

3-87-190-CV

CAUSE NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

8358

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 XXVI OF XLVI

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SUGAN K. BAGE, CLERK

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TAKEN MARCH 2, 1987

MONICA ROSS WEIDMANN

Official Court Reporter
250th Judicial District Court

CAUSE NO. 362, 516

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

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

APPEARANCES:

MR. ALBERT H. KAUFFMAN and MS. NORMA V. CANTU,
Attorneys at Law, 517 Petroleum Commerce Building,
201 N. St. Mary's Street, San Antonio, Texas 78205.

-and-

MR. PETER ROOS, Attorney at Law, 2111
Missions Street, Room 401, San Francisco, California
94110

-and-

MR. CAMILO PEREZ-BUSTILLO and MR. ROGER RICE,
META, Inc., Attorneys at Law, 7 Story Street,
Cambridge, MA 02138

-and-

MR. RICHARD F. FAJARDO, MALDEF, Attorney at Law,
634 South Spring Street, 11th Floor, Los Angeles,
California 90014

ATTORNEYS FOR THE PLAINTIFFS

1 APPEARANCES CONT'D

2 MR. RICHARD E. GRAY III, and MR. STEVE J.
3 MARTIN, with the law firm of GRAY & BECKER,
4 Attorneys at Law, 323 Congress, Suite 300,
Austin, Texas 78701

5 -and-

6 MR. DAVID R. RICHARDS, with the law firm
7 of RICHARDS & DURST, Attorneys at Law, 600 West
8 7th Street, Austin, Texas 78701

9 ATTORNEYS FOR THE PLAINTIFF-INTERVENORS

10 MR. KEVIN THOMAS O'HANLON, Assistant
11 Attorney General, P. O. Box 12548, Austin, Texas
78711-2548

12 -and-

13 MR. DAVID THOMPSON, Office of Legal Services,
14 Texas Education Agency, General Counsel, 1701 N.
Congress, Austin, Texas 78701

15 ATTORNEYS FOR THE DEFENDANTS

16
17 MR. JIM TURNER and MR. TIMOTHY L. HALL,
18 with the law firm of HUGHES & LUCE, Attorneys
19 at Law, 1500 United Bank Tower, Austin, Texas
78701

20 -and-

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

23 -and-

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

25 -and-

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APPEARANCES CONT'D

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

ATTORNEYS FOR THE DEFENDANT-INTERVENORS

BE IT REMEMBERED that on this the 2nd day of March,
1987, the foregoing entitled and numbered cause came on
for trial before the said Honorable Court, Honorable
Harley Clark, Judge Presiding, whereupon the following
proceedings were had, to-wit:

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1 MARCH 2, 1987

2 MR. LYNN MOAK

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

5 DIRECT EXAMINATION (CONTINUED)

6 BY MR. THOMPSON:

7 Q. Mr. Moak, since you were with us last week, we have
8 had some additional discussion about the issues of
9 consolidation and regional taxing authorities. I
10 would like to take a few moments and discuss those
11 particular concepts with you, based on your expertise
12 and your historical involvement in these issues.

13 First of all, I would like to go back to
14 something that was mentioned the first day of your
15 testimony. Am I correct, in 1980 through '82, you
16 served as Director of the Senate Committee of the
17 Whole on redistricting?

18 A. Yes, that's correct.

19 Q. What were your specific duties in that capacity?

20 A. I was staff -- the first record, I was involved in
21 the initial analysis of the 1980 census data with
22 respect to both congressional and senatorial
23 redistricting.

24 At a later point in time, I became involved in
25 -- maintaining an involvement in the same activities

1 and was involved in the special session work on
2 congressional redistricting in the legislative
3 redistricting board work on House and Senate
4 redistricting and then in several court cases that
5 grew out of that.

6 Q. Is it fair to say that you were personally involved
7 in the issues of redistricting and that you were
8 aware of and familiar with all of the different
9 factors that have to be taken into consideration?

10 A. Well, at that time, I spent a great deal of time
11 being involved in those factors. The factors shift
12 from time to time, but --

13 Q. Okay..

14 A. But yes, during that time period, I did have the --
15 we did spend a tremendous amount of time and effort
16 from both the research base and computer bases and
17 computer modeling and so on, on the demographics of
18 the state and the characteristics of communities of
19 mapping and related kinds of factors, as various
20 redistricting plans were considered.

21 Q. And this computer modeling that you mentioned was
22 conducted under your direct supervision and control?

23 A. Well, the computer modeling effort was under the
24 legislative council, in terms of the work that --
25 much of the work that was done for the Senate, that

1 was under my direct supervision.

2 Q. Let's talk about consolidation of school districts.
3 Are you aware of any proposals that have come up in
4 the last several decades regarding consolidation of
5 school districts?

6 A. Well, there were -- yes, I am. And there were two
7 major proposals within the period of several decades,
8 I guess. The Gilmer-Aikin Committee, in 1947 and '48,
9 considered the issue of school district organization,
10 was successful in making recommendations which were
11 adopted to reduce the number of school districts
12 substantially at that time, primarily from the basis
13 of non-operating school districts which were in place
14 and had been in place for many years up through the
15 1940s. And then the other major study that addressed
16 the issue of consolidation was the Governor's
17 Committee on Public School Education study in the
18 late '60s.

19 Q. Is that what we have referred to in this trial as the
20 COPSE study?

21 A. Yes, COPSE is Committee on Public School Education.
22 The formal title was Governor's Committee on Public
23 School Education. The rationale for the changing
24 actually came out of the fact that governors changed,
25 and the association with the consolidation proposal,

1 as much as anything else, made -- gave rise to the
2 fact that Governor Smith sent word to the committee
3 that he would appreciate it if it would become COPSE
4 instead of the Governor's Committee. But yes, it was
5 the COPSE study.

6 Q. With regard to the consolidation proposal coming out
7 of that study, were you personally involved as a
8 staff member with the development of that proposal?

9 A. I was involved with a lot of the data analysis, but I
10 was not specifically involved in the formulation of
11 the actual proposal, itself. I did a lot of the data
12 analysis and supervised the modeling that went into
13 analyzing the impact of the consolidation plan that
14 had been developed by other members of the staff.

15 Q. So you analyzed the data, but it wasn't your role to
16 formulate the policy, at least on that issue, is that
17 a fair --

18 A. That is correct.

19 Q. Okay.

20 A. I was involved in a number of aspects of the study,
21 but not -- not specifically in coming up with the
22 school district reorganization proposal.

23 Q. Are you aware of any legislative committees that
24 studied the issue of efficiency in government during
25 the last two years and reached the conclusion that

1 consolidation was not a practical effort in that
2 regard -- or full scale --

3 A. I know that several studies, and I guess the
4 Efficiency and the Economy Commission, in particular,
5 looked at the issue of consolidation, or at least of
6 eliminating the subsidies that were involved for
7 small school districts.

8 Q. Okay.

9 A. And came to the conclusion that -- well, they did not
10 pursue it. I'm not aware precisely of the grounds on
11 which they did not pursue it, but after presentation
12 of some initial information, they chose not to pursue
13 the matter further.

14 Q. Let's talk about the one major proposal that we've
15 had, then, in recent years regarding consolidation,
16 and that was the proposal growing out of COPSE. What
17 were the reasons for that particular recommendation?

18 A. The recommendation was couched, essentially, in terms
19 of having an efficient sized unit at a reasonable
20 cost to offer an adequate education program. And to
21 a secondary extent, at least in selecting persons,
22 was held to address some of the problems of the
23 operation of various tax havens around the state,
24 places in which those very small student population
25 and extremely high concentrations of values in which

1 consolidation could be reasonably accomplished.

2 Q. Okay. But it's your understanding that cost
3 efficiency was the primary reason for that
4 recommendation?

5 A. It was very much so. That in making the
6 recommendations, the committee and the staff involved
7 felt that the -- it was necessary to have an adequate
8 educational program. That the additional costs
9 associated with having a really adequate education
10 program, as they were describing it in the small
11 districts, would be cost prohibitive to the system.
12 And as a result, the proposal for consolidation came
13 about.

14 Q. Mr. Moak, in retrospect, were there other factors
15 that you've become aware of in the intervening 20
16 years, that perhaps could have or should have been
17 considered as part of that study?

18 A. Well, I think that there were several factors that
19 became evident that the committee had not looked at,
20 even at the time that it gave initial consideration
21 to the issue of consolidation. And those factors
22 have remained somewhat in place over the years.

23 In setting the stage for the kinds of concerns
24 that developed, the Governor's Committee proposal,
25 which contained a great many individual

1 recommendations covering an entire range of
2 educational enterprise, became so wrapped up in the
3 issue of school district consolidation, that
4 essentially, many of the other concerns and issues
5 that the committee had become impossible to address
6 for a series of years as Governor's Committee's
7 proposals, because the Governor's Committee was so
8 associated with the issue of school district
9 consolidation.

10 I think the largest central issue that was not
11 taken into account at the time was really the issue
12 of the impact on local communities. There was an
13 assumption made that the impact would be reasonably
14 small, because the operating units could stay in
15 place, the various campuses within the various
16 communities. And it was widely held throughout the
17 state that what was going to happen under the
18 proposal was to shut down school districts within --
19 shut down school operations within many of the
20 communities of the state. And the economic impact of
21 that had not been taken into account by the committee
22 research.

23 And so I think one of the major factors that's
24 involved is realizing that in many areas of the
25 state, especially in the rural areas, the school --

1 the very operation of the school district is, in
2 fact, a major economic factor within the operations
3 of the community, within the operations that becomes
4 a major economic player, if you will, in keeping the
5 community as a viable community. So certainly, that
6 issue was one in which I think that any study today
7 that began to look at the issue of school district
8 consolidation or school -- or serving small schools,
9 if you will, going back to the basic concept of that,
10 this being largely about how to deliver services to
11 small districts, was a -- would have to be a major
12 factor for consideration. It was not at that time, I
13 don't think it was fully understood, the concern that
14 existed over that issue.

15 The second issue that was not really present at
16 that time but has become present today, increasingly
17 so, is the mechanisms for alternative kinds of ways,
18 at reasonably low costs, of reaching students in poor
19 -- in small districts. That on the basic issue of
20 consolidation being linked to program adequacy, we
21 now find ourselves in a position that we have the
22 technology through satellite communications and
23 related kinds of services to deliver a full scale
24 educational program to students residing in these
25 districts as -- at a relatively low cost. Our

1 problem is we have a number of administrative and
2 procedural problems to work on that. In fact, we've
3 just commissioned -- are in the process of
4 commissioning two studies that are specifically
5 related to that.

6 Q. When you say "we" have commissioned two studies --

7 A. The Texas Education Agency is in the process of
8 commissioning two studies on effective delivery
9 systems for smaller schools.

10 The third issue that has taken place over that
11 time period is that the advantages from a fiscal
12 equity standpoint or property value equity
13 standpoint, has substantially decreased from the kind
14 of analysis that was made during the days of the
15 Governor's Committee on Education. And that largely
16 has to do with evaluation practice on property
17 appraisal and property evaluation practice, that the
18 law, 20 years ago, in constitutional provisions
19 governing property taxation, held that property value
20 -- that land was to be taxed at its market value. As
21 a result, when you looked at the disparities that
22 existed, you were dealing very much with the very
23 wealthy rural area as measured by their taxable land
24 values, and that by bringing that into a more
25 consolidated pattern, we could certainly see major

1 change taking place.

2 Today, the practice constitutional provisions
3 provide for the evaluation of land, but essentially
4 on the basis of income or productivity, which ties
5 back to income. And this eliminated a great deal of
6 theoretically taxable property value, if you will,
7 that existed in many of the rural areas of the state.
8 So the financial equity benefits of the kind of
9 consolidation that the Governor's Committee was
10 looking at 20 years ago are not really in place
11 today.

12 Q. Okay. As I understood what you just said, then one
13 factor that perhaps could and should have been
14 considered, that perhaps was not fully considered,
15 was the relationship of the school to the community.
16 Are there studies, today, or does the research,
17 today, support the role of the community in -- as a
18 major component in improving the quality of public
19 education?

20 A. I think that much of the research at the state level
21 and certainly at the national level, has given rise
22 to the fact that one of the critical factors -- this
23 is coming out of the effective schools research that
24 was sponsored by the U.S. Department of Education,
25 continuing works by people such as Harry Passow who

1 came down and addressed a major mid-winter conference
2 of school administrators -- that really, one of the
3 No. 1 factors in improving educational performance is
4 to seek the involvement of the community in effective
5 manners. And so, I think yes, the whole role of
6 involvement of the community, involvement of parents,
7 is increasingly considered to be one of the major
8 factors in increasing educational performance.

9 And it was recognized in Texas, recently, by
10 the research base that the State Board of Education
11 utilized in the development of a long-range plan for
12 public education, in which they put a -- of the major
13 eight goals for public education that they
14 established, established a goal specifically in the
15 adult community education, parent education area.
16 And it has also been incorporated into the work which
17 the Education Agency has been carrying on regarding
18 dropout prevention and reducing dropout rates. So it
19 has been effectively recognized, both in research and
20 practice, I believe.

21 Q. Mr. Moak, the mandated consolidation aspect of the
22 Governor's Committee, in the late '60s, certainly
23 received a lot of attention. Were there other
24 portions of that study, or other recommendations that
25 had to do with reorganization of districts that

1 perhaps have not attracted as much attention?

2 A. One of the aspects was that there was present in the
3 research at the time, and I suspect still is, the
4 issue of units that have become too large. Of how
5 to, in major urban school districts, effectively
6 decentralize community decision making in order to
7 fully involve elements of the community within a
8 school -- large school district.

9 There was a specific proposal in addition to
10 the consolidation proposal. There was a specific
11 proposal for additional funds to be utilized for
12 decentralization of major urban school districts and
13 setting up regional structures, if you will, within
14 major urban school districts to, in part, at least
15 move a good deal of the administrative decision
16 making and even some of the -- I think, under some
17 concept, some of the school board decision making,
18 from a central focus to a decentralized focus.

19 The basic concern was that in these large urban
20 districts, it was extremely difficult to take into
21 account the very factors of community support that
22 the committee and its research really failed to take
23 into account in consolidating the larger -- the small
24 districts, but was looking to -- how to involve
25 effect -- the community effectively within the large

1 urban districts.

2 Q. Okay. Mr. Moak, if we were to do some judicious
3 consolidation of districts, is it your opinion, would
4 it be possible to bring about some reduction in the
5 disparities of property wealth that exists in Texas?

6 A. Yes, it is. There's no doubt that the opportunity
7 for reduction of disparity -- especially at the top
8 end of the scale, to some extent at the bottom end of
9 the scale, would exist in reducing effectively the
10 ranges, the top end to the bottom end, the districts
11 that are -- many of the districts that are at the
12 very bottom end of the scale, today, that are among
13 the poorest districts in the state, do reside close
14 to, at least, districts with higher property values.
15 Not wealthy districts, necessarily, but higher
16 property values, in which they could be consolidated.
17 So districts such as North Forest in Houston, or
18 Edgewood in Bexar County, or Wilmer-Hutchins in
19 Dallas County, do reside sufficiently close to
20 districts where the bottom end could be affected.

21 It would be harder to effect some of the other
22 districts that are at that bottom end, such as those
23 in the Lower Rio Grande Valley, where they
24 effectively are not -- some of them are very much --
25 some of them would have likely prospects for

1 consolidation, improvement of wealth -- their wealth
2 position. But many of them would not, simply because
3 they have concentrations effectively of low value
4 districts.

5 At the high end of the spectrum, in a similar
6 fashion, there are certain districts that could be
7 consolidated and disparities could be reduced.
8 Probably a good example is the situation in Webb
9 County, where United Independent School District,
10 which I believe comes out as one of the wealthier
11 districts in the state, could easily be consolidated
12 with Laredo, and improve the position of both. So
13 there are individual circumstances around the state
14 where there's no doubt that effective consolidation
15 would reduce disparities.

16 Q. Mr. Moak, you mentioned North Forest ISD and Houston
17 ISD. Would it surprise you that Dr. John Sawyer, the
18 superintendent of North Forest, has already testified
19 in this trial that he doesn't want to be consolidated
20 with Houston, even though Houston has more property
21 value per student?

22 MR. RICHARDS: I believe his testimony was
23 he did not want to be consolidated for government's
24 purposes. He never testified he would not be
25 consolidated for financial purposes.

1 MR. THOMPSON: We will get into a
2 discussion of that particular intriguing distinction
3 that has come up in the course of this trial, Mr.
4 Richards.

5 MR. RICHARDS: Well, it's an intriguing
6 distinction that's contained in Section 18 of the
7 Texas Education Code, among other places.

8 MR. THOMPSON: I think that may be a
9 mischaracterization of what's in Chapter 18 of the
10 Texas Education Code, but I will rephrase the
11 question.

12 BY MR. THOMPSON:

13 Q. Mr. Moak, would it surprise you that Dr. John Sawyer,
14 the superintendent of North Forest ISD, has already
15 testified in the course of this trial, that at least
16 for government's purposes, he does not want to be
17 consolidated with Houston Independent School
18 District?

19 A. That would not really surprise me. On the other
20 hand, I think that one could build a major case for
21 it. But it wouldn't surprise me that the
22 superintendent took that position.

23 Q. Do you think that possibly reflects this strong
24 relationship between the school and the community
25 that you've become aware of since the COPSE study?

1 A. Well, I'm not particularly aware of why the
2 superintendent may have taken the position, but it
3 seems to me that that's at least -- the areas of
4 viable community, certainly when we were -- when I
5 was involved in the redistricting area, there was a
6 viable community within the overall Houston community
7 in that section of the city. And it would not
8 surprise me to see that considered as a -- as a
9 community basis for supporting an educational system.

10 Q. Mr. Moak, you just mentioned, I think you used the
11 phrase "viable community." Is that reasonably
12 analogous to a community of interest?

13 A. Well, the term "community of interest" is one which
14 has a lot of definitions and yet no fixed one at all.
15 But a viable community and a community of -- a viable
16 community would constitute a community of interest, I
17 think, in terms of the way in which it was utilized
18 within redistricting.

19 Q. Just based on your knowledge of school districts in
20 the State of Texas, do you believe that the -- that
21 most districts reflect these viable communities, or
22 do you have an opinion on that subject?

23 A. I think most districts do reflect -- do have a
24 community basis to them. That is not to say,
25 necessarily, that the individual boundary lines

1 exactly where they were placed reflect that as much
2 as the inclusion of and the organization of, in many
3 of the rural areas of the community of the state in
4 particular, and a good many of the suburban ones, an
5 affinity between the local area, as organized through
6 a town or a community, and the operation of the
7 school district.

8 Q. Mr. Moak, you testified a moment ago that it would be
9 possible, through some use of consolidation, to
10 reduce some of the disparities in property wealth per
11 student between districts in Texas. And I would like
12 to ask a follow-up question that way and ask you to
13 put your redistricting hat on and let's consider it
14 two different ways.

15 And the question is, is it possible to
16 absolutely reduce any disparities between districts
17 in the State of Texas so that all districts in the
18 state would have exactly equal dollars per student in
19 terms of property value? And in answering that
20 question, I would like you to consider what you
21 regard as an administratively feasible size of
22 district and what other considerations that you may
23 deem important.

24 But first of all, let's talk about the existing
25 school districts in the State of Texas. What their

1 existing boundaries -- and we are simply going to
2 take these existing political subdivisions and start
3 grouping them together into larger districts, but
4 still maintaining the boundary lines of the existing
5 districts, but consolidating them into larger wholes.

6 Now, if we were to do something like that
7 around the State of Texas, is it possible, in your
8 opinion, based upon your expertise in the area of
9 redistricting, to absolutely eliminate any
10 disparities in property value per student?

11 MR. GRAY: Excuse me, are you assuming --
12 again, it's for government's purposes, consolidation
13 for government's purposes?

14 MR. THOMPSON: At this point, I'm not
15 making that distinction.

16 MR. GRAY: I just wanted to make sure.

17 A. In terms of trying to come up with an absolutely
18 equal system, when we start with the premise that if
19 one had complete freedom -- as we do in many parts of
20 redistricting, the Legislature is an example -- to
21 draw the lines in any way we wanted. And if you
22 could have a very small number of units, it would be
23 possible to come fairly close. Now, how the units
24 would look on the map at that point, how the -- using
25 the phrase out of redistricting, what kind of

1 "gerrymandering" we would have to go through to get
2 there, what kind of line drawing we would have to be
3 engaged in in districts that might stretch from West
4 Texas into -- well into Central Texas, or well into
5 the Valley, in order to create equality, I think that
6 that would be possible to come up with something
7 fairly close, again, with a very small number of
8 districts.

9 Now, the problem being that you, in the context
10 of your question, you discussed the concept of
11 whether this would be possible from an administrative
12 standpoint. And from an administrative standpoint,
13 it seems to me it would be very impossible to draw
14 those districts in such a way that they became
15 administrable in terms of the problems of just basic
16 operations of a school district.

17 The overall concept of how to do that would
18 start with the premise that we would have to use the
19 existing school districts and try to bring them
20 together in some fashion.

21 The basic answer to your question is, if you're
22 after absolute quality and you're after a degree of
23 administration, and you're after an area which is --
24 assuming all of this is in areas which are
25 contiguous, we have a -- it would be a very

1 substantial problem. And I'm not at all sure -- I'm
2 certain the research has never been done. I'm
3 stumbling over this somewhat, because I'm trying to
4 visualize how we might go about it. But the research
5 has never been done to look at it and what kind of
6 units you could come out with.

7 If you approached this as the Governor's
8 Committee on Education did 20 years ago, you still
9 ended up with a great deal of disparities. It was
10 consolidation to the point of county-wide units, and
11 that maintained a great deal of disparity. While
12 eliminating a good deal that was there, it maintained
13 a good deal. So I would assume we have to
14 considerably go beyond county-wide to get to equal
15 values per student.

16 In addition to that, from an administrative
17 standpoint, we would have the problem that those
18 values would change. New data will become available
19 once a year, and the question would become how to
20 achieve equality within -- whether to try to
21 continually achieve that equality, or whether to
22 achieve it for a certain point in time, only.

