

3-87-190-CV

CAUSE NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

C 8353

THE 250TH JUDICIAL

VS.

DISTRICT COURT OF

WILLIAM KIRBY, ET AL

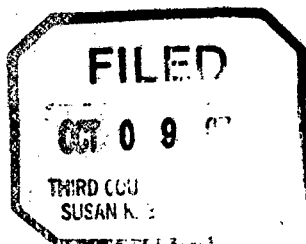
TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

STATEMENT OF FACTS
VOLUME IX OF XLVI

JOHN T. ADAMS, Clerk
By _____ Deputy



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CAUSE NO. 362,516

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

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

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6 ATTORNEYS FOR THE DEFENDANT-INTERVENORS
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17 BE IT REMEMBERED that on this the 3rd day of
18 February, 1987, the foregoing entitled and numbered
19 cause came on for trial before the said Honorable Court,
20 Honorable Harley Clark, Judge Presiding, whereupon the
21 following proceedings were had, to-wit:
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1 FEBRUARY 3, 1987

2 MORNING SESSION

3 MR. O'HANLON: I guess I'll proceed.

4 THE COURT: All right.

5 MR. O'HANLON: Before we start, Your Honor,
6 I think Mr. Kauffman has a retraction he would like
7 to make.

8 MR. KAUFFMAN: Well, the attorneys in this
9 case are now unanimous, Your Honor, that even my
10 questioning whether we would be holding court on
11 Friday was probably inappropriate. We all agree that
12 a Friday rest period would be good for us.

13 So, of course, if the Court wants us here,
14 we'll be here, but I heard a firmer response than I
15 have gotten in the entire trial when I even asked the
16 question.

17 THE COURT: Okay. That will be fine.

18 MR. O'HANLON: May I proceed?

19 THE COURT: Yes, sir.

20 MR. CRAIG FOSTER

21 was recalled as a witness, and after having been previously
22 sworn, testified as follows, to-wit:

23 CROSS EXAMINATION

24 BY MR. O'HANLON:

25 Q. Mr. Foster, I have taken -- before we got here and I

1 discussed with you briefly, I believe, I've taken the
2 liberty of making a computer here.

3 What I want to do is have you kind of give me
4 the numbers and work through the methodology with me.
5 What I'm going to try to do is explain the
6 interrelationship of some of the variables here on
7 the Foundation School Program and the local fund
8 assignment and how they interrelate with each other.

9 What I have done here is, on this vertical axis
10 here, I have put dollars in \$100.00 increments. Each
11 inch represents \$100.00 here on the left. On the
12 bottom axis, the horizontal axis, I have put in one
13 inch increments, five percentiles of student wealth.
14 That's pretty much the same way that you have ordered
15 your data with respect to that axis, is that correct?
16 You've looked at a lot of --

17 A. Yes. We have looked at it in terms of those
18 percentiles, yes.

19 Q. I suppose -- and I'll ask you whether you would be
20 more -- in making this kind of analysis, what I am
21 going to do is I'm going to take and draw an axis
22 line here and we're going to compute the area under
23 the triangle for the present system, and then we'll
24 move the local fund -- the Foundation School Program
25 any way you want, and then compute the square inches

1 under it and see where it comes along on the wealth
2 line. Then we'll figure out what kind of tax rate is
3 going to be necessary to implement that kind of a
4 program. Does that methodology make any sense to
5 you?

6 A. In general, it does. It's right out of my
7 repertoire. I have done this many times.

8 Q. Okay.

9 A. But you will need to, on the horizontal axis,
10 represent dollar amounts rather than percentiles
11 because there are not equal dollar intervals from one
12 percentile to another.

13 In other words, the wealth line is not a
14 straight line. It is a curved line.

15 Q. Okay.

16 A. If you don't put down a scale that represents
17 dollars, you will not get correct arithmetic when you
18 start figuring the area. This just occurred to me.
19 I wasn't trying to hide this from you, it just
20 occurred to me a minute ago.

21 Q. Okay. Let's do that. How would you go about doing
22 this horizontal axis, then?

23 A. Well, we have, from our 102-B, a set of values per
24 student unit that are at the zero, five, ten, so
25 forth, percentile. What I would like to suggest is

1 that for these purposes, we use not the student unit
2 figures because we want something that corresponds
3 with familiar and recognized Foundation School
4 Program numbers, like the \$2,414.00 from the
5 committee's study and the current level of \$2,041.00
6 and so forth.

7 And in anticipation of there needing to be some
8 discussion based on Refined ADA, we have in the far
9 right-hand column of Page 3 of 102-B a set of
10 property values per Refined ADA that have been
11 standardized for cost. In other words, they are
12 adjusted for cost the same way -- in a similar manner
13 that we adjusted student units.

14 Q. Okay. Let me stop you there.

15 For one, I don't think we've ever defined this
16 standardized. Could you go into a little more
17 detail? I don't remember you defining this for the
18 Court.

19 A. No. Number one, it is important to understand it's
20 exactly proportional to student units. In other
21 words, they are larger numbers, but each of them is
22 larger by exactly the same proportion or percentile.

23 They are numbers which are standardized at the
24 average rather than at the minimum. In doing student
25 units, we standardize at a minimum value, being

1 \$1,350.00. When we standardize for Refined ADA, we
2 simply standardized at the average cost per Refined
3 ADA.

4 Q. Okay.

5 A. The benefit of using figures like that in this kind
6 of graph is that this only works if you deal with
7 averages.

8 Q. Okay.

9 A. You cannot take any particular district because it
10 may be a high or low cost.

11 Q. Okay.

12 A. You don't know whether it fits into budget balanced
13 just on the basis of wealth. It has to be on the
14 basis of its cost and combination with its wealth.

15 So this does help to permit us to deal strictly
16 with averages.

17 Q. Okay.

18 A. If it's sort of a "if everybody had average students"
19 kind of approach, then this works mathematically.

20 Q. Okay.

21 A. So the range that you're dealing with is from -- at
22 the low end -- well, if you're dealing with a range
23 across all districts of \$12,252,542.00 in
24 standardized property value in Santa Gertrudis and if
25 you put that on this chart, that will be all the way

1 over to the right-hand side, and the data we actually
2 want to look at will be a couple of inches over here
3 on the left.

4 Q. Okay.

5 A. So it will be unmanageable.

6 Q. Okay.

7 A. So I would suggest going to the value at the 95th
8 percentile --

9 Q. Okay.

10 A. -- which is one we have, and set up your chart on the
11 basis of that value, which is 432,701. So if you set
12 a figure out there that, let's say, is 440,000, and
13 then you set up your graph to have equal intervals,
14 you can divide 440,000 by 20 if you wanted to have
15 your 20 intervals.

16 Q. Okay. Let's do that. 440 by 20 would give us
17 \$22,000.00 --

18 A. Right.

19 Q. -- a unit. So this one is going to be 44? The next
20 one that's marked will be 88. I'm going to have to
21 start multiplying 132, 176, 220, 264, 308, 352, 396
22 and 440. That came out right. How about that?

23 A. Very good.

24 Q. All right. What this horizontal axis now represents
25 are increments in increments at each hash mark, with

1 \$22,000.00 per inch property wealth in the district.

2 A. Right, per Refined ADA.

3 Q. Per Refined ADA.

4 A. Cost standardized basis.

5 Q. Okay. Now, when we are looking at this, how shall we
6 look at the vertical axis here? What shall we
7 include -- should we include just the Foundation
8 School Program, should we include Foundation with
9 equalization?

10 A. If you include just the -- well, if you include
11 equalization, then you have actually two triangles to
12 work with up there.

13 Q. Right.

14 A. You have one triangle that goes all the way out in
15 the wealth scale, and another that only goes to --

16 Q. 110.

17 A. -- 110.

18 So for purposes of doing this, it is better to
19 fold the equalization into the total and just
20 multiply the average current costs, nominal costs,
21 average nominal costs per Refined ADA across the
22 state by 1.3 and establish that as that first level
23 that we're going to look at.

24 Q. Okay. Let's do that. How much would that be?

25 A. That is \$2,653.00.

1 Q. Okay. Two thousand six hundred -- let me get a pen --
2 \$2,653.00?

3 A. That is correct.

4 Q. These are \$100.00 increments, 653, so it would be
5 right about in the middle, wouldn't it?

6 A. Now, we're going to need to go with just the numbers
7 that I have to a little over \$2,900.00 there -- well,
8 let me tell you the maximum number that I have that
9 we might want to look at, and that is \$3,492.00,
10 which is the average cost of the Accountable Cost
11 Advisory Committee quality program for all kids,
12 including all the weights and so forth.

13 Q. Okay. Well, we can figure out -- I'll take a ruler
14 when we get to that point and we'll draw the line
15 back down.

16 A. Okay.

17 Q. All right. Now, this 2,653 is what your figures show
18 is what?

19 A. That represents 1.3 times the current average nominal
20 costs per Refined ADA, so it is the average cost kid
21 plus 30 percent.

22 Q. Okay. Now, this distribution will tend to show a
23 little bit more money, because of the fact that rich
24 districts under this methodology are getting a little
25 bit of that, may skew just a little bit, isn't that

1 right?

2 A. Well, what this methodology says is that that 30
3 percent is part of the costs for everybody.

4 Q. It's evenly distributed, which we know it's not, but
5 if you --

6 A. We know it's not evenly distributed with respect to
7 the tax rate required to raise it. We've already
8 established that. So there is that caveat that needs
9 to go with this particular presentation, but it is --
10 just won't work if we have two triangles. We'll be
11 in it forever.

12 Q. All right. Now, should we draw this down -- in
13 computing that and for purposes of our computation,
14 we'll call that 50, so we'll call that 26 and a half
15 inches, okay, in computing the area under that.

16 A. Okay.

17 Q. That will get us within \$3.00 of it.

18 A. I can deal with that discrepancy.

19 Q. Where is the point where I'm going to cross this
20 line? At the 44?

21 A. First of all, if you will, put a -- perhaps even a
22 red line across there at \$280.00, so that we can see
23 the point beyond which nobody ever drops in terms of
24 the state aid portion.

25 Q. Okay.

1 A. That actually -- if you will, extend that all the way
2 out because that literally goes to the 12 million,
3 which is to the right of your chart, but just to
4 emphasize that that is available --

5 Q. Okay. This money under here is available fund?

6 A. Yes, the so-called per capita distribution.

7 Q. Okay.

8 A. You now need to establish a point on the horizontal
9 axis which approximates where we are now in terms of
10 budget balance -- where budget balanced districts
11 begin if all districts have average cost kids.

12 Q. Okay.

13 A. We can approximate that by looking at our Exhibit
14 102-A, and I'll start at the 95th percentile, which
15 is -- Richardson is there. Richardson is not budget
16 balanced, so I want to move up a little further.
17 Let's see. I'm looking for districts that are of
18 some magnitude. Texas City is at 96.8. Let's see if
19 they're budget balanced. No, they're not.

20 Q. Let's go down to Alamo Heights.

21 A. I believe Alamo Heights is.

22 Q. They're not quite. As I recall, you figured that
23 they're getting about \$100.00 or something like that
24 per child.

25 A. Just a moment. They're getting 273 per student unit;

- 1 probably 200 of that is available school fund. So
2 they're almost budget balanced.
- 3 Q. I think the next one down would be Snyder.
- 4 A. That would not be a bad choice.
- 5 Q. Okay.
- 6 A. That's at the 98th percentile --
- 7 Q. Okay.
- 8 A. -- which is -- I know that percentile to be
9 approximately correct for the beginning of the budget
10 balanced districts, generally.
- 11 Q. Okay.
- 12 A. So we need a line at -- we got from our 440,000 to a
13 much higher figure pretty rapidly here.
- 14 Q. Uh-huh.
- 15 A. So you really need to start your -- you need to
16 extend your horizontal axis to pick up Snyder at
17 \$622.00. So you need a few more inches there.
- 18 Q. All right.
- 19 A. 440 from 620 would be 180, so --
- 20 Q. Okay. 484?
- 21 A. Another eight inches or so.
- 22 Q. What is the amount you were talking about now?
- 23 A. 622.
- 24 Q. Okay.
- 25 A. Directly above that point on the red line, you need

1 to make some sort of dot, so your current line begins
2 over there. That's the beginning point.

3 Q. Right here?

4 A. Right.

5 Q. Okay. And it goes to this 2,653?

6 A. No. It goes to a point that is less than that by the
7 poorest district's local fund assignment per Refined
8 ADA.

9 Q. Okay. That would be Boles Home?

10 A. Yes. It would be Boles Home, and they would have a
11 local fund assignment on a standardized property
12 value per Refined ADA of .2865 times \$18,480.00. So
13 they would have a \$55.00 local fund assignment, so
14 come down to \$55.00.

15 Q. Let's call it right at the \$2,600.00 mark.

16 A. That would be very close, yes.

17 Q. All right. Okay.

18 A. So now to represent the current program, you can draw
19 a straight line from the point we have just
20 established down to the point on the red line.

21 Q. That's \$622,000.00. Okay. So we have a line here
22 that captures -- what's under this curve is state
23 aid.

24 A. Yes.

25 Q. Okay. And I assume, then, if we draw a line across

1 the top, we don't go to the top of this, we go back
2 to the 2,653.

3 A. Yes. That would capture the total program at that
4 particular level.

5 Q. Is that about straight?

6 A. Down a little on the right. I appreciate your
7 appreciation for my attention for accuracy.

8 Q. Okay. Now, at any given point on there, then,
9 wherever a district happens to fall along here, just
10 in a representational form, the matter below the blue
11 line is the amount of state money that's available.

12 A. That is correct.

13 Q. The amount above the blue line and below the red line
14 at the top is the amount of local funds that are
15 going to have to be raised by a district.

16 A. That is correct.

17 Q. Okay.

18 A. To fund an average program at 2,653.

19 Q. Okay. Now, we can compute the area under this curve
20 by taking 26 inches, and then I assume we subtract
21 2.8 inches down here because everybody gets that,
22 right, as long as I come back to this line?

23 A. Well, we won't be talking about total state aid then,
24 we'll be talking about state aid from sources other
25 than the available school fund, which is an

1 acceptable way of doing this.

2 Q. Okay. Then what we'll come out here is 28 -- if you
3 will write these numbers down, let's call that 28 and
4 -- let's call that 28.2 inches here.

5 A. Okay. Got it.

6 Q. We'll take 26, and then we'll subtract 2.8 inches, so
7 you get 23.2 inches.

8 A. So it's 28.2 by 20 --

9 Q. 23.2.

10 A. All right.

11 Q. Take half of that number, it will give us the other
12 end of the curve.

13 A. Right. Looks like 327.

14 Q. Okay.

15 Now, let me ask you a couple of questions about
16 this relationship here. If we take off the available
17 fund, if we just don't consider this for the time
18 being, then the way the system works, because this
19 line does not come all the way up to the top, the
20 locals -- and the fact we have budget balanced here
21 that are spending exclusively local money, the local
22 districts are required under this system right now to
23 spend a little bit more than the state does.

24 A. Yes.

25 Q. That's not quite --

1 A. If you did the other triangle, you'd have a minor
2 difference for that particular set of districts
3 excluding all the budget balanced.

4 Q. That's the nature of the system we've got right now?

5 A. That's right.

6 Q. Now, what I'm going to ask you to do now is to go
7 back to some -- and you can use Dr. Hooker's
8 testimony or anything you want -- and let's establish
9 a new Foundation program cost at whatever level you
10 like, and let's see what it does to this axis. Let's
11 see how far we push back into the districts.

12 A. Let's first confirm that the local fund assignment
13 rate applies to the cut off district on the
14 right-hand side -- applied to its value does indeed
15 produce the money we're looking at there --

16 Q. Okay.

17 A. -- just to verify the system.

18 MR. O'HANLON: This is all the computer we
19 could afford, Judge.

20 A. I get \$1,782.00 plus the available school fund. At
21 this point, we're \$1,600.00 short.

22 Q. We're \$1,600.00 short?

23 A. That's because we folded in --

24 Q. The .3?

25 A. Yeah. We need to change the local share -- assuming

1 we keep the two-thirds/one third sharing ratio, we
2 need to change that local fund assignment rate to 37.
3 We're up to 2,580 now. We're doing much better. We
4 need to adjust the number on the vertical axis so
5 that the local fund assignment amount for Boles Home
6 is a little bit different. You don't need to redraw
7 the line to capture it.

8 Q. Okay.

9 A. It's \$68.00 instead of 53, so we'll take --

10 Q. 68 is the local fund assignment?

11 A. Yes. So 25 -- wait a minute.

12 Q. Yeah, I get 2,585.

13 A. 2,585, yes.

14 Q. Okay. All right. So when we're measuring that axis,
15 let's call it 25.85 inches.

16 A. Okay. And then, that one remains the same at 22 --
17 23.2, so you have -- that's 300.

18 Q. Let me count these again to make sure we have it
19 right.

20 A. 300 square inches.

21 Q. Okay. You got that? What number did you use here?
22 I get 28.2.

23 A. You gave me 23.2.

24 Q. It's 28.2.

25 A. Okay. 364 square inches.

1 Q. 364?

2 A. Right.

3 Q. Okay. Now, did you figure to this point then? I
4 should say, did you take off the 280?

5 A. No.

6 Q. Okay. Let's take that off.

7 A. Right. I thought you were giving me a net, but I
8 should have known. So it's 2,305 times 28.2 divided
9 by two.

10 Q. Uh-huh.

11 A. How about 325?

12 Q. All right.

13 A. That's close to the 327 we had earlier, just got to
14 it the wrong way.

15 Q. Now, should we use Dr. Hooker's figure? What figure --
16 well, I'll ask you. What figure should we use when
17 we're adjusting up the program? The Accountable Cost
18 Committee study says \$2,600.00 for '85-'86?

19 A. I've got a two-step process that gets us -- one way
20 to do this exercise, at least initially, is to say to
21 hold total state money constant --

22 Q. Uh-huh.

23 A. -- and to hold the local tax rate constant at 55
24 cents, which is the average for M&O now, and then see
25 what we can do without changing either state aid or

1 the local average tax rate.

2 Q. Okay.

3 A. And then, if that combination of things doesn't fund
4 a certain level, then we have to talk about the
5 alternatives as to how you go from that point to some
6 higher point. And it happens that the Advisory
7 Committee's standard and the quality program are both
8 higher costs than the cost at the limits we can go
9 without changing state aid or the average local tax
10 rate.

11 Q. Okay. Let's go to that higher rate for the
12 Accountable Cost Committee, then, just for purposes
13 here.

14 A. Okay. Let me give you the figures for both the
15 standard and quality programs under the Accountable
16 Cost Advisory Committee study once they are inflated
17 to incorporate the entire Foundation School Program
18 rather than just regular education.

19 Q. Okay.

20 A. The 2,414 that is for regular education becomes
21 3,093, and it is multiplied by -- to get there, it's
22 multiplied by 1.28, which is the ratio of total
23 program costs per Refined ADA to regular program
24 costs per regular ADA.

25 Q. Uh-huh.

1 A. For the quality program, the 2,725 for the regular
2 program multiplied by the same factor gives you a
3 total of 3,492.

4 Q. Okay. Now, to stay true to our methodology here,
5 we've got to then take that figure and multiply it by
6 1.3, is that correct?

7 A. No. These incorporate. In other words, they are --
8 we do not add for this analysis a .3. Whatever
9 enrichment is there is incorporated for purposes of
10 this analysis.

11 Q. Okay.

12 A. Now, by that, I do not mean to say that we do not
13 need to have some percent above those figures to take
14 into account contingencies. But for purposes of this
15 analysis, since we have folded the current enrichment
16 equalization money into this and it's part of this
17 2,653, then to have comparable figures, we need to
18 use other data in which it is considered to be part
19 of the costs we're going to use, so that we have
20 apples and apples.

21 Q. Okay.

22 A. And at \$2,913.00, that's the next level that I'd like
23 to deal with because it's the level at which you can
24 take existing state funds and the existing average
25 tax rate and show what happens as you change the

1 local fund assignment, what happens to the
2 distribution of the state aid.

3 Q. Well, at 2,913, the Edgewood School District is in
4 excess of that, aren't they?

5 A. No.

6 Q. They're getting in '85-'86, 2,940 in state and local
7 taxes, aren't they?

8 A. I'm afraid you have the wrong book.

9 Q. I don't have --

10 A. That's state and local taxes for '85-'86 divided by
11 Refined ADA for the prior year --

12 Q. That's right.

13 A. -- which at the time that publication was published
14 was the best data available, but it no longer is.

15 Q. But you say that if we'll go back and look at this
16 other Bench Marks, I think we'll find that Edgewood
17 is a shrinking district rather than a growing
18 district.

19 A. Well, all I'm saying is it's not the right figure,
20 and there's no point in putting up the wrong figure
21 if you and I both agree it's the wrong figure.

22 Q. I mean, assuming Edgewood is approximately a stable
23 size and that they shrunk over that period of around
24 700 between the time the '84-'85 and the '85-'86 came
25 out. I'm willing to suffer the fact that we lost 700

1 students for purposes of this analysis. Okay? That
2 will cost the state a little money. I'm not trying
3 to compute any district here. I'm trying to get --

4 A. You cannot compute any district here unless you
5 assume it's an average cost district, which Edgewood
6 is not. But I can give you a standardized figure
7 based on the average.

8 This kind of analysis is generally not for the
9 purpose of looking at -- well, we can, though. We
10 certainly can. If we use the standardized figure,
11 then it fits into a standardized framework.

12 Q. Okay. What I am trying to find out now is how much
13 money we should run on this axis.

14 MR. RICHARDS: He's already said 2,913.

15 A. 2,913 is the next number up that we need to look at.

16 Q. Okay.

17 A. That represents an enhancement of the state's
18 Foundation School Program of -- that would represent
19 a \$260.00 enhancement of the program that we started
20 with here.

21 Q. Okay. Now, let's take this 29.13 to tell me how far
22 I can get on this axis, take that 29.13 and divide it
23 by two, and that will cut it in half.

24 A. We still have to do the 2.8 down there. 2,469.

25 Q. Okay. To do that, I'm going to move that twenty-four

1 and five-eighths inches, a little over five-eighths.
2 That will get me at just a hair over five-eighths and
3 would be .62, correct?

4 A. Okay.

5 Q. All right. And we draw the same line, don't we?
6 I'll draw this one in black.

7 Now, as I see that, that's going to put us at
8 about \$510,000.00 property wealth in the district.

9 A. That is correct. I mean, if it is correct, we are at
10 Robert Lee at that point.

11 Q. Okay. And where is that in the percentile -- how far
12 down is that? What district is that?

13 A. That's at the 96.8 percentile. It is the 113th
14 wealthiest district.

15 Q. Okay. So you've cut off 113 districts at this point
16 by --

17 A. Well, let's just cut -- we're talking about the
18 additional ones that are budget balanced.

19 Q. Uh-huh.

20 A. We already have -- let's see -- we have created 23
21 budget balanced districts.

22 Q. Okay. Now, let's take the next figure up the line.
23 Should we go to Mr. Hooker's, or 3,400, or would you
24 not subscribe to that kind of an increase?

25 A. At this point, no. At this point, as we have

1 indicated, created some additional budget balanced
2 districts. We also need to look at -- well, we have
3 an error up there, Mr. O'Hanlon. We need to draw a
4 new red line at that higher figure, the 2,913 --

5 Q. Uh-huh.

6 A. -- and then we need to start your black line from the
7 state aid point.

8 Q. Okay. So I don't draw too many lines, let's leave
9 that off and do the rest of the analysis
10 understanding that every district is going to be
11 raising a little bit of money.

12 A. Okay. But we need to redo the --

13 Q. Calculation?

14 A. -- calculations we just did.

15 Q. That's fine.

16 A. We haven't really created that many budget balanced
17 districts yet.

18 Q. I wouldn't want to create any more than we have to.

19 A. I have no problem with that.

20 Q. I understand.

21 MR. RICHARDS: Kevin, can you tell us how
22 much money there is in here between this blue line
23 and black line?

24 MR. O'HANLON: Well, actually, we probably
25 could compute that, if you really want to know.

1 MR. RICHARDS: I thought that's where you
2 were going. I thought you were going to take that
3 triangle and figure out how much money was inside it.

4 MR. O'HANLON: It actually can be done.

5 MR. RICHARDS: Can it?

6 MR. O'HANLON: Yes.

7 A. Mr. O'Hanlon, you might want to note that black line
8 really starts at twenty-eight and a third inches.

9 Q. 28.33?

10 A. Yeah. Okay. It's going to be below -- okay.

11 Q. 28.33.

12 A. You should be at twenty-four and a half inches.

13 Q. I was at twenty-four and five-eighths.

14 A. You're okay there.

15 Q. Okay.

16 A. And that value is going to be slightly lower.

17 Q. Okay. So what was the district that you identified?

18 MR. RICHARDS: Robert Lee, No. 113.

19 MR. O'HANLON: Okay.

20 BY MR. O'HANLON:

21 Q. What's the next figure we want to do?

22 A. Okay. Let's see, let's also draw that second red
23 line that shows the new program level.

24 Q. Okay.

25 A. And draw it above your black line to show that there

1 is a local share for the poorest districts.

2 Q. Okay. Let me ask you a couple of questions about
3 that real quick.

4 Now, what you've done by that figure is, in
5 essence, captured all of the average property tax in
6 the state and put it under the Foundation program.

7 A. That is correct.

8 Q. Okay. And that's what the difference between these
9 two lines is?

10 A. Yes.

11 Q. Okay. And given that average, you have captured from
12 the richest district in the state all the money that
13 you can, isn't that right?

14 A. Not from the richest district in the state, but from
15 every district that is between the two points on the
16 red line at the bottom.

17 Q. Okay. And this is -- all you've done is, you've only
18 picked up about 20 districts?

19 A. Something in that order.

20 Q. Okay.

21 A. Whatever that was.

22 Q. Okay. So the difference between what the state has
23 done and the best the state could do, assuming
24 existing tax rates, is represented by that chart.

25 A. Assuming existing state aid and just the average tax

1 rate as an illustration. For example, what that
2 procedure does for two districts that I have
3 selected, one at 43,000 in property value, and the
4 other at 430,000 in the selection, being where one
5 district is ten times as wealthy as the other. Of
6 course, you'll recognize those figures as being well
7 within the range of district wealth without getting
8 into extremes, from 43,000 in the poor district to
9 430,000 in a rich district.

10 What we started out with before we made any of
11 these changes was a situation where these two
12 districts with identical costs, the poor one was
13 spending or had available from state and local funds
14 \$2,666.00 and the wealthier one had \$3,160.00.

15 So the wealthier district was spending a little
16 under \$500.00 more than the poor district. And by
17 the time we had done just this much, both districts
18 were able to spend \$2,913.00. So they were
19 equalized, given a constant M&O tax rate at the
20 average level and existing levels of state aid for
21 those districts.

22 So we achieved a substantial degree of
23 equalizing. We shifted a significant amount of
24 money. And \$500.00 in public education is a
25 significant amount of money, especially for a poor

1 district.

2 So that's what we have achieved so far.

3 Q. Okay. I compute that we shifted from 26 -- about
4 300.

5 A. No, from the -- if this thing is actually
6 proportional, and you can make determinations from
7 it, and you're close but not exact, what this means
8 is if you took -- if you drew a line at the
9 \$43,000.00 mark and drew another line at 430,000,
10 what you've done, without changing state aid or total
11 tax rate, you shifted \$500.00 from the district at
12 430,000 in value to the district at 43.

13 Q. Oh, I see. You've taken \$500.00, but you haven't
14 given \$500.00 over here.

15 The reason why I say that is that all we've
16 done for the theoretical poorest district is raise
17 their spending level from 2,653 to 2,913. So we --

18 A. For the very poorest district. What I'm talking
19 about is two districts that are elsewhere in this
20 chart, but for which I have actually computed actual
21 data.

22 Q. Okay. Now, this is essentially -- the difference
23 here is the difference between what the state's doing
24 and the best the state could possibly do without
25 raising a heck of a lot more money?

1 A. No. That's not true. The state could raise a little
2 bit more money. The state could talk about a
3 slightly higher local fund assignment, both of which
4 would continue to make significant contributions.

5 Q. Well, now, wait a minute. Slightly higher money is
6 more money.

7 A. Yes. You said a lot more money.

8 Q. Excuse me. And a local fund assignment, raising the
9 local fund assignment is more money too, isn't it?

10 A. It puts more money into the system, yes.

11 Q. And what it does by doing that is it requires these
12 districts -- every district that's above the line to
13 raise their tax rate.

14 A. If they want to spend at the level indicated. They
15 do not have to raise their tax rate. And if they're
16 already raising a higher tax rate, which is very
17 common, then they don't have to raise their rate one
18 penny in order to spend at that level. In fact,
19 they may decide to cut their tax rate and spend at
20 that level.

21 Q. But we know there's a lot of districts in the State
22 of Texas that have made the choice to spend more than
23 the average, isn't that right?

24 A. That is correct.

25 Q. And they actually -- in terms of tax rates, the

1 higher taxing districts tend to be in the middle.

2 A. The highest tend to be in the middle with some
3 obvious exceptions there. The next highest tend to
4 be at the poor end. And the lowest tend to be at the
5 high end. If you --

6 Q. Well, now, wait a minute. If you're saying in the
7 middle, I count one -- well, that's a half -- one,
8 two, three, four, five, six, half, half, seven and a
9 half, which is 75 percent of the districts in the
10 state, according to your chart, tax at a higher rate
11 than the 10 percent of the poorest districts?

12 A. You're looking at the M&O rate or you're looking at
13 the total --

14 Q. No, I'm talking about the total tax rate -- no, I'm
15 looking at M&O here.

16 A. If you look at the -- if you can visualize a slope
17 that has as much below as above it at the top of
18 those charts, you will see there is a downward
19 sloping line. The arithmetic average of deviations
20 produces a downward slope.

21 Q. Okay.

22 A. So there is a downward slope in total tax effort from
23 poor to rich. Probably also true mathematically.

24 Q. Now, what we're going to find is that these districts
25 in the middle, though -- is it reasonable to assume

1 that these districts in the middle are not going to
2 be -- because they're not content now with spending
3 at an average tax rate, if they want something more
4 than an average program for their kids, are likely,
5 if they want to continue that, to be forced to raise
6 their taxes?

7 A. Well, if they want to continue to maintain a gap
8 between themselves and other districts, that might
9 require raising their rates, but if they want to
10 maintain a high quality program and they already have
11 it, then I don't know why they'd raise their tax
12 rates.

13 Q. Okay. Now, at any rate, what we're doing -- by
14 simply calling something local fund assignment
15 doesn't mean that citizens out there aren't going to
16 have to pay taxes in order to support the educational
17 program.

18 A. Citizens do now; citizens will continue to pay taxes
19 to support local education.

20 Q. And every time we raise that local fund assignment,
21 what the state, in effect, is doing is forcing a tax
22 increase --

23 A. That's not true.

24 Q. -- on districts.

25 A. That's not true.

1 Q. Well, they don't have to spend. That's --

2 A. Well, if Richardson, for example, is funding with
3 their tax rate, which is above average, and with the
4 state aid that they're getting, if they are funding
5 what they consider to be a quality program, or what
6 the state considers to be a quality program, either
7 way, if you raise the local fund assignment their
8 choice is whether to maintain that gap, which could
9 mean an increase in taxes, or to just have that
10 something that's more equitable in terms of the
11 comparison between that program and somebody else's
12 program.

13 Q. I see. You represent the Equity Center. Would you
14 tell your subscribing districts to make less than
15 that average total tax rate?

16 A. I do not advise my members with respect to where they
17 should set their tax rates.

18 Q. You wouldn't tell your districts? You're up here
19 telling the Court that everybody needs to spend the
20 same amount of money, but you wouldn't tell the
21 districts that you represent that they need to spend
22 the same amount of money that everybody else does?

23 A. I don't make those kinds of recommendations to my
24 districts.

25 Q. How can you be up here making it to the Court if you

1 won't even make it to the members of your
2 organization?

3 A. Well, I didn't know that I was here to make
4 recommendations to my membership or that there is any
5 necessary relationship between how I deal with my
6 membership and how I deal with the overall question
7 of school finance equity in the state system.

8 Q. Okay. So the business of how much money a local
9 district wants to spend is their own business.

10 A. It is, up to a certain point, not quite their own
11 business, because if they are not funding at certain
12 levels, they are likely to be in trouble with the
13 state with respect to accreditation. So they may
14 spend less, they may tax less, but it may cause them
15 to lose accreditation or to be otherwise warned or
16 put on some sort of status that means less than fully
17 accredited. So there is, by virtue of accreditation
18 compliance activities, some pressure on school
19 districts to tax locally at at least that level.

20 Q. So you wouldn't tell these poor districts down here
21 to tax at the same rates of the middle district. You
22 wouldn't tell them that; it's not your business, even
23 though they can raise and spend more money on their
24 kids.

25 A. I would advise them -- if we made a change in the

1 school finance formula which had the effect of
2 providing substantial additional state aid with some
3 additional local effort, I would advise them of that
4 fact and I would compute for them what additional
5 state funds they might receive if they made some
6 particular effort level.

7 What they do with that information and advice
8 is entirely their own business.

9 Q. So it's okay for these districts out here to be
10 taxing at less than the state level, the state
11 average level. They're taxing, as you can see,
12 significantly below the statewide average, aren't
13 they, for maintenance and operations?

14 A. I don't understand why you would say that.

15 Q. Well, they're taxing at an average of -- if I read
16 that right -- about 45 cents.

17 A. You're talking about the M&O?

18 Q. Yes, sir.

19 A. Okay. If you don't look at the total tax burden, you
20 miss a very important point. And that is that
21 taxpayers don't really make a fine distinction
22 between what is being collected from them for debt
23 and what is being collected for operations. Their
24 acceptance of or resistance to the setting of tax
25 rates and increases in tax rates is a reflection of

1 the perceived burden that they're under, and they
2 don't ask to break it down between debt and M&O.

3 Q. You know as well as I do, Mr. Foster, that once
4 you've issued an unlimited bond, that that tax rate
5 -- the tax rate necessary to retire it is out of the
6 control of the trustees, isn't it, of an independent
7 school district?

8 A. No, it's not.

9 Q. You have to --

10 A. You have to have made a commitment to retire the
11 debt, if that's what you mean.

12 Q. No, you have to do that. That's part of your
13 fiduciary responsibilities.

14 A. That's correct.

15 Q. That's not subject to a roll-back election or
16 anything of that nature, is it?

17 A. No, it's not. It is exempt from the roll-back
18 provisions.

19 Q. That's right. So the only thing that the voters are
20 involved in is the setting of that maintenance and
21 operations tax?

22 A. That's not true. If the trustees have made a
23 commitment to spend large amounts of money to build
24 what they consider to be necessary facilities, then
25 taxpayers will resist increases in M&O taxes because

1 they are already heavily burdened by the combination
2 of M&O and debt taxes.

3 Q. Well, let's take the total, then. Now, these
4 districts are still spending below the state average,
5 aren't they, for total taxes?

6 A. The very poorest group is slightly below the state
7 average. They're just real, real close to it.

8 Q. And you wouldn't advise them to spend at the state
9 average --

10 MR. RICHARDS: Excuse me. Mr. O'Hanlon, he
11 hasn't finished his answer. Why don't you let him
12 finish before you cut him off, okay?

13 A. And then the next four columns, including the narrow
14 one next to that, and the next two narrow ones, and
15 the one next to that are all in the bottom third of
16 wealth and they are all making an effort that is
17 clearly above the state average.

18 Q. Uh-huh. So you wouldn't advise these districts and
19 say, "Hey, we can spend more money on our kids if we
20 go up to average tax rates." That's what I want to
21 know.

22 What are you going to tell these folks down
23 here, that they're not spending enough money?

24 A. If they went up to the average tax rate, their values
25 are so low in that set of districts that it would be

1 counter-productive in terms of the additional hassle
2 on taxpayers for a very, very small return, the only
3 exception to that being those districts which have
4 not yet maximized their enrichment equalization aid.

5 Q. There's a bunch of those, aren't there?

6 A. There are some. There are many more that have
7 substantially increased their tax rates to take
8 advantage of the -- to maximize their enrichment
9 equalization aid.

10 Q. Well, the very first one on your list, Boles Home,
11 doesn't have a rate high enough to maximize their
12 state enrichment equalization allotment, do they?

13 A. That's correct. I have no recommendation to make to
14 Boles Home Independent School District.

15 Q. You wouldn't tell them "Hey, guys, in addition to
16 losing all your local revenues, you're losing state
17 dollars in amounts big enough to make a difference,
18 and that we don't think your program, if you're not
19 spending at these levels, is good enough to meet
20 state standards"?

21 MR. RICHARDS: Excuse me. I object.
22 Counsel ought to frame a question the witness may
23 answer and not put compound questions together.
24 That's at least three run together, it seems to me.

25 THE COURT: Go ahead. See what he can

1 answer.

2 BY MR. O'HANLON:

3 A. Would you tell me again what your question or
4 questions are?

5 Q. Okay. You wouldn't tell Boles Home that, "Hey,
6 you're losing state money"?

7 A. Number one, no, I would not. They haven't asked for
8 my advice and they're not members of the Equity
9 Center.

10 Q. But as a poor district -- you're speaking on behalf
11 of poor districts. Don't you think these districts
12 ought to make the effort?

13 A. Oh, I wish that they would take advantage of the
14 inducements in the enrichment equalization formulas
15 so that you wouldn't have to ask me these questions.

16 Q. Now, what does this -- what does Boles Home -- what
17 does the fact that they're not doing that do to all
18 your ratios?

19 A. Very little.

20 Q. If you increase their state funding by about -- their
21 total program funding by about \$300.00 per student
22 unit?

23 A. Okay. Tell me what exhibit of mine that you're
24 referring to.

25 Q. Okay. Let's look at a bunch of them. Start off with

1 102.

2 MR. RICHARDS: You mean charts or --

3 BY MR. O'HANLON:

4 Q. 102-A, the first one that I had out.

5 A. All right.

6 Q. Now, Boles Home is what you base all the ratio on on
7 property value per -- that's on property value per
8 student. That wouldn't change at all, would it?

9 A. Right. That has nothing to do with whether they levy
10 their full maximizing tax rate.

11 Q. Let's look at 105-E, and the district --

12 A. 105-E? Did you say E?

13 Q. How about D and E?

14 A. E is a group report.

15 Q. Uh-huh.

16 A. All right.

17 Q. Let's look at 105-D.

18 A. All right.

19 Q. Now, Boles Home isn't the lowest, is it?

20 A. No, it's not.

21 Q. The lowest is Centerville on Page 3, top of the page.

22 A. That is correct.

23 Q. Should we look at the tax rate?

24 A. We can certainly do that.

25 Q. Do you have it there? Do you want to look at it?

1 A. Well, I was going to look at it in 116.

2 Q. Okay.

3 A. Centerville. There are two Centervilles. Must be
4 this one. There are two Centervilles. It's the one
5 that's in County 228.

6 Q. Uh-huh.

7 A. And their M&O tax rate is 44 cents, which is 12 cents
8 below the state average. It's about like Dallas'.
9 The total tax rate is 44 cents, which is 23 percent
10 below the state average.

11 Q. So they don't qualify for a lot of state dollars, do
12 they?

13 A. They do not qualify for maximum enrichment
14 equalization aid.

15 Q. Okay. That's the base line, isn't it?

16 A. That is simply number one in that progression.

17 Q. That's the base line for the ratio, isn't it?

18 A. That is the 1.00 point.

19 Q. Okay. And the fact that you added \$300.00 to that
20 district's spending ability by virtue of both local
21 taxes and additional state funding would change your
22 ratio, wouldn't it?

23 A. If you did what, now?

24 Q. If you brought that district up to the amount of
25 money they could be spending.

1 A. Yes.

2 Q. If they would spend an average.

3 A. If they had an average tax rate?

4 Q. Yes, sir.

5 A. If they had an average tax rate, they would qualify
6 for all their enrichment equalization aid, and they
7 would have a higher M&O expenditure per student unit.

8 Q. Uh-huh. And by computing the ratio off of them,
9 isn't that using the puniary of that district against
10 the state?

11 A. If you will look at our group reports, it will show
12 that -- you will see that we invariably provide data
13 which does not include those extremes. In other
14 words, we have given the Court a variety of ways of
15 looking at these things, all of which are perfectly
16 legitimate. Whatever that expenditure -- the lowest
17 expenditure in the state per student unit is is
18 number one. I mean, that is the nature of a
19 statistical ordering of numbers.

20 Q. I understand that.

21 A. It has nothing to do with making judgments about
22 whether they should or should not, or do, or
23 whatever, to maximize their enrichment equalization
24 aid.

25 Q. So Centerville out here -- what you're saying -- when

1 we're computing the ratio on 105-D -- and we'll talk
2 about some other ones later -- when you are computing
3 that ratio, we're saying Centerville is the lowest,
4 so we're going to compute a ratio off it, is that
5 right?

6 A. What we are saying in all of these rankings is that
7 whichever is the lowest number will be assigned 1.00.

8 Q. Well, is it fair to say because -- couldn't you have
9 said that since they're spending at below, to give
10 them a negative in that ratio, if you're going to say
11 what the state program could yield?

12 A. That is just another way of looking at it. You could
13 line them all up the same way. You could take every
14 district and put in its maximum state aid.

15 In fact, in 116, we have the maximum state aid
16 cited there, so if you are concerned about that and
17 want to determine what that might do to the total,
18 you can certainly -- in fact, in those numbers, we
19 assume maximum state aid.

20 Q. I understand that. But I mean, these ratios -- what
21 you're doing when you're computing these ratios is
22 you're using the puniary of that district against the
23 state, if you're going to say that ratio means
24 anything.

25 A. No, that is not true that we are using that against

1 the state.

2 Q. Well, isn't it true --

3 A. When you order -- if you're going to do a ranking of
4 numbers and you want to compare the lowest number and
5 the highest number, you have two choices. You can
6 either say we're just going to look at the numbers
7 and assign 1.00 to the lowest and go from there. You
8 can also say, "Well, let's make a lot of adjustments
9 in these. These don't look particularly good for
10 this reason or another." Then we could say, "Well,
11 okay, because it doesn't look good that way, we'll
12 establish some other procedure."

13 What we have done throughout our exhibits is to
14 be consistent. It is, in my judgment, far more
15 straightfoward and honest to be consistent in the way
16 you present data than is it to make a lot of
17 judgments about each set of data and rearrange the
18 numbers to suit your own purposes.

19 We could have done that; we did not.

20 Q. Okay. So Centerville -- and to the extent that this
21 ratio that you're talking about, if this doesn't have
22 anything to do with the state program, this just has
23 to do with the district's decisions that individual
24 districts are making about how much they want to
25 spend on their kids?

1 A. That school district is part of the overall state
2 system. It is permitted to make certain decisions as
3 an independent school district. The state has
4 certain inducements that it offers. The state will
5 check out that school district for accreditation.
6 Unless it is not an accredited school district, then
7 we will assume, from the state's point of view, they
8 are spending at least an adequate amount. And it is
9 not for me to judge whether I should assign them
10 something other than 1.00.

11 Q. So you can't tell whether -- are you telling me that
12 you can't look at that number, 1,060, and say that
13 they are -- these people are spending an inadequate
14 amount of money per student unit on their kids?

15 A. If I were associated personally with that school
16 district, I would make an effort to get the
17 expenditures per student up in that school district,
18 but I am not.

19 Q. You're sitting on the witness stand and you're
20 telling this Court that because districts are not
21 spending a certain amount of money on an average
22 bases that they can't run an adequate program.

23 Now, I'm going to ask you about a district.
24 And this district, Centerville, is spending
25 \$1,060.00. They're doing it because they choose to

1 do it, not because they can't raise additional money,
2 isn't that right?

3 MR. RICHARDS: Excuse me. That's at least
4 four questions. Is that right what? You've got --

5 BY MR. O'HANLON:

6 Q. That they choose to do it.

7 A. That district has adopted a tax rate which is lower
8 than the tax rate that would be required to maximize
9 their state aid.

10 Q. Okay. So they're choosing to spend significantly
11 less dollars, fewer dollars, than they could spend.

12 A. They are making that choice, yes.

13 Q. Can you tell that they're running -- are you going to
14 go tell them that they're running an inadequate
15 program because of the dollars they're spending?

16 A. No, I'm not. If the state feels that they are,
17 that's the state's business. It is not my business.

18 Q. So you can run an adequate program for \$1,060.00 per
19 student unit?

20 A. I have no idea whether that's the case in that school
21 district.

22 Q. So none of your -- then if you don't have any idea
23 for that school district, you don't have any idea for
24 the state, do you?

25 A. I have ideas about what kinds of expenditures result

1 in what I consider to be quality programs.

2 Q. Well, if you can't apply those ideas to a district,
3 what good are they, Mr. Foster?

4 A. I do apply them to districts.

5 Q. Then what would you tell this district?

6 A. I'll say it again. I'm not going to tell that
7 district anything.

8 Q. Why is that?

9 A. It is not my business to do so.

10 Q. You're telling the state what to do. Why do you
11 hesitate about telling a district what to do?

12 A. I didn't realize I was telling the state what to do.

13 Q. Do you have any notion of what level of funding that
14 you want to see?

15 A. Yes, I do have a notion as to what level of funding I
16 want to see.

17 Q. Well, let me translate something real quick.

18 Now, you're using the number of 1.57, average
19 student is equal to 1.57 student units?

20 A. 1.53.

21 Q. 1.53. So to translate this Centerville, assuming
22 that they had the average ratio, that would translate
23 to about \$1,600.00, wouldn't it?

24 A. Yes. You can actually convert that for the
25 individual district, if you would like me to do so.

1 Q. Why don't you do that.

2 A. (Witness complies.)

3 THE COURT: Let's take a break.

4 (Short break.)

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1 BY MR. O'HANLON:

2 Q. Before you get into that calculation, I want you to
3 look at Plaintiffs' No. 119-A.

4 A. 119-A.

5 Q. Page 4, three down from the top.

6 A. Looks like Centerville.

7 Q. Is that the same Centerville, since there are two of
8 them?

9 A. That's the one in County 228, yes.

10 Q. Okay. Now, there, you've already done the
11 computation of what Centerville would generate in
12 state and local tax revenues per student unit at an
13 average state tax rate.

14 A. That is correct.

15 Q. And because we know that Centerville doesn't have any
16 bonded indebtedness since we just looked that up,
17 that would all be available to spend on their
18 program.

19 A. That is correct.

20 Q. And they're spending 1,060, and if they made only an
21 average effort, they'd be spending 1,750.

22 A. That is correct.

23 Q. All right. So they're leaving \$690.00 on the table,
24 so to speak, are they not?

25 A. By their local choices, they have decided not to

1 maximize their enrichment equalization aid and not
2 tax at the average total tax rate.

3 Q. So could we assign them a puniary ratio?

4 A. Well, you may assign them whatever ratio you want. I
5 have assigned them a ratio that is consistent with
6 the way I presented the data and do not propose to
7 change that ratio.

8 Q. Okay. But isn't it fair to say that that district --
9 and that's the lowest spending district in the state,
10 right?

11 A. Yes, that is the lowest spending district in the
12 state.

13 Q. Well, why is it that you make your computations based
14 on -- if your problem here is the state program, why
15 is it that you base your numbers on what they do
16 spend versus what they could spend if they took full
17 advantage of the state program?

