

3-87-190-CV

CAUSE NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL  
DISTRICT, ET AL

C 8353

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 XV OF XLVI

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THIRD COURT OF APPEALS  
SUSAN R. GAGE, CLERK

TAKEN FEBRUARY 12, 1987

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MONICA ROSS WEIDMANN

Official Court Reporter  
250th Judicial District Court

CAUSE NO. 362,516

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

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STATEMENT OF FACTS

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BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

---

APPEARANCES:

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Dallas, Texas, 75201-4622

5  
6 ATTORNEYS FOR THE DEFENDANT-INTERVENORS

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17 BE IT REMEMBERED that on this the 12th day of  
18 February, 1987, the foregoing entitled and numbered  
19 cause came on for trial before the said Honorable Court,  
20 Honorable Harley Clark, Judge Presiding, whereupon the  
21 following proceedings were had, to-wit:

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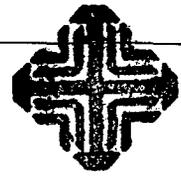
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1 FEBRUARY 12, 1987

2 MR. JOHN SAWYER

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

5 CROSS EXAMINATION (CONTINUED)

6 BY MR. TURNER:

7 Q. Mr. Sawyer, could you tell us whether federal funds  
8 to your district have increased or decreased from the  
9 period of the fiscal year 1983-'84, which was the  
10 first year, as I understand it, prior to House Bill  
11 72 money flowing, and the fiscal year '85-'86?

12 A. My recollection is that they have been relatively  
13 flat with very, very modest decreases per unit on the  
14 school lunch program.

15 Q. So if we were to look at figures regarding changes in  
16 maintenance and operations expenses for those two  
17 periods, they would -- any changes would not be  
18 reflective of any changes in level of federal  
19 funding?

20 A. As I said, modest decreases, but relatively flat is  
21 my recollection of federal funds. So most of the  
22 difference that you would see would not be the result  
23 of changes in federal funds.

24 Q. Mr. Sawyer, I've done some comparisons on the changes  
25 in maintenance and operations expense in your

1 district and in all the districts in Harris County  
2 from 1983-'84, which was the first year prior to the  
3 implementation of House Bill 72, which is reflected  
4 in this Bench Marks for 1984-'85, which is in  
5 evidence as Defendants' Exhibit No. 20. And I've  
6 compared that with the level of spending for  
7 maintenance and operations in 1985 and '86, which is  
8 in this book.

9 And what I note for North Forest -- and I want  
10 you to tell me if this would be right, in your  
11 judgment -- that in '83-'84, you're spending for  
12 total current operating expense, was \$2,264.00. And  
13 by fiscal year 1985-'86, your spending per pupil had  
14 increased to \$3,097.00, which represented a  
15 difference in those two of \$833.00 per student, for  
16 an increase from this year to this year of 36.8  
17 percent.

18 And I noted that that absolute increase in  
19 spending per child as well as the percentage of  
20 increase in spending per child was the largest  
21 increase, both in absolute terms and in percentage  
22 terms, of any school district in Harris County. Does  
23 that sound correct to you for those numbers to  
24 reflect that?

25 A. Yes. Those numbers reflect that, but they also

1 reflect something else.

2 Q. All right, sir. You may explain if you would like.

3 A. I may explain?

4 Q. Sure.

5 A. If you extend that same explanation in a comparative  
6 basis with my neighboring districts -- take Deer  
7 Park, for example. I picked Deer Park because it's  
8 right next to North Forest on the chart and easy for  
9 you to see.

10 In 1983-'84, Deer Park was spending \$4,100.00  
11 per child. And in 1985-'86, Deer Park was spending  
12 \$4,700.00 per child, so there is a 600-plus dollar  
13 increase there. The point I'm making is these data  
14 reflect the increase that North Forest received and  
15 how our expenditures improved, yes. But relatively  
16 speaking, it also points out how far behind we were  
17 and how far behind we still are with respect to  
18 expenditures.

19 And I think that pattern -- example, in  
20 1985-'86, you pointed out correctly the \$3,097.00.  
21 The results were \$4,700.00 per child, 3,600 per  
22 child, 3,200 per child, 3,900 per child, 4,000 per  
23 child. So I'm saying that in Harris County, there  
24 are still wide disparities between what North Forest  
25 spends and what other districts are spending. And we

1 still have that very high tax rate.

2 Q. I understand that. And I guess if we put this as  
3 North Forest and we put Deer Park, I believe is the  
4 one you named --

5 A. Yes.

6 Q. -- you would see a larger number here as well as here  
7 (indicating) and you would see \$587.00 here and, of  
8 course, a smaller percentage of increase for Deer  
9 Park.

10 MR. RICHARDS: Why don't you write the  
11 numbers down and just make notes there.

12 BY MR. TURNER:

13 Q. And if you saw a district like Aldine, which I  
14 believe you mentioned is next to you, you'd see  
15 similar changes, but the differences would not be as  
16 great.

17 A. No.

18 Q. Let me see if I can honor Mr. Richards' request here.  
19 It's 47 -- let's see, 4,159, and 4,746 and Aldine is  
20 2,334 and 2,724. Aldine increased \$390.00.

21 So by way of comparison, what you're saying is  
22 there --

23 A. Let me suggest that you add one other thing, and I  
24 think it would help us a great deal. Why don't you,  
25 on this side over here to the left of the three

1 districts, put the tax rates.

2 Q. I understand what you're saying about the tax rates.

3 A. I suggest that that would give us a clearer picture  
4 of when we -- I have tried to emphasize in my  
5 testimony --

6 THE COURT: Excuse me just a minute. Now,  
7 give us a question.

8 BY MR. TURNER:

9 Q. The question that I had for you, Mr. Sawyer, is that  
10 as a result of House Bill 72 and the financing that  
11 came along with that, even though you are behind in  
12 terms of spending, as a result of that legislation  
13 passed in 1984 and the subsequent funding, you have  
14 made greater progress in terms of additional spending  
15 than any other school district in Harris County?

16 A. Yes. We have enclosed the monumental gap somewhat,  
17 but it's still a substantial gap, as you can see.

18 Q. Now, you were telling me just the other day the  
19 amount of total dollars that was represented by the  
20 change between those two years, and I wrote down that  
21 your budget was in 1983-'84, \$32 million, was that  
22 the right figure?

23 A. Approximately, yeah, in terms of state agenting.

24 Q. That's right.

25 A. Yeah. What year is that?

1 Q. '83-'84.

2 A. Yes -- no, that's a proximate budget for operating,  
3 right.

4 Q. Total budget?

5 A. Yes, which about 22 million represented the state  
6 funds, 22.5 or something like that.

7 Q. And ten local --

8 A. No.

9 Q. -- and federal?

10 A. Local and federal.

11 Q. And actually, I guess it would be more accurate, we  
12 had four million in federal funds last year and they  
13 didn't change much, so I assume there's really --

14 A. Approximately six and four.

15 Q. -- four million federal and six local --

16 A. Yeah, about that.

17 Q. -- makes up that 32 million.

18 And then in '85-'86, by that time, due to the  
19 increase under House Bill 72, we had arrived at a  
20 figure of 49 million?

21 A. No, no. That 49 million includes expenditures --  
22 also, it includes capital improvements. Our  
23 operating budget as indicated by our audit was  
24 approximately \$40 million in '85-'86. And I think  
25 that has -- I know that document was provided --

- 1 Q. All right.
- 2 A. -- because I have a copy of it. Those figures of 49  
3 million that you have include some things that you're  
4 not --
- 5 Q. Now, our numbers that we showed here on spending per  
6 child, M&O expenses and changes, gave us a 36 percent  
7 increase, almost 37. So we must have a 37 percent  
8 increase here, too, must we not, for these numbers to  
9 all be correct if we want to talk about your M&O  
10 budget?
- 11 A. No, we must not because budgets and expenditures are  
12 not identical.
- 13 Q. Be pretty close, though, wouldn't they?
- 14 A. It depends. I indicated to you yesterday that the  
15 first year of House Bill 72 that we did not spend all  
16 of the funds and that some of it was transferred to  
17 the district's reserves.
- 18 Q. Three million dollars, I believe you said, of this 22  
19 million was actually --
- 20 A. No, not the 22. The year after that, which would be  
21 the figure that you're getting ready --
- 22 Q. I understand. All right.
- 23 A. See, there are intervening years that you're not  
24 dealing with.
- 25 Q. We're missing one year.

1 A. Right.

2 Q. And during that year, \$3 million of your additional  
3 state aid you used for capital expenditures?

4 A. No. Three million of the additional state aid we did  
5 not utilize because of our projections of where the  
6 formulas were going and the way they were  
7 inadequately funded. As a manager, part of my  
8 responsibility is to meet the state mandates and to  
9 have money to do it. And since I knew that there was  
10 a possibility that future years would not result in  
11 the funding necessary to support the program, proven  
12 would dictate that we escalate our expenditures at a  
13 rate slower than that one time infusion of money,  
14 because that's what it proved to be. As I indicated  
15 yesterday, we received ten -- approximately 10.6  
16 million, then down to about 9.5, and now down to 8.3.  
17 I think those are the figures.

18 Q. 10.6?

19 A. The first year.

20 Q. And nine --

21 A. And I think the next year was about 9.3 or 4. And we  
22 are now projecting this year -- and I'm saying over  
23 the 22 million that we had in '83-'84.

24 Q. All right.

25 A. This year we're probably going to be at about eight

1           -- maybe 8.5 or 8.7 in the -- so there's a constant  
2 decrease of revenue, and there has been a constant  
3 increase in expenditures because of the built-in  
4 salary schedule changes mandated by House Bill 72  
5 because of the changes in class sizes and other  
6 things.

7 Q.   As I recall, you testified yesterday the salary  
8 schedule increase that was part of House Bill 72 cost  
9 you a million dollars of this ten million dollars?

10 A.   A million and a half, right.

11 Q.   So a million and a half of that went --

12 A.   No, no, understand what I'm saying. I'm saying that  
13 every year built into that state ten-step salary  
14 schedule until we top out at step ten, which would be  
15 this coming year based on the way this schedule  
16 started, in addition to what increases are already in  
17 the budget, we need another million and a half to  
18 meet that year's raise alone.

19           Every teacher in Texas under that schedule,  
20 that ten-step schedule, if the schedule is uniform,  
21 is entitled to a \$1,040.00 raise each year.

22 Q.   1,140 each year?

23 A.   Right. And you take my approximately 1,000  
24 professionals and apply that, you've got 1.14  
25 million. You take the other employees in the

1 organization at a 3 or 4 percent -- some modest  
2 increase in all of the support areas who are not on  
3 the teacher salary schedule, and you come with about  
4 a million five in salary increases each year.

5 Q. All right. So you're telling me that for '85-'86,  
6 your maintenance and operations budget is 40 --  
7 approximately how many million?

8 A. If you want to get an accurate number, I have a copy  
9 of my audit and I can give you that figure from my  
10 most recent audit.

11 Q. So this is the increase in state aid over the 22  
12 million?

13 MR. KAUFFMAN: Excuse me, counsel, if  
14 you'll give him a chance, he wanted to look that up  
15 for you.

16 BY MR. TURNER:

17 Q. All right.

18 A. Total M&O last -- this number includes this new lunch  
19 program. It does not include Chapter 1 which is, of  
20 course, a separate fund. It's \$41,936,000.00.

21 Q. Almost 42 then, would be rounded off?

22 A. Right, okay. Yes.

23 Q. And can we show the figures state, local and federal  
24 on that. I guess federal didn't change.

25 A. The only federal on that is 1.875.

1 Q. I thought we said earlier that our federal funds have  
2 remained relatively constant.

3 A. That figure that I just gave you, I indicated only  
4 includes federal child nutrition. The Chapter 1  
5 program is not included in that 42 million. As you  
6 know, the Chapter 1 program is --

7 Q. I'm just trying to make these two figures comparable.  
8 The 32 and the 42, I just --

9 A. Okay, then you'll have to give me a couple of  
10 minutes --

11 Q. Okay.

12 A. -- to combine some numbers from both local, state and  
13 federal programs.

14 Okay. If we want to take the '85-'86 year, why  
15 don't we do it this way. We'll start at the maximum  
16 number and back out all of the federal programs.  
17 Then at '85-'86, instead of 42, you would have 49  
18 million, 49.5. I'm going to round these, 49 and a  
19 half. Of that, 4,100,000 is federal, 12.6 is local.

20 Now, that includes -- again, we're looking at  
21 all funds now which means debt service is included.  
22 Now, if you want to take debt service out, bonded  
23 indebtedness --

24 Q. Yeah, we need to do that to have these all comparable  
25 when we're talking about maintenance and operations.

- 1 A. See, you have the 49 million includes the debt  
2 service.
- 3 Q. Oh.
- 4 A. The debt service is 3,750,000.
- 5 Q. Okay. So, we would have to take the 3,700,000 out of  
6 the 12.6 and out of the 49.5 to get comparables. And  
7 so in round numbers, we could just call that nine,  
8 nine million local, and we could take the three and a  
9 half out of here.
- 10 A. No, no, wait a second. Why would you take the three  
11 and a half out of there? You're going to take the  
12 federal out, also, which is four.
- 13 Q. I thought I had federal over here, so I'm just trying  
14 to get these the same, the comparables the same.  
15 Comparing apples and apples here.
- 16 A. Okay. The problem I have is I'm not -- the 32 did  
17 not include federals.
- 18 Q. Does not include federals?
- 19 A. No. The 32 on this side would not include that --
- 20 Q. I'll take that out of there --
- 21 A. -- the way this is formatted, right.
- 22 Q. -- since we've established the federals?
- 23 A. Right.
- 24 Q. So I have to take the four out of here?
- 25 A. Right.

- 1 Q. And that gets me down to 45.5, and then I need to  
2 take out the portion of the budget that goes to  
3 interest and sinking fund, which would be 3.7?
- 4 A. Right.
- 5 Q. So, I'll just -- let me just say 3.5 for simplicity,  
6 so we're down to 42 million.
- 7 A. And also, 1.4 million, which was, as I indicated on  
8 yesterday and which is listed here, which was M&O  
9 utilized to complete a capital improvements project.
- 10 Q. 1.4?
- 11 A. 1.4 million was used to complete the district's  
12 air-conditioning program --
- 13 Q. Okay.
- 14 A. -- which was really not -- it's M&O expenditure, but  
15 it's not -- it's a capital improvement, if you  
16 understand what I'm saying.
- 17 Q. Okay. But that's the kind of M&O that would show up  
18 up here too, wouldn't it? Well, no, I guess it  
19 wouldn't.
- 20 A. No.
- 21 Q. It wouldn't be under capital outlay at all.
- 22 A. No. It's not really capital outlay. It's the  
23 transfer, right.
- 24 Q. Okay. Let's just take two million out, let's just  
25 say 40, then we'll be close enough.

- 1 A. Now, we are back -- now we have comparability.
- 2 Q. All right. So we've got 9 million in local funds,  
3 that leaves the state funds at 30 --
- 4 A. About 31.
- 5 Q. 31 --
- 6 A. Yeah.
- 7 Q. -- which is pretty close to right, because you're  
8 saying in the second year, you had about \$9.3 million  
9 in state aid over what you had over here?
- 10 A. Right.
- 11 Q. And nine and 22 is 31.
- 12 A. Right.
- 13 Q. So we're pretty close.
- 14 A. Actually, the state total was 31.8.
- 15 Q. 31 --
- 16 A. .8.
- 17 Q. .8.
- 18 A. It should be close, shouldn't it?
- 19 Q. It should be.
- 20 A. Yeah.
- 21 Q. All right. So, those changes then accurately depict  
22 the change in your financial status that basically  
23 was a result of House Bill 72 funding?
- 24 A. Yes.
- 25 Q. Now, Mr. Sawyer, during this time frame from '83-'84,

1 when -- before House Bill 72 was implemented, and the  
2 next year, which I don't have shown on here, when you  
3 gained a \$10.6 million, you're aware that there were  
4 numerous districts in Harris County that actually  
5 lost state dollars?

6 A. Very few, but a few.

7 Q. The ones that the Texas Education Agency records show  
8 lost funds are Alief, Cypress-Fairbanks, Deer Park,  
9 Katy, La Porte, Spring Branch, Tomball and Sheldon.  
10 Would those be ones that you would have expected to  
11 have lost state funds under the changes?

12 A. Yes.

13 Q. Those are the ones that you would commonly refer to  
14 as wealthier districts?

15 A. Yes.

16 Q. And the Texas Education Agency records I have show  
17 that those districts lost in the first year of House  
18 Bill 72 implementation \$24.6 million, while at that  
19 time, you were gaining 10.6. And I assume that there  
20 were other districts in Harris County that actually  
21 gained some money?

22 A. I don't think you're painting a complete picture.  
23 You say that those districts lost money. But what  
24 you're saying is those districts lost state aid  
25 distribution.

1 Q. That's what I'm saying, that's right.

2 A. Those are two different statements.

3 Q. I'm just talking about state aid. That's all I'm  
4 asking about.

5 A. Well, I want to make that clear because the record  
6 reflects, based on the numbers we just looked at,  
7 Deer Park could not possibly go from spending  
8 \$4,100.00 per child to \$4,700.00 per child and lose  
9 money. Those districts increased their funding.

10 Q. I'm talking about state aid.

11 A. Yes, I understand that. That's the point I wanted to  
12 make clear. What you're saying is the distribution  
13 of state aid changed.

14 Q. That's right.

15 A. Yes. They're about 20 districts altogether in Harris  
16 County, and I think you said five of them received  
17 less money, or six. I'm not sure of the number.

18 Q. Well, I said Alief, Cypress-Fairbanks, Deer Park,  
19 Katy, La Porte, Spring Branch, Tomball and Sheldon  
20 lost in the first year 24.6 million.

21 A. They're about 20 altogether, so of those, okay, 15  
22 gained maybe five. The point, yes, North Forest  
23 gained funding under the financial provisions of  
24 House Bill 72. That is without question, which was  
25 your statement, did not get enough to bring us even

1           into the average expenditure.

2           Q.    But the nature of the change and the degree of the  
3           dollars and the percentage increase is one that you  
4           found very helpful in terms of trying to deal with  
5           the problems you have in North Forest?

6           A.    Found it more helpful than what I had in 1983-'84.  
7           Still found it inadequate in relationship to the high  
8           cost education and the competition that we face in  
9           the county area.  But yes, it did provide the  
10          increased funding, as indicated.

11          Q.    In other words, it would be fair to say from your  
12          vantage point, that the state, in passing House Bill  
13          72, was acting in good faith with regard of trying to  
14          solve the kind of problems that you say you have in  
15          North Forest with funding?

16          A.    A partial effort in redistributing state aid was  
17          made, clearly made under House Bill 72.  How good the  
18          faith was, knowing the accountable costs of the state  
19          mandated program at approximately \$1,850.00 per child  
20          and setting the state aid distribution at 1,300 which  
21          is 500 less than what was needed per child, based on  
22          the accountable costs that had been developed, is  
23          what leaves me to question the extent to which I can  
24          just categorically say all of that improvement was  
25          made in good faith.

1           The will to make the changes necessary to  
2           implement the provisions of House Bill 72 fell short  
3           on the financial side, but an effort was made, yes.  
4           That's undeniable.

5           Q.   When you talked about the possibility of  
6           consolidation with Houston, you made the comment that  
7           that wouldn't help any particularly because that  
8           would be equalizing down; do you remember saying  
9           that?

10          A.   Well, Houston does not spend any more money per  
11          student than North Forest does.

12          Q.   I understand.  And so --

13          A.   If you take the two tax basis combined and apply  
14          Houston's lower tax rate to it, we all get less money  
15          for students.  Mathematically that has to happen.  
16          Houston, if we follow that premise and consolidate  
17          the two districts, prudence would dictate we're not  
18          going to have North Forest's tax rate.  We would have  
19          Houston's tax rate, which means less money for all  
20          children.  That's what that would mean.

21          Q.   Perhaps what you're talking about is best illustrated  
22          by a Plaintiffs' exhibit in this case, which is No.  
23          103, if I can put my hand on it here, which would be  
24          103-C.

25                 Mr. Sawyer, this is an exhibit that is already

1 in evidence. This is a copy of it Mr. Kauffman just  
2 handed me. But this is a list of expenditures per  
3 student unit for all of the school districts in the  
4 state. And it should show a figure for your district  
5 and all other districts. And they're in alphabetical  
6 order, you can probably find it. Can you find that?

7 A. Yes, Houston is 1,933 and North Forest is 2,044.

8 Q. Now, I don't know if Mr. Kauffman has explained to  
9 you this methodology here, but that's a figure that's  
10 designed to represent the actual -- a figure that's  
11 worthy for actual comparison of spending in Houston  
12 versus North Forest, in that you don't have any  
13 inflation in these figures because of special needs  
14 children that might be weighted higher, so --

15 A. The weights -- you have controlled for weights in  
16 these unit -- student unit figures.

17 Q. That's right. So Mr. Kauffman would represent that  
18 that exhibit would say that this is a more  
19 appropriate and realistic figure to look at on that  
20 document than these documents that we -- these  
21 numbers that we've been using out of Bench Marks,  
22 which are just actual dollars spent per ADA. And  
23 what that reveals is what you said, and that is that  
24 Houston is spending less per child than you are in  
25 North Forest. One of the districts --

1 A. Because of the relative percentage of high cost kids  
2 in my district versus Houston's is one of the other  
3 reasons.

4 Q. Well, as I understand it, those numbers there are  
5 supposed to have been adjusted for high cost kids.  
6 In other words, there would be no inflation.

7 A. I understand that. I understand that, but -- well,  
8 yes.

9 Q. This is supposed to take all that out of the  
10 consideration and just get down to kind of raw  
11 dollars so we can have a realistic comparison of who  
12 is spending how much per student unit?

13 MR. KAUFFMAN: Your Honor, if I may, there  
14 may be a slight confusion. Mr. Sawyer has not worked  
15 through these exhibits so in terms of adjustment for  
16 cost, the numbers in Mr. Foster's exhibits have not  
17 been adjusted for tax rate, just for the cost of the  
18 district. There might be some confusion about that.  
19 Those are just pure expenditures.

20 MR. TURNER: Well, I think we all know  
21 they're not adjusted for tax rates.

22 BY MR. TURNER:

23 Q. Mr. Sawyer, this also takes out any federal monies,  
24 so this discussion we were having down here about, in  
25 your case, federal funds that are spent have been

1 relatively constant, this wouldn't have any federal  
2 money comparisons in it.

3 A. Okay.

4 Q. A district that you mentioned yesterday that was kind  
5 of one of those, you know, the grass is greener on  
6 the other side of the railroad track kind of examples  
7 was Aldine. And I was noticing Aldine's expenditure  
8 per student unit -- and you might check me there on  
9 Aldine -- being a figure of 1,755; is that the right  
10 number?

11 A. Right, 1,755.

12 Q. I was trying to determine if I --

13 A. You have again picked three of the districts with the  
14 lowest expenditures in the area. And I don't want  
15 you to confuse my statements. My statements with  
16 respect to Aldine on yesterday were statements in  
17 reference to wealth and tax rate, not with respect to  
18 what they choose to expend. Again, I think their tax  
19 rate is 60 -- less 60 some cents, I'm not sure  
20 exactly what it shows.

21 Q. I'm not sure either. I saw that and looked at that.  
22 60 or 70 or 80 or something, but it is lower than  
23 yours. I --

24 A. It's considerably lower than I believe all of the  
25 districts in the area except Houston. But Sheldon, I

1 also mentioned, and again, both in reference to tax  
2 rate, but Sheldon's expenditure on this same index is  
3 \$3,200.00. Humble ISD's expenditure, which has a  
4 relatively high tax rate as we do, but it has wealth  
5 also, is \$2,800.00. Deer Park on this same index is  
6 \$3,289.00.

7 I'm pointing those out to say that, again,  
8 we're looking at Harris County in a very selective  
9 way when we pick the three districts with the lowest  
10 expenditures. Two of those happen to have very high  
11 property values, but choose not to tax. So there are  
12 clear distinctions between the three districts with  
13 respect to wealth, tax rate and expenditure. And you  
14 -- all of those variables have to be put in the  
15 equation. You can't say because Aldine spends 1,755,  
16 and yet it has close to \$255,000.00 per student.

17 Q. Mr. Sawyer, I'm not trying to trick you here, and I'm  
18 not trying to --

19 A. Yes, you are.

20 Q. -- and I'm not trying to mislead you. What I'm  
21 trying to do is to illustrate and to try to examine,  
22 as best I can, while you're on the witness stand,  
23 what's going on in North Forest and where your money  
24 goes, and I'm trying to also see the changes --

25 A. Well, then --

1 Q. -- that have occurred in North Forest in the last two  
2 years.

3 A. And counselor, my response is if we're going to do  
4 that and we're going to do it in relationship to  
5 Harris County, then why don't we put them all up  
6 there.

7 Q. You know, Mr. Kauffman may want to go back through  
8 all of that with you, but what I'm trying to do is to  
9 illustrate the changes in the budgetary status that  
10 you have in North Forest between '83-'84 and '85-'86  
11 with the principal purpose of trying to show the  
12 impact that the state funding changes have had on  
13 North Forest.

14 Now, you know, and I realize your position is  
15 that you have not got up to the levels that we see in  
16 Deer Park and I respect your position on that, but  
17 I'm trying to show basically the changes.

18 A. I'm trying to pick Deer Park. You could put all 20  
19 districts up there, and I think you'll find out that  
20 we're probably right near the bottom of all of them.

21 Q. Well, I looked at that. And I don't mind telling you  
22 that in 1983-'84, you were low man on the totem pole  
23 in spending in Harris County. And as the changes  
24 have occurred, you have moved up a notch, and Aldine  
25 is now the last and you're next to last. And that's

1 the state of affairs, and I'm not trying to not  
2 represent the facts as they are.

3 What I'm trying to show is the nature of the  
4 change in the state's contribution to education in  
5 North Forest between these two years. And as I  
6 understand it, you're in this courtroom because you  
7 take the position that the changes the state have  
8 made have not been enough.

9 A. That is exactly why I'm here.

10 Q. And all I'm trying to show is the good faith in which  
11 the State of Texas has acted in -- between these two  
12 years with respect to the equity circumstance.

13 A. You're saying it has been enough.

14 Q. No, I'm not saying whether it's been enough or not.  
15 I'm trying to say to you that the movement toward  
16 equity by the State of Texas has been substantial.  
17 In fact, I think you would probably agree with me  
18 that that move that has occurred during these two  
19 years, '83-'84, '85-'86 have been more significant in  
20 terms of movements toward equity than we've ever seen  
21 in Texas. Would you agree with me?

22 A. This whole period that we are talking about almost  
23 dates exclusively the period which I have been  
24 involved in Texas school finance, okay, because  
25 that's when I came to Texas just before in 1983.

1 From what I have observed, from what I have been able  
2 to look at historically, I think it's fair to say  
3 from Gilmer-Aikin down, that this House Bill 72 was a  
4 minimum movement.

5 However, I want to go back and emphasize again,  
6 the numbers that you have on the right edge of the  
7 board, the substantial movement is diminishing  
8 already every year.

9 Q. You say that because your actual state dollars have  
10 dropped?

11 A. Are declining. And mandates, example, going to  
12 1-to-22 in 3rd and 4th grade next year, which is  
13 included in the House Bill 72 program, will have  
14 substantial costs which, if that curve over there  
15 that's projected continues, I'm going to get even  
16 less money. If we extrapolate 9, 8, 7, 6, 5, 4, 3,  
17 2, in three years, conceivably -- particularly where  
18 the accountable costs concept and the Accountable  
19 Cost Committee, which was a part of House Bill 72,  
20 was set up with the purpose of developing econometric  
21 models to ascertain exactly what the basic program  
22 under House Bill 72 would cost per child, and that  
23 was to be the basis on which funding would be made in  
24 the future. I believe that Accountable Cost  
25 Committee has reported out figures which are

1 substantially higher than the 1,350 on which we're  
2 currently being funded.

3 I think that if the accountable costs  
4 recommendations were implemented and that those  
5 figures were used in funding school districts with  
6 the provisions in the formula, most of the questions  
7 which we are discussing in this courtroom would be  
8 moot. The money would be there. But it's  
9 diminishing in staff.

10 Q. Well, as I understand it, the Accountable Cost  
11 Advisory Committee is just that, it was an advisory  
12 committee created under House Bill 72 to advise the  
13 State Board of Education regarding accountable cost  
14 and the State Board --

15 A. Regarding what the basic education program actually  
16 cost.

17 Q. And the State Board was then, in turn, advised the  
18 Legislature. And I understand that process of  
19 advising is taking place. And I think you may not  
20 have been in the courtroom, but we've had  
21 considerable testimony about the accountable cost  
22 study and the methodology used and the function of it  
23 and we understand the --

24 A. That we are funding at a level substantially below  
25 what experts know the basic educational program

1 costs.

2 Q. Well, we know, as I understand it, that spending  
3 actually in the field, today, which is the primary  
4 methodology used by the Accountable Cost Study  
5 Committee is higher than the level of state funding,  
6 which probably didn't surprise anyone based on the  
7 fact that most of these figures that we have up here  
8 on the board have been around and known for sometime.  
9 But I think we've had ample discussion here, and we  
10 all understand and appreciate what you're saying  
11 about the Accountable Cost Study Committee.

12 This ten million six, when it flowed to you, as  
13 I understand it, that was the year in which the  
14 beginning teachers' salaries were substantially  
15 increased.

16 A. Yes.

17 Q. So, a part of the fact that that money there is  
18 larger than maybe in later years would have been due  
19 to the fact that in the first year of House Bill 72  
20 your salary costs increased substantially?

21 A. No. What happens with the salary cost is not of --  
22 is not a function of how much revenue we get from the  
23 state. What that does, when salaries are raised --  
24 and we go back and look at that -- when salaries were  
25 raised in 1984-'85, like any other expense built into

1 an organization's structure, that expense is there  
2 and it remains all future years. You can't give a  
3 salary increase one year and then take it back the  
4 next. Well, theoretically, you could.

5 But the point I'm simply saying is if you raise  
6 your total salary costs from 30 to 32 million of 30  
7 to 31.5, using my million and a half example is what  
8 our increases are, then the next year, your base  
9 salaries for all employees equal 31.5. And if  
10 there's a million five on top of that, the next year,  
11 your base salary will be 33 million. That's a given  
12 cost in any organization.

13 So, the fact that we receive the 10.6 million,  
14 and the fact that we are receiving less in future  
15 years is a combination of two things. One, we have  
16 experienced some enrollment declines, and that's not  
17 a function of the formula. Yes, that is something  
18 that you would expect to happen.

19 However, we also are beginning to experience  
20 underfunding as I mentioned yesterday. The  
21 pre-school program is being funded at 85 percent of  
22 level. And special education at 95 percent.  
23 Transportation has always been underfunded.

24 So I'm saying certain portions of the formula  
25 suggests that my district, that all districts in the

1 state, should be receiving "X" dollars. And because  
2 of dollars appropriated, we are receiving "X" minus  
3 10 percent or "X" minus 15 percent. So that's why  
4 you're going to see -- if that pattern continues,  
5 that's why you see decreases in the amount of money  
6 that the district gets each year.

7 Q. So you're telling me some of this decrease is a  
8 result of the enrollment decline that you had?

9 A. ADA decline.

10 Q. But not all of it?

11 A. Not all of it. Some of it is a result of funding  
12 elements.

13 Q. Now, how much of this 9.3 million that you got in the  
14 second year under House Bill 72 did you pull out for  
15 capital expenditures? I believe you told me out of  
16 the 10.6, you pulled out three. Do you recall what  
17 you pulled out?

18 A. No, I didn't say we pulled out three. We pulled out  
19 1.4. That's all.

20 Q. Out of the 10 --

21 A. Out of the first year, we pulled out the 1.4 million.

22 Q. Okay.

23 A. That's all.

24 Q. That was the first year?

25 A. Uh-huh.

- 1 Q. And how much the second year?
- 2 A. None.
- 3 Q. None?
- 4 A. All of the rest of it has been used to operate M&O.
- 5 Q. All right. So, when we look at what's occurred, at  
6 least between the first and second year, your actual  
7 increase in state aid that you applied to maintenance  
8 and operations was 10.6 less 1.4 or 9.2?
- 9 A. Less another 1.6, and I'll explain what I mean. In  
10 the first year, I indicated that we placed 3 million  
11 of the 10.6 in reserve.
- 12 Q. That's what I understood, and I thought you changed  
13 that.
- 14 A. I pulled a million four out of that.
- 15 Q. All right.
- 16 A. So that leaves a million six.
- 17 Q. All right. So in the first year, you actually set  
18 aside 3 million?
- 19 A. And we used a million four of that for capital  
20 improvements.
- 21 Q. And in the second year --
- 22 A. We spent it all.
- 23 Q. -- you spent it all. All right. So in terms of the  
24 impact on maintenance and operations of the state aid  
25 in the first year, you had \$7.6 million that you

1 spent on maintenance and operations. And then, the  
2 second year, you had \$9.3 million that you spent on  
3 maintenance and operations or available to spend on  
4 maintenance and operations. And I assume you  
5 probably had a fund balance at the end of that year?

6 A. You mean a fund balance related to that total --

7 Q. Well, related to your total budget?

8 A. For that year?

9 Q. Yes.

10 A. Oh, about 400,000, I believe.

11 Q. All right.

12 A. On a \$40 million budget.

13 Q. All right. The point I'm trying to make here -- I  
14 want to ask you just straight out if this is accurate  
15 -- the impact on you in terms of your statement that you  
16 were underfunded as the years go by, really is not  
17 accurate with respect to the first and second year  
18 because the first year you only spent 7.6 of your new  
19 state aid money on maintenance and operations. The  
20 second year, under House Bill 72, you spent 9.3, so  
21 you actually had a substantial increase in money from  
22 the state that you spent or had available to spend on  
23 maintenance and operations. And then, of course,  
24 you're estimating now that in the third year, you're  
25 going to see another decline. And you actually don't

1 have those figures available to you yet, do you?

2 A. Yes, I do.

3 Q. You do?

4 A. Based on my January printout, that's what I'm giving  
5 you.

6 Q. You're going to get 8.5?

7 A. Right. Now, you want to ask me about expenditures  
8 this year?

9 Q. No. I'm trying to ask you about the impact of state  
10 aid?

11 A. I want to tell you because you did go through year  
12 one and year two.

13 This year, in order to meet those same  
14 expenditures, as you can see right there, between the  
15 9.3 and the 8.5, there's an \$800,000.00 shortfall,  
16 plus the 1.5 increase that I talked about in terms of  
17 what the salary schedule demands. This year, we are  
18 2.3 deficit --

19 Q. All right.

20 A. -- in this year's budget.

21 Q. So we're talking about this current year, you  
22 anticipate --

23 A. This current year, we now have to tap into the  
24 reserves for \$2.3 million in order to balance all of  
25 the expenditures.

- 1 Q. So what you're saying is that this reserve here was  
2 used for capital expenditures and now you don't have  
3 any reserves here --
- 4 A. No, that's not what I'm saying.
- 5 Q. -- so you're going to need a little more money?
- 6 A. What I'm saying is -- let me explain it this way.  
7 Starting with the first year, when we received the  
8 10.6 million, we raised expenditures 7.6 million, set  
9 aside three. The second year, we expended about 10.2  
10 million, which does include the capital improvement,  
11 plus the funds for that year. This year,  
12 expenditures are running about -- and I'm talking  
13 about over this -- over this Bench Mark that we're  
14 using over here -- about 11.5 million. And so as a  
15 result, if you combine all of those three years  
16 together, the ten, the nine, and the eight in terms  
17 of increased state aid, we're looking at 19, 27, 28  
18 -- \$28 million in new money over that period of time,  
19 expenditures over that period of time now equal to  
20 that.
- 21 Q. How much of that 11.5 in anticipated expenditures are  
22 for capital expenditures?
- 23 A. None.
- 24 Q. All of that is M&O?
- 25 A. All of that is M&O.

1 Q. Okay.

2 A. We have no capital projects on -- we need capital  
3 projects, but we have no funds available to do the  
4 additional capital project, so none are available  
5 this year.

6 Q. Mr. Sawyer, I have, in listening to your testimony,  
7 gotten the opinion that one of the areas -- in fact,  
8 maybe the most significant area -- in your view in  
9 education is that relationship between the teacher  
10 and the students. Am I accurate in discerning that  
11 from your testimony?

12 A. That is a cutting edge of which schools accomplish  
13 their primary purpose, teaching and learning.

14 Q. And I heard you say that one of your problems that  
15 you felt you had was that your average teachers'  
16 salaries were below districts that are around you?

17 A. I refer to that as a problem in relationship to  
18 sustaining and recruiting the best possible teachers  
19 for my kids.

20 Q. Would it be fair to say that, in your judgment, if  
21 there was one problem that you wanted the state or  
22 anybody else, you, your school board, the State of  
23 Texas to prioritize, that solving that teacher  
24 problem and that quality teacher problem that you  
25 have in your district and which I assume probably

1 exists in some other places -- I don't think your  
2 testimony here today is going to be exclusively a  
3 North Forest testimony, I'm sure this problem of  
4 teacher quality exists everywhere --

5 A. It's a national problem.

6 Q. -- wouldn't you think that that probably would be the  
7 one most important thing that we probably should  
8 attack?

9 A. I think that that is the responsibility of every  
10 school board to hire and every superintendent to  
11 recommend the most qualified teachers available. So  
12 solving the problem of supply and quality of  
13 instructional staff or of school personnel is  
14 certainly very, very critical.

15 Q. How far, in your judgment, can money go in solving  
16 that problem on the short range?

17 A. I think I have some evidence that money can go quite  
18 a distance in solving the problem on both the short  
19 and long -- for both the short and long haul.

20 On the short haul, we're talking about  
21 expenditures for staff development and upgrading the  
22 skills of existing faculty.

23 On the long haul, we're talking about  
24 investments in schooling at all levels so that the  
25 general population that leaves elementary, that goes

1           into high school is better educated, that goes into  
2           college is better educated, that coming into the  
3           educational work force is better educated.

4                   And so, clearly, compensation, benefits,  
5           working conditions make a major contribution to the  
6           desirability of education as a profession for  
7           individuals to go into. And so both the long and  
8           short haul, there are a number of things that  
9           additional monies can do.

10   Q.   What did you tell me the change in beginning teacher  
11       salary was in the first year of House Bill 72?

12   A.   In the North Forest School District?

13   Q.   Well, on the state --

14   A.   The state level?

15   Q.   -- state level?

16   A.   I think the minimum salary went to 15.5. And someone  
17       will have to help me. I believe the state minimum  
18       before that was --

19   Q.   11 something, wasn't it?

20   A.   I believe it was 11.5, I'm not sure, 11,750, it was  
21       somewhere around just under \$12,000.00, I believe. I  
22       think it was 11.5 and went to 15.5.

23   Q.   And the average teacher salary went up around, what,  
24       between 11 and 12,000?

25   A.   Oh, I think in the aggregate, it probably was a

1 little higher than that when you consider even  
2 districts that paid above the base. Since the base  
3 jumped 4,000, I think you may find more of a  
4 something closer to a \$2,000.00 average increase.

