate from Baylor?

9       A.   1950.

10      Q.   1950. Then what did you do after you graduated from  
11           Baylor?

12      A.   I began teaching at Midway.

13      Q.   At Midway?

14      A.   Yes, sir.

15      Q.   All right. Is that the same Midway we've been  
16           talking about here?

17      A.   It is, sir.

18      Q.   Was that your very first experience of teaching  
19           school at Midway?

20      A.   It was.

21      Q.   And how long did you teach at Midway?

22      A.   I taught there one year and went into the Air Force.

23      Q.   What did you teach?

24      A.   I taught the seventh grade.

25      Q.   Dr. Long, then you stayed in the service for some

1 period of years, didn't you?

2 A. Four years.

3 Q. And when you came out of the service, what did you  
4 then do?

5 A. I taught at Connally Junior High School in the Waco  
6 area.

7 Q. And then how long did you teach at Connally?

8 A. I taught a year and a half.

9 Q. What did you then do?

10 A. I went to Waco and taught in junior high school in  
11 the Waco Independent School District.

12 Q. Now, while you were teaching in these areas, were you  
13 also going to school?

14 A. Yes, sir, I was.

15 Q. Where were you going to school?

16 A. At Baylor.

17 Q. And then did you continue -- did you get another  
18 degree from Baylor, by the way?

19 A. Yes, I did. A Master's degree.

20 Q. A Master's degree?

21 A. Yes, sir.

22 Q. What was your Master's in?

23 A. In education.

24 Q. What year did you get it?

25 A. '57. 1957.

1 Q. Did you continue to teach in the Waco area all  
2 through the Master's program?

3 A. Yes, sir, I did.

4 Q. Then after you finished your Master's program, where  
5 did you then go?

6 A. I was in industry for four years. I was with NCR as  
7 a systems and accounting machine sales person with  
8 them, in data processing.

9 Q. Did you go to school any after that?

10 A. Not while I was in industry. I went back to teaching  
11 school. I began teaching school, elementary school  
12 in California. And I began going to school again or  
13 I continued my education then.

14 Q. Did you get another degree?

15 A. Yes, sir. I received a fellowship to the University  
16 of Texas in Austin and did some work here and went  
17 back into the public schools. I was principal here  
18 in Austin and continued my work; finished a Ph.D in  
19 educational administration with a supporting field in  
20 government in 1970. I was a principal at that time.  
21 Later went to Dumas as a --

22 Q. Principal where?

23 A. Principal here in Austin.

24 Q. Here in Austin Independent School District?

25 A. Yes, sir. Margaret Riley Elementary School across

1 from the -- presently, the administration building.

2 Q. All right. And then you went where from Austin?

3 A. I had an invitation to go to Dumas as Director of  
4 Curriculum.

5 Q. Is that out in West Texas?

6 A. Yes, sir, in the Panhandle.

7 Q. And how long did you stay in Dumas?

8 A. I was there a year and Brother Reagan offered me an  
9 opportunity to come to North East Independent School  
10 District as his assistant superintendent for  
11 instruction.

12 Q. How long were you there?

13 A. I was there four years.

14 Q. And where did you then go?

15 A. I had an opportunity to come back to Austin as the  
16 assistant superintendent for Human Resources and I  
17 was here three years.

18 Q. And then where did you go from Austin?

19 A. I became superintendent of Pampa in the Panhandle. I  
20 was there two years.

21 Q. And where did you go from Pampa?

22 A. To Carrollton-Farmers Branch.

23 Q. And what year was that, Dr. Long?

24 A. 1976.

25 Q. 1976. Dr. Long, in the Carrollton-Farmers Branch

1 school district, would you tell His Honor of what  
2 it's made up -- of what it consists of in the way of  
3 municipalities, for example?

4 A. It's 54 square miles made up of six municipalities.  
5 We serve all of no one of those six. We have  
6 portions of Dallas, Addison, Carrollton, Farmers  
7 Branch, Coppell and Irving, in our district. But we  
8 do not serve all of any one of those cities. It's  
9 about -- I believe I said 54 -- approximately 54  
10 square miles.

11 Q. Dr. Long, we have talked here in this case about some  
12 of the school districts having a considerable amount  
13 of property wealth. And I believe yours is one that  
14 has been mentioned in that category as having about  
15 \$542,000.00 plus per ADA as of the 1985 market value  
16 and .609 tax rate. Does that sound about right?

17 A. Yes, sir, it does.

18 Q. Does that mean you've got a bunch of rich folks that  
19 live in your district?

20 A. No, sir, it does not. We have seen our community  
21 change principally, since I've had the privilege of  
22 working there, from a low tax value district to one  
23 that certainly is rather high tax value-wise; and  
24 that's because of the development in the area.

25 Our community, though, is made up of a lower



1           socioeconomic and lower-middle and some middle class.  
2           We have no upper class or wealthy districts. The  
3           people who manage many of our operations live in  
4           surrounding districts such as Plano, Richardson and  
5           Highland Park.

6       Q.   Now, there's an area called Las Colinas that's in  
7           your district, is there not, part of it?

8       A.   Yes, sir, it is.

9       Q.   And Las Colinas, when just a few years ago, was a  
10          Brahma cattle ranch, wasn't it?

11      A.   Yes, sir.

12      Q.   But now that Las Colinas has office buildings and  
13          hotels and all kind of commercial buildings, does it  
14          not?

15      A.   Yes, sir, it does.

16      Q.   But the people that own all of those buildings, do  
17          they live in your school district?

18      A.   No, sir, they do not.

19      Q.   They're investors from all over?

20      A.   Yes, sir.

21      Q.   Now, Dr. Long, with respect to the ratio makeup of  
22          your school district, do you have any minorities in  
23          your district?

24      A.   Yes, sir. We now have 25 percent minorities and  
25          we're growing at the rate of two percent per year.

1 Q. 25 percent minorities?

2 A. Yes, sir.

3 Q. On the board here, it is in evidence that  
4 Carrollton-Farmers Branch spends \$3,711.00 per  
5 student, is that right?

6 A. Yes, sir.

7 Q. And Edgewood only \$3,600.00?

8 A. Yes, sir.

9 Q. Now, as a result of that spending another \$111.00 per  
10 student, you get twice as much results in math; and  
11 in reading, you get more than twice as much; and  
12 almost twice as much in writing, is that right,  
13 insofar as test results are concerned for that year?

14 A. I think your comparison of the test results would be  
15 accurate.

16 Q. Now, as much property value as you have in your  
17 district, why don't you spend more?

18 A. Well, a combination of factors. One, the fact that  
19 the state has reduced its funding to our district by  
20 millions and millions of dollars over the last few  
21 years is one thing, and we've had major tax raises in  
22 order to continue to offer the program we have in the  
23 past.

24 As a result of House Bill 72, we will soon be a  
25 budget-balanced school district, receiving no money

1 from the state under the foundation school program;  
2 only receiving that money that's guaranteed to us by  
3 the Constitution. Money has flowed -- money that  
4 once flowed to our districts is now going to -- those  
5 millions of dollars are going to other districts in  
6 the state. And our local taxpayers have been willing  
7 -- although we did face a threat of rollback election  
8 this last year and a petition was begun, we have  
9 increased local taxes in order to make up the  
10 difference.

11 We feel that right now, we're in a good  
12 position with \$3,711.00 to offer a program that's  
13 comparable to those in North Texas and provide the  
14 type of program that our community wants and demands.

15 Q. Now wait a minute. With all of the wealth in that  
16 district, over \$500,000.00 per ADA, are you telling  
17 the Court that you had an attempt at a rollback  
18 election?

19 A. Yes, we did.

20 Q. And when was that?

21 A. This last year. This last fall.

22 Q. This last fall?

23 A. Yes, sir.

24 Q. So then you -- in your locality, you have some  
25 limitations on what your taxpayers are willing to

1           pay. Is that what you are telling us?

2       A.    They have told us they do not intend for us to  
3           increase beyond the eight percent next year or we  
4           will have a rollback election.

5       Q.    Now, within those limitations, have you been able to  
6           meet the requirements of House Bill 346?

7       A.    House Bill 246.

8       Q.    246, excuse me.

9       A.    Mr. Luna, yes, we have been able to meet those. We  
10          think we meet the requirements of the state.

11      Q.    Do you know offhand how many courses you offer?

12      A.    No, I do not. But I would say that we have greatly  
13          reduced the number of courses that we offered from  
14          where we were five years ago. I think the direction  
15          of public education, certainly education in the State  
16          of Texas, has gone toward fewer courses. And those  
17          courses are, using a term that we in education use a  
18          lot, and I think communicates, core subjects. We do  
19          not offer the variety that we once did. We went down  
20          that road -- several years ago, we were offering a  
21          great variety of courses. I do not think that was a  
22          wise move on our part. And we have come back to  
23          fewer courses and we have reduced the emphasis from  
24          the variety of courses to the quality of courses.  
25          And I think we're serving our youngsters much better

1           than we did a few years ago.

2       Q.   Now, with the problems that you have with the threat  
3           of rollbacks on spending more money, would you tell  
4           us whether or not you would like to see that problem  
5           resolved by the Court making some sort of  
6           requirements that we have a level tax rate across the  
7           State of Texas so that you wouldn't have to worry  
8           about those local folks voting on you?

9       A.   No, sir, I would not.

10      Q.   Why? You would get more money, maybe.

11      A.   Well, I do not believe that the organization the size  
12           of the State of Texas is in a position to tell every  
13           community what they need to do as far as education.  
14           Communities have the latitude at this particular time  
15           to offer a basic program that's set out by the state.  
16           I hate to see the state involve itself any more in  
17           education at the local level than it already has. I  
18           think it's disfunctional.

19                People no longer believe that its their  
20           education, they tend to walk away from it, see it as  
21           a large impenetrable bureaucracy that is insensitive  
22           to their needs.

23                One of the elements of pure democracy, I think  
24           that's left -- but -- not democracy -- representative  
25           of Republican form of government, is that at the

1 school district level where people can remain in  
2 touch with their elected representatives, make their  
3 wishes known, make their desires felt. And to lose  
4 that would be I think a travesty in this state.

5 Q. Wouldn't you gain more if we had something that would  
6 give you more money -- you didn't have to worry about  
7 the local money -- wouldn't that money be able -- if  
8 you had that money, could you solve some problems?