18 A. The printouts which show the expenditure per student
19 unit are presented in several forms, which you're
20 aware of. One is strictly an enumeration from the
21 lowest number to the highest number without any
22 judgment being made about those figures; whether
23 districts should or should not spend that little or
24 should or should not spend that much.

25 I've made no judgment about whether Santa

1 Gertrudis is spending too much money and should give
2 some of it back to Exxon. I've made no judgment
3 about the expenditure level in any of those
4 districts. I have simply presented them in order of
5 expenditure from the lowest to highest.

6 We have also presented documents for the Court
7 which show the averages of those figures for school
8 districts when those school districts are grouped by
9 5ths, by 10ths, by modified 10ths and by 20ths. And
10 we have even shown the amounts in cases that are
11 univariate analysis at every percentile, every 5th
12 percentile from zero to 100.

13 I'm not sure what we could do that would make
14 any more complete set of data with respect to what
15 one might do with it and how one might interpret it.
16 It is literally a set of documents that gives the
17 Court and anyone else an option to analyze it in any
18 set of districts or in any way it pleases to do so.

19 Q. Okay. Well, let's just see what that would do to
20 your ratios on 103-D. Let's start at the base line.
21 Instead of a \$1,060.00, let's look at \$1,750.00.

22 A. What exhibit are you on now?

23 Q. 103-D.

24 A. All right. 103-D.

25 Q. Okay. Let's see what that does plugging in the

1 \$1,750.00 that Centerville could be spending, what it
2 does to your ratio.

3 A. Then if we were to do that --

4 MR. RICHARDS: You wouldn't use
5 Centerville, you'd use Apple Springs.

6 A. -- the entire report would have to be reorganized on
7 the basis of the lowest expenditure of that -- you
8 would have to look at the expenditures in the
9 district which maximizes equalization aid, but at the
10 same time, spent not one penny more. And that would
11 become No. 1.

12 Q. Uh-huh. Let's just -- for right now, let's just use
13 that \$1,750.00.

14 A. I don't know the \$1,750.00 -- is it adjusted for the
15 maximum? Okay. We would -- we've already done that
16 in the report where Centerville appears in that
17 fashion.

18 MR. KAUFFMAN: 119.

19 A. 119.

20 Q. No. But what I'm asking you to do is make the
21 computation. Let's change -- let's take 103-D. All
22 right?

23 MR. RICHARDS: Excuse me. It's clearly
24 inappropriate. The next person you'd use is whatever
25 the next lowest district is. You don't want to use

1 Centerville as a bench mark. You'd use some other
2 district, whichever is the lowest spending district,
3 and just place Centerville at another point, if
4 that's what the answer is. If Mr. O'Hanlon wants to
5 make that calculation, it's up to him to do so.

6 MR. O'HANLON: I think this is legitimate
7 cross-examination, Your Honor.

8 MR. RICHARDS: It's clearly not. That's
9 not what the table shows. The table shows lowest
10 spending districts and Centerville is not the lowest
11 spending district. Let's use the lowest spending
12 district, whatever it is.

13 MR. O'HANLON: What I submit is that if you
14 go to the next lowest one after you get past
15 Centerville, you run into the same problem, that
16 spending -- the reason why a lot of these districts
17 and the ratio is so low, there's in excess of 100
18 districts in this state that do not maximize state
19 aid. I'm going to take an example, that is
20 Centerville, using his own figures and see what it
21 does to the ratio. I think it's legitimate
22 cross-examination.

23 THE COURT: You may proceed, sir.

24 A. The figure for Centerville is \$1,750.00. Is that the
25 figure you want to deal with?

1 Q. Yes, sir. And let's compare it. At 1,750, let's
2 compare it to Spring Creek, which is the first
3 district on the rank of expenditures on 103-D.

4 A. We are not looking at 119-A now?

5 Q. No. We're looking at 103-D.

6 A. Okay.

7 Q. Instead of using the \$1,060.00 figure, let's use that
8 \$1,750.00 figure --

9 A. What do you want to do with this?

10 Q. -- and compare it, recompute a ratio of its M&O
11 expenditures per student unit to -- and I'm going to
12 have you compare them to a couple -- Spring Creek,
13 which is the highest spending district in this state.
14 I don't know whether it's the richest; it's the
15 highest spending.

16 MR. KAUFFMAN: Your Honor, we object to the
17 question. It's completely senseless at this level.
18 He's comparing two completely different things. He's
19 comparing what one district would raise at its state
20 and local tax rate or the average for the state
21 against what another one raises with the district
22 rate that it actually has.

23 Mr. Foster has said that in Exhibit 119-A, he
24 has done what Mr. O'Hanlon is asking for. He has
25 listed every district in the state with the state and

1 local revenue they would have at the average for the
2 state. So he's asking him to compare completely
3 different things and make a ratio out of it, which is
4 nonsensical.

5 Mr. Foster has said several times now that in
6 119-A, he has done exactly what Mr. O'Hanlon has
7 asked him to do. He's looked at every district in
8 the state and he has said how much state and local
9 revenue that district would raise at the average tax
10 rate for the state and you can compare any two
11 districts using the same numbers for every district.

12 In 103-E, he said exactly what he was
13 testifying to, that this shows the maintenance and
14 operation expenditures per student unit, what the
15 districts actually spent. So he's done both things.

16 To compare one to the other, we object to the
17 question as misleading and -- well, I guess that's
18 enough.

19 THE COURT: I'll overrule.

20 A. Now, would you repeat your question.

21 Q. Yes, sir. I want you to take that \$1,750.00 figure
22 for Centerville, and I want you to recompute the
23 ratio with Spring Creek using that \$1,750.00 instead
24 of the 1,060.

25 A. Okay. So you want me to compare --

1 Q. What I want you to do is, I want you to divide 9,523
2 by 1,750.

3 A. I'm comparing a district that is taxing at less than
4 the statewide average with a district which, if it
5 were taxing at the statewide average, would have
6 1,750.

7 Q. Yes, sir.

8 A. That is a ratio of 5.44-to-1.

9 Q. Okay. So if we were to use a higher expenditure
10 level, that would change the ratios, wouldn't it,
11 what they could spend?

12 A. You can take literally a number from any of five or
13 six printouts that I have prepared and compare it
14 with another school district in another printout that
15 I have prepared that is not similar data and you can
16 come up with literally any ratio you want.

17 Q. Uh-huh.

18 A. In fact, if you will give me a ratio -- if you like
19 six, give me six, and I will find a report where I
20 can get you a 6.00 ratio.

21 Q. Okay. I want you to do something else. I want you
22 to compare that \$1,750.00 expenditure to the district
23 at the 95th percentile, as listed on 103-D.

24 A. The 95th percentile, we have Richardson, is that
25 right?

1 Q. Yes, sir.

2 A. Okay. Their M&O expenditure per unit is 2,529, which
3 is 1.45 times the maximum that Centerville could
4 raise.

5 Q. Okay. So what does that tell us about your ratios
6 here?

7 A. It tells you that the ratios that I have put in these
8 reports are entirely legitimate; that in every
9 instance, I have clearly identified the variable that
10 I am going to list, and I have invariably established
11 the number 1.00 for the lowest number in that
12 listing.

13 Q. Well, but see, isn't that a negative figure?
14 Shouldn't that truly be a negative if you're looking
15 at the state system?

16 A. If you understand the procedure that I used, it
17 should not be a negative figure. It should be 1.00.

18 Q. Even though --

19 A. These are not -- these figures are not figures that
20 are based on my judgment as to what the state should
21 be doing or what any district should be doing. They
22 are based on the pure fact taken from the Texas
23 Education Agency files that there is a range of 1.60
24 to \$9,523.00 in expenditures per student unit. And
25 as with every other printout that we've prepared, 1.0

1 is assigned to the lowest number.

2 It's just like we assigned to Santa Gertrudis'
3 80 cent tax rate the number 1.00. It is the lowest
4 in the state.

5 Q. All right.

6 A. I've made no judgment about whether Santa Gertrudis
7 was taxing at a sufficient rate when I did that.

8 Q. And even though Centerville is -- if you were to say
9 this ratio is significant -- is this ratio
10 significant?

11 A. Is what ratio significant?

12 Q. Is this ratio that you have computed on 103-D a
13 significant figure in looking at school finance in
14 Texas?

15 A. In combination with all of the other reports that are
16 provided in that set in which you have statistical
17 groupings and in which -- whenever there is a
18 univariate, as is the case here, we have ratios to
19 the lowest and ratios to the 5th percentile.

20 The ratio to the 5th percentile provides one
21 the opportunity to look at the data in a very
22 standard rule-of-thumb way the restricted range ratio
23 of 95-to-1. That information is there.

24 If we were trying to deceive the Court or
25 anyone else, we might not have put that information

1 in there, but it's all there. The information is all
2 there. There is no question as to what the
3 information is. It is clearly identified and those
4 ratios are exactly what they are.

5 Q. What I'm saying is is that if you challenge a state
6 system -- this compares district expenditures,
7 doesn't it? This doesn't really look at the state
8 system because what it does is is it uses as its base
9 line the fact that a district is willing to spend
10 \$690.00 less than they could spend on their kids.

11 A. If you will look, for example, at the district
12 groupings for this same report. Can you do that?

13 Q. Uh-huh.

14 A. If you will look on Page 1 of 103-E, the first set of
15 groups we have are 10ths of school districts.

16 Q. Uh-huh.

17 A. And when you average together all of the school
18 districts that are in that tenth, you come up with a
19 total of 1,549.

20 Q. Okay.

21 A. That has Centerville in it. It has other districts
22 that are spending below their maximum state aid
23 level. It has some that are spending as much or
24 more, but there's some mix in each of those
25 districts. It is a perfectly legitimate statistical

1 technique to group things in that fashion.

2 Let me continue. I'm answering your question.

3 We have also, on Page 3 of that report, listed
4 at intervals of five percentile the districts across
5 the state. We have shown the ratio to lowest, which
6 is the same figure that you saw in the larger report,
7 where Centerville is 1.00 and Spring Creek is 8.98.

8 We have also shown a column called "Ratio to
9 5th Percentile." When we do the ratio to 5th
10 percentile, we have completely eliminated Centerville
11 from the calculation. It is no longer of any
12 consequence.

13 Comparing things at various other percentiles,
14 the percentile to the 5th percentile to the number at
15 the 5th percentile is a widely recognized, generally
16 accepted rule-of-thumb technique for eliminating the
17 extremes.

18 In statistics, you prove nothing whatsoever by
19 citing Centerville or Spring Creek in this instance.
20 If you are trying to describe the system, you use
21 statistics that are of this nature. "And when we do
22 this, we find, for example..." And if the Court or
23 anyone else decides that 95-to-5 is an appropriate
24 range ratio to look at, then the range ratio for M&O
25 expenditures per student in the State of Texas is

1 1.61, substantially above any recommendation I'm
2 aware of that constitutes equity.

3 Q. Let me ask you a question.

4 A. You can even look at -- go down as far as the 65th
5 percentile and you're still above the 1.25, which is
6 a very loose general rule type thing established by
7 the federal government for entirely different
8 purposes.

9 Q. Let me ask you a question. In that first tenth on
10 Page 1 of 103-E, how many districts in there are not
11 maximizing their state expenditures per student unit?

12 A. I do not know.

13 Q. That's not a significant number to you?

14 A. It is not a significant number in the determination
15 of whether Texas has an equitable school finance
16 system.

17 Q. Because you can't use the fact that a district
18 doesn't want to spend and tax itself at an average
19 rate against the state.

20 A. In determining the equity of a school finance system,
21 we are looking at two kinds of questions, and both
22 have to do with opportunity, equal educational
23 opportunity and equal fiscal opportunity to provide
24 public education. There is nothing in either of
25 those that mandates that everybody take advantage of

1 their opportunity.

2 We are not seeking, as far as I am aware, a
3 remedy that would force anybody to take advantage of
4 their opportunities.

5 Q. Those kids in Centerville certainly have a lot more
6 opportunity if their district were spending at the
7 average tax effort, wouldn't they?

8 A. They would have more money available to the school
9 district.

10 Q. Presumably that would be spent on kids rather than
11 superintendents' cars or something like that.

12 A. I'm not going to make that presumption.

13 Q. We've computed -- you've talked about a number out
14 here, lost to budget balance.

15 A. Right.

16 Q. How much -- we could equally compute a number out
17 here, lost to puniary, couldn't we?

18 A. No.

19 Q. We couldn't compute that? You cannot compute how
20 much the quote "property poor districts" are losing
21 because their M&O tax rate is not up to state
22 average, could you?

23 A. You can compute that. And you can compute it also in
24 terms of how much the state saves by not having to
25 send that money to them.

1 Q. Well, the state's just going to take it from the
2 other end, aren't they?

3 A. The net would be zero in that case.

4 Q. Not to those kids in those poor districts, would it?

5 A. There would be -- there is now, because those
6 districts do not tax at the target rate, less state
7 money and less local money available for their
8 education than would otherwise be the case.

9 Q. That's right. Do you know how much we're losing out
10 here because the local districts out here that claim
11 they're poor are simply not willing to tax themselves
12 at what everybody else in the state is willing to tax
13 themselves?

14 A. Well, first of all, your statement is incorrect. Not
15 everybody else in the state is willing to tax
16 themselves anywhere near the level that's required to
17 maximize your enrichment equalization aid.

18 Q. Well, how many people are there out there that are
19 claiming that they're not getting enough money and
20 are simply unwilling to tax themselves at the
21 statewide average?

22 A. I have never heard Centerville complain that they're
23 not getting enough money.

24 Q. So they can run an adequate program at the funding
25 levels that exist.

1 A. I don't know what they're running.

2 Q. You take it from their lack of complaint that they're
3 perfectly happy and content that they can run an
4 adequate program at 1,060 per ADA?

5 A. I take from their lack of complaint that they choose
6 not to complain.

7 Q. Well, you ascribe significance to the fact that they
8 weren't complaining.

9 A. I did not.

10 Q. Well, what would that figure do? What would you
11 expect that figure to do if I were to factor in that
12 districts out there are not availing themselves of
13 state revenues that are available to them? What
14 would that do to the statistical analysis?

15 A. Very little.

16 Q. Even though you're changing the ratio here from --
17 you saw what it did to the ratios.

18 A. But that raw ratio from one to whatever the number
19 turns out to be is not, in and of itself, the subject
20 of a statistical conclusion that I have reached.

21 Q. So then these columns don't lend themselves to any
22 statistical conclusion that you reached.

23 A. Those columns represent a full and complete
24 laying-out of the available data.

25 Q. But they don't --

1 A. I have not reached any -- to answer your question
2 further, I have not reached any statistical
3 conclusion whatsoever on the basis of the fact that
4 Centerville's M&O expenditures per student unit are
5 \$1060.00.

6 Q. And you can't tell us whether they are or are not
7 running an adequate program at those levels?

8 A. It is the business of the state through its
9 accreditation process to make that determination. I
10 am not employed by the state for that purpose. I am
11 not employed by the Equity Center for that purpose.
12 I do not have any expertise in that particular area,
13 specifically determining whether a school district
14 is, in fact, meeting all accreditation standards.

15 Q. Okay. Let me ask you to assume a hypothetical. Let
16 me ask you to assume that Centerville Independent
17 School District is meeting all its accreditation
18 standards.

19 A. I cannot make an assumption of that nature. I have
20 no basis, in fact, to do that.

21 Q. Well, I'm asking you -- that's what an assumption is.
22 I want you to assume that they are doing that.

23 A. I will -- if you want to hypothesize that that is the
24 case, I will work with you on a hypothetical. I will
25 not assume it's the case.

1 Q. All right. I hypothesize that the Centerville
2 Independent School District is meeting accreditation
3 standards. What does that tell us with respect to
4 the expenditures required to run an adequate program?

5 A. It would appear that in that area of Texas, among
6 other things, that they are able to hire a very -- at
7 least an adequate quality of teachers and
8 administrators and buy supplies and build buildings
9 at rates that are far below the state average.

10 Q. Well, now, you've accounted for those variations by
11 including the Price Differential Index and the
12 small/sparse. I thought your statistical technique
13 has accounted for those kinds of difference by
14 converting it to student units.

15 A. In your hypothetical, it's possible that the PDI and
16 the small/sparse factors for that district are
17 inaccurate.

18 Q. Well, the dollars aren't inaccurate, are they, the
19 1,060?

20 A. According to the records of the Texas Education
21 Agency, the \$1,060.00 is a correct figure.

22 Q. Okay. Let's assume, given that assumption, that the
23 Centerville Independent School District is operating
24 an adequate program as defined by the state at that
25 level and aren't complaining about it, as you said.

1 What does that tell us about the amount of money that
2 is required to run an adequate program in the State
3 of Texas?

4 A. Well, at the extreme, and I respond only this way
5 because you're using an example that, to me, is an
6 absolute non-sensical extreme, and the extreme means
7 we're spending probably 4 or \$5 billion dollars more
8 on public education in Texas than is required.

9 Q. To run an adequate program.

10 A. Under this absurd hypothetical, that is a conclusion
11 that one might reach.

12 Q. Well, how can you say it's absurd if you don't know
13 anything about Centerville?

14 A. I've already told you I didn't know anything about
15 Centerville. You're the one that said we're going to
16 do a hypothetical, and I agreed to a hypothetical.

17 I did not agree I knew one thing about
18 Centerville other than the fact that the records of
19 the Texas Education Agency indicate that the M&O
20 expenditures per student unit in that district are
21 \$1,060.00.

22 Q. Then what is absurd -- if they can run a program at
23 that level, how do you adjust it for the Price
24 Differential Index, having adjusted for all the
25 various factors that comprise your statistical

1 methodology of a student unit to equalize spending so
2 that we can compare, if I recall, every district in
3 the state?

4 A. Yes. You may also recall that I said we were using
5 the state's own judgment with respect to cost
6 differences. We did not specifically say that we
7 thought that the state's own cost adjustments were
8 either the appropriate adjustments or that on a
9 district-by-district basis that they provided precise
10 cost differentiation.

11 Q. So you're challenging now, as I understand it, the
12 basic assumption that underlines all these tabular
13 displays of this information?

14 A. We are not challenging that information. I am saying
15 that information is calculated on the basis of the
16 state's own cost adjustment mechanisms.

17 Q. Now, I assume if we're going to do something to
18 Centerville to make this come out somewhere on our
19 chart, what we would have to do is like we did
20 before, which is to add -- multiply it by a factor of
21 1.3, is that right? I'm going to put Centerville on
22 the chart here, and what I want to do to make it the
23 same is I want to multiply it times 1.3, isn't that
24 right?

25 A. Take the figure in the far right column.

1 Q. The figure in the far right column, okay.

2 A. \$1,623.00 is the standardized --

3 Q. Okay.

4 A. -- M&O expenditure as that fits into this mechanism.

5 Q. Okay. Multiply that times 1.3 and let's see what
6 that comes out to.

7 A. Multiply it by what?

8 Q. 1.3. Isn't that the factor that we used? Or is that
9 the number that you've already standardized it for?

10 A. We've already -- for purposes of this, we're talking
11 about items that have that in there that we do not
12 have to add that to it.

13 Q. Okay. Well, let me take a small pen. What was that
14 amount on there?

15 A. \$1,623.00.

16 Q. So old Centerville is actually spending way below
17 what they could get, isn't that right?

18 A. Well, we've established they get 1,750. Actually the
19 average tax rate is higher than the target tax rate,
20 but the 1,750 is not a bad figure. They could be
21 getting 1,750 out of the process.

22 Q. Okay, per student unit. And I assume 2,653 per
23 student?

24 A. No. We've adjusted for Refined ADA. So that's --
25 you're right there. That's 1,623. You're right

1 where you should be within that mechanism.

2 Q. And if they're meeting accreditation standards, we've
3 got the difference between this figure and 2,653 that
4 we may be spending too much money on.

5 MR. KAUFFMAN: That, again, is assuming the
6 hypothetical that they're meeting accreditation
7 standards and they have an adequate program?

8 BY MR. O'HANLON:

9 Q. I think this witness testified and let me see -- I'll
10 ask you again, that's the way that we determine
11 whether or not they're running an adequate program,
12 isn't it, meeting the state standards for
13 accreditation?

14 A. That's the way the state makes those judgments. The
15 state has apparently decided that if it has, indeed,
16 done a bona fide accreditation compliance examination
17 of that district, that they're doing all right. The
18 state has also withdrawn accreditation from districts
19 who are spending substantially more than that.

20 Q. Okay. Because they're not spending it well.

21 A. I don't know. They are not meeting accreditation
22 standards.

23 Q. Okay. Now, given the light of this, what are you
24 going to say is the amount of money that we need to
25 be spending on public education in the state?

1 A. As I indicated in my deposition, the lowest figure
2 that I would deal with given all of the data that is
3 now readily available to me, most of which is data
4 that is available to me through the Texas Education
5 Agency, and with that in hand, and with literally
6 hundreds of conversations with superintendents and
7 other educators, the absolute minimum figure that I
8 would consider as the basis for determining
9 equalization of educational opportunity in Texas is
10 the quality level recommended by the Advisory
11 Committee on accountable costs.

12 Q. Which is?

13 A. Which on the average from the data we were using
14 before, and this is total cost, all things
15 considered, except those things which are not in the
16 FSP costs, the cost in '85-'86 would have been
17 \$3,492.00 --

18 Q. Okay. I want you to take --

19 A. -- per Refined ADA.

20 Q. Okay. I want you to take that 34.92 -- when you
21 talked to school superintendents, I take it you
22 didn't talk to somebody at Centerville?

23 A. You're absolutely right. I have never talked to
24 anyone at Centerville.

25 Q. Okay. Let's take that 34.92 and let's compute where

1 it's going to come out again.

2 A. Well, you don't have enough room on your chart there.

3 Q. Well, we can do the drawing, and then I'll do the
4 measuring. Okay. If you'll tell me what this
5 horizontal line is, the distance, I'll draw it up
6 there for us. We do it the same way, don't we?

7 A. Okay. We'll take the 34.92 -- well, no, we don't
8 have all the data necessary to do this, Mr. O'Hanlon.

9 Q. Why not?

10 A. We would have to have a statewide estimate from the
11 little example I did of two school districts. It is
12 not possible to ascertain the statewide costs and the
13 local fund assignment required and loss to budget
14 balance and so forth, all of the things you would
15 need to know in order to do the kind of thing that
16 you want to do.

17 Q. Okay.

18 A. You simply can't do it without an impact analysis.

19 Q. Okay. Just humor me here a minute. I know we're
20 going to lose some to budget balance out here, but
21 let's see if we can't figure the area under the
22 square and where it's going to come down.

23 Take this 34.92, divide it in half, and figure
24 out how far it will get you under the same area under
25 the triangle.

- 1 A. One obvious problem is that we don't know what the
2 local fund assignment rate would be and, therefore,
3 we don't know where to start one end of the line.
- 4 Q. If we draw this line, it's going to come down to a
5 certain point, isn't it?
- 6 A. Yes, it is, but you have to know where to start that
7 line on the vertical axis.
- 8 Q. Okay. Let's have --
- 9 A. You want to give me the local fund assignment rate?
- 10 Q. Well, we took off \$68.00 here. Let's take off
11 \$100.00 here. It's roughly proportional.
- 12 A. You want me to use a local fund assignment that would
13 result in a \$100.00 local fund assignment for the
14 district at 43? Okay.
- 15 Q. So at \$100.00, we measure back an inch.
- 16 A. Well, I'm afraid that's not going to do it. You need
17 a higher local fund assignment.
- 18 Q. Okay.
- 19 A. I mean, it's already higher for as far as we've
20 gotten, so if we go further, you need to recommend
21 some other local fund assignment rate that you feel
22 would be appropriate for the hypothetical.
- 23 Q. \$150.00?
- 24 A. No. We are already at 175.
- 25 Q. All right. Got to be careful out here, don't we, on

1 a local fund assignment? We may put it so high that
2 the poor districts can't raise it.

3 A. I don't think there's any danger of getting the local
4 fund assignment so high that it won't be very
5 pleasing to low wealth districts.

6 Q. Okay. Well, how much?

7 A. Well, it's your hypothetical. Where do you want to
8 put it?

9 Q. \$200.00?

10 A. Okay. \$200.00.

11 Q. That's got to make this district, if this is right,
12 have a tax rate of 66 cents for M&O, isn't it?

13 A. That will be a 55 cent local fund assignment rate.

14 Q. Okay. Now, before we talk about that, that's going
15 to require an increase in the amount of taxes down
16 here, isn't it --

17 A. Yes.

18 Q. -- that these districts have heretofore been
19 unwilling to make.

20 A. If you set the local fund assignment rate at 55
21 cents, they'll be more than willing to make that
22 effort, I can assure you.

23 Q. They haven't made it yet, have they?

24 A. No. It hasn't paid off.

25 Q. Even though it cost them -- even though it's cost

1 Centerville \$690.00, they still haven't been willing
2 to do it.

3 A. Even Centerville might be inspired to do that, given
4 the amount of money that would be made available to
5 them.

6 Q. \$690.00 per student unit hasn't done it yet. You
7 think if we tried enough out there, they might bite
8 on it?

9 A. Even Centerville.

10 Q. Okay. Let's do \$200.00 local fund assignment.

11 A. You are now at 21 -- a little over 21 and a half
12 inches on your horizontal axis.

13 Q. Do this one in red. Okay. Now, I read that at about
14 \$410,000.00. How many districts have we budget
15 balanced now?

16 A. Enough.

17 Q. You think we've budget balanced enough?

18 A. What is your approximate figure?

19 Q. 410.

20 A. We have now roughly 155 to 159. Let's settle on 157
21 just for --

22 Q. What percentile of wealth have we cut into now?

23 A. We are at the 85th percentile.

24 Q. Okay. So we've budget balanced Dallas, haven't we?

25 A. Uh-huh.

1 Q. And we've put Houston, which is, as I recall, at the
2 82nd percentile. They're not getting a heck of a lot
3 of money, are they?

4 A. Their state aid would be significantly reduced at
5 this point.

6 Q. Almost to nothing.

7 A. It would be low.

8 Q. Okay. You think those people in those districts
9 would ever vote for an increase in state funding for
10 public schools when it wasn't coming to their -- ever
11 again when it wasn't coming to their kids?

12 A. Absolutely. They would vote for continued growth in
13 state funds for public education. It's the only way
14 they would have of obtaining any funds from the
15 state.

16 Q. Even though they've been budget balanced by this
17 system now?

18 A. The way to get the money back is to use their
19 political power, which is considerable, to make sure
20 that there was enough money in the pie that they
21 would get some.

22 Q. Or to spend it all locally, based on their property
23 tax.

24 A. You mean to raise it all locally?

25 Q. Yes, sir, and totally isolate themselves from the

1 state system altogether because that's what we've
2 done to Dallas. We've put them out here alone,
3 haven't we? They're on their own, except for \$280.00
4 a kid.

5 A. Yes, they are, and they can do it for less than 55
6 cents. At that point, they can have the same
7 educational opportunity, same fiscal opportunity as
8 every other poorer district in the state. They can
9 have the same opportunity at a slightly less tax
10 effort.

11 Q. Okay. Now, what happens if they decide to spend --
12 to equalization here -- are we capping these
13 districts under this system? Are we capping Dallas
14 in addition to that?

15 A. We've not discussed anything like that.

16 Q. Let's assume Dallas wants to spend the state average.
17 Okay. Now, we've pushed the state average up a
18 little bit, haven't we, in order to get enough money
19 into it?

20 A. The state average has obviously gone up, yes.

21 Q. The state average tax rate.

22 A. No, the state average expenditure.

23 Q. Excuse me, state average expenditure.

24 So Dallas may be able to do better on their
25 own.

1 A. I don't know what you mean by "they may be able to do
2 better on their own." Than what?

3 Q. If they go ahead and spend at an average tax rate,
4 they're going to get more money, aren't they?

5 A. They would have a little more money than poorer
6 districts that were spending at 55 cents.

7 Q. So it actually -- let's look back here. Let's look
8 at what is going on in 1985-'86. You were here when
9 we talked to Dr. Hooker about what's going on in the
10 districts right now.

11 Do you remember us discussing Defendants'
12 Exhibit 15?

13 A. I was here for part of that, I think. I'm not sure
14 that I --

15 Q. Okay. What this is, I will represent to you, and
16 what Dr. Hooker testified is is that this is not
17 including federal funds. I don't want to get in any
18 trouble. This is the state and local revenues, tax
19 revenues, in these three districts. And what the
20 black number is is the subtraction of what they're
21 spending for debt service. The blue number is what
22 they're spending for maintenance and operations by
23 subtracting debt service. Now, that's pretty equal,
24 isn't it?

25 A. I'd have to look at my own figures to decide whether

1 or not I thought that Edgewood, Houston and Dallas
2 numbers are actually in that relationship.

3 Q. Okay. Well, this is from you all's Exhibit No. 205,
4 which is where we took that.

5 Now, what are we going to do --

6 MR. KAUFFMAN: Excuse me, Your Honor. The
7 debt service figures are not from 205, they're from
8 Bench Marks.

9 MR. O'HANLON: That is 205.

10 MR. KAUFFMAN: Oh, I'm sorry. Excuse me.
11 I apologize.

12 BY MR. O'HANLON:

13 Q. Now, what are we going to require the tax rate, then,
14 to get to that level of spending we talked about on
15 our chart?

16 A. We had a local fund assignment rate of 55 cents.

17 Q. 55 cents. Okay.

18 What if Dallas, on its wealth basis -- what are
19 we going to require state average spending? What are
20 we doing to the state average by doing this? Do you
21 have any notion?

22 A. Well, we increase the amount of local funds.

23 Q. Uh-huh.

24 A. Well, that's really a function of what school
25 districts do in response to this, so there is no

1 telling really whether they will -- you know, what
2 they would do if you actually set the rate there.

3 If every district in the state in response to
4 this said, "We're going to set our rate at 55 cents,"
5 and if the current rate average rate, based on
6 statewide data is 55 cents, then you'd have no change
7 in local funds.

8 We've already, in your computer, held the state
9 funds constant. So it is literally a function of who
10 does what, who might do what in response to the thing
11 that you have constructed.

12 Q. Okay. Well, school districts, in the aggregate, are
13 spending an average of 14 cents over the 52 cents
14 minimum right now?

15 A. If you include facilities.

16 Q. Okay. Let's take Dallas, and let's figure out, based
17 on their current wealth -- let's take that 55 cents
18 and add 14 cents to it, and let's multiply it times
19 its present value, and let's see how much money they
20 get.

21 A. First of all, I need to look at the figures that you
22 have up here, and if they're not in agreement with
23 the basis for my analysis, I won't be able to do
24 anything in particular with them.

25 Q. Oh, by the way, when we got past Dallas, we also made

1 Austin a budget balanced district, too, didn't we?

2 A. Yes. I believe we did.

3 You started out with a total, right? Okay.

4 Okay, for Dallas, those expenditures are right.

5 Q. Okay. Let's just focus on Dallas for a minute.

6 A. Wait a minute, let me get the debt.

7 Q. It's okay. Let's forget about debt right now because
8 we're going to roll it into the total tax rate.

9 Let's not factor that for a second. We'll compare
10 what we do with the 70 cent rate to this thirty-three
11 thirty-two, which includes debt service.

12 A. I don't understand what you're saying.

13 Q. What I want you to do is, I want you to take that 55
14 cent rate that you were talking about and I want you
15 to add the same 14 cent difference. Okay. Right
16 now, we're talking about 52 cents required to
17 maximize your state program or is it less? It's 29
18 plus --

19 A. 5,211 is the --

20 Q. Okay. And the statewide average expenditures -- the
21 statewide tax rate, total tax rate -- if I can find
22 it in here -- do you know that number off the top of
23 your head?

24 A. What is that?

25 Q. The statewide average tax rate total.

1 A. It's the end of 116. In round figures, it's 66.
2 We've only carried it to two places.

3 Q. Okay. So there's a 14 percent -- over that 52,
4 there's a 14 cent --

5 A. Can you wait just a moment, please?

6 Q. Uh-huh.

7 A. All right. Your question?

8 Q. Okay. What I want to do is, for purposes of
9 comparison, because we don't know what school
10 districts are going to do, so I'm going to say that
11 they're going to do what they do now, which is, it
12 requires 52 cents to raise the state program. And
13 they're spending voluntarily, on the aggregate, an
14 average of 14 cents above that. That's what they're
15 doing now.

16 MR. KAUFFMAN: We object to the quesiton,
17 Your Honor. It's facts not in evidence. He has
18 never testified that every district needs to spend 52
19 cents to raise the state program. His testimony was
20 some districts can get by at 52 cents, some spend a
21 lot less.

22 A. That's correct. In Dallas, for example, instead of
23 spending twenty-some cents over the local fund
24 assignment rate, they only spend 14 cents for the
25 whole program. So you simply can't --

1 Q. Okay. Let's take 14 cents. Let's add 55, and let's
2 add 14 cents to it. You said Dallas is spending 14
3 cents over the local fund assignment.

4 A. That's not the same as adding 14 cents to 55. You're
5 getting your numbers all mixed up, if I understand
6 what you're saying.

7 Q. What I'm saying is this -- we'll do it any way you
8 want. I'm trying to get a computation here. We
9 don't necessarily have to talk about Dallas, but
10 let's -- we'll come back to Dallas.

11 What I want to do is this. Right now, 52.11 is
12 the rate required on the average to meet the state
13 program.

14 A. That's not true.

15 Q. What does this 52.11 represent?

16 A. That is the target rate, is what I call it, which is
17 used in a formula to -- and it's compared to your M&O
18 tax rate to determine what percentage of your
19 enrichment equalization aid that you get.

20 If the ratio of your total tax rate to a
21 different target rate is higher than the ratio of
22 your M&O rate to this particular rate, then you get
23 more of your -- in other words, you get the best of
24 which those calculations are. So to put that up
25 there -- literally to use that number in a context

that says, "We're going to talk about whether or not we maximize our state aid," you have to use not only the M&O amount, you'd have to use the total amount for that formula, determine which of the districts you're going to use would do better, then compute what they would get of the total.

So you're simply not using a set of numbers that will produce accurate results for those districts you're talking about.

Q. So you can't tell me -- let's just do something. Let's just take my number out of the sky, and let's assume Dallas imposed a 70 cent tax rate. What kind of money would they yield?

A. If they imposed a 70 cent tax rate?

Q. Uh-huh. They're on their own now. They're not getting any state money.

Let's figure it on a per ADA basis so we have a basic comparison, not just total revenue.

A. Looks like \$4,235.00.

Q. Okay.

A. Let me do this one more time. I'm getting a different number.

Q. Okay.

A. \$2,965.00.

THE COURT: We'll stop there. We'll get

1 started up again at 2:00.

2 (Luncheon recess.)

3 AFTERNOON SESSION

4 BY MR. O'HANLON:

5 Q. Mr. Foster, what I am going to try to do here is, as
6 quickly as we can, get back to this 3,492 number that
7 you gave me.

8 A. Yes.

9 Q. Okay. What I want to do is see if we can't figure
10 out the tax rate necessary to implement that kind of
11 level of funding assuming no new state appropriation
12 out of the general revenue fund.

13 What we do to do that is, we take that 3,492
14 and multiply times 3 million ADA -- is the number
15 we've been using here -- for a rough approximation of
16 the ADA in the state.

17 A. That's correct.

18 Q. Have you got your calculator there?

19 A. 10,476,000,000.

20 Q. Then what we do is, we have to subtract the \$5
21 billion, more or less, in state aid, right?

22 A. Well, not really. What you do is, take that total
23 cost figure and multiply it by 67 -- well, if you
24 want the local share by 33 and a third percent.

25 Q. Okay. Let's do that. Well, now, if we do that, we

1 are -- that's going to assume a higher level of state
2 funding than we have, isn't it?

3 A. I don't know what you're saying.

4 Q. Well, the state right now is spending \$5 billion.

5 A. Oh, I thought you wanted to know what the local share
6 was.

7 Q. I want to know what the local share would be -- would
8 have to be if the state continued to spend \$5 billion
9 out of their funds and relied on this 3,492 -- to get
10 to this 3,492 to get the balance out of local
11 taxation.

12 A. Well, you need to start with the -- okay, we can do
13 it this way. This is the back doorway, but we can do
14 it this way.

15 Q. Okay. Subtracting the 5 billion?

16 A. Yes. So that would be 5,476,000,000.

17 Q. Right. What we would have to do would be to divide
18 that by the total property wealth in the state, is
19 that correct?

20 A. Yes. How close do you want to be on that? Seven
21 hundred and two billion something.

22 Q. 702,000,000,000 is the figure that I was working
23 with.

24 A. Looks like 78 cents.

25 Q. Okay.

- 1 A. Now, the problem with that is that you cannot get
2 5,476,000,000 out of that 78 cent rate.
- 3 Q. Because your loss to budget balance?
- 4 A. -- because your loss to budget balance, and you can't
5 compute that loss to budget balance from the data
6 that's available.
- 7 Q. Should we put in a nickel?
- 8 A. Well, if you put in a nickel just offhand like that,
9 you may or may not be in the ballpark. So if you do,
10 it's your nickel.
- 11 Q. Okay. Let's call that 78 cents plus, then. Okay?
12 Now, that doesn't include facilities, does it?
- 13 A. No, it doesn't.
- 14 Q. All right. The districts on the average in the state
15 are spending 11 cents on facilities.
- 16 A. That's correct. But we're also going to put that
17 through a state and local share formula, so the local
18 share would not be 11 cents.
- 19 Q. Well, but we haven't added it in back up here, have
20 we?
- 21 A. Not yet.
- 22 Q. Okay. So if I'm going to add that and put it in the
23 facilities, that's going to make this number get
24 bigger?
- 25 A. Right. You need to do it either with the facilities

1 in both places or the facilities out of both places
2 and do it separately, but not do it together.

3 Q. Okay. We use that 78 and we'll just remember that we
4 have an 11-cent statewide average for facilities.

5 A. We've got a separate problem with facilities, yes.

6 Q. Okay. Plus we've got some figure -- whether it's a
7 nickel or not, we don't know -- but there's some
8 figure in there that's going to be lost to budget
9 balance, isn't that right?

10 A. That is correct.

11 Q. Okay. So when we do this, if we raise this 3,492, if
12 that's what we decide on spending, and we say 78
13 cents is what we want, there's not a district up
14 there or there's not a group of districts up there
15 that are raising taxes at that level, is there?

16 A. Well, there's a group up there that's raising 80
17 cents.

18 Q. But that's including facilities, isn't it?

19 A. Yes, it is.

20 Q. Okay. So we're saying -- what is that number for the
21 5th --

22 A. It's 63 or four.

23 Q. Okay. So even the highest spending district, if
24 we're going to get to this group of districts, if
25 we're going to get to this 3,400 figure, we're going

1 to be required to substantially increase their taxes,
2 aren't they?

3 A. No, that's not true because they will -- all we are
4 creating is an equal opportunity for every district
5 other than a budget balanced district to fund at that
6 level, but we're not requiring them to. So there is
7 no requirement whatsoever for a property tax
8 increase. In fact, you could decrease the property
9 tax.

10 Q. I see. So, now, what are we going to do with these
11 districts down here that are taxing themselves at a
12 rate of about 45 cents? Are we going to let them
13 keep on doing it?

14 A. They can keep on doing it or they can increase their
15 effort or they can decrease their effort.

16 Q. Okay. So what's this going to do to equity? Let's
17 take this 3,492 number, and at the tail-end here,
18 3,000 of it is going to be state money?

19 A. Could be --

20 Q. Okay.

21 A. -- for some districts.

22 Q. And do you ascribe to a system in which the districts
23 ought to be able to draw state money regardless of
24 their local effort?

25 A. Well, we currently have a system where that is

1 precisely the case, with the exception of a
2 relatively small amount of money that does have an
3 effort factor in the formula.

4 Q. Okay. And that's the equalization enrichment
5 allotment?

6 A. Enrichment allotment. Otherwise it doesn't matter
7 what you raise locally, you get your state share.
8 It's been that way for -- indefinitely. It's always
9 been that way in Texas. That would be no change.

10 Q. Would you continue that program?

11 A. I would not be adverse to having some portion of the
12 maximum amount, the 3,492 figure, subject to an
13 effort test. I have no problem with that at all.

14 Q. Well, because it wouldn't be fair to let this
15 district, the poorest district in the state, get
16 \$3,000.00 with no tax effort, would it? That
17 wouldn't be equalizing at all, would it?

18 A. What I said was that if we had that or any other
19 level, I'm not opposed. I don't think it is contrary
20 to equity to ask that some portion of the state funds
21 be adjusted pursuant to a district's tax effort. We
22 have that now. I have no recommendation to
23 discontinue that.

24 Q. How about all of it?

25 A. How about all of it what?

1 Q. Yeah. Don't you think this district ought to be
2 required to raise the same level of tax to get the
3 same amount of money?

4 A. Not in total, no.

5 Q. Then you would allow a system in which this district
6 on the tail-end would be able to get roughly
7 \$3,000.00 with no taxes.

8 A. I did not say that. You first have to specify a
9 percentage of the total program that you are going to
10 subject to an effort test, which, in effect, is what
11 we do now.

12 If you want to ask about a specific level of
13 the total program that you want to subject to an
14 effort test, then I can tell you what the -- I can
15 generalize about what the results would be if a
16 district did or did not make a particular effort.

17 Q. Why not all of it?

18 A. It's never been that way in Texas. There are very
19 good reasons why it's not that way. And I see, as
20 I've already said, no proposal to change; having part
21 of it subject to an effort, but certainly not all of
22 it.

23 Q. Why not? What are the good reasons for not
24 subjecting it --

25 A. Well, the best one is that it punishes kids in

1 districts where the taxpayers rather than the parents
2 or just -- where the taxpayers have an inordinate
3 influence to the extent that without regard to the
4 educational needs of the kid, they can simply vote
5 down anybody that approves tax increases. They can
6 vote themselves in a school board that will keep tax
7 rates at 35, 40 cents, 25 cents indefinitely. If you
8 don't flow the state funds simply because of that,
9 you're hurting the kids because the taxpayers are
10 refusing, in effect, to support public education.

11 Q. Why is that any different in one district than
12 another?

13 A. Because there are differences among taxpayers from
14 one district to another.

15 Q. And the state has got an obligation, under your
16 opinion, to override and to protect the citizens of
17 the state from themselves.

18 A. No. The state has an obligation to provide a public
19 education system that involves a general diffusion of
20 knowledge. It absolutely has nothing to do with
21 overriding a local public decision.

22 Q. Well, is the state's obligation to provide the
23 program or to provide the opportunity?

24 A. It's to see that those --

25 MR. RICHARDS: This is a question about

1 what Article 7, Section 1 means, and if you recognize
2 Mr. Foster is not a lawyer and want his reaction,
3 that's fine, but I think that is one of the ultimate
4 questions in the case.

5 THE COURT: Well, he may answer.

6 A. The question again?

7 Q. Is the state's obligation to provide the program in
8 terms of actual dollars or is its obligation to
9 provide the opportunity?

10 A. It is obligated, in my judgment, to provide one of
11 two things, depending on how the courts view the
12 Constitution.

13 If it involves an absolute equity kind of thing
14 from the student point of view, where each student
15 has an amount available to him based on his needs
16 without regard to local effort, then it's the state's
17 responsibility to make sure those resources are
18 available to the children of that district.

19 If the Court decides that fiscal neutrality is
20 the appropriate constitutional standard, that means
21 that each district should have the same fiscal
22 opportunity to provide education at a suitable basic
23 educational level.

24 Q. And by doing that and making it subject to the local
25 effort totally, we're doing precisely that, aren't

1 we?

2 A. The reason we don't do it based solely on the local
3 effort is because history has shown that that hurts
4 kids.

5 Q. Okay. So fiscal neutrality, that is, that test of
6 equity, one of the two of which you espouse, we
7 shouldn't do because that hurts kids?

8 A. No. If it does not include some minimum basic level,
9 as the Texas school finance system has always done,
10 there are some districts -- some kids in some
11 districts who, because of the lack of taxpayers'
12 concern or commitment to public education, will be
13 hurt.

14 Q. So then, you're espousing a situation in which the
15 people in Austin have got to spend their money --
16 Austin, which by the way is going to be budget
17 balanced, has to spend additional money in addition
18 to what they're spending on their kids to send to
19 Centerville, for example, because their taxpayers are
20 not willing to make the effort.

21 A. That's not true. That's absolutely untrue. They
22 both have the same fiscal opportunity under a
23 fiscally neutral system. If Austin chooses to take
24 advantage of the opportunity that the state makes
25 available, that is an Austin decision. If

1 Centerville does not, that is a Centerville decision,
2 and they will receive less state aid as a result
3 thereof.

4 Q. Well, how much less state aid? I hate to keep
5 beating on this, but if Austin -- let's assume that
6 Austin is right at the -- let's take "X" district
7 rather than Austin because Austin is clearly over.
8 Let's take a district that's going to get -- at that
9 78 cent tax rate is going to get 3,492. Now, let's
10 take a district that only imposes half of that, that
11 only imposes a 39 cent tax rate. Isn't it fair that
12 they only get half as much money?

13 A. The Legislature has not thought so; I have not
14 thought so. I'm not going to say so at this time
15 because I do not believe it is true.

16 Q. So the citizens in Austin, assuming that they're
17 getting taxed at the same rate, are going to
18 subsidize those people in that district that are
19 simply, purely unwilling to tax themselves.

20 A. No, they're not going to be subsidizing those people.
21 Austin is an independent, separate school district.
22 Under a fiscally neutral system the state makes
23 certain amounts of money available and the remainder
24 is to be raised locally. If there is some effort
25 test at all, whether it's 15 percent of the total or

1 whatever it is, it's normally not very much more than
2 that, then if Austin chooses to tax at 78 cents, for
3 example, they would get 100 percent of their 3,492.
4 That's it. Austin is there; they have made their
5 decision; they have their funding.

6 Q. Uh-huh.

7 A. Now, if Centerville decides to increase its effort,
8 it's actually going to use up more state aid which
9 would not then be available to Austin if there was
10 some provision for distributing state aid that didn't
11 go to the low effort districts to the high effort
12 districts. So you could actually -- Austin could end
13 up hurting, under some instances, if Centerville
14 actually raised their effort.

15 Q. Well, Austin is not getting any. We budget balanced
16 Austin, so they're not getting any.

17 A. They're still paying the state taxes that you are
18 talking about that are going to Centerville.

19 Q. Yes, sir.

20 A. I'm saying if Centerville raises its effort, Austin
21 will have to pay more state taxes to be sent to
22 Centerville.

23 Q. Well, where do you do it? What do you do with the
24 freeloading district here that says, "Okay. I
25 understand I'm going to get \$2,500.00 in state aid

1 and that's enough. And we're going to tax our
2 citizens at zero." That's not fair to the people of
3 Austin, is it?

4 A. It saves them money.

5 Q. They're just going to rely on the state's system in
6 its entirety and they're going to take that money out
7 of everybody else's sales tax and gasoline tax and
8 everything else and that's fair.

9 A. You raised the question whether it's going to cost
10 Austin money or other taxpayers more money. The more
11 Centerville takes advantage of the state funds
12 available, the more Austin and other districts will
13 have to pay in state sales tax. That's the answer to
14 your question.

15 Q. What's that going to do for equity if they're down
16 here at zero and they're getting \$2,500.00?

17 A. They have a fiscally neutral opportunity to spend the
18 3,492.

19 Q. But that's not going to be taxpayer equity and that's
20 not going to be student equity, is it?

21 A. It is equity as defined under the concepts of fiscal
22 neutrality with the exception, which I have already
23 mentioned to you, that those systems normally do
24 provide some sort of floor so that kids are not
25 totally subject to the whims of local taxpayers.