5 Q. For teachers above the first year level?

6 A. No.

7 Q. Or for all?

8 A. Aggregate for all.

9 Q. And I believe you said that in the second year, under  
10 House Bill 72, the salaries went up again \$1,140.00?

11 A. Well, that varied from district to district because  
12 what the state says, in essence, and in its mandate  
13 is that the minimum salary shall be 15.5 with 1,140  
14 added on that to each year, to a maximum of 2,660, I  
15 believe, per month or 26,600 a year.

16 Now, if a district is paying 15.5, then that  
17 next year it must pay 16 -- 16,640. But if a  
18 district is paying more than the state minimum at any  
19 given level, any given year in that schedule, it is  
20 not obligated by the state mandate in House Bill 72  
21 or by the state minimum salary schedule to change its  
22 salaries. It may leave the salaries at the level  
23 that they are, as long as they're above the state  
24 minimum.

25 What comes into play and what I've tried to

1 emphasize is that there is clearly a segmented market  
2 economy for teachers and whether it's regionalized,  
3 or by county, or by area, or whatever, you have to  
4 respond to the market in your given area, as I've  
5 indicated the problems at North Forest has had.  
6 Although we pay 2,000 above the minimum, we are still  
7 far below the salary schedule of other districts in  
8 the area. So consequently, it makes solving the  
9 supply and quality problems that you mentioned  
10 difficult.

11 Q. You are aware, I would assume, that the increases in  
12 teachers' salaries that were mandated by the state as  
13 a result of House Bill 72 salary schedules were the  
14 largest percentage increases in salaries for teachers  
15 that has ever been provided by the State Legislature?

16 A. Yes. Isn't that controlling for inflation?

17 Q. My understanding is that it was the largest  
18 percentage increase in salary?

19 A. But percentage increase still would not control  
20 for --

21 Q. For inflation.

22 A. -- inflation and Consumer Price Indexes at the top.

23 Q. And it's probably true that four or five years ago,  
24 we had a lot higher inflation than what we're having  
25 now?

1 A. If you look historically at it, a \$2,000.00 raise at  
2 a given point, when inflation was at 1 or 2 percent,  
3 may have been as substantial as the \$4,000.00  
4 increase that occurred between 1970 -- what was it,  
5 '78 or '77, when the previous minimum to House Bill  
6 72. So again, I'm looking at all of the economic  
7 factors involved in that. What we're saying --

8 Q. Well, irrespective -- even though it was the largest  
9 percentage increase, you also would hold the opinion,  
10 would you not, that the increases in teachers'  
11 salaries in terms of their impact on teachers' pocket  
12 books was the largest ever provided by the Texas  
13 Legislature?

14 A. I think that's a true statement in terms of raw  
15 dollars.

16 Q. I was trying to address this problem that you have  
17 shared with the Court regarding teachers' salaries,  
18 and I notice that the district that we talked about a  
19 while ago that spends less per student unit, Aldine  
20 at \$1,750.00, compared to your two thousand and -- is  
21 it \$2,044.00, that Aldine is one of those districts  
22 that borders you that spends more on teachers'  
23 salaries?

24 A. Right.

25 Q. And I want to work -- let us work through this, if

1           you will help me here.

2                     Is there another marker over there?

3                     North Forest has an average teacher salary --  
4           and you check me if I'm wrong on any of this, Mr.  
5           Sawyer. I wrote all of this down last night. Your  
6           average teacher salary is \$22,841.00.

7   A.    Yes.

8                     MR. KAUFFMAN: Excuse me. Which year are  
9           you looking at?

10                    MR. TURNER: Let's see, which year am I  
11           looking at here.

12   A.    '85-'86.

13   Q.    '85-'86.

14                    And Aldine has an average teacher salary of  
15           \$23,441.00, for a difference of \$600.00.

16   A.    Now, what does that mean.

17   Q.    Well, I'm not sure what it means.

18   A.    It means absolutely nothing. Let me explain.

19                    Unless you are going to also include how many  
20           teachers in various salary categories, how many  
21           teachers with Master' degrees versus Bachelor's  
22           degrees, how many teachers with ten years of  
23           experience versus one year of experience, there are a  
24           number of variables that go into coming up with an  
25           average salary again. And if the faculty is older,

1 or if it has more advanced degrees, all of these  
2 things determine how much money is made.

3 So unless you can break out all of those  
4 variables -- I can give you an example. Let's take  
5 ten teachers in each district, and give those ten  
6 teachers different degrees. One year experience  
7 accounts for \$1,140.00. So if we are saying the  
8 average experience is greater by one year on  
9 experience in experienced teachers, that would  
10 explain.

11 I'm saying there are a number of ways. We  
12 can't just look at pure numbers and come to certain  
13 conclusions.

14 Q. Well, I thought, Mr. Sawyer, you told us yesterday  
15 that Aldine pays better teachers' salaries than North  
16 Forest?

17 A. Aldine has a higher starting salary than we do.

18 Q. Do they have a higher salary level up in the higher  
19 experienced ranks?

20 A. Probably so.

21 Q. All right. So the representation here of the average  
22 would not be misrepresenting the actual state of  
23 facts. And that is, that Aldine has a higher level  
24 of teacher salaries than you do?

25 A. That is true.

1 Q. All right.

2 A. But there are a number of factors again involved in  
3 what the difference and what the averages are with  
4 respect to that. And I want to point that out.

5 Q. I understand. If they have a large number of  
6 experienced teachers and you don't have any  
7 experienced teachers, then that would account for it.

8 I believe you testified yesterday, however,  
9 that North Forest, you have a whole lot of  
10 experienced teachers.

11 A. We do.

12 Q. So that may not account for the difference. It may  
13 be simply the fact that they pay higher salaries.

14 A. That is one possibility.

15 Q. All right.

16 A. But not the only one.

17 Q. Well, you have highly experienced teachers. You  
18 think it's possible that Aldine may even have higher  
19 experienced --

20 A. We would have to have a demographic diagram of each  
21 faculty to be able to know that.

22 Q. All right.

23 A. Do you want -- again, also, if we talked about high  
24 cost kids, you would find a significantly higher  
25 proportion in my district than in Aldine.

1 Q. All right. And how would that impact on salaries?

2 A. It impacts on the number of people that we have to  
3 employ in certain categories, and of course, the cost  
4 of those positions. Added impacts on the barrier in  
5 which we have to figure our expenditures in terms of  
6 the kind of services and the kinds of teaching  
7 positions we have to have. It impacts on class size  
8 with respect to how many students per class we have  
9 to function with as opposed to another district.

10 Q. None of --

11 A. Again, I have consistently said that -- Your Honor, I  
12 recognize I'm not in a position to object to  
13 anything, but I think to characterize the data with  
14 -- let's pick a school to compare salaries, another  
15 school district in my area, and then let's pick a  
16 different one to compare tax rates, and let's pick a  
17 different one to compare wealth.

18 And I consistently said, if we're going to make  
19 these kind of comparisons, put them all up there, as  
20 well as putting North Forest with Aldine, with  
21 Aldine's slightly lower expenditure rate. And I  
22 don't relish sitting and characterizing one  
23 neighboring school district. I'm much more  
24 comfortable talking about the relationship between  
25 all of us.

1           For example, we've already talked about  
2           Aldine's tax rate. We know what Aldine's wealth is.  
3           Aldine builds school buildings for cash. They build  
4           four and \$5 million elementary schools for cash.  
5           It's a growing district. It contains  
6           Intercontinental Airport, where all international  
7           traffic comes in, where all of the tax revenue from  
8           the airport goes to that one school district. So  
9           there are a number of variables and factors involved  
10          when you start to make those kind of comparisons.

11       Q.    But none of those things you mentioned earlier would  
12           affect -- the number of teachers you have wouldn't  
13           affect the average teachers' salary. I mean, you  
14           would just have more teachers, and more salary, and  
15           dividing a bigger number into a bigger number?

16       A.    It depends. You happen to be talking about a school  
17           district that is not uncomfortable with 30, 32, 35  
18           students in some of its classes.

19       Q.    All right. But that --

20       A.    Not at the level that you mandate, but at other  
21           levels. What I'm saying is that -- and when you  
22           don't have high cost kids -- and I talked about that,  
23           and I'm not going to philosophically say that  
24           instruction can't be affected with 30 children given  
25           an analysis of the particular 30 children that we're

1 talking about.

2 I have consistently suggested even during the  
3 debate on the 1-to-22 ratio, that I'm much more  
4 comfortable with an average rather than with the  
5 statement that says in every classroom I must have 22  
6 students. I might prefer to split mine 26 and 1 and  
7 18 in another, based on the needs of children,  
8 because in some cases because of problems, the  
9 teacher may be more effective with 18, whereas the  
10 other 26 could work.

11 But there are a number of variables involved  
12 that you're talking about, and unless you know a lot  
13 about the particular school district that you're  
14 comparing, you're treading on some dangerous ground  
15 in just making a comparison based on just what the  
16 numbers show.

17 Q. All right. Let's try to work our way through this.

18 The administrative staff --

19 A. Despite of what I said, you're going to do it anyway.

20 Q. I'm going to try to.

21 The administrative staff per 1,000 ADA at North  
22 Forest is 4.1, 4.1 administrators per 1,000 students.  
23 And at Aldine, the ratio is 3.1, the difference, .8.

24 Support staff --

25 MR. KAUFFMAN: I think it's 3.2.

1 BY MR. TURNER:

2 Q. -- per 1,000 ADA at North Forest is 6.7. And at  
3 Aldine it's 5.7, for a difference of 1.

4 The ratio of age per 1,000 ADA at North Forest  
5 is 9.6. And at Aldine, it's 6.6.

6 MR. KAUFFMAN: Your Honor, we would pursue  
7 my objection about the federal funds. These do  
8 include many teachers and aides that are paid only  
9 out of federal funds. I think that's particularly  
10 true with respect to aides. So we were asked to  
11 advise the Court whenever it included federal funds,  
12 and I want to make clear that this does.

13 THE COURT: Okay. I asked that. I  
14 appreciate that.

15 MR. RICHARDS: While we're at it, we were  
16 all asked by the Court to do this sometime other than  
17 right during the course of the trial. I don't know  
18 whether Mr. Turner was here yesterday or not. It's  
19 not apparent by his performance.

20 THE COURT: If that's possible, it would  
21 speed things along. I don't know that there's a  
22 hard, fast rule about that. It would speed things  
23 along to get your charts all done before.

24 MR. TURNER: All right. I'll try to do  
25 that, Your Honor.

1 THE COURT: Because I think what's going to  
2 happen is most of you all are going to sort of agree  
3 with y'all's figures anyway, and to extract numbers  
4 from witnesses that may not really know it as well as  
5 you all, is a bit painful. It does take some time.

6 THE COURT: He wants to ask you something.

7 MR. KAUFFMAN: Okay.

8 (Conference between witness and counselor.)

9 BY MR. TURNER:

10 Q. Mr. Sawyer, what I've depicted up here are these  
11 comparisons between North Forest and Aldine. And  
12 what we see is that North Forest has more staff,  
13 administrative support, more aides per thousand ADA  
14 than Aldine.

15 And what I've also depicted is the average  
16 North Forest salaries, according to the book we're  
17 all looking at, Bench Marks, in administrative  
18 salaries, support salaries, and aide salaries, and  
19 what I am doing here is trying to determine, based on  
20 the figures that we have available to us, the  
21 difference in staffing levels between the two schools  
22 in terms of a thousand ADA units.

23 And what I've done here is tried to reduce this  
24 all to figures that would be comparable by using  
25 thousand ADA unit figures over here.

1           And what I've calculated by doing this is that  
2           14,026 divided by a thousand times this number here  
3           will give us the staff differences between North  
4           Forest and Aldine per thousand ADA. And by doing  
5           this division right here, I show that you have four  
6           -- 11 more administrators per thousand ADA, 14 more  
7           support personnel per thousand ADA, and 42 more aides  
8           per thousand ADA.

9           Now, those numbers in and of themselves, I  
10          think --

11         A. No, no, that's not true. You don't mean 42 per  
12          thousand.

13         Q. That's right.

14         A. No. There's a difference of three per thousand,  
15          according to your figures -- I mean 42 per my 14,000  
16          ADA.

17         Q. Oh, let's see if I have this right.

18                 You're right, Mr. Sawyer. What this represents  
19                 is if you had comparable numbers of students in both  
20                 districts, you would have 11 more personnel units or  
21                 administrative units, 14 more support units, and 42  
22                 more aides if you had comparable numbers of students  
23                 in the two districts. Is that making more sense?

24         A. No. What it means is if both districts had 14,000  
25          students, if Aldine had the same number of students

1           that I did, then that would be true.

2   Q.   That's right. That's right. That's what we're  
3       trying to say. If they were the same size, same  
4       number of students that you had --

5   A.   14,000 students, right.

6   Q.   All right. 14,000. Is that number wrong?

7   A.   No. Your statement was if we had the same number.  
8       We both could have 36,000 compared to the 40,000 that  
9       they have.

10  Q.   All right. I follow you. So assuming we reduce the  
11       schools both to the size of your school --

12  A.   Right.

13  Q.   -- you have 11 more administrators, 14 more support  
14       staff members, and 42 more aides.

15               Now, Mr. Kauffman likes for us to talk in terms  
16       of comparisons without considering federal money.  
17       And I'm going to do something here to take the  
18       federal money out of these differences, even though I  
19       know and I'm sure you know that Aldine also gets some  
20       federal money, but I don't know how much, so I'm  
21       going to give you the benefit of the doubt. We're  
22       going -- for comparison purposes, we're going to  
23       assume that Aldine doesn't get one dollar in federal  
24       money, that they pay for all of their personnel with  
25       state and local dollars.

1           And so what I would do is take your testimony  
2           of yesterday, in which you told me you had two  
3           administrative positions paid for by federal money,  
4           and I'm just going to take that out. In other words,  
5           I'm going -- for comparison purposes, we're going to  
6           give North Forest the benefit of the doubt about what  
7           is funded with federal money. We're going to presume  
8           Aldine -- in making the comparison, Aldine just  
9           doesn't get federal money. You have 23 -- based on  
10          your testimony of yesterday -- 23 aides that are paid  
11          for with federal money. And so actually, if we just  
12          do that for you, give you the benefit of the doubt  
13          and presume Aldine doesn't have any federal  
14          positions, you would still have 9 more administrative  
15          positions, 14 more support positions, and 19 more  
16          aides than the way Aldine operates, assuming both  
17          schools had the 14,026 ADA?

18       A.    You didn't go far enough. You didn't go far enough.  
19            If you're going to do that, then among my support  
20            staff are 33 faculty positions that are federally  
21            funded. You have not discounted those. Those are  
22            support positions, instructional support.

23                    You understand what the term staff support  
24                    -- what we're talking about there.

25       Q.    I assume everybody that wasn't a teaching position,

1 an administrator, or an aide was a support position?

2 A. What kind of a teaching position, a regular classroom  
3 teacher. So Chapter 1 teachers and all of those  
4 people fall into the support area.

5 Q. All right. So you're saying that you've got --

6 A. Subtract 34.

7 Q. Well, that won't work --

8 A. Oh, yes it will work.

9 Q. -- on my comparison.

10 A. Yes, it will work. It becomes a negative number.

11 You have to back out of those figures that we're  
12 talking about. The fact is I have less support staff  
13 per 1,000 ADA than Aldine does when you back out  
14 those factors you're talking about.

15 Q. Well, how do we know how many support staff you have  
16 at Aldine --

17 A. I just told you we're going to discount that.

18 Q. No. I mean, for purposes of this illustration --

19 A. For purposes of this illustration, it's 5.7 at  
20 Aldine, it's 6.7 in my district less the federal  
21 ones, which you were perfectly willing, counselor, to  
22 back out the federals on administration and aides.  
23 Now back them out on support --

24 Q. Well --

25 A. -- and then we're talking about apples and apples.

1 Q. Well, I'm not sure -- we're not talking apples and  
2 apples when we did what I did the first time, Mr.  
3 Sawyer. I was saying --

4 A. But for purposes of your illustration, you were  
5 perfectly willing to walk me through that as long as  
6 I said yes. When I raised a question, now you're  
7 changing --

8 Q. Well, I guess -- I was trying to give you the benefit  
9 of the doubt. If you want me to back out 32,  
10 obviously what I guess we'll have to go back to is  
11 just compare the raw numbers and presume Aldine gets  
12 federal aid just like you do. It's probably a more  
13 accurate assumption, isn't it?

14 A. No, it's not, because we have a basis on which we can  
15 attack that. You do not have for the Aldine  
16 Independent School District's access to the same  
17 budget figures where -- that you have on my district  
18 and every district in the state. Well, you know how  
19 much federal dollars the district receives and you  
20 know how many positions are involved, this base line  
21 report that the Agency prints on personnel rosters by  
22 type, which includes federal programs and et cetera,  
23 isn't that data available to you?

24 MR. GRAY: Oh, they have it all, they're  
25 just not using it.

1 A. Also, on that line --

2 MR. O'HANLON: On that response, Your  
3 Honor, that side bar comment bears a response. They  
4 have it all, too. It's all been made available to  
5 them. If they want to use it, they're absolutely  
6 free to do so.

7 MR. GRAY: We're not saying we're not using  
8 it.

9 A. On --

10 BY MR. TURNER:

11 Q. Mr. Sawyer, let me just ask this of you. Can't we  
12 tell by looking at these numbers right here that you  
13 are more heavily staffed than the Aldine School  
14 District is staffed?

15 A. No.

16 Q. And why do you say you can't tell that by looking at  
17 these numbers?

18 A. You cannot tell that by looking at those numbers  
19 because the classifications in various districts of  
20 various positions vary. I keep informing you and I  
21 keep insisting that if you're going to make these  
22 comparisons, you have to look inside the data.

23 Example: One school district will operate  
24 with a central office curriculum consultant, and that  
25 person will be assigned support staff status. And

1 another district, that same person performing that  
2 same function may operate at the building level as a  
3 quasi-department chairperson, and will be reported  
4 under the teacher category. I'm simply saying that  
5 unless you're really looking closely at the data,  
6 when you start making these generalizations and  
7 comparisons, you have to be very careful.

8 For example, you also put the average North  
9 Forest salary in three categories up there.

10 Administrative is how much?

11 Q. 37,439.

12 A. Well, in Aldine, it's 40,251; in support, it's  
13 27,918; for aides, it's 10,022. So, again --

14 Q. Well, you just made my point, Mr. Sawyer.

15 A. -- what I'm pointing out is --

16 Q. If you have less staff, you could pay higher  
17 salaries. In fact, it probably wouldn't surprise you  
18 to know if we calculated this on out --

19 A. If I had --

20 Q. Let me ask this question of you. If we calculated  
21 this on out and you operated at the same staffing  
22 levels as Aldine does, you could pay your teachers  
23 1,100 more dollars every year, every one of them.  
24 That wouldn't surprise you, would it?

25 A. Based on the calculations that you just said?

1 Q. That's right.

2 A. Let's do that. Let's run those calculations now,  
3 because I think it's a hundred dollars.

4 Q. All right.

5 THE COURT: We're going to stop for break.  
6 Y'all can be doing that while we're taking our break.  
7 We'll get started up again at ten till.

8 (Morning recess.)

9 (Defendant-Intervenors' Exhibit  
10 (Nos. 18, 19 and 20 were marked.

11 THE COURT: All right, sir.

12 BY MR. TURNER:

13 Q. Mr. Sawyer, during the break, I've tried to transfer  
14 the rest of the presentation over to another page  
15 here. And what I've done is carried these numbers  
16 down here forward. And we were talking about these  
17 support people. In our Bench Marks exhibit,  
18 Defendants' 20, it gives a definition of support  
19 personnel. And on Page A-5, if you would like to  
20 look at it, but I'll read it. It says,  
21 "Instructional-related personnel" -- this is the  
22 definition of support personnel --  
23 "Instructional-related personnel who are not  
24 classroom teachers or aides (supervisors, counselors,  
25 librarians, nurses, physicians, and special service

1 personnel)."

2 And you may not, even after reading that, agree  
3 that that support item doesn't include those special  
4 teachers you were talking about. And I'm just going  
5 to ask you to settle the argument to presume with me,  
6 just for purposes of this illustration, that the  
7 author of this book, Mr. Barnes, could take the stand  
8 and testify that this figure doesn't include those  
9 classroom teachers, or those federal teachers, or  
10 those special teachers that you were talking about  
11 that you were wanting me to take out.

12 And without asking you to agree with it, so we  
13 won't get into any argument, let's just presume that  
14 that number is a sound number and is correct, for  
15 purposes of the illustration.

16 MR. KAUFFMAN: Your Honor, I would object  
17 to the presumption in that the next ten questions  
18 will be based on the presumption and, therefore,  
19 unless every one of the questions in the next two  
20 exhibits contains it, the rest is meaningless. And  
21 to ask Mr. Sawyer to agree to something that he says  
22 is wrong in his district, seems so fundamentally  
23 unfair as to make the rest of the questions  
24 meaningless, so we object to the question.

25 MR. TURNER: Your Honor, I'm entitled to

1 ask a hypothetical question. I've tried to phrase it  
2 in that term, even though we are fully able to call  
3 the author of this textbook, who is sitting in the  
4 courtroom, and put him on the stand and establish  
5 that the hypothetical is, in fact, true. For  
6 purposes of dealing with Mr. Sawyer and his  
7 objection, I'm just asking him to walk through a  
8 hypothetical with me and to not worry any further  
9 about the argument that he had raised earlier.

10 MR. O'HANLON: The problem that we've got  
11 here is that -- I suppose it hails back to the whole  
12 issue of federal funds -- counsel has introduced  
13 Bench Marks. It is Plaintiff-Intervenors' Exhibit  
14 205. Now, they did not condition that offer. They  
15 introduced it into evidence. And now they're  
16 claiming that it doesn't properly illustrate things.  
17 I mean, what we're doing here is we're taking their  
18 own exhibit and we're drawing inferences and  
19 conclusions from it. And what these objections are  
20 doing are objecting to their own exhibit.

21 MR. KAUFFMAN: My objection still stands,  
22 Your Honor. Mr. Sawyer, who knows the most about his  
23 district, has said this does not apply to his  
24 district. And to ask him to presume the impossible  
25 and ask further questions based on an impossible

1 presumption just creates a record which doesn't  
2 reflect the truth of the matter.

3 MR. TURNER: Your Honor, I think as we go  
4 through the hypothetical, that the hypothetical will  
5 make the point without jeopardizing the witness'  
6 opinion on any matter.

7 THE COURT: Okay. I'll overrule, you may  
8 proceed.

9 BY MR. TURNER:

10 Q. Mr. Sawyer, what I've done is taken the figures that  
11 I had down here and I just moved them to the next  
12 page, the top of the next page. And you'll see on  
13 here, what I've done is to illustrate that if you  
14 multiplied those additional administrative positions  
15 times your average administrative salary, and the  
16 additional support people that you have over Aldine  
17 for a comparable 14,000 student body times the  
18 average support salary, which is in our Bench Mark  
19 book is where I got that, and we get this number, and  
20 if we take our aides number that we had from the  
21 previous page and multiply it times the average  
22 salary of aides, we get this number. We add them all  
23 up, we get a total dollar figure of \$902,187.00. Are  
24 you following me on that?

25 A. Yes.

1 Q. What I did then is I took your number of teachers,  
2 14,126, and divided them by 17.3, which is your  
3 average number of your teacher/pupil ratio --  
4 pupil/teacher ratio. And this, again, coming from  
5 Bench Marks. And I showed that you have 817  
6 teachers, and I believe you testified yesterday you  
7 had about 800, so that must not be too far afield,  
8 817 --

9 A. Counselor --

10 Q. -- and what I did then was I took that 817 number of  
11 teachers and divided that into this additional salary  
12 money that I was showing here that would be available  
13 if your administrative staffing were at the same  
14 level as Aldine's. And by doing that, I came up with  
15 an average -- what I called an average raise if your  
16 positions -- I said retrenched if you go back to the  
17 level of Aldine, that you would have \$412.00  
18 available to apply to teachers' salaries from the  
19 administrative excess, \$473.00, which is divide 817  
20 into the 386, 484, and you get 473. And do the same  
21 division on the aides, 817 into this 178,752, you get  
22 219, and you add all of those up, and I show here a  
23 total of \$1,104.00, which I have labeled the annual  
24 teacher increase that could be applied in your school  
25 district were your staffing levels at the

1 administrative support and aide level the same as  
2 Aldine's.

3 Now, do you follow me on what I've done there?  
4 I didn't ask you if you agreed with me, I've just  
5 asked you do you follow what I've done there?

6 A. I follow and I do not agree.

7 Q. All right. But my calculations, do you understand my  
8 calculations?

9 A. I do not agree with the assumptions on which your  
10 calculations are based.

11 Q. I understand that.

12 A. The Bench Mark report shows my district with 58  
13 administrative positions. 58 administrative  
14 positions divided by -- come back and I'm still  
15 trying to see how -- turn back.

16 Q. See, what we started with were those figures from  
17 Bench Marks about staff per 1,000 ADA. So you don't  
18 see in here the total staff numbers.

19 A. I'm not going to argue with your assumptions. I  
20 understand the ruling on that. I just do not agree  
21 with projections that you made and the numbers that  
22 you've included.

23 Q. All right.

24 A. Also, you're comparing -- one other point, you're  
25 comparing a district with 40,000 students with a

1 district with 14, where there are considerable  
2 economies of scale related to administrative  
3 position, campuses, et cetera, in terms of -- and  
4 central office positions in terms of the size of the  
5 district --

6 Q. All right.

7 A. -- i.e., a district with 14,000 students has one  
8 superintendent, or a district with 40,000 or 100,000,  
9 for that matter, has one. So there are some  
10 economies of scale that get into those numbers and  
11 the assumptions that you're making, I do not agree  
12 with.

13 Q. All right. With regard to economies of scale, we've  
14 had a witness in this courtroom tell us that in his  
15 judgment economies of scale begin to diminish in  
16 school districts of 2,400 or 2,500 or less.

17 And you're aware, I'm sure, that the state  
18 recognizes economies of scale even at a lower level  
19 with the small and sparse formula, I believe it's  
20 about 1,600.

21 Now, do I understand you to tell me that it's  
22 your view that economies of scale differences even  
23 exist in districts from 14,000 up to -- Aldine has  
24 -- does it have 40 now, 40,000 now? I think this Bench  
25 Marks show --

1 A. It's about 40,000 this year.

2 Q. This year?

3 A. Right. 36, 38 is shown here. But again, take for  
4 example the example that I used, the obvious one. In  
5 the superintendent, you have one position, so if you  
6 take that and break it out on a per-student basis or  
7 whatever, it's going to be considerably less costly  
8 in a district with 40,000 students than one with 14.  
9 If you take other support positions -- I'm simply  
10 saying, and again, I emphasize, with high cost  
11 students, with the program that we must operate, to  
12 say that our inclusion of 19 aides, I don't agree  
13 with the support staff position or the  
14 non-administrative positions, to say we have such  
15 positions and should not have them, which is the  
16 basis of the argument that you're making --

17 Q. No. I don't think I ever suggested to you, Mr.  
18 Sawyer --

19 A. -- that we should not have those positions --

20 Q. I don't want you to misrepresent what I'm trying to  
21 do here.

22 THE COURT: Just a minute. One of you  
23 needs to be talking, and one of you needs not to be  
24 talking.

25

1 BY MR. TURNER:

2 Q. I haven't asked you to draw any conclusion regarding  
3 whether you need those administrative positions as  
4 compared with the numbers of Aldine yet, have I?

5 A. You have asked me to agree with the assumptions to  
6 eliminate positions and transfer the funds to  
7 increase teacher salaries.

8 Q. I've walked you through those numbers, but I haven't  
9 suggested to you that you do that. I want to make  
10 that clear with you. I'm not trying to tell you that  
11 I'm going to pass judgment on the way you run your  
12 school from this chart up here. I'm not trying to do  
13 that.

14 What I'm trying to show, and I think you just  
15 verified it for me, is that there are differences  
16 from school district to school district even at the  
17 level of 14,000 up to 35,000 or 40,000 that might  
18 account for some variations and expenditure. And in  
19 your case, there's a difference in the administrative  
20 level, and those dollars or those differences do, in  
21 fact, relate to substantial amounts of dollars.

22 Now, it is true by the illustration that you  
23 could take that money and you could cut back here and  
24 you could put it in teacher salaries and have 1,100  
25 more dollars annually for every teacher?

1                   MR. KAUFFMAN: I object to the question,  
2                   Your Honor. He said it is true. Everything they're  
3                   talking about is still based on the original  
4                   assumption or presumption with which the witness  
5                   disagrees.

6 BY MR. TURNER:

7 Q. Let me restate that. I don't mean to say that it's  
8 true that you could. You may not choose to do that.

9                   But in terms of illustration, these dollars  
10 that we have shown here translate into \$1,104.00 on  
11 teacher salaries on this illustration, is that fair?  
12 This many dollars translate to an increase in salary  
13 for your 817 teachers of \$1,104.00 a year, just in  
14 terms of the calculations?

15 A. You're asking me if \$902,000.00 will provide an  
16 \$1,100.00 increase for 817 teachers. The answer to  
17 that question is yes.

18 Q. All right.

19 A. The assumptions that you used to derive at a source  
20 in the North Forest budget for \$902,000.00, I  
21 disagree with the premise on which it's based.

22 Q. I understand. I understand. And you know that I  
23 wouldn't dare ask you if you thought you were over  
24 staffed at the administrative support of the aide  
25 level because I'm sure you believe, do you not, that

1           your staff in North Forest as superintendent at the  
2           level that you think is appropriate to do the job you  
3           need to do?

4           A.    No, I don't.  I believe that my staff is organized at  
5           the level in which the district can currently afford.  
6           I have indicated throughout my testimony that the  
7           district needs additional resources, that the  
8           district needs additional staff.  We are having to  
9           operate so -- whether we're talking about teachers,  
10          aides, support staff, et cetera, we are forced to  
11          operate in a way that reflects the funds available to  
12          expend.  And it's not enough.

13          Q.    All right.  Let me ask you the question this way:  
14          would you agree with me that if we consider a  
15          comparison of a district that has staffing levels  
16          such as Aldine, with a district such as North Forest,  
17          a hypothetical district such as North Forest, that by  
18          shifting the level of staffing at this level, in any  
19          given district, I suppose, that we can change the  
20          amounts of money that we have available to pay  
21          teachers two fairly substantial levels?

22          A.    No, I would not because we cannot take a district  
23          with almost 40,000 students and make assumptions for  
24          a hypothetical district with 14,000 students in terms  
25          of staffing configurations.

1 Q. All right.

2 A. That would be as ludicrous as taking a district with  
3 40,000 students and making comparisons on staff  
4 configurations with a district with 200,000 students.

5 Q. We were looking at some numbers over here a moment  
6 ago that compared M&O expenditures per student unit  
7 between Houston, North Forest and Aldine. And I  
8 think I advised you that those were adjusted so that  
9 there's no effect of the special children in there.  
10 There's no extra money weighted. This is purported  
11 to be a comparison of costs upon which a court should  
12 base some decision.

13 And I think, am I correct, what you're now  
14 telling me is that there are differences in school  
15 districts even of the size of Aldine and North Forest  
16 that you relate to the broader term of economies of  
17 scale that would even make those two numbers right  
18 there something less than perfect with regard to  
19 making a comparison?

20 A. Would you repeat the question?

21 Q. Well, these numbers that I showed you earlier that  
22 purported to show Aldine spent less money than you do  
23 were M&O expenditures per student unit that were  
24 adjusted numbers that have been presented to us and  
25 this Court as numbers that have taken out the

1 weighting so that if you have a bunch of high cost  
2 kids, you don't just end up with a higher number than  
3 somebody else. It's tried to make a representation  
4 to take the weightings and make them neutral.

5 And the question I'm asking you is that what I  
6 think you've just told me is that there are economies  
7 of scale differences between a school like North  
8 Forest and Aldine, a 14,000 student population up to  
9 close to 40,000, that must be taken into account in  
10 determining what the appropriate needs are for  
11 expenditures for M&O that are represented by the fact  
12 that those two schools are that size difference,  
13 those economy of scale issues?

14 A. But those are not the factors that determine the  
15 student unit costs. The student unit costs are  
16 determined by decisions to expend "X" amounts of  
17 money in various categories to tax at "X" rates.

18 Aldine has chosen, with its wealth, to tax at a  
19 certain level, thus generating 1,755 in terms of its  
20 expenditure per pupil, and then utilize economies of  
21 scale to figure that to pay for the things that we've  
22 talked about as does every school district. So  
23 there's no relationship between the two.

24 Q. So if these numbers here, 2,044 for North Forest and  
25 Aldine of 1,755, do not account for the fact that

1 Aldine has some economies of scale advantage by being  
2 that large, then that would not be a fair  
3 representation of a comparison of what it costs to  
4 provide an education in those two school districts?

5 A. That is a fair representation of what it costs based  
6 on the decisions to operate in the manner in which  
7 the various districts have chosen to operate, to pay  
8 the salary schedules that they have chosen to pay, to  
9 provide employee benefits as they have chosen, et  
10 cetera, et cetera, et cetera.

11 Q. But what you're telling me on that economies of scale  
12 statement you made is that Aldine should be able to  
13 do the same kind of things North Forest does for a  
14 lower amount of money?

15 A. No. I made a specific reference to the notion  
16 concerning two points that you had on the chart,  
17 concerning administrative positions or concerning  
18 aide positions.

19 My point simply was, you cannot say that a  
20 school district with -- take an example, one school  
21 district has three buildings with a thousand students  
22 in each building. Consequently, it will hire three  
23 principals. Another district might have four  
24 buildings with 750 students in each one and it will  
25 need four principals. In both cases, you're talking

1 about serving 3,000 pupils.

2 But your unit costs on administrators or your  
3 ratio on administrators would be 1,000 to 1 in one  
4 case, 1.3 per thousand in another because of  
5 decisions in terms of the number of schools that they  
6 can operate, how large the schools are going to be.

7 So there are a number of constraints and issues  
8 that get into those decisions that lead to what those  
9 ratios ultimately show when you divide them out. And  
10 I'm saying those things have not been considered in  
11 your premise.

12 Q. All right. So, as a general proposition, you would  
13 tell me, as a school administrator, that a 40,000  
14 population school should be able to operate at lower  
15 costs per student unit than a 14,000 ADA population  
16 school?

17 A. No, I'm not saying that. I've indicated that there  
18 are a number of variables that go into what the costs  
19 are per student unit in terms of how the district  
20 chooses to operate, what it chooses to purchase with  
21 it, what it chooses to raise in revenue with its tax  
22 rate. Because all of those are variables, I cannot  
23 make that statement. I can't agree with that  
24 statement.

25 Q. So if the smaller school, the 14,000 student

1 population school has a more efficient campus  
2 configuration, they may have an advantage over the  
3 larger district that might not have as efficient a  
4 campus organization?

5 A. It could go either way. Using the term that you  
6 used, campus configuration, you could have five  
7 schools in a 14,000 district with 2,500 students in  
8 each one, or you could have a 15 school campus  
9 configuration. So your administrative costs are  
10 going to be different.

11 Q. You could go either way?

12 A. Sure.

13 Q. So if the larger school had the least efficient  
14 campus configuration and the small school had the  
15 most efficient campus configuration, then the cost at  
16 the least efficient organized campus-wise would  
17 naturally be more expensive?

18 A. I don't know what the term "most and least efficient"  
19 means in this case because efficiency is more than  
20 just mere numbers. The configuration on a campus to  
21 have two assistant principals in -- on one campus  
22 versus one on another will be a function of the type  
23 of students, the type of program, a number of  
24 variables that determine what kind of staffing  
25 patterns are needed. So you might need two

1 administrators on a campus. You might need a class  
2 size configuration that's different. And I wouldn't  
3 call that more or less efficient.

4 Q. Basically, it would be fair to say that those are  
5 among probably a multitude of local choices that take  
6 place out there in the field as a practical matter  
7 that you have to make on a day-to-day basis to  
8 determine how you operate?

9 A. Yes.

10 Q. And I suppose we could probably devise a model school  
11 where we had efficient campus sizes and efficient  
12 arranged administrative staffs and come up with some  
13 optimal figure. But basically, that's not the way it  
14 happens out there in actual practice, is it?

15 A. When you said that, it occurred to me that to some  
16 extent, in creating the 16 combination splits and the  
17 TEA data utilizing high or low wealth population  
18 above 10,000, 5 to 9, the breakouts that are used on  
19 the report, that you have created at least some  
20 configurations there that tend to look the same,  
21 where you tend to compare districts of other  
22 districts that are of similar size, make up, et  
23 cetera.

24 Q. All right. Are there any other factors that  
25 we --

1 A. And in that data base -- which I had a copy of, I do  
2 not have it now. It's here somewhere. Let me find  
3 it. Here it is.

4 On these categories that we're talking  
5 about --

6 Q. What are you referring to?

7 A. I'm referring to the annual performance report,  
8 Section 2 data.

9 Q. All right. On your school?

10 A. On my school district, in relationship to the  
11 division that the state has created of a group of  
12 schools that match us in terms of wealth, size, et  
13 cetera.

14 Q. Let me look over your shoulders so I'll be sure of  
15 what you're saying here.

16 A. All right. This is a report that the agency did  
17 which compares school districts that have enrollments  
18 over 10,000, wealth below average, low income, 40  
19 percent or more. And if you note on campus  
20 configurations, campus administration, our percentage  
21 is 3.7, the state average is 4.1, the group is 3.9.  
22 On central administration, ours is 22.1 percent, the  
23 group is 2.1. On support staff, ours is 9.6, the  
24 group is 8.0. So in these personnel categories, in  
25 terms of what the state has declined as a group of

1 school districts with the same characteristics, size,  
2 wealth, et cetera, that our configurations are at or  
3 below the normal. In two to three cases, one  
4 percent, 1.6 percent above than the others and we're  
5 right in that group.

6 Q. All right.

7 A. That's the kind of comparison that I think is valid  
8 more so than the one you're making.

9 Q. The differences in costs between running a school  
10 district like Aldine and running a school like North  
11 Forest, if I understood you correctly, that there are  
12 some cost differences solely as a result of the  
13 difference in the size of the two schools, it should  
14 be, maybe?

15 A. There may be some -- I'm sure there are some  
16 differences. I am not saying that that accounts for  
17 all of the differences. That there are many choices.  
18 As you've stated, the districts choose to make that  
19 effect what and how they operate. The major  
20 constraint, of course, is the amount of money  
21 available and the rate at which they choose to tax  
22 themselves to raise revenue, and what that tax rate  
23 will yield based on the wealth of the district.

24 Q. What I've done here, Mr. Sawyer, is not so much an  
25 exhibit that's trying to have you conclude after

1 viewing it that you're overstuffed administratively,  
2 but merely an exhibit to try to discern how  
3 meaningful are figures like this in terms of what  
4 actually happens out in the field of any given school  
5 district, because I could presume very easily, and  
6 you may presume -- you may know Aldine well enough,  
7 that they're staffed at a level that nobody thinks is  
8 excessive, and I'm sure you feel like your staffing  
9 levels are appropriate.

