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CAUSE NO. 362,516

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

FILED
IN SUPREME COURT
OF TEXAS
JUN 21 1989
JOHN T. ADAMS, Clerk
By_____Deputy

STATEMENT OF FACTS

VOLUME I OF XLVI

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THIRD COURT OF APPEALS
SUSAN K. BAGE, CLERK

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13 MR. DAVID R. RICHARDS

14 Statement by Mr. Richards ---------- 7970
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✓1	Atlas of Texas Public School Districts (in accompanying box)	--	3508
✓8	'85-'86 Texas School Directory (in accompanying box)	--	3511
✓9	TEA Rank Order of 1984 SPTB Taxable Values	--	3512
✓10	Texas Program Cost Differential Study of March 8, 1985	--	3513
✓16	TEA Division of Information Analysis, Rank Order of 1981 SPTB Index	--	3520
✓25	Research Report Volume V Public Education in Texas -- Financing the system, 1969	--	3531
✓26	Report of the Governor's Committee on Public School Education entitled ... To make Texas a National Leader in Public Education: The Challenge And The Change	--	3531
✓31	1985-86 Annual Performance Report - Part II	5883	5887
✓32	Easel board illustration discussed in Dr. Long's testimony	5936	5936
✓33	Texas Public School Fall Membership by Ethnic Group entitled Campus Report - Count And Percent 1986-87	6085	6197
✓34	Status Report on The Accreditation of School Districts TEA Division of Accreditation, February 1987	6435	6436

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✓36	TEA School Plant Section entitled Suggested Sizes Building And Areas	6469	6479
✓37	Requests For Legislative appropriations fiscal years 1988 and 1989 (in accompanying box)	6734	6735
✓38	Address to the Texas House of Representatives by Dr. W. N. Kirby dated May 30, 1986	6755	6756
✓39	Report by Dr. Kirby for Texas School Law Conference entitled Overview of Texas School Finance	6772	6772
✓40	TEA State Board of Education School Program Budget Recommendation Gains and Losses in Total State Aid for 1987-88 School Year dated 3/19/87	6772	6778
✓41	TEA State Board of Education School Program Budget Recommendation Gains and Losses in Total State Aid for 1987-88 School Year dated 2/27/87	6772	6778
✓42	TEA State Board of Education School Program Budget Recommendation Gains and Losses in Total State Aid for 1987-88 School Year dated 3/19/87, amounts per ADA	6772	6778
✓43	TEA State Board of Education School Program Budget Recommendation Gains and Losses in Total State Aid for 1987-88 School Year dated 2/27/87, amounts per ADA	6772	6778
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50	Copy of the Introduced Version of Senate Bill 4	7489	7489
91	M&O Rates and Total Tax Rates for districts	--	1816
92	Biographical Sketch by Dr. Gloria Rodriquez Zamora	--	2480
93	Dr. Leonard Valverde's vita	--	2570
94	Vita of Jose A. Cardenas ED.D.	--	3463
96	Preliminary draft of Dr. Verstegen's report	--	4579
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117B	Report JBG Tax Rates To Raise Loc. SHR if 30% M&O Enrichment	--	1370
118A	Report MBE Tax Rates To Raise Loc. SHR of 30% of FSP Cost	--	1313
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119A	Report IBE, St. & Loc. Tax Rev. Per Student at Avg. Tot. Tax Rate	--	1379
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120A	Report NBE, M&O Tax Rates To Generate 130% of FSP Cost	---	1822
120B	Report NBG, M&O Tax Rates To Generate 130% of FSP Cost	--	1822
127	Scope Funding Principle Group Presentation to Haley-Parker Committee	1801	1814
190	Annual Performance Report Compiled by the Texas Education Agency	913	915

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201	Article VII of the Texas Constitution	--	33
203	Copy of the words "essential" and "fundamental" out of the Webster's New World Dictionary	--	33
204	Section 16 of the Education Code of the laws of the State of Texas	--	33
205	Bench Marks for 1986-87 School District Budgets in Texas	--	91
206	Typed version on the chart on Foundation School Program	--	70
207	Comparison: Tax Rate V. Expenditures of Districts	--	116
209	Comparison of High Tax Rates - Rich V. Poor	--	117
210	Urban County Data	--	115
211	Regional Education Service Center Data	--	116
212	Committee report to the State Board by the Accountable Cost Committee	--	87
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215	Rank Order of 1985-86 Total Effective Tax Rates	--	113
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220	Photograph of classroom used for two classes	--	962
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224	Photograph of work area for teachers	--	962
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229	Photograph of cafeteria	--	962
230	Photograph of playground	--	962
231	Photograph of carpet in hall	--	962
232	Photograph of the ceiling in a classroom	--	962
233	Large pad of charts (Accompanying Exhibit Volume)	1428	1428
234	Billy Don Walker's resumer	1911	1917
235	Book entitled School Board Member's Library, The Basics of Texas Public School Finance	1911	1917

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236	Biographical Data Sheet on Harold L. Hawkins	2847	2850
237	The Texas School Facilities Study, 1986-1996, By Frank W. Lutz, Loren E. Bety and James S. Maddirala	2847	3080
238	Pages representing total revenue excluding federal revenue	4926	4927
239	Report of the Governor's Committee On Public School Education	5151	5158
240	Case Re: State of Texas v. Project Principle filed with Texas Supreme Court	6674	6677
241	General Highway Map, Val Verde County, Texas, Texas Education Agency District Square Miles, by county	6714	6715
242	General Highway Map, Hudspeth County, Texas, Texas Education Agency District Square Miles, by county	6714	6715
243	General Highway Map, Kerr County, Texas	6714	6715
244	General Highway Map for Lamb County, Texas and Hockley County, Texas	6721	6724
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301F	Photograph of library at Turner High School	--	5695
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301J	Photograph of auditorium in Turner High School	--	5698
301K	Photograph of gymnasium in Turner High School	--	5699
301L	Photograph of cosmetology classroom at Carrollton-Farmers Branch	--	5699
301M	Photograph of agricultural section at Carrollton-Farmers Branch	--	5700
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301Q	Photograph of auto shop at Turner High School	--	5701
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401	Summary of hours of Plaintiffs' attorneys, by month	7903	7907
402	Comtemporaneous time records of Albert Kauffman	7903	7907
403	Resume of Albert Kauffman	7903	7907
404	Affidavit of Norma Cantu, along with resume	7903	7907
405	Chronology of hours worked by Norma Cantu on Edgewood	7903	7907
406	Affidavit of Jose Garza and the contemporaneous time records of Jose Garza for work on Edgewood	7903	7907
407	Affidavit of Jose Roberto Juarez, Jr., along with the hours worked by Jose Roberto Juarez	7903	7907
408	Affidavit of Roger Rice regarding his hours and contemporaneous time records in Edgewood	7903	7907
408A	Affidavit of Camilo Perez-Bustillo	7903	7907
409	Contemporaneous time records of Roger Rice and Camilo Perez	7903	7907

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410	Affidavit of Peter Roos, also a copy of his resume and a list of contemporaneous time records in this case	7903	7907
411	Affidavit of managing partner of Schulman, Walheim & Beck, and a list of all the hours and costs incurred by them	7903	7907
412	Affidavit of the managers of the MALDEF office in San Antonio with a month by month breakdown of the hours worked by paralegals on litigation	7903	7907
413	Affidavit of the Director of Finance Administration of MALDEF showing all costs spent by MALDEF on Edgewood	7903	7907
414	List of deposition costs and marshalls' costs	7903	7907
415	Summary of the hours in the litigation by each of the attorneys, with their respective hourly rate	7903	7907
416	Summary of all attorneys' fees, paralegal fees, and costs by all of the attorneys worked for the Plaintiffs in the litigation	7903	7907

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NO.	DESCRIPTION	MARKED	ADMITTED
1	Select Committee report on Public Education Recommendations dated April 19, 1984	213	304
2	Pages of 34 CFR Chapter 11 (7-1-86 Edition)	743	746
3	Letter to Mr. Bill Sybert from Dr. Sherry Strain and attached report	851	852
4	Easel board illustration produced during Dr. Hooker's testimony	1423	1423
5	Easel board illustration produced during Dr. Hooker's testimony	1424	1424
6	Easel board illustration produced during Dr. Hooker's testimony	1424	1424
7	Easel board illustration produced during Dr. Hooker's testimony	1424	1425
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9	Easel board illustration produced during Dr. Hooker's testimony	1425	1425
10	Easel board illustration produced during Dr. Hooker's testimony	1425	1425
11	Easel board illustration produced during Dr. Hooker's testimony	1425	1426
12	Easel board illustration produced during Dr. Hooker's testimony	1426	1426
13 A,B,C	Easel board illustrations produced during Dr. Hooker's testimony	1426	1426
14	Easel board illustration produced during Dr. Hooker's testimony	1426	1426

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15	Easel board illustration produced during Dr. Hooker's testimony	1426	1427
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17	Easel board illustration produced during Dr. Hooker's testimony	1427	1427
18	Easel board illustration produced during Dr. Hooker's testimony	1428	1428
19	Bench Marks for '85-'86	1570	1571
20	Bench Marks for '84-'85	1570	1571
21	Easel board illustration of figures taken from Plaintiffs' Exhibit No. 205	1593	1593
22	A report by the Texas Commission on State and Local Tax Policy	2072	2527
23	State Board of Education Rules for Curriculum (in accompanying box)	2479	2479
24	Easel board illustraion of figures taken from Plaintiffs' Exhibit No. 205	2490	2525
25	1985 Annual Performance report compiled by the Texas Education Agency, District Report	2648	2650
26	TEAMS Texas Educational Assessment of Minimum Skills Student Performance Results for 1985 and 1986	3071	--
27	Equalized Opportunity for Quality Education	3371	3371
28	1985-86 Annual Performance Report - Part II, Information Compiled by the Texas Education Agency, District Report	3423	

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29	Resume of Lynn M. Moak	3668	3668
30	Comparison of State Revenue by District Wealth 1983-84 and 1984-85	3677	3679
31	Chart entitled Receipts and Disbursements - Receipts by Source	3691	3693
32	Budget Level III Funding Level - Current Law	3739	3750
33	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3815	3826
34	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3826	3828
35	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3874	3897
36	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3894	3897
37	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3895	3897
38	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3895	3897
39	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3895	3897
40	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3896	3897

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41	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3896	3897
42	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3896	3897
43	TEA Current Law with Projected Pupils and Preliminary 1986 Property Values and Levies	3896	3897
44	Comparison of Tax Rates and Amounts of State/ADA, By Wealth, 1986-87 through 1988-89	3927	3931
45	1985-86 Official Budget, Part I - Revenues, State Total For All Districts	3932	3937
46	TEA 1985-86 Official Budget Total Revenues and Expenditures (Reported in Thousands)	3950	3955
47	TEA 1985-86 Official Budget Total Revenue and Expenditures Per Refined Average Daily Attendance	3950	3955
48	Copy of Dr. Verstegen's study on the school equity system (in accompanying box)	4192	4195
49	Vita of Deborah Verstegen	4598	4599
50	Regular Program Cost Estimates From the 1985-86 Accountable Costs Study	4702	4705
51	TEA Program Costs, 1985-86, Basic Alltoment $1,350, Figures Represent Thousands	4723	4724
52	TEA Program Costs - 1985-86 - Basic Allotment $1,350, Amounts Per ADA	4723	4724

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57	Financial Adequacy Analysis 1985-86, Technical Descriptions of Variables	4727	4727
58	Financial Adequacy Analysis, Description of Variables Used in Revenue Analysis 1985-86	4727	4727
59	Districts, Students (ADA), Total General Fund Revenue by General Fund Per ADA Groups, 1985-86	4786	4790
60	Districts, Students (ADA), Total General Fund Revenue, and State Support, by Percent Other Local Revenue Groups, 1985-896	4790	4794
61	Districts, Students (ADA), Total Revenue, State Support by Percent Low Income Groups, 1985-86	4794	4799
62	Table 1, The Relationship between Total General Fund Revenue Per Pupil and Selected Local District Characteristics (all districts)	4799	4844
63	Table 7, Regression Analysis of the Relationship Between District-Weighted Average TEAMS Scores and Selected Local District and Personnel Characteristics	4865	4867

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✓64	Easel board illustration	4914	4914
✓65	Letter to Mr. Dameron, Superintendent Midway ISD, from Burel Block, and attached accreditation report	5616	5617
✓66	Book entitled The Status of Curriculum in the Public Schools	6336	6337
✓67	Book entitled Recommendations For Legislative Action On Public Education in Texas, submitted to the Governor and the Seventieth Legislature	6635	6636
✓68	Book entitled 1986-1990 Long-Range Plan of the State Board of Education for Texas Public School Education	6654	6656
✓69	Easel board illustration produced during Dr. Wise's testimony	7069	7080
✓69A	Easel board illustration produced during Dr. Wises's testimony	7079	7080

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NO.	DESCRIPTION	MARKED	ADMITTED
✓1	Regional Education Service Center Data	583	584,593
✓2	Second Supplement to Plaintiffs' Exhibit No. 211	592	592
✓3	Excerpts of Rich Schools, Poor Schools, The Promise of Equal Educational Opportunity, by Arthur E. Wise	660	682
✓4	Easel board illustration produced during Dr. Hooker's testimony	670	683
✓5	Photograph of construction on Socorro high school	944	945
✓6	Photograph on construction on Socorro high school	944	945
✓7	Photographs of new O'Shea Keleher school in El Paso area	945	946
✓8	Photographs of new Escontrais school	945	947
9	Chart	1391	--
✓10	Foster Analysis	1397	1397
✓11	Form of a bar graph, the Total Expenditures Per Student Unit By Wealth Group	1403	1406
✓12	Form of a bar graph, the M&O Expenditures Per Student Unit By Wealth Group	1404	1406
✓13	Form of a bar graph, the Total Expenditures Per Student Unit and Total Tax Rate By Wealth Group	1408	1630

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14	Form of a bar graph, the State and Local Tax Revenue Per Student Unit at Avg. Tot. Tax Rate By Wealth Group	1637	1638
15	Form of a bar graph, the State and Local Tax Revenue Per Student Unit at Avg. Tot. Tax Rate By Wealth Group Restricted Range	1638	1639
16	Plaintiff/Plaintiff Intervenor M&O Rates	1731	1732
17	Easel board illustration produced in Craig Foster's testimony	1911	1911
21	Easel board illustration produced in Craig Foster's testimony	3304	3324
22	Curriculum Vitae for Herbert J. Walberg	5326	5331
23	Improving the Productivity of America's Schools, and Article written by Herbert J. Walberg	5326	5400
24	Easel board illustration discussed in Dr. Walberg's testimony	5400	5400
25	Easel board illustration discussed in Dr. Walberg's testimony	5550	5551
26	Resume of Robert W. Jewell	5724	5729
27	Edgewood vs. Kirby Exhibit 1986-87 School Year 14 Lowest Spending Districts in Texas Test Scores	5724	5736
28	Edgewood vs. Kirby Exhibit 1986-87 School Year 10 Lowest Districts Student Test Scores	5724	5744

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29	Burden of States in Descening Order	5724	5753
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1 CAUSE NO. 362,516

2 EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL > IN THE 250TH JUDICIAL
3 >
4 VS. > DISTRICT COURT OF
5 >
6 WILLIAM KIRBY, ET AL > TRAVIS COUNTY, TEXAS

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7 STATEMENT OF FACTS
8

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9 BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

10
11
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17 BE IT REMEMBERED that on this the 20th day of
18 January, 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

1 (Plaintiff and Plaintiff-Intervenors'
2 Exhibits were premarked by attorneys.)
3
4 AFTERNOON SESSION
5 MR. KAUFFMAN: I'd like to introduce myself
6 first. I'm Al Kauffman for the Plaintiffs.
7 We're ready, with the Court's permission, just
8 to go ahead and start in on some evidence. We feel
9 like we've sort of made our opening statements at the
10 time of the summary judgment hearing. On behalf of
11 the Plaintiffs, we're ready to proceed with our first
12 witness.
13 MR. O'HANLON: I don't have any objection
14 to proceeding, Your Honor.
15 THE COURT: Okay. What are you all
16 anticipating out of me in regard to the Motion for
17 Summary Judgment? That is, are you anticipating a
18 ruling before we start on the merits?
19 MR. O'HANLON: I was anticipating that you
20 were going to grant it, Judge, and then we could all
21 go home.
22 THE COURT: Twice disappointed today.
23 MR. O'HANLON: I do not have any objection
24 to the Court carrying it. If you want to wait and
25 hear a little evidence before we --

1 THE COURT: I would appreciate that.
2 Okay. We'll make a note now that I am
3 continuing to carry the Motion for Summary Judgment
4 along. We're going to hear a little evidence and
5 we're going to test the water, so to speak. Although
6 I've been working on the Motions and reading, I
7 suppose I could rule, but I don't really know it
8 would serve a great purpose right at the moment.
9 Okay. Does anyone want to make an opening
10 statement? Mr. Kauffman, do you feel satisfied with
11 what you have already said here?
12 MR. KAUFFMAN: Yes, Your Honor, we do. We
13 probably have some exhibits we would like to put in,
14 but we can just wait until whenever it's appropriate
15 for the Court, maybe later on, before or after break
16 or something, just to have some options.
17 THE COURT: I'll leave that up to you.
18 MR. RICHARDS: We're ready on behalf of the
19 Plaintiff-Intervenors, Your Honor, Rick Gray and
20 David Richards.
21 THE COURT: We'll take announcements over
22 here.
23 MR. E. LUNA: We would like to make a brief
24 opening statement on behalf of the
25 Defendant-Intervenors. We did not make an opening

1 statement at the time of the summary judgment
2 hearing.
3 THE COURT: Okay.
4 OPENING STATEMENT ON
5 BEHALF OF THE DEFENDANT-INTERVENORS
6 MR. E. LUNA: My name is Earl Luna and we
7 represent 25 school districts, Carrollton-Farmers
8 Branch and a number of others.
9 Our position in this case, Your Honor, is
10 generally as follows: The Plaintiffs contend that
11 there is a state tax and it is collected on a local
12 level and expended on a local level. Therefore, they
13 say it is unconstitutional to collect and spend a
14 local tax on a local level.
15 We call to the Court's attention Article VIII,
16 Section 1(e) of our State Constitution that provides
17 there is no state ad valorem tax. So whatever it is,
18 it can't be a state tax.
19 Secondly, Article VII, Section 3 of the
20 Constitution specifically provides for the levying of
21 a local tax for maintenance and operation, as well as
22 for the building of buildings. So we think that if
23 Plaintiffs are not happy with it, they're criticizing
24 the Constitution instead of the violation of it.
25 These taxes follow the Constitution verbatim.

1 They contend, on the one hand, that they say
2 they are poorer school districts. Our position is
3 they were poorer until House Bill 72 took money from
4 the school districts that we represent and
5 transferred it to them. So that now, the $3,600.00 a
6 year that the Plaintiff Edgewood, for example, spends
7 is considerably more money than some, not all, but is
8 considerably more money than some of the school
9 districts that we represent in this case have to
10 spend.
11 So the rich districts/poor districts have now
12 changed. Those that were contending they were poor
13 before House Bill 72, through the formula that they
14 now say is unconstitutional, gave them the money that
15 used to flow to other districts. They didn't have as
16 much money to spend.
17 Now they have more than some of these
18 districts, and our testimony will show that they not
19 only have more, but their tax rate is lower. Their
20 local tax rate is lower.
21 Furthermore, we expect to show that in those
22 cases where they spend a little less than some
23 others, that those dollars do not transfer into
24 education from children. They may help some
25 educators or some building contractor who builds a

1 building, but they don't translate into education.
2 We expect to show that some of the Plaintiffs
3 in this case, and starting with Edgewood in
4 particular, they spent more money, didn't produce but
5 half as much as some of the Plaintiffs, and the only
6 way that we have of scientifically testing a school
7 district to determine whether or not they're
8 producing the TEAMS scores that will be in evidence
9 here in the Texas Research League publication, the
10 Bench Marks of '86 and '87, will be offered in
11 evidence and they will show that. Their TEAMS scores
12 are half as much as some of them who spent less.
13 We think that the testimony in this case will
14 show that it's the interest of the parents and the
15 emphasis they place on education to encourage their
16 kids to go to school and to study that has a lot to
17 do with the equation of whether or not students are
18 receiving a proper education in the school district.
19 Finally, we believe that in this case, this
20 statute, while most of the Plaintiffs were for it
21 when it was going through the Legislature, and most
22 of the Defendants were opposed to it, we're now in
23 the unusual position that it's those who lost all of
24 the money who are now saying it's constitutional.
25 We simply say it is a rational basis. There

1 might be a lot of other types of legislation that
2 would suit different school districts better, but in
3 our case, where our courts have held that our
4 Constitution and the education area, Article VII,
5 Section 1, is to be judged on the basis of a rational
6 basis, that there is a rational basis for the
7 statutes that we have in place and therefore, the
8 Court should rule them to be constitutional.
9 THE COURT: Mr. Turner.
10 MR. TURNER: Your Honor, I'm Jim Turner and
11 I represent 22 other Defendant-Intervenors in this
12 case.
13 There are a few points I think that should be
14 made at the outset of this trial, which we all
15 anticipate to be quite lengthy.
16 First, I want to mention that when you look at
17 the districts that are represented in this lawsuit,
18 and in particular look at the Defendant-Intervenor
19 districts that I represent and Mr. Luna represents,
20 you'll see that those districts are spread across the
21 state. We have districts in deep East Texas, we have
22 districts in the Panhandle, we have districts in West
23 Texas, we have districts here in Travis County, we
24 have districts in North Texas, and districts in South
25 Texas.

1 The position that we take in this lawsuit, as
2 the Court is well aware, is very simple. We believe
3 that the current system of school finance is
4 constitutional.
5 Now, the characterization that has been made
6 oftentimes in the course of taking depositions in
7 this case has been one that I think bears some
8 scrutiny. The Plaintiffs are oftentimes quick to
9 refer to our clients as rich districts. I think it's
10 important for us to understand, Your Honor, that the
11 term "rich" is not really properly applied to any of
12 the school districts in this lawsuit.
13 What we're really talking about when we refer
14 to a rich district is one -- and what we should be
15 talking about -- is one that has an above-average
16 state property tax value per student or per ADA.
17 The term "wealth" when used in this litigation
18 represents in some instances somewhat of an illusion.
19 For example, we have some districts in this state
20 that are property wealthy in terms of their average
21 wealth per ADA, who have the lowest average incomes
22 in the families residing in those districts.
23 So in truth and fact, it can be shown over time
24 that as we have moved in Texas of transferring state
25 aid from the property wealthy district to the

1 property poor district, we have oftentimes moved
2 money from those areas where poor families reside
3 into areas where wealthier families reside.
4 So, in fact, it's important for us to
5 understand that to use the word "rich" as if that's
6 somehow suspect or somehow is the result of some
7 inherent invidious scheme to benefit the wealthy is
8 certainly not the case when we talk about a property
9 tax system as it's been administered in this state.
10 In this case, Your Honor, you're going to see a
11 picture painted of a school finance system that,
12 according to the Plaintiffs in this case, does not
13 enable them to have an equal opportunity or access to
14 a quality education.
15 Contrasting with that, you will see, as
16 presented from the state's vantage point, a picture
17 of tremendous progress in the State of Texas in terms
18 of school finance.
19 Following the Rodriguez case before the Supreme
20 Court in 1973, Texas made tremendous advances by
21 action of the Legislature in equalizing educational
22 opportunity even though the Rodriguez case, in
23 effect, held the system to be constitutional.
24 In 1984, in the summer, the Legislature
25 convened in special session and enacted House Bill

1 72. That action of the Legislature occurred just
2 months after this very lawsuit was filed by this
3 group of original Plaintiffs. In the reforms that
4 took place under House Bill 72, the Legislature saw
5 fit to provide substantial additional dollar aid to
6 the school finance system in this state. In fact, a
7 tax bill was passed that generated an additional $1
8 billion in the very first year of implementation of
9 House Bill 72 to the schools in this state.
10 In addition to that, the financial reforms in
11 finance shifted state aid from the wealthy districts
12 to the poorer districts in a significant degree. By
13 way of example, it's interesting to note that
14 currently under the Texas scheme of public school
15 finance, the property wealthiest 10 percent of all
16 districts in this state receive only $300.00 per ADA
17 in state aid.
18 The 10 percent poorest districts in terms of
19 property wealth in this state today receive
20 approximately $2,400.00 per ADA. That shift that
21 occurred under House Bill 72, which was a
22 continuation of a trend that had already been in
23 place, resulted in 281 school districts in this state
24 losing an absolute amount of state aid.
25 In fact, $124 million was taken away from those

1 281 wealthiest districts and transferred along with
2 that additional $1 billion in the first year of House
3 Bill 72 to the poorer property districts in this
4 state.
5 We think, Your Honor, that the evidence will
6 abundantly show that Texas and the Texas Legislature
7 have been very sensitive in providing equity in
8 school finance; that the trend that is in place in
9 Texas and that is represented by House Bill 72
10 represents the kind of progress and reform that does
11 not justify a finding that the Legislature has denied
12 equal protection to any of the students in this
13 state.
14 We further think, Your Honor, that when the
15 Plaintiffs suggest to you that education is a
16 fundamental right which should subject this finance
17 system to close scrutiny, that they have failed to
18 deal with what the Supreme Court in Rodriguez really
19 said, as well as ignored what the vast majority of
20 state Supreme Courts, who have dealt with public
21 school finance, have ruled.
22 For example, one of the states considering the
23 public school finance system, the state of Colorado,
24 made a ruling that basically said -- and I would like
25 to read a section of their holding -- "We reject,"

1 they said, "the Rodriguez test. While the test may
2 be applicable in determining fundamental rights under
3 the United States Constitution, it has no
4 applicability in determining fundamental rights under
5 the Colorado Constitution. This is so because of the
6 basic and inherently different natures of the two
7 Constitutions. The United States Constitution is one
8 of restricted authority and delegated powers. As
9 provided in the 10th amendment, all powers not
10 granted to the United States by the Constitution or
11 denied to the states by it or reserved to the states
12 or to the people. Conversely, the Colorado
13 Constitution is not one of limited powers where the
14 state's authority is restricted to the four corners
15 of the document. The Colorado Constitution does not
16 restrict itself to addressing only those areas deemed
17 fundamental, but rather, it contains provisions which
18 are both equally suited for statutory enactment as
19 well as those deemed fundamental to our concept of
20 ordered liberty. Thus, under the Colorado
21 Constitution, fundamental rights are not necessarily
22 determined by whether they are guaranteed explicitly
23 or implicitly within the document."
24 On its face, Article IX, Section 2 of the
25 Colorado Constitution merely mandates action by the

1 general assembly. It does not establish education as
2 a fundamental right. It does not require the general
3 assembly to establish a central public school finance
4 system restricting each school district to equal
5 expenditures per pupil.
6 Appellees instead argue that we should accept,
7 amidst a raging controversy, that there is a direct
8 correlation between school financing and educational
9 quality and opportunity.
10 We refuse, however, to venture into the realm
11 of social policy under the guise that there is a
12 fundamental right to education which calls upon us to
13 find that equal educational opportunity requires
14 equal expenditures for each child.
15 Lastly, a review of the record and case law
16 shows that the Courts are ill-suited to determine
17 what equal educational opportunity is, especially
18 since fundamental disagreement exists concerning the
19 extent to which there is a demonstrable correlation
20 between educational expenditures and the quality of
21 education.
22 The evidence that will be presented on behalf
23 of the State and Defendant-Intervenors will support
24 the same type of finding by this Court as was found
25 by the State of Colorado, as well as a majority of

1 the 16 states in this country whose Supreme Courts
2 have been asked to make a determination as to the
3 constitutionality of their state system of public
4 school finance.
5 Your Honor, we think that it was important
6 perhaps for us to briefly mention a few of those
7 points simply because, as the Court is well aware, in
8 every one of the states that we have researched,
9 these 16, the trial of these issues are quite
10 lengthy. It's been discussed among us already that
11 the presentation of the Plaintiffs' case may take a
12 month or even longer, and of course, we anticipate
13 the State's effort would be equally lengthy.
14 So in closing, we believe that it's very
15 important for the Court to look very carefully at
16 what the reasoning has been in these majority of
17 other state courts where they have rejected the
18 Rodriguez analysis and have determined that under
19 their state constitution, a rational basis is the
20 appropriate test to be applied.
21 THE COURT: All right. Thank you.
22 MR. O'HANLON: Well, I guess I better take
23 a quick shot at it. If I can go to the board, Your
24 Honor, there are some numbers that we need to talk
25 about with respect to this case. I don't think

1 there's any major dispute about them. I don't
2 anticipate there's going to be much.
3 We're going to be calling them various things,
4 but it's our position that when you're analyzing the
5 amount of dollars to be spent regardless of what you
6 call them, what you're really calling them is
7 "dollars," and you've got to add them up to see how
8 much every school district has available to it for
9 the provision of an educational program.
10 The evidence is going to show in this case that
11 under the current financing system in the State of
12 Texas, that the state guarantees access to the amount
13 -- on the average now because we're talking for an
14 average district because this includes figures for
15 weighted pupils, for comp. ed., bilingual and things
16 of that nature, assuming an average district in terms
17 of composition in this state, regardless of that
18 district's wealth, the state current financial system
19 guarantees the amount of $2,736.00 per Refined ADA,
20 that's a student count, for every school child in the
21 State of Texas, regardless of effort.
22 Now, this requires a certain thing -- I said of
23 the effort, it's not quite. This requires, to yield
24 that amount of money, an average tax effort; that is,
25 is that a district cannot tax its own county, its own

1 district at below that average effort and still get
2 compensatory state dollars. It's an incentive
3 program here.
4 That effort is 52.17 cents per hundred dollar
5 valuation. That's what is called maintenance and
6 operation rate for purposes -- now remember, were
7 talking in the summary judgment that the maximum
8 authorized by statute is $1.50. So this is 52.17
9 cents per hundred dollar valuation.
10 If a district, a theoretical district, any
11 district out there taxes at that rate for maintenance
12 and operations, they're going to have at least
13 $2,736.00 per child for the provision of education in
14 that district.
15 Now, how does it split up? It's not all state
16 money. Let's look at some things. Let's look at the
17 10 percent of the poorest districts in this state.
18 Of the 10 percent poorest districts in the
19 state, of those districts you've got state funding
20 contributing in the amount of -- and there's two
21 factors here we need to consider: One, that you can
22 do something about it, and one that you can't.
23 State funding in the educational system comes
24 in the manner of two ways. One is through the
25 available fund, which is set up under the auspices

1 and funded by the permanent school fund. That's a
2 constitutional fund. That is dedicated to be
3 distributed on a per capita basis on a county basis
4 to every school child in the state.
5 That currently yields $260.00 per child in the
6 state. No, it's $280.00 -- excuse me -- per child in
7 this state. That's funded off the revenue of the
8 permanent school fund, and that's distributed on a
9 per capita basis. It's not equalized, and I don't
10 think the Plaintiffs are really taking a position
11 against that, because that's set up by the
12 Constitution in this state. So for every child in
13 the state, we have $280.00.
14 Now, for the 10 percent of the poorest
15 districts in this state, the Legislature is funding
16 out of general revenue the amount of an additional
17 $2,140.00. This gives us a total of 2,420.
18 Now, you're going to say that this figure
19 doesn't match up, and it doesn't, but this is to
20 account for the local taxes that are raised. So this
21 is the amount in the 10 percent poorest districts.
22 10 percent. That's 106 districts in this state that
23 are at the bottom. That's what the state is paying.
24 Now, let's take the 10 percent at the other end
25 of the spectrum. Remember there are two factors.

1 We've got $280.00 in the constitutional money, plus
2 the state on the other end of the stick is putting
3 money into those schools. It's putting the grand sum
4 of $95.00. That's for the 106 richest, quote,
5 districts in this state. That's how much per child
6 they're getting out of the Texas Legislature. That
7 totals $375.00. That's the comparison of the state
8 system.
9 Now, the problem that we've got is, is that the
10 state system in this case guarantees equality at a
11 specific level. It says "At this $2,736.00 level,
12 you're going to raise $2,700.00 with this tax rate,
13 and we're going to guarantee the results of that."
14 I don't think there's any dispute but that that
15 works effectively at those ranges. That's not going
16 to be a dispute in the lawsuit.
17 The issue in this lawsuit is going to be
18 whether or not school districts are entitled to
19 something more than that money. I think the evidence
20 is going to show you overwhelmingly that school
21 districts can and do run adequate programs in this
22 state for this amount of money.
23 But that doesn't mean that every school
24 district in the state is spending the same amount of
25 money. There are districts out there that have

1 substantially more property wealth than others by act
2 of God, grace, or some developer that happened to
3 move in and build the right development and at the
4 right time in that district, or oil, or something of
5 that nature. That's not something the state had
6 anything to do with. That's an act of God. They
7 happen to be fortunate in that some of them tax at a
8 higher level and yield more money. But that's beyond
9 the control of this state system.
10 Remember, the state system here is designed to
11 operate to yield a specific amount of money at a
12 specific amount of tax rate, and tolerates higher
13 effort on a local basis to the tune of almost a
14 dollar. At that rate, over this 52 cent rate, there
15 is indeed a differential ability to raise funds, and
16 that's local enrichment. You're going to hear a lot
17 about local enrichment. That's local enenrichment,
18 the ability to raise above this, and it's
19 differential.
20 But the Constitution specifically says two
21 things that are important to this case: One, the
22 ability. The Legislature is supposed to, under
23 Article VII, Section 3, specifically authorize to
24 provide for local ad valorem taxation for the
25 construction and maintenance of school facilities and

1 their operations. That's constitutionally set out.
2 The toleration of that is contemplated specifically
3 by the Texas Constitution on a district-by-district
4 basis.
5 Then we have Article VIII, Section 1(e) of the
6 Texas Constitution that was passed in 1981, if I'm
7 not mistaken, as part of the Peveto process, which
8 specifically says that the State of Texas is
9 specifically prohibited from raising a statewide ad
10 valorem taxation.
11 So not only are the districts authorized to
12 raise and collect taxes for school purposes, the
13 state is specifically prohibited from doing so.
14 So what is the remedy? What can the state do
15 about this inequity? You're going to hear a lot
16 about it. There's just no question. The highest
17 school district in this state is spending $19,000.00
18 per child. There's 39 kids in that district, and
19 most of what they're spending it on is tuition in
20 other schools and transportation. It's Texoma ISD.
21 Actually, it's 39.77 children in the district. I
22 don't know how they got the .77.
23 You'll find districts that are spending less
24 than this $2,700.00 level. There's about 300 of
25 them. The reason why is that their local tax effort

1 is higher. They don't have the required spending
2 level. They don't have their taxes up locally, so
3 they lose some of their state incentive money.
4 That's not something the state can do something
5 about. The state can set it out there, but they
6 can't make them come and take it. So that's a local
7 decision.
8 Now, at this level -- and we'll show you that
9 the Accountable Cost Committee study, that all the
10 empirical studies testified to by the Plaintiffs own
11 witnesses came up with the figure that about
12 $2,400.00 is what you need for the provision of a
13 basic education, somewhere between $2,100.00 and
14 $2,400.00.
15 We submit that it's clear under all the
16 empirical information that the state meets that, and
17 tolerates districts spending above those levels. And
18 that isn't equal. There's no question about that.
19 But that's not what we're talking about. We're
20 talking about the provision of a basic fundamental
21 education and the guarantee of that right to every
22 citizen in the State of Texas, regardless of how much
23 money they happen to have in that district. We meet
24 that by this $2,736.00 figure. The fact that some
25 district out there wants to spend a whole lot more

1 money is the business of their own taxpayers.
2 So the Plaintiffs are going to tell you that
3 the mere tolerance of this disparity should not be
4 countenance, and the state should do something about
5 it.
6 Let's do a little quick calculation. We've got
7 this district out here that's spending $19,000.00 for
8 40 kids. Let's cut them down to $3,000.00, which is
9 16. 40 times 16 is 64. That's $640,000.00, if I'm
10 not mistaken, that is being spent above the state
11 level.
12 Let's take that money away from those kids
13 which we can't do because Article I, Section (e) says
14 we can't, but let's theoretically take it away and
15 spread it out among the 3,000,000 kids in the State
16 of Texas. What good does it do? It doesn't do any.
17 Similarly, if you go down all these, you'll
18 find that by and large, in the smaller districts,
19 that the disparity between districts of any size is
20 not all that great.
21 If you look at the true cost down here, if you
22 take the 106 top districts and you take that $95.00
23 away from them, what good is it going to do? It
24 doesn't narrow the gap in this great disparity.
25 That's because the local taxpayers have decided for

1 whatever reason that they want their kids to have
2 more money spent on them and they're willing to tax
3 themselves to do so. Other districts may not be
4 willing to tax themselves to do so. Certainly the
5 state tolerates that variance in its scheme.
6 But the districts in here are coming in and
7 asking the Court to "Save us from ourselves. We
8 can't help it, Judge. We can't help but have it
9 going out there and passing the low tax rate, and we
10 want you to save us from ourselves. We want you to
11 make the state make up the funding difference because
12 we just can't bring ourselves to do it."
13 You're going to hear another thing in this
14 case. We're talking about facilities. You're going
15 to hear a lot about facilities, how the state doesn't
16 finance facilities. But there's nothing in any of
17 these formulas that takes care of school buildings.
18 That's true. It's been true for 110 years.
19 Article VII, Section 1 has been in place
20 virtually untouched in the Texas Constitution since
21 it was first drafted in 1876. And in essence, its
22 predecessor, Article X, Section 1 that got moved in
23 1876 said almost the exact same thing back to the
24 days of the Republic. Never in the history of either
25 the Republic or State of Texas has there ever been

1 any state funding going as a part of the formula for
2 facilities.
3 Now, after 110 years, the Plaintiffs are going
4 to say, "Golly bum, we've been misinterpreting that
5 Constitution for 110 years and the Constitution
6 really requires that the State of Texas provide those
7 facilities. So now, the provision of facilities is
8 constitutionally mandated when it hadn't been for 110
9 years. People have known that. Their own experts
10 are going to get up and say it was never contemplated
11 that facilities be included.
12 So we keep bringing in, Is it fair? Is it fair
13 is not the question in this case. The question is,
14 is it constitutional. Is a system which specifically
15 puts the decision-making cut in terms of tax rates on
16 the local district, that's specifically
17 constitutionally required. That's the question. Is
18 it fair is a question for the Legislature to address,
19 not the Court. The Court has got a legal obligation
20 to determine the constitutionality of these statutes
21 as they're applied and under the Texas Constitution.
22 With respect to that, I would remind the Court
23 that as we discussed in connection with the summary
24 judgment, there is a case to guide this Court in
25 terms of its interpretation of the constitutional

1 requirements of the State of Texas. That's the case
2 of Mumm versus Mars.
3 In 1931, the Texas Supreme Court said, "We want
4 you to look at those statutes based on whether or not
5 there's a rational basis for the Legislature to have
6 made the considerations that they did.
7 The Plaintiffs are going to argue that Article
8 VII, Section 1 compels strict scrutiny because of
9 some language that they said in Rodriguez, which by
10 the way was dictum because it wasn't necessary to the
11 holding of the Court, and which is an interpretation
12 of the Federal Constitution which they say doesn't
13 apply to this case because of a res judicata. That
14 case has been lost.
15 But now they're saying that what we need to do
16 is take some language out of Rodriguez and apply it
17 to the Texas Court and ask you, as a trial judge, to
18 overrule expressly Mumm versus Mars because it
19 squarely holds on the level of scrutiny in this case,
20 and in so holding, finds a higher level of scrutiny
21 than the Supreme Court was willing to hold in Mumm
22 versus Mars.
23 Then based on that, they want you to turn
24 around and hold a statute which flows approximately
25 in 1986-'87, $11.2 billion to the school kids in this

1 state for the provision of education, they want you
2 to hold that unconstitutional.
3 It's an enormous task. It is with good reason
4 and wisdom that the Texas Supreme Court in 1931 -- a
5 time in which, by the way, there was cause for
6 financial disturbance to where money, two years after
7 the Great Depression had started in the State of
8 Texas as everywhere else, money was important and
9 dollars were very important to a local school
10 district -- they're asking you to disregard the
11 wisdom there and say, "This is too complicated."
12 These are political judgments where the Legislature
13 can and should make these kinds of decisions and
14 weigh these kinds of considerations, not the Courts."
15 I might point out in that respect that that's
16 who I regard as the client in this case. I
17 understand that the Rules of Procedure and whatnot
18 require, since Commissioner Kirby and the Texas
19 Education Agency disbursed the funds pursuant to
20 Chapter 16 of the Education Code, that they be named
21 as a party technically in this case. They're not the
22 real parties in this case. There's no allegation
23 that the Texas Education Agency or Dr. Kirby are
24 misapplying the formulas. The real party in this
25 interest is the Legislature.