1 Q. And we have to protect all these kids from the whims
2 of local taxpayers.

3 MR. RICHARDS: No, you don't. The
4 Constitution says you must. That's the question, Mr.
5 O'Hanlon.

6 MR. O'HANLON: Well, I'm asking this
7 witness.

8 MR. RICHARDS: That's what we think the
9 Constitution says and it's pretty obvious here --

10 MR. R. LUNA: Objection, Your Honor.
11 Unless counsel has an objection, and I haven't heard
12 it yet, we object to his side bar comments.

13 MR. RICHARDS: It is what it is.

14 THE COURT: All right. Here we go.

15 BY MR. O'HANLON:

16 Q. So we need to protect these citizens from the whims
17 of local taxpayers.

18 A. In my opinion, it is essential for the state, which
19 is required by the Constitution to provide a public
20 education system, to make sure that no children in
21 the State of Texas are shortchanged on their
22 education because their district is controlled by a
23 set of taxpayers who simply prefer not to pay more
24 taxes and has the political power to control the
25 school board and to elect people that will not levy

1 local taxes. Absolutely.

2 Q. Okay. Now, what we do by steepening this curve and
3 raising the amount is we, in essence, require more
4 money to the state system to be drawn from local
5 revenue sources, isn't that right?

6 A. If districts want to take advantage of the fiscal
7 opportunity, they can. These districts out here that
8 you're talking about and which you're concerned about
9 on the right-hand side of this thing will still,
10 under any set of lines you want to draw up there that
11 are within any range of reasonableness, will be able
12 to provide the same level of educational services at
13 any given tax rate. They will be able to provide the
14 same as anybody else at that or a lower tax rate. If
15 you make Dallas budget balanced, Dallas will be able
16 to provide the target educational program below the
17 rate that will be required to do so in Edgewood and
18 in most of the other districts in the state.

19 Q. I understand that. But isn't the effect here to make --
20 by requiring the actual number of dollars and pushing
21 that on the districts through the local fund
22 assignment, doesn't that change this 50/50 ratio?
23 Doesn't that make substantially more money required
24 to be put into this system from the local districts?

25 A. You go a long way before you absorb all of the

1 differences between 50/50 and two-thirds/one-third.

2 Q. Right.

3 A. Beyond that point, if you do indeed hold state aid
4 constant, yes, you start the program. Assuming
5 districts make those tax efforts, the program does
6 become more than 50/50 and it becomes more on the
7 local side.

8 Q. Doesn't that make the system more subject to the
9 whims of the local taxpayer by requiring a lot more
10 effort?

11 A. Not necessarily.

12 Q. You think an independent school district is more
13 likely to raise, under your system, that 80 cents?
14 Do you think we're going to get 78 cents across the
15 board here?

16 A. School districts generally are more likely to raise
17 their taxes to the extent that any given amount of
18 tax increase increases their actual resources. In
19 other words, the likelihood of a district with
20 \$400,000.00 in wealth increasing its tax rate by a
21 penny is far greater than at 40,000, simply because
22 you really get something out of a penny at
23 \$400,000.00 in wealth. You don't get much out of a
24 penny at 40,000.

25 Q. So these districts on the low end, are they going to

1 increase their effort up to that 78 cents?

2 A. I cannot tell you precisely what they are going to
3 do. I have no way of knowing. The only way to
4 determine the behavior of school districts under a
5 new system is to sit and watch what they do.

6 Q. Well, what I'm asking you, as executive director of
7 the Equity Center, and as a person whose organization
8 represents the lowest third in wealth, which is from,
9 I guess, here over (indicating), what are these
10 districts likely to do? Are they going to raise
11 their rates up to 78 cents for maintenance and
12 operations, which is just the yellow column?

13 A. It has partly to do with whether part of the total
14 wealth available is subject to an effort test.

15 The record is pretty clear that after House
16 Bill 72, a substantial number of districts increased
17 from very low M&O rates -- I'm talking about our
18 districts, the poor districts -- in response to the
19 incentive provided by the Legislature in that
20 allotment. We did a lot of consulting with them, as
21 I think I mentioned before, as to what they could do
22 and how much it would bring in and how much it would
23 add to the local revenue. And so to the extent that
24 any part of that is based on incentive, I think,
25 indeed, they will probably react the same way they

1 reacted after House Bill 72.

2 Q. Reacting in which 100 districts down here are not
3 raising the minimum required to get the equalization
4 enrichment allotment.

5 A. Well, there are 100 districts that are not raising
6 their maximum. There are over 600 districts that are
7 eligible for equalization aid. The 100 that are not
8 raising the rate to get the maximum are not all in
9 the bottom 5 percent.

10 Q. Uh-huh.

11 A. Do you have figures? I'd be happy to comment if you
12 can suggest to me how many figures there might be in
13 districts that are above average wealth, for example,
14 and raising their full rates. Do you have those
15 figures?

16 Q. I don't have them with me, but we'll provide them.

17 A. That would be helpful to the Court.

18 Q. What I'm trying to find out is whether or not -- what
19 are those guys going to do? If they stay low and
20 decide to subsist on state revenues only, this whole
21 system, with this \$3,415.00 or \$3,492.00, isn't going
22 to be any more equalized than the system we've got
23 right now, is it?

24 A. Well, I think so, and I've studied this for years.
25 There are several hundred school districts out there

1 that think so who have looked at it. I'm not sure on
2 what assumption you state the position that something
3 else is going to happen. There's no rational basis
4 for that, in my judgment.

5 Q. If you don't know what they're going to do about the
6 tax rate -- you don't think the state's going to
7 equalize it and then let somebody just take all the
8 state's money and not raise any locally. You don't
9 think they're going to do that.

10 A. I don't predict what the state will do. The state
11 normally responds to what happens in the real world
12 after changes are made.

13 Q. Okay. Now, let's take a rich district that we've
14 talked about. I guess let's talk about Highland
15 Park. Now, these guys are budget balanced, aren't
16 they?

17 A. Oh, I would think that they are or very close to it.

18 Q. Okay. They certainly will be if we change the
19 system, won't they?

20 A. If we increase the -- well, I can tell you precisely
21 at what local fund assignment rate Highland Park
22 would be budget balanced.

23 Q. Well, what I want you to tell me is, let's assume
24 that Highland Park does nothing more than the state
25 average tax rate which is now 78 cents for

1 maintenance and operation.

2 A. Let me tell you that in order to answer that, I have
3 to tell you where they would get to the basic program
4 and then how much tax rate out of the 78 they'd still
5 have left.

6 Highland Park would be budget balanced at 26
7 cents. So, yes, they are already budget balanced.

8 Q. Okay. So how much --

9 A. Then they would have another 78 -- another 52 cents
10 that they could spend that districts that had to
11 spend 78 cents to get to a full program did not have.

12 Q. Okay. So what is it that they're going to have if
13 they have a statewide average?

14 A. If they have a state average effort?

15 Q. Uh-huh.

16 A. Where is your state average?

17 Q. 78 cents.

18 A. The local fund assignment or state average are going
19 to be the same?

20 Q. Yes.

21 A. Okay. They'll have \$9,534.00 a kid.

22 Q. Okay. So that's close to 3-to-1, comparing it back
23 to that 3,492. It's 2 1/2-to-1.

24 A. 2.73.

25 Q. Okay. So even after doing all that, even after

1 raising the Foundation School Program to \$3,492.00,
2 and even after budget balancing a whole bunch of
3 districts, we really haven't gotten any closer to
4 equity, have we?

5 A. We've gotten a lot closer to equity. Edgewood and
6 other poor districts would have an equalized fiscal
7 opportunity for a 78 cent tax rate, which is lower
8 than a good many tax rates in the state today, to be
9 able to operate a quality program --

10 Q. Okay.

11 A. -- which means 3,492, and that's adjusted, so it's
12 really higher than that because they have high-cost
13 kids. This is adjusted downward. But they would
14 have an opportunity to spend substantially more money
15 than they do now. I don't think if they were able to
16 provide a quality program and one that would equalize
17 with 90 percent of the kids in the state that they
18 would even look in the direction of Highland Park to
19 worry about how much they were spending.

20 Q. Well, we keep talking about Highland Park. Everybody
21 in this case keeps talking about Highland Park. Why
22 would it be any different? Even at the 3,492 level,
23 would you then be satisfied and say that, "No, what
24 we need to do is look at the range ratio and Highland
25 Park is spending 2.72 times as much as us"?

1 A. If you understand the range ratio, you would know
2 that Highland Park would be outside the range that
3 anybody has looked at or suggested.

4 Q. Okay. So you ascribe to that notion of range ratio?

5 A. I think that the range ratio is probably overall the
6 best way of looking at the system because of its
7 simplicity and because it applies nicely to the kind
8 of data we're looking at, yes.

9 Q. Okay. So you would be willing to tolerate at a
10 higher -- if funding was high enough, disequities in
11 the system.

12 A. If we have in any of the poor districts that we're
13 talking about here -- I hate to keep mentioning
14 Edgewood, but let's say Edgewood. If Edgewood had an
15 equalized opportunity to provide a quality education
16 program, there would be -- I can almost guarantee you
17 from my perspective and my knowledge gained over the
18 several years of working with that particular
19 district and my understanding of school finance --
20 that they would literally not even blink in the
21 direction of Highland Park.

22 Q. Okay. You think that would have been the same back
23 in -- think you could have made that statement back
24 in 1984-'85?

25 A. About Edgewood? That Edgewood would be satisfied at

1 the level provided by House Bill 72?

2 Q. No. If they got an equalized ability to spend a lot
3 more money, whether or not they would be blinking at
4 Highland Park.

5 A. Not if we had adopted a quality education program in
6 House Bill 72.

7 Q. Okay. Do you know how much money that Edgewood was
8 spending? Well, let me ask you this. Are you
9 familiar with this document, please, sir?

10 A. Yes, I have seen that. I have a whole library full
11 of those things.

12 Q. Okay.

13 A. I think I have the original.

14 Q. Okay. Do we have the '82-'83? You're familiar with
15 these documents, aren't you?

16 A. Yes, I am, but the data in them does not represent
17 the expenditure of state and local funds on a current
18 year's basis for any one of the years --

19 Q. I understand, but --

20 A. -- and, therefore, it's nonsense information in terms
21 of trying to make the kinds of comparisons that
22 you're proposing.

23 Q. Do you know what kind of comparisons I'm proposing?

24 A. Uh-huh.

25 Q. What are those?

1 A. You want me to look at the expenditures in Edgewood
2 over this period of time.

3 Q. Yes, sir. Actually, I want to know what their state
4 and local revenues are. And these documents contain
5 that information.

6 A. Do you have the 1983-'84 ADA figures so I can take
7 the amounts in this book and convert them into the
8 actual years ADA that they apply to?

9 Q. Sure, we can do that.

10 A. You'll have to have a prior set. You'd have to
11 provide a set of information to me.

12 Q. Well, let me ask you this. Let me get these put in
13 evidence before we -- are these documents used by
14 educational people in the field of educational
15 finance in Texas?

16 A. Those documents are intended -- it's my
17 understanding, I'm not sure whether it's in the
18 introduction anymore, but it used to be in the
19 introduction that those documents were intended for
20 the use by members of the Texas Research League and
21 others in the examination of budget proposals being
22 made by school districts.

23 Q. Uh-huh.

24 A. And the reason that the data is -- at least it was
25 published at the time it was published -- July is the

1 normal target date -- is that that is the time that
2 school districts are considering budgets. So it is
3 extremely valuable for members of the League and
4 others to be able to go to a school district budget
5 hearing and say, "Here, I have some information that
6 is the most current available information and I'd
7 like to know why we're spending twice as much on
8 administration here as in our neighboring school
9 district," and that sort of thing is very helpful.

10 But literally, the day that the budget hearings
11 end, almost immediately there are updated bits of
12 information. So these are, number one, the single
13 most accurate set of that kind of data available at
14 the time it is published. It is for a purpose that
15 terminates within two to three months.

16 And the fact that some people may continue to
17 use those for years does not mean that they contain
18 data that is now reliable for the years in question.
19 In other words, there is for all those years in
20 question more reliable data now available.

21 Q. Given those limitations, are these still used by
22 school officials in compiling budgets in the area of
23 finance?

24 A. I don't know of any use by school officials in
25 compiling budgets.

1 Q. I thought you just said they did use them.

2 A. What I'm aware of is members of the League, and I'm
3 also aware of at least one teacher's group that uses
4 them. I do not know any school administrators -- no
5 school administrator has ever told me that he used
6 Bench Marks in preparing his budget.

7 Q. And Dr. Hooker uses it when he bases his testimony in
8 part upon Bench Marks. You were here when we
9 admitted one year, weren't you?

10 A. That was for purposes of Dr. Hooker's testimony.

11 Q. Okay. So experts in the field rely on these
12 documents, don't they, in some measure?

13 A. I assume in some respects what is in there was the
14 best available at the time when Dr. Hooker was needed
15 to testify.

16 Q. Okay.

17 (Defendants' Exhibit

18 (Nos. 19 and 20 marked.

19 BY MR. O'HANLON:

20 Q. The book we were just talking about, those are marked
21 Defendants' Exhibits 19 and 20, is that correct?

22 A. They are indeed marked 19 and 20.

23 Q. And Defendants' 19 is the Bench Marks for 1985-'86?

24 A. It is, yes. The title says that the data is for the
25 prior year.

1 Q. Okay. And Defendants' Exhibit No. 20 is the Bench
2 Marks for 1984-'85?

3 A. Yes, that is the title.

4 MR. O'HANLON: With that rather tortured
5 predicate, Your Honor, we will offer Defendants'
6 Exhibits 19 and 20.

7 MR. RICHARDS: No objection.

8 MR. KAUFFMAN: Your Honor, we object on the
9 basis that, again, it does include federal funds, and
10 this witness has said there is much better data
11 available that he would want to use in his analysis.

12 THE COURT: I'll overrule. They'll be in
13 evidence.

14 (Defendants' Exhibit

15 (Nos. 19 and 20 admitted.

16 BY MR. O'HANLON:

17 Q. Now, let's take these Bench Marks and let's see what
18 happened to Edgewood to see whether they quit looking
19 at Highland Park or not.

20 A. Is that a question?

21 Q. Yes, sir. Let's look at Edgewood.

22 A. How about looking at Highland Park?

23 MR. O'HANLON: No, that was a side bar
24 comment. Excuse me. I apologize.

25 THE COURT: Okay.

1 A. What was your question?

2 Q. How much did they get in state and local revenues in
3 '84-'85? Wait, now, let's talk about '83-'84.

4 THE COURT: State and local?

5 MR. O'HANLON: Yes, sir.

6 A. I believe we've struck out.

7 Q. Well, no. We've got a maintenance budget, don't we?

8 A. That's not the same as state and local revenue.

9 Q. Okay. Let's look at the figures they budgeted for
10 '82-'83. That will give us a basis for comparison.

11 In '82-'83, what did the Edgewood Independent
12 School District budget? Well, let's look at total --
13 what did they budget on student instructional service
14 in '82-'83?

15 A. Now that you understand, that would include federal
16 funds. That is not just state and local
17 instructional money.

18 Q. Okay. Well, the federal funds haven't gone up in
19 that period of time, have they?

20 A. I'm not sure what federal funds have done in
21 Edgewood.

22 Q. Okay. You don't have any basis to believe that
23 there's been a huge increase in federal funds under
24 the Reagan administration for education?

25 A. I have no reason to believe that Edgewood is not

1 getting as much or more.

2 Q. Okay. Student services. What was Edgewood spending
3 in '82-'83?

4 A. On instructional services?

5 Q. Uh-huh.

6 A. Okay. On instructional services, including federal
7 funds, the Edgewood School District budgeted for
8 '83-'84 the following amount per 1982-'83 student
9 ADA.

10 Q. Okay.

11 A. If you do not have any adjustment to make in the
12 '82-'83 ADA so that we can divide '83 by 80 --
13 '83-'84 by '82-'83, then we'll have to accept these
14 numbers as being suspect.

15 Q. Well, we do that every year, don't we? That's one of
16 the things Bench Marks does.

17 A. But it depends whether there are changes in the rate
18 of change.

19 Q. I understand. Well, let's talk about that. Give me
20 that instructional services figure.

21 A. \$1,255.56.

22 Q. Twelve hundred and what?

23 A. In round dollars, 1,256.

24 Q. 1,256. Okay. What was their ADA in that year?

25 A. I don't know. The prior year's ADA was 15,221.

1 Q. Let's go to '85-'86. That's Plaintiffs' Exhibit 205.

2 A. What would you like to know?

3 Q. What is the instructional services component of their
4 budgeted figure?

5 A. \$2,149.00.

6 Q. What was their ADA at that time?

7 A. I don't know, but the prior year it was 14,599.

8 Q. Well, we've got a district in which we've got a
9 declining ADA over that three-year span, but we have
10 an increase of \$900.00 for instructional services in
11 that district -- actually 907, right?

12 A. No. You're trying to subtract upside down and I
13 think it's giving you a problem.

14 Q. Oh, you're right. I can't subtract upside down.
15 What is that?

16 A. 893.

17 Q. \$893.00 increase in instructional services.

18 Now, that's before and -- judging those dates,
19 that's before and after House Bill 72.

20 A. That is correct.

21 Q. That's money that's actually spent on students in the
22 district, budgeted --

23 A. It was budgeted for expenditure on students in the
24 district, yes.

25 Q. Okay. And Edgewood filed this lawsuit prior to House

1 Bill 72. I suppose, in your vernacular of looking at
2 Highland Park, now we've got an almost \$900.00
3 increase and we're still looking at Highland Park.
4 And now you're telling us that if we get just this
5 little bit more -- how much did they get right now in
6 state and local revenues for '85-'86?

7 A. Wouldn't you want to use a comparable figure here?
8 That's all we have that closest to a comparable
9 figure. We don't have the historical data, so we
10 really can't say how much of a change that
11 represents.

12 Q. Just tell me what state and local revenues are. I'm
13 going to compare it to this number. Tell me what
14 state and local revenues are. We had it back on that
15 other chart. It's twenty-nine hundred and something
16 dollars.

17 A. 2,940.

18 Q. Okay. So now you're saying that even on a per ADA
19 basis, Edgewood is getting \$2,900.00; that if they
20 only get 500 more dollars, they're finally going to
21 quit looking at Highland Park.

22 A. Well, number one, that figure is not comparable to
23 this figure because we're talking about a
24 cost-adjusted statewide average figure.

25 Because Edgewood is a higher than average cost

1 district, it would have a higher figure than what
2 we're talking about over here.

3 Q. Okay.

4 A. So there is more of a difference than what you're
5 talking about.

6 Q. Okay. Let's cost adjust it up from 34 to 4,000.
7 What does that tell us about what is going on in
8 Edgewood? They were spending \$2,000.00 before House
9 Bill 72. That their program was so bad that it had
10 to double?

11 A. It had to double using those figures in order to
12 provide an equal educational opportunity to the kids
13 in Edgewood, vis-a-vis, kids elsewhere or
14 specifically Highland Park although --

15 Q. We still haven't done it, have we?

16 A. As I have already told you, when you reach a quality
17 level and 90 percent of the kids in the state have an
18 equal educational opportunity, the other 10 percent
19 are going to be forgotten. It is not the case that
20 we now have 90 percent of the kids in the state with
21 an equal educational opportunity.

22 Q. As defined by what definition, Mr. Foster?

23 A. Any set of rational cost figures that we've been
24 talking about in the context of this lawsuit, whether
25 it's a SCOPE recommendation or the Advisory Committee

1 numbers.

2 Q. Well, the Advisory Committee numbers said 2,400 --
3 the Accountable Cost Advisory Commission said 2,414,
4 didn't they, for a program -- let me see if I can
5 quote it -- "that meets all current state and federal
6 standards."

7 A. No. They did not say it had anything to do with
8 federal standards.

9 Q. Just all state accreditation standards?

10 A. And rules of the State Board of Education.

11 Q. Okay. So we do have some data that says \$2,414.00 in
12 recommendation one that the cost of providing a
13 regular educational program that meets current
14 accreditation legal and regulatory requirements is
15 \$2,414.00.

16 A. Yes. That report does say that, yes. It also says --
17 and that's just for a regular program. When you
18 factor that to include all kids, it goes up
19 substantially, 28 percent, as a matter of fact, which
20 is a number that we've already dealt with here.

21 Q. That's right.

22 A. So it's really \$3,090.00.

23 Q. Edgewood is not that far away, are they --

24 A. This is an average cost. You have not adjusted that
25 figure. I'm not going to compare 3,090, an average

1 figure, with any figure from Edgewood when I know
2 that Edgewood is not an average district.

3 Q. Well, let's talk about the concept of average
4 districts for a minute. Let's look at the diagram in
5 which you set out student units and compare them to
6 wealth.

7 A. What would you like me to look at?

8 Q. Would you agree with me that the incidence of high
9 cost districts -- and we may not have to pull it out --
10 is unrelated, high cost kids is unrelated to wealth;
11 that they're relatively evenly dispersed throughout
12 all wealth categories in the state?

13 A. The wealth per Refined ADA, unadjusted for cost
14 differences, is highest at the low end of wealth
15 because primarily of student characteristics and to
16 some extent, as a result of the Price Differential
17 Indexes.

18 At the other end it is higher than average by
19 virtue primarily of the small/sparse adjustments. It
20 is not evenly distributed across the spectrum of
21 wealth.

22 Q. Let's look at Plaintiffs' Exhibit 101-B. I'm going
23 to read you back to what appears to be a quotation
24 from the 29th of January at 11:50 a.m.

25 I think you said that "No relationship between

1 high or low student unit averages for a district and
2 the wealth and poverty of a district exist; that high
3 or low average student units appear to be distributed
4 more or less randomly or at least as far as district
5 wealth is concerned."

6 Do you still ascribe to that notion?

7 MR. KAUFFMAN: Your Honor, we do object. I
8 think it's his notes on what he thinks the witness
9 said. It's not a transcript, I don't think.

10 A. I don't recall saying that. I would be happy to look
11 at your notes and see if I can reconstruct what I
12 might have said that's related to that.

13 Q. Okay. I would be happy to show it to you. The quote
14 isn't important. What I'm trying to get at is
15 whether you ascribe to that notion.

16 A. I'm sure I don't speak in this kind of language, so
17 it must be a rather cryptic interpretation.

18 Q. Well, we don't take shorthand, so we're not going to
19 get every word down.

20 Let's look at Exhibit 101-B.

21 A. Student units, as you know, are already adjusted for
22 costs. So a student unit is \$1,350.00 whether it's
23 in a rich district, big district, small district,
24 poor district, it doesn't matter.

25 Q. They're not distributed -- they're not clustered in

1 rich districts or poor districts or anything of that
2 nature, are they?

3 A. Once you have adjusted for cost differences and you
4 said that a student unit is equal to \$1,350.00, then
5 there's no such thing as clustering it. I'm sorry,
6 but the question is based on a false notion.

7 Q. Well, let's look at 101-B.

8 A. All right.

9 Q. If what you just said is true, then your columns must
10 be mistaken when you're comparing the group
11 percentage of student units to the group percentage
12 of property value.

13 A. No. Those are -- I'm not sure what your -- you want
14 me to compare the group percent of student units --

15 Q. Or the group percentage of nominal costs. They're
16 the same figure, aren't they?

17 A. No.

18 Q. Well, do you see any difference there between those
19 two columns?

20 A. These are nominal costs that are arranged not by
21 wealth, but simply from the lowest nominal costs to
22 the highest nominal cost per Refined ADA.

23 Q. Okay. What will that tell us by looking at that when
24 you compare it to property value?

25 A. Okay. We have in the first group, in the group of

1 student units, we have the percentage of total
2 student units that are in the groups of nominal cost.
3 There's a reasonable chance that that is -- it has a
4 group percent of nominal cost. The group percent of
5 student units and the group percent of nominal costs
6 are identical --

7 Q. What I'm trying to get you to do --

8 A. -- and that doesn't appear to be correct.

9 Q. All right. So one of those columns has to be messed
10 up.

11 A. I'd have to think about that because it would be
12 extraordinary for my research associate to mislabel
13 them, but we will check that out.

14 Q. Okay. What I want you to compare is either one of
15 those to the group percentage of the property value.
16 And what I'm asking you is, there's not a whole lot
17 of difference between those percentages, are there?

18 A. No. There aren't a lot of differences.

19 Q. The fact that there aren't any differences, say, that
20 there isn't a whole lot of -- that high cost
21 students, as you have arrayed them here, are pretty
22 randomly distributed throughout districts regardless
23 of their relative property value.

24 A. Well, if you look at the 8th group by -- for example,
25 on the 10ths, there's one radical departure from what

1 you're saying.

2 Q. That's right. There's one.

3 A. Then seven, that's fairly substantial. That's a 30
4 percent difference. Then six is turned around the
5 opposite direction. So I don't call that a random
6 distribution, no.

7 Q. Can you tell me then that there's a high correlation
8 between property value and hard-to-serve kids?

9 A. Hard-to-serve kids. Do you mean high-cost kids?

10 Q. High-cost kids, yeah.

11 A. Okay. What I will tell you is the same thing I've
12 already told you. It's from an analysis we did that
13 is not amongst our exhibits. We did it a long time
14 ago because we had the same question as to whether,
15 if we were going to analyze things by wealth groups,
16 we needed to make adjustments for cost.

17 What we found was that there was a
18 concentration of high-cost kids at the low end of the
19 wealth spectrum and at the high end of the wealth
20 spectrum. We looked at the districts that were at
21 those ends of the spectrum and we said, given our
22 knowledge of what causes a student to be high or low
23 cost, we said, "What are we looking at?"

24 At the upper end of the wealth spectrum, we
25 have a great number of very small, tax-haven type

1 districts which, because of their very small size,
2 have very high small/sparse adjustments.

3 We then looked at the other end and we saw that
4 there were a lot of districts that had high numbers
5 of bilingual kids, special ed. kids, comp. ed. kids,
6 and so forth. It was pretty apparent from that kind
7 of inspection that, indeed, they are not randomly
8 distributed across all categories of wealth, but tend
9 to be concentrated at the high and low ends for
10 different reasons.

11 Q. Do you have any information that supports that that
12 you have presented for the Court?

13 A. I just told you it is not in any exhibit that we have
14 submitted.

15 Q. Okay. Would it surprise you that the correlation
16 coefficient of that would be somewhere below 2.2?

17 A. I have not computed a correlation coefficient for
18 that. I had no reason to believe that I should or
19 that it would be helpful because what we were doing
20 was controlling for cost differences, which is a
21 perfectly legitimate, perfectly standard statistical
22 procedure.

23 Once one has done that, it becomes irrelevant
24 to what the coefficient correlation is between the
25 cost and either wealth or tax effort or size of

1 district or anything else. You have literally
2 reduced everything by a common denominator and,
3 therefore, can make a legitimate comparison between
4 any two districts, as well as any set of districts,
5 which is something I have already said and I'm not
6 quite finished.

7 If you were doing nothing but group analyses,
8 if you're not looking at any individual districts,
9 then the variation in the concentration of high-cost
10 kids in different parts of the wealth spectrum would
11 be a minimal significance. It would not really
12 require any elaborate weighting system if you found a
13 set of groups where the variations were not
14 significant among groups.

15 But knowing, as we did, that individual
16 districts would be compared throughout this trial, it
17 was our position that we should have apples and
18 apples and apples and apples, so when we got down to
19 the individual districts, we would be talking about
20 the same thing. And that is why we used a weighted
21 student approach, which we call the student unit.

22 Q. Okay. So you use the student unit, and then when I
23 compare that to student units, you said, "But wait a
24 minute, Edgewood has got high-cost kids." Aren't you
25 just saying that we can't count student units now

1 because Edgewood has got high-cost kids?

2 A. The reason that I objected to the use of the figure
3 you have over there is that that figure is not
4 adjusted for cost differences. The figure we have
5 over on the flip chart is adjusted for cost
6 differences. You would literally have an apple over
7 here and an orange over there.

8 Q. Right. And assuming a random distribution of
9 high-cost kids, then what you've been doing in a more
10 or less cavalier fashion throughout this is saying,
11 "It's a multiple of 1.5." Are you saying that we
12 can't do that now? Mr. Kauffman says that you're
13 talking about these units, we're talking about
14 300,000 kids or 450,000 student units. Are you now
15 saying we can't do that?

16 A. Not at all. I think I just explained why we can do
17 that.

18 Q. So then, we can take Edgewood and we can divide by --
19 to get to student units, we divide by one and a half.

20 A. No, no, no, no, no, no. That's the statewide
21 average. You can't do that with each district. That
22 is the statewide average relationship between student
23 units and Refined ADA.

24 Q. So how is the state, when it's designing a system,
25 how can it account for these individual district

1 idiosyncrasies other than passing on a budget for
2 each district individually?

3 A. The costs developed by the state for each district's
4 Foundation School Program are indeed built from
5 formulas which take into account all of these cost
6 adjustments that the state makes. I am not
7 suggesting and never have suggested that the state do
8 it in any other particular fashion. In fact, I have
9 said that I am supportive of the process of
10 recognizing the fact that there are differences in
11 cost among kids.

12 Q. Back to where we started before we diverted. How are
13 we going to assure the State of Texas if we allow
14 Highland Park to have 1.72 -- 2.72-to-1 disparity
15 that it's not going to happen all over again?

16 A. Well, I don't think you can make those assurances to
17 the state.

18 Q. So we can go tell the Legislature that, "By golley,
19 here we go, we have a constitutional lawsuit, and
20 here is the fix, but we've got our fingers crossed
21 behind our back because if these disparities happen
22 again, we're going to do it again."

23 A. Well, you'll have to convince the Legislature that
24 Highland Park is going to go out and levy a 78 cent
25 tax when they can have a quality program for 30

1 cents.

2 Q. There's a lot of districts that do that, aren't
3 there? Look at all these districts that do just
4 that. Let's look at spending. Look at all these
5 districts that do just that, Mr. Foster.

6 A. They don't do it at 78 cents, they do it for nickels
7 and dimes up there on the right-hand side of the
8 chart.

9 Q. Okay. Then that makes it worse, doesn't it?

10 A. No, it doesn't.

11 Q. We're still going to have a disparity, aren't we? I
12 don't care what we do to raise that Foundation School
13 Program --

14 A. I think I have already explained to you that I
15 recognize that there will be disparities. I've
16 already said to you that the range ratio is a measure
17 which basically I accept and I've already said that
18 at least Highland Park and all the districts that you
19 are trying to point to now would be at or very close
20 to budget balanced status. I've indicated that, in
21 my measure of equity, they don't appear.

22 Q. Okay. So let's talk about Dallas at the 95th. Let's
23 assume Dallas went out there and spent a dollar.

24 A. All right.

25 Q. Okay. They can do that under your system. We're not

1 capping anything, are we?

2 A. Well, Dallas has traditionally been a low tax
3 district. I'm not sure on what basis you would
4 assume or ask anyone to assume that they are going to
5 double their tax rate in order to accommodate this
6 hypothetical.

7 Q. Okay. Well, let's go back. Let's look at --

8 A. You see, Dallas can raise \$5 million for a penny of
9 tax, so if you took away \$50 million from Dallas,
10 they would replace it with a dime.

11 Q. Uh-huh. If they raise it up to a dollar, we don't
12 have equity anymore, do we?

13 A. But Dallas is not going to raise it up to a dollar.
14 That's an absurd assumption.

15 Q. But you're saying that you don't know what the
16 districts that you represent are going to do, but you
17 do know what Dallas is not going to do.

18 A. Well, I can relate to some things that, in my
19 professional opinion, are absurd. That doesn't mean
20 I can make guesses about what every district would
21 do.

22 Q. Let's see what Eanes does. What is Eanes going to
23 do?

24 A. My home district is an exemplary school district.

25 Q. They're taxing their brains out right now, aren't

1 they?

2 A. We in Eanes take public education very seriously.

3 What do you want me to look at in Eanes?

4 Q. Let's assume they spend a dollar for maintenance and
5 operation.

6 A. They are already spending 61 cents.

7 Q. Let's assume they spend a dollar.

8 A. They might just do that in Eanes.

9 Q. They might. How much are they going to get? A
10 dollar ought to be pretty easy to figure.

11 A. Well, let's see, for a dollar, not just a penny?
12 You want a whole dollar?

13 Q. I want a whole dollar. That's not that unreasonable
14 if we're saying the state average is now 78 cents for
15 maintenance and operations.

16 A. Let's see. Let me look up their tax value. Well, a
17 \$1 tax rate in Eanes, we can raise \$6,025.00 per
18 standardized Refined ADA.

19 Q. All right. 6,025?

20 A. Yes.

21 Q. That's without any state money, right?

22 A. That's without any state money.

23 Q. Your version of this says 3,492, right? I think
24 that's that figure up there on the board, isn't it?

25 A. 3,492 is the statewide average cost-adjusted level of

1 expenditure per Refined ADA, yes.

2 Q. Okay. That's not equity either, is it, by the 1.25
3 ratio or by Dr. Hooker's 1.15 ratio or by anybody's
4 ratio?

5 A. Let me try to be a little more plain in what I'm
6 saying and that is, that if we have equalized
7 opportunity in Texas to spend at a minimum at that
8 quality level determined by the Accountable Cost
9 Advisory Committee, the probability that the low
10 wealth districts in the state will come back to court
11 and complain about the fact that Eanes or any other
12 school district spends \$6,000.00 per kid is just
13 about nil.

14 Q. Isn't that what the people that were promoting House
15 Bill 72 told -- in almost the exact same words told
16 the Texas Legislature what would happen if they
17 passed House Bill 72?

18 A. No. That is absolutely untrue.

19 Q. So when Dr. Hooker was in there crafting that House
20 Bill 72 -- remember, he called himself one of the
21 technicians -- and when members of the Equity Center
22 were out there and the people involved in the school
23 districts that were in the working group, even though
24 the Legislature let them in and let them work on that
25 plan, they had their fingers crossed behind their

1 backs?

2 A. What do you mean by "had their fingers crossed behind
3 their backs"? Would you explain that to me?

4 Q. Well, even though they were in there working on the
5 plan by which they would draw these state revenues,
6 they had as their intention the entire time to turn
7 around and continue with this lawsuit.

8 A. I don't know that that's the case.

9 Q. Do you know of anybody that told the Texas
10 Legislature that even though you're going to give us,
11 Edgewood, \$900.00, even though you're going to give
12 Bill Sybert \$1,100.00, from testimony we heard that
13 he got, we're going to sue you anyway?

14 A. I think you failed to understand the dynamics that
15 were involved in the construction and passage of
16 House Bill 72 because what you're describing is
17 totally unrelated to what actually occurred.

18 Q. Dr. Hooker wasn't one of the technicians that worked
19 on crafting the formula?

20 A. He did indeed work on various aspects of House Bill
21 72.

22 Q. Mr. Foster, I need to ask you a couple of things
23 about your formula now. When you talked about
24 equalization enrichment, you don't count that as part
25 of the Foundation School Program, is that right?

1 A. In the examples that we did over here, if you will
2 recall, I said, "For purposes of doing this, we will
3 use numbers which do include enrichment equalization
4 aid amounts." In other words, I did not raise any
5 objection to using a quality program figure that was
6 of the nature that the Advisory Committee adopted
7 because, if you will recall, I pointed out that we
8 would have to have a second triangle and we would be
9 jumping around with two rather than one.

10 Q. I'm back here on something else for a second.

11 A. I'm sorry. You were pointing at the board and
12 talking about --

13 Q. When we are computing -- in all these figures that
14 went into student units and all this other stuff that
15 you were saying, you had counted the weights and you
16 counted the PDI, but you decided not to use the
17 equalization --

18 A. Oh, absolutely. It is not a cost item.

19 Q. Okay. I think you said it's not part of the
20 Foundation School Program.

21 A. It's definitely part of the Foundation School
22 Program.

23 Q. It is, isn't it?

24 A. Oh, absolutely.

25 Q. It's defined in --

1 A. It's in Chapter 16.

2 Q. It's in Section 16.251(a), and then it's referred
3 back to in 16.002, isn't it?

4 A. Yes. As you know, it is not a Foundation School
5 Program cost. It is an allotment that is within the
6 Foundation School Program.

7 Q. Okay. So I thought you said that it wasn't part of
8 the Foundation School Program. It most certainly is,
9 isn't it?

10 A. It is not part of FSP costs. It is part of the
11 Foundation School Program.

12 Q. When we talk about these two triangles -- I suppose I
13 need to get this marked.

14 (Defendants' Exhibit No. 21 marked.)

15 A. Don't forget to mark the upper part of the back of
16 the previous one.

17 MR. O'HANLON: Your Honor, we offer
18 Defendants' Exhibit 21.

19 THE COURT: Okay. Any objection?

20 MR. KAUFFMAN: No.

21 THE COURT: It will be admitted.

22 (Defendants' Exhibit No. 21 admitted.)

23 BY MR. O'HANLON:

24 Q. I'm going to try to run through this a little
25 quicker. I'm not going to get super accurate.

1 I don't want to hurt your feelings here, but
2 what I want to do is kind of put the relationship of
3 the two triangles -- we kind of ran them together --

4 A. Uh-huh.

5 Q. -- and I want to see the relationship with the two
6 triangles. This is everything but the equalization
7 enrichment allotment, right? And this is the
8 equalization enrichment allotment?

9 A. That's one way of drawing it, yes.

10 Q. Okay. Now, because of the way this triangle works,
11 this equalization enrichment allotment is actually
12 better for the poorer districts because it doesn't
13 spread over as far than it would have been if it had
14 been rolled merely into the Foundation School
15 Program.

16 A. I don't share that opinion.

17 Q. You don't share that opinion? Okay.

18 Well, wouldn't these dollars have gone all the
19 way out to here?

20 A. What you asked is whether it's better for poorer
21 districts.

22 Q. On the whole, not any given poor district.

23 A. Not even on the whole. In my opinion, the
24 equalization aid allotment -- it used to be called
25 state equalization aid, and now, enrichment

1 equalization allotment -- is not now, and never has
2 been anything other than an attempt to nullify poor
3 school districts to throw a little extra money at
4 them to try to keep them out of Court and off the
5 backs of the Commissioner of Education and the
6 Legislature.

7 Q. This is limited, by definition, to plus 110 percent
8 state average wealth.

9 A. It is up to the districts that have property values
10 that are up to 1.1 times state average value. I'm
11 not sure what the plus.

12 Q. Well, a hundred -- okay -- 110 percent of the state
13 average --

14 A. Right. From districts -- from the lowest wealth
15 district to the district at 1.1 times state average
16 value are eligible for enrichment equalization aid.

17 Q. Now, if I'd rolled that into the Foundation School
18 Program, I'd have run it all the way out to the 97th,
19 which would get you to 97 percent state --

20 A. If you had taken the same money and added it to the
21 Foundation School Program and put it through the
22 local fund assignment?

23 Q. Yeah. Would have gone all the way out here to the
24 97th percentile in the budget balanced districts.

25 A. Yes, it would.

1 Q. Okay. What we've done is, we've arbitrarily -- we've
2 restricted this to a smaller group of students in
3 that?

4 A. That's correct.

5 Q. Okay. Now, so when we've got this, you say that --
6 the incentive program -- now, when we're talking
7 about the local fund assignment, a district in any
8 place along here gets this amount of money, which is
9 the state's share --

10 A. That is correct.

11 Q. -- regardless of their own effort.

12 A. Yes, that is true.

13 Q. Then they're free or not, under the current system,
14 to raise that additional fund.

15 A. For purposes of the -- well, in general, they are
16 free to raise additional funds.

17 Q. That's right. But I mean, up into this point, it
18 doesn't matter. They get the same state dollars
19 regardless of their tax effort. They get the same
20 state dollars.

21 A. Roughly 29 cents. They have a combination of state
22 and local funds that is equal to their Foundation
23 School Program costs.

24 Q. Right. If they want only -- at 29 cents -- if they
25 only want to levy 10, they're not going to lose any

1 state money, they're just going to lose their own
2 local revenues.

3 A. That is correct.

4 Q. Now, it doesn't work the same way up here, does it?

5 A. That is correct.

6 Q. Because if your tax rate isn't high enough, you start
7 -- the state starts taking money away.

8 A. Yes.

9 Q. Okay. So the only incentive that's out here is on
10 the equalization enrichment allotment?

11 A. The only major formula that has any effort test
12 involved in it is the enrichment equalization.

13 Q. Okay.

14 A. In contrast to the equalization transition
15 entitlement, which is primarily for rich districts,
16 where it is assumed that they are at the average
17 effort even if they're not.

18 Q. Okay. But this is the last year for it, down to
19 three and a half million dollars for all those
20 districts out there.

21 A. That was gratuitous.

22 MR. O'HANLON: Given the hour, Your Honor,
23 I need a couple of minutes to organize myself and I
24 can probably wrap it up within a fairly short period
25 of time. I would ask the Court for a few minute's

1 break since we're close to it anyway.

2 THE COURT: All right. We'll take our
3 afternoon break. We'll get started up again at a
4 quarter till.

5 (Afternoon break.)

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1 BY MR. O'HANLON:

2 Q. Mr. Foster, when you said that -- well, I'm going to
3 ask you to read 16.251(a) of the Education Code.

4 A. "The sum of the basic allotment under Subchapter C
5 and the special allotments under Subchapter D
6 computed in accordance with the provisions of this
7 chapter constitutes the total cost of the Foundation
8 School Program."

9 Q. Okay. So if you look at the statute -- now, is the
10 equalization enrichment allotment -- actually it's in
11 Subsection D, isn't it?

12 A. Well, let's take a look at it and see. What is under
13 D?

14 Q. The equalization enrichment allotment.

15 A. It's in H. This is the old one. Let me make sure
16 this is all here.

17 Q. Here is the new one. The reason I did that was
18 because this one exhibit is missing, 16.251. For
19 some reason it got omitted.

20 A. The enrichment equalization allotment is in Section
21 16.157.

22 Q. Which is part of Subchapter D.

23 A. Subchapter D, special allotments. Yes, it is there.

24 Q. Okay. So when you say it's not defined as a cost,
25 the state defines it as a cost, don't they, of the

1 Foundation School Program?

2 A. The setting forth of costs under the Foundation
3 School Program in the documents which are prepared by
4 the Texas Education Agency and those which are used
5 by the Legislative Budget Board and those which
6 appear in the appropriations bill have a set of
7 allotments, a set of numbers which they add up and
8 call FSP costs.

9 There are in addition to that some things that
10 I have identified as FSP non-costs because they are
11 not included in the costs. In fact, there are some
12 Education Agency documents which I believe read
13 "non-cost FSP."

14 But in any event, the general thing that is
15 meant when one refers to FSP costs is the sum total
16 of the programs, which include regular, special ed.,
17 comp. ed., voc. ed., bilingual ed., gifted and
18 talented, and that's summed up and called "all
19 programs." Into all programs is added transportation
20 and then career ladder and education improvement,
21 education improvement and career ladder. The sum
22 total of all that is referred to as FSP costs.

23 MR. RICHARDS: The statute includes the
24 equalization enrichment as part of the Foundation
25 school cost, doesn't it?

1 A. Refer me again to the language that you are referring
2 to, if you will.

3 Q. The statute speaks for itself, whatever it says. I
4 don't think this is proper cross-examination.

5 A. That's the old version of it. Isn't that what you
6 gave me first, the old version?

7 Q. 16.251(a).

8 A. 16.251(a). 98 and 99 are missing.

9 Q. Yeah, I understand. But this one includes House Bill
10 72, doesn't it, effective September 1, 1984?

11 A. That looks reasonable.

12 Q. It says --

13 A. Yes. This is the figure that is at the bottom after
14 a lot of several other things are totaled in, and
15 then it is referred to -- I forget the exact language
16 -- but it is the total -- what I think it is in those
17 documents that I'm referring to is just total
18 Foundation School Program or FSP total.

19 Q. Uh-huh. Well, what I'm getting to is that the way
20 the state defines Foundation School Program in costs
21 in that statute is not that \$1,350.00 figure, but the
22 sum total of all the things that go into it,
23 including the equalization enrichment allotment,
24 isn't that right?

25 A. No, it is not correct.

1 Q. Well, isn't the equalization enrichment allotment in
2 Subsection D of Chapter 16?

3 A. It is in Subsection D. When you add subsection D to
4 all the other subsections, it is the total cost of
5 the Foundation School Program.

6 Q. Uh-huh. That's a cost that -- this equalization
7 enrichment is a cost of the state, isn't it?

8 A. It's a cost to the state. It is not considered a
9 program cost. It is not considered a cost in the
10 sense that all of the other things that I mentioned
11 which are subsumed under the heading FSP costs.

12 Q. Does this make that distinction? Does this statute --

13 A. I'm making the distinction. It's characteristically
14 made by the Agency in documents that they produce, in
15 Legislative Budget Board documents and in the
16 appropriations bills.

17 Q. What I'm saying is if you look at the Foundation
18 School Program and what it provides, you've got to
19 include that because the statute does, don't you?

20 A. You can include that as a cost to the state. The
21 state's share of that is a cost to the state. That
22 is not the same thing as an FSP cost. An FSP cost is
23 the cost of putting on the Foundation School Program.

24 Q. Okay. So when we're defining costs for the state, we
25 need to look at that whole program, Subsection C and

1 Subsection D. That includes all of that, doesn't it?
2 It includes enrichment, transportation, weighted
3 students, it includes small and sparse, it includes
4 the Price Differential Index, it includes all of
5 those multipliers including --

6 A. And a number of other things, too; state aid to blind
7 schools and a long list of things.

8 Q. Sure. In those, along with everybody else, is the
9 equalization enrichment allotment.

10 A. In that total figure, the figure known as the total
11 Foundation School Program, there is an item called
12 the enrichment equalization allotment, that is
13 correct.

14 Q. Okay. Now, if you will pull out two of your
15 exhibits, and those are Plaintiffs' Exhibits 109-B
16 and 110-B.

17 109-B is the local tax revenue per student, and
18 that's assuming what, average total tax rate?

19 A. This is the local tax revenue per student, and it is
20 in student units as you will see from the column
21 heading, at average total tax rate, which is the 66
22 cent tax rate.

23 Q. This is what they get if they taxed at that rate?

24 A. If every district in the state were taxing at that
25 rate, the revenue that they would generate is what is

1 shown in this exhibit.

2 Q. Okay. That's without state aid?

3 A. And that is without state aid.

4 Q. Okay. In other words -- I'm putting up here Exhibit
5 102 -- that all we have done is we've multiplied
6 these times the average tax rate.

7 A. That is -- let's see -- yes.

8 Q. Okay. So if this is what -- and what 109 does is it
9 shows us what the disparities in the state would be
10 without state equalization, isn't that right?

11 A. Let's back up for just a minute.

12 Q. Now, this just says wealth, and this takes the wealth
13 and multiplies it times average state value.

14 A. Okay. These are based on actual calculations made
15 district-by-district.

16 Q. Okay.

17 A. So they are --

18 Q. A little bit different.

19 A. They would be a little bit different.

20 Q. Okay. Let's compute a range ratio of what the state
21 would be without state equalization. And if we're
22 going to do a range ratio and do it properly, I guess
23 we have to get the relation of 1.51-to-9.97, isn't
24 that right?