10 But it seems that there are some resulting  
11 differences in what you're able to do, not because of  
12 any fault of yours, but there's some resulting  
13 differences in what you're able to do in terms of  
14 spending per student unit, and your numbers will  
15 vary, and also in terms of what teachers' salaries  
16 you can offer, because they obviously have some kind  
17 of advantage over you because of maybe some economy  
18 of scale in offering teachers' salaries, because your  
19 administrative costs have to be a little higher,  
20 maybe of necessity, than theirs do.

21 And that is all I'm trying to show through this  
22 exhibit. And would you agree with me that basically  
23 looking at those two districts, whether it's yours or  
24 Aldine or some hypothetical district, that this does  
25 illustrate that there are some differences in cost of

1 running a school district out there that cause  
2 differences in spending that relate to the size of  
3 the district, the configuration of the campus, the  
4 local choices that we all, under current law, have a  
5 right to make?

6 MR. KAUFFMAN: I object to the question,  
7 Your Honor. There are at least eight questions  
8 there, in addition to the speech.

9 THE COURT: Well, we'll give him a chance  
10 to go at it again.

11 MR. TURNER: He's been real sharp thus far,  
12 Al. He may be able to answer it.

13 THE COURT: He may be able to answer all  
14 eight at one time.

15 MR. KAUFFMAN: He might be able to, but I  
16 might not understand it.

17 A. Could you repeat the question?

18 Q. All right. Let me try to break it down.

19 You would acknowledge with me that there are  
20 some differences in spending per child from district  
21 to district -- in this case, we've used yours and  
22 Aldine -- that relate to some factors such as local  
23 decisions regarding, in this case, administrative  
24 positions, I believe you said, and economies of scale  
25 that exist even between districts of the size of

1 14,000 ADA up to 40,000 ADA. Do you agree with me?

2 A. On those two points?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. I may just stop there rather than --

6 I wanted to ask you one other thing about  
7 teachers' salaries and that is what has your  
8 experience been in the utilization of the career  
9 ladder and how have you utilized it?

10 A. The school district made a decision to award career  
11 ladders at a \$1,500.00 level which was the minimum  
12 provided under House Bill 72. That decision was made  
13 because of the amount of money provided and  
14 recognizing that given the number of teachers likely  
15 to meet the state criteria -- I think we have about  
16 235 out of the 800-plus that meet that criteria  
17 -- \$1500.00 was more practical than \$2,000.00.

18 And the district also recognized that once  
19 career ladders were awarded, they became a fixed  
20 expense, and were they awarded at -- awarded at a  
21 considerably higher level, than that would escalate  
22 costs again.

23 So we made a decision, \$1500.00. And there is  
24 a committee that follows the prescribed procedures in  
25 House Bill 72.

- 1 Q. That makes the determination?
- 2 A. That makes the determination. The determination is  
3 made by the committee consisting of the assistant  
4 superintendent for personnel, the district  
5 superintendent of instruction, one principal, and two  
6 teachers.
- 7 Q. Did I understand you that 235 teachers --
- 8 A. Approximately.
- 9 Q. -- are on the career ladder?
- 10 A. Approximately 235.
- 11 Q. That meant \$1,500.00 to those 235 in the first year  
12 under House Bill 72?
- 13 A. Yes. And every year thereafter, that group remained.  
14 I believe we had about five who did not retain career  
15 ladder status the second year.
- 16 Q. How many?
- 17 A. About five.
- 18 Q. And did you pick up some more?
- 19 A. Yes, we did.
- 20 Q. And how many did you add, approximately?
- 21 A. Approximately the same number because we -- to the  
22 maximum available for funding.
- 23 Q. So as of this school year, those teachers on the  
24 career ladder are being paid \$3,000.00?
- 25 A. No. It's not an increase. It's 1,500 per year.

1 Q. 1,500 per year?

2 A. Yes. In other words, the second year, it doesn't go  
3 to 3,000.

4 Q. Okay.

5 A. It's still 1,500.

6 Q. So we have 200 and approximately 35 teachers today in  
7 your school district that are getting \$1,500.00 more  
8 than they otherwise would get without the career  
9 ladder?

10 A. That is correct.

11 Q. And how have you found that career ladder program to  
12 assist you in trying to promote a quality teaching  
13 work force at North Forest?

14 A. It hasn't helped to this point.

15 Q. It has not helped did you --

16 A. No. And I'm going to explain why. It has a  
17 potential to help a great deal.

18 What happened was when House Bill 72 was  
19 passed, the career ladder was implemented and  
20 administrators were required to look back. It was  
21 almost like what would be considered an ex post facto  
22 law.

23 It was passed in '84, implemented in that year,  
24 but in order for one to qualify, you had to go back  
25 to the two previous years when no career ladder was

1 envisioned, when districts had a variety of different  
2 types of evaluation programs, and make decisions  
3 based on an evaluation system that may or may not  
4 have met the career ladder criteria to decide who  
5 went on the career ladder and when.

6 Now that we have the State Texas Teacher  
7 Appraisal System, there is a more uniform way, but we  
8 still have to use evaluations two years back. So  
9 it's going to take a couple of years.

10 It would have been, in my judgment, more  
11 prudent to have implemented the evaluation system  
12 first and then the career ladder. What happened was  
13 it made -- and I think what I'm saying is not just  
14 true of North Forest, I think it's true statewide  
15 -- it put many building administrators in a very  
16 untenable position.

17 You say a school system had an evaluation  
18 design and on one campus, under the law, one  
19 unsatisfactory on an entire evaluation instrument  
20 disqualified a person for career ladder.

21 And if the district had an instrument that only  
22 had satisfactory and unsatisfactory as the only  
23 rating scales, on some item, if a person were not  
24 completely satisfactory, which in this case since  
25 it's a two scale rating, means everything from

1           satisfactory, to excellent, to above excellent, to  
2           meeting beyond expectations and all of that, you had  
3           problems implementing the program so you could get a  
4           situation in which -- and I know there are a lot of  
5           students, and a lot of problems, and how decisions  
6           were made to place a person on a career ladder.

7                        So it did create in school districts, to some  
8           extent, conflict between administrators and teachers.  
9           And it was a conflict that resulted out of things  
10          that happened two years before that no one knew was  
11          going to be a factor in determining whether one  
12          obtained \$1500.00 in additional salary or not. So it  
13          has been problematical.

14       Q.    Well, do you think --

15       A.    But it has potential.

16       Q.    Well, do you think that with the advent of the  
17          uniform statewide evaluation of teachers, and the  
18          forms, and the training that have gone along with  
19          that, that we are moving toward remedying the problem  
20          that you just described?

21       A.    No. We are not moving toward remedying that problem  
22          with the Texas Teacher Appraisal System because, for  
23          two reasons: One, the evaluation system is still  
24          not child centered. And I think the output measures  
25          of what is accomplished in classrooms should be the

1 basis on how teachers are rewarded.

2 And what the TAS does is aware teachers for the  
3 exhibition of certain type of behaviors in the  
4 classroom, not for results.

5 So I don't think that that is going to solve  
6 the problem in the long run. It is going to give a  
7 greater degree of standardization than we have under  
8 the old system, but it still does not go far enough  
9 with respect to evaluation and/or to merit pay which  
10 is what the career ladder should be in relationship  
11 to performance. And performance is measured by  
12 outcomes in student achievement.

13 Q. I take it, then, you're an advocate of merit pay?

14 A. I am an advocate of paying for production, that those  
15 teachers who produce more results in his or her  
16 classroom should receive some kind of -- if there is  
17 to be a career ladder or some compensation above the  
18 basic salary schedule, that those are the teachers  
19 who should get it.

20 Q. And under the current state law, I guess you or any  
21 other school district in the state has the authority  
22 to implement some type of merit supplement, do you  
23 not?

24 A. No, we don't. The career ladder does not give us the  
25 -- the way the career ladder is structured, it does

1 not give us that option.

2 Q. Well, if you, instead of providing, let's say, a  
3 \$2,000.00 supplement to teachers, as you currently  
4 do, you and your school board decided that you were  
5 going to implement a local district merit pay  
6 plan --

7 A. Oh, yes.

8 Q. -- you could do that, could you not?

9 A. Yes. That could be done at the local level. The  
10 local board could do that, yes.

11 Q. That brings me to a question I wanted to ask you all  
12 along and that is -- I think I've alluded to the fact  
13 earlier that I felt you agreed with me, that the  
14 quality of that teacher is probably the most  
15 important factor, among a lot of other important  
16 factors, but the most important factor in education,  
17 the quality of that teacher in front of those  
18 students.

19 And I wanted to ask you if you had ever  
20 considered utilizing a merit system at the local  
21 level to try to upgrade or improve the quality of the  
22 teaching force at the North Forest District?

23 MR. KAUFFMAN: I object to the question,  
24 Your Honor. There are at least two or three, again.  
25 One was his restatement of what he thought Mr. Sawyer

1 said about quality of teachers, and another one was  
2 regarding the merit of pay system. So I object to  
3 the --

4 MR. TURNER: I'll restate that. I didn't  
5 think it misled him. I'll restate.

6 BY MR. TURNER:

7 Q. Didn't you agree with me that the quality of the  
8 teacher is perhaps the most important factor among  
9 many other factors in terms of providing quality  
10 education to the students in any given school  
11 district?

12 A. I believe that.

13 Q. And have you or your district ever considered  
14 implementation of some type of local merit pay  
15 program to try to upgrade the quality of the teaching  
16 force in the North Forest District?

17 A. The resources to do that are not available. We are  
18 paying in the base salary schedule \$3,000.00 and  
19 \$4,000.00 less than surrounding districts. So, in  
20 order to implement any kind of merit pay program, it  
21 would certainly take substantially more money than we  
22 currently have.

23 To speak to the point as to whether there has  
24 been any talk about those concepts, yes, there have  
25 been discussions about those concepts, but nothing

1 concrete with respect to moving in that direction  
2 because the funds are not available.

3 You can't implement a merit pay program in a  
4 school district where your basic salary schedule is  
5 \$3,000.00 or \$4,000.00 below your competitors, when  
6 your competitors are in dire need of teachers as you  
7 are.

8 The merit pay schedules, historically where  
9 they have been implemented in the country, are on top  
10 of competitive base salary schedules.

11 Q. I've been told that in our state we have a particular  
12 problem with quality math and science teachers. Is  
13 that a problem that you found to exist in the North  
14 Forest District?

15 A. Science more so than mathematics in our case. But  
16 basically, the critical shortage areas in our school  
17 district are science, math, but more than that,  
18 bilingual, foreign languages.

19 But those are areas, yes, where you tend to  
20 have more difficulty finding teachers than in, say,  
21 elementary ed.

22 Q. And more difficulty in finding a quality teacher?

23 A. More difficult finding teachers, and certainly more  
24 difficult in finding high quality teachers.

25 Q. And in a district like North Forest, I mean, how many

1 science teachers do we have that are at that high  
2 school level that you say there's a need for upgrade?

3 A. I would guess that overall, about 45 or 50. And  
4 that's a guesstimate because those numbers reflect  
5 demand and enrollment, and in various points of time,  
6 from year to year, there may be changes in that.

7 Q. Mr. Sawyer, you told me the other day that you  
8 replace about 50 teachers every year on average, is  
9 that correct?

10 A. For the last two or three years, it has been close to  
11 that number.

12 Q. And how many of those teachers are replaced or the  
13 vacancy occurred because that teacher is terminated  
14 for inadequate performance?

15 A. There are a number of ways in which teachers leave a  
16 school district that would fit the broad definition  
17 of what you're describing, but would not be the  
18 result of the formal recommendation, board action,  
19 public firing, et cetera. A number of staff members  
20 are counseled into other professions. It is far more  
21 practical to do it that way because it avoids the  
22 blood letting that occurs, it avoids the expense in  
23 litigation.

24 So consequently, a number of staff members are  
25 given leave each year because of evaluations and the

1 decision of the administrators that it is in both the  
2 district's best interest and yours if you seek  
3 employment elsewhere.

4 If I had to put a number on that, I would say  
5 that of the ones that we replace, probably eight to  
6 12, 15 a year probably fall under that category.

7 Q. I take it from your comments, when I used the word  
8 "terminate," that you find it under current practice  
9 in law difficult to actually fire a teacher?

10 A. It is a tedious and expensive process, yes. But it  
11 can, and I have experienced accomplishing it, but  
12 yes, it is, under current law, not the easiest task  
13 that a school system faces.

14 There are a number of -- and so to some extent,  
15 rightly so -- there are a number of procedural  
16 safeguards, there are a number of requirements, and  
17 there are a number of due process provisions, both  
18 through school district grievance procedures and then  
19 recoured to the courts, and et cetera, after the  
20 school district, the Commissioner of Education, and  
21 all of the different levels.

22 Q. And without denying that teacher may be entitled to  
23 those rights, in your experience, have you found it  
24 to be a difficult thing to deal with removing a  
25 teacher?

1 A. Through that system?

2 Q. Through that system.

3 A. It's difficult, but I guess more important than that,  
4 it is very time consuming and demanding.

5 And consequently, I think it's fair to say that  
6 school administrators and teachers, when such  
7 situations become apparent, generally look for other  
8 alternatives to solve the problem. Those  
9 alternatives might involve requesting and getting a  
10 resignation. It might involve an individual taking a  
11 leave of absence for a period of time to recoup one's  
12 professional skills so that they can return at a  
13 level that will result in the kind of efficiency and  
14 effectiveness that you would expect in this  
15 structure.

16 Q. Mr. Sawyer, have you or the board ever considered  
17 providing a supplement, say, to a prospective science  
18 teacher in order to try to use that supplement as a  
19 method to attract a higher quality level of teacher  
20 into your district?

21 A. I don't understand. How would that work? A  
22 supplement to a prospective that may be against the  
23 law.

24 Q. Well, I'm talking about an offer, make an offer to a  
25 prospective teacher, that if they will come into your

1 district, you'll put them on the state salary  
2 schedule. Let's say it's a teacher with -- I don't  
3 know -- a teacher with ten year's experience would  
4 make how much?

5 A. Let's say \$28,000.00.

6 Q. 28,000. And you say to them, you know, you're  
7 obvious -- we'll put you on the career ladder or they  
8 may have been on the career ladder where they were,  
9 and I think they have --

10 A. That's legal.

11 Q. -- some right to transfer.

12 A. Right. They may do that.

13 Q. So you say to them that they'll be on the career  
14 ladder, you'll give them 1,500, and then you say,  
15 "We've got a special little program here, we're  
16 trying to find ten outstanding science teachers, and  
17 we want you to be one of them, and we're going to pay  
18 you \$3,000.00 extra to come into the North Forest  
19 District, so your total salary will be 30, whatever  
20 it is, 32.5 at North Forest." Has that ever been  
21 tried?

22 A. Well, it would raise some serious legal questions.  
23 For example, if I had 45 science teachers and I  
24 employed a new one while the first part -- the year's  
25 experience is transferable, while the career ladder

1 is transferable, to say that for that one science  
2 teacher, I'm going to pay a bonus of 3,000, but we're  
3 not going to pay that same to all of the other  
4 individuals in that class, I think I will be raising  
5 some questions and exposing the district to some  
6 potential litigation.

7 Now, I understand it could be done by class,  
8 meaning all science teachers, or all bilingual  
9 teachers, or math teachers, or whatever. But to  
10 single out individuals on that basis may raise some  
11 questions, particularly where we're talking about  
12 equal pay for equal work.

13 Q. Has any attorney of your school district ever advised  
14 you on that, that forms the basis of your opinion  
15 that you couldn't do that?

16 MR. KAUFFMAN: Your Honor, he might have an  
17 attorney/client privilege on that.

18 MR. TURNER: He may. He can claim it if he  
19 does.

20 A. No.

21 Q. Assume with me for a moment that there's no legal  
22 problem with doing it.

23 A. I can't. I can't agree with that assumption.

24 Q. Well, what I wanted to ask you is, what other  
25 problems would you foresee that that might create if

1           you did that, other than what you might perceive as a  
2           possible legal problem?

3       A.    Well, I think, one, it would create some significant  
4           moral problems if -- in fact, there has been some  
5           evidence that even in districts where it is done by  
6           class, again all of the people who teach bilingual  
7           ed. or all of the people who teach science, and not  
8           for the math/science department or -- I'm sorry, the  
9           math department or the English department, it has  
10          created conflict among the staff members.

11                 I would see it as creating a moral problem with  
12           the staff. I would see it as creating a potential  
13           for conflict and a lack of cooperation from other  
14           staff members simply because it does not have any  
15           degree of uniformity.

16                 And based on the assumption that you made, it  
17           is not tied to productivity. It does not say that  
18           this is being awarded because this teacher took these  
19           students who were at level "X" at the beginning of  
20           the year based on certain assessment measures, and at  
21           the end of the year they were at "X" plus five, when  
22           they would normally expect to be at "X" plus two.  
23           And for all of those that took their students from  
24           "X" plus two to "X" -- from "X" to "X" plus five,  
25           rather than just to "X" plus two, which was expected,

1           here is an extra \$3,000.00. So I think you're  
2           front-end loading some things there, and that would  
3           not be for productivity.

4       Q.   Well, I wasn't asking you to hire the science teacher  
5           and tell him that as long as he stays there with you  
6           and doesn't leave, you promise him you'll get the  
7           \$3,000.00. I expected you to hire him because you  
8           thought he would come in and do a good job and tell  
9           him when you hired him, "As long as you do a good  
10          job, we're going to keep you at that \$3,000.00  
11          supplement. We've got ten of them, and you're going  
12          to get one of them." Wouldn't that work?

13       A.   I suppose it is a concept that could be tried. I'm  
14          really not sure.

15       Q.   In fact, it is a concept that's routinely used in  
16          private business, isn't it?

17       A.   Yes.

18       Q.   And I guess what I'm looking for here from you,  
19          Dr. Sawyer, as an educator and as one who I perceive to  
20          be well versed in educational problems from your  
21          background is, how is it that we can overcome the  
22          problem of attracting quality people to the classroom  
23          which, I believe we agreed, was the most important  
24          factor in education? How can we overcome that  
25          problem which, based on what we've cited here, could

1           be overcome in some instances by an expenditure of  
2           very little money.

3                        What are we going to have to do in education to  
4           be able to allow North Forest, or Aldine, or any  
5           other district to start taking a teaching force, and  
6           instead of seeing ten of them leave every year  
7           because they just kind of get talked into resigning,  
8           and, you know, in your case, I believe you had 25  
9           percent fail the initial TECAT test, and that may not  
10          be indicative of quality, but you've got some  
11          problem. How can we get to improving the quality of  
12          the teaching force that we so desperately need to do  
13          in a reasonable amount of time?

14   A.    A key to doing that or several keys to doing that  
15          are these: One, districts such as North Forest must  
16          have the resources to offer competitive salaries so  
17          that we are not always having to select our teaching  
18          staff after other districts have made their choices.

19                        Two, the continued efforts to improve the  
20          skills of current staff members through staff  
21          development activities, whether those are in district  
22          or they are in relationship with universities,  
23          regional service centers and other options for  
24          additional work for staff members to improve his or  
25          her skill level must be ongoing.

1           Thirdly, administrators, including principals,  
2           superintendents, and board members must be vigilant  
3           in protecting that sacred trust and responsibility to  
4           evaluate and assess the performance of those who work  
5           in schools with the public an explicit system that  
6           says clearly what expectations are, how people are to  
7           perform, and then measure them on some objective  
8           assessment instrument to determine whether they are  
9           meeting those needs or not.

10           You see, I don't take the position that if the  
11           Texas public schools lose 2,000 teachers a year,  
12           statewide, that that is inherently bad. I would be  
13           concerned about what 2,000 were lost, and whether  
14           those 2,000 needed to leave public education or not.  
15           I think that -- I believe, not I think, I believe  
16           that there are some situations of that nature that  
17           must be resolved with whether it's a termination or  
18           resignation or whatever, that teaching is not the  
19           chosen profession for everyone who enters it. And  
20           for those who, through their own will or through  
21           their evaluators, come to the conclusion that it is  
22           not for them, should not stay in it because it's a  
23           secure job.

24           And so, with better compensation, better  
25           training, and vigilance in assessing the performance

1 of individuals, we will get to the kind of  
2 professional staff that you've described.

3 Q. Have you implemented staff development programs at  
4 North Forest?

5 A. I believe that we have some of the most comprehensive  
6 staff development programs of any district in the  
7 area.

8 For example, when House Bill 72 required that  
9 all administrators go through educational leadership  
10 training, because of a program that we had  
11 implemented one year before that was done with Dr.  
12 Madelaine Hunter from UCLA, who is the master in  
13 terms of the effective teachers design, my  
14 administrative team already had the certification  
15 that the state required. So in that sense, we were  
16 kind of pioneers that led to something that became a  
17 part of House Bill 72. We had done it before. It  
18 was based on some premises and beliefs that I had  
19 from my own experience, and work and training that I  
20 had required of the staff where I had previously  
21 served as superintendent and brought with me. And it  
22 worked very well for us.

23 We have an ongoing staff development program  
24 now with approximately 235 or 250  
25 teachers/administrators involved in -- on Saturdays,

1 monthly, September through April.

2 We have other staff development activities in  
3 training taking place through our in-service days.  
4 We have had individuals trained, of course, in  
5 appraisal training through the Regional Service  
6 Center.

7 So yes, there are just a variety of activities,  
8 both in-house and with outside consultants. So we  
9 are doing that.

10 Q. It sounds to me like you're doing it about as well as  
11 we could find it done anywhere. I commend you on it.

12 The other two problem areas we mentioned were  
13 the salary levels.

14 A. Uh-huh.

15 Q. Competitive salary levels. And I suppose that  
16 problem in a way may tie into the other one that you  
17 mentioned about the vigilance of the administrators  
18 in evaluating performance.

19 And I guess the question I have for you is how  
20 are we going to change our attitudes, whether it be  
21 administrator's attitudes, or teacher's attitudes to  
22 where we can come to the point to where we can accept  
23 allowing Mr. Sawyer at North Forest to improve the  
24 quality of science by going out and getting some  
25 teachers that you feel good about putting in front of

1           those students?

2   A.   One, I think we have to make the money available to  
3       low wealth districts.

4           Two, given that, and I have raised some gray  
5       areas legally, and I don't know if those are there or  
6       not. If they are, then they need to be addressed.  
7       If they are not, then I think this type of concept  
8       needs to be positive as public policy.

9           And once it is, then I believe that we can make  
10       that happen because the resources would be available.  
11       I believe the will is there.

12           I think the demands on public schools -- "USA  
13       Today," yesterday, had a report that ranked the 51  
14       -- well, the states in the District of Columbia in terms  
15       of where they stood in relative rank on SAT scores,  
16       SAT scores average expenditure. And we're not doing  
17       as well in Texas from '82 to '86 as we would like to  
18       do.

19           So we have to make improvements. And these are  
20       some of the ways in which we can bring some of that  
21       about, but it's going to take additional resources.

22           You cannot take salary schedules that run  
23       \$4,000.00 and \$5,000.00 behind districts, and  
24       recognizing that the gap -- if there are not  
25       additional resources for low wealth school districts,

1 the gap is going to widen as the years go by. And in  
2 future years, rather than the \$3,000.00 gap between  
3 the two types of school districts, we might manage to  
4 get up to 19,5, and by that time, other districts  
5 might be paying 25 or 28. And that's a problem. But  
6 we can do it if we have those two things working for  
7 us.

8 Q. Mr. Sawyer, if we were just to take the North Forest  
9 average teacher's salary and just say we move it up  
10 \$1,000.00 or move it up \$2,000.00, have we got any  
11 basis for knowing how high you would have to go  
12 before you began to see some changes in the type and  
13 quality of teacher that you have at North Forest?

14 A. It is my opinion that the salaries must be at the  
15 countywide average in order to compete on almost an  
16 equal basis. And I say almost an equal basis because  
17 there are always other kinds of settled preferences  
18 that individuals may have, whether they live on the  
19 northeast side of town or the southeast side of  
20 Houston because of massive traffic problems, et  
21 cetera.

22 For the next -- for the immediate period, if we  
23 had resources which would enable us to meet a  
24 \$21,000.00 starting salary, which is pretty close to  
25 what is in our area, I would see with other changes

1           that are taking place in the Houston economy, a  
2           number of engineers and other people, for example,  
3           are coming back into teaching. We were able to  
4           attract some this year.

5           The question becomes, again, in terms of that  
6           little model that you have up in the corner up there,  
7           given what the levels of salaries are, are they going  
8           to come back to us, work one or two years, find out  
9           that they're really interested in staying and  
10          teaching because it is more secure than some of the  
11          other -- particularly with the oil economy, then are  
12          they then going to branch out, now that they know  
13          they're going to stay with teaching, look at some of  
14          the surrounding school districts that pay  
15          substantially more and move. So that's where we have  
16          to try to compete. So we need about 21 to do that.

17 Q.       So if you raised all average salaries to 21, you  
18       think you'd begin to attract some quality people?

19 A.       More. Let's use the term more quality, because right  
20       now, our efforts in recruiting teachers is aimed at  
21       quality as the No. 1 priority. That is our No. 1  
22       priority. The fact is we have these other mitigating  
23       circumstances. But that is our priority, quality.

24 Q.       And we could either, I guess, change everybody to 21  
25       starting and adjust it upward on up. I don't know

1           how much above state minimum that would be up on into  
2           the higher ranges if you kept the same stair step on  
3           up. It would be quite a bit, wouldn't it?

4           A. Well, we would be talking about \$6,000.00. You would  
5           be talking about 21 to 31.

6           Q. And you could maybe begin to attract some quality  
7           teachers.

8                         And I guess, by the same token, if you just  
9           establish a little policy like this here where you  
10          offered, let's say, a \$6,000.00 above, maybe put them  
11          on career ladder of 15 and gave them \$4,500.00  
12          supplement locally, you could probably get you ten  
13          quality ones that way, just like you could if you  
14          raised everybody's all across the board all at once  
15          to the 21 level?

16          A. Well, the problem that I would have with the example  
17          that you used is I would be very concerned what  
18          bringing in ten employees and paying them \$3,000.00  
19          above what everyone else is going to be paid is going  
20          to do for the morale of my 807, if we use this 817  
21          number, we're not going to get that 3,000. And  
22          organizationally, that could be disastrous, because  
23          you get ten people you perceive to be high quality,  
24          and we already have people in the system who meet  
25          that test of high quality. Are they going to get

1           that kind of -- so there are a number of problems  
2           concerning that.

3       Q.    Mr. Sawyer, in your view, is that attitude, morale  
4           problem that you would foresee if you did that, is  
5           that a problem that ought to be there?

6       A.    I think it is. I think it is a problem that is in  
7           any profession. When you say we are both going to be  
8           responsible for prosecuting this case and the basic  
9           rate is "X", but I'm going to pay you "X" and I'm  
10          going to pay you "X" plus 3,000, particularly where  
11          you have the history -- and this nation has long had  
12          a history of what are called single salary schedules  
13          for teachers. We are trying to get away from that,  
14          but let's not think that it's going to be easy to do  
15          that.

16       Q.    Well, I'm sure it's not.

17       A.    It's not.

18       Q.    What you're saying is those morale factors are  
19           present in any profession to some degree?

20       A.    They are.

21       Q.    They may be more pronounced --

22       A.    More pronounced in teaching because of the way we've  
23           always had single salaries.

24       Q.    But aside from money, that's one problem that we, in  
25           your judgment, must solve in order to improve the

1 quality of education in Texas?

2 A. You said aside from money. What, the problem of  
3 quality --

4 Q. Right.

5 A. -- instructors?

6 Q. Not as you say we need more money, but aside from  
7 that --

8 A. We need more money to get quality teachers. But we  
9 must have quality instructors at every level in order  
10 to improve our schools, yes.

11 Q. But this problem of unwillingness in the teaching  
12 profession and even to some degree among  
13 administrators to accept this concept that you spoke  
14 of of merit pay is something that we must overcome,  
15 in your judgment?

16 A. We must overcome that given the scarcity of resources  
17 and the recognition that we may not be able to pay  
18 all teachers \$40,000.00 a year, which is probably  
19 what they deserve.

20 MR. TURNER: I'll pass the witness, Your  
21 Honor.

22 THE COURT: We'll stop for lunch. We'll  
23 start again at 2:00. We're going to have to stop at  
24 a quarter to five this afternoon.

25 (Lunch recess.)

1 THE COURT: All right, sir.

2 Mr. Turner, has the witness passed to another  
3 lawyer now?

4 MR. TURNER: Yes, I passed the witness Your  
5 Honor.

6 THE COURT: All right.

7 MR. R. LUNA: Your Honor, I'm next.

8 CROSS EXAMINATION

9 BY MR. R. LUNA:

10 Q. Mr. Sawyer, I just introduced myself to you. For the  
11 record, my name is Robert E. Luna. I represent some  
12 of the Defendant-Intervenors school districts. I'm  
13 going to stand over here, if you don't mind, because  
14 we can't see each other across the courtroom because  
15 of the way the courtroom is situated.

16 Mr. Sawyer, I want to ask you some basic  
17 questions. There are some matters that are not in  
18 the record. We have in the record, first of all, and  
19 we have heard from certain school districts that have  
20 a high percentage of minorities throughout the Valley  
21 of Texas. And as I understand it, you have 88  
22 percent minority in your school district, is that  
23 correct?

24 A. I have about 95 percent minority.

25 Q. All right. What is the composition of your district

1 with the minority makeup?

2 A. 88 percent Black, 7 percent Hispanic.

3 Q. So the vast majority of your minority population is  
4 Black rather than Hispanic?

5 A. Yes.

6 Q. Would that be true in certain other school districts  
7 across Texas?

8 A. I know of one other district where that is true.

9 Q. What other district would that be?

10 A. That's Wilmer-Hutchins.

11 Q. That's in Dallas County?

12 A. Yes.

13 Q. So, is it safe to say, then, for the record, that  
14 there are many minority groups throughout Texas and  
15 not just one minority group located in the Valley?

16 A. Can you clarify the question for me?

17 Q. Sure, let me rephrase the question.

18 Where, if you know, is most of the Black  
19 population located and, for that matter, Black  
20 students?

21 A. In Texas?

22 Q. Yes, sir.

23 A. Probably the Houston area and the Dallas area.

24 Q. Close to your urban centers?

25 A. Yes.

1 Q. Mr. Sawyer, you discussed when you came to Texas and  
2 that you came from Illinois, as I understand it?

3 A. Yes.

4 Q. You would have gotten to Texas before House Bill 72  
5 was introduced in the Legislature in the summer of  
6 1974, is that right?

7 A. '84, yes.

8 Q. '84, yes, sir.

9 A. Yes.

10 Q. So you had a chance to see a Texas school district,  
11 that is your own school district, North Forest,  
12 before House Bill 72 and, in fact, accepted the  
13 position of superintendent under the old educational  
14 statutes before House Bill 72?

15 A. Yes.

16 Q. Now, when House Bill 72 was introduced in the  
17 Legislature, did you have any input in regard to that  
18 bill in any way?

19 A. I was involved as a member of the Equity Center in  
20 some discussions relative to the impact of certain  
21 aspects of House Bill 72 on districts such as North  
22 Forest. I had discussions with the representative  
23 from my area. I don't know how much of that I would  
24 call input if we are talking about content in terms  
25 of process and seeking to bring the concerns of my

1 district to bear on the resolution of issues. I  
2 tried to work with those -- I did testify before the  
3 Educational Committee of the House. So yes, I did  
4 those things.

5 Q. When you testified before the Educational Committee,  
6 did you testify in support of or against House Bill  
7 72?

8 A. I testified in support of some of the provisions  
9 proposed in House Bill 72.

10 Q. Generally did you support the bill?

11 A. Yes.

12 Q. Mr. Sawyer, there is in evidence in this Court  
13 Plaintiff-Intervenors' Exhibit 235, which is a book  
14 written by Billy Walker and William Kirby. You're  
15 familiar with both of those men, I assume?

16 A. I'm familiar with the Commissioner Kirby. Mr. Walker  
17 I've heard about, but no, I'm not familiar with  
18 Mr. Walker, per se.

19 Q. Mr. Walker has been introduced as an expert by the  
20 Plaintiffs in this case and has previously testified  
21 before you on this witness stand about his book and  
22 some of his views in regard to equity.

23 A. May I see the book?

24 Q. Certainly.

25 A. If I'm going to respond --

1 Q. What I would like to do, if I could, is I would like  
2 to share with you some of the concerns about equity  
3 that he testified about and then ask your opinion,  
4 not necessarily about your school district, I'm going  
5 to move you off that subject, but I'll ask you about  
6 some other school districts in general across Texas,  
7 if we could.

8 On Page 64 of his book, he talks about that  
9 there are 1,063 local school districts in Texas and  
10 in two thirds of them, the ADA, the average daily  
11 attendance is under 1,000. He testified verbally  
12 before the Court that somewhere in the neighborhood  
13 of 2,400 students to 2,600 would probably be the  
14 figure below which a district was not efficient, and  
15 perhaps should be considered for consolidation  
16 purposes.

17 And, in fact, he points out further on down the  
18 page there about the Governor's Committee on Public  
19 School Education in 1968 creating a furor by  
20 suggesting that our 1,063 districts be reduced to  
21 353.

22 Now, as you can see there from that passage, he  
23 states that, "The advantages of small districts are  
24 many and should not be discounted; however, from a  
25 school finance equity viewpoint, such districts

1 contribute negatively in two ways: (1) district costs  
2 are high on a per-pupil basis because of diseconomy  
3 of scale, leading to expenditure inequalities, and  
4 (2) taxable wealth per pupil is skewed, adding to the  
5 lack of fiscal neutrality. Most states do not  
6 encourage small districts by granting extra state  
7 dollars to them, as is done in Texas, unless the  
8 districts can meet some formula of necessity."

9 He goes on to say, "Consolidation of school  
10 districts into larger units is a significant  
11 contributor to equalization."

12 At the bottom of that paragraph, "The potential  
13 for development of an equitable system of school  
14 finance in Texas is hampered by inadequate school  
15 district organization."

16 Now, let's assume for a moment that that's  
17 true, whether or not we agree with it. Assume for a  
18 moment that that's true and that the Plaintiffs'  
19 expert has suggested that it would be better for many  
20 of the small districts to be consolidated.

21 Here is my question to you: If consolidation  
22 of small districts would be in the best economic  
23 interest of the school children of these districts,  
24 why are the superintendents and adult residents of  
25 those districts so opposed to consolidation?

1 A. I don't think I can answer that. Your question asks  
2 me to speak for some 600 school districts, i.e., some  
3 600 superintendents, i.e., some 4,200 school board  
4 members. I can't do that.

5 Q. All right. Let's back up and let me relate that to  
6 one statement that you made.

7 A. Okay.

8 Q. Earlier, you testified, I think, that you were not  
9 interested in consolidation and the people in your  
10 district would be opposed to any consolidation,  
11 something along that line. But the statement, as I  
12 recall, that you made is that you were not interested  
13 in legislating yourself out of the superintendency of  
14 the North Forest Independent School District.

15 Now, is that a correct recitation of the  
16 statement that you made yesterday?

17 A. I think it's a very intelligent statement. It is  
18 true.

19 Q. Do you think that that would be a fair observation  
20 that it might be true of the superintendents of all  
21 of the small school districts, that that could be one  
22 reason they would not be interested in consolidating?

23 A. I would not attempt to speak for them, as I said  
24 before. And I think I should clarify something about  
25 the statement that I made with respect to my own

1 position in my own school system.

2 I feel that the services which I render, which  
3 I'm responsible for providing, and the potential of  
4 my school community as it is materializing is  
5 significant and important to educational development  
6 in North Forest. I believe that I am a critical  
7 variable in that. And that is why I made the  
8 statement. It had nothing to do with concern for  
9 security, compensation benefits, et cetera, that go  
10 with being superintendent of North Forest ISD,  
11 because if I were not superintendent of North Forest  
12 ISD, I would be somewhere else doing the same thing  
13 in another district in Texas or somewhere else in the  
14 country. It is my profession, and I am competent at  
15 it, and feel very strongly about that.

16 And I believe that most of my colleagues in  
17 other districts probably feel the same way. So I  
18 don't think it's out of that kind of personal  
19 concern. And I want the record to reflect that,  
20 because it is out of concern for what I believe to be  
21 the value of the job which I am doing where I am.

22 Q. Thank you.

23 MR. R. LUNA: No further questions.

24 MR. DETHERAGE: No questions.

25 THE COURT: Back over here.

1 MR. KAUFFMAN: We have nothing further.

2 MR. GRAY: Nothing from us, Your Honor.

3 MR. O'HANLON: I've got just one little  
4 short line.

5 THE COURT: Okay.

6 RE CROSS EXAMINATION

7 BY MR. O'HANLON:

8 Q. Mr. Sawyer, one of the complaints in this case is  
9 that the 22-to-1 ratio is not fully implemented  
10 -- fully funded by the Legislature when they put that  
11 in. And I assume that your district doesn't feel  
12 that it was fully funded?

13 A. No, it's not.

14 Q. Okay. Now, Governor Clements talked about that in a  
15 tape that the Plaintiffs are going to put into  
16 evidence, or are going to try and put into evidence.  
17 How do we deal with that? What would you recommend  
18 that we do about that situation?

19 A. Put the tape in evidence.

20 Q. No, no.

21 A. I'm unclear. I'm not clear on what question you are  
22 asking.

23 Q. 22-to-1.

24 MR. KAUFFMAN: Your Honor, so my witness is  
25 not a much better lawyer than I am, just a little bit

1 better lawyer. I'm going to object to the question.  
2 It's unclear what part of Clements' speech he was  
3 talking about. It's unclear what he wants the  
4 witness to respond to.

5 BY MR. O'HANLON:

6 Q. What do we do about 22-to-1?

7 A. What do we do about fully funding 22-to-1? I think  
8 your question was, do I agree that it's not fully  
9 funded and what do we do about that.

10 Q. Well, we have several options, don't we? We can  
11 simply get rid of it, which would probably do some  
12 -- would be a step back educationally; do you  
13 acknowledge that?

14 A. I believe it would.

15 Q. Okay. Or we can ask the citizens of the state to pay  
16 for it as a whole, I suppose, or we can ask the  
17 citizens of each individual district to pay for it,  
18 which is -- we're kind of splitting those two right  
19 now, aren't we?

20 A. I guess we're split between those last two options  
21 that you described.

22 Q. Right. What I'm asking you is, is that we've got a  
23 situation out there in which we've got something  
24 where the Legislature required it, gave some funding  
25 for it, but not enough, districts are having to make

1 up the difference. Do we step back and do away with  
2 that requirement even though that would be an  
3 educational step back, or do we require the districts  
4 to continue to pay for it?

5 A. Or does the state pay for it, which is the third  
6 alternative, that the state fully funds it.

7 Q. All right.

8 A. That is what I think should happen.

9 Q. Now, I want you to assume that the state isn't going  
10 to fully fund it because there's not enough money out  
11 there to fully fund it. Then what do we do? Do we  
12 do away with the requirement?

13 A. I can't accept the assumption that there is not  
14 enough money to fully fund it in one of the  
15 wealthiest states in the country.

16 Q. Well, I want you to assume that the Legislature is  
17 not going to do it. Now, what do we do? Let me tell  
18 you the -- let me assume -- go through with you the  
19 following hypothetical.