9 A. Well, as a young man coming out of poverty, I thought  
10 if you had enough money you could solve any kind of  
11 problem. As a young educator, I used to believe in  
12 just what you're saying. My years of experience have  
13 indicated to me that that is not a solution to the  
14 problem of education in the country. You cannot  
15 solve it just with dollars. And increased  
16 bureaucracy, which accompanies larger geographic  
17 areas when they're combined, is a detriment.

18 I think all you have to do is take a look at  
19 the large organizations in this country and look at  
20 what research tells about their effectiveness. And  
21 it says that the large organizations simply aren't as  
22 responsive to the local citizen as a smaller  
23 organization is.

24 No, I would not like to see it larger. And no,  
25 I think that \$3,711.00 -- I am not saying we are not

1           fortunate to have that, we are. We offer a good  
2           program. We serve a variety of students in a  
3           puristic community. And no, I wouldn't -- I wouldn't  
4           want to see a change.

5       Q.   Dr. Long, how do you compensate for -- or how do you  
6           account for the high test scores that you have. What  
7           do you do in your school district to, with 25 percent  
8           minorities, to be able to produce the kind of test  
9           scores that you do?

10      A.   Well first, Mr. Luna, I would say that from my  
11           experiences in this trial and listening to the  
12           testimony, one of the things we're going back to do  
13           is an increased determination to raise those tests  
14           scores.

15                   I see the performance of other districts that  
16           makes me want to set our goals even higher. We are  
17           relatively pleased with where we are.

18      Q.   But how do you go about it? What do you do?

19      A.   We do several things. One, we make a commitment  
20           beginning with the board and superintendent, that  
21           children are going to learn and that children can  
22           learn. And we work very hard in that community to  
23           organize the resources that are available to us. And  
24           then we concentrate on reading, writing and  
25           arithmetic and say that these are the very basis for

1 all of education. And we involve parents. We --  
2 it's a responsibility of the teachers --

3 Q. You involve parents?

4 A. Right.

5 Q. What do they have to do with it?

6 A. Well, we, based upon our studies and based upon our  
7 review of research and based upon personal  
8 experiences that goes back to, once again, the fall  
9 of 1950 -- if parents are not committed to the  
10 education of their children, no matter how much money  
11 or effort we make, we cannot overcome that.

12 As we heard testimony yesterday, you see the  
13 public schools only have the children for a small  
14 percent of their childhood. It may appear that we  
15 have them a long time, but the actual time we have is  
16 limited.

17 If there is not a partnership between the home  
18 and the school, good education is not possible.

19 Q. Do you have any homework?

20 A. Yes, we do.

21 Q. Is that important?

22 A. It is important.

23 Q. Dr. Long, suppose you have parents -- and you've told  
24 us your minority population is growing -- it has been  
25 at the rate of two percent a year. As those new



1 people, including the new minority people, come in  
2 and if the parents don't have any particular interest  
3 in the school, how do you go about contacting them  
4 and getting them interested in school?

5 A. I think there are several things, and let me say I  
6 think they've done a pretty good job.

7 Our dropout rate among Hispanic surname  
8 youngsters is lower than it is among the Whites. I  
9 was not acquainted with that until last week and our  
10 staff members are doing some research and I told them  
11 I'm very proud of them.

12 One of the things you do is you let these  
13 people know that they're important; that they have  
14 dignity; that they have worth in the school; and we  
15 really love and care about their kids. And we make  
16 an intense effort to do that.

17 I believe if you would come to our community,  
18 you would find our minority members of that community  
19 and our minority students would say that they are  
20 first class citizens; that they are respected; that  
21 we really care; that we reach out to them; that we  
22 make a genuine effort.

23 We don't just go through the motions of saying  
24 that these kids have some special needs, we want to  
25 work with them. We're really attempting to do that.

1       Are we perfect? No, we're not. But it's a very high  
2       priority with us. And as a result, I think our  
3       youngsters are showing that, one, in the  
4       Carrollton-Farmers Branch school district, they can  
5       and they do learn.

6       Q. Dr. Long, in connection with your school district and  
7       recognizing students -- when students are involved in  
8       academic contests of one type or another, whether  
9       it's academic decathlon, or something else -- and  
10      when and if your students win -- tell the Court, with  
11      respect to recognition in public, how you handle that  
12      at board meetings?

13     A. Well, we bring them in. We invite their families in.  
14     They are asked to -- if possible, we present the  
15     awards. They are recognized as students. But their  
16     parents are recognized. We ask them to be there and  
17     they, too, are recognized by the board and by the  
18     community.

19               We make a special effort to get this  
20     information in the newspaper. And work very hard at  
21     letting our public know that all youngsters can  
22     compete and all youngsters can be successful.

23     Q. And does that seem to have an affirmative effect on  
24     the parents as well as the kids?

25     A. Yes, it does.

1 Q. Do you take time out at the school board meetings  
2 every time you have one to recognize, whoever has  
3 won, do you not?

4 A. Yes, sir, we do.

5 Q. Dr. Long, with respect to the discipline program in  
6 your school with 25 percent minorities, are you able  
7 to handle your discipline program?

8 A. Yes, sir. We feel that children have a safe and  
9 comfortable climate; that staff members have a safe  
10 and comfortable climate; and the business of school  
11 is carried on in a matter where decorum is recognized  
12 and appreciated.

13 MR. E. LUNA: Pass the witness.

14 CROSS EXAMINATION

15 BY MR. TURNER:

16 Q. Dr. Long, with regard to the discipline program that  
17 you have in your school, what kind of things do you  
18 do to promote good conduct and good discipline order  
19 among students?

20 A. Several things that go together. One, we stay in  
21 contact with parents and we let parents know -- if  
22 their children aren't there, a parent gets a call  
23 immediately. I say immediately -- that day, they get  
24 a contact if the youngster is not there. One, we  
25 keep kids in school.

1           No. 2 -- as a follow-up on that, I just can't  
2 emphasis enough working with parents.

3           Another thing is that when teachers come  
4 prepared to teach, the day is filled with interested  
5 and provocative learning activities. Youngsters  
6 don't spend their time getting into trouble.

7           I found that when I was in the classroom, the  
8 days that I had trouble were the days that I was not  
9 performing well, as a teacher. So, we worked very  
10 hard.

11           And then when youngsters have behaved with  
12 problems, we attempt to work with that youngster in  
13 solving the behavioral problem. Punishment may be  
14 necessary, but solving the problem is more important.

15 Q. Dr. Long, what kind of additional financial resources  
16 do you have to commit to carry out this kind of  
17 discipline program that you've described for us?

18 A. I don't -- I don't believe we commit a great deal of  
19 funds -- I'm trying to think -- to carry this out.  
20 Most of the things we're talking about is just doing  
21 better what we already know how to do.

22           I don't think there's anybody in education that  
23 wouldn't mouth basically the same things I'm saying.  
24 In some cases, though, it's talk and some cases it's  
25 performance.

1                   And we have put together an organization -- I  
2                   have the privilege of working with people who  
3                   genuinely care about kids and are willing to put  
4                   forth the effort to make a difference in the lives of  
5                   those kids.

6       Q.     Dr. Long, would it be fair to characterize your  
7                   district as a fast growing district?

8       A.     Yes, it is. As of Friday, we had 652 youngsters more  
9                   than we had this same day last year.

10     Q.     And what kind of problems has being a fast growth  
11                  suburban district created for you?

12     A.     Well, I would like to not think that they're  
13                  problems, but more challenges. But the problem or  
14                  the challenge, if you prefer, has been providing  
15                  physical facilities for those youngsters.

16     Q.     And have you been able to meet that adequately?

17     A.     Yes, we have. We have -- we think we have. Our  
18                  community feels pretty good about it. They're always  
19                  pushing us for additional facilities, permanent  
20                  facilities. Right now, we have 48 portable  
21                  buildings. And with the requirements from House Bill  
22                  72 for lowering pupil/teacher ratios -- putting a cap  
23                  on pupil/teacher ratios at grades three and four, I  
24                  think we will probably need another -- along with our  
25                  growth, need another 40 portable buildings.

1           But portable buildings in the north Dallas area  
2           are not unusual. Our friends in Richardson have some  
3           68. Our friends in -- just west of us in Arlington  
4           have 218 classrooms in portable buildings.

5           So if they're functional, we use them. But of  
6           course, I -- you know, over the passing of time,  
7           we'll be building more permanent buildings.

8       Q.    Dr. Long, you said you had 42 portables --

9       A.    48.

10      Q.    48 today?

11      A.    Yes, sir.

12      Q.    And you anticipate adding approximately another 40?

13      A.    I think we'll add another 40. Now, once again,  
14           that's looking to the future, but that's what the  
15           staff and I have projected and what we're discussing  
16           with the board.

17      Q.    What kind of impact do you think receiving a part of  
18           your education and a portable building has on the  
19           quality of education a given child might receive in  
20           your district?

21      A.    The physical facilities in which a youngster, if it's  
22           a reasonable facility, simply doesn't have any effect  
23           upon education. The interrelation between the parent  
24           -- between the teacher and the child is what counts,  
25           not the physical surroundings. I believe I can say

that from my own experience and that of my family, and when we were students and with the passing of years as a -- as an educator, that doesn't -- that doesn't affect a youngster. Portable buildings are not a problem.

The difficulty with portable buildings is they absorb your playgrounds. And if the classes get large enough, you may be overcrowding your central facilities, such as the cafeteria, but it's not a problem. And we have them on both elementary and secondary campuses and they're being used and work well. As the previous witness stated, some teachers actually like them. There's a feeling of possession there that you do not have in a large building. Some of the kids actually like them. It's not a -- it's not a negative that would interfere with the performance on standardized tests and on the way we judge schools.

THE COURT: We're going to stop for lunch.  
See you all at 2:00.

(Lunch Recess.)

1 THE COURT: All right, here we go.

2 CROSS EXAMINATION (RESUMED)

3 BY MR. TURNER:

4 Q. Dr. Long, in this lawsuit, there has been some  
5 discussion from time to time about consolidation of  
6 school districts. What would your opinion be  
7 regarding the -- as an educator, regarding the impact  
8 of consolidation on your district and districts  
9 within your area as it might affect educational goals  
10 that you have for your district?

11 A. Well, first of all, if they were to consolidate  
12 Dallas County, I doubt if they would put the  
13 administration building in downtown Farmers Branch.  
14 And that would mean it would be some distance from  
15 the seat of control or seat of power. I think our  
16 people would feel definitely alienated in a large  
17 complex, and as I mentioned earlier, you increase the  
18 size of bureaucracy. In fact, major school districts  
19 are finding that they cannot cope with -- I say, they  
20 cannot cope -- they do not cope efficiently and  
21 effectively with the problems. And they are coming  
22 up with all types of schemes that have sub-districts  
23 there.