23 But in general terms, I would see it as very
24 difficult -- if these were to be operating school
25 districts -- in fact, I would see it as possible if

1 these were to be generally operating school districts
2 in a way in which we generally held that to be over
3 the years, that if these were to be operating school
4 districts and if the goal was to come up with equal
5 property values. The fundamental problem in
6 evaluation in Texas is that we have a pattern in
7 which the location of our property value and the
8 location of our students aren't in the same places.
9 And as long as we have that pattern -- and that
10 pattern as much as anything else is created by the
11 existence and the capability under the Texas
12 Constitution, as I understand it, that school
13 districts have to tax oil and gas reserves. And
14 obviously, the oil and gas reserves are located
15 throughout the state in different places.

16 If we were operating under a system such as
17 Louisiana, in which local ad valorem taxation of oil
18 and gas reserves does not take place, we would have a
19 far easier job of doing this. But with those
20 reserves and with the fluctuating values that are
21 assigned to those reserves, given whatever the price
22 of oil might be, again, I think it becomes a
23 virtually impossible tax.

24 Q. So if we were -- if I understand you, if we were to
25 adopt equal dollars per student as our primary goal

1 and sacrifice every other important goal in education
2 to a pursuit of that primary goal, we still couldn't
3 get there and have school districts that are
4 administratively manageable or that would maintain
5 that equal distribution over time, is that a fair
6 synopsis?

7 A. I guess if we sacrifice every other goal, one of
8 those goals would be to have a reasonably
9 administrative unit. So it would be possible --

10 Q. Okay. If we sacrificed that one, also --

11 A. But as I said, the -- part of the hesitation in all
12 of this is that research hasn't been done on this
13 issue.

14 Q. Okay.

15 A. That the concept of being able to reorganize in this
16 fashion is not something that I'm aware of any -- any
17 background to fall back on, if you will. I mean,
18 even the study of the Governor's Committee, which was
19 -- to an extent it provides anything, it provides us
20 only something which is now 20 years old and mostly
21 only remembered by those of us that were involved in
22 it.

23 Q. But even if we could somehow do it, even sacrificing
24 administrative feasibility, is it your perception
25 that a year from now, or two years from now, or three

1 years from now, it would be back out of kilter again?

2 A. I'm certain -- I mean, everything we know about the
3 evaluation practices and the patterns of evaluation
4 changes in Texas tells us that it would be out of
5 date the year -- it would be out of date the year you
6 put it in place, because you couldn't put it in place
7 based on current values. You'd have to put it in
8 place based on some values out of a past study.

9 Q. Okay. So, given a world in which it's not practical
10 to divide up the state and get school districts with
11 equal dollars per student, is a primary function of
12 the state school finance system to then come in on
13 top of that and to compensate for the disparities
14 that exist in local property taxation?

15 A. That has been -- when you say primary purpose, I
16 think in many ways, the primary purpose of the state
17 school finance system is to account for a wide range
18 of disparities.

19 Q. Okay.

20 A. Among those, the disparities that exist on the basis
21 of evaluation. Certainly, as well, the -- in a
22 system such as the one that we have developed in
23 Texas, those disparities based on size, those
24 disparities based on price differentials, those
25 disparities based on the locations of students, that

1 the entire school finance system is oriented towards
2 the resolution of disparities. And in one fashion or
3 another, it has been since at least 1950.

4 Q. So the purpose of the school finance system is to
5 accommodate and compensate for a variety of
6 disparities that would otherwise exist in the absence
7 of that state action?

8 A. That's correct.

9 Q. Okay. Mr. Moak, I would like to turn your attention
10 for a few moments away from consolidating school
11 districts. And when I have discussed consolidation
12 in the last few minutes, I have not been
13 differentiating between government's functions and
14 financial functions.

15 I would like to turn your attention
16 toward a concept that has been discussed in the
17 course of this trial, and I guess it can best be
18 called regional taxing units or authorities. And
19 although it has not been fleshed out with any
20 considerable detail in the course of this trial, the
21 basic concept as it has been presented would
22 essentially divorce the government's functions of
23 education from the financial functions of education.
24 And we would somehow create an indefinite or
25 indeterminate number of regional authorities within

1 which property taxes would be levied and presumably
2 distributed to existing school districts that are
3 still governing in some, again, unspecified manner.
4 You've attended part of this trial and heard some of
5 the testimony in previous dates, is that correct?

6 A. Yes, I have.

7 Q. And have you heard this concept mentioned at any time
8 when you've been present in the courtroom?

9 A. Well, I have heard the concept mentioned, the overlap
10 between what's been mentioned in the courtroom and
11 what's been mentioned in the corridors somewhat
12 escapes me, as I think about it, but as to what I've
13 heard. But I'm aware that the issue has been
14 discussed, yes.

15 Q. Have you had an opportunity, over the last several
16 weeks, to think about this concept and to give it a
17 little of your reflection?

18 A. I've given it -- I've given it some thought as to
19 some of its operational -- some of the operational
20 aspects of it. I wouldn't claim that I -- as I said
21 earlier, when we were discussing how to -- how one
22 might reorganize towards equal evaluation, said that
23 the study has not been done, that the information has
24 not been analyzed, that the potential has not been
25 looked at, essentially. We have discussed this in

1 terms of -- as I've understood the discussion up to
2 this point, we've been dealing with theoretical
3 concept and not a plan. So, absent that plan, I'm
4 not quite sure what we've been dealing with. But
5 I've had some opportunity to think about some of the
6 potential problems that would be involved.

7 Q. Let's just talk about the concept, then, for a few
8 moments. If you haven't heard a plan, I suspect
9 you're in the same position as the rest of us. But
10 talking about the concept, are there some problems
11 with the concept that are apparent to you?

12 A. Well, I think there are several things that are
13 certainly issues that would -- major issues that
14 would have to be resolved before anything of this
15 type would be put in place. We made a great deal of
16 progress in the late '70s, finally moving from a
17 system in which, theoretically, each school district
18 in the state or almost every school district in the
19 state had the independent power to appraise property
20 and to set up -- to have its own appraisal practices.
21 In fact, many of the school districts did do that.
22 Many of the other schools -- also, many school
23 districts contracted with another unit of government
24 for their evaluations.

25 But we finally moved from that point where we

1 had moved from the system of having 1,100 plus, at
2 the time, theoretical evaluation entities in public
3 education with a wide range of capabilities and
4 practices and procedures and definitions of property
5 value, to a system under which we went to a
6 county-wide system. And the county-wide system is,
7 today, serving us very well, I think, in public
8 education. But there is -- there is no doubt, based
9 on the studies that at least I've had the opportunity
10 to examine from the State Property Tax Board or on
11 the school district data that is furnished to the
12 Education Agency by the State Property Tax Board,
13 that we still have a great deal of disparity between
14 counties.

15 And so one of the problems that would -- one of
16 the first problems that occurs is, is if we went to
17 these regional kinds of units, what would we use as a
18 basis for taxation? Would we use the existing county
19 tax rolls, not -- county appraisals rolls, I'm sorry,
20 as established by each one of the counties? If we
21 were to do that, what would we do about the problem
22 of unequal appraisal practices that existed between
23 these? Because that would, in essence, lead us back
24 to the same situation that we were concerned about
25 before in utilizing the old values, was that we would

1 end up with an inherently unequal system of taxation
2 based on what kind of evaluation practices were being
3 used in what part of the unit.

4 Q. Do you at least see a potential that that could bring
5 back in the competitive underevaluation problem that
6 seemed to characterize much of school finance, at
7 least prior to some of the property tax reforms of
8 the '70s?

9 A. Well, I think the potential is there and the
10 potential is very real. Another one of the issues
11 that's involved in this kind of regional authority
12 issue is what kind of governments do you have? The
13 sole function -- if the sole function is initially,
14 as I've understood it in this, was for the purpose of
15 creating a taxing unit, there would be -- the whole
16 question of what kind of body would govern this, were
17 they to be an elected -- I would assume they would be
18 an elected body. That is an assumption on my part.
19 But that this would be an elected body and the
20 question of competitive or regional practices of
21 appraisal would clearly be at issue there.

22 Again, I don't know how this regional body
23 would address the issue of use of multiple appraisal
24 authorities and of the practices that a particular
25 county simply was not valuing -- it was shown by the

1 Texas State Property Board not to be valuing its
2 property at a sufficiently high level in comparison
3 with the other counties. I'm not sure what would
4 happen. I wouldn't want to prejudge what kind of
5 litigation might arise out of that, or what kind of
6 approach might arise out of it. But it strikes me
7 that it's a real problem that we can look at in a
8 research sense, variably -- again, a research study
9 in this issue would document the degree and the kinds
10 of disparities that exist between the counties.

11 And this is for using this system. Again,
12 using this system for the purpose of taxation. And
13 to distinguish between that and what we do in school
14 finance today, that we have uniform values that we
15 use for the purpose of distribution of state school
16 aid. But they don't apply to the individual
17 property, but rather estimates out of a research
18 study.

19 So, I would see -- I would see some real
20 concerns about what kind of governing structure would
21 be involved in this. And whether the governing
22 structure had any control over the appraisal process,
23 whether you would very likely end up back in a
24 situation where you had potential regional kinds of
25 -- or subregional kinds of appraisal concerns.

1 Q. In addition to appraisal and government's concerns,
2 are there other concerns that occur to you about this
3 concept, say, regarding how you would set rates or
4 distribute money?

5 A. Well, I don't know how you set rates or distribute
6 money. Again, there would be -- not to say that
7 there aren't options out there, but there are many
8 options. And how those would work, up to this point,
9 I have not heard in my limited understanding of this
10 proposal, a concept of how this -- how this would
11 work. There are -- the question of setting rates, if
12 you have -- if one assumes that these authorities are
13 set up to the point of getting to reasonable --
14 reasonably equal evaluation practices -- reasonably
15 equal evaluations per student, I take it as a given
16 that it would have to be a very small number of them.
17 And if there was a very small number of them, how
18 would the rate be set? It becomes a question -- is
19 this by -- do we essentially have a vote of the
20 people within this larger area? What kind -- it ties
21 back to what kind of government structure would be
22 utilized. It ties back to what kinds of distribution
23 system and in its relationship to the state aid
24 system.

25 It seems to me that the state aid system would

1 lose much of its -- could potentially lose much of
2 its ability and flexibility to recognize individual
3 variations, because you would have eliminated much of
4 that variation. But then the question would be, how
5 do you set the rate?

6 Beyond setting the rate specifically for the
7 purpose of maintenance and operation, the additional
8 problem would occur how to set the rate for the
9 support of buildings and what to do -- as well, what
10 to do about existing bonded indebtedness and existing
11 tax rates that are committed to the support of the
12 bonded indebtedness.

13 Q. Let's talk about bonds, for a moment. Dr. Moak, is
14 it your perception that Texas school district bonds
15 enjoy a reasonably favorable position in the national
16 bond market?

17 A. Everything that I've been told, and I couldn't speak
18 to that from personal knowledge, but I have reviewed
19 what a good many other people who are involved in the
20 bond market have reported on the subject. And the
21 contention has been, for many years, that Texas bonds
22 do well. That the particular features of Texas law,
23 which support school bonds, have allowed them to
24 enjoy a very favorable condition in the national
25 marketplace.

1 Q. Which particular features of Texas law have you heard
2 or do you understand contribute to that favorable
3 position?

4 A. Well, the first one starts out with the use of the
5 so-called unlimited tax rate for much of the debit
6 that is issued in Texas. The unlimited tax rate
7 system for debt service essentially works that we
8 have a separated tax rate for school districts in
9 Texas. We have a tax rate for maintenance, and we
10 have a tax rate for debt service. In contrast, for
11 instance, to a tax rate for cities, which is not a
12 separated rate. But in that separated rate, we
13 establish a specific rate for the support of the
14 principal and interest payments for bonds. That
15 rate, for most bonds in Texas, today, is set at
16 whatever the -- essentially, is allowed to be set at
17 whatever the rate required to pay off the interest in
18 sinking fund requirements for that year. And so if
19 the property value changes, the rate is automatically
20 adjusted.

21 So, under this procedure, essentially, the
22 financing of the debt payments of the district is not
23 something that comes up in the context of decisions
24 over the aggregate property tax level, is not
25 something that comes up in the decisions over the --

1 in the formal decisions over the budget, anywhere
2 near to the extent it might in another kind of
3 setting. And that's the kind of issue that tends to
4 give those involved in the purchase of bonds a very
5 basic comfort level, to know that that kind of
6 provision exists and that it can be enforced.

7 There's some other aspects with regard to our
8 issuance of debt which also contribute to the concept
9 of a Texas marketplace. Those include the -- that we
10 have relatively -- a lot of relative freedom in terms
11 of what kind of debt is issued and very little
12 involvement of any other governmental unit, other
13 than the state, for the purpose of making sure the
14 debt is being issued properly. The state has put
15 forward a very free environment in which to issue
16 debt for school buildings and for school purposes, as
17 long as it's for facilities.

18 And I think that environment, which has to do
19 with the nature of interest rates and it has to do
20 with the nature of the term of the bonds, and it
21 allows the school district to package their bond
22 issue, if you will, in a way in which it is best
23 suited to the marketplace. And it allows the school
24 district to utilize mechanics of financing, which are
25 best suited to the operation of the district and best

1 suited to the marketplace and best suited to the
2 particular times in which the district finds itself
3 in regard to growth patterns and future debt. So all
4 of these issues have contributed.

5 And then an additional contribution, certainly
6 in recent years, has been the role that the permanent
7 school fund has played in providing a guarantee. One
8 of the problems that school districts had, especially
9 smaller districts and poorer districts in Texas, was
10 that the ratings established by the national rating
11 agencies for -- that look at the issuance of
12 municipal debt, have historically been available at
13 their top rank, only to certain sized jurisdictions.
14 That really very small jurisdictions could not have
15 -- really couldn't qualify for a AAA bond. Or in
16 many cases, even a AA bond, simply because they
17 simply weren't large enough. And since we had a
18 large number of smaller operating units and a large
19 number of units that were not well-known in the
20 marketplace issuing debt, they were -- there was
21 virtually a necessity for an internal Texas
22 marketplace to handle this debt, because it was not
23 placeable on the national market. You really
24 couldn't place it on the national market and utilize
25 it on a national market.

1 What the permanent school fund guarantee has
2 done is take a great deal of that debt and make it
3 marketable, nationally, by giving it a guaranteed
4 underwriting through the permanent school fund of an
5 ultimate guarantee, if you will, to payment to the
6 bond holder the debt that might have been unrated, or
7 might have been B-rated, or might have been A-rated,
8 is now AAA-rated and placeable within that -- usable
9 within that national market and saleable in that
10 national marketplace. So -- and to some extent, now,
11 an international marketplace.

12 And this has been very helpful, because some of
13 the factors that once contributed to a strong Texas
14 market have tended not to be so strong any longer, as
15 we changed our banking requirements and changed our
16 banking laws and our savings and loan laws. There
17 are different kinds of people investing in municipal
18 debt today, the national study shows, than there were
19 a couple of decades ago. But overall, we've
20 undertaken in Texas or have built in Texas what I
21 think is considered to be one of the strongest
22 systems for provision of facilities through debt
23 financing, through long-term financing. And that's
24 recognized nationally. And it's a great deal better
25 than what quite a few states face in terms of the

1 obstacles that a school district has to overcome in
2 order to, quote, "to issue debt" and to market it.

3 Q. Let's tie that back into these regional taxing
4 authorities for just a moment.

5 Do you have any idea, personally, or have you
6 heard any discussion about how you would pass a bond
7 for a particular local district within these large
8 regional authorities?

9 A. No, I don't have any. Again -- the problem with
10 these large regional authorities is, is that we're
11 dealing -- we're dealing with something that has a
12 nice general terminology to it, it doesn't have any
13 specifics. I mean, I'm sure that it's not that
14 there are not mechanisms to deal with the issue of
15 how to finance facilities and use a large regional
16 authority, but what those mechanisms are would take
17 some time and effort to try to work out all of the
18 features of. And to date, I have not seen anything
19 which would indicate that those kinds of mechanisms
20 have been worked out, either in terms of the
21 financing of existing debt, or in the financing of
22 future debt.

23 Q. But do you agree that this whole issue of bonded
24 indebtedness, both the existing bonding indebtedness
25 and the continued viability of the opportunity to

1 sell bonds, would certainly have to be a major factor
2 that would be taken into consideration in setting up
3 these regional authorities? Do you see that as a
4 real problem to be overcome?

- 5 A. I think one of the reasons that it's a real problem
6 -- yes, I do. And I think it is a real problem to
7 overcome and especially with regard to making sure
8 that the existing debt is properly protected.
9 Typically, for instance, one is talking -- we've had
10 conversations and many studies in the past about the
11 use of state funds for the payment of debt, debt
12 service. But there becomes a real problem to make
13 sure that's guaranteed to protect the interest of the
14 bond holder in a system which is subject to
15 appropriation. And so, with regard to any kind of a
16 change in taxing practices, I would think that it
17 would be necessary to take very stringent -- build
18 into it very stringent features to make sure that the
19 rights of existing bond holders were protected. And
20 that would require, I presume, a system -- one system
21 for administering taxation for a prior debt, and a
22 new system for administering taxation for new debt.
- 23 Q. What about distributing the tax money within one of
24 these indeterminate units? Have you heard any
25 discussion on that or do you have any idea,

1 personally, on how you would divide up the money once
2 you've raised it and do you see some potential
3 concerns in that area?

4 A. I think there would be a great many concerns. Either
5 the state would have to stipulate a particular way
6 that the district review would take place, if such a
7 system were put in place. We would tend to have --
8 first of all, have a very major problem at the local
9 level, in terms of how we would -- how to distribute
10 that money. Is it to be distributed within a
11 foundation program concept? Is it to be distributed
12 on a basis of a means such as weighted students? Is
13 it to be distributed on the basis which takes into
14 account unique regional factors beyond those taken
15 into account at the state level? The distribution of
16 whatever money was administered, whatever tax money
17 would be collected, would be a significant problem
18 with regard to that.

19 Q. Let's just pretend, for a moment, that we can
20 overcome all of these problems. Do you believe that
21 separating the fiscal responsibility from programatic
22 responsibilities is good public policy with regard to
23 public education in Texas?

24 A. I think it raises some real problems. In terms of
25 moving so far from a community base to a large

1 regional basis. I don't know what happens -- the
2 extent to which the current system involves the
3 community in its financial decision making to come up
4 with the issue of what kind of school system is going
5 to be available, it involves the support of the
6 community in everything from passing bond issues to
7 changing the tax rates, to adoption of the budget, to
8 public hearings on the budget and setting of the tax
9 rate as a whole -- a whole statutory basis that is
10 set up. We have an entire statutory basis set up
11 that evolves around the support of the community and
12 the involvement of the community in the development
13 of the financial spending patterns of the area. And
14 if we moved up to a -- if we move setting the rate to
15 a regional basis, or if we move setting the -- to
16 some overall regional basis, or if we move away from --
17 move essentially to a system where those people who
18 are paying the taxes are not going to be -- cannot
19 really be convinced that that money is going to be
20 utilized within their area, we're moving a great
21 distance from where we are today. And I think,
22 potentially, with some real long-term problems. I
23 don't necessarily subscribe that control
24 automatically follows the dollars, but we have a lot
25 of history to suggest and a lot of places, that when

1 you set up a financial control at one point and try
2 to leave a government's control on another point,
3 that what you have, over time, tends to be the
4 movement of the government's control to where the
5 financial control is.

6 We once had something in Texas called rural
7 high school districts. And rural high school
8 districts were originally set up as overlapping -- as
9 I understand them, were set up as overlapping
10 jurisdictions over the old common elementary
11 districts. So there would be -- there would
12 effectively be a series of elementary districts that
13 were each independent, and then this was set up as an
14 overlapping unit for the purpose of offering high
15 school. Well, certainly by the time that -- and that
16 practice took place a great many years ago. But by
17 the time that I came into this, we still had
18 something called rural high school districts, but
19 basically, they were simply grade one to 12
20 districts. Those old elementary districts just
21 disappeared along the way and the governments and the
22 tax -- the governments had all been absorbed into the
23 rural high school district.

24 So, again, an assessment of the pros and cons
25 of this issue, I think, has to go beyond simply the

1 issue of financing. I think it has to go to the
2 issue of what would be the consequences
3 administratively and how do you protect, if it's
4 one's desire not to move governments, how do you
5 build in the necessary protections to make sure the
6 governments doesn't move up to that higher level,
7 especially if that higher level is also controlling
8 the distribution of money? Because as soon as you
9 have -- certainly, we, at the state level, are more
10 than aware that because we control the distribution
11 of money, we have a great deal of leverage. I don't
12 believe for a moment that many of the regulations
13 that we send out as an agency would be paid any
14 attention to whatever, if there wasn't money tied to
15 them. So if there's power of distribution and money
16 placed at the regional level, certainly it's hard to
17 imagine that there wouldn't be a tendency to begin to
18 look at accountability and look at regulatory -- the
19 use of regulations to ensure the proper utilization
20 of that money in accord with the wishes of the
21 region, as opposed to the wishes of the individual
22 community.

23 Q. Mr. Moak, Mr. Robby Collins, a previous witness, I
24 believe on Wednesday, made a statement along the
25 lines of we need to be careful of quick fixes,

1 because today's quick fix becomes tomorrow's problem.
2 Would you agree with that in general terms?

3 A. I certainly would. I think that, in some ways, to
4 launch into a new kind of governmental enterprise
5 without a complete assessment of what it is that the
6 potential consequences would be, would be a
7 significant real problem. Here, we don't know -- in
8 this particular case -- there's no doubt that you
9 could solve, substantially, from a basis of running
10 computer models and others, that the issues of
11 financial equity or financial equalization and come
12 to an issue that -- a basis on which one had equal
13 revenues for equal tax efforts and varieties of other
14 desirable kinds of issues. But at what price that
15 would be to the total educational system is something
16 that I have some real concern about, in terms of
17 developing a quick fix, if you will, to a problem
18 that has been with us for far more than the two
19 decades that I've been involved with it, certainly,
20 but a problem which is inherent to the kind of system
21 of public education we've created in the state, and
22 which is the subject as many continuing efforts and
23 attempts to work on, as any other, that the state
24 enterprise is involved in today.

25 Q. Mr. Moak, if these regional taxing authorities of

1 indeterminate number, indeterminate size,
2 indeterminate administrative structure, and with
3 indeterminate solutions to evident problems, were
4 held out to this Court as constitutionally necessary
5 to solve problems in our school finance system, with
6 an assurance that the Legislature can fill in the
7 blanks, have you heard this concept presented in the
8 Legislature in your experience?