1 The question that you must consider throughout
2 this, is the Court set up to make these kinds of
3 determinations, to make the trade-offs necessary to
4 the provision of education for all the students in
5 the state? Is that a decision that the Court should
6 engage in, or is that an issue that is better left to
7 the deliberative process of the Texas Legislature,
8 because that's what the Plaintiffs in this case are
9 asking you to do, to usurp the power of the
10 Legislature and to tell them that their deliberative
11 process was wrong and should not be countenanced, and
12 will you ever get out of it. If you ever say strict
13 scrutiny, we're going to look on you -- are they not
14 going to be back in here next time after the funding
15 session and the time after that, and the time after
16 that, and the time after that, and the Court is never
17 going to get out of that situation. That's the
18 Legislature's job.
19 I would ask the Court to consider those notions
20 of separation of powers as it hears the evidence and
21 ask yourself regularly as to whether or not this is
22 something that should better be left to the Texas
23 Legislature, because they're the guys that have got
24 to go out and raise the money. So they should have
25 some voice in how it's spent.

1 THE COURT: All right, sir.
2 MR. DEATHERAGE: My name is Jim Deatherage
3 and I and Mr. Ken Dippel represent a
4 Defendant-Intervenor, the Irving Independent School
5 District.
6 We would like to make just brief remarks as to
7 what Irving Independent School District intends to
8 demonstrate to the Court in this matter. We will
9 largely confine our participation in this cause to
10 that question, and that deals with the constitutional
11 provision itself and the historical facts behind that
12 Constitution and the historical facts since it was
13 adopted to attempt to revise that constitutional
14 provision as laid -- as amended again to revise
15 Article VII, Section 1, fail at a time when the
16 effort was to reword that provision and attempt to
17 make education in this state a fundamental interest,
18 which the history of Article VII, Section 1 will
19 clearly demonstrate to the Court is not the case,
20 fundamental interest not being akin to education, and
21 the Court, as Mr. O'Hanlon and Mr. Luna have eluded,
22 must apply the rationale basis test.
23 The Court is going to hear testimony, some of
24 which Mr. O'Hanlon has talked about, about fairness,
25 equity, et cetera. I think we must keep in mind --

1 and this is what we hope to assist the Court to do --
2 that the constitutionality is the issue, not equity.
3 We get to the language of Article VII, Section
4 1. What did the people in 1876 mean when they used
5 the word "efficient"?
6 Constitutional history will indicate that that
7 was a reaction and that the '76 Constitution was a
8 reaction to the carpetbaggers and the Reconstruction
9 era in which education had been attempted to be made
10 a fundamental right. The people in 1876 rebelled
11 against that.
12 In reality, the education article, as Mr.
13 George Braden (Phon.) says, was not a mandate to
14 establish an efficient public free school system at
15 all, but was intended rather as a restrictive
16 document to prevent establishing an elaborate and
17 expensive system like the one devised by the
18 then-hated Republicans.
19 The Texas Constitution is not a living,
20 flexible document as some political speeches would
21 indicate. That's contrary to the Federal
22 Constitution. The Federal Constitution, the Congress
23 must look to the Constitution to find authority for
24 its act. Contrary to Texas, the Legislature, by the
25 Constitution itself, is given the authority by the

1 people of this state to act except where the
2 Constitution prohibits it.
3 Those are some of the facts we want to present
4 to the Court to help this Court interpret this
5 constitutional provision, the language that is used,
6 and the intent of the people who framed it.
7 Thank you.
8 THE COURT: All right, sir.
9 MR. GRAY: May we proceed, Your Honor?
10 THE COURT: Yes, sir.
11 MR. GRAY: As our first witness, we call
12 Dr. Richard Hooker.
13 I've already exchanged these with opposing
14 counsel. I would like to offer into evidence and ask
15 the Court to take judicial notice of Plaintiffs'
16 Exhibit 200, which is a copy of the Declaration of
17 Independence for the State of Texas; Plaintiffs'
18 Exhibit No. 201, which is a copy of Article VII of
19 the Texas Constitution; Plaintiffs' Exhibit 203,
20 which is a copy of two words, "essential" and
21 "fundamental" out of Webster's New World Dictionary;
22 Exhibit 204, which is Section 16 of the Education
23 Code of the laws of the State of Texas; and Exhibit
24 No. 218, which is an excerpt out of Chapter 75 of the
25 State Board of Education's Rules for Curriculum for

1 the State of Texas.

2 At this time, I would offer each of those into

3 evidence.

4 THE COURT: Any objection?

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

6 THE COURT: They'll be admitted.

7 (Plaintiffs' Exhibit Nos. 200,

8 (201, 203, 204 and 218 admitted.

9 MR. GRAY: Your Honor, just to short

10 circuit and point the Court to specific aspects of

11 each of those, in the Declaration of Independence,

12 which was signed by our forefathers in March of 1836,

13 the first full paragraph in the third column sets

14 forth one of the very reasons that the State of Texas

15 withdrew from Mexico was because of the failure to

16 establish a system of public education.

17 They go on to state in the Declaration of

18 Independence that, "It is an axiom in political

19 science that unless a people are educated and

20 enlightened, it is idle to expect the continuance of

21 civil liberty or the capacity for self-government."

22 Our forefathers then, in Exhibit 201, which is

23 Article VII, Section 1, set forth the requirement of

24 a public free education and a general diffusion of

25 knowledge being essential to the preservation of

1 liberties.

2 The dictionary makes it very clear that

3 "essential" and "fundamental," which is Exhibit 203,

4 mean one in the same thing.

5 Exhibit 204, which is indeed the Education Code

6 that implements these provisions, at the very

7 beginning sets forth the state policy in Section

8 16.001, which is found on the second page of the

9 exhibit. "It is the policy of the State of Texas

10 that the provisions of public education is a state

11 responsibility and that a thorough and efficient

12 system be provided and substantially financed through

13 state revenue sources so that each student enrolled

14 in the public school system shall have access to

15 programs and services that are appropriate to his or

16 her educational needs and that are substantially

17 equal to those available to any similar student

18 notwithstanding the varying local economic factors."

19 Then in conclusion, on our initial exhibits,

20 Plaintiffs' Exhibit No. 218, which is the State

21 Board's own rules pertaining to curriculum, Section

22 75.1, Subsection A, "Public elementary and secondary

23 education is responsible for providing each student

24 with the development of personal knowledge, skill,

25 and competence to maximum capacity. The fulfillment

1 of this responsibility by the state and its school
2 districts is fundamental when enabling citizens to
3 lead productive and effective lives and is further in
4 the interest of the state and the nation."
5 We would submit, Your Honor, that these
6 exhibits alone set forth that it has been and
7 continues to be the state's own policy that education
8 is indeed a fundamental right from the beginning of
9 our Declaration of Independence up through today.
10 I would now like to proceed with my questioning
11 of Dr. Hooker, if that is appropriate for the Court.
12 THE COURT: Yes, sir. That will be fine.
13 Thank you.
14
15 PLAINTIFFS' AND PLAINTIFF-INTERVENORS' EVIDENCE
16
17 DR. RICHARD LEE HOOKER
18 was called as a witness, and after having been first duly
19 sworn, testified as follows, to-wit:
20 DIRECT EXAMINATION
21 BY MR. GRAY:
22 Q. Would you state your full name, please, sir?
23 A. Richard Lee Hooker.
24 Q. And where are you employed, sir?
25

1 A. University of Houston.
2 Q. In what capacity are you employed at the University
3 of Houston?
4 A. Associate professor.
5 Q. What topic or topics do you teach?
6 A. I teach politics of education, school finance,
7 administration of curriculum, constructional
8 supervision.
9 Q. For how long have you been teaching policies of
10 school finance or school finance related courses?
11 A. Since September of 1976.
12 Q. For how long have you been involved in the general
13 area of school finance?
14 A. At the state level?
15 Q. Well, start at the state level.
16 A. Since 1968.
17 Q. If you would, give the Court a brief synopsis of your
18 background and experience as it pertains to school
19 finance.
20 A. I started by trying to learn about the Copus
21 Committee's report in 1968 and as Associate Executive
22 Director of the Texas Association of School Boards, I
23 was responsible for analyzing that and disseminating
24 information to all of the school board members in the
25 State of Texas.

1 After that, I continued an interest in the
2 school finance issue, wrote a handbook on the state
3 school finance system in the early '70s, became
4 Governor Briscoe's Special Assistant for Education.
5 Governor Briscoe asked me to place as my top
6 priority the comprehensive restructuring of the state
7 system of school finance. I gave leadership to a
8 two-year comprehensive study of the state system of
9 school finance and developed legislative
10 recommendations which the Governor proposed to the
11 session in 1975. The result of that in the
12 legislative process was House Bill 1126.
13 After that, I spent another year in the
14 Governor's office working on school finance issues,
15 left the Governor's office September 1, 1976, became
16 a professor who is considered the department
17 specialist in the area of school finance, consulted
18 with educational organizations, legislative
19 committees, candidates for the Legislature, and have
20 done so since.
21 Q. Did you have any role in consulting with the State of
22 Texas or its agencies through the -- what I will call
23 the House Bill 72 process?
24 A. Yes, I did.
25 Q. Tell us what role you had during the House Bill 72

1 process.
2 A. Essentially, I coordinated the research and
3 development of the school finance article in the
4 proposed legislation, House Bill 72, Article 2.
5 Q. Did you have any involvement with Mr. Perot and his
6 committee, the Select Committee on Public Education,
7 which I believe is called the Scope Committee from
8 time to time?
9 A. Essentially in my consulting role, I served the
10 Comptroller of the State of Texas who was chairman of
11 the Finance Subcommittee and his staff and an ad hoc
12 advisory committee, which he had assembled for
13 purposes of advising the School Finance Subcommittee.
14 Q. After the Select Committee on Public Education
15 prepared its report and made its submission, did you
16 have any further role with Mr. Perot or the Select
17 Committee or the Texas Education Agency in working
18 for or assisting the Legislature as they deliberated
19 House Bill 72?
20 A. Yes, I did. I was employed by Mr. Perot to be a
21 technical assistant, technical consultant, to the
22 lobby which was attempting to get passed the Select
23 Committee's proposals and worked with the legislative
24 processing of the school finance proposals of the
25 Select Committee through the enactment of the

1 legislation.
2 Q. Have you consulted with or been involved in school
3 finance issues in any states other than Texas?
4 A. Yes, sir. Since House Bill 72's passage, I have
5 worked with State Representative Paul Colbert, our
6 Texas State Representative Paul Colbert, in doing a
7 comprehensive study for the Oklahoma Legislature's
8 Select Committee on School Finance and assisted them
9 in the development of a plan for the comprehensive
10 restructuring of their state finance system.
11 Q. In Oklahoma, for whom were you employed or for whom
12 were you doing that work?
13 A. The Oklahoma Legislature Select Committee on Finance.
14 Q. Besides working in Oklahoma, have you done any
15 consulting work or advisory work to any other states?
16 A. Yes. I have been working with the State of Alabama,
17 State Department of Education since November of last
18 year in developing a proposal for the comprehensive
19 restructuring of the state school finance system in
20 Alabama, which the State Department of Education is
21 considering proposing to the Legislature.
22 Q. Would it be accurate to say that you have spent the
23 better part of the last 20 years dealing very heavily
24 with school finance and school finance issues?
25 A. Yes, sir, it would.

1 MR. GRAY: May I approach the witness, Your
2 Honor?
3 THE COURT: Yes.
4 BY MR. GRAY:
5 Q. Dr. Hooker, let me hand you Plaintiffs' Exhibit No.
6 217 and briefly ask you if you can identify that as a
7 copy of your resume as it currently is?
8 A. Yes, sir. This represents in the primary vita
9 through the summer of 1984 and in the mini-vita for
10 the calendar year 1985. I did not update it through
11 1986.
12 Q. Does your vita go into more detail as to specific
13 functions that you have had and things you have done
14 in the area of school finance over the last 20 years
15 that we have done in this brief testimony?
16 A. Certainly. It presents speeches, articles, chapters,
17 books, and handbook authorship and that sort of
18 thing.
19 MR. GRAY: Your Honor, at this time, I
20 would offer Plaintiffs' Exhibit No. 217.
21 MR. O'HANLON: No objection.
22 THE COURT: It will be admitted.
23 (Plaintiffs' Exhibit No. 217 admitted.)
24 MR. GRAY: Also, Your Honor, for the
25 Court's information, Plaintiffs and

1 Plaintiff-Intervenors, not knowing exactly how many
2 exhibits each one would have, Plaintiff-Intervenors
3 started at No. 200 to leave room for the Plaintiffs
4 to do whatever numbers they may have had in advance.
5 THE COURT: Okay.
6 BY MR. GRAY:
7 Q. Doctor, if you would, give the Court a brief overview
8 and synopsis of the high points in school reform and
9 pick a reference point, whichever seems to be the one
10 that happens to be the most significant for today's
11 history, and bring us forward, if you would.
12 A. Obviously, the state participated to some degree in
13 financing public education from its beginning, but
14 the first landmark school finance proposal resulted
15 from a resolution by the Legislature in 1947, which
16 called for a major state study of our system of
17 public education.
18 In 1949, it was enacted, popularly known as the
19 Gilmer-Aikin laws, in which the state assumed a major
20 responsibility for creating a basic Foundation School
21 Program. In the law, it was both referred to as
22 Foundation School Program and the Minimum Foundation
23 School Program.
24 It was a program that described certain
25 elements that should be available to all school

1 districts in the state if they chose to participate,
2 regardless of the local wealth of the school
3 districts. There was a state/local sharing, the
4 state sharing 80 percent of the cost and the local
5 school districts sharing 20 percent of the cost.
6 By 1955, research began to appear saying that
7 the state, having failed in that five-year period to
8 make progress and to update the system, that it was
9 no longer achieving the objectives that the
10 Legislature had when it was originally enacted.
11 Several of those pieces of research occurred over the
12 years.
13 Finally, in 1965, the Legislature, by
14 resolution, created another major study. The Public
15 School Committee on Education was authorized to
16 function for a period of four years. As I recall,
17 they were given something like a million dollars in
18 order to do the research and development. It
19 prepared a report for the Legislature in 1969.
20 At the time it issued the report, in my
21 opinion, it was the most comprehensive state study of
22 public education ever done in a state in the United
23 States and it came forward with recommendations for
24 the comprehensive restructuring of the system of
25 public education in the state.

1 The Legislature, in its wisdom, left the
2 reforms on the table, granted teachers a salary
3 raise, put in kindergartens and moved on.
4 Q. Now, by that -- and I don't want to break your train
5 of thought too much -- but when you said the
6 Legislature, in their wisdom, left the reforms on the
7 table, be more specific, if you will, and tell me
8 what the comprehensive study recommended as far as
9 reforms and what the Legislature chose to ignore.
10 A. Well, in general, without getting into a lot of
11 detail, it proposed reorganization of the public
12 schools of the state into school districts that were
13 countywide or had 1,600 or more -- 2,700 or more, I
14 think, ADA -- I can't remember specifically --
15 reorganized into those kinds of units, would have
16 installed a comprehensive basic Foundation School
17 Program that was adequate to support a good basic
18 educational program in every school district in the
19 state. It recommended a significant increase in the
20 local district share.
21 It would have gotten away from a very complex
22 and inequitable economic index of determining local
23 ability to support public education, and would have
24 instituted a basis of measuring what school districts
25 can tax, taxable property, on some kind of an

1 equalized basis so we could tell the rich schools
2 from the poor schools and that there could be
3 distributed state aid to local school districts and
4 an inverse relationship to local wealth and local
5 capacity to produce revenue.
6 Q. Did the Legislature proceed with implementing those
7 recommendations that you just outlined?
8 A. No, sir. They did not.
9 Q. I know I interrupted your train of thought when you
10 were at the 1969 report and the session that
11 followed. Now, if you will continue with your
12 description of the highlights of school reform.
13 A. Well, the Rodriguez case was filed, I think, in 1968.
14 In its infancy, it was really focusing on the
15 consolidation, so to speak, of the tax base in Bexar
16 County for purposes of supporting public education.
17 The Plaintiffs amended their pleadings along
18 the way and made it a much broader issue attacking
19 the constitutionality of the state system of school
20 finance under the 14th Amendment of the U. S.
21 Constitution.
22 Needless to say, that resulted in a decision by
23 the federal district court in 1971 saying that the
24 system was unconstitutional.
25 The leadership of the State of Texas obviously

1 paid a great deal of attention to this decision. It
2 was appealed to the Supreme Court of the United
3 States. They indicated that they would try to rule
4 timely on it.
5 In 1973, a decision came down from the Supreme
6 Court on a five/four vote reversing the lower Court's
7 decision. In that decision, the majority described
8 the system as unjust, chaotic and too reliant for too
9 long on the property tax, but judged that it was not
10 a fundamental right guaranteed under the Constitution
11 of the United States and, therefore, was not a
12 problem for the Supreme Court, that it was a problem
13 for state legislatures and state courts and the
14 people of the state to resolve the problem.
15 Q. After the impact of the Rodriguez events, what's the
16 next movement as far as education reform in this
17 state?
18 A. Interestingly enough, after the Supreme Court said
19 that it was a problem for the state, the Legislature,
20 in 1973, chose to do nothing in terms of trying to
21 address the problem.
22 In that time period, Governor Briscoe, as I
23 related earlier in going over the vita, asked me to
24 join his staff for the primary purpose of trying to
25 attempt a state study and trying to achieve the

1 comprehensive reform of the system even though the,
2 shall we say, decision of the Supreme Court did not
3 mandate that the state do that. Governor Briscoe
4 felt that it should be done. It was a problem that
5 should be addressed.
6 We spent two years studying the system and
7 proposed a comprehensive reform, which was House Bill
8 1083/Senate Bill 476 introduced in that session of
9 the Legislature.
10 The Legislature processed and compromised what
11 was thought of then as a fairly idealistic proposal
12 and produced House Bill 1126, which was, in my
13 opinion, an honest compromise between our proposals
14 to the Legislature and the old system which had been
15 in place, but the result was the comprehensive
16 restructuring of the state system of school finance.
17 It made substantial progress in achieving
18 equity and rationality in the state school finance
19 system.
20 Q. Was the progress that was made by the Briscoe reforms
21 in --
22 A. I wouldn't describe them as Briscoe reforms; I would
23 describe them as a legislative compromise.
24 Q. By the legislative compromise that was reached during
25 Governor Briscoe's tenure --

1 A. Yes, sir.
2 Q. -- were the reforms, as they pertain to equity and
3 equalization of school finance, were they long
4 lasting? By that, I mean was the disparity that we
5 will get to later on as far as the spending of some
6 districts versus other districts, was that gap eraced
7 forever?
8 A. Absolutely not.
9 Q. Why not?
10 A. The state made a giant step forward in 1975.
11 In 1977, entities in the legislative process
12 attacked the basic fundamental part that achieved
13 equity by cutting the local fund assignment in half,
14 which gave tremendous increases in state aid to
15 property rich school districts.
16 So after Senate Bill 1 in the special session
17 in the summer of 1977, the state had substantially
18 retreated from its progress toward equity.
19 Q. What is the next significant milestone on the road to
20 equity or inequity, as the case may be?
21 A. Some people might disagree with me, but I consider
22 Senate Bill 621 in 1979, which was actually a
23 property tax recomputation and substantive change in
24 property tax law that resulted in us beginning the
25 process of identifying who's rich and who's poor by

1 getting good property tax numbers made available to
2 the State of Texas, a very critical event in school
3 finance reform history.
4 Then basically no progress was made toward
5 achieving further equity in the system, even though
6 some minor refinements in House Bill 1126 were made
7 along the way.
8 Senate Bill 1 added $998 million to the state's
9 cost in school finance without futhering equity.
10 Q. When is Senate Bill 1?
11 A. That was in 1977.
12 In 1979, Senate Bill 350, as I recall, added
13 another billion, $200 million to the state's
14 financial commitment to public schools, again,
15 without significantly improving equity.
16 In 1981, as I recall, there was no major school
17 finance bill because the legislative processing of
18 school finance issues had been moved from passing a
19 separate school finance bill to handling the process
20 mainly within the appropriations bill. They added a
21 billion four and still made no progress toward
22 equity.
23 Then in 1983, the oil money began to fizzle and
24 the state didn't have a lot of money from increased
25 oil prices and from sales taxes that resulted from

1 inflation. And as a result, the Legislature in 1983
2 did not pass any major school finance legislation.
3 That led to the formation in the closing days
4 of that session -- I say formation -- led to the
5 passage of a resolution which created the Select
6 Committee on Public School Education.
7 Q. And thereafter, the next step, I assume, is House
8 Bill 72?
9 A. That is correct. The Select Committee spent a year
10 in study and its proposals were embodied in House
11 Bill 1 and Senate Bill 4, close to their purity.
12 After that, it became a process of the
13 Legislature processing the Select Committee's
14 proposals. The ultimate result was House Bill 72.
15 Q. Now, am I correct then in characterizing your
16 testimony that between 1975, when there was
17 substantial reform, until 1984, there was no change
18 significantly, vis-a-vis equity in school finance
19 other than in 1977, when the '75 reforms were
20 destroyed?
21 A. Yes. We took two huge steps forward and one step
22 back.
23 MR. E. LUNA: May it please the Court, the
24 thing that is before this Court is whether or not the
25 current statutes are constitutional.

1 The statutes that he's talking about -- and if
2 we're going to study the history of all the
3 legislation, it's really going to unnecessarily
4 elongate this case. Whatever happened in those
5 statutes that he's talked about earlier do not affect
6 whether or not the current House Bill 72 is
7 constitutional. That's what is before the Court.
8 In the interest of the expenditure of an awful
9 lot of time on those subjects that we think are not
10 material, we object and ask the Court to instruct him
11 to stay closer to the points before the Court. It's
12 interesting, but not material.
13 MR. GRAY: Your Honor, it's merely
14 background and we've got him to House Bill 72, which
15 is where I wanted to go right into the meat of the
16 case anyway, but I thought it was important for the
17 Court to get a general overview of where we had been
18 and where we are.
19 THE COURT: All right. Well, this might be
20 a nice time for a break.
21 We'll do that. We'll get started up again at
22 ten till.
23 (Afternoon break.)
24 BY MR. GRAY:
25 Q. Dr. Hooker, at the break, we were at House Bill 72.

1 I know you've already outlined for the Court
2 and the record your involvement in that process. Am
3 I correct in stating that your involvment throughout
4 the House Bill 72 process was extensive?
5 A. If you mean I spent a lot time, yes, sir, I did.
6 Q. Were you involved in discussions and meetings and
7 whatever with various state leaders, leaders of the
8 Texas Education Agency and members of the Legislature
9 as they worked through the House Bill 72 process?
10 A. Yes, I was.
11 Q. After House Bill 72, have you had any involvement
12 post-House Bill 72 with the general process?
13 A. Yes, sir. I was appointed by the State Board of
14 Education to the accredited program Accountable Cost
15 Advisory Committee to the State Board.
16 Q. What is the Accountable Cost Advisory Committee?
17 A. It is a statutorily mandated advisory committee to
18 the Board for the purpose of advising the Board
19 regarding the annual average accountable costs of
20 providing a quality program, personnel and
21 facilities.
22 Q. Am I correct then in stating it is an advisory board
23 created by statute that advises the Texas Education
24 Agency on what the cost of educating children in the
25 state is?

1 A. That is its purpose, as I understand it, yes.
2 Q. Now, tell us briefly what House Bill 72 accomplished.
3 Give us some of the highlights as far as educational
4 reform.
5 A. Comprehensively or school finance?
6 Q. Comprehensively. And then I'll ask you specifically
7 about school finance.
8 A. Well, comprehensively, House Bill 72 is an almost
9 300-page plus comprehensive reform of the state
10 system of public education. To my knowledge, it is
11 the most comprehensive reform bill passed in the
12 United States by any state.
13 It touched almost every facet of the operation
14 of local public schools. It has so many items in it
15 in terms of specifics that just in generalities, the
16 intent of the framers was to refocus the system on
17 learners and learning outcomes and to recapture the
18 school day for learning, to obligate local school
19 districts to teach, to offer tutorials for those who
20 were not passing, to stop social promotion, to
21 require exit tests so that students indicated
22 proficiency before they were graduated from high
23 school, just a tremendous number of things that
24 related to maximum class size, instituted a career
25 ladder, bringing about performance pay for teachers.

1 In the context of all this, Article 2 was a
2 comprehensive reform of the school finance laws.
3 Q. The reforms as they deal with education, the
4 classroom size, the career ladder, the more money for
5 starting level teachers, the, I believe, "No Pass/No
6 Play" was part of it?
7 A. "No Pass/No Play" was definitely a part of it.
8 Q. Were those reforms cost neutral -- and by that, I
9 mean were there any additional financial obligations
10 imposed on districts because of House Bill 72?
11 A. Certainly, many.
12 Q. Did House Bill 72 provide the funds for the local
13 districts to implement those additional mandated
14 requirements?
15 A. In my personal opinion, no. It was far short in
16 terms of providing the state funding necessary to
17 implement all the reforms.
18 Q. In your opinion, did House Bill 72 have some affect
19 towards a greater movement towards equity on the
20 short-term?
21 A. Yes, sir. The school finance article improved equity
22 substantially for the '84-'85 school year.
23 Q. Has that improvement in equity continued forward?
24 A. No, sir, it hasn't, in the sense that the increase in
25 the basic allotment from $1,290.00 per student in the

1 first year to 1,350 accompanied by a cut in the
2 maximum entitlement under equalization aid
3 essentially resulted in steady state levels of
4 funding to school districts. There are individual
5 school districts exceptions, but in general, that's
6 been my observation, that there has not been
7 additional increases in funding to property poor
8 school districts to assist them with offsetting these
9 additional costs.
10 Q. Has the effect of these additional costs --
11 A. Or to the property rich, for that matter.
12 Q. The effect of these additional costs as imposed on
13 districts, has it had the effect of closing the gap
14 between what the wealthy can spend and what the rich
15 can spend, or has it had the effect of widening that
16 gap?
17 A. Well, initially, it closed the gap. It provided much
18 greater increases in state funding to school
19 districts in the bottom wealth categories, and at the
20 same time, did not increase state funding. And in
21 fact, as one of the attorneys referenced, it actually
22 reduced state funding to some 200 school districts or
23 more.
24 Q. What has been the long-term effect of the funding
25 requirements of House Bill 72? By that I mean,

1 beyond the initial impact, what are we seeing today?
2 A. Well, the document "Bench Marks" put out by the Texas
3 Research League and Alan Barnes is an indicator that
4 significant local property tax increases took place
5 in the 1985-'86 school year and for this school year.
6 So the net effect is that in response to all
7 these mandates, the property rich school districts
8 have raised their local taxes to comply with the
9 state mandated requirements.
10 Obviously there are exceptions, but that
11 appears to be the generality from reviewing those
12 reports.
13 Q. The net effect of the property rich districts raising
14 taxes, what effect, if any, has that had on the
15 disparity or the gap in spending capabilities on
16 levels of rich versus poor districts?
17 A. Well, compared to the 1984-'85 school year, the
18 disparities began to widen again because the property
19 poor school districts not having the property tax
20 base to generate a lot of local revenue did not do
21 so.
22 The wealthier, average wealth and above average
23 wealth school districts dug deep in their local ad
24 valorem tax pockets to offset losses in state
25 revenues and to meet the mandates under House Bill

1 72.
2 Q. Based upon your review of the literature and your
3 review of the research that is done by the Texas
4 Research League, the Bench Marks you've referred to,
5 do you have an opinion as to whether or not the gap --
6 and by "gap" I mean expenditure levels that the
7 wealthy can and do spend versus what the poor can and
8 do spend -- is growing, or is it shrinking as we sit
9 here today?
10 A. The gap has widened somewhat in my view without
11 reviewing further data.
12 MR. GRAY: Your Honor, may I approach the
13 witness and question him from the easel where I have
14 an exhibit?
15 THE COURT: Yes.
16 BY MR. GRAY:
17 Q. Doctor, I'm going to leave you a set of data there
18 that I will introduce as we proceed through the
19 questioning, but if there are printouts or data that
20 you need to refer to as you testify, please feel free
21 to do so. But at the time you start, let me know so
22 that I can offer the appropriate thing into evidence,
23 okay?
24 A. Okay.
25 Q. Explain, if you will, how the Foundation School

1 Program works in Texas and take us through a
2 step-by-step analysis so Judge Clark can understand
3 in as simple of terms as we can make it or as you can
4 make it how the system actually translates into money
5 for educating children in the state.
6 A. The Foundation School Program is set up as a
7 state/local sharing system for guaranteeing to be
8 available a certain level of program of education in
9 that dollars make that program available. You start
10 in the process with the best four weeks of average
11 daily attendance out of a sample of eight weeks. You
12 multiply that by the basic allotment --
13 Q. Okay. I'm going to interrupt you as we go through.
14 When we have up here on the chart number of students,
15 is this number derived at from the count that is
16 actually taken during the best four weeks of
17 attendance out of an eight-week period?
18 A. Sampling period, yes.
19 Q. Is it an average of how many children showed up on
20 average during that best four weeks?
21 A. Yes, it is.
22 Q. Okay.
23 A. You subtract out the full-time equivalent student
24 from special ed. and vocational education before you
25 start operating the formula there.

1 Q. Okay. You multiply whatever number you get from this
2 best four-week sample times the basic allotment?
3 A. Yes, sir.
4 Q. What is the basic allotment?
5 A. The basic allotment was construed by the advisory
6 group that I worked with who devised it as the cost
7 of regular education, current operations for the
8 student who has no special learning problems or needs
9 that cause him to fit into one of the other special
10 program groups.
11 Q. Would I be correct then in describing the basic
12 allotment as the amount of money that it would cost
13 to educate your John Doe average child who doesn't
14 have any special needs?
15 A. It was conceptualized by the designers in that
16 fashion, yes.
17 MR. O'HANLON: Objection, Your Honor. To
18 the extent that he talked about designers, this
19 witness is not competent to testify. I believe the
20 designers of the system are the Legislature.
21 To the extent he is talking about legislative
22 intent, that is not a proper way of testifying with
23 respect to legislative intent. Legislative intent
24 can be gleaned from the official record, the
25 committee notes, the hearings that are testified --

1 where testimony is adduced in the official record
2 over at the Legislature. I believe those are the
3 designers of the system.
4 Bystander testimony is simply not relevant and
5 not a proper way of proving legislative intent. If
6 he wants to talk about some other study group, that's
7 fine. But to the extent he's talking about
8 legislative intent, I believe they are the designers
9 since they wrote the statute.
10 We would object to it as not a proper way of
11 proving legislative intent.
12 MR. GRAY: Your Honor, I'm not trying to
13 prove legislative intent. I will establish through
14 Dr. Hooker where this came from and his role in the
15 Scope Committee as they designed it.
16 THE WITNESS: It was not my intent to
17 testify to legislative intent.
18 THE COURT: I'll sustain. You may proceed.
19 BY MR. GRAY:
20 Q. Dr. Hooker, you were a consultant to the Scope
21 Committee, were you not, the Select Committee on
22 Public Education.
23 A. The finance subcommittee, yes.
24 Q. In that Finance Committee that was the subcommittee
25 of the Select Committee on Public Education, did it

1 develop a formula for school finance?
2 A. Yes, sir, it did.
3 Q. Did that formula that was developed center around or
4 have as one of its components a term called "basic
5 allotment"?
6 A. Yes, it did.
7 Q. What was the basic allotment as initially presented
8 by the subcommittee that later went to the whole
9 Select Committee on Public Education that later went
10 to the Legislature, what was basic allotment intended
11 to be?
12 A. The cost of regular education for the child who did
13 not need special programs, current operations cost
14 only.
15 Q. Now, the next part of our chart is plus add-ons.
16 What did you --
17 MR. E. LUNA: May it please the Court, we
18 object to that kind of testimony about what some
19 individuals intended. Now, we have a lot of other
20 school committees around the state and if we are
21 allowed to put in that kind of testimony as to what
22 somebody intended who didn't have the vote -- this
23 was passed by the Legislature. And what this witness
24 is testifying to now as to what he may have intended
25 and some of his friends and associates is not

1 material to what is before this Court.
2 MR. O'HANLON: I would reiterate, Your
3 Honor, to the extent that he's expressing the views
4 of others on the committee, that would call for
5 hearsay.
6 Intent, once again, even with respect to
7 committees, is made by the transcripts and official
8 passages and deliberations of those bodies, which can
9 be produced in the form of testimony, records,
10 resolutions, recommendations that are officially
11 adopted by the committee.
12 Individual anecdotal testimony with respect to
13 deliberations or what the intent of individual
14 members are is not admissible to prove the intent of
15 the committee as well.
16 I suppose he could testify as to what his own
17 perception is, but anything else would either be
18 violative of the rule with respect to how you prove
19 intent or it would be based on hearsay.
20 MR. GRAY: Your Honor, I can go back
21 through him and establish -- and I guess I should --
22 the discussions that the committee had, the
23 interchange that they had, that he was present there,
24 he heard what people said.
25 This was what he intended and he has -- no one

1 at any time ever informed him or led him to believe
2 that his understanding was contrary to what anybody
3 else intended, that this was the formula that was
4 presented and it was subsequently passed.
5 I'm not trying to belabor the topic. I'm
6 trying to make an easy explanation of what and how
7 school finance currently works in the State of Texas.
8 MR. TURNER: Your Honor, if his only
9 purpose is to simply find out what this witness
10 intended, I think it places the testimony in the area
11 of being irrelevant.
12 I think it's very important for the Court to
13 understand, the reason we're hearing so many
14 objections at this point in time is that depositions
15 would reveal to us there is some effort being made
16 here on the part of the Plaintiffs to show that the
17 basic allotment was intended by the Scope Committee
18 to mean one thing and that one amount was
19 recommended, and that when the issue came before the
20 Legislature, the Legislature made a decision to
21 select a lower amount, which Plaintiffs then contend
22 was an arbitrary decision and resulted in an amount
23 of money to fund education that's below an adequate
24 level as determined by this earlier committee.
25 So we think the objection is very important and

1 very critical in the presentation of testimony.
2 And as has been stated, Dr. Hooker has no
3 ability to testify without it being hearsay as to
4 what the other committee members said. His
5 understanding and intent is really not relevant to
6 the issue before the Court.
7 MR. GRAY: Your Honor, as an expert, he is
8 entitled to rely on hearsay, for one thing.
9 Two, as the consultant to the state in this
10 process, he is certainly entitled to inform the Court
11 as to what was his understanding and what the
12 discussions were and what people said and didn't say
13 as they worked through the deliberation process to
14 make the recommendation to the Legislature.
15 What the Legislature did or didn't do, all he
16 can say and will say is what the study indicated the
17 cost was, and what the Legislature did. But we're
18 not even at that point, as of now.
19 MR. E. LUNA: May it please the Court,
20 they've introduced in evidence as Exhibit 204 the
21 entire Chapter 16 as what the Legislature did do.
22 Now, the only other thing that could possibly
23 be material would be the Legislature's intent and not
24 what somebody who was on some committee intended for
25 the Legislature to intend. That's twice removed.

1 The legislative intent is the only thing that is
2 important to the legislation.
3 We've got an awful lot of witnesses who were
4 around that committee meeting who had a lot of
5 different ideas, but we've already had that committee
6 meeting and the Legislature made its decision and
7 passed Chapter 16, Texas Education Act, which is in
8 evidence and speaks for itself.
9 MR. O'HANLON: I think the problem, Your
10 Honor, I think the problem comes and what my
11 objection is based on is that this witness may be
12 able to testify as an expert, and I think we're going
13 to offer some testimony as to what they thought about
14 it.
15 But I think the question and the line of
16 questioning is what did the committee think, what did
17 the drafters think and things of that nature.
18 I think to that extent, it's particularly
19 onerous to us. If he wants to say what he thought,
20 that's a different matter. I suppose we're all going
21 to present witnesses that will say what they thought.
22 But I think to speak for a committee, to speak
23 for the Legislature, to speak for subcommittees where
24 there are official records and deliberations and
25 things of that nature is what specifically we have

1 difficulty with.
2 THE COURT: We'll have the witness speak in
3 terms of his intent and/or his understanding.
4 BY MR. GRAY:
5 Q. Dr. Hooker, going to the add-ons, what was your
6 understanding of what the add-ons encompassed?
7 A. Well, as you have that up there, the add-ons would
8 have to start with the cost equalization component,
9 which is identified in the law as the Price
10 Differential Index, and that's compiled there to
11 equalize the purchasing power of the dollar that's in
12 the Foundation School Program that's delivered to
13 school districts.
14 Q. It acknowledges that some students cost more to
15 educate in one area than they would cost in another
16 area because of the differences in --
17 A. Geographic differences and what it costs school
18 districts to purchase goods and services, yes.
19 Q. What other categories fall within the add-ons?
20 A. There is a formula for small schools and for sparse
21 schools, which adds additional revenue because of
22 diseconomies of scale that result from some schools
23 having to spend more money to educate kids on small
24 campuses and in small school districts.
25 In addition, there is a special education

1 allotment where weights have been placed on students
2 who are in different instructional arrangements, and
3 those weights are intended to be multiplied by the
4 basic allotment or the adjusted basic allotment after
5 you get through with the price differential
6 adjustment of that allotment and the small/sparse
7 adjustment for that allotment.
8 The special education program obviously is
9 there to provide more money for handicapped kids.
10 Q. By these special education programs, I assume we're
11 referring to bilingual education, comp. education --
12 A. If you're going to use that in the generic sense,
13 yes. There are several different special programs.
14 I was referring to one of those, which is special
15 education for the handicapped.
16 Q. These special programs, is a weight applied to them
17 that is then multiplied against the basic allotment?
18 A. The adjusted basic allotment, yes.
19 Q. Once you run through this calculation, you then come
20 up with what the district's Foundation School Program
21 costs are?
22 A. Yes. But it might be important to point out that in
23 addition to special education, vocational education
24 is recognized as a higher cost program and there's
25 additional money for that; compensatory education,

1 and there's additional money for that; bilingual
2 education, there's additional money for that; and
3 gifted and talented education.
4 In addition, there are transportation formulas
5 and formulas related to education improvement and
6 career ladder.
7 In your scheme of things there, all of those
8 would have to be identified as either special
9 programs or et cetera.
10 Q. Okay. Once one goes through the calculation -- and
11 we will in a moment actually plug the numbers in --
12 but once one goes through the calculation, you then
13 come up with an individual district's Foundation
14 School Program cost, correct?
15 A. Yes, sir.
16 Q. Then in working through to come up with how the
17 actual dollars get disbursed, do you total all of the
18 1,063 districts' costs?
19 A. Yes, sir.
20 Q. I'm correct to say that all --
21 A. Costs meaning the amounts determined by formula under
22 the Foundation School Program, yes.
23 Q. You apply the formula that's set forth on the top of
24 this chart for all 1,063 districts?
25 A. Yes, sir.