24 So first of all, our people would lose their  
25 feeling that they were an essential part of an



1 organization that was sensitive to their needs.

2 No. 2, we think we're at a size which is  
3 relatively efficient and we have a program that we  
4 are pleased with and our community likes. I don't  
5 think we would gain anything by that and I think we  
6 would lose a great deal.

7 One of the -- once again, to repeat somewhat  
8 the testimony I gave earlier, one of the strengths of  
9 our society is that people believe that they're  
10 involved and can have a say in government. They have  
11 very little say in federal government, very little  
12 say in state government, but they really feel that  
13 they can have a say in two areas of local government  
14 and that would be the city and the school. And I  
15 think this is very important. And when you lose  
16 that, part of the enthusiasm of our schools would  
17 disappear and be lost in the morass of a large  
18 structure or large organization. I do not think it  
19 would help us at all. It would be detrimental to our  
20 operation.

21 Q. Dr. Long, when was the Carrollton-Farmers Branch  
22 district created?

23 A. Well, Carrollton-Farmers Branch was created in the  
24 '50s, really. The old Carrollton district had been  
25 there a long time and I can't give you the date. It

1           was established right after the turn of the Century  
2           and it had been there a long time. Farmers Branch  
3           had a separate district. With the passing of years,  
4           the common school districts in Dallas and Denton  
5           County were absorbed, as was typical in the State of  
6           Texas, were absorbed into the Carrollton school  
7           district. Farmers Branch, because of financial  
8           difficulties, decided to dissolve itself. It was  
9           dissolved. Part of Farmers Branch, what was the  
10          Farmers Branch school district, went into Dallas,  
11          part of it went into Carrollton. And in the early  
12          50s, what we know today as Carrollton-Farmers Branch  
13          Independent School District was formed. Since that  
14          time, the boundaries have not changed.

15       Q.   Dr. Long, when that district came into being, I  
16           notice you mentioned that the Farmers Branch district  
17           actually split. Part of it went to Dallas and part  
18           of it went into Carrollton-Farmers Branch district.  
19           At the time that district was created, was there a  
20           community of interests that arose that caused that  
21           district to have the configuration that it currently  
22           has?

23       A.   Yes. The people in the areas made the choice that  
24           they would like to have it formed the way it is.

25       Q.   And over time, has that community of interests been

1 maintained by virtue of that area being contained in  
2 a single school district?

3 A. Yes, it has. Although the City of Farmers Branch,  
4 the city itself, and members on the City Council some  
5 two years ago, are interested in becoming an even  
6 smaller school district and setting up the City of  
7 Farmers Branch as a municipal district. That did not  
8 fly, because it cannot fly under federal court --  
9 present federal court rulings, but they were  
10 interested in doing that. So instead of becoming  
11 larger, if our people had a choice, the only way I  
12 would see it moving is towards a smaller school  
13 district.

14 Q. Dr. Long, there has been some discussion in this  
15 lawsuit about tax district consolidation. Which,  
16 generally speaking, as I understand it, would involve  
17 maintaining present school districts for government  
18 purposes and creating some larger district comprising  
19 of two or three or five or ten or maybe a hundred  
20 school districts that would be a tax district, that  
21 would be given the power to tax and distribute that  
22 tax revenue back to these local governing school  
23 boards.

24 As an administrator and an educator, what would  
25 your opinion be regarding the impact of that kind of

1 structure upon your goals of rendering an education  
2 to the students within your district?

3 A. First of all, and I am not an attorney as able  
4 Counsel for Plaintiffs and the Defense are, I'm in an  
5 area -- I have read it -- and in my opinion, that  
6 cannot be done under the Constitution of the State of  
7 Texas. An opinion. If it were done, it seems to me  
8 that it would be a very clumsy way of forming a tax  
9 basis in the state. I think if we were going to  
10 that, then it possibly should go statewide. I can't  
11 imagine the configuration. And I'm not an expert in  
12 the area, but I do know something, having lived most  
13 of my life in the State of Texas and having an  
14 interest in both the schools and the geography of the  
15 state, I can't imagine how you would configure taxing  
16 entities -- 20 of them or 30 of them or 10 of them in  
17 the state, without the most unusual gerrymandering in  
18 order to accomplish anything that would come close to --  
19 if the goal was to equalize tax wealth, I don't think  
20 that that could be done. I certainly -- I could be  
21 proven wrong in that, but from my point of view, I  
22 would say if the legislature would look at that, I  
23 think they would make a decision to make us a unified  
24 state like Hawaii, rather than going to this -- what  
25 I think is a rather cumbersome approach of political

1 subdivisions in the State of Texas, in calling them  
2 taxing subdivisions. I don't -- I can't see that  
3 working and working well.

4 Q. As an educator and as an administrator, what would  
5 your view be regarding that proposal which would have  
6 the effect of separating the budget spending power  
7 from the taxing power and placing that power in  
8 another board?

9 A. Well, I would say this, that it would happen just as  
10 it does in other parts of the country where they have  
11 separated taxing power and operational  
12 responsibility, as its people who have the ability to  
13 raise the funds are going to determine the character  
14 and the procedures in the schools. Those who have --  
15 those who control the purse strings have the power.  
16 And what we would see, even if we went that route, it  
17 would be only the first step toward a statewide  
18 system of education in the state or -- and in the  
19 interim, the taxing districts would have, I think,  
20 much more power over their operation of the schools  
21 than would be anticipated. Because where there is a  
22 power to tax, there's a power to control. And the  
23 control would be shifted from the local school boards  
24 to the people who raise the taxes. And you could  
25 determine programs and changes and improvements, or --

1           whether we were going to retrogress at the regional  
2           levels, if we might call them regional levels, rather  
3           than the local school district level.

4       Q.   Dr. Long, you have testified earlier about some of  
5           the principles that you tried to implement in your  
6           school district, such as organization of your  
7           resources and developing a spirit of commitment on  
8           the part of teachers and staff, and involvement of  
9           parents in the educational process and maintenance of  
10          order and discipline in the classroom, as being  
11          factors that are critical to the production of  
12          educational quality. Do those factors, any of those  
13          factors, in your judgment, require the expenditure of  
14          additional money in your district?

15       A.   No, I don't -- if they are, they're minimal amounts.  
16           It would not be a major expenditure. It's using the  
17           people that you have on board in a way that's more  
18           effective. And once again, I don't want to lead this  
19           Court to believe that we're a model for the state and  
20           that there's no room for improvement. There is room  
21           for improvement. We think we run a pretty good  
22           operation. We want to be better with the passing of  
23           time, but what we're talking about is the utilization  
24           of the human resources that we have on our staff at  
25           the present time to better serve the parents and

1 ultimately the children we serve. No, it does not  
2 involve major expenditures of funds.

3 Q. Dr. Long, is it important in trying to promote  
4 educational achievement, educational quality, to have  
5 a degree of what we might call stability within a  
6 school system?

7 A. Yes. It is.

8 Q. If your school district were to be required to  
9 consolidate with other districts, or your taxing  
10 power were to be invested in some larger board, would  
11 that have an impact upon the stability and continuity  
12 of operations of your district?

13 A. Well, it's one of the most emotional things that  
14 happens in public, I think, is the idea that local  
15 schools are going -- either the power of the local  
16 people to determine what their schools are going to  
17 be like has been usurped, or that they must join  
18 forces and become a larger organization. And time  
19 after time, over the State of Texas, I know of few  
20 things that are more emotional, more distressing and  
21 more disturbing to a local district than the thought  
22 of losing their district, or that district being  
23 overshadowed by some power outside the local  
24 community. Be very distressing, be destabilizing --  
25 not seeing -- as an institution, we couldn't live

1 through it. But I don't think that it would be in  
2 the best interest of youngsters, nor in the best  
3 interest of the community to have to go through  
4 something like that. I doubt if you'll find but a  
5 handful of people in the entire state that would be  
6 for something of that nature, Mr. Turner. It is so  
7 unpopular in this state, that politically it hasn't  
8 flown. And I think people have dug their feet in and  
9 are determined it won't happen in the state. I'm not  
10 saying it can't happen, but it will be one of the  
11 most unpopular decisions that could be made for the  
12 state, was to do away with the local school districts  
13 and their power to tax.

14 Q. There is a provision, as I understand it, under law  
15 today, that would allow us two school districts to  
16 consolidate on their own motion, is that your  
17 understanding?

18 A. It is possible to do so.

19 Q. And I don't guess you've seen that happen or been  
20 involved in that -- in your experience.

21 A. Well, I'm not an expert in that area. I'd need to  
22 grab the law book and probably an attorney and ask  
23 for advice on this. But it is possible and it has  
24 happened in the state, and if it's of benefit of  
25 districts to do that. But once again, even districts



1       who may be hollering the loudest about how badly  
2       they're mistreated under a system of finance would be  
3       quick to tell you "Our people want independence, we  
4       want our own school districts and we don't want to  
5       give that up." Now, I'd better add to that, there are  
6       exceptions, but it is a very rare exception in this  
7       or any other state, for them to exercise what is now  
8       available to them in the law.

9       Q.   Since you first entered the field of education when  
10       you graduated from Baylor in 1950, I believe it was --

11      A.   '50.   Yes, sir.

12      Q.   Have you observed the number of school districts  
13       changing in Texas?

14      A.   They've greatly diminished.   I can't give you the  
15       number in 1950, but as has been testified to here in  
16       court earlier, the number since 1950 has greatly  
17       diminished.   I can't -- as I say, I can't give you a  
18       figure, but we're -- we only have a fraction of the  
19       number that we had in 1950.

20      Q.   Dr. Long, has your school district lost considerable  
21       amount of money as a result of the enactment of House  
22       Bill 72?

23      A.   Yes, sir.

24      Q.   Do you recall exactly how much your district lost?

25      A.   No, but in 1983, 44 percent -- 45 percent of the

1 funds that we used in our school district to operate  
2 our schools came from the State of Texas. This year  
3 it's 11.38 percent, is what we're forecasting coming  
4 from the state. This year, I mean the current school  
5 year. So it's dropped from 45 to 11 percent since  
6 1983. A precipitous drop, involves millions of  
7 dollars. I don't have the total number, but we're  
8 talking about losses of multi-millions of dollars to  
9 our school district.

10 Q. And that rate of decrease has created some difficult  
11 administrative problems for you, I would suspect, has  
12 it not?

13 A. The greatest problem it's created for us is going to  
14 the public and saying we're going to raise your  
15 taxes, we need to raise your taxes, and advising the  
16 board to do that. And that they have done.