9 A. I don't recall anything of this type really being
10 presented as a potential public policy issue within
11 the school finance area. I think that if I could as
12 well hazard the comment, that it would be with some
13 fear and trepidation that I would worry about filling
14 in the blanks, because I suspect I would be cast in
15 one of the roles of the blank filler inners and I'm
16 not sure what the nature of those blanks would be and
17 what the consequences would be of trying to get them
18 filled in. And that's part of the concern, here,
19 that until an evaluation of this kind of concept is
20 undertaken, I'm extremely hesitant to say that it
21 could be adopted as a general concept of research and
22 then -- but going -- but a committed -- as a general
23 concept, but a committed concept within research and
24 then to turn to the issue of working out the details
25 in the legislative process.

1 Q. But you're not aware of any individual or
2 organization within the public school community that
3 has presented this idea with any degree of
4 specificity in the Legislature?

5 A. If they have, it's certainly escaped me over the
6 years.

7 Q. Does it strike you that what we have is a concept
8 that is thrown out in this Court that has never been
9 presented to the Legislature?

10 A. As far as I know, the issue -- the issue of regional
11 authorities of this type has not been presented.

12 Q. Mr. Moak, at the conclusion of the day, last Tuesday,
13 we had begun a discussion of accountable costs. And
14 I believe we had had a short discussion about the
15 first accountable cost study that was implemented
16 following House Bill 72 in the fall and early spring
17 of -- fall of 1984 and early spring of 1985, do you
18 recall that discussion?

19 A. Yes, I do.

20 Q. I would like to move on, now, and discuss the
21 accountable cost study that followed that particular
22 study that was conducted during 1985 to 1986.

23 MR. THOMPSON: May I approach the witness?

24 THE COURT: Yes, sir.

25 Q. Mr. Moak, I'm handing you what has been marked as

1 Plaintiffs' Exhibit 212 and I would ask you if you
2 can identify that document?

3 A. Yes, this is the report of the 1985-1986 accountable
4 cost study, together with the recommendations of the
5 Accountable Cost Advisory Committee to the State
6 Board of Education as published by the Education
7 Agency in October of 1986.

8 Q. Mr. Moak, what was your role with regard to this
9 particular study?

10 A. The study was -- the undertaking of the study and the
11 research on the study was one of -- is one of the
12 areas which falls under my jurisdiction at the Texas
13 Education Agency. In addition, I was very
14 specifically involved in this study, both in working
15 with the advisory committee, but more particularly,
16 working with a rather detailed level, the staff of
17 the Education Agency, as we undertook to do the
18 research work necessary to make the study both to the
19 committee and to the State Board of Education.

20 Q. But all of the research that was done to support this
21 study was conducted by individuals under your
22 supervision?

23 A. It was -- yes, with the exception of a very minor
24 piece of career ladder research which was done under
25 -- by a doctoral student of Richard Hooker.

1 MR. GRAY: Who was that, I'm sorry, the
2 doctoral student?

3 THE WITNESS: I'm sorry, I don't recall his
4 name. It was the only piece of information which was
5 presented to the study that I recall that wasn't
6 presented by research staff under our direction.

7 MR. GRAY: I'm sorry, I thought you had
8 given a name.

9 THE WITNESS: No.

10 BY MR. THOMPSON:

11 Q. Mr. Moak, if you would look on Page i, little i of
12 this particular study. Is this a listing of the
13 membership of this particular committee and down at
14 the bottom, of the staff that supported the
15 committee?

16 A. Yes, it is. The committee is somewhat larger than
17 that as professed by statute, so this is the full
18 membership listing, both of voting and non-voting
19 members. And then the project staff is shown below.

20 Q. Let's talk about the membership of the committee for
21 just a moment. What guidelines are established in
22 law for selecting members to this particular
23 committee?

24 A. The Advisory Committee on Accountable Costs, which is
25 set up as an advisory committee to the State Board of

1 Education to assist the board in its duties under law
2 for informing the Legislature as to the accountable
3 costs of certain programs, is set up under statute as
4 a nine member committee, five members of whom must be
5 superintendents or principals. The statute is not --
6 the statute does not go beyond that in terms of
7 specifying the committee or its role.

8 Q. But a majority of the voting members must be
9 superintendents or business managers? That is a --

10 A. Superintendents or principals.

11 Q. Superintendents or principals, excuse me. And that's
12 a specific requirement from the statute?

13 A. That's correct.

14 Q. Okay. In the process of identifying specific
15 individuals to serve as members of this committee, as
16 you look through the membership there, is it fair to
17 say that different types of districts and different
18 geographical regions are represented on the
19 committee?

20 A. Yes, it is. I need to just very briefly -- something
21 I mentioned with regard to the membership of the
22 committee, the -- there was an additional -- I
23 believe it will only show eight voting members here
24 on the committee. And the distinction -- there was a
25 vacancy created by Dr. Carl Candoli, who was a member

1 of the committee following the superintendent of Fort
2 Worth, resigned from the committee, upon his
3 resignation of that job, and he was the ninth member.
4 But there is a wide representation of different types
5 of districts, which was intentional in terms of the
6 selection of the committee membership, the
7 recommendation to the State Board of Education by the
8 staff of the Texas Education Agency, and then by the
9 formal appointments of the board.

10 Q. And how was the committee established?

11 A. The committee was appointed by the board. I'm not
12 sure that I recall the date, right offhand, that most
13 of these -- most of these committee members have been
14 members of the -- I'm sorry, October of 1985, the
15 committee was appointed by the State Board of
16 Education. A number of members were reappointed and
17 in addition, a series of non-voting members were
18 added to the committee for the purpose of giving a
19 fuller and more complete perspective on the
20 assignments of the committee.

21 Q. And what was the purpose of the committee?

22 A. The purpose of the committee was to advise the State
23 Board of Education as to a -- under a series of
24 charges that were developed by the State Board of
25 Education. These are summarized on Page 2 of the

1 report. They include determining the cost of program
2 to districts of current accreditation, legal and
3 regulatory requirements, determining the cost per
4 pupil of providing a quality regular education
5 program, to determine the appropriateness of weights
6 established for special education and vocational
7 education, compensatory, bilingual and gifted and
8 talented education. And to determine the statewide
9 needs for school facilities and the cost of meeting
10 those needs.

11 Q. So this was a committee established by the State
12 Board of Education to advise the State Board of
13 Education with a charge prescribed by that same
14 board?

15 A. That's correct. The committee is recognized in
16 statute. The charge is made by the State Board of
17 Education and the committee reports to the State
18 Board of Education.

19 Q. So this committee doesn't report to the Legislature,
20 it reports to the state board, is that correct?

21 A. That's correct. There's no -- it has status only as
22 an advisory committee to the board.

23 Q. And there are other advisory committees, I assume,
24 that the board has on other subjects?

25 A. Sometimes, seemingly without number.

1 Q. Mr. Moak, did the committee undertake as extensive a
2 study as was originally intended?

3 A. No, it did not.

4 Q. Why not?

5 A. It originally had been an allocation from state funds
6 available for research and development of some
7 \$400,000.00 to support the work of the committee.
8 With respect -- with special respect to the cost of
9 quality education programs and potentially, the cost
10 of facilities. Under a decision by the board, that
11 grant was frozen pursuant to -- I'm not sure which
12 executive order, but pursuant to one of Governor
13 White's executive orders that asked for funding
14 reductions up to 13 percent. The Education Agency
15 was unable to fully comply with that, but that
16 \$400,000.00 was set aside and designated as
17 non-spendable, if you will, within our budget process
18 in order to comply -- as one of the whole series of
19 actions that were undertaken by the board and the
20 agency in terms of potential funding reduction areas.

21 That was partly, but not fully offset by
22 substantial work which was undertaken and redirection
23 of staff resources into the areas that were of major
24 concern to the State Board of Education. And also
25 supplemented by the hope that a quality product on

1 school facilities could be derived from the East
2 Texas State study conducted by their center for
3 policy studies.

4 Q. Mr. Moak, if you would turn to Page 5 of this
5 particular report. On Pages 5 through 11, we see the
6 actual recommendations of this particular committee.
7 And I would like you, briefly, to just explain the
8 different recommendations that came out of this
9 committee that are embodied on these pages.

10 A. Well, all told, there were 13 recommendations made by
11 the committee, 13 areas of recommendations. Some of
12 them have a good many subparts. And I'm assuming by
13 the nature of your question, that a summary of these
14 will be sufficient.

15 Q. A summary would be perfectly acceptable, thank you.

16 A. The first two recommendations dealt with the
17 committee's review of the research work which had
18 been conducted by the staff and their determination
19 as to, based on 1985-'86 data, what certain average
20 annual costs were. In particular, the cost of
21 regular program, in which a -- in 1985-'86, of an
22 average program, if you will, that met all of the
23 necessary standards, was based on a variety of
24 research studies was recommended by the committee, or
25 found by the committee to be \$2,414.00. In addition,

1 based on much -- on very limited information that was
2 available to the committee, the committee recommended
3 that a quality education program cost was, from the
4 data it had available, which as I say was much more
5 limited than that, the basic program was \$2,725.00.

6 The committee made recommendations, under No. 3
7 and No. 4, to come up with an overall recommendation
8 for a basic allotment for consideration by the State
9 Board of Education and the development of its
10 recommendations to the Legislature.

11 The recommendation five addressed a
12 recommendation to the board concerning the operation
13 of the career, or the funding of the career ladder
14 system and higher cost levels associated with that.
15 Effectively, the committee recommended that there be
16 an increase, small increase for 1987-'88 and a
17 somewhat more substantial increase for 1988-'89.
18 That data was taken from the research that I
19 mentioned a moment ago that had been developed by a
20 graduate student of Dr. Hooker's in preliminary form.

21 Recommendation six deals with a feature of our
22 program costs area that deals with indirect costs or
23 overhead costs. Essentially, that beyond each of our
24 special program areas is divided up between money
25 that is to be utilized for direct instruction and

1 that which can be used for the payment of general
2 overhead expenses. So recommendation six addressed
3 an issue of the establishment of various kinds of
4 indirect costs -- factors associated with each of the
5 special program areas on the bottom of Page 8.

6 Recommendations seven through eleven dealt with
7 the individual program areas and specific
8 recommendations for each one of those as to what
9 might be done relative to weights. In general terms,
10 the committee made recommendations with regard to
11 special education for a series of instructional
12 arrangements. These are by and large, I believe in
13 all cases, are the instructional arrangements that
14 are included in current law today and are set forward
15 on -- set forth on Page 9. But the board also -- the
16 committee first of all recommended that the board set
17 an overall weight and seek legislative authority to
18 establish its own instructional arrangements. This
19 was effectively moved, something that was rather
20 inflexible, it was in the law and under State Board
21 of Education regulations. And this work was based on
22 -- in part, on special education studies undertaken
23 by the Education Agency, out of both the '84-'85
24 accountable cost study and the '85-'86 accountable
25 cost study, both of which addressed the issue of

1 special education weights. In addition, there were
2 certain independent judgments made by the committee
3 members that were not drawn from the research base
4 that was specifically available, but reflected their
5 more general concerns about certain of the
6 instructional arrangements.

7 Recommendation eight dealt with funding for
8 vocational education, recommending essentially that a
9 somewhat higher weight than currently utilized be
10 adopted by -- for vocational education, but
11 effectively, that indirect cost be counted, which
12 they are not today. And that the State Board of
13 Education have discretionary authority to set up
14 individual instructional arrangements.

15 Recommendation nine dealt with compensatory
16 education. And I'd say, in case of both
17 recommendations nine, ten and eleven, compensatory
18 education, bilingual education and gifted and
19 talented education, the committee was making
20 recommendations at the same time that a major program
21 evaluation study had been undertaken by the Education
22 Agency, which is a separate effort from this effort.
23 And so there was a relationship between the
24 preliminary research out of those areas and the
25 committee's recommendations here. But basically,

1 they recommended that the current funding system stay
2 in place for compensatory education, that the
3 bilingual education funding system be substantially
4 increased and the gifted and talented funding system
5 be substantially increased.

6 With respect to recommendation twelve, they
7 endorsed an equalized state funding system for
8 construction costs incurred by districts as a result
9 from meeting a particular feature of state law in the
10 area of maximum class size requirements for grades
11 three and four, due to be implemented in 1988-'89.
12 They made a general recommendation, here, based on
13 the general information that had been placed before
14 it as to the costs of implementing class size
15 limitations for grades three and four. They did not
16 make a specific recommendation as to the formula to
17 be utilized.

18 Q. Is that at least, in part, the consequence of the
19 fact that the study was not done at that time?

20 A. I'm sorry, which study are you --

21 Q. I'm speaking of the Lutz study that was done by East
22 Texas State University that you mentioned earlier.

23 A. In part, that was the result of the absence of the
24 Lutz study. In part, there was a real concern over
25 -- that there had not been sufficient time or effort

1 out of the Lutz study or the work we had undertaken
2 internally, to cover the issue of the methodology for
3 financing the construction area.

4 And then finally, the committee recommended to
5 the board that the recommendations be included in the
6 overall recommendations to the State Board of
7 Education.

8 So, in general terms, the committee had made
9 recommendations that dealt with both its analysis of
10 1985-'86 data, with certain factors to be undertaken
11 to modify that data in coming up with recommendations
12 for the coming biennium. And then in a series of
13 program -- made recommendations and findings in a
14 series of program areas to support additional
15 improvement.

16 Q. Mr. Moak, if you would look back at Table 1, which is
17 on Page 6 of this report, I'm going to ask you to
18 explain this table and what the different numbers
19 contained in this table represent.

20 THE COURT: Before we do that, let's stop
21 for break and we'll start right up at that place at
22 ten 'til.

23 (Morning Recess)

24 THE COURT: All right, sir.

25 MR. THOMPSON: Thank you, Your Honor.

DIRECT EXAMINATION (RESUMED)

1
2 BY MR. THOMPSON:

3 Q. Mr. Moak, just prior to the break, we were looking at
4 Table 1, which is on Page 6 of the accountable cost
5 report. And I had just asked you if you would
6 explain the different numbers that are represented on
7 that report.

8 A. The purpose of this table was to show a series of
9 adjustments to 1985-'86 costs, to show the -- provide
10 a basis for the recommendations of the committee for
11 their recommendation to the State Board of Education
12 concerning the basic allotment for 1987-'88 and
13 1988-'89.

14 Current law was a representation using only
15 part of the data, I'll come back to that, for the
16 operations of the Foundation Program as it existed in
17 1985-'86. And then standard program and quality
18 program were two spending levels, one of which was
19 associated with the regular program costs that have
20 been determined from the study for a standard program
21 that met the accreditation legal and regulatory
22 requirements.

23 And the other, which was held to be a level for
24 a quality program, which essentially was a
25 representation of the costs that have been determined

1 in certain districts with relatively high TEAMS --
2 excuse me, relatively high standardized test scores
3 from the state testing program in the seventh grade.

4 The 1985-'86 annual costs referred to the costs
5 that had been determined from the 1985-'86 data and
6 chosen by the committee as their standardized costs
7 for '85-'86. So, in each case, for 1987-'88 and for
8 1988-'89, for the standard program, that was
9 \$2,414.00. The number the committee -- from the
10 various options that were before the committee, the
11 quality program was determined to be \$2,725.00, based
12 on the options that -- very limited options that the
13 committee had before it with respect to a higher
14 level cost program.

15 Grades three and four referred to the
16 implementation in the 1988-'89 school year of a class
17 size limitation for grades three and four, 22.
18 Essentially, effective in 1988-'89, no grade three or
19 grade four classroom should have a class size in
20 excess of 22 students unless a waiver has been
21 received from the Commissioner of Education.

22 Inflation was an estimate using the data from
23 the -- that has been current from the Comptroller's
24 office as to the overall cost of living increase
25 between 1985-'86, and the 1987-'88 and 1988-'89

1 school years. So a factor of \$181.00 was added to
2 the '85-'86 program costs for the standard program,
3 \$310.00 was added to the '85-'86 costs for the
4 1988-'89 year.

5 Salary schedule refers to a feature in the
6 Foundation Program of a standardized or -- not
7 standardized, but a minimum salary schedule, which is
8 part of Chapter 16 of the Education Code, which
9 essentially, is a regulatory salary schedule. At one
10 time, it played an integral part in the funding
11 formulas. And today, it plays only a minor part.
12 But the way in which the current salary schedule was
13 adopted by the Legislature under House Bill 72, it
14 effectively had a built-in future cost, as a result
15 of a gradual implementation of this new salary
16 schedule, which is based solely -- the salary
17 schedule is designed to be fully implemented by 1994.
18 And at that point, will be based solely on
19 experience. And so -- again, here, an estimate was
20 provided the committee of what costs would be
21 associated with implementation of the salary schedule
22 for the 1985-'86 base. This resulted in the addition
23 of \$120.00 for 1987-'88, \$170.00 for 1988-'89.

24 The line, total average annual cost, was a
25 summation of the -- for the standard program or for

1 the quality program, was a summation of the four
2 lines above it. Representing, in effect, the
3 committee's estimation of the cost factors -- of the
4 cost per student for a -- either a standard or a
5 quality education program for those two years.

6 In addition, that number is shown there for
7 current law, which really represents a mathematical
8 calculation, given certain calculations that we'll go
9 through in a moment. In fact, it worked from the
10 bottom up, instead of from the top down.

11 Once the levels of \$2,715.00 and \$2,952.00 were
12 determined for the standard program, and \$3,049.00
13 and \$3,303.00 were established for the quality
14 program, it was necessary to then make adjustments to
15 bring those back down to a basic allotment to be
16 comparable to \$1,350.00 in current law.

17 The committee utilized two adjustments that
18 were available to it. One was Equalization Aid, in
19 which they discounted, in effect, the total average
20 annual cost by 30 percent. And the other was the
21 Price Differential Index in small school factors --
22 two factors, really, there together, which resulted
23 in a discounting factor of 17.6 percent. And these
24 resulted in the subtractions that you see in Table 1,
25 from this average annual cost, to come down to a

1 basic -- a projected basic allotment. So the
2 recommendations of the committee was for a basic
3 allotment in 1987-'88 of \$776.00, and a basic
4 allotment in 1988-'89 of \$1,931.00, each assuming the
5 standard program. And then higher levels were shown
6 for the quality program.

7 The column, "current law," shows \$1,350.00.
8 The way you get -- and then it shows the discounting
9 that is based on current law from the Equalization
10 Aid Program, the Price Differential Index element and
11 the small school adjustment, and comes back to an
12 average annual cost of \$2,064.00.

13 Q. Mr. Moak --

14 A. Go ahead.

15 Q. I'm sorry. There has been some previous discussion
16 in this trial as to whether equalization aid properly
17 should be subtracted from the total average annual
18 cost in working back to a basic allotment. I note
19 that in this table, equalization aid is subtracted in
20 terms of considering it as a means of funding that
21 total, or as a part of that total average annual
22 cost, in terms of working back to the basic
23 allotment. Do you agree with the methodology that's
24 presented in this particular table with regard to its
25 treatment of equalization aid?

1 A. Yes, I do.

2 Q. Are you aware of the discussions that have taken
3 place regarding possible other treatments of
4 equalization aid?

5 A. I don't know. I don't know that I've been here for
6 all of them, but I am aware of a number of
7 discussions that have taken place on the matter.

8 Q. Were you present in the courtroom the day Dr. Richard
9 Hooker discussed that particular issue?

10 A. Yes, I was.

11 Q. Okay. Do I take it that you agree with what is
12 presented in the table, and you disagree with the
13 analysis of that particular issue, with regard to the
14 treatment of equalization aid as presented by Dr.
15 Hooker?

16 A. Very much so.

17 Q. Would you please explain your reasons for supporting
18 the treatment of equalization aid as it is reflected
19 in Table 1?

20 A. Well, the treatment follows both some historical
21 concepts that go back to when the concept, although
22 it had a different name, but the concept of
23 equalization aid was first created in a study that I
24 did for the State Board of Education in the early
25 '70s. And then is more specifically ground in the

1 specific provisions of House Bill 72 and the
2 modifications that they made to Chapter 16 of the
3 Texas Education Code.

4 First, referring to the 1972 study, the -- I
5 guess it was finally adopted in early '73. No, it
6 was December of '72. At that time, I recommended to
7 a committee of the State Board of Education and
8 ultimately the State Board of Education adopted, a
9 concept of an allotment called Local Leeway, which
10 was for a \$300.00 per student add-on to the basic
11 Foundation Program to get up to a total aggregate
12 level of financing. And that was laid out in the
13 recommendations of the State Board of Education to
14 the Legislature in 1973.

15 Q. It was?

16 A. It was specifically the State Board's response to the
17 Rodriguez decision, where we first incorporated this.

18 That was, in turn, adopted in legislation --
19 that concept was then adopted in 1975 by the
20 Legislature in a bill that I had a share in the
21 authorship of. And in that particular section,
22 personally wrote the provisions of dealing with the
23 Equalization Aid Program, I believe we called it, for
24 equalization aid component in Chapter 16.

25 Q. And what was that bill?

1 A. That was House Bill 1126 in 1975.

2 Going forward to the specific law that we have
3 now, I believe the sections -- there are several
4 sections of Chapter 16 of the Education Code which
5 make it very evident that the intent of the
6 Equalization Aid Program was to be a part of the
7 overall state support program, or the -- even as it's
8 described there, the Basic Foundation Program. That
9 in terms of the definitions of the Basic Foundation
10 Program that is laid out in Chapter 16 and the
11 description of financing of that program, it is made
12 clear that the equalization aid level is inclusive
13 within the program and not exclusive. That it did
14 not exist in the -- in that drafting, or in that --
15 when House Bill 72 went into effect, the Equalization
16 Aid Program, which from a statutory sense, had
17 existed somewhat separate from the rest of the
18 Foundation Program, was specifically described in
19 Chapter 16 and is, today, specifically described in
20 Chapter 16, as being part of the Foundation Program.

21 Q. Was that a specific change that was included in House
22 Bill 72?

23 A. That was a specific change in House Bill 72. To the
24 best of my knowledge, it was actually in all of the
25 versions of House Bill 72, although I would have to

1 verify that in detail. But to the best of my
2 knowledge, it was in that provision as it was
3 introduced. It was in the provisions of the SCOPE
4 report. Legislation -- the legislation was held to
5 be the SCOPE Committee legislation, and it was
6 adopted by the Legislature.

7 Q. Okay.

8 A. And it is on that basis that I not only feel that
9 it's appropriate to include it, but actually, in
10 terms of the state's construction and the Foundation
11 Program's construction, that it clearly belongs in
12 the analysis and not outside of it.