20 That you're sitting with your teacher  
21 representative at the Legislature. Who is  
22 representing your district?

23 A. Representative Thompson, Senfronia Thompson.

24 Q. Okay. And you're sitting in Ms. Thompson's office,  
25 and she says, "Look, we can't get any more money for

1           22-to-1. We're going to hold what we've got, if  
2           we're lucky, but we can't get any more money." What  
3           do we do about it?

4           A. Redistribute the money that we have.

5           Q. Okay. By simply doing what?

6           A. Well, I think there are witnesses and people who are  
7           better able to explain how that process can happen  
8           than I could.

9                         But clearly, we have presented evidence that  
10           there's a great deal of variety in tax rates among  
11           the school districts, there's a great deal of variety  
12           in wealth among school districts, and that tax effort  
13           to some extent equalized can solve all of these  
14           problems without placing an undue burden on anyone,  
15           without school districts having to pay  
16           extraordinarily high rates.

17                         We're fond of talking about the average rate.  
18           What if everybody paid the average?

19           Q. Well, now --

20           A. If we took the state's wealth and applied the average  
21           state tax rate to all the property in the state,  
22           wouldn't that solve our problem?

23           Q. Well, what I'm asking you about is what do we do with  
24           your district? Are you going to tell -- let's assume  
25           that that doesn't happen, either.

1           Do we do away with 22-to-1, knowing that that's  
2           a good -- that's an educational advancement in this  
3           state, or do we let the district -- each of the  
4           districts have to bear that expense on behalf of the  
5           kids in their district?

6           A.    So you're asking me, do we do away with the benefits  
7           of the reduced class sizes, or do we force the low  
8           wealth school districts to incur tax increases from  
9           five to ten times as high as those that the more  
10          affluent districts would have to undergo? Is that  
11          the choice? Do I die of cancer or a heart attack,  
12          again, my example? That's the choice you're  
13          presenting to me.

14          Q.    Uh-huh.

15          A.    And I'm suggesting that you get a better doctor who  
16          fixes it. And in this case, that is equity in tax  
17          wealth and distribution.

18          Q.    And I'm asking you, in a situation where we've got a  
19          forced choice between doing away with an educational  
20          advancement and -- or dropping that requirement and  
21          lowering conceivably taxes, because if you did away  
22          with that requirement, you would reduce that tax  
23          obligation in the exact proportion that you're  
24          talking about. It comes off the same way that it  
25          adds up. Which would you tell Representative

1 Thompson to do?

2 A. You boxed me in.

3 Q. Yes, sir, I am. Because that's exactly the situation  
4 the Legislature is in right now.

5 A. My --

6 MR. KAUFFMAN: Your Honor, we object to  
7 that. We disagree with that, that that's exactly the  
8 situation that the Legislature is in. And Mr.  
9 O'Hanlon, again, is nesting assumptions, three or  
10 four of them, and then coming back with a question as  
11 though it's all true. We object to the form of the  
12 question. We also say that he has mischaracterized  
13 the state of what the Legislature's powers are.

14 THE COURT: All right. Go ahead now. I  
15 understand.

16 A. My school district's commitment on the question that  
17 you're asking is clear. And my response would be how  
18 many districts have tax rates \$1.17.

19 Q. If your district's response is clear, sir, why don't  
20 you tell me what it is to the question that I asked  
21 you?

22 THE COURT: Which is?

23 Q. Which is, do we do away with the 22-to-1 in an effort  
24 to reduce that extra burden on the low wealth  
25 districts?

1 A. My problem with your assumption is that we're talking  
2 about equity and if you talk about doing away with  
3 the 22-to-1, the 22-to-1 ratio is going to continue  
4 to exist in those districts where property values are  
5 high. And consequently we, by doing what you are  
6 suggesting, were we to take that approach, do away  
7 with it, increase the inequities, and we reverse the  
8 pendulum that you suggested that House Bill 72 went  
9 part of the way to solve. I just can't accept that  
10 premise that that would be the position of the state.

11 Q. I'll ask you the question again.

12 A. There are alternatives.

13 Q. I'll ask you the question again.

14 A. Your question assumes that there are only two  
15 alternatives. I cannot agree with that assumption,  
16 therefore, I cannot answer that question.

17 Q. If given a forced choice between eliminating the  
18 22-to-1 ratio or not, which would you do?

19 MR. KAUFFMAN: Your Honor, I object to the  
20 question. It's now been asked and answered three  
21 times.

22 MR. O'HANLON: It's been asked three times.  
23 It hasn't been answered once.

24 THE COURT: I think it's fair to take a  
25 witness in narrow -- to narrow the options down so

1 long as the question is clear that he's only being  
2 given two options, so I don't see anything wrong with  
3 that as cross-examination. You've got -- if he's  
4 giving you only two choices and that's the question,  
5 I guess you need to pick one.

6 A. I would attempt -- and you understand I recommended  
7 the board that the community approves, but I would  
8 attempt to raise the revenue.

9 Q. Okay.

10 A. I am committed to quality education, and I believe  
11 that the lower class sizes make that more likely to  
12 happen in laying those foundations in the early  
13 grades. And I think that's what I would do.

14 Q. So despite the hardships on your own individual  
15 taxpayers, it's worth it to your students to keep  
16 these reforms in place?

17 A. I prefer the reforms in place to the alternatives.  
18 However, I point out again to you, when you talk  
19 about those numbers and the amount of money necessary  
20 or the amount of tax rate increase necessary to raise  
21 the revenue, it gets to be very difficult. But given  
22 those choices, that is what I would attempt to do to  
23 keep the quality in the program.

24 Q. Is that your same general view with respect to all of  
25 the other subparts, the other reforms, the other

1 requirements that cost your district money?

2 A. No.

3 Q. So you would have to look at them on a case-by-case --

4 A. I would have to look each in the eye.

5 Q. Okay.

6 MR. O'HANLON: That's all I have.

7 MR. KAUFFMAN: I still don't have any  
8 questions.

9 THE COURT: All right, sir. You may step  
10 down. Are you going to let him be excused?

11 MR. O'HANLON: Yes.

12 THE COURT: You may be excused, thank you.

13 (Witness excused.)

14 MS. CANTU: Your Honor, Plaintiffs call  
15 Hilda Ortiz.

16 MRS. HILDA S. ORTIZ

17 was called as a witness, and after having been first duly  
18 sworn, testified as follows, to-wit:

19 DIRECT EXAMINATION

20 BY MS. CANTU:

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

22 A. My name is Hilda S. Ortiz.

23 Q. Are you a Plaintiff in this cause?

24 A. Yes, ma'am, I am.

25 Q. Where do you live, Mrs. Ortiz?

- 1 A. I reside in Mission, Texas.
- 2 Q. Have you lived there all of your life?
- 3 A. Yes, ma'am.
- 4 Q. All right. Are you a parent of children in the  
5 district?
- 6 A. Yes, ma'am, I am. I have two children in the Mission  
7 public schools, Davie, who is ten years old and in  
8 the 5th grade, and Danny, who is five and a  
9 kindergarten student.
- 10 Q. Where are you presently employed?
- 11 A. I am employed as an educator with the Mission  
12 Consolidated Independent School District.
- 13 Q. At what school, please?
- 14 A. At Bryan Elementary School.
- 15 Q. And what grade?
- 16 A. I teach 5th grade this year.
- 17 Q. Could you very briefly describe your educational  
18 background, starting with high school?
- 19 A. I attended the public schools in Mission, went to  
20 high school there and graduated in 1968, went to our  
21 nearby college, which has later become a university,  
22 in 1971, with a BA degree, I went back and got my  
23 Masters, and have done some post-graduate work in  
24 management.
- 25 Q. And that university was Pan American University, is

1           that right?

2       A.    It became Pan American University later, yes.

3       Q.    What did you receive your Bachelor in?

4       A.    I had a double major in secondary English and in  
5            Spanish.

6       Q.    And your Masters is in what area?

7       A.    It's in bilingual education.

8       Q.    Could you very briefly go over your work history?  
9            Where have you been employed?

10      A.    I have been -- I am starting my 16th year as an  
11            elementary teacher with the Mission public schools.  
12            And there was an integral there where I worked as a  
13            graduate assistant with the university.

14      Q.    By that, you mean the Pan American University?

15      A.    Yes, ma'am.

16      Q.    What schools did you teach at in the Mission public  
17            schools?

18      A.    I move around a lot. I started out at Roosevelt  
19            School, which was the oldest or is the oldest school  
20            in Mission. My Daddy went to school there and he's  
21            60 years old. And it's still in existence, and it  
22            was already old when he went.

23                    And then I moved to -- oh, I taught at the  
24            university for a year and a half while I was getting  
25            my Masters, came back and worked at Bryan Elementary,

1 worked there about five years, moved -- transferred  
2 to Pearson, worked there several more years, and I'm  
3 back at Bryan again. This is my, I believe, third or  
4 fourth year in Bryan again.

5 Q. As a resident in Mission, how active are you with the  
6 Mission community?

7 A. As a parent, I make it a point to attend as many  
8 school board meetings as I can, so I'm well aware of  
9 the problems that we have in education in Mission,  
10 along with associations with education sororities and  
11 honor societies, as well as church groups.

12 Q. And are you a member of the PTA or the PTO?

13 A. Yes, uh-huh.

14 Q. Briefly, could you provide some background on  
15 Mission, Texas in terms of the environment that sends  
16 the students to the public schools in Mission?

17 A. Imagine for a moment the State of Texas and go as far  
18 south as you can and you've just about reached  
19 Mission. We're about 15 miles away from the border.  
20 We get a lot of influx of children from Reynosa in  
21 the area where I work.

22 Our main source of economy centers around in  
23 the citrus industry. As you'll recall, we had a  
24 severe freeze about three or four years ago that  
25 totally devastated the economy.

1           As far as jobs are concerned, the majority of  
2           the parents at some particular schools, their  
3           livelihood is labor. And as a result of the freeze,  
4           many of them, you know, lost their jobs or didn't  
5           have a job.

6           We're dealing with exciting economy in South  
7           Texas because of the deevaluation of the peso. I  
8           believe it's over a thousand to one now, and that has  
9           caused a problem.

10          If you walk -- we're one of these one main  
11          streets, and if you breathe, you're out of Mission.

12          The south part of Mission is -- it's sad to see  
13          because a lot of the buildings are empty. They have  
14          been condemned, roofs have caved in, it looks like a  
15          poverty-stricken area. There's a few buildings on  
16          that side of Mission that have businesses that are  
17          still operating.

18          We are experiencing a lot of problems with  
19          having to keep up with the students that are coming  
20          into our school. Some cases are more severe than  
21          others, depending on the geographic location of that  
22          school that we have in Mission.

23          Q.    And what is the principal ethnic group of the  
24          population of Mission?

25          A.    It is mainly Hispanic.

1 Q. By mainly Hispanic, could you estimate what  
2 percentage?

3 A. I would say between 85 to 90 percent Hispanic  
4 students.

5 Q. What testimony can you offer regarding the poverty  
6 rate in Mission from your observations?

7 A. When I was working at Pearson, it was sad to have to  
8 -- I'm the kind of teacher that if there's a problem,  
9 that the child is not learning, I investigate what  
10 the problem is with the home environment. And it was  
11 really sad to see or having me have to go visit the  
12 area -- there's an area of town called El Cuchillo.  
13 And it's really sad to go and visit those places  
14 because you're talking homes that consisted of maybe  
15 two rooms, no indoor facilities as far as plumbing is  
16 concerned, outhouse in back, eight to ten kids,  
17 living in a two-room house, that kind of thing.

18 We get a lot of migrant students in Mission and  
19 that poses a problem for teachers in the classroom  
20 because of the time they come into the school.  
21 They'll come in as late as October or November, and  
22 it's a matter of playing catch up with those  
23 students.

24 Q. Have you observed any problems in the maintenance and  
25 upkeep of school buildings in the Mission public

1 schools?

2 A. Do you want me to answer that as a parent or as a  
3 teacher?

4 Q. First as a teacher. Let's talk about your school.

5 A. The school where I'm presently working in is  
6 relatively new. It's about, what, 25 or 30 years  
7 old.

8 Walk down the ramp and you see water fountains  
9 that don't work anymore. The shifting of classes to  
10 accommodate the different age groups, it shifts from  
11 year to year, so presently I'm working at a ramp that  
12 was really meant for five and six-year-old children.  
13 As a result, a lot of our 6th graders have to like  
14 almost kneel down to the water fountains to drink  
15 water.

16 The bathroom situation is atrocious to say the  
17 least. There is six rooms to a ramp times 25 to 30  
18 students per class. If you multiply that, it gets to  
19 be a pretty heavy number in terms of the number of  
20 times kids go to use the bathroom. The plumbing is  
21 constantly breaking down, there are no doors on the  
22 stalls where the kids go to the bathroom. I've asked  
23 why there are no doors, and I've been given several  
24 different reasons why there are not. I asked that  
25 they be put in and nothing has been happening. Since

1 I work with 5th grade students, they're at an age  
2 where they're very modest about themselves, and it's  
3 embarrassing for them to go to the bathroom  
4 sometimes.

5 Air-conditioning in the classrooms, because of  
6 our lack of wealth, we have a policy in our district  
7 with regards to air-conditioning. If you know  
8 anything about South Texas, you know that the weather  
9 is unseasonably warm. We don't have cool, warm, hot.  
10 It's mostly hot. You're talking anywhere from 88 to  
11 101 degrees, most of the time. But our policy is  
12 because of lack of funds, that we can only turn the  
13 air-conditioning on "X" number of weeks out of the  
14 year. The air-conditioning goes on sometime in April  
15 through the end of school. And then in September,  
16 it's still on through, I believe, November 1. If the  
17 weather gets unseasonably hot, and it's about 90  
18 degrees in the Valley right now, those  
19 air-conditioners are not on. So our resource is to  
20 open windows.

21 I've been having a particular problem in my  
22 room that every time we open those windows, we have a  
23 -- something about the room that the honey bees keep  
24 coming into. That gets to be a problem when several  
25 kids get bitten, and we try to stop class, kill the

1 bees, and call maintenance to come and spray, et  
2 cetera.

3 The heaters in my class -- and I only have one  
4 and it didn't work -- and we had some unseasonably  
5 cold weather, sometimes around October, and it was  
6 like the room was -- it was warmer outside than it  
7 was inside kind of thing. I finally got it fixed  
8 after about three months of requesting that it be  
9 fixed.

10 Q. Would you describe the playground?

11 A. If you can call it a playground. It consists of a  
12 black top that has not been resurfaced since the  
13 school was built, it seems like. The kids, as far as  
14 the playground is concerned, the field where they do  
15 all kinds of activities such as baseball, football,  
16 et cetera, the track has been made by kids running  
17 the laps. There's no really track to speak of.

18 As far as supplies for P.E. are concerned, the  
19 coach who services all of the kids in the school on a  
20 day-to-day basis has to make do with like four  
21 basketballs, two bats and that's it.

22 She is presently undergoing a project with 6th  
23 grade students to sell goodies during the lunch hour,  
24 and the kids donate these items, to make enough money  
25 to buy and offer things like tennis or -- you know,

1           those kinds of things.

2   Q.   And with the mention that you've made of the plumbing  
3       breaking down and the water fountains not working,  
4       what are the health considerations of those factors?

5   A.   As far as health considerations are concerned, it's  
6       real hard to explain to a kid that there's 30 kids  
7       behind you and even though you're thirsty, I can't  
8       let you drink water until you're full because I've  
9       got to get 30 kids in and out and back into the  
10      classroom to continue with my lesson. That gets to  
11      be a problem.

12           One thing I didn't mention was -- and it's a  
13      real problem in most of the schools -- we have a flea  
14      infestation. And this past year was so severe that  
15      some kids got bitten by fleas, the teacher got bitten  
16      by fleas and landed in the hospital with typhoid  
17      fever for about a week. That really cut into the  
18      teaching time that those kids got or didn't get  
19      because of her absence.

20   Q.   That leads me to the follow-up question. What is the  
21      effect on the learning environment of the problems  
22      that you've just described?

23   A.   I believe it's definitely detrimental. I'm the kind  
24      of teacher that goes into the classroom and I will  
25      give 200 percent to those kids on a daily basis, but

1 I cannot do it with all of these outside factors  
2 impeding the progress or the goals or the plans that  
3 I have for the students in my classroom.

4 If I have a class of 30, which I presently do,  
5 and I spend at the very minimum five minutes a day  
6 trying to kill those wasps in my room, you multiply  
7 that times the 30 kids that are in my classroom,  
8 you're talking about a lot of teaching time, valuable  
9 teaching time being wasted.

10 Q. You mentioned a lack of P.E. supplies. Are there any  
11 other problems with regards to getting supplies for  
12 your students?

13 A. Yes. Depending on the school that you work in  
14 determines the kind of budget that principal works  
15 under. At our school, the budget is nill in  
16 comparison to the others in Mission. Many times  
17 -- and I can give you an average. I spent an average  
18 of \$200.00 to \$300.00 a year buying supplies that are  
19 not provided through the school district. Whenever  
20 we have to -- something as common as a box of  
21 staples, boxes of chalk, board deck for my bulletin  
22 boards, those things are doled out on a weekly basis.  
23 We have to make reservations for a box of staples or  
24 chalk or whatever I need.

25 Q. What supplies are lacking in the science programs?

1 A. Everything. I'm a constant period teacher, which  
2 means I have to teach all courses to the kids all day  
3 long, language arts, math, reading, science, et  
4 cetera. I teach science to the kids, but it's not  
5 enough to just teach it to the kids from the books  
6 because that's all I'm provided with.

7 As far as the equipment is concerned, it is  
8 like one set for the districts located at a central  
9 LRC, and first come/first choice basis. If I get to  
10 it in time, I get some supplies, not all. I haven't  
11 been able to work it to where I can get the supplies  
12 that I need to go with the lessons I'm going to  
13 teach. I've tried to skip chapters around in an  
14 effort to solve this problem and that's futile.

15 Q. Have you checked into getting any supplies from  
16 Region 1, the Education Service Center?

17 A. That's another problem because Region 1 services all  
18 of the districts in the Valley and then some, I  
19 believe. And you're talking of having to develop  
20 lesson plans two weeks in advance to be able to get  
21 the film that's going to match the lesson that's the  
22 follow-up I'm going to need. And many times I'll get  
23 a slip from them saying it's not available from them  
24 at the time I want to use it. And then when I have a  
25 change of plans, I can't hold on to those films

1           because they're due within a week. That is a  
2           problem.

3   Q.    Are the supplies that teachers refer to as  
4           consumables, practice workbooks, manuals that  
5           students take home to do additional work on, are  
6           those available from Region 1?

7   A.    Not from Region 1. The district has to pick up the  
8           tab. Workbooks, if I want them, run about \$5.00 a  
9           book. And they encourage that they not consume them  
10          as they are meant to be.

11   Q.    And how many sets of workbooks do you have for your  
12          5th graders?

13   A.    I don't have sets. I have to make do with like maybe  
14          six books, whereas I have 13 kids in the same reading  
15          book. Therefore, I have to improvise a lot.

16   Q.    Do you have a computer available to you as a  
17          classroom teacher?

18   A.    No, ma'am, I do not.

19   Q.    Is there a computer in your building?

20   A.    There is a computer lab in the building, but then  
21          again, it only services certain kinds of students and  
22          not the gifted or the average student. They do not  
23          have access to those computers. Even if it were in a  
24          voluntary basis, they do not have access to those  
25          computers at all.

1 Q. What students can use the computers?

2 A. The students who have been identified as having  
3 scored 42 or lower in CE scores on achievement tests  
4 are the ones that qualify.

5 Q. For the regular student, who is at the average  
6 reading level, or the gifted student, what would be  
7 the first grade that that student would have hands-on  
8 experience on a computer in the Mission schools?

9 A. Not until they get to high school, and that's always  
10 an elective.

11 Q. And again, what effect would the problems in terms of  
12 supplies and equipment have on the ability of  
13 children to learn in the Mission public schools?

14 A. The effect is I'm not really maximizing the abilities  
15 of these students because I'm having to expend my  
16 time, what little I have available, to go hunting for  
17 materials that may or may not be in the district, may  
18 or may not be being used by someone else, or I wind  
19 up having to pay for them and use them myself.

20 Q. In the area of support personnel, personnel other  
21 than classroom teachers, have you noticed any  
22 problems in the Mission public schools?

23 A. Yes. At the school where I work in, we have a staff  
24 of 40 teachers. And out of those 40, we only have  
25 two aides, two educational aides, and they work with

1           only kindergarten students.

2                     In addition to that, we have two more aides who  
3 work with the pre-kindergarten or the four-year-old  
4 program. And that's the extent of our instructional  
5 aides.

6 Q.   Is there a full-time nurse for your campus?

7 A.   No, ma'am, there is not.

8 Q.   Is there a need for such a position?

9 A.   You bet. Our nurse comes to us, if we're lucky,  
10 maybe one day a month. So, any accidents that occur  
11 other than the time she's there, have to be taken  
12 care of by office staff, meaning the principal, the  
13 secretary, the facilitator or the counselor.

14                    When the nurse is there, she's so busy trying  
15 to go through their health records, that that's the  
16 extent of her day at our school. I have asked that  
17 could we use the nurse to provide health education  
18 for the students because even in 5th grade, we have  
19 some cases that are -- where students have a severe  
20 case of lice, head lice, and that proves a health  
21 hazard to all of the students in my classroom. And  
22 these attempts have been futile because of the  
23 shortage of that nurse at our school.

24 Q.   Is there a full-time counselor for your elementary  
25 school?

- 1 A. Yes. We have a full-time counselor, but she doesn't  
2 serve all of the students. She can only service  
3 students who have been identified as Chapter 1 or  
4 migrant students. And if that kid is not a Chapter 1  
5 or migrant, he won't get priority regardless of the  
6 problem.
- 7 Q. And have you referred a student to the counselor  
8 where the student is not Chapter 1 or migrant? And  
9 if so, what happens?
- 10 A. The counselor violates the law sometimes. And being  
11 the type of individual that she is, she will work  
12 with that student even if it's after school, but she  
13 will try and meet the needs of those kids.
- 14 Q. How available are services for students who need help  
15 with speech therapy?
- 16 A. We have a speech therapist who comes to our campus  
17 one day a week, okay? And even though I have two or  
18 three kids who are in need of her services, she will  
19 only concentrate on the most severe cases. And it's  
20 hard to explain to a kid why he can't get the help  
21 that he needs with a lisp or that this or that or the  
22 other. It's hard to explain to a parent how come  
23 your child cannot go to speech.
- 24 Q. What support staff is available for the gifted  
25 student who is capable of more accelerated learning?

1 A. The gifted program in our school district, there may  
2 be an attempt to do the best with what they've got,  
3 but it's like relatively nill. My child has been  
4 identified -- my son has been identified as a gifted  
5 learner.

6 I asked him what goes on in those classes, and  
7 as far as enrichment that he should rightfully be  
8 receiving, because of his ability, is not there. The  
9 exposure that he should be receiving as a gifted  
10 student is not there. And by this, I mean they can't  
11 offer enrichment in terms of things that the child  
12 -- where the child's thinking skills will be expanded.  
13 It's mostly a classroom teacher who has decided to  
14 serve as VLP. They may have had a couple of hours  
15 training in the area, and that's it.

16 Q. Could you very briefly describe the cafeteria  
17 conditions?

18 A. In one word, they're bad. The reason I say they're  
19 bad is because we have to have staggered lunch  
20 periods. The cafeteria or the cafetorium cannot  
21 accommodate every one at the same time. Therefore,  
22 we have three staggered lunch periods. They start  
23 serving lunch at 11:00 o'clock with the first shift,  
24 and their last shift goes through at 12:20.

25 Because we don't have a central kitchen and the

1 food is not prepared on site, the food is  
2 pre-packaged and frozen, and then it's brought to the  
3 satellite cafeterias from the central kitchen. And  
4 sometimes the kids will eat food that hasn't been  
5 adequately heated, food that has been -- they will  
6 get food that has been spoiled as a result of the  
7 amount of lunches or meals that have to be prepared.  
8 I have seen the stove in which they cook the meals,  
9 and I wouldn't use it in my home.

10 Q. Would you describe the Mission District as a stable  
11 population, a growing population, or a diminishing  
12 population?

13 A. I would describe it as a diminishing population.  
14 People just don't seem to want to stay there. I  
15 believe we have had a drop as far as the last census  
16 that was taken in about -- a drop of about 10,000  
17 people.

18 Q. What about the student population? How would you  
19 describe that in trends of growth or diminishment?

20 A. The population seems to be growing. And the way I  
21 can substantiate that comment is that in the last  
22 three years, they have built two new elementary  
23 schools. Right now, they're building a third  
24 elementary school which will be ready for use come  
25 September. And right behind that, there's plans for

1 building a junior high.

2 Q. You've already mentioned that you have 30 students in  
3 your classroom. Do you have a teacher's aide?

4 A. No.

5 Q. Is your classroom funded by any of the federal  
6 Chapter 1 monies?

7 A. Not that I know of.

8 Q. Is your classroom funded by any of the federal  
9 bilingual education monies?

10 A. No.

11 Q. Are there any kind of federal gifted and talented  
12 program monies for your classroom?

13 A. No. It's all on a local endeavor.

14 Q. Is 30-to-1 the largest pupil/teacher ratio you've had  
15 at that district?

16 A. No, ma'am. I have had as many as 37 1st graders at  
17 one time.

18 Q. Is 37-to-1 a ratio that still exists in the district?

19 A. It exists at the secondary and junior high level,  
20 yes.

21 Q. Does the Mission District have a full-day or half-day  
22 pre-kindergarten program?

23 A. It has a half-day.

24 Q. What is the effect in your classroom of having 30  
25 students rather than a smaller ratio, effect on the

1 students?

2 A. It's been trying, to say the least. Even though I  
3 have a 5th grade class does not mean I have students  
4 who are functioning at a 5th grade level. This year,  
5 I have reading abilities ranging all the way from 2nd  
6 grade up through 12th. As a result, I'm having to  
7 -- or I'm attempting to meet the needs of these  
8 students, but with a range that wide, it's almost  
9 impossible.

10 As I said before, this is my 16th year as a  
11 teacher. I consider myself a veteran. I consider  
12 myself a good teacher. But it gets harder and harder  
13 every year to make do and help those kids.

14 Q. Now, you say you have children in your 5th grade  
15 classroom that read anywhere from the 2nd to the 12th  
16 grade?

17 A. Yes.

18 Q. Overall, what is your observation of the achievement  
19 levels as measured by TEAMS for your district?

20 A. As measured by TEAMS -- which incidentally we're  
21 going to be doing next week -- as measured by TEAMS,  
22 it is below the state level. How can you expect a  
23 child who reads at a 2nd grade level attempt to  
24 master objectives that has a 5th grade level ability.  
25 It's impossible.

1           Essential elements have also played a role in  
2           defeating the goals that I have been trying to  
3           attempt because if I get a child in 5th grade who can  
4           only do 2nd grade math, then I must teach 2nd, 3rd,  
5           4th grade essential elements and make sure that child  
6           masters it before I can even attempt to get to do my  
7           job, which is to teach 5th grade. So it is a  
8           challenge.

9   Q.   Do you know what the tax rate is for Mission?

10 A.   Yes, ma'am, it's 85 cents.

11 Q.   And has it always been at that rate?

12 A.   It just got increased.

13 Q.   How do the teachers' salaries in Mission compare to  
14       salaries in districts close to Mission?

15 A.   It's below. In comparison, it's not comparable to  
16       what school districts to the west and east of us  
17       offer. In McAllen, for example, I believe they offer  
18       their teachers \$3,000.00 above state, and they do so  
19       in La Joya also. In Mission, they offer us \$1,500.00  
20       above state.

21 Q.   What is the effect that you've observed of the  
22       Mission salaries not being competitive with the other  
23       districts?

24 A.   What I have seen happening a lot, and this becomes  
25       more and more obvious every year, is that the better

1 teachers or the good teachers or the veteran teachers  
2 who have experience in their teaching field are  
3 leaving our district and getting jobs in districts  
4 that pay more money.

5 Q. Taking into account that a number of the problems  
6 you've enumerated have their sources in a lack of  
7 funding, if the district were to receive additional  
8 funding, what would you recommend that money be spent  
9 on for the district?

10 A. Well, as a parent and as a teacher, both, I would  
11 like to see that every child in Mission -- every  
12 child in the State of Texas, for that matter -- be  
13 given a quality education, an opportunity to be able  
14 to compete in the work force, an opportunity to be  
15 educationally ready to meet the challenges of the  
16 future.

17 We're advancing to a very technicalized age,  
18 and we can't even offer computer science to our kids  
19 in the elementary level. And that's sad. It's in  
20 the books, but we can't teach it because there's no  
21 materials available. I would like to see these kids  
22 being afforded the opportunity that they deserve as  
23 citizens of the State of Texas.

24 As a parent, I would like to see that all kids,  
25 not just my own, be given that opportunity.

1 Q. Thank you.

2 MS. CANTU: Pass the witness.

3 MR. GRAY: We have no questions.

4 CROSS EXAMINATION

5 BY MR. O'HANLON:

6 Q. Mrs. Ortiz, who is your local representative?

7 A. He is Representative Juan Hinojosa.

8 Q. Okay. Have you talked to him about this?

9 A. You bet.

10 Q. Okay.

11 A. We're in daily contact. He and I go round and round.  
12 As a matter of fact, earlier this year, we held a  
13 forum and he is aware of the problems not just in  
14 Mission, but in his district.

15 Q. Okay. Do you think he's responsive to your problems?

16 A. I'm sorry?

17 Q. Do you think he's responsive to your problems?

18 A. He's very sensitive to our concerns, yes.

19 Q. Okay. And would vote to increase spending, I assume,  
20 if he's responsive to your needs?

21 MS. CANTU: Your Honor, I'm not sure she  
22 understands the question.

23 BY MR. O'HANLON:

24 Q. Well, do you think he would support increased  
25 spending? Have you talked to him about that?

- 1 A. We have talked about the problems in the district,  
2 okay? And I'm sure that based on what he has heard  
3 from us as far as input, because he is who he is, I  
4 am confident that he will make a choice that is a  
5 good one.
- 6 Q. Did you tell him you wanted him to vote increased  
7 taxes so there will be more money spent on these  
8 kids?
- 9 A. I haven't talked to him recently since the  
10 Legislature convened.
- 11 Q. Okay. Have you talked to your state senator?
- 12 A. Hector Uribe?
- 13 Q. Yes, ma'am.
- 14 A. He was in on that forum when we had it, and he is  
15 aware of our problems.
- 16 Q. Okay. Did you talk to him about increasing taxes so  
17 we can spend more money on education?
- 18 A. We just raised the tax rate at our own local  
19 district.
- 20 Q. No, I mean state taxes.
- 21 A. Repeat the question.
- 22 Q. Did you talk to him about increasing state taxes?
- 23 A. Directly, no; through his spokesperson, yes.
- 24 Q. Okay. Responsive to what you had to say?
- 25 A. He was responsive to our needs. He was sensitive to

1           our needs. He's aware.

2       Q.    Okay. Have you talked to your school board?

3       A.    Oh yeah.

4       Q.    Okay.

5       A.    Yes. We have made several complaints. We have made  
6           the school board aware of our problems. Priorities  
7           being what they are, they are making an attempt, but  
8           it's nearly impossible with the kind of money we get.

9       Q.    Okay. As a citizen and taxpayer, are you willing to  
10           increase your taxes in the district to increase the  
11           opportunities for the children in the school?

12      A.    Well, as I said before, they've already increased our  
13           taxes and I'm willing to live with that because I'm  
14           expecting to see some changes in the educational  
15           community, yes.

16      Q.    Okay. Are you willing to increase them further if  
17           those funds are not sufficient to get the changes  
18           that you see?

19      A.    Well, it would be presumptuous of me to answer that  
20           question for the simple reason we want to wait and  
21           see what will happen with the increase present.

22      Q.    Okay. How much did you increase your taxes?

23      A.    I can't tell you specifics. All I can say is there  
24           has been an increase.

25      Q.    Okay. So, a number of these problems that you've

1           discussed theoretically, at least, are going to be  
2           taken care of by the tax increase that your district  
3           voted?

4   A.   I don't know if they're going to be taken care of.

5   Q.   Or addressed?

6   A.   Addressed.

7   Q.   Okay. Do you have any idea -- I mean, was that why  
8           that you increased your tax rate in that district?

9   A.   I believe so.

10  Q.   Okay. And that money just hasn't been spent yet  
11           because it hasn't been collected, is that --

12  A.   We have a problem of collecting taxes in Mission, and  
13           they are pursuing an aggressive effort, via  
14           delinquent attorneys or whatever they're called, to  
15           have people pay up.

16  Q.   Okay. What I'm trying to figure out, though, is that  
17           you've said you've increased your taxes, but you  
18           indicate that that money hasn't quite gotten out  
19           there yet, is that right?

20  A.   I'm not an expert on tax rates, et cetera, so I  
21           really can't answer your question. Were I a  
22           mathematician or CPA, or whatever, business manager,  
23           I'm sure I would be qualified to answer.

24  Q.   I'm trying to find out when you raised taxes last?

25  A.   It's been within the last two years, I believe.

1           There was an election held and it passed.

2       Q.    Are you talking about a bond?

3       A.    No.  I'm talking about tax increase.

4       Q.    You had an election on a tax increase?

5       A.    Well, we had something and taxes were raised and I  
6       know I'm paying more than I was last year.

7       Q.    Okay.  Okay.  As a citizen, let's talk about  
8       pupil/teacher ratio.  Is it important enough -- and  
9       I'm going to ask you to kind of wear both of your  
10       hats simultaneously, and if the answer is different,  
11       let me know.

12                Take a reform such as the 22-to-1 ratio.  Do we  
13       back off that to ease the burden on the taxpayers, or  
14       do we keep that burden on the taxpayers even though  
15       it hurts to ensure that the education -- those kinds  
16       of ratios are done, and the kids are getting a better  
17       education.

18                MS. CANTU:  Your Honor, I would object  
19       again.  He's limiting it to just two choices.

20                THE COURT:  Well, that's all right.  She  
21       may answer.

22       A.    Ask me again.  As soon as you started asking the  
23       question --

24       Q.    Okay.  I'm going to ask you to make a hard choice.  I  
25       take it by your previous answers, that you think

1 reduced class sizes are a good thing, as a teacher?

2 A. You want me to answer that?

3 Q. Uh-huh.

4 A. Yes.

5 Q. Okay. Now, 22-to-1 ratios are expensive, aren't  
6 they?

7 A. Yes.

8 Q. Okay. Now, given the choice, do we back off the  
9 22-to-1 ratio so that it will be cheaper for the  
10 school districts and hence, their taxpayers, or do we  
11 keep that 22-to-1 ratio even though it's expensive  
12 and hard on the taxpayers?

13 A. My answer to that question is whatever needs to be  
14 done to improve the educational opportunities for the  
15 children in Mission is what I would agree to.

16 Q. Do you include the 22-to-1 ratios in that?

17 A. Again, whatever needs to be done to improve it, I  
18 would be a hundred percent for.

19 Q. Even if the citizens and the taxpayers in Mission  
20 have to pay for it?

21 A. Whatever needs to be done to help those kids, I'm a  
22 hundred percent for it.

23 Q. Thank you.

24 MR. O'HANLON: Pass the witness.

25 MR. TURNER: I have no questions, Your

1 Honor.

2 CROSS EXAMINATION

3 BY MS. MILFORD:

4 Q. Mrs. Ortiz, I believe you said you had been in  
5 Mission for 16 years, is that correct?

6 A. Yes, ma'am.

7 Q. I imagine you've seen quite a bit of change in the  
8 school district over that period of time. Have you?  
9 Has it changed considerably?

10 Here, I'll move down here so we can see each  
11 other.

12 A. What do you mean by change?

13 Q. The school, the facilities, the system of education,  
14 the school district, has it changed over those 16  
15 years considerably?

16 A. The facilities, with the exception of those two new  
17 schools, are still the same.

18 Q. When did you get the two new schools?

19 A. Within the last three years.

20 Q. Within the last three years.

21 What about the teachers? Has the quality of  
22 the teachers improved or has the numbers of the  
23 teachers improved over the years.

24 A. The number of teachers have improved as well as the  
25 quality of teacher.

1 Q. When is the period of greatest change that you've  
2 seen educationally in your school district? Has it  
3 been within the last couple of years?

4 A. It's hard for me to answer that question because it  
5 varies from whatever they happen to grab at the time  
6 as far as schools of thought are concerned,  
7 philosophies, et cetera. So I would say to you it  
8 varies.

9 Q. But overall, let's say increase in teachers'  
10 salaries, when have they increased?

11 When have you seen the greatest increase in  
12 teachers' salaries? Would it be fair to say that has  
13 taken place over the last couple of years?

14 A. I think so.

15 Q. Would it be a fair statement to say that the impact  
16 of House Bill 72 on the education of the children has  
17 been the single greatest improvement in your  
18 district?

19 A. You know, there is a tendency to lump this house bill  
20 all at once, and I get the impression that people  
21 seem to think that it's the cure all for all of our  
22 ills, and it isn't. There is an attempt being made  
23 with this house bill to improve, but we're a long way  
24 down the road from really, really offering the kids  
25 the educational quality or the educational

1 opportunity they deserve.

2 Q. But was this House Bill 72 one of the single biggest  
3 improvements in your 16 years at Mission that you've  
4 seen? Was this a landmark?

5 A. I would say so.

6 Q. You would say so.

7 Would it be a fair statement of your school  
8 district to say that the ability of the district to  
9 deliver educational services has been negatively  
10 impacted by the community circumstances, the poverty  
11 in the community, and the community problems?

12 Let me rephrase the question for you --

13 A. Okay.

14 Q. -- since you seem to be having a problem with it.

15 If we were to take the Mission Independent  
16 School District and put it in another community that  
17 does not have the same economic and poverty problems  
18 that Mission, the city, has, would the school be able  
19 to deliver services a little more effectively?

20 MS. CANTU: Objection. That's an  
21 impossible hypothetical, Your Honor.

22 THE COURT: I want to see what the witness  
23 says.

24 A. Ask it again. I'm having trouble trying to --  
25 following your train of thought.

1 Q. Does your community's economic problem, the City of  
2 Mission --

3 A. We're poor.

4 Q. That's right. Does Mission, being a poor city, and  
5 having economic problems of its own separate and  
6 apart from the school district, does this have a  
7 negative effect on the school district's ability to  
8 educate those children? Does it create an additional  
9 burden for the school district?

10 A. Yes, it does.

11 Q. Okay.

12 MS. MILFORD: No further questions. Thank  
13 you.

14 MR. DETHERAGE: I have no questions.

15 THE COURT: Ma'am?

16 MS. CANTU: No redirect, Your Honor.

17 MR. GRAY: No questions.

18 THE COURT: Ma'am, you may step down.

19 Thank you. I'm going to let her be excused.

20 MS. CANTU: Yes, sir.

21 (Witness excused.)

22 MR. GRAY: Your Honor, at this time, we  
23 call Dr. Harold Hawkins.

24 (Plaintiffs' Exhibit Nos. 236 and 237 marked.)

25 MR. GRAY: To facilitate, Your Honor, I

1 think we don't have any objections to his resume and  
2 state requirements.

3 (Off-the-record discussion among attorneys.)