1 Q. That will get you the statewide Foundation School
2 Program cost, correct?
3 A. For those elements of the program that are subjected
4 to the local fund assignment, yes.
5 Q. And then once you know what this statewide figure is,
6 how is it divided between state general revenues
7 versus local taxes paying for the cost?
8 A. The state assumes two-thirds of the responsibility of
9 the cost of the Foundation School Program elements
10 that are subjected to the local fund assignment. The
11 local school districts are assigned a share of
12 one-third.
13 Q. Am I correct then in stating that the two-thirds that
14 is the state's share, the state actually comes out of
15 general revenues or some form of separate state
16 revenues that go into that pot?
17 A. Yes, sir.
18 Q. The one-third that is the collective local districts'
19 share, how is that one-third divvied up between
20 District 1 and District 2 and 3 and so on?
21 A. The ratio is set up, as is indicated by your chart,
22 the individual school district's property wealth, as
23 estimated by the State Property Tax Board one year
24 prior, is divided by the total property wealth of the
25 state as estimated by the State Property Tax Board to

1 create a percentage of the state total property
2 wealth for each district. All those numbers add up
3 to one.
4 Q. I take it then that within the costs that are covered
5 by this formula, what an individual district has to
6 or is required or should raise to get the full
7 maximum benefit of the formula is their property
8 wealth over the state property wealth, whatever that
9 fraction may be, times the total statewide local
10 share?
11 A. That is correct.
12 MR. GRAY: Now, let me at this point, Your
13 Honor, for purposes of my record, I would like to
14 introduce into evidence Plaintiffs' Exhibit No. 206,
15 which is a short version or a typed version of the
16 chart that the witness has been testifying about.
17 At the close of the testimony, I intend to
18 offer all the documents contained on the chart
19 itself, but I wanted to take it step-by-step.
20 That has been shared with opposing counsel.
21 THE COURT: Is there any objection to 206?
22 MR. O'HANLON: As a summary of the
23 witness's statement? Is it offered for that purpose?
24 MR. GRAY: That's correct.
25 MR. O'HANLON: No objection.

1 MR. TURNER: No objection, Your Honor.
2 THE COURT: 206 will be admitted.
3 (Plaintiffs' Exhibit No. 206 admitted.)
4 BY MR. GRAY:
5 Q. Now, let me go back to the chart, which has been
6 reduced to Exhibit 206 and ask you what number has
7 the state plugged in as the basic allotment?
8 A. The first year of the program, '84-'85, the number
9 was plugged in at $1,290.00. The second year and
10 thereafter until changed by law, it's 1,350.
11 Q. As we sit here today in Judge Clark's courtroom, what
12 is the basic allotment, 1,350?
13 A. 1,350.
14 Q. At the time the Legislature adopted 1,290 and then to
15 phase into 1,350, had you been made aware and had
16 members of the Select Committee's subcommittee on
17 finance been made aware of studies that showed what
18 the cost of educating your normal John Doe child in
19 this state actually was?
20 MR. O'HANLON: Objection as to whether
21 members of the finance committee were made aware.
22 That would either call for speculation or require
23 hearsay.
24 MR. GRAY: If he has firsthand knowledge of
25 something that transpired, it's certainly not hearsay

1 and it's not speculation.
2 MR. O'HANLON: The only way that I'm aware
3 that people can be made aware of things is if
4 somebody tells them something, and that would be
5 hearsay.
6 THE COURT: I'll sustain. You'd have to
7 develop how he is aware of what they're aware of.
8 BY MR. GRAY:
9 Q. Were you aware of any studies that indicated what the
10 true cost of educating your normal, basic, no special
11 needs child in this state was?
12 A. Yes, in terms of being asked as a consultant to
13 develop a basic allotment number through research,
14 and it was done in two different ways.
15 Q. First, let me ask you, were you as a consultant asked
16 to develop a basic allotment number?
17 A. Yes, I was.
18 Q. Who asked you to do that?
19 A. Directly, Camilla Bordie is the one who asked
20 me to do that on behalf of the Executive Director of
21 the Select Committee staff. I was involved with the
22 comptroller's staff serving the finance committee.
23 Q. Tell the Court what process you went about to come up
24 with a basic allotment number to be the real cost of
25 educating a non-special needs child in this state.

1 A. Two methods were employed. One was the development
2 of model schools through expert judgment by some of
3 the state's leading educators in attempting to
4 determine the requirements of law and accreditation
5 standards and putting specifications on the kinds of
6 resources which would be necessary to meet those in a
7 quality fashion.
8 The result of that study was an average number
9 of $2,100.00 per student.
10 The other methodology which was employed was a
11 sample of local school districts and utilizing a cost
12 analysis related to the '82-'83 school year actual
13 expenditures in school districts that were
14 representative of the school districts of the state.
15 The result of that was we determined from the
16 '82-'83 school year that the average school district
17 found it necessary to spend $1,800.00 per student in
18 average daily attendance in order to provide a
19 regular program for regular students needing no
20 special programs.
21 Q. Am I correct then in stating that based upon your
22 study of the two methodologies you just described,
23 you came to the opinion that the basic allotment
24 should be somewhere between $1,800.00 and $2,100.00?
25 A. It was the judgment of the ad hoc advisory committee

1 to the finance committee of the Select Committee that --
2 MR. O'HANLON: Objection, Your Honor. The
3 judgment of the committee is a question of record and
4 that should be proved through the formal document of
5 recommendation of that committee. It's oral
6 testimony and that would be hearsay.
7 MR. GRAY: I'll ask him again.
8 THE COURT: I'll sustain.
9 BY MR. GRAY:
10 Q. Based upon your study that you just described, what
11 was your judgment?
12 A. My judgment was that it should be $2,100.00 in order
13 to provide the opportunity to have access to a
14 quality regular program.
15 MR. E. LUNA: May it please the Court, we
16 object to that question and answer. We wonder if we
17 might ask him about four questions on voir dire on
18 that subject. We think we can demonstrate that he
19 really doesn't have an opinion as to what it costs to
20 educate kids.
21 THE COURT: All right, sir.
22 VOIR DIRE EXAMINATION
23 BY MR. E. LUNA:
24 Q. Dr. Hooker, have you an opinion based on any
25 scientific evidence as to what is the reasonable cost

1 to educate a student in Texas without any special
2 need?
3 A. Would you define "scientific" for me?
4 Q. Well, you're an expert, what would you call
5 scientific in connection with your testimony?
6 A. Well, if you're willing to accept my judgment of what
7 that is, yes, sir, I've been involved in many studies
8 and with many different methodologies involved. The
9 Accountable Cost Advisory Committee pursued three
10 different methodologies itself.
11 What do you want to know about that?
12 Q. Do you have anything that you consider to be
13 confirmed scientific data on what the cost to educate
14 a student in Texas with no special needs is?
15 A. I'm sorry, I don't know how to answer that question
16 the way you're wording it.
17 Q. Have you made an opinion or have you arrived at an
18 opinion based on what you considered scientific data
19 as to the cost of education of a student in Texas
20 with no special needs?
21 A. I would apply two dimensions to that. One would be
22 the accountable costs study results, which I found
23 valid. And that number for the '84-'85 school year
24 with the adjustments related to inflation for the
25 '85-'86 school year would have been $2,400.00.

1 Q. But those accountable costs, didn't you approach that
2 by assuming that what was spent was necessary?
3 A. We approached that in one methodology that way, yes.
4 We assumed that the collective wisdom of the people
5 of Texas as represented by their elected officials
6 local school boards found it necessary on the average
7 to spend "X" amount of dollars. Then we adjusted
8 that for inflation and other kinds of factors.
9 Q. So then your costs started out with that assumption,
10 assuming that those numbers were valid expenditures?
11 A. In one methodology, yes.
12 Q. What did you do in the other methodology?
13 A. We attempted to create a minimum model of
14 hypothetical school districts of various sizes and
15 types, and we put specific constraints that we
16 considered minimum staffing needs in order to deliver
17 a quality program. And we also looked at the school
18 districts that scored in the top 16 percent in terms
19 of TEAMS test scores and cost analyzed those systems
20 as to the costs that was associated with their
21 programs that resulted in high TEAMS test scores.
22 Q. So you used a hypothetical district?
23 A. We did in one methodology, yes.
24 MR. E. LUNA: That's all. We object to it,
25 Your Honor. He's alluded in one case he started out

1 with an assumption that what was spent was correct.
2 In the other one, he used strictly a hypothetical.
3 There's nothing to tie it to the cost of schools in
4 Texas.
5 THE COURT: I'll overrule.
6 DIRECT EXAMINATION (RESUMED)
7 BY MR. GRAY:
8 Q. Doctor, where we were before you were taken on voir
9 dire, you had described for the Court the studies
10 that you had done as a consultant to the Scope
11 Committee and come with one study $1,800.00, another
12 $2,100.00. And you came to the conclusion that 2,100
13 was, at that time, the cost for educating a
14 non-special needs regular student.
15 Do you know where I am?
16 A. Average cost, yes.
17 Q. Right. Now, to whom did you communicate that to?
18 A. I communicated that to the ad hoc advisory committee
19 and to the staff of the Comptroller.
20 Q. Who made up the ad hoc advisory committee?
21 A. I'm not sure that I can remember all of the
22 individuals who were involved. They were
23 representatives of various education associations.
24 The community schools were involved. The Texas
25 Association of School Boards were involved. The

1 Texas Association of School Administrators were
2 involved. The Texas Council of School Districts were
3 involved. The Equity Center was involved.
4 Q. Did you, in any legislative form, committee
5 testimony, testimony before or to the TEA personnel,
6 state officials, did you ever communicate to them the
7 effects of your study as to the $2,100.00 average
8 cost on a regular child?
9 A. No, sir, I did not, in the sense that you're
10 referring to.
11 Q. Did you communicate it in any way to them in a
12 non-legislative testimony context?
13 MR. O'HANLON: Objection. If he did, it's
14 not relevant. The question, once again, is an issue
15 as to the legislative decisionmaking process. The
16 Legislature receives information in a specific way.
17 There's testimony before a committee. Anything else
18 is simply irrelevant to the consideration.
19 THE COURT: Your objection is irrelevancy.
20 Right?
21 MR. O'HANLON: Yes. He said that he
22 communicated. But whether or not he communicated is
23 irrelevant. The question is, is what was presented
24 in testimony before committees of the Legislature.
25 He said he didn't, and now Mr. Gray was asking him

1 whether he had done it any other way.
2 THE COURT: Okay.
3 MR. O'HANLON: It's not the proper way to
4 prove intent.
5 MR. GRAY: I'm not trying to prove intent.
6 All I'm trying to prove is the extent to which
7 knowledge -- studies were done prior to the basic
8 allotment being adopted. That information was
9 available and brought to the attention of certain
10 people, and they did or did not accept it is a matter
11 of legislative record and I'm not going to get into
12 legislative record other than establish that, by law,
13 they passed 1,290 and 1,350.
14 But I am entitled to establish what was
15 available and out there at the time they made the
16 decision to go to 1,290 and 1,350.
17 MR. O'HANLON: That is not relevant what is
18 out there and available. The question is what the
19 testimony was before the committees deliberated.
20 That is how you determine legislative intent.
21 What is available out there in some abstract
22 notion is simply irrelevant to any consideration.
23 THE COURT: He says that what you're doing
24 is not relevant. Maybe you should respond to me and
25 tell me what it is you're trying to prove.

1 MR. GRAY: Okay. I will have testimony
2 that there indeed were studies done that showed what
3 the real cost of education was and that that study
4 was done as part of the overall state process from
5 which he was a hired consultant to do the study.
6 We have taken Mr. Moak's deposition and other
7 depositions from state officials who will testify, I
8 believe, that the 1,350 number that was adopted was
9 purely a political number, that it was not based on
10 any study whatsoever as to what the cost of education
11 was. It was just plugged into the slot.
12 I'm entitled to establish on an arbitrary basis
13 and to show whether or not there's a rational basis,
14 assuming I'm at the -- unless the state has a lesser
15 burden than strict scrutiny to show that there is no
16 rational basis for what they've done here because
17 it's totally arbitrary.
18 MR. O'HANLON: If I can respond to that, we
19 now have a new way of passing legislation, which is
20 that somebody does a study and if the Legislature --
21 regardless of whether or not it is considered by the
22 Legislature, and if the Legislature doesn't adopt
23 that study, then it's arbitrary and capricious.
24 That's simply not the way you prove legislative
25 intent. There is a way to do that.

1 The way to do that is to consider -- the
2 Legislature keeps track of committee hearings,
3 deliberations and things that are presented before
4 it. That is what the legislative intent is gleaned
5 from.
6 Whether or not a study existed out there or
7 something in the abstract notion is irrelevant to the
8 consideration. You determine legislative intent and
9 whether or not it is arbitrary and capricious, what
10 they do, based on the testimony that is adduced
11 before those committees and in those deliberations
12 and in the floor debates and in the evidence that is
13 presented by those processes, not by some study out
14 there that we don't even know whether it was
15 presented or not. But we do know, with respect to
16 Dr. Hooker, that he did not -- he just testified --
17 present these considerations to the Legislature.
18 So how is that relevant in any sense to the
19 determination of legislative intent if we're limited
20 by law to determining legislative intent on the
21 record that's adduced in the legislative process?
22 MR. KAUFFMAN: Your Honor, I think first of
23 all the Plaintiffs are willing to accept the
24 testimony, of course.
25 The Defendants' arguments are going to the

1 weight rather than the admissibility of the evidence.
2 Dr. Hooker has been established as an expert.
3 And although he's not being asked his opinion, even
4 if he did, he could use as evidence of intent
5 whatever he knew about the legislative process,
6 whatever he saw at the hearings, whatever information
7 he gave, whatever he heard. His opinion could be
8 attacked based on its weight.
9 And I'm sure the defense attorneys are willing
10 and able to do that. That does not affect its
11 admissibility.
12 MR. O'HANLON: Mr. Kauffman is simply
13 wrong.
14 The way you determine legislative intent is on
15 the record that is presented before the committee.
16 That's the only way to do it.
17 By standard, things of that nature are not an
18 admissible or valid way of proving legislative
19 intent. That studies exist out there is simply
20 irrelevant to the determination.
21 The question is the debate and what was
22 considered by the Legislature. And the only way to
23 prove that is what is in the official record of that
24 deliberative body.
25 MR. E. LUNA: Another way to say what he

1 was saying, Your Honor, is that this evidence that
2 he's offering here is not the best evidence. There
3 is a record of that hearing and that's the best
4 evidence.
5 We object to it on that ground.
6 MR. TURNER: Your Honor, when he clearly
7 advises the Court his intent is to prove the decision
8 of the Legislature was arbitrary, and you can see
9 where he's going, you can clearly see the irrelevancy
10 of the testimony being offered.
11 MR. GRAY: Judge, I am not here trying to
12 prove what the Legislature intended when they passed
13 the 1,350 basic allotment.
14 His testimony is as an employee/consultant
15 hired by a state committee. This is what he did for
16 the state committee, and these were his findings.
17 He further can testify that he has been served
18 on two other state committees since House Bill 72,
19 the Accountable Cost Committee.
20 In response to Mr. Luna's questions on voir
21 dire, he said that the '85-'86 study showed the basic
22 allotment should be at 2,400.
23 All I'm merely trying to establish is, what is
24 his personal knowledge about what studies were done
25 at this time, what was available to be considered.

1 And if they considered it, fine; if they didn't
2 consider it, fine. I'm just wanting to establish
3 through this witness what was available out there and
4 what he had done as a state consultant as part of the
5 process.
6 MR. O'HANLON: I say what is available to
7 be considered is irrelevant. The question is what
8 was considered. That's how you determine legislative
9 intent.
10 What was available out there in an abstract
11 notion is simply not a way of proving legislative
12 intent.
13 MR. GRAY: Again, I'm not trying to prove
14 legislative intent. I'm not trying to show what they
15 intended to do when they passed the 1,350.
16 MR. O'HANLON: If that's not the case, I
17 don't see how any of this testimony is relevant to
18 any issue before the Court.
19 MR. E. LUNA: He's trying to do the
20 flip-side of it. He says he's not proving
21 legislative intent. He wants to try to prove by
22 something that wasn't before them that it was
23 unreasonable and arbitrary, which is the same thing.
24 This is not the best evidence. It started out
25 on an assumption of all of the evidence of all the

1 expenditures that they were compiling to begin with.
2 THE COURT: Tell me again what you expect
3 to prove by him answering which other people outside
4 of the Legislature had this information from him or
5 like, similar information. Tell me what you're
6 trying to prove.
7 MR. GRAY: All I'm trying to prove on the
8 total scheme of things is I will take this witness,
9 hopefully, as a state consultant hired to study the
10 process and show what his findings were, show to whom
11 he communicated those findings, then show whether or
12 not his findings were used in any respect as far as
13 he can tell.
14 Then we'll be able to show, based upon what
15 they actually did, the 1,350, compared to what the
16 real cost is, how much money is short and where does
17 that money have to come from. It's going to come
18 from the local districts if they do it, obviously.
19 THE COURT: Okay. I'll overrule and let
20 the Defendants have their objection. They can go at
21 him in cross-examination.
22 BY MR. GRAY:
23 Q. Now Doctor, a mountain has been made out of a
24 molehill because this is not --
25 MR. O'HANLON: Objection to side-bar

1 comments, Your Honor.
2 MR. GRAY: Excuse me, Your Honor.
3 BY MR. GRAY:
4 Q. Were you hired as a consultant for the Select
5 Committee on Public Education that was appointed by
6 who? Who appointed the Select Committee on Public
7 Education?
8 A. That was the responsibility of the Governor and some
9 of the positions were fixed by the resolution.
10 Q. It was a state committee to study school reform in
11 school finance?
12 A. That is correct.
13 Q. Were you hired by that state committee to come up
14 with a model and offer to that state committee what
15 the real costs of educating a regular child was?
16 A. I was.
17 Q. Did you come to that determination that it was
18 $2,100.00?
19 A. On the average.
20 Q. Did you offer that to the state committee?
21 A. Through the people that I worked with, yes.
22 Q. And you've already testified that the Legislature
23 ultimately passed 1,290 and 1,350?
24 A. Yes, sir.
25 Q. Since House Bill 72 was passed, have you served on

1 any committees created by House Bill 72 to study the
2 cost of providing education to children in this
3 state?
4 A. Yes, I have. I was on the accredited program
5 Accountable Cost Advisory Committee which served
6 during the '84-'85 year. We issued a report to the
7 State Board of Education.
8 And then I was reappointed and continued to
9 serve, and we submitted a report to the State Board
10 this last October.
11 Q. The most recent report that was submitted to the
12 State Board of Education was a -- let me hand you
13 Plaintiffs' Exhibit 212 and ask you if you can
14 identify that document.
15 A. Yes, sir, I can. It is the committee report to the
16 State Board by the Accountable Cost Committee.
17 Q. Is that a committee upon which you served?
18 A. Yes, it is.
19 Q. Are you familiar with the deliberations and the
20 findings of that report?
21 A. Generally, yes.
22 Q. Was this report delivered to the State Board of
23 Education pursuant to the mandates of House Bill 72?
24 A. Yes, it was.
25 MR. GRAY: Your Honor, at this time I would

1 offer into evidence Plaintiffs' Exhibit 212.
2 MR. O'HANLON: No objection, Your Honor.
3 MR. TURNER: No objection.
4 THE COURT: All right. It will be
5 admitted.
6 (Plaintiffs' Exhibit No. 212 admitted.)
7 BY MR. GRAY:
8 Q. The Accountable Cost Committee that's been offered
9 into evidence as Exhibit 212, did it find what the
10 cost of providing a basic education in today's terms
11 is?
12 A. The '84-'85 report reflected to the State Board that
13 the cost on the average was $2,100.00 per student.
14 In the '85-'86 studies, which were reported to
15 the Board in October of '86, there were two numbers
16 which were presented to the State Board of Education.
17 One called for a standard program of 2,414 on the
18 average. And for a quality program, 2,725, if I
19 recall the numbers correctly.
20 Q. Tell me what was contained in the 2,414, the standard
21 program.
22 A. What was included?
23 Q. Yes, sir. Give me the definition of "standard
24 program."
25 A. It was the Committee's deliberation that that was the

1 average cost of meeting the current operations
2 requirement for a program that met the legal
3 requirements specified by the Legislature and the
4 State Board requirements which they established in
5 accreditation standards.
6 Q. What was the definition of a quality program?
7 A. The definition of a quality program was a cost
8 associated with TEAMS test scores for the 7th grade
9 that resulted in a district being placed in the top
10 16 percent in scores.
11 Q. Tell me what TEAMS scores are briefly.
12 A. Team scores are criterion-referenced tests designed
13 by the State Education Agency and administered in all
14 of the school districts in the state.
15 Their purpose is to determine the mastery of
16 essential elements as specified by the State Board of
17 Education for all of the subjects that are taught in
18 the public schools as a part of the basic curriculum
19 as defined by the State Board.
20 Q. Am I correct in defining a quality program as a
21 program that meets the basic state requirements plus
22 the students did well by passing the TEAMS test?
23 A. Yes, sir.
24 Q. As an educator, is that your definition of what a
25 quality education program is?

1 A. No, sir, it is not. By definition, the State Board
2 established essential elements. They used that term
3 to imply that what was under discussion and what was
4 being required of local school districts was the
5 basic minimum that every student should master.
6 To me, quality education goes far above a
7 simple mastery of minimum skills.
8 Q. Now, let me focus you back on the Foundation School
9 Program with the basic allotment as it currently
10 exists in law at $1,350.00.
11 Does this Foundation School Program cover the
12 cost, the real cost of educating children in this
13 state as we currently sit here?
14 A. In my opinion, no.
15 Q. In your opinion, what elements of the real cost of
16 education are left out of the Foundation School
17 Program? And by that I mean, what costs are there
18 that the districts have to incur and pay in order to
19 provide an education? Or putting it the other way
20 around, if they don't provide an education, what
21 costs are there that they don't have to worry about
22 that are not covered with the Foundation School
23 Program?
24 A. In terms of major elements, quite obviously, the
25 formula structures do not speak to the facilities

1 issue. So facilities costs are not in any way
2 covered in the formula structures.
3 Q. FSP shortages, that's what I'm going to title this
4 document.
5 You said facilities are not covered in the
6 program?
7 A. Formula structures, yes.
8 Q. In order to avoid spelling "facilities," can I write
9 buildings?
10 A. It's quite all right with me, sir.
11 Q. Do you have access to or do you have any information
12 as to what, on an ADA basis, average daily attendance
13 basis, those costs are out there the districts are
14 actually having to incur but that are not covered by
15 this Foundation School Program?
16 A. According to Alan Barnes' Bench Marks report, the
17 average cost for '85-'86 was $300.00 in order to meet
18 the debt service requirement, $300.00 per student on
19 average daily attendance.
20 Q. Are you referring to what I have marked as
21 Plaintiffs' Exhibit 205?
22 A. Yes, sir, I am.
23 Q. Let me give you my copy. Tell me what Plaintiffs'
24 Exhibit No. 205 is.
25 A. Obviously, my opinion --

1 Q. That's fine.
2 A. -- it is a document which is put out by the Texas
3 Research League and historically has been issued for
4 many years now on an annual basis that attempts to
5 show the budgeted or appropriated, if you want to use
6 that term, monies and the effective tax rates that
7 school districts incur in providing those expenditure
8 levels.
9 Q. Do you know where the information that's contained in
10 this report, where the Texas Research League gleans
11 that information?
12 A. From the budgets which were provided to the Texas
13 Education Agency by local school districts.
14 Q. Is the information contained in this document,
15 Plaintiffs' Exhibit 205, information that is
16 generally considered to be reliable and is relied
17 upon by experts such as yourself in reviewing and
18 analyzing school finance?
19 A. Absolutely.
20 MR. O'HANLON: I can probably shorten this.
21 We have no objection to the admissibility of this
22 document.
23 MR. GRAY: I offer Plaintiffs' Exhibit 205.
24 THE COURT: It will be admitted.
25 (Plaintiffs' Exhibit No. 205 admitted.)

1 BY MR. GRAY:
2 Q. Now, you were talking then about buildings, and you
3 said debt service is excluded in the building
4 category. And by debt service, I assume you mean the
5 actual loan or bonds that have to be sold by a school
6 district to build their physical plant; is that
7 correct?
8 A. I'm referring to the amount of revenue that the
9 school district must collect annually to service its
10 outstanding debt.
11 Q. Much like repaying a car loan?
12 A. Paying principal and interest on an outstanding debt,
13 yes.
14 Q. The Research League has found that number to be,
15 based on '85-'86 data, what?
16 A. $296.00, I think, per ADA.
17 Q. What other costs -- and I will get to the shortage in
18 the basic allotment in a moment -- but what other
19 costs are not included within the Foundation School
20 Program that school districts actually do have to
21 incur out there?
22 A. That they have to incur?
23 Q. Well, or if they choose to educate the children to
24 meet state standards that they need to incur.
25 A. You are excluding the basic allotment cost?

1 Q. Yes. I'll come to basic allotment, any shortages
2 that may be there in a moment.
3 Let me ask you this way. Do all schools go
4 into debt in order to build their facilities?
5 A. No, they do not.
6 Q. Some schools, are they able to build their facilities
7 and pay for their capital outlay just out of their
8 own revenue?
9 A. A few of the wealthier school districts operate on a
10 pay-as-you-go basis and they do not sell bonds, but
11 simply accumulate fund balances from their current
12 operating tax rate to build facilities.
13 Q. Putting aside that, people that just are kind of
14 paying as you go and don't have to -- I assume those
15 are wealthy districts?
16 A. They would have to be above-average wealth, in my
17 opinion, to be able to do that.
18 Q. Putting aside those people, what about things such as
19 library books, desks, projectors, the things you have
20 to have to operate a school?
21 A. There is a capital outlay cost which local school
22 districts incur for items. I think the definition is
23 "that are durable for more than two years and the
24 unit cost is more than $100.00."
25 Q. Is the capital outlay cost, would that include those

1 things like library books and desks and things of
2 that nature?
3 A. Yes, audio/video materials, that sort of thing.
4 Q. Is it part of the Foundation School Program formula
5 that we discussed previously?
6 A. Not specifically. It can be construed that the basic
7 allotment and other monies made available can be used
8 for that purpose, but it is not a specific formula,
9 no.
10 Q. If you use the basic allotment, the 1,350, for that
11 purpose, are you able to provide any kind of
12 education to the children?
13 A. Well, basically it would diminish your opportunity to
14 do that, yes.
15 Q. Let me do this then. What I'm trying to establish is
16 to what extent there are costs out there that
17 districts are having to incur in order to meet the
18 educational needs of their children but that aren't
19 covered by the Foundation School Program. Do you see
20 where I am?
21 A. I understand where you are. The difficulty that I'm
22 having is in saying that the other money out there
23 can't be spent for that purpose. It can be.
24 Q. Okay. Well, let's go to the basic allotment then.
25 We know the basic allotment by law now is

1 $1,350.00, correct?
2 A. Yes, sir.
3 Q. Are you aware of any district out there of the 1,063
4 districts that is able to educate its children and
5 provide an education to its children and only spend
6 $1,350.00?
7 A. To my knowledge, no.
8 Q. Your testimony earlier was that you knew the basic
9 allotment was -- or that the study that you had done
10 showed the basic allotment should be --
11 MR. E. LUNA: Please the Court, we object
12 here to him leading the witness and advising him as
13 to what his earlier testimony was.
14 THE COURT: It's leading. I'll sustain.
15 BY MR. GRAY:
16 Q. In your opinion, how much is the basic allotment
17 short today compared to -- the 1,350 compared to what
18 the real cost of educating a child is out there?
19 A. $1,050.00.
20 Q. How do you determine that the basic allotment today
21 is $1,050.00 short?
22 A. My assumption is based on the studies of the
23 Accountable Cost Committee for the '85-'86 school
24 year, if we're taking that as our bench mark, in
25 order to provide the opportunity to have a quality,

1 regular education program, that the number in the
2 formula should be $2,400.00.
3 Q. And take me step-by-step, if you can, through how you
4 get from 1,350 to $1,050.00 short?
5 A. Because our studies conclude that in order to achieve
6 excellence on the TEAMS test scores that school
7 districts found it necessary to spend $2,725.00 on
8 their regular education program.
9 Q. You're actually having to spend 2,725. The basic
10 allotment is 1,350. Now, that's not going to be --
11 A. You have to discount the 2,725 for Price Differential
12 Index and small/sparse formulas. And utilizing the
13 numbers in this report, it would appear that $325.00
14 should appropriately be subtracted from the 2,725,
15 which is how I got to the $2,400.00 number.
16 Q. You're taking off an additional 325 to be the
17 additional cost for Price Differential Index and
18 small/sparse in what we called before some of the
19 add-on factors?
20 A. Yes, sir.
21 Q. That gets you to the 1,050 shortfall?
22 A. Yes, sir.
23 Q. Did the Accountable Cost Committee report that has
24 been introduced and admitted as Exhibit 212, did it
25 make any findings or projections as to what this

1 shortfall is going to be as we move into the future?
2 A. It did. It attempted to suggest numbers for the
3 '87-'88 school year and the '88-'89 school year.
4 Q. Tell us, if you will, what, in your basic opinion,
5 happens to this 1,050 shortfall today. How short
6 does it get in the future?
7 MR. O'HANLON: Objection, Your Honor. This
8 is not relevant to any consideration before the
9 Court.
10 Now we're trying what the state hasn't done,
11 even though it hasn't had the opportunity to vote on
12 it because the legislative appropriations cycle for
13 '87-'88 and '88-'89 has not even -- it's never been
14 presented to the Legislature.
15 Now we're trying that the Legislature is
16 somehow messing up by not appropriating money that
17 they haven't even had the opportunity to meet on.
18 MR. GRAY: Your Honor, it's already into
19 evidence as Exhibit 212. The findings are contained
20 in the report. I'm merely asking him to summarize
21 those findings briefly.
22 For purposes of any further demonstration, I'm
23 going to use today's shortfall, not the future
24 shortfall.
25 But since the study is here, it's already been

1 admitted, I thought it only relevant to ask the
2 witness to elaborate as to what it contains.
3 MR. O'HANLON: If it's already in the
4 record, then it's cumulative.
5 I still have my objection to not being relevant
6 because the Legislature hasn't even had a chance to
7 consider it.
8 THE COURT: I'll overrule.
9 BY MR. GRAY:
10 Q. Tell us what your studies have indicated is going to
11 happen to this 1,050 shortfall as we move into the
12 future.
13 A. I can't recall specific numbers, but they were
14 inflation adjusted at 7.5 percent to get us from the
15 '85-'86 cost for the first year, and I think 4.5 for
16 the second year of the coming biennium.
17 So that shortfall is going to be greater, if
18 that's what you're asking me.
19 Q. I'm not asking you to give me a number.
20 A. In addition, we had to add to it because of due legal
21 requirements that are associated with maximum class
22 size in grades 3 and 4 and for the obligations which
23 are incurred in moving teachers a step forward on the
24 state minimum salary schedule.
25 Q. So am I correct then in just summarizing that the

1 study indicates that the shortfall gets bigger in the
2 future?
3 A. Yes, it does, if 1,350 is not adjusted.
4 Q. Okay. Now, the combined shortfall as we sit here
5 today, in your opinion, is the combined shortage on
6 the debt service and the shortage on the basic
7 allotment; is that correct?
8 A. At least that, yes.
9 Q. When you say the term "at least that," what do you
10 mean?
11 A. Well, I prefer not to elaborate.
12 Q. How does a district go about making up this
13 shortfall, this thirteen hundred and some-odd
14 dollars, that is not contained within the Foundation
15 School Program formula? What are their options?
16 A. Well, of course, they can not raise it. They can
17 also raise local ad valorem taxes in order to provide
18 that money.
19 Q. If a district chooses to not raise the shortfall, the
20 thirteen hundred and some-odd dollars, do you have an
21 opinion as to what affect that has on the children in
22 this state as far as educational opportunity?
23 A. Their quality of education suffers.
24 Q. If a district chooses to raise at least the 1,346
25 shortfall, from what source is available to raise it?

1 A. From what source?
2 Q. Where does it come from?
3 A. Taxpayer pockets.
4 Q. Is it taxpayer pockets spread out across the state or
5 is it the local taxpayers?
6 A. Well, the local taxpayers in terms of local school
7 districts making the choice to raise or not to raise.
8 THE COURT: Counselor, that might be a good
9 place to stop.
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14 (Proceedings adjourned.)
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3-87-190-CV

CAUSE NO. 362,51 C 8353

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

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk
By_____Deputy

STATEMENT OF FACTS

VOLUME II OF XLVI

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THIRD COURT OF APPEALS
SUSAN K. BAGE, CLERK

TAKEN JANUARY 21, 1987

MONICA ROSS WEIDMANN
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9 MR. BILLY DON WALKER

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5 MR. MARVIN DAMERON

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1 CAUSE NO. 362,516

2 EDGEWOOD INDEPENDENT SCHOOL > IN THE 250TH JUDICIAL
DISTRICT, ET AL >
3 >
>
4 VS. > DISTRICT COURT OF
>
5 >
>
6 WILLIAM KIRBY, ET AL > TRAVIS COUNTY, TEXAS

---

7 STATEMENT OF FACTS
8

---

9 BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

10

11

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-and-

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-and-

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25 -and-

1 APPEARANCES CONT'D

2

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6 ATTORNEYS FOR THE DEFENDANT-INTERVENORS

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17 BE IT REMEMBERED that on this the 21st day of
18 January, 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 JANUARY 21, 1987

2 MR. GRAY: We are ready to proceed when

3 Your Honor is.

4 THE COURT: I'm ready.

5 MR. GRAY: Judge, in order to speed things

6 along, we have decided not to belabor the point on

7 the basic allotment, the question that arose

8 yesterday with the objections. We have another

9 witness who will come in who will testity as he

10 testified before the Senate and the House Committee,

11 that Dr. Hooker's study and recommendations not only

12 were notified to the Legislature, they were indeed

13 incorporated into the Senate Bill and the House Bill

14 that was initially introduced and, in fact, passed

15 the Senate. So we will tie up that loose end with

16 another witness as opposed to trying to belabor the

17 point through Dr. Hooker. But I didn't want the

18 Court to be under the impression that we had a loose

19 end that was hanging, which has been tied up with

20 another witness.