13 Q. Okay. Mr. Moak, if we look at the recommendations
14 for basic allotment as developed by the Accountable
15 Cost Committee, did the State Board of Education
16 adopt the committee's recommendations regarding the
17 basic allotment?

18 A. No, it did not.

19 Q. Why not?

20 A. Well, I don't know that there is a single answer to
21 that question. And information -- a comprehensive
22 series of options was presented to the State Board of
23 Education by the staff, by the Commissioner,
24 concerning their program cost options for the
25 1987-'88 and 1988-'89 school years. Included in

1 those options were the levels of the -- up through
2 the standard program level of the Accountable Cost
3 Committee. And as well, there had been separately
4 presented to the Committee of the Whole of the State
5 Board of Education, a comprehensive report on the
6 recommendations of the Accountable Cost Committee and
7 on the findings of the staff. And so, complete
8 information had been presented, in both options and
9 in terms of discussion, the report to the board. The
10 recommendations of the Commissioner, which were taken
11 after discussions with various board members and with
12 staff, came out with a lower cost. Came out with a
13 basic allotment recommendation of getting up
14 something over -- I believe something a little over
15 \$1,600.00 for 1988-'89 compared to the \$1,900.00.

16 Q. And what was the cost that was associated with that
17 particular recommendation?

18 A. Well, I don't recall the cost recommended, but that
19 only -- the total package of the board's
20 recommendations was a \$2 billion biennial increase on
21 a basis of about \$10 million.

22 Q. Okay.

23 A. That was in addition to some \$400 million of
24 additional costs that were associated with simply the
25 extension of current law, forward.

1 The primary reasons that the -- that it seemed
2 to me that the recommendation was made by the
3 Commissioner, and the State Board of Education
4 ultimately adopted, had to do with several things.
5 First, the work of the Accountable Cost Committee
6 research, or the accountable cost research and the
7 information that was reviewed by the Accountable Cost
8 Committee, did not support the theory that there was
9 only one cost level which could be associated with
10 the statutory concept of a program of meeting current
11 accreditation and legal and regulatory requirements.

12 In fact, there were other cost levels. And
13 there were some that were significantly lower than
14 the standard program costs that were recommended by
15 the board -- I mean, recommended by the committee.

16 Secondly, the adjustments of the committee,
17 that we've been through in discussing Table 1, were
18 somewhat, although not -- they're certainly
19 defensible adjustments. There was both later
20 information to suggest that they were not quite as
21 high as they had been suggested and there were some
22 question as to whether those were appropriate
23 adjustments by some of the board members, as opposed
24 to simply being costs that should not be adjusted
25 for, especially in light of the overall cost to the

1 program.

2 And the third basic element was a concern by
3 the State Board of Education that they not make
4 recommendations to the Legislature, which in the
5 current kinds of economic setting, would place them
6 in a position of asking for what they considered to
7 be an unreasonably high level. And they have been
8 through a thorough review of what the current
9 economic situation that the state was facing, of what
10 the potential magnitude of the current services
11 budget deficit was going to be, based on the
12 available information about the Comptroller's revenue
13 estimate. And so, it was their general conclusion
14 that it was not the time to seek major increases, but
15 rather, to seek the minimum increase necessary,
16 designed to carry forward the intent of House Bill 72
17 and the provision -- and to provide for the continued
18 shared financing of the additional mandates of House
19 Bill 72.

20 So it's a combination of factors which led to,
21 I think, the recommendation by the Commissioner and
22 the recommendation by the board to the Legislature,
23 that the lower level be undertaken than that
24 originally adopted by the Accountable Cost Committee.

25 MR. KAUFFMAN: Excuse me, Your Honor, may

1 I ask two clarification questions, if you don't mind.

2 VOIR DIRE EXAMINATION

3 BY MR. KAUFFMAN:

4 Q. Those projections of \$2 billion extra, was that based
5 on no change in the local share?

6 A. Yes, it was. No change in the percentage local
7 share.

8 Q. Percentage local share. Okay.

9 MR. THOMPSON: Is that all?

10 MR. KAUFFMAN: Yes.

11 MR. THOMPSON: Okay.

12 DIRECT EXAMINATION (RESUMED)

13 BY MR. THOMPSON:

14 Q. Mr. Moak, if I understand what you just said then,
15 the State Board of Education considered, when they
16 considered the committee's report and recommendations
17 of a variety of options arising out of the research
18 material, they looked at the total cost in light of
19 the current economic circumstances of the state and
20 they looked at the research that underlaid that
21 particular study, are those the kind of factors that
22 the board considered?

23 A. Yes, they are.

24 Q. Okay. But the recommendation that the board did make
25 to the Legislature is supported by the research of

1 the accountable cost study?

2 A. Yes, I believe that the basic thrust of the
3 recommendations is supported by the study that was
4 undertaken by the staff and presented to the
5 Accountable Cost Committee.

6 Q. Okay. Mr. Moak, you've made that distinction a
7 couple of times, and I want to make sure I understand
8 the importance of it. Would you explain, briefly,
9 the role of the staff vis-a-vis the role of the
10 members of the accountable cost with regard to the
11 research that was undertaken?

12 A. Well, there was a full-time staff of -- it wasn't all
13 of the project staff listed here, but there were
14 several staff members, four or five, who worked on
15 this study essentially full-time for a fairly sizable
16 time period, well in excess of six months. Mostly a
17 year, really. And the work of this project was
18 undertaken by that staff. The committee served in an
19 advisory mode to the staff, it served in a mode of
20 asking for certain kinds of -- making certain kinds
21 of general policy, reacting to certain kinds of
22 general policy questions that were brought forward by
23 the staff to the committee for particular
24 methodologies within particular alternative --
25 particular alternatives within a given methodology

1 for determination of the cost. But specifically, the
2 research work was undertaken by the staff. Advisory
3 committees all differ in terms of how they approach
4 their effort. And this particular advisory committee
5 generally approached this effort as one in which it
6 was there to review staff level research, not to
7 direct the study on a day-by-day basis, or not to
8 undertake independent research in their own
9 capabilities as -- well, several members of the
10 committee had independent research capabilities and
11 research backgrounds. They did not undertake an
12 independent analysis of this information, however,
13 but rather, limited themselves to being an advisory
14 committee to the board and to being a general policy
15 committee to review those questions of policy that
16 the staff brought forward.

17 Q. Okay.

18 A. And it was out of that effort that it has come to be
19 distinguished between the fact, as noted in the
20 title, that there was an accountable cost study and
21 there were the recommendations to the advisory
22 committee. And they weren't written as a cohesive
23 document of one flowing to the other, but rather,
24 written as an independent study of accountable costs
25 on the one hand, and on the other hand, the

1 recommendations of the committee, based on that
2 information. And as I indicated earlier, in certain
3 cases, independent judgment by members of the
4 committee.

5 MR. THOMPSON: May I approach the board,
6 Your Honor?

7 THE COURT: Yes.

8 Q. Mr. Moak, as you look on Table 1, there on Page 6,
9 and we've had some discussion about it previously in
10 this trial, about the \$2,414.00 annual cost number
11 for the standard program in '87-'88 and the \$2,725.00
12 cost number for the quality program in 1987-'88. Is
13 there anything magic about those two numbers, or are
14 those the only two numbers supported by the research
15 of the Accountable Cost Committee?

16 A. No, they're not.

17 Q. You have talked about options that were presented to
18 the committee during the course of its deliberations,
19 are those options contained in this report that we
20 have in evidence?

21 A. Yes.

22 Q. And where are they contained?

23 A. Well, they're essentially laid out in Chapter Four,
24 which begins on Page 19, with respect to the
25 particular element of the regular education program.

1 It's laid out in pages -- the work is laid out in
2 Pages 19 through 30 of the committee's -- of the
3 research study.

4 Q. So, if we look at Chapter Four of this outline, it's
5 a number of those options that grew out of the
6 research?

7 A. Yes, they support the basic premise that was
8 undertaken by the staff and by the committee, which
9 was that there is no single way to determine what the
10 cost per student of the -- of an accountable study,
11 or of a study of a regular education program was.
12 There is some characterizations, at one point in the
13 committee's process, that there were some that wished
14 that we could produce out of this the single magic
15 number which would stand for all time as the cost to
16 the regular education program in 1985-'86. And the
17 fact of the matter was, is that single magic number
18 really didn't exist. And so, what it was determined
19 to do was to take -- undertake a series of studies
20 with a series of different definitions and
21 approaches, in order to come up with various
22 alternative costs. To lay those out and then to have
23 those available for the committee, or for the State
24 Board of Education, or for the Legislature, to choose
25 from.

1 Q. Okay. So there was an intentional decision to try
2 some different approaches because of a belief that
3 there was no one magic approach?

4 A. Very much so. The history of these kinds of studies,
5 both in Texas and in other states, clearly suggests
6 that these type of studies have all of the basic
7 problems of an average, with a great deal of range to
8 it. That on the one hand, certainly one can come up
9 with an average cost and on the other hand, that
10 average cost is not indicative that that's the only
11 cost level at which a particular program can be
12 operated. And in this case, we're looking at a
13 program which met -- the programs that met a series
14 of accreditation standards and related kinds of
15 standards, statutory standards, and determining what
16 costs existed in those programs.

17 Q. Okay. Mr. Moak, you just mentioned looking at
18 districts that met certain accreditation standards as
19 part of this study. Did the study look at all school
20 districts in the State of Texas, or was there a
21 winnowing-out process of some sort? Did the study
22 focus on all districts, or just a select number of
23 districts in the state?

24 A. No, the study focused on -- began with all districts
25 and then excluded a -- for a series of reasons, about

1 -- something on the order of the magnitude of 400
2 districts from the calculations, prior to determining
3 the cost levels that existed in those.

4 Q. What was the basis for excluding districts from the
5 study?

6 A. Well, there were several bases. The staff that was
7 associated with the Accountable Cost Committee,
8 worked with the accreditation division, first of all,
9 to determine districts that essentially had -- had
10 had accreditation problems. Not necessarily that
11 they weren't accredited, but they had had
12 accreditation problems.

13 Q. Okay. Let's stop and talk about that for a moment.
14 Is it your understanding that there are a range of
15 accreditation statuses, ranging from fully accredited
16 to accredited advised to accredited warned,
17 eventually resulting in being unaccredited?

18 A. Yes.

19 Q. Do districts frequently get placed on an accredited
20 advised status and that that's not necessarily an
21 indication that they are moving rapidly towards being
22 unaccredited?

23 A. That's correct. But the exclusion went even beyond
24 that.

25 Q. Okay.

1 A. The exclusion included all the districts that were
2 not on full accreditation, but also excluded those
3 districts that had a history of problems associated
4 -- or determined during accreditation visits, even
5 though they had managed to retain full accreditation.

6 Q. So the study excluded every district that had a
7 current accreditation problem, and then also excluded
8 districts that had past histories of having
9 accreditation problems?

10 A. That's correct.

11 Q. Okay.

12 A. And the second exclusion was, that if the district
13 had filed for a waiver for the class size limitation
14 for grades -- 22-to-1 for grades kindergarten, one
15 and two, this was held to be a potential indicator of
16 a problem and so all of those districts were
17 excluded.

18 Q. Okay. So, even if they had a plan on file to resolve
19 that particular problem, that they had applied for a
20 waiver, they were excluded from the study?

21 A. They were excluded.

22 Q. Okay.

23 A. And then thirdly, districts that were -- had
24 statewide testing results in the bottom 16 percent of
25 the districts, effectively, one standard deviation

1 from the mean were excluded.

2 Q. Okay.

3 A. So, there were three major exclusions that deal with
4 that overlapping. But there were three major
5 exclusions that resulted in the elimination of
6 something over 420 districts.

7 Q. Okay. What was the purpose of those exclusions?

8 We've got an exclusion for accreditation problems, an
9 exclusion for facilities of problems, and an
10 exclusion for low test scores. What was the purpose
11 of those exclusions?

12 A. To make sure that the districts that we were working
13 with were districts, to the best of our ability, that
14 met the full accreditation and legal and regulatory
15 requirements of the State Board of Education. And
16 that as a result, that all districts that were
17 involved, did in fact -- that we used no data from a
18 district that was suspect, if you will. That every
19 district that was involved was a district that had
20 been -- was given as clean a bill of health as
21 possible under those standards. And that in coming
22 forward with the recommendations to the board, that
23 we would know that all of our definitions were based
24 upon -- simply put, those districts that had met the
25 standards.

1 Q. So there was a designed decision up front to make
2 sure that the districts that were being looked at met
3 all of these important standards that were built into
4 the study?

5 A. Yes, they met the standards. And because the charge
6 to the State Board of Education, under the statute
7 relating to accountable costs, indicates that the
8 State Board of Education to conduct a study of -- or
9 have a study conducted of the costs of operation of
10 such a quality program -- I mean, of such a program
11 -- of a program that met -- I believe the phrasing
12 in the law is something to the effect of quality
13 programs that meet full accreditation legal and
14 statutory requirements. And so it was the belief of
15 the staff that by these exclusions -- belief of the
16 committee, in my judgment, that by these exclusions,
17 that they were dealing with a set of districts that
18 met that statutory definition.

19 Q. Okay. So, as we walk through and look at the options
20 that were presented here a moment, in all cases, even
21 when we talk about the lower districts within the
22 study, we're talking about districts in all cases
23 that have all accreditation requirements met, that
24 have not asked for a facilities waiver and that don't
25 have low test scores?

1 A. That's correct.

2 Q. Okay. So we're not pulling these numbers down by
3 including districts that are not meeting those
4 standards?

5 A. That's correct.

6 Q. Okay. Mr. Moak, you mentioned a minute ago in
7 discussing generally your understanding of
8 accountable cost studies, is that there is no one
9 magic approach and that therefore, you try a number
10 of different approaches. What were some of the
11 different methodologies, or approaches, that were
12 tried in connection with this particular accountable
13 cost study?

14 A. In terms of these kinds of studies, let me say that
15 first of all, I guess, that a lot of studies do rely
16 on a single approach.

17 Q. Okay. What is your judgment about the value of
18 studies that rely on a single approach?

19 A. Essentially, that they -- they tend to be -- they can
20 well tend to be misleading by not providing a full
21 range of information. Many of them rely on a single
22 approach by simple end of time and the resources
23 required to do studies. Fortunately, in this case,
24 we utilized a series of methodologies that allowed us
25 to have sufficient time to look at multiple

1 approaches and have a sufficient data base to work
2 those from.

3 Q. Mr. Moak, if we look on Page 20 of this particular
4 report, I find a Table 4 that lists a number of
5 different models and then a state average at the
6 bottom. And I find, under the second vertical
7 column, which is headed "Total Expenditures Per Ada,"
8 I note at the bottom of that column, a state average
9 of \$2,414.00. Is this the \$2,414.00 that is the same
10 \$2,414.00 that was reflected back on Table 1 on Page
11 6?

12 A. Yes, it is.

13 Q. Okay. Would you explain the development of that
14 number?

15 A. Well, essentially, what that number did is to look at
16 the average within the 640 districts that we were
17 utilizing on this particular basis, derived a per
18 pupil expenditure based upon information that had
19 come in from a budget survey, which is presented
20 elsewhere in this document, and to inflate that, in
21 turn, to a total expenditure for the regular program.
22 As you can see above that, we've used a methodology
23 that actually looked at 14 different categories of
24 districts in making that determination. Or 14
25 different models, if you will, of individual types of

1 districts. But this was the aggregate level for the
2 state average, the \$2,414.00 number.

3 It had started with a premise of some --
4 inclusive in that number were direct instructional
5 salary costs to some \$1,266.00. And a balance -- a
6 proration as a result of variety of indirect cost
7 factors and related kinds of costs to come up with
8 the equivalent of this overall average.

9 Q. But your models, one through fourteen, are taking
10 these same 640 districts, or sub-sets of that 640
11 districts, and looking at them in different ways?

12 A. Yes, there are sub-sets. There's -- I'm not sure
13 where else, but on Page 97, there's a complete
14 listing of the 14 -- there's a listing of the 14
15 hypothetical model districts, in which, in essence,
16 these were predescribed, these 14 districts were
17 predescribed. And then data was looked at from
18 districts of this type, from the 640, to assist us in
19 determining what the overall costs were.

20 Q. Okay. So if we look at Appendix F on Page 97, that
21 tells us what the groups of districts are that are
22 looked at within the 14 models that are reflected on
23 Table 4 on Page 20?

24 A. That's correct.

25 Q. Okay.

1 A. So the first model, there, which had an expenditure
2 per ADA of \$2,408.00, contrast to the state average
3 of \$2,414.00, represents the data from the districts
4 or calculation based on the data from the districts
5 over 25,000 students.

6 Q. Okay.

7 A. And five of the models -- the first five models were
8 sized based. Then there were models that were a
9 combination of size based and associated with various
10 levels of students qualifying for compensatory
11 education, which comes out as an income measure.
12 There were then two models that were -- 10 and 11 --
13 excuse me, 10, 11, 12 and 13, that were a combination
14 of wealth in size based. And then there were --
15 model 14 represented the top 25 percent of the
16 districts on their test scores for seventh grade.

17 Q. Okay. So we looked at size, then we looked at size
18 in combination with comp. ed., then we looked at size
19 in connection with wealth, and then finally in model
20 14, looked at size -- I'm sorry, looked at test
21 scores?

22 A. That's correct. Not all of the combinations that
23 were possible were looked at, but there were certain
24 size and wealth. As an example, certain size and
25 wealth combinations looked at, only for districts

- 1 under 1,600.
- 2 Q. Okay. And in all of these studies, again, we're
3 looking at districts that don't have any
4 accreditation problems, that don't have any
5 facilities waivers and that don't have unusually low
6 test scores?
- 7 A. That's correct.
- 8 Q. Okay. Well, if we go back to Page 20 and look down
9 that second column, in terms of total expenditures
10 per ADA, where we find at the bottom the state
11 average of \$2,414.00. Just looking down the column,
12 I note a very wide range in the numbers that are
13 generated by the various models. If I'm not
14 mistaken, I find a low of \$1,825.00 for model six, on
15 up to a high of \$3,948.00 for model twelve. Am I
16 reading that table correctly?
- 17 A. That's correct.
- 18 Q. Okay. How do you explain the wide range, in terms of
19 expenditures, that are reflected on this particular
20 table?
- 21 A. Well, I don't know necessarily -- say, first of all,
22 I don't necessarily seek to explain it.
- 23 Q. Okay.
- 24 A. The study was to look at costs within those areas --
- 25 Q. Okay.

1 A. -- and not to seek to look at why they were
2 different, between them.

3 Q. Okay. Let's stop and talk about that for a moment.
4 So the committee study simply looked at levels of
5 expenditure. It didn't necessarily look at what
6 different districts were spending money on?

7 A. That's correct.

8 Q. Okay.

9 A. Now, in an additional study that I presume we'll go
10 through in a moment, there's some definition given as
11 to, on a different basis, as to what some districts
12 were spending money on. But in this case, we're
13 looking at a predetermined list of different types
14 and determining what kind of information we derive
15 from that. In case of model six, with an \$1,825.00
16 level, that happened to represent districts between
17 5,000 and 25,000, with 40 percent or more of the
18 students from low income. The high order level that
19 you mentioned, model twelve, was districts under 500
20 students with wealth greater than the state average,
21 effectively. So, these numbers were not discounted,
22 in any fashion, for the Price Differential Index, or
23 the small schools formula, or student composition.
24 And so we note that some of the variations that occur
25 here, occur as a result of that, the failure to

1 discount.

2 Q. Okay.

3 MR. KAUFFMAN: Excuse me. Do these numbers
4 include debt service expenditures?

5 THE WITNESS: The numbers are excluding
6 debt service, transportation, co-curricular
7 activities, food services and community services, are
8 exclusions laid out in the first paragraph on Page
9 19.

10 BY MR. THOMPSON:

11 Q. Mr. Moak, as you look through -- I note a number of
12 tables here, running from Table 4, which we've been
13 discussing, through the remainder of this particular
14 chapter of the report. If the \$2,414.00 number that
15 was reflected in the recommendations of the advisory
16 committee was simply an average of total expenditures
17 within these 640 districts, I would ask you to walk
18 us through some of the different approaches that were
19 considered, some of the different methodologies that
20 were looked at and where the methodologies result in
21 different numbers that you believe are supported by
22 the research. If you would point that out, I would
23 ask you to do that.

24 A. Well, the \$2,414.00 represents one methodology to
25 come up with an average. There's another methodology

1 that will, as we page through -- that for instance,
2 came up with an average using the same districts of
3 \$2,466.00. So there was a little bit of swing there.

4 Greater swing, though, was shown in terms of
5 looking at data that suggested from two different
6 standpoints, that an accredited program that met all
7 of the statutory requirements could be operated at
8 substantially less than that. That in fact, these
9 \$2,414.00, \$2,466.00 numbers, which represented the
10 overall average for these 640 districts, were higher
11 than the levels that might be required to actually
12 operate a minimum program. A minimum program that
13 still met all of the standards that the statutes and
14 the regulations laid out.

15 Q. Okay. Let me make sure I understand that. If that
16 number is by definition, an average, then that means
17 that there must be districts that are below that
18 level that also are meeting all accreditation
19 requirements, that don't have facilities waivers, and
20 that have good test scores?

21 A. That's one part of it.

22 Q. Okay.

23 A. There are certainly a number of districts that are
24 below that average. There also is the question of,
25 do you have to spend the \$2,414.00? The \$2,414.00

1 number, the \$2,466.00 number were based upon what
2 districts were actually spending that met the
3 standards. We don't have an accounting system that
4 says, "What do you spend per standard?" So it was
5 just a representation of what the districts that met
6 standards were spending. If they were spending money
7 for a 20-to-1 pupil/teacher ratio, for instance,
8 instead of a 22-to-1 pupil/teacher ratio, that wasn't
9 reported in the accounting system as we were picking
10 up the data.

11 Q. Okay.

12 A. On Page 20, there are two representations of minimum
13 costs not based on -- well, two basic minimum costs
14 under the heading there, "Minimum Program." There's
15 an expenditures per ADA, option one, in which the
16 state average is \$1,958.00, and expenditures per ADA,
17 option two, in which the state average is \$1,986.00.