17 This year, for instance, we have published in  
18 the paper a 27 percent tax increase under the truth  
19 and lending report that we must give to the public.  
20 We had a 14 cent tax increase this year. We have  
21 increased taxes over the last several years every  
22 year and well beyond the eight percent rollback  
23 figure. And we would anticipate that we will have  
24 tax increases this coming year. I can assure you the  
25 board is not going beyond 7999, so that there's not a

1 rollback.

2 Q. Dr. Long, are you familiar with the projections that  
3 are prepared by the Texas Education Agency that  
4 projects what your state aid will be in future years  
5 as a result of the continuing formula changes and the  
6 automatic adjustments that occur?

7 MR. RICHARDS: Excuse me. This is leading,  
8 Counsel. The only evidence so far is his tax base is  
9 increasing. There's no evidence of changing in  
10 formulas and you are leading him.

11 MR. TURNER: I didn't know I was leading  
12 him, but if I was, I'll restate it.

13 THE COURT: Didn't sound leading. You  
14 might put it again now so the witness will know what  
15 it is.

16 BY MR. TURNER:

17 Q. Dr. Long, are you familiar with the data that's been  
18 produced by the Texas Education Agency for all school  
19 districts that purport to show the changes for the  
20 future in their state aid?

21 A. Yes, sir, our staff has studied that.

22 Q. And what does the projections -- do the projections  
23 show for the Carrollton-Farmers Branch district?

24 A. We're going to lose anywhere from 1.8 to probably  
25 three million dollars. Again, this is for the coming

1 school year. It will mean that -- it's according to  
2 what the local fund assignment is, but there's a  
3 possibility that even this coming year we will be a  
4 budget-balanced school district. Along with a number  
5 of other school districts in the state who are no  
6 longer receiving funds from the state, that money is  
7 being sent to other districts in the state.

8 House Bill 72, if it were intended to bring  
9 about a redistribution of funds, I can personally  
10 testify from a Carrollton-Farmers Branch standpoint,  
11 the transfer has been made from our district to other  
12 districts in the state. How that's being spent and  
13 how the children have benefited, I do not know. I do  
14 not have control over that. But we will continue to  
15 lose, under those reports and under our calculations,  
16 money, until we have no more money left under the  
17 Foundation School Program. And if that's not this  
18 coming year, it will certainly be within the next two  
19 years.

20 Q. This is occurring, I suppose, at a time that your  
21 enrollment is continuing and projecting to continue  
22 an increase?

23 A. Yes, sir. As I mentioned this morning, as of Friday,  
24 it was 652 additional scholastics over the same day  
25 last year.

1 Q. What is --

2 A. It also --

3 Q. Excuse me.

4 A. Go ahead, I'm sorry.

5 Q. What is the primary factor, as you understand it,  
6 that causes and will cause your district to continue  
7 to lose state aid under the state formulas?

8 A. It is House -- it's the formula in House Bill 72.  
9 And that's what it was intended to do. It was  
10 intended to reduce the amount of money that flowed to  
11 school districts where there's greater tax wealth.  
12 And it flowed to other school districts that have  
13 less tax wealth. And with the passing of time, it  
14 will require more local tax effort for us to continue  
15 the program that we have. It will provide money to  
16 other school districts to provide more dollars per  
17 student in the lower wealth school districts.

18 MR. TURNER: I'll pass the witness.

19 CROSS EXAMINATION

20 BY MR. O'HANLON:

21 Q. Dr. Long, you mentioned something about just general  
22 kinds of disruption as having an impact on the  
23 provision of education. Did you notice any in your  
24 district or any of your surrounding districts, any  
25 disruptions as a result of House Bill 72?

1 A. Yes, there was a great deal of frustration. My  
2 position is that we were very concerned about some of  
3 the provisions of House Bill 72. And there was --  
4 one of the most difficult things that we have right  
5 now is convincing at least some of our people in the  
6 community that millions of tax dollars are being  
7 shortstopped that once came to us and are being sent  
8 to other districts. They're having trouble believing  
9 that could occur. So when we are asking them to  
10 raise taxes, they're saying "We don't want to hear  
11 any more about House Bill 72." You know, they have  
12 doubts that the state is really taking that money  
13 that once flowed to us and sending it to other school  
14 districts. That was one disruption.

15 One of the greatest disruptions in House Bill  
16 72 was the removal of, or the movement of control  
17 from the local school district to the state. Now,  
18 the state has a right to do that under the  
19 Constitution. We don't disagree with that. And  
20 although we did not like some of the provisions of  
21 House Bill 72, we recognized it as being the law of  
22 the State of Texas. There are many fine provisions,  
23 but there were disruptions.

24 For instance, the pupil/teacher ratio, cap  
25 22-to-1. You've heard testimony here -- I have

1       studied that for years -- there is no justification  
2       for spending the kinds of millions of dollars that  
3       are being spent in the State of Texas on reducing  
4       pupil/teacher ratio, putting 22-to-1 caps on, if  
5       you're looking for productivity. Now, if you want to  
6       make teachers happy and some parents happy,  
7       politically, it's a marvelous move. But from the  
8       standpoint of efficiency and effectiveness, that's  
9       not beneficial.

10               So there was disruption in our community when  
11       we -- as I have mentioned that we have portable  
12       buildings, we have now 48. You see, it's not  
13       unusual, that on each campus, you're going to have to  
14       have two rooms, one for each grade level where you  
15       put a cap on there and sometimes more. And so, in  
16       anticipation of what's going to happen, we are  
17       anticipating another 40 portables. Not only that,  
18       but we're talking about the investment in teachers  
19       and equipment to put in those classrooms. And so,  
20       yes, sir, there's some disruption there. There was a  
21       great deal of frustration in our community.

22               However, we're now in a position of saying  
23       "That's the law of the land." We're learning to live  
24       with it. We believe that there are some definite  
25       benefits. We're still concerned about some of the

1 elements and hope that they will be ironed out within  
2 the next few years.

3 Q. Okay. Are you familiar with the curriculum  
4 provisions of Chapter 75?

5 A. Yes, I am familiar with them.

6 MR. O'HANLON: May I approach the witness,  
7 Your Honor?

8 THE COURT: Yes.

9 A. I am no longer the assistant superintendent for  
10 instruction, so I am not as well equipped in that  
11 area as I was a few years ago.

12 Q. I'm handing you, now, what has been marked as  
13 Defendants' Exhibit No. 23. And let's see if we  
14 can't walk through what it takes at a minimum to  
15 graduate from a high school in Texas.

16 A. Well, if we were to set up four years, as you did  
17 just a moment ago, we could say in each of those four  
18 years, you would have English, language and arts.

19 Q. As a requirement?

20 A. Every student would be required to have that each of  
21 the four years.

22 MR. RICHARDS: May the record reflect -- I  
23 guess the witness is simply reading from some  
24 document you've given him. Counsel, is this a  
25 document in evidence and is it identified for the



1 witness?

2 MR. O'HANLON: Yes, Defendants' Exhibit No.  
3 23.

4 MR. RICHARDS: And you're going to have him  
5 read from it, is that what you're going to do?

6 MR. O'HANLON: Then I'm going to ask him  
7 how it works, a little bit.

8 BY MR. O'HANLON:

9 Q. I guess we'll put English. Okay.

10 A. In three of those years, you would have mathematics.

11 Q. Typically, what is that?

12 A. Ordinarily, that would be out -- in the ninth grade,  
13 if a youngster does not have a great aptitude in  
14 math, that could be a math course that could go in  
15 there.

16 Q. General math?

17 A. General math course that could go in there.

18 Q. Sophomore year?

19 A. Sophomore year would be geometry. Eleventh grade  
20 would be second-year geometry. And then -- okay.  
21 That would ordinarily be the pattern.

22 Social studies would be -- excuse me, science  
23 would be two units. Ordinarily, that would be in the  
24 freshman and sophomore years and that would be  
25 physical science, if you want to put that down for

1           grade nine, physical science and then biology.

2       Q.    These are the minimum requirements, right?

3       A.    Right. Then you would have social studies for two  
4           and a half units. So for two and a half of those  
5           years, as a minimum, you would have to have social  
6           studies. And that would begin with either world  
7           history studies or world geography in either grade  
8           nine or grade 10, it's according to how you organize  
9           it. And then one unit in American -- in U.S. history  
10          and then one-half unit in United States government.

11      Q.    Okay. How is that typically organized?

12      A.    Ordinarily, it would be -- the way we have it  
13           organized, in the ninth grade, you would have  
14           American history. And in the next one, either world  
15           history or world geography, whichever one -- in grade  
16           10.

17      Q.    Okay. Which should I put?

18      A.    Why don't you put world history. Ordinarily, the  
19           government or more familiar name civics course would  
20           be in our senior year.

21      Q.    Okay.

22      A.    Then we would have, of course, in economics, a half  
23           unit. And that could fall either in the junior or  
24           the senior year, just according to how they worked  
25           out their schedule. And that's required -- a half

1 unit in economics.

2 Q. Is this --

3 A. With an emphasis on free enterprise.

4 Q. Okay. Is this civics course typically a half year?

5 A. It's a half. Why don't you just slash that for each  
6 here, today, and put economics on the other end and  
7 we'll know that that's one course.

8 Physical education would be one and a half  
9 units and ordinarily that would fall in the freshman  
10 and sophomore year. And that would just be a half  
11 unit required. A youngster may stay, but --

12 Health education would be a half unit. Why  
13 don't you just -- ordinarily, it would come a little  
14 later, but why don't you just slash it right there  
15 for ease, so we don't get these mixed up. Ordinarily  
16 that would come in the junior year, but -- and then  
17 you would have seven electives. And that should work  
18 out properly for the 21 credits, if we've not made an  
19 error.

20 MR. RICHARDS: Looks like you've only got  
21 six.

22 A. Well, we overlooked one, somewhere along the line.  
23 Well, we may have missed one. We have seven -- what  
24 it works down to is we have seven electives.

25 Q. Okay. What kind of electives are we talking about?

1           Is language an elective?

2   A.    Yes.   Foreign language would be one and that might  
3           begin in the ninth grade and go through.

4   Q.    What other kinds of courses?

5   A.    For many youngsters who are going on to college,  
6           interested in math and science, there would be  
7           advanced science and advanced math courses.  There  
8           would be vocational courses, journalism, speech.  
9           Then we haven't put the fine arts up there; that  
10          could be band, orchestra and choral.