21 THE COURT: Okay.

22 MR. GRAY: Dr. Hooker.

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1 DR. RICHARD HOOKER
2 was called as a witness, and after having been reminded
3 he was still under oath, testified as follows, to-wit:
4 DIRECT EXAMINATION (Resumed)
5 BY MR. GRAY:
6 Q. Doctor, as we took the break yesterday, we were
7 talking about the shortages of cost out there to
8 comply with the state mandate to do the House Bill 72
9 requirements to provide the minimum education for the
10 children. And you had enumerated a $1,346.00
11 shortfall. Do you know where we are?
12 A. At least, yes.
13 Q. Okay. And by the term "at least," I take it that you
14 mean that that is a conservative number in your
15 opinion?
16 A. Yes, it is.
17 Q. The local districts, how do they go about -- what
18 choices do they have as far as making up this
19 shortfall or not making up the shortfall?
20 A. They certainly can choose not to make it up and --
21 Q. And what is the result of their choosing not to make
22 it up?
23 A. The quality of the education and the children suffer
24 as a result of them not raising the money.
25 Q. And if they choose to try to make it up, where does

1 the money have to come from, this $1,346.00
2 shortfall?
3 A. If they what?
4 Q. It they choose to make it up, where does the money
5 come from?
6 A. Local district taxpayer pockets.
7 Q. Now, have we asked you to secure printouts and
8 computer data that is necessary for you to evaluate
9 the current system of school finance and how it is
10 affecting current districts and current taxpayers
11 across this state as we sit here today?
12 A. Yes, sir.
13 Q. Let me hand you a series of exhibits. First, I will
14 hand you Plaintiffs' Exhibit No. 215 and ask if you
15 can identify that for me, sir?
16 A. Yes, sir. It's a ranking of school districts by
17 total effective tax effort.
18 Q. And the information that is contained in here of the
19 ranking of total effective tax effort, where did that
20 information come from?
21 A. It came from an analysis done by the Equity Center
22 utilizing Texas Education Agency data, which the
23 Texas Education Agency provided to the Equity Center.
24 Q. And do you consider the information contained in
25 Exhibit 215 and the ranking in 215 to be reasonably

1 reliable?
2 A. Yes, sir.
3 Q. And is it information that you have reviewed in
4 preparing for your testimony as to the
5 constitutionality and the equity of the current
6 system of school financing?
7 A. Yes, sir.
8 MR. GRAY: Your Honor, at this time I would
9 offer in evidence Exhibit 215.
10 MR. O'HANLON: Judge, we need to clear
11 something up at this point. It's not that I'm going
12 to object to that necessarily, but we've got
13 something that we need to clear up in this case over
14 discovering and things of that nature. I don't want
15 to get in the position of waiving an objection that
16 Mr. Gray makes at a later time.
17 The situation is simply this, is we've provided
18 -- we have not seen these documents before yesterday.
19 This comes out of the central data base that we've
20 provided. And we've never managed to get to a
21 stipulation about it, but it comes out of data that's
22 been provided by the other side.
23 I assume the Plaintiffs are going to have a lot
24 more manipulations of that data that they have not
25 presented us. We likewise are going to probably have

1 some manipulations of that data that we haven't
2 presented them. We're still working on them right
3 now.
4 I don't want to be in a position -- I want to
5 get a consistent ruling with respect to whether or
6 not this is admissible or not. It all comes out of
7 the same source. I don't think there's any
8 reasonable doubt that the information is possessed by
9 both sides. It's just presented in a particular form
10 and both sides are going to be doing it.
11 So I suppose to preserve this situation, I need
12 to object to the admission of Plaintiffs' Exhibit 215
13 because it hasn't been produced in discovery.
14 MR. GRAY: We weren't asked to produce it
15 in discovery, Your Honor. We sent interrogatories to
16 the state asking for this information produced that
17 never were answered.
18 MR. O'HANLON: That's simply not true.
19 MR. GRAY: But they never sent us
20 interrogatory one.
21 And if he can point to an interrogatory where
22 he's asked us or a motion to produce that he's asked
23 us to produce it, I'll be happy to respond, but he
24 cannot do so. And these were not prepared until
25 January 15th, reflecting the date on them. But we're

1 not going to be trying to play games with the State
2 on their printouts.
3 THE COURT: Let me ask this. This is
4 information -- what's on 215 is information that the
5 witness from the data base that you all have agreed
6 upon he can testify to.
7 MR. GRAY: Absolutely.
8 MR. O'HANLON: The problem that I've got is
9 I'm not really seeking -- I have to object so I don't
10 get caught with the same objection down the road
11 because we're going to display the same information
12 in different ways.
13 THE COURT: Okay.
14 MR. GRAY: I don't intend to object to
15 their data coming in that they've shared with us that
16 we've all been relying on. I gave them our printouts
17 yesterday.
18 THE COURT: Let me say this. It seems to
19 me like if you all have an agreed data base and each
20 of you have experts that have taken those numbers
21 that you've agreed upon and interpreted them in
22 certain ways, then maybe made compilations that would
23 reflect that interpretation, I don't see much
24 difference between the witness testifying one, two,
25 three, four, exactly what's on 215, I don't see much

1 difference between that and having an exhibit
2 prepared, that the witness prepared, that would
3 reflect his work, which would be the same thing as
4 his testimony. It seems to me like that might be
5 fair for both sides.
6 MR. GRAY: That's right.
7 MR. TURNER: Your Honor, I don't see any
8 problem with that. I would like to clarity one
9 thing. We did make a request of Mr. Gray with regard
10 to 16 experts, one of which is on the witness stand
11 at present, and asked for the production of each
12 document that will be relied upon or each report that
13 will be relied on by that expert. So it is true, as
14 Mr. O'Hanlon stated, this is an example of a document
15 that is being used that was not furnished to us in
16 our discovery process and was requested.
17 And as he pointed out, that will occur, I'm
18 sure, on the other side as well because there's been
19 data produced since we've engaged in the discovery
20 process.
21 So it will happen that there will be documents
22 that will be brought forward that have not been
23 exchanged.
24 THE COURT: What we're trying to do, I
25 think, is just sort of settle down and see who is

1 going to object to what data and what the Court is
2 going to do about it, isn't that right?
3 MR. O'HANLON: Uh-huh.
4 THE COURT: Okay. Well, let me make a
5 proposition then. I suggest to you that given the
6 state of the case and the state of discovery, how
7 would you all feel about allowing your various
8 experts to use the data base that you all have agreed
9 upon and to have documents introduced that you may
10 not have given each other by reason of discovery, but
11 have them admissible nonetheless because the idea
12 being that they could testify the same way that those
13 documents indicate.
14 MR. O'HANLON: That's acceptable.
15 MR. GRAY: Absolutely.
16 MR. E. LUNA: That's agreeable at least
17 without waiving the hearsay of a particular document.
18 For example, I don't know -- we haven't determined
19 yet exactly who made this test, this 215. It shows
20 to be made by the Equity Center. Maybe he's the man
21 who made it for them. I don't know.
22 MR. GRAY: No. He said it was made by the
23 Equity Center at our request. Mr. Foster, from the
24 Equity Center, is going to be here. He's going to
25 testify. We can tie all of that up. We're just

1 trying to move the case along on the data that we've
2 all already shared and already agreed to and --
3 MR. O'HANLON: Yes.
4 MR. GRAY: -- you're objecting.
5 MR. O'HANLON: I just want to make sure
6 that we've got the same set of rules for both sides
7 since they were introducing those. The Court's
8 proposition is perfectly acceptable to us.
9 MR. GRAY: It's acceptable to us, Your
10 Honor.
11 MR. E. LUNA: Yes, it is to us, too.
12 THE COURT: Okay. Again, the idea being
13 that there won't be objections on account of a
14 failure of discovery for disclosure by some of the
15 documents that various of you would want to introduce
16 in regard to your experts, the idea being that the
17 experts could testify just as well as having the
18 documents, themselves, in evidence.
19 MR. E. LUNA: We'll all have witnesses that
20 will change these figures around some, but they'll
21 come from the same basic figures.
22 THE COURT: Okay.
23 MR. O'HANLON: With that, Your Honor, I
24 don't have any objection to 215.
25 MR. GRAY: In fact, we can probably speed

1 it up because I've already shared all of these with
2 Mr. O'Hanlon. I'll just introduce them and identify
3 them and I don't think there will be any objections
4 to them.
5 THE COURT: Okay.
6 MR. GRAY: At this time, Your Honor, I
7 would offer Plaintiffs' Exhibit 215, which is a rank
8 order of the 1985-1986 total effective tax rates for
9 all 1,063 districts. It ranks the districts from the
10 district that has the lowest tax rate through the
11 district that has the highest tax rate. I would
12 offer 215 into evidence at this time.
13 MR. TURNER: Do you have any extra copies
14 of that?
15 MR. GRAY: Yes, I do. Steve will get them
16 for you.
17 THE COURT: Hearing no objection, it will
18 be admitted.
19 (Plaintiffs' Exhibit No. 215 admitted.)
20 MR. GRAY: At this time, Your Honor, I
21 would offer Plaintiffs' Exhibit 216, which is the
22 rank order of the 1985-1986 total expenditures per
23 average daily attendance for students at the various
24 school districts. It ranks them from the district
25 that spends the lowest amount per average daily

1 attendance all the way through the district that
2 spends the highest amount on average daily
3 attendance.
4 MR. O'HANLON: No objection.
5 THE COURT: It will be admitted, 216.
6 (Plaintiffs' Exhibit No. 216 admitted.)
7 MR. GRAY: At this time, Your Honor, I
8 would offer Plaintiffs' Exhibit 214, which is a
9 printout showing the rank order of property wealth of
10 all the 1,063 districts based upon 1985 property
11 values per average daily attendance. In other words,
12 it shows what is the -- how much property wealth they
13 have per student attending school.
14 It also contains the expenditure of a
15 particular district on our -- on average daily
16 attendance as well as our tax rate. It's a
17 cumulative printout of the two previously introduced
18 with the one addition being the wealth category.
19 MR. O'HANLON: No objection.
20 THE COURT: All right. It will be
21 admitted.
22 (Plaintiffs' Exhibit No. 214 admitted.)
23 MR. GRAY: At this time, Your Honor, I
24 would offer into evidence summary exhibit,
25 Plaintiffs' Exhibit 210, which is a summary printout

1 showing urban county data.

2 It contains the school districts contained in

3 the San Antonio area, Dallas area, El Paso, Harris

4 County, Tarrant County and Travis County and breaks

5 them down on the same kind of comparison as these

6 previous printouts do, but it pulls them altogether

7 so that the people can focus on particular areas of

8 the state. I would offer 210 at this time.

9 MR. O'HANLON: What number is that?

10 MR. GRAY: 210.

11 MR. O'HANLON: No objection.

12 THE COURT: Okay. It will be admitted.

13 (Plaintiffs' Exhibit No. 210 admitted.)

14 MR. GRAY: Your Honor, at this time, I

15 would offer Plaintiffs' Exhibit 211, which is the

16 same kind of comparative data, but this goes into

17 looking at selective school districts in each of the

18 20 regions of the state. The state is divided into

19 20 regions for educational purposes, and this picks

20 out districts within each and every region, and again

21 shows wealth, shows tax rates, expenditures and TEAMS

22 scores or how the students in those particular

23 districts did on the TEAMS scores.

24 MR. O'HANLON: No objection.

25 THE COURT: Okay. It will be admitted.

1 (Plaintiffs' Exhibit No. 211 admitted.)
2 MR. GRAY: At this time, Your Honor, I
3 would offer Plaintiffs' Exhibit 207, which is a
4 comparison sheet, again, summarizing information
5 contained on some printouts previously offered
6 showing tax rates of the 50 poorest and richest, 100
7 poorest and richest, and so on, districts comparing
8 their tax rates and their expenditures throughout the
9 state. And I would offer Plaintiffs' Exhibit 207 at
10 this time.
11 MR. O'HANLON: No objection.
12 THE COURT: All right. It will be
13 admitted.
14 (Plaintiffs' Exhibit No. 207 admitted.)
15 MR. GRAY: And likewise, at this time, Your
16 Honor, I offer Plaintiffs' Exhibit 209, which is a
17 comparison very similar to Plaintiffs' Exhibit 207,
18 but it compares rich districts versus poor districts
19 on tax rates that exceed $1.00, and also in tax rates
20 between 80 cents and $1.00, which are obviously the
21 highest tax rates.
22 I would offer Plaintiffs' Exhibit 209 at this
23 time.
24 MR. O'HANLON: No objection.
25 THE COURT: All right. It will be

1 admitted.

2 (Plaintiffs' Exhibit No. 209 admitted.)

3 MR. GRAY: Your Honor, I have -- the

4 witness will be testifying from and about these

5 exhibits. I have copies of each of them for the

6 Court.

7 THE COURT: All right, thanks.

8 Let's see, these are not the ones in evidence,

9 these are for me?

10 MR. GRAY: Yes, sir. They all have the

11 same stickers. The ones in evidence are here by Dr.

12 Hooker and I will make sure they get to the court

13 reporter.

14 MR. TURNER: Rick, do you have any extra

15 copies of those?

16 MR. GRAY: Yes. I think Steve is getting

17 them for you right now.

18 DIRECT EXAMINATION (RESUMED)

19 BY MR. GRAY:

20 Q. Doctor, let's talk about tax rates that districts

21 have to impose in order to make up the $1,346.00

22 shortfall that you've testified before, okay?

23 You start with 1,346 short at a minimum,

24 correct?

25 A. Yes, sir.

1 Q. Now, look at Plaintiffs' Exhibit No. 214, which is
2 the wealth rank order, and give me the poorest
3 district in the state, what their property wealth is
4 per average daily attendance.
5 THE COURT: Which exhibit?
6 MR. GRAY: 214.
7 A. The poorest district in the state is Edcouch-Elsa
8 with $21,293.00 of wealth per refined ADA for the
9 1985 property values reported by the State Property
10 Tax Board.
11 Q. Okay. Take me through the methodology and the
12 calculations on how Edcouch-Elsa, with $21,293.00 in
13 property per student attending school, how you
14 calculate how much tax they would have to impose to
15 raise the $1,346.00 shortfall.
16 A. The tax rate is levied in sets per hundred dollars of
17 value. So what you would do is divide 1,350 or 1,346
18 by -- excuse me -- by two hundred and -- rounding --
19 13 units of hundred dollars of value, which would
20 result in a necessary tax rate of $6.32 by rounding.
21 Q. Okay. Now, how did you get the 213? Did you divide
22 this 21,293 --
23 A. I was taking the units of a hundred dollars of value
24 out of the property tax base, 21,293. I just rounded
25 the nine to three.

1 Q. Okay. So you divide that 21,293 by a hundred --
2 A. Yes.
3 Q. -- and that will get you how many units of tax you've
4 got?
5 A. Yes, sir.
6 Q. And that is 212.93 units.
7 Now, what do you do with this 212.93 taxing
8 units in order to make up the 1,346?
9 A. You divide that into $1,346.00.
10 Q. And that comes up to a tax rate of $6.32; is that
11 what you said?
12 A. Approximately, yes, by rounding.
13 Q. So for the poorest district to make up the $1,346.00
14 that's not in the foundation program, they would have
15 to tax themselves at $6.32 on a tax rate, correct?
16 A. Yes, sir.
17 Q. Now, look at the wealthiest district in the state.
18 And I want to do the same calculation for them.
19 A. The wealthiest district is shown to be Santa
20 Gertrudis Independent School District with
21 $14,661,867.00.
22 I think Mr. O'Hanlon said it was the result of
23 an act of God.
24 Q. And running through the same calculation with them,
25 do I divide the 14,661,867 again by a hundred to get

1 the number of units?
2 A. Yes, sir.
3 Q. My calculation shows that is 14,146,618.67 units.
4 And then, do I divide the number of units into the
5 1,346 to get the tax rate to make up the shortfall?
6 A. Yes, sir, you do.
7 Q. And if I divide 1,346 divided by the number of units,
8 I get a tax rate of --
9 A. Less than one cent.
10 Q. .009 tax rate.
11 A. Yes, sir.
12 Q. Now, is it your testimony that under the current
13 system we have in place on school finance, one
14 district, in order to raise $1,346.00 can tax itself
15 at less than a penny, and another district, in order
16 to raise the same amount of money to spend on the
17 students, has to tax at $6.32?
18 A. Yes, sir. The general principle being that the
19 property rich school districts have to tax themselves
20 at a less effective effort to raise any given amount
21 of money than the property poor school districts. As
22 a matter of fact, that poor school district would be
23 prohibited by law from levying that kind of a tax
24 rate.
25 Q. Now, you say that -- what is their limitation, tax

1 limitation on law of how much tax can they impose by
2 law?
3 A. Well, in terms of the current operations, they're
4 limited to a dollar and a half unless somebody has
5 changed the law and I haven't noticed. Terms of debt
6 service, they could have an unlimited tax rate on
7 debt service.
8 Q. So, if we were to take out --
9 A. But most of that money obviously is involved in
10 current operations shortfall.
11 Q. Right. As you had described yesterday, there is over
12 a thousand dollars of the shortfall is in current
13 operations?
14 A. 1,050, yes, sir.
15 Q. And if you were to use the same make up of the
16 operations shortfall on the poor district, you would
17 divide 1,050 as opposed to the 1,346 by the 212.93
18 units, is that right?
19 A. Yes, sir.
20 Q. And what tax rate does that get you?
21 A. It gets me $4.92, rounded 4.93.
22 Q. And am I correct then in understanding your testimony
23 that for this poor district, that by law, they could
24 not tax anywhere close to high enough to even come
25 close to making up this shortfall?

1 A. No, sir. They could not.
2 Q. And is this a real district? Are we talking
3 hypothetical or are we talking about a real district
4 with real students in this state?
5 A. We are talking about a very real district, which has
6 a fairly large student body.
7 Q. Now, if we were to make the same calculation and not
8 pick the poorest and the richest, but instead move in
9 5 percent of students on either end, so that we're
10 only looking at part of the pie as opposed to the
11 full pie.
12 A. Uh-huh.
13 Q. You see what I'm going at?
14 A. Yes, sir, right.
15 Q. In Exhibit 214, because it contains the column of
16 cumulative percent of average daily attendance, would
17 allow us to do that, would it not?
18 A. Yes, sir. It would. Poteet I.S.D. is where you
19 break over the 5 percent level of students in average
20 daily attendance.
21 Q. Okay. Give me the district that is at the 5 percent
22 level on poorness as far as coming in, it is off the
23 bottom 5 percent. You say that's Poteet?
24 A. Yes, sir.
25 Q. And what property wealth do they have?

1 A. $51,958.00 per ADA.
2 Q. And do the same thing for the district that is on the
3 wealth end, 5 percent in on wealth?
4 A. That is 5 percent in on wealth, okay. That would
5 seem to be Sheldon I.S.D. --
6 THE COURT: What page?
7 THE WITNESS: It's Page 18.
8 THE COURT: Sheldon.
9 A. -- with 422,500.
10 Q. Okay. Actually that's at 91. Instead of 5 percent,
11 we're about --
12 A. There's a big break.
13 Q. -- 8.7 percent in, right?
14 A. Yeah. There's a big break there because of the size
15 of the Dallas Independent School District.
16 Q. Okay. Instead of changing this 5 percent, I'll round
17 it to 9 percent in on the wealthy. So we're now
18 looking at only 86 percent of the whole pie, correct?
19 A. Yes, sir.
20 Q. Because we're excluding --
21 A. Yeah.
22 Q. -- the 9 percent on the top and the 5 percent on the
23 bottom. And you say that is Sheldon, and their
24 wealth per student is 422,500?
25 A. Yes, sir.

1 Q. Now, to make up the 1,346 shortfall that we've talked
2 about -- and let me go back to this earlier one.
3 This ratio is about the difference in the poorest tax
4 rate and the richest tax rate, on the extremes, is
5 about 700 to one, correct?
6 A. Yes, sir.
7 Q. And it appears that the ratio on wealth, the
8 twenty-one thousand and some odd dollars, compared to
9 the fourteen million and some odd dollars also was
10 about 700 to one on wealth -- I mean on ratio.
11 A. Obviously, it would be the same ratio, yes, sir.
12 Q. So am I to predict, if one were to look at the ratio
13 of property wealth of the poor compared to property
14 wealth of the rich, which here is approximately eight
15 to one, as we move in 14 percent, do you anticipate
16 that the tax rates we're going to ultimately get are
17 going to be the poor are going to have to pay eight
18 times more tax than the rich to raise the same amount
19 of money?
20 A. Approximately, yes.
21 Q. Okay. Let's run through the same calculations.
22 You've got 51,958 divided by a hundred, that will
23 give us 519.58 units. Am I correct so far?
24 A. Yes.
25 Q. And then to make up the 1,346 short, I divide 1,346

1 again by the 519.58?
2 A. Yes.
3 Q. And what tax does that get you?
4 A. Approximately $2.59 with rounding.
5 Q. Okay. And that includes both -- that will be the tax
6 necessary to make up the 1,346 shortfall?
7 A. Yes, sir.
8 Q. If you want to limit it again strictly to operations,
9 divide the 519 units into the 1,050, and tell me what
10 taxes, just for operations, is necessary?
11 A. With rounding, $2.02.
12 Q. And again, that exceeds what they can do by law?
13 A. Yes, sir.
14 Q. Okay. Now, take the same calculation on the district
15 that is 9 percent in on wealth and let's run through
16 it.
17 I get -- when I divide the 422,500 -- 4,225
18 units. Does your calculator tell you the same thing?
19 A. Yes, sir.
20 Q. And then when I would try to make up the 1,346
21 shortfall for this district, what tax rate do you
22 come to?
23 A. With rounding, $3.18.
24 Q. Run it again. I think you've miscalculated a number.
25 A. Okay.

1 MR. O'HANLON: I think that's leading.
2 THE COURT: I guess I could scratch out
3 that $3.00.
4 A. Well, that's still what I'm coming to, about that.
5 Q. Well, let's do it this way. Take 1,346, which is the
6 shortfall number you're trying to make up --
7 A. Yes, sir.
8 Q. -- divide that by 4,225.
9 A. My calculator is still showing it that way. I don't
10 know what that means.
11 Q. Okay, use my calculator.
12 MR. O'HANLON: I know that's leading.
13 MR. KAUFFMAN: Your Honor, that's not
14 leading, that's helping.
15 A. Oh, I'm sorry. Excuse me, I was doing the decimal in
16 the wrong place, $3.18.
17 Q. It is not $3.18, it's --
18 A. I'm sorry. I apologize. It's 31 cents, rounding,
19 it's 32 cents. I'm sorry.
20 Q. So the tax rate necessary for the wealthy district to
21 make up this same shortfall after you have moved in 9
22 percent on wealth is 32 cents?
23 A. Yes, sir.
24 Q. And again, the difference in tax rates turns out to
25 be right at eight times, does it not? By that I mean

1 the poorest have to tax themselves at a rate eight
2 times higher than the rich after you've moved in 14
3 percent to make up the same $1,346.00?
4 A. Yes, sir.
5 Q. Now, let's go to -- put this in dollar and cents
6 terms. Do you have the copy -- let me hand you the
7 copy of the Bench Marks that was introduced and
8 admitted yesterday. And does Bench Marks show you
9 and show us all in a real world context what
10 districts have to -- what a district, wealthy
11 district taxes an $80,000.00 house and you might cite
12 the Court to the page.
13 THE COURT: What exhibit number is that,
14 please?
15 MR. GRAY: It is 205.
16 A. Page 14 is where the discussion starts where they
17 have shown the impact on an $80,000.00 house and the
18 district that taxes at the highest level on the
19 house. Bench Marks identifies that with the
20 homestead exemptions at $1,106.00 on Page 15, the
21 third paragraph from the top.
22 Q. Okay. Let's back this up.
23 A. Okay.
24 Q. On an $80,000.00 house, tell me -- and that is
25 considered to be somebody's home. They're living in

1 it and they have the homestead exemption.
2 A. Yes.
3 Q. How much tax, real dollars out of their pocket, do
4 they pay on an $80,000.00 house in the district that
5 is represented in the Bench Marks on Page 14?
6 A. It's on Page 15 --
7 Q. Excuse me.
8 A. -- where the data is presented, but Crystal City, the
9 tax on that house is $1,106.00.
10 Q. Crystal City, they tax at how much on this $80,000.00
11 house?
12 A. 1,106.
13 Q. And this is actual money that the person has to take
14 out of their pocket and pay to the school district
15 for taxing purposes, correct?
16 A. That's what the report says, yes, sir.
17 Q. Okay. Now, give me the tax on this same $80,000.00
18 house that they pay in the wealthy district.
19 A. Compared to $38.00 in Iraan-Sheffield.
20 Q. How do you spell Iraan?
21 A. They spell it I-R-A-A-N.
22 Q. How about if I just put Iraan-S?
23 A. Okay. It's certainly fine with me.
24 Q. And that is -- what is that tax?
25 A. $38.00.

1 Q. So, the people in Crystal City are paying right at 30
2 times as much tax on the same $80,000.00 house as
3 they are in Iraan-Sheffield?
4 A. Yes, sir.
5 Q. Now, for paying the 30 times more tax in Crystal
6 City, go to the printout -- in any one you want to
7 that ranks the -- that shows the expenditures of
8 these two districts and tell me how much -- when
9 Crystal City taxes at $1,106.00, how much money does
10 that translate into being able to spend on the kids
11 for education in Crystal City?
12 A. Crystal City is showing $3,250.00 per refined ADA.
13 Q. So, they spend 3,250 on education for kids.
14 Now, what is the $38.00 that the taxpayer in
15 Iraan-Sheffield pays? How much money does that get
16 his or her -- how much money is available to be spent
17 on his or her children for their education?
18 A. $7,481.00.
19 Q. Now, the numbers that we've just talked about are not
20 hypothetical numbers, are they, sir?
21 A. They are on the Texas Education Agency data as
22 analyzed by the Equity Center and presented to me.
23 Q. Okay. By that, I mean, these dollars, this is what,
24 in fact, is being paid for taxes in Crystal City and
25 Iraan-Sheffield, correct?

1 A. By the Bench Marks report, yes.
2 Q. And the 3,250 and the 7,481 is, in fact, what's
3 getting spent on the kids for education in these
4 districts, is it not?
5 A. That's what the report shows, yes, sir.
6 Q. And the net effect of this, is it not, that the poor
7 district, by taxing itself at a rate of 30 times
8 higher than the wealthy district, is only able to
9 spend half or less than half as much as the wealthy
10 district on education?
11 A. Definitely less than half, yes.
12 Q. And explain to me how does this happen. How does
13 1,106 end up being a much smaller number than the
14 $38.00?
15 A. Very simple, the tax base of Iraan-Sheffield is
16 $7,327,646.00 per ADA compared to Crystal City with
17 $66,071.00. So, Iraan-Sheffield has a huge tax base
18 for students compared to a relatively poor one for
19 Crystal City.
20 Q. So, am I correct then, in stating that it's simply a
21 matter of property tax based wealth?
22 A. It is a matter of the fortuitous incidence of
23 property tax wealth.
24 In this particular case, the incidence of oil
25 and gas in Iraan-Sheffield.

1 Q. Is this type of disparity that we've talked about so
2 far in the three different examples we've gone
3 through, the richest and the poorest districts moving
4 in 14 percent in on the ends, and then a real life
5 example on an $80,000.00 house in the two districts,
6 is this type of phenomenon an isolated event in this
7 state or is it more widespread?
8 A. No. That's very definitely the real world in Texas
9 school finance. And I might point out to you, while
10 5 percent doesn't sound like much, you're talking
11 about 150,000 kids that are involved in 5 percent
12 when you lop off 5 percent of the kids.
13 Q. And likewise, if you lop off 9 percent or so at the
14 top, I assume you're talking about another
15 approximately 300,000 kids?
16 A. Approximately, yes.
17 Q. So, the range that I have put up here lopping off the
18 14 percent and still showing an eight times different
19 tax rate does not take into consideration over half --
20 right at half a million school children out there,
21 450,000 or thereabouts?
22 A. Yeah, 450,000 or a few less.
23 Q. Okay. And if you want to look at all the school
24 children, if you don't want to say, well, there's
25 some that we're just not going to look at out there

1 and they are just going to take their lumps and move
2 on down the road, if you look at all the school
3 children, is this the example you use, the one that
4 shows that -- the poorest and the richest?
5 A. That's the extreme range, yes, sir.
6 Q. And it shows a tax rate to do the same thing of $6.32
7 to as low as below a penny?
8 A. The poorest district estimates 700 times the effort
9 of the wealthiest district to produce the same amount
10 of revenue, yes.
11 Q. Okay. Now, have we asked you and have you analyzed
12 the system? And I will focus you on Exhibit 207.
13 A. This one?
14 Q. Yes, sir.
15 A. Okay. Yes, sir.
16 Q. And have you looked at this system across the board
17 from the 50 poorest, compare them to the 50 richest
18 on tax rates and on expenditures per student all the
19 way down to comparing the 500 poorest and the 500
20 richest districts?
21 A. Yes, sir. That's what this table represents.
22 Q. And when you compare each of these increments, are we
23 safe in saying that by the time you have gotten to,
24 say, 500 poorest and 500 richest, you are literally
25 looking at every single district but 63 in the state?

1 A. I think that's the latest number on the TEA reports,
2 yes, 1,063 districts.
3 Q. Okay. And to get the average tax rate, did we merely
4 take the tax rate that is shown on the --
5 MR. O'HANLON: I think counsel -- I think
6 that is a little bit leading.
7 THE COURT: Okay, just a minute, please.
8 MR. O'HANLON: If counsel wants to testify,
9 he can get up and do that.
10 THE COURT: Okay.
11 BY MR. GRAY:
12 Q. Doctor, tell us how you go about comparing the 50
13 poorest and the 50 richest tax -- I mean, the 50
14 poorest and the 50 richest districts, for example, on
15 average tax rate and average expenditure for average
16 daily attendance?
17 A. This table was created by simply adding the tax rates
18 of the 50 poorest school districts and dividing by
19 50, the 50 richest dividing by 50. The expenditures
20 per refined ADA is done in the same manner, adding
21 their expenditures per student and dividing by 50 in
22 the poorest and the richest.
23 Q. And likewise, the calculation, as you go all the way
24 up to 500 --
25 A. All the way through.

1 Q. -- the same kind of calculations?
2 A. Yes, sir.
3 Q. Okay. Now, without belaboring the point, the Court
4 then at any given point can look and see who, on a
5 wealth basis, who is taxing at the lowest rate
6 compared to the highest rate on a rich to poor
7 comparison, correct?
8 A. Yes, sir.
9 Q. And on every single instance, as you go down the
10 chart, comparing the whole school system, are the
11 richest districts taxing at lower rates than the poor
12 districts?
13 A. When you compare the averages of these groups, that
14 is the pattern.
15 Q. And likewise, if you do the reverse, if you then
16 compare across the board on the averages the
17 expenditures per student, what children are getting
18 spent on them for education, in the poor districts
19 compared to the rich districts up and down the line,
20 what do you see?
21 A. Well, it's quite obvious that in the 50 poorest/50
22 richest, the richest school districts are taxing at
23 about half the rate of the 50 poorest, while they're
24 getting to spend over twice as much on their kids for
25 less tax rate.

1 And when you even go down to the bottom and
2 compare the 500 poorest to the 500 richest, you see
3 that the poorest, on the average, are taxing at
4 somewhat greater rate and only can spend $3,100.00
5 per student, while in the 500 richest school
6 districts, for a lesser tax rate, there you can spend
7 at an average of 4,648.
8 Q. Am I correct then in stating that in every single
9 comparison, the richest districts tax less on a rate
10 basis, but because they can -- but because -- well,
11 the result of their taxing less means that they get
12 to spend more?
13 A. Yes, sir. That is a generalization often made. Tax
14 high, spend low; tax low, spend high.
15 Q. And in your opinion, is that an accurate statement as
16 it pertains to the current system of school finance
17 in this state?
18 A. It certainly describes the Texas system, yes, sir.
19 Q. Now, have you looked at the analysis -- and I'll now
20 point you and the Court to the Exhibit 209.
21 And tell us please, if you will, simply what
22 this is.
23 A. It is a table which attempted to identify the school
24 districts that taxed first at the rate of over a
25 dollar, and then those in the second column over on

1 the right that taxed between 80 cents and a dollar in
2 terms of the effective tax rates. And the groupings
3 of the 100 poorest, 16 of those felt it necessary to
4 tax at a level exceeding a dollar, while only two out
5 of the richest 100 school districts felt it necessary
6 to do that.
7 Q. In a summary fashion, what does this comparison on a
8 high tax rate basis tell you?
9 A. It tells me that the poorest school districts have
10 higher average effective tax rates in this part of
11 public education, and the richest do not find it
12 necessary to tax themselves at those levels.
13 Q. And if you compare again, the 209 with the data that
14 we saw on 207, are they consistent or inconsistent
15 findings?
16 A. They are consistent.
17 Q. Now, have you looked at this phenomenon of tax low,
18 spend high, tax high, spend low on a basis that we
19 could all equate to the cities, the Travis County
20 area, the San Antonio area, so we actually see what
21 is happening in the urban areas of this state?
22 A. Yes, sir. On Exhibit 210, a table has been prepared
23 that shows the major metropolitan counties of the
24 state.
25 If you look at Bexar County, you can see that

1 Alamo Heights' expenditure per pupil is $4,127.00 for
2 a total effective tax rate of 56 cents per hundred
3 dollars of value.
4 When you look down at Southside down at the
5 bottom of that grouping of school districts, they're
6 in the same county, you see Southside spending 2,853,
7 and yet they are taxing themselves at $1.10 per
8 hundred of value, almost twice the tax rate of Alamo
9 Heights.
10 Q. Now, let me take you through this example in more
11 detail and then I'll ask you some questions about the
12 other counties as well.
13 And Alamo Heights has 2,972 students, correct,
14 according to the data provided?
15 A. Yes, sir.
16 Q. And Southside has 2,179 students, correct?
17 A. Yes, sir.
18 Q. So we're talking roughly the same amount of kids in
19 each school district.
20 A. They are about the same size. Alamo Heights is a
21 little larger.
22 Q. And the result of the current system is that for the
23 2,000 plus kids in Southside, when their parents tax
24 themselves at a rate of twice what they're taxing in
25 Alamo Heights, they have over $1,300.00 or

1 thereabouts less spent on them?
2 A. Absolutely.
3 Q. And this same type of comparison -- by the way, how
4 far apart are Southside and Alamo Heights?
5 A. I don't know exactly, but 20 miles.
6 Q. The same kind of comparison -- for example, if you
7 pick Dallas County, do you find the same -- the
8 similar type disparities where some districts in the
9 same area are able to tax at a much lower rate and
10 yet spend at a much higher rate than one of their
11 very neighboring school districts?
12 A. Yes, sir. If you'll look at Highland Park, they are
13 spending at a level of $4,836.00 per student for the
14 tax rate of 35 cents per hundred.
15 You can look down at Wilmer-Hutchins in the
16 same county, just a few miles away, and you can see
17 that they are spending at a level of $3,513.00 per
18 student. The tax rate there is $1.05. So Alamo
19 Heights is spending --
20 Q. You mean Highland Park?
21 A. Highland Park, excuse me, is spending at a level of
22 some 13 or more hundred dollars per student higher
23 and making roughly a third of the tax effort.
24 Q. So, for example, in Highland Park, they're taxing at
25 one-third the rate of Wilmer-Hutchins --

1 A. Absolutely, yes.
2 Q. -- and yet are able to spend, what, 40 percent more?
3 A. Close to that, yes.
4 Q. And is the same comparison, is it going to be true
5 county-by-county as we can look at it throughout the
6 state?
7 A. You can look at any of the counties that you want to.
8 El Paso County tends to be relatively poor
9 countywide. And all of the other counties you will
10 find relatively high-spend tax-low districts and
11 low-spend tax-high districts, all in the same county.
12 Q. Well, let's look, for example, in Travis County,
13 where we are today.
14 A. Travis County. Lake Travis I.S.D. is spending at
15 $7,227.00 per student for a 63 cent tax rate.
16 Pflugerville is spending at $2,887.00 per student for
17 a 68 cent tax rate.
18 Q. So, again --
19 A. It's a somewhat higher tax rate, and yet spending
20 less than half the money that Lake Travis is.
21 Q. Now, when we talk about how much money they have
22 available to spend on their children, is that a
23 reflection of what happens to be the per pupil tax
24 base that's also shown on this urban county data?
25 A. Yes, sir.

1 Q. So when I see that the per pupil tax base in Lake
2 Travis, for example, is $950,000.00 rounded, and the
3 per pupil tax base in Pflugerville is $220,000.00
4 rounded, if they tax at the same -- roughly the same
5 effort, does that explain why Lake Travis is able to
6 spend roughly four times more money?
7 A. Absolutely.
8 Q. Now, have you looked at this same phenomenon, the
9 tax-low, spend-high, tax-high, spend-low, the trap
10 the poor districts are caught in, in something other
11 than just the urban areas?
12 A. Yes. We looked at regional areas.
13 Q. Okay. What exhibit are you referring to?
14 A. I am referring to Exhibit 211.
15 Q. How many, for education purposes, how many regions is
16 the state broken into?
17 A. 20.
18 Q. And is that -- does the Texas Education Agency -- are
19 these the 20 regions recognized by the Texas
20 Education Agency?
21 A. Yes, they are.
22 Q. And have you looked at this same phenomenon that
23 we've been discussing in each and every one of the 20
24 regions throughout the state?
25 A. Yes, sir. I have reviewed that data.

1 Q. And tell us in general, and then pick out whatever
2 examples you think are appropriate to articulate the
3 point, but without going through each of the 20
4 regions, tell us what you find when you look at the
5 data on a region-by-region basis.
6 A. You find basically the same pattern that you found in
7 looking at the urban areas. If you look at Region 1,
8 you can see that Rio Grande City is spending
9 $2,717.00 per student for current operations for a
10 tax rate of $1.18. And I don't know how to pronounce
11 the name, but --
12 Q. San Elizario?
13 A. San Elizario is spending $6,602.00 for an 86 cent tax
14 rate.
15 You can take any region that you're interested
16 in and you can find the examples of the tax-high,
17 spend-low, tax-low, spend-high situation.
18 Q. So, am I correct in stating that the trap that we've
19 been describing the poor districts are in is not only
20 true in the urban areas, but it's true in every
21 region of the state?
22 A. It is absolutely true in every region of the state.
23 Q. And does the amount of the revenue a school district
24 has available and spends on educating its children,
25 in your opinion, does it make any difference?

1 A. Absolutely.
2 Q. And why do you think it makes a difference?
3 A. School districts have to buy goods and services. And
4 money buys them.
5 Q. The data that we have looked at through your
6 testimony so far is average daily attendance data,
7 correct?
8 A. Yes, sir.
9 Q. And in layman's terms, is that -- if I or the Court
10 were to walk into a classroom and count heads and
11 we've got 20 pupils in that classroom, that would be
12 what we're looking at, right, in a very simple term?
13 A. In a simplistic way, yes.
14 Q. I assume that all students do not cost the same to
15 educate.
16 A. No, sir. Some students are extremely costly to
17 educate. Some handicapped kids are costing school
18 districts as much as $60,000.00 to $80,000.00 a year.
19 Q. And the data that we have looked at is treating --
20 A. All kids alike.
21 Q. -- all kids alike, correct?
22 A. We're just looking at the refined average daily
23 attendance of the school district.
24 Q. Have you looked at the data and are you familiar
25 enough with the dispersion of higher cost kids on a

1 basis of wealth of an area, rich districts versus
2 poor districts, to have an opinion as to whether or
3 not you find more high-cost kids in one area or the
4 other?
5 A. The tendency is for property poor school districts to
6 have a higher incidence --
7 MR. O'HANLON: Your Honor, before he does
8 that, I would like to take him on voir dire to
9 question him about the basis of his conclusion.
10 THE COURT: Okay. You may do so.
11 VOIR DIRE EXAMINATION
12 BY MR. O'HANLON:
13 Q. You said if you looked at something -- Dr. Hooker,
14 what have you looked at that will tell you the
15 tendency? What empirical data have you examined?
16 A. The weighted student counts of school districts in
17 comparison to their wealth base, and just reviewing
18 that data. I have not performed a detailed analysis
19 of that. We are frequently in a position of
20 analyzing finance data utilizing weighted students
21 rather than just looking at the refined ADA.
22 Q. All right. So what you've done is you haven't looked
23 at a correlation?
24 A. I have not.
25 Q. And you would recognize that a correlation would be

1 the way to go about making that interpretation?
2 A. Yes, sir. I have not done that kind of analysis, no.
3 Q. All right. So what you're talking about is that
4 you've kind of looked at it and you're making a
5 guess?
6 A. An educated guess, yes.
7 Q. That's just by looking at stuff, there's no sight --
8 A. Just by -- no, you're correct.
9 MR. O'HANLON: All right. I don't think
10 this witness is qualified to make that kind of
11 determination. We do object.
12 MR. GRAY: Your Honor, it goes to the
13 weight to the extent to which it's a valid objection.
14 He has looked at the data. He has already said he's
15 looked at the data. And I'm merely asking if he has
16 an opinion as to where you generally find higher cost
17 students.
18 MR. O'HANLON: He also said that the way he
19 made that determination is to run a correlation on
20 it. And he said he hasn't done that.
21 MR. KAUFFMAN: Your Honor, can I jump in
22 and try four questions, too?
23 VOIR DIRE EXAMINATION
24 BY MR. KAUFFMAN:
25 Q. Dr. Hooker, are you on any committee set up by the

1 State of Texas looking at the issues of weighted
2 students?
3 A. We did that in the Accountable Cost Advisory
4 Committee, yes.
5 Q. Okay. You're on that committee?
6 A. Yes, sir.
7 Q. Is that committee looking at these issues?
8 A. We did, yes.
9 Q. Okay. Have you been a consultant of that committee
10 either voluntarily or hired?
11 A. Not a consultant. I've been a member of that
12 committee.
13 Q. You're a member of that committee.
14 A. Yes.
15 Q. And that was appointed by the State of Texas?
16 A. Yes.
17 Q. And that's looking at these issues of weighted
18 students?
19 A. Yes, sir.
20 Q. During your career of 20 years, have you considered
21 the issue of weighted students?
22 A. I think I may have met a weighted student once.
23 Q. Okay. During your 20 years, have you looked at it
24 from both an academic and a professional level?
25 A. Certainly.

1 MR. O'HANLON: Your Honor, I challenge Dr.
2 Hooker to point out any Accountable Cost Advisory
3 Committee study --
4 THE WITNESS: We never ran --
5 MR. O'HANLON: -- to point out a
6 correlation for the dispersal of weighted students.
7 THE WITNESS: We did not run such a
8 correlation in that Committee's work.
9 MR. O'HANLON: There's no scientific
10 underpinning for his testimony. And we would object
11 on that basis. He's not qualified to make that kind
12 of a judgment.
13 THE COURT: All right. I'll sustain.
14 DIRECT EXAMINATION (Resumed)
15 BY MR. GRAY:
16 Q. Dr. Hooker, do you have an opinion as to whether or
17 not the current system of public school finance, as
18 you have described it and the results that we've gone
19 through yesterday and today in your testimony,
20 whether or not it is fair and equitable?
21 A. It is not.
22 Q. Have you looked at -- and let me hand you or
23 reference you to Exhibit 204, which is the stated
24 state policy?
25 A. 204?