18 Now, these were based upon staffing patterns
19 that the committee reviewed and worked on. There was
20 one variation in the staffing pattern which had to do
21 with how to treat secondary English teachers and what
22 kind of pupil load to associate with those. And that
23 accounts for the differences between option one and
24 option two. But essentially, the committee went
25 through, with the staff, a very detailed examination

1 of -- given certain size assumptions and given
2 various campus assumptions, what kind of teaching
3 staff level was appropriate to be able to offer a
4 program that met the curriculum requirements and the
5 statutory requirements of TEA. Excuse me, the
6 statutory requirements of the Legislature and the
7 curricular requirements of the State Board.

8 Q. Okay.

9 A. In which, under the statewide curriculum, we have
10 offered a relatively standardized program of what
11 school districts should offer to every student in
12 their -- what every school district should be
13 offering to students in terms of availability. So,
14 the committee went through and made determinations of
15 how many teachers would be involved to do that. And
16 then looked at overhead costs to get from the cost of
17 teachers to total costs. And came to the conclusion
18 that per -- essentially, slightly less than \$2,000.00
19 per student. One could offer, at this basic staffing
20 level, this basic operation, a regular education
21 program that met the standards that were involved.

22 Q. Okay.

23 A. And again, this was to the extent that this used
24 actual salary information, this used actual salary
25 information from those 640 districts that were --

1 that were still within the study.

2 Q. Okay. Let me make sure I understand that. There's
3 been some discussion in this trial about different
4 approaches that were used by the accountable cost
5 study. One approach is certainly to analyze actual
6 expenditures and to group districts in different
7 ways, or look at averages. And another approach
8 would certainly be to construct hypothetical, or
9 model districts, or something of that regard. Is
10 that a little bit of what we are seeing under that
11 minimum program, over on the right-hand side of Page
12 20, where the committee members looked at what their
13 professional judgments indicated were appropriate
14 staffing patterns?

15 A. Yes. This is one place where the committee was,
16 perhaps, of the greatest use to the staff.

17 Q. Okay.

18 A. That the committee members who had, of course, a wide
19 amount of background and school experience, looked at
20 the staffing ratios, modified them, made
21 recommendations, made changes and came out with this
22 being the appropriate --

23 Q. Okay.

24 A. -- staffing level, to meet the basic standards that
25 were in rule and statute.

- 1 Q. Okay. So when the committee, itself, which included
2 Dr. Hooker and Dr. Walker and other individuals, used
3 their professional judgment and made some conclusions
4 about appropriate staffing patterns, they actually
5 came up with numbers that are lower than current
6 average expenditures, again, within these 640
7 districts?
- 8 A. That's correct.
- 9 Q. Okay.
- 10 A. Table 5 shows some slightly different minimum program
11 numbers. It shows the same current program numbers
12 as Table 4. Table 5, though, is based upon
13 application of a class size limitation through the
14 fourth grade, rather than limited to the second
15 grade, which was true in 1985-'86. So this raised
16 the numbers from slightly under \$2,000.00 to slightly
17 over \$2,000.00.
- 18 Q. Okay. But the main difference between those two
19 tables is the inclusion of the 22-to-1 class size
20 limitation for grades three and four?
- 21 A. That is the difference.
- 22 Q. Okay.
- 23 A. Table 6, on Page 23, laid out a different approach,
24 in which we took the 640 districts and looked at them
25 in terms of -- statistically, effectively, how they

1 clustered amongst various characteristics. And we
2 came out with five clusters. A low wealth, high tax
3 effort was cluster one. Cluster two was low wealth
4 and low tax effort. Cluster three was somewhat
5 intermediate on all values. Cluster four tended to
6 be higher wealth and high tax effort. And cluster
7 five was high wealth and low tax effort. And then
8 came out with the state average, again, based on the
9 640 districts.

10 And so, if you go to the far right-hand column,
11 the \$2,466.00 number for state average is shown. And
12 what this table shows is a series of the factors that
13 might be involved in that, showing several different
14 variables. Variables going across the page, the
15 number of districts that were in each cluster, the
16 discount factor, which is for the proportion of total
17 expenditures for instruction which go to regular
18 education, the average teachers' salary, a
19 standardized per pupil cost, which was a cost that
20 was derived by the application of the small school
21 formula and the Price Differential Index to their
22 total costs. And then, several categories of
23 estimated expenditure, payroll costs, total
24 instructional costs, instructional related services,
25 pupil services, general administration and plant

1 services. All this excluding debt service and all
2 this excluding food service, co-curricular activities
3 and transportation.

4 Q. Okay. And if we look over on the right-hand side of
5 that page, under column heading five, "Total
6 Expenditures," down at the bottom, we see a state
7 average for these 640 districts of \$2,466.00. Is
8 that the origin of the number that you mentioned a
9 little bit earlier as being somewhat analogous to the
10 \$2,414.00 that was ultimately recommended by the
11 advisory committee?

12 A. Yes, the \$2,414.00 number was based on the
13 application of certain kinds of -- well, there were
14 slightly different methodologies used here, that came
15 up with a slightly different answer.

16 Q. Okay.

17 A. But essentially, the \$2,466.00 number and the
18 \$2,414.00 number were expected to come out close.
19 And did, in fact, come out close as being two
20 representations, if you will, of what kinds of
21 average costs are associated with the 640 districts.

22 Q. So those are just two different ways of looking at
23 average costs within this select population?

24 A. That's correct.

25 Q. Okay.

1 A. Table 7 plays out some totals for the data in Table
2 6. It shows the aggregate amounts of dollars that
3 were associated with each one of those categories.

4 Q. Okay.

5 A. Table 8 discusses the budgeted expenditures for
6 regular education in terms of what's identified as
7 quality districts. And the representation as quality
8 districts is one -- was a characterization of the
9 committee. And essentially derived from the fact
10 that their original purpose, or their original charge
11 had included a representation to determine the cost
12 of quality -- a quality education program that met
13 the long-range plan of the State Board of Education
14 in terms of the goals and objectives of the State
15 Board of Education.

16 As I mentioned earlier, the research effort had
17 been considerably curtailed. It was originally
18 designed to go into that, that determination of
19 quality education program costs. And so the
20 committee, in an attempt to -- indicated a strong
21 desire to the staff to attempt to meet this charge in
22 some fashion. And the determination was made to
23 utilize seventh-grade test scores as one methodology
24 for selecting districts that might be of a higher
25 quality level. And then associating the fact that

1 they had high scores with whatever kinds of cost
2 levels were determined. And I want to emphasize that
3 that was not based on a study that said cost and
4 quality were related, but rather, it took a
5 particular set of districts that turned out to be 110
6 districts and indicated that they were -- looked at
7 the cost levels that were there. There was no
8 judgment made within the concept of this study that
9 there was a specific relationship between costs and
10 quality, but rather, for these 110 districts, these
11 were the costs. They were judged to have quality
12 programs and so the committee reported them as such.

13 Q. Okay. So we had an original charge that focused on
14 meeting the long-range plan. And because of lack of
15 funds, the committee wound up looking only at
16 seventh-grade TEAMS scores in terms of determining
17 which districts were quality districts, is that
18 correct?

19 A. That's correct.

20 Q. Okay. And when we look under -- again, on the
21 right-hand side of Table 8, under the column headed
22 "Total Expenditures," and come down to the bottom, we
23 find a state average for the 110 districts included
24 within this pool of \$2,725.00. Is this the origin of
25 that \$2,725.00 number that is reflected on Table 1 on

1 Page 6?

2 A. Yes, it is.

3 Q. Okay.

4 A. And that showed -- if you compare it, for instance,
5 to the \$2,414.00 number, showed that in these
6 districts, there existed a \$311.00 per student higher
7 cost for regular education.

8 Q. Now, that's over the \$2,414.00?

9 A. Right.

10 Q. Okay. But again, let me just make sure I understand
11 this. There was nothing that was part of the study
12 that indicates what those districts were buying for
13 that additional \$300.00?

14 A. That's correct. And it also indicates, if you'll
15 look up the column there, that these districts that
16 were having -- that did have higher scores, had
17 variable costs within these variable clusters. And
18 again, putting some difficulty as to -- in all of
19 these, as to exactly how much faith to put in an
20 average, that the average, by cluster, ranged from
21 \$1,966.00 to \$3,495.00.

22 Q. I was going to ask you about that. If I read this
23 chart correctly, then, there were at least 10
24 districts in the state that met all of the
25 accreditation requirements, had no facilities waiver,

1 and had high test scores, that were meeting that
2 requirement for less than \$2,000.00 a student?

3 A. Well, the 10 districts averaged that.

4 Q. Okay.

5 A. To say that there were at least 10 districts in the
6 state, I can't guarantee that.

7 Q. Okay.

8 A. But they average less than \$2,000.00 per student.

9 Q. Then if you look down that particular column and you
10 come all the way up to cluster five, that seems to be
11 averaging \$3,495.00 for that -- to meet, essentially,
12 the same standard?

13 A. That's correct.

14 Q. Okay. So, even within this group of 110 districts,
15 there was a wide range around that \$2,725.00 number?

16 A. Yes.

17 Q. And these are still unadjusted numbers, at this
18 point, for PDI, small/sparse?

19 A. Yes.

20 Q. Okay.

21 A. They're not adjusted for PDI and small/sparse,
22 although the indications are that even if you made
23 such an adjustment -- look over at standardized per
24 pupil expenditure, you have a number which follows a
25 similar pattern, except for cluster two, which is

1 actually lower than cluster one.

2 Q. Okay.

3 A. And those numbers are standardized for PDI and
4 small/sparse.

5 Q. Okay.

6 A. Turning to Table 10, on Page 27, another
7 representation of cost of a basic educational
8 program. And in this case, out of the 640 districts,
9 the 160 districts with the lowest expenditures per
10 student were chosen, on that last column. Again,
11 these 160 districts met all of the standards, met all
12 of the procedures, effectively, had a clean bill of
13 health with regard to their educational operations as
14 determined by the principles that were being utilized
15 in the study, and they came out with an average cost
16 of \$2,285.00 per student.

17 Q. Okay.

18 A. So what this led to in total was, is that as we
19 presented this to the committee and to the State
20 Board of Education, the study had determined that the
21 current program, on an average basis of these
22 districts, was between \$2,414.00 and \$2,466.00 per
23 student. That the cost of operating a basic program
24 that met all of the standards, was between \$1,958.00
25 per student and \$2,285.00 per student. And that the

1 cost of programs within the higher levels of test
2 scores was \$2,629.00 per student to \$2,725.00 per
3 student. So these were the basic results, along with
4 all of the data relative to the various clusters and
5 models that were utilized. But these were the six
6 basic kinds of cost levels that we derived out of the
7 study.

8 Q. Thank you.

9 THE COURT: Okay. We're going to stop for
10 lunch. We'll be back where we belong in my courtroom
11 at 2:00. See you all at that time, downstairs.

12
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14 (Lunch Recess)
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1 THE COURT: All right, sir.

2 DIRECT EXAMINATION (RESUMED)

3 BY MR. THOMPSON:

4 Q. Mr. Moak, just prior to the noon break, we were
5 looking at Chapter Four of the Accountable Cost
6 Report. And you were explaining the different
7 methodologies and some of the different options that
8 were developed as part of the research and that were
9 presented to the committee for its consideration.

10 And you particularly mentioned several options
11 relating to the current program, to the minimum
12 program, and to a quality program.

13 (Defendants' Exhibit No. 50 marked.)

14 Q. I'm handing you what has been marked as Defendants'
15 Exhibit 50 and I would ask you to identify that,
16 please.

17 A. Consists of two tables which are part of the
18 presentation made by me to the State Board of
19 Education in October, in San Antonio. And the first
20 table presents the various levels of regular program
21 costs per pupil, based on three different definitions
22 and two different fundamental methodologies used in
23 the accountable cost research.

24 The second is a table that was utilized --
25 there is a table from the report, effectively, Table

1 from the report, that relates to the calculations of the committee's recommendation for a basic allotment for 1987-'88 and 1988-'89.

4 Q. Is the second page of this, in fact, just a restatement of Table 1, which appears on Page 6 of the Accountable Cost Report?

7 A. Yes, it is.

8 Q. And Page 1 is a synopsis of some of the information contained in the different models, also drawn from that same report?

11 A. Yes, it is.

12 MR. THOMPSON: Your Honor, at this time, we offer Defendants' Exhibit 50.

14 MR. KAUFFMAN: Your Honor, I guess -- can I ask one or two questions? We probably won't object, if I understand.

17 VOIR DIRE EXAMINATION

18 BY MR. KAUFFMAN:

19 Q. Is method two the recommendations of the Accountable Cost Committee?

21 A. No, method two refers to the --

22 MR. THOMPSON: Excuse me a minute, Mr. Moak. We are going to discuss what each of the numbers on this particular exhibit represents. I'm going to walk Mr. Moak through that and have him

1 explain that.

2 MR. KAUFFMAN: Well, could you explain
3 method one and two, please?

4 I mean, I'll object until I hear the reasons.

5 THE WITNESS: Method two refers to the data
6 that is taken from the methodology using the cluster
7 analysis that is presented on Pages 23 through 28 of
8 the report. Method one relates to the model program
9 approach taken on Pages 20 and 21 of the report.

10 MR. KAUFFMAN: No objection.

11 MR. RICHARDS: Could I have a question?

12 VOIR DIRE EXAMINATION

13 BY MR. RICHARDS:

14 Q. Do I understand, this is something you actually
15 presented to the State Board in October of '86, or is
16 this -- I couldn't --

17 A. This is taken from a presentation, directly from a
18 presentation that was part of a series of
19 transparencies handouts that was given to the State
20 Board when I presented the Accountable Cost Report to
21 them in October of 1986.

22 Q. So the first page of D50 is actually a transparency
23 of -- was a transparency that you used in dealing
24 with the board, is that what you're saying?

25 A. That's correct.

1 MR. RICHARDS: We have no objections.

2 THE COURT: Okay.

3 MR. THOMPSON: Your Honor, we've offered
4 this exhibit, is it admitted?

5 THE COURT: Yes, I don't think there is any
6 objection.

7 MR. GRAY: No objection.

8 THE COURT: So it will be admitted, 50.

9 (Defendants' Exhibit No. 50 admitted.)

10 MR. THOMPSON: Thank you.

11 DIRECT EXAMINATION (RESUMED)

12 BY MR. THOMPSON:

13 Q. First of all, Mr. Moak, would you explain on Page 1
14 of this particular handout the distinction between
15 method one and method two?

16 A. Method one relied upon the model program approach
17 used in the accountable cost research as presented on
18 tabulated results which are presented on Page 20 and
19 21 of the research report. And specifically, it was
20 the information drawn from the state average on total
21 expenditures per ADA for the current program on Page
22 20. And the expenditures per ADA for the minimum
23 program, it was for the -- it was the expenditures
24 per ADA, option one, under the minimum program, state
25 average. And under the quality program, it was model

1 14, total expenditures per ADA. Model 14 relates to
2 districts that scored in the top 25 percent of
3 districts on the TEAMS score for seventh grade for
4 1985-'86.

5 Q. Okay. So if I understand that, if we look down the
6 column of numbers under method one and look at Page
7 20 on the report, the \$2,414.00 number is found at
8 the bottom of column two as the state average for
9 total expenditures, the \$2,629.00 number is right
10 above that and that's the model 14 number. And then
11 the \$1,958.00 number is over under the column
12 entitled Expenditures per ADA Option One, is that
13 correct?

14 A. Yes.

15 Q. Okay. And method two is what?

16 A. Method two takes the data from the cluster analysis
17 presented on Pages 23 through 28. And the current
18 program for method two is the total expenditures per
19 student, \$2,466.00 shown on Page 23 for -- as the per
20 pupil cost for regular education for all districts.
21 For the minimum program, \$2,285.00 is shown for the
22 bottom quartile of the districts that fully met
23 accreditation standards as \$2,285.00 on Page 27,
24 total expenditures state average. And the quality
25 program is shown on Page 25, the total expenditures

1 per student for the districts with TEAMS scores in
2 the top 16 percent of all districts, all districts
3 within the accreditation that were within this group
4 of 640.

5 Q. Okay. So what we have presented on this first page
6 of Exhibit 50 is a range for current program, minimum
7 program and quality program, and showing a high and a
8 low number in each of those three categories, based
9 on two different methods?

10 A. That's correct.

11 Q. Okay. Mr. Moak, you were asked a question this
12 morning, I believe by Mr. Kauffman, regarding whether
13 debt service was included in anyway in the numbers
14 that are included in the accountable cost study?

15 A. Yes.

16 Q. And I want to make sure I fully understand your
17 response on that. Are debt service numbers included
18 in anyway in the numbers in the accountable cost
19 study?

20 A. No, they are not.

21 Q. Should they be included?

22 A. No, they should not.

23 Q. Would you please explain why not?

24 A. Well, the annual data for debt service represents
25 simply the expenditures of the district for a given

1 year for debt service payments. To present them as
2 someone presented them in terms of debt service
3 expenditures per student, for several reasons, bears
4 little -- that would not bear inclusion in this kind
5 of analysis.

6 First of all, the data is not necessarily
7 comparable from one district to another. The
8 conditions under which school districts issued that,
9 may well lead to substantially different debt service
10 expenditure levels from one district to another. One
11 district might issue debt for -- it was repayable
12 within five years. Another district might issue debt
13 that was payable within 15 years. They will show
14 substantially different expenditures per student. It
15 would appear that the district with five years, who
16 is paying off its debt in five years, was spending
17 more per student for its debt than the district that
18 was paying it off for 15 years. In fact, the reverse
19 would be true in the net effect of things. The
20 district that was paying off -- by paying interest
21 costs for 15 years, the second district would have
22 total debt service expenditures, over that time
23 period, of substantially more, assuming they started
24 with the same amount of debt. So it's -- to take
25 1985-'86 data, or any other particular year, and try

1 to say that such a measure is debt service
2 expenditures per student could be included in an
3 analysis of this type, which is designed to get to a
4 standardized amount for an inclusion for a given
5 year, does not follow the logic that you can follow
6 with operating costs where you have annual and
7 recurring costs that are not substantially changeable
8 year to year.

9 The second reason that it really wouldn't be
10 appropriate to include these, is that the purpose of
11 the study was to come down to what kind of
12 information should be utilized by the Legislature in
13 setting the basic allotment. A basic allotment that
14 included debt service would really fail -- it would
15 be kind of a simplistic basis that would fail to take
16 into account the needs of the district for debt
17 service. That effectively, one has to be able to
18 take into account other measures than simply looking
19 at debt service expenditure per student, if you're
20 going to design an equalized program or an annualized
21 debt service expenditure, so they were not included
22 within this report. Certain information on the
23 construction costs were included, but overall debt
24 service costs were not included, nor should they be
25 included.

1 Q. Given the concerns that you have just expressed, do
2 you believe that any method of analysis that simply
3 folded those average debt service amounts into the
4 analysis could produce some incorrect or misleading
5 results?

6 A. I think that would be highly probable, that it would
7 produce incorrect or misleading results.

8 Q. Okay. Mr. Moak, if you would look at the first page
9 of Exhibit 50, which we've just been discussing, I'm
10 going to ask you to look at the six different
11 numbers, or particularly, the four numbers that are
12 displayed there for current and minimum programs.
13 And I'm going to ask you your opinion, what is your
14 opinion regarding which numbers we ought to be
15 looking at for comparative purposes in terms of the
16 ability of the district under the Foundation School
17 Program to meet all accreditation standards and other
18 requirements imposed by law?

19 A. Well, I think the study -- the table, as well, but
20 the study supports the basic conclusion that a
21 district can offer a program which fully meets the
22 accreditation standards and the related kinds of
23 regulatory requirements at an average cost for a
24 regular program student of between \$1,958.00 and
25 \$2,285.00. I would be personally uncomfortable,

1 probably at the low end of that scale, because of
2 some methodological considerations that were used in
3 the study. But I think that as for where the line
4 falls to look at the relationship of the Foundation
5 Program to an adequate program, it would clearly be
6 at the -- at that level of somewhere in the
7 neighborhood of \$2,000.00 to \$2,200.00, or somewhere
8 in that range, at any rate, of \$1,958.00 to
9 \$2,285.00.

10 Q. And certainly, if we look at the top end of that
11 range, at the \$2,285.00 number, we are looking at a
12 group of districts there, are we not, that are
13 meeting all of the accreditation requirements, that
14 don't have any facilities waivers, and that have good
15 test scores?

16 A. That's correct. They certainly don't have bad test
17 scores, they're not in the bottom group. They don't
18 have any history of accreditation problems. They
19 don't have the facilities waiver. They don't have
20 any current accreditation filing against them, and
21 everything -- everything would indicate that they do
22 meet all standards that are available. And that as a
23 result, that that number in particular would
24 certainly be a relevant number to compare the basic
25 Foundation Program against if you had comprehensive

1 information on regular program costs.

2 Q. Okay. Mr. Moak, let's turn to Page 2 of this
3 particular exhibit, which I believe is the same as
4 Table 1, back on Page 6 of the accountable cost
5 study, is that correct?

6 A. Yes, it is.

7 Q. And I note that in the upper left-hand corner, where
8 it says '85-'86 Annual Costs, under the current law
9 column, there's a blank. And that's the same line on
10 which the \$2,414.00 number and the \$2,725.00 numbers
11 are displayed for the '87-'88 year, for both the
12 standard program and the quality program, is that
13 correct?

14 A. Yes.

15 Q. What I would like to ask you and work through with
16 you is, what number should we put in that blank for
17 the '85-'86 year for annual costs that is
18 appropriate, for comparative purposes, to the numbers
19 in the other columns? Should we use the \$2,064.00
20 number that is displayed later down the page under
21 Total Average Annual Cost?

22 A. I don't think that would be the appropriate number to
23 use.

24 Q. Okay. What adjustments should we make to that number
25 to come up with a number for 1985-'86 that is a

1 comparable to the other numbers that are included
2 within the accountable cost study?

3 A. Well, to explain what that number represents as a
4 base and then to talk about where it's deficient.

5 Q. Okay.

6 A. The \$2,064.00 number represents a basic allotment
7 which has been modified for the purposes of
8 Equalization Aid and Price Differential Index and the
9 small school adjustment. What it does not represent
10 are two additional components of the Foundation
11 Program that were included within the \$2,414.00
12 number, effectively. And those would be the
13 components for the educational improvement fund and
14 for the experienced teacher allotment. Both of those
15 would be -- would count information that was within
16 the 1985-'86 annual cost of \$2,414.00, or any of the
17 other cost data that we're referring to.