25 A. Okay. You cannot do a range ratio on a multivariate.

1 Q. Okay. Let's get 109 then, and let's compute these
2 two rates. What I want to do is I want to --

3 A. 109 is also a function of wealth.

4 Q. Okay.

5 A. 109 and 110 are both a function of wealth.

6 Now, you can -- it's not really a range ratio
7 in the sense it's been discussed in this courtroom or
8 that it's usually discussed in statistical
9 literature, but you can, of course, take any two
10 groups and divide the larger one by the smaller one
11 and come up with it.

12 Q. Let's do that. Would you do that for me? Have you
13 got your calculator handy? What I want you to do is
14 I want you to do it for 109 and I want you to do it
15 for 110, which all we've done here, we've still got
16 an average tax rate, so all we've got -- the only
17 difference here is that we have accounted for state
18 aid, right?

19 A. The difference between the two of these should,
20 indeed, be state revenue, and it's the maximum state
21 revenue rather than actual state revenue. The
22 difference is that we have given the state -- we have
23 put in the amount of state revenue that each district
24 would get if they maximized their state revenue.

25 Even for those districts that haven't made the

1 effort, it's in here so that it produces a higher
2 figure which is more fair to the system because they
3 could be getting this much money.

4 Q. Because of the problem we talked about earlier today?

5 A. Right.

6 Q. Okay. Let's compare with -- why don't you give me
7 the multiples of that. Let's divide 9.97, which is
8 the 95th on 109-B --

9 A. Well, you would want to divide the 1,810 by 273. I'm
10 not sure that it would be the same thing.

11 Q. Okay. That's fine.

12 A. The other thing that I might point out -- I mean, we
13 can calculate any set of numbers you want, but we
14 already have the relative size of these things,
15 unless you specifically want to -- instead of going
16 from the lowest, you go from the next to the lowest
17 group. Is that essentially what you want to do?

18 Q. Yeah. I want to go from the 5th to the 95th so we
19 can be fair with the range ratio methodology here.

20 A. Okay. We can't go from the 5th to the 95th. We can
21 take a group that is between the 5th and 10th and
22 compare that to a group that's between the 90th and
23 95th.

24 Q. I understand that.

25 A. So it would be closer to saying we're doing seven and

1 a half percentile to -- it's really not that --

2 Q. Right.

3 A. If that's what you want me to do, I'd be happy to do
4 it.

5 Q. That's what I want you to do.

6 A. Okay. You want me to compute it first for local tax
7 revenue?

8 Q. Yeah, 109-B.

9 A. All right. That's 1,810 divided by 273, and the
10 answer is 6.6.

11 Q. Okay. So that ratio before adjusting for state aid,
12 if we didn't have any state at all, is 6.6-to-1.

13 A. Correct.

14 Q. Okay. Now, let's do the same thing for 110-B.

15 A. All right. 2,458 divided by 1,774, and that is 1.4.

16 Q. So by computing that, we can tell the relative role
17 of state aid in equalizing opportunity to educate by
18 way of spending in this state, isn't that right?

19 A. It is a -- using these particular groups, it is one
20 way to measure the difference between having and not
21 having state aid in conjunction with the average
22 total tax rate.

23 Q. Okay. And there's a substantial improvement by
24 virtue of state aid here, isn't there?

25 A. Yes. There is a substantial improvement.

1 Q. Four times better. Is that fair to say? More than
2 four times better.

3 A. Well, that's not really quite the way you would go
4 about doing it.

5 MR. RICHARDS: It is what it is.

6 Q. It is what it is. We've gone 6.6-to-1 to 1.4-to-1,
7 is that right?

8 A. That is correct.

9 Q. In doing so, we have converted a system which, in
10 essence, if we had allowed equal -- if we assumed
11 equal taxing here at equal tax rates, would have
12 given us this kind of variation, right, that's
13 expressed on 102? I know we haven't multiplied it.

14 A. Yes. It would do that.

15 Q. We have converted it into a system that looks like
16 those figures that are displayed on
17 Defendant-Intervenors' Exhibits 11 and 12.

18 A. No. That is not true.

19 Q. We haven't done that?

20 A. No, because these are not the ones that show the
21 combination of state aid and revenue at an average
22 tax rate. This is state aid plus revenue at actual
23 tax rates.

24 Q. Okay. But these came off your charts, didn't they?

25 A. They came off our charts. They're similar to our

1 charts. They simply are not what you have indicated
2 that they are.

3 Q. Okay. But regardless of whether we do it by this
4 system or by the ratios that you used in 110, that's
5 a lot closer to equity than what we would have if we
6 would have simply said we're going to base it on
7 property wealth.

8 A. Oh, there's absolutely no question that the existing
9 distribution of state aid is better than having
10 nothing but local property taxes.

11 Q. Changing that system from 6.6 to 1.4-to-1.

12 A. Yes. But that has nothing to do with this.

13 Q. Okay.

14 A. Specifically with those exhibits. What numbers were
15 those?

16 Q. Defendants' 12 and 11.

17 A. 112 and 111.

18 THE COURT: Those were
19 Defendant-Intervenors' 10 and 11.

20 Q. Excuse me.

21 MR. RICHARDS: And 12.

22 THE COURT: And 12.

23 Let me stand corrected. We were talking about
24 Defendant-Intervenors' 11 and 12.

25 A. Were those the two where I verified the numbers?

1 Q. Yes, sir.

2 A. Okay.

3 Q. Now --

4 MR. KAUFFMAN: Excuse me, Your Honor. I
5 would like to object to the last question. When he
6 said "moves the system from 6.6 to 1.4," I did not
7 want -- the testimony was that that comparison was
8 not the type of comparison Mr. Foster usually does.

9 He said he looks at the district at the 95th
10 and the district at the 5th percentile. That's not
11 what these ratios are. They're a combination of five
12 percentiles between 90 and 95 to five percentiles
13 between five and ten. He said that would be more
14 akin to 7.7 percentile than 92.5 percentile.

15 So if he says the system went from one to the
16 other, I would not want that to be confused at some
17 later time in testimony to something often called the
18 range ratio or the federal range ratio.

19 MR. O'HANLON: I'll do it the other way.
20 I'm trying to save time, Judge, but if Mr. Kauffman
21 insists, we can go back and compute that difference.

22 BY MR. O'HANLON:

23 Q. Let's go back to the exhibits. Let's go back to the
24 109 series and 110 and let's compute it off the
25 actual one.

1 A. We actually have a report that does that.

2 Q. Okay.

3 A. I believe it's 119. 119 is the type of document from
4 which range ratios are characteristically derived in
5 the sense that it is a univariate analysis where each
6 district is listed and it's listed from the lowest
7 amount to the very highest amount.

8 This is the way it's done with the federal
9 range ratio. This is the way Dr. Verstegen did it in
10 her study for the Texas Education Agency. So it is
11 the standard procedure.

12 Q. Tell me what the range ratio would be after state aid
13 assuming state average tax rate.

14 A. The range ratio is -- and this is called not actual
15 expenditure levels, but just if we controlled for tax
16 effort by setting everybody's tax effort the same, we
17 would have a 95th to 5th percentile range ratio --

18 Q. Right.

19 A. -- of 1.44-to-1.

20 Q. Okay.

21 A. That's from Page 3 in the column headed "Ratio to 5th
22 Percentile."

23 Q. Okay. Do you have something we can do it before
24 state aid on this 6.6?

25 A. Just a moment. That would be identical to the wealth

1 report. That is listed from the highest to the
2 lowest wealth --

3 Q. Sure.

4 A. -- in terms of the ratio.

5 Q. Right.

6 A. And that, I believe, is 102-B.

7 Let's look at that. The ratio here would be
8 the same because if you apply a uniform tax rate to
9 the values, the results would be the same as the
10 values themselves.

11 Q. That's right.

12 A. And the 95th to 5th range ratio here is 8.71.

13 Q. To one?

14 A. Yes.

15 Q. So it got worse after we made the refinements that
16 Mr. Kauffman made, 8.7 something-to-1.

17 A. Yes.

18 Q. Okay.

19 A. I simply want you to have the best data available
20 from our research.

21 Q. Okay. I appreciate that.

22 Now, you were here yesterday when Dr. Hooker
23 testified, weren't you?

24 A. I was here during part of his testimony.

25 Q. He said that the SCOPE Committee itself did not make

1 any recommendations with respect to either the local
2 fund assignment or the Foundation Program level, is
3 that correct?

4 A. He did say that, yes.

5 Q. Okay. Do you agree with that?

6 A. No, I do not.

7 Q. The Select Committee on Public Education itself did
8 make recommendations then?

9 A. Yes, I believe it did.

10 Q. Okay. I'm going to hand you Defendants' Exhibit No.
11 1 and see if you can point those out to us. I
12 haven't been able to find them.

13 A. What you have given me is the recommendations of the
14 Select Committee on Public Education dated April 19,
15 1984. I have not looked at this document in a long
16 time, but I believe that somewhere in this document
17 there is a statement of funding principles.

18 On Pages 20, 21, and ending on Page 22, there
19 are a set of funding principles. Let me just review
20 them very briefly to make certain they are what I
21 have in my file. They appear to be similar or very
22 close.

23 Q. Okay. Now, do they have anything about local fund
24 assignment or Foundation School Program money?

25 A. No. The recommendations of the committee are not

1 contained in this particular report.

2 Q. In what report are the recommendations of the
3 committee contained?

4 A. They are contained in a document that was presented
5 to the Joint House and Senate Education Committees on
6 May 15, 1984.

7 Q. Was that the SCOPE Committee or was that this
8 Advisory Committee that was formed with Dave Thompson
9 on it and some other folks?

10 A. The Chief of Staff of the SCOPE Committee, Mr. Tom
11 Luce, also Mr. Perot's personal attorney. He was
12 identified to us as such. In his capacity as Chief
13 of Staff for SCOPE, he advised the -- what you are
14 calling the ad hoc advisory group that the House and
15 Senate Committees would meet on that date and that he
16 would be presenting the SCOPE report to that
17 committee. And he requested that the ad hoc group
18 present the finance recommendations at that time.

19 At that meeting, which was called for the
20 purpose of hearing the Select Committee report, Mr.
21 Tom Luce provided an overview of the committee's work
22 and recommendations, and then introduced Dr. Richard
23 Kirkpatrick as a representative of the ad hoc group
24 and said that Dr. Kirkpatrick would provide the
25 committee's recommendations with respect to finance.

1 Q. Okay. Now, the SCOPE Committee itself, then, never
2 made any recommendations with respect to finance.
3 That came out of the advisory group.

4 A. No. It came from the Chief of Staff of the committee
5 and acting on behalf of the committee.

6 Q. Is it contained in the SCOPE report? Is there
7 anything in there --

8 A. It is contained in what I would call the SCOPE report
9 since it was prepared for and offered under those
10 circumstances to be. It is a SCOPE report. It has
11 SCOPE on it. The committee accepted it as a SCOPE
12 report. The committee knew they were there to
13 receive the report of SCOPE. And Mr. Luce
14 specifically said that Dr. Kirkpatrick was presenting
15 the committee's recommendations on finance.

16 Q. Was Mr. Kirkpatrick ever a member of the SCOPE
17 Committee?

18 A. Dr. Kirkpatrick --

19 Q. Excuse me.

20 A. -- was requested by the Chief of Staff of the
21 committee to make the report on behalf of the
22 committee. It could have been made by anyone
23 requested by the committee; a member, non-member. Dr.
24 Kirkpatrick was indeed a non-member of that
25 committee.

1 Q. Okay.

2 MR. O'HANLON: Pass the witness.

3 RECROSS EXAMINATION

4 BY MR. TURNER:

5 Q. Mr. Foster, you were looking at this Defendants'
6 Exhibit No. 1, the Select Committee on Public
7 Education report.

8 A. Yes.

9 Q. You referred to which pages, again?

10 A. 20, 21, 22, I believe, somewhere in that area. It's
11 under finance and they are letter recommendations A
12 through H.

13 Q. I believe you testified that nowhere in there is
14 there any mention of a local fund assignment in any
15 place, is there?

16 A. That is correct. The Chairman of the Finance
17 Committee of SCOPE took the eight principles that you
18 find in that document to the SCOPE Committee in their
19 final meeting and said, "Here are the finance
20 principles that I recommend for inclusion in the
21 SCOPE report, and I'm going to ask the people that
22 have helped me in the development of these principles
23 to flesh them out and prepare them for legislative
24 consideration."

25 Q. So at the time the final report was presented to the

1 SCOPE Committee, this is what they were looking at,
2 wasn't it?

3 A. Yes. That is what they were looking at with the
4 understanding that the finance principles would be
5 fleshed out and prepared for presentation to the
6 Legislature in legislative format.

7 Q. When the SCOPE Committee voted on their final
8 recommendations, this is what they voted on, wasn't
9 it?

10 A. Yes. They voted on that document with the
11 understanding that the funding principles would be
12 fleshed out and prepared for legislative
13 consideration under Mr. Bullock's supervision.

14 Q. But there wasn't any presentation at that time of any
15 recommended local fund assignment to the members of
16 the SCOPE Committee, was there?

17 A. That is correct.

18 Q. There was, however, an attachment on the
19 cost-per-year of the recommendations, wasn't there?

20 A. I'm not familiar with that attachment of costs.

21 Q. I'll let you look at this again. It's the last --
22 looks like the last couple of pages. I'll let you
23 look at it and see if you recall it.

24 A. Yes, I have seen these. It's been a long time, but I
25 have indeed seen these.

1 Q. Look there on the next to the last page, the numbers
2 down at the bottom of the page.

3 A. Yes. "Total cost, state and local, of the
4 recommendations."

5 Q. Right. On the next page, does it show the state
6 costs?

7 A. I don't see that this is identified as state costs.
8 Can you point that out to me?

9 Q. I was looking at the figures down at the bottom.

10 A. These are different from the others? It is not clear
11 from this document. The first page is clearly
12 labeled "state and local," but the second page is in
13 different type and is not similarly labeled and it
14 does not say that it is state cost.

15 Q. Mr. Foster, it appears that the two exhibits -- one
16 of them, as you can see here, is total additional
17 costs per year, state and local of all
18 recommendations.

19 A. Yes, I see that one.

20 Q. It starts up here and it mentions in order the
21 proposals that are contained in this report.

22 A. Yes.

23 Q. Lengthen the school day by ten days, extend the
24 school day two hours, it goes on down and lists
25 estimated costs all the way down for 1985 and then

1 for 1986, and then for 1987, it shows those costs.
2 That says, "state and local of all recommendations."

3 A. Right.

4 Q. If you look over on Exhibit B, it has the same list
5 of proposals and it says up here, "cost." It doesn't
6 say "state and local." It just says, "Cost per year
7 of the recommendation as prioritized for phased
8 implementation."

9 A. Yes, it does.

10 Q. Down at the bottom, you see under 1985, \$987 million;
11 under '86, \$669 million; under '87, \$720 million. If
12 you compare those figures to the ones at the bottom
13 of this other page, which was the page labeled "state
14 and local costs," you notice that there is a
15 difference in the figures.

16 A. The total labeled "state and local" is substantially
17 larger than the other which is unlabeled.

18 Q. All right. Can't you tell by looking at that that
19 Attachment B there is the cost to the state of these
20 recommendations and that this Table A is the
21 estimated total cost of those recommendations? Do
22 you see that?

23 A. If you let me look at the document, I may be able to
24 make a calculation or two that would be helpful.

25 Q. I'm asking -- if you think I'm wrong, you tell me --

1 but it appears that way.

2 MR. RICHARDS: Mr. Foster, you're simply
3 being asked can you tell what it is. If you can --

4 A. I cannot tell what it is. It is not in proportion to
5 any then existing or current local state sharing
6 ratio. 2.4 billion, if this is the state's share,
7 it's only -- the state share is shown as 40 percent
8 of the total, and that would indicate a 60 percent
9 local share. So perhaps the report is recommending a
10 60 percent local share rather than the 40 that was
11 requested by the advisory group. I simply don't --
12 the figures do not make sense to me in terms of other
13 knowledge. I cannot say to you that I understand the
14 second set of figures to be the state cost except for
15 the fact that they are on the order of what
16 eventually came out of -- well, the eventual new
17 taxes that were put into House Bill 72.

18 Q. All right, sir. Of course, my understanding is that
19 the recommendations for total costs that were made by
20 the Select Committee ended up being just about what
21 the Legislature did. Is that your recollection?

22 A. I recollect what they finally did. I don't recollect --
23 I cannot say that that's what this represents. I'm
24 not saying that it isn't; I'm saying I simply cannot
25 identify it as such. I don't mean to be

1 argumentative. I simply don't want it to be on the
2 record as acknowledging that those figures are
3 something that they're not labeled to be.

4 Q. All right. But if we look at 1985 recommended state
5 expenditures of \$987.3 million down there, that is
6 about what the Legislature ended up appropriating to
7 fund House Bill 72 in the first year, wasn't it?

8 A. You just characterized them as state expenditures,
9 and they are not so characterized on the page. What
10 I will say is that those figures at the bottom of the
11 page approximate what was eventually appropriated,
12 which may or may not mean that those figures are the
13 actual state share.

14 Q. All right. There's nothing on those pages here and
15 you looked in the report itself, but there's nothing
16 anywhere on here that talks about the size of a local
17 fund assignment or a local share.

18 A. I haven't studied it thoroughly recently. I looked
19 at the funding principles and it's not in the funding
20 principles. So the only other information that I
21 have seen in the report would be this document that
22 you're showing me, which would show a 40 percent
23 state share, which would have been 60 percent local
24 share. I simply -- that doesn't make sense to me
25 because there wasn't any discussion of a local share

1 that high, yet the local share is -- would be 60
2 percent of the total as calculated from that report.

3 Q. All right. So you did say that there was no mention
4 of a recommendation at the last meeting of the SCOPE
5 Committee where they adopted this of any local share
6 percentage or any amount of basic allotment?

7 A. No. What I said is that the SCOPE Committee adopted
8 that report, the finance section of it, with the
9 understanding, based on Mr. Bullock's report, that
10 those funding principles would be fleshed out and he
11 was asked to supervisor that process and indeed did.

12 Q. And you're aware that the SCOPE Committee, after that
13 final meeting where this was adopted, adjourned, I
14 believe, in just a matter of a few weeks before the
15 Legislature was called into special session?

16 A. I don't recall precisely when that happened, but it
17 seems to me the committee's activities as a committee
18 -- I don't recall meetings of the committee after the
19 session began.

20 Q. Well, in fact, the SCOPE Committee adjourned before
21 the Legislature convened in special session.

22 A. I'm not sure of how the committee was terminated or
23 what action that it took. It was clear that Tom Luce
24 was still representing himself as an agent of SCOPE
25 as late as May 15, 1984.

1 Q. You're also aware, are you not, that after that final
2 meeting of SCOPE, this document was widely circulated
3 and, in fact, the Governor himself sent a copy to
4 every member of the Legislature?

5 A. I did not know that, but I would not dispute it.

6 Q. Dr. Foster, this ad hoc advisory group on finance --

7 A. Yes.

8 Q. -- that you say worked some with Mr. Bullock and his
9 staff, were any of those people a member of the SCOPE
10 Committee?

11 A. The only person that I know -- there were two people
12 that were involved in the fleshing out of the funding
13 principles that were members of SCOPE. They were
14 Governor Hobby and Comptroller Bullock.

15 Q. I believe the other day, a list was prepared and put
16 on the board of the people that served on the ad hoc
17 advisory group.

18 A. A partial list was created on the flip charts, yes.

19 Q. Just a partial list?

20 A. Yes. I don't recall exactly who was there, but I
21 know there were more people involved than were
22 actually shown on the flip chart, yes.

23 Q. I believe you said that everyone that served on that
24 ad hoc advisory group was, in some way, an educator,
25 is that correct?

1 A. Well, the ad hoc advisory group was not the same the
2 final day that it operated as it actually was the
3 first day it operated. There were a number of people
4 that Mr. Bullock invited or his staff invited to
5 participate in the process. After the process began,
6 some of those people stopped coming to meetings and
7 other people started coming to meetings.

8 To the best of my recollection, there was never
9 a roster maintained. Mr. Bullock issued an
10 assignment and apparently he felt that there was
11 adequate organization to provide what it was he had
12 asked us to provide. It was, I agree, a loose
13 organization, but it did function and we were never
14 asked to change the organization by Mr. Bullock. So
15 I would surmise that he felt we were doing what he
16 had asked us to do.

17 At some points, there were state employees who
18 were there; most often in the role of observers, it
19 seemed, but occasionally their advice was sought and
20 they spoke on various issues, and I would not
21 consider them educators, per se. They were
22 representatives of the Governor's office, the
23 Lieutenant Governor's office, the Speaker's office,
24 and Legislative Budget Board staff people, and Senate
25 Education Committee staff --

1 Q. That was a fairly fluid group, then, wasn't it?

2 A. It was a fluid group, yes.

3 Q. It never was a group that was appointed in any formal
4 sense by the Select Committee, was it?

5 A. Well, when the Chairman of the Finance Committee
6 asked us to get involved, a lot of us felt that that
7 was very much an appointment, if not a command
8 performance.

9 Q. All right. Now, Mr. Bullock was Chairman of the
10 Finance Committee, wasn't he?

11 A. Yes, he was.

12 Q. Some of the members of the SCOPE Committee served on
13 the Finance Committee, didn't they?

14 A. Yes.

15 Q. Do you recall who the members of the Finance
16 Subcommittee were?

17 A. No, I do not. I only remember that there were people
18 on all of the subcommittees.

19 Q. Do you recall if that subcommittee made a report to
20 the full committee?

21 A. The Finance Committee?

22 Q. Yes.

23 A. Yes, indeed it did.

24 Q. Do you have a copy of that report?

25 A. The report is as you see it in the document there.

1 It was adopted without change by the committee.

2 Q. So the Finance Subcommittee, itself, did not make any
3 recommendations regarding local fund assignment,
4 percentages or amount of basic allotment, did it?

5 A. The Finance Committee met prior to the meeting of
6 SCOPE, agreed with Mr. Bullock's principles, and were
7 advised of what the plan was. That plan was carried
8 forward to the committee, itself, and the committee
9 was aware of the plan. And upon unanimous approval
10 of his report, with the understanding that he had a
11 plan for fleshing things out, was all -- it's all
12 there. It's all part of the SCOPE process.

13 Q. But the SCOPE Committee never saw that plan, did
14 they?

15 A. The SCOPE Committee did not see the plan because the
16 plan had not been developed. It was not fleshed out.

17 Q. So it really wouldn't be fair to say that the SCOPE
18 Committee had any kind of recommendation on the size
19 of the basic allotment or the --

20 A. I think it would be fair to say that the SCOPE
21 Committee was prepared to endorse Mr. Bullock's --
22 the product of Mr. Bullock's effort. He was given
23 that charge by the committee without any
24 publicly-expressed reservations, as far as I know.

25 Q. Mr. Haley and Senator Parker were both members of the

1 SCOPE Committee, weren't they?

2 A. Yes, they were.

3 Q. As far as Representative Haley goes, those
4 percentages of local fund assignment and size of
5 basic allotment never appeared in the bill with Mr.
6 Haley's name on it, did it?

7 A. I don't know whether they ever did. I would agree
8 that what Mr. Haley eventually was working for did
9 not include many of the things that were recommended
10 to the Legislature by the SCOPE Committee through
11 that testimony on the 15th of May.

12 Q. Do you think if Mr. Haley came over here today and
13 testified that he would agree with you that the SCOPE
14 Committee made a recommendation on the size of the
15 local fund assignment and the size of the basic
16 allotment?

17 A. It would depend on whether or not he remembered the
18 testimony given at that meeting on the 15th of May.

19 Q. So it's your position that the SCOPE Committee
20 adopted this report and then gave the counsel to the
21 committee the free reign to take the ad hoc committee
22 to the Legislature and represent to the Legislature
23 that the ad hoc committee's recommendations on
24 finance were, in fact, the recommendations of the
25 SCOPE Committee even though those recommendations

1 never appeared in the final report nor ever were
2 voted on by the SCOPE Committee?

3 A. It is my judgment, based on what I saw of the
4 process, that Mr. Bullock was given the charge and
5 accepted the charge and did, indeed, fulfill that
6 charge, and that his agent and the agent of the
7 committee, a man who represented himself as Chief of
8 Staff of the committee, came to meet with the Joint
9 House Senate Education Committee at the request of
10 the committee to lay out the recommendations of
11 SCOPE.

12 As part of that process, he, as I said,
13 introduced Dr. Richard Kirkpatrick and said, "Dr.
14 Kirkpatrick will review with you now the
15 recommendations of SCOPE with regard to finance."

16 Q. Mr. Foster, yesterday I had handed you an exhibit
17 marked Defendant-Intervenors' Exhibit No. 13. I'm
18 going to hand it to you again and ask you if you
19 would look at it, and also refer to your Plaintiffs'
20 Exhibit 105-B and Plaintiffs' Exhibit 106-B.

21 A. Give me just a moment to rearrange my library, if you
22 will.

23 Would you tell me again the numbers of the
24 exhibits you want me to review?

25 Q. They're listed there on the bottom of my exhibit.

1 They refer to your exhibit.

2 A. All right. Thank you.

3 I have Defendant-Intervenors' Exhibit No. 13
4 and I have a copy of it.

5 Q. Have you examined your exhibit 105-B and 106-B?

6 A. I have them here before me. I would like to verify
7 that the figures used are indeed the same. Where on
8 your materials do you find -- I don't have your table
9 that corresponds with my 105-B.

10 Q. I'm not asking you to look at any table I prepared.
11 I'm asking you to look at your Exhibit 105-B. The
12 chart that I have prepared there is a representation
13 in graphic form of the second page of your 105-B
14 where you rank the districts by 20ths.

15 A. Okay. Now I have the corresponding set of numbers
16 here, I believe. All right.

17 Q. And if you would, verify that I have used the right
18 figures in preparing the chart.

19 A. Those would appear to be the correct figures. I'm
20 speaking about the expenditure lines.

21 Q. All right. Those are the columns?

22 A. Yes.

23 Q. And look at Page 2 of 106-B and verify, if you will,
24 that I have charted in the line form the correct data
25 that you have shown on 106-B, which is the total tax

1 rates by wealth divided by 20ths.

2 A. All right. I have verified that both sets of figures
3 are the same on your tables as they are on mine. I
4 assume that the charts are done by computer that
5 takes the information in the form it appears on the
6 chart, so I will agree that these are a proportional
7 representation of what is in those exhibits.

8 Q. All right. The data that's from 105-B regarding
9 total expenditures per student unit --

10 A. Yes.

11 Q. -- you did not prepare a chart for exhibition to the
12 Court displaying that data, did you?

13 A. That is correct.

14 Q. Now, you did have a chart, I believe, a bar chart on
15 total tax rate by wealth group, did you not?

16 A. Yes.

17 Q. I have superimposed that data in the line on the
18 chart that you see on the top of the chart.

19 A. Yes. That does appear to be the same representation.

20 MR. TURNER: Your Honor, I'd like to offer
21 Defendant-Intervenors' Exhibit No. 13.

22 MR. RICHARDS: No objection.

23 THE COURT: It will be admitted.

24 (Defendant-Intervenors'

25 (Exhibit No. 13 admitted.

1 MR. KAUFFMAN: Your Honor, if I may, as
2 long as it's clear that on Exhibit 13 that the
3 wiggley line at the top refers to the scale on the
4 right and the bars refer to the scale on the left.
5 Is that right?

6 MR. TURNER: That's right.

7 A. It's my understanding that the total tax rate figures
8 on the right are those which are associated with the
9 line, and that the dollar figures on the left are
10 those associated with the bar. Even though they are
11 not precisely in the same scale, it is close enough
12 so that it is not a significant distortion of the
13 relationship.

14 MR. KAUFFMAN: Your Honor, I'm just trying
15 to make clear this does not mean that the
16 expenditures per student in the lowest wealth group
17 is \$2,500.00. There is a dot above that one. That
18 means their tax rate is whatever, 63. It does not
19 mean their expenditures are \$2,500.00. That's what I
20 am trying to make clear. Is that right?

21 A. Yes. That's my understanding of this chart.

22 MR. KAUFFMAN: Well, on the far right, the
23 bar shows that the expenditures of the wealthiest
24 group are around 3,000 and their tax rate is around
25 .5.

1 A. Yes.

2 MR. KAUFFMAN: Okay.

3 BY MR. TURNER:

4 Q. Mr. Foster, that top bar, that top 20th, I believe
5 you said the other day that was contained in most of
6 our budget balanced districts; is that right?

7 A. Yes, I did.

8 Q. Those are the ones you said we really can't do
9 anything about.

10 A. What I have said is that when I apply what I feel is
11 an appropriate range ratio test, that the districts,
12 the super wealthy, budget balanced districts are
13 effectively excluded from consideration.

14 Q. All right. So if we look at the next bar or the 19th
15 percentile, nineteen 20th bar --

16 A. All right.

17 Q. -- I suppose we probably would still have some budget
18 balanced districts in that grouping, but many of them
19 would not be. Would that be accurate?

20 A. There may be some. I'm not at all sure there are. I
21 have not examined it closely, but they would tend to
22 be grouped in the 20th. Their impact in the 19th,
23 because of their necessarily limited numbers, would
24 be not very significant.

25 Q. All right. And if you'll notice the tax rate of that

1 nineteenth 20th percentile, it appears to be equal to
2 or greater than any of the tax rates paid by the
3 districts in the first through about the eight 20th,
4 doesn't it?

5 A. Would you pose your question again, because it does
6 not appear to be the case.

7 MR. RICHARDS: You can look here at your
8 Exhibit 106.

9 A. I'm trying to work from his chart. Did you say the
10 19th?

11 Q. That's right. Comparing the tax rate paid by
12 districts in the 19th percentile to the tax rates in
13 the poorer districts.

14 A. I show that all of those in the poorer districts are
15 at or above that level. In fact, there are only two
16 groups of 20 up to the 13th that are actually below.
17 So 11 of the first 13 groups are at or above that
18 level.

19 Q. All right. The first 20th is below that level, isn't
20 it?

21 A. Not on my copy.

22 Q. Now, what I'm asking you to compare is the tax rate
23 paid by the districts -- the average tax rate paid by
24 the districts in the nineteenth 20th --

25 A. All right.

1 Q. -- which is, as I understand it, the next to the last
2 column.

3 A. Okay. I've got my citing line right on the bottom of
4 that dot.

5 Q. All right.

6 A. And that also permits me to look directly across one
7 of the black lines, and I find that the -- well, I
8 have covered up the first one. I'm sorry. It's from
9 the 2nd on. With the exception of the 5th and the
10 12th, they are all at or above that level.

11 Q. But the first --

12 A. Yes.

13 Q. -- is clearly below, isn't it?

14 A. Right.

15 Q. The tax rate paid by those districts is clearly lower
16 than the 19th?

17 A. That is correct.

18 Q. All right. The second one, the second 20th looks
19 like it's slightly above.

20 A. It is above, yes.

21 Q. I can't tell how much; 2 cents, maybe?

22 A. Each one of those is apparently about 2 to 3 cents,
23 so it would be on the order of about 4 cents.

24 Q. The 3rd percentile rate looks like about the same,
25 maybe a fraction below the 19th, doesn't it?

1 A. The 3rd is slightly below the 19th.

2 Q. Then the 4th, it goes back up a little bit, looks
3 like it may be --

4 A. It's 74. It's three higher.

5 Q. All right. And the 5th percentile has a clearly
6 lower --

7 A. Right. It's down about a nickel.

8 Q. -- tax rate than the 19th, doesn't it?

9 Are you representing to us in your presentation
10 that these higher spending districts pay higher tax
11 rates, by looking at this chart?

12 A. No. What my testimony is and has been is that on the
13 whole, the tax rates in the low wealth districts are
14 at or above the tax rates in the high wealth
15 districts, and that the tax rates in the mid-wealth
16 districts are greater than both.

17 Q. All right. In the mid-wealth districts, you're
18 talking about the 9th, 10th, 11th, right in there?

19 A. Yes.

20 Q. Maybe jumping over to the 14th?

21 A. It's a little -- what I am really -- if you look at
22 my chart over here in the 4th, 5th and 7th 10ths,
23 those are clearly -- well, at least the 5th and the
24 7th. The 4th is no greater than a couple of the
25 poorer groups. The 5th group is obviously the

1 stand-out group, with 7 closely following.

2 Q. But look at this chart. If you look at the 17th and
3 the 19th, clearly those two groups of districts pay
4 high tax rates, don't they?

5 A. They pay tax rates which are very near the average
6 and are no greater than the rates in the poor
7 districts.

8 Q. And when we see that lower tax rate in the 18th 20th
9 group, they actually have lower spending too, don't
10 they?

11 A. Yes, they do. That is what I call the Dallas
12 phenomenon. Dallas is a low-taxing, low-spending
13 district.

14 Q. You think they fall in that group?

15 A. Well, they are 15 percent below the state -- 15 cents
16 below the state average tax rate, and they are \$34.00
17 per student unit below the total expenditure level.
18 And because of both of those things and because they
19 have 120,000 kids and 191,000 student units, they
20 pull that group 18th very far down. In fact, they
21 are -- I mean, there are only a handful of other
22 districts in 18. So when you look at 18 essentially
23 you're looking at Dallas.

24 Q. All right.

25 MR. TURNER: I'll ask the reporter to mark

1 this next chart I prepared as Defendant-Intervenors'
2 Exhibit No. 14.

3 (Defendant-Intervenors'

4 (Exhibit No. 14 marked.

5 BY MR. TURNER:

6 Q. I hand you Defendant-Intervenors' No. 14 and ask you
7 to look at that and compare that to the data that you
8 presented on Plaintiffs' Exhibit 110-B. I might ask
9 you as you're doing that, is this another one of the
10 exhibits that you did not prepare a chart to
11 accompany?

12 A. That is correct. The charts accompanied one, two,
13 three, four, six, seven and eight, and none others.

14 Q. This should be on Page 2 of 110-B.

15 A. All right.

16 Q. Again, the ranking by 20ths.

17 A. All right.

18 Q. Have you looked at it sufficiently to verify that the
19 chart I prepared accurately reflects your data from
20 your exhibit?

21 A. The tables are identical.

22 MR. TURNER: Your Honor, I would like to
23 offer Defendant-Intervenors' Exhibit No. 14.

24 THE COURT: Any objection?

25 MR. RICHARDS: No objection.

1 THE COURT: It will be admitted.

2 (Defendant-Intervenors'

3 (Exhibit No. 14 admitted.

4 BY MR. TURNER:

5 Q. This chart represents state and local revenue per
6 student unit, is that correct?

7 A. Yes, at the average total tax rate. So it is a
8 hypothetical rather than actual distribution.

9 MR. TURNER: I'd like to ask the reporter
10 to mark this next chart as Defendant-Intervenors'
11 Exhibit No. 15.

12 (Defendant-Intervenors'

13 (Exhibit No. 15 marked.

14 BY MR. TURNER:

15 Q. Mr. Foster, if you will, take a look at this No. 15.
16 It's a representation of the same data that you just
17 looked at on 14, but it omits the top and the bottom
18 percentile group.

19 A. That appears to be accurate.

20 MR. TURNER: Your Honor, I'd like to offer
21 this Exhibit No. 15 into evidence.

22 Q. Basically, that one eliminates that group on the top
23 end that we said most of the budget balanced
24 districts are in.

25 A. Yes, I understand that.

1 Q. And also eliminates the bottom one.

2 THE COURT: It will be admitted, 15.

3 (Defendant-Intervenors' Exhibit

4 (No. 15 admitted.

5 THE COURT: We're going to stop for the
6 day.

7

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13 (Proceedings recessed until

14 (February 4, 1987.

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3-87-190-CV

CAUSE NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

C 8353

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DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

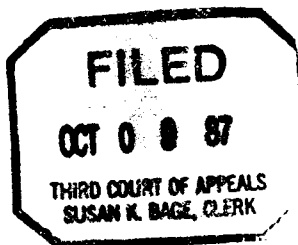
FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk
Deputy

STATEMENT OF FACTS

VOLUME X OF XLVI



TAKEN FEBRUARY 4, 1987

AFFILIATED REPORTERS

Computer Aided Transcription

805 West 10th, Suite 301 • Austin, Texas 78701
(512) 478-2752

CAUSE NO. 362,516

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

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

APPEARANCES:

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Dallas, Texas, 75201-4622

5
6 ATTORNEYS FOR THE DEFENDANT-INTERVENORS
7
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16

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

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1 FEBRUARY 4, 1987

2 MORNING SESSION

3 MR. CRAIG FOSTER

4 was recalled as a witness, and after having been previously
5 sworn, testified as follows, to-wit:

6 CROSS EXAMINATION

7 BY MR. R. LUNA:

8 Q. Mr. Foster, for the record, I'm Robert R. Luna. I
9 want to ask you a couple of questions about some of
10 your prior testimony.

11 First of all, as I recall, the way you
12 described your position, you are president or at
13 least head of the Equity Center, is that right?

14 A. My title is executive director.

15 Q. The Equity Center is a group of school districts who
16 are in the bottom third of state wealth.

17 A. That is correct.

18 Q. You are here today basically as their representative?

19 A. No. My understanding is that I am here because of my
20 background and expertise in school finance.

21 Q. You are at this time on their payroll, are you not?

22 A. That is correct.

23 Q. You spend all of your time before the Legislature
24 testifying or before this Court on their payroll, do
25 you not?

1 A. I do not testify before the Legislature except at the
2 written request of the committee chairman, but at
3 those times, I am also on their payroll.

4 Q. So you're a full-time employee. And whether that
5 means that you're in your office working or here in
6 the courtroom or before some legislative committee,
7 you are an employee of the Equity Center.

8 A. I am an employee of the Equity Center, yes.

9 Q. All right. I believe you said that of those 160
10 districts, approximately, that are members of the
11 Equity Center, that if anyone gets above and beyond
12 the one-third of the wealth in this state, then
13 they're no longer eligible for membership.

14 A. That is correct.

15 Q. Mr. Foster, let me ask you, any time there is a major
16 reform movement -- for example, in this state in
17 House Bill 72 -- is it safe to say that all of the
18 effects of that movement are not felt for several
19 years, at least?

20 A. There are some effects that are felt immediately,
21 others are not felt for short periods of time, and
22 others that it would be very difficult to say that
23 the effect was ever complete.

24 Q. You were here when Mrs. Jones of Rosewood-Lott
25 Independent School District testified before the

1 Court that she had certain immediate problems out in
2 her school, were you not?

3 A. I was only here for a very short part of her
4 testimony. I was in and out.

5 Q. It later turned out that those problems which she
6 described to the Court were scheduled by her own
7 school board for completion or resolution of all or
8 most of those problems the following year and the
9 year following that.

10 MR. RICHARDS: I do not believe that to be
11 an accurate characterization of her testimony. To
12 that extent, we object to it.

13 THE COURT: Well, it was either a
14 combination of her or Mr. Sybert.

15 MR. RICHARDS: They're from different
16 districts, Your Honor, though.

17 She is from Rosewood. She is both principal
18 and teacher in that district and also answers the
19 telephone, and I don't think she ever suggested
20 anything was going to be solved by House Bill 72 or
21 anything else.

22 THE COURT: I think she did testify that at
23 least some of the her problems were at least
24 scheduled to be taken care of. So I'll allow the
25 question as it is.

1 A. I did not hear that portion of her testimony, so I
2 cannot confirm that.

3 Q. Now, I raise that issue because I know that when
4 you're here as a representative of the Equity Center,
5 you're trying to present a complete picture for the
6 Court. I understand that. But at the same time, you
7 also want to present that picture in the light most
8 favorable to the members of the Equity Center, don't
9 you?

10 A. My job basically is to present -- to develop and
11 present information as objectively as we can, and we
12 have discovered -- this is the first time we've ever
13 used any of the information in a judicial proceeding,
14 but we have discovered at the legislative level that
15 it literally does not pay to jack around with the
16 figures because sooner or later someone will become
17 aware of that and they will no longer ask for your
18 information.

19 So we make a real effort to be as objective and
20 straightfoward as we can in the presentation of our
21 information and we have virtually no complaints from
22 the people that use our information or from people
23 who find it to be not in their interest.

24 Q. So sometimes a snapshot view of House Bill 72 of a
25 particular year and a description of what is going on

1 to the Court may not tell the whole story, especially
2 if it's going to take several years to fully
3 implement the bill.

4 A. Our focus for this trial is 1985-'86 simply because
5 that is the most recent year for which we have a
6 substantial body of reliable or more or less reliable
7 information. That is the only purpose for selecting
8 that year. It is not for the purpose of suggesting
9 that one year is precisely like every other year.

10 Q. Good. That's the point I was trying to make.

11 I think it's a point that Mrs. Jones also
12 probably finally made is that one year is not
13 necessarily like every other year as House Bill 72 is
14 being implemented.

15 Now, as she pointed out or as it was pointed
16 out to her, under the current scheduling system, all
17 the things she was complaining about appeared to at
18 least be controlled by her board of trustees.

19 My question to you is -- and I'm now referring
20 to your comment yesterday, an example -- when you
21 used Carrollton-Farmers Branch Independent School
22 District as an unequitable or inequitable school
23 district because of the tax rate and the level of
24 state funding, do you recall your comment?

25 A. Yes. The thrust of my comment was that to send state

1 aid above the constitutionally-required level to a
2 district that was spending substantially above what
3 the state claims is an adequate level and is taxing
4 below the statewide average seemed to me to be
5 inequitable and to contribute to inequity because
6 that same money could be used to help equalize the
7 system.

8 Q. What was the statewide average?

9 A. The tax rate?

10 Q. Yes, sir.

11 A. It's 55 for maintenance and operations and 66 for a
12 total, and roughly 11 for debt.

13 Q. They were at roughly 61 cents, as I recall. It's
14 actually .609. So they were slightly below.

15 A. They are 7 cents below on M&O and 6 cents below on
16 total.

17 Q. Let me ask you this question. Since that was your
18 example of an inequity, what would they have to do,
19 in your opinion, to have an equitable system?

20 A. In my opinion, to have an equitable system, the state
21 would have to distribute whatever funds it was going
22 to put into public education in such a way that each
23 school district, excluding budget balanced districts,
24 would have an equal fiscal opportunity to provide the
25 comparable level of educational services.

1 In other words, it would be something that
2 matched the formula that I presented during my
3 deposition.

4 Q. Does that have anything to do with tax effort?

5 A. That formula, per se, does not. That is correct.

6 There is a -- the total of that formula can be
7 broken down into two or more sections, one of which
8 can be subjected to an effort test.

9 The part that I have shared in my deposition
10 was just the general equalizing formula.

11 Q. What would Carrollton-Farmers Branch have to do to
12 have an equitable system as a local district?

13 A. Well, it's not that Carrollton-Farmers Branch has an
14 inequitable district. I think that may have been the
15 characterization in the question that was asked of
16 me.

17 My response was intended to reflect my opinion
18 that it was indicative of an inequitable situation to
19 be sending those millions of dollars to
20 Carrollton-Farmers Branch at a time when they were
21 spending substantially more than state average,
22 taxing less, and other poor districts that are taxing
23 above average are spending a lot less than
24 Carrollton-Farmers Branch. That's what I intended to
25 convey.

1 Q. Good. Let me extrapolate one thing from your last
2 comment. Because they're receiving state tax money,
3 that's really your objection, isn't it?

4 A. Yes. The point about Carrollton-Farmers Branch that
5 was being made is that in terms of the state's -- if
6 the state desires to equalize funding to the extent
7 possible among school districts, then it doesn't make
8 very much sense for the state to send \$5 million to
9 Carrollton-Farmers Branch.

10 Q. Very good.

11 Now, we've had our snapshot picture, \$5 million
12 to Carrollton-Farmers Branch.

13 Now, let's go one step farther just as we did
14 with Mrs. Jones. How long are they going to continue
15 to get that money from the state under House Bill 72.
16 And is it ultimately going to be cut off?

17 A. Not necessarily. It's a function of their value and
18 the values in other districts around the state.
19 There is no necessary downhill road that they are on.

20 Q. Well, let me ask, then, two more questions. Number
21 one is, if I told you that according to the
22 projections, Carrollton-Farmers Branch is going to be
23 budget balanced by '88-'89 receiving zero state funds
24 under House Bill 72 -- and assume with me for a
25 moment that's correct -- let me ask you the last

1 question, what knowledge do you have that they're
2 going to continue to receive those funds?

3 A. Well, if somebody is projecting that they will become
4 budget balanced under current law --

5 Q. Yes, sir.

6 A. -- it means that they anticipate that
7 Carrollton-Farmers Branch district property value is
8 going to become a larger percentage of statewide
9 property value because the local fund assignment
10 percentage is staying the same. The cost is only
11 going up to reflect new kids. And so some
12 combination of value changes and possibly something
13 having to do with their ADA because that affects
14 their cost, but primarily it would look like -- I
15 would suspect that they're projecting value changes,
16 theirs versus statewide averages, that would make
17 them budget balanced.

18 If that's the case, keep in mind that that new
19 value that they have is taxable. And the more value
20 they have, the lower the tax rate they have to levy
21 to get the same revenue from it. So --

22 Q. Good. So they could actually have a lower tax rate.

23 A. Yes, they could.

24 Q. They can have -- by their own projections -- and by
25 the way, have you done a projection on that

1 particular school district, or a study?

2 A. No, I have not done projections on any school
3 district with respect to value. No statewide study
4 has been done.

5 Q. All right. So let me make sure once again, you, like
6 Mrs. Jones, are presenting only the current picture
7 to the Court without showing what is going to happen
8 in the future, the next couple of years for these
9 districts --

10 MR. RICHARDS: Excuse me. I think the
11 issue before the Court is the constitutionality of
12 H.B. 72. We are not trying to litigate some statute
13 that may or may not be in existence by 1989. I can't
14 see the relevance of the question.

15 MR. R. LUNA: We're talking only about the
16 current statute, the one that the system he says is
17 inequitable.

18 THE COURT: Okay. I'll overrule. You may
19 continue.

20 BY MR. R. LUNA:

21 Q. Your last statement, you zeroed in on tax rates.
22 They can do it with the lower tax rate.

23 A. If their value increased and their costs remain
24 constant, or their expenditure levels per whatever
25 unit you want to describe, and their values went up

1 and they could provide the same services with the
2 lower tax rate, I mean, that's just arithmetic. It
3 has nothing to do with House Bill 72 other than the
4 fact that House Bill 72 does provide that as your
5 costs and values change, that you will inevitably
6 come out at some different point from year to year.
7 I --

8 Q. Excuse me. I don't intend to cut you off. Are you
9 through?

10 A. I'm through.

11 Q. Would it surprise you to know that the tax rate
12 instead of going down in that district has gone from
13 .609 total rate to .819?

14 A. You're speaking now of the local nominal rate, the
15 rate that is levied against the locally-assessed
16 value?

17 Q. Yes, sir.

18 A. No. That would not surprise me. It's been my
19 understanding that prior to House Bill 72,
20 Carrollton-Farmers Branch had an even better deal
21 than they do now.

22 Q. Well, without going into that comment, your reduced
23 rate that you just described to the Court is not, in
24 fact, what is happening. It's going the other rate
25 and it's skyrocketing. What kind of percentage

1 increase is that from 61 to 81?

2 MR. KAUFFMAN: We object to the question.
3 There's at least three quesitons there, including Mr.
4 Luna's speech about that it's skyrocketing. We
5 object to it as three parts and we ask that it be one
6 question.