11   Q.    Arts?

12   A.    Uh-huh.  Just arts and also the visional arts as  
13          well.

14   Q.    Okay.

15   A.    That would encompass most of the major programs that  
16          we would have.

17   Q.    Okay.  You said that in the last five years, there's  
18          been kind of a backing-off of electives that were  
19          offered.

20   A.    Yes, that's true.  In fact, the advanced high school  
21          program that we have, the academic achievement record  
22          for the advanced program, leaves only three  
23          electives.  And many of the kids that are going on to  
24          college will be involved in that advanced high school  
25          program and they only have three electives.  The rest

1 of them, in order to get that recognition, be in that  
2 program, as prescribed by the State of Texas.  
3 There's only three electives during your entire four  
4 years that are available.

5 Q. Okay.

6 MR. KAUFFMAN: Is that the advance  
7 programs?

8 THE WITNESS: Yes, sir. Advanced high  
9 school programs.

10 MR. RICHARDS: Is that in the curriculum,  
11 too?

12 THE WITNESS: Yes, sir.

13 BY MR. O'HANLON:

14 Q. Is the provision, or not, of the advanced high school  
15 program, a function for the district of funding or is  
16 it a function of --

17 A. It's not funding, it's just required. It really  
18 doesn't require -- I wouldn't see that it requires  
19 extra funding. It just says that if a youngster and  
20 his family are willing to commit to this type of  
21 program and wants that recognition when they leave  
22 the school, then they will have a choice of only  
23 three electives. For those who are not interested in  
24 that, they can have as many as seven electives. It's  
25 part of a movement and I did not answer your question

1 properly. It's part of a movement in this country  
2 away from a large number of electives toward -- the  
3 word I used this morning, more core subjects, courses  
4 that deal with a more classical approach to  
5 education. You see -- and I was part of this  
6 movement and I am not saying we now are so much  
7 smarter than those people yesterday, because I was  
8 around yesterday. There was a time, in the '60s and  
9 '70s, when we were being told, and I honestly  
10 believe, several things that I do not believe today.  
11 And one of them is that there needed to be a large  
12 number of courses, a great amount of selection in the  
13 high school. And in school, period. But certainly  
14 in the high school. We tried that, it simply did not  
15 work.

16 And we recognized in this country, and I think  
17 it's evident in every state in the union, not just in  
18 Texas, but every state in the union, at the federal  
19 level as well, that we need to get back to a smaller  
20 number of courses, improve the productivity of  
21 children, youth in those courses. And that's part of  
22 what we're seeing here. It's a very definite step on  
23 the part of the State of Texas to move in that  
24 direction. But we're not unique in that. That's  
25 true throughout the nation, certainly across the

1 south and southwest.

2 Q. Okay. Do you consider it significant that the  
3 acceleratory or advanced courses have got fewer  
4 options than the regular graduation curriculum?

5 A. Yes, because they wanted to hold them closely to  
6 those subjects which -- math, science, language, arts --  
7 and once again, this doesn't rule out the arts, but  
8 they were determined that they would not be scattered  
9 all over the field, as we jokingly say, underwater  
10 basket weaving. They wanted them to have something  
11 that had some meat to it, rigorous courses.

12 Q. Okay. As a school superintendent, is it more  
13 expensive for you to direct kids to the advance  
14 programs? Are you costing your taxpayers money?

15 A. No, sir, we're not. We're going to provide classes  
16 for students for six periods a day, 175 days of the  
17 year. Now, they can -- they can be in a course --  
18 and they may need to be in a remedial course, or they  
19 may be qualified and desire to be in an advanced  
20 course. But basically, it's not going to cost us  
21 much more money if we schedule properly. Now,  
22 sometimes we're not as efficient as we should be.  
23 And one of the big problems is management of the  
24 public schools. We're not always as efficient as we  
25 should be. But no, it does not cost you more.

1 Q. Does the state have to provide you textbooks for the  
2 advance courses?

3 A. Yes, they do.

4 Q. And every other district?

5 A. Yes, sir, every district in the State of Texas.  
6 We're very fortunate.

7 Q. Do you have to pay any more additional funds to get  
8 teachers to teach the advance courses?

9 A. No, you don't. In fact, many teachers see them as a  
10 real challenge. The fight is for the advanced  
11 courses very often. They like the challenge, enjoy  
12 working with the youngsters.

13 Q. Okay. When you talk about the difference between  
14 offering a mathematics course in the fourth year,  
15 since you've only got three years required, do you  
16 have to go out and hire an additional math teacher to  
17 teach that fourth year -- what is the fourth year  
18 math course?

19 A. It could be calculus.

20 Q. Do you have to go out and hire somebody different to  
21 teach calculus as opposed to Algebra II, or something  
22 like that, necessarily?

23 A. With a background that a math teacher has to be  
24 certified, they're prepared to teach calculus. We  
25 would just assign one class. Instead of maybe an



1 Algebra II class to them, we would just assign them  
2 the calculus. No, it's not a problem. We plan for  
3 that the year before.

4 Q. Okay. If you were going to offer a Chemistry II  
5 course as opposed to just a basic chemistry course,  
6 would you need a more sophisticated teacher?

7 A. No, we would not. The person who is prepared to  
8 teach chemistry can teach Chemistry II.

9 Q. Biology?

10 A. Same thing is true in the second year of biology.

11 Q. All right. What about foreign languages? Do you  
12 need any more sophisticated foreign language teachers  
13 to teach third and fourth years as opposed to the  
14 first and second year?

15 A. No, you do not. A person who has a degree in foreign  
16 language has enough hours to teach foreign language,  
17 certainly can teach a fourth year course in high  
18 school.

19 One of the things that -- let me talk about use  
20 -- I think one of the things that may come to mind is  
21 would you have a small German IV class? Yes, you  
22 will. But you combine German IV and German III into  
23 one class. This is being done in the finest high  
24 schools in the State of Texas. And teachers work  
25 with both German III and German IV, Latin III and

1 Latin IV.

2 So, we make a decision that we're going to  
3 operate reasonably efficient. Once again, it's to  
4 make the statement, you operate efficiently until  
5 someone comes along and finds that you're not.

6 One of the things we attempt to do is not have  
7 classes where youngsters are in a very low number.  
8 And in order to do that in the languages, we will  
9 have French III and French IV together in the same  
10 class. And it's accepted by TEA and it's recognized  
11 throughout the state and it works well. And in fact,  
12 our kids do quite well in the languages.

13 Q. How do you go about -- when you're designing a  
14 curriculum plan for your district, how do you go  
15 about selecting among the panoply of electives that  
16 are theoretically available?

17 A. First thing you do, you get your core together --  
18 what's required. Then you look and see what would be  
19 -- well, what would be popular among youngsters and  
20 parents. And we determine -- well, I'd better step  
21 back one step -- you look at the Texas Education  
22 Agency and see what they allow to be offered and you  
23 choose from the courses that are available under  
24 state rules and regulations. And you go in and you  
25 determine -- we're very pleased -- calculus was not a

1 course we were offering a few years ago. We pushed  
2 very hard to raise the educational aspirations of our  
3 community. And one of the things that's happening,  
4 kids now want calculus. We are now offering  
5 calculus. And so, with the passing of time, we  
6 attempt to raise the educational aspirations of the  
7 youngsters and their families and then we take those  
8 courses and add them if -- if there's enough  
9 interest, add them to our curriculum.

10 Q. Okay.

11 A. We present that to our board for their approval.

12 Q. Do the principals and counselors and things in the  
13 school, then, I take it, have some influence on  
14 directing kids to certain courses?

15 A. Yes, they work with them in selection of courses,  
16 they do, with their youngsters and with their  
17 parents. We try to work out a four year program for  
18 them to begin with. And we send that to their --  
19 they and their parents. The parents sign off on it.  
20 Parents know what kids are doing and they work out a  
21 program and we attempt to counsel them into the  
22 programs in which we think they can have the most  
23 success.

24 Q. Okay. After looking at the curriculum -- you're  
25 familiar with the curriculum as a general basis, are

1           you not, the Chapter 75 in the Texas Administrative  
2           hearing?

3   A.    Yes, sir.

4   Q.    Do you think that curriculum provides for a sound  
5           basic fundamental education?

6   A.    No question about it. It does. It's been studied by  
7           people all over this state. It's been looked at by  
8           people in other states. It is a sound basic  
9           education and youngsters are much better off now in  
10          our schools as a result of this than they were a few  
11          years ago. I really have difficulty dealing with the  
12          fact that the state has to tell us what to do. As  
13          educators, we failed to do what we should have done.  
14          We should not have been in a position where the state  
15          had to tell us. In those states where they're doing  
16          a good job -- there are some states that have  
17          absolutely no requirements. But I have to say that  
18          the public schools did a better job of educating  
19          their youngsters than we have. We got state controls  
20          because we failed to exercise properly our local  
21          responsibilities.

22   Q.    Okay. When we talked about Chapter 75, are you  
23           familiar with the process by -- through which that  
24           chapter was written?

25   A.    I can't recite that, but it was extensive.

1 Q. Did your district have hearings all over the state?

2 A. All over the state, right.

3 Q. Did your district and curriculum people participate  
4 in the development of that?

5 A. Yes, we did. We participated in that. We were  
6 invited to participate.

7 Q. Okay. It wasn't just that somebody -- a couple of  
8 educational folks, experts or somebody, sat down and  
9 just wrote up these rules, then?

10 A. No. And I don't think I'm overstating this, in the  
11 35 plus years that I've been in the business, this  
12 was the most extensive study of curriculum, the  
13 greatest involvement of the greatest number of people  
14 that I have seen in the development of curriculum in  
15 the state.

16 Q. Okay. And districts were invited to participate in  
17 the public hearings?

18 A. Yes. And they did participate. It was widespread  
19 participation in districts of all size; small  
20 districts, medium-sized districts and large districts  
21 throughout the state.

22 MR. O'HANLON: I don't have any further  
23 questions. Thank you.

24

25

## CROSS EXAMINATION

BY MR. KAUFFMAN:

Q. Dr. Long, I would like to show you some pictures of your district and see if you agree that these are pictures of your district and what they represent. I would like to show you what's marked as Plaintiffs' Exhibit 301-A as -- is that a building, a special education administration building in your district, that's Carrollton-Farmers Branch ISD?