18 Q. Okay.

19 A. That would have the effect of taking the \$2,064.00,
20 of adding \$120.00 to that for the educational
21 improvement fund, and of adding about \$30.00 to that
22 for the experienced teacher -- excuse me, \$20.00 to
23 that for the experienced teacher allotment, which
24 gives you a \$2,204.00 dollar level at the '85-'86
25 annual cost level.

1 Q. Okay. So if I understand you, if I take that
2 \$2,064.00 number that appears midway down in the
3 first column, and add \$120.00 to it, to reflect the
4 career ladder and education improvement fund, and
5 then add another \$20.00 to it to reflect the
6 experienced teacher allotment, I would get a number
7 at the top of that column, where it says 1985-'86
8 Annual Cost of \$2,204.00?

9 A. That's correct.

10 Q. Okay. And is that number comparable to the \$2,414.00
11 number that appears next to it and then to the
12 \$2,725.00 number that appears over under Quality
13 Program?

14 A. Yes, it is.

15 Q. Okay. Now, should we make the same adjustment to
16 those other columns for standard program and quality
17 program should we also go in and add our career
18 ladder money and the experienced teacher money to
19 that \$2,414.00 and also to the \$2,725.00?

20 A. No, it was already included in those data, based on
21 their original calculations for 1985-'86 budget and
22 personnel budget.

23 Q. How are you sure that it is included within the
24 numbers that are already reflected on those columns?

25 A. Well, the data that was utilized in the calculations

1 of those essentially was a combination of personnel
2 data taken from the professional personnel roster
3 submitted to the Education Agency and budget data
4 submitted to the Education Agency by school
5 districts. The effect of that data is that it
6 included the allotments for -- or included revenue
7 from the educational improvement fund, it included
8 the offerance from -- the revenue from the
9 experienced teacher allotment and that their budgeted
10 expenditure data represented that, also. And so, it
11 would be appropriate to include that, as -- it would
12 not be appropriate to make any further adjustments,
13 because they were already there.

14 Q. Okay. And did you prepare this particular table that
15 appears in the accountable cost study?

16 A. Yes, I prepared it for the Accountable Cost Committee
17 and later utilized it with the State Board of
18 Education.

19 Q. Okay. So if we write in that blank for 1985-'86
20 annual costs, at the top of that left-hand column
21 under Current Law, the amount of \$2,204.00, and then
22 if we were to substitute for the \$2,414.00 number
23 next to it, let's pick the top end of the minimum
24 program that's on Page 1 and put in \$2,285.00, does
25 it appear to you that the current law number is

1 getting pretty close to what would be a minimum
2 program as determined by the accountable cost
3 research?

4 A. Well, as I said a moment ago, I believe that the
5 Foundation Program number, that basic number, is
6 somewhere in that \$2,200.00 range --

7 Q. Okay.

8 A. -- based on the accountable cost research. And this
9 would indicate that the Foundation Program does, in
10 fact, support a \$2,200.00 regular program allotment.

11 Q. Mr. Moak, let's look for just a moment at some of the
12 other recommendations of the accountable cost study
13 that are reflected in the accountable cost study.
14 Particularly, I would like to ask you about the
15 recommendations regarding the weights of the special
16 programs. And let's start with recommendation seven,
17 which is special education. What is your judgment
18 about what the committee determined to be the
19 appropriate weights as compared with what exists in
20 law at present?

21 A. Well, the current Foundation Program utilizes a
22 weight of 3. -- essentially, index utilizes a weight
23 of 3.13 for special education, on the average, across
24 all of the instructional arrangements.

25 The study results came up with a weight of

1 about 3.25 and the -- so, basically, the study
2 results came up with a weight that was fairly close
3 to what is in current law, showing some slight
4 deficiency.

5 The recommendations of the committee were
6 somewhat higher than that. Those recommendations
7 were made in the course of the discussion by the
8 committee of the recommendations, the committee
9 specifically changed certain instructional
10 arrangement of weights that they felt, in their
11 judgment, were too low. And the effect of changing
12 that was to raise the average weight from the study
13 base of about 3.25 up to a level of 3.78.

14 Q. Okay. But at least the original recommendation --
15 I'm sorry, the original study determined an overall
16 weight that was reasonably comparable to existing
17 law?

18 A. That's correct.

19 Q. Okay. Let's talk about vocational education. What
20 does the recommendation of the committee have to tell
21 us about the relationship of that study to current
22 law with regard to vocational education weight?

23 A. Well, the research found that there was a
24 relationship of 1.65 -- a weight of 1.65, overall,
25 for vocational education, contrast to the Foundation

1 Program current weight of 1.45. So there was a
2 relatively substantial deficiency found within that.
3 That did not take into account the fact that the --
4 one of the things that the committee recognized was
5 that the State Board of Education was then engaged in
6 making a major modification in vocational education
7 programs through the adoption of a new vocational
8 education arrangement, in which it was not expected
9 by the State Board of Education that the cost of most
10 of vocational education programs can be substantially
11 above that of regular programs. But the research did
12 reveal, and the committee did utilize, a weight of
13 1.65 and which would show the -- what the State Board
14 -- what the current law has in it, was somewhat low.

15 Q. Okay. Let's talk about recommendation number nine,
16 with regard to compensatory education. What was the
17 determination of the study and of the recommendation
18 of the accountable cost in the area of comp. ed.,
19 vis-a-vis current law?

20 A. The study indicated that the weight of .2, which is
21 currently in law as an add-on weight to the regular
22 education program, was effectively just about what
23 districts were spending, and that it was appropriate
24 to the committee. The research did not reveal that
25 there was any deficiency with the current program.

1 The committee did not make any recommendation for
2 changing.

3 Q. Okay. With regard to recommendation ten for
4 bilingual education, what was the finding of the
5 study and the recommendation of the committee in that
6 particular area?

7 A. The finding of the study was that there was a
8 deficiency in bilingual education. The deficiency
9 was fairly substantial in terms of size. Although in
10 terms of total cost, could not be considered
11 deficient in any major way, because of the size of
12 the program. But the current weight for bilingual
13 education is a .1. The committee -- the research of
14 the staff found that it was a .26 in actual practice.
15 And the committee recommended a .26 to the State
16 Board of Education. As I say, that is a substantial
17 difference in terms of a .1 up to a .26, but it is
18 -- it should be kept in mind that the bilingual
19 education program as currently funded is not a major
20 -- not a major cost element within the Foundation
21 Program.

22 Q. With regard to recommendation number eleven for
23 gifted and talented, what was the finding of the
24 study with regard to that particular program area
25 compared to current law?

1 A. There were several studies done on that. The data
2 that was gathered from school districts indicated
3 something -- that probably indicated a -- there was
4 more of a problem with accounting systems than
5 anything else. I think it came out with an average
6 weight of .45.

7 We had a separate study evaluation of bilingual
8 education ongoing at the time, which was extremely
9 gifted and talented education, which determined that
10 the cost was not more than about 25 percent or a .25.
11 This contrast with the very low level in current law,
12 .034. I believe it's .036 now, but it was .034 in
13 1985-'86. And again, this is only currently an \$8
14 million program. So in context of it having an error
15 of, oh, about eight times, it was a significant
16 amount of money. More significant than was involved
17 in bilingual education. The research, however, did
18 clearly indicate that we had a real problem in terms
19 of school districts accounting for gifted and
20 talented education programs on a basis that was
21 comparable to the Foundation School Program weighting
22 system.

23 Q. And finally, with regard to recommendation twelve,
24 what was the finding of the committee and the study
25 vis-a-vis current law, in that particular area?

1 A. No, the committee -- the study found that school
2 districts would have a substantial cost for
3 implementation of the 22-to-1 ceiling on grades three
4 and four. And the committee incorporated that, both
5 in terms of its -- some adjustments to the basic
6 operating allotment recommendation, as well as that
7 that was on Table 1, as well as recommending a system
8 of state funding for facilities.

9 Q. Mr. Moak, based upon your review of all of the study
10 material that was prepared and presented as part of
11 the Accountable Cost Report, do you have an opinion
12 as to whether the state program as it existed in
13 1985-'86, provided each school district in Texas with
14 a financial opportunity to offer an adequate program?

15 A. Yes, I do.

16 Q. And what is your opinion in that particular regard?

17 A. Well, with regard to the issue of whether it provided
18 each school district a financial opportunity to offer
19 an adequate program, I believe that it offered school
20 districts across the board an adequate -- an
21 opportunity to have an adequate program. The
22 determination of that on an absolute by district
23 basis is something that I wish I could give an
24 opinion on, but I cannot.

25 Q. Okay.

1 A. But it did certainly provide at the average level --
2 at the basic funding level, an opportunity to provide
3 a program that met the basic standards that have been
4 prescribed by the State Board of Education under
5 direction from the Legislature as to what an adequate
6 program was. And so for 1985-'86, a fundamental
7 conclusion is that the overall Foundation Program
8 does provide an opportunity for an adequate
9 educational resource base at full funding of
10 Equalization Aid that's inclusive of full funding of
11 Equalization Aid in terms of maximum tax effort. I
12 do not have the opinion that it does much more than
13 provide a basic or a Foundation Program level. I
14 have the opinion that it does not.

15 Q. So --

16 A. So we're not very far up the scale. But there is
17 clear evidence that we are substantially above an
18 absolute minimum and that we are at the range of an
19 adequate -- providing the necessary funding for an
20 adequate education program in operational costs.

21 Q. And is that opinion supported by the accountable cost
22 research which we've been reviewing today?

23 A. Yes, I think it's supported by the accountable cost
24 research. It also draws upon a substantial body of
25 other information as to what school district current

1 financial practices are.

2 Q. Thank you.

3 (Defendants' Exhibit Nos. 51-56 marked.)

4 Q. Mr. Moak, I'm going to be handing you a series of
5 printouts and asking you to identify them. The first
6 one is marked as Defendants' Exhibit No. 51. And at
7 the top, it's entitled "Texas Education Agency
8 Program Costs, 1985-'86, Basic Allotment \$1,350.00,
9 Figures Represents Thousands." Would you identify
10 that, please?

11 THE COURT: What number is that?

12 MR. THOMPSON: No. 51, Your Honor.

13 THE COURT: 51.

14 A. This is the first in a series of printouts which were
15 prepared under a study that, in various forms, I've
16 had under my personal direction for the past year or
17 more now, I guess, that address the basic
18 relationship of the general fund of school districts
19 to the Foundation School Program and its related
20 parts.

21 MR. THOMPSON: Your Honor, we offer
22 Defendants' Exhibit 51.

23 THE COURT: Hearing no objection, it will
24 be admitted.

25 MR. THOMPSON: Thank you.

(Defendants' Exhibit No. 51 admitted.)

1
2 Q. Mr. Moak, I'm handing you what has been marked as
3 Defendants' Exhibit 52 and it is entitled "Texas
4 Education Agency Program Costs, 1985-'86, Basic
5 Allotment \$1,350.00, Amounts Per ADA."

6 A. This is the same as 52, except expressed in terms of
7 amounts per student --

8 Q. So this --

9 A. -- in average daily attendance.

10 MR. GRAY: I thought that was 52.

11 MR. THOMPSON: This is 52.

12 THE WITNESS: I'm sorry, 51.

13 MR. GRAY: He said that's the same as 52.

14 THE WITNESS: It's the same as 51.

15 BY MR. THOMPSON:

16 Q. Okay. So it's the same information, simply displayed
17 in per student amounts?

18 A. That's correct.

19 MR. THOMPSON: Your Honor, we offer
20 Defendants' Exhibit 52.

21 THE COURT: All right. It will be
22 admitted.

23 (Defendants' Exhibit No. 52 admitted.)

24 Q. Mr. Moak, I'm now handing you what has been marked as
25 Defendants' Exhibit 53. It is entitled "Texas

1 Education Agency Program Costs, 1985-'86, Basic
2 Allotment \$1,350.00, Categories as Percent of Total
3 Costs."

4 A. This information is, again, based on Exhibit 51 and
5 calculates horizontal percentages of the total costs.

6 Q. Okay. So it's the same information, simply displayed
7 in a different manner?

8 A. That's correct.

9 MR. THOMPSON: Your Honor, we offer
10 Defendants' Exhibit 53.

11 THE COURT: All right. It will be
12 admitted.

13 (Defendants' Exhibit No. 53 admitted.)

14 Q. Mr. Moak, I'm now handing you what has been marked as
15 Defendants' Exhibit 54. It's entitled "Texas
16 Education Agency Revenue Analysis, 1985-'86, Basic
17 Allotment \$1,350.00, Figures Expressed in Thousands."

18 A. This is a printout which displays certain
19 information, essentially relates the state program
20 information to the total general funds -- general
21 funds of the districts by source and revenue. It
22 displays that information by type of district. It
23 does include, in addition to the general fund
24 revenue, calculated revenue for the district. It
25 does include a calculated allocation for textbooks

1 and teacher retirement, labeled state costs.

2 MR. THOMPSON: Your Honor, we now offer
3 Defendants' Exhibit 54.

4 THE COURT: It will be admitted.

5 (Defendants' Exhibit No. 54 admitted.)

6 Q. Mr. Moak, I'm now handing you what is entitled, or
7 what is identified as Defendants' Exhibit 55.

8 THE COURT: Just a minute. Is there going
9 to be any objection to any of this?

10 MR. THOMPSON: I've just got two more, Your
11 Honor, 55 and 56.

12 THE COURT: Is there going to be any
13 objection on any of this?

14 MR. KAUFFMAN: Your Honor, if I could ask
15 just one question on Exhibits 51, 52 and 53, that
16 does not include local revenue outside the Foundation
17 School Program?

18 THE WITNESS: That's correct.

19 THE COURT: Is 55 amounts per ADA?

20 MR. THOMPSON: Yes, sir. That is the one
21 entitled "Amounts per ADA."

22 THE COURT: It will be admitted. Next is
23 Defendants' 56, that's amounts as percent total?

24 MR. THOMPSON: Yes, Your Honor.

25 THE COURT: Any objection?

1 MR. KAUFFMAN: No, Your Honor.

2 THE COURT: It will be admitted. All
3 right.

4 (Defendants' Exhibit Nos. 55 and 56 admitted.)

5 MR. THOMPSON: There's two more that go
6 with this particular set, Your Honor.

7 (Defendants' Exhibit Nos. 57 and 58 marked.)

8 BY MR. THOMPSON:

9 Q. Mr. Moak, I'm now handing you what has been marked as
10 Defendants' Exhibit 57, entitled "Financial Adequacy
11 Analysis, 1985-'86, Technical Descriptions of
12 Variables" and ask you to identify that?

13 THE COURT: Is there going to be any
14 objection to 57?

15 MR. KAUFFMAN: No, Your Honor.

16 MR. GRAY: No, Your Honor.

17 THE COURT: How about 58?

18 MR. GRAY: No, Your Honor.

19 MR. THOMPSON: Thank you.

20 THE COURT: Those two will be admitted,
21 though you may explain those, if you want to.

22 (Defendants' Exhibit Nos. 57 and 58 admitted.)

23 BY MR. THOMPSON:

24 Q. Mr. Moak, would you briefly identify 57 and 58?

25 A. 57 is a description of the variables which are

1 utilized and the formulas which are utilized in the
2 analysis which I performed to have the data that is
3 produced that's in 51 through 56. And 58 is --
4 relates specifically to the definitions of the column
5 headings that are used in Exhibits 51 through 56.

6 Q. If I understand correctly, what we have here are two
7 different sets of definitions. One of them is a
8 highly technical set, and the other one is a little
9 bit more lay language, definition of the headings and
10 the various factors that are included in the
11 printouts that were just admitted?

12 A. That's correct.

13 Q. Okay. Mr. Moak, if you would, turn to Defendants'
14 Exhibit No. 51. First of all, I would ask you to
15 briefly explain what this particular exhibit
16 represents?

17 A. Overall, for a series of groups of districts, this
18 represents the distribution of about \$8 billion of
19 state local shared costs under the Foundation
20 Program. Breaking that down into the state local
21 shares of the basic Foundation Program, the state and
22 local share of the equalization element of the
23 Foundation Program, the state and local share of the
24 equalization transition and experienced teacher
25 elements of the Foundation Program. It shows an

1 aggregate state and local share and total costs.

2 Q. Okay. And just to make sure we have our terms clear,
3 would you please start with the State FSP and go
4 across the headings and tell us what the headings
5 include?

6 A. State FSP is the state aid under the basic elements
7 of the Foundation Program, which are subjective to
8 the local fund assignment process. This would
9 include the support for the regular education --
10 effectively, the state support for the regular
11 education program, the various special programs,
12 transportation, experience -- excuse me, not
13 experience teacher, educational improvement fund,
14 those basic elements.

15 Q. And moving on across to State Equalization and Local
16 Equalization.

17 A. I'm sorry, Local FSP.

18 Q. I'm sorry, Local FSP is the next item. I apologize.

19 A. The Local FSP is what has been referred to as the
20 local fund assignment. It is the local share for
21 each category of districts of that basic Foundation
22 Program that's the state's share of in column one.

23 Q. Okay. Now, moving to State Equalization and Local
24 Equalization, can you explain those two headings
25 together?

1 A. State Equalization and Local Equalization represent
2 the calculated amounts for the state and local shares
3 of the equalization program calculated at 30 percent
4 of the basic Foundation Program.

5 Q. And State Equalization Transition and Experience
6 Teacher and then Local Equalization Transition and
7 Experience Teacher, what are those headings?

8 A. Those represent the state and local shares of the
9 experienced teacher allotment, plus the effective
10 state and local shares of the equalization transition
11 allotment as it was in place in 1985-'86.

12 Q. Okay. And then the column entitled State Share, does
13 that basically represent the sum of columns one,
14 three and five?

15 A. Yes, it does.

16 Q. And the column entitled Local Share, is that
17 essentially the sum of columns two, four and six?

18 A. Yes, it is.

19 Q. And then as Total Cost, the sum of state share and
20 local share?

21 A. Yes, it is.

22 MR. KAUFFMAN: David, can I ask one
23 question?

24 MR. THOMPSON: Yes.

25

VOIR DIRE EXAMINATION

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BY MR. KAUFFMAN:

Q. Mr. Moak, the state equalization and local equalization, does that assume that the districts have the tax rate necessary to achieve maximum equalization, or is that the actual equalization they have?

A. No, it's calculated on the basis of the assumption of the maximum tax rate.

Q. Okay. So that figure would probably be higher than the amount actually sent to the district by the state for the state equalization, is that right?

A. That is correct.

DIRECT EXAMINATION (RESUMED)

BY MR. THOMPSON:

Q. Mr. Moak, let's follow up on that just a moment to make sure that I understand, at least. It's my understanding that the state equalization program works to some extent as an incentive program. As local districts increase their tax efforts up to some level, the state aid that they qualify for also increases, is that correct?

A. Until you get to that level.

Q. Okay.

A. It specifically works as an incentive program, yes.

1 Q. Okay. And then beyond that level, under the statute,
2 there's no additional aid for additional tax
3 increases beyond that point?

4 A. That's correct.

5 Q. Okay. But in this analysis, you have assumed that
6 the districts are making the effort necessary to
7 qualify for their full state money?

8 A. I'm calculating an eligibility, if you will --

9 Q. Okay.

10 A. -- as opposed to calculating the allotment.

11 Q. Okay. So what we find here is what they're eligible
12 for and that may or may not be the same as what
13 they're actually receiving?

14 A. That's correct.

15 Q. Okay. Mr. Moak, in your analysis, which you
16 reflected and which we're going to go through in some
17 detail on these printouts, on this set of exhibits,
18 are you familiar with the student unit concepts that
19 have been discussed in this trial by other witnesses?

20 A. Yes, I'm familiar with concepts utilized similar to
21 that by Mr. Foster and Dr. Verstegen.

22 Q. Okay. And have you reviewed both of those methods of
23 analysis?

24 A. Yes, I have.

25 Q. For purposes of the analysis that we're going to talk

1 about this afternoon, do you use any type of student
2 unit concept, or are we going to be talking just
3 about Refined ADA or something like that?

4 A. We'll just be talking -- we will just be talking
5 about amounts per student in average daily attendance
6 to the extent we're using student counts.

7 Q. Okay. And why have you chosen not to use a student
8 unit concept for purposes of your analysis?

9 A. Well, first of all, one could. I don't think it
10 would change the basic essence of the analysis that
11 I've gone through. So, it is not that a student unit
12 kind of approach is invalid, by any means. The
13 reason that I have chosen not to is that in the
14 critical distributions, especially those involving
15 wealth, it's really not a tremendous -- in any of
16 these analyses, there does not turn out to be a
17 tremendous difference in terms of the student weight,
18 if you will, by type of district as you go down
19 through the wealth groups, either based on numbers of
20 students or in numbers of districts.

21 The second reason is that to -- although I
22 think that the student unit type of analysis is
23 appropriate for adjusting data for an overall
24 statistical analysis test, such as that utilized by
25 Dr. Verstegen, I question its utilization in the --

1 and I have explored it's utilization, applied the
2 individual district data and the production of
3 individual district data. But I really have come to
4 question the validity of being able to present data
5 so precisely as to assume that, at an individual
6 district level, that all of our weightings and all of
7 our factors in the Foundation Program are that
8 precise a unit to discount aggregate level budgets
9 for each individual school district and then to try
10 to display the results. These are factors which are
11 utilized in the distribution of state school aid in
12 order to obtain a more equitable factor -- equitable
13 result, is what essentially the various things -- the
14 elements that are used to calculate these analyses.

15 My analysis of school finance, over time, has
16 indicated there's certainly a good many other factors
17 that work beyond these. And our inability to take
18 those into account suggests that we should use great
19 caution in trying to analyze data and display data by
20 an individual district that is adjusted for these
21 kinds of factors. And so, since some of the data
22 that I was looking at were certainly individual
23 district data and these were groupings of districts
24 that were being presented and because they did not
25 seem to make a -- produce a major different result,

1 one way or the other, I felt that it was both -- that
2 it was unnecessary to use the student unit analysis
3 type of approach, first of all. And secondly, that
4 it was not -- that it served to cloud the picture by
5 necessitating the very detailed kind of calculations
6 that essentially lies behind the student unit
7 analysis -- was presented, somewhat simply, in both
8 Dr. Verstegen's work and Dr. Foster's work.

9 The net effect is that literally thousands of
10 calculations, in some ways, or at least hundreds in
11 the process, I guess, thousands for the state as a
12 whole, underlies this concept of student units. And
13 to justify each one, to state that each one has a
14 base that we want to be able to analyze the data for
15 any individual district, causes me some problem and
16 so I chose not to use it.