1 Q. Yes, sir.
2 A. I don't seem to have that.
3 Q. I'll hand it to you right here.
4 A. Okay.
5 Q. Section 16.001 is titled "State Policy," and it
6 reads, "It is the policy of the State of Texas that
7 the provision of public education is a state
8 responsibility and that a thorough and efficient
9 system be provided and substantially financed through
10 state revenue sources so that each student enrolled
11 in the public school system shall have access to
12 programs and services that are appropriate to his or
13 her educational needs and that are substantially
14 equal to those available to any similar student
15 notwithstanding varying local economic factors."
16 Let me ask you two questions.
17 One, in Texas, today, as we sit here, do all
18 students have access to programs and services that
19 are substantially equal to those available to other
20 similar students?
21 A. In my opinion, no.
22 Q. And do you have an opinion as to why students do not
23 have access to the same or similar programs in this
24 state?
25 A. Interaction of two factors: One, the lack of equity

1 provided by the State Foundation School Program and
2 the existence of widely varying local tax basis.
3 Q. And when the stated state policy is that they "shall
4 have access to substantially similar programs
5 notwithstanding varying local economic factors," are
6 varying local economic factors a primary reason that
7 they do not have equal access?
8 A. It is a very significant reason why they do not have
9 substantially equal programs available to them.
10 Q. Now, Mr. O'Hanlon, in his opening argument, informed
11 the Court that all districts can raise and spend
12 $2,736.00 if they tax at 52 and some odd cents on a
13 tax basis. Did you hear that opening statement?
14 A. I heard the opening statement, yes.
15 Q. Now, based upon the numbers that we have run
16 previously when we were doing the amount of tax
17 necessary to make up that $1,346.00 shortfall --
18 A. Uh-huh.
19 Q. -- how much money does a wealthy district have to tax
20 out in order to make this $2,736.00 that Mr. O'Hanlon
21 was talking about?
22 A. Much less than the poor district, if that's what you
23 mean, and much less than 52 cents.
24 Q. Okay. Well, take the district that we were using on
25 the chart before, and without getting it back up

1 here, the Edcouch-Elsa, the one that had property
2 wealth per student of $21,293.00, and I believe it
3 was your testimony that they would have to tax at
4 $6.32 to raise $1,346.00 shortfall?
5 A. Yes, sir.
6 Q. Compare that with the Santa Gertrudis district, the
7 $14 million district. And the $14 million district,
8 at what rate do they have to tax to get this
9 $2,736.00?
10 A. Give me a minute. Approximately two cents.
11 Q. So the wealthy district can raise the amount that Mr.
12 O'Hanlon said all districts can raise by taxing two
13 cents, correct?
14 A. Approximately, yes.
15 Q. Approximately. And yet it takes poor districts 52
16 cents or 26 times that rate to raise the same amount
17 of money, correct?
18 A. That's not exactly how that works. What Mr. O'Hanlon
19 was saying is that if they are willing to tax
20 themselves at that level, that the state will come in
21 and make up the difference in an equalized framework
22 so that the school district has available to spend
23 $2,736.00. It doesn't mean that they can generate
24 that from a 52 cent tax rate.
25 Q. Right. I'm assuming you're saying they generate a

1 lot less than that from that 52 cent tax rate, but
2 the state will make up the difference?
3 A. Substantially less, yes.
4 Q. What I'm merely trying to make sure we understand is,
5 in order for a poor district to have $2,736.00
6 available to it to spend, it is going to have to tax
7 at 52 cents per hundred dollar evaluation?
8 A. Yes, sir.
9 Q. And in order for the wealthy district to have the
10 same $2,736.00 available to spend, it's going to have
11 to tax at about two cents, correct?
12 A. Approximately, yes. You're talking about the
13 extremist level of wealth, yeah.
14 Q. So we're talking about roughly a 26 times difference
15 in tax rate in order to have available the same
16 $2,736.00 to spend, correct?
17 A. That's true.
18 Q. Now, are you familiar with any standards the federal
19 government or other agencies use in evaluating
20 whether or not a state system passes the equity test
21 for the federal government?
22 MR. O'HANLON: Objection, Your Honor. It's
23 irrelevant. This is a matter that arises under the
24 Texas Constitution.
25 If we're getting into federal standards, the

1 Plaintiffs lost this case in 1973 in the case of
2 Rodriguez versus San Antonio Independent School
3 District.
4 This case has been brought and is being tried
5 exclusively under Texas Constitution. Federal
6 standards are purely and simply irrelevant to the
7 consideration.
8 MR. GRAY: Your Honor, they have offered by
9 deposition and I expect will offer live a witness who
10 has his own standard on how to measure equity. And
11 it is obviously a very generous standard. And it
12 exceeds, by a substantial degree, what is commonly
13 used throughout this state and every state, which is
14 the federal standard to look at just a very generous
15 range.
16 And I'm merely trying to offer a standard that
17 the Court may or may not choose to look at or may or
18 may not choose to apply as one way that equity is
19 measured in some areas. That's all that I'm looking
20 at.
21 MR. O'HANLON: In the first place, the
22 federal standard is not used throughout this state as
23 Mr. Gray said. It's not used at all in this state.
24 MR. GRAY: That's because the state can't
25 pass it.

1 MR. O'HANLON: But the reason why it's not
2 used is it doesn't apply to the State of Texas. If
3 we're trying this case under the Texas Constitution,
4 then we ought to try it under the Texas Constitution.
5 If they want to get into federal issues, then
6 we ought to go down to the Federal Court, but they've
7 already lost that lawsuit.
8 So I think the determination of some kind of
9 federal standard that applies to other states under
10 principles of federalism or something like that
11 doesn't exist in this case. And we shouldn't get
12 into trying it. It's not relevant to the Court's
13 determination.
14 What the question is, is what does the Texas
15 Constitution require and what does Texas law mandate.
16 THE COURT: What you're trying to establish
17 is some guidelines that come from the federal
18 government somehow or other as to the range of what
19 is spent per student?
20 MR. GRAY: Yes, sir. The federal
21 government has a measure by which they look at the
22 amount of money that is available to be spent for
23 education and see what that range is for -- if the
24 state wants to take into consideration the federal
25 money that they get for showing how good and fair

1 their system is, they've first got to pass this
2 federal test. And it's merely designed so that they
3 can have some control over whether states do or do
4 not claim use of the federal money.
5 Texas has -- and I'll be able to establish it
6 and the state won't dispute it; Texas has not passed
7 that test, cannot pass that test. And that's all I'm
8 trying to establish through this witness.
9 The Court may choose to say that that standard
10 and that testimony is irrelevant, but it is a
11 standard that is used that may be of some guidance.
12 This witness does not particularly like the standard.
13 He thinks it's way, way too generous. But the fact
14 is, the state doesn't pass the test.
15 MR. O'HANLON: Counsel is testifying now.
16 Pardon me, but I was not aware that the State
17 of Texas was not receiving federal funds. The State
18 of Texas receives approximately $700 million per
19 annum in federal funds. And I hadn't noticed that
20 the United States had come down and tried to stop or
21 filed a lawsuit against us based on that standard.
22 And I think if they do, then we'll try that case and
23 we'll try it over in federal court.
24 It's simply not relevant, the dispersal with
25 respect to federal determinations for their funding.

1 MR. GRAY: Your Honor, I can wait. I don't
2 want to belabor. I'm trying to move through this.
3 They're going to have a witness and if the witness
4 offers a standard, as long as I'm entitled to
5 cross-examine that witness on other standards that
6 are used, I'll get to the same point. And I don't
7 want to delay the trial.
8 MR. O'HANLON: By that, I take it he's
9 withdrawing the question?
10 MR. GRAY: Well, I don't want to withdraw
11 the question until I have an understanding that I'm
12 not going to face the same objection when I
13 cross-examine their witness on -- when he offers up --
14 when he has another statement. If I'm not going to
15 face that objection and I'm entitled to go into all
16 standards that are used with their witness, then I
17 don't have any worry about it. But I don't want to
18 get sandbagged here by Mr. O'Hanlon.
19 MR. O'HANLON: All I'm doing is making an
20 objection at this point.
21 THE COURT: Let me put it to you this way,
22 I think I would like to hear about standards and to
23 see what is behind the standards if there is more
24 than one and how certain people reach the place where
25 they can tolerate disparity. And I would like to

1 hear the reasons for it, so --
2 MR. O'HANLON: I'm not sure this witness is
3 going to be able to testify as to the reasons the
4 federal government imposed in the CFR certain
5 regulations.
6 Once again, we run into the notice and the
7 official promulgation of rules. And the way to get
8 an understanding of that determination is to view the
9 files on the notice and comment period after the
10 promulgation of it as a regulation.
11 THE COURT: Okay. I'm going to overrule.
12 We'll see how far this witness can go with it.
13 BY MR. GRAY:
14 Q. Doctor, how do you -- Dr. Richard Hooker -- how do
15 you go about looking at and attempting to determine
16 whether or not a system of school finance that has
17 disparities in funding and funds available to be
18 spent on educating children is fair and equitable?
19 A. Well, in terms of current operations, money only, I
20 feel that a fair system would allow 15 percent above
21 a quality Foundation School Program and that that 15
22 percent of revenue would be available to school
23 districts based on their local tax efforts and not on
24 the wealth of the local school district.
25 Q. Are you familiar with does the federal government

1 employ any form of standard in measuring equity of
2 state school funding systems?
3 A. Yes, they do, for the purpose of determining whether
4 or not a state can utilize impact aid in an analysis
5 of the equity of a state local school finance system.
6 Q. And describe for the Court what that standard is?
7 A. It is a restricted range ratio from the 90 -- from
8 the fifth percentile to the 95th percentile in terms
9 of expenditures for people.
10 Q. And by that, do you mean that they lop off 5 percent
11 on the top and 5 percent on the bottom and then look
12 at the range?
13 A. Yes, sir. That's what they do.
14 Q. And what standard do they apply as far as what
15 percent difference is tolerable?
16 A. If it's 1.25 or less --
17 MR. O'HANLON: I would like to tie in who
18 "they" is, if we can.
19 MR. GRAY: I'm sorry. I'm referring to the
20 federal government as they analyze the system and
21 whether or not you can take into consideration --
22 THE WITNESS: The Department of Education.
23 MR. GRAY: -- federal money.
24 BY MR. GRAY:
25 Q. What range does the Department of Education apply?

1 A. If it is over 1.25, they, by their rules, would not
2 permit you to use that impact aid in your
3 calculations.
4 Q. Do you agree with the 1.25 disparity being an
5 acceptable level of disparity?
6 A. I do not.
7 Q. And why do you not?
8 A. If you have a comprehensive Foundation School Program
9 that provides the opportunity to have a quality
10 system of public education, it is unnecessary for
11 school districts to substantially exceed that level.
12 And if you permit school districts to exceed that
13 level by large expenditures of funds, even if, you
14 know, on whatever -- on whatever basis, you create
15 inequities in the system where some school districts
16 attract the brightest and best teachers and are able
17 to hold on to them, they are able to reduce
18 pupil/teacher ratios, provide additional
19 instructional materials, provide better facilities
20 and so forth, and so the policy of the State of Texas
21 in 16.001, which you read, would become violated
22 because the educational opportunities would not be a
23 substantial issue.
24 MR. O'HANLON: Objection, Your Honor, to
25 this statement, (a), it's not responsive and (b),

1 it's legally incorrect. It is simply astounding to
2 me that this witness or that anybody could assert
3 that under rules of statutory construction, that a
4 very general policy statement set out in the first --
5 in the introductory section of a statute, the chapter
6 on school finance, is violated by another statute.
7 The witness is arguing, I think, and we need to
8 stop that right now, but to argue that somehow that
9 the Legislature, in enacting the school finance
10 provisions, violated a statute. I don't think a
11 Legislature can violate a statute. I think it's this
12 Court's job to harmonize those two, if at all
13 possible, under the rules of statutory construction.
14 And also, this witness isn't qualified to make
15 a legal judgment.
16 MR. E. LUNA: Further, we further object,
17 Your Honor, because the witness is invading the
18 province of the Court. It's the Court to decide
19 whether or not the policy is violated and not this
20 expert witness to make that decision for the Court.
21 MR. GRAY: Your Honor, the policy and the
22 law and in the Constitution and the Declaration of
23 Independence, all of these documents will speak for
24 themselves.
25 I'm merely asking the witness whether he agrees

1 with the 1.25 disparity as being acceptable or not.
2 I will rephrase the question and move on so we don't
3 spend forever standing up and down objecting.
4 THE COURT: Okay. I'll overrule.
5 BY MR. GRAY:
6 Q. Doctor, specifically, you had told me that you
7 disagree with the 1.25 range as being appropriate.
8 Do you think it is too favorable to the state
9 or too restrictive to the state? In other words,
10 should it be a bigger ratio or a smaller ratio as far
11 as measuring a fair system in your opinion?
12 A. I just concluded that 1.15, assuming that you have a
13 quality comprehensive Foundation School Program
14 underpinning your finance structures, would be what I
15 would consider to be acceptable.
16 Q. So I take it that your answer is that you think the
17 1.25 is, in your opinion, too generous towards the
18 State?
19 A. Yes.
20 MR. E. LUNA: May it please the Court, we
21 object to him telling him what he thinks that his
22 testimony is. That's leading and suggestive.
23 THE COURT: That's leading. I'll sustain.
24 BY MR. GRAY:
25 Q. Have you looked at the state system such that you can

1 offer an opinion as to whether or not the current
2 state system with the current expenditures that we
3 see out there today meets or does not meet the
4 federal standard?
5 A. It does not.
6 Q. What is, then, the bottom line? What do -- under the
7 present system, what choices do property poor
8 districts have?
9 THE COURT: Just a minute. Before we get
10 into that, I want to ask a question or two and then
11 we want to stop for morning break and we'll get back
12 to that after break. Of course, I'm interested in
13 that.
14 MR. GRAY: That's fine.
15 EXAMINATION
16 BY THE COURT:
17 Q. Tell me again about your idea as to the range of
18 tolerable disparity. You said you allow 15 percent
19 above --
20 A. A quality comprehensive Foundation School Program.
21 I'm saying that school districts, if they are
22 enriching at levels that are 25 percent above that
23 and greater levels, they create situations where the
24 quality of educational opportunity afforded children
25 in one school district versus another is not

1 substantially equal.
2 Q. Okay. And what is the 15 percent?
3 A. 15 percent would be the opportunity to enrich or to
4 exceed the level of the quality foundation school
5 program.
6 Q. All right. So you would say that if you compared
7 school districts, and one of them had available 15
8 percent more money to spend on its children above the
9 cost of the quality Foundation School Program, and
10 had that 15 percent more than all of the others, you
11 would say that that disparity would be acceptable.
12 A. Yes, sir.
13 Q. Okay. So that's 15 percent available to spend?
14 A. Yes, sir.
15 THE COURT: Okay. We'll stop there. We'll
16 get started up again at ten till.
17 (Morning recess.)
18 MR. GRAY: May I proceed?
19 THE COURT: All right, sir.
20 DIRECT EXAMINATION (RESUMED)
21 BY MR. GRAY:
22 Q. Doctor, just at the break, I was getting ready to ask
23 you what the bottom line is. And let me ask one last
24 question about the data analysis that we've done.
25 You have already testified that, in your opinion,

1 some kids cost more to educate than other kids,
2 correct?
3 A. Yes, sir.
4 Q. Would you take issue with an analysis of the data
5 that took into consideration the extra cost
6 associated with educating some kids compared to
7 educating other kids?
8 A. No, sir. I would not.
9 Q. If the data was analyzed on that basis, would you
10 expect that it would change the overall relationship
11 of rich to poor as far as tax low, spend high on the
12 wealthy and tax high, spend low on the poor?
13 A. Not substantially, no. The same patterns would
14 exist, in my opinion.
15 Q. Okay. Now, what is the bottom line? What choices do
16 your property poor districts have?
17 A. Not to spend, to deprive their youngsters, or to tax
18 themselves quite heavily compared to the wealthier
19 school districts of the state.
20 Q. And when they don't spend and they deprive the
21 youngsters, does that make a difference?
22 A. In my opinion, it certainly makes a difference, yes.
23 Q. And what kind of difference does it make and why?
24 A. Well, it makes differences in the quality of teachers
25 that they can attract and retain. It makes

1 differences --

2 MR. O'HANLON: Objection, Your Honor,

3 unless he can show the emperical basis for that

4 statement.

5 MR. GRAY: Your Honor, I'm going to go in

6 with this witness in the very next line of

7 questioning, his personal experience in being both in

8 a wealthy district and in a poor district. And I'll

9 ask him now to testify on his personal experience

10 about that situation.

11 MR. O'HANLON: I don't think anecdotal

12 evidence will be particularly relevant or helpful to

13 the Court's determinations.

14 I think we can demonstrate and we will

15 demonstrate that there isn't any specific change in

16 the quality of teachers as measured by the districts,

17 themselves.

18 And without an emperical basis, he's got no

19 basis to form a conclusion.

20 So if he's testifying as an expert, it's not

21 going to be helpful to the Court. Anecdotal

22 testimony is not going to be helpful to the Court.

23 If he can testify to some emperical basis, then

24 we have something else. I don't think he can and Mr.

25 Gray said he couldn't.

1 THE COURT: Why don't you go ahead and get
2 the cart before the horse. Let me hear what
3 experience he has.
4 MR. GRAY: I will.
5 BY MR. GRAY:
6 Q. Doctor, tell the Court, if you will, your
7 professional experiences in the area of education
8 dealing with -- working and dealing with students in
9 property poor areas, as well as your experience in
10 working with students and dealing with students and
11 educating students in property wealthy areas.
12 A. I taught in the Warren Independent School District as
13 a beginning teacher. Atlantic Richfield had an oil
14 field there which made them a relatively advantaged
15 school district.
16 I then taught in Smiley High School (Phon.),
17 which is part of the North Forest School District,
18 which is one of the poorest school districts in the
19 State in terms of property wealth per student.
20 I then became the Director of Instruction in a
21 school district that was above average wealth per
22 student, but not property rich.
23 And as a university professor, I supervised
24 interns in instructional supervision, and then
25 management and the superintendency internship, and go

1 into school districts, school campuses all over the
2 Houston area on a weekly basis.
3 Q. And through your experience, both as a teacher, as
4 Director of Instruction, and through your college
5 University of Houston duties, have you had experience
6 in exposure to the actual conditions that are found
7 in property poor districts compared to property rich
8 districts?
9 A. Yes, sir. Let me describe to you the teaching
10 situation in the Warren School District first.
11 MR. O'HANLON: May I take the witness on
12 voir dire and establish his qualifications as to
13 time?
14 THE COURT: Yes, you may.
15 VOIR DIRE EXAMINATION
16 BY MR. O'HANLON:
17 Q. Dr. Hooker, the last time you taught or directly
18 managed or were involved in a school district was
19 when?
20 A. 1968.
21 Q. All right. And that was before, by your own
22 testimony, the state put $1 billion into --
23 $998,000,000.00 into the system in 1977?
24 A. If you want to start in '75, they added 760 million.
25 Q. All right. And that was before they put

1 $998,000,000.00 into the system in 1977?
2 A. Yes, sir.
3 Q. And that was before they put an additional $1.2
4 billion into the system in 1979?
5 A. Yes, sir.
6 Q. And that's before they put an additional $1.4 billion
7 into the system in 1981?
8 A. Yes, sir.
9 Q. And that's before they put an additional $2 billion
10 into the system in 1984?
11 A. An additional billion dollars from the state level
12 and -- yes.
13 Q. Well, that was a billion dollars each year, wasn't
14 it?
15 A. I'm sorry, I don't follow you.
16 Q. They put an additional -- for the biennium, they put
17 $2 billion in it?
18 A. In terms of Houston Bill 72, the obligation, when
19 they passed the bill, the cost estimate was something
20 over $800 million a year for each of the three years
21 of the program.
22 Q. All right. And do you have any emperical data that
23 would indicate to you one way or another the level of
24 expenditures for teachers' salaries by districts?
25 A. Yes, sir. I've seen that sort of data, yes.

1 Q. And there's not a very high correlation, is there,
2 between teachers' salaries and wealth anymore, is
3 there?
4 A. The gap was closed in the, in my opinion, right
5 direction in terms of the impact of House Bill 72,
6 yes.
7 Q. Okay. So since you've had actual experience in the
8 field in terms of ability to attract teachers, there
9 have been billions and billions of dollars been
10 thrown into the public education system?
11 A. Invested wisely.
12 Q. Okay. Invested wisely into the public education
13 system. Well, we would hope wisely by the individual
14 districts, wouldn't we?
15 A. Well --
16 Q. And so things have changed enormously since the time
17 when you've had experience out there in the actual
18 classroom, haven't they?
19 A. Yes, sir. But I do go into the schools and work with
20 administrators on a continuing basis weekly and I
21 have for ten years.
22 Q. And have you had occasion to evaluate teacher
23 competency?
24 A. For school districts, no, I have not.
25 Q. Okay. So you have no way of knowing at this point

1 what the relative teacher competencies are by
2 districts, do you?
3 A. In the sense that you're asking the question, I have
4 no direct knowledge through these specific personal
5 evaluation of teachers, no.
6 Q. And you know that the state engaged -- and for the
7 first time -- in this fall in a statewide uniform
8 teacher appraisal system?
9 A. Yes, sir.
10 Q. And that would be the way to determine, would it not,
11 by comparison of those results, how the relative
12 ability of various districts to attract competent
13 staff, wouldn't it?
14 A. It would be the best indicator we have ever had. I
15 am not accepting that as necessarily the end all in
16 terms of the evaluation of teaching.
17 Q. And you simply don't have any notion or any ability
18 to say one way or another what the results of a
19 comparison in those competency appraisal reports
20 would be?
21 A. Obviously not. They just piloted this fall, and the
22 for real ones, the first ones are coming out this
23 spring.
24 Q. Well, now, these are for real, the first ones in the
25 fall, weren't they?

1 A. Well, they were for real in the sense that they were
2 doing them, but they were not being utilized in
3 awarding career ladder opportunities.
4 Q. Okay. But I mean they were really out there and they
5 were really measuring the teachers?
6 A. They were really trying to use the instruments as
7 best they could, yes.
8 MR. O'HANLON: I would renew the objection,
9 Your Honor. This witness doesn't have any emperical
10 information on which to make the judgment the counsel
11 has asked him to do. I'm not sure whether the
12 anecdotal information, given the time lag between
13 when he was last in the classroom or directly
14 involved in a district, is helpful to the Court to
15 the extent that he's going to have to rely on
16 accounts being brought back to him by his students.
17 It would be based -- that testimony would be based on
18 hearsay.
19 THE COURT: In this evaluation, are you
20 talking about teachers that has transpired here
21 recently?
22 MR. O'HANLON: Yes. It was done on --
23 THE COURT: Are you talking about something
24 beyond those tests?
25 MR. O'HANLON: In the fall of 1986, for the

1 first time, the State of Texas required, mandated, a
2 uniform appraisal of teachers to be conducted by the
3 districts. The appraisal instrument was drawn
4 through the committee process in the State Board of
5 Education over the process of a year. Approximately
6 12,000 to 14,000 supervisors and administrators were
7 put through state training to make the application of
8 the filling out of that appraisal instrument uniform
9 throughout the state. And that appraisal was done on
10 teachers in the State of Texas for the first time in
11 approximately October and early November of 1986.
12 So we do have, for the first time, the ability
13 to make a measure of what districts appraise, on a
14 uniform basis, their teaching competencies to be.
15 And that's the emperical evidence I'm talking about.
16 What Dr. Hooker is talking about is purely anecdotal
17 testimony. I don't think it's going to be helpful to
18 the Court's determination.
19 THE COURT: In the forms that everyone was
20 to use to appraise teachers, there's not anything
21 subjective in there?
22 MR. O'HANLON: It's all subjective.
23 MR. GRAY: It's totally subjective,
24 totally.
25 MR. O'HANLON: What it is is it displays

1 competencies on a one-to-five scale. There's a
2 number of measures and appraisals are taught what
3 specific competencies entitles specific grades. Of
4 course, it's a subjective appraisal, but it's
5 uniform.
6 THE WITNESS: Uniformally subjective.
7 MR. O'HANLON: Well, teacher competency can
8 only be a subjective measure. I don't see any other
9 way you can measure it. But at least we have a
10 uniform data collection as to what the collective
11 judgments of the appraisals are.
12 MR. GRAY: Your Honor, the State has taken
13 the position and continues to take the position that
14 money does not make a difference.
15 This witness has got a wealth of experience not
16 only in the past of having taught in a rich and poor
17 system, but in being in those systems on a weekly
18 basis for the last ten years. We're not limiting his
19 inquiry to does money make a difference, and are the
20 rich able to hire and pay more and keep better
21 teachers.
22 I want him, across the board, to talk about
23 does money make a difference. I believe the State's
24 position is absurd, but they have taken it, and
25 nevertheless, I've got to have witnesses who are out

1 in the education field to say, can you do better and
2 provide a better education for the children if you
3 have more money, if you have the 19,000 that some
4 districts have compared to 2,600 that other districts
5 have, that type of comparison.
6 The State is saying, it doesn't make any
7 difference. We obviously maintain that it does. And
8 he's an educator and a professional who ought to be
9 in a position to offer an opinion based on his
10 experience, both professionally and actually teaching
11 in there. Does money make a difference? And that's
12 all I'm trying to establish.
13 THE COURT: Mr. Luna.
14 MR. E. LUNA: May it please the Court, in
15 addition to the objection Mr. O'Hanlon made, the very
16 bill that this witness advocated and helped to get
17 passed had a standard testing procedure to test all
18 of the teachers in the State of Texas. That test has
19 been administered. And those who didn't pass it are
20 out of the system.
21 So we should no longer have the problem, if it
22 ever existed, because of the statewide examination
23 that has been administered by the State of Texas and
24 was advocated by him and the others in the bill that
25 he's talking about.

1 MR. GRAY: Your Honor, we'll also have
2 evidence on those scores and just how the poor
3 districts faired compared to the rich districts on
4 that test, but we're not offering that through this
5 witness.
6 MR. E. LUNA: To help the Court, Your
7 Honor, if he's got some particular districts that
8 he's made a study of and can show they've got sorry
9 teachers, the teachers are below average, then that's
10 one thing. And that's what the test that Mr.
11 O'Hanlon is talking about would show on the
12 evaluation, if there are any. And those statewide
13 tests are the criteria that's been set up to test
14 these teachers. And again, that also was in House
15 Bill 72.
16 We object to his general observation on a wide
17 brush basis that somebody who doesn't pay more than
18 another school district gets sorry teachers when, in
19 fact, he doesn't claim that there is any district
20 that he represents who has got inferior teachers.
21 MR. DETHERAGE: If the Court please, I
22 would like to add one thought.
23 If Mr. Gray and the witness intend to proceed
24 in this line of questioning that there should be more
25 funds and more state money for teachers to improve

1 their salaries or for whatever other use it's made,
2 is not relevant to the issues in this case.
3 The issue in this case is whether the
4 foundation of school systems, the program, the
5 distribution of the state money throughout the school
6 districts in this state is violative of the
7 Constitution. Whether there should be more money or
8 not is a question for the folks down the street to
9 decide.
10 MR. TURNER: Your Honor, one other thing
11 Mr. Gray said I think needs a clarification. And
12 that is he made the comment that the state contends
13 that money doesn't make any difference. That's a
14 vast oversimplification of the position that the
15 State, the Defendants, have taken.
16 The testimony that you're going to hear from
17 the State will indicate beyond a basic level of
18 providing education, there's no empirical data or
19 research that has indicated that those additional
20 dollars will buy you any better quality education.
21 And so the characterization that we simply have
22 taken that absurd position, that money doesn't make a
23 difference, is clearly an inappropriate summary of
24 the State's position in this case.
25 MR. O'HANLON: If I can briefly state what

1 the State's position is, is that the judgment of how
2 much money makes how much of a difference is not
3 properly an issue before this Court. I don't think
4 that -- otherwise we would be trying the issue of how
5 much, in terms of absolute dollars, is required to be
6 spent on every school child in this state.
7 I submit to the Court that that kind of a
8 funding consideration is beyond the ambit of judicial
9 review. I don't think that you can -- that the
10 Constitution requires any particular level of
11 spending. It simply requires that it be distributed
12 equitably.
13 So, to the extent that counsel is trying to
14 force me into this position, I think that how much
15 money to be spent on education is properly a
16 legislative rather than a judicial determination.
17 And what we're talking about is the system of
18 distribution.
19 Once again, I'm not sure that this testimony is
20 going to be helpful to any issue before the Court.
21 THE COURT: Okay. I believe that the law
22 is that people can testify as experts from what we
23 might call book learning and people can testify as
24 experts from their own experience, assuming that the
25 evidence is such that that experience would raise the

1 person to the level where they would be more
2 knowledgeable than the ordinary fact trier on account
3 of that experience, that the experience is broad
4 enough and deep enough.
5 And I think that any time you go to evaluate
6 teachers, it has to be largely subjective. And I'm
7 not offended by the desire of the Plaintiffs to have
8 some opinion from this expert -- from this gentleman
9 who, I think, is qualified experience-wise about
10 teachers and how they fair in richer districts as
11 opposed to poor ones.
12 And I do think that the funds available to a
13 school district would have at least some relationship
14 on the quality of the education that it can be
15 provided. So it may not be the only thing, but I
16 think it is a factor. So I think it's relevant, so
17 I'll overrule the objections.
18 One other thing, if you all haven't caught on
19 yet, I just may as well tell you that I'm really
20 interested in absorbing as much as I can, and I'm
21 very happy to have some diverse information. So,
22 you'll just have to trust my -- whatever capacities I
23 have to sift and to weigh.
24 All right. I'll overrule. Here we go.
25

1 DIRECT EXAMINATION (RESUMED)

2 BY MR. GRAY:

3 Q. Doctor, the question that I had asked in which you
4 were answering was, after we established your
5 experience of observing and seeing and working in
6 both property wealthy versus property poor settings,
7 the question I believe I asked was to the effect, do
8 the resources that a property rich district have
9 compared to what a property poor district has, does
10 that make a difference in the quality and kind of
11 education that is provided to the students attending
12 those two kinds of schools?

13 A. And I was about to describe my teaching situation at
14 Warren where I had 90 students in high school English
15 class of sophomores, juniors and seniors. During the
16 two years that I taught there, I never submitted a
17 requisition that wasn't immediately approved and I
18 got whatever additional specialized instructional
19 materials that I requested so that I could
20 individualize instruction. And it made me able
21 because of the availability of additional materials,
22 audio visual aids, at a reasonable number of students
23 to individualize and to do what I felt was a
24 creditable job of teaching.

25 I went to the Houston area to work on my

1 doctorate at the University of Houston, and accepted
2 the first job I was offered. And I knew nothing
3 about rich schools and poor schools.
4 The first day I met class, I had 166 students
5 the first day of school in high school English
6 classes at the sophomore level. Finally, after
7 dropouts and so forth, it got down to 150 for the
8 year.
9 The departmental budget for a 4-A, which would
10 now be a 5-A high school with a thousand students in
11 it, had $125.00, with a broken record player, a
12 broken down, worn out 16 millimeter projector. And
13 as a consequence, I was not in a position to get
14 additional instructional materials other than the
15 state adopted text book. I was not able to have
16 available to me audio visual instructional aids to
17 help individualized instruction. And I was certainly
18 not able with a teaching load of students that high
19 in high school English classes to assign a great deal
20 of writing so that I could respond to the felt needs
21 of our society to have students who could, in fact,
22 write competently.
23 The library support in the high school for a
24 thousand kids, the library was inferior to the
25 library in a school district with 500 kids, K-12.

1 Q. Now again, the library in the poor district was
2 inferior compared to what you found in the rich
3 district?
4 A. Right. Even though it was a much larger high school,
5 we had a much more adequately library to support the
6 English Department in the smaller school system
7 because it was property rich and bought the library
8 that it needed.
9 Q. Based upon your experience -- you, Dr. Richard
10 Hooker, a teacher -- were you able to teach and
11 educate the children in the poor district as well as
12 you were the children in the rich district?
13 A. I could not, no matter how many hours I worked. The
14 only reason I didn't resign was I had five children
15 to feed.
16 Q. Do you, today, go to, on a regular basis, schools
17 that are both property rich and property poor?
18 A. I do. I go to some of the finest schools, I guess,
19 in the world, certainly in the United States. And I
20 also go to some that are certainly questionable in
21 the quality of their offerings.
22 Q. In general, describe for me the condition of the
23 facilities that you see in the property rich
24 districts today compared to what you see in the
25 property poor districts.

1 A. I happen to live in the Alief School District that
2 has some of the finest facilities that one would ever
3 want to go into. They're current, modern, well
4 heated, well air-conditioned, carpeted, adequate
5 space in most of the schools. There is some crowding
6 in some places. They are beautifully furnished.
7 They're light, bright and attractive and something a
8 community can take pride in and children can take
9 pride in.
10 I also enter school districts in property poor
11 areas where there are hurricane fences around old
12 buildings, they are not well maintained, the grass is
13 growing high, the buildings are dirty, custodial and
14 maintenance services are extremely poor, and
15 obviously, it would be a depressing environment in
16 which for a teacher or a student to enter through the
17 hurricane fences with barbed-wire at the top in order
18 to try and get an education.
19 Q. Do you have an opinion, based upon your experience,
20 as to whether or not the condition of the educational
21 facility makes any difference as far as the teacher's
22 ability to teach and the student's ability to learn
23 and absorb?
24 A. Either facilities make students and teachers
25 comfortable and able to focus on academic endeavors

1 or they detract from it, certainly.
2 Q. Now, if a school district chooses to not tax, a
3 property poor district, if it chooses not to tax at
4 the rate necessary to make up the shortfall and be
5 able to be competitive with the property rich
6 districts, what effect will that have on their
7 ability to provide education for their kids?
8 A. In my opinion, the property poor school districts,
9 the poorest ones in the state, have great difficulty
10 in providing quality education.
11 Whereas, the high tax, well school districts
12 exceed the level of the Foundation School Program and
13 offer some of the finest educational programs in
14 America.
15 Q. If a district chooses to tax itself at a very high
16 rate in order to try to provide additional funds for
17 education, what effect does that have on the
18 district's ability to expand and increase its tax
19 base in the future?
20 A. Generally speaking, business and industry, when
21 they're looking at entering communities, certainly
22 will look at the ad valorem property taxes that
23 they're going to have to pay in the district. And if
24 the school district is taxing at near a dollar and a
25 half for current operations plus debt service, then

1 the industry would be discouraged from moving there
2 and would probably select an area where the property
3 tax rates were somewhat lower.
4 Q. And the net effect of that, does that lock them into
5 a cycle of poverty so to speak?
6 A. Well, the net effect is that it makes it very
7 difficult for them to attract business and industry
8 if their tax rates are substantially higher than
9 other alternatives to the business, yes.
10 Q. If they are unable to attract business and industry,
11 do they have the availability to expand their tax
12 base so that they could benefit from what the wealthy
13 now benefit from, which is lowering taxes and yet
14 spending more sums of money on the kids?
15 A. In general, certainly they are not in a position to
16 enhance their local tax base.
17 MR. GRAY: Thank you, Dr. Hooker.
18 I'll pass the witness at this time, Your Honor.
19 MR. KAUFFMAN: May I proceed, Your Honor?
20 THE COURT: Yes, sir.
21 CROSS EXAMINATION
22 BY MR. KAUFFMAN:
23 Q. For the Plaintiffs, Dr. Hooker, we will, during the
24 course of this litigation and possibly as soon as
25 your cross-examination, hear about such terms as

1 price differential index, small and sparse
2 adjustments, equalization aid, add-ons, local share,
3 state share, entitlements, program weights. There
4 are a variety of terms like this that are used when
5 talking about the school finance system in Texas; is
6 that right?
7 A. Yes, sir. Those are words that are associated with
8 the formula structures.
9 Q. Now, the numbers you were talking about during Mr.
10 Gray's examination, the total expenditure figures,
11 are those based on just these add-ons and things or
12 are those based on the total amount of money spent on
13 kids in the districts?
14 A. It is my understanding that those numbers exclude
15 federal revenue, but otherwise include all local and
16 state revenue.
17 Q. So all of these concepts we're going to hear about,
18 all are just part of the total expenditure figures
19 that you've been talking about today; is that right?
20 A. I'm sorry --
21 Q. Okay. All of these figures, like the basic
22 allotment, the add-ons, the PDI's, the small and
23 sparse, all of those things go together, add up,
24 multiply, divide, add-ons, subtract, come to a
25 number. Then you add on some local money, that comes

1 to a number. And the total that's actually spent on
2 kids, that's the numbers you've been talking about
3 today as total expenditures?
4 A. To the best of my knowledge. Craig Foster and Lynn
5 Moak, of course, are much more competent witnesses in
6 that area than I.
7 Q. But if it is a total expenditure figure in the
8 district, it includes the whole picture?
9 A. It includes current operations revenue for both state
10 and local courses, plus debt service. If it says
11 total, if it says M&O at the top of the column, then
12 it's limited to current operations revenue only and
13 does not include debt service.
14 MR. KAUFFMAN: Pass the witness, Your
15 Honor.
16 MR. O'HANLON: May I proceed?
17 THE COURT: Yes, sir.
18 CROSS EXAMINATION
19 BY MR. O'HANLON:
20 Q. Dr. Hooker --
21 MR. O'HANLON: Can I approach the board?
22 THE COURT: Yes, sir.
23 Q. -- to follow up on what Mr. Kauffman said, you're
24 talking about a shortage -- when you're talking about
25 this $1,300.00 shortage that you're alleging, is that

1 for operation of a total program that the school
2 district is -- that $1,350.00 plus the 1,346 that you
3 say is short will show sufficient number to operate a
4 total program?
5 A. No, sir. I did not say that --
6 Q. Okay. So --
7 A. -- if I understand your question.
8 Q. So you think it should be somewhat more than that,
9 than this 1,346?
10 A. If you're asking me if I think that a combination of
11 the shortage and the basic allotment and debt service
12 has, outside of those two factors, some additional
13 things that might have been considered, but was not
14 brought in, yes, there are some other things.
15 Q. How much more?
16 A. I am not prepared to testify regarding those issues.
17 I could list them for you, if you would like me to.
18 Q. Well, just since this is a summary, would you say a
19 thousand dollars a student would be enough to cover
20 the incidental?
21 A. Yes, sir.
22 Q. You think that would be enough?
23 A. I would guess so. I would reserve judgment, but I
24 would guess that that would be the case.
25 Q. Okay. Would you look at Exhibit 205, please.