A. Yes, it is.

Q. 301-A?

A. Yes, sir. Yes, it is. I have tried to, a couple -- may I bring them a little closer?

Q. Can I look over your shoulders?

A. Sure. That's a special education administration building.

Q. Look at the next one, 301-B. Is that the administration building of the Carrollton-Farmers Branch ISD?

A. It is.

Q. Is that the building that cost around one and a half or \$2,000,000.00?

A. Yes, sir, it is.

Q. When was that built?

A. Four years ago.

1 Q. Okay. So it cost about one and a half to  
2 \$2,000,000.00 in about '83, is that right?

3 A. Yes, sir.

4 Q. Okay. Let's go to 301-C. Is that a classroom in  
5 Turner High School?

6 A. I cannot recognize it as a classroom in Turner High  
7 School, but I would not -- yes, I recognize the  
8 teacher, now. Otherwise, I would not have known it.  
9 It's a typical high school science room.

10 Q. In Turner High School in Carrollton-Farmers Branch  
11 ISD, is that right?

12 A. Well, typical throughout the State of Texas.

13 Q. Well, let's take one at a time. It is typical in  
14 Carrollton-Farmers Branch?

15 A. Yes, sir, it is typical in Farmers Branch.

16 MR. KAUFFMAN: Your Honor, so I don't get  
17 too far ahead of myself, I move that Plaintiffs'  
18 Exhibit 301-A, B and C be admitted into evidence.

19 THE COURT: Okay. They will be admitted.

20 (Plaintiffs' Exhibit Nos. 301-A,

21 (301-B and 301-C admitted.

22 BY MR. KAUFFMAN:

23 Q. Okay. Now, with 301-D, Plaintiffs' Exhibit, is that  
24 a -- looks like a science room at Turner High School?

25 A. Mr. Kauffman, I can't identify that. I will not say

1           that it is not. I just don't recognize that  
2           particular room. We have over two million square  
3           feet and hundreds and hundreds of rooms in our  
4           district. I cannot identify that. I would not say  
5           that it is typical of our science...

6       Q.    Okay. You would not say it is atypical?

7       A.    I would not say it's atypical. I just can't identify  
8           that particular room. The only reason I could  
9           identify the other room is because I recognized the  
10          face of the science teacher there.

11      Q.    Okay. How about 301-E. Is that a high school -- is  
12          that a hall of the Turner High School in your  
13          district?

14      A.    That is a hall in a very large school. And since  
15          there are no colors there, I can't identify that for  
16          sure. It looks like just a hall in a high school.  
17          It could be Turner High School.

18      Q.    Okay. 301-F, is that a library at Turner High  
19          School?

20      A.    Yes, that looks like the library in Turner High  
21          School.

22      Q.    Okay.

23                   MR. KAUFFMAN: Your Honor, so we do take it  
24          one at a time, I move that Exhibit 301-F be admitted  
25          into evidence.



1 MR. R. LUNA: Well, so far he has not been  
2 able to identify it.

3 MR. KAUFFMAN: He could identify that one  
4 as a high school library.

5 THE WITNESS: Mr. Luna, I was able to  
6 identify this one. Some of the others, I was not  
7 able to.

8 MR. R. LUNA: We have no objection if he  
9 identifies them.

10 THE COURT: F will be admitted.

11 (Plaintiffs' Exhibit No. 301-F admitted.)

12 BY MR. KAUFFMAN:

13 Q. All right. Let's go to Plaintiffs' Exhibit 301-G.  
14 Does that also appear to be the library at the Turner  
15 High School?

16 A. I am not sure that it is. It could be a portion of a  
17 room anywhere with a cinder block wall on it.

18 Q. A cinder block wall, some computers and display  
19 terminals and things like that?

20 A. Right. This would be typical of many areas and many  
21 schools in the state.

22 Q. Okay.

23 A. I'm not saying it's not. I just don't see anything  
24 there that I would recognize that would make me sure  
25 that it was that room.

1 Q. Is Exhibit 301-G though, typical of part of a library  
2 at the Turner High School in Carrollton-Farmers  
3 Branch ISD?

4 A. Yes, it is.

5 Q. Okay.

6 Q. I'll go on to 301-H. Does that also look like part  
7 of the library at Turner High School at  
8 Carrollton-Farmers Branch?

9 A. It's such a small area, I don't know whether it is or  
10 not. It looks as though it's a portion of a library  
11 and once again, it would not be atypical of what you  
12 might find in Carrollton-Farmers Branch.

13 Q. Okay. I'm sorry to pick on you on the word atypical --

14 A. That's all right.

15 Q. For the court reporter, we must speak one at a time,  
16 if we can.

17 Does 301-H appear to be typical of the  
18 facilities or the library materials available at the  
19 library at Turner High School in Carrollton-Farmers  
20 Branch?

21 A. It would, Mr. Kauffman.

22 Q. Okay.

23 MR. KAUFFMAN: Your Honor, I would move  
24 that, I guess 301-H be admitted. That was the  
25 pictures of the library at Turner High School at

1 Carrollton-Farmers Branch.

2 MR. R. LUNA: Once again, I'm not sure  
3 whether or not he clearly identified it. If he did,  
4 then --

5 THE WITNESS: I didn't identify it as being  
6 Turner, I identified it as being typical of theirs.  
7 We have plenty of pictures out of the library. I  
8 don't think anybody would have any trouble  
9 identifying the library. This one I can identify.

10 BY MR. KAUFFMAN:

11 Q. Okay. Let's go ahead. Exhibit 301-I does represent  
12 a picture of the library at Turner High at  
13 Carrollton-Farmers Branch, is that correct?

14 A. Yes, it does.

15 MR. KAUFFMAN: I move 301-I be admitted  
16 into evidence.

17 MR. R. LUNA: No objection.

18 THE COURT: It will be admitted.

19 (Plaintiffs' Exhibit No. 301-I admitted.)

20 BY MR. KAUFFMAN:

21 Q. Look at 301-J. Does that appear to be the auditorium  
22 in Turner High School in Carrollton-Farmers Branch?

23 A. I think so, although the photographer did some  
24 unusual toning of the colors, I mean of the shades,  
25 there. It's a little difficult to recognize. I

1 believe that it is Turner.

2 Q. Do you recognize all of the seats and the recessed  
3 lights and --

4 A. Well, they look --

5 Q. And sides and things?

6 A. Well, they look like seats and sides and -- they  
7 could be a number of auditoriums -- can you see  
8 anything in there that would be particularly --

9 Q. Okay.

10 A. Yes, I believe it is. The brick work there  
11 identifies 301-J.

12 MR. KAUFFMAN: Your Honor, we move that  
13 301-J, the auditorium at the Turner High School in  
14 Carrollton-Farmers Branch be admitted.

15 MR. R. LUNA: No objection.

16 THE COURT: It will be admitted.

17 (Plaintiffs' Exhibit No. 301-J admitted.)

18 BY MR. KAUFFMAN:

19 Q. Is Exhibit 301-K a gymnasium at Turner High School in  
20 Carrollton-Farmers Branch?

21 A. Yes, it is.

22 MR. KAUFFMAN: Your Honor, we move that  
23 301-K be admitted.

24 MR. R. LUNA: No objection.

25 THE COURT: Be admitted.

(Plaintiffs' Exhibit No. 301-K admitted.)

BY MR. KAUFFMAN:

Q. Is Exhibit 301-L the girls' gym at Turner High School in Carrollton-Farmers Branch?

A. I see no identifying marks that indicate that. It could be, but I don't see anything identifying it as being a Turner High School gymnasium.

Q. Is 301-L typical of what the girls' gymnasium of Turner High School in Carrollton-Farmers Branch --

A. Yes, I would say it's typical. I just can't recognize it.

Q. Do you recognize the cosmetology classroom at Turner High?

A. Yes, I do.

MR. KAUFFMAN: Your Honor, we move that 301-L, a picture of the cosmetology classroom at Carrollton-Farmers Branch be admitted into evidence.

MR. R. LUNA: No objection.

THE COURT: It will be admitted.

(Plaintiffs' Exhibit No. 301-L admitted.)

BY MR. KAUFFMAN:

Q. Now we have 301-M, which is a picture of this agricultural section. Do you recognize this?

A. I recognize the teacher that's in there. Otherwise, I would not recognize the facility.

1 Q. Is 301-M a picture of an agricultural facility and  
2 some machines at the Carrollton-Farmers Branch?

3 A. I can testify it's a shop in our area. I don't  
4 recognize it as an ag. shop. It may be, but I don't  
5 recognize it.

6 MR. KAUFFMAN: Your Honor, we move that  
7 301-M be admitted.

8 MR. R. LUNA: No objection.

9 THE COURT: It will be admitted.

10 (Plaintiffs' Exhibit No. 301-M admitted.)

11 BY MR. KAUFFMAN:

12 Q. Dr. Long, is 301-O a picture of the metalworking lays  
13 and drill presses at the Turner High School in  
14 Carrollton-Farmers Branch?

15 A. I don't recognize -- I see -- I do not recognize the  
16 teacher in there and I do not recognize the drills  
17 and presses. However, that is very typical of the  
18 metalworking lays and drills and presses. They're  
19 rather antiquated and they look like our antiquated  
20 equipment.

21 Q. In 301-P, does that appear to be automotive  
22 computerized equipment for, I guess, your auto shop  
23 at Turner High School?

24 A. It's a piece of tune-up equipment, is what it is. I  
25 do not recognize it as being ours, but we have some

1 automotive tune-up equipment that looks very similar  
2 to that. But I do not -- there's nothing in there  
3 that would indicate that this wouldn't be in a garage  
4 somewhere. I have no way of recognizing it.  
5 However, I would be pleased to say that we have a  
6 piece of equipment that does computerized testing of  
7 automobiles.

8 Q. Okay. Is 301-Q a picture of, again, an auto shop at  
9 the Turner High School in Carrollton-Farmers Branch?

10 A. Yes, it is.

11 MR. KAUFFMAN: Your Honor, we move that  
12 301-Q be admitted into evidence.

13 MR. R. LUNA: No objection.

14 THE COURT: It will be admitted.

15 (Plaintiffs' Exhibit No. 301-Q admitted.)

16 BY MR. KAUFFMAN:

17 Q. Dr. Long, is 301-R a picture of the body shop at the  
18 Turner High School in Carrollton-Farmers Branch?

19 A. It could be a body shop anywhere, Mr. Kauffman. We  
20 do have a body shop. I am not sure that this is our  
21 body shop. There's nothing to indicate that it is.

22 Q. Is it typical of the body shop which you do have at  
23 Carrollton-Farmers Branch?

24 A. It would be similar, if it's not that.

25 Q. Okay. And 301-S, is that a picture of the

1 cabinetmaking area at the Turner High School?