17 Q. So when we're looking at districts in the aggregate,
18 and aggregating them for analysis, as we will be
19 doing, you get roughly the same picture by looking at
20 refined average daily attendance as you might looking
21 at some student unit concept? And as I understand
22 what you just said, it's simpler and maybe a little
23 bit more intelligible just to look at ADA?

24 A. Yes, that's correct.

25 Q. Okay. And just to clarify another basic point, Mr.

1 Moak, are you doing your analysis from a revenue
2 perspective or an expenditure perspective?

3 A. Essentially a revenue perspective.

4 Q. Are you aware of other analyses that have used an
5 expenditure approach?

6 A. I'm not aware of anyone which has used a pure
7 expenditure approach, if you're -- I assume you're
8 speaking of analyses that affect this case.

9 Q. Yes, that have been presented in this case.

10 A. I am aware that some of the analyses focused more
11 heavily on expenditures than they did on revenues.

12 Q. Okay. And why did you choose to use a revenue
13 perspective for your analysis?

14 A. Well, as I explained when we were discussing several
15 days ago the information from school district
16 budgets, I have some concern about that information.
17 It is not the same as trying to use information from
18 a final audit report. In fact, it's not even the
19 same as using information from an end of the year
20 expenditure report. It is utilizing information
21 which is calculated at the beginning of the year for
22 budget purposes, really, before the year starts.

23 It is possible to adjust the revenues, insofar
24 as the state revenues are concerned, in particular,
25 on the basis of actual eligibility or what we

1 actually sent school districts. And we have, in
2 analyzing this over time, there is a substantial
3 problem, especially as associated with school
4 district growth rates, in the budgeting of state
5 revenue.

6 In the first year of House Bill 72, when House
7 Bill 72 -- in the extreme case when House Bill 72 was
8 adopted in the summer of 1984, school district
9 budgets adopted that fall, failed to account for
10 between \$150 million and \$200 million of state aid
11 that models indicated would actually come to
12 districts. And so I felt, out of that experience and
13 out of the experience of trying to work in an
14 approach to improve district budgeting, that really,
15 you could much easier adjust a revenue base for the
16 -- you had a much greater likelihood of accurate
17 information and the use of accurate information on a
18 revenue base than you did on an expenditure base.

19 Q. Okay. Just to make sure I understand that. Is it
20 your perception that districts frequently tend to be
21 very conservative on the budgeting in order not to
22 overestimate their -- either their state revenue or
23 their local revenue, is that a fairly common
24 occurrence?

25 A. It's a fairly common occurrence, and especially

1 associated with district growth in numbers of
2 students, that state aid is often budgeted on the
3 basis of last year's students, effectively, rather
4 than taking into account the increased state aid,
5 which would generally flow from increased numbers of
6 students.

7 Q. And has the information for 1985-'86 been through
8 final audit, at this point?

9 A. No, we have received -- in the world of exceptions in
10 school finances, I started to say we received all of
11 the school district audit reports. We're supposed to
12 have received all of the school district audit
13 reports, and probably have received most of them and
14 are in the process of entering them into our
15 information system, but they have not been fully
16 entered yet, or edited.

17 Q. So, at least for '85-'86 analysis, is it your opinion
18 that a revenue perspective provides us with a little
19 bit more accurate information than an expenditure
20 perspective?

21 A. Well, it does, especially because we're given the
22 ability to adjust a revenue perspective. As I say,
23 the prior analyses -- I don't know of any analysis
24 which has relied solely on the basis of expenditures
25 which has been presented. So it's not inconsistent.

1 I simply chose to utilize a revenue base after
2 exploring both a revenue and an expenditure base in
3 my overall research, came to the conclusion that the
4 revenue base was theoretically a sounder approach to
5 utilize.

6 Q. Okay. Just so we have the ground rules straight,
7 we're going to be talking about refined average daily
8 attendance, and not some student unit concept. And
9 we're going to primarily be talking about revenues of
10 districts and not expenditures of districts?

11 A. That's correct.

12 Q. Okay. Mr. Moak, as I look through Exhibit No. 51,
13 and I note the information that is displayed in a
14 number of different manners, beginning with ADA
15 Groupings down through District Type and Wealth and
16 Tax Rates, et cetera. Are these the standard
17 analyzed categories within which information is
18 routinely analyzed by the Texas Education Agency?

19 A. Yes, they are, with the exception of the last page.

20 Q. Okay. I was going to get to the last page.

21 Is the last page a different method of looking
22 at the information than what you might do in a
23 routine analysis?

24 A. Yes, it's effectively an alternative method of
25 examining the wealth data.

1 Q. What is this perspective? What have you done with
2 the data here that is different from what we've done
3 in some of the previous analyzed categories?

4 A. The data, as presented on the first page, is based on
5 ten equal groupings of districts -- ten groupings of
6 districts with equal numbers of districts. On this
7 last page, we have utilized the -- a distribution
8 based on five percent -- the top five percent and the
9 bottom five percent of students, or as close as one
10 can come to that. And then three groups of 30
11 percent in the middle. So, effectively, we have a
12 new addition to analyze that we've done standardly in
13 this series, which the first group is the 21
14 districts with wealth under \$52,000.00 that have
15 146,000 students. The second group has 432 districts
16 with some 850,000; the third group, 266 districts
17 with 889,000; and the fourth group, 164 districts
18 with 893,000. And the last group, 180 districts with
19 132,000 students.

20 The numbers are not exactly five percent, 30,
21 30, 30 and five, because the problems of the
22 districts lying at individual breaking points and the
23 need to -- as has been discovered by others that have
24 looked into this same area, the need to make
25 adjustments for that.

1 Q. And if I understand that, you did not define a
2 district that was at one of your break points?

3 A. No.

4 Q. You went ahead and included the district all in one
5 category or the other?

6 A. That's correct.

7 Q. Okay. And this information, on this last page, takes
8 some of the analyzed information and looks at it
9 based upon the percentages of students, not based
10 upon analyzing districts on some other basis?

11 A. That's correct.

12 Q. Okay. So if I understand it, let me read across a
13 line or two. You have 21 districts under \$51,956.00
14 in wealth per student. And those 21 districts
15 contain approximately five percent of the students,
16 or 146,269. They have an average wealth of
17 \$45,199.00 per student and aggregate FSP -- state FSP
18 of \$295,145,000.00 and an aggregate local FSP of
19 \$20,804,000.00?

20 A. That's correct.

21 Q. Okay.

22 A. And then you keep reading that same line down on the
23 next series --

24 Q. Okay.

25 A. -- for those same 21 districts.

1 Q. Okay. Oh, I see, okay. And so then if we were to
2 come down to the next set of information, we pick up
3 21 again, under Number of Districts, that's that same
4 21 districts. And if we come across, those districts
5 are receiving an aggregate \$76,677,000.00 in state
6 equalization?

7 A. They're eligible --

8 Q. Or they're eligible?

9 A. (Witness nodded head to the affirmative.)

10 Q. Okay. And they are eligible for \$18,108,000.00 of
11 local equalization. They're receiving \$73,000.00 of
12 state equalization transition and experience teacher,
13 and they have local equalization transition and
14 experienced teacher allotment of \$431,000.00, for a
15 combined state share of \$371,894,000.00, a combined
16 local share of \$39,342,000.00, and total costs --
17 total Foundation School Program and related costs of
18 \$411,236,000.00?

19 A. Yes.

20 Q. Okay. Is there anything else about this page that we
21 need to know?

22 A. No, in terms of what it says -- are you asking me to
23 analyze it, or are you just asking if there's --

24 Q. Well, I'm asking you to analyze it in terms of what
25 the information portrays.

1 A. Well, I do draw several conclusions from data such as
2 this.

3 Q. Okay.

4 A. But --

5 Q. Okay.

6 A. -- in terms of what the page basically shows, you
7 fairly described the basic information.

8 Q. Okay. And we could take the same -- or we could take
9 the 180 districts that make up the top five percent
10 of students, and we could walk through that same
11 method of looking at those districts and see that
12 they have a state share ultimately of \$78,798,000.00
13 and a local share of \$326,333,000.00?

14 A. Yes.

15 Q. Okay. And total costs that are roughly the same as
16 for the bottom five percent, of \$405,131,000.00?

17 MR. RICHARDS: Those are FSP costs. I
18 think he's understands. He's using them.

19 THE WITNESS: Yes, those are FSP costs.

20 BY MR. THOMPSON:

21 Q. The total FSP costs as presented here are roughly
22 equivalent to the bottom five percent?

23 A. Yes.

24 Q. Okay. Mr. Moak, if we could turn to Exhibit 52.
25 What does this information represent?

1 A. Oh, this is the same information as on Exhibit 51.
2 It is expressed in terms of amounts per student. It
3 again displays basic Foundation Program, state and
4 local equalization eligibility, state and local
5 transition, and experience teacher, state and local.
6 And then by various groupings of districts, including
7 the modified wealth grouping that we've just
8 discussed, shown on the last page.

9 Q. Okay. Let's look at that particular page, again.

10 So this takes the information that we were just
11 talking about that was aggregate information and
12 looks at it in per student terms?

13 A. Yes.

14 Q. Okay. So, again, when we have 21 districts under
15 \$51,956.00, that's the same 21 districts, and they
16 contain the five percent of the Refined ADA in the
17 state, with the same \$45,199.00 in property value per
18 student?

19 A. That's correct.

20 Q. Okay. And those students in that category have a
21 state FSP of \$2,018.00 and a local FSP of \$142.00?

22 A. Yes.

23 Q. And if we could just look down, that contrasts with
24 the top five percent that have a state FSP of \$537.00
25 and a local FSP of \$1,553.00?

1 A. Yes.

2 Q. Okay. And those students in that bottom five percent
3 have state equalization -- or eligible for state
4 equalization aid in the amount of \$524.00 per student
5 and local equalization aid of \$124.00 per student?
6 And coming across, they are ineligible, I presume,
7 for a state share of \$2,543.00 per student and a
8 local share of \$269.00 per student?

9 A. That's correct.

10 Q. Okay. For a total program cost of \$2,812.00?

11 A. Yes.

12 Q. Okay.

13 MR. GRAY: Again, this is the FSP cost, the
14 small box?

15 MR. THOMPSON: These are FSP costs. And
16 it's a bigger box that you all may have portrayed it
17 as bigger.

18 MR. GRAY: But using my terminology, it's
19 the small box or the big box, right?

20 MR. THOMPSON: It's the box that doesn't
21 encompass the universe.

22 MR. O'HANLON: It's the smaller of the two
23 boxes.

24 MR. KAUFFMAN: We'll except that as a
25 stipulation.

1 BY MR. THOMPSON:

2 Q. Okay. Mr. Moak, if you would look at Defendants'
3 Exhibit 53. And I would ask you, what does this
4 particular exhibit represent?

5 A. Again, we're dealing in the same set of basic
6 information. This time it's addressed in terms of
7 percentages of the total Foundation Program costs in
8 the small box. The smaller of the two boxes, smaller
9 sized shoe, showing the percentage that at each
10 element is of that total costs, state and local.

11 Q. Okay.

12 A. And again, for the same groupings of districts.

13 Q. Let's just look at a couple of these categories to
14 make sure I understand that. These are all now in
15 percentage terms?

16 A. Yes.

17 Q. Okay. So, if we were to take the wealth category
18 that appears about midway down on Page 1, for
19 example, for the 106 districts that are under
20 \$87,371.00 per ADA in wealth, the state FSP is 70.04
21 percent?

22 A. Yes.

23 Q. Is that 70.04 percent of what is total costs?

24 A. Yes. If you go over to the far right-hand column,
25 that's \$959,340,641.00.

- 1 Q. Okay.
- 2 A. Which was the same number utilized in Exhibit 51 as
3 total program costs.
- 4 Q. Okay. But if we were to take that 70.04 percent
5 which is the state FSP, add to it the 17.40 percent
6 which is the state equalization aid, and add to that
7 the .11 percent which is state equalization
8 transition and experienced teacher, then we get a
9 total state share for these districts of 87.55
10 percent?
- 11 A. That's correct.
- 12 Q. Okay. And if we were to look at the local
13 percentages in the same way, if we took the local FSP
14 percent of 6.57 percent, the local equalization
15 percent of 5.59 percent, and the local equalization
16 transition and experienced teacher percent of .29
17 percent, we would get a total local share of 12.45
18 percent?
- 19 A. That's correct.
- 20 Q. And just for purposes of comparison within that
21 wealth display, if we were to come down to the bottom
22 -- or to the top 106 districts with wealth over
23 \$630,807.00 per ADA, if we were to look at that
24 information the same way and add up all of the state
25 percentages and all of the local percentages, then

1 over in the far right-hand columns, we have a state
2 share of 11.99 percent and a local share of 88.01
3 percent?

4 A. Yes.

5 Q. So those are roughly the reverse, if you will, of the
6 percentages for the bottom 106 districts?

7 A. Very close.

8 Q. Okay. On Page 3 of this material --

9 A. Yes.

10 Q. -- if we were to look at the -- just again, for
11 purposes of comparison, if we were to look at the
12 comp. ed. percent, which is about halfway down on
13 that page. Then if I understand it, for the 262
14 districts with less than 20 percent of their students
15 eligible for comp. ed., the state FSP is 45 percent,
16 the local FSP is 27.5 percent. And again, if you
17 track those over, you have a total state share of
18 50.29 percent and a total local share of 49.71
19 percent?

20 A. That's correct.

21 Q. And as I look down those columns, if I look at the
22 state share and the local share, and come down those
23 columns, it appears that the state share tends to
24 increase as the percentage of comp. ed. students
25 increases, and the local share tends to decrease as

1 the percentage of comp. ed. students increases, with
2 the exception of the 232 districts that are between
3 40 percent and 60 percent comp. ed., am I reading
4 this chart correctly?

5 A. Yes, the rate of change is most noticeable in the top
6 two groups.

7 Q. Right.

8 A. The 60 percent to 80 percent and the 80 percent and
9 over. But there is a dip there at that 40 to 60
10 percent group, in that progression.

11 Q. And why is that?

12 A. Well, I mean, fundamentally, it's indicating that in
13 that group, there are districts that are wealthy
14 enough, have high enough wealth to change those
15 percentages. To me, much of what it is indicating is
16 really in the first four groups. That there's not a
17 marked relationship between the state comp. ed. or
18 low income percentage and the distribution of state
19 aid, which as in the top two groups, there are. I
20 think specifically, what changes that 40 to 60
21 percent, is that -- I believe both Houston and Dallas
22 are in that particular line.

23 Q. Okay. And both of those two districts, Houston ISD
24 and Dallas ISD, are above state average in wealth, is
25 that correct?

- 1 A. Yes.
- 2 Q. Okay.
- 3 A. Substantially above state wealth.
- 4 Q. Okay. So, if what we're seeing on that one
5 particular line is a Dallas/Houston effect, or
6 something of that nature, then what we see is a
7 gradual increase in state share as comp. ed.
8 percentage increases, until you get up to that 60
9 percent or over, at which point you see a very
10 dramatic increase?
- 11 A. That's correct.
- 12 Q. Okay. And if we could look at your last page again,
13 which is your new analyzed category that looks at the
14 five breaks of five percent of the kids and the 30
15 percent, 30 percent, 30 percent and then the five
16 percent. Again, if we take the state FSP and add to
17 it the state equalization aid, and add to that the
18 state equalization transition and experienced
19 teacher, then for those 21 districts that had the
20 bottom five percent of students in terms of wealth
21 per ADA, state share is in excess of 90 percent?
- 22 A. That's correct.
- 23 Q. And the local share is slightly less than 10 percent?
- 24 A. That's correct.
- 25 Q. Okay. And if we look at the 180 districts on the

1 other end that contain the top five percent of the
2 students in terms of wealth per ADA, once you add up
3 the state costs and the local costs, you have a state
4 share of slightly less than 20 percent and a local
5 share in excess of 80 percent?

6 A. That's correct.

7 Q. Okay. Mr. Moak, one thing that has occurred to me as
8 I see the information displayed this way, I note that
9 it takes 21 districts to make up the bottom five
10 percent of pupils as compared to a 180 districts to
11 make up the top five percent of the pupils, in terms
12 of wealth per student. Does that tell us anything
13 about those top districts, particularly? Are there
14 any conclusions about what we can draw about what
15 those districts are like?

16 A. Well, not only from this information, but from
17 various pieces of information. There are various
18 ways to characterize some set of districts that are
19 at the top end of the wealth scale. In this
20 particular analysis, it shows 180 districts with
21 132,000 students. That's telling you that the
22 average one of those districts, as an example, has
23 less than 750 students in it. We've seen similar
24 information throughout various analyses that have
25 been presented about a grouping of districts at the

1 top end of the wealth scale that are characterized by
2 being small, that are characterized by being
3 extremely wealthy. In this case, they have an
4 average wealth per student of \$870,000.00, which is
5 better than three times the state average. And
6 they're characterized by having a very small amount
7 of local money associated, very small amount of state
8 money associated with either their total budget or
9 their Foundation Program budget, or any other
10 particular measure of financing on which to use.

11 Q. So as a group, are we looking at a relatively large
12 number of relatively small districts, that as a
13 group, have a relatively small amount of state money
14 involved with it?

15 A. Yes.

16 Q. Okay. So if I understand correctly, then what we
17 have in Exhibits 51, 52 and 53 are three different
18 ways of looking at the program cost information for
19 the '85-'86 year?

20 A. That's correct.

21 Q. Okay. Mr. Moak, if you would take up Exhibit No.
22 54. And I believe the next three exhibits are all
23 entitled Revenue Analysis. First of all, what is the
24 distinction between the revenue analysis that we are
25 now going to be looking at and the program costs that

1 we've been looking at in the three previous exhibits?

2 A. Well, the size of the box grew a few billion dollars.

3 Q. Okay.

4 A. Instead of \$8 billion, we're dealing with \$10
5 billion. This represents the general fund of the
6 districts, plus adjusted for -- the general fund of
7 the districts adjusted for underbudgeting with state
8 revenue and failure to raise local revenue and the
9 addition of teacher retirement in textbooks from the
10 state's perspective.

11 Q. Okay. So the piece of the pie that we're looking at
12 now is going to be somewhat larger than what we were
13 looking at with just the program costs?

14 A. Yes.

15 Q. Okay.

16 A. When I say "general fund," this goes back to fund
17 group 10 in the analysis that we went through of the
18 total school district budget. Effectively, what
19 we're trying to do here is isolate fund group 10 from
20 the federal funds, the debt funds, the capital
21 projects funds, and analyze the particular aspects of
22 components of its revenue, marrying it with the --
23 marrying the state program that we've just gone over,
24 with the components of local revenue as found in the
25 general funds of the districts.

1 Q. Okay. So last week, when we were talking about local
2 district budgeting and we talked about the general
3 fund and some of the different funds within the
4 funding structure in which districts operate, what
5 we're taking, now, is that general fund concept that
6 we discussed at that time, and we're going to analyze
7 it in a little more detail?

8 A. That's correct.

9 Q. Okay.

10 Q. Mr. Moak, on Exhibit --

11 MR. RICHARDS: Mr. Thompson, I don't mean
12 to interrupt your thread, could I ask a question to
13 help me follow?

14 MR. THOMPSON: Please do.

15 VOIR DIRE EXAMINATION

16 BY MR. RICHARDS:

17 Q. You're on, I guess, Exhibit 54, is that right?

18 A. Yes.

19 Q. Can you relate it back to your Exhibit 47? That may
20 be too much to ask. In terms of why we have
21 different totals in your -- 46 and 47, which were
22 your earlier -- showing revenues. The differences
23 aren't great, but I can't figure out what's in this
24 one that is not in that one.

25 A. I need to find out what 46 and 47 are.

1 MR. RICHARDS: This is just so we can
2 follow the testimony, Your Honor. There's probably a
3 very simple explanation.

4 MR. THOMPSON: We certainly don't want
5 anybody to get lost.

6 A. 46 and 47 relate to all funds budgeted at the
7 district level, off their official budgets for local
8 revenue, state revenue, total -- federal revenue, and
9 total revenue. So that is an all funds --

10 Q. All funds?

11 A. -- number. It's also as the districts directly
12 reported it.

13 Q. Okay.

14 A. Here we've made the adjustment for the addition of
15 textbooks and teacher retirement, which are not in
16 local district budgets, in order to fully analyze the
17 equivalent of what the general fund of the district
18 would be if we take into account those costs. And
19 we've adjusted for -- effectively low budgeting of
20 state revenue or failure to raise local revenue, so
21 we don't end up with a negative enrichment or a
22 negative kind of concept of having to subtract out
23 state revenue later on.

24 MR. GRAY: You've kept federal funds in?

25 MR. RICHARDS: Federal funds in both of

1 these?

2 THE WITNESS: No, not all federal funds.
3 There are federal funds in both.

4 MR. THOMPSON: Excuse me a minute. We're
5 going to talk in considerable detail about exactly
6 what's included within these.

7 MR. RICHARDS: Thanks very much. I didn't
8 mean to interrupt.

9 DIRECT EXAMINATION (RESUMED)

10 BY MR. THOMPSON:

11 Q. Mr. Moak, if I understand, just to summarize, the
12 primary distinction of what we're going to be looking
13 at in these exhibits and particularly Exhibits No. 46
14 and 47 that we looked at last week, is the
15 distinction between looking at all funds as budgeted
16 by districts and looking particularly at the general
17 fund?

18 A. That's one of the distinctions there.

19 Q. Okay.

20 A. I think the largest other distinction deals with if
21 textbooks and teacher retirement were a district
22 cost, then they would effectively be a general fund
23 cost to the district. The state absorbs those costs
24 and therefore, they do not show up on district books.
25 But to analyze the financial position in which

1 districts find themselves, given the size of those
2 two programs, it's appropriate to include them in the
3 general fund of the district for analysis purposes.

4 Q. Okay. Let's talk about that in a little bit more
5 detail. Let's take our same headings. If you will
6 look at Exhibit No. 54, and start with "State Costs"
7 and describe what is in that particular column?

8 A. The state cost number is a calculated number based on
9 textbooks and teacher retirement, estimated amounts
10 for textbooks and teacher retirement. It was
11 calculated, essentially, as follows:

12 overall, there was \$71 billion worth of textbook
13 financing in 1985-'86. This was distributed on an
14 amount per student to all districts as proxy number
15 for the value of the textbooks received by each
16 school district. The value of those textbooks
17 actually might vary slightly from that exact amount
18 per student, but the -- we feel it's an appropriate
19 adjustment and not one that is misleading to the
20 analysis.