4 MR. R. LUNA: I don't know if anybody else  
5 has an objection, Your Honor, but apparently the  
6 exhibit he's getting ready to introduce has 98 pages  
7 full of charts. I haven't seen them before and  
8 haven't been given a chance to look at it before.

9 MR. GRAY: Well, we got it from the state,  
10 Your Honor. We'll delay, giving him a chance. We  
11 discussed it with the State prior.

12 And for the Court's information, the state  
13 commissioned the study of facilities that was done  
14 by East Texas State University, Dr. Lutz. It was  
15 just concluded. And this is the report that was  
16 presented to the Senate last week, I believe, or a  
17 week -- within the last two weeks, certainly. We  
18 have Dr. Lutz under subpoena to come authenticate  
19 this, but since he's in Commerce, we're trying to  
20 avoid that necessity. If it's a necessity, we'll do  
21 it that way.

22 THE COURT: Well, I think the objection was  
23 he hasn't seen it, and doesn't know what it is, and  
24 wants a little time to look at it. I don't know if  
25 he's --

1 MR. GRAY: Sure.

2 THE COURT: He may object further later,  
3 but I think the objection now is a chance to look at  
4 it.

5 MR. TURNER: Perhaps we can come up with  
6 some extra copies during the break.

7 MR. GRAY: I thought since we had gotten it  
8 from the state, that you had copies.

9 MS. MILFORD: What numbers are those?

10 MR. GRAY: 236 is his resume and 237 is the  
11 state's report.

12 MR. O'HANLON: Your Honor, that's not the  
13 state's report. That's Dr. Lutz' report.

14 MR. GRAY: I'm sorry. The report done by  
15 Dr. Lutz, commissioned by the state.

16 MR. HAROLD HAWKINS  
17 was called as a witness, and after having been first duly  
18 sworn, testified as follows, to-wit:

19 DIRECT EXAMINATION

20 BY MR. GRAY:

21 Q. Would you state your full name, please, sir?

22 A. Harold L. Hawkins.

23 Q. And Mr. Hawkins or Dr. Hawkins, will you give the  
24 Court a brief background on your education?

25 A. Yes. I have a Masters degree in education

1 administration from the University of Michigan, a  
2 Doctoral degree in education administration from  
3 Harvard University. I have served as a school  
4 superintendent for 18 years, have been part of the  
5 faculty at Texas A&M for nearly 20 years.

6 Q. And tell us what your current position is with Texas  
7 A&M University?

8 A. I hold a rank of Professor of Educational  
9 Administration. I teach facility planning courses to  
10 graduate students and educational administration. I  
11 also teach educational law.

12 Q. And how long have you been teaching at Texas A&M?  
13 You say 20 years?

14 A. I'm in my 20th year.

15 Q. Let me hand you what I have already marked as Exhibit  
16 236, which is your resume, and ask if you can  
17 identify that for me, please, sir.

18 A. It is my resume, yes.

19 MR. GRAY: Your Honor, at this time, we  
20 would offer Exhibit 236.

21 MR. O'HANLON: No objection.

22 MR. R. LUNA: No objection.

23 MR. TURNER: No objection.

24 THE COURT: It will be admitted.

25 (Plaintiffs' Exhibit No. 236 admitted.)

1 BY MR. GRAY:

2 Q. Dr. Hawkins, tell us briefly, if you will, the role  
3 or your involvement in your professional career with  
4 the facilities in the educational process?

5 A. As a superintendent of schools and in two different  
6 states, I participated with the boards of education  
7 and with communities in the planning and construction  
8 and utilization of new facilities.

9 I guess probably in four or five separate  
10 school districts and over a period of the 18 years  
11 that I was in the superintendency, we were frequently  
12 involved in some kind of planning or construction  
13 phase of new educational facilities.

14 As a university faculty member, having taught  
15 educational facility planning for most of the time  
16 that I've been at Texas A&M, we have made a practice  
17 -- our instructional methodology is to do facility  
18 planning for school districts. And so we do, under a  
19 contract basis with no -- at cost basis only, with no  
20 one getting paid any salaries, of course, but we do  
21 facility studies for school districts, look at their  
22 enrollments, do an evaluation of their existing  
23 buildings, and help to devise recommendations for  
24 what their needs may be for a five, ten-year period  
25 of time.

1 I also do some of that same work on a  
2 consultant basis.

3 Q. For how long have you, in the State of Texas, been  
4 either doing the consulting work advising school  
5 districts or doing the work within the grant system  
6 at Texas A&M advising school districts on their  
7 facilities and planning purposes?

8 A. I think almost the entire period of time. Some of my  
9 first contacts would go back to 18 or 19 years ago.

10 Q. Has your experience within the State of Texas been  
11 limited to just a few school districts or give us  
12 some idea of how many school districts you've  
13 provided assistance to or consulted with during the  
14 course of your career?

15 A. I think if you take all kinds of contacts, it  
16 probably would be in that capacity of some  
17 relationship to their school facilities probably  
18 would be at least 20, 30, 40 range. But, of course,  
19 in terms of other professional involvement, I  
20 certainly have had opportunities to visit within  
21 school districts, a much greater number of districts.

22 Q. Okay. During the course of your involvement with  
23 facilities for various school districts, have you  
24 been limited to one wealth category, so to speak, of  
25 the school districts that you've consulted with or

1 had an opportunity to review their facilities?

2 A. I think it's been pretty nearly the full range of  
3 what we have in the state, a reasonable cross-section  
4 of it, say.

5 Q. During your experience, have you come to learn that  
6 there is indeed a great disparity in property wealth  
7 from one school district to another school district  
8 in that state?

9 A. Yes. Of course, automatic administrative experience,  
10 I was well aware of that before I ever came to this  
11 state and joined the faculty at Texas A&M. But  
12 certainly what I have been able to observe and to  
13 study during the time that I've been here, continued  
14 to make me very well aware of that range of  
15 difference in tax base and ability to provide good  
16 education programs.

17 Q. Do you have an opinion as to whether or not  
18 facilities have any impact on the educational  
19 process?

20 A. Yes, I certainly have an opinion. I'm a firm  
21 believer that we all are affected by the kinds of  
22 facilities within which we find ourselves working,  
23 living, or whatever.

24 Q. Explain that for me, please, sir.

25 A. Well, I'm simply putting that at the moment in the

1 adult context, our work place, our homes, whatever.  
2 But my point being that students in school for a full  
3 school day for ten months of the school year, I think  
4 are impacted considerably by the kind of facilities  
5 within which they find themselves during that period  
6 of time.

7 Q. And give us some idea of the kind of impacts you  
8 think that a student will feel based upon the kind of  
9 facility he or she is in during the school day?

10 A. I think there are a wide range of ways in which the  
11 facility and the environment may have an impact.

12 This is perhaps best reflected in some of the  
13 literature in terms of behavior and psychological  
14 problems and this sort of thing. Overcrowding, for  
15 example, clearly demonstrates an impact upon the way  
16 in which people function. They tend to become more  
17 tired, tired more easily. There are all kinds of  
18 frustrations, and so that there are disruptions and  
19 things of that sort that have an impact upon the way  
20 in which students function.

21 Q. Do you have an opinion as to whether or not the  
22 general appearance of a facility will have any effect  
23 on the educational process that is conducted within  
24 that facility?

25 A. Yes, I think so. I am a staunch believer of the

1 importance of aesthetics in terms of our  
2 surroundings. We've come through over long periods  
3 of time when there seem to have been little relevance  
4 or little value given to whether or not we surround  
5 ourselves with those things that are pleasant and  
6 comfortable.

7 I think a full and complete education certainly  
8 involves gaining some kind of impression and placing  
9 some value upon something more than mere austere  
10 walls and a place to sit down and work. And so I  
11 believe that environment does have an impact, and  
12 that impact is very much a part of the total aspect  
13 of education, although not measured by the tests that  
14 are typically administered in terms of an academic  
15 program.

16 Q. What about the kind of climate one -- is he enduring  
17 the educational process? By that, I mean does the  
18 room temperature, for example, in a classroom, does  
19 it have any effect on the educational process?

20 A. Yes, I think that it does. In fact, if I go on back  
21 to my own classroom teaching experience, I know that  
22 it's particularly difficult to maintain attention and  
23 to concentrate upon whatever the task at hand may be.  
24 I think that's rather clear and rather evident to all  
25 of us who are part of education. It is reflected, I

1 believe, in terms of the tendency to later in the day  
2 to be more interrupted by those negative aspects of  
3 our environment.

4 Q. Drawing upon your actual -- I take it you've been in  
5 one capacity or another, have been on many many  
6 school district campuses in this state during your 20  
7 years?

8 A. Yes, I have. I did not mention that I also  
9 participate in accreditation studies for the Southern  
10 Association of Colleges and Schools, and have chaired  
11 a number of those teams, have been part of some, and  
12 so, in that capacity, I also have on many occasions  
13 spent a period of two to three days in a single  
14 school district.

15 Q. During the course of your years on visiting various  
16 campuses, either consulting for facilities, or for  
17 other educational purposes, or for your accreditation  
18 purposes, have you come to an opinion or a conclusion  
19 as to the effect the property wealth has on what kind  
20 of facilities an individual district may or may not  
21 have?

22 A. Yes. I think that's been evident to me over the  
23 years.

24 Q. Tell us what you've seen.

25 A. In school districts where there is a low tax base so

1           that there's difficulty in being able to finance at  
2           the local level, there is a much greater tendency.

3           The first thing that might be apparent is that  
4           schools are less likely to be well maintained. When  
5           something has to be dropped out of the budget, the  
6           first thing that goes is the roof on the building  
7           that ought to be replaced, or those other kinds of  
8           things that are very much a part of maintenance.

9           I experienced that personally. I don't think  
10          there's anything about the budget development process  
11          that has changed.

12        Q.    And by that, I take it what you're saying is that a  
13           poor district that's having to make choices when it  
14           comes to cutting the budget, one of the things that  
15           invariably gets cut is building maintenance?

16        A.    Yes.

17        Q.    What effect does that have in the long haul on the  
18           facility, itself?

19        A.    It means, of course, that the building is not going  
20           to have as long a life expectancy. It's going to  
21           become less educationally suitable, as well as  
22           something that's going to be much more costly to  
23           maintain. And so, districts that are very limited in  
24           their financial resources have the difficulty of  
25           providing the building in the first place, the

1 difficulty in maintaining them, and then sort of as a  
2 third level of impact, the difficulty of trying to  
3 take care of whatever those additional maintenance  
4 costs might be from the neglect over the years caused  
5 from the lack of sufficient funds.

6 Q. Have you seen -- for example, on maintenance, have  
7 you seen a maintenance problem in your districts that  
8 I would characterize as being property wealthy? Are  
9 they able to maintain their buildings any better than  
10 the poor districts are?

11 A. I think that's generally true, yes.

12 Q. Have you noticed during the course of your years in  
13 working with school districts any tendency as far as  
14 the use of portable buildings? Does one wealth  
15 category use portable buildings more frequently than  
16 the other category?

17 A. Yes. Portables, of course, are used for two -- in  
18 two specific kinds of instances generally. One, of  
19 course, is to take care of changes in population,  
20 student enrollments from one campus to another, and  
21 so may be necessary for use to take care of some  
22 short-term need.

23 The other need, of course, is where there needs  
24 to be additional space, either on a very quick basis,  
25 immediate need, or where there may not be sufficient

1 funds to really go into a complete building program.  
2 And so it again becomes a temporary arrangement or a  
3 stop gap arrangement.

4 I don't like to use the word temporary, because  
5 there's no such thing as a temporary building in  
6 educational circles; as we found out over the years,  
7 temporaries tend to become permanent.

8 Q. Using those words "temporaries tend to become  
9 permanent," have you experienced or do you have an  
10 opinion as to whether or not these temporary  
11 buildings, these portable buildings, tend to become  
12 permanent with any higher or different degree of  
13 frequency in your poor districts than they do in your  
14 wealthy districts?

15 A. I would say yes, very definitely. In the poor  
16 district, the tendency will be to have to maintain  
17 those portable temporary buildings for a longer  
18 period of time. No question about that.

19 Q. From an educational point of view, over the prolonged  
20 period of time using temporaries as permanent  
21 educational structures, does that have any impact on  
22 the educational process?

23 A. I believe that it does. There are people who would  
24 look at the interior arrangements of the portables  
25 and compared with some of the existing structures

1 perhaps, find them attractive and reasonable in terms  
2 of use.

3 The difficulty I think is twofold, however.  
4 One is that they are not built for permanency and so  
5 their maintainability is less than one would expect  
6 or desire to have.

7 The other is that I think it has an impact upon  
8 the educational program, itself.

9 It is true that they may serve reasonably well  
10 for the academic program itself for one teacher, one  
11 class at a time, but there is much more involved in  
12 the total education than just the academic classroom  
13 situation. And frequently what happens is that the  
14 use of the portables create situations where some  
15 group of students is quite cut off from the rest of  
16 the student body.

17 And socialization, although some people look  
18 down upon that and think that's not a part of  
19 education, in my opinion, it is very much a part of  
20 what goes on in the learning process in school and  
21 that means that students need to have some  
22 opportunities to mix together and interchange of  
23 ideas and so on, some things that are important  
24 during that school day other than just what happens  
25 in the classroom. Portables tend to minimize that

1 kind of opportunity.

2 Q. In general, how would you characterize the condition  
3 of facilities that you have seen over your years if I  
4 was to ask you how would you compare facilities in  
5 wealthy districts compared to facilities in property  
6 poor districts?

7 A. A number of things that you're likely to find. One  
8 is that the amount of space in size of classrooms and  
9 so on in districts where there is much greater  
10 economic resources available. Corridors, for  
11 example, are likely to be much narrower.

12 Now, the average person going into the school  
13 building thinks all you need is a space to get from  
14 here to there and they often are not that accustomed  
15 to being there when the students are changing classes  
16 or their periods in between times. And school  
17 administrators are quite conscious of what it is that  
18 happens at those periods of time. And so traffic  
19 flow in a building can be a problem, or it can be  
20 something that the building facility permits to occur  
21 more easily.

22 You get also, of course, into other kinds of  
23 situations with air-conditioning, heating and  
24 cooling. We've made some strides, of course, in the  
25 state in recent years, but still a lot of variation

1 in terms of whether some buildings will have  
2 appropriate heating and cooling. Lighting may be  
3 quite different.

4 There is also a strong likelihood that the low  
5 income districts, the low tax based districts, if  
6 they are able to provide classroom space, of course,  
7 make that the first priority. Most people would  
8 accept and understand that.

9 But there is then always the difficulty in  
10 going beyond that to provide auxilliary space, such  
11 as auditoriums, perhaps may affect the size of  
12 gymnasiums, possibly the areas for counseling.  
13 Clinics, for example, tend to be very very sparsely  
14 provided, almost like closet space in some buildings.

15 And so those things that go beyond basic  
16 classrooms are even to a greater extent a penalty  
17 that low income districts tend to have to put up  
18 with.

19 THE COURT: Okay. We're going to stop  
20 there for afternoon break. We'll start up again at  
21 five till.

22 (Afternoon recess.)

23 THE COURT: All right.  
24  
25

## DIRECT EXAMINATION (RESUMED)

1  
2 BY MR. GRAY:

3 Q. Doctor, at the break, you had completed an answer to  
4 my question that basically was, give me some kind of  
5 comparison of the differences that you see in  
6 facilities in poor districts compared to wealthy  
7 districts.

8 And I take it I'd be -- well, let me ask it  
9 this way. In summary, is there a significant  
10 difference in the quality of the facility for  
11 educational purposes in what you see in -- generally  
12 what you see in property poor districts compared to  
13 property wealthy district?

14 A. Yes. I believe that there is considerable  
15 difference.

16 Q. And does the magnitude of the difference that you  
17 see, in your opinion, does it have an adverse impact  
18 on the educational process that is going on? In  
19 other words, does the deteriorating conditions that  
20 you've described that you see in the poor districts,  
21 in your opinion, does that affect their ability to  
22 educate or provide the kind of education that is  
23 necessary to their children?

24 A. In my opinion, it does, providing you define  
25 education in the broad context of which I spoke

1 earlier, being more than just necessarily the  
2 academic program, itself.

3 Q. Now, there has been testimony, and we're certainly  
4 not refuting it, that some of your poor districts  
5 have indeed built new facilities, that they don't all  
6 have old facilities. Have you, during your  
7 experience of consulting with and looking at  
8 facilities in various school districts, come to any  
9 kind of opinions as to the kind and quality of new  
10 facility that a property rich district can and does  
11 build compared to what a property poor district does?

12 A. Yes. I think that this was partly reflected in what  
13 I was trying to say about the compromises that school  
14 boards have to make when it comes to the question of  
15 how many dollars can they make available to build a  
16 facility. And those kinds of things that add quality  
17 to a facility improve its maintainability and assure  
18 its longer life expectancy are the very things that  
19 are likely to be -- to have to be cut out of that  
20 building program.

21 We're really thinking about the difference  
22 between quality hardware, the best kind of  
23 elimination, perhaps the heating and cooling units.  
24 Those kinds of things in which there's always a range  
25 of quality in that kind of equipment. And that range

1 of difference often resolves when you get into a  
2 compromise situation of having to cut back and not  
3 provide the building with comparable quality  
4 throughout.

5 Q. And has it been your experience that your property  
6 poor districts generally have to cut back to make  
7 ends meet, while your property wealthy districts  
8 don't have that dilemma?

9 A. I would not want to make it sound as though the  
10 building of school buildings is easy enough that  
11 anybody gets everything they want. There are always  
12 compromises.

13 I think the compromises in property poor  
14 districts, however, cut more deeply into the value to  
15 the quality of the building, itself, and affects the  
16 longevity and the quality of the building that may  
17 enhance its utilization over years.

18 Q. All of the questions that I have been posing to you  
19 so far during your direct examination have asked your  
20 opinion based upon your years of experience, which is  
21 20 or approximately 20 years or so here in Texas.

22 Have you been involved in any more recent  
23 visits to campuses that in any way changes or  
24 reconfirms or alters the opinions you've given us so  
25 far?

1 A. Yes. I'm currently involved in a project in terms of  
2 the preparation of some materials to use in my  
3 facility planning courses, actually a collection of  
4 photographic slides that present good quality in  
5 buildings and those slides which, at the same time,  
6 will portray less than acceptable quality in the  
7 buildings. And so, I have probably been in 30, 40  
8 school buildings in the last six months as I have  
9 engaged in that particular project.

10 And although I've had an opportunity to see  
11 many things, it has not changed my mind at all in  
12 terms of the basic understanding that there is a  
13 relationship between the property value of the  
14 district and the kind of facilities that it does  
15 provide.

16 Q. Now, are you aware that Dr. Frank Lutz and his staff  
17 was commissioned by the State of Texas to perform a  
18 Texas school facilities study to look at the current  
19 facility needs, the needs of the state into the 1990s  
20 and also the cost of implementing the mandates under  
21 House Bill 72 and 246 as far as facilities go?

22 A. Yes. I'm familiar with that study and have reviewed  
23 it, and had a little opportunity to be a part of the  
24 study in a very limited sense.

25 Last July, I was asked by Dr. Lutz to spend a

1 day at East Texas State University to assist in  
2 helping to train the evaluators, the appraisers, that  
3 were going out and visiting campuses.

4 The study had at least two major data  
5 collection mechanisms. One was the written material  
6 that was obtained through questionnaires provided to  
7 all or most of the school districts in the state. I  
8 had no part in that. But the latter portion of the  
9 study which involved actual on-site visitations to  
10 -- I think they started out to get a hundred, I believe  
11 they got 110 campuses across the entire state. And  
12 they used for that materials that I had developed  
13 over the years and had published by the Council of  
14 Education Facility Planners at Ohio State in  
15 Columbus, Ohio.

16 Q. In their report, in the report prepared by Dr. Lutz  
17 under contract of the state, they came to the  
18 conclusion that the additional space needed in  
19 facilities due to House Bill 246 and House Bill 72  
20 will cost \$1.8 billion.

21 Do you, based upon your knowledge of  
22 facilities, do you agree with that assessment?

23 A. That appears to me to be a reasonable assessment.  
24 I've not done the mathematics in the study, itself,  
25 but I am familiar with the way in which they obtained

1           their average square footage costs to be used to  
2           apply all across the state. And so I simply know  
3           that the procedures that they used should have  
4           produced a reasonably accurate figure in the context  
5           of the new state mandates.

6       Q.    And also in the report, they, based upon the  
7           anticipated population increase that the state will  
8           have in the next ten years, reached the conclusion  
9           that an additional \$3.9 billion in facilities would  
10          be needed to provide adequate educational facilities  
11          for the school children up through 1996.

12                 Do you have any basis to agree or disagree with  
13                 that opinion?

14       A.   I have no basis for disagreement, and so I accept  
15          that as a valid portion of the report.

16       Q.    The report also found that to replace the existing  
17           today, below average, inadequate, obsolete  
18           facilities, that the cost would be an approximately  
19          \$1.5 billion.

20                 MR. O'HANLON:  Objection, Your Honor, at  
21                 least at this point.  If we're going to read out of  
22                 the report extensively, in the first place it's  
23                 leading.  He's reading from a document that hasn't  
24                 been admitted into evidence.

25                 If we're going to get into this report, then we

1           need to resolve the objection issue is what I'm  
2           saying. Let's put the document in evidence if we're  
3           going to rely on it.

4                   MR. GRAY: I'm more than happy to, Your  
5           Honor. I would reoffer Exhibit 237, which is the  
6           report by Dr. Lutz, Dr. Betz and Dr. Maddirala from  
7           East Texas State University under contract for the  
8           State of Texas.

9                   MR. TURNER: Your Honor, I'm going to  
10          object at this time. I have read down through Page  
11          31 during the break and so far have found in the  
12          narrative of the report quite a few conclusions that  
13          I may -- it may be helpful to actually cross-examine  
14          the author about.

15                   I would like to withhold that, however, until  
16          we get through a little further with Dr. Hawkins  
17          because I may be able to gain the understanding I  
18          need about these conclusions by cross-examining  
19          Dr. Hawkins.

20                   So at this time, I would object. But I  
21          understand what Mr. Gray is trying to do here and  
22          that is not to have to call Dr. Lutz to the witness  
23          stand. And I don't want to require him to do that  
24          unless it's absolutely necessary.

25                   But at this time, I would like the opportunity

1 to object and to perhaps go a little further along  
2 before we admit this document.

3 MS. MILFORD: We would have basically the  
4 same objection, Your Honor. And in particular, we  
5 would object to Mr. Hawkins testifying for Mr. Lutz  
6 regarding Mr. Lutz' report. I don't believe Mr.  
7 Hawkins would be the proper person to go into the  
8 Lutz report. He may testify whether he agrees or  
9 disagrees with it or what his opinion is of it, but  
10 we are approaching Mr. Hawkins as if he were Mr. Lutz  
11 -- proving up Mr. Lutz' report, and we do have an  
12 objection to that, Your Honor.

13 MR. DEATHERAGE: Your Honor, I add one more.  
14 Although this is very interesting and educational, I  
15 don't quite understand its relevance or importance.  
16 Dr. Walker, the Plaintiffs' witness, has already told  
17 the Court that facilities are not a constitutional  
18 proponent for education and funds to be provided by  
19 the state. Although it's interesting and educational  
20 and may be important to the Legislature, I don't see  
21 the relevancy to this lawsuit.

22 MR. GRAY: Your Honor, like I said, I have  
23 Dr. Lutz under subpoena. I discussed this with the  
24 State in advance of this point. All I'm merely  
25 trying to establish through this witness is whether

1 he agrees with the cost findings. And it's  
2 undisputed that the report and Dr. Lutz would go into  
3 these particular cost findings.

4 I'm not going to go into this witness of --  
5 some of the editorial comments that are made within  
6 the report. I'm going to ask him his opinions after  
7 I establish the magnitude of the cost problem. And I  
8 was not aware there was a problem up until now, and  
9 I've heard conflicting objections. Mr. O'Hanlon says  
10 don't question from the report, off the report, and  
11 Mr. Turner says don't offer the report and question  
12 from the report. I can do it either way. I just  
13 need some guidance.

14 THE COURT: Okay. I'm going to sustain  
15 Mr. Turner's objection.

16 MR. GRAY: May I just withdraw the offer?

17 THE COURT: All right.

18 BY MR. GRAY:

19 Q. Doctor, the report indicates that the cost to replace  
20 and repair current obsolete facilities is \$1.5  
21 billion.

22 Based upon your study and your review of  
23 existing facilities, do you agree with that  
24 conclusion?

25 A. I would agree that that's a reasonable conclusion.

- 1 Q. And if my math serves me right, and if it also serves  
2 Dr. Lutz right, the combined total of the 1.8 billion  
3 to comply with the house bill requirements, the 3.9  
4 billion to meet the future population needs and the  
5 1.5 billion to replace or repair existing obsolete  
6 facilities comes to a total facility need facing this  
7 state of \$5.4 billion, is that correct, sir?
- 8 A. Yes, it is.
- 9 Q. Now, are you aware that Texas, in its current scheme  
10 of funding public education, makes no provision for  
11 facilities whatsoever?
- 12 A. Yes, I'm aware of that.
- 13 Q. And do you know where the money comes from to build  
14 facilities if districts have a need to build  
15 facilities?
- 16 A. Almost entirely from the local school district.
- 17 Q. And when you talk about the dollars necessary to  
18 build facilities, much less addressing the statewide  
19 problem of 5.4 billion, does the differences in local  
20 districts' property wealth, does it have any effect,  
21 in your opinion, on their ability to build the kind  
22 of facilities necessary for the full education of  
23 their children?
- 24 A. Very definitely.
- 25 Q. And explain that to me, please, sir.

1 A. Since there are no state funds provided and since the  
2 dollars for the construction of school facilities is  
3 totally a local taxpayer expense, then there is the  
4 resources, the financial resources, the tax base in  
5 the school district obviously has to have a direct  
6 bearing upon those -- whether or not dollars are  
7 available to provide those buildings.

8 Q. Do you have an opinion, given the disparity in  
9 property values that we see in this state, as to  
10 whether or not there are some districts, because of  
11 their relative poverty as far as tax base, who can't  
12 build the necessary facilities under any  
13 circumstances?

14 A. Yes. That may be a specific, perhaps limited, but  
15 I'm sure that that exists in some districts.

16 Q. Now, based upon your -- the problem on facilities  
17 that we have been discussing, and by that I mean the  
18 problem that we have today with our facilities and  
19 the problem we know we're going to have in the future  
20 with providing facilities, in your opinion, is it a  
21 problem that can be solved and can be handled  
22 strictly by local taxpayers?

23 MR. O'HANLON: Objection, Your Honor,  
24 foundation. There's no foundation, at least in this  
25 record, for that question because there's no way of

1           determining, at least at this point, whether or not  
2           it's going to occur. And that's a necessary  
3           foundation for the conclusion.

4                   MR. GRAY: I'll ask him to assume.

5                   THE COURT: Okay.

6 BY MR. GRAY:

7 Q.    Assume, Doctor, that the findings of the Lutz report  
8       are such that there -- and the facts are that the  
9       mandates of House Bill 72 and 246 will cost \$1.8  
10      billion, assume that the growth of our state's  
11      population in the future will require an additional  
12      \$3.9 billion in facilities, and assume that we have  
13      right now \$1.5 billion worth of facilities that need  
14      to be repaired or replaced. Given that problem that  
15      I've just outlined to you, do you have an opinion as  
16      to whether or not that problem is capable of being  
17      solved at the local level by local taxpayers?

18                   MR. O'HANLON: Objection, Your Honor,  
19      foundation. The problem here is that each one of  
20      those premises requires a decision to be made on the  
21      distribution. If I can give an example.

22                   Where you are depends on the situation in your  
23      district. If we compare North Forest, which has got  
24      a declining enrollment, that district may not have a  
25      problem because they've got a declining enrollment

1 and, therefore, they've got available classrooms,  
2 therefore, there is no particular mandate for  
3 additional construction of facilities within that  
4 district.

5 On the other hand, with respect to Socorro or  
6 something like that, we do. But that global question  
7 is not -- does not -- we don't have a foundation upon  
8 which to answer that question.

9 THE COURT: Yes, sir.

10 MR. GRAY: Well, I think I have asked him  
11 to assume the facts as we know them to be, which is  
12 we've got \$5.4 billion of need out there and I  
13 think --

14 MR. O'HANLON: That is without foundation  
15 as well because it's not --

16 MR. GRAY: It's a hypothetical.

17 MR. O'HANLON: A, that's not the evidence.  
18 That's an assumption because that assumes a 35  
19 percent growth rate in this state, which is not very  
20 likely to occur in this state given its present  
21 economic circumstances.

22 MR. GRAY: I asked that in the form of a  
23 hypothetical question that you requested that I ask,  
24 and that's the context of what I've asked this  
25 witness the question. And I've put into context that

1           problem, assume with me that that is a problem we  
2           have to face. I'm merely asking him now, in his  
3           opinion, based upon his years of education, if it's  
4           one that's capable of being solved on the local  
5           level, irrespective of who's poor and who's rich.

6           MR. O'HANLON: The problem with that  
7           assumption is that as we know, and you've heard the  
8           testimony, is that it assumes every district is  
9           differently situated. So, I mean, how can that  
10          question even be answered? We need a foundation to  
11          establish the relative need by district type or  
12          something else, and that has not been gone into. And  
13          without that kind of information, there's no basis  
14          for an answer unless the witness wants to ascribe his  
15          own.

16          MR. TURNER: And Your Honor, it says that  
17          that conclusion probably -- and I don't know this,  
18          but I assume it's probably going to be based on that  
19          same report.

20          MR. GRAY: The report says that, but I'm  
21          not asking him on the report. I'm asking him does he  
22          have an opinion.

23          MR. TURNER: What I'm saying is that I  
24          would assume his opinion is probably based on the  
25          report.

1                   MR. GRAY: It's based on 20 years of living  
2                   the problem.

3                   THE COURT: You're asking this  
4                   hypothetically?

5                   MR. GRAY: Yes, sir.

6                   THE COURT: He didn't use the word  
7                   "hypothetical," but he did use words that indicate to  
8                   me that he wants the witness to assume things, so  
9                   I'll overrule. I'll try to find in the evidence,  
10                  though, some basis for my ruling.

11                  MR. O'HANLON: I'm not -- we're getting a  
12                  little obscure with respect to the evidence, Judge.

13 BY MR. GRAY:

14 Q.    Doctor, my question was asking you to assume certain  
15        facts. And I had asked you to assume the  
16        construction cost leading into the future of \$5.4  
17        billion.

18                  Based on that, do you have an opinion as to  
19        whether or not that problem can be solved under our  
20        current method of school financing, which is the  
21        local taxpayers and local districts having to pay for  
22        the facilities?

23 A.    Given the meaning of the question to apply to the  
24        statewide need, my response then, of course, is in  
25        terms of that statewide need, not specific districts.

1           And therefore, my answer is no, the problem is not  
2           resolvable on a statewide basis in its totality.

3                   MR. GRAY: I'll pass the witness. Thank  
4           you, Doctor.

5                                   CROSS EXAMINATION

6           BY MR. O'HANLON:

7           Q.    Dr. Hawkins, do you --

8                           MR. KAUFFMAN: Excuse me. May I consult?  
9           I might have a question here, Your Honor.

10                           THE COURT: Okay.

11                           MR. KAUFFMAN: Yes, I do have a question,  
12           Your Honor.

13                           THE COURT: Okay.

14                                   CROSS EXAMINATION

15           BY MR. KAUFFMAN:

16           Q.    Dr. Hawkins, based upon your experience in the area  
17           of facilities of schools in the State of Texas and  
18           your reading of reports rather old or recent  
19           regarding construction needs or proposed needs in the  
20           State of Texas, do you feel that those buildings can  
21           be built using only local funds?

22           A.    No.

23                           MR. KAUFFMAN: No further questions, Your  
24           Honor.

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## CROSS EXAMINATION

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BY MR. O'HANLON:

Q. Dr. Hawkins, do you have any idea how many dollars were spent in bonded indebtedness last year? How much money was raised in bonded indebtedness?

A. I don't have such a figure in mind, no.

Q. Would it surprise you if it exceeded \$600 million?

A. Oh, certainly not.

Q. All right.

A. It wouldn't surprise me a bit.

Q. And we're projecting a growth in the State of Texas over ten years, is that right? That's what the report said.

A. I believe so.

Q. Now, \$600 million a year times ten years is how much money?

A. It's your problem.

Q. \$6 billion, isn't it?

A. Uh-huh.

Q. And so if we simply assume our present rate of bond issuance, then we can cover that \$5.4 billion, can't we?

A. If you are saying the wealth of the state and the taxing capability of the state, the bonding capability of the state as such, then you are talking

1 about something quite different from what actually  
2 occurs in terms of providing school facilities. You  
3 don't build school buildings that way in this state.

4 Q. You don't use bonds to build buildings?

5 A. We do, but it is not what the -- if you want to say  
6 that the wealth of the state is such that those  
7 buildings could be built, I might agree with that.  
8 We're talking, however, about the current kind of  
9 situation in which buildings are built totally at  
10 local expense, and that's not your question.

11 Q. Well, now, are buildings built totally at local  
12 expense now?

13 A. I don't know the exact percentages, maybe it's 99 and  
14 99/100ths percent.

15 Q. Well, districts take \$2 million once in a while out  
16 of maintenance and operations expenses to do that,  
17 don't they? You know that happens, don't you?

18 A. No, I do not know that that happens.

19 Q. You mean you --

20 A. If they have raised additional money in their annual  
21 budget, that is not necessarily an assumption that  
22 those are state dollars. Those still are probably  
23 local dollars.

24 Q. Well, what I'm asking you is, is that money other  
25 than from just purely bonded indebtedness goes in the

1 construction of facilities in this state, doesn't it?

2 A. To a very limited extent.

3 Q. Okay. And if we're issuing -- now, you said we're  
4 going to need -- you agreed with the hypothetical  
5 that we need \$5.4 billion of new facilities in this  
6 state over a ten year period, is that right?

7 A. That's what the report says, yes.

8 Q. Okay. And you agreed that we're spending about  
9 -- we're issuing about 600 million -- we're issuing  
10 \$600 million worth of bonds every year, is that right?

11 A. I accepted your figure.

12 Q. Okay. So dividing that into \$5.4 billion is we'll  
13 get there in nine years rather than ten if we keep  
14 our same rate of issuance, isn't that right?

15 A. I say again that the way in which you present it has  
16 nothing to do with the way in which school facilities  
17 are funded in the State of Texas. You are talking  
18 about the wealth of the state as a whole.

19 If you are going to set up an equalization  
20 formula to fund local school buildings at the state  
21 level, then your hypothetical situation here is  
22 workable.

23 I did not say that the wealth of the state was  
24 insufficient. I said that the current funding  
25 arrangement was such that the provision for the

1           needed facilities would not be able to be  
2           accomplished.

3       Q.   Well, now, wait a minute here.  If we're issuing \$600  
4           million worth of bonds a year, that's under the  
5           present system, isn't it, without any state aid?

6       A.   It's the only way it can be done at the present time.

7       Q.   That's right.  And we've managed to muddle through  
8           and raise \$600 million a year worth of bonded  
9           indebtedness under the present system, haven't we?

10      A.   Yes.  But you are seemingly not addressing the fact  
11           that while this is going on, the mandates from the  
12           state and the cost of operation at the local level  
13           keeps on going up and, therefore, the capability at  
14           the local level is decreasing.

15      Q.   Well, now, let's talk about the capability at the  
16           local level as well.  We've got \$702 billion worth of  
17           wealth in this state.  Does that sound about right to  
18           you?

19      A.   I'm not familiar with that figure.

20      Q.   Okay.  Now, is it reasonable to assume that we're  
21           going to have a 33 percent increase or 35 -- I forget  
22           which number we used -- 33 to 35 percent increase  
23           with no increase in the property value in this state?

24      A.   The problem is that there is no consistency between  
25           the way in which those -- the wealth of the state,

1           which you represent with your total figure there, and  
2           the way in which the needs occur at the local level.

3   Q.   Well, that's always been the case, hasn't it?

4   A.   Yes, it has been.  And that's why we have problems as  
5           serious now as they are.

6   Q.   Well, let me ask you about the seriousness of the  
7           problems.  You're saying you're on the Southern  
8           accreditation, you're on the accreditation team?

9   A.   I said I have served in that capacity, yes.

10  Q.   How many schools have you pulled accreditation for  
11           because they did not meet the accreditation  
12           standards?

13  A.   Membership in the Southern Association of Colleges  
14           and Schools is voluntary.  It is only sought by those  
15           school districts that presume that the quality of  
16           their programs, the quality of their facilities and  
17           so on are such that they will meet the accreditation  
18           requirements.  Therefore, it would be unlikely to  
19           have accreditation denied under those circumstances  
20           because of poor facilities.

21  Q.   Now that you've qualified it, how many schools have  
22           you pulled accreditation for because of inadequate  
23           facilities?

24  A.   The individuals who serve as members of the team make  
25           a study of the local school conditions and make a

1 recommendation. They do not provide the  
2 accreditation, nor do they deny it. There is a state  
3 committee that has that responsibility. I have not  
4 served in that capacity and, therefore, I cannot  
5 respond to your question.

6 Q. How many recommendations have you made or committees  
7 in which you have participated to remove the  
8 accreditation status for districts -- for schools or  
9 districts whose facilities failed to meet the  
10 Southern accreditation standards?

11 A. Not any, but that doesn't mean that there weren't  
12 many instances in which there were recommendations  
13 about the improvement of the facilities.

14 Q. Of course. And then when you're making the  
15 recommendation, you expect them to go improve it,  
16 isn't that right?

17 A. Recommendation is something that you think is in the  
18 best interest of the school district to do.

19 Q. But you --

20 A. There's no level of expectation. You simply make  
21 -- unless you get into a situation where you are  
22 -- where a school district is placed on a warning list  
23 or something of that sort.

24 Q. How many school districts have been placed on a  
25 warning list for their failure to meet Southern

1 Association accreditation standards with respect to  
2 facilities?

3 A. I do not have that information.

4 Q. How many have you put on a warning list?

5 A. None.

6 Q. All right. How many schools have you been in?

7 A. For accreditation purposes?

8 Q. Yes, sir.

9 A. That probably involves a very modest number of maybe  
10 eight or ten.

11 Q. Okay. And none of them you put on the list, on a  
12 warning list, is that right?

13 A. That's correct.

14 Q. Is membership in the Southern Association constrained  
15 to property wealthy districts?

16 A. It's not constrained to them, but since it is a  
17 voluntary membership and accreditation, it is  
18 reasonable to understand that those districts that  
19 have very limited resources, financial resources,  
20 possibly some inadequacies of buildings, would not be  
21 seeking that accreditation.

22 Q. All right. Now, I want to work through some figures  
23 with you. Would you agree that given your view of  
24 the relative ability of the poor -- that we're  
25 limited in some respects to facilities to the

1 relative ability of poor districts to raise the  
2 property taxes sufficient to build adequate  
3 facilities?

4 A. Would you repeat that please, sir?

5 Q. Yeah. Are we constrained in looking at facilities to  
6 look at the poorest districts because of their  
7 relative inability? If the poor districts raise this  
8 \$5.4 billion, can the rich districts?