2 A. I -- I don't know. We have some woodworking  
3 equipment in Turner High School, but I -- I'm -- do  
4 you see anything in there that would indicate that  
5 this is unique to our --

6 Q. I see something about sales.

7 A. Yeah, but I'm not familiar with a sign that's stacked  
8 against -- leaning against the wall --

9 Q. Fine.

10 A. I just don't know. Once again, we do have some  
11 woodworking equipment along -- and the same thing is  
12 true of 301-T. I would not want to leave the Court  
13 with the impression we do not have woodworking  
14 equipment, we do. I just can't identify -- as you  
15 can see, there's no indication there that it's our  
16 equipment.

17 Q. Dr. Long, are 301-S and 301-T pictures of equipment  
18 that is typical, though, of the Turner High School?

19 A. Yes. I would say that is typical of equipment that  
20 we would have available for our students.

21 Q. Okay. If we may go back and look at these pictures  
22 which you were not able to completely identify. Dr.  
23 Long, if I were to tell you that previous testimony  
24 in this trial by the photographer identified these as  
25 pictures of facilities, of materials and classrooms



1 at the Carrollton-Farmers Branch Turner High School,  
2 would you have any reason to question that that was  
3 an accurate statement?

4 A. Mr. Kauffman, if you tell me that they are and your  
5 photographer, who came to our district to take  
6 pictures said they are, I have no reason to deny it.  
7 You're just asking me to identify something that I  
8 cannot, based upon what's available here. If the  
9 Court wants to take your word and that of your  
10 photographer, that's fine with me. I certainly would  
11 not argue with you. I just can't, in good  
12 conscience, identify that as Turner High School.

13 Q. Do you recall when the photographer went out? We  
14 sent a photographer to your district to take  
15 pictures?

16 A. Yes, I do.

17 Q. Mr. Alan Pogue?

18 A. Yes, sir.

19 MR. KAUFFMAN: Your Honor, we move that  
20 these remaining exhibits do be admitted, based on Mr.  
21 Pogue's testimony and based on Dr. Long's testimony.  
22 And these exhibits are specifically exhibits 301-D,  
23 301-E, 301-G, 301-H, 301-L, 301-O, 301-P, 301-R,  
24 301-T and 301-S.

25 MR. R. LUNA: To the extent they've not

1           been identified by Dr. Long, we do have an objection.  
2           Also, there's been no relevance really shown to it,  
3           either.

4                   THE COURT: Well, as to the identity, I'll  
5           sustain.

6                   MR. KAUFFMAN: Okay.

7                   MR. RICHARDS: We do -- excuse me. As you  
8           know, we have rested, subject to recalling Mr. Pogue  
9           and we'll clear that part up.

10                   THE COURT: Okay.

11 BY MR. KAUFFMAN:

12 Q.   Dr. Long, you talked at some length with Mr. O'Hanlon  
13       about the curriculum offerings in the  
14       Carrollton-Farmers Branch ISD, didn't you? Do you  
15       recall that?

16 A.   Yes, I do.

17 Q.   Okay. Do you know how many courses the  
18       Carrollton-Farmers Branch does offer in the high  
19       school level between ninth and twelfth grades?

20 A.   I do not. I regret that I did not anticipate that  
21       question. It would've been very easy to find out.  
22       They're out of school this week and I couldn't call  
23       back and get that information for you.

24 Q.   If I told you that the Carrollton-Farmers Branch  
25       offers 115 different courses in the ninth through

1 twelfth grades, would that surprise you as the --

2 A. I have not counted -- I would not be surprised. If  
3 you've counted them and you're telling me that, well,  
4 Mr. Kauffman, I'll accept what you say. I do not  
5 know.

6 Q. Okay. I assume that each year, the  
7 Carrollton-Farmers Branch, as well as other districts  
8 in the state, sends in a superintendent's annual  
9 report, where you list the number of courses you have  
10 and the number of students in those courses. Is that  
11 right?

12 A. I can't remember whether that's a part of an  
13 extensive report, because it's brought to my desk for  
14 signature. I do not compile that. It's done on a  
15 computer run and I sign off on it when the staff  
16 attests to it. Certainly, that's possible. We  
17 certainly keep a record of the courses. In fact, we  
18 publish a book and give it to parents so that they  
19 will know what's available to parents and students.  
20 I just haven't gone down and counted the number.

21 Q. Okay. And if I can ask you about a few of those. Do  
22 you offer four different courses in theater arts,  
23 Theater Arts I, II, III and IV?

24 A. I imagine we do. We have students who are interested  
25 in it. And once again, they have a choice of either

1           going to that class or some other class. The  
2           implication there is, I suppose, that this is a  
3           frill. It's not a frill in those peoples' minds. It  
4           -- we have -- it carries its own weight -- the  
5           classes make -- and if they're not there, we're going  
6           to provide them a teacher in some other area.

7   Q.   No implication, I'm just asking you a question, Dr.  
8       Long.

9                   Do you recall whether you offer four years of  
10          English and then offer another English course called  
11          Academic British Literature?

12   A.   We probably do. I heard you ask that question this  
13          morning -- I was trying to remember. We probably do  
14          that.

15   Q.   And you offer psychology, I assume?

16   A.   We have in the past, and I believe that course made  
17          it again in this year.

18   Q.   And you offer four years of art. You're aware of  
19          that?

20   A.   Yes.

21   Q.   Okay. And you offer three years of French and  
22          another year of advanced French?

23   A.   Right.

24   Q.   Okay. And three years of -- two years of Latin and  
25          two years of advanced Latin?

1 A. Yes, sir.

2 Q. And three years of Spanish and one year of advanced  
3 Spanish?

4 A. Yes, sir.

5 Q. Are you aware that there are some districts in the  
6 State of Texas, like San Elizario, that don't offer  
7 any foreign languages at all?

8 A. I went to that school that's had no foreign languages  
9 at all. I know quite well about that.

10 Q. Did you go to San Elizario, I'm sorry?

11 A. No, sir. I went to the type school that offered no  
12 foreign languages at all.

13 Q. Are you aware that even now, in 1986-'87, that San  
14 Elizario offers no foreign languages at this time?

15 A. That's their decision. They certainly could offer  
16 those courses if they wanted to. You know, once  
17 again, as we're discussing this, that's a prerogative  
18 of an independent school district to do that without  
19 additional costs. They could offer that to their  
20 youngsters if they feel that it's important. It's  
21 surprising that in that area, certainly they wouldn't  
22 offer at least one or two foreign languages to their  
23 youngsters. But that's -- that's the local  
24 prerogative.

25 Q. Dr. Long, if we look at one of your attorneys' charts

1           here, I think the one involving expenditures and  
2           scores, it looks as though that Carrollton-Farmers  
3           Branch scores are worse than the Midway ISD scores,  
4           is that correct?

5   A.    I think that's quite evident.

6   Q.    Okay. There's an average, I guess of, it looks like  
7           six to 10 points lower on each one of the three parts  
8           of the TEAMS test, is that right?

9   A.    That's right. I've got to go back home and go to  
10          work.

11   Q.    Okay. In the Carrollton-Farmers Branch, according to  
12          your Counsel's figures here on Intervenors' Exhibit  
13          24, you spend about \$1,100.00 more than Midway ISD  
14          per student, is that right?

15   A.    That's what it appears on that chart.

16   Q.    At this time, does the Carrollton-Farmers Branch ISD  
17          have around 15,000 students?

18   A.    We do.

19   Q.    If you'll trust my multiplication, if you multiply  
20          15,000 students times \$1,100.00, you come up with  
21          about \$16,500,000.00. Does that sound about right to  
22          you?

23   A.    I haven't figured that, but if you say that's correct  
24          -- it will be sizeable sum.

25   Q.    Okay. So you could reduce the budget of the

1           Carrollton-Farmers Branch by \$16,500,000.00 and still  
2           have as much to spend per student as the Midway ISD  
3           does, is that right?

4       A.    Well, if your figures are correct.

5       Q.    Okay.

6       A.    And I'm assuming they are.

7       Q.    In fact, I think you said your patrons of your  
8           district have found it necessary to raise their taxes  
9           every year in order to afford a program for the  
10          students in your district, is that right?

11      A.    Yes, sir, that's correct.

12      Q.    So, I guess they have made a decision, rather than  
13           allow their per pupil expenditures to decrease -- in  
14           fact, they have increased their expenditures. They  
15           have picked up over the last years, haven't they?

16      A.    That is correct, Mr. Kauffman.

17      Q.    Do you feel that your board and the citizens that  
18           elect your board, have been making wasteful decisions  
19           -- to waste their own money in terms of giving an  
20           education to the kids in your district?

21      A.    No, I do not think that they've been making a  
22           wasteful decision. The corollary to that is, could  
23           we operate more efficiently? I think any district  
24           probably could operate more efficiently.

25      Q.    I understand. But I assume that when you go before

1           your board and you propose a budget, you are  
2           proposing a budget which you see to be an efficient,  
3           well designed budget that accurately and properly  
4           uses the funds of your taxpayers, aren't you?

5   A.    Yes.

6   Q.    And after your recommendation, the board every year  
7           has decided to increase the expenditures per pupil or  
8           students in the Carrollton-Farmers Branch ISD, is  
9           that right?

10   A.   Right. Not always as much as we recommend, but they  
11           have done so.

12   Q.    In terms of efficiency, as I recall during the  
13           deposition I took of you, didn't you tell me that --  
14           I think it was last year -- that your administration  
15           actually recommended to the board an even higher  
16           budget than the board shows, is that right?

17   A.    Yes, sir. Would you like for me to repeat why?  
18           There was a logical reason for that.

19   Q.    Let me ask you one question at a time. And in fact,  
20           your recommendation was for one or two percent higher  
21           for teachers' salaries --

22   A.    I believe --

23   Q.    Let me finish my question before you answer.

24   A.    Sorry.

25   Q.    Your recommendation was that the board spend one or



1           two percent more on teachers' salaries than they  
2           ultimately chose to do, is that correct?

3   A.   The statement in the deposition was one to one and a  
4           half percent. And at the time, I cannot remember  
5           which.

6   Q.   I assume now -- I'll go ahead and ask the question, I  
7           assume you've checked on it. What is it?

8   A.   No, I haven't. It's still one, one and a half  
9           percent. I had no reason to check on it.

10   Q.   I don't even know when I'm being set up, I'm sorry.

11               Let's look at the teachers' salaries in your  
12           district. Are you pretty much aware that your  
13           district, I guess of the 15 districts in Dallas  
14           County, that you have the third or fourth highest  
15           teachers' salaries in the county?