7 Q. Let me just ask him the last part. What kind of
8 percentage increase is that? And, in fact, is it
9 more than the 8 percent that would trigger a rollback
10 from the citizens that your own witness was concerned
11 about?

12 A. How many increases were there? What was the first to
13 second year, and second to third year?

14 Q. '85-'86 was .609; '86-'87 was .819.

15 A. That's a 34 percent increase. Is that a two-year or
16 a one-year increase?

17 Q. One year.

18 A. One year increase.

19 Since they did lose state aid, they were
20 permitted to make up that state aid loss without
21 running up against the 8 percent rollback threshold.

22 Q. What percentage increase is that?

23 A. What percentage increase is what?

24 Q. Is the tax rate.

25 A. Oh, I thought I'd already said it's 34 percent.

1 Q. 34 percent.

2 A. Right.

3 Q. Now, yesterday in talking about these districts that
4 are losing state aid, you made a comment that they
5 must not be hurting. Do you remember saying that?

6 A. I don't remember that precisely, but if you could
7 fill me in on the context, I might be able to help
8 you.

9 Q. I think you -- well, my co-counsel tells me the
10 phrase you used was that House Bill 72 was not
11 impacting these rich districts and --

12 A. Well, I certainly did not say House Bill 72 was not
13 impacting rich districts because, indeed, it did and
14 is impacting rich districts.

15 Q. And is impacting them fairly severely, isn't it?

16 A. No, not in my opinion, not in terms of the tax rates
17 required to recover state aid losses, and then the
18 rates which they have after having done so. I mean,
19 Carrollton-Farmers Branch, even though the percentage
20 increase in their local rate -- I really don't know
21 what the effective rate change might have been. It
22 might have been more or less than that because some
23 of this may be a reflection of reevaluation. We
24 simply don't know whether this was a real percentage
25 increase.

1 But even after that increase, they're still
2 below state average effort and still very, very much
3 above state average on expenditure. So to me, it's a
4 situation of literally going from having a terrific
5 deal to just sort of a great deal.

6 Q. Well, I notice that Mr. Sybert, superintendent of
7 Socorro, was very concerned about any kind of
8 increase over 8 percent. He used phrases like "it
9 flirts with danger." I know you were here when he
10 testified about that. If this district has to
11 increase its taxes that dramatically and is losing
12 all state funds above the constitutional amount,
13 within the next couple of years, if that's correct, I
14 was trying to figure out the basis for your statement
15 that this is simply having no impact on those
16 so-called wealthy districts.

17 A. Well, let me say again that if there is a projection
18 that Carrollton-Farmers Branch is going to become
19 budget balanced, okay, that is a projection that is
20 based on somebody's notion as to what is going to
21 happen to their local values and local costs.

22 The primary thing that would push them toward
23 being budget balanced is not anything that's in House
24 Bill 72 because the local fund assignment is set to
25 remain constant.

1 So in order for them to become budget balanced,
2 they would have to have a substantial growth in their
3 value. If they have the growth in their value, they
4 will have that value to tax.

5 So it simply is misleading to suggest that
6 because they are going to become budget balanced with
7 current law static, to represent that as being an
8 adverse impact of House Bill 72 is not proper, in my
9 judgment.

10 Q. Well, if the citizens in the community have started a
11 tax rollback petition, it certainly wouldn't indicate
12 that it has gone unnoticed, would it?

13 A. I didn't suggest that it would go unnoticed, I don't
14 believe.

15 Q. Well, I noticed earlier also in your testimony you
16 indicated when talking about the tax rates in the
17 poor districts that there was no reason to -- I've
18 forgotten in what context you were discussing it --
19 but there was no reason to increase taxes in poor
20 districts because of the hassle on taxpayers. Do you
21 remember using that phrase, "hassle on the
22 taxpayers"?

23 A. Yes, I do. Let's put it completely in context.

24 In Edgewood, for example, prior to House Bill
25 72, prior to there being any incentive for making a

1 strong tax effort, Edgewood had a low M&O tax.
2 Edgewood was criticized for that widely. Every time
3 school finance came up in a legislative committee,
4 somebody wanted to take a shot at Edgewood and its
5 low tax rate.

6 The tax rate in Edgewood at the time, a penny
7 increase in the tax rate would raise two bucks per
8 kid, which is a very, very insignificant amount. So
9 you raise your tax rate 10 cents and you've raise 20
10 bucks a kid, and you've increased your tax rated by
11 33 percent.

12 That was the situation they were in. That's
13 exactly what it would have been, a 30 to 35 percent
14 increase to pick up twenty bucks a kid. The
15 combination of that being a real impact on taxpayers
16 but not really impacting education, and the fact that
17 most of the people that live in the Edgewood School
18 District are relatively poor anyway, made it
19 literally not worth the hassle for taxpayers to raise
20 that rate.

21 Now, when the enrichment equalization allotment
22 formula was adopted and contained an effort factor
23 that rewarded Edgewood with additional state dollars
24 for additional tax effort, Edgewood's effort came up
25 dramatically. In fact, they are at or very close to

1 the level required now to gain the maximum enrichment
2 equalization aid. So when it did pay off, they made
3 the effort.

4 Q. Do you know in this case that the Plaintiffs have, in
5 addition to asking for some type of equitable system,
6 which I think is represented on the graph in front of
7 you by the red line which is your increased money, in
8 order to make this system more equitable, then in
9 addition to that, they have asked for damages. Are
10 you aware of that?

11 MR. KAUFFMAN: Your Honor, I object to the
12 question. He again gave a speech, and he said that
13 Mr. Foster had agreed that that red line was
14 equitable. Now, he's asking a question. I would ask
15 again he ask one question at a time.

16 MR. R. LUNA: I'll rephrase it, Judge.

17 A. I did not answer yes to that being my construction as
18 to what would be an equitable system. That
19 particular construction fell apart on us when we
20 started trying to plug in phony numbers which gave us
21 phony tax rates which made it impossible to
22 calculate, on the basis of this structure, a sensible
23 tax rate that would cause Dallas, for example, to go
24 budget balanced. It turned out to be just a useless
25 exercise.

1 Q. Now, my question is in regard to the Plaintiffs'
2 request for damages. Where would those funds, if
3 any, for damages come from?

4 MR. KAUFFMAN: Your Honor, our petition, I
5 think, is being mischaracterized here. We said that
6 whatever system is implemented should compensate for
7 the inequities of the past. We're not seeing that as
8 damages. We're seeing that as whatever new system is
9 implemented should take into account what has
10 happened over the past.

11 So to characterize that as a damage claim that
12 taxpayers of Carrollton-Farmers Branch would have to
13 pay each person in Edgewood some money is certainly
14 incorrect.

15 MR. R. LUNA: Well, I don't want to
16 mischaracterize Plaintiffs' petition. Perhaps I
17 could read it.

18 In the prayer, they say that they're requesting
19 not only a preliminary and permanent injunction
20 enjoining the Defendants from maintaining any school
21 finance system which violates the State Constitution
22 and requiring the state to compensate for the
23 violations of the Texas State Constitution in the
24 past.

25 Then they go on and have their other requests

1 in there, and also the same statement appears during
2 the petition that they seek both an equitable system
3 and damages for what they allege to be past
4 violations.

5 MR. KAUFFMAN: Where is that latter part
6 where we ask for damages?

7 MR. R. LUNA: While I'm looking for it,
8 Your Honor, if I'm in error and they're not asking
9 for damages or at this time they choose to tell the
10 Court that if it says damages, they're not really
11 asking for damages, we'll be happy to accept that.

12 MR. KAUFFMAN: It asks for whatever system
13 is implemented compensate, take into consideration
14 the past inequities of the system. That's what it
15 asks for.

16 MR. R. LUNA: So you're not seeking
17 damages.

18 MR. KAUFFMAN: No. We're not seeking cash
19 damages, no.

20 MR. R. LUNA: Okay. As long as we
21 understand they're not seeking cash damages, then I
22 withdraw my question.

23 BY MR. R. LUNA:

24 Q. Mr. Foster, taking you away for a moment from the
25 snapshot picture we've discussed and looking at the

1 overall effect of the bill that's now in place and
2 the changes it's bringing about for the next several
3 years which we've discussed briefly -- and I know
4 you're aware of the magnitude of the bill probably
5 better than anyone else -- you cannot at this time
6 tell the Court, can you, that the system that's in
7 place under House Bill 72 is an inefficient system?
8 You can't tell the Judge that, can you?

9 A. In my opinion, it is an inefficient system, yes.

10 Q. It is an inefficient system?

11 A. Right.

12 Q. Well, do you remember when you were asked that
13 question in your deposition and you had just the
14 opposite opinion?

15 A. Well, I've apparently done some thinking about it and
16 now have an opinion.

17 Q. Well, I guess you have. When did you do that
18 thinking and have that opinion?

19 A. Since the deposition.

20 Q. When was that deposition taken?

21 A. I don't recall.

22 Q. It was taken in late December, wasn't it?

23 A. Seems like it was, yes.

24 MR. KAUFFMAN: Your Honor, we'd like some
25 reference to the page and the context of this

1 question. They asked him about efficiency in about
2 ten different contexts during his deposition. Let's
3 just find out what he said then and compare it to
4 what he's doing now.

5 MR. R. LUNA: I'd be happy to, Your Honor.

6 BY MR. R. LUNA:

7 Q. I'm talking about the deposition of Craig W. Foster
8 taken on December 22, 1986. I'm reading from Page
9 88. Mr. Foster, let me read you the questions and
10 answers from that page.

11 "QUESTION: You have no basis to say, then,
12 that the present system is either efficient or
13 inefficient?

14 "ANSWER: Our research and my expertise
15 goes to the question of equity and equal fiscal
16 opportunity, not to what's efficient.

17 "QUESTION: You just have no basis one way
18 or another or any opinion with respect to the
19 efficiency of the present school system?

20 "ANSWER: I have no expertise at all with
21 respect to whether it's efficient."

22 Q. Now, when did you gain all this expertise to justify
23 the opinion you just gave the --

24 MR. RICHARDS: I think the problem here is
25 Mr. Luna went fishing and caught something he didn't

1 want to catch, and that's the end of that. He has
2 nothing to do to argue with this witness. He's asked
3 the question whether he has an opinion. Mr. Foster
4 says, "I have an opinion. It's inefficient." He
5 doesn't like the answer, but he doesn't get to argue
6 with the witness about it.

7 THE COURT: I'll let him argue. Go ahead.

8 BY MR. R. LUNA:

9 Q. I want to know when you received all this expertise.

10 A. Actually, I had the expertise all along and simply
11 didn't recognize it, didn't think of it at the time.

12 Q. Mr. Foster --

13 MR. RICHARDS: He gets to answer, Mr. Luna.
14 If you don't like it --

15 THE COURT: Wait a minute now. I think
16 that was an answer. We can have another question
17 now.

18 BY MR. R. LUNA:

19 Q. Mr. Foster, when you had your deposition taken on
20 December 22, 1986, you were under oath, weren't you?

21 A. Yes, I was.

22 Q. You're under oath before this Judge now, aren't you?

23 A. Yes, I am.

24 Q. You've given one answer on the 22nd that's totally
25 different from the answer you've given today, and

1 both of them were under oath. I want to know which
2 one is correct and which one is a lie.

3 MR. RICHARDS: Excuse me. It's not an
4 accurate thing that he gave different answers. I
5 think the record is clear on that. On the
6 deposition, Mr. Foster said he didn't consider
7 himself to have the expertise, didn't offer an
8 opinion. He's now -- Mr. Luna is wanting an opinion
9 and he got the opinion. Obviously, he's unhappy
10 about it. But there's no conflict in the answers.

11 MR. R. LUNA: I'll read the deposition
12 again.

13 "QUESTION: You just have no basis one way
14 or another for any opinion with respect to the
15 efficiency of the present school system?

16 "ANSWER: I have no expertise at all with
17 respect to whether it's efficient."

18 Q. Mr. Foster, I want to know what it is that you've
19 gained in expertise since December the 22nd to
20 February the 4th that has caused you to change your
21 answer without notice to the Defendants in this case.

22 A. Well, I have given a great deal of thought to the
23 question since then. If you will notice in the
24 deposition, it says that the studies that I have done
25 for preparation here were not studies of efficiency.

1 At the time, it just didn't occur to me. In fact, I
2 had not thought through that particular question. So
3 the correct answer at that time was to simply
4 indicate that I didn't feel that I was -- in essence,
5 I indicated I wasn't qualified to comment on
6 efficiency at that time.

7 Q. Do you know that you are under an obligation to
8 notify the other parties once your deposition has
9 been taken under oath if you have changed anything in
10 it?

11 A. I am not advised of exactly what my responsibilities
12 are with respect to that.

13 Q. Did you sign your deposition after you reviewed it?

14 A. No, I didn't.

15 Q. Have you read it?

16 A. Yes, I have read it.

17 MR. KAUFFMAN: Your Honor, I think before
18 we go on, and before the witness is asked further
19 questions about that, I'd like to go ahead and read
20 the two pages that occurred before this final killer
21 question that Mr. Luna asked so that we have some
22 context of what they were talking about in terms of
23 the word efficiency. Otherwise, it is clearly unfair
24 to the witness to go on and try to show
25 inconsistencies in his testimony.

1 If I may read the two pages so that the record
2 is fair and complete.

3 MR. R. LUNA: Your Honor, Counsel will have
4 plenty of opportunity to read anything into the
5 record he would like.

6 THE COURT: We'll come back to you. You
7 can do that when it comes your turn, if you want to.

8 MR. R. LUNA: Pass the witness.

9 THE COURT: Mr. Turner?

10 FURTHER RECROSS EXAMINATION

11 BY MR. TURNER:

12 Q. Mr. Foster, I want to ask you, if you will, to go
13 back to your chart that you started off your
14 testimony with that shows the two circles, where you
15 have the nominal cost circle and real cost circle.
16 Do you have that still available?

17 Mr. Foster, the circle on the left represents
18 nominal costs, is that correct?

19 A. That is correct.

20 Q. I was a little unclear when you went through that
21 testimony as to what costs you actually include in
22 your calculation of nominal costs. Could you review
23 that for us? I understand there were some costs that
24 maybe were not listed on the circle.

25 A. These include, first of all, all of the things that

1 are generally characterized as FSP costs, plus three
2 other items. The things that are normally
3 characterized as FSP costs are the all-programs costs
4 and those are regular, special ed. -- we have
5 enumerated these a number of times -- all those
6 special programs, and the PDI affects those and the
7 small/sparse formulas affect those, as do the program
8 weights.

9 In addition to that, there are -- in addition
10 to the all-programs number, there are two other
11 numbers that go into FSP costs. Those are
12 transportation and education improvement and career
13 ladder. That is the sum total of FSP costs.

14 Then in addition to those things, we have put
15 in three items which are part of the Foundation
16 School Program. They do have costs associated with
17 them. They have formulas that show they are state
18 share formulas, and from the state share -- well,
19 first of all, in order to determine a state share,
20 one has to have a notion as to what the total is. So
21 we infer from the formula a total cost which is a
22 fairly simple, straightfoward, arithmetic procedure.
23 We then can look at both the state's share, which is
24 the result of the formula, and then whatever is the
25 residual is obviously local share.

1 So these items are very much like the things
2 that are in this so-called FSP costs in that they are
3 state and local shared programs. The three which are
4 there in addition to the standard ones in FSP costs
5 are the summer LEP program, the pre-kindergarten
6 program and the experienced teacher allotment.

7 The programs, especially the programs, the
8 summer LEP program and pre-K, are as much a part of
9 the state's required system as essentially anything
10 in the so-called FSP costs.

11 The experienced teacher allotment is an
12 allotment which recognizes that school districts
13 which have an inordinate number of experienced
14 teachers or just a high experience average are
15 necessarily going to have -- and most all other
16 things being equal, to pay somewhat higher salaries
17 based on that experience.

18 So that is sort of an add-on to the basic
19 allotment in a sense because teachers' salaries are
20 otherwise supposed to be coming out of the basic
21 allotments and the add-ons to that. But it's
22 recognized in some districts that simply doesn't
23 cover the real costs. So for that reason, and our
24 interpretation of that being that it's part of the
25 program cost, we included that.

1 Then for that total package, we developed the
2 term "nominal costs," because we wanted to have no
3 confusion between the real world costs of providing a
4 suitable basic education and those costs which the
5 state happened to name their costs by statute.

6 Q. Could you take a district, just any of your choice,
7 and show us where you arrived at these figures from
8 your data?

9 A. No. The data that goes into the calculation out of
10 the figures for each district are on the same files
11 that we used. Most of them are. But you're talking
12 about hundreds and hundreds of data items that go
13 into formulas that are calculated on a mainframe
14 computer. It's just a very complex computation.

15 So we can tell you the results for any given
16 district because we took that figure or those items
17 that had to add up to the total from the tape. We
18 did not take each and every little bit of information
19 that went into that.

20 In other words, we trusted the tapes to have
21 the information on them that was developed from the
22 state's formulas. We assumed the state had
23 accurately computed the numbers that we then used in
24 our analyses.

25 Q. Mr. Foster, when you're calculating the Foundation

1 School Program budget for a given school district, at
2 what point do you plug in the figures for the
3 pre-kindergarten program and the LEP program? At
4 what point do you add those in?

5 A. Well, you can add them anywhere. You can put them
6 first or you can put them last. One place that you
7 can't put them is within the FSP costs because that
8 is a subtotal which runs through the local fund
9 assignment formula, so you would not want to have
10 those items running through two different formulas,
11 both of which provided for state and local sharing.
12 That would be sort of a nonsense sort of thing. But
13 other than that, you could plug them in first, you
14 could plug them in last, you could plug them in
15 anywhere you wanted to.

16 Q. Mr. Foster, tell us what LEP stands for. What kind
17 of program is that?

18 A. It's the Limited English Proficient program. It's
19 for students who have limited English proficiency.

20 Q. Now, as I understand it, then, you take those nominal
21 costs and divide that by the Refined ADA and you come
22 up with a figure.

23 A. No. We take the formula that the Agency uses to
24 calculate the amount of state aid that the state is
25 going to send to a school district. That formula

1 implies a total cost. It is there by inference. In
2 order for the state to determine what its share of
3 something is, it must know what that something is
4 first, i.e., there is an inferred total cost.

5 Q. So you take the nominal costs, which is a total cost
6 nominal cost figure, and you divide that by the
7 Refined ADA?

8 A. No. That is not correct.

9 Q. All right. If I understood -- there's a chart, I
10 guess it's the next one. Maybe we should turn to
11 that. I believe that's it right there.

12 I'm trying to direct your attention, Mr.
13 Foster, to the top numerator on that formula that we
14 see there.

15 A. I'm sorry. I thought you were still with the LEP
16 program. I thought your line of questioning sought
17 to get at how I calculated the inferred costs of the
18 LEP.

19 Q. No. I'm looking at this formula, at the numerator.

20 You arrive at the nominal costs for a given
21 district by adding up all of these costs that you say
22 you take from these Texas Education Agency tapes.

23 A. That is correct.

24 Q. Then you divide those nominal costs by the Refined
25 ADA.

1 A. That is correct.

2 Q. And you get a number.

3 A. Yes.

4 Q. Then the denominator is arrived at by taking the
5 minimum nominal cost. And as I recall, the minimum
6 nominal cost is always 1,350, is that correct?

7 A. That is correct, yes.

8 Q. And you divide that by the Refined ADA and get --
9 well, you always get 1,350 as the denominator, don't
10 you?

11 A. Yes.

12 Q. So the only variable in looking at different
13 districts is the numerator. The denominator is always
14 the same.

15 A. That's correct. So what you get is a ratio of
16 Refined ADA to student units, in effect.

17 Q. All right. The resulting number in that example,
18 1.53, is what you call the student units?

19 A. 1.53 is the ratio of average nominal costs in the
20 state to the minimum. In other words, statewide, on
21 a statewide average, there are 1.53 student units for
22 each Refined ADA. It's simply a ratio.

23 Q. So then you take that 1.53 or whatever number you
24 come up with for the district that you are analyzing
25 and divide that into the total expenditures per

1 Refined ADA, is that correct?

2 A. Well, we compute the number of student units. It
3 might be useful to look at our Exhibit 116 and take
4 the first district there and show you how we
5 compiled that, if that's what you're getting at, if
6 you're seeking to understand how we calculated it.

7 Q. All right. Is 116 a chart or is it --

8 A. It's the vital statistic. It's the companion of most
9 of this information we're using here.

10 Q. I'm looking at it now. Do you have your copy?

11 A. Yes. Looking at the first three columns after the
12 school district name --

13 Q. Yes.

14 A. -- step one involves dividing the nominal cost per
15 Refined ADA number by 1,350. So for Abbott, that
16 would be 2,587 divided by 1,350. That gives a ratio
17 of 1.916. What that means is that for each of the
18 warm bodies in Abbott, there are nearly two student
19 units which are cost units.

20 In other words, those students cost nearly
21 twice the minimum cost, the minimum that they could
22 cost. So Abbott has relatively high-cost kids. If
23 you consider that the statewide average is 1.53 and
24 Abbott is, in round figures, 1.92, that means Abbott
25 has higher-cost kids than the state by a fairly

1 significant margin.

2 You then multiply that ratio, 1.916, whatever,
3 by the 188 Refined ADA in the first column, and that
4 equals 360 student units.

5 Q. All right. Then you take the student units and
6 divide that into the expenditures per Refined ADA?

7 A. Right. We divide the student units into wealth, into
8 M&O expenditures, total expenditures, debt
9 expenditures, anything that is per student unit, yes.

10 As you are well aware, most of our exhibits
11 express things in terms of student units. In each
12 case, we have divided the amount by the number of
13 student units. In the case of Abbott, when we talk
14 about expenditures per student unit, we have taken
15 their total expenditures and divided them by 360, and
16 we then have whatever type of expenditure that is per
17 student unit.

18 Q. All right. In an example you showed us earlier, you
19 were comparing the calculations for Lumberton and the
20 calculations for Axtell School District. Do you
21 recall doing that?

22 A. Oh, that was -- yes. That was to demonstrate that
23 one could not make accurate comparisons if one simply
24 went in and looked at the cost or expenditure per
25 Refined ADA because a high cost district would be

1 expected to spend more, all other things being equal;
2 a low cost district would be expected to spend low.

3 So if you looked at two districts and you say
4 "Hey, this one looks like it's a real high spending
5 district because of the expenditures per Refined
6 ADA," but then you found out that it had real low
7 cost kids, then it would be apparent it was even a
8 higher spending district than you would anticipate.

9 So in order to compare any two districts -- and
10 that was the whole point of this Lumberton/Axtell
11 thing. And as you recall, we selected these two
12 districts in a scientific manner -- well, what is an
13 appropriate kind of manner. We decided before we
14 named the districts how we were going to go about
15 doing it.

16 In other words, we didn't say, "We're going to
17 go in here and pick Axtell because we want to make
18 this or that point with Axtell or Lumberton." We
19 simply said, "Here is a procedure we'll use," and
20 then we went through that procedure and Axtell and
21 Lumberton were the districts that came out of that
22 procedure.

23 Q. All right. So in this example, what you looked at,
24 for purposes of illustration, was a comparison of the
25 expenditures. In this case, was it M&O expenditures?

1 A. Yes, as indicated in the upper left-hand corner.

2 Q. All right. Now, that's really what I'm trying to get
3 down to is for you to tell us what you include in M&O
4 expenditures.

5 A. Okay. M&O expenditures include everything in the
6 general fund and the governmental expenditure trust
7 fund, with the exception of we have taken out all
8 federal money, and all the lunch money, and all
9 community service money. And I would have to look at
10 our documentation to see if there was anything else,
11 but I think those are the categories that we took
12 out.

13 Q. Do you have the information with you that you could
14 look at to be sure that you're giving us accurate
15 information?

16 A. I do have in my briefcase down there a description of
17 that formula.

18 Q. I would like for you to, if you will, to tell us --
19 to look at that and be sure and tell us exactly what
20 is in M&O.

21 A. Okay. M&O expenditure per student is budgeted
22 expenditures from funds 10 and 80, except food
23 services which is function 37, community services
24 which is function 81, non-food federal programs,
25 which is the result of subtracting from object 5,900

1 the federal lunch revenue figures that were provided
2 by the Agency. So those are what we took out of the
3 we started with totals, and those are the things we
4 removed.

5 Q. Would extra funds spent on extracurricular activities
6 be included in M&O?

7 A. Yes, they are, in this instance.

8 Q. What type of things are included in community
9 services, which is one of the items you say you did
10 not include in M&O?

11 A. I'm not sure exactly what they are. I have read the
12 description in the accounting manual. In fact, it's
13 also in one of the exhibits we have here. The Bench
14 Marks has, I believe, a description of that category.
15 In most cases where I have checked the Bench Marks
16 definition against the accounting manual, it's
17 virtually a verbatim repetition of what is there, so
18 we can check to see what that is by looking at that
19 exhibit.

20 Q. Now, what basis did you have for excluding the
21 federal funds from the formula?

22 A. The basis for excluding the federal funds is that
23 federal funds, with minor exceptions, are
24 specifically and legally required to be spent for
25 purposes that are above and beyond the state's

1 education program.

2 In fact, there are federal regulations which
3 require that you cannot use those funds to supplant
4 state and local funds. You must supplement state and
5 local funds. They are provided to the district for
6 the purpose of conducting programs and activities
7 that are above and beyond what are normally provided
8 by the state and local governments.

9 So in the analysis of the equity of the Texas
10 school finance system, the state system, seems to us
11 inappropriate to include monies that, by law, cannot
12 be spent on the state and local program.

13 Q. All right. So the numbers that we see under M&O in
14 all of your exhibits would always include the
15 expenditures that a district would make for the band,
16 and the football team, and all sports activities, and
17 anything that's extracurricular would always be in
18 this number?

19 A. Yes. There's a definition of that in the Bench
20 Marks, which I think we ought to review, because it's
21 not just football and band. Extracurricular
22 activities include a lot of things that are very,
23 very closely related to academic pursuits.

24 Q. All right. But the state formulas that you're using
25 when you arrive at the nominal costs, the state

1 doesn't fund anything specifically for those kind of
2 activities.

3 A. There is no Foundation School Program allotment, per
4 se, for co-curricular or extracurricular activities.
5 It is legal to use public funds to do some of these
6 things that are co-curricular. It is not against the
7 law. School districts do it. It's an accepted part
8 of the state and local public school finance system.
9 And somebody might very well end up spending some of
10 their education improvement funds on a debating group
11 that technically wouldn't fall within a necessary
12 program item, but it would be an academic-related
13 activity that would be financed, in essence, with
14 public funds, including possibly state funds.

15 Q. So if we excluded the expenditures for
16 extracurricular activities from your formulas and
17 your analysis in the example that's before us there,
18 Lumberton's 2,022 figure would be a smaller figure,
19 is that correct?

20 A. Yes. It would be smaller, assuming that they are
21 spending some on those kinds of activities, that's
22 right.

23 Q. So in all of your analyses of M&O expenditures,
24 student unit analyses, if a district spends a lot of
25 money on extracurricular activity, they're going to

1 show up as being a higher spending district.

2 A. That is correct, yes.

3 Q. Would it be fair to say that if we eliminated
4 extracurricular activity spending from our formulas,
5 that we would have a much greater degree of leveling
6 of expenditure ranges across the districts in the
7 state?

8 A. I don't know that that's necessarily the case. We
9 are doing an analysis right now to see if that might
10 be the case. We have not completed it. We have just
11 yesterday received the data from the Agency's tapes
12 that we need to conduct that study.

13 We do know that statewide the expenditures are
14 about \$50.00 per student unit, which in the context
15 of the kinds of expenditure levels we're talking
16 about isn't very substantial. It's less than, what,
17 maybe 2 percent. So it is not a substantial factor
18 in these expenditures, although it could vary from
19 being virtually nothing to perhaps a fairly
20 substantial number in some districts.

21 But we do think that that needs to be taken
22 into account, and if there are major differences,
23 that the expenditure level should indeed be adjusted.

24 Q. Mr. Foster, do you believe that state policy requires
25 the state to fund activities such as football, and

1 band, and other sports activities of a school
2 district?

3 A. Well, if you look at the Texas public school system
4 and talk to educators in Texas about what it is they
5 do and the importance of the various things they do,
6 you are led inescapably to the conclusion that the
7 extracurricular activities are a very integral part
8 of what is considered public education in Texas.

9 And whether you agree or disagree -- whether
10 football is something that is good for kids and
11 provides some enhancement of their education, whether
12 you agree or not with that, it is a fact in Texas.
13 And Texas is not totally unlike other states. I
14 don't mean to characterize it as being some
15 extraordinary thing.

16 It is a fact that from the educator's point of
17 view, from the community's point of view, what they
18 want, what they expect to see, what is public
19 education to them, includes a very substantial
20 component of these kinds of activities that provide
21 children with a wider variety of experiences in their
22 public school education.

23 Mr. Sybert spoke of the importance of that in
24 Socorro. The importance, in his case, was a matter
25 of having opportunities that would assist his efforts

1 to integrate persons from other cultures, and other
2 cultures, in particular, into the mainstream of
3 American society in that he considered that an
4 essential part of that process.

5 So perhaps it's that reason in Socorro; and
6 somewhere else, it's another reason. But I think if
7 you look at the system you would find that as far as
8 Texans are concerned, co-curricular activities are
9 part of the state and local public education system.

10 Q. When you use the term "co-curricular," distinguish
11 that for me, if you will, from the term
12 "extracurricular," that I've been using.

13 A. Well, co-curricular is simply a term that's used by
14 the state in its accounting manual. I don't know
15 whether the terms are interchangeable. I've never
16 really looked at that difference. I noticed that
17 difference the first time I ever looked at it and I
18 read what was in there and it sounded like the kinds
19 of things I used to call extracurricular, but I have
20 not thoroughly examined that. I don't know if any
21 formal distinction is made.

22 Q. Do I take it by your answer to my question that you
23 do believe that the provision of co-curricular
24 activities, particularly things such as football and
25 band and baseball programs and other sports programs,

1 are part of the state responsibility and part of a
2 state program of education?

3 A. What I said was that they are an integral part of
4 what the people of Texas believe to be the public
5 education system. If you talk to the people of Texas
6 about what they think the state system includes, you
7 will find that they believe that it includes making
8 suitable provisions for a variety of activities for
9 students outside the classroom.

10 I do not mean to say that I have -- of course,
11 I've never read in the Constitution that there shall
12 be football in every high school in Texas. But if
13 you talk about the people's notion as to what ought
14 to be in the Constitution, I think there might be a
15 drive to do that.

16 Q. Mr. Foster, you've been an advocate of including in
17 our state formulas a provision for the cost of
18 construction, have you not?

19 A. Yes, indeed.

20 Q. If we are going to consider extracurricular
21 activities a part of the state program, I suppose we
22 ought to have some formula in the state total formula
23 to fund those kind of things, shouldn't we?

24 A. I'm certainly not adverse to that. I think it goes --
25 if you're talking about providing what Texans expect

1 and think is important in public education, then, of
2 course, you would include facilities for whatever
3 kinds of activities are part of the program.

4 Q. So then, it would be your position that the state
5 falls short of its obligation to fund education if it
6 fails to recognize any aspect of cost of providing
7 education as the term "education" might be defined as
8 we've discussed it.

9 A. I am prepared to propose equalization of the public
10 education system in terms of the people's perception
11 of what public education is.

12 Q. Mr. Foster, were you in the courtroom when Dr. Hooker
13 was on the witness stand and I asked him about his
14 familiarity with this book, "The Measurement of
15 Equity in School Finance" by Robert Berne and Leanna
16 Stiefel?

17 A. Yes, I was.

18 Q. Do you recall, then, that Dr. Hooker said, in his
19 opinion, this book was a recognized, reliable
20 authority or treatise on the subject of measurements
21 -- the various measurements of school equity?

22 A. Yes. It's my understanding that that is the most
23 recent attempt to put together a description of the
24 various methodologies that are used and which are
25 accepted, at least in some areas.

1 Q. Now, you also then heard Dr. Hooker say that he
2 wasn't familiar with many of the measures talked
3 about in here. In fact, I think he -- to paraphrase
4 him -- said he really didn't go in for this kind of
5 analysis in terms of making his judgments. Do you
6 recall him saying something to that effect?

7 A. What I recall his saying was that in his years of
8 analyzing the system in terms of funding equity, that
9 it didn't appear to him to be necessary or
10 appropriate to get all wrapped up in
11 geni-coefficients and that kind of thing when it was
12 perfectly apparent to the naked eye through some
13 fairly simple graphics and some simple arithmetic
14 that the system was inequitable.

15 I may have filled in a little bit from what I
16 actually heard, but that was my interpretation of
17 what he was saying.

18 Q. Mr. Foster, I want to show you something that's right
19 here in the introduction of this book. If I may just
20 read the portion that I want to ask you about. It's
21 right on Page 1 of the book, the second full
22 paragraph.

23 It says, "This book is about alternative ways
24 to conceptualize and emperically measure equity in
25 school finance. It emphasizes the different values

1 inherent in alternative equity concepts. The
2 intended audience includes policy-makers who wish to
3 understand their staffs' analyses, analysts
4 themselves, members of public interest groups and, in
5 general, anyone who wants to be able to critically
6 evaluate levels, changes or recommendations for
7 changes in school finance equity."

8 A. Yes, it does say that.

9 Q. So this is the kind of book -- and you're familiar
10 with this book?

11 A. Yes, I've read parts of it.

12 Q. This is the kind of book we should look to if we're
13 going to try to make judgments on what types of
14 analysis we ought to make of equity, or lack thereof,
15 of our school finance system?

16 A. I think it's a good starting point. I think it would
17 be improper to conduct such analyses without looking
18 at what other people have done and are doing. I do
19 not accept the notion that that means that this
20 particular book contains all of the methods that
21 might be appropriately applied to the system.

22 Q. All right. If you will, I want to also direct your
23 attention to Page 2, a little section here I have
24 marked I just want to read to you.

25 It says, "Since 1965, federal funds for

1 education have been largely restricted to specific
2 purposes, such as compensatory education, aid to
3 handicapped students and aid for vocational
4 education. When spent as intended so that neither
5 state nor local monies for these purposes are reduced
6 and the funds are truly added on to existing funds,
7 then students who fall into the targeted groups
8 should benefit in relationship to the others. To the
9 extent that federal categories are considered
10 legitimate candidates for unequal treatment, they
11 switch away from funding that is targeted to them can
12 be expected to harm them. This is not to say that if
13 given more leeway over allocation decisions, the
14 states and localities will discontinue completely the
15 programs in place for special students, but only that
16 some of the federal monies are likely to find their
17 way into other programs of higher priorities to the
18 specific states or districts."

19 Also, I want to direct your attention to Page
20 99 of this text which is in a chapter entitled,
21 "Review of Methodologies of Recent School Finance
22 Equity Literature." On Page 99, there's a chart that
23 is titled, "Frequency of Children's Equity Objects in
24 School Finance Studies."

25 From reading that chapter, it appears that what

1 the authors were attempting to do was to look at some
2 of the more recent school equity studies that had
3 been done around the country and to determine what
4 basis of analysis had been used in those studies.

5 Have you read or do you recall, from your
6 reading of this book, that particular chapter?

7 A. No, I don't. I can see generally what they're
8 talking about in terms of the equity objects.

9 Q. All right. I ask you the question only because I
10 don't want to mislead you about where the chart came
11 from or what they're trying to show with the chart.
12 I want to be sure you understood that before I asked
13 you any questions about it.

14 A. Well, if you want to ask questions based on this and
15 I need to refer to it, I will do that.

16 Q. All right. Let's look at the very first of the chart
17 where the data reflects the number of studies that
18 utilized an analysis of total expenditures, which is
19 shown in the very first line of the study. Total
20 expenditures.

21 Can you, by referring to that chart, tell us
22 how many of the recent studies that the authors had
23 looked at utilized in their equity analysis total
24 expenditures. If you will, I think it might be
25 appropriate for us to note that their analysis looks

1 at three different categories.

2 A. Single state analyses, multi-state analyses and all
3 50 states, I guess, is what this means.

4 Q. Of course, what we're engaged in here --

5 A. Then another category that says methodological only,
6 but I'm not sure what that is.

7 Q. We're engaged in this courtroom in an analysis of a
8 single state.

9 A. That is correct.

10 Q. Just so we won't be misleading in any way, we might
11 note that all of the numbers of studies in the last
12 two columns on multi-state and 50 state are smaller
13 numbers because evidently there hadn't been that many
14 studies done on that broad scope.

15 A. Yes, that's readily apparent.

16 Q. So let's look at the first column, single state
17 studies. Tell me how many single state studies used
18 to analyze equity total expenditures?

19 A. Okay. More than -- it's six, which is the highest
20 number in that column. So of those states that have
21 done it, it appears that that is the most frequently
22 used figure, the most frequently used object, as they
23 call it here.

24 Q. All right. Under expenditures again, the second item
25 is just labeled "expenditures."

1 A. Yes.

2 Q. So obviously, the authors are saying to us that's not
3 an analysis of total expenditures, but they're
4 looking at some expenditures within the range of
5 expenditures.

6 How many states' studies just selected and used
7 some expenditures in their analysis?

8 A. Three.

9 Q. All right. The third item under expenditures
10 analysis says "total expenditures less Title I." Now,
11 what is Title I?

12 A. It's one of the sources of federal funding, as I
13 understand it.

14 Q. And that's one of the items you excluded in your
15 analysis, wasn't it?

16 A. Yes.

17 Q. Total expenditures, you excluded federal funds?

18 A. Right.

19 Q. Looking at that chart, how many studies have analyzed
20 expenditures and, as it says there, analyzed total
21 expenditures and excluded Title I federal funds?

22 MR. KAUFFMAN: Your Honor, we object to the
23 form of the question. There is nothing in that table
24 that shows that. He's confusing what this table
25 purports to say with his question.

1 Let me explain what I mean. He says total
2 expenditures less Title I. The interpretation of
3 that is, expenditures minus just Title I.

4 Mr. Foster did not say that he has total
5 expenditures minus just Title I. He said he took out
6 all federal funds.

7 So Mr. Turner, in his question, is just
8 misinterpreting this chart. We don't have the person
9 who made the chart to explain it, and now he's asking
10 Mr. Foster to answer questions based on Mr. Turner's
11 incorrect explanation of Table 5.one. It's just
12 going out of sight, the question, so we object to the
13 form of the question.

14 MR. TURNER: Your Honor, as I understand
15 it, Mr. Foster has testified that his analysis of
16 equity in Texas has excluded the existence of any
17 federal funds. I think we've heard Mr. Kauffman
18 object several times in this courtroom when anybody
19 starts talking about federal funds.

20 The item that Mr. Foster is now looking at is
21 labeled, "total expenditures less Title I funds." I
22 recognize in asking the question that Title I funds
23 are only a portion of federal funds. With that
24 explanation, I would ask him to answer the question.
25 And I don't believe there's any confusion about it.

1 THE COURT: You may answer.

2 BY MR. TURNER:

3 Q. So how many districts, Mr. Foster, or how many
4 studies were done that looked at total expenditures
5 less Title I funds?

6 A. There were none.

7 Q. All right. The last category of expenditure analysis
8 that the authors list is "expenditures less state and
9 federal categoricals."

10 A. That's one state. I'm not absolutely sure precisely
11 which funds, federal funds or state funds, might this
12 author be classified as categoricals.

13 Q. All right.

14 A. I don't know if we have any state categoricals, for
15 example.

16 I would also like to reserve, until I have
17 studied this more, the question as to whether this is
18 dealing with equity in terms of services to kids as
19 opposed to some sort of fiscal neutrality, which is,
20 of course, what we're dealing with here.

21 Q. Well, now, let's address that a minute. Now, you
22 come with your theory before the Court and have
23 talked about two things. You've talked about equity
24 for children, and then you've talked about taxpayer
25 equity, is that correct?

1 A. I have spent very little time on taxpayer equity, per
2 se. That's been discussed in more detail by others,
3 but we have talked about variations in tax rate
4 required to do certain things, and nobody has asked
5 me yet whether my concern is about taxpayers, per se,
6 or about the effects of those variable rates on kids.

7 Q. Mr. Foster, again, let me direct your attention to
8 another page in this book, Page 122. Maybe we better
9 start actually over at the beginning of the chapter,
10 Chapter 6. It's entitled "Children's Objects in
11 Michigan and New York."

12 The book, after doing a general study of other
13 studies of equity that had been done, takes two
14 states and takes a look at two states for
15 illustrative purposes, does it not?

16 A. I'm not sure of that. That would be implied by --
17 well, all that's implied by the title of this chapter
18 is that they're going to look at children's objects,
19 whatever that might be, in Michigan and New York.

20 Q. All right. You might want to flip over and look at
21 some of the other chapters and refresh your
22 recollection about the book you said you had read.

23 A. No. I did not say I'd read the book. I said I read
24 parts of it.

25 In fact, I need to check Page 97 to see if

1 that's actually the chapter that I read, because it
2 may have been from a different publication that
3 covered similar things.

4 What I recognized when Dr. Hooker was on the
5 stand was the list of statistical measures that were
6 used and I kind of assumed that was from the same
7 things because they listed the same measures, but
8 that's not necessarily a correct assumption.

9 Q. I would like for you to look at it sufficiently to
10 satisfy yourself that the authors have chosen
11 Michigan and New York for purposes of illustrating
12 the proper methodology that one should use in
13 analyzing equity in any state.

14 A. Well, right away, Texas is disqualified in the first
15 paragraph. The reason they chose Michigan is it is a
16 state with excellent time series data allowing us to
17 demonstrate a wide variety of different equity
18 concepts and their behavior over time. We do not
19 have that in Texas. We do not have the data to
20 conduct a study like they did in Michigan and
21 therefore, this chapter would seem to me not to be
22 applicable. If we don't have the data, we can't do
23 the analysis.

24 Q. Well, let's look at the data they had available to
25 them in Michigan.

1 A. Would you show that to me?

2 Q. Referring back to Chapter 6 where they discussed the
3 children objects -- and you might want to explain to
4 us what is generally meant when we say we look at
5 children objects. What does that mean?

6 A. I'm not really sure what those authors have in mind.

7 Q. All right. Let's just look over here on Page 120, a
8 section entitled "Dollar Measures in Michigan."

9 A. They use a state pupil weighted mean value, and I
10 understand that.

11 Q. That's the concept that you're using in your
12 analyses, is it not?

13 A. They do instructional expenditures and they do
14 current operating expenditures, it indicates. Then
15 they do -- you've checked two. I don't know what --

16 Q. I'm not sure that's my writing.

17 A. Okay. You checked those two.

18 Q. All right. If you will, direct your attention to the
19 dollar measures that they used in analyzing equity in
20 Michigan. The first one you just read, they looked
21 at instructional expenditures.

22 A. That is correct.

23 Q. The second dollar measure that they looked at to
24 analyze equity was current operating expenditures.

25 A. Right, saying that it covers all major non-capital

1 related spending. It's instruction, all
2 administration, all pupil/staff and administrative
3 support, employee benefits, transportation, and
4 operations and maintenance of the plant. They
5 exclude things like student book stores and lunches
6 and community services.

7 Q. All right. What's the third dollar measure that they
8 analyze?

9 A. Current operating expenditures less transportation.
10 So it would appear that -- well, when they do current
11 operating expenditures, they do include
12 transportation, then they also do it without
13 transportation to get a look at it both ways,
14 apparently.

15 Q. All right. What's the next dollar measure they look
16 at?

17 A. Local plus state membership revenue --

18 Q. All right.

19 A. -- which is similar to what we did in one of our
20 exhibits where we took the combination of local and
21 state revenues and measured what that would provide
22 to each district if all of the tax rates were
23 equalized at the average. I'm not sure you were here
24 for that testimony, but that would appear to be
25 related.

1 Q. All right. What's the next method or measure?

2 A. Local plus total state, which is -- I'm not sure how
3 that state membership is opposed to the total state.

4 Q. I believe state membership was more akin to our
5 Foundation Program elements. And the latter category
6 you mentioned there would be all state aid of
7 whatever type and character.

8 A. It doesn't include state categorical -- I mean, total
9 state does include the categorical.

10 Q. All right. What's the next measure that they looked
11 at in analyzing equity?

12 A. Local plus total state plus total federal.

13 Q. Is that the last one?

14 A. Yes. Looks like a pretty wide variety of choices.
15 We have covered most of that except federal. I've
16 explained to you why we didn't include federal.

17 Q. All right. Let's look at what they have to say about
18 the use of local plus total state plus total federal
19 revenue. I'll just read it into the record here.

20 "The \$6.00 variable is the sum of local
21 revenue, intermediate revenue, all state revenue and
22 all federal revenue. Federal revenue is primarily
23 derived from Title I of the Elementary and Secondary
24 Education Act of 1965 (compensatory education.) Other
25 federal revenue of lesser dollar significance is also

1 for categorical purposes such as school lunches,
2 vocational education, emergency, school assistance
3 (desegregation), Head Start and impact aid. The last
4 of these, impact aid, is granted to districts heavily
5 affected by the presence of federal employees or
6 installations within their boundaries. Per pupil
7 local plus total state plus total federal revenues
8 grew 122 percent between 1969 and '70 and 1977 and
9 '78. This is faster than either of the two preceding
10 revenue variables. Thus, federal revenues have grown
11 faster than either general state or categorical state
12 revenues."

13 Now, you wouldn't disagree with the authors of
14 this book, would you, that to look at the impact of
15 federal aid, and in particular, the comp. ed. money,
16 the Title I money, and the impact aid, which is
17 mentioned here, would be appropriate in terms of
18 analyzing the equity of a school finance system,
19 would you?

20 A. If those authors or someone else wants to use those
21 funds, that's fine. But it's clearly only one of six
22 different things to look at and I'm not sure what
23 exactly it is they're looking for when they look at
24 each of the six things. But it would certainly
25 indicate that what we have done is entirely

1 appropriate because it matches -- it covers most of
2 what they did with the exception of federal funds.

3 Q. What this book really tells you is that there's not
4 any one single way to analyze equity. In fact, you
5 may be better off or a Court may be better off if
6 they look at several ways of analyzing equity. The
7 object doesn't appear from reading the book to be a
8 select one, does it?

9 A. No. I have no objection to the Court looking at any
10 analysis of equity it wants. It's not my business to
11 object. But bring them on, as far as I'm concerned.
12 They all show essentially the same thing.

13 In fact, we'll be happy to stick in the federal
14 funds on the expenditure side. We'll also put them
15 on the cost side and you'll have a wash-out. We'd be
16 perfectly happy to do that. It's kind of
17 inconvenient to add in that additional information on
18 both sides to come out with a net zero, but --

19 Q. Well, now, you have a lot in the cost -- there's a
20 lot in the expenditure side of your analysis that's
21 not in the cost side, isn't that correct?

22 A. There's no expenditure of federal funds.

23 Q. No. I realize that. You have chosen, in your
24 analysis, to exclude federal funds. But what I'm
25 saying -- you just commented to me you would be happy

1 to include federal funds in the expenditure side, but
2 you would stick them in the cost side and you said
3 they would be a wash.

4 A. Right.

5 Q. Well, is it fair for you to take that approach when
6 the very heart of your analysis chooses certain
7 nominal costs, and you put those on the cost side,
8 but when you talk about expenditures, you're talking
9 about all expenditures except federal monies and
10 school lunches and the community services?