9 A. That depends upon the priorities that the voters in  
10 that school district may place upon their schools.

11 Q. Okay. Let me ask you to assume something and let's  
12 work this out a little bit.

13 Let's assume that a district with .00737 of the  
14 state's property wealth was able to raise \$30 million  
15 in bonds under the old system in 1985 or 1984.

16 Now, to figure out -- and that's a poor  
17 district. Now, to figure out the state's capacity,  
18 we would then multiply both of these numbers -- we'd  
19 multiply this by enough to get to a hundred percent  
20 and multiply this against that some cost, wouldn't  
21 we?

22 A. I'll accept your mathematics at the moment.

23 Q. Does that make any sense?

24 A. (No response.)

25 Q. Does that make any sense?

1 A. Would you repeat your point?

2 Q. Yeah. In other words, if what we're going to try and  
3 do is the combined capacity, I want you to assume  
4 that every district in this state is a poor district,  
5 and that a poor district with this percentage of the  
6 wealth was able to raise \$30 million.

7 MR. GRAY: If he's referring to what I  
8 think you're referring to, the Socorro example,  
9 that's guaranteed by the permanent school fund.

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

11 MR. GRAY: Okay. So as long as it's  
12 understood that it's guaranteed, you might ask him  
13 who has to pay for it, too.

14 MR. KAUFFMAN: Let me make mine, too, Your  
15 Honor. The question is unclear to the extent that if  
16 there's \$30 million, he hasn't stated where that \$30  
17 million was all raised and paid for in one year, or  
18 whether bonds that were meant to be paid out over ten  
19 or 20 or 30 or 40 years would result in \$30 million.  
20 So I know it's just a hypothetical, but in order I  
21 think for the witness to understand it and for the  
22 record to make any sense, he'll have to express which  
23 way it is.

24 MR. O'HANLON: I'll be happy to explain it.

25 THE COURT: All right.

1 BY MR. O'HANLON:

2 Q. My hypothetical, which is the Socorro Independent  
3 School District several years ago was able, with this  
4 percentage of the state's property wealth, to raise  
5 \$30 million by selling bonds, which bonds will have  
6 to be paid back by the citizens in this property poor  
7 district by spending their hard-earned tax dollars  
8 for an I&S tax, okay? That's how it's done, isn't  
9 it?

10 A. (Witness nodded head to the affirmative.)

11 Q. So if every district, every poor district could do  
12 this, then we could multiply -- if every district did  
13 what Socorro did, we would find some idea what the  
14 capacity in this state is, couldn't you?

15 A. I can't respond to your question. I fail to follow  
16 the logic of what you're talking about. If you are  
17 endeavoring to say or to suggest that a poor district  
18 has as much money as a wealthy district, what's the  
19 point? I don't think we have to go through this kind  
20 of an obtuse question in order to deal with somebody  
21 has more money and can better afford to finance their  
22 education. And therefore, I see no point to the  
23 question that you're going through.

24 Q. No, I took it from your inference that because we've  
25 got poor districts out there, that they can't afford

1 to raise their fair share of the construction needs  
2 that are going to be done.

3 So what I'm intending to do by this example is  
4 to take the effort of one district and multiply it  
5 times the state -- a poor district at that -- and see  
6 how much can be done if there's the will to do it.  
7 Now, isn't that a reasonable thing to do?

8 A. No.

9 Q. Why not?

10 A. Because you are attempting to take one school  
11 district and to say because something or other occurs  
12 in that school district, therefore, all poor school  
13 districts across the state can go and do likewise. I  
14 see no logic to that at all.

15 Q. Well, I --

16 MR. KAUFFMAN: Your Honor, I would object  
17 again. Since it was a hypothetical, I guess I  
18 couldn't object. But since he said the hypothetical  
19 is a real district, which happens to be my Plaintiff,  
20 I do have an objection.

21 As I understood the testimony regarding  
22 Socorro, this isn't being paid off at all, this 30  
23 million. The only thing that's being paid off is the  
24 interest on it.

25 And to therefore ask this witness to make a

1           hypothetical structure based on a fact situation that  
2           doesn't have anything to do with reality, it's  
3           particularly upsetting and makes no sense in the  
4           record. The testimony was that only the interest on  
5           that money is being paid.

6           MR. O'HANLON: So what. The issue here is  
7           whether or not Socorro did or did not, given this  
8           percentage of the state's property wealth, raise \$30  
9           million.

10          MR. GRAY: And Your Honor, that's the basis  
11          of my objection. Their ability to raise \$30 million  
12          was not based upon how much property they had, it was  
13          based upon the guarantee of the available school  
14          fund. He has not put in how much money is in the  
15          available school fund. That's the extent to which  
16          any underwriter is going to look to, is the solvency  
17          of the guarantee, because they know these poor  
18          districts can't pay it, and that's why they passed  
19          the constitutional amendment last time.

20          MR. O'HANLON: Well, now, if you want to  
21          get down to that, the amount of money in the  
22          permanent school fund exceeds that \$5.4 billion. So  
23          we're going to be able to cover it if the federal  
24          government will let us because of the arbitrage rule.  
25          So it's there. From the state's point of view, it's

1           there. And the citizens of the State of Texas  
2           authorized a constitutional amendment in 1983 to  
3           Article VII, Section 5, to allow this to happen.

4           So what I'm trying to do is, as this witness  
5           said -- I think he said that because of the existence  
6           of poor districts, we might not be able to do it.  
7           Well, I'm going to make every district in the state  
8           as poor as Socorro by doing this, and we'll see what  
9           happens.

10           THE COURT: Okay. I'll overrule. I'm  
11           going to let you do that, but we haven't got time for  
12           that today. So we're going to quit.

13           Back in the old days prior to the rules of  
14           evidence, it was permissible to ask hypothetical  
15           questions, something like, "Assume the evidence will  
16           show," then you give your expert or maybe some other  
17           type of witness some hypothetical facts, and then ask  
18           them their opinions about it, and then you were under  
19           an obligation. Sometimes you might fail to actually  
20           do it, to prove up those facts with a subsequent  
21           witness or some other way.

22           I think that's still permissible under the  
23           rules. And in addition to that, talking about  
24           experts, now, in the rules, the 700 rules, "The  
25           expert may testify in terms of opinion or inference

1 and give his reasons therefore without prior  
2 disclosure of the underlying facts or data unless the  
3 Court requires otherwise. The expert may, in any  
4 event, be required to disclose the underlying facts  
5 or data on cross-examination."

6 There's probably another section over here in  
7 the 100s that's a little bit more obtuse that would  
8 allow that type of question. And even if not, I  
9 think that you can ask hypothetical questions making  
10 an expert assume that facts will be introduced that  
11 correspond with the facts that you are laying out in  
12 your hypothetical upon the representation to the  
13 court that you'll prove that up later. I think you  
14 can still do that, so that was the basis of my  
15 ruling.

16 I'll see you all again tomorrow morning at 9:00  
17 o'clock.

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22 (Proceedings were recessed until  
23 February 13, at 9:00 a.m.)  
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3-87-190-CV

CAUSE NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL

C 8353

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 XVI OF XLVI

FILED  
OCT 09 87  
THIRD COURT OF APPEALS  
SUSAN K. BAGE, CLERK

TAKEN FEBRUARY 13, 1987

MONICA ROSS WEIDMANN

Official Court Reporter  
250th Judicial District Court

Travis County Courthouse • Austin, Texas 78701



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17 ATTORNEYS FOR THE DEFENDANT-INTERVENORS

18  
19 BE IT REMEMBERED that on this the 13th day of  
20 February, 1987, the foregoing entitled and numbered  
21 cause came on for trial before the said Honorable Court,  
22 Honorable Harley Clark, Judge Presiding, whereupon the  
23 following proceedings were had, to-wit:  
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JUNE 1, 1987  
VOLUME XLVI

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1 FEBRUARY 13, 1987

2 THE COURT: All right, sir.

3 MR. HAROLD HAWKINS

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

6 CROSS EXAMINATION (CONTINUED)

7 BY MR. O'HANLON:

8 Q. Dr. Hawkins, what I've put up here on the board is  
9 the method of calculating, in essence, extending. If  
10 this percentage of the state property wealth will  
11 support a \$30 million bond issue, then what I did is,  
12 is to see what a hundred percent of the property  
13 value in the state would support with that kind of  
14 effort.

15 Have you had a chance to look at the  
16 calculations?

17 A. Yes.

18 Q. Okay. Does that seem -- do the calculations look all  
19 right?

20 A. I have no problem with the calculations. I do have  
21 some difficulty with the basic premise upon which the  
22 calculations are based. If you are saying that the  
23 total wealth of the state is sufficient to meet the  
24 needs of the state, that may be a reasonable  
25 assumption. But that, then, necessitates the

1 distribution of that wealth in such manner as to meet  
2 the needs of all of the local districts.

3 Q. I understand. But in this case, and where we glean  
4 that number, we have taken a district that is poor in  
5 property wealth. And you weren't here for the  
6 testimony, but for the Socorro Independent School  
7 District, which is one of the poorer districts in the  
8 state, Mr. Sybert said that they were able to  
9 construct some of the finest facilities in the State  
10 of Texas or even in the United States.

11 So, what I'm trying to ask you is, it can be  
12 done, can it not?

13 A. It does not seem to me that an example taken for a  
14 single school district goes very far in the direction  
15 of determining what the state as a whole can or  
16 cannot do.

17 There are some, as I understand it, uniqueness  
18 in problems of that particular example that you are  
19 using. You're looking at a very long-term bond  
20 issue. You're looking at a great deal of interest  
21 costs over a period of time. You are looking at the  
22 needs.

23 And at least part of your circumstances that  
24 you are describing are based upon current needs in  
25 the state and, therefore, seem to me entirely

1           inappropriate in the context of looking at that 5.4  
2 billion requirement as a state as a whole.

3           MR. KAUFFMAN: Your Honor, before we go on,  
4 I've checked the calculations and if I'm right,  
5 they're wrong by a factor of ten. It's 4.07 billion.  
6 If you want to check them again, you're just off by  
7 \$35 billion, but --

8           MR. O'HANLON: All right. Let's do it  
9 another way, Mr. Kauffman, if you want to talk about  
10 what can be done in the state.

11 Q. Are you familiar with the provisions of 20.04, Dr.  
12 Hawkins?

13 A. What is 20.04?

14 Q. It's a portion of the Education Code which authorizes  
15 the issuance of bonds in this state.

16           Let's see if we'll be off by a factor.

17           I assume that you are familiar with that --

18 A. Yes.

19 Q. -- because you have advised districts with respect to  
20 the issuance of the bonds?

21 A. No, I'm not a financial advisor.

22 Q. Okay. Well, that statute says, does it not, that you  
23 can issue unlimited bonds in this state, not to  
24 exceed 10 percent of the wealth of the district, is  
25 that right?

1 A. That's what the code provides, yes.

2 Q. Okay.

3 A. One must, however, understand that that provision in  
4 a practical sense means that there is little if any  
5 capability in reality of issuing bonds beyond 8  
6 percent. Bond buyers are very reluctant to go beyond  
7 that. I suspect that they will be even reluctant to  
8 provide reasonable bids if it gets anywhere beyond  
9 the 6 or 7 or 8.

10 Q. Okay. Well, let's take them -- let's just take the  
11 statute right now.

12 There's \$702 billion in property wealth in this  
13 state. So if we were to issue bonds to the full  
14 capacity of the State of Texas, we would be able to  
15 issue \$70.2 billion in bonds, is that right?

16 A. According to the Code, but not according to the  
17 realities of what you could probably sell.

18 Q. Okay. Let's take it down as low as 5 percent, cut it  
19 in half. Is that a reasonable -- you could sell  
20 those bonds at 5 percent of the district's wealth or  
21 the state's wealth. Does that sound reasonable?

22 A. Typical practice would seem to suggest that, yes.

23 Q. Okay. That would only lower us to \$35.1 billion.  
24 That far exceeds that 5.4 billion, doesn't it?

25 A. Yes, it does. And it makes an excellent case for the

1 total wealth of the state being applied to the needs  
2 of the state in terms of construction of educational  
3 facilities.

4 Q. Okay. To do that, we would have to tax on a  
5 statewide basis, though, wouldn't we? We would have  
6 to retire them on a statewide basis? We would have  
7 to collect the money on a statewide basis?

8 A. I'm not sufficiently studied on that particular  
9 situation to assume that that's the only way. There  
10 may be other methods of utilizing that wealth without  
11 moving to a -- completely to a statewide levy in tax  
12 collections.

13 Q. Now, -- oh by the way, we have worked back through  
14 the calculations and we think our math is correct.

15 Now --

16 MR. KAUFFMAN: We'll work it out during  
17 lunch.

18 BY MR. O'HANLON:

19 Q. So there's a difference, then, you're saying in terms  
20 -- there's a difference between the capacity and the  
21 ability to do it, is that what you're trying to tell  
22 us?

23 A. And are you applying this at -- you're still at the  
24 statewide level?

25 Q. Well, let's take any district that you want to talk

1 about. Let's talk about a theoretical district out  
2 there.

3 Now, -- well, let's go back for a second.  
4 Let's kind of explain how bonding works in the  
5 state's case.

6 We've got two kinds of bonds, we've got  
7 unlimited, and then limited bonds, is that right?

8 A. Yes.

9 Q. Okay. What's the difference?

10 A. The difference is in terms of the limitations put on  
11 the Board of Education in terms of their maximum  
12 levy.

13 The limited bonds are created with a fixed tax  
14 rate, and that tax rate then applies during the  
15 period of the bond issue, itself.

16 The unlimited bonds provide the authority for  
17 the Board of Education to vary the tax rate in  
18 accordance with the annual needs for the payment of  
19 the bonds.

20 Q. When you say the Board of Education, you're saying  
21 -- you're talking about the local board of trustees of  
22 the independent school district, is that correct?

23 A. Yes.

24 Q. Okay. Now, as a matter of practice, the unlimited  
25 bonds that are issued in the State of Texas far out

1 number the limited bonds, don't they?

2 A. It's my impression that in recent years, that many or  
3 most of the bond issues have been for -- oh, excuse  
4 me, unlimited now, yes.

5 Q. Okay.

6 A. The new issues are tending to go in the unlimited  
7 direction.

8 Q. Because the board of trustees of a local independent  
9 school district, in essence, guarantees that they'll,  
10 by virtue of looking at the whole wealth of the  
11 district, that they will raise whatever money it  
12 needs -- they need to cover that makes those bonds a  
13 bit more saleable, doesn't it?

14 A. That's right.

15 Q. Okay. So, we've got unlimited bonds in Texas.

16 Now, is there a provision -- are you aware of  
17 the provisions and the change in the Texas  
18 Constitution which allowed it for the guaranteed bond  
19 program?

20 A. I have a channel awareness of this, but I'm not -- I  
21 don't know the specifics, but I'm aware that that  
22 change has occurred.

23 Q. Okay. And are you aware that that change that has  
24 occurred has, in effect, given even the poorest  
25 district in the state the opportunity to sell bonds

1           because of the guarantee at the best available rate?

2   A.   This has been helpful in my understanding.

3   Q.   Okay.  So what we've done at least by doing this is  
4       we've put the poorer property wealth districts on the  
5       equal footing with the wealthy districts that would  
6       qualify for a high rate on their own?

7   A.   What do you mean by equal footing?

8   Q.   They can go out and issue Double A and Triple A  
9       bonds, whereas before, they might have been issuing  
10      B's or something of that nature, isn't that right?

11  A.   That's equal footing in that sense.  Certainly it's  
12      not an equal footing in terms of the amount of effort  
13      that are usually required in order to pay off those  
14      bonds.

15  Q.   No.  I'm just talking about when you're looking at  
16      the bond, the higher the rating, the lower the rate,  
17      because it's rated as a better risk for the investor,  
18      isn't it?

19  A.   Yes.

20  Q.   Okay.  So even the poorest districts in this state  
21      can go out and sell bonds on the market in the United  
22      States at as good a rate as you can get?

23  A.   Selling bonds is one part of the problem; paying them  
24      off is another one.  That's the critical issue.  Not  
25      that the interest rate is not important, it obviously

1 is. But the most critical aspect is the occurrence  
2 of that debt over the full life of the bond issue.

3 Q. Well, now, the interest rate is real important  
4 because over the life of a 30-year bond, you're  
5 actually going to be paying back more interest than  
6 you are principal likely, aren't you?

7 A. That's right.

8 Q. Okay. So a substantial reduction in interest rate is  
9 an enormous help, is it not?

10 A. It certainly helps, yes.

11 Q. Okay.

12 A. It's important.

13 Q. Okay. Are you aware that the Texas Education Agency  
14 has, in terms of the bonds they guarantee, has  
15 limited their guarantees to districts that are by and  
16 large property poor?

17 A. I'm not aware of that, but that may be the case.

18 Q. Okay. Now, are you saying that -- now, the voters in  
19 the district get to vote on these unlimited bonds.  
20 It's part of the nature of the beast. It's what  
21 makes it different, isn't it?

22 A. Well, they vote on either issuance of bonds --

23 Q. Okay.

24 A. -- whether it's limited or unlimited.

25 Q. Okay. When you put this out to the voters, they

1           either assume -- they assume the burden, even though  
2           it's going to be a high tax burden, they assume that,  
3           don't they?

4       A.     That's what the process of election results in, yes.

5       Q.     Okay. And they take that data on themselves for the  
6           provision of education for the kids in their  
7           community?

8       A.     Yes.

9       Q.     Okay. So it's not -- it's a voluntary process where  
10          it's submitted to the voters, isn't it?

11      A.     Not necessarily. It depends upon how you use the  
12          word "voluntary." If your buildings are falling down  
13          and the state is requiring you to provide for an  
14          education, what alternatives do the local taxpayers  
15          have? It's certainly not voluntary in the sense that  
16          everybody troops down and votes "yes," happy to incur  
17          that debt.

18      Q.     Well, if everybody votes "no," the bonds don't pass,  
19          do they?

20      A.     That's right.

21      Q.     Or if even 50.001 percent vote "no," the bonds don't  
22          pass?

23      A.     That's right.

24      Q.     Okay. So I mean they go down and secret ballot and  
25          have an election and those citizens, before you can

1 put that liability on local taxpayers, they've got to  
2 say "yes"?

3 A. (Witness nodded head to the affirmative.)

4 Q. Isn't that right?

5 A. That's the way it works.

6 Q. Okay. And they're guaranteeing the wealth of that  
7 district to pay those bonds back?

8 A. That's what the law provides for. That's what takes  
9 place.

10 Q. Okay. Now, let's talk about how Texas deals with  
11 bonds. Are you aware that Texas issues more bonds  
12 for school construction than any other state in the  
13 union?

14 A. I'm not aware of that, but it's a large state. I  
15 assume that that could be a correct circumstance.

16 Q. And that the bonds issue coming out of the Texas  
17 independent school districts have got as good a rate  
18 as any municipal bonds in the country?

19 A. I'm not aware of that, but it could be. I presume  
20 that you're saying taken as a whole, the average  
21 perhaps for the state, but I suspect that you've got  
22 just as much range of high and low as you would have  
23 anywhere else.

24 Q. Okay.

25 A. Since the wealth of the state has been over the years

1 a very prominent aspect of that, I would suspect that  
2 what you suggest is generally true.

3 Q. Are you aware that by and large the citizens in this  
4 case -- in this state, when they're dealing with  
5 questions of property, taxation would -- we've heard  
6 a bunch of testimony in this courtroom that says --  
7 to the extent that they would prefer to keep that as  
8 a matter of local control.

9 MR. GRAY: Prefer to keep what as a matter  
10 of local control?

11 MR. O'HANLON: The amount of expenditures  
12 that they spend on their kids in their district.

13 MR. GRAY: I'm not at all sure that's the  
14 testimony in this record. I mean, I can tell you our  
15 point. They're asking to be able to spend more money  
16 on their kids. That's the whole nature of this case.  
17 If you're intending to leave the impression with this  
18 witness that our districts are satisfied with what  
19 they can spend, that's totally in error.

20 MR. O'HANLON: Well, I believe Mr. Sawyer  
21 testified that even though his district is not  
22 interested in consolidation, even though it's going  
23 to increase his tax base substantially.

24 MR. RICHARDS: He testified he was not  
25 interested in consolidation for the government's

1           purposes, which is slightly different, if you want to  
2           be concise with what his testimony was.

3                       THE COURT:   Okay.

4   BY MR. O'HANLON:

5   Q.   Well, you go out there and deal with school  
6       officials.  Don't you find that they would like to  
7       keep that within their own realm, have control over  
8       the expenditures and whatnot in their own district?

9   A.   There's no doubt that local officials and taxpayers  
10       desire to have as much local control as they can  
11       have.

12   Q.   Okay.

13   A.   That does not always mean that that local control  
14       enables them to do, particularly in education, what  
15       may be needed.

16   Q.   Okay.  Now, let's talk about growth.  Now, the single  
17       largest need assessment that you cited yesterday was,  
18       I believe, \$3.9 billion that was needed just for the  
19       influx of new students in the state, is that correct?

20   A.   I didn't cite that in terms of personal testimony,  
21       but I believe that's a figure out of the Texas study.

22   Q.   And you concurred with that?

23   A.   I said that it seemed to be reasonably accurate --

24   Q.   Okay.

25   A.   -- in a general sense.

1 Q. Now, we're not going to get -- and that's based on  
2 the 35 percent population growth estimate, isn't it?

3 MR. GRAY: Wrong.

4 MR. O'HANLON: 33?

5 MR. GRAY: Yes.

6 BY MR. O'HANLON:

7 Q. 33 percent population growth estimate?

8 A. I think that's correct.

9 Q. Are you aware of that Texas 2,000 study?

10 A. Not in terms of its specifics.

11 Q. Are you aware that the study done specifically for  
12 Texas only projected a 25 percent growth in the  
13 school age population of the state?

14 A. No, I'm not aware of that. It may be correct, but  
15 I'm not aware of it.

16 Q. Well, have you read Dr. Lutz' study?

17 A. Yes, I have reviewed that.

18 Q. He cites it in here, doesn't he?

19 A. I don't know. I'm not -- I can't cite it chapter and  
20 verse. I said I reviewed it.

21 Q. Well, given the fact that the growth in scholastic  
22 population in the last couple of years has been  
23 between 1 and 2 percent, do you think maybe that 33  
24 percent is a little bit unrealistic?

25 A. No. I have no basis for trying to refute the

1 information in that report. I think it was done  
2 consistent with the methodology that is ordinarily  
3 used in educational studies and, therefore, I accept  
4 it.

5 In accepting it, I don't vouch for the figures.  
6 I'm not guaranteeing them, but I say that it is  
7 generally acceptable and seems reasonable, to the  
8 best of my knowledge.

9 Q. Well, would the fact that what we're projecting the  
10 33 percent growth over the next ten years, would it  
11 give you cause to know that our growth in scholastic  
12 population has only been between 1 and 2 percent for  
13 the last couple of years? Would it cause you to  
14 question that figure?

15 A. I think if one is going to deal with this kind of a  
16 question or problem, you ought to have pause and  
17 consideration for all of the figures. It's an  
18 intricate kind of calculation that requires a great  
19 deal of indepth study, information from a wide range  
20 of sources, and the knowledge and capability of those  
21 people carrying out the study to determine on the  
22 basis of all of their findings whether or not their  
23 conclusions are accurate and supportable. I assume  
24 that that has taken place here.

25 It is not my desire to try to defend the study

1           since it is not something that I had any personal  
2           responsibility for. I have already said that I  
3           generally accept it, but that does not mean that I  
4           can accept or refute every one of the calculations in  
5           the study.

6           Q. Well, but I'm asking you as an expert in the field,  
7           whether this most recent data, which is what our  
8           growth in scholastic population has been over the  
9           last couple of years, would cause you to question  
10          this 33 percent figure?

11          A. I would have to have a lot more information available  
12          to respond to your question.

13          Q. Okay. Would the fact that this census figure was  
14          arrived at using information in Texas in the early  
15          '80s, would that cause you to question its voracity  
16          or applicability?

17                       MR. GRAY: Your Honor, I'm going to have to  
18          make the same objection that was made on me  
19          yesterday. The census data, what was used, it's all  
20          contained in the report, and I am trying to bring the  
21          report to the Court's attention. But as long as the  
22          defense objects to the report coming into evidence  
23          before this Court, I have to object to defense  
24          counsel now questioning the witness from the report  
25          and saying, "Do you know this census fact and that

1 census fact." He's going to have to put it in a  
2 hypothetical form, like I was forced to put it in, or  
3 I would reoffer Exhibit 237 at this time to clean up  
4 this mess.

5 MR. O'HANLON: I don't have any objection  
6 to 237. I don't know whether my co-counsels might.

7 MR. TURNER: I'm maintaining the same  
8 objection as yesterday, Your Honor.

9 THE COURT: Okay. I'll sustain. It's not  
10 in evidence. I'll sustain the objection.

11 BY MR. O'HANLON:

12 Q. Okay. Assume that this census number was based on  
13 what's arrived at in the early '80s, would that cause  
14 you to question its voracity, given the present  
15 economic circumstances and a great deal of  
16 out-migration that's going on in the State of Texas  
17 right now?

18 A. Out-migration, of course, can occur at any point in  
19 time and is scarcely something that can be  
20 predictable in this kind of long range projection.  
21 Certainly today, knowing what the economic situation  
22 is, we're well aware that there is an out-migration,  
23 and that may very well have an effect.

24 On the other hand, the reverse could happen  
25 also within the period of time that we're talking

1 about to where the in-migration might exceed what  
2 we're seeing now as out-migration.

3 Q. Okay. Now, when you're talking about -- and we can  
4 use either figure, between the 25 to 33 percent range  
5 of growth in the scholastic population in the state,  
6 that's going to entail, of necessity, substantial  
7 growth in the property wealth of the state as a  
8 whole, is it not?

9 A. It will make a difference, but the extent of that  
10 difference, of course, is something that is not  
11 necessarily on a 1-to-1 ratio.

12 Q. That's correct. But I mean, it is going to, of  
13 necessity, increase the property value in the state  
14 as a whole?

15 A. Unfortunately what often happens is that the property  
16 values don't occur in the same school districts as  
17 the enrollments. If the state could assure that some  
18 way or other, then what you're -- the basis for your  
19 assumptions would have more validity.

20 Q. Well, now, 21.031(b) of the Education Code requires  
21 that kids live in the district in which they go to  
22 school, does it not?

23 A. Yes, unless there's a tuition arrangement.

24 Q. Okay. And if we increase the population by 33  
25 percent, 25 to 33 percent, those kids have got to

1 live somewhere, don't they?

2 A. Yes.

3 Q. And that's going to be a building or a structure of  
4 some kind which is going to have taxable value to the  
5 district, is it not?

6 A. Yes. And it's often just over the line in some other  
7 school district so somebody else gets the value of  
8 that property, and the school district that has to  
9 educate the children, build the facilities for them,  
10 does not gain anything from that evaluation at all.

11 Q. Well, now, that would be in violation of 21.031(b),  
12 wouldn't it?

13 A. No, no, no, no. It's true that the residence of the  
14 student is a factor in where the child attends  
15 school.

16 Q. It's a requirement, it's not a factor, is it?

17 A. It's a requirement. I'm not aware that the state has  
18 any requirement that the evaluation that accompanies  
19 that has to be in that same district. You're talking  
20 about inward growth within the district, as I  
21 understand it. And that evaluation does not keep  
22 pace, it does not grow at the same rate necessarily  
23 with the numbers of students.

24 Q. Well, but I mean, if you've got a house, you've got a  
25 district out here, and the child lives in the

1 district, because if he doesn't live in the district,  
2 he lives in another district and has to go to school  
3 there, right?

4 A. Yes, I understand the attendance requirements.

5 Q. And that house is going to have -- or apartment or  
6 whatever -- is going to have a taxable value for the  
7 district in which that kid lives, isn't it?

8 A. Yes, but it seems to me that you're making your  
9 premise on the basis that a substantial portion of  
10 the value of the district that is essential to the  
11 creation of facilities and the instructional program  
12 come from residential property. And I can't quote  
13 the figures, but I certainly know that the districts  
14 that have a great deal of wealth have that wealth  
15 primarily because of industrial values rather than  
16 residential values.

17 Q. Okay. So what you're saying is, is that one district  
18 might get all of the houses and another district  
19 might get all of the Seven Elevens and shopping  
20 centers and things of that nature?

21 A. It seems to happen that way.

22 Q. Okay. Now, but there is -- you would admit, if we've  
23 got \$702 billion worth of property wealth in the  
24 state, if you're going to have this kind of property  
25 -- I mean population growth, you're going to have a

1 large increase, maybe not proportionate, but a large  
2 increase in the property wealth of the state as a  
3 whole? Isn't that reasonable to assume?

4 A. That's reasonable to assume, but I think that it is  
5 scarcely a factor in terms of the disproportionate  
6 wealth of school districts and their capabilities to  
7 meet the needs as they come along.

8 Q. Well, we don't really know that because we don't know  
9 where those kids are going to be, do we?

10 A. They're going to be within the boundaries of the  
11 state and, therefore, they are a state responsibility  
12 for education.

13 Q. But they're going to be within some districts. And,  
14 in fact, what they're going to be largely, if you  
15 believe Dr. Lutz' study, is they're going to be in  
16 suburban districts?

17 MR. GRAY: Excuse me, my same objection.  
18 Make it in the form of a hypothetical.

19 THE COURT: Okay.

20 BY MR. O'HANLON:

21 Q. Assume with me that Dr. Lutz has found that the  
22 primary growth in this state is going to be in the  
23 suburban districts. Assume further that he has put  
24 them in a category known as suburban fast growing.  
25 Now, those districts, the suburban districts are not

1 poor districts by and large, are they?

2 A. No.

3 Q. Okay. So most of the growth, assuming that Dr. Lutz  
4 found that most of the growth is going to be in the  
5 suburban fast growing districts, are going to be in  
6 districts that can afford to do the construction  
7 necessary to house those students?

8 A. Providing the increase and enrollment keeps pace with  
9 the -- is comparable to the increase in evaluation.

10 Q. Okay.

11 A. If we're equal, then nothing would have changed in  
12 terms of their financial capability, at least in  
13 terms of the local portion of the cost.

14 Q. And you don't have to assume, do you, because you  
15 know that the suburban districts are by and large  
16 capable of raising the bonds and retiring them at  
17 this time?

18 A. They have greater capability, yes.

19 Q. Okay. And that's where all of the growth is. Is  
20 that reasonable -- I'm asking you, is that a  
21 reasonable projection that most of the growth in the  
22 state in terms of the scholastic population is going  
23 to be in the suburban districts?

24 A. Much of it is. But for the district that does not  
25 have that wealth and gets some growth, the fact that

1           you state the increased enrollments in those suburban  
2           areas, doesn't do much of anything to ease the  
3           problem in the property poor district.

4       Q.    I understand that.  But we're talking about statewide  
5           now, because we're talking about your \$5.4 billion  
6           figure.

7       A.    Excuse me.  That's not my figure.  I haven't given  
8           you that 5.4.  I understand the source of it, and I  
9           said it was generally, in my opinion, correct.

10      Q.    Okay.  Now, let's put that \$5.4 billion in some  
11           perspective.  That \$5.4 billion is what is going to  
12           be required for the total of the next ten years, is  
13           that correct?

14      A.    That's what the report indicates.

15      Q.    Okay.  Now, that includes fixing all of the  
16           obsolescent -- hypothetically includes fixing all of  
17           the obsolescent buildings and all of the  
18           educationally inadequate -- that's all of it, isn't  
19           it -- and growth and 22-to-1?

20      A.    Yes.

21      Q.    Okay.  Now, during that same period, let's see if we  
22           can't figure out how much money is going to be spent  
23           on education in the state, assuming current levels of  
24           expenditures.  And we'll just take the current level  
25           of expenditures and extend it on out, okay?

1                   Now, that's going to be a little short, isn't  
2                   it? When we're doing that, if we're taking current  
3                   levels of expenditures and we've got 33 percent more  
4                   kids, that's going to be a little lower than the  
5                   actual expenditures over the next ten years, isn't  
6                   it?

7                   A.    Yes.

8                   Q.    Okay. But right now, the state is expending about \$5  
9                   billion per year and the local districts are  
10                  expending about \$5 billion.

11                  MR. GRAY: Are you asking him to assume  
12                  these facts?

13                  MR. O'HANLON: No, I think those are in  
14                  evidence.

15                  MR. GRAY: You said 6 billion yesterday, I  
16                  believe, or 600 million when you were talking about  
17                  the bonds, which we know is wrong.

18                  MR. O'HANLON: Well, I will stand  
19                  corrected, Your Honor, that the issuance of bonded  
20                  indebtedness in the state last year was around \$500  
21                  million rather than \$600 million. We went back and  
22                  checked the numbers.

23                  BY MR. O'HANLON:

24                  Q.    Now, we've heard testimony that this is a level of  
25                  expenditures in the state right now. Now, if we

1 project that -- merely project those figures over the  
2 next ten years, what we're going to have is \$100  
3 billion, aren't we?

4 A. Yes.

5 Q. Okay. So that if we compare the facilities need to  
6 the total expenditures on education in this state,  
7 we've only got 5.4 percent?

8 MR. KAUFFMAN: Your Honor, we object to the  
9 question. He said when you compare the facilities  
10 need. The implication is that the state is spending  
11 no other money on facilities. This \$5.4 billion  
12 figure, as I understand it, is an extrapolation of  
13 additional needs, not what has already been incurred  
14 by the State of Texas -- by the districts in the  
15 State of Texas. It is an additional amount.

16 And to the extent that this question assumes  
17 that the total expenditure needs for facilities in  
18 the state is \$5.4 billion in the next ten years,  
19 there's no testimony in the record to support that.  
20 This is an additional, beyond what has already been  
21 incurred by the districts in the State of Texas to  
22 spend for the next ten years.

23 MR. GRAY: Also, I would object, Your  
24 Honor, on the grounds that this is assuming that 5.4  
25 is over ten years. The report shows 1.8 right now

1 because of House Bill 72, and 1.5 right now because  
2 of obsolete facilities for a cost of 3.3 today  
3 billion dollars.

4 THE COURT: Okay.

5 MR. O'HANLON: May I proceed?

6 THE COURT: Yes, sir.

7 BY MR. O'HANLON:

8 Q. My math is correct, isn't it? Five and five is ten,  
9 and ten times ten is a hundred?

10 A. Yes.

11 Q. Okay. So, we're comparing -- the facilities need is  
12 not a large percentage of the expenditures as a  
13 whole, is it?

14 MR. KAUFFMAN: Your Honor, I reurge my  
15 objection to the extent that \$5.4 billion is  
16 characterized by counsel as the facilities need. It  
17 is not a proper characterization of the record.

18 MR. O'HANLON: I really don't understand.

19 MR. KAUFFMAN: Ask him.

20 MS. MILFORD: Your Honor, this witness just  
21 testified no less than five minutes ago that the 5.4  
22 billion is generally correct and adopted it as his  
23 own. In his opinion, that it's a correct estimate.

24 THE COURT: Well, a correct estimate of  
25 what is the question.

1 MR. GRAY: Your Honor, we went over this  
2 with the witness yesterday and the report, 1.8  
3 billion for House Bill 72 and 246, which are  
4 immediate requirements. The report then says 3.9  
5 billion for future construction based upon population  
6 growth. And it says 1.5 billion for immediate  
7 facilities that are obsolete.

8 My objection goes to the assumption that the  
9 5.4, which actually is -- when you add all three of  
10 those numbers, it's over 7 billion, not 5.4, is a  
11 ten-year projection, when it's clear that it is not.

12 If he wants to ask the witness, is 5.4 a small  
13 percentage of a hundred, we'll stipulate that it's  
14 approximately one-twentieth. If that's the point of  
15 his question, we can move right on down the road and  
16 we'll stipulate to the mathematics of it.

17 We won't stipulate to the impression which we  
18 believe is erroneous that he is trying to lead  
19 through this witness.

20 MR. O'HANLON: Mr. Gray's calculations are  
21 incorrect. Actually, the 5.4 is the cumulative  
22 total.

23 MR. GRAY: Add 1.8, 3.9, and 1.5 and you do  
24 not get 5.4, I promise you.

25 Mr. Gray is right.

1                   MR. O'HANLON: No, actually you're wrong  
2                   because you're adding something twice, you're adding  
3                   1.8 twice. That's why you're getting the wrong  
4                   figure. Anyway, it's all a hypothetical at this  
5                   point.

6 BY MR. O'HANLON:

7 Q.    What I'm trying to do -- and I don't want to get  
8           dragged into this -- is that if we compare this  
9           amount to the expenditure or even 7 or even 8, the  
10          facilities are just not a -- they're less than 10  
11          percent of the total expenditures on education in  
12          this state, aren't they?

13 A.    That would appear to be the case given the  
14          difficulties of financing school construction in the  
15          state.

16 Q.    Well, and what was your figure -- let's figure  
17          something else out. What was your figure for the  
18          obsolescence or inadequate facilities that are out  
19          there right now? What was the dollar amount?

20 A.    I don't have that figure in my head. I'm not -- my  
21          expertise is not to defend somebody else's report. I  
22          simply have said that I have reviewed it, I agree  
23          with the procedures in a general sense, the findings  
24          seem realistic. I would also suggest that no matter  
25          how you move through this hypothetical report, that

1 the bottom line says that in the opinion of the  
2 people who did the report, that it will be necessary  
3 to have some state assistance in terms of financing  
4 school facilities in this state. And that's the  
5 bottom line. Now, I don't care what we do between  
6 here and there, that's what the report says and  
7 that's what, in effect, I generally agree with.

8 Q. All right. As an expert -- let's work through some  
9 calculations here. As an expert in school finance,  
10 let's figure out how much it costs -- what's an  
11 optimum size of a high school?

12 A. Excuse me --

13 Q. I mean not on school finance, on facilities?

14 A. -- please.

15 Q. What's the optimum size of a high school?

16 A. In terms of enrollment or square footage?

17 Q. In terms of cost efficiency per student.

18 A. It would depend somewhat upon what authority is in  
19 the field, but you're saying a high school.

20 Q. Uh-huh.

21 A. In terms of enrollment.

22 Q. Uh-huh.

23 A. Probably somewhere in the thousand range, the  
24 Governor's report, of course, back in '68 set a 600  
25 -- well, set a hundred for each of the graduating

1 classes, and that would give you something of 500 to  
2 600. But --

3 Q. Shall we call it a thousand?

4 A. A thousand I think would be an acceptable figure, in  
5 my opinion.

6 Q. And how much is that high school going to cost?

7 A. For a thousand students, the minimum standard is 110  
8 square foot per student, and the report uses a \$49.00  
9 figure. That's average across the state. So you've  
10 got 1,000 times a 110 times 49.

11 Q. Does that include gymnasiums and all that other --

12 A. That's an average square footage cost. The figures  
13 used, however, for square footage cost often do not  
14 include site acquisition, site development, architect  
15 fees, and other incidental expenses. It depends upon  
16 how that figure is put together. But for our  
17 purposes, realizing that it may or may not be final  
18 completion of a building, we can use the \$49.00  
19 figure.