1 A. Exhibit 205?
2 Q. Uh-huh.
3 A. Bench Marks?
4 Q. Look at page -- I believe it's A-8 -- well, let's
5 look at A-10.
6 A. A-10?
7 Q. Uh-huh, A-8 and A-10. I'm going to ask you some
8 questions about the lead Plaintiff in this case,
9 Edgewood Independent School District.
10 A. You're wanting me to find Edgewood on this page?
11 Q. Yes.
12 A. I don't see Bexar County.
13 Q. Excuse me, I'm looking at the Valley. Edgewood is on
14 Page 50, excuse me.
15 A. Page what?
16 Q. 50.
17 A. 50?
18 Q. Uh-huh.
19 A. A-50 or just 50?
20 Q. A-50.
21 A. A-50. Yes, sir.
22 Q. Now, if you'll look at column -- on A-50, No. 10, and
23 if you look down, that Column No. 10 is total current
24 operating expense, right?
25 A. For Edgewood, yes, sir. And as I read the number,

1 it's $3,600.00.
2 Q. And 58 cents, right?
3 A. Yes, sir.
4 Q. Okay. Edgewood, $3,600.58.
5 Now, your number that you talked about was
6 1,350, right?
7 A. I'm saying that that number was short.
8 Q. Plus it's short by 1,346; is that right?
9 A. I see where you're going, but you've got a lot of
10 other things involved in terms of all of the add-ons
11 that are a part of the Foundation School Program.
12 Q. Well, that's exactly right.
13 A. Okay.
14 Q. That $1,350.00 figure that you started off with is no
15 where near what a school district in this state gets,
16 is it?
17 A. No, sir, because of all of the other programs that
18 are involved, yes.
19 Q. That's right. And you wouldn't want to mislead the
20 Court into the impression that that $1,350.00 was all
21 the state was providing for the provision of
22 education to its children, would you?
23 A. I certainly would not.
24 Q. And to the extent that you left that impression,
25 that's a mistaken impression, isn't it?

1 A. If I left that, I did not mean to do so.
2 Q. Now, Edgewood is spending 1,300 -- $3,600.00 in
3 current operating expense, aren't they?
4 A. That's what the Bench Marks report says, yes.
5 Q. Now, in addition to that, there's -- they've got some
6 debt service out there, don't they?
7 A. They have a capital outlay debt service number of
8 $95.38, yes.
9 Q. Okay. In addition to that, they're spending capital
10 outlay, aren't they?
11 A. Yes, sir, $896.00 worth --
12 Q. All right.
13 A. -- which I would assume includes bond money that they
14 spent during that year, but I do not know. Alan
15 Barnes can tell you what goes into those numbers.
16 Q. Okay. But for that year -- that's the problem with
17 bonds, you've got to be a little incautious about it,
18 you've got to be careful about figuring that in.
19 A. Yes.
20 Q. Your figure, when you figured in the bond thing, is a
21 little bit misleading, wasn't it?
22 A. I didn't figure the bond thing. I figured in the
23 debt service requirement for the average school
24 district a day.
25 Q. But let's look at Edgewood and let's see what they

1 spent on their kids in this poor district in 1985-'86.
2 Have you got a calculator there?
3 A. In my pocket, yes.
4 Q. Let's add these numbers up.
5 A. You've already determined that I'm not the greatest
6 in using a calculator.
7 Q. All right. Well, we'll take our time here.
8 You've got $3,600.58.
9 A. Can I leave off the cents, please?
10 Q. Well, no, I want to get it right, if we can.
11 A. Okay.
12 Q. And then they're spending $95.38 for debt service.
13 A. Yes, sir.
14 Q. All right. And then they're spending $896.65, right?
15 A. I thought we agreed that we didn't know what all went
16 into that number.
17 Q. Well, they spent it, didn't they?
18 A. Yes, but if that includes bond money that they spent
19 during that year for services, that's not something
20 that's involved on an annual basis that they have as
21 an obligation.
22 Q. Well, that can include the old projectors and all of
23 the things, and libraries, and all of the things that
24 the poor districts just can't afford, couldn't they?
25 A. It could. I do not know what is in that number.

1 Q. Okay. But they spent -- you don't dispute that they
2 spent that money on an ADA basis for that district,
3 in that year?
4 A. For that year, I would trust Alan Barnes.
5 Q. Okay. So let's add that in, $896.65.
6 Now, how much is that?
7 A. $4,592.61.
8 Q. Now, at the end of all of that year, after spending
9 all of that much money, how much extra money did
10 Edgewood have in the bank?
11 A. The answer is, I don't know.
12 Q. Well, there's an operating fund balance --
13 A. The operating fund balance is out in the far
14 right-hand column.
15 Q. Column 14, isn't it?
16 A. Column 14, they had $659.00 per student -- and one
17 cent, excuse me. I didn't get precise enough there.
18 Q. And that's money that they had in the bank that they
19 could have spent if they had felt the need to do
20 that, right?
21 A. That's what Column 13 says, yes.
22 Q. Okay. Now, there's a column in there that will tell
23 us what the tax rate is for the Edgewood Independent
24 School District for maintenance and operations, won't
25 it?

1 A. Somewhere in the report, yes.
2 Q. Well, it's on the next page, isn't it?
3 A. I don't think so. The columns do not reflect it. I
4 think it's in another part of the --
5 Q. Look at Page A-52.
6 A. A-52, okay.
7 Okay. Edgewood, their true tax rate, total
8 true tax rate is .657.
9 Q. Actually, you're looking at San Antonio, aren't you?
10 A. Okay, .563, yes. I went one down.
11 Q. Now, they didn't need a $6.00 tax rate to spend
12 $4,596.00 a child in that district, did they?
13 A. No. My assumption is they needed whatever that tax
14 rate was plus floating a bond, but I don't know that.
15 Q. All right. Well, let's forget the bonds for a
16 second. We're still at $3,700.00, aren't we?
17 A. For current operations plus debt service including
18 state, local and federal revenue, yes.
19 Q. So, they didn't need a $6.00 or a $5.00 tax rate to
20 raise that kind of money. All they needed was 56
21 cents; isn't that right?
22 A. Yes, sir.
23 Q. So, to the extent that you're indicating that to
24 spend the average -- for an average program that you
25 needed this exorbitant tax rate was just not right,

1 is it?
2 A. The example that was being given was that low
3 property tax wealth school districts have to make a
4 much greater effort in order to raise any given
5 amount of money as compared to the property rich
6 school districts.
7 Q. Well, now, that varies about depending on where on
8 the spectrum you are, doesn't it?
9 A. Yes, sir. It does.
10 Q. Enormously, doesn't it?
11 A. Yes, sir. It does.
12 Q. All right. Now, Edgewood out here is spending
13 $3,600.00. There's a column that will tell you the
14 statewide average, isn't it, in there?
15 A. Yes, sir. There is. It should be down at the bottom
16 of the page, back over here.
17 Q. What is the statewide average expenditure?
18 A. Statewide average total of current operating expense
19 in Column 10 was $3,345.66.
20 Q. Okay. Let's talk about that now.
21 Now, Edgewood is spending -- we'll put Edgewood
22 versus state, okay? Now, Edgewood is spending
23 $3,600.58 versus the statewide average of how much?
24 A. 3,345.66.
25 Q. So Edgewood is spending about $250.00 more per

1 average daily attendance than the statewide average,
2 aren't they?
3 A. That's what the report reflects, yes.
4 Q. Okay. Now, they're a property poor district, aren't
5 they?
6 A. Yes, sir. They are.
7 Q. Okay. And what's Edgewood's tax rate?
8 A. I'm on the wrong page for that.
9 Q. Well, we can look back at this page, can't we, .563?
10 A. Yes.
11 Q. Okay. And what's the statewide average?
12 A. You put it up there.
13 Q. For a tax rate?
14 A. Oh, a tax rate, excuse me. Statewide average should
15 appear at the bottom of this page in terms of the
16 true rate which, I guess, is the one you want.
17 Q. Give me the one that you gave me for Edgewood,
18 whatever it is?
19 A. .681.
20 Q. All right, .681. So, in summary, then, is Edgewood
21 typical of the property poor districts in this state?
22 Are they typically situated?
23 A. Typically situated?
24 Q. Yes. If we're to examine the plight of poor
25 districts as a group, could we say that Edgewood is a

1 typical example of a property poor district?
2 A. With a market value per ADA of $38,000.00, they would
3 fall into what we would think of as the poorer group
4 of schools, yes.
5 Q. Is it fair to use them as an example versus the
6 statewide average then? They're about as typical of
7 the property poor districts as there is, isn't there?
8 A. I can't answer that question.
9 Q. Okay. Well --
10 A. But you are including federal resources in your
11 analysis of state/local revenues, if that bothers
12 you.
13 Q. Well, now, does it say in there that that's what
14 we're doing?
15 A. It is my understanding that Alan includes federal
16 revenue, yes. He is talking about the total
17 expenditures of the school district from whatever
18 source.
19 Q. Okay. Now, if they're included over here on
20 Edgewood, they're included over here on state, aren't
21 they?
22 A. As a matter of fact, that's true.
23 Q. Okay. So we're comparing apples to apples, aren't
24 we? We haven't switched columns?
25 A. If you're comparing that number to that one, yes,

1 that's apples.
2 Q. Just because it's federal doesn't mean that it
3 doesn't spend, does it?
4 A. No, sir.
5 Q. And those are resources that are available to a
6 district for the provision of the education to the
7 students within that district, isn't that right?
8 A. That is correct.
9 Q. All right. Now, in summary, then, we're looking at
10 these two and Edgewood is spending $250.00 more than
11 the statewide average per their children with 12
12 cents less local tax rate, local tax effort, isn't
13 that right?
14 A. Yes, sir. That's correct.
15 Q. How much money does Edgewood need to spend on
16 educating their kids?
17 A. I can't answer that question.
18 Q. You have no opinion on that?
19 A. How much do they need to spend to deal with the kinds
20 of high density, high cost kids that they have? I
21 would expect that they would need to spend a thousand
22 a pupil more than that in order to provide a quality
23 educational program for kids who have extreme
24 learning needs, yes.
25 Q. So you're saying that Edgewood needs to spend

1 $4,600.00?
2 A. I am saying that they have a very high density of
3 high cost kids and, as a result, providing them with
4 a quality educational opportunity costs considerably
5 more than the state average, yes.
6 Q. Do you think they have a higher density of high cost
7 kids than, say, the Houston Independent School
8 District?
9 A. Probably not.
10 Q. Or the Dallas Independent School District?
11 A. Probably not.
12 Q. Or the Austin Independent School District, which is
13 now a majority minority district?
14 A. I would assume that Edgewood's density of high cost
15 kids is greater than Austin's.
16 Q. Okay.
17 A. But certainly Dallas and Houston would be comparable.
18 Q. Okay. Now, why don't we look and see what -- let's
19 compare something. Why don't you look in there and
20 tell me what Dallas -- if what revenues spend against
21 the average, why don't we look in there and see what
22 Dallas and Houston are spending on their equally high
23 cost kids?
24 A. Which one do you want first, and what page is it on?
25 Q. Dallas is A-26.

1 A. A-26?
2 Q. Uh-huh. Well, before you get there, is it fair,
3 then, to compare Edgewood and Dallas?
4 A. In terms of the incidents of high density and high
5 cost kids, I would assume so.
6 Q. Okay. Edgewood, Dallas. How about Fort Worth?
7 Let's throw Fort Worth in there. Is that fair?
8 A. Fort Worth, I think, does not have that level of
9 density of high cost kids.
10 Q. Okay. Well, let's just do Dallas and Houston. Okay?
11 3,600.58.
12 A. What do you want to do?
13 Q. Dallas and Houston, I want that same column where you
14 got the $3,600.58.
15 A. Total current operating expense, Column 10 for
16 Dallas, $3,545.80.
17 Q. Okay. Does somebody have a page number for Houston?
18 A-14.
19 A. A-14. Houston, $3,589.99.
20 Q. So, despite the variations in property wealth, would
21 you say that Houston and Dallas are relatively
22 wealthy districts?
23 A. Yes, they are both relatively -- Houston is not as
24 wealthy as Dallas, given the current property tax
25 numbers.

1 Q. Right. But Dallas is right up there bumping against
2 the old 95th percentile, isn't it?
3 A. I believe it is at the 95th percentile, yes.
4 Q. Okay. So these guys can tax and spend, according to
5 your earlier theory, as much money as they want.
6 A. I didn't say they could spend as much money as they
7 want, but certainly they're in a position to generate
8 a lot of local ad valorem tax revenue for a
9 relatively low tax effort, yes.
10 Q. And yet those folks are spending less money per child
11 than Edgewood --
12 A. Yes, sir.
13 Q. -- despite the fact that they've got the same kind of
14 student composition and things of that nature?
15 A. The element that is involved is the willingness of
16 the taxpayers to tax themselves.
17 Q. Oh, the voters have something to say about that, huh?
18 A. In that they elect school boards and school boards
19 set the tax rates, yes, sir.
20 Q. Do you think maybe the state ought to make the local
21 tax board or the local board of trustees to raise
22 taxes? Is that what you're advocating?
23 A. Through a local fund assignment process, yes.
24 Q. I see.
25 A. If, in fact, that's what you are referring to as

1 making, we do not require local school districts to
2 raise local fund assignment as a condition of
3 receiving state aid, but --
4 Q. What's Dallas' tax rate, by the way?
5 A. Alan, where would I find it?
6 Q. It's A-14, I believe.
7 MR. E. LUNA: A-28.
8 MR. O'HANLON: Dallas is which?
9 MR. E. LUNA: A-28.
10 BY MR. O'HANLON:
11 Q. A-28.
12 A. A-28?
13 Q. Uh-huh.
14 Now, Edgewood's tax rate is .563. That's from
15 the other page. What's Dallas' tax rate?
16 A. The true tax rate -- sorry, I'm having trouble
17 finding Dallas County, here we go -- for the Dallas
18 Independent School District is .539.
19 Q. There's not a whole lot of difference between the tax
20 rates in Edgewood and Dallas, is there?
21 A. No, sir.
22 Q. Not so much that industry would be dissuaded from
23 moving into the Edgewood School District because of
24 that variation, would they?
25 A. No, sir.

1 Q. Not so much to where it would have an economic impact
2 that would push somebody away from that district
3 because of its exorbitantly high taxes, would they?
4 A. No, sir.
5 Q. Oh, yes, let's look at Houston's tax rate. What
6 page?
7 MR. E. LUNA: A-16.
8 Q. A-16.
9 A. A-16.
10 Q. Let's finish this up.
11 A. Houston's tax rate is shown as .68.
12 Q. .68. Now, you think that's enough to where they
13 might not pick Houston and they go to Edgewood?
14 A. No, sir.
15 Q. So that kind of difference in tax rate, the 12 cent
16 difference in tax rate isn't going to run somebody
17 out of that district?
18 A. No, sir.
19 Q. And you would concede that Edgewood could raise up to
20 Houston's rate, raise additional funds and not run
21 people out of Edgewood back to Houston if they
22 thought they needed more money?
23 A. Yes, sir.
24 Q. Let's go back to the foundation program.
25 Now, the $1,300.50 figure is nothing more than

1 a starting point, isn't it?
2 A. That is correct. It is the basic allotment, which is
3 the charting point in calculating the entitlement of
4 the school district.
5 Q. Uh-huh. And it really doesn't have anything -- that
6 much to do with making a determination of where
7 things come out in terms of spending, does it?
8 A. It has a tremendous implication for how you come out
9 because all of the other components of the program,
10 except for career ladder and education improvement
11 and transportation, are multipliers based on that
12 basic allotment. If you raise the basic allotment,
13 you generate a whole lot more money to the school
14 district without changing the multipliers.
15 Q. For everybody, though, isn't it?
16 A. Yes, sir, if you do not change the local fund
17 assignment, that's true.
18 Q. Now, let's talk about -- well, back to this figure,
19 since you say that Edgewood needs to be spending a
20 thousand dollars more, Dallas and Houston could raise
21 a thousand dollars more per child, couldn't they?
22 A. Yes, sir. They could.
23 Q. And their taxpayers made a judgment that --
24 A. They do not wish to spend more than they are
25 currently spending, you know, as experienced by the

1 Board of Education.
2 Q. Have you gone down there and told those people in the
3 Dallas and Houston Independent School Districts that
4 they're not spending enough money on their kids?
5 A. Yes, sir. I have.
6 Q. All right. They didn't buy it, did they?
7 A. No, sir. They didn't.
8 Q. Their taxpayers have said that that $3,500.00 is
9 about right?
10 A. As represented by the judgments of their school
11 boards, yes.
12 Q. Okay. Now, when we're talking about -- okay, we
13 started off with the Foundation School Program. And
14 there's a myriad of other factors that you add into
15 it; isn't that right?
16 A. Yes, sir.
17 Q. You add in -- and the impact of those is going to
18 vary based on how you are particularly situated?
19 A. Yes, sir.
20 Q. Okay. Now, for the basic provision of education --
21 and that's what you are talking about in the
22 foundation program -- we start off with that
23 $1,300.00 figure, don't we? We start off with 1,350,
24 right?
25 A. Yes, sir.

1 Q. Okay. And then we add some things to it, don't we,
2 that --
3 A. (Witness nodded head to the affirmative.)
4 Q. Now, we add the price differential index to it, don't
5 we?
6 A. Yes, sir, if it's above the level of 1.00.
7 Q. Okay. There is a sum of $600 million that is
8 allocated to the state system for purposes of price
9 differential index, isn't it?
10 A. Yes, sir.
11 Q. Is it fair to add $200.00 per child, since there's
12 3,000,000 kids in the state, to that $1,350.00
13 figure?
14 A. I'm not sure of the precise number, but approximately
15 that, yes --
16 Q. Okay.
17 A. -- for the average school district.
18 Q. Okay. That's PDI. Now, PDI is designed to be
19 revenue neutral, isn't it? It's supposed to deal
20 with actual costs that the districts incur out there,
21 isn't it?
22 A. It's supposed to equalize the purchasing power of the
23 dollar for goods and services, yes.
24 Q. Now, there's a factor in the PDI that actually gives
25 a little bit of an edge to the property poor

1 districts, doesn't it, one of the things that's
2 considered?
3 A. What factor are you referring to?
4 Q. It's one of the -- in the very complex formula, the
5 wealth of the district has something to do -- it's
6 one of the measures that's calculated in connection
7 with figuring out the price differential index.
8 A. I do not pretend to be able to explain the price
9 differential index in its entirety, but my assumption
10 is that that's a Stage 2 in a wealth neutralized
11 factor.
12 Q. Okay. So that's in there. All right. Now, we take
13 that $1,300.00 figure and we add 200. Now, there's a
14 figure in there in the Foundation School Program that
15 sends money on an ADA basis that's equalized for
16 career ladder and teacher improvement, isn't there?
17 A. Yes, sir.
18 Q. How much is that?
19 A. $140.00.
20 Q. Okay. Now, when you were talking yesterday -- well,
21 now, wait a minute, this $200.00 isn't right. When
22 you were talking yesterday, you subtracted $325.00,
23 didn't you?
24 A. Yes, I did --
25 Q. Okay.

1 A. -- because that was both small, sparse and PDI, and
2 it was on a much higher level of basic allotment,
3 which would make the cost of those factors go up.
4 Q. Okay. How much more should I add in here for small,
5 sparse?
6 A. I'm assuming somewhere in the neighborhood of $40.00
7 to $50.00.
8 Q. Which?
9 A. Try 40 in that that's what I assume goes into the
10 $240.00 in the accountable cost report.
11 Q. Okay. Now, there's something else in there called
12 the equalization enrichment allotment, isn't there?
13 A. Not in the components that are subjected to the local
14 fund assignment and are normally thought of as
15 subtotal on the Foundation School Program cost.
16 Q. Well, now, it's money that goes to the poor
17 districts, isn't it?
18 A. Yes. There are those that are 110 percent of average
19 wealth and less.
20 Q. All right. So that's money that's specifically
21 targeted to help the property poor districts?
22 A. Yes, sir. It is.
23 Q. Okay. And how much money is that?
24 A. In terms of the highest, maximum entitlement that
25 I've seen, approximately $600.00.

1 Q. How about 650? If you'll look at Page A-20, I
2 believe it is. No, let's look at the very back page
3 of it.
4 A. Bench Marks?
5 Q. Yes, sir.
6 A. Okay. Of what, A-20?
7 Q. No, I don't have it on this. Okay. Let's use your
8 600 -- $600.00?
9 A. I used that as an approximate figure from
10 recollection, yes.
11 Q. If I found one in there that says 651 --
12 A. I would accept that, yes.
13 Q. Okay. And this is equalization?
14 A. Enrichment, yes.
15 Q. Okay. Now, this is all subjected to the equalization
16 formula, isn't it? It's all skewed, whether we draw
17 the line here or draw the line there, it is all
18 dispersed on the basis of relative wealth of the
19 district, is it not?
20 A. That is correct.
21 Q. And we're talking about a theoretically poor district
22 here, aren't we, because of this 651, the high end?
23 A. That would be an extremely poor district, yes.
24 Q. Okay. Let's add that up. Would you add that up on
25 your calculator for me?

1 A. I'm having trouble believing my calculator. Let me
2 try it again.
3 Q. Well, let's do it by hand. That's one, that's 18,
4 isn't it, four and four and ten, carry the one, four,
5 six, seven, eleven?
6 MR. THOMPSON: No.
7 MR. O'HANLON: No? Sorry about that, guys.
8 Q. Four, six, seven, 13.
9 A. Yes, sir, 23.81.
10 Q. Okay. Now, this figure is before you get into --
11 this does not include weighted students, does it?
12 A. No, sir. It does not.
13 Q. Okay. So that Voc. Ed. kids, which get a multiplier
14 of 1.4 --
15 A. Five.
16 Q. 1.5.
17 A. 1.45, excuse me.
18 Q. Excuse me, I kind of split the difference there.
19 Bilingual kids aren't included in here, the weights
20 for that, 1.1?
21 A. Bilingual kids is a .1 add on.
22 Q. Uh-huh. And Comp. Ed. kids?
23 A. Is a .2 add on.
24 Q. Okay. So a district that has -- now, you would
25 expect for a lot of these bilingual kids to be also

1 Comp. Ed. kids, right?
2 A. It's conceivable that -- yes, there's a high positive
3 correlation.
4 Q. Uh-huh. And those are added in, those weights.
5 They're not exclusive, are they?
6 A. They are add on weights and one child may be eligible
7 for both weights, yes.
8 Q. Okay. So if you've got a high concentration of the
9 weights, you take this number and multiply it times
10 1.3.
11 A. Not that number, but back up here.
12 Q. The one above it?
13 A. The 1,350, yes.
14 Q. All right. So there's more money that goes for those
15 weighted kids. We're not talking about weighted kids
16 with this 2,381, we're talking about average kids?
17 A. That is correct.
18 Q. Okay. And we don't include transportation?
19 A. No, sir.
20 Q. And we don't include money that's generated from
21 school lunches and things of that nature?
22 A. Well, obviously not, no.
23 Q. And we don't include federal funds here?
24 A. No, sir.
25 Q. So there's a whole lot of stuff that's not included

1 in this 23. This is just kind of a starting point
2 number, isn't it?
3 A. Well, I don't agree with your conceptualization of
4 the structure, but, yes.
5 Q. Now, that's money that's available to every district
6 in this state on behalf of every school child in this
7 state, isn't it, for these components?
8 A. Yes, sir. For the 52 cent tax rate, I believe it is.
9 Q. Okay. And all you've got to do to get this amount of
10 money is to have 52 cents worth of taxes, right?
11 A. That is my understanding, yes.
12 Q. Now, the district is free to raise in addition to
13 that, should it desire to do so, an additional
14 dollar, approximately, 98 cents, correct, per child?
15 A. They can raise up to a dollar and a half, if that's
16 what you're getting at.
17 Q. Yes. Okay. Now, even in Edgewood, with $20,000.00,
18 that's $200.00 a kid, isn't it?
19 A. What they -- the difference that they could --
20 Q. That they could impose.
21 A. -- generate by the additional tax effort up to a
22 dollar and a half, yes, I'm sure it would be that
23 much.
24 Q. Okay. Well, it's 20,000 times a hundred.
25 A. Yeah.

1 Q. It's $200.00 a child.
2 A. I'm not disagreeing with you.
3 Q. Okay.
4 A. I'm sure it would be that much.
5 Q. Now, when you did your accountable cost study, did
6 you -- and you looked at the cost of what was out
7 there, you computed, in essence, an average, didn't
8 you?
9 A. We used several methodologies. That was one of them,
10 yes.
11 Q. And the average that you came to was 2,414, wasn't
12 it?
13 A. Yes, sir, in terms of the cost of regular education
14 in the '85-'86 school year.
15 Q. Uh-huh. And this is what you looked at, isn't it?
16 A. What do you mean?
17 Q. Aren't these the factors that you considered in the
18 provision of a regular education?
19 A. Well, in terms of average cost of what they were
20 spending out there is what we looked at, and in that
21 that money is involved in that average expenditure
22 level, yes.
23 Q. Well, and we talked about this in your deposition.
24 And you said it's fair to compare this calculation to
25 the average that you arrived at in the accountable

1 cost study, isn't it?
2 A. I agreed with you that if you accept the fact that
3 equalization and enrichment should be treated in that
4 context, in that manner, that there was an equalized
5 opportunity for school districts of less than 110
6 percent average wealth per student for a 52 cent tax
7 rate to generate that kind of money, yes, sir.
8 Q. To generate the average?
9 A. Very close, yes.
10 Q. Okay.
11 A. For regular programs.
12 Q. For regular programs.
13 So, now, let's talk about concept of averages
14 for a second. I'm going to ask you to do something
15 with me.
16 I'm going to ask you to go way back in the way
17 back machine with me and try and back into what an
18 accountable cost study would have looked like in 1983
19 or 1984, okay?
20 A. I'm not sure I can do that, but go ahead.
21 Q. Well, see if you can --
22 A. I'll try to follow you, though.
23 Q. See if you can follow my methodology.
24 THE COURT: It's noontime. Before you
25 start in on that new subject, you mark your place and

1 we'll start up there at 2:00. Okay, see you all at
2 2:00.
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6 (Lunch recess.)
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1 AFTERNOON SESSION
2 (Defendants' Exhibit No. 1 marked.)
3 MR. O'HANLON: May I approach the witness?
4 THE COURT: Yes.
5 CROSS EXAMINATION (RESUMED)
6 BY MR. O'HANLON:
7 Q. Dr. Hooker, before we broke for lunch, I was going to
8 ask you to kind of -- let's go back and do, to the
9 extent that we can, a look at what an accountable
10 cost study would have looked like in '83-'84.
11 The premise being, so I -- I don't want to
12 sneak up on you or anything, but the premise here is
13 that when we did the accountable cost committee
14 report in -- we did it on the 1985-'86 data, didn't
15 we?
16 A. The last one, yes.
17 Q. The one that yielded the 2,414 number?
18 A. Yes.
19 Q. Okay. Now, that included a bunch of money that had
20 been flown into education as a result of House Bill
21 72?
22 A. Yes, sir.
23 Q. So what I want to do, to the extent we can, is let's
24 see if we can't subtract that money and then see what
25 an accountable cost committee -- what an accountable

1 cost study would have looked like based on 1983-'84
2 school year data. Does that sound like a fair
3 approach?
4 A. I'm answering the questions.
5 Q. Does that sound reasonable? Can we kind of try and
6 subtract that out and see if we can't take a look at
7 it?
8 A. I'll answer whatever questions you ask to the best of
9 my ability.
10 Q. No. The question is, does that sound like a
11 reasonable -- can we get something approximating what
12 it would look like by doing that, by taking the
13 increases that came as a result of House Bill 72, and
14 subtracting them out?
15 A. I suppose in a rough calculation sense, yes.
16 Q. Okay. Now, if you'll look at Exhibit 205, and let's
17 look at the second page. I don't see that it has a
18 number on it, and I guess it's Page 1, right inside
19 the content page.
20 A. The introduction?
21 Q. Yeah, it says "Bench Marks for 1986-'87 District
22 Budgets in Texas."
23 A. Yes, sir.
24 Q. Now, it says that the state has added a billion
25 dollars a year. Let's talk about a year basis rather

1 than a biennium, okay? Can we do that?
2 A. Yes.
3 Q. That it added a billion dollars a year, that's about
4 right, isn't it?
5 A. Somewhat less, but yes.
6 Q. Okay.
7 That's right, isn't it, all of those zeros?
8 A. Nine of them.
9 Q. Yeah.
10 A. Yeah.
11 Q. It's a whole lot of money, isn't it?
12 A. Yes. I have a hard time imagining what that is.
13 Q. Okay. Now, it also gives us two numbers here in the
14 first paragraph up there for what the local school
15 districts had to raise in taxes in that year, is that
16 right?
17 A. Well --
18 Q. In those two years?
19 A. The term "had to," I might argue with in terms of
20 they, in fact, did. I wouldn't argue with that.
21 Q. Okay. And if they did, then that would have been
22 picked up in the numbers in that $2,414.00 number
23 that you used for an average on the accountable
24 costs?
25 A. Yes, sir.

1 Q. Okay. So is it fair, then, to add that 519 and that
2 551, those two numbers for those two years?
3 A. In terms of increased local ad valorem tax revenue
4 produced, yes.
5 Q. Okay. So that in the first year, we added $519
6 million from local sources. And in the second year,
7 an additional -- so it's fair to add them to get one
8 year, isn't it?
9 A. In terms of looking at '85-'86 revenue available,
10 yes.
11 Q. Okay. That's 551,000,000.
12 Now, the total of that, correct my math here,
13 $2,070,000,000 a year?
14 A. By '85-'86, yes.
15 Q. Now, if I was going to compare that number, if I was
16 going to try and figure out a per ADA increase in
17 that, I would divide that by approximately the
18 3,000,000 students; is that correct?
19 A. Yes, sir.
20 Q. Well, let's see if we can't do short division over
21 here.
22 Now, we can scratch those out, that will get us
23 down to three into 2,000, right?
24 Is that right?
25 A. I'll accept that, yes.

1 Q. Now, if we're backtracking -- no, that's actually not
2 right, that's six, isn't it?
3 A. No. I'm sorry. I agreed too rapidly, yes.
4 Q. I tricked myself here. $690.00, isn't it?
5 A. Yes, sir.
6 Q. Now, we can take that 2,414, and then we can subtract
7 that 690, that's three -- is that right?
8 A. Well, nine and one is ten, so you would have a zero
9 there.
10 Q. No, we're subtracting now.
11 A. Oh, I'm sorry.
12 Q. $1,724.00?
13 A. Okay.
14 Q. Okay. Now, if we had done an accountable cost report
15 using the same methodology that you all used based on
16 1985-'86 data, then at least back then, we would have
17 come up with somewhere around $1,724.00 average cost
18 for educational program?
19 A. Yes. As a matter of fact, the program cost
20 differential study that I referred to as a part of
21 our methodology in working with a select committee
22 wound up with an $1,800.00 number on that same data.
23 Q. Okay. So that tells us we're in the ballpark,
24 doesn't it?
25 A. Yes, sir.

1 Q. So, it is not unreasonable to assume that when -- and
2 that would have been the most current data that was
3 available to the Texas Legislature when they were
4 considering House Bill 72, isn't it?
5 A. In terms of average annual cost data, yes --
6 Q. Okay.
7 A. -- per what corresponds to regular program cost.
8 Q. Okay. So, what they were looking at back when they
9 passed this statute was something around $1,800.00.
10 And the reason why we're looking at $2,400.00 today
11 is the fact that we put so much money into the
12 program, isn't that right?
13 A. Your numbers at the top show that the state put in
14 almost a billion and the locals put in almost a
15 billion as a result of their response to House Bill
16 72, yes.
17 Q. Okay. Now, would you agree with me that from your
18 knowledge, and not with any empirical studies, but
19 from your knowledge that the differential ability of
20 districts to raise and levy and collect local taxes,
21 that this amount was probably disproportionately
22 taken from the wealthier districts?
23 A. My assumption is that the 519 and the 551, that the
24 wealthier school districts, those above state average
25 wealth per pupil, generated substantially more of

1 that money than the property poor districts, yes.
2 Q. And that this billion dollars went substantially to
3 the lower?
4 A. The design of the system was to put the majority of
5 that money into property poor school districts, yes.
6 Q. Okay. Have you looked at Bench Marks back for
7 '83-'84 to get some kind of notion on let's go back
8 to Edgewood about what they were spending in '83 and
9 '84 on their educational component?
10 A. I read it with interest annually.
11 Q. Can you tell us or do you have a document here where
12 you can look and tell us how much Edgewood was
13 spending in 1983 and '84 for their educational
14 program?
15 A. I don't have it with me, no.
16 Q. Okay.
17 A. I do have a copy of it in my office.
18 Q. Okay. So, what the Legislature was looking at was
19 not that $2,100.00 figure which you were talking
20 about, but realistically if you're looking at a
21 study, empirical study, which is the best methodology
22 we have available, I assume, that it was looking at a
23 $1,700.00, $1,800.00 figure?
24 A. They were looking at two things. One was the
25 $2,100.00 figure adjusted for price differential and

1 small, sparse formulas that resulted in the bill that
2 reflected the select committee's proposals reflecting
3 the 1,715 basic allotment based on average daily
4 membership.
5 If you convert that to ADA, then it was an
6 1,842 recommendation which was in Senate Bill 4 and
7 House Bill 1, which were the purest forms of the
8 select committee's recommendations.
9 The Senate, as a matter of fact, passed the
10 Bill with a 1,715 per ADA average, which translates
11 to 1,842 basic allotment.
12 Q. Okay. Now, you said the billion dollar increase that
13 was ultimate -- there was a billion dollar per annum
14 increase that was ultimately passed?
15 A. (Witness nodded head to the affirmative.)
16 Q. Did I hear you say that there was no study that
17 supported that increase? That they pulled that
18 billion dollar increase out of the air?
19 A. No, sir. I never said that.
20 MR. O'HANLON: May I approach the witness?
21 THE COURT: Yes, sir.
22 BY MR. O'HANLON:
23 Q. I'm handing you now what's been marked for
24 identification as Defendants' Exhibit No. 1 and ask
25 if you can identify that document, please, sir.

1 A. Select committee on public education recommendations.
2 Q. All right. Now, are you familiar with that document?
3 A. I read it at the time that it was put out, yes, sir.
4 Q. That's a scope committee report, isn't it?
5 A. Yes, sir. It is.
6 Q. That's the workings and deliberations of the scope
7 committee that included the Governor and Mr. Perot
8 and Lieutenant Governor Hobby and Gib Lewis and all
9 the people --
10 A. That is correct.
11 Q. They looked at a lot of data, didn't they?
12 A. Yes, sir. They did.
13 Q. They held hearings all over the state?
14 A. Yes, sir. They did.
15 Q. And talked to literally thousands of witnesses in
16 terms of all of the issues contained in what
17 ultimately became House Bill 72, didn't they?
18 A. That is correct.
19 Q. They spent an awful lot of time on finance, didn't
20 they?
21 A. That is correct.
22 Q. Okay. Now, there's a figure in the back that says
23 what their specific recommendations are with respect
24 to funding, isn't there?
25 A. Yes, there is.

1 Q. And what is that figure?
2 A. The cost of proposed implementation is 987.3 million
3 for the fiscal year 1985.
4 Q. Uh-huh. The same for '86.
5 A. Yes, sir.
6 Q. They got every penny of it, didn't they?
7 A. They were -- in terms of the appropriations
8 implications, as it was reflected in the Bill, no,
9 sir, they didn't. You're talking about a figure that
10 is over a hundred million dollars shy of this.
11 But in terms of what it costs when it was
12 implemented, I don't specifically recall. It may
13 have ultimately cost that, but that's not what was in
14 the copy of House Bill 72 that I received.
15 Q. The amount of money was the same. It's just that it
16 wasn't allocated the same way, isn't that right?
17 A. Well, the amount of money was also less.
18 Q. I thought you said that there was a billion dollars a
19 year appropriated to education by House Bill 72.
20 A. No, sir. I agreed with you, in general round terms,
21 that it was approaching a billion dollars that the
22 state added.
23 But what I'm saying is that, as I recall the
24 specific number -- and I don't have a reference to
25 that up here in the stand, I do have it in my little

1 satchel out there -- but it was something over $800
2 million a year, but not a whole lot more than $800
3 million a year. I'm not trying to be picky with you.
4 I'm just saying that what the Legislature thought it
5 was appropriating at the time, in terms of that one
6 year, is almost $200 million less than this figure.
7 Q. Well, that's because of when they appropriated it,
8 isn't it?
9 A. What do you mean?
10 Q. Well, because it was passed in March, we cut across
11 fiscal years and things of that nature, isn't that
12 right. And it became --
13 A. It was passed in June, and the Bill was implemented
14 beginning September 1.
15 Q. Okay. Now, but at any rate, we can go back to the
16 appropriations act and find out exactly how much
17 money was appropriated, can't we?
18 A. Yeah. And as I said, I'm not trying to be
19 argumentative. I'm just saying it's somewhat less
20 than that.
21 Q. Okay. But it's pretty doggone close to everything
22 that the scope committee asked for in terms of
23 funding.
24 A. On a relative basis, the Legislature certainly did
25 respond in the right direction, yes.

1 Q. Now, one of the problems that we had with respect to
2 all this was that there wasn't -- the $2,100.00
3 figure, if we went in with the $2,100.00 basic
4 allotment, it would have cost considerably more than
5 that, wouldn't it?
6 A. It would cost a great deal -- I say a great deal --
7 substantially more than that because the House Bill
8 1/Senate Bill 4 local fund assignment was, in fact, a
9 40 percent level rather than the 30 percent level in
10 the first year. And so the property rich school
11 districts were spared additional losses and state
12 aid.
13 Q. You mean the property school districts like Dallas?
14 A. Dallas, yes, sir --
15 Q. Okay.
16 A. -- and other districts that are in that category of
17 districts.
18 And so, there was that dimension and also, the
19 level of the basic allotment dimension.
20 Q. Okay. You, as I take it, wanted, in addition to the
21 $2,100.00, an extra 15 percent to be added on for
22 equalization; is that right -- I mean for enrichment?
23 A. If you're talking about me, personally, I was a
24 consultant to the process and that was not my
25 decision making. But me, personally, I was not

1 uncomfortable with that, no.
2 Q. Okay. Now, that would have been $2,100.00 plus 15
3 percent of $2,100.00 which would have been 315
4 additional dollars, right?
5 A. Well, that's just where you start in the system. You
6 also have to put on all of these add ons that you're
7 talking about. And the 15 percent would have been of
8 total Foundation School Program costs less
9 transportation.
10 Q. Okay. So it would have been considerably higher than
11 that? How much higher?
12 A. I can't answer that question with any precision at
13 this point.
14 Q. Okay. But at any rate, a 15 percent add on?
15 A. Equalized opportunity to enrich above the level of
16 the Foundation School Program at a 15 percent of the
17 other Foundation School Program cost level, yes, sir.
18 Q. Okay. Let's talk a minute, if we can, and see if we
19 can come up with the schematic about how funds are
20 dispersed in the state and what goes into public
21 education at this point.
22 There are, at a base level, textbooks and
23 teacher retirement are provided for everybody,
24 regardless of how much wealth they have; isn't that
25 right?