11 A. Community services, yes.

12 Q. So you don't have a system whereby you have the same
13 costs on one side, and the same expenditures for
14 those costs on the other.

15 A. The expenditures are -- the only exception, and it's
16 a minor one and it's one worth trying to resolve to
17 see if it makes any significant difference, and in
18 our initial impression it doesn't, it is the
19 co-curricular because there isn't an actual cost
20 factor. I mean, there isn't an allotment and
21 therefore, we don't have a way of building that in,
22 but --

23 Q. There's no cost over here for --

24 MR. KAUFFMAN: Excuse me, Your Honor, he
25 hasn't really had a chance to answer the question

1 yet.

2 THE COURT: I think he was not quite
3 through.

4 A. Well, with all that activity, I'm not sure where I
5 was.

6 Let's assume that I have finished the question.

7 Q. All right.

8 MR. KAUFFMAN: Is there any difference
9 between expenditures and cost?

10 MR. TURNER: Wait a minute. I'm asking the
11 questions here.

12 MR. KAUFFMAN: Oh, sorry.

13 BY MR. TURNER:

14 Q. You acknowledged earlier that we did not have a cost
15 element in your analysis for co-curricular
16 activities.

17 A. That is correct. There is no such thing in the Code
18 and therefore, we had no opportunity to provide that.

19 Q. So when we arrived at student unit, we didn't have
20 any cost in that calculation --

21 A. That is correct.

22 Q. -- for co-curricular?

23 A. Right.

24 Q. But when we divided that into the expenditures to
25 come up with a number that is a basis of a

1 comparison, the expenditures do include what that
2 district spends on extracurricular or co-curricular
3 activities.

4 A. Yes, it does. What we have put together now does
5 have some minor amounts in there for co-curricular.
6 It's the only thing that I have detected that is in
7 there that doesn't have a cost element. You
8 suggested a moment ago there were significant numbers
9 on the expenditure side that were not on the cost
10 side. Is there something other than the --

11 Q. How about capital outlay? We've had testimony
12 earlier in this case about how many districts try
13 their dead-level best not to have to float bond
14 issues, and if they can get hold of a little cash,
15 they use that for construction.

16 So any expenditure in here for capital outlay
17 for a fiscal plant or any capital outlay for
18 computers or anything like that is all in this
19 expenditure item.

20 A. That's also on the cost side, with the exception of
21 facilities. All right?

22 Q. All right. So there is an element in here for
23 capital outlay, but not for any facilities costs.

24 A. Yes. What we have done is the same thing that the
25 state did in designing the study data for the

1 Advisory Committee on Accountable Costs. That was,
2 that they left in the capital outlay for
3 non-facilities purposes. That's money spent out of
4 M&O. If there are capital funds spent for
5 facilities, or even for the same things, but out of
6 bond funds, they come out of the capital projects
7 fund. We did not include any expenditures from the
8 capital project fund in anything we did. So in terms
9 of the inclusion of capital outlay, we tracked the
10 Agency's Advisory Committee study straight down the
11 line.

12 Q. So if a district such as Lumberton had expended
13 significant sums or any sums out of their M&O account --

14 A. Out of the two accounts we have identified, 10 and
15 80.

16 Q. -- for the construction of a building, then that
17 amount that they spent that went into the
18 construction of a building would still be in this
19 expenditure figure.

20 A. It would only be in that expenditure figure if they
21 had not followed the state's accounting manual.

22 If Lumberton is not following the state's
23 accounting manual, then the state has a problem with
24 enforcing the use of its accounting manual. I don't
25 know whether there's anything in that or not.

1 When we take the figures from the Agency, if
2 the Agency has not detected a misaccounting of funds --
3 of course, that's their job and they supplied the
4 figures with that amount in there. They were in
5 funds 10 and 80. In fact, they used the same data in
6 their accountable cost study, so apparently the State
7 Education Agency felt that they had a set of data
8 that was appropriate to do something as important as
9 come up with recommendations to the Legislature as to
10 what the basic allotment ought to be. So we just
11 took their figures, and whatever was in their figures
12 is in our figures.

13 Q. We talked about the Axtell district. Do you know
14 what type of district Axtell is? I mean, it shows to
15 have very high expenditures on the top line.

16 A. That is correct. The first time that we looked at
17 Axtell -- well, the first time we did a printout, it
18 showed Axtell sticking out as a sore thumb. We did a
19 little preliminary analysis. I think I've already
20 mentioned this. We looked at the student count on a
21 sheet called district detail that is prepared. It's
22 a whole sheet of details for each district in the
23 state. One thing on it is the breakdown of their
24 student population. They had an inordinately high
25 number of special ed. kids, and that would -- from

1 that, one could reasonably infer that they are some
2 sort of center for special education, special
3 education co-op, or some districts set up to handle
4 that in some other fashion.

5 So it is a high expenditure or high cost
6 district, basically, a high expenditure district. We
7 showed it wasn't a high expenditure district. What
8 we showed from the Agency's figures was that it was a
9 high cost district.

10 Q. So from what you said, it wouldn't surprise you if I
11 were to tell you that Axtell is a special education
12 co-op.

13 A. Yes. Since we used that the other day, I've had
14 several people advise me of that. So it didn't
15 surprise me then and it doesn't surprise me now.

16 Q. You're aware, are you not, that special ed. co-ops
17 get a whole lot of federal aid?

18 A. These figures are the state and local -- on the
19 expenditure side, they're the state and local. On
20 the nominal cost side, they're from the state's own
21 formulas. That's all we were looking at.

22 Q. I understand. But my question was, you are aware
23 that special education co-ops get a high degree of
24 federal funds?

25 A. I realize there are federal funds available for

1 special education. I do not have any idea what any
2 particular co-op receives.

3 Q. A point you were trying to make with this exhibit was
4 that if you looked at the numbers in our Bench Marks
5 publication, which just looked at M&O expenditures
6 per Refined ADA, one would think that Axtell is a
7 high-spending district and Lumberton is a
8 low-spending district.

9 A. That's exactly the point that was trying to be made.

10 Q. That's right.

11 A. It had nothing else to do with Axtell or Lumberton
12 other than when we did what we said we were going to
13 do, and we went into the report and we came to those
14 two districts and we did them.

15 Q. Your analysis resulted in a showing that by the use
16 of student units, that Lumberton would actually
17 appear in terms of what you perceive to be a more
18 appropriate basis of analysis to really spend more
19 per student unit than Axtell.

20 A. That is correct.

21 Q. Recognizing -- and I don't dispute that. We're not
22 arguing about your methodology. But what I'm asking
23 you to do is to consider for a moment what would
24 happen to Axtell, a special ed. co-op receiving a
25 significant amount of federal funds, if your analysis

1 had included federal funds in their M&O expenditures.

2 A. What it would have done is irrelevant to our analysis
3 because we said up front we have no federal funds in
4 here, and that meant we had no federal funds in
5 Axtell, we had no federal funds in Edgewood. In
6 other words, they're factored out of everything. And
7 what it might look like if you did put them in for
8 Axtell is totally irrelevant to our analysis of the
9 state and local finance system in Texas.

10 Q. It's irrelevant in the context of the choice of
11 analysis that you selected to present to the Court,
12 correct?

13 A. What is irrelevant is the effect that including
14 federal funds for Axtell might have had on this
15 analysis. I'm saying to you that that is totally
16 irrelevant.

17 Q. But in terms of what Berne and Stiefel in their
18 textbook said about the various methods of analyzing
19 school equity, you certainly wouldn't disagree with
20 me, would you, that we could certainly look at
21 federal funds in this figure right here and put it in
22 that figure and be consistent with the
23 recommendations or the variety of choices of analysis
24 that Berne and Stiefel referred to?

25 A. It is clear from that book that some analyses are

1 done with those federal funds in there. In our
2 opinion, when you're analyzing equity within a
3 state/local context, it is inappropriate to consider
4 those and they're factored out on both sides of the
5 equation. I'll say to you again, if you want them
6 in, you can put them in on both sides of the
7 equation. They'll show up as \$1,000.00 of costs to
8 Axtell and \$1,000.00 of expenditure and the net of
9 that is zero.

10 Q. But your method of analysis, Mr. Foster, takes what
11 the state, under state law, uses as cost.

12 A. That is correct. And compares that to expenditures
13 for those items that are included in cost, with the
14 minor unresolved exception for the co-curricular.

15 Q. So if we were to put federal funds in the
16 expenditures item for all districts, Axtell obviously
17 would end up with a larger figure than 1,436,
18 wouldn't it?

19 A. That is correct because that is an amount divided by
20 student units. If you put the expenditures into the
21 numerator, the student units in the denominator would
22 be increased because that would be an increase in
23 cost factors. So you would not change the equation
24 significantly because when you put the cost into the
25 form of student units, you would be increasing both

1 the numerator and denominator.

2 Q. Well, Mr. Foster, isn't one of the basic premises of
3 your whole analysis that costs, from the basic
4 allotment right on through the weightings, that all
5 of those costs, in your judgment, are understated?

6 A. They are certainly understated in total, in my
7 opinion. They are certainly understated with respect
8 to the basic allotment, in my opinion, based on the
9 state's own studies, plus my own observations. They
10 are understated in terms of transportation by
11 approximately the same degree that regular education
12 is understated, because we have looked at the data
13 and found that the real world expenditures on
14 transportation are 1.48 times the transportation
15 allotment provided for in the law.

16 So on those specific things, I would say
17 definitely. On the education improvement and career
18 ladder, I would say that is understated, too, but the
19 amount by which it is is something I'm not really
20 familiar with. But I believe that it is by virtue of
21 the fact that both teacher groups and administrator
22 groups agree it is, and when I find teacher and
23 administrator groups unanimous on the subject, I
24 normally don't do a great deal more research to
25 confirm it.

1 Q. Now, the two circles you drew --

2 A. Yes.

3 Q. -- you showed your nominal cost circle small and you
4 showed your real circle cost large.

5 A. Yes.

6 Q. So when you arrive at student unit, your calculation
7 is based on a nominal cost, is it not?

8 A. Yes. As we explained, that is the only place where
9 there's any unitizing of the student body, is in the
10 cost formulas. It is necessary, just as Dr.
11 Verstegen took the state's formulas and calculated
12 her weighted students, she did it on the basis of
13 what is in the state's formulas. It's the only basis
14 for doing it. She could not, nor could we, start
15 with an expenditure set of data and do any
16 unitization from that because there is no unitization
17 in that. It's in the state's formulas. It is the
18 only place to go for it. You cannot weight students
19 by her system, by ours, or by any other with
20 reference to anything other than what is included in
21 the state's formulas.

22 Q. So you're suggesting to me that if I'm going to put
23 federal funds into the expenditures, I've got to put
24 that federal funds in up here at its real cost so
25 that it washes?

1 A. It would be just like the state's figures give us an
2 indication of what the state -- or a statement by the
3 state as to the cost of something. The federal grant
4 procedures, the applications, the budgets and so
5 forth, would give us cost information for those
6 programs that are to be funded by the federal funds.
7 We would go into those documents just as we went into
8 the Texas Education Code and we would come up with
9 costs that we would call nominal costs. Whether a
10 nominal cost is close to the real cost or not is
11 something we know about in terms of the state/local
12 system.

13 But in any event, we would have a cost factor
14 from the federal programs and we would simply add
15 that into our total cost and divide it by our student
16 units, either the one that we already used, the
17 1,350, or we might get more sophisticated than that
18 and develop some other dollar figure to use as a
19 student unit figure.

20 It doesn't really matter what you have in the
21 denominator -- I'm sure you understand that whatever
22 the number is, as long as it's the same for every
23 district. It could be \$1,000.00, \$5,000.00, it could
24 be the average cost instead of the minimum cost. As
25 long as you have the same denominator, you will come

1 out with apples to apples measurements.

2 So yes, indeed, if we put the expenditures in
3 on the expenditure side, the expenditure of federal
4 funds, we would put those same -- we would put the
5 cost of those programs that are presumably funded
6 through those expenditures on the other side of the
7 equation. And you would essentially get a net zero
8 effect.

9 THE COURT: Let's stop for a break.

10 (Short break.)

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1 BY MR. TURNER:

2 Q. Mr. Foster, before the break, we were talking about
3 the impact of federal funds on equity analysis. I
4 understand that your choice of analysis is to exclude
5 federal funds.

6 A. That is correct.

7 Q. But you do acknowledge that other analyses of equity
8 could rightfully include federal funds.

9 A. I only acknowledge that I have seen a brief reference
10 to a study that did so in some respect, but I don't
11 know if it was a finance neutrality equity type of
12 test or what type of test it was.

13 Q. Your approach in analyzing equity has been, as you
14 just stated, fiscal neutrality, financial neutrality,
15 is that correct?

16 A. The basic thrust of the data that we have prepared
17 deals with issues that could be subsumed under the
18 heading of fiscal neutrality, yes.

19 Q. It's a concept that totally disregards educational
20 outputs such as test scores, whether it be basic
21 skills scores or more comprehensive scores, it's
22 totally -- the issue of output in your analyses is
23 totally irrelevant.

24 A. What the fiscal neutrality aspect of it does is deal
25 with financial resources. It does not measure equity

1 in terms of a test score, it measures equity in terms
2 of an equalized opportunity to have certain resources
3 available. There is always the presumption that
4 there's some connection between those resources and
5 outcome, but that's not part of the fiscal neutrality
6 analysis.

7 Q. So even though the existence of federal funds in
8 Axtell would result in greater expenditures per child
9 in Axtell and greater opportunity for overcoming the
10 problems of special education children in Axtell,
11 that enhanced quality that results from those funds
12 in Axtell is totally irrelevant to your method of
13 analyzing school equity.

14 A. Well, the financial aspects of it are irrelevant by
15 virtue of the way state or federal funds are
16 provided. They are provided for things other than
17 what is within the normal state/local system. So
18 both the enhancement of performance and enhancement
19 of funding is outside of a fiscal neutrality
20 analysis.

21 Q. So the fact that Axtell has a higher quality of
22 education provided in its district because of the
23 existence of federal funds is, in your judgment and
24 in your analysis, totally irrelevant?

25 A. It is not relevant to fiscal neutrality. It is not

1 -- I'm not saying it's irrelevant to children and to
2 the things that education attempts to do for
3 children. I'm saying only in terms of an analysis of
4 fiscal neutrality, it's irrelevant.

5 Q. So you would then admit that other methods of
6 analyzing equity in school finance could
7 appropriately consider the impact that it may have on
8 quality of the educational program?

9 A. If we were doing an analysis of total educational
10 funding -- federal, state, local, private, every
11 other aspect of funding -- we could actually include
12 a concept or work on the concept of whether the
13 federal contribution was equitable with respect to
14 the needs of the kids it's being spent on, but we're
15 not studying the federal system or grand system. We
16 are here, as I understand it, to talk about the
17 state/local system in Texas.

18 Q. You wouldn't object, then, to an analysis of equity
19 of the Texas school finance system that took into
20 account educational outputs, would you?

21 A. Would you ask the question again, please?

22 Q. I said you wouldn't object or find any fault with an
23 analysis of equity of the Texas school finance system
24 that utilized, as part of the data for analysis, the
25 educational outputs of the system?

1 A. No, I wouldn't object to that at all.

2 Q. Therefore, any analysis or testimony that would be
3 offered that would have the effect of drawing a
4 conclusion about the relationship between quality
5 education and expenditure of a dollar or additional
6 dollars would, in your judgment, be a proper and
7 appropriate way to look at the equity of school
8 finance.

9 A. Yes, it would. If we were including federal dollars,
10 I would certainly attempt to measure the extent to
11 which federal dollars provided certain outputs that
12 would not otherwise be available because, in point
13 and effect, that's what they're designed to do.

14 Q. Mr. Foster, in terms of a legislative committee
15 meeting to determine what kind of structure school
16 finance in Texas should have, I take it you would
17 suggest that they should not consider federal money
18 in drawing up their formulas?

19 A. They definitely should not.

20 Q. But at the same time, in terms of analyzing the
21 quality of education in Texas, it would be equally
22 appropriate to consider the existence of funds from
23 all sources, would it not?

24 A. I would recommend to the state that the state analyze
25 the effect of its system, its expenditures, and the

1 efficiency with which those monies are being used.

2 Q. Are you aware, Mr. Foster, of the percent of federal
3 expenditures on education in Texas as compared to
4 total expenditures from all sources?

5 A. No, I have no idea.

6 Q. Are you aware of the amount of the total federal
7 expenditures in Texas?

8 A. No. I saw someone during the course of this trial
9 write a figure on the flip chart of several hundred
10 million dollars, but I don't recall exactly what that
11 was and didn't consider it relevant at the time.

12 Q. I take it that your analysis and your judgment would
13 cause you to say that federal impact aid is also
14 inappropriate for consideration in terms of an equity
15 analysis?

16 A. I said earlier that with minor exceptions, we thought
17 it was just totally inappropriate to consider federal
18 funds. Most of the impact aid, most of the
19 categories are supposedly associated with actual
20 costs of having extra kids there on short notice, a
21 lot of turnover, a variety of things that federal
22 installations cost that result in their being there.
23 The one exception that I was referring to is that one
24 form of federal impact aid has to do with replacing
25 value lost by virtue of the exemption of certain real

1 property from the tax base of the school district.

2 Q. You're aware, for example, that over in East Texas,
3 there are certain school districts that are located
4 and overlap into federal national forests and the
5 federal government provides direct grant money to
6 those school districts for the sole purpose of
7 offsetting the fact that those federal lands are not
8 taxable that lie within that school district.

9 A. That's the kind of impact aid that I was referring
10 to.

11 Q. That same situation exists in the Killeen Independent
12 School District with the presence of Fort Hood?

13 A. I'm aware Fort Hood is all or partly within the
14 Killeen Independent School District.

15 Q. So you at least do recognize that impact aid is, in
16 large part, designed to offset the fact that certain
17 properties are taken out of the tax base of those
18 districts?

19 A. Not all impact aid, but there is a category of impact
20 aid that, it's my understanding, is specifically for
21 that.

22 Q. So when your basic analysis here, based on the
23 concept of fiscal neutrality, which looks, in large
24 part, to the property tax bases of the various
25 districts, I take it that you wouldn't have any

1 objection at all to including this federal impact aid
2 that's provided to offset this property tax base loss
3 to any school district in Texas, would you?

4 A. Well, there are two answers to that. One is that I
5 would object to its use for the same reason that the
6 federal government would object to its use in any
7 consideration of equity, because the state's school
8 finance system doesn't meet the equity test it would
9 need to meet in order to be able to consider that
10 funding. So that's one answer.

11 The other answer is if I could have found that
12 amount on the state's budget files, I would have been
13 happy to take it out. Number one, it would have
14 preempted any questioning on the part of the state
15 about that, and number two, there aren't enough
16 districts or enough money involved to make one wit of
17 difference in any of the groups of districts that we
18 put together. It would have been a nice thing to be
19 able to have so we wouldn't have to explain it away,
20 but it's just not there in the budget information
21 maintained by the state.

22 Q. I take it that item is like many of the items that
23 Dr. Hooker listed that are not accounted for in the
24 cost of the state programs, such as a configuration
25 of any given campus, and its impact on cost. Those

1 things are not accounted for in the state system and
2 are not accounted for in your analysis, are they?

3 A. What specific things are you referring to?

4 Q. For example, campus configurations and the variations
5 of campus configurations.

6 A. Is not included?

7 Q. Is not accounted for.

8 A. Well, it is in what some people consider to be a
9 crude way. It may end up being a very good way once
10 it's fully analyzed. I know the things that he
11 talked about were the recommendations made by the
12 SCOPE group, and the fact that those were sensitive
13 to specific campus differentials. In lieu of that,
14 we simply altered the old small/sparse school formula
15 to provide a little additional funding to
16 small/sparse schools without really getting into a
17 sophisticated analysis of the precise cost
18 differentials. The small-schools people found that
19 acceptable, the ones that were part of the process,
20 so it was acceptable and it got in that way.

21 Q. Well, you were in the courtroom, I believe, when Mr.
22 Sybert was testifying regarding --

23 A. I was here part of that time.

24 Q. Do you recall the size elementary school that he is
25 building in Socorro?

1 A. I remember some discussion of building schools and I
2 think he had to build them larger than what he wanted
3 to. It was more cost effective, but it was less
4 personal, so he didn't like to have to build them
5 that size. I recall something to that effect.

6 Q. Those types of diseconomies of scale are not
7 accounted for in any state formula, are they?

8 A. Well, the Socorro district, as far as I know, that's
9 not the real thing there. It's the lack of funds
10 that means that he can't build a -- what is both an
11 economical and -- an economic school and one that
12 provides the proper environment for the kids. So
13 it's a lack of funds. It hasn't anything to do with
14 the adjustments we're talking about for actual campus
15 size in small/sparse districts. It's assumed once a
16 district gets to a certain size, it has enough
17 flexibility and enough leeway to organize its
18 campuses in an efficient manner.

19 I don't know of any discussion of campus
20 modifiers for districts that have more than -- I
21 think maybe 2,500 or 3,000 kids is the most that I've
22 heard any discussion about where there's a sense that
23 that kind of thing is needed because of the
24 diseconomies of scale.

25 Q. I believe Dr. Hooker said, in his judgment,

1 diseconomies of scale began at the 3,000 ADA level
2 and continued in increasing degree below that 3,000
3 figure.

4 A. Uh-huh.

5 Q. Our state formulas consider small and sparse to be --
6 is it 1,500?

7 A. 1,600. It starts there, yes.

8 Q. So if Dr. Hooker is correct in his opinion, then our
9 state formulas don't account for any diseconomies of
10 scale between the 3,000 and 1,600 level?

11 A. They do, to some extent, through the PDI because you
12 begin to get some Price Differential Index effect at
13 those levels. One could argue that that tends to
14 offset some of those diseconomies. What the Price
15 Differential Index actually reflects is a source of
16 considerable controversy, as you may well know.

17 Q. But you understand, I'm sure, that if we had two
18 districts both with 3,000 ADA, and if District No. 1
19 operated four elementary schools and District No. 2
20 operated one elementary school, that in the campus
21 configuration of the two districts, there would be
22 some cost variables -- in fact, some cost increases --
23 as a result of the choice of that district to operate
24 four elementary schools instead of one.

25 A. There could be some cost differential. That depends

1 on what the four are and what the one is. But there
2 may or may not be. I mean, you'd have to deal with
3 specific circumstances.

4 That's the kind of thing that Dr. Hooker has
5 done extensively. It's the kind of thing I've never
6 done. I've never established a model school district
7 and decided how many elementaries there should be and
8 how many middle schools and high schools, so they're
9 a little outside my area of expertise.

10 Q. Because of these kind of variations that aren't
11 accounted for in the state formulas and because of
12 the fact that there are variations, for example, in
13 expenditures for extracurricular activities from
14 district to district, would it be fair for us to
15 conclude that the formula comparisons that you use in
16 your study are not intended to be representations of
17 perfect fiscal neutrality?

18 A. I think we at least tried to make it very clear at
19 the beginning of our testimony that we were taking
20 the state's cost elements as given. We use that
21 terminology "as given." We also qualified that to say
22 that this does not mean we agreed that those cost
23 differentiations were accurate.

24 I have some opinions on some of them myself.
25 Dr. Hooker has some opinions on what the weight

1 should be, and so on and so forth. So we have never
2 represented that those cost elements are precise.

3 We simply said that for purposes of developing
4 an analysis to permit us to come as close as possible
5 to comparing apples to apples, that we had that set
6 of cost elements and none others to rely on so we
7 would simply take them as given.

8 Q. In fact, the basic number of 1,350 that forms an
9 integral part of the calculation of the student units
10 is a figure that your earlier testimony and Dr.
11 Hooker's earlier testimony said, in your judgment, at
12 least, was an arbitrary figure?

13 A. Indeed, it is. As a basic allotment, as a figure
14 that is supposed to do what the basic allotment is
15 designed to do, that's a totally arbitrary figure.

16 Q. If you change this denominator on this formula, is it
17 not correct that the ranges that would exist in
18 student unit values would come closer together for
19 all districts?

20 A. No. As I indicated to you earlier, if you maintain a
21 common denominator, you're going to get similar
22 ratios. You could choose -- at one point in time,
23 the Equity Center was using \$1,470.00 because we
24 thought it was appropriate to include the career
25 ladder allotment as part of the minimum costs.

1 Well, the agency did not do that in their
2 accountable cost study. They used the 1,350 pretty
3 much the way we've used it here. In fact, I checked
4 with them as to how they computed their weighted FSP
5 costs and it turned out they had taken a two-step
6 process that produced exactly the same results as our
7 one-step process.

8 So rather than argue about whether it should be
9 1,350 or 1,470, we said we will accept the state's
10 methodology and use 1,350.

11 Q. If we have two districts, District A and District B --

12 A. Uh-huh.

13 Q. -- and we calculate, as you do, to arrive at a
14 student unit figure by dividing by 1,350, and we do
15 the same for District B, divide the nominal cost in
16 District B by 1,350 --

17 A. All right.

18 Q. -- we're going to get some numbers that look
19 something like this (indicating), aren't we?

20 A. Yes, right.

21 Q. If we then, instead of using 1,350, chose 2,000 --

22 A. Uh-huh.

23 Q. -- and divided that -- use that as a denominator in
24 both examples --

25 A. All right.

1 Q. -- the degree of difference of range between these
2 two numbers is going to be less in this calculation
3 than it is in the top calculation, isn't it?

4 A. You'll get different absolute values, but you'll get
5 the same relativity. In other words, the values will
6 be -- they'd be proportional. The smaller number you
7 use in the denominator, the lower numbers you're
8 going to come up with. Those lower numbers will be
9 closer together absolutely, but they will be
10 relatively in proportion. In other words, they will
11 have the same proportional relationship to each
12 other.

13 Q. So what you're saying is that, in your judgment, it
14 wouldn't matter if you change this figure in terms of
15 your analysis?

16 A. You would simply be looking at a different set of
17 figures. If you then compared them relative to one
18 another, as in the case of saying "this district
19 spends 41 percent more than that district" -- you'll
20 notice one of the things that I put over at the
21 right-hand side of that was percentages. That was to
22 establish when we initially used this thing that we
23 have that kind of relationship, and once we
24 established the magnitude of the numbers that we were
25 dealing with in student units, well, then we were

1 talking about differences between one set of
2 districts and another in terms of the student units.

3 Q. I guess stated another way -- let's just take this
4 example. If you double 1,350, just for illustrative
5 purposes, this number would become .7, am I correct?

6 A. Right.

7 Q. If we did the same over here on Axtell, this number
8 would become 1.615, is that correct?

9 A. Yes.

10 Q. What you're saying is that when we apply these same
11 numbers to this formula here, that we're going to
12 maintain this same ratio of difference?

13 A. The same ratio, yes. If you divide two numbers by
14 two, you'd have the same ratio between the original
15 numbers and the numbers resulting from your division.

16 Q. All right.

17 A. That's also apparent from our exhibits where we have
18 in the far right-hand side an amount that reflects
19 the standardized amounts per Refined ADA, which is a
20 procedure which involves dividing the nominal cost by
21 the average level of costs in the state instead of at
22 a minimum cost. It's a figure that I have over here
23 because it allows me to compare that with the
24 unadjusted nominal costs per Refined ADA. It's very
25 useful in identifying high versus low spending

1 districts.

2 More than anything else, the selection of the
3 1,350 is meant to track the methodology of the state
4 in a similar kind of study.

5 Q. Earlier, Mr. Foster, in a comment you made to me, you
6 made reference to the fact that you haven't been
7 asked too much about taxpayer equity. Is taxpayer
8 equity part of your concept that you're presenting
9 here?

10 A. Yes. I am concerned about taxpayer equity in the
11 sense that if you have a public service that is
12 sponsored by -- in this case, which is a
13 responsibility of the state, and for what are
14 presumably the same services in two different
15 jurisdictions, one taxpayer is expected to pay one
16 and a half or two times what a similarly situated
17 taxpayer in another district is expected to pay for
18 the same level of service, and that represents a tax
19 inequity.

20 We have in the Texas Property Tax Code a
21 provision from which one can infer that it's
22 considered within a jurisdiction inappropriate to
23 have an effective tax rate that's more than 10
24 percent above the average. You are entitled to a
25 remedy in court if your appraisal value -- your

1 percentage appraisal is that much above the average
2 in the district.

3 If you consider that education is a function of
4 the state, and that is the jurisdiction, in effect,
5 then to apply the same principle, one would say it's
6 inappropriate for any taxpayer to have to pay more
7 than 10 percent than any other taxpayer for an
8 educational system of comparable quality.

9 Q. Do you base your views, Mr. Foster, on your belief
10 that there is taxpayer inequity with respect to
11 school taxes on any statutory or constitutional
12 grounds?

13 A. Well, as I understand it, just from reading briefs
14 and not from being an attorney, that there are some
15 laws that are designed to protect people from unequal
16 taxation for the same thing.

17 I cite the one thing that I know is in the law,
18 because I helped write that particular law, that was
19 based on a judgment as to what constituted inequities
20 between taxpayers.

21 My primary concern, however, in the context of
22 differing tax rates required to provide similar
23 educational services is that the probability that any
24 given program will be offered in any particular
25 district is very much a function of the tax rate

1 required to provide it.

2 That would not be the case in an equalized
3 system. In an equalized system, if you wanted to put
4 on a program that was going to cost \$500.00 a kid in
5 Carrollton-Farmers Branch and the same program in
6 Edgewood, and the decision was before the school
7 board or the taxpayers, and in both cases it would
8 cost another 3 pennies of tax rate, I would regard
9 that as fiscal neutrality and the availability of
10 equal educational opportunity.

11 So it is important to me both from the taxpayer
12 point of view and from the probability of what is
13 going to happen in the school districts.

14 (Defendant-Intervenors'

15 (Exhibit No. 16 marked.

16 Q. Mr. Foster, I want to hand you this Exhibit 16 and
17 ask you if you could look it over for a minute and
18 just tell me what I have displayed there.

19 A. It's entitled, "Plaintiff-Intervenors' M&O Rates" and
20 it lists a number of districts that I presume total
21 67, who are the Plaintiffs and Plaintiff-Intervenors
22 in this lawsuit.

23 The rates displayed are called M&O rates. I'm
24 not sure whether they are the effective rates as
25 measured by the state, the local rates set by the

1 jurisdictions, or the effective rates as calculated
2 for Bench Marks.

3 Since I have an alphabetical listing here, I
4 guess I could check that out rather quickly.

5 Q. If you would, do that. I want to establish what I
6 think their effective rates are.

7 A. Let's see. I don't have these carried out in four
8 places in this particular listing. Yes, those appear
9 to be the effective rates as calculated by the
10 Education Agency for school finance purposes.

11 MR. TURNER: Your Honor, I'd like to offer
12 this Exhibit 16 into evidence.

13 MR. RICHARDS: No objection.

14 THE COURT: It will be admitted, 16.

15 (Defendant-Intervenors'

16 (Exhibit No. 16 admitted.

17 BY MR. TURNER:

18 Q. Mr. Foster, at the bottom of this exhibit, it shows
19 the state average tax rate.

20 MR. RICHARDS: You must not have given me
21 the same thing you gave him.

22 A. It's written in on mine.

23 Q. It's shown as 55 and 29 one-hundredths of a cent. Is
24 that your understanding of the state average tax
25 rate?

1 A. Yes, it is. It's at least within a fraction.

2 Q. There are 67 Plaintiff or Plaintiff-Intervenor
3 districts listed on this exhibit?

4 A. Yes.

5 Q. If you will, would you count the number among that
6 group of 67 that have M&O rates at less than the
7 state average. I made it easy there by checking
8 them. You might want to verify that my checkmarks
9 are correct.

10 A. There are 41 which are below 55.29.

11 Q. So 41 of our Plaintiff and Plaintiff-Intervenor
12 districts in this case have M&O tax rates below the
13 statewide average?

14 A. That is correct.

15 Q. That's 1985-'86 data we're looking at?

16 A. Those are 1985 values divided by the 1985-'86 tax
17 levies.

18 Q. Your concept of taxpayer equity would suggest that
19 those 41 districts ought to have their M&O tax rate
20 moved up to the statewide average, is that correct?

21 A. What one can infer from my testimony -- and I think I
22 probably said it directly -- is that the total tax
23 effort is the proper figure to look at because of the
24 situation we have in Texas where the state does not
25 share in the cost of constructing facilities.

1 It happens that poor districts tend to have
2 very high debt tax rates, much higher than what you
3 experience in richer districts, and that the higher
4 debt tax rates tend to suppress the M&O efforts.

5 In fact, we have a report that we offered as
6 evidence to demonstrate exactly that proposition.
7 It's 114, which, in its A Form, lists the districts
8 of the state in order of their wealth.

9 On the first page, it provides evidence of
10 several districts that are precisely in that
11 category. There are -- it looks like better than
12 half on that first page have a below-average M&O tax
13 rate. There are far fewer that have a below-average
14 total rate.

15 There's very little question and it's sort of
16 pretty well known that these two sets of tax rates
17 are offered by various people for the very purposes
18 that I presume you're offering these, and that is to,
19 on the one hand, make it look like poor districts are
20 not making an adequate or appropriate tax effort, and
21 on the other hand, by persons who want to demonstrate
22 that if you look at the total tax rate -- which is
23 really what matters in terms of what the taxpayer is
24 paying. I think I've already said in this court that
25 a person doesn't get his tax statement and say,

1 "Whoops, here is this much for M&O and here is this
2 much for debt."

3 When I get my annual tax statement from the
4 mortgage company, it says total taxes paid to Eanes
5 Independent School District. It doesn't break it
6 down by M&O and debt.

7 Q. I take it then if the Legislature determined or this
8 Court, in its ruling, determined that the
9 construction of school buildings can properly reside
10 as a responsibility of a local school district, that
11 you wouldn't be urging the Legislature to adopt
12 taxpayer equity of M&O rates.

13 A. Your predicate again is what, that the state --

14 Q. If the Legislature or this Court determined that the
15 construction of school facilities is properly, under
16 our constitution or our laws, a local responsibility --

17 A. Okay.

18 Q. -- you would not be then advocating to this Court
19 that we somehow should under any statute be required
20 to have taxpayer equity.

21 A. Well, if that were the case, that the Court actually
22 decided that, then I would advocate that any state
23 aid that was distributed on the basis of an effort
24 test would give consideration to the fact that some
25 districts have a higher total tax rate or a higher

1 debt service tax rate than others. And in fact,
2 that's precisely what the Legislature has already
3 done in its enrichment equalization allotment
4 formula.

5 It is meager. It doesn't take into account
6 very much of the debt tax effort that poor districts
7 make, but it does at least show some recognition of
8 the fact that there is an inequity involved with the
9 debt tax rates and they are -- have shown a
10 willingness in a very meager way, at least, to
11 recognize that and to provide an effort factor in the
12 formula that it does take into account a little bit
13 of that debt tax rate.

14 Q. So the formula for distribution of equalization aid
15 does take into account the debt tax rates, in
16 essence, of a school district?

17 A. No. It takes into account the first ten or eleven
18 cents. Most poor districts that haven't had any
19 building programs in the recent past have a lot more
20 than eleven cents on their debt tax rate, so it's not
21 true the state formula takes into account the debt
22 tax rates.

23 Q. Well, it does acknowledge that as a factor.

24 A. It does acknowledge a small part of it as a factor,
25 yes.

1 Q. So your position would be that that needs to be
2 recognized to a greater degree just as you, I think,
3 earlier have advocated that our costs that the state
4 provides for funding, the state provides needs to be
5 larger as well?

6 A. Yes, that's correct.

7 Q. Dr. Hooker, I've wondered, is there any way by
8 looking at this M&O tax rate schedule that one can
9 figure out which ones of these districts are not
10 taxing at a rate necessary to maximize their
11 equalization aid?

12 A. You cannot look at this set of rates and tell that,
13 no.

14 Q. Where do we go -- how do you figure that out?

15 A. Well, you have to go to the formula for enrichment
16 equalization allotment and you have to have both the
17 M&O rate and you have to add to that the average debt
18 service rate or an approximation thereof.

19 Q. Do you know just off the top of your head how many of
20 those districts on that list are not maximizing their
21 state aid?

22 A. No, I have not looked at that.

23 Q. You worked with Mr. Peveto for, I suppose, several
24 years, which culminated in the passage of the
25 so-called Peveto Bill which, I believe, was Senate

1 Bill 621?

2 A. Yes.

3 Q. I think earlier you testified that you worked for the
4 City of Galveston and did property tax analysis for
5 the City of Galveston or Galveston County?

6 A. I was employed by the Galveston County Research
7 Council and did some work on loan to the Galveston
8 County Tax Office.

9 Q. Does your opinion regarding taxpayer equity go beyond
10 school finance into the provision of other basic
11 services by county governments?

12 A. I'm not sure I understand what you're asking.

13 Q. Well, let's take for example the provision of courts,
14 which as you are I'm sure aware, with the exception
15 of the basic salaries of district judges, the other
16 expenses of the operation of our court system, trial
17 court level, are provided for by the individual
18 counties. Are you aware of that?

19 A. Yes, I am.

20 Q. Each county has the option of supplementing the basic
21 salaries and has the sole discretion regarding the
22 provision of courtroom facilities, and secretaries,
23 and supplies, and clerks, and district clerks, and
24 offices of staffing. For that very important
25 function of access to the court, would your concept

1 of taxpayer equity require that there be both fiscal
2 neutrality in the provision of access to the courts
3 and taxpayer equity with regard to the provision of
4 courts?

5 A. Well, I'm not familiar with the constitutional
6 requirements regarding the judiciary and I just don't
7 know the language. I don't know that it's anything
8 similar to what's in the education section.

9 The only study I've ever done of the judiciary
10 was a study to decide whether we needed five or ten
11 JP's in Galveston County in 1962. I ended up
12 recommending three.

13 I just have no basis for saying that -- I have
14 not analyzed it from an equity standpoint. I don't
15 know of any study that has.

16 Once we get this school finance equity thing
17 solved, I'd be happy to go to work for a group of
18 people who are advocating equity in judicial
19 services.

20 Q. Well, I think maybe that comment goes to the heart of
21 what I'm trying to ask you, and that is, where do we
22 draw the line here in terms of fiscal neutrality and
23 taxpayer equity?

24 A. Well, I don't know where you draw the line and I
25 don't think it's necessary to draw the line until

1 it's a real issue.

2 To my knowledge, I have no knowledge whatsoever
3 of judicial officials doing studies of the kind of
4 things we're doing. To me, it's literally not heard
5 of. I assume if it is or becomes a problem of
6 sufficient magnitude to affect the equal
7 administration of justice in Texas that somebody will
8 get to work on it.

9 Q. I suppose you would agree that as long as we are
10 receiving higher quality justice in Travis County
11 than they are in Dallas County, the fact that we
12 spend less down here than they do really wouldn't
13 create any problem in terms of your analysis of
14 fairness or equity with regard to the opportunity of
15 a citizen to have access to the courts.

16 A. I have no opinion on that matter.

17 Q. Mr. Foster, what is your opinion regarding the equity
18 or inequity of the property tax itself?

19 A. That's a pretty broad question. I spent a good
20 number of years of my life studying those things.
21 I'm not sure if you want a quick answer or a real
22 explanation.

23 Q. Well, I would like for you to expand upon it
24 somewhat, and I asked the question because I knew you
25 were very familiar with the question of equity or

1 lack thereof of property tax.

2 A. Properly administered, and with appropriate
3 exemptions, you can have what I would consider a
4 reasonably equitable property tax system with one
5 major exception. I would not include in that
6 property tax system oil and gas properties, nuclear
7 plants, electric facilities, generating facilities,
8 railroads or any of the other major industrial and
9 commercial interests which have managed over the
10 years to very successfully determine the manner in
11 which, and in some cases the direct amount, in which
12 their properties are valued for tax purposes.

13 It is, in my judgment, beyond the capacity of
14 local tax administrators to handle the situations
15 that they encounter when they attempt to put true
16 market value figures on oil and gas wells.

17 But other than the exclusion of those
18 unmanageable kinds of properties, I think there is a
19 real place for the property tax and I think that it
20 can be administered with reasonable equity.

21 Q. Mr. Foster, I asked Dr. Hooker his opinion regarding
22 the property tax and I gave him an example of a
23 homeowner that resides in a house that has
24 \$100,000.00 market value that he owes \$80,000.00 on --
25 in other words, has \$20,000.00 in equity -- living

1 next door to another taxpayer with similar income who
2 owns his home free and clear of any debt. Of course,
3 as we all know, both property taxpayers pay the same
4 amount of tax assuming they're not over 65 or qualify
5 for some exemption.

6 I asked him if that fact that one of them had
7 only \$20,000.00 worth of equity and the other had
8 \$100,000.00 of equity, but both paid the same
9 property tax, caused him to conclude that there is
10 some basic inequity in the property tax itself.

11 Do you believe that that example I cited to you
12 is representative of some basic inequity in the
13 property tax itself?

14 A. That, in itself, is of no concern to me. It doesn't
15 bother me. It doesn't indicate to me inequities.
16 You can make analogies of industrial properties, some
17 of which are owned in full by a small family, others
18 which are owned or that are in hock or whatever. The
19 general sense in property taxation is that that's
20 kind of irrelevant. If the person that's currently
21 occupying and using the property is, in effect, the
22 property owner, then there's no real point in making
23 distinctions in how much equity one has as opposed to
24 another.

25 Q. What if we were to assume that both of them owe

1 \$80,000.00 on their \$100,000.00 homes, but one of the
2 property owners has an annual income of \$100,000.00
3 and the other has an annual income of \$35,000.00.
4 Would that differential in annual income cause you to
5 have an opinion regarding the equity or inequity of
6 the property tax?

7 A. That differential would not, no.

8 Q. So the comments that you've made from time to time in
9 this courtroom regarding the fact that in some poor
10 districts there are poor people, have been comments
11 that really, in your judgment, have no bearing or
12 relevance to analysis of taxpayer equity?

13 A. No. That's not true.

14 Q. Clarify it for me.

15 A. The example you just gave me is not an example that's
16 pertinent to the kind of situation I was talking
17 about. I'm not talking about communities where
18 you've got streets lined with \$100,000.00 houses and
19 some of the people are making 100,000 and some making
20 35. That's what you asked me to comment on.

21 I told you in that particular case, I did not
22 find that inherently, and with only that information
23 to go on, inequitable. It is not extraordinary for a
24 person with \$35,000.00 of income to have a
25 \$100,000.00 home. It is not extraordinary. It's

1 probably more extraordinary for somebody 100,000 to
2 live in a \$100,000.00 home, but it's certainly an
3 option they have. They're free to do so, if that's
4 what they choose to do.

5 In most communities that I'm aware of, both
6 would have sufficient income if they were managing
7 their income at all well to make property tax
8 payments on a \$100,000.00 home.

9 Q. So in your judgment, property tax only becomes
10 inequitable if we're talking about very, very, very
11 low income levels?

12 A. Well, when you're talking about absolute minimal
13 housing, and that absolute minimal housing being
14 occupied by persons at the poverty level plus or
15 minus a few points, I think then it can make a very
16 substantial difference.

17 As you move away from that point, it makes less
18 and less difference. This sort of thing is
19 documented in all kinds of tax economy public policy
20 studies as to the affects of particular kinds of
21 taxes on people in particular circumstances,
22 including economic circumstances.

23 THE COURT: We're going to have to stop
24 there. I'm interested in this, but we're going to
25 have to stop for lunch. See you again at 2:00

1 o'clock.

2 (Lunch break.)

3 AFTERNOON SESSION

4 BY MR. TURNER:

5 Q. Mr. Foster, before lunch, I was asking you some
6 questions to try to discern your views regarding the
7 equity of the property tax in the form of taxation.
8 You told me before lunch that the fact that two
9 taxpayers may pay the same property tax and yet have
10 different degrees of equity in their home, did not,
11 in your judgment, cause you to conclude that there is
12 any inequity in the property tax itself. And also,
13 you shared with me that the fact that one taxpayer
14 may have a very low income as compared to the other
15 and yet pay the same property tax was again not in
16 your judgment a sign of any basic inequity in the
17 property tax.

18 Am I correct in my conclusions of your earlier
19 testimony?

20 A. Well, only insofar as with respect to the second half
21 that you gave me a specific set of home values and
22 personal incomes. On the basis of those numbers, I
23 said that I saw no inherent or automatic kind of
24 problem there.

25 Q. Is there anything about the property tax that would

1 cause you to conclude that there is an element or
2 some elements of basic inequity in that form of
3 taxation?

4 A. Well, I have already outlined the fact that I think
5 there are certain kinds of property which are simply
6 not manageable by local appraisal authorities with
7 respect to their capacity to deal with the owners of
8 those properties and that I would therefore be
9 inclined, if I had my druthers, to tax those kinds of
10 properties under some other method than the property
11 tax.

12 I also indicated that at the very lowest levels
13 of personal income, I think there are some serious
14 problems that do arise from the property tax, but
15 there are solutions to those kinds of things as well.

16 Q. With regard, Mr. Foster, to the inability of a local
17 appraisal district to adequately appraise industrial
18 properties and mineral properties, you are aware, are
19 you not, that by and large, most all of those local
20 appraisal districts hire experts in those particular
21 fields to appraise that element of their property tax
22 base?

23 A. That is correct. I'm acquainted with all of the
24 major firms that do that and have been acquainted
25 with those firms and their work and the principles of

1 those firms for over 20 years.

2 Q. Other than those things you just mentioned, you see
3 no basic inherent inequity in the property tax?

4 A. Well, my general conclusion is that -- to restate it
5 -- is that with proper adjustments to just a
6 straightfoward, no exemptions, no sensitivity to
7 varying economic conditions type approach, that the
8 system can be applied equitably to certain kinds of
9 property, that it is, in effect, a usable source of
10 public revenues in a fashion that can be made
11 equitable.

12 Q. In other words, your view is that if we simply
13 provide uniformity of rate across the state for
14 school taxes, that we have created somehow a very
15 equitable system of property taxation for schools?

16 A. Now, that's a different question from what we've been
17 dealing with. As I understand it, we've been dealing
18 with the property tax system as a whole and whether
19 the property tax, per se, is or can be an equitable
20 tax. That's one question. I responded to that.

21 It's another question to ask whether, in my
22 opinion, providing a uniform or equalized rate as the
23 basis for -- well, I advocate the use of a uniform
24 equalized rate for purposes of determining the amount
25 of direct state aid that a school district receives.

1 That is not the same as saying that I recommend
2 that every district in the state levy the same
3 property tax.

4 Q. You like to see the system place the burden on the
5 local district to tax at a uniform rate in order to
6 maximize their state aid?

7 A. In my system, the state would provide a dollar amount
8 of total state aid to be distributed to all school
9 districts. The amount that any given school district
10 would get would be a function of the district's
11 ability to raise the balance by the application of a
12 uniform tax rate.

13 Q. So you would not limit the tax rates of the
14 districts?

15 A. I would not propose placing a cap on the amount of
16 tax rate that a district could levy, provided that
17 with experience, if it were determined that the
18 uniform statewide rate was so low that wealthy
19 districts characteristically took advantage of that
20 low statewide equalized rate and used their superior
21 wealth to provide significantly better educational
22 programs -- and I'm not referring here to the
23 \$10,000.00 and \$15,000.00 per kid a year program. I
24 don't regard those as being within the normal range
25 of what we consider public education.