20 Q. Okay. Well, can we -- let's work back for a second  
21 and let's figure out the square foot cost per child.  
22 Can we do that? So if we take one child times a 110  
23 square foot times 49, we get to -- I don't know,  
24 would somebody --

25 MS. HAAS: \$5,400.00.

1 BY MR. O'HANLON:

2 Q. \$5,400.00. And we multiply that times 3  
3 million --

4 MS. HAAS: 16.2 billion.

5 BY MR. O'HANLON:

6 Q. 16.2 billion. That would be the replacement cost  
7 theoretically of all of the school buildings in  
8 Texas, just as a rough kind of approximation; is that  
9 right?

10 A. I'm not sure where you got your 16.2.

11 Q. Well, what we did was we multiplied one student times  
12 110 square feet times \$49.00 per square foot to get  
13 \$5,400.00. We multiply that times the 3 million  
14 scholastic population in the state.

15 A. (Witness nodded head to the affirmative.)

16 Q. Okay. And that would give us a rough approximation  
17 of what the replacement value of all of the  
18 facilities out there would be.

19 MR. GRAY: Your Honor, as long as he makes  
20 it clear that assumes that all 3,000,000 students are  
21 in high school, and they all are in high schools that  
22 are 1,000 people in all high schools across the  
23 state, I have no problems with the question. And  
24 also, it assumes that all of the land and the  
25 development fees and the architectural fees are free.

1 BY MR. O'HANLON:

2 Q. No, I would be happy to add -- how much more should  
3 we add in for that? How much more should we add in  
4 for that? I'm trying to get to a high number. I  
5 would be happy to add anything that you want. What  
6 else should we add in there?

7 A. That figure varies so much that it is usually not  
8 part of the estimates on square footage cost per  
9 building.

10 Q. Okay.

11 A. It varies so much community by community.

12 Q. Does this 110 square feet per student go all the way  
13 through all the schools, grade school, primary  
14 school, secondary school?

15 A. No. Actually, the standards are less than that for  
16 elementary level.

17 Q. How much less?

18 A. 70, 90, 110 --

19 Q. Okay.

20 A. -- is the generally accepted standard. You find  
21 variations from this. Sometimes, of course, you get  
22 something less. Often it will be something slightly  
23 greater than those standards.

24 Q. Okay. Well, let's cut it down to -- let's take that  
25 -- I don't want to go down and waste a bunch of time

1 with the calculations. Let's cut it down to 15  
2 billion.

3 Now, if you'll refresh your recollection and  
4 tell me what you think that the obsolescent -- the  
5 figure for obsolescent buildings was in the State of  
6 Texas?

7 A. I can't quote the figure.

8 Q. Well, I think you testified that -- you ascribed to  
9 it a little earlier under direct examination. I  
10 believe you got it from the report.

11 MR. GRAY: Hypothetically, the hypothetical  
12 report finds \$1.5 billion.

13 MR. O'HANLON: Okay.

14 BY MR. O'HANLON:

15 Q. Hypothetically, we've got \$1.5 billion.

16 Now, school districts don't deal in  
17 depreciation, do they?

18 A. No.

19 Q. In other words, they build the facility and they use  
20 it, and then when it wears out, they fix it or they  
21 go out and buy a new one.

22 A. That's the typical practice, yes.

23 Q. They don't set aside a depreciation fund or anything  
24 of that nature, a reserve.

25 A. (No audible answer.)

1 Q. So if you compare the amount of obsolescent property  
2 to the total replacement value. If we're not  
3 depreciating, I suppose that would be the rational  
4 comparison, wouldn't it?

5 A. Yes.

6 Q. That figure is not out of line with any kind of  
7 property, industrial property or anything of that  
8 nature, is it?

9 A. I have no opinion on that.

10 Q. Okay. Comparing that hypothetical \$1.5 billion to  
11 the \$15 billion that we've got out to, that's not an  
12 extraordinary proportion of obsolescence, is it,  
13 given construction cycles?

14 A. If your point is that we don't have a considerable  
15 number of buildings in the state that ought to be  
16 replaced, I would not accept that. We have a very  
17 real backlog of construction needs because of lack of  
18 capability of replacing buildings at the time when  
19 they have lost their educational usefulness.

20 Q. Okay. Now, I want you to assume with me that we're  
21 going to introduce evidence that says that the  
22 largest proportion of those obsolescent facilities  
23 are in urban and central city school districts. Is  
24 that a reasonable assumption?

25 A. It is from the standpoint that the large districts

1           have the greatest number of buildings, but I think  
2           you would need also to include as a significant  
3           factor the number of obsolescent buildings in small  
4           rural communities.

5   Q.   We'll talk about that --

6   A.   The suburban schools, of course, will tend, because  
7           of their growth, to have high percentages of new  
8           facilities.

9   Q.   Okay. Now, two categories that have very high rates  
10           of obsolescents, those are urban center cities and  
11           suburban stable districts. And those are suburbs  
12           that have been there for a long time, built their  
13           schools 30 years ago, and haven't replaced them.

14                   From your observation, is that a reasonable  
15           assumption to make, that there are a lot of large  
16           concentration of facilities needs are in these two  
17           categories?

18   A.   Percentagewise, yes.

19   Q.   Okay. And the urban districts include Dallas,  
20           Houston, Austin, Fort Worth, San Antonio, don't they?

21   A.   Yes.

22   Q.   Okay. Now, Dallas and Houston don't have any  
23           financial problem replacing those buildings, do they?

24   A.   If you believe what you read and what you hear them  
25           say, they certainly do have.

1 Q. Okay. But they've got the property wealth to do it,  
2 don't they?

3 A. They certainly have more wealth than the property  
4 poor districts.

5 Q. Okay. And by and large, the suburban districts have  
6 that same amount of wealth too, don't they?

7 A. Some do, but often because of the rate of growth  
8 exceeding the increase in valuations, urban districts  
9 often can have -- at least on the short range -- a  
10 serious difficulty in keeping up with their  
11 facilities needs.

12 Q. Okay. But these are not the districts that you would  
13 expect to have major problems in refinancing or  
14 reconstructing the physical plants?

15 A. Your point of view seems to be based on the premise  
16 that with the local district having to finance its  
17 portion of the operational costs of the instructional  
18 program, that the added burden of school facilities  
19 is not anything that is a serious problem for them.  
20 It is, in my opinion, with the increase necessity to  
21 levy taxes, being pushed back from the federal to the  
22 state to the local level. This, I think, is a  
23 problem for all school districts. There may be some  
24 that are what we've called over the years budget  
25 balanced districts, there may be a few of those. But

1 the urban districts, the large city schools are not  
2 anywhere near budget balanced districts and,  
3 therefore, their requirements and their needs are, at  
4 least in the opinions of those individuals who are  
5 paying those taxes, still remains a very much of a  
6 tax problem for them.

7 Q. Okay. So your testimony is that nobody is going to  
8 be able to afford then this \$5.4 billion?

9 A. That's not what I said. I said it was difficult,  
10 even for those with reasonable tax values. I did not  
11 say it was impossible.

12 Q. Okay. It's not really impossible anyplace, is it?  
13 It's a matter of local will and the ability to pass a  
14 bond issue.

15 A. There is always the possibility that there might be a  
16 local district that would find itself unable legally  
17 to finance its needs in terms of school construction.  
18 I don't know of such a district, but from time to  
19 time, those circumstances do occur where a district  
20 has taxed itself to a legal limit. Whether that is  
21 occurring currently in this state, I cannot say. But  
22 it certainly is a possibility since there are legal  
23 limits as to the levy -- the maximum tax levy.

24 Q. Okay. Now, I would propose a hypothetical problem  
25 here from a hypothetical state known as California,

1 and an independent school district known as the Los  
2 Angeles United School District.

3 Now, in this district, we have a state that has  
4 taken away the local school district's ability to  
5 issue bonds for the construction of facilities. And  
6 in this state, the relative allocation of facilities  
7 and construction money for the creation of new  
8 facilities is based on a needs assessment. And that  
9 needs assessment is determined by the -- by formulas  
10 which allocate construction resources by districts as  
11 a total.

12 And in this district, we've got schools in the  
13 western part of the district that due to the aging of  
14 the population are virtually empty. And in the  
15 eastern portions of this district, we've got schools,  
16 due to the birth rate in that portion of the  
17 district, where the schools are filled up beyond  
18 capacity.

19 Now, what happens here is that when you look at  
20 the whole district, there isn't a need because the  
21 state formulas say that you've got unused capacity in  
22 your district.

23 Now, if we go to a state formula, that creates  
24 as many problems, doesn't it, as it solves? That's a  
25 problem for this district, isn't it?

- 1 A. There probably are state formulas and there are state  
2 formulas. The one that you're citing does seem to  
3 create a problem in this hypothetical instance. But  
4 if your point is that it is impossible to develop  
5 some kind of a state formula to meet the needs of the  
6 district, I would not agree with that.
- 7 Q. Okay. But I mean, if we simply said state funding,  
8 that can create as many problems if we're not  
9 extraordinarily cautious, as it saw?
- 10 A. I don't think the State of Texas is likely to create  
11 statewide funding in such a broad open sense that  
12 they're going to simply hand out money to any school  
13 district that asks for it.
- 14 Q. Okay. And of course, this district out in Los  
15 Angeles certainly isn't getting any handed out to it,  
16 is it?
- 17 A. (No audible answer.)
- 18 Q. Now, if this district could issue bonds based on its  
19 tax rate, they could solve this problem, couldn't  
20 they, if the local voters said we want to build  
21 schools over here to serve these kids?
- 22 A. They would have a legal capability of proceeding to  
23 meet their need.
- 24 Q. And would you agree with the proposition that the  
25 local school officials have a better feel for the

1 needs of their local district than, say, people in  
2 Austin?

3 MR. KAUFFMAN: Your Honor, I object to this  
4 hypothetical which is slowly melding into what he  
5 thinks is going on in Los Angeles. It ignores  
6 something that the board in Los Angeles decided where  
7 to spend the money on those facilities. The state  
8 -- I assume, under your hypothetical, the state has not  
9 told Los Angeles not to spend money on these schools  
10 over here on the east side.

11 BY MR. O'HANLON:

12 Q. No. My hypothetical is that they've built these  
13 schools out in west Los Angeles when they had the  
14 need there, and now those kids aren't there anymore  
15 because they've all graduated, they've gone on to  
16 college. That happens, doesn't it?

17 A. Yes.

18 Q. So with the ebb and flow of populations, you get that  
19 kind of situation all the time, don't you?

20 A. Often.

21 Q. So you've got a -- you build a school, you've got a  
22 new subdivision on the outskirts of town, you build  
23 the school out there to serve that subdivision, and  
24 then the neighborhood turns over, everybody stays in  
25 their houses, and all of a sudden you've got an empty

1 school because there's no kids in that neighborhood  
2 anymore. That's a common occurrence, isn't it?

3 A. I would hardly agree that it happens suddenly.

4 Q. No, it happens --

5 A. It is true that regardless of the careful planning,  
6 the wise planning that may be done by local boards  
7 and by administrators, the decision is made at the  
8 local level, sometimes they don't prove to have been  
9 accurate in retrospect.

10 Q. Well, but given that, the local officials are in the  
11 best position to know what's going on in their  
12 district, aren't they, because they live there, and  
13 they work there, and they're there all the time, and  
14 they know what's going on?

15 A. I'm a firm believer in local control, but if the  
16 assumption that you state were completely accurate,  
17 then we would have fine educational facilities in  
18 every school district in the state. We do not have.

19 Q. Well, some people just don't want to spend the money,  
20 isn't that right?

21 A. Lots of people don't want to spend the money. But on  
22 the other hand, education is a function of the state  
23 and it is the responsibility of the state to provide  
24 the leadership, the legal mechanisms that enable  
25 local school districts to go ahead and meet those

1 needs.

2 Q. Okay. Now, do you think that because, oh, somebody  
3 -- a school district 30 miles up the road doesn't want  
4 to spend the money, do you think that it requires me  
5 to spend it for them? Do you think it's fair that I  
6 have to pay for construction in their district  
7 because they don't want to pay for it?

8 A. Yes.

9 Q. Okay. That's fair to tax me twice. So those folks  
10 out there that don't want to spend the money don't  
11 have to get taxed?

12 A. Education has been considered for many years to be  
13 for the benefit of all people. And therefore, our  
14 tax system in public education is such that all  
15 people have to help to carry the support that's  
16 necessary.

17 Q. So I've got -- so I have to pay twice -- I'm living  
18 here in Austin, and I've got high taxes, and they've  
19 got low taxes out there because they don't want to  
20 spend them, they don't want to raise that money, they  
21 don't want to improve their facilities. So in  
22 addition to paying high taxes in Austin, I need to  
23 pay high state taxes so that those people out there  
24 in that district can have low taxes.

25 A. Your premise seems to ignore the fact that in many

1 school districts, that their local effort may be  
2 extremely high, much higher often than that which is  
3 represented in the districts with high property  
4 values.

5 Q. But you would accept the premise that there is a lot  
6 of districts out there that have low efforts, would  
7 you not?

8 A. I imagine there is a complete range from high to low.  
9 Whatever those limits are, I'm not prepared to so  
10 indicate, but I certainly accept that there will be a  
11 range.

12 Q. And so you think that we should subsidize the people  
13 with the low efforts out there because they just  
14 don't have the political will to get it done?

15 A. I assume by "we," you really mean the collective "we"  
16 of the State of Texas.

17 Q. No. We as in citizens in the district that is  
18 already paying high taxes to support education in  
19 their district, a high effort district. Let's take a  
20 poor district. Let's take a poor district that's out  
21 there struggling along and it's got \$1.17 tax rate.  
22 And they're doing the best they can, but we're not  
23 only going to make them pay that \$1.17 tax rate,  
24 we're going to increase their state taxes so that  
25 another district with a 40 cent tax rate can provide

1 the same facilities. That's not fair, is it?

2 A. When education is a function of the state, the state  
3 has the responsibility to see that that is provided  
4 at every local level. And if there are inequities,  
5 it is the responsibility of the state to correct  
6 those inequities. The problems that we have is  
7 because those inequities have not been properly  
8 addressed by the Legislature.

9 Q. Well, what about those inequities being addressed by  
10 the local taxpayers speaking through their elected  
11 board of trustees?

12 A. Those local taxpayers are paying taxes to support a  
13 state function. In most instances, if not in all,  
14 those dollars are state tax dollars collected at the  
15 local level --

16 Q. Well, now, we know --

17 A. -- as a state function.

18 Q. Are you familiar with Article VIII -- you teach  
19 school, are you familiar with Article VIII, Section  
20 1(e), of the Texas Constitution?

21 A. I don't have the Constitution memorized, no.

22 Q. All right. Now, that's a recent one, so you might  
23 have heard of it, in which the people of the State of  
24 Texas, in a vote, decided that statewide ad valorem  
25 taxes are unconstitutional. Do you remember that

1           one?

2       A.    No, but I don't dispute your statement.

3       Q.    Okay.  So if it was the state tax, if the local ad  
4           valorem tax was really a state tax, it would be  
5           unconstitutional, wouldn't it?

6       A.    In terms of that interpretation, but you'll find very  
7           few people that would disagree that the local taxes  
8           collected for education are, in effect, a state tax  
9           to carry out a state responsibility.

10      Q.    Well, if you're doing that, should we just then  
11           repeal that constitutional amendment and make every  
12           school district in the state have the same tax rate?

13      A.    That's not what I'm proposing or what anyone is  
14           proposing.

15      Q.    Well, then you're going to tolerate variances in the  
16           tax rate, is that what you're saying?  Then you're  
17           going to tolerate?

18      A.    We have tolerated over the years variations.  The  
19           efforts being put forth are to bring a closer  
20           uniformity so that the state is really meeting its  
21           responsibilities.

22      Q.    Well, so the question is, are you going to -- is it  
23           okay to tolerate variations in tax rates or not, from  
24           your perspective?

25      A.    In theory -- and I realize it is in theory -- it

1 would be appropriate for the state to assume all of  
2 the responsibility for the funding of education.

3 In practice, that becomes very inappropriate,  
4 unfeasible. That occurs only in one state, the State  
5 of Hawaii. They do not have school districts, and  
6 apparently does work there. Theoretically, that  
7 would resolve a lot of problems, but it is probably  
8 impossible to get from here to there.

9 Q. That's right. It's probably impossible for the state  
10 to find \$5 billion more a year that's coming from  
11 that local property tax, isn't it?

12 A. No.

13 Q. Where are we going to get that kind of money?

14 A. Based on the wealth of the state, the state is able,  
15 in the long term at least, to meet the needs of  
16 education.

17 Q. Well, where are we going to get that money? I mean,  
18 if we're going to take over that function, then we're  
19 going to have to raise an additional \$5 billion that  
20 the school districts have put in there. Where are we  
21 going to get that money?

22 A. I think that's the problem for the state.

23 Q. Well, no, how are we going to solve it? You're up  
24 here saying that we've got a problem. We can observe  
25 it. Now, how are we going to fix it?

1 A. I do not want to try to provide solutions to a  
2 problem that has existed for many, many years, and is  
3 being addressed here now because it's reached a point  
4 where something really needs to be done about it.

5 There are a variety of ways probably, just as  
6 we have had formulas that have moved in the direction  
7 of equalizing the operational cost to a greater  
8 extent. There are ways for the state to begin at  
9 least to finance the facility needs in a manner that  
10 will provide some relief for those at the local  
11 level.

12 I know of at least one state, when I served  
13 there, that was providing the same percentage of  
14 funding for school facilities, for school  
15 construction costs as they were for operational  
16 purposes. Now, just how that would be implemented in  
17 this state, I'm not prepared today to suggest how  
18 that could be done.

19 But there are mechanisms to more fully meet the  
20 cost and to do it more equitably. And I believe that  
21 that determination of a way of doing that is not  
22 beyond the capability of those responsible in this  
23 state.

24 Q. Well, the problem that I've got is that all of those  
25 solutions require a higher expenditure of state

1 dollars, don't they? I mean, isn't that the bottom  
2 line, the state needs to spend more money?

3 A. We need a distribution of the taxing powers to be  
4 more equitably determined. And whether that results  
5 -- I don't believe that necessarily results in a greater  
6 amount of money statewide.

7 Q. So how are we going to do that, then? How are we  
8 going to redistribute the taxing power?

9 A. I'm not a legislator, but it is the responsibility of  
10 the Legislature to deal with those needs and  
11 determine how to best meet them.

12 Q. Well, as I understand it, this lawsuit is taking on  
13 the Legislature for not doing it right. And it's  
14 easy to criticize, sir. And if you've got a problem  
15 with the present system, I would like to know what  
16 the solution is. It's easy to observe a problem.  
17 Let's talk about the solution.

18 MR. GRAY: Your Honor, this witness was  
19 called strictly to deal with the facilities problem.  
20 We have had any number of witnesses who already have  
21 talked about proposed solutions on school finance.  
22 He is not a school finance expert. He was never  
23 offered as a school finance expert. I believe we're  
24 at the point now that we're getting into an  
25 argumentative stage with the witness, an area which

1 he frankly does not have the expertise to deal with.

2 MR. O'HANLON: He's implying that we can't  
3 raise the money, that local school districts can't  
4 raise the money and we can't come up with the \$5.4  
5 billion, and I want to know how we're going to fix  
6 it. I think that's a legitimate inquiry.

7 MR. GRAY: I'll let him go on for days, but  
8 we're --

9 THE COURT: Well, if this witness has some  
10 idea about it, I'll let him answer; if he doesn't,  
11 I'll let him answer that, too.

12 A. I'm not prepared to provide formulas. I think that  
13 the responses that I have provided do speak to the  
14 capability of the state to look at equalization, to  
15 consider some way of moving in the direction of  
16 providing state funds, at least in part for school  
17 facility needs. And I support that position.

18 Q. But if we're going to provide state funds, we've got  
19 to get them from someplace. Where are we going to  
20 get them?

21 A. I don't have an answer to your question.

22 Q. Now, the problem with any kind of -- you talked a  
23 little while ago about suburban districts are by and  
24 large where most of the growth is going to occur, is  
25 that correct?

1 A. That has been true in the past.

2 Q. Okay.

3 A. I expect it will continue.

4 Q. Okay. And suburban districts are by and large better  
5 able to provide for themselves, are they not? They  
6 have a higher tax base and they're certainly -- you  
7 wouldn't classify them as property poor?

8 A. We had some testimony yesterday, I believe, from a  
9 suburban school district that would be different from  
10 the situation that you're describing.

11 Q. Well, yeah, I understand. I'm talking about as a  
12 general rule. For every North Forest, there's a  
13 Carrollton-Farmers Branch, and there's an Eanes, and  
14 there's an Aldine, and there's a Spring Branch,  
15 there's a lot of -- by and large, the suburban  
16 districts are in pretty good shape.

17 A. They are in better shape than property poor  
18 districts.

19 Q. Now, if we gave aid for construction, we would have a  
20 problem on that, wouldn't we, by having a tendency of  
21 sending additional funds to a district that may not  
22 even need it?

23 A. I think we're going to have problems regardless of  
24 what kind of requirements we set up, what kind of  
25 legislation we have. It is a complex area with which

1 to deal. But that's not to say that it is impossible  
2 for all of this to be handled on a more equitable  
3 basis than it currently is.

4 Q. Well, what I'm saying is -- that's not the question I  
5 asked. The question I asked was, is that if we give  
6 aid for new construction, and we're not -- how are we  
7 going to keep from giving all of the money to the  
8 districts that may not need it?

9 A. We'll have a form we have to fill out. That's the  
10 usual procedure. You have to make application. You  
11 have to justify what your need is. And if that is  
12 properly handled at the state level, as we presume  
13 that it is, there will be reasonable implementation  
14 of such plan, in my opinion.

15 Q. So we say to one district, we're going to build you a  
16 school and another district, we're not going to build  
17 you a school?

18 A. (Witness shook head to the negative.)

19 Q. And that's reasonable?

20 A. We do not say that.

21 Q. Well, what are we going to say?

22 A. The provisions in the law usually prescribe what the  
23 conditions need to be and the way in which there will  
24 be solutions provided. It isn't a matter of the  
25 state saying, "We'll do this for somebody and we'll

1 not do something for somebody else." The mechanism is  
2 set up and procedures are established in terms of  
3 carrying that out in the most equitable manner that  
4 is possible.

5 Q. What procedures?

6 A. The one that might be established in your  
7 hypothetical situation.

8 Q. Well, how are you going to establish it?

9 A. We have a Legislature to carry out those  
10 responsibilities.

11 Q. Oh, so once again, this is something that ought to be  
12 debated and discussed at the Legislature?

13 A. It frequently is.

14 Q. All right. In fact, all of this -- all of these  
15 discussions need to be debated and discussed at the  
16 Legislature.

17 A. Yes, but that doesn't mean that the problem stops  
18 there. Discussion doesn't always produce results,  
19 and therefore, there may be a necessity for judicial  
20 decisions.

21 Q. I see. Well, talking about results, I assume that  
22 you've been in districts before and after the  
23 implementation of House Bill 72?

24 A. As an observer.

25 Q. Okay.

1 A. Participant in --

2 Q. Have you observed that for property poor districts,  
3 there's been an enormous infusion of new money for  
4 those districts?

5 A. What you label as an enormous infusion, I would  
6 describe as simply a flow of money more equitably  
7 than there has been in the past to meet the  
8 educational needs of that district.

9 Q. So much so that some districts that we've discussed  
10 in here have had an \$1,100.00 increase in the amount  
11 of money they're receiving in state aid per student.  
12 Now, if you're sitting in a district, that's a pretty  
13 enormous increase, isn't it?

14 A. It certainly is an increase.

15 Q. Okay. And you can spend that money on facilities,  
16 can't you, if you've got enough money to maintain  
17 your operations?

18 A. It's my understanding that those increases in dollars  
19 are not limited to operation and maintenance of a  
20 program.

21 Q. And in fact, districts do that all the time, don't  
22 they?

23 A. I have no information that would suggest that  
24 districts do that all the time.

25 Q. Okay. It wouldn't surprise you if, for example,

1 Mr. Sybert sitting back there was able to, in the last  
2 three or four years, for his district to save  
3 approximately \$4 million?

4 A. It doesn't surprise me that school districts that  
5 have had very limited resources to maintain their  
6 program when there is a change in which the state  
7 meets its responsibility by infusing additional  
8 dollars, that those additional dollars are an  
9 increase to the resources that are available. If you  
10 think of them as being enormous or something of that  
11 sort, you have to measure that in terms of what the  
12 needs are.

13 Q. Okay. But I mean, what we're talking about here is  
14 -- I don't want to quarrel with you about enormous or  
15 whether it's just big, but what I'm asking is, does  
16 it surprise you that a district -- it's able to take  
17 from the revenue stream that's coming from state and  
18 local taxes and set aside \$4 million for facilities?

19 A. Apparently that has happened and it could happen, but  
20 I think that it is not typical of school districts  
21 across the state.

22 Q. Okay. And that's a management function, isn't it?

23 A. It's an administrative responsibility, yes.

24 Q. Okay. And your ability, as a manager, to juggle all  
25 of the plates up in the air and to deal with all of

1 the kinds of issues is, if you're a good manager, you  
2 may be able to do that a little better than if you're  
3 not a good manager?

4 A. You'll probably do it better.

5 Q. Okay.

6 MR. O'HANLON: I don't have any further  
7 questions.

8 THE COURT: Well, you've left your fellows  
9 on your side of the table four minutes if they want  
10 to have some time before you have to go see the  
11 Governor there, Mr. O'Hanlon.

12 Mr. Turner, do you have anything you want to  
13 ask?

14 MR. TURNER: I do, Your Honor, more than  
15 four minutes. If you would like to start, I will.

16 THE COURT: Well, we're going to stop now  
17 and let Mr. O'Hanlon go on to his appointment. We'll  
18 meet again at 2:30, so I'll see you all at that time.

19 (Luncheon recess.)

20 THE COURT: All right.

21 CROSS EXAMINATION

22 BY MR. TURNER:

23 Q. Dr. Hawkins, I'm Jim Turner. I represent a group of  
24 22 school districts that have intervened on the side  
25 of the state in this lawsuit seeking to uphold the

1 constitutional of our current finance system.

2 I noted in reviewing your biographical data  
3 that you have been involved for many years as a  
4 facilities planner and have received numerous awards  
5 and recognitions for your work in the area of  
6 facilities planning, is that correct?

7 A. Yes, it is.

8 Q. I wanted to ask you a few questions, Dr. Hawkins, to  
9 give the Court some indication about the relationship  
10 between the efficient design or configuration of the  
11 campus or campuses within the school district as that  
12 affects the operating cost of a school district.

13 And I want to begin, if I may, by just asking  
14 you for some general observations regarding what size  
15 school districts permit one to operate and to have a  
16 campus configuration that is optimal in terms of cost  
17 efficiency in rendering educational services.

18 A. This kind of issue is usually viewed by those of us  
19 in education from an educational point of view as  
20 well as from a cost basis. And I might be more  
21 familiar with that than I would with the cost  
22 efficiency.

23 Obviously, if there are school districts that  
24 are very small and have a number of campuses with  
25 administrators at each campus and those

1 administrative units are very small, there is an  
2 obvious factor of greater costs for administration  
3 than there would be otherwise.

4 You can add to that, of course, the likelihood  
5 that transportation costs will be somewhat greater,  
6 distribution of supplies, materials, and those kinds  
7 of tangible things probably are going to be somewhat  
8 more difficult to get distributed to a wide range of  
9 campuses.

10 But even given those factors, typically we end  
11 up with decisions on the operation of "X" number of  
12 school campuses based upon factors other than real  
13 efficiency, because out of the local school district  
14 concept -- and we've talked about the closeness of  
15 the people to the operations of the schools -- there  
16 enter into this complex situation a variety of  
17 political factors in terms of how parents react to  
18 location and numbers of campuses. And so often  
19 administrators and boards of education will  
20 acknowledge that they are operating in a situation  
21 that is probably less than fully efficient but for  
22 educational, political, community reasons, it's not  
23 unusual to have those campuses continue in operation.

24 Q. We have had an opinion expressed in this courtroom  
25 earlier that below certain levels in size, there are

1           what have been referred to as diseconomies of scale  
2           in the operation of school districts. Have you found  
3           that to be true?

4       A.    Yes. I think this is basic to the whole idea of  
5           school district consolidation, looking at the  
6           necessity of having teaching faculty with appropriate  
7           training and experience to provide the various areas  
8           of the curriculum, which I think in particular at  
9           the middle school and senior high school level. And  
10          so, of course, it's not unusual to find very small  
11          school districts that will have difficulty trying to  
12          maintain faculty that can offer the -- even the full  
13          range of required courses, to say nothing of those  
14          that might be considered to be elective courses.

15       Q.    When you look at school districts for purposes of  
16           facilities analysis, do you, in your approach, divide  
17           the school districts up based on their size in some  
18           type of category when you study them?

19       A.    Our work has been primarily in single school  
20           districts at any one point in time, although I am  
21           familiar with the kinds of studies particularly that  
22           took place a number of years ago where consolidation  
23           might have been the major thrust of the study. And  
24           of course, those would often include a careful  
25           analysis of a significant number, half a dozen or

1 eight or ten, whatever numbers of school districts.

2 What we have been doing in my own experience  
3 has been largely that of providing services to a  
4 single school district, in effect, often looking at  
5 the operation of all of the campuses that they have,  
6 doing an enrollment projection, doing an analysis of  
7 the existing facilities to determine those that  
8 appear certainly to be educationally obsolete, and  
9 then putting all of those factors together to develop  
10 a -- what might be called a long range plan, although  
11 a long range plan in educational planning typically  
12 is in the five to ten-year range.

13 Q. Dr. Hawkins, our state funding formulas recognize  
14 districts below 1,600 in ADA as being a small  
15 district and provides some additional financial help  
16 for districts below that size. Are you aware of  
17 that?

18 A. Yes, I think this is referred to as a sparsity factor  
19 in the formula. I have not worked with the formula,  
20 but I understand that component, at least. And some  
21 states even provide a density factor. And not having  
22 worked specifically with the Texas formula, I don't  
23 know whether -- to the best of my knowledge, I don't  
24 believe we take that into consideration, but there is  
25 a sparsity factor, at least.

1 Q. And we've had-- before you arrived, we've had one  
2 witness in this case tell us that diseconomies of  
3 scale actually begin at districts of 2,500 average  
4 daily attendance and less rather than the 1,600  
5 figure that the state has in the formula. Would you  
6 think that that would be an appropriate measure for  
7 when diseconomies of scale actually begin?

8 A. I think it's rather difficult to have a precise  
9 response to that. The question of size and the  
10 relationship of size to educational factors results  
11 in considerable variations of thinking. Those  
12 individuals who have been used to and experienced  
13 attendance in or employment in very large districts  
14 tend to think of something as 2,500 as being very  
15 small, but on the other hand, those whose background  
16 and experience has been much smaller would think of  
17 2,500 school districts as being, you know, reasonably  
18 modest in size. And so, there is considerable  
19 variation in the thinking of that.

20 Having come from a very small -- in terms of my  
21 early experience, my attendance in school -- a very  
22 small school district, I tend to understand the  
23 operation of the -- in the schools perhaps under  
24 2,500 better than some of the very large districts.  
25 But there are many people who just think that if you

1 go beyond a thousand students or something, that you  
2 are destroying everything valuable in education. And  
3 that's -- so that's a matter of opinion.

4 Q. If you were designing from scratch the facilities for  
5 a school district with 2,500 average daily  
6 attendance, what kind of campuses and building  
7 configurations would you be recommending?

8 A. Oh, I think typically in the school district of that  
9 size, you would probably have several elementary  
10 campuses. Those campuses may be in the range of 500  
11 or so. And so you may have something that would be  
12 two or three such campuses. You more than likely  
13 will have one or two that may be called junior high  
14 school or a middle school, as we more typically refer  
15 to it, and probably one senior high school. That  
16 senior high school will probably be in the 600 to 800  
17 range, something of that sort.

18 Q. So you would suggest one high school, one middle  
19 school or two middle schools?

20 A. One or two, depending upon the geographic arrangement  
21 of the community.

22 Q. And perhaps two or three middle schools or elementary  
23 schools, excuse me.

24 A. Elementary.

25 Q. And I suppose with 2,500 students, we're looking at,

1 on average, about 200 students per class --

2 A. Approximately.

3 Q. -- if there's a need in the distant future. So the  
4 800 figure you were referring to would be the 9th  
5 through 12th grade, the 800 there?

6 A. (Witness nodded head to the affirmative.)

7 Q. And in elementary school, we're talking about where  
8 you -- would we be talking about kindergarten through  
9 5th grade?

10 A. Fourth, 5th, varies quite a little bit, but 4th is  
11 considered a good arrangement. But some of these  
12 will go through 6th, of course that was the more  
13 traditional pattern over the years. We've just in  
14 recent years moved more to the elementary being  
15 something like K-4, K-5, and the middle school  
16 arrangement varying from 5th through 8th, some  
17 combination of that.

18 But one of the things that has always occurred  
19 in these kinds of decisions is that the -- and you're  
20 talking about economy and the operation and that sort  
21 of thing -- but what might be considered by some  
22 individuals to be highly desirable from an  
23 educational point of view almost invariably gives way  
24 to the most effective and efficient utilization of  
25 the space as possible. And so these grades that I

1 refer to tend to gravitate up and down depending upon  
2 the size of the facilities that already exist since  
3 we seldom, if ever, are able to start a school  
4 district and build everything new, the decisions  
5 always are a part -- become a part of what already  
6 exists.

7 Q. Have you ever had occasion to do any research or in  
8 any consulting work that you've done to make any  
9 comparisons regarding the operating costs that may be  
10 incurred by a district if they choose one campus  
11 configuration or one option for new construction  
12 versus another option for new construction?

13 A. No, I have not, not that kind of careful analysis. I  
14 can see where that could be done at any point for a  
15 single school district and perhaps be helpful. I've  
16 not engaged in that kind of analysis, however.

17 Q. We have had testify before this Court one  
18 superintendent who comes from the Socorro District  
19 out in El Paso, and he has advised the Court that the  
20 building program that they have been embarked on in  
21 the last few years has involved construction of  
22 elementary schools that will accommodate 1,000,  
23 because in his judgment, that has proven to be an  
24 efficient method of operation. Would that --

25 MR. GRAY: Excuse me, Your Honor, as long

1 as he's talking about cost efficient, the witness  
2 said he didn't think it was educationally efficient,  
3 but for dollars, he had to do that.

4 MR. TURNER: That's fine.

5 Q. He testified it was cost efficient to utilize  
6 elementary schools of 1,000 -- approximately 1,000  
7 student population. Would that, in your judgment,  
8 based on your experience, be a wise and appropriate  
9 choice in terms of cost efficiency?

10 A. Well, I think it would be difficult to argue with  
11 someone who is in a specific community who's operated  
12 in school campuses, you know, in that school district  
13 and is aware of the density factors, what the size of  
14 the community looks like compared with the numbers of  
15 students, where they're coming from. And it would  
16 not be unusual to come to a decision such as you have  
17 suggested.

18 I think that is something different, however,  
19 than trying to take that as a model and saying that  
20 that is going to work for large numbers or for all  
21 school districts in the state.

22 Q. What kind of factors would one look at that might  
23 dictate these variations in campus configurations?

24 A. I think I've kind of enumerated those already. I  
25 have suggested that enrollment projections, the

1 condition of existing buildings. I probably did not  
2 comment earlier about anticipated changes in program  
3 because ideally, we would start with the program and  
4 work backwards from there, but that's often not  
5 possible. And then the fourth factor of what there  
6 is there at the point in time that the study is made,  
7 because you're going to have to address the manner in  
8 which those existing facilities, assuming that they  
9 are usable and must continue to be in use for "X"  
10 number of years in the future. And so a combination  
11 of all of those would result in recommendations.

12 Now, that doesn't mean, of course, that local  
13 administrators and boards of education will  
14 necessarily hasten immediately to accept those  
15 recommendations. Recommendations made by people from  
16 the outside hopefully have a level of objectivity  
17 that provides value to those studies and  
18 recommendations, but seldom can they entirely  
19 appreciate the political arena within which those  
20 decisions must actually be made, and therefore,  
21 decisions sometimes, of course, will be made with  
22 some modification or even with the complete rejection  
23 of a facilities plan that might be prepared by  
24 outside consultants.

25 Q. Have you found that to be true in your own work?

1 A. Yes.

2 Q. So the factor of local decision-making, in essence,  
3 may have, in your experience, on some occasions  
4 actually outweighed or overruled, if you will, the  
5 recommendation of the outside expert, if you will?

6 A. Yes. For example, we did a study in which the need  
7 was very apparent at -- the greatest need at the  
8 elementary level. And we recommended that the school  
9 district build a high school.

10 That doesn't surprise us. They have to make  
11 those decisions, they have to live with them. We  
12 would like to think that the facilities study and  
13 plan, even if it were not followed in an instance  
14 like that, provides a basis for decision-making in  
15 which the facts and the information are there and  
16 will be implemented in a manner that the local  
17 individuals find compatible with the community in the  
18 school district.

19 Q. Dr. Hawkins, we were talking earlier about -- or you  
20 were talking earlier about state participation in  
21 construction of buildings. And have you found that  
22 many states, as they begin to look at the possibility  
23 of assisting in construction maybe take, at least as  
24 a first step, making some contribution from the state  
25 level toward providing facilities planning advice?

1 A. Yes, that's a normal first step. If you'll look at a  
2 state that does not provide any money, it is almost  
3 inevitable that they will provide very little  
4 assistance. It's obvious when the money begins to  
5 flow in from a state level, there is going to be a  
6 responsibility for exercising control, uniformity, to  
7 some extent, in terms of the way in which those funds  
8 are expended. And so what you suggest, I suspect,  
9 it's very common, at least I've encountered that in my  
10 experience.

11 Q. Has the State of Texas ever established any program,  
12 to your knowledge, providing advice and counsel  
13 regarding facilities planning to local districts?

14 A. The Texas Education Agency has an office for  
15 educational facilities. That has been staffed with a  
16 single individual, and as I understand it, with one  
17 secretary. Plans are sent into that office  
18 primarily, as I understand it, so that they may be  
19 checked for safety reasons.

20 I believe that it is the Railroad Commission  
21 that also has some responsibility for checking plans  
22 for safety.

23 There are recommended standards for size of  
24 sites and square footage, as they mentioned  
25 yesterday. But Texas does not provide -- does not go

1 very much beyond that since there are no specific  
2 mandates except those that are now appearing in the  
3 state accreditation. And that's more for quality  
4 than it is for, as I perceive it, more for quality  
5 than in terms of meeting specific standards of  
6 allocation of space and that sort of thing.

7 Q. Dr. Hawkins, if we were to take a district of let's  
8 say 4,000 -- or I guess to make this a little easier  
9 for us, let's just say -- let's just stay with a  
10 district that we had. We're talking about a 2,500  
11 district -- a district with 2,500 in size. If we had  
12 the option of constructing that district with one  
13 high school, two middle schools and four elementary  
14 schools, or the option of constructing it with one  
15 high school, one middle school and two elementary  
16 schools, what, in your view and experience, would be  
17 the impact upon operating costs within that district  
18 based on those two options of campus configuration?

19 A. In my opinion, the operating costs would be lower.

20 Q. In the --

21 A. In the configuration that you describe, but the  
22 difference is probably not as great as might be  
23 presumed simply on the basis of dropping from four  
24 elementaries to two. That's not an automatic saving  
25 of 50 percent of your operating costs obviously, but

1           if all other things were equal, you took into  
2           consideration what your transportation costs, one  
3           might presume that the operating costs would be  
4           somewhat lower.