1 A. In terms of the state share of teacher retirement,
2 yes.
3 Q. Okay.
4 A. And textbooks.
5 Q. And that's required by the Constitution, isn't it?
6 That's set out in the Constitution?
7 A. Not to my knowledge.
8 Q. Are you familiar with Article VII, Section 4?
9 A. I have read it. I won't say that I can quote it.
10 Q. Okay. So we've got a base line here that is
11 textbooks and retirement. And that's for everybody,
12 right?
13 A. Their retirement is a surprise to me if it appears in
14 the Constitution, but if you say so, I will accept
15 your word for it.
16 Q. Okay. These figures don't even get figured into
17 anything, do they? School districts don't even
18 figure costs associated with textbooks because
19 they're provided by the state, aren't they?
20 A. That is correct. And it goes to property rich
21 districts as well as property poor.
22 Q. That's right. So we're talking about a district
23 that's spending $3,600.00 or $4,800.00 or $19,000.00
24 or whatever.
25 A. They have basic textbooks for their youngsters

1 provided by the state.
2 Q. That's right. And those aren't accounted at all in
3 any of those figures?
4 A. No, sir.
5 Q. Okay.
6 A. That's state costs. It's outside the framework.
7 Q. Now, what's also provided in this basic system is the
8 result of the available school fund, isn't it?
9 A. Yes, sir.
10 Q. Now, that's in the Constitution, isn't it?
11 A. Yes, sir.
12 Q. And there's nothing this lawsuit can do about it.
13 That's just constitutionally just supposed to go to
14 all of the kids in the state on a per capita basis,
15 isn't it?
16 A. Unless you amend the Constitution, yes, that's
17 constitutionally dedicated.
18 Q. Okay. And that's $280.00, isn't it?
19 A. I don't know the current figure. I've heard numbers
20 from 250 to 260. 280 is, I suppose, what you're told
21 by Mr. Moak.
22 Q. Uh-huh. Do you have any reason to dispute it?
23 A. No, sir.
24 Q. Okay. Then on top of that is when we get into
25 program. And that's what we talk about equalization

1 and things of that nature, is that right?
2 A. Yes, sir, except for the fact that the state
3 subtracts from its share of the cost of the
4 Foundation School Program in the district, the
5 $280.00. And the $280.00 is sent to the budget
6 balanced school districts. So actually, school
7 districts that are not budget balanced really don't
8 care how high or low that number is because the
9 state's --
10 Q. It's included anyway.
11 A. Yeah, discounting it.
12 Q. But we can't take it away from the budget balanced
13 districts, can we?
14 A. No, sir. We cannot.
15 Q. Okay. So probably when we talk about the state
16 system, we ought to just kind of leave that off for
17 right now, just kind of throw it in there and deal
18 with it, okay? I'm talking about what the
19 Legislature can do something about. What the
20 Legislature can do something about is up on top of
21 this; isn't that right?
22 A. Yes, sir.
23 Q. Okay. Now, is it fair then to say -- let's extend
24 this on up. And let's extend this on up to -- what
25 was the figure we got here, around $2,400.00, which

1 is what the program yields; is that right?
2 A. The average accountable costs for a regular program --
3 Q. Uh-huh.
4 A. -- for 1985-'86, was 2,414 according to the report,
5 yes.
6 Q. Okay. And let's run -- this is money here on this
7 access. And this is wealth on this access, okay?
8 Okay. Do you follow me so far?
9 A. I'm not sure why wealth is being --
10 Q. Wealth in the district. What I'm trying to do is try --
11 A. Okay. You're trying to create -- yeah, okay.
12 Q. I'm going to draw a line here.
13 A. All right.
14 Q. And if this is the poorest district -- now, it
15 doesn't quite go all the way up to the edge because
16 every district has got to raise some taxes, right?
17 A. Yes. They have some responsibility.
18 Q. Okay. And then out here, we get to a theoretical
19 percentage where we've got budget balanced districts
20 out there that don't really get any money because of
21 budget balance?
22 A. Correct.
23 Q. Other than the $280.00.
24 A. And there may be a few other minor things, but yes.
25 Q. Okay. And if the area under this curve here, if

1 we're running money here and wealth along the bottom
2 access, the area I kind of covered in is what state
3 aid looks like, right?
4 A. As a general conceptual framework, yes.
5 Q. Okay. So that the poorer you are, the more money you
6 get?
7 A. That's correct.
8 Q. The design being to equalize the program at a
9 specific level.
10 A. That is correct.
11 Q. And it does that, doesn't it?
12 A. To a specific level, yes.
13 Q. And that level being the $2,300.00 to $2,500.00
14 range?
15 A. Yes, sir.
16 Q. Okay. So, if any district is to go out here and
17 spend between $2,300.00 and $2,500.00, if they had
18 the same tax rate -- now, let's forget about the
19 budget balanced districts out here, but let's assume
20 any nonbudget balanced districts out here, for the
21 same tax rate, are going to have the same amount of
22 money, aren't they?
23 A. The answer to that is no, because that only works to
24 110 percent of the state average wealth per pupil.
25 After that, those districts are in a position

1 to exceed that level with, you know, or raise that
2 amount of money with less tax effort.
3 Q. Okay. So, in other words, if we're going to put a
4 kink in it, the kink would go down here, wouldn't it,
5 the slope would drop off quicker.
6 If you've got, say, average, and then average
7 plus 110, you've got state finances going down here
8 on an even slope and then it will even drop off
9 quicker?
10 A. I'm not sure I would agree with that. The deviations
11 from the line up there that you're conceptualizing
12 would result, in a minor sense, because of local tax
13 effort being expended and so forth.
14 Okay. Go ahead.
15 Q. Is that fair to change the curve of that a little bit
16 and drop it off quicker?
17 A. In my opinion, I don't think it's necessary to change
18 the curve, no.
19 Q. Okay. So then it's fair to just have just kind of an
20 inversed direct kind of relationship between wealth
21 and the amount of state aid?
22 A. To that level of funding, yes.
23 Q. Okay. Now, whatever we do out here, we don't account
24 for the budget balanced districts, do we?
25 A. No.

1 Q. Now, the budget balanced districts operate
2 independent of the state system, don't they, in
3 essence?
4 A. I think they have to comply with the accreditation
5 standards like anybody else does.
6 Q. The financing system?
7 A. Yes.
8 Q. I mean, they can raise whatever money and they don't
9 get any state aid. The state doesn't take anything
10 back from them.
11 A. That's correct.
12 Q. And all we're going to do by -- now, let's talk about
13 something else -- is, in essence, if you increase the
14 local fund assignment, you're going to push this line --
15 you're going to make it steeper, aren't you, and make
16 a lot more districts budget balanced?
17 A. The higher the level local fund assignment without
18 increasing the forum Foundation School Program, the
19 more budget balanced school districts you would
20 create.
21 Q. Okay. All you're going to do here is put a bunch of
22 more districts outside the state system of finance?
23 A. You're going to make more property rich school
24 districts support more of their own cost of public
25 education in order to free up state resources to put

1 in property poor school districts, yes.
2 Q. That's not going to make things any more equal, is
3 it?
4 A. Well, in terms of -- you have to change the level of
5 the base of the Foundation School Program by the
6 money you're saving not sending it to budget balanced
7 school districts in order to put more money into
8 property poor school districts.
9 Q. Okay.
10 A. And my assumption is you would have no reason for
11 doing that except to save the state money in a budget
12 crunch --
13 Q. Okay.
14 A. -- unless you use the money that you freed up to
15 actually increase the power. In that case, yes, you
16 would put more state money into property poor school
17 districts.
18 Q. You're not testifying that the state isn't in a
19 budget crunch right now, are you?
20 A. I certainly would not testify that it is not,
21 contrary to Mr. Clement's prospective.
22 Q. Okay. Now, what I'm saying is let's take -- what was
23 the richest district? Do you have that document in
24 front of you? What is the richest district out
25 there?

1 A. As I recall, it was Santa Gertrudis on this printout.
2 Look down under Santa Gertrudis School District, yes.
3 Q. Okay. Santa Gertrudis, and they're spending how
4 much? Do we know how much --
5 A. $12,840.00 is what this report indicates.
6 Q. Do you see how many kids there are in that district?
7 A. Not on this report, no.
8 Q. Okay.
9 A. Oh, wait a minute. No. It is -- I don't see a
10 column on this report for students.
11 Q. Well, let's assume that we took this $2,400.00 level
12 and we add this thousand dollars that we talked about
13 earlier that you say you're short or you say
14 $1,346.00, and we come up with 3,746.
15 Now, we don't take any money away from Santa
16 Gertrudis, do we?
17 A. Not unless you institute a recapture provision.
18 Q. Okay. Now, that would be a statewide property tax,
19 wouldn't it?
20 A. I wouldn't want to rule on a point of law.
21 Q. But if the state was going to say, "You can levy it
22 all you want and we're going to come in and take it,"
23 that's kind of like the state's tax, isn't it?
24 A. I would guess that you're generally correct. I don't
25 know what the points of law are, and I certainly

1 wouldn't want to argue them with you.
2 Q. Now, at this point, to equalize, and if we can't take
3 that away, this definition, even adding the $1,300.00
4 that you say we need to add in the program, doesn't
5 even get us close to equity, does it, by your
6 definition?
7 A. It moves us in the right direction, but still,
8 obviously, there's an equity issue there.
9 Q. And you would say by applying your 1.15 -- let's
10 divide that. Let's divide -- let's see -- what is a
11 hundred and -- can you tell me how much to make an
12 equitable system I would have to spend given this
13 type range of funding to be within 15 percent?
14 A. I have no idea. We have never been optimistic enough
15 to run one at that level.
16 Q. Well, it's fair to say that it would be somewhere
17 over $11,000.00 per child in this state, isn't it?
18 A. It would cost you a lot of money, yes.
19 Q. And you're not saying that we're needing to spend
20 $11,000.00 per child on education in this state, are
21 you?
22 A. No, sir.
23 Q. Okay. So, the concept of adequacy, how much is
24 enough, is a completely different notion than equity,
25 isn't it?

1 A. Yes, sir.
2 Q. And you can make things equal without doing anything
3 to equity -- without doing anything to quality, can't
4 you?
5 A. Certainly.
6 Q. In other words, I could tell this Santa Gertrudis, I
7 suppose, that "Golly bum, you can't spend any more
8 than $2,414.00," couldn't I?
9 A. For regular -- well, for anything, yeah, you can tell
10 them that.
11 Q. For regular program.
12 A. Yes.
13 Q. You can run it back to accountable cost. Now, that
14 isn't going to do a doggone bit of good to anyone
15 else in the state, is it?
16 A. Without a recapture provision, no.
17 Q. And by merely saying to Santa Gertrudis and all the
18 other budget balanced districts out there that you
19 can't spend any more than a given level, now that
20 makes the system more equal, but it doesn't do
21 anything to any other student, does it?
22 A. Not in terms of the Santa Gertrudis example, that's
23 for certain.
24 Q. So you're doing harm to the kids in Santa Gertrudis
25 if money makes a difference without doing anyone else

1 any good?
2 A. If you're simply placing an arbitrary low cap, that's
3 certainly the case.
4 Q. So, would you ascribe to that notion of just saying
5 "Well, we're going to hurt the kids in Santa
6 Gertrudis just for the purpose of making everything
7 equal"?
8 A. I've never advocated an arbitrary cap on spending,
9 no.
10 Q. Okay. But without a cap, then we can't have an
11 equitable system, can we?
12 A. A purely equitable system, no.
13 Q. And as long as we tolerate expenditures based on
14 local wealth without a cap, we're doomed to never
15 have an equitable system, aren't we?
16 A. In terms of pure equity in a philosophical and
17 conceptual sense, absolutely not.
18 Q. Okay. Do you ascribe by that? I mean, are you
19 advocating a cap or are you saying no, it's better
20 not to have one?
21 A. I have not advocating a cap previously. I am not
22 advocating one today.
23 Q. So your definition of equity as being defined by 1.15
24 percent deviation shouldn't apply to the State of
25 Texas?

1 A. That was a range ratio, a restricted range ratio
2 observation on my part. And the question was asked
3 of me how much could the districts spend without
4 creating inequities in educational opportunities and
5 that was my response, yes.
6 Q. Well, what I'm saying is, is that if you're not going
7 to advocate a cap, you're willing to forget that
8 range ratio?
9 A. I am not willing to forget that range ratio if you're
10 dealing with a restricted range ratio that operates
11 from the bottom 5 percent to the top -- to the 95th
12 percentile.
13 Q. Okay.
14 A. So most of those school districts that you are
15 referring to up there on those extremes of wealth
16 would not be involved in the 1.15 test. They would
17 be out of it simply because they are in the top 5
18 percent in terms of wealth per pupil.
19 Q. Okay. Well, let's talk about Dallas.
20 A. All right. Let's talk about Dallas..
21 Q. If we lowered the local fund assignment, we're going
22 to make Dallas budget balanced, aren't we?
23 A. No, sir. You would send Dallas more state aid if you
24 lowered the local fund assignment.
25 Q. I mean if you raised the local fund assignment,

1 excuse me.
2 A. It depends on how high you raise it, but certainly
3 you could raise it high enough to make it budget
4 balanced.
5 Q. They're not very far off now, if we're talking about
6 a restrictive range ratio and things of that nature,
7 are we? They're at the 95th percentile?
8 A. They're at the 95th percentile, yes.
9 Q. So it's not going to take a whole lot to make it
10 budget balanced, is it?
11 A. No. And I think that they anticipate that that, too,
12 will come.
13 Q. Okay. Let's assume that Dallas, the good citizens of
14 Dallas, decide to heed your words and raise their
15 local expenditures to the $4,600.00 level. Would you
16 applaud that?
17 A. Yes, I would.
18 Q. Now, that's going to make them outside that 1.15
19 range, isn't it?
20 A. It depends on what you do with the rest of the
21 system.
22 Q. Okay. But without substantial increase in state aid,
23 that's going -- if they heeded your words and did
24 what you told them to do, that would put them outside
25 the range?

1 A. If you raise the floor of the Foundation School
2 Program to where there is an opportunity to spend in
3 a physical and neutral situation at the level of
4 Highland Park, the answer is, no, it wouldn't.
5 Q. Let's go through that again. I lost your context a
6 little bit.
7 A. What I'm simply saying is, is that it depends on how
8 you define quality education and what it takes to
9 provide it.
10 Highland Park is spending approximately
11 $5,000.00 per pupil. I assume Winston Power feels
12 that that's necessary to provide quality education
13 for relatively advantaged kids who are not high into
14 that high cost kids. I'm simply saying if you take
15 the level of the guaranteed equalization framework to
16 the point where every school district can raise
17 $5,000.00 or at least lopping off the 5 percent and
18 the bottom 5 percent could, in fact, do that for
19 equalized tax efforts, and no, it would not do that
20 to Dallas.
21 Q. Well, but Highland Park is different here, isn't it?
22 Highland Park -- and you've seen depositions and you
23 know Highland Park has got inside tennis courts and
24 all this other kind of stuff, haven't they?
25 A. I have not made on-site visits to interns at Highland

1 Park, so I'm not familiar with what it is they buy
2 with their money.
3 Q. Well, they buy that primarily with their money, don't
4 they?
5 A. Well, in terms of local ad valorem tax money, they
6 buy that with local ad valorem tax money.
7 Q. Now, if you say that because Highland Park builds
8 indoor tennis courts with their own money, does that
9 mean that we, as taxpayers in the State of Texas in
10 order to be equalized, have to pay for tennis courts
11 in every other district in the state?
12 A. I'm not sure how much tennis courts would cost
13 amortized over 25 years, but I doubt that's a major
14 cost factor.
15 Q. What I'm trying to get is whatever educational
16 improvement, there's a difference here, isn't there?
17 And this is what I'm trying to get to is that we can
18 define on a theoretical basis what it takes to run an
19 adequate program and that will give us a dollar
20 amount. That's kind of what the accountable cost
21 committee did, isn't it?
22 A. No. We were looking at real world -- what local
23 school boards and superintendents felt were necessary
24 expenditures.
25 Q. Okay. That's what we're looking at it. We can do

1 modeling and when you did modeling, you came up with
2 $2,100.00. And when you did the accountable cost,
3 you came up with $2,400.00. And when you did
4 modeling back in '83 and '84, you came up with
5 $1,800.00 -- I mean when you did --
6 A. In one approach of the research that we did.
7 Q. Okay. And that's the basic program, it's defined by
8 looking out there and seeing what's out there and
9 getting an average. And do you know of any other way
10 to do it?
11 A. You can create the hypothetical model business,
12 utilizing expert judgment. You can identify
13 exemplary school districts that are achieving some
14 level of quality that you're recognizing and do cost
15 analysis of what they spend on what in order to
16 achieve whatever it is you're saying they're doing
17 well. And you can utilize averaging approaches. And
18 those are the three basic kinds of methodologies that
19 are generally employed to look at all of the stuff,
20 yeah.
21 Q. And everything that we've done in that range for an
22 adequate program comes in at $2,400.00 or less?
23 A. Well, what was referred to as a standard program,
24 which was reflecting average expenditure levels for a
25 regular program, yes, sir.

1 Q. Okay. So that's one way to define an average program
2 or a cost effective adequate program that meets state
3 requirements. And that's exactly what Finding No. 1
4 of the accountable cost committee study was, wasn't
5 it?
6 A. But no assertion that that guaranteed quality. I say
7 guaranteed quality, I misstated, guaranteed the
8 physical opportunity to provide quality.
9 Q. Okay. Now, the fact -- that's the best measure we
10 have, isn't it? Do you have a better measure?
11 A. Of what?
12 Q. Of what's an adequate program?
13 A. It depends on your subjective definition of adequate.
14 If you want to say that adequate is what the average
15 school district is now spending on regular program in
16 terms of 1985-'86 data, my answer is yes.
17 Q. Well, now, if you look at -- we can look at some
18 other factors and look at Exhibit 205, the State of
19 Texas is right on national average in terms of
20 standardized testing, isn't it? They're right at the
21 50th percentile, statewide?
22 A. I can't testify to that. I have not looked at those
23 tests scores.
24 Q. Why don't you look at Bench Marks, Exhibit 205.
25 A. What page?

1 Q. Oh, any of those pages where you'll see the report of
2 test scores. There will be, in the middle of the
3 page, a statewide average?
4 A. Does this -- okay, yes, I see what you're talking
5 about.
6 Q. Okay. What are the statewide averages?
7 A. In terms of math, 53rd percentile; in terms of
8 reading, 46; and in terms of writing, 50.
9 Q. Okay. So we're right on national norms, aren't we,
10 with respect to what our test scores are in the State
11 of Texas?
12 A. From those tests scores, it would appear that way,
13 yes.
14 Q. So, if as you said money makes a difference in
15 education, we're spending an average amount of money
16 because we've got average test scores nationally,
17 right?
18 A. Well, I haven't seen recent national data, but I was
19 under the impression that we were somewhat below the
20 national average in terms of per pupil expenditures.
21 Q. But we've got average results, don't we?
22 A. In terms of those, that those tests scores reflect
23 that, yes.
24 Q. Okay. And it would be kind of difficult to argue
25 that somebody is constitutionally entitled to be

1 above average because obviously, if you've got an
2 average, you have people that would be below it,
3 wouldn't we?
4 A. When have Texans ever been content with being
5 average?
6 Q. All right. So you think that we ought to not be
7 content constitutionally. We ought to demand that we
8 be better than the rest of the nation. Do you think
9 our Constitution requires that?
10 A. I'm not a constitutional lawyer.
11 Q. Okay.
12 A. My assumption is that with a 35 percent drop out
13 rate, with extremely low TEAMS test scores in many of
14 the school districts of the state, we're not doing a
15 very good job in a lot of places.
16 Q. Well, now, but that's not related to money, is it?
17 That's related to a lot of other different things,
18 isn't it?
19 A. Money only creates the fiscal opportunity to provide
20 programs. It doesn't guarantee results.
21 Q. Now, if we've defined what an adequate program is by
22 taking a statewide average -- are you familiar with
23 Dr. Benson's approach to that, one of the experts
24 that's going to testify?
25 A. No, sir.

1 Q. Would you be surprised if he said that that's the way
2 to determine what's a sufficient level of funding and
3 take kind of an average of collective judgments of
4 all of the school folks in the state?
5 A. I would not be greatly surprised by someone coming to
6 that conclusion, no.
7 Q. Does that sound like a reasonable approach?
8 A. In my opinion, the answer to that is no.
9 Q. You'd rather tell all of the citizens in the State of
10 Texas, rather than their school trustees, how much
11 they need to spend?
12 A. No. I would like to create a fiscally neutral
13 opportunity to raise and spend a sufficient amount of
14 money to guarantee the opportunity, fiscally, to
15 produce a quality program. And I --
16 Q. You can't do it, can you, in this state, if you're
17 relying on local property tax, can you?
18 A. I'm not sure what you're saying about relying on
19 local property tax.
20 Q. Well, you said one way we can say that we're spending
21 the same amount -- we can assure the same amount of
22 spending is to put a cap on spending, right?
23 A. That's conceptually one alternative, yes.
24 Q. And if we put it at the $2,400.00 rate here,
25 everybody is going to be doing it, the 52 rate,

1 except the budget balanced districts are going to do
2 it at a penny.
3 A. Well, there are quite a few districts, I think, below
4 that that could do that for less than 52 cents, but
5 okay.
6 Q. Okay. So that's not fiscally neutral, is it?
7 A. No. That's not fiscally neutral.
8 Q. Okay. And if we put a cap on a rate, then we
9 wouldn't get the same yields, would we? If I said --
10 A. The state could certainly consider a guaranteed tax
11 rate yield system, and it is employed in some other
12 states after a fashion.
13 Q. But let's go back a second now --
14 A. So, you know, it's quite possible to guarantee the
15 yield of the Dallas Independent School District for
16 all of the school districts in the state that are
17 below that level of wealth.
18 Q. Okay. But that would cost a heck of a lot of money,
19 wouldn't it?
20 A. It depends on the response of school districts to
21 that. If they all levied whatever maximum rate you
22 allow them to levy and you set that at a very high
23 level, then obviously, yes, it would cost the state
24 additional revenue.
25 Q. Well, see, what I'm getting at is, is that at the

1 $2,400.00 level for a basic program before the add
2 ons and all of this other kind of stuff, that's
3 exactly what we've got, is we've got a guaranteed
4 kind of yield system, don't we?
5 A. Up to the level that we have been discussing, yes.
6 Q. And beyond that, that's where we run into problems.
7 A. Yes, sir.
8 Q. Yeah. But if we do that, if we equalize for the
9 students, if we're trying to address the problem, if
10 we equalize for the students, we disequalize for the
11 taxpayers, right?
12 A. No, sir. We do not. In the sense that the
13 conceptual framework that I was talking about, the
14 guaranteed tax base yield, you put all of the
15 taxpayers on the same footing. They get the same
16 opportunity to spend for the same unit of tax effort
17 regardless of their local property wealth.
18 Q. Well, then, that's called the statewide ad valorem
19 property tax, isn't it?
20 A. No, sir. It is not. In that kind of a context, it
21 is quite possible for the state not to prescribe to
22 anything relating to Foundation School Program
23 structures except to set up that guaranteed tax base
24 yield system. Then it's up to the local school
25 district to decide what level of programming it's

1 willing to support and go after it.
2 Q. How is the state going to control -- now, you'll
3 agree that the state has to appropriate dollars,
4 correct?
5 A. Yes, sir.
6 Q. How is the state going to control the amount of
7 dollars they're going to be spending under that
8 system?
9 A. Under that system, they would have to set a tax base
10 that they were willing to guarantee. And they would
11 also, if they were going to control expenditures,
12 have to place some limit on the school district's
13 opportunity to levy its taxes.
14 Q. Right. And let's assume that the State of Texas
15 says, "We're in a financial crunch and we can't put
16 any more money into public education this biennium or
17 next biennium," whenever they're considering it. And
18 they say, "We're going to do exactly what you said at
19 the 52 cent level and the $2,400.00 yield." Now, you
20 can't really design the system any better than that
21 at those levels, can you?
22 A. It's a fair system to that point.
23 Q. Okay. So, either when you get right down to it, the
24 state has got to put more money in it. In order to
25 raise that guaranteed yield, the state is going to

1 have to put a heck of a lot more money in it.
2 A. That's correct, or send less money to property rich
3 school districts or a combination of the two.
4 Q. Okay. But sending less money to the property school
5 districts isn't going to do anything for equity, is
6 it?
7 A. It certainly can.
8 Q. Not on your ratios. If this $12,000.00 is your
9 definition of --
10 A. Well, you keep forgetting that that's the 5th
11 percentile or 5 percent of the students and 95
12 percent of the students, those levels.
13 Q. Okay. Well, you saw the statistics that I read on
14 opening statements. Since I haven't proved them up
15 yet, I'm going to have to ask you -- I'm going to ask
16 you to assume that those are true. Okay?
17 A. Assume that there's a what?
18 Q. Assume that those -- let's assume these statistics.
19 Let's assume that -- and Mr. Gray talked about it
20 this morning -- that when I was talking, that what I
21 said was, was that the 10 percent richest districts
22 are only getting $95.00 in money that comes out of
23 the general revenue.
24 Now, we can't really cut it any finer -- much
25 finer than that, can we?

1 A. I'm not sure of the point.
2 Q. If I'm going to take that $95.00 away from these
3 people entirely and spread them out over the entire
4 rest of the State of Texas, then it's only going to
5 get $9.50 or so, if my math is right, per ADA.
6 A. Well, I don't understand the point that you're trying
7 to make.
8 Q. Well, you said --
9 A. Obviously, if you raise the local fund assignment
10 from 30 percent to 40 percent, which is what the
11 Senate passed, there are school districts, such as
12 Dallas, that would go budget balanced. And there are
13 school districts with less property wealth than that
14 that would incur a greater obligation to support
15 their program.
16 Q. Okay. Now, you've been around politics and whatnot
17 around the state. You've been on all of these
18 committees and things of that nature.
19 Let me ask you to assume some things. Let's
20 assume that Dallas goes budget balanced. Let's
21 assume that all of the suburbs here around Dallas
22 goes budget balanced.
23 A. That would be impossible. Not all of the suburban
24 schools around Dallas are --
25 Q. Let's talk about a lot of the school districts, the

1 Highland Parks and the Richardsons and the Planos and
2 the Carrollton-Farmers Branches, all those go budget
3 balanced. There's a lot of kids in those districts,
4 aren't there?
5 A. I don't think Plano would either, but okay.
6 Q. Okay. And let's assume that a lot of the large
7 suburban districts around Houston go budget balanced.
8 A. A few would.
9 Q. Okay. For every district that you go budget
10 balanced, it gets a lot harder to raise money for
11 public school education, doesn't it, because you're
12 losing that many voters?
13 A. Yes, sir. That is the politics of the issue. Any
14 time you encroach an attempt to take current state
15 revenues away from local school districts, you line
16 up the votes against such a proposition.
17 Q. That's right. So if we're not careful about it,
18 don't we make it inevitable that public school
19 finance -- if we make too many districts budget
20 balanced, don't we make it impossible to raise
21 additional funds for public education in this state?
22 A. I would agree with you that the more budget balanced
23 school districts you create, the more difficult it is
24 to get appropriations passed for education, yes.
25 Q. So if we just jump out there and arbitrarily make a

1 bunch of districts, if we're not very careful, we're
2 going to say "That's fine, we separate those
3 districts, in essence, from the entire system of
4 school finance," don't we and we put them all out
5 there on their own?
6 A. I'm not sure I would agree with your term "separate" --
7 Q. They don't get anything from them?
8 A. -- but you would certainly put them in the position
9 of taking their available school revenue and
10 providing their own programs.
11 Q. And a taxpayer in those situations, if faced with the
12 choice of raising -- with raising money for
13 education, they'd spend it on local taxes in that
14 situation rather than on state taxes because that's
15 what goes to their kids.
16 A. That's the politics of the issue, yes, sir.
17 Q. Okay. So we've got to be careful here, don't we,
18 unless we're going to ruin the public school system
19 in this state?
20 A. What do you want me to say? Is that a question or a
21 statement?
22 Q. That's an assertion. I want you to say "Yes, that's
23 correct," or "That's not correct."
24 A. All right. I don't think there's any question but
25 what you could make a decision to set the local fund

1 assignment at such a high level that you would create
2 so many budget balanced school districts that you
3 would diminish the opportunity to create political
4 support in the Legislature for improving the funding
5 for public education, yes.
6 Q. Then, of course, I don't care how much it -- then it
7 doesn't matter, does it? The appropriation is just
8 not going to be enough money to go around to the poor
9 districts?
10 A. I can't crystal ball that. I've agreed with you on
11 your general premise.
12 Q. So like it or not, in essence, there's a tenuous, but
13 very real of a political necessity alliance between
14 the districts that are out there in connection with
15 school finance.
16 A. There is no question but where the more folks that
17 are highly supportive of what you're trying to pass,
18 the more likely you are to get it passed.
19 Q. Okay. Do you have a recommendation for us in terms
20 of what you think would be an equitable system, what
21 we need to do here? Would you turn and tell Judge
22 Clark what it is that you want from this lawsuit?
23 A. I would prefer not to answer that question in that I
24 have not been asked to prepare remedial approaches to
25 deal with the issues.

1 MR. GRAY: Judge, he's given the answer.
2 We have specifically asked him not to develop any
3 alternative remedies or scenarios at this time
4 because we didn't want to prejudge what the Court may
5 or may not do.
6 It's been our desire all along that if we
7 should prevail, that the Legislature be given a
8 chance to address the problem prior to the Court
9 having to implement a plan.
10 He's certainly prepared to talk in generalities
11 of what he's been talking about, about equalization
12 and the guaranteed tax yield system and things of
13 that sort.
14 We don't have any models to offer at this time
15 unless the Court is desirous that we prepare some of
16 these. Certainly we can, but we have not done so.
17 MR. O'HANLON: I find myself, Judge, in the
18 position of trying to fight somebody in the dark. If
19 they're telling us that they don't like the other
20 system, I think -- the existing system -- I think
21 that we ought to know what it is that's better.
22 And regardless of whether this Court orders it,
23 for a basis of comparison, good, bad, better, the
24 comparative terms don't mean much unless you've got
25 something else to compare them to.

1 If the Plaintiffs in this lawsuit are going to
2 come into this Court and say that the Constitution
3 requires that a better system of school financing be
4 prepared and offered up by the Texas Legislature, I
5 think it's incumbent upon them to give us some kind
6 of notion about what it is that's better. And I
7 think that's a reasonable question.
8 MR. GRAY: Mr. O'Hanlon may have taken a
9 different course in constitutional law than I did,
10 but I think the system is going to be judged by the
11 Constitution, not by four other systems that may or
12 may not be different than this current system. It
13 either is or is not constitutional in our minds. And
14 that's why we have tried to focus the issues before
15 this hearing to be on the Constitution, the
16 requirements of the Constitution, state policy, and
17 does this system comply with state policy in the
18 Constitution, and is it providing an equal
19 educational opportunity for all children in the state
20 irrespective of varying local economic factors.
21 That's the issue before the Court, as we see
22 it, not is there a middle level system or one system
23 further this way or this way or what have you.
24 MR. TURNER: Your Honor, I think Mr. Gray
25 is -- I mean, the issue is whether the system we've

1 got is constitutional.

2 And the question that was asked of the witness

3 by Mr. O'Hanlon, I think, is a very appropriate one

4 in that we have never had any agreement in this trial

5 that we were going to bifurcate the trial and talk

6 about the issue of constitutionality and have a

7 separate hearing about what would be the remedies, or

8 what should the Court's order be.

9 We've always taken the position that the

10 potential remedies have a very definite impact upon

11 the analysis of our system and on the constitutional

12 issues that are before this Court.

13 And as the Court is very well aware from the

14 testimony that Dr. Hooker has given, not only has he,

15 by background and training, studied educational

16 finance and equity issues, but he has perhaps more

17 than any other witness that will be before this Court

18 on behalf of the Plaintiffs, been actively involved

19 in the governmental process and the decision making

20 process as he testified, back as long ago as Governor

21 Briscoe.

22 And he has been actively there and he has a

23 great sensitivity to the alternatives. And I think

24 that his declining to answer the question is more of

25 a convenience to the Plaintiffs than his ability to

1 provide insight to the question.
2 THE COURT: Is there any law that might
3 help us with this, like maybe what the Supreme Court
4 has said in the Sullivan case, maybe? I don't know,
5 I'll have to look at it.
6 MR. GRAY: Your Honor, I will be happy and
7 I'm delighted to hear Mr. Turner's statement as to
8 the knowledge and competence he places in Dr. Hooker
9 and his ability to come forward with such a plan.
10 We certainly intend to, if the system is
11 declared unconstitutional, have such a plan. And if
12 Mr. Turner is going to embrace it, I'm more than
13 willing to ask him to start doing it right now. But
14 I suspect when Mr. Turner next stands up, he'll be
15 saying, "Well, I didn't quite mean what I said."
16 MR. O'HANLON: The problem that we've got,
17 Judge, is that it's real easy to criticize. And
18 that's essentially what we're talking about here.
19 It's real easy to get up and criticize and say how
20 you don't like something and how bad it is and all of
21 these other kinds of things. But it's difficult to
22 come up -- because it's a difficult process to come
23 up with a plan that meets some kind of something
24 better.
25 And our position is that given all of the

1 considerations that the state has got to deal with in
2 the provision of public education in this state, that
3 this was a good plan.
4 Now, if they've got a better one, we need to
5 know it. They need to tell us so we can go tell the
6 Texas Legislature that these experts have come up
7 with a better idea of doing things.
8 Not that you're going to order it, but you
9 can't look at it in the abstract. You've got to know
10 what would be better, how we can better disperse the
11 funds and things of that nature.
12 So that's essentially our objection, is that
13 it's really not very fair just to allow them to
14 criticize unless they can come up with an idea that's
15 better.
16 MR. E. LUNA: Your Honor, in their
17 pleadings, they claim that the system is not an
18 efficient system. So I think what Mr. O'Hanlon was
19 asking him was, if it's not, what would it take to
20 make it that. If it's not efficient, why is it not
21 efficient.
22 And in order for them to be able to get what
23 they're saying in their prayer, they're asking for a
24 permanent injunction to require the Defendant to
25 design, implement and maintain a constitutional

1 system of public school finance.
2 So they're not only talking about that this one
3 is unconstitutional, but they're asking the Court to
4 require an injunction on one that is. And that's a
5 paragraph in their prayer. And if the Court is going
6 to do that, the Court has to have some kind of
7 guideline. And I think that's a fair question.
8 MR. KAUFFMAN: Your Honor, if I may, I'm
9 afraid I'm not familiar enough with the state law on
10 the issue. I'm very familiar with the federal law on
11 the issue. And that is, whenever you're attacking
12 the constitutionality of a plan of a government
13 entity of the state, or the school district, or the
14 city, or the county, the issue in the first part of
15 the case is the constitutionality or statutory
16 propriety of the issue of the plan, districting plan,
17 or the desegregation plan, or the finance plan.
18 And then, as a matter of fact, at one time the
19 law developed so that Plaintiffs could not even offer
20 their plan during the hearing on the merits. It was
21 considered irrelevant.
22 But the issue became, and the Supreme Court has
23 found that the local jurisdiction must be given the
24 first opportunity to come up with a plan that meets
25 whatever types of weaknesses the district court has

1 found.

2 If this Court finds that not enough funding is

3 spent on public school children and the equity is not

4 proper, then the state will have to come up with a

5 plan that meets those standards first. It will not

6 be the duty of the Plaintiffs to first come up with a

7 plan and have the Court issue it. In fact, the Court

8 would be in error if it did that without first

9 allowing the political entity to come up with their

10 plan.

11 And that has been -- I know the federal law

12 enforced for many, many years has been on that basis.

13 And again, it makes logical sense. The courts have

14 carefully dealt with the issue of court interference

15 in legislative issues. The courts have many times

16 found state enactments, local enactments to be

17 unconstitutional, but has always given them the first

18 opportunity to come back with a plan that they think

19 is proper.

20 MR. O'HANLON: I agree with that notion

21 from the remedies point of view and from the court

22 order point of view, but not from the evidence point

23 of view.

24 I find myself in the situation of looking at a

25 bunch of little kids that's got something in their

1 hands and they keep looking at it, and say "I've got
2 something, but I can't show it to you." We're going
3 to save that for later.
4 Now, it's in there. They've got a plan. They
5 just said they did. They've got ideas about
6 remedies, but they're not going to show them to us
7 until later. And it's just not fair to be trying the
8 case in the abstract. If they've got a better notion --
9 this gentleman testified that he was on all of these
10 committees -- if they've got a better notion, we need
11 to examine it. We need to examine their notions to
12 whether or not they're going to meet their
13 definitions of equities, because I submit to you they
14 can't do it. That it can't be done given the
15 parameters that they've set out, they're impossible
16 for them to meet their own parameters.
17 So what I'm trying to do is try it out within
18 the funding limitations. Now, you can't order the
19 Legislature to appropriate additional funds for
20 legislation. You can't do it. The Plaintiffs aren't
21 alleging that you can do it, it just can't be done.
22 It's a violation of separation of powers. So given
23 the funding parameters, I'd like to see how they
24 would spend the money in this state. And I want to
25 see if their definition is going to meet -- what

1 their plan is meets their own definition of what
2 equity is.
3 That's relevant, because it gives us the
4 opportunity to examine their test of equity, to
5 determine whether the best plan they can come up with
6 can meet their own stringent requirements. And if it
7 can't, then it gives us very good reason to question
8 that definition to begin with. I think to that
9 extent, it's highly relevant to the issues that are
10 on trial in this lawsuit.
11 MR. TURNER: Your Honor, all of the 16
12 other states that have addressed this to the level of
13 their Supreme Courts, the reading of those opinions
14 will show you that the options are more often than
15 not fully discussed in the opinions.
16 So, it's apparent that somewhere along the way
17 at the trial court level, some testimony was offered
18 about these options which are so fully discussed in
19 so many of these opinions.
20 And again, I reiterate, in this instance, the
21 question that was asked, in my judgment based on what
22 the Court has heard, this witness clearly is in a
23 position to have some viewpoints on that subject.
24 And if he does, he's before the Court, he's under
25 oath, and we think he's obligated to answer the

1 question. If he tells us he really doesn't have any
2 remedies that he would propose and can't think of any
3 that would work, then we are entitled to hear that
4 from this witness as well.
5 MR. DETHERAGE: Your Honor, Mr. Kauffman
6 has alluded to the federal review of the standard in
7 dealing with desegregation cases, and I first submit
8 that having more than one federal district judge tell
9 me that the rules of the game just do not apply to
10 desegregation cases.
11 But even in those cases, where a constitutional
12 violation is found, it becomes incumbent upon the
13 Court to fashion an appropriate remedy to cure the
14 violation.
15 Mr. Hooker has testified that, in his opinion,
16 the system is not equitable and, therefore, is not
17 constitutional. It seems to me that it falls upon
18 him and is incumbent upon him to tell the Court what
19 is an equitable system, what is a constitutional
20 system, in his opinion. Whether or not that gets
21 over into possible remedy waits to be determined.
22 The Court can take that up in terms of a plan then.
23 But if we're going to evaluate at this point in time
24 a constitutional violation, then we've got to have
25 some model that they say is constitutional.

1 THE COURT: Well, are you all asking me to
2 make some sort of ruling? I mean, it's been
3 interesting listening to you.
4 MR. O'HANLON: I can go back and ask my
5 question.
6 THE COURT: Sir?
7 MR. O'HANLON: My question was, and I think
8 that started this whole thing, was I asked him what
9 plan he's got that would be an equitable system, to
10 which Mr. Gray objected to.
11 MR. GRAY: Your Honor, I did not object.
12 THE COURT: I think he said they did not
13 have one.
14 MR. GRAY: I said at this point, we didn't
15 have a plan.
16 MR. O'HANLON: No. I think he said he
17 didn't want to discuss it, and what I want him to do
18 is discuss it.
19 THE COURT: Well, ask your question again
20 and we'll see what response we get.
21 BY MR. O'HANLON:
22 Q. All right. Dr. Hooker, do you have a secret plan to
23 make --
24 A. Yes, but Governor Clements and I are not going to
25 release it yet.