1 But if the local fund assignment or the
2 equalized rate is set so low that wealthy districts
3 can continue to provide things that are within the
4 normal scope of public education at a much lower
5 additional effort than poor districts, then I would
6 want to consider first of all whether the uniform
7 equalized rate had been set high enough because quite
8 clearly, the higher you set that equalized rate, the
9 less inclined any district is going to be to go above
10 that because there would be increasing resistance at
11 the local level to tax increases above a high
12 equalized rate.

13 So it's sort of -- the need for caps is as much
14 as anything a function of how high the equalized rate
15 is set.

16 Q. So you would recommend a fairly high equalized rate?

17 A. I would recommend that before I would consider or
18 before I would recommend capping the amount that a
19 school district could tax.

20 Q. Do I understand you, then, that your interest in the
21 equalized rate really goes to the issue of equal --
22 as you define it and have spoken of it -- the issue
23 of equal fiscal opportunity rather than to the issue
24 of taxpayer equity?

25 A. Well, my primary concern is equal fiscal opportunity

1 to provide an education to the children of the state.
2 I also have an interest in tax equity, but it is not
3 my primary interest.

4 Q. I guess for that reason, in terms of trying to arrive
5 at property taxpayer equity in this state, it
6 wouldn't be meaningful for you to look into the rates
7 paid by an individual taxpayer in a given school
8 district to other units of local government?

9 A. Well, there is the question of municipal overburden,
10 to which I assume you're referring. There are ways
11 of taking that into account.

12 We have no specific recommendations with
13 respect that in Texas -- and I think that the
14 question is not a burning question at this point in
15 time. It might very well become a very important
16 issue if substantially higher school district tax
17 rates were enacted or other units of government. If
18 there were substantial increases, increased reliance
19 on the property tax, per se, then there would be
20 rising concerns about the multiple tax burdens in any
21 given area.

22 Q. I guess we would all agree, would we not, that the
23 tax rates paid around the state to various counties
24 and the tax rates paid in the various cities, large
25 and small, vary so greatly that even if we equalize

1 school tax rates, there would still be a lot of
2 overall inequity, if you will, among taxpayers in
3 this state?

4 A. There would be still be a variation in the amount of
5 taxes paid on any given value in various parts of the
6 state. Whether it is inequitable for that to happen
7 is a function of whether those taxes are for purely
8 local purposes and if the taxpayers either approve
9 those rates or continue to elect the people that
10 adopt those rates, and it is the burden that they
11 take upon themselves, then I don't call that
12 inequity.

13 But if we're speaking in terms of the school
14 district property tax as a tax that is applied to a
15 system which is a function of the state, that gives
16 it a little bit different status than the taxes that
17 are raised, for example, to pay for the fire
18 department.

19 Q. Well, that leads me to another line of questions I'd
20 like to ask you. That is, what is your view, Mr.
21 Foster, of the importance of local control in the
22 provision of public education?

23 A. My position on local control is that it has a place
24 in the provision of public education. I agree that
25 the local electorate has, to some extent, a better

1 understanding for what their communities need and
2 what will be beneficial in their communities.

3 But when it comes to the point that local
4 control is used to establish an unfair advantage for
5 one group of children over another group of children,
6 then I do not sanction that kind of local control.

7 Q. Well, do you think it's important, as many people do,
8 to be sure that the local citizens have a
9 responsibility to contribute financially at the local
10 level to the provision of public education?

11 A. Yes. I believe it is. It does focus more public
12 attention on the schools and is potentially very
13 beneficial to the process of public education to have
14 people involved, whether it's because they want to
15 look at the finances or for whatever reason.

16 My impression from discussing things of this
17 nature with my superintendents is that with the
18 occasional exception of someone who is not at a
19 school board meeting for the purpose of improving the
20 public schools in the community, that community
21 involvement is a very good thing and taxation does
22 bear some relationship to community involvement.

23 Q. Mr. Foster, your theory of equity, as I understand
24 it, which is embodied in the concept that you have of
25 equal fiscal opportunity, involves basically flowing

1 funds on an equitable basis as opposed to measuring
2 or weighing the educational output or the resulting
3 quality that those funds would generate, is that
4 correct?

5 A. I believe there are two separate questions. The
6 fiscal neutrality equity concept is one which says
7 every school district with its children and its
8 taxpayers and its community leaders should have an
9 equal opportunity to provide public education
10 services, should have equal access to resources to do
11 that.

12 Now, if they take advantage of that opportunity
13 and acquire those resources by doing so, and then
14 turn around and spend the money for things that don't
15 really contribute to this student performance or
16 quality education, that is a separate question, and a
17 question which I hope the Texas Education Agency and
18 the State Board of Education and the Legislature
19 would concern itself to do everything that it could
20 possibly do to insure that both state and local funds
21 are being spent in the most efficient possible
22 manner.

23 But they are separate questions. I would not,
24 under any circumstances, suggest that we discontinue
25 fiscal equity simply because one or more school

1 districts was not spending the money well. I think
2 if the state makes the determination the school
3 district is not getting the kind of performance
4 that's expected at a given level of expenditure, the
5 state ought to take some other action, but not revert
6 to a system of unequal fiscal opportunity.

7 Q. Lieutenant Governor Hobby suggested a few weeks ago
8 that those school districts that don't show progress
9 on their TEAMS scores should perhaps have some of
10 their state funds taken away from them until they do
11 better. Would you agree with that kind of approach
12 to school finance?

13 A. I have no inclination to argue issues with Governor
14 Hobby in any public forum. Unless the answer to that
15 is essential to the Court's understanding of my
16 position, I would decline to do so.

17 Q. Well, I guess to ask it another way, do you believe
18 that irrespective of the educational output that
19 these funds should flow on a fiscally equitable basis
20 as you have defined the term?

21 A. I feel that I've answered the question, but I'll
22 state it again, if I may. They are separate issues.
23 That if, indeed, the State lieutenant governor or any
24 other state official believes that funds should be
25 withdrawn or that some punitive measure should be

1 taken against school districts that aren't showing
2 performance, that that is a separate question and
3 should be dealt with as it actually occurs and not on
4 a speculative basis.

5 If, in fact, the state has identified those
6 situations, I think the state would be remiss in its
7 duty if it didn't take some action to correct them,
8 but I do not -- going back to the first part of the
9 issue -- think we should abandon fiscal neutrality in
10 our funding system, simply because any particular
11 number of districts fails to use the money
12 advantageously.

13 Q. Well, you would acknowledge, wouldn't you, Mr.
14 Foster, that as long as we have a local
15 decision-making by local school boards and local
16 administrators, and as long as we believe that to be
17 healthy in terms of the provision of public
18 education, that we're going to have some varying
19 degrees of quality in that decision-making that will
20 affect the quality of education in those districts?

21 A. I think that's certainly the case. I think the
22 differences can be minimized by a state board of
23 education and state education agency which assumes
24 its role to be one of being very helpful and
25 constructively critical and so forth of the school

1 districts that aren't performing.

2 I think that's kind of inherent in a lot that's
3 been done in House Bill 72 and in response to what's
4 happened since then that the -- I have personally
5 detected an attitude at the agency in these last
6 couple of years that says the agency is here to help
7 school districts do a better job rather than to
8 punish school districts who have somehow failed to do
9 so.

10 Q. Mr. Foster, if we're going to devise a system that
11 flows dollars based on the approach that you have
12 taken, knowing that there are many variations in
13 local decision-making going on out there, we really
14 don't have any assurance that that system is going to
15 assure quality in education, do we?

16 A. If you're talking about some sort of absolute
17 assurance that that's going to occur, why, I think
18 the answer is obvious. The answer is no.

19 I think, once again, through the State Board of
20 Education and the Agency, steps can be taken to
21 maximize the probability that those funds will be
22 spent to the advantage of children and to the
23 advantage of the state as a whole.

24 Q. Mr. Foster, does your method of analysis properly
25 take into account local decision-making with respect

1 to teacher salary supplements?

2 A. I have no reason at this point in time to believe
3 that it does not provide sufficient flexibility.
4 There's nothing in my sense of equity that would in
5 any way deny that opportunity.

6 One of the premises of House Bill 72 in the way
7 it's structured along dollars per student instead of
8 dollars per personnel unit is to give school
9 districts, the school boards, and school
10 administrators more flexibility with respect to who
11 it is they hire and how much they pay them and how
12 long they keep them and so on and so forth. The
13 personnel unit system created some anomalies, if you
14 will, in the, let's say, deviations from good
15 administrative and good personnel practice. So we
16 have, I think, an improvement under House Bill 72,
17 and as far as I'm concerned, my scheme of things
18 would not interfere in any way with that.

19 Q. Am I correct in saying that approximately 80 percent
20 of all expenditures outside of expenditures on
21 interest and sinking fund go to the payment of
22 salaries of one type or the other?

23 A. I have seen figures of that magnitude, yes.

24 Q. So if one district had made a decision to pay better
25 salaries than another district, is not that going to

1 generate a natural variation in cost of education
2 that is not accounted for in the formulas that you've
3 generated?

4 A. Well, if each school district has the same amount of
5 money per unit of cost that's been determined for
6 them, and an equalized opportunity to raise whatever
7 the cost level is determined to be, the school
8 districts can make a variety of decisions as to
9 whether they hire more teachers at lower salaries,
10 fewer teachers at higher salaries, less
11 administrators, more counselors, and so on and so
12 forth. All of that kind of flexibility is very much
13 within the system.

14 That's the kind of local control -- the
15 divvying up and deciding at the local level how best
16 to allocate those funds, but there is nothing that --
17 I mean, we can't accept the proposition that
18 everybody can simply go out and pay teachers a lot of
19 money for the purpose of driving up the cost for
20 their districts. I mean, that would have sort of a
21 self-destructing effect over time.

22 Q. But if we take, for example, that figure for
23 Lumberton there of 2,022, that's a figure that you've
24 arrived at that is based on certain assumptions about
25 costs that are assigned by the state. But how can we

1 discern within that \$2,022.00 how much variation in
2 terms of the educational output there may be based on
3 local decision-making?

4 In other words, you know, could we say
5 \$1,800.00 up to \$2,400.00 might generate the same
6 quality level of education depending on how the money
7 is used, and how it's allocated, and what kind of
8 local decision-making goes on within the Lumberton
9 district?

10 A. Well, you can say that any given amount of money will
11 produce different results if it's, on the one hand,
12 spent well, and on the other hand, spent poorly. But
13 you can't take that number and say that that number,
14 per se, can be adjusted upward or downward by any
15 particular amount and produce the same results.

16 Q. I take it your analysis really doesn't go into that
17 kind of -- make those kind of judgments in terms of
18 the quality of spending within the district?

19 A. Right. The thrust of what I'm about is the equitable
20 delivery of funds for the provision of public
21 education. What happens to it at the local level is
22 a function of the combination of local control and
23 the intervention of the state through the
24 accreditation process and other processes that go on
25 between local districts and the State Education

1 Agency and State Board.

2 Q. Mr. Foster, in addition to local spending decisions,
3 what other factors, in your opinion, affect the
4 quality of education provided in a school district?

5 A. Well, just in a very general sense, those school
6 districts which have personnel who ascertain through
7 reading and through communication with other
8 educators what kinds of program offerings and what
9 kinds of instructional arrangements and so forth are
10 providing the best results and to then try to emulate
11 those kinds of things are -- and the probability is
12 that those districts will show better performance
13 over time than those districts who, on the other
14 hand, do not maintain -- are not current in terms of
15 the best thinking and best practice in the
16 educational field.

17 Q. That's a conclusion you draw based on a common sense
18 approach to school finance?

19 A. It's a combination of common sense and understanding
20 how things work in organizations other than school
21 districts, and also a great deal of contact with
22 superintendents with whom I discuss these things.
23 When we get together to discuss things, they
24 understand that my primary agenda has to do with
25 finance, but they seem to forever want to talk to me

1 about all the other things that are going on in their
2 districts. So I have picked up a little education
3 with respect to district practices and I can identify
4 people who are concerned about various aspects of
5 their local programs.

6 So that combination of things, I think,
7 qualifies me to make the judgment that I have.

8 Q. Our discussion about taxpayer equity would lead me to
9 ask you if you wouldn't agree with me that even if we
10 had equal tax rates for every property taxpayer and
11 every school district in this state, that because of
12 all the other taxes they pay and the variations in
13 local property taxes, that we really wouldn't achieve
14 perfect equity for a taxpayer just by making all
15 school tax rates the same, would we?

16 A. Right. If I have given any impression that I am
17 working in the direction of perfect equity for all
18 taxpayers or perfect equity for anything, please be
19 assured that I am not.

20 Q. By that, I take it, you mean also your numbers that
21 you come up with of adjusted dollars per student
22 unit, if we spent those out there in those districts,
23 you're not trying to tell this Court that by that
24 approach alone, we're going to have equal quality
25 education for every student in this state?

1 A. No. Just the fact that we have taken the state's
2 cost elements as given, and given that I have
3 concerns about the way some of those things are
4 derived, would indicate that I don't believe that
5 just using those cost elements is going to provide a
6 perfect kind of thing.

7 I agree with Dr. Hooker's testimony that under
8 the very best of circumstances, the study of what
9 something really costs cannot be so perfect that you
10 should not allow for some contingency. His 15
11 percent is based on more experience in dealing with
12 contingencies than mine and I have no argument with
13 it. I might come to a slightly different conclusion
14 if I studied it carefully, but I think that it's
15 probably very much within a reasonable range.

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

17 CROSS EXAMINATION

18 BY MR. DEATHERAGE:

19 Q. Mr. Foster, I'm Jim Deatherage and I represent the
20 Irving Independent School District, one of the
21 Defendant-Intervenors in this case. I just have two
22 or three questions for you.

23 You discussed capital outlay and facilities and
24 that the state doesn't share in the cost of
25 facilities at the local level, I believe you said, of

1 the existing system?

2 A. What I said is that the state does not have a
3 specific allotment within its Foundation School
4 Program that provides any direct assistance to help
5 cover the cost of building facilities.

6 Q. So you're not telling the Court, then, that the state
7 does not share, by its distribution of state funds to
8 local districts, in the cost of facilities and
9 equipment and so forth?

10 A. Well, certainly with respect to the equipment. There
11 is a substantial amount of equipment and library
12 books and so forth that are purchased through the two
13 funds that we have included in our expenditure
14 totals, Fund 10 and Fund 80.

15 Q. Let me see if I can rephrase the question. Maybe you
16 can answer it yes or no.

17 Are you telling the Court that the state
18 distribution system of state funds to school
19 districts does not -- those funds do not share -- the
20 state funds do not share with local districts in the
21 cost of facilities? Is that what you're telling the
22 Court, yes or no?

23 A. What I am telling the Court is that some of those
24 funds, I understand, are spent on facilities, but the
25 amount of those expenditures are relatively minor and

1 that the school districts do use some of those funds
2 for that purpose in a fashion that's legal, that
3 among legal purposes is some money that can be used
4 for construction.

5 Q. Have you done a study as to how much -- you said it's
6 minimal. Have you done a study to determine how much
7 of that?

8 A. I have heard figures over the years and none of the
9 figures that I've heard have been very impressive in
10 terms of their magnitude.

11 Q. So your answer is you have not done any studies?

12 A. I have not done any formal studies of the precise
13 amounts involved.

14 Q. All right. You are aware, are you not, Mr. Foster,
15 that school districts have rented school buildings,
16 for example, for many years?

17 A. Yes. I'm aware of that practice.

18 Q. And they rent them and generally preserve a right to
19 make annual appropriations to pay rent. You're aware
20 of that?

21 A. I assume if they're keeping up the rent, they're
22 making annual appropriations for that purpose, yes.

23 Q. All right. The method of those rentals and leases
24 being subject to annual appropriations are generally
25 considered not to be a constitutional debt of that

1 school district?

2 A. That is correct.

3 Q. All right. In handling that, then, under accounting
4 principles and in your accounting manuals you earlier
5 referred to, that those buildings and those
6 facilities being rented do not show up as a capital
7 outlay?

8 A. That is correct. If the school district is following
9 the accounting manual, they will not show up as a
10 capital outlay.

11 Q. But with no studies having been made, knowing that
12 schools rent school buildings and have for many
13 years, there's really no way for us to know how much
14 facilities are being rented and how much the state is
15 sharing in the paying of that rent.

16 A. No.

17 Q. All right. Let me ask you a question about your --
18 what do you call it, the cycle of poverty?

19 A. Yes.

20 Q. Is it your contention to this Court that the state
21 somehow has created that cycle, if one does exist?

22 A. It is my contention to this Court that the state's
23 school finance system has definitely contributed to
24 that phenomenon.

25 Q. My question was, are you telling the Court that the

1 state has created the cycle of poverty?

2 A. Well, I'm not sure that the word created -- I'm not --

3 Q. Well, you can answer the question, "Yes, I'm telling
4 the Court that it did," or "No, I'm not telling the
5 Court that it did."

6 MR. RICHARDS: Or he can answer it as he
7 chooses to, it seems to me, and which he's chosen to
8 do.

9 MR. DEATHERAGE: If he'll respond to the
10 question, Your Honor, I think it calls for a yes or
11 no --

12 MR. RICHARDS: I object. There's no reason
13 for him to argue with the witness. The witness has
14 been up here two days answering everybody's questions
15 fairly. The witness can answer the question as he
16 chooses.

17 MR. DEATHERAGE: Your Honor, I just want a
18 responsive answer to my question so we can get
19 through.

20 THE COURT: You may answer.

21 BY MR. DEATHERAGE:

22 A. It is my position that the state has contributed to
23 the creation of the cycle of poverty that I referred
24 to in my earlier testimony.

25 Q. All right. Have you done any studies on which you

1 base that conclusion?

2 A. Yes.

3 Q. When was that study done?

4 A. I've been studying that problem for the better part
5 of 24 years.

6 Q. Is that study written up, submitted to anybody or
7 anything we can find or read?

8 A. Well, the results of that study are reflected in a
9 broad set of writings and presentations that I've
10 done over that period of time.

11 Q. Is there any writing you can refer us to that we
12 could examine and see how you reached that conclusion
13 as to what your study was based on?

14 A. There is no set of writings from which you could
15 determine precisely the research methodology or
16 precisely what districts at what point in time and
17 what actual changes in commercial or industrial or
18 residential development plans were results of that,
19 but that's the kind of thing that -- my observations
20 led me to the conclusion that that cycle of poverty
21 is a real thing.

22 Q. Can you refer us to any studies to help us answer the
23 question of what attracts industries to given
24 localities?

25 A. There have been a number of studies done that I have

1 looked at over the years. I can't give you a list of
2 those or hand one to you. Well, there was one
3 recently in the Austin American-Statesman, a report
4 of such a study that I could furnish to you. I could
5 give you the --

6 Q. Do you remember the name of that study?

7 A. I forget who did it. It looked very much like a
8 dozen others I've seen over the years. It's there
9 and I've offered to furnish it to you.

10 Q. From your studies that you've told us about, whatever
11 they are, based on those studies, you've drawn
12 conclusions from them that the type of school
13 district more than zoning laws, et cetera, of a city
14 will influence whether industry goes into that
15 particular school district or city.

16 A. Okay. My conclusions after having seen a number of
17 studies over the years on this subject and my
18 interest in it and the observations that I make as a
19 result of my interest in the subject, meaning that I
20 take special note of newspaper articles, magazine
21 articles, television reports, the brochures put out
22 by realtors and developers and so forth, and from
23 that body of information, it is very, very clear to
24 me that if you hold a set of factors constant and one
25 thing -- and you vary other factors, that there's a

1 very definite relationship between good schools and
2 further development in economic growth.

3 If, for example, an industry has decided that
4 the Austin area is an area in which it wants to do
5 business, and if -- it may have decided that
6 primarily because of a labor market thing or other
7 companies in the area, whatever, and so let us assume
8 they have chosen Austin, then where they actually
9 locate their plant will have to do with tax rates in
10 various school districts and the perceived quality of
11 the schools in those districts, particularly with
12 reference to where it is that they project their
13 employees will be residing.

14 Q. The tax rates and so forth of the city and of the
15 county doesn't enter into that thought processes of
16 the management of that company deciding where they're
17 going to be?

18 A. Yes. They respond, in part, to either actual or
19 potential additional taxation from other
20 jurisdictions.

21 Travis County provides a good example, the
22 Travis and Williamson County area. If a company
23 decides that they want to operate in this area, and
24 they have the choice of purchasing property on the
25 southeast part of Austin and being in the Del Valle

1 Independent School District as opposed to being out
2 in the Eanes School District or north in Round Rock,
3 and they say, "Well, we're essentially going to have
4 the same labor market to draw from. We have the same
5 city amenities and so forth" -- in other words, if
6 all other things appear equal to them, it's perfectly
7 clear they are going to locate in Eanes or Round Rock
8 rather than Del Valle.

9 Q. That's your speculation, not based upon any study nor
10 any interviews with any corporations?

11 A. I have talked to corporate people throughout this
12 period who make those kinds of decisions. I worked
13 for, in Galveston County for ten years, corporations
14 that were constantly making decisions about whether
15 to expand their plants there or to locate them in
16 Brazoria County, which is what Monsanto decided to do
17 at one point because they found the situation over
18 there more attractive. They had the opportunity to
19 buy some property and do it in Hitchcock, which is a
20 very poor school district -- was then and still is a
21 very poor school district with what are regarded as
22 being low quality schools, and they chose Brazoria
23 County.

24 I have counseled with those people, I've
25 discussed their decisions with them, I've discussed

1 the tax rate impact with them. There is no doubt in
2 my mind that those things really do make a
3 difference. That is confirmed by every study that I
4 have ever seen on the subject.

5 Q. But you can't tell us any study, identify any study
6 that we can go to?

7 A. I have offered to put in your hands a copy of the
8 newspaper article that I saw most recently and it
9 identifies the source of the study and it lists the
10 things that are considered. When you see that, you
11 will see that of the 20 or so things listed, at least
12 half of them are related to the education of the
13 population, the quality of life and so forth, all of
14 the things that are very closely related to the kinds
15 of things that I'm talking about.

16 Q. But all you did was read the newspaper article about
17 it and you didn't go acquire and examine the study
18 yourself?

19 A. No. Unless the newspaper article misquoted the
20 information from the study, I would assume that it
21 was correct. It certainly was confirmatory of a
22 variety of similar studies I've seen over the years.

23 Q. Mr. Foster, as I recall something you said yesterday
24 and again today, whatever your theory of equity is,
25 it's still going to contain or result in a number of

1 disparities, is that correct?

2 A. Depending on what you're referring to as my system
3 would be designed to minimize disparities.

4 Q. They're still going to be disparities that exist?

5 A. The disparities that would remain would be
6 infinitesimal compared to those which now exist.

7 Q. I believe you said this gets you closer to equity
8 than the existing system?

9 A. Substantially closer.

10 Q. And that in your analysis of equity, you drop the
11 bottom 5 percent and top 5 percent of the scholastic
12 students?

13 A. No. I think I testified that that is not
14 automatically what one would drop at either end. It
15 is the rule of thumb that statisticians typically use
16 in their efforts to eliminate the extremes. It's
17 sort of a -- it's nothing more than a rule of thumb.
18 If upon examination of a particular set of data, one
19 finds that the extremes can be effectively eliminated
20 at a range of 1 to 97 or 1 to 99, or it may take a
21 range of 7 to 75, but the only purpose of the range
22 is --

23 Q. Well, answer me this. What --

24 MR. KAUFFMAN: Excuse me, Your Honor, we
25 would object to further questioning. He is not

1 finished with his answer.

2 MR. DEATHERAGE: He finished his answer a
3 long time ago.

4 BY MR. DEATHERAGE:

5 Q. What percentage did you drop off the bottom and off
6 the top in your analysis?

7 A. Well, we have not done an analysis that has
8 specifically dropped off any percentage. I have
9 referred to various percentages and in our reports
10 that we presented to the Court, we have, wherever
11 possible, provided a column that says the ratio to
12 the 5th simply because that is a common rule of thumb
13 thing.

14 It does not constitute a recommendation on our
15 part. It's simply sharing some information with the
16 Court which the Court can use to relate that to the
17 standard rule of thumb approach.

18 Q. So there's still whatever not going to be complete
19 equity.

20 A. If you mean by that that there will be districts
21 outside of whatever range might eventually be chosen,
22 I would agree that there certainly will be.

23 I would not recommend to anyone that we have a
24 system that attempted to equalize a district with
25 \$10,000.00 to \$20,000.00 in taxable value to one that

1 had over 10 million. I don't think that's necessary.
2 I don't think it's appropriate. I don't think that
3 there's anything very real world about a district
4 that has millions of dollars in taxable value per
5 child. Those are tax haven districts. The state has
6 permitted them to exist, but that's what the state
7 has done. In my system of equity, I'm literally
8 willing to throw those to the wind unless the state
9 is induced to correct what I think is a public policy
10 error in allowing those to exist.

11 Q. What I'm interested in are the kids in those
12 districts.

13 A. Well, the kids --

14 Q. The kids just disappear in your equity analysis.

15 A. The kids in those districts which have many millions
16 of dollars in property tax wealth behind them may
17 indeed not be well served by the circumstances in
18 which they find themselves, no matter how much money
19 you spend on them.

20 But I'm saying in terms of a systematic equity
21 analysis, that I would not require that all of those
22 super wealthy districts be brought into the fold, if
23 you will, in terms of demanding or asking the state
24 to equalize everything at those extraordinary levels.

25 Q. If you don't consider, Mr. Foster, in analyzing the

1 existing finance system, educational output, then are
2 you not just making equity just an end in itself?

3 A. No. I'm making it an opportunity to provide the
4 kinds of outcomes that I think all of us want our
5 children to have.

6 Q. But without examining an existing system in relation
7 to educational output that is presently existing,
8 then the search for equity is just an end in itself,
9 isn't it?

10 A. No. I would not characterize it that way at all. I
11 just disagree totally that that's what it is.

12 Q. But you're asking the Court to set aside the existing
13 system strictly on the basis of equity without it
14 considering educational output, aren't you?

15 A. I think you've probably heard me say many, many times
16 up here we're concerned about equal fiscal
17 opportunity. That refers to the opportunity to
18 provide public education to school children on the
19 basis of an equalized resource base.

20 Q. Isn't the state funds and the local funds designed or
21 intended to give the school children of this state an
22 opportunity to master the essential elements of the
23 core curriculum the state has designed?

24 A. Well, what it appears to me to do is to provide an
25 absolute minimum, and in some cases, an inadequate

1 opportunity for some children and a bountiful
2 opportunity for others.

3 Q. But the overall system is intended or desired to help
4 the children master the essential elements of the
5 curriculum they're expected to study. Isn't that
6 what it's all about?

7 A. That intent is expressed on the books. It is not
8 reflected in the actions of the Legislature, in my
9 opinion.

10 Q. Now, do you recall the efforts of 1973, '74 to adopt
11 a new Texas constitution?

12 A. I did not get very much involved in that, but I
13 recall it was going on.

14 Q. All right. Do you recall what the provision was in
15 proposed Article VII, Section 1 of the Constitution?

16 A. No, I don't.

17 Q. You don't recall that?

18 A. No, I don't.

19 Q. Do you recall any effort being made to insert in that
20 constitutional provision equitable distribution or
21 equitable support?

22 A. I believe that I heard U.T. Law Dean Mark Udoff
23 (Phon.) presenting something to that effect to
24 somebody over at the Capitol, but I'm not --

25 Q. It was your understanding that was what was presented

1 to the people to vote on --

2 A. I don't know that.

3 Q. -- from Professor Udoff's discussions?

4 A. No. What I'm reporting to you is a vague
5 recollection of his being at the Capitol and making
6 some sort of presentation to somebody at the Capitol
7 to that effect.

8 MR. DEATHERAGE: I have no other questions.

9 MR. O'HANLON: Your Honor, I have just
10 about three questions.

11 RECROSS EXAMINATION

12 BY MR. O'HANLON:

13 Q. I handed your counsel over lunch a couple of
14 questions that I wanted to ask you for purposes of
15 developing a more sophisticated computer model than
16 the one that we've talked about for the last couple
17 of days. I'm going to ask you to see if you can't
18 give me that information right now.

19 That is, where would you set -- I assume that
20 you're talking about, when you're talking about what
21 you would like, we're setting a program level at the
22 level of \$3,492.00, is that correct?

23 A. That's one of the options that we talked about when
24 we were dealing with the flip chart.

25 Q. Okay. Where would you set -- two questions with

1 respect to that level. Where would you set the level
2 at which you would start penalizing districts for not
3 raising their fair share?

4 A. You mean at what point would I put in an effort
5 factor?

6 Q. An incentive. Stated another way, rather than
7 penalty, where would the floor be underneath that
8 incentive program?

9 A. That would be a function of the number that was
10 chosen for the total program. What portion of that
11 is actually anything called enrichment equalization
12 or contingency equalization or whatever is truly a
13 function of that.

14 We discussed this at length during the process
15 with Mr. Bullock's staff and it was agreed upon at
16 that time that if we got to a level which everybody
17 agreed was highly sufficient, that we could then deal
18 with sort of an enrichment or a contingency add-on in
19 the neighborhood of 15 percent. But if you select a
20 number for the total, that is below that true
21 sufficiency level, then the proposition was you
22 should have a larger allowance factor in there.

23 Q. Okay. I assume that 3,492 number is going to be a
24 sufficient program, so could we take 85 percent of
25 it? That would be a little more than 15 percent

1 going back the other way, but --

2 A. Well, I'd have to look at the actual consequences of
3 that in my own impact model before I would make any
4 recommendation to you or even give you a number to
5 run with.

6 Q. Well, we're going to run the impact model, so I want
7 you to give me the figure to plug into it, is
8 basically what I'm saying.

9 A. When I have been able analyze it, I will supply you a
10 number. If you need to do your impact model before
11 that happens, you may select -- obviously, you are
12 free to select whatever percentage you like.

13 Q. Okay. Where would you put -- what percentage would
14 you put as the local fund assignment at the 3,492
15 level?

16 A. Well, you don't start out in my model by deciding
17 what the state/local sharing ratio should be. What
18 you do in my model is start with a cost figure and
19 deduct either the existing amount of state aid or
20 that plus someone's proposal for additional state aid --

21 Q. So we're back up to --

22 A. -- or even a reduction, and so we then find out what
23 tax rate, after adjusting for budget balanced
24 districts, would raise the local share on an
25 equitable basis. And one cannot -- that is a process

1 that requires repeated trial and error, at least on
2 our little MacIntosh. Now, I'm sure the Agency can
3 do that in a one-step equation, but it does take a
4 significant amount of trial and error to arrive at
5 the tax rate that is the equalized rate.

6 Q. So what you do -- like we did on the board then, is
7 you kind of back into it by figuring out how much
8 absolute dollars, how much the state is willing to
9 spend, and then back into it figuring how much is
10 left, and that's how much the district's have to
11 raise?

12 A. That's exactly right. In any change from the
13 existing system, you can set the state aid constant
14 and vary the local fund assignment rate; you can set
15 the local fund assignment rate constant and vary the
16 state aid. You can vary both of them simultaneously.
17 So it's a process which is sufficiently complicated
18 that I cannot, from the witness stand, rattle all of
19 these things off.

20 Q. Okay. One other question. That is, when you got to
21 this figure -- and I believe it was 2,000 or in that
22 area -- \$2,067.00, this is the amount that is
23 identified by the state as the cost of students after
24 you have applied all the formulas.

25 A. Yes. That's the average nominal cost per Refined

1 ADA.

2 Q. Okay. Now, to take that out to a complete state cost
3 and true to our methodology earlier, we'd have to
4 multiply that times 1.3 to include the effective
5 enrichment equalization, is that right?

6 A. Yes. That does not include enrichment equalization.

7 Q. Okay. Would you make that calculation for me and
8 let's put that up here.

9 A. You may want to use -- I'm sure you'll learn this,
10 but the portions of that \$2,067.00 which are in our
11 inferred costs --

12 Q. Yes.

13 A. -- are not going to get in your --

14 Q. I understand.

15 A. -- they're not modeled by the Agency that way. So
16 the figure is \$2,041.00 in terms of the way the
17 Agency would model it.

18 Q. Right. But what I'm trying to do is extend this out
19 to include equalization enrichment because that's
20 identified at least to the state as a cost.

21 A. Yes. That is the number which is in the enrichment
22 equalization formula as the base. So 1.3 times that
23 figure would be the statewide average maxant.

24 Q. Okay. Would you compute that? I don't care whether
25 you use 2,041 or the 2,067. Just tell us which one

1 you use.

2 A. That would be using the 2,041. It would be
3 \$2,653.00, 2,653.

4 Q. That, as the state defines it, is what is contained
5 for each student in the state under the umbrella of
6 the Foundation School Program?

7 A. The term that I have heard used by officials of the
8 state is the total Foundation School Program, but in
9 addition to that total Foundation School Program, you
10 also have some other allotments we have taken out, so
11 I don't mean to agree that is the true total
12 Foundation School Program.

13 Q. There's a little bit of other money that goes in
14 there?

15 A. That is correct.

16 Q. Okay. Would the other, you think, get us another
17 \$60.00 or \$70.00?

18 A. Well, the inferred cost of the other is the
19 difference between 67 and 41, which is \$26.00.

20 Q. Okay. You'd have to multiply that times 1.3, I
21 guess.

22 A. No. Those aren't subject to enrichment. They're
23 just all by themselves.

24 MR. O'HANLON: Okay. That's all I have.

25

RECROSS EXAMINATION

BY MR. RICHARDS:

Q. Mr. Foster, I, with some trepidation, was going to ask you to be sure we had once and for all the reason for your -- this is the right one, isn't it? I thought it was. All we've been through with creating student units, as I understand it, is to be able to -- the division of the nominal costs by 1,350 was to be able to determine, with respect to any district, those costs associated with that district that were over and above the basic program, is that right, if I said it right?

A. Well, it's a way of doing that on a basis where if you're looking at any two districts and you want to know which one of them is spending more above the basic program, this allows you to do that, yes.

Q. It lets you determine, with respect to any district as it relates to another district, whether it is a high cost or more high cost district, is that a fair --

A. High spending.

Q. High spending.

A. We've controlled it for costs, so then we're determining whether it's a high or low spending district.

Q. Okay. Well, that's still not what I thought. If we

1 see what a district gets for their Foundation School
2 Program and we divide it by 1,350, which is the
3 normal -- I mean the base --

4 A. The minimum.

5 Q. -- the minimum, it's something over and above that,
6 either in dollars or percentages, that we assume
7 reflects added costs that are recognized by the
8 Foundation School Program --

9 A. That is correct.

10 Q. -- whether small/sparse, PDI, special ed. or whatever
11 factors that are thrown together, is that correct?

12 A. That is correct.

13 Q. That's all I wanted to ask you about that one. I
14 don't want to get any further into it. I don't want
15 to get lost.

16 You were asked during the course of -- I think
17 it was one of Mr. Luna's questions a while back, that
18 we have not perceived all of the effects of H.B. 72
19 yet. I want to ask you in that context, are there
20 cost factors associated with H.B. 72 which we have
21 not seen yet?

22 A. There are a number of cost factors associated with
23 House Bill 72 for which there was no specific
24 provision made in House Bill 72 and some that are yet
25 to come that are recognized and the state has even

1 applied some estimates of costs to those. So the
2 state has acknowledged that there are to be
3 additional costs even though there are not to be any
4 increases -- those increases in costs have not been
5 covered by changes in the actual funding formulas.

6 Q. So the long-term effects, as we see H.B. 72, in terms
7 of cost to the districts are going to be more on the
8 cost side than on the flowing of money in, is that
9 correct?

10 MR. O'HANLON: Well, Your Honor, that's a
11 little premature in that the Legislature has to write
12 an appropriation bill every two years and that if
13 you're talking about --

14 MR. RICHARDS: Well, I made that same
15 objection. That's an objection I thought I made,
16 which was overruled. You all thought it was a
17 wonderful question when Mr. Luna asked it, so I
18 thought I would at least be able to ask it back on
19 this side.

20 MR. O'HANLON: I don't think I objected to
21 it.

22 MR. RICHARDS: No. I objected to Mr.
23 Luna's question when he wants to project H.B. 72 in
24 the future. It was allowed and he questioned --
25 proceeded then, as I understood Mr. Luna's questions,

1 about we haven't seen the full effects of H.B. 72.
2 My questions are focused back on that.

3 MR. O'HANLON: I'm objecting to some kind
4 of speculation about what the Legislature might do in
5 one of several appropriations cycles. The
6 expenditure side, I didn't object to, or the
7 expenditure requirements that are being forced, I
8 didn't object to.

9 BY MR. RICHARDS:

10 Q. That's really all I'm pointing at, is that there are
11 expenditure requirements imposed on districts by
12 virtue of H.B. 72 that move into the future, is that
13 correct?

14 A. That is correct.

15 Q. They weren't funded -- at least they have not been
16 funded yet?

17 A. That is correct. Those requirements were there.
18 Some of them have already gone into effect; some are
19 going into effect in the future. But the statute
20 reads with respect to the basic allotment that it's
21 1,350 for this year -- the current year and
22 thereafter.

23 Q. All right. I think we identified it earlier, but
24 let's go back through some of those new cost items
25 that are going to be picked up by the districts, both

1 during this current funding cycle and future funding
2 cycles.

3 A. I think the two that we mentioned that are the ones
4 that have been of most concern are the 22 to 1 class
5 size and the salary schedules. Those are the two
6 specific ones other than inflation that the
7 Accountable Cost Advisory Committee took cognizance
8 of in terms of wealth in their recommendations to the
9 Legislature.

10 Q. How was the 22 to 1 ratio phased in? Can you tell us
11 that?

12 A. Well, they established an amount that would be added
13 to the basic allotment to take account of the fact
14 that there would be additional costs. I'm not
15 positive how they arrived at it, but they threw a
16 figure in that was to recognize that.

17 Q. I meant, as I understand it, districts didn't go to
18 22 to 1 at each grade level in the same year. My
19 question was, how is that phased in with the 22 to 1
20 requirement?

21 A. K through 2 has already been phased in, and 3 through
22 4 is going to be phased in in the next biennium.

23 Q. All right. To the extent that that required
24 additional classroom space, that was not funded by
25 the Legislature, is that correct?

1 A. It was not specifically recognized by the
2 Legislature, that's true.

3 Q. To the extent, as we said early, that school
4 districts have to tax at this rate to try to provide
5 the classrooms, those districts and the taxpayers in
6 them are being -- in effect, compel the Legislature
7 to provide classrooms on a significantly different
8 rate than would be anticipated in the wealthy
9 districts, is that true?

10 A. That is correct.

11 Q. Can we assume or make a reasonable range assumption
12 about what these additional costs may be per ADA or
13 per student unit within the districts, these unfunded
14 costs of H.B. 72?

15 A. Just in round figures, and this is within the range
16 that the Accountable Cost Committee came up with, it
17 would be not out of line to suggest that it would be
18 at least \$100.00, just the combination of salary
19 increments, built-in salary increments, and 22 to 1
20 class size will get you to the range of \$100.00.

21 Q. Per student unit or per ADA?

22 A. Theirs were expressed in terms of ADA and the
23 adjustments -- it would come out to about \$100.00
24 because by the time you added theirs up and divided
25 it by 1.53, you'd have around \$100.00, so \$100.00

1 plus or minus a few bucks.

2 Q. Okay. If I gave you several sample districts, could
3 you give us, then, an estimate of what the increased
4 tax rate would be necessary to fund that \$100.00 per
5 ADA in the various districts?

6 A. Yes, I could.

7 Q. Why don't you try at the poor range Edcouch-Elsa,
8 Socorro and Rosebud-Lott. Go ahead and just --

9 MR. O'HANLON: Is Mr. Richards also asking
10 the witness to speculate what the property values in
11 those districts are going to be in 1988-'89?

12 MR. RICHARDS: We'll do it on the basis --
13 the state may, we recognize, may consolidate all
14 these districts and increase their property wealth
15 significantly, but if they don't, this is based on
16 their current value.

17 THE WITNESS: So we are, in effect, not
18 projecting any specific value changes.

19 MR. O'HANLON: Can I take the witness on
20 voir dire with respect to that?

21 THE COURT: Yes.

22 VOIR DIRE EXAMINATION

23 BY MR. O'HANLON:

24 Q. Mr. Foster, you know doggone good and well, don't
25 you, that there's been a huge change in property

1 value -- increase in property values in this state
2 over time?

3 A. There have been some rather substantial changes in
4 things in both directions in recent years.

5 Q. That's right. So it's real impossible to predict
6 what the property value in Edcouch-Elsa is going to
7 be two years from now, isn't it?

8 A. What we can very clearly say is that if we had -- if
9 they had met these cost requirements in '85-'86, this
10 is the tax base they would have had to do it with,
11 and here are the tax rate increases that are
12 associated or the tax rates that are associated with
13 that kind of dollar figure. That takes away all
14 speculation as to what might happen in the future in
15 Edcouch-Elsa or any other district.

16 Q. They didn't have to implement 22 to 1 in grades 3 and
17 4 in '85-'86, did they?

18 A. They were involved in the K-2, and they were involved
19 in the salary schedule change, and they were involved
20 in inflation, so, you know, we are nickles and dimes
21 in terms of whether we want to argue about \$100.00.
22 Give us some -- I'd be happy to do -- I'll do \$100.00
23 with him and \$50.00 with you if that --

24 MR. RICHARDS: Excuse me.

25

RECROSS EXAMINATION (RESUMED)

BY MR. RICHARDS:

Q. In the current funding cycle, what we are dealing with right now in the current basics of current law, the districts are imposed by H.B. 72 certain cost requirements that were unfunded, is that correct?

A. That is generally considered to be correct, and I agree.

Q. Those included the going to 1 to 22 class size to through K-1, right?

A. Right.

Q. The teacher is necessary to do that, is that correct?

A. Yes.

Q. And the career ladder, some of the career ladder?

A. Some of the career ladder, yes.

Q. Is there a cost factor which you think is reasonable --

A. And the salary schedule. We have to add the salary schedule to that.

Q. Right. These are all state imposed requirements under H.B. 72, is that correct?

A. That is correct.

Q. There's a cost factor associated with it to the districts not funded by the state.

A. There are no adjustments made in the state funds to take into account these things.

- 1 Q. All right. Now, do you think \$100.00 is too high a
2 figure to associate with that?
- 3 A. No, I do not.
- 4 Q. Okay. You think that's a reasonable figure to
5 associate with those costs?
- 6 A. Yes.
- 7 Q. All right. So assuming, then, that during this
8 funding cycle, these districts are going to have to
9 raise an additional \$100.00 per ADA to comply with
10 H.B. 72 --
- 11 A. All right.
- 12 Q. -- let's look at their current property values, and
13 tell us what that would cost on the districts I gave
14 you.
- 15 A. All right. Which was the first?
- 16 Q. I gave you -- you might jot them down so you can look
17 back -- Edcouch-Elsa, Socorro and Rosebud-Lott. You
18 might as well mark off Dallas, Houston and Carrollton
19 while you're at it, and we'll just look at those six.
- 20 A. Edcouch-Elsa would be 84 and a half cents.
- 21 Q. Per \$100.00 evaluation?
- 22 A. Per \$100.00 evaluation. We can also add their
23 current rate to that to see what it would be.
- 24 Q. No.
- 25 A. In Socorro, it would be 62 cents -- I'm sorry. I've

1 grabbed the wrong thing. I'm making the case too
2 well.

3 Q. It sure sounded good for a moment.

4 A. I was predisposed to start with the current and then
5 show what the addition would do. I'll try to be more
6 responsive.

7 Edcouch-Elsa, 76 cents.

8 Q. That is to raise an additional \$100.00 per ADA?

9 A. This is the one that says tax rate to raise \$100.00
10 per student unit, right.

11 Q. Okay. That's per student unit, then. Fine. All
12 right.

13 A. We've already made that conversion. We said that
14 that would be an appropriate number.

15 It's 76 cents in Edcouch-Elsa.

16 In Socorro, it's 22 cents.

17 In Rosebud-Lott, it's 19 cents.

18 In Dallas, it is 4 cents.

19 In Houston, it is 4 and a half -- 5 cents in
20 round figures.

21 In Carrollton-Farmers Branch, it is 2 and a
22 half cents.

23 Q. Okay. Now, in terms of taxpayer equity of the state
24 funding system, the state system of public education,
25 what is your comment, if any, with respect to those

1 disparate tax rates and the equity of a current
2 system as far as taxpayers are concerned?

3 A. Well, clearly the taxpayers in Edcouch-Elsa, if they
4 are to meet those requirements under House Bill 72,
5 would be required to levy a tax rate that is many
6 times higher than in Dallas, Houston and
7 Carrollton-Farmers Branch. By most standards of
8 equity, that would be considered highly inequitable.

9 Q. They're taking the taxpayers' property by this
10 system, are they not?

11 A. It could have that effect.

12 Q. Defendants' 21 is a model Mr. O'Hanlon drew on the
13 chart here, and you've talked about it, is that
14 right?

15 A. Yes.

16 Q. Do you recall that?

17 A. Yes, I do.

18 Q. And recognizing, I think, it's just a rough
19 approximation, but I want to be sure I understand
20 some features of it. I guess the blue diagonal line
21 is one that, I suppose, was roughly to approximate
22 the current system, is that correct?

23 A. Yes. That was what we were doing.

24 Q. All districts that fell under the blanket of the blue
25 diagonal are school districts which participate and

1 receive state funds over and above the available
2 fund, is that correct?

3 A. That is correct. Any district to the left of that
4 blue line.

5 Q. So that if we understood the system, districts with
6 property wealth values as high as 622,000 per ADA or
7 student unit --

8 A. We were doing ADA because we were working with --

9 Q. -- are receiving some state funds under the current
10 system, is that correct?

11 A. That is correct.

12 Q. Now, when Mr. O'Hanlon took you down with his second
13 line which, I guess, is the black line, to a figure
14 in which, as I understand it, the basic cost the
15 program would raised to \$2,913.00, is that correct?

16 A. I believe that's the number. I can confirm it.

17 Q. That's what it looks like to me. The chart speaks
18 for itself. I think it's 2,913. Is 2,913 -- that's
19 the number that's written up here. I think that's
20 the way I remember it, too.

21 A. Yes. I understand what that number is and that is
22 correct.

23 Q. And under a state funding system with that number in
24 place, keeping state expenditures constant, we would
25 then move, as I understand it, those districts which

1 are receiving state funds down to those who
2 approximate -- somewhere in the range of \$510,000.00
3 per valuation, is that correct?

4 A. Something on that order, yes.

5 Q. As I understood the purport of this testimony was
6 that that area, which I'm not going to ask you to
7 calculate, I know you want to, but between the black
8 line and the blue line would be, in effect, state
9 funds that moved from wealthy districts to presumably
10 poor districts in the state funding pattern, is that
11 right?

12 A. That is correct.

13 Q. Obviously, since Mr. O'Hanlon said he was going to
14 take -- apparently going to do an impact model of the
15 red line which kind of goes up here, and that's your
16 best of all sort of possible worlds figure, is that
17 correct?

18 A. I believe that was the Accountable Cost Advisory
19 Committee quality program.

20 Q. But obviously, this line can move all the way down
21 the spectrum here, short of the red line, and still
22 move many millions of dollars from rich districts to
23 poor districts, is that correct?

24 A. Yes, that is correct. We can -- at the very least,
25 you can move from the blue line to the black line

1 without affecting any increase in state aid.

2 Q. All right. In that process move, as you said, many
3 millions of dollars into the poor districts from the
4 wealthy districts?