5       Q.   All right. We had a gentleman here in the courtroom  
6           the other day. He was not a witness, but he was from  
7           one of these smaller school districts that we were  
8           talking about a minute ago. In fact, he had 200  
9           students in the whole district.

10           And there was a witness testifying on the  
11           witness stand, a Dr. Valverde, who was talking about  
12           the kind of staffing that a school should have. And  
13           he testified that a school district of that size  
14           needed to have in addition to a superintendent and a  
15           counselor and a nurse and a principal, perhaps, in  
16           his judgment, to provide quality, should have an  
17           instructional coordinator and an assistant of the  
18           kind that could help with the budget and things like  
19           that under the superintendent, and one other position  
20           that I didn't quite understand, but something that he  
21           thought would be contributory to the overall quality  
22           of education.

23           And I was looking at that example as one that  
24           required \$100,000.00 extra of that school district to  
25           provide those particular staff members and a

1 resulting \$500.00 increase in the M&O expenditure per  
2 child in that district.

3 And what I am, I guess, asking you in terms of  
4 these facility analysis is to give me some help in  
5 trying to understand how operating costs per student  
6 vary from district to district in this state as you  
7 found them simply because we've got campuses  
8 configured all different ways in this state and we're  
9 not operating at the optimal in terms of cost  
10 efficiency.

11 So could you help me in trying to discern how  
12 those costs might vary simply because we don't have  
13 the same campus configuration from place to place for  
14 any given size of school district?

15 A. I don't see that you have changed anything. Your  
16 question seems to me to be a continued review of what  
17 we've been talking about.

18 Obviously, you've got upkeep of building,  
19 you've got personnel costs. And the way in which you  
20 deploy those in the school district are going to make  
21 some difference. You also, of course, have the  
22 factor of where those people may be in some kind of a  
23 salary schedule.

24 If one endeavors to take the efficiency and  
25 -- and factor and to presume that an analysis of two

1 school districts is going to show that one is more  
2 efficient than another, there may be people who are  
3 adept enough at using their mathematics that they  
4 would come up with some proof, but when they got  
5 through, they wouldn't have convinced anybody there,  
6 but what the way in which they operate their school  
7 was the best for that school district in terms of  
8 their needs. I'm not suggesting that there's nothing  
9 -- that there's no need to strive toward efficiency and  
10 economy of scale. All of those things are important.

11 But it's different than some aspects of our  
12 private sector, I think, because of the way in which  
13 the educational services are provided and the  
14 expectations of a community in terms of how schools  
15 are going to operate.

16 Q. In this litigation, we have seen a lot of numbers  
17 that you haven't had the opportunity to see that  
18 basically compare one school district with another  
19 based on the cost or the expenditure for maintenance  
20 and operations per student.

21 And in fact, we had testimony the other day  
22 from a superintendent who is at the North Forest  
23 Independent School District who, when presented with  
24 the operating expenditures per student in his  
25 district of 2,000 approximately fifty dollars per ADA

1 and asked to compare that to an adjoining district,  
2 Aldine, that operates at about \$1,750.00 per ADA,  
3 advised the Court that there were differences in cost  
4 that resulted from the differences in size of those  
5 two districts; that is to say, the North Forest  
6 District at 14,000 ADA and the Aldine District which  
7 operated at the lower cost had \$40,000.00 ADA.

8 In your experience, would that kind of  
9 differences in size, even up at that higher level,  
10 encompass some economies of scale that would  
11 naturally result in lower operating costs for a  
12 larger district of that size over one of 14,000?

13 A. I think that's possible. On the other hand, there is  
14 a belief in the minds of some people that if you get  
15 whatever the point may be, but that you don't  
16 continue to maintain that efficiency and that economy  
17 of scale by keeping on increasing, I don't know what  
18 the magic point is. But I think it does not serve us  
19 well to presume that if you keep on increasing, that  
20 you will always be gaining in terms of your economic  
21 factors.

22 Q. In your experience, could it be that differences in  
23 campus configuration between a district like Aldine  
24 -- which you're not familiar with, I assume -- but could  
25 there be differences in a district like Aldine at

1           40,000 student population as compared to a district  
2           like North Forest at 14,000 that, based on campus  
3           configuration, could account for that much difference  
4           in spending per child from one of those districts to  
5           the other?

6       A.   Well, unless one is to assume that they're doing  
7           something wrong, and I have no basis for assuming  
8           anything other than that they are operating as well  
9           as they possibly can in both districts, if one starts  
10          with that assumption, then you end up, it seems to  
11          me, with a determination that the differences in size  
12          do account for at least a portion of that.

13                 But as I said before, there are all kinds of  
14                 differences in terms of how many years that your  
15                 faculty may have been in the school system, presuming  
16                 that they're operating on some type of salary  
17                 schedule, although I realize we've had some changes  
18                 in that regard, but the teachers that have been in  
19                 the system for a long time.

20                 If it's an older system that's had fairly  
21                 stable populations, fairly stable enrollments, they  
22                 probably will have a faculty that's been employed in  
23                 that school district, if it's a good place to work,  
24                 and may well be in the upper limits of whatever the  
25                 salary range would be.

1           Some other school systems that have had fairly  
2 rapid growth may have an average salary that is  
3 considerably less. Some people would look at that  
4 and immediately jump to the conclusion that the one  
5 school district is doing a superior job as compared  
6 with the other. And there are factors such as I've  
7 just mentioned that can very reasonably account for  
8 those differences.

9           MR. TURNER: Your Honor, may I approach the  
10 witness?

11           THE COURT: Yes, sir.

12 Q. Dr. Hawkins, I want to hand you two sets of pictures  
13 here, one is marked Defendant-Intervenors' Exhibit 7  
14 and the other one Defendant-Intervenors' Exhibit 8,  
15 and ask you to look at those pictures.

16           What you are looking at there, Dr. Hawkins, are  
17 pictures of the two new elementary-level buildings in  
18 the Socorro Independent School District and they are  
19 -- the buildings to which I referred you to earlier  
20 where the superintendent testified that he found the  
21 optimum size was to build them or cost efficiency was  
22 to build them at 1,000, even though he also expressed  
23 the opinion he wished he could do them a little  
24 smaller, it would be a little nicer to have a little  
25 smaller school, but he found that to be an efficient

1 operating size.

2 If we were to have a campus such as I mentioned  
3 the size of North Forest, which was the 14,000 size  
4 school district, student population, and that school  
5 district were fortunate enough to have those quality  
6 -- that quality of buildings that you see there and  
7 operating at what would appear to be an optimal size  
8 in terms of cost, and then to compare that school  
9 district to another district that's operating with  
10 elementary schools on different campuses of, say, 500  
11 rather than a thousand, thus generating twice the  
12 number of buildings. And perhaps also not having as  
13 new as facilities as we have here, perhaps some older  
14 facilities requiring maintenance, could we see in a  
15 school district of that size operating costs or  
16 maintenance and operating expenditures per student of  
17 variations of the level that I was referring you to  
18 when we looked at Aldine and North Forest, which  
19 varied approximately \$300.00 per student unit between  
20 those districts.

21 A. That's rather a long involved question. I'm still  
22 looking at the pictures and wondering what you're  
23 saying.

24 Q. I apologize, because I probably --

25 MR. GRAY: If you don't understand it, ask

1           him again.

2   A.    I can't tell you anything about the efficiency of the  
3           operation of these buildings.  They're nice fine  
4           looking school buildings, and I am sure that they are  
5           much better and more efficient in using that word in  
6           the usual practice rather than a mathematical sense.  
7           They are probably more efficient than an awful lot of  
8           other schools that we have in the state, but from  
9           looking at these, there's no way in which I can  
10          respond meaningfully to your question.

11   Q.    All right.  Perhaps I should not have referred you  
12          even to the specific district or to those pictures.

13                 What I'm looking for here is your best judgment  
14                 and advice regarding the differences in costs or  
15                 maintenance and operations expenses per student that  
16                 we might find solely based on campus configuration  
17                 and age and condition of buildings.

18   A.    Operating costs will be affected by those conditions  
19          that you enumerate.

20   Q.    And do we have a method whereby we could determine  
21          how those operating costs would vary?

22   A.    If there is such a method, I'm not aware of it.

23   Q.    Would you agree with me that if we were going to  
24          fairly compare districts, based on the amount of  
25          money they spend for maintenance and operations per

1 pupil, that we would need to account for the  
2 differences from district to district in the actual  
3 costs that relate to campus configuration and to  
4 maintenance of whatever type buildings that they may  
5 have available to them at the time we do the  
6 analysis?

7 A. Would you repeat the question, please?

8 Q. I said would you agree with me that if we were going  
9 to fairly compare the operating costs of one district  
10 to the operating costs of another, or for that matter  
11 to compare operating cost -- maintenance and  
12 operations expenses, I should say, for all districts  
13 in Texas, that we should properly look at the  
14 differences in costs that are brought about by  
15 variations in campus configuration and makeup and  
16 costs that relate to maintenance of the buildings  
17 within those campus configurations in order to be  
18 able to fairly compare one district to another?

19 A. That would seem to be entirely realistic. The one  
20 thing that our discussion does not seem to deal with  
21 is substantial variations in the program, itself.  
22 And whether or not we're looking at school districts  
23 that provide the minimum program, meet the  
24 requirements, but nothing beyond that, then that's  
25 going to be quite a different operation normally in

1 terms of cost as compared to the kind of program that  
2 is found in what we've been referring to as the  
3 wealthy districts where their level of expectation of  
4 what an instructional program is has to be quite  
5 different from perhaps what you're finding in some of  
6 those districts where you're looking at the  
7 efficiency costwise.

8 Q. Now, what did you mean there when you talked about  
9 level of expectation?

10 A. In terms of the community, in terms of the way in  
11 which the Board of Education translates that  
12 community expectation into an instructional program.

13 Q. So in your experience, the level of instructional  
14 program that we see around the state is due in part,  
15 at least, from the expectation level of the local  
16 community?

17 A. It's a combination of state requirements and the  
18 level of expectation within a community.

19 Q. Dr. Hawkins, if we were to ever envision interjecting  
20 the State of Texas into the field of making some  
21 contribution to the financing of facilities, how  
22 would you suggest that we deal with these myriad of  
23 factors that you and I have been talking about here  
24 as well as, I suppose, those factors that you and  
25 Mr. O'Hanlon talked about earlier in order to be sure

1           that whatever the State of Texas did, it was done  
2           fair and equitably?

3       A.    That seems to me to be a combination of the state  
4           determining what the program ought to be, what is to  
5           be provided in terms of the state's responsibility  
6           for education, and then determining what the costs of  
7           that educational service is going to be, and assuring  
8           that every school district has in terms of the state  
9           support, those funds that will adequately provide  
10          that program.

11       Q.   Have you ever been called upon to advise the Texas  
12           Education Agency or the Legislature or any member of  
13           the Legislature or testify before a committee about  
14           this subject --

15       A.    No.

16       Q.    -- to explore this area?

17       A.    No.

18       Q.    Have you, on the other hand, noted any reluctance on  
19           the part of the state to get into this area?

20       A.    Yes.

21       Q.    And would it be fair to say that some of these things  
22           that we have been talking about here, that represent  
23           some complexity in arriving at how we do this, that  
24           that, in itself, would tend to cause a Legislature to  
25           approach the subject very slowly?

1 A. I think that it's well known that the efforts at the  
2 state level on the leadership of those who have  
3 responsibilities for making recommendations and for  
4 the Legislature, itself, to make a determination as  
5 to what amount of money can be provided, will be  
6 provided for equalization, and then proceed to  
7 develop the formula and implement the formula on the  
8 basis of that.

9 It does not start, typically, with some kind of  
10 determination of how many dollars it takes to really  
11 effectively accomplish equalization.

12 Now, that's been true in terms of the operation  
13 and maintenance funds. And if it were occurring at  
14 the moment in terms of facilities, that would  
15 certainly be helpful, but there is -- one would not  
16 expect in terms of how it has occurred in the past,  
17 that it would be any true, and careful, and accurate  
18 analysis of what the need is and then moving to make  
19 provision for those funds.

20 Q. Were you familiar with the theory that some espouse  
21 that Mr. O'Hanlon shared with you, that if we were to  
22 have a facilities component in the state formula,  
23 that it would obviously be to the benefit of fast  
24 growing districts, many of whom are suburban and many  
25 of whom are wealthy, and therefore, to divide the

1 pie, so to speak, of state funds and create a  
2 facilities component may not be the best and wisest  
3 expenditure of funds in terms of trying to achieve  
4 equity?

- 5 A. I don't accept that as an accurate interpretation of  
6 the way in which the funding program would affect  
7 school facilities. There is one, in my opinion, that  
8 would more accurately assume that in terms of the  
9 state's share, that that provision in whatever --  
10 based on whatever the need was, along with  
11 equalization, would be what was determined.

12 That does not in any sense suggest that they're  
13 going to fully fund facilities in any single school  
14 district, but that instead, it would be worked out as  
15 part of a formula. And if the need is there in terms  
16 of facilities, and if the need is demonstrated in  
17 terms of funding capabilities, that that's the way  
18 such a program would operate.

19 There's no reason to assume that funds would be  
20 distributed on any basis other than that of need. It  
21 seems to me that one either accepts the idea of  
22 equalization or they do not. It's true you can  
23 accept it and only be able to go part way in that  
24 direction, but if there were no need for  
25 equalization, then our school funding programs would

1 operate in quite a different manner.

2 There is a need under the present arrangement  
3 because of the wide variance in the tax basis  
4 available in school districts.

5 Q. Well, doesn't it seem that as long as the Legislature  
6 continues its historical trend toward greater  
7 equalization and that equalization is based on wealth  
8 or lack thereof, that the same result is, in fact,  
9 accomplished that would be accomplished if we had a  
10 separate facilities formula as a part of the  
11 remaining existing formulas?

12 MR. GRAY: Excuse me, Your Honor. I've got  
13 to object at this point. That is a  
14 mischaracterization of the evidence. The evidence,  
15 as far as equalization is, have been flat since 1950.  
16 We've been flat for the last 35 years, I believe, is  
17 the only historical evidence we have in this record.  
18 And a question that indicates the study we met with  
19 equalization is a misstatement of the evidence.

20 MR. O'HANLON: No, actually, that's not  
21 what Billy Walker said. The relative contribution  
22 has remained relatively -- between state and local  
23 funding have been relatively the same for the last 35  
24 years is what he said, and that the march towards  
25 equalization has been -- let's see, how do I

1 characterize it, by the question of march of progress  
2 marked by crisis and reaction to that crisis, if I'm  
3 not mistaken.

4 MR. TURNER: Your Honor, I don't think it's  
5 -- I don't think there's any question the testimony thus  
6 far has clearly shown that when House Bill 72 passed,  
7 Texas moved toward equity in a greater manner than it  
8 ever has in its history.

9 Now, what Mr. O'Hanlon says is correct, that  
10 the share of the state program versus the local share  
11 is remaining relatively constant. But in terms of  
12 progress, I don't think it's unfair at all to phrase  
13 a question in terms of progress. And perhaps if you  
14 would like me to ask Mr. Hawkins if he has a view of  
15 the impact of House Bill 72, I'll be glad to do that.

16 MR. GRAY: That's fine.

17 BY MR. TURNER:

18 Q. Dr. Hawkins, are you familiar with the funding that  
19 the state provided in 1984?

20 A. In a very general sense, yes.

21 Q. Do you have enough understanding of it to have formed  
22 an opinion regarding the progress or lack thereof  
23 that Texas made toward providing equity in public  
24 school finance?

25 A. It's my understanding that it was a change in terms

1 of a significant movement in the direction of equity  
2 as it relates to the operation and maintenance.

3 But having said that it was a movement in that  
4 direction, one still has to contend with the fact  
5 that there has always been a very significant  
6 difference in terms of resources available between  
7 and among districts.

8 And for one to assume that House Bill 72 has  
9 some way or other corrected all of that, I think that  
10 would be in error. It is a step in the right  
11 direction.

12 Q. And the question I would have for you is if we were  
13 to assume, which we all know we can't in these  
14 economic times, but if we were to assume that the  
15 state had available another \$500 million to put into  
16 education in this state, would you think or wouldn't  
17 you think that we could put that 500 million in and  
18 continue that effort toward trying to make a  
19 contribution to those property poor districts through  
20 the existing formulas and accomplish about the same  
21 results as we would if we took that 500 million and  
22 put it over here and created a facilities component?

23 A. I think the time is long past for the State of Texas  
24 to recognize its responsibilities in providing  
25 adequate school facilities for all of the children in

1 the State of Texas.

2 Q. Dr. Hawkins, I suppose you've probably studied or are  
3 generally familiar with kind of the history of the  
4 financing of school buildings through the history of  
5 our state?

6 A. I have some awareness, yes.

7 Q. And as I recall, about the time that our Texas  
8 Constitution was adopted in 1876, we were operating  
9 by and large in what one witness in this courtroom  
10 called one-room school houses.

11 Is that your understanding of our status of our  
12 facilities in the early days of our state?

13 A. Yes. Historically, there were many one-room school  
14 houses in this state as well as elsewhere.

15 Q. And are you familiar with the fact that in those  
16 early days around the time that we adopted our  
17 constitution that we now operate under, that it was  
18 solely the responsibility of the local people and in  
19 that situation, the parents, to actually provide a  
20 building in which to provide education?

21 A. I think that's correct, but one must put that in the  
22 context of the movement away from private education,  
23 where we know historically, education for the wealthy  
24 was provided at the expense of the parents.

25 When we moved nationally into free, common

1 public schools, we set a pattern, a different pattern  
2 for education that has prevailed to an extent over  
3 the years, in some states, to a greater extent than  
4 others. We still are working in the direction of  
5 trying to accomplish that.

6 The hassle we had a few years ago in other  
7 states about student fees, for example, was just a  
8 part of that great controversy over how free public  
9 schools ought to be.

10 And if what you're saying is that in the  
11 earlier days, a determination was made that the state  
12 did not have a responsibility for educational  
13 facilities does not, in my opinion, speak at all to  
14 what we can and should expect the state to do in  
15 1987.

16 Q. You're familiar then, Dr. Hawkins, with the fact that  
17 the Legislature, a few years after the Constitution  
18 of 1876 was adopted, took a step to provide for an  
19 amendment to the Constitution to allow local school  
20 districts to actually tax within the boundaries of  
21 their own jurisdiction to finance education?

22 A. Yes. And that would have been a logical thing, given  
23 a decentralized school system across the state with  
24 the creation of local school districts.

25 Q. And it really wasn't until --

1 A. And of course that occurred, as I understand it,  
2 historically because the funds allocated at the state  
3 level in the very early days, it soon became apparent  
4 that those funds would not be adequate, and instead  
5 of the state moving in the direction of some way or  
6 other more adequately funding those districts, they  
7 took, apparently, made the decision at that time to  
8 make it a completely legal arrangement for the levy  
9 of taxes at the local level to carry out a state  
10 function.

11 Q. And I assume you're also aware that it really wasn't  
12 until the '40s, and specifically the passage of the  
13 Gilmer-Aikin Act in our state, that the state  
14 Legislature really took a significant role in the  
15 financing of education in this state?

16 A. It's a monumental time, yes.

17 Q. Would it be fair, then, to say that historically,  
18 Texans have always considered the construction of  
19 buildings for the provision of education to be a  
20 local responsibility?

21 A. I think historically, this would be generally true  
22 across the country. The difference is at what point  
23 in time have state legislatures made a determination  
24 about the need and necessity to bring some portion of  
25 that expense, at least, into the state allocation of

1 funds.

2 Q. And would it be fair to say that even today in Texas,  
3 that most people consider the provision of school  
4 buildings to be a local school district  
5 responsibility?

6 A. Since they have never experienced anything other than  
7 that, it is rather natural that they see that as the  
8 way in which it is done.

9 Q. When you testified in response to a question  
10 propounded by Mr. O'Hanlon, that most people agree  
11 that local taxes or state taxes to carry out a state  
12 responsibility, that wouldn't be consistent with what  
13 we've just said and you've just said about the  
14 perception of most people regarding who those local  
15 taxes are -- belong to?

16 A. Because those dollars are levied, the taxes are  
17 levied and the dollars collected at the local level,  
18 historically we have the very broad assumption or the  
19 assumption on the part of the broad population of the  
20 state, that those are local dollars.

21 It is not unusual, however, when something like  
22 that has been the practice and experience and the  
23 taxpayers operate with that kind of an impression for  
24 them to continue to think that those are local  
25 dollars.

1           Now, the issue, I think, typically is not so  
2 much whose dollars those are except that the local  
3 people want to have as much control of those dollars  
4 as they possibly can have. And that's a rather  
5 natural phenomenon, I would say.

6 Q. In your experience, where states have made  
7 contributions, financial, of some type toward  
8 construction, have you found that the state also,  
9 along with that financial contribution, sets out  
10 certain standards and guidelines and requirements  
11 that the districts must follow in the use of those  
12 funds?

13 A. Yes.

14 Q. And if we were to do that in Texas, we would have to  
15 eliminate some of those local political factors, the  
16 consideration of them that you referred to earlier,  
17 that have often overruled objective judgment that has  
18 been provided by an outside consultant?

19           MR. GRAY: Is that a question or a  
20 statement?

21           MR. TURNER: It's intended to be a  
22 question.

23 A. Would you repeat it please?

24 Q. I said in those states where the state has begun to  
25 make some kind of financial contribution toward the

1 cost of construction, have you found that in those  
2 states that do that, that they also send along with  
3 that financial contribution some requirements or  
4 standards or regulations that have the effect of  
5 impinging upon those political factors that you  
6 referred to earlier that sometime overruled the  
7 objective outside consulting recommendation?

8 A. In any kind of funding arrangement, there are going  
9 to be trade offs. And it is obvious that if you have  
10 more control at the state level, you will have the  
11 intervention of the state in terms of certain  
12 determinations.

13 The issue, however, seems to me to be more  
14 relevant if one considers what the effect is under  
15 those circumstances with the quality of education  
16 being provided. And particularly for our purposes  
17 here, the quality of the educational facilities being  
18 provided.

19 Q. Dr. Hawkins, we have a publication that has been  
20 admitted into evidence in this case -- if I can find  
21 the document.

22 MR. KAUFFMAN: It's 235.

23 MR. GRAY: Are you looking for  
24 Commissioners Kirby's and Dr. Walker's book?  
25

1 BY MR. TURNER:

2 Q. It's this book right here, Dr. Hawkins. I don't know  
3 if you've ever read that book.

4 A. Not in it's entirety. I have had an opportunity to  
5 do some review of that and to have -- prior to our  
6 discussions in the last day or two, have at least  
7 reviewed that for certain pieces of information.

8 MR. TURNER: This is known as what exhibit,  
9 Mr. Gray?

10 MR. GRAY: 235, I believe.

11 BY MR. TURNER:

12 Q. Plaintiffs' Exhibit 235. And in this document, it  
13 says that for the year of 1985-'86, that 7 percent of  
14 all funds expended on education were --

15 MR. GRAY: Excuse me, do you know what  
16 page? I'll just give him a copy.

17 MR. TURNER: Sure. It's Page 32.

18 A. Thank you.

19 Q. Seven percent of all funds expended for education  
20 were expended for bonds service. And I'm referring  
21 to a little graph down there at the bottom of the  
22 page.

23 I would assume there is some smaller amount  
24 also perhaps spent on construction out of maintenance  
25 and operations in addition to that bond service

1 expense. Is that true, in your experience?

2 A. Some very modest amount.

3 Q. So, something a little bit over 7 or maybe 8 percent  
4 of all funds might be -- spent on education in Texas  
5 might be spent as a whole on construction?

6 A. I understand bond service, as it's reflected here, to  
7 mean the retirement of bonds and interest payments  
8 for those bonds. And then you have translated that  
9 into construction. Construction of school facilities  
10 is something different from bond service.

11 Q. Distinguish those for me, please, sir.

12 A. Construction are the costs of facilities according to  
13 the contracts issued for the construction of the  
14 buildings. They may include other supplemental  
15 costs, such as architect's fees and so on, but those  
16 kinds of estimates figures, if they're in the context  
17 of construction of new facilities and the cost  
18 arising therein is not, in my understanding, the same  
19 as bond service, which is the payment of those bonds  
20 that come due, that mature, along with the annual  
21 interest costs.

22 Q. All right, sir. You mentioned earlier that the type,  
23 in your experience, the type of curriculum or  
24 instructional program, I believe you called it,  
25 offered by any given district would be affected by

1 the local expectations. Is that the proper -- do I  
2 recall the words?

3 A. Yes.

4 Q. Would local expectations also affect the type and  
5 quality of school buildings?

6 A. To some extent, yes. That's local expectations  
7 matched with financial resources to meet those  
8 expectations, of course.

9 Q. We had a witness testify in this courtroom a few days  
10 ago, Dr. Hawkins, a lady by the name of Mrs. Nelda  
11 Jones, whom you have no reason to know, who was a  
12 teacher at a small school district in Central Texas,  
13 the Rosebud-Lott school district. Have you ever had  
14 occasion to go to Rosebud-Lott?

15 A. I've not visited there. I used to know the  
16 superintendent from that district, but I've never  
17 visited in the district.

18 Q. Mrs. Jones enumerated some of the deficiencies in the  
19 physical facilities of the elementary school in which  
20 she taught and served as principal. And then, when  
21 examined further about why that condition exists or  
22 whether or not there had been some people urging that  
23 it be changed, she made the comment to the effect  
24 that she supposed people were pretty well satisfied  
25 with it the way it is. And that attitude that she

1 shared regarding the people of the Rosebud-Lott  
2 district, that small Central Texas district, is that  
3 one that you have noted existing in certain parts of  
4 our state?

5 A. Seems to me as though there's always a gap between  
6 what we would like to have and what we're willing to  
7 pay for it, particularly when that decision of  
8 payment is something that can be exercised at the  
9 local level.

10 However, given that description of the  
11 situation, it is well recognized that some  
12 communities will come much closer to achieving what  
13 their level of expectation and the level of needs  
14 suggest than others. Many factors probably are  
15 involved here, the composition of the community in  
16 terms of the educational level of the preponderance  
17 of the voters, many things that relate to the pride  
18 of what their schools are like.

19 Q. There have been some who studied the condition of  
20 facilities around Texas, I understand, who have  
21 particularly noted the lower quality of school  
22 facilities in rural school districts with the  
23 exception of some rural West Texas districts. Have  
24 you found that, in your experience, to be the case?

25 A. I think that's not unusual. The provision for

1 facilities often is a political struggle between  
2 those who have lived in a school district for a long  
3 time and those who may be newer residents. And so  
4 this is often reflected in districts where there has  
5 been very little change of population. Sometimes the  
6 pride that I mentioned is pride in a facility that is  
7 old and obsolete, remembered by some individuals as  
8 where they attended school, and therefore, changes  
9 are slower to come, usually, in a district such as  
10 you described.

11 Q. Mr. Sybert, the superintendent of Socorro that I  
12 referred you to earlier, while we were viewing these  
13 facilities and he acknowledged they were typical of  
14 the buildings that he had put in place in his poor  
15 school district, since he had been superintendent for  
16 about the last four or five years, acknowledged that  
17 there is one building in his district that's an old  
18 adobe school building that had been there for years  
19 and they had chosen to remodel it rather than tear it  
20 to the ground and build something new and modern.

21 Is that the attitude that you're talking about  
22 that we find in some places, trying to hold on to  
23 something that may not be the best in terms of  
24 educational provision, but has some sentimental value  
25 or is representative of some attitude in the

1 community?

2 A. That might prevail in some instances. It seems to me  
3 that it's more typical, however, for those who are  
4 reluctant to vote increases in local taxes for  
5 facilities will be reluctant even to do that in terms  
6 of renovation.

7 So that it is difficult for people who operate  
8 with the pattern of belief that it was good enough 30  
9 or 40 years ago, that it's still good enough.

10 Q. And that's the kind of attitude that we would find in  
11 some of our rural districts in this state?

12 A. I think you'll find that in some rural districts  
13 across the country.

14 Q. Dr. Hawkins, have you found that many of the school  
15 districts of our state that have quality facilities  
16 or facilities comparable to the ones you saw in the  
17 pictures there of the Socorro District are often  
18 times districts that are fast growing districts that  
19 have been forced through necessity to make some  
20 changes?

21 A. Yes. If you're saying that growth in the community  
22 results in increase in enrollments, and therefore,  
23 the need for some school districts, particularly as  
24 this occurs, as we've already said more frequently in  
25 suburban districts, it is obvious that we're more

1           likely to find a preponderance of new facilities in  
2           school districts and communities of that type.

3       Q.    Therefore, in addition to the -- what we call the  
4           local expectation towards school plant facilities,  
5           the presence of growth or the lack thereof would also  
6           be a factor that would affect the kind of facilities  
7           we would likely find out there on the ground?

8       A.   There's another factor, I think, that is very  
9           significant in terms of what it is that happens in  
10          suburban school districts as opposed to the more  
11          stable communities that we were referring to a moment  
12          ago.

13                 Typically new residence construction these days  
14                 has -- the arrangements for financing home  
15                 construction is such that the taxes are usually built  
16                 into an escrow arrangement. And the payment of those  
17                 taxes are not, of course, hidden. People are aware  
18                 that they're paying those taxes, but it is much  
19                 easier to get a favorable vote in a community where  
20                 the actual payment of taxes is incorporated into the  
21                 monthly payment of the mortgage due on the house.

22                 And where that's not true and people are paying  
23                 taxes directly out of their own pocket at that  
24                 appropriate time is something that they're much more  
25                 conscious of, and are much more likely, in terms of

1 my experience, to vote against bond issues.

2 Q. Dr. Hawkins, how is it that we seem to find -- or I  
3 maybe should ask you if you have found that those  
4 growth areas that you referred to there in your last  
5 comment where you find people who are more ready to  
6 make a contribution toward their school district are  
7 able to do so, even though they probably are the very  
8 people who are burdened with taxes from many other  
9 governmental jurisdictions, and their willingness  
10 seems to be greater than even someone out in the  
11 rural district who may not even live in the city and  
12 may have low rural county taxes. What explains that  
13 phenomenon?

14 A. I think a part of that is the reflection of the type  
15 of individuals that you find in a suburban community,  
16 people are more mobile. They probably have come from  
17 another region in the state or many of them, of  
18 course, come from out of state, their level of  
19 expectations are different, and they come into a  
20 community seeking the best for their children.

21 Often they even make a decision based upon the  
22 quality of the schools that they see when they are  
23 considering a community. Quality of schools often is  
24 a determination by the outside appearance because  
25 that's most easily available, observable for them.

1 But along with that, they at least have reasonable  
2 expectations of a -- of perhaps a superior  
3 educational program.

4 And so they come to a school district, they  
5 face the kinds of decisions such as bond issue  
6 elections, and it leads to somewhat a different  
7 manner of a different context than people who are  
8 less mobile and whose views about what are  
9 appropriate are more a reflection of what they have  
10 known throughout their lives.

11 Q. Dr. Hawkins, have you found it to be true, in your  
12 experience, that it's not so much what a taxpayer's  
13 tax rate is that bothers them as much as it is how  
14 much it increases at any given time that some  
15 proposal comes forward for construction or for some  
16 increased expenditures?

17 A. Yes, I think that's true, because our taxing systems  
18 have been such that it is very difficult for people  
19 to understand the relationship between property  
20 assessments, tax rates and the actual tax levy on  
21 that piece of property. And so it's natural that  
22 they deal with that factor, which is more readily  
23 apparent and understood by them and that is the  
24 dollar amount that they are paying.

25 Q. Have you ever done any studies to determine what

1 percentage of a family's average annual income is  
2 consumed by school taxes at any given level?

3 A. No.

4 Q. Dr. Hawkins, we have talked some in this case about  
5 consolidation. And as you're aware, that idea has  
6 been around for many years. Share with us, if you  
7 will, what kind of facilities costs considerations  
8 would be involved and should be accounted for and  
9 discussed in any proposal for consolidation of school  
10 districts in our state?

11 A. Discussed at what level are you saying?

12 Q. Well, specifically what impact would there be in  
13 terms of construction costs if we move into some type  
14 of mandated or consolidation of school districts?

15 A. It's not so much a matter of variation in  
16 constructional costs as it is a broadening of that  
17 tax base so that it will be more favorable toward the  
18 new consolidated school district.

19 Now obviously, some people will lose, some  
20 property owners will lose and some will gain. But  
21 the two basic factors for consolidation, of course,  
22 are to increase the size of the student body so that  
23 the program can be more adequately provided. The  
24 other is to equalize to a greater extent the tax  
25 burden both for operational purposes as well as for

1 payment of construction.

2 Q. So in your view, one merit of consolidation would be  
3 to allow a broader range of course offerings in the  
4 consolidated district?

5 A. That is often true.

6 Q. And is that a function of cost savings or just the  
7 fact that in maybe the unconsolidated form, you had  
8 one 12th grader who wanted to sign up for calculus  
9 and nobody else, so they didn't offer it. Is that  
10 the kind of thing that --

11 A. Usually it's construed in terms of an educational  
12 advantage, improvement of the curriculum instruction  
13 program. If their cost -- if there are savings and  
14 there is a favorable impact upon the tax rate, why  
15 that, of course, is desirable. And many of the  
16 voters, of course, will formulate their opinion as to  
17 how they will vote based upon what the direct effect  
18 may be upon them and their own family.

19 Q. When you refer to them voting, you're talking about  
20 if they consolidated voluntarily?

21 A. Well, I've not been through the process in this  
22 state, but I'm not sure what you mean by  
23 consolidating voluntarily. This process requires an  
24 election, typically, of the voters in the total  
25 district to be formed. So that's -- it's true that

1 that's voluntary, but it's in terms of someone or  
2 some group, usually the Board of Education, making a  
3 determination that such an election will take place,  
4 but it's not necessarily a voluntary act on the part  
5 of the voters. They may be very reluctant to, one  
6 way or another, to have that take place.

7 Q. You're aware, I'm sure, that there is not very much  
8 interest in Texas among the people out there in these  
9 various districts in consolidating voluntarily?

10 A. I haven't known in my experience any place where that  
11 would be true.

12 Q. Where they would want to do it?

13 A. Yes.

14 Q. So if we're going to have any kind of meaningful  
15 consolidation in Texas, it would require, I assume,  
16 some action or act of the Legislature?

17 A. This is usually associated with some kind of  
18 appropriate desire on the part of the Legislature.  
19 There are a variety of ways ranging from states such  
20 as Pennsylvania, where many years ago the Legislature  
21 mandated consolidation -- and I'm not personally  
22 familiar with exactly how the process worked out, but  
23 that is a state where I believe consolidation was  
24 forced upon all school districts -- to the other  
25 extreme, where there simply are provisions within the

1 statutes in terms of how this can be accomplished,  
2 but it may be left totally to local initiative.

3 Q. Dr. Hawkins, I am familiar with a school district  
4 that I grew up in and went to school in, and I want  
5 to ask you, just being familiar with that district,  
6 to let me share with you the configuration of that  
7 district, and then to ask you what kind of facilities  
8 implications, construction implications would exist  
9 in that -- in a proposal for consolidation of those  
10 school districts.

11 We have referred in this case many times to the  
12 Bench Marks publication.

13 MR. TURNER: Your Honor, may I approach the  
14 witness?

15 THE COURT: Yes, sir.

16 Q. Dr. Hawkins, I'll hand you this copy of Bench Marks,  
17 which is an identical copy to the one that's in  
18 evidence, and I don't seem to be able to put my hand  
19 on, but it's the Bench Marks publication for the  
20 1986-'87 school year. And I would like for you to  
21 direct your attention to Region 6, which is at the  
22 top of that page.

23 MR. GRAY: What page are you on, sir?

24 MR. TURNER: On Page A-18.

25 Q. And the districts are -- that I want you to look at

1 specifically are the first full group of districts or  
2 the second group, Kennard, Crockett, Grapeland,  
3 Lovelady and Latexo, all of which are in the  
4 boundaries of Houston County in East Texas.

5 And we see there in the first column the  
6 average daily attendance of those school districts.  
7 And I'll refer them to you in column one, Kennard has  
8 379 students, Crockett has 1,704, Grapeland has 738,  
9 Lovelady has 493, and Latexo has 259.

10 We had heard testimony earlier from one witness  
11 that economies of scale begin about 2,500. So if you  
12 put all of those districts together, you would have  
13 over 2,500 students. But the question I have for you  
14 is, looking at the size of those student populations  
15 and what you, in your judgment, would expect to be  
16 the kind of facilities that would be present to house  
17 districts of that size, what kind of implications  
18 exist if the state were to mandate consolidation in  
19 such a way that those five school districts were  
20 required to consolidate?

21 A. What kind of configuration of buildings, is that the  
22 question?

23 Q. No. What kind of construction cost implications  
24 would exist in a district like that if those five  
25 districts were to consolidate?

1 A. I can't, from those enrollment figures, provide you  
2 with a plan of what the needed facilities would be  
3 for a new consolidated district.

4 I know that obviously, if that were to occur,  
5 such a study would look at the condition and location  
6 of those existing facilities and endeavor to make  
7 such rearrangements in the attendance areas as to  
8 eliminate any obsolete buildings, if possible, to try  
9 to make the transportation system as efficient as  
10 possible, and to utilize the facilities in a manner  
11 in which that would be accomplished first. Then  
12 beyond that, the expectation would be to determine  
13 what are the numbers of classrooms needed in order to  
14 accommodate the needs of this entire group and to  
15 build a plan based upon that kind of information.

16 Q. Would it be fair, Dr. Hawkins, to say, based on what  
17 you just shared with me, that there would be some  
18 significant construction costs arise out of a  
19 consolidation of school districts?

20 A. Not necessarily. Often there will be. But let's  
21 assume for a moment that each one of these school  
22 districts has several fairly new buildings, a  
23 redistribution of the student population in the  
24 entire area, with the utilization of the high school  
25 facility that is the best of all of the existing

1 school districts, conceivably could produce a  
2 situation in which there would be no new need for  
3 construction at all. Granted, that that's probably  
4 unlikely, but in theory, it could be a matter of just  
5 rearranging the student body so that were housed  
6 better, that they were transported effectively, and  
7 provided with the best possible instruction program.

8 Q. So it's possible that consolidation could be  
9 accomplished without significant construction costs,  
10 but it's very unlikely?

11 A. Yes. I think that's accurate because of the reason  
12 that the motivation which brings this about usually  
13 is something that is dramatic and crucial enough that  
14 some kind of action has to be taken. The theoretical  
15 premise that if all the buildings were appropriate,  
16 were usable, acceptable educationally, usually does  
17 not stimulate people to change a situation in which  
18 they find themselves. However, we would like to  
19 think that they would examine the educational program  
20 and say, "Well, we can have a much stronger  
21 educational program if we consolidate." As a matter  
22 of fact, seldom, if ever, have I known that to occur.

23 THE COURT: Is that a good place to stop?

24 MR. TURNER: Yes.

25 (Discussion off the record.)

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THE COURT: Okay. See you all at 9:00  
Tuesday.

(Proceedings were recessed until  
February 17, 1987 at 9:00 a.m.)