16   A.   Yes, sir, I do know that.

17   Q.   Okay. And I assume that you feel that those  
18           teachers' salaries are necessary in order to attract  
19           and retain good teachers for the kids in your  
20           district?

21   A.   I think if you'll look at that, you'll find that our  
22           salaries are in line. We're neither the -- as I said  
23           in my deposition, we're neither the lowest nor the  
24           highest, but in order to be in line with those in  
25           Dallas County --

1 Q. Uh-huh.

2 A. -- The people that we usually look at -- Dallas and  
3 Collin County -- we try to stay somewhere -- not the  
4 highest or the lowest, but stay somewhere in that  
5 area.

6 Q. Okay. Well, as a matter of fact, your salaries are  
7 almost exactly the same as Dallas or about \$2,000.00  
8 less than Highland Park and almost exactly the same  
9 as Richardson, and higher than everybody else in the  
10 county, is that right?

11 A. We compare probably a little bit less than Plano. If  
12 you look at Plano, which is our neighbor to the  
13 northeast in Collin County, we're not in the same  
14 county...

15 Q. Let's compare you to someone else in your county.  
16 Are you aware that you pay about \$4,000.00 more for  
17 every teacher than Wilmer-Hutchins, another district  
18 in your county?

19 A. I don't know that it's \$4,000.00, but I do know  
20 there's a difference, yes, sir.

21 Q. Let me approach the witness here. I think from Bench  
22 Marks -- from the salaries here, I guess from Bench  
23 Marks, your average salary is \$26,227.00 and  
24 Wilmer-Hutchins was \$22,176.00, a difference of about  
25 \$4,000.00 per teacher, is that correct?

1 A. Yes.

2 Q. Now, you said in terms of setting your teachers'  
3 salaries, the way you do that is to look at the other  
4 suburban districts in the Dallas area, your sort of  
5 competition, is that right?

6 A. Yes. We consider our competition Richardson, Plano,  
7 Highland Park, Irving, Arlington, HEB -- those are  
8 the ones we usually look at.

9 Q. HEB is a school district, right?

10 A. Hurst-Euless-Bedford, right. Sorry.

11 Q. Because you pay a lot higher than the checkers at  
12 H.E.B., I promise you.

13 You do consider it then, that at least among  
14 your peers, that it is important for you to maintain  
15 a teacher's salary at least their level or higher in  
16 order to attract those good teachers, isn't it?

17 A. As I said earlier, we try to stay somewhere between  
18 the lowest and the highest.

19 Q. Well, the reason why you try to stay between the  
20 lowest and the highest is you want to be in there  
21 competing with your peers to attract teachers, is  
22 that right?

23 A. More important than that, we want to keep morale for  
24 the teachers we already have.

25 Q. Do you feel that it is important for the students in

1           your district to have teachers with that high morale  
2           that is brought about by having comparable salaries  
3           to the surrounding districts?

4   A.    I think morale is very important to education.  And  
5           that's the reason our community is willing to make  
6           the investment and raise taxes to pay for it.

7   Q.    And those salaries which are necessary to keep up  
8           that morale, though, are necessary, ultimately,  
9           because it's good for the education of the children  
10          in your district, isn't it?

11  A.    Oh, yes.

12  Q.    You talked a little bit about portable buildings.  
13          The portable buildings in your district are all  
14          single class portable buildings, is that correct?

15  A.    Yes, we made that decision about single or double.  
16          Our friends in Arlington have 218 classroom units and  
17          they're in double buildings.  We made the decision  
18          that we want them in single units.  We think it  
19          offers us a little bit more flexibility and they're  
20          easier to move.  So we have 48 now, and as you've  
21          already heard me say, with the anticipation of  
22          getting another 40 more.

23  Q.    The 48 buildings -- the portable buildings in your  
24          district are 48 separate classrooms, is that correct?

25  A.    Yes, sir.

1 Q. You talked a little bit about your -- I guess about  
2 your dropout rate. And do you recall that the Texas  
3 Education Agency sent to your district, and I guess  
4 to all of the other districts in the state, something  
5 called annual performance report with statistics  
6 about your district, do you recall that?

7 A. Yes, I do. If I remember correctly, that report is  
8 -- I believe that's the one that's incorrect. We  
9 address the dropout program and we -- it's a high  
10 priority with us. It's something we've been working  
11 on for about the last 10 years. You and I discussed  
12 that earlier. We have reduced our dropout rate to a  
13 great extent. I think those dropout figures are  
14 incorrect. There are few people willing to put the  
15 effort into tracing dropouts, as we are. I can't  
16 remember. I would be happy to look at those if  
17 you'll show me.

18 Q. Sure, let's look at them for a second. I think what  
19 you are telling me is, you don't place much weight or  
20 credence in the dropout figure that was sent to you  
21 by the Texas --

22 A. Let me look at those. I may be wrong.

23 Q. Before we look, you know ahead of time of whether  
24 you've given weight to that figure or not, can't you?

25 A. I can't remember. This is part of a report. I do

1 not remember. I will tell you what -- if you think  
2 I'm playing games with you, I'll tell you ahead of  
3 time -- if you'll tell me the year, I'll tell you  
4 approximately what our dropout rate was.

5 Q. Okay. '85-'86.

6 A. '85-'86. It was about -- it was about 16 percent.

7 Q. Okay.

8 A. What does the state show?

9 Q. You know, I'm not sure. What do they show?

10 A. Where?

11 Q. Where is it? I'm not even sure it's on here.

12 A. It may not be.

13 Q. Okay. Let's go ahead. I want to know your position.  
14 I'm going to try to look at this, anyway.

15 A. Well, we want to talk about dropouts. We're anxious  
16 to talk about dropouts, because it's a problem that  
17 the state hasn't addressed properly and we have  
18 attempted locally to address that problem.

19 Q. Let's look at the performance report, if we could.  
20 The performance report here shows that your district  
21 is 11 percent Hispanic, is that correct?

22 A. Well, this year it's over 12. I don't know about  
23 that figure, I -- that's close. We're 12 plus  
24 percent this year.

25 Q. Okay. And in grades pre-kindergarten through six,

1           your Hispanic percentages was 13 percent as of  
2           '85-'86, is that correct?

3   A.    I don't remember. I don't know that we checked  
4           these, but it's not far off. It's very close.

5   Q.    And in grades seven through nine, your Hispanic  
6           percentages is 11.3 percent, is that correct?

7   A.    If that's what the report says, we won't argue about  
8           that.

9   Q.    Okay, in grades 10 through twelve, your Hispanic  
10          percent is 7.3 percent, is that correct?

11   A.    I will accept this. We have an overall of something  
12          over 12 percent this year.

13   Q.    Okay. If the TEA is correct, the percent Hispanics  
14          in your student population goes down from 13 percent  
15          in elementary school to 7 percent in high school, is  
16          that right?

17   A.    Yes. But we're very -- we're very pleased -- that is  
18          a deceptive figure, and the immediate reaction is  
19          hey, we're losing a lot of kids. But our dropout  
20          rate among the Spanish is lower than among the  
21          Whites. We're very proud of that.

22   Q.    You told me that before. Let me make sure I  
23          understand that. Your dropout rate, do you compute  
24          that by looking at the number of Spanish that you  
25          have in the district in one year and compare that to

1 a number in a subsequent year?

2 A. I can't tell you all of the steps that our pupil  
3 services goes through, but it's recognized as the  
4 most complete study of dropouts that's being done  
5 anywhere, that we know of. Because our district 10  
6 years ago decided that dropouts were a major problem  
7 in the State of Texas, we attacked that problem. And  
8 when everybody else was playing games, and some  
9 people still are playing games with dropouts, we  
10 discovered in our district almost 30 percent  
11 dropouts, 28, 29 percent. We reduced that, before  
12 reform came along, to just over 12 percent. When the  
13 changes came in House Bill 246 and House Bill 72,  
14 that jumped back up to around 17 or 18 percent. It  
15 is now back down and we think this year we'll be down  
16 to around 13, 14 percent.

17 Q. Okay.

18 A. But in Hispanics, they did a study on that. And it  
19 reported to me this last week that the actual rate of  
20 dropouts among Hispanics is lower than among Whites.

21 Q. Okay. You're not sure of exactly how that dropout  
22 rate was computed, is that right?

23 A. No.

24 Q. Okay.

25 A. I can't give you all of the steps that they went



1 through in getting that, but I have great confidence  
2 in that, and we're very pleased about it. The same  
3 figure that gave us 30 percent when everybody else  
4 was saying you shouldn't publish those figures 10  
5 years ago, is the same process, an even more  
6 sophisticated process we've developed since then, so  
7 I feel very comfortable with that.

8 Q. Okay. Do you feel that the expenditures that you're  
9 making on your programs, on your teachers, has helped  
10 you to reduce that dropout rate?

11 A. I think there's a correlation between the two. We do --  
12 we have a situation in which we're in a market that  
13 is unique in the state. Ours, and basically Houston,  
14 in which teachers are paid more than they are in  
15 other places in the state. And we just sit somewhere  
16 being controlled by a market. And if we're going to  
17 keep our teachers reasonably happy, we need to be  
18 somewhere in there.

19 No, I don't think there's a correlation between  
20 the two. I do think that if we were the only school  
21 district in the Dallas/Fort Worth area that was not  
22 raising their teachers when every one else was, logic  
23 would tell us we have morale problems. Yes, I don't  
24 think that would be any more positive.

25 If we go out to hire people, we're looking for

1 people who care about kids. A few hundred dollars in  
2 the salary is not going to determine whether they  
3 love or don't love kids, whether they're dedicated or  
4 not dedicated to kids.

5 Q. So, you've reduced your dropout rate from 30 to 16  
6 percent?

7 A. 28, 29 down to -- our best year was about -- was the  
8 year before the reforms, it was down to around 12  
9 percent. We're going to be down to, we think, we're  
10 hoping we're down to 13, 14 percent again this year.

11 Q. Okay. And is it your testimony then, that all of  
12 that reduction has nothing to do with the amount that  
13 you spend on the kids in your district? Was it just  
14 sort of luck or what?

15 A. It's hard work. It's caring. It's getting out there  
16 with the troops. It's going into the street and  
17 getting kids, persuading them to come back into  
18 school. Dollars won't buy that. Dollars won't hurt  
19 that, but dollars don't buy that.

20 THE COURT: We're going to stop, you all.  
21 See you tomorrow morning at 10:00 o'clock.

22 (Proceedings Recessed until

23 (March 25, 1987.  
24  
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