5 A. Right.

6 Q. I'm not sure whether Mr. O'Hanlon -- he usually trots
7 out Dallas and Austin as being moved to budget
8 balanced. Did you say -- and I don't recall if you
9 did or not -- but if you move the black line down
10 here, that you would somehow make Dallas a budget
11 balanced district, or did you?

12 A. I think we hit Dallas when we came to the red line.
13 As I recall, that was the premise, that we were going
14 to shoot for Dallas.

15 Q. Was Dallas a target of the red line? Was that the
16 premise of that?

17 A. As I recall, that was a --

18 Q. Okay.

19 A. When we talked about Dallas and how much it would
20 take to budget balance Dallas, I'm not sure that was
21 in connection with that red line. It may have been --

22 Q. All right. But in any event, as I understand it,
23 there are a variety of adaptations that can be made
24 along this scheme of Defendants' Exhibit 21 which, if
25 put in place within current state funding levels,

1 would move significant amounts of money into the poor
2 districts from the wealthy districts?

3 A. That is correct.

4 Q. You mentioned when we had Plaintiffs' Exhibit 106 on
5 the line before you -- that's the chart -- that there
6 was a Dallas phenomenon, I believe is the term you
7 used, is that correct?

8 A. Yes.

9 Q. And you used it, I think, to describe what happens at
10 the --

11 A. Second half.

12 Q. -- 85th line, is that correct? That's where --

13 A. That's correct.

14 Q. -- the taxes fall significantly below the adjoining
15 two bars, is that correct?

16 A. Yes. Dallas has been and remains, as far as I know,
17 a low tax/low spend district. So both with respect
18 to a tax representation and an expenditure
19 representation, you will see a dip at that particular
20 point, and Dallas is the dominant district in that
21 particular group.

22 Q. So I take it your testimony would be that the drop of
23 that bar is explained largely by the presence of
24 Dallas being in that cluster, is that correct?

25 A. That is correct, yes.

1 Q. What about at the 8th line which drops also? Do you
2 have any opinion as to why that particular bar drops
3 below its neighbors?

4 A. That is the Houston effect.

5 Q. All right. In the world in which we're dealing, has
6 Houston been also somewhat of a low tax/low
7 expenditure district? Is that what you're saying?

8 A. Yes.

9 Q. Its presence within that particular segment of the
10 chart, you say, explains why it's different from its
11 neighbors?

12 A. Right. There are only a handful of other districts
13 in all of that because of the size of Houston.

14 Q. Mr. Luna asked you whether you thought the current
15 system of Texas funding support for public education
16 was efficient. You said, in your opinion, it was
17 not, am I correct?

18 A. That is correct.

19 Q. What do you base that opinion on?

20 A. Well, one of the things that leads me to the
21 conclusion that it's inefficient is that the state
22 has permitted the creation of school districts which
23 are largely tax haven-type school districts. What
24 that has the effect of doing is concentrating very
25 high amounts of wealth per student unit or per ADA,

1 however you want to measure it, in areas where there
2 are just a handful of children to serve. So there is
3 so much wealth in those situations that you literally
4 are wasting the opportunity that that wealth provides
5 to enhance the educational opportunity for children
6 in other adjacent areas.

7 Q. All right. Are you saying that there are two
8 components in that, one being that there are
9 diseconomies of scale simply because districts are
10 too small?

11 A. Yes. But that is actually -- that's true, but it's
12 relatively minor to the real implications.

13 If, for example, you take a budget balanced
14 district in a tax haven-type situation and for a dime
15 tax rate, they raise \$10,000.00 or \$20,000.00 per kid
16 as opposed to putting that particular wealth in a
17 jurisdiction that had enough children to where you
18 would be spending an average tax rate, you would be
19 getting five and a half times as much resources,
20 revenue for education, if that set of oil wells or
21 whatever were in a jurisdiction that had a meaningful
22 number of kids.

23 Q. All right.

24 A. So I think it's a waste of that -- in a sense, it's a
25 waste of that kind of funding.

1 Q. How does that conclusion, if it does, relate in any
2 way to the cycle of poverty we described and the
3 state's role, if any, in that cycle of poverty?

4 A. Well, specifically with reference to the tax haven
5 district, most of those are ones that are based on
6 mineral properties, which are not ones that move and
7 relocate on the basis of low taxes, as you
8 understand.

9 There are some other very rich districts where
10 the wealth is a function of a decision to locate an
11 industrial facility, such as a major generating
12 station. If the generating station can manage to get
13 the lines properly drawn or redrawn to protect it
14 from higher taxes, that has the kind of effect that
15 we're talking about.

16 Some personal experience there, I just --

17 Q. They'll probably ask you this on cross.

18 A. Okay.

19 Q. Do you have among your exhibits the SCOPE Funding
20 Principles, a document that reflects a presentation
21 that was made to the Haley/Parker Committee on May
22 15, 1984?

23 A. Yes, I do have that document.

24 (Plaintiffs' Exhibit No. 127 marked.)

25 Q. We have marked -- and I think counsel for the

1 Defendants has a copy of Plaintiffs' 127. Do you
2 have it before you?

3 A. Yes.

4 Q. Can you tell me what that is?

5 A. This is the document that was prepared at the request
6 of Mr. Tom Luce in his role as he represented it to
7 us as Chief of Staff of SCOPE for presentation by
8 what we were then calling the SCOPE funding
9 principles group to a joint meeting of the House and
10 Senate Education Committees on May 15, 1984.

11 Q. All right. There was a good deal of testimony on
12 cross-examination about the function of that
13 committee and Mr. Luce and there was a presentation
14 made, I think, by Dr. Kirkpatrick?

15 A. That is correct.

16 Q. Is this the report, as you understand it, that Dr.
17 Kirkpatrick made in both verbal and written form?

18 A. This is a copy of the report that he had in making
19 his presentation. I believe copies of this were
20 handed to -- the standard practice is to hand copies
21 to the committee clerks, but this is the document
22 from which he spoke because I prepared it myself.

23 Q. All right. Does it contain a figure which would --
24 recommended figure in terms of the basic allotment?

25 A. Yes, it does. It recommends a three-year set of

1 basic allotments, and they are made in terms of
2 average daily membership rather than average daily
3 attendance, because the funding principles which are
4 reflected here were then average daily membership,
5 and since that is a higher number than the average
6 daily attendance, these figures have to be adjusted
7 to take into account their equivalency as they are --

8 Q. Tell us what the document says, first.

9 A. For the three years beginning in '84-'85, the
10 recommendations were 1,750, 1,800 and 1,850.

11 Q. What page does that appear on?

12 A. That's on Page 3 at 4-B.

13 Q. All right. I think Dr. Hooker has testified if you
14 converted that to ADA, it would be upward adjusted
15 slightly, is that correct?

16 A. As a matter of fact, there is over 7 percent, so it's
17 1,890 the first -- 1,880 the first year, 1,933 the
18 second year, and 1,987 the third year.

19 MR. RICHARDS: We would offer Plaintiffs'
20 Exhibit No. 127.

21 MR. TURNER: We object to the admission of
22 this. I understand it's being tendered as a report
23 by a funding principles group, and I think the
24 testimony that Mr. Foster just offered indicates that
25 it is a document that he personally prepared in order

1 to allow Mr. Kirkpatrick to make a speech or
2 presentation to the Joint House/Senate Education
3 Committee. In the sense that it's being represented
4 here as a report of a group or of a SCOPE Committee,
5 we think it's improper to tender it for that purpose.

6 MR. O'HANLON: I would request to take the
7 witness on voir dire for a minute with respect to
8 that predicate and as to whose origin the document is
9 from.

10 THE COURT: Okay.

11 VOIR DIRE EXAMINATION

12 BY MR. O'HANLON:

13 Q. Would you turn to Page 5, Paragraph F?

14 A. Yes.

15 Q. Would you read that?

16 A. "Summary of Benefits" --

17 Q. F?

18 A. I'm sorry. "The Equity Center would welcome the
19 opportunity to share with you or your aides the
20 details of its findings on the source and nature of
21 current inequities."

22 Q. The SCOPE Committee was in the business of making
23 advertisements for the Equity Center, Mr. Foster?

24 A. I don't consider that an advertisement for the Equity
25 Center. When Dr. Kirkpatrick was introduced, he was

1 introduced as a representative of the group and
2 president of the Equity Center.

3 Q. Okay.

4 A. The next paragraph goes on to say that "the members
5 of the Group will continue their dialogue and we
6 invite you, the Commissioner, the State Board, the
7 Comptroller, the Legislative Budget Board and other
8 interested parties to join with us in our efforts."

9 Q. Okay. The group we're talking about is not the
10 Select Committee on Public Education, is it?

11 A. The group which actually participated in the
12 preparation of this document.

13 When I said I prepared it, what I meant was
14 that I actually punched it into our word processor
15 the night before the testimony because there was very
16 short notice given to the group.

17 The group met and each paragraph in here was
18 drafted by a different member of the group, which is
19 one of the reasons that it looks a bit like a
20 hodgepodge, but it was the most that could be
21 completed in that period of time.

22 Numerous members of the group were there and
23 involved in the preparation of this. This was not an
24 Equity Center exercise.

25 Q. Did the group ever formally vote on it?

1 A. The group read it. Everybody involved in the group
2 read it and signed off on it; said, "Yes, this is
3 appropriate, this is okay."

4 Q. Is there a place where they signed off on it?

5 A. No. I'm telling you that they read it and all said
6 that they approved it.

7 Q. But there was never a formal -- you never sat down
8 and caucused and went like a regular committee or
9 something like that and voted on it or anything like
10 that?

11 A. We did not consider that necessary. The way we had
12 been working together for months and months, I don't
13 think we ever sat down and took a vote.

14 Q. Okay. You never even sat down at the same time and
15 considered it, debated it together. This was just
16 kind of --

17 A. Yes, we did.

18 Q. After this was drafted?

19 A. Yes.

20 Q. You sat around and took a vote?

21 A. Yes. We talked about it. We reviewed it.

22 Q. You took a vote?

23 A. I did not say we took a vote. I said they all said
24 "Yeah, this is it."

25 MR. RICHARDS: We tender the exhibit. I

1 think there's been extensive cross-examination about
2 this presentation and it's admissible for no other
3 reason than to just clear up what's been developed in
4 cross-examination.

5 THE COURT: He's tendering 127.

6 MR. TURNER: Could I have a couple of
7 questions.

8 VOIR DIRE EXAMINATION

9 BY MR. TURNER:

10 Q. Mr. Foster, the title of the document that you
11 prepared for Dr. Kirkpatrick's testimony says "SCOPE
12 Funding Principles Group." Now, the group that we're
13 referring to and Mr. O'Hanlon asked you about, that's
14 the informal group that collected around the
15 subcommittee on finance at the request of Mr. Bullock
16 that consisted of some members -- I think you've
17 named some of them before and some of them you said
18 you weren't sure you could name because it was a
19 flexible, in-and-out sort of group. So this SCOPE
20 Funding Principles Group has no formal relationship
21 to the SCOPE Committee --

22 MR. RICHARDS: Is this still the same
23 question or is this a speech that you're making based
24 on something that you want to talk about? I haven't
25 heard a question yet. If he wants him on voir dire,

1 he ought to ask a question. I've offered an exhibit,
2 Your Honor.

3 THE COURT: Okay. I think the question is
4 coming.

5 BY MR. TURNER:

6 Q. Mr. Foster, this SCOPE Funding Principles Group is
7 not a formal designated subcommittee of the SCOPE
8 Committee, is it?

9 A. If you understand the way the Comptroller of Public
10 Accounts of the State of Texas operates, when he has
11 the authorization from the SCOPE Committee to proceed
12 in this activity and he calls you up and he says, "I
13 want you to participate in this activity," number
14 one, you don't say no. And number two, the group was
15 varied, as I've already testified. There were people
16 that were added to it from time to time; there were
17 people that dropped out of it from time to time.
18 There was never any doubt in the minds of any of us
19 who were there when this was finally done that we
20 were doing it with the full authorization and as a
21 command performance for Mr. Bullock, and that it was
22 being done under the auspices of the SCOPE Committee.
23 And indeed, if that had not been the case, I do not
24 believe that Tom Luce would have asked us to make the
25 presentation and introduce Dr. Kirkpatrick and said,

1 "Dr. Kirkpatrick is now going to present to you the
2 SCOPE funding principles in terms of the proposed
3 legislation."

4 Q. But the SCOPE Funding Principles Group is not and was
5 not the subcommittee on finance of the SCOPE
6 Committee.

7 A. Well, I think subject only to the input of Mr. Perot
8 that the finance subcommittee of SCOPE consisted of
9 whomever Mr. Bullock wanted it to consist of.

10 Q. My recollection is that the SCOPE Committee -- well,
11 first of all, the SCOPE Committee was appointed by
12 the Speaker and the Governor and Lieutenant Governor,
13 is that correct?

14 A. The SCOPE Committee was appointed by Mr. Perot. The
15 Governor and Lieutenant Governor and the Speaker
16 signed off on the names that he wanted to have on the
17 committee and they then went through the formality of
18 making the formal appointments.

19 Q. Now, Mr. Foster, the SCOPE Committee was created by
20 resolution of the Legislature, was it not?

21 A. That is correct.

22 Q. That document specifically states that there will be
23 appointments made, and as I recall, it may have been
24 an equal number of appointments to be made by the
25 Speaker, Lieutenant Governor, and the Governor.

1 A. That language sounds familiar, yes.

2 Q. There's nothing in that resolution of the Legislature
3 that says Mr. Perot was going to appoint the members
4 of the SCOPE Committee, does it?

5 A. I'm talking to you about the de facto situation.

6 Q. All right. So the SCOPE Committee was appointed by
7 these three state officials. And it's also true, is
8 it not, that the SCOPE Committee, once it was formed
9 and the chairman appointed, as I recall, by the
10 Governor, the committee itself divided up into
11 subcommittees.

12 A. This is my understanding, yes.

13 Q. And there were certain members of the SCOPE Committee
14 that were named to the finance subcommittee chaired
15 by Bob Bullock?

16 A. Yes.

17 Q. Do you remember who served -- who was appointed to
18 serve on the finance subcommittee?

19 A. The only two people that had anything to do with our
20 activities in connection with that were Mr. Bullock
21 and Mr. Schlueter. I think Mr. Schlueter was a
22 member, but I'm not positive.

23 Q. All right.

24 A. Mr. Schlueter did request -- he confirmed to Mr.
25 Bullock's request that certain parties be made a part

1 of that funding principles group.

2 Q. It is true that that subcommittee consisting of Mr.
3 Bullock and Representative Schlueter and certain
4 other people that you don't recall never voted on
5 this and approved this document that you're talking
6 about right here, Plaintiffs' Exhibit No. 127?

7 A. Not to my knowledge, they didn't.

8 Q. The SCOPE Committee, itself, never voted upon or
9 adopted Plaintiffs' Exhibit No. 127?

10 A. They did, by implication, quite clearly, as I have
11 already indicated to you.

12 Q. How do you explain to us that this document, No.
13 127, was adopted by implication when, in fact, the
14 SCOPE Committee report that we have in evidence here
15 that we all know was adopted at the final meeting of
16 the SCOPE Committee makes no mention of these things
17 in the specificity that's in here and makes no
18 mention of the numbers that are in here, numbers
19 which I believe earlier you looked for in this
20 document and couldn't find?

21 A. What's in this document are a set of funding
22 principles which the committee did approve with the
23 understanding Mr. Bullock was given the directive and
24 the authorization to proceed to put those things into
25 legislative form.

1 If you will study the SCOPE Committee report,
2 there's not a whole lot of it that's written in bill
3 form, including the finance article. There are a lot
4 of things in there that are recommendations. They
5 had not been at that point committed to bill form.

6 Now, by implication, you're suggesting that if
7 the finance article wasn't in there and approved,
8 that the finance article wasn't SCOPE's finance
9 article. The same thing would apply to every other
10 article of House Bill 72 that was responsive to the
11 SCOPE report.

12 The SCOPE Committee never did sit down and look
13 at Senate Bill 4 or House Bill 1 or House Bill 72 and
14 take a vote and adopt those measures as their
15 reports. But anyone who questions whether those are
16 the result of and the offspring of and the prodigy of
17 SCOPE simply doesn't understand the process.

18 Q. Well, I think we understand the process, Mr. Foster.
19 And the process was that after the SCOPE Committee
20 had its final meeting and adopted that report that's
21 already in evidence and adjourned, that the
22 legislative process began to work. And
23 Representative Haley and Representative Parker drew
24 up a bill, and many elements of the SCOPE
25 recommendations were contained in those pieces of

1 legislation, is that correct?

2 A. That is correct.

3 Q. And then we had a joint meeting of the House and the
4 Senate Education Committee, did we not?

5 MR. RICHARDS: Excuse me, Your Honor. This
6 exhibit, I think, is admissible and authenticated.
7 Mr. Turner spent at least an hour on this very
8 question yesterday and is going back through it
9 again. I tender the exhibit and suggest it's
10 inappropriate voir dire at this stage.

11 MR. TURNER: Your Honor, I think it's been
12 offered as a report of the SCOPE Committee.

13 MR. RICHARDS: It has been offered by what
14 exactly -- it's not a report of the SCOPE Committee,
15 it's been offered exactly as how the witness has
16 described it. You cross-examined him about it
17 yesterday. Here is the document.

18 MR. TURNER: Your Honor, this, as I
19 understand it from the testimony of Mr. Foster, is a
20 document that he personally prepared in order to
21 enable Dr. Kirkpatrick to make a presentation to the
22 Joint House/Senate Committee that met in the early
23 days of the special session in the summer of 1984.
24 As Mr. O'Hanlon pointed out on the last page, it even
25 refers to the Equity Center, and Dr. Kirkpatrick, at

1 the time he made his presentation, was the chairman
2 of the Equity Center. To try to say to this Court
3 that this is a recommendation of the SCOPE Committee
4 is an inappropriate representation of the document.

5 If they will offer it for the limited purpose
6 of saying that it's a document that Mr. Foster
7 prepared or Dr. Kirkpatrick, both being members of
8 the Equity Center, to present their views before that
9 committee, I think that's appropriate. But beyond
10 that, I don't think it has any bearing or carries any
11 weight and shouldn't be admitted in terms of it being
12 represented as a SCOPE report.

13 THE COURT: Okay. Bearing in mind what the
14 witness has said about the document, as well as what
15 counsel has pointed out concerning their doubts about
16 it, we'll go ahead and have it in evidence with the
17 understanding of how it was prepared and where it
18 came from, as well as the doubts as to its direct
19 connection to the SCOPE Committee itself.

20 We'll stand adjourned now.

21 (Short break.)

22 (Plaintiffs' Exhibit No. 127 admitted.)
23
24
25

1 MR. RICHARDS: I pass the witness.

2 THE COURT: Anything else?

3 MR. KAUFFMAN: Yes, Honor, we have some.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. KAUFFMAN:

6 Q. Mr. Foster, the Defendant-Intervenors showed you
7 Defendant-Intervenors' Exhibit 16, which was a list
8 of maintenance and operations tax rates.

9 A. Yes, that is correct.

10 Q. And now, I have given you Plaintiffs' Exhibit No. 91,
11 which is a list of the maintenance and operations tax
12 rates as well as the total tax rates for the
13 Plaintiff and Plaintiff-Intervenor districts, is that
14 right?

15 A. Yes, I have that list.

16 Q. Which one of your exhibits did the tax rate
17 information come off? Was it 106, I think, or 108?

18 A. The total tax rate?

19 Q. I think it's 106 or 108.

20 A. Total tax rates came from 104-C, I believe.

21 Q. Okay. Fine. You can just check the first two or
22 three to make sure we got it right.

23 A. Okay. Yes. I have checked the first three and they
24 appear to be taken from Exhibit 104-C.

25 MR. KAUFFMAN: Your Honor, I think the

1 Defendants will agree we have gone through and from
2 the other Plaintiffs' Exhibit, we have taken
3 Defendants' 16 and we have listed the total tax rates
4 for the districts and found that of the 67 Plaintiff
5 and Plaintiff-Intervenor districts, 45 had tax rates
6 above the state average for the total tax rate; 22
7 had tax rates below the state average for the total
8 tax rate. They can, of course, check our numbers,
9 but if they'll believe us, we would like to go ahead
10 and move in Plaintiffs' Exhibit No. 91.

11 MR. O'HANLON: We would like to see it.

12 MR. TURNER: No objection, Your Honor.

13 MR. O'HANLON: No objection.

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

16 (Plaintiffs' Exhibit No. 91 admitted.)

17 BY MR. KAUFFMAN:

18 Q. Mr. Foster, if I can show you now Defendants' Exhibit
19 11, which is a list of total expenditures per student
20 unit by wealth group. What was the range of the
21 upper expenditures per group to the lower
22 expenditures per group?

23 A. The 20th group has a figure of \$3,094.00, and the
24 first group in the poorest has a figure of \$1,708.00.

25 Q. If I can look at Exhibit 11 with you for a second,

1 even if you compare the second poorest group to the
2 second richest group, I think you'd still get a
3 difference of about a thousand dollars, roughly.

4 A. Yes, that is correct.

5 Q. This is a thousand dollars per student unit?

6 A. Yes, it is.

7 Q. Okay. In terms of what districts in Texas can afford
8 to do in terms of tax rates, what are the chances in
9 those districts in the bottom 5 or 10 percent raising
10 a thousand dollars per student?

11 A. Well, one of our charts depicts that. In the lowest
12 group, it's nearly 37 cents for each hundred. So for
13 a thousand, it would be \$3.70 in tax rate, which is
14 above the legal limit.

15 Q. Okay. If you look at Defendants' Exhibit 13, they
16 have combined the tax rates of various groups of
17 districts and expenditures. Can you draw any
18 inference on that relationship between low wealth and
19 high wealth districts and tax rates and expenditures?

20 A. Well, if one looks at the overall pattern and draws a
21 line -- two lines, one that intersects the dotted
22 line in such a fashion that the rates above the line
23 are equal to the rates below the line, one gets a
24 slope that would reflect how the total tax rate
25 changes over wealth and that would be a downward

1 sloping line.

2 If one did the same thing -- that is, to draw a
3 line across the bars so that the quantities above the
4 line were equal to the quantities below the line --
5 you would again have what is known as a slope that
6 would represent the overall pattern and that would be
7 a slope that would rise from the poor end of the
8 spectrum to the rich end.

9 So in effect, you would have a declining tax
10 effort line and an inclining expenditure line, which
11 is a representation of the well-known tax paradox,
12 tax spend paradox that you tax high, spend low and
13 you tax low, spend high.

14 Q. As you go from poor districts to rich districts, the
15 pattern is that they are taxing higher and they are
16 spending less on their kids.

17 A. Yes. That is the overall pattern represented in this
18 chart.

19 Q. Okay. If we can look now at Defendants' Exhibit 21,
20 the computer. Now, let's look at 107, which is your
21 expenditures per student unit. In terms of what is
22 actually going on in the State of Texas and what
23 districts are spending on their students, don't we
24 sort of have to put those two charts together?

25 A. That is, I think, a fair representation. The lower

1 part, the flip chart computer to the line that
2 represents the current total program as defined by
3 the state would be the lower of the two horizontal
4 red lines. So if on top of that you placed this
5 chart so that the base line of the chart where it
6 says FSP -- well, actually, the FSP part needs to be
7 lower than that, because part of the state's total --
8 it's approximately that relationship right there.

9 So what's happening is what's in the box up to
10 that line formed by the horizontal axis of our chart
11 represents the total state program, and then the
12 chart represents the expenditures above and beyond
13 that.

14 Q. Okay. So if you're looking at Defendants' Exhibit
15 21, the fact that it has these red lines going from
16 left to right does not mean that all the districts
17 are spending the same amount on their kids?

18 A. No, it does not.

19 Q. Okay. Your Exhibit 107 shows the relative ability of
20 districts in the state to spend money on kids in
21 their districts, is that right?

22 A. It reflects the actual expenditure levels above the
23 Foundation School Program, which is a reflection of
24 both the effort made and the values that are
25 available in those districts for taxation.

1 Q. Mr. Foster, in response to some of the questions on
2 your earlier cross-examination, did you prepare a
3 chart and sort of in response to Mr. -- I think Mr.
4 Turner's questions about the tax rate necessary to
5 raise amounts above the Foundation School Program
6 compared to the total tax rates?

7 A. Yes, we did.

8 Q. Mr. Foster, we're not going to go through the whole
9 thing again, but let me just see if I understand this
10 one now.

11 Plaintiffs' Exhibit 120 shows the combined tax
12 rate to generate 130 percent of the Foundation School
13 Program cost, is that right?

14 A. That is correct. In this case, we're looking at 130
15 percent rather than the 30 percent in Exhibit 118.

16 Q. Okay. Now, is this the amount that some of the
17 questions to you have asked whether the state is
18 equalized up to this level?

19 A. This is in response to the suggestion that we were
20 not properly representing the ratio required to raise
21 revenues at that level.

22 Q. So what you have here on 128 is you can see the tax
23 rate necessary, the total combined tax rate for
24 maintenance and operations for any district in the
25 state to generate 130 percent of that Foundation

1 School Program cost level?

2 A. Yes.

3 Q. And again, you have listed for each district in order
4 of their wealth here?

5 A. Yes. This is by the lowest tax rate to the highest
6 tax rate, which is the same form that we had in 118.

7 Q. Okay. So again, you've got a rank of a little bit
8 less than 2 cents to 99 cents in Texas to raise that
9 amount?

10 A. That is correct.

11 Q. And again, you've given us the average and the ratio
12 to lowest, and the breakdown chart is just the way we
13 did it on the other graphs?

14 A. Yes. This is exactly the same as Exhibit 118 except
15 that it's for the entire 130 percent, which the state
16 characterizes as its total FSP, whereas 118 was just
17 the 30 percent of FSP above the basic cost.

18 Q. But in fact, in Texas, districts are spending even
19 above that 130 percent of Foundation School Program
20 costs, is that right?

21 A. Yes.

22 Q. Above that amount, it's all from local funds?

23 A. That is correct.

24 Q. Those local funds are raised based on that chart you
25 showed us of tax rate necessary to raise \$100.00?

1 A. That is correct, yes.

2 MR. KAUFFMAN: Your Honor, we move that
3 Exhibit 120-A, 120-B and 120-C be admitted -- no,
4 just 120-A and 120-B. I'm sorry.

5 MR. O'HANLON: No objection.

6 MR. TURNER: No objection.

7 THE COURT: All right. They'll be
8 admitted.

9 (Plaintiffs' Exhibit Nos.

10 (120-A and 120-B admitted.

11 MR. KAUFFMAN: We have nothing further.

12 MR. O'HANLON: I do.

13 FURTHER RECROSS EXAMINATION

14 BY MR. O'HANLON:

15 Q. Mr. Foster, let's look at 120-B for a second.

16 A. 120-B?

17 Q. Yes, sir.

18 A. All right.

19 Q. Mr. Foster, you computed a range ratio from the 5th
20 to the 95th percentile on Page 3?

21 A. Yes, we did.

22 Q. It's 1.35 --

23 A. Yes, it is.

24 Q. -- to 1?

25 A. Yes.

1 Q. Okay. Now, let's talk about -- is that 130 percent
2 the same as that \$2,653.00 that we talked about a
3 little while ago?

4 A. This would be just FSP costs and not our total M&O
5 expenditures. So this would be 1.3 times, for each
6 district shown, the FSP costs as computed by the
7 Education Agency for each district, yes.

8 Q. Okay. What I'm trying to do is convert that back to
9 dollars. That's the same \$2,653.00 that we talked
10 about?

11 A. That would be the average amount across the state.

12 Q. Okay. So they're comparable? I mean, one converts
13 to the other?

14 A. Yes. I believe there's a state total on here by
15 which we can confirm that -- well, no, because this
16 is the tax rate. It's not the FSP amount.

17 Q. Okay. Well, there's going to be some slight
18 variations because we're dealing with averages, but
19 it's a comparable number?

20 A. Right.

21 Q. Okay. Mr. Richards asked you some questions about
22 what it would look like -- if this can be over here
23 for a second; no, you can't see it -- Socorro having
24 to raise \$100.00 to meet teachers' expenses and the
25 22-to-1 program with \$100.00 per student unit, is

1 that what you said?

2 A. What we were talking about is the statewide
3 approximation of the cost to do these things in the
4 same sense that the data in the Accountable Cost
5 Advisory Committee report is not the data for any one
6 school district, but is simply a statewide figure.

7 Q. Okay. He talked about Socorro and you said they're
8 going to have to raise their taxes 22 cents to meet
9 this by 1988.

10 A. The premise there is that if Socorro were typical of
11 the statewide figure, then indeed, that much money --
12 to raise that much money in Socorro would require the
13 rates that we quoted.

14 Q. Let's project Socorro off into the future. You're
15 projecting expenditures off into the future. Let's
16 project Socorro off into the future.

17 If you look at the '85-'86 Bench Marks, I think
18 you will find that Socorro -- that they had a 1984
19 property value, and we're operating a year behind,
20 right?

21 A. Yes. That is not the current value --

22 Q. That's the year before?

23 A. Right.

24 Q. Okay. 1984 property value, which will project into
25 the '85-'86 year, right?

1 A. It will be used to distribute state aid in '85-'86.
2 The local tax revenue for '85-'86 will be based on
3 the '85 value.

4 Q. Right.

5 A. So we can't apply a rate to the '84 values for
6 '85-'86. We'd have to apply a rate to the '85 value.

7 Q. Okay. Let's look at what Bench Marks does. Bench
8 Marks showed in 1984 a property value of 58,870 per
9 ADA, right? You want to confirm my figures?

10 A. Yes. Why don't we use the figures that are
11 comparable to the information that we've been using
12 that we've been presented. We have a set of current
13 values that we can provide.

14 Q. Well, I'm going to use the values out of here for a
15 second so I can go back and project into time. It's
16 not totally unreasonable. Bench Marks was right with
17 respect to the reporting of those values, aren't
18 they?

19 A. I don't know they're wrong except they simply don't
20 apply to the year you're trying to get them to.

21 Q. Well, we know that the property value increased in --
22 was in '84 was 58,870.

23 A. Okay. The '84 tax year value was that, okay.

24 Q. 1985 tax value. Do you want to confirm that or do
25 you want to take my word for it?

1 The 1985 value was 77,255 per ADA. Okay?

2 A. If you say that's the case.

3 Q. Do you want to confirm that for me? Do you want to
4 look in the blue one and check?

5 A. All right. Give me a page number, if you will.

6 Q. It's at the last page. I think it's 52.

7 A. Okay. The 1985 market value divided by the 1984-'85 --
8 the prior year's ADA which is not even, I understand;
9 the Refined ADA. I've been advised it's just sort of
10 a gross ADA -- the figure shown here is 77,255.

11 Q. Okay. I computed that a minute ago and I got a 31
12 percent increase. Now, let's project from 1986,
13 1987, 1988, a 31 percent increase. Will you do that
14 for me and tell me what the property value in the
15 district is going to be at that time?

16 MR. RICHARDS: Why don't we also project
17 the increase in students which is also going up.

18 A. First of all, there is no reason to believe that the
19 31 percent increase in value was actually the result
20 of real value increase as opposed to a reevaluation.
21 If it were a reevaluation, you can't get that kind of
22 thing out of reevaluation every year.

23 Q. Well, inherent in your discussion with Mr. Richards,
24 you assumed that the property value in that district
25 would not increase one penny when you said it was

1 going to take an additional 22 cents, isn't that
2 right?

3 A. What I tried to say was that if we look at it in
4 terms of the '85 values and '85-'86 costs, that
5 that's what we would have.

6 Q. All right. So inherent in that assumption is that
7 they're going to have to raise 22 cents in 1988
8 because their property value isn't going to increase
9 in that time?

10 A. Well, it would also increase an additional -- I mean,
11 they may even lose property value. There's just
12 simply no way of making an intelligent projection of
13 their property values.

14 Q. Well, let's talk about your cycle of poverty for a
15 second. Good schools mean increase in property
16 value, right, which brings more development, right?

17 A. This is the generality reflected in that property
18 cycle, yes.

19 Q. You wouldn't say Mr. Sybert has got bad schools. You
20 heard him testify.

21 A. I would not consider his schools to be the kind of
22 schools that would necessarily attract additional
23 development.

24 Q. So you would dispute Mr. Sybert's testimony that he
25 has got the finest schools in the State of Texas?

1 A. I think you understand as well as I do that when Mr.
2 Sybert talks about his schools in those terms, that
3 he is saying that that community has taken what it
4 has and made the best of it and they're proud of it.
5 At the same time, he has said the funds available to
6 do the kinds of things they need to do are
7 inadequate.

8 Q. Well, if good schools are one of the elements and an
9 attractive physical plant are one of the elements,
10 which is what you're saying because we need a
11 facilities component, Mr. Sybert's schools are going
12 to be a heck of a lot newer than the ones in Ysleta,
13 and the ones in El Paso, and the ones in San Elizario
14 and the ones in all the rest of that district, aren't
15 they --

16 A. I don't know.

17 Q. -- because they're all brand new?

18 A. That doesn't mean that they're superior facilities.
19 I've seen some brand new facilities that were built
20 with the rock bottom dollars that are just new and
21 that's all.

22 Q. So Mr. Sybert was puffing when he said that he has
23 got the finest facilities in the State of Texas?

24 A. I cannot testify to that. I have not seen his
25 facilities.

1 Q. Well, let's take him at his word and let's plug this
2 into your cycle of wealth because he's got good
3 schools, and he's got the finest facilities in the
4 State of Texas, and let's project this growth at 31
5 percent. Will you do that for me with your
6 calculator?

7 MR. KAUFFMAN: I would object to the
8 further characterization of their increase in
9 property value. Mr. Sybert did testify there was a
10 reevaluation of all the property in his district
11 between those two years, and therefore, because that
12 is, I assume, the major explanation for that increase
13 in property value, whether it is or not, this witness
14 doesn't know the difference. It's unfair to project
15 it.

16 THE COURT: Well, you can bring that out on
17 your examination of him.

18 MR. KAUFFMAN: Yes, sir.

19 THE COURT: He's got a right, I think, to
20 ask him to do most any sort of calculation. You all
21 have got a right, if you don't agree with it, to
22 straighten it out when you get this witness back, if
23 you think it needs straightening out.

24 A. Now I'm ready.

25 Q. Okay. Let's do that. Let's run it one, two, three

1 years in the future at 31 percent annual increase.

2 A. The first year, 101,204.

3 Q. Okay.

4 A. The second year, 132,577.

5 Q. Okay.

6 A. The next year, 173,676.

7 Q. Okay. Now, let's take this year's 95 cent tax rate
8 and let's figure out the difference per ADA that it
9 would yield at 1984 values --

10 A. Per year?

11 Q. -- versus --

12 A. You're not assuming that the value is going up per
13 ADA by that much?

14 Q. That's what those figures are.

15 A. In other words, the student population is going to
16 decline as the actual values go up, I presume, which
17 doesn't seem to fit the pattern that Mr. Sybert was
18 indicating for their school district.

19 Q. Well, you know, when people move into a district, Mr.
20 Foster, they move into houses, don't they?

21 A. Well, according to Mr. Sybert, they don't all move
22 into houses. Perhaps we need to do a district where
23 they actually do move into houses.

24 Q. He didn't talk about the western part of the district
25 where all the development is as an outgrowth of the

1 expansion of El Paso and that's where all the new
2 schools are going?

3 A. He mentioned things like that, yes.

4 Q. And that's where he's building his new schools, isn't
5 he?

6 A. Yes.

7 Q. There's going to be people living in -- and that's
8 the affluent part of his district, isn't it? You
9 heard that testimony.

10 A. His testimony was not that all those folks are going
11 to be in the affluent part of his district.

12 Q. Well, they're all buying \$50,000.00-plus houses?
13 That's what he said they're going to live in.

14 A. No. He did not say they were all doing that.

15 Q. Well, humor me a minute and let's make this
16 computation. Let's see what happens. Take that 95
17 cent rate.

18 A. Let the record show this is for humor.

19 All right. What is it you want?

20 Q. Let's take that 95 cent rate, and let's multiply it
21 by what he would have gotten at that rate at 58,000.

22 A. 95 cents.

23 Q. Yep.

24 A. All right.

25 Q. Well, no, let's do that. Let's take facilities out

1 and let's do the 45 cent, which is what his M&O
2 component is.

3 A. Okay. You want me to start with the first one,
4 right?

5 Q. Yeah, 58. All I want is the two extremes.

6 A. That's \$265.00.

7 Q. Okay. Let's do that times 173.

8 A. Okay. \$782.00.

9 Q. That's more than the \$100.00 that would be required
10 to pay that additional room, wouldn't it?

11 A. If that actually occurs in Socorro, clearly they
12 would have more than enough to pay the additional
13 \$100.00 cost.

14 Q. The point of this exercise, Mr. Foster, is that we
15 can't make projections, can we? It's at least as
16 reasonable to assume growth in that district in
17 property values of some magnitude as it is to figure
18 that it's not going to grow at all, there's not going
19 to be any increase in property values in that
20 district, isn't it?

21 A. I didn't make any assumptions about projections.

22 Q. Okay. So your projections with respect to any of the
23 six school districts that Mr. Richards had you make
24 computations of about how much they're going to have
25 to raise in the future in 1988 and '89 to pay for a

1 \$100.00 per either student or student unit cost is
2 based on something that's just not knowable right
3 now, isn't it?

4 A. The figures that I provided as my testimony are for
5 1985-'86. The unaccounted for costs, those House
6 Bill 72 costs which are not accounted for in the
7 funding, were for 1985-'86 and for that --

8 Q. Mr. Sybert didn't get \$1,100.00 in new state money.

9 A. I don't know what he got in new state money. That's
10 not relevant to my testimony.

11 Q. Let's look at it. You say that House Bill 72 didn't
12 provide any money to fund certain components, but an
13 \$1,100.00 increase in state funding is not relevant
14 to your testimony?

15 A. The components of the funding formulas did not make
16 provisions for certain costs that were the result of
17 mandates in House Bill 72.

18 Q. So we simply gave Mr. Sybert \$1,100.00 for nothing.

19 A. Mr. Sybert -- that school district got \$1,100.00 or
20 whatever the figure is -- I don't know that it's
21 \$1,100.00 -- for a variety of reasons. A lot of it
22 was simply to equalize the system. A lot of it, as I
23 understand from his testimony, was used to take care
24 of things that hadn't been taken care of in a long
25 time.

1 My testimony is that there are costs associated
2 with House Bill 72 mandates that are not reflected in
3 the funding formulas. That has nothing to do with
4 how much money any school district got in new money
5 under House Bill 72 in 1985-'86. It is a totally
6 different question.

7 For those amounts which are not taken into
8 account in the accounting formulas, which I have
9 roughly estimated to be in the neighborhood of
10 \$100.00 per student unit, if you take that figure and
11 look at the value that the school district had to use
12 for that year per student unit, you come up with
13 exactly the tax rates that I quoted for you in my
14 redirect.

15 Q. Well, what I'm curious about -- all you're saying
16 then is there's not a specific subsection in one of
17 the statutes that specifically allocates money for
18 these particular items, right? Is that what you're
19 saying?

20 A. There are mandated changes in what a school district
21 must do which are not reflected by comparable changes
22 in the funding formulas.

23 Q. But the Legislature put an additional billion dollars
24 into education, right?

25 A. The Legislature put a billion dollars into education.

1 You're right.

2 Q. But not all of it is accounted by the funding
3 formulas, right? Some of it was just money they
4 threw into the whole Foundation School Program?

5 A. No. You're confusing two entirely separate things.
6 You have one set of figures that constitute the
7 Foundation School Program costs, and those figures
8 were changed by House Bill 72. And then House Bill
9 72 mandated some programs and activities which were
10 not reflected, changes that occurred from the first
11 to the second year that were not reflected in changes
12 in the funding components.

13 Therefore, it is my contention those things are
14 not accounted for. They are costs over and above
15 what is accounted for in the state's funding
16 formulas; mandates that are unfunded, if you will.
17 That's what I was talking about.

18 Q. That same period, we increased the basic allotment
19 from 1,290 to 1,350, didn't the state?

20 A. And reduced the enrichment equalization maxent from
21 35 to 30 percent, which is just about a wash-out and
22 the difference does not cover even but a tiny
23 fraction of the dollar figure that I talked to you
24 about.

25 Q. \$60.00 doesn't cover but a tiny fraction of \$100.00?

1 A. Well, whatever that difference is --

2 Q. We know, don't we, now that we've been through it
3 all, that that 1,350 -- that \$60.00 multiplies times
4 other factors, don't we?

5 A. We're talking here about just the basic factors.
6 We're not talking about the multiplying factors.

7 Q. Well, once you raise the floor --

8 A. If we want to multiply those factors, we'll multiply
9 everything that way because those figures in the
10 accountable cost study are prior to the application
11 of the PDI and small and sparse, for example. So
12 we'll multiply those figures that I use, and then
13 we'll multiply whatever the differential is between
14 the reduction in maxent combined with the increase in
15 the basic allotment.

16 Q. So when the State of Texas flowed an additional
17 \$900.00 to Rosebud-Lott, it doesn't count because we
18 didn't say it's for a 22-to-1 ratio?

19 A. It was for the things required to provide a basic
20 education. That's what the basic allotment is for.

21 Q. In that was the 22-to-1 ratio, wasn't it? It was all
22 part of the same statute, wasn't it?

23 A. The 22-to-1 ratio was something that was superimposed
24 on all of the studies done with respect to what the
25 basic allotment should be. The basic allotment --

1 and it's very clear from the testimony that we
2 offered here earlier from before the SCOPE Committee
3 that this was based on a -- and then the funding
4 principles adopted by SCOPE were based on meeting the
5 accreditation standards set forth in House Bill 242 a
6 couple of years earlier.

7 Q. 246.

8 A. 246. Excuse me.

9 Those things did not have class size in there.
10 They did not have the career ladder under funding.
11 It simply isn't there. It's simply not there. The
12 Accountable Cost Committee has formally recognized
13 that. The state itself has formally recognized that
14 those things are not accounted for in the existing
15 basic allotment and other derivative funding --

16 Q. The Accountable Cost Committee doesn't matter, does
17 it, Mr. Foster?

18 Are you proposing a whole new method of
19 constitutional law that we have a committee decide
20 something, and then once the committee decides
21 something, if the Legislature doesn't adopt it
22 verbatim, then the whole statute must be arbitrary
23 and capricious and therefore unconstitutional?

24 A. The state, through its appointed Accountable Cost
25 Advisory Committee, which was staffed by the deputy

1 commissioner who is concerned with the research and
2 policy development for the Agency, formally
3 recognized in their report that the cost of the
4 22-to-1 class size, as well as some inflation, as
5 well as some changes in minimum salary schedule costs
6 as people moved along the salary schedule had not
7 been incorporated in House Bill 72. They said so,
8 they made some estimates of the figures, and they
9 incorporated those estimates in their
10 recommendations.

11 As far as I'm concerned, I agree they should be
12 there. I don't say that I agree with the numbers. I
13 suspect they are lower than what I might come up
14 with, but those are the state's figures. My
15 testimony a little earlier was based on a
16 generalization about those numbers.

17 Q. So if the Texas Legislature doesn't agree with an
18 associate deputy commissioner of the Texas Education
19 Agency on a study that they do that they specifically
20 commissioned in House Bill 72 for further review and
21 study, and they don't agree with them immediately,
22 then the whole thing is unconstitutional?

23 A. I can't tell you what the legislative response to
24 this might be. I'm telling you that the official
25 agency of the state which is charged by the

1 Legislature with making these determinations has come
2 up with a set of numbers that fully justifies my
3 saying that we can talk realistically about a \$100.00
4 difference in what is contained in the current cost
5 formulas and the cost of mandated programs under
6 House Bill 72.

7 Q. If the Legislature doesn't agree with them, the whole
8 system is unconstitutional?

9 A. The Legislature is under no obligation to agree with
10 the Texas Education Agency.

11 Q. Thank you.

12 MR. O'HANLON: Pass the witness.

13 FURTHER RECROSS EXAMINATION

14 BY MR. TURNER:

15 Q. Mr. Foster, I want to direct your attention -- so we
16 might be sure we have this clear in the record -- to
17 the section of the law that refers to the Accountable
18 Cost Advisory Committee. I'm showing you a copy of
19 Section 16.201 of the Texas Education Code entitled
20 "Report." Are you following me there?

21 A. Yes.

22 Q. I'd like to read that section and the two following
23 sections. It says, "As a part of its biennial report
24 to the Legislature, the State Board of Education
25 shall report what it determines to be the annual

1 average accountable costs to school districts in
2 providing quality education programs, personnel and
3 facilities that meet the accreditation standards as
4 described by law and rule."

5 Did I read that correctly?

6 A. Yes, you did. I'm very familiar with that language.

7 Q. Then, looking at Section 16.202 entitled "Advisory
8 Committee," it says in Section A, "The State Board of
9 Education shall appoint an advisory committee to
10 assist the Board in determining the annual average
11 accountable costs. The committee must be composed of
12 nine members, a majority of whom must be school
13 principals or superintendents."

14 Section B, "In making appointments to the
15 committee, the Board shall give representation to
16 different geographic areas and different sizes of
17 schools and districts."

18 C, "Members of the committee shall serve
19 without compensation, but be entitled for
20 reimbursement for actual and necessary expenses
21 incurred in performing their duties. Reimbursement
22 is from funds appropriated to the Central Education
23 Agency and available for that purpose."

24 Then the last section, 16.203, entitled
25 "Legislative Consideration." "In adopting the amount

1 of the basic special and transportation allotments
2 under this chapter, the Legislature shall consider
3 the recommendations and report of the State Board of
4 Education as to the annual average accountable cost
5 of the program that meets accreditation standards."

6 Did I read that correctly?

7 A. Yes, you did indeed.

8 Q. Now, what that says to me, and you can correct me if
9 I'm wrong, that the first step is that the State
10 Board of Education is authorized by law here to
11 appoint an advisory committee on accountable costs.

12 A. That's correct.

13 Q. Is it not true that the second step is for the
14 committee to do their work and make their
15 recommendation back to the State Board of Education?

16 A. That is correct.

17 Q. Then the third step, is it not, is to have the State
18 Board of Education, as it says in the last section,
19 report to the Legislature. It says that "The
20 Legislature" -- and I'm quoting here -- "shall
21 consider the recommendation."

22 A. That's correct.

23 Q. So there's nothing binding on the state or the
24 Legislature as a result of the work of the Advisory
25 Committee on Accountable Costs?

1 A. There is nothing that the state Legislature --

2 MR. RICHARDS: I think that calls for a
3 legal conclusion. We think it is binding on the
4 state. We would argue that it is in its interest by
5 the state. So if the witness wants to answer, it's
6 fine. It's our view it's an admission by the state.

7 MR. O'HANLON: Mr. Richards is taking the
8 position that we don't need the Texas Legislature;
9 that we can have a committee out there and that if
10 the committee makes a recommendation and then the
11 Legislature doesn't immediately adopt it, then we've
12 got an unconstitutional system. This is a novel
13 theory of constitutional law.

14 THE COURT: Well, okay. Something you want
15 me to rule on here? Do you want me to say yes or no?

16 We're going to quit for the day. I'll see you
17 all again at 9:00 o'clock.

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20
21
22 (Proceedings adjourned until
23 (February 5, 1987.
24
25