1 Q. Well, could you kind of give us the outline of that
2 plan?
3 A. I have never been presented with the opportunity to
4 work on such a plan. I have always been employed as
5 a hired gun with somebody else making the policy
6 decisions and being told what the general parameters
7 were. And so, I have no secret plan.
8 Q. How were we going to, at the current level of
9 funding, improve on our present system?
10 A. If you assume totally a current level of funding,
11 period --
12 Q. Well -- okay.
13 A. -- the state putting in no more money, the only way
14 that you can improve on the plan is to develop some
15 sort of scheme for the redistribution of the existing
16 state revenues so that more of that money goes to the
17 property poor school districts and less of it goes to
18 the property rich school districts.
19 Q. Now, we looked at Dallas before, but Dallas has got
20 essentially the same tax rate as Edgewood and the
21 same expenditures as Edgewood, don't they? Aren't we
22 pretty close to that situation right now?
23 A. In my opinion, we're not nearly as close as we should
24 be.
25 Q. Dallas should be getting less state money, they

1 should have higher taxes than Edgewood. Is that what
2 you're saying?
3 A. I'm not necessarily willing to conclude that on that
4 specific example.
5 Q. Well, we looked back at this comparison, didn't we,
6 that Edgewood has got more money for a lesser tax
7 rate than the state as a whole, right?
8 A. Their current operating tax rate, I would guess, is
9 fairly close to the state average.
10 Q. Well, you read it out of the book. It was .563,
11 wasn't it?
12 A. That was the total and they have a very small debt
13 service requirement.
14 Q. Uh-huh. Well, this is M&O, isn't it?
15 A. No, sir.
16 Q. This is total?
17 A. That was total effective rate.
18 Q. Okay. So they're spending more because of their low
19 debt service rate. They're actually putting more in
20 operations here in this 3,600 out of that then even
21 the average.
22 A. What's causing that 3,600, I don't know how much
23 federal money is in that, but it's federal revenues
24 that, I suppose, is exempted from this discussion of
25 state local school finance.

1 Q. Well, let's look and see how much state and local
2 money they're getting. They're getting $2,900.00,
3 aren't they, in just state and local taxes? Do you
4 want to look it up? I believe it's A-8. I may be
5 wrong. No, that's Brownsville. A-52.
6 A. A-52?
7 Q. Uh-huh.
8 A. And what is it that you're trying to determine from
9 looking at A-52?
10 Q. What the total state and local tax revenue is.
11 A. State and local revenues for Edgewood, if I've got
12 the right -- 2,940.
13 Q. 2,940. Okay. And that's at -- what's their M&O tax
14 rate?
15 A. For Edgewood?
16 Q. Uh-huh.
17 A. The way he shows this, he doesn't show a breakdown on
18 true tax rate for current operations versus debt
19 service.
20 Q. Well, he's got a nominal tax rate, doesn't he?
21 A. Maintenance -- he has, I suppose, is what Edgewood is
22 showing as their tax rate at 55 cents. I'm assuming
23 that's a tax rate that was adopted by the board.
24 Q. Okay. So they've got a 55 cent tax rate.
25 A. For maintenance only, and a 74 cent total tax rate on

1 their assessed value.
2 Q. Actually they've got a .639 tax, don't they?
3 A. I'm sorry. I'm reading off the wrong line. .639 on
4 maintenance, and 65.3 on total.
5 Q. Okay. And if we go back -- let's compare it to
6 Houston, I guess. Let's take out federal money
7 altogether. And Houston is getting how much? Let's
8 look on Page A-16.
9 A. A-16. Okay. And you're looking for Houston? All
10 right.
11 Q. 3,198?
12 A. That is what it shows, yes.
13 Q. With how much effort?
14 A. With -- in terms of what they're publishing as their
15 tax rates, 63.4 for maintenance and 68.3 total.
16 Q. Okay. So, there's not a whole lot of difference
17 there, is there?
18 A. In terms of the tax effort of the two school
19 districts --
20 Q. Right.
21 A. -- and the available state local revenue, no, sir.
22 Q. Okay. If I'm going to increase the local fund
23 assignment to cut deeper into Houston, what would
24 hardly change that at all, I'm going to make Houston
25 get less money for more taxes than Edgewood, aren't

1 I?
2 A. Conceptually, you could, yes.
3 Q. And that's not fair, is it? That's the opposite of
4 your definition of equalization, isn't it?
5 A. I would not want to be a party to that process, no.
6 Q. Okay.
7 A. I would want to look for other alternatives.
8 Q. Okay. So merely changing the -- so, if we're saying
9 we're going to change the local fund assignment, it's
10 not that easy, is it? We can't, because we start
11 cutting into other people at the other end of that
12 local fund assignment, don't we?
13 A. Well, obviously, that's what raising the local fund
14 assignment is about, to diminish state aid to school
15 districts that are relatively well-off on a local tax
16 base.
17 Q. And Houston is relatively well-off, aren't they?
18 A. They're certainly above the state average, 150 or 160
19 percent of above the state average.
20 Q. Okay. So by doing much at all to that local fund
21 assignment, we're going to make the system
22 inequitable, aren't we?
23 A. I would have to do computer runs and a thorough
24 analysis to look at the impact on various sizes and
25 types of school districts. The particular example

1 that you cited certainly -- it would appear that we
2 couldn't do much to it without creating an unfair
3 situation for Houston.
4 Q. Okay. So that's one thing that we'll have to
5 consider and we'll have to set aside because it's
6 going to hurt the biggest district in the state with
7 more minority kids and more hard to educate kids than
8 any other school district in the entire State of
9 Texas.
10 A. And one of my former students is the president of the
11 board.
12 Q. And you sure don't want to get them mad, do you?
13 Q. Now, what other things can we do?
14 THE COURT: Let him be thinking about that
15 during break. We'll get started up again at five
16 till.
17 (Afternoon Recess.)
18 CROSS EXAMINATION (RESUMED)
19 BY MR. O'HANLON:
20 Q. All right. Now, these are some numbers that Mr. Gray
21 wrote up, would these be part of your plan, if you
22 had to come up with a plan, Dr. Hooker?
23 A. Well, you put a constraint on my discussion which
24 said that no new state revenue would be involved.
25 And obviously, that can't be a part of the plan if

1 there's no new state revenue involved to some degree.
2 I think you picked the most favorable example that
3 you could have picked in terms of the
4 Houston/Edgewood situation. But I understand that
5 the general principle holds.
6 But in terms of -- are you asking me what I
7 would like to see done to the system?
8 Q. Well, I kind of am. Yeah, that's what I'm asking.
9 A. I would like to see the basic allotment set at the --
10 Q. Well --
11 A. Okay.
12 Q. -- let me explore that under two parameters now.
13 A. Okay.
14 Q. And let's see if we've exhausted the first one.
15 MR. GRAY: Your Honor, he asked the
16 question and as the witness started to say, are you
17 asking what I would like to see and started the
18 answer, and then Mr. O'Hanlon cut him off. I think
19 the witness ought to be entitled to answer the
20 question. If Mr. O'Hanlon wanted it asked, I think
21 it ought to be answered.
22 MR. O'HANLON: I am going to ask him. I
23 want to define it a little more. I'm going to ask
24 him both sides of it.
25 THE COURT: Okay.

1 BY MR. O'HANLON:
2 Q. Now, let's operate under two parameters. And that's
3 first of all, under no new state revenues parameter,
4 and then I'm going to ask you about what you do if we
5 add more revenue. So, I'm going to give you both
6 shots at it. Okay? We'll kind of write it up here,
7 no revenue.
8 Now, it's kind of tough if we're not putting
9 any more state dollars into it, isn't it?
10 A. Yes, sir. It's very tough in terms of consequences
11 that you wouldn't desire resulting from trying to
12 achieve any semblance of pure equity.
13 Q. Okay. Now, as a matter of fact, in your deposition,
14 you described yourself as one of the technicians that
15 went back and came up with the financing scheme that
16 we've got, given the revenue parameters that you were
17 given; isn't that right?
18 A. Yes, sir. I was a party to that.
19 Q. And do you have any new information that would lead
20 you to a better system than you were able to create
21 then?
22 A. With no new revenue?
23 Q. Yes, sir.
24 A. I would still like to do some computer runs on the
25 level of the local fund assignment to see, you know,

1 what the general dynamics of that are.
2 And I think it would be possible within no new
3 revenue to create a greater degree of equity within
4 the system and, to some degree, lift the floor, the
5 basic allotment number, through that means. But I
6 certainly would have to look at it a lot more than I
7 have in order to make that judgment.
8 Q. If you were going to ask for a computer run, what
9 kind of local fund assignment would you ask for, just
10 if you're calling for a computer run?
11 A. I would like to see it at 35, 37 and a half, 40.
12 Q. You know that the State Board of Education has
13 recommended raising it to 35 to this session of the
14 Legislature, isn't it?
15 A. I am not aware that they had recommended that, no.
16 Q. Okay.
17 A. They did recommended that?
18 Q. Yes, sir.
19 A. Okay. I'm waiting. I was looking for a nod from Mr.
20 Moak back there and I didn't get one.
21 MR. RICHARDS: Are you taking your signals?
22 THE WITNESS: Well, I just looked to Lynn
23 as the ultimate authority on what the State Board
24 does.
25 MR. O'HANLON: All right.

1 THE WITNESS: And I hadn't heard that one.
2 MR. O'HANLON: Okay.
3 BY MR. O'HANLON:
4 Q. So you wanted to look at it at maybe 35, maybe 37,
5 maybe 40?
6 A. Yeah. I would split 37 and a half to between 35 and
7 40 and just take a look at it.
8 Q. Okay. Would you agree with me that given a
9 constraint of no new revenue, what else do we do
10 besides looking at local fund assignment?
11 A. Well, in terms of creating equity within the system,
12 we have some equity problems for kids in the sense
13 that we need further refinement of the weights that
14 are in the law. And in special education, the study
15 results would lead me to conclude that while the
16 average in current law is 3.13 for special ed. wage,
17 that they should move to at least 3.6. And based on
18 the judgment of the collective wisdom of the
19 committee to 3.78 in order for them to get their fair
20 share of whatever revenue is available.
21 In terms of vocational education, moving it
22 from 1.45 to 1.65 in order to deal with the higher
23 cost of vocational education.
24 In terms of --
25 Q. Let me stop you about weights for a second.

1 A. Yes, sir.
2 Q. Now, if we're dealing with weight within the
3 parameters of the current revenues that are put out
4 there by the State, okay?
5 A. Yes, sir.
6 Q. The only way we can get more revenue for the weights
7 is to take it out of the foundation program, right?
8 A. Well, the point being that if you're going to
9 relatively distribute based on diagnosed educational
10 needs of kids, and no new revenue is involved,
11 barring our increasing the local fund assignment,
12 yes. What you would do is essentially reduce the
13 level of funding in the regular program when you do
14 that sort of thing.
15 Q. Okay. So, is it fair to say that with -- and the
16 local fund assignment has to deal with equity as that
17 term is known and the weights are something -- are a
18 different notion, aren't they?
19 A. The weights are a different notion in that the issue
20 being addressed is student equity in terms of
21 treating similar students with similar educational
22 needs in a similar fashion in terms of the funding
23 system.
24 Q. Right. So what we can do, theoretically, if we
25 increased the weights, is we increase the weights,

1 say, for bilingual education from 1.1 to 1.25.
2 A. From --
3 Q. Now, we can do that by increasing the -- putting
4 actual state dollars in to do that, or if we did it
5 within the same parameters as the state dollars, we'd
6 have to take it out of the foundation program, and in
7 essence, lower the whole weight.
8 In other words, to get -- if we started off
9 with 1,350 plus a multiple of 1.1, that gives us a
10 number.
11 Now, to get to 1.25, we're going to have to
12 lower that 1,350.
13 A. You're more equitably distributing the money in
14 relationship to identifying student needs when you do
15 that. Then I would certainly advocate doing it, you
16 know, as a premise of equity for kids.
17 Q. But, as a principle of equity among allocating funds
18 by districts, it would be disequalizing, wouldn't it?
19 A. I would not assume so, no.
20 Q. Well, isn't it disequalizing to lower the basic
21 allotment?
22 A. In general terms, yes. But in the kind of a context
23 you're forcing me into, I wouldn't necessarily agree
24 with that statement.
25 Q. Okay. Well, I still don't see how -- if we're going

1 to increase --
2 A. What --
3 Q. I'm going to talk to you about increasing the money
4 over here in a minute. We'll talk about it in a
5 little while.
6 But what I'm saying is, is that if you want to
7 increase the weights here --
8 A. Yes, sir.
9 Q. Okay. And you want to do it within the parameters of
10 no additional new revenue in the state, if you
11 increase money for weights for kids that are
12 identified as having special needs, you're going to
13 have to take that money away from something else,
14 right?
15 A. The conceptual framework which appears in House Bill
16 72, and which was the recommendations of the ad hoc
17 advisory committee was one in which the regular
18 program cost would be determined. That would be put
19 in the bill at the basic allotment level. All of the
20 appropriate weights, recognizing the program cost
21 differentials and the instructional arrangement
22 differentials, would be put in place. And if the
23 Legislature chose not to fund the full level that was
24 there as shown as the true cost of being able to
25 provide quality, then there would be a proration

1 system which would reduce the level of funding
2 proportionally among school districts.
3 Q. Well, but if you do that and you do it
4 proportionally, don't you make -- you increase the
5 weights, but you're hurting the property poor
6 districts who can't get that money from taxes outside
7 the system.
8 A. You can't, in my opinion, make that assumption. I
9 would have to see what computer simulations would do
10 in the redistribution of money. But I can't follow
11 you that far without seeing more hard data than that.
12 Q. Well, once again, I go back. If we increase the
13 weights, we've got to get the money from somewhere.
14 We're talking about a set sum of money here. I'm
15 asking you to assume that right now. We'll talk
16 about increasing it later. But when you're talking
17 about weights and you're talking about increasing
18 money for these kids, the money has got to come from
19 somewhere. Now, where is that money going to come
20 from?
21 A. Well, my assumption is that you could improve the
22 equity of the system by doing that.
23 Q. You improve the equity --
24 A. And I, you know, stand to be corrected by the
25 computer simulation.

1 Q. But, I mean, where is the money going to come from?
2 A. The money in a no new revenue context doesn't come
3 from anywhere. It is a matter of achieving a more
4 equitable distribution of revenue based on the
5 identified learning needs of kids.
6 Q. Okay. And that -- what that does is that gets you --
7 by tying that system to the learning needs of kids,
8 you must, of necessity then, be removing that system
9 from the relative abilities of the districts to tax.
10 If you're hitching your star to the wagon of
11 individual students, aren't you, of necessity,
12 separating yourself from the local ability of a
13 district to tax?
14 A. It's according to the way you operate the proration
15 system. The way property rich school districts would
16 like you to do it is to do a percentage cut across
17 the board.
18 The most equitable process would be to create
19 an effective tax effort to make up the loss, kind of
20 a proration system where the rich lose more than the
21 poor lose.
22 Q. Okay. In other words --
23 A. And there's something in the middle which is a per
24 ADA or weighted student or some kind of a proration
25 system.

1 Q. Okay. Let's see if we can go back to this diagram
2 and see if we can't get to it this way.
3 Now, if we're going to increase the weights, if
4 we're going to do on weighted pupils, okay?
5 A. (Witness nodded head to the affirmative.)
6 Q. If we do that, then what we're counting is not the
7 3,000,000 students in the state, we're counting,
8 let's say, 4,000,000 weighted students in the state.
9 A. Well, it's according to the way you set that up. But
10 a higher number, sure, you're going to get a higher
11 number of units when you go through a weighting
12 process.
13 Q. Okay. Now, when you do that and you're starting to
14 spread the same number, you're trying to spread this
15 amount of -- the amount of state dollars is the area
16 under the curve, right?
17 A. I remember your explanation, yes.
18 Q. Now, let me go to one of Mr. Gray's red ones here.
19 Now, as I recall mathematics, if you lengthen
20 this curve out here -- and that's what we're going to
21 be doing by increasing the number of students, right?
22 A. I'm not following that. Maybe I'm just too tired.
23 But I don't know why you would be lengthing the
24 curve.
25 Q. Well, we're spreading the same dollars out over more

1 students, aren't we, mathematically more students
2 because we have to account for the weights?
3 A. Well, if you want to say that mathematically, I guess
4 I could agree with you. Obviously, the number of
5 students are the same.
6 The point is that you would be getting an
7 accurate assessment of the learning needs of kids and
8 the program prescription for those kids, and based on
9 their differential local tax bases, would be
10 distributing money more equitably in relationship to
11 identifying student needs.
12 Q. That's right. But what I'm saying is, is that if
13 you're increasing the number of kids, mathematical
14 kids, not real kids because you're counting -- by a
15 weighting system, in essence, what you're saying is,
16 is that a child in a bilingual program is actually
17 for purposes of computing, he's not one child, but
18 he's 1.1 child. And if we increase the weights to
19 say 1.25, we're making it one and a quarter children,
20 correct? Isn't that what we're doing?
21 A. You can do that --
22 MR. KAUFFMAN: Excuse me, Your Honor. I
23 think the confusion is beyond comprehension now. I
24 cannot understand the questions enough to be able to
25 prepare my redirect.

1 I think this chart had something to so with
2 districts, not with individual kids.
3 MR. O'HANLON: Your Honor, I'll redraw --
4 MR. KAUFFMAN: And if it does, Dr. Hooker
5 needs to know exactly what Mr. O'Hanlon is asking.
6 Maybe they're communicating, but I, as an outsider,
7 am having difficulty.
8 THE COURT: All right, sir.
9 THE WITNESS: Needless to say, after having
10 been on the stand since 9:00 this morning, I'm not
11 sure I know my name.
12 BY MR. O'HANLON:
13 Q. What we're saying is, is that we're taking by
14 weights, we're saying Comp Ed kids are not one kid,
15 they're 1.2 kids. That Voc Ed kids are not one kid,
16 they're 1.45 kids.
17 A. In terms of units of cost, yes.
18 Q. Okay. And if we do that, we add all of those units
19 of cost -- if we turn kids into units of cost, we're
20 going to have a lot more units of cost than we are
21 kids?
22 A. That's correct.
23 Q. And for dispersing money over units of cost as
24 opposed to kids, we've got a lot more units of cost
25 than we've got kids.

1 A. And you don't add any more money to the system, so
2 the amount of money per unit of cost is lessened.
3 Yes, I understand.
4 Q. That's right. So what happens is, is that if we do
5 what you say, what we end up having to do, if we add
6 units of costs instead of kids within the confines of
7 the same amount of money, we're going to have to drop
8 this 2,414.
9 A. You're going to have to institute a proration system.
10 And so the school districts would not be receiving
11 the full benefits of the basic allotment set in law
12 and would not be receiving the full benefits of the
13 implications of the weights.
14 Q. Okay. And I want you to assume something with me. I
15 want you to assume that there is a more or less
16 random distribution of special needs children in this
17 state by wealth.
18 MR. KAUFFMAN: Your Honor, we object now.
19 During the direct examination, this question was
20 asked of Dr. Hooker and they objected saying he
21 didn't know anything about where weighted students
22 lived and where they didn't. And now, he's asking
23 him to assume something that's not consistent with
24 his personal experience. And it makes the
25 hypothetical absolutely incomprehensible at least to

1 the attorneys and I assume eventually, to this Court
2 and to the Supreme Court. So we object to the
3 question as -- let me see, I can't phrase it exactly,
4 but let us say incomprehensible.
5 MR. O'HANLON: That's not a very good
6 objection. I think the proper objection is --
7 MR. KAUFFMAN: Well then, it's not a
8 question in the form of a question to be answered.
9 MR. O'HANLON: -- it assumes facts not in
10 evidence. And we're going to show that there is a
11 more or less random distribution of special need
12 children in this state unrelated to wealth.
13 Now, it just happens that this is the first
14 witness.
15 THE COURT: All right. You may ask him a
16 hypothetical.
17 MR. O'HANLON: Okay.
18 BY MR. O'HANLON:
19 Q. Now, assuming a random distribution of special needs
20 children in the state, that this procedure of
21 dropping the amount of money per child and prorating
22 it is not going to do a doggone thing for the poor
23 districts because we've got a random -- if there's a
24 random distribution, isn't that right, not going to
25 do anything for equity?

1 A. If there is a totally random distribution, if that is
2 your assumption, the answer to it is it depends on
3 the proration system which you adopt.
4 Q. If the proration system is the same as the proration
5 system in the state for dispersement of state aid,
6 then it won't do anything, will it?
7 A. If the current system of proration --
8 Q. No. You say that whether or not it is equalizing or
9 disequalizing or neutral with respect to equalization
10 would depend on how you do the proration.
11 A. Yes, sir. That's what I said.
12 Q. And let's assume if you did the proration in the same
13 kind of way of sliding the scale depending on
14 district wealth, then it would be neutral in terms of
15 equalization.
16 A. I'm maybe too tired, but not willing to accept that
17 that is the result.
18 Q. How would you prorate it?
19 A. The most equitable way to prorate it is in terms of
20 the tax effort necessary for the school district to
21 make up the loss.
22 Q. Isn't that exactly how state funds are being
23 distributed at the level of $2,400.00 and below?
24 A. Yes.
25 Q. Okay. So it doesn't do anything. The most equitable

1 way of distributing pursuant to this proration would
2 be exactly the same way that the state is
3 distributing funds right now?
4 A. You may be correct. But with my fatigue level, I
5 just can't say whether you are or you aren't.
6 Q. And that -- the way relative to wealth is the most
7 equitable way, isn't it? Is your fatigue going to
8 stop you from that assertion?
9 A. No, sir.
10 Q. Okay.
11 A. I don't have any trouble with that.
12 Q. Okay. So that's the most equitable way?
13 A. Well, if you've got the weightings correct in terms
14 of your actual cost differential of your special
15 needs children, yes.
16 Q. So, the weights may do something for what -- the
17 short form of that is it's going to do something good
18 for the special needs children, but it's not
19 necessarily going to do anything for the districts in
20 which those special needs children reside?
21 A. Not unless there is a higher incidence of high cost
22 kids in property poor school districts, no.
23 Q. Okay. So, assuming that we can prove that there is a
24 more or less random distribution of high cost kids in
25 this state by wealth, then this weight isn't going --

1 your theory of weights isn't going to do anything to
2 add equity to the system, as we're talking about
3 equity, right?
4 A. In terms of to the property poor school districts
5 given your assumptions, that would be correct.
6 Q. Okay.
7 A. But at the same time, I would still insist that that
8 needs to be done to make the system honest and to
9 have it reflect the true cost of meeting identified
10 student needs.
11 Q. Okay. But that has a cost associated with it and
12 that's reduced under a no new revenue system of
13 reducing the total amount of money alloted to the
14 average student, doesn't it?
15 A. It could have that impact, yes.
16 Q. Okay. What other issues under no -- or what other
17 plans would you have under no new revenues to
18 equalize this system?
19 A. Well, I don't -- I'm not becoming a proponent of
20 them. If you're talking about alternative financing
21 concepts, the --
22 Q. If you're not a proponent of them -- if you don't
23 think -- I'm not asking you what wouldn't work, I'm
24 asking you what you would be a proponent of.
25 A. I have done no work associated with a very

1 significant concept in school finance, which is
2 referred to as percentage equalizing and modified
3 forms of power equalizing, that potentially I think
4 have the opportunity, within no new revenue, to
5 achieve a more equitable distribution of funds.
6 Without further work on those issues, personally, I
7 would not want to become an advocate of that as a
8 solution. But I certainly think it's an interesting
9 idea that ought to be explored by the Court.
10 Q. Now, power equalization is -- there's another word
11 for that or another term for that is guaranteed
12 yield, isn't it?
13 A. That is a form of guaranteed yield, yes.
14 Q. And what that notion is, is that for any district in
15 the state, a certain tax revenue, a certain tax
16 effort, will yield a set constant amount of dollars;
17 isn't that right?
18 A. That is the general concept, yes. The constant
19 amount of dollars can be adjusted in terms of the
20 student units to put in a weighted student concept on
21 that.
22 Q. Okay. Now, the state, up to that $2,400.00 level,
23 has, in essence, the power of equalization, doesn't
24 it?
25 A. In essence, it is close to that, yes.

1 Q. Okay. So, to the extent that $2,400.00 reflects any
2 real costs out there, then the state is power
3 equalized at that level.
4 A. The no new revenue context, it's close, I would
5 guess. I would have to look at the distribution of
6 revenue from running one of those to see it.
7 Q. Okay.
8 A. I've not done one of those.
9 Q. So, under a no new revenue kind of notion, power
10 equalization is not likely to yield a lot of results,
11 is it?
12 A. In its purest form, with a recapture provision.
13 Q. Well, now a recapture provision -- we'll talk about
14 recapture -- that goes on the new revenue side,
15 doesn't it?
16 A. Oh, on the new revenue side --
17 Q. That's new revenue to assist them, isn't it?
18 A. No, because it's already being raised and being spent
19 out there, but --
20 Q. Well, the state has kind of got to go take it away
21 from somebody, don't they?
22 A. You've got to go take it away from somebody. And I'm
23 not of the opinion that that's a highly popular
24 political solution. It hasn't been anywhere that
25 it's being proposed.

1 Q. Okay. Should I put power equalization as a possible
2 theory after our little discussion under possible
3 solutions, or don't we have -- we have that right
4 now, don't we, at the level of funding that we've
5 got?
6 A. I still think it's a concept that's deserving of
7 further exploration. I'm not willing to say, without
8 doing that further exploration, that it would help or
9 solve or whatever.
10 Q. How about a question mark there?
11 A. Yes, sir.
12 Q. Okay. Anything else?
13 A. In terms of no new revenue?
14 Q. Yes, sir.
15 A. Back up on the weights issue or back at that level,
16 going back to modifications of the current system, I
17 think in order to be fair in the system, I think some
18 kind of a facilities component has to be applied in.
19 And I know you're going to take me back through.
20 That again, further reduces and complicates, but I
21 think in order to have a system that in --
22 legislation recognizes the true cost of doing
23 business, that that ought to be out there, too.
24 Q. Well, I'm just fixing to take you back through all of
25 that.

1 Now, how are we going to do that with no new
2 revenues? If we don't have enough -- the question
3 I've got is, if we don't have enough money to pay for
4 education now out there -- and I think you're saying
5 that we don't -- adding revenues -- spending some of
6 the money for facilities, how is that going to help
7 us?
8 A. I didn't say it was going to help us from the
9 standpoint of what you are pointing toward. I'm
10 simply saying that that is a modification of the
11 system that the facilities cost kinds of factors need
12 to be a financing component in the system. It is an
13 integral part, a necessary cost, and the state has
14 failed to recognize that in formula structures. And
15 all I'm saying is in order to improve the system with
16 no new revenue, we would have to look at some way of
17 dealing with those revenue needs. Now, how that
18 would work, I don't know.
19 Q. Okay.
20 A. I'm not -- I told you I didn't have a plan.
21 Q. Well, let's talk about facilities a second.
22 Now, is a facilities component going to be -- I
23 assume it's going to be driven by construction.
24 A. There are a whole lot of alternatives that are
25 employed by other states. 40 other states in some

1 form or fashion participate in facilities financing.
2 Q. But facilities are going to be driven by need in some
3 notion; isn't that right?
4 A. Yes, and the component should also consider current
5 outstanding debt.
6 Q. Okay. And current outstanding debt is probably most
7 related to recent past need, isn't that right,
8 because you have to float the bonds and you've got to
9 pay them off?
10 A. Well, most of them are 15, 20-year pay offs.
11 Q. Okay. Now, if you're talking about -- so you're
12 going to see the highest bonded indebted rates in the
13 districts that have the most recent construction; am
14 I right?
15 A. In relationship to their pupils, yes.
16 Q. Okay.
17 A. I'm assuming that you're talking about a rapidly
18 growing school district that has had to build
19 buildings over the last five years at a rapid rate.
20 Q. Sure. And the rapidly growing school districts are
21 the ones that are out there in the suburbs, aren't
22 they?
23 A. For the most part, they are.
24 Q. And the suburbs are the ones that are sitting on the
25 far side of the table over here defending the current

1 system, aren't they, by and large. Let me restate
2 that.
3 The suburbs are by and large above average in
4 property wealth, aren't they?
5 A. I'm not above caring about the suburban school
6 districts. I happen to live in one. I want quality
7 education everywhere. And I want the finance
8 structures of the state to appropriately reflect the
9 costs. To the extent that they have those costs and
10 wealth is not present in order to meet those
11 obligations, I think the state ought to participate
12 in helping to do that.
13 Q. Well, I understand that.
14 A. There are suburban school districts like North
15 Forest. There are suburban school districts that are
16 like Wilmer-Hutchins. You know, not all suburban
17 school districts are like Dan Long and
18 Carrollton-Farmers Branch.
19 Q. Well, now, Wilmer-Hutchins isn't really suburban.
20 It's out in the country, isn't it? Have you been to
21 Wilmer-Hutchins?
22 A. I know it's up there in Dallas County. I have never
23 been to the district personally.
24 Q. There's about 20 miles between it and south Dallas,
25 isn't there?

1 A. I'm just making a reference to -- there's certainly a
2 dramatic contrast in what a suburban school district
3 is. There's as much difference among the suburban
4 districts in wealth per pupil and high incident, high
5 cost kids as there is probably urban or rural.
6 Q. Sure. But what I'm saying is these fast-growing
7 urban districts or suburban districts that are
8 building all of these buildings, that are floating
9 all of these bonds, that are doing this, aren't they?
10 Isn't that right?
11 A. I'm not denying what you're saying.
12 Q. Okay.
13 A. And all I'm saying is that for the system to
14 represent the true cost of public education, there
15 needs to be a facilities cost of funds. If that
16 brings the revenue bonanza to the Dan Long, so be it.
17 You know, in an equitable context, he's going to get
18 some help with his tremendous facilities or debt
19 services obligations. I'm not opposing that, as long
20 as it goes in an equitable framework.
21 Q. Well, isn't that going to be disequalized? By giving
22 Dan Long out there all this money for facilities --
23 and we're operating again under no new revenues --
24 aren't we taking money away from somebody else?
25 A. I don't automatically assume that Dan Long would get

1 any of it because of the wealth base of
2 Carrollton-Farmers Branch.
3 Q. Well, if he gets any of it, it would be
4 disequalizing, wouldn't it?
5 A. Within the given revenues that we have now and
6 considering the educational needs, it probably would
7 be.
8 Q. So you've got to be very careful about facilities
9 because of the phenomenon of differential growth
10 because if you put a facilities provision in there,
11 you're probably going to end up flowing more money to
12 the districts that are doing most of the construction
13 which are above average state wealth, isn't that
14 right?
15 A. Most of the school districts in the Houston area, as
16 a result of budget analysis that my students do every
17 semester, tie up somewhere between 30 and 40 percent
18 of their local tax effort in debt service. And sure,
19 there are very high debt service requirements in
20 growing suburban school districts.
21 Q. Uh-huh.
22 A. And the question becomes how much property tax wealth
23 do they have out there relative to other school
24 districts as to whether or not they need some
25 equalized assistance in helping to do that. And, you

1 know, I haven't denied that at all.
2 Q. And one other thing about the current system that
3 exists out there, where we're just dispersing
4 dollars.
5 A. Yeah.
6 Q. Okay.
7 Now, school districts are free, are they not,
8 to the extent that they can run a program and have a
9 surplus, they can spend that money on construction,
10 can't they, and do?
11 A. Sure. I think earlier in my testimony, I referenced
12 the fact that they were pay as you go districts.
13 Q. Uh-huh. And, in fact, Edgewood spent $805.00 per
14 average daily attendance for capital outlay in that
15 district for things that cost over, what did you say,
16 a hundred dollars in that district last year.
17 A. And I have no concept of where that money came from,
18 whether it was bond money or it was fund balance
19 money or current tax revenues.
20 Q. It sure as heck didn't come from their local taxes,
21 did it, because the local taxes are less than $200.00
22 or around $200.00.
23 A. My assumption is that it came primarily from bonds,
24 but I don't know that.
25 Q. Okay. Well, if the bonded indebted -- we can look at

1 their paybacks on there. Take a look at 205, will
2 you?
3 Will you look at Edgewood's tax rate for bonds?
4 A. The difference between their maintenance tax rate and
5 their total tax rate is only 2.6 cents.
6 Q. So the only difference is --
7 A. So their outstanding debt is not very great.
8 Q. Okay. So they probably haven't floated any bonds
9 recently.
10 A. But at the same time, if they floated the bond issue
11 and spent the money, their obligations would not show
12 up until probably next year in terms of this kind of
13 a report.
14 Q. Okay. So should we put -- given this discussion,
15 should I put facilities in here as something that
16 would enhance equity? We're talking equity now.
17 A. As far as I'm concerned, when you recognize in law
18 the true cost of providing education in the formula
19 framework, the ultimate outcome is going to be to
20 enhance equity if it's done through equitable
21 structures.
22 Q. Okay.
23 A. And so I -- you asked me what I would do, I would
24 install some sort of facilities financing component
25 back up where you were talking about adjustments to

1 the current system rather than an alternative
2 conceptual framework.
3 Q. Okay. Now, would we distribute this state aid
4 probably on a theoretical model related to state --
5 related to property wealth?
6 A. What I had proposed to the Legislature in 1975 was a
7 modified form of guaranteed tax base yield system.
8 Q. Okay. So yes. In other words, the answer to that is
9 yes, we would do it on the basis of relative wealth
10 to the district.
11 A. Relative wealth of the district, right.
12 Q. And we're doing that now with respect to the
13 $2,400.00 level, correct?
14 A. We're what?
15 Q. Back with respect to the distribution of state aid
16 right now, the chart that we had, we're doing that
17 based on relative wealth of the districts, aren't we?
18 A. Of the $2,400.00, I haven't argued with you about
19 that at all. We're doing that on the relative wealth
20 of the district.
21 Q. Okay.
22 A. I'm simply saying that's a cost component that is not
23 recognized.
24 Q. Okay. Now, what other things would bring equity?
25 Not more sense, we're talking equity. And I think

1 that is what this lawsuit is about. But what kind of
2 equity? What things would add equity to this system?
3 A. Well, there is a third alternative in the literature
4 which I'm not particularly proposing again in terms
5 of looking at -- I can't even remember it well enough
6 to describe it. Those are the two primary approaches
7 to a dealing with school finance systems that are
8 employed around the country. And as a matter of
9 fact, to some degree, we do some of both.
10 Q. Okay. Any other --
11 A. Not in terms of broad conceptual framework, no.
12 Q. Let's go on to the money side. I guess I'll just put
13 a dollar sign up here or new money.
14 Okay. Now, we're going back -- is it safe to
15 use your conceptual framework that you did with Mr.
16 Gray?
17 A. If I have a problem, I'll say I don't understand or I
18 don't agree.
19 Q. Okay.
20 A. Proceed.
21 Q. Okay. What I think -- I think what you said was is
22 that what you would do is you would start off with
23 1,350, okay. And then you would add 1,050. And then
24 you would add $226.00 -- $96.00 --
25 MR. GRAY: 96.

1 Q. -- which is your bond, your debt. And we come up
2 with the figure of 2,696.
3 A. Well, I obviously wouldn't formula structure it that
4 way. The money, I'm not disagreeing about.
5 Q. Oh, okay. How would you structure it formula? I'm
6 sorry. I thought that's what you were talking about
7 with Mr. Gray.
8 A. What we were talking about was adding to the basic
9 allotment so that 1,350 would become a higher number.
10 And he asked me how short I thought the basic
11 allotment was, and I told him $1,050.00.
12 The facilities aspect of it would be inside of
13 another formula. It wouldn't be there.
14 Q. Okay. Let's do this --
15 A. But in terms of the amount of money, I'm not arguing
16 with you at all.
17 Q. Okay. So should I just take this off and add these
18 two to get to a 2,350 basic allotment for starters?
19 A. I believe it's $2,400.00 basic allotment.
20 Q. Oh, excuse me. I'm sorry, you're right. Is that
21 what you want for the basic allotment?
22 A. I'm surprised I noticed that.
23 Q. Okay. Is that right?
24 A. In terms of what I think the state ought to be doing
25 and the financing of public schools, yes.

1 I think that for the '84 -- wait a minute --
2 the '85-'86 school year, that was the number which we
3 were discussing.
4 In terms of, you know, if you're going forward
5 with the thing, are you staying in the '85-'86
6 framework --
7 Q. Well, now --
8 A. -- or are you talking about looking at next year?
9 Q. If we lose this case, I guess if it's going to be
10 passed, it's going to be passed. What are we looking
11 for, I guess, for the '87-'88 school year?
12 A. For the next year, the number is approximately
13 $2,600.00 for the '87-'88 school year.
14 Q. Okay. So in order to have a constitutional system,
15 we need a 2,600 basic allotment; is that right?
16 A. It would certainly improve both the adequacy and the
17 equity of the system to do that, yes.
18 Q. Would you keep the weights the same?
19 A. I would do exactly what you described over here or I
20 described over here in terms of the adjustments of
21 the weights.
22 Q. Okay. Now, that would cost more money, too, wouldn't
23 it?
24 A. It would certainly cost more money, yes, sir.
25 Q. Okay.

1 A. Not only more money because you're increasing the
2 weights, but more money because you're increasing the
3 basic allotment to which the weights are applied.
4 Q. Okay. What would you do to local fund assignment?
5 A. I would have to see the results, the computer
6 simulations, but my assumption is it would go to at
7 least 40 percent.
8 Q. Okay. Even though it's a little scary for Houston,
9 isn't it, if you get a local fund assignment?
10 A. It's a little scary for Houston, yes.
11 Q. You may be hurting a lot of kids down there, one
12 hundred and ninety something thousand of them.
13 A. I feel sorry for Houston when HISD is making the
14 effective tax rate of the suburban neighbors around
15 it.
16 Q. Okay.
17 A. If you're looking for sympathy, I don't have a whole
18 lot.
19 Q. No sympathy with them having the same rate as
20 Edgewood, one of the Plaintiffs in this lawsuit?
21 A. Well, you've mentioned Edgewood several times. You
22 know, I don't live there. I don't work there. All
23 I'm interested in is an equitable system. If that
24 helps Edgewood, fine. If that hurts Edgewood, that's
25 fine, too.

1 Q. Okay. Now, let's just -- so we can compare apples to
2 apples, let's compare what it would cost. You've got
3 a 1,350 -- have you got your calculator handy here?
4 A. I can't use it. Ask somebody else to calculate it.
5 MR. O'HANLON: I'll ask Mr. Gray to
6 calculate it.
7 THE COURT: Counselor, I'm going to have to
8 stop before you get off on a new subject. I know
9 it's before 5:00, but I need to stop today.
10 THE WITNESS: Thank you.
11 THE COURT: See you all again tomorrow
12 morning at 9:00.
13 MR. O'HANLON: Judge, before we adjourn, so
14 I don't forget something, can I offer Defendants'
15 Exhibit No. 1? I don't think I did.
16 THE COURT: I don't think it was admitted.
17 MR. GRAY: It was never offered, Your
18 Honor.
19 THE COURT: All right. That's the
20 subcommittee report.
21 MR. O'HANLON: Yes, Your Honor.
22 THE COURT: Any objection?
23 MR. GRAY: No objection.
24 THE COURT: It will be admitted.
25 (Defendants' Exhibit No. 1 admitted.

(Proceedings adjourned.)