21 With respect to teacher retirement, the
22 calculation was made from a series of studies and
23 work that has been ongoing for some time. But
24 essentially looked at the state -- overall state
25 contribution for teacher retirement and applied this

1 only to those personnel. They essentially took out
2 any teacher retirement that wasn't associated with
3 general fund expenditures, and so -- or general fund
4 payrolls for 1985-'86. So for instance, for
5 personnel paid for from federal funds in the
6 categorical fund area, in which the district
7 specifically owes the money back to the state, in any
8 case, we did not include that specific kind of
9 information. But essentially, we took payrolls and
10 we calculated the state's -- an estimated amount of
11 payrolls for the salaries for each district,
12 calculated the state's share, or calculated a state
13 contribution rate of eight percent, and determined
14 the amount of teacher retirement contribution that --
15 or an estimate amount of teacher retirement
16 contribution that had been made to these districts on
17 behalf of these districts by the state.

18 Q. Okay.

19 A. On behalf of the employees of those districts,
20 really, by the state.

21 Q. What is included within the column headed "State
22 Share?"

23 A. State share is taken from Exhibit -- directly from
24 Exhibit 51. It is the total of the state shares as
25 indicated there, which was the state basic FSP, the

1 state equalization aid, equalization transition and
2 experienced teacher.

3 Q. Okay. So you can get that number, and let's just
4 take, for example, the first grouping of districts is
5 by ADA by size. If we take that first group of six
6 districts with over 50,000 students, and we see a
7 state share number of \$701,590.00, it's actually
8 \$701,590,000.00. If we were to go back over to
9 Exhibit 51 and look under the column on the
10 right-hand side there for state share, we would find
11 the same number?

12 A. That's correct.

13 Q. Okay. And that number is the sum of the local share,
14 state equalization and state equalization transition
15 and experienced teacher?

16 A. That's correct.

17 Q. So you've brought those numbers forward from Exhibit
18 51 into Exhibit 54?

19 A. Yes.

20 Q. Okay. What is "Other State Revenue?"

21 A. We took total state revenue that was budgeted by the
22 district. As we went through the budget process the
23 other day, you'll recall it was per capita annual and
24 foundation revenue, other state revenue through TEA
25 and the state revenue from other organizations. We

1 took the total of those three numbers, compared it to
2 state share. If the difference was positive, we put
3 it in other state revenue. If the difference was
4 negative, we used a -- we simply showed a zero for
5 other state revenue.

6 Q. But you didn't charge anybody with a negative?

7 A. No, we did not.

8 Q. Okay. Under Local Share, is that the same number off
9 of Exhibit No. 51, as for example, of the state
10 share?

11 A. Yes, it is.

12 Q. So you could go to Exhibit 51 and find this number
13 and know how that number was computed?

14 A. Yes.

15 Q. Okay. What is "Local Co-curricular Revenue?"

16 A. From the budget categories we went through the other
17 day, you may recall a local revenue from
18 co-curricular/enterprizing. I described that, I
19 believe at the time, as fee income from parents and
20 students for co-curricular, extra-curricular,
21 curricular activities, student payments for school
22 lunch and related kinds of functions. This is that
23 information brought forward directly, without
24 adjustment.

25 Q. And what is "Other Local Revenue?"

1 A. Other local revenue took total local revenue from the
2 budget of the district. It subtracted the local
3 share, it subtracted local co-curricular revenue and
4 was the residual number, if positive. If the number
5 was not positive, the zero was used. It is the
6 closest determination one can make, really, from a
7 revenue basis. Another title for it would
8 effectively be, in a colloquial sense, it's
9 enrichment revenue above the Foundation Program level
10 from local funds.

11 Q. Okay. What is "Federal Food Revenue?"

12 A. This is federal funds received and deposited in the
13 general funds, or budgeted in the general funds by
14 districts for the operation of their food service
15 programs. It primarily is utilized for the payment
16 of students -- full or partial payment of food
17 expenses for students who are qualified for the free
18 and reduced lunch program.

19 Q. And what is the rationale for including that
20 particular column, or bit of information, in this
21 analysis?

22 A. Well, the attempt here -- not the attempt, the
23 purpose of this analysis is to analyze the general
24 fund of a district. And to analyze that in a way
25 that was brought forward the best information we can

1 to provide a comparable basis of analysis of the
2 general fund obligations of the district. Food
3 service costs are paid from the general fund of a
4 district. It happens that the federal government,
5 for certain types of students, subsidizes those
6 costs. If the federal government does not subsidize
7 the cost, or if there's a cost remaining after the
8 federal subsidy, it is picked up out of either local
9 co-curricular revenue, or effectively out of other
10 local revenue or even local share. It's a local
11 cost. School districts throughout the state run very
12 sizable and considerable food service programs. I
13 don't think it's illegitimate, simply -- in this
14 case, because the federal food revenue is merely a
15 method of financing effectively of a service which is
16 offered statewide. I don't think it's appropriate to
17 exclude it, in looking at the total general fund of
18 the district. So, I've included it in this analysis.

19 Q. Okay. Let me make sure I understand that. Food
20 services are a function that all districts provide,
21 regardless of wealth. And in this particular
22 category, the federal money for that is just one
23 method of revenue. And it's included in the general
24 fund, just like local tax dollars or fees from
25 parents that are also used for that purpose?

1 A. Yes. I don't know that every district in the state
2 offers a food service program.

3 Q. Okay.

4 A. Certainly, most districts do.

5 In terms of what our accounting system does in
6 Texas, we have a fundamental difference between what
7 our school district accounting systems does in Texas
8 and what most school district accounting systems do
9 in other places. And that's made it impossible, in
10 the past, to analyze the data for either local
11 co-curricular revenue or for federal food revenue, as
12 school districts have operated in the past and still
13 a number of school district accounting systems
14 operate around the country.

15 In 1980 -- I believe 1980 or 1981, a change in
16 our accounting system went into effect that declared
17 food service operations, as well as co-curricular
18 operations, to be basic general fund activities of
19 the district. And the revenues were effectively
20 declared to be, by that action, as non-categorical
21 and as eligible for deposit in the general fund of
22 the district to recognize the overall general
23 purposes of the district.

24 One can approach this in several ways, but I
25 feel it's best to approach it from the point of view

1 of let's look at the total general fund operations in
2 the district. What that -- knowing that that
3 supports a variety of different activities. Knowing
4 that there's a lot of variation, not only among food
5 service, but among many other areas. A variety of
6 different activities that school districts support
7 with their general fund revenue.

8 Q. So, in order to get a fair picture or a comparable
9 figure on the general fund revenue between districts,
10 you believe it's important to include this federal
11 food revenue?

12 A. Yes, I do.

13 Q. Okay. What is Federal Education Revenue, the next
14 column over?

15 A. This is rather a minor amount of revenue, you see \$37
16 million total. This essentially is other direct
17 federal -- other revenue received by districts
18 directly into their general fund. It would be most
19 typically categorized by what is known as impact aid
20 revenue, the revenue that flows to school districts
21 specifically impacted by military or other federal
22 activities. It may have some minor other amounts of
23 money that aren't specifically budgeted, but
24 essentially, again, it's money that's received by the
25 district in their general fund and it's subject only

1 to their general budget. And it is not a categorical
2 or separate program.

3 Q. So this is not money that the federal government
4 places any particular strings or controls over, it's
5 part of the general fund available for spending as
6 the district chooses?

7 A. That's correct.

8 Q. Okay. And if you total all of these columns up, then
9 total revenue is simply a sum of all of the previous
10 columns?

11 A. For the purposes of this analysis, it gives us an
12 adjusted general revenue total amount --

13 Q. Okay.

14 A. -- that has been adjusted, primarily for two things.
15 One is to make sure that we get as close as
16 comparable information as possible. And the second
17 is for the textbooks and teacher retirement.

18 Q. All right.

19 A. There have been other adjustments that have been
20 made, as in all of the analyses that we've seen. All
21 of us have been forced, because we're not using final
22 audited revenue or expenditures, to use a variety of
23 different proxies and calculations in the
24 determination of whatever basis we're working from.

25 THE COURT: Stop there for afternoon break.

1 We'll get started up again at 4:00.

2 (Afternoon Recess)

3 DIRECT EXAMINATION (RESUMED)

4 BY MR. THOMPSON:

5 Q. Mr. Moak, if you would look at Exhibit No. 54, again.
6 The heading that is entitled "Other Local Revenue,"
7 which you also, I believe, in passing said that some
8 people might label enrichment, is that correct?

9 A. Yes.

10 Q. Let's talk about that column in a little bit of
11 detail. How do you define what is represented in
12 that particular column?

13 A. Well --

14 Q. On No. 54?

15 MR. GRAY: Other Local Revenue, right?

16 MR. THOMPSON: Looking at Other Local
17 Revenue.

18 A. If you look down, if you will, at State Totals, this
19 reflects a total local contribution composed of local
20 share, local co-curricular revenue, and other local
21 revenue of some \$4,000,000,000.00, almost
22 \$4,500,000,000.00. It's saying of that
23 \$4,500,000,000.00, that \$3.4 billion, or
24 \$3,355,000,000.00 that is used up as a local share.
25 That \$315 million is in co-curricular and

1 enterprizing revenue for food service and
2 co-curricular activities, in particular. And this
3 leaves \$801 million left out of that money. And the
4 reason we've designated it as other local revenue, is
5 that that's exactly what it is. It's other local
6 revenue. It's whatever is left from a total out
7 there to be spent.

8 So the enrichment here, it's enrichment in the
9 sense that it's above the Foundation Program and the
10 local share, and it's above the federal food revenue
11 and the federal education revenue. It is a residual
12 number of local revenues that's there for expenditure
13 above the Foundation Program. Overall, it comprises
14 \$801 million out the \$10 billion in total revenues
15 that's associated. And it has a distribution
16 pattern, as you'll see from this printout and others,
17 has a high association with wealth. But it is the
18 revenue that exists outside of the structure that
19 we've been discussing -- that exists on top of that
20 structure.

21 So, to describe it as enrichment, is that it --
22 those who would describe it as enrichment would
23 describe it as revenue used to enrich or to enlarge
24 upon the Foundation Program. Whether it's solely --
25 whether that's its sole purpose is really unclear, as

1 one goes through all the calculations. It might be --
2 there's a certain amount -- there's a small amount of
3 capital outlay in the general fund, for instance,
4 that might be used for that. What it's used for, I
5 guess is what I'm saying, is that we don't know. We
6 don't know whether it's used for additional teachers,
7 we don't know whether it's used for additional
8 salaries, we don't know whether it's used for -- what
9 component parts it's used for. We simply know that
10 it's a revenue extreme that exists above and beyond
11 the other components of analysis.

12 Secondly, we don't know exactly what it's made
13 up of. I mean, the assumption, the widely held
14 assumption is that most of this is local tax money.
15 And it effectively is. A great deal of it is local
16 tax money. But as we went through the total budget
17 analysis the other day in one of the earlier
18 exhibits, it demonstrated there was a substantial
19 amount of local revenue which was calculated -- put a
20 substantial amount of local revenue which was
21 generated from non-tax sources in that calculation,
22 other than those for fees and enterprizing
23 activities. And so that money enters into this. So,
24 it is a residual number. It is a number which
25 represents the revenue above the system that the

1 state prescribes. And that flows through federal
2 revenue, for whatever purpose the districts chooses
3 to make of it.

4 Q. And if I looked down at the bottom of that column and
5 find it has a state total of \$801 million?

6 A. That's correct.

7 Q. Out of a total revenue of over \$10 billion?

8 A. Yes.

9 Q. So, what we have identified in this particular
10 exhibit as other local revenue, and what someone else
11 might choose to call enrichment, is only
12 approximately eight percent of total revenue,
13 statewide?

14 A. Yes.

15 Q. Okay. Mr. Moak, if you would turn to Exhibit No. 55.
16 Now, what is this exhibit? What does this exhibit
17 represent?

18 A. Well, it is an exhibit based on 54, with the numbers
19 converted from total dollars to amounts per student,
20 showing the patterns by type of district in each one
21 of the elements of state revenue, local revenue and
22 federal revenue within the general funds of the
23 districts.

24 Q. Okay. So, under Total Revenue, if we look down to
25 the very bottom of the first page, the State Total

1 Revenue, that \$10 billion amount works out to roughly
2 \$3,454.00 per ADA?

3 A. That's correct.

4 Q. Okay.

5 Q. And out of that amount, this other local revenue that
6 we've been talking about translates into only \$274.00
7 per ADA?

8 A. That's correct.

9 Q. Okay. And if, for example, if we look on the middle
10 of this page at the wealth groupings of the
11 districts, and we look at the State Share and we see
12 a range of state share from \$2,420.00 per student
13 down to \$375.00 per student, is that the same pattern
14 that was reflected for state share on Exhibit, I
15 believe, 51?

16 A. Yes.

17 Q. Okay. And that tends to show that the state share
18 decreases dramatically as local property value per
19 student increases?

20 A. In terms of state's share, with a minor amount of
21 offset out of state costs.

22 Q. Okay. And Local Share, if we were to look at that
23 particular column, for example, do we see the inverse
24 pattern there that the local share tends to increase
25 as the wealth per ADA increases?

- 1 A. Yes.
- 2 Q. Okay. And then under this column entitled "Other
3 Local Revenue," is there any strong pattern there
4 until you get to the very top end of that category?
- 5 A. Well, essentially, you begin to get some pattern, in
6 the last three groups in particular.
- 7 Q. Okay.
- 8 A. But it has to be measured against the -- will be
9 measured in Exhibit 55 against the percentage that is
10 in total revenue.
- 11 Q. Okay.
- 12 A. Of 56, I'm sorry.
- 13 Q. And again, the very back page of this particular
14 exhibit contains our new analyzed category for the
15 break-outs of five percent of the students and the 30
16 percent, 30 percent, 30 percent and then five percent
17 of the ADA?
- 18 A. Yes.
- 19 Q. Okay. And so, if I read this correctly, then for the
20 five percent of the students that are in the 21
21 poorest districts in the state with a property value
22 on average of \$45,199.00 per student, they have a
23 state share of over \$2,500.00 per student and total
24 revenue of approximately \$3,247.00 per student. And
25 that's compared to the top 180 districts and their

1 five percent of the students that have a state share
2 of \$595.00 per student, a local share of not quite
3 \$2,500.00 per student, and a total revenue of
4 \$4,800.00 per student?

5 A. Yes.

6 Q. Okay.

7 THE COURT: Let me see. Excuse me just a
8 minute, please.

9 EXAMINATION

10 BY THE COURT:

11 Q. That top five percent, it picks up most of the
12 difference there between the 32 and the 48, I guess,
13 with other local revenue?

14 A. Yes.

15 Q. And then the next category, the 164 districts,
16 there's a \$400.00 difference and I guess they pick up
17 most of it in other local revenue?

18 A. Yes.

19 Q. Okay.

20 MR. THOMPSON: Is that all, Your Honor?

21 THE COURT: Yes, sir.

22 MR. KAUFFMAN: Your Honor, excuse me, may
23 we take off our coats?

24 THE COURT: Sure.

25

DIRECT EXAMINATION (RESUMED)

1
2 BY MR. THOMPSON:

3 Q. Mr. Moak, to follow up on Judge Clark's question for
4 just a moment, if we look at that very back page,
5 again, of Exhibit No. 55, and we look at that Total
6 Revenue column and we see a range from \$3,247.00 up
7 to \$4,801.00, is most of the difference in that
8 column explained by the differences in the Other
9 Local Revenue column?

10 A. I'm going to say yes. I might wish to study on that
11 just a little bit, but the -- it would certainly
12 appear that way. I'm a little nervous about --

13 Q. Right.

14 A. -- precisely how much -- whether there are any
15 offsetting factors that are involved as well. But
16 for instance, that there's a \$213.00 other local
17 revenue in the third group down, but there's no
18 appreciable change in the total revenue. So
19 something else is accounting for the lack of
20 variation between it and the two poorest groups. And
21 I would need to take a look at that --

22 Q. Okay.

23 A. -- certainly in the top two groups. And then
24 especially, this recurrent pattern of a set of
25 districts at the top end of the spectrum which have

1 substantial revenue resources in -- far and in excess
2 in addition to other districts, other local revenue
3 is what explains it.

4 Q. Okay.

5 THE COURT: Let me ask one more question.

6 EXAMINATION

7 BY THE COURT:

8 Q. Local co-curricular revenue --

9 A. Yes.

10 Q. That's money that goes into the school district for
11 charges in connection with extra-curricular
12 activities?

13 A. Well, it is --

14 Q. Can you tell me what it is for?

15 A. Okay. It is extra-curricular activities that are
16 called co-curricular activities, which would be the
17 types of activities that might take place as part of
18 the academic program, but not necessarily supports
19 athletic events.

20 Q. Yeah.

21 A. And then probably the largest piece of it is the
22 revenues paid by students or their parents for school
23 lunch. And so all of the fees that are collected in
24 the lunchroom are included in this amount. So, in
25 aggregate, we're talking about \$108.00 per student in

1 the course of a year, on the average that is
2 collected.

3 Q. So that would include school cafeteria revenue?

4 A. That's correct. The school -- under the accounting
5 system that we utilize, the school district cafeteria
6 revenues are not segregated out under those separate
7 funds, but are maintained within the general fund.

8 THE COURT: Thank you.

9 DIRECT EXAMINATION (RESUMED)

10 BY MR. THOMPSON:

11 Q. Mr. Moak, let's move on to Exhibit No. 56. What do
12 the numbers displayed on this particular exhibit
13 represent?

14 A. Well, again, we're dealing with the same set of
15 information that we've been dealing with in the last
16 two printouts. This time by displaying the
17 percentage of total revenue that each one of these
18 sources contribute of the total revenue dollars. So,
19 in the case of the districts over 50,000, for
20 instance the -- well, in the case of the State Total,
21 for instance at the bottom of the page there, the
22 state costs run about six percent and the state share
23 of the state local program runs 46 percent. Other
24 state revenue is negligible. Local share runs about
25 33 percent of the total; local co-curricular, three

1 percent; other local revenue, eight percent; federal
2 food revenue, about 2.6 percent and federal
3 educational revenue, less than one-half of one
4 percent.

5 Q. Okay. And within any of these brackets, we could --
6 or with any of these methods of grouping districts,
7 we could look at that and see the pattern on a
8 percentage basis for how their revenue, their total
9 revenue, is divided by source on a percentage basis?

10 A. That's correct.

11 Q. Okay. So again, if we take the wealth category in
12 the middle of Page 1, if we look at State Share, we
13 see the same pattern we saw on a previous exhibit,
14 where the state share tends to decrease dramatically
15 as the wealth of the district increases?

16 A. Yes.

17 Q. Okay. And for Local Share, we see the converse
18 pattern, where the local share tends to increase as
19 the wealth of the district decreases?

20 A. Up to the next to last group, if you'll note the last
21 three groups --

22 Q. Okay.

23 A. -- there's a marked leveling off of local share at
24 those last three groups, where 45 percent from the
25 third to the last group and then 51 percent, and it

1 naturally dips slightly to 49 percent.

2 Q. Is there a particular reason for that?

3 A. Well, it's really -- as much as anything else, the
4 influence of those very top ends, especially the very
5 top end of that Other Local Revenue column. We're
6 dealing with a percentage of a larger number. And
7 with other local revenue, at this point, we're
8 dealing with -- on that top group, we're dealing with
9 expenditures -- or revenues per student of \$5,559.00
10 compared to \$3,454.00. So the local share simply
11 doesn't grow enough to finally offset that last --

12 Q. Okay.

13 A. -- that last increase in expenditures -- in revenues.

14 Q. Okay. If we look at that Other Local Revenue column,
15 we generally see a pattern of gradual increase until
16 we get to the top three categories, at which point,
17 we see a very rapid rate of increase?

18 A. Yes, especially in the top category.

19 Q. Okay. If we look at that top category, if I'm
20 correct, if we add up the various columns that are
21 state columns, either state -- called State Share or
22 Other State Revenue, we'd find that for this group of
23 districts, the overwhelming majority of their program
24 is either local share or other local revenue?

25 A. That's correct.

1 Q. With very little federal food revenue or federal
2 education revenue money and very little state money
3 flowing into this category?

4 A. Yes. Although interesting enough, under Federal
5 Education Revenue, in terms of the amount per student
6 back on 55, it's actually the largest, with \$46.00
7 per student compared to \$13.00 on the average.

8 Q. Is it the largest or the next to the largest?

9 A. The largest. The second largest is the poorest
10 group.

11 Q. Okay. And if we look on Page 3 of this material,
12 about midway down, the Comp. ed. Percent, and again,
13 this is the same standard analysis that we've looked
14 at previously, is that correct?

15 A. That's correct.

16 Q. Okay. So for the 262 districts with less than 20
17 percent comp. ed. students, if we look across those
18 districts, we see State Costs of 6.2 percent, State
19 Share of 38.25 percent, a Local Share of 37.81
20 percent, and another Local Revenue amount of 12.14
21 percent?

22 A. Yes.

23 Q. As being -- it looks to me as the most significant
24 items and their funding patterns, as you look across
25 those districts?

1 A. Yes.

2 Q. Okay. And then comparing that to the 54 districts
3 that are 80 percent or more comp. ed. students, we
4 see a State Cost of 5.8 percent, a State Share of
5 over 75 percent, and coming across, a Local Share of
6 10.27 percent, another Local Revenue of 1.61 percent?

7 A. Yes.

8 Q. Okay. So, do we see a pattern within this comp. ed.
9 district of an increase in the -- a general increase
10 in the state share, particularly at the top end, as
11 the percentage of comp. ed. students increases and a
12 corresponding decline in the local share,
13 particularly at the top end, as the percentage of
14 comp. ed. students increases?

15 A. It's like other patterns that we've looked at to the
16 extent that there's a significant difference
17 associated with low income. It appears that the
18 pattern is primarily one, at the 60 percent and over
19 low income group, that we have relatively little
20 variation in the ones that are less than 60 percent.

21 Q. Okay. If we look up a column on this, or a method of
22 grouping districts on this particular representation
23 that I find interesting, if we look at the top of
24 that page at the State Property Tax Board Highest
25 Category, what does this method of grouping districts

1 indicate?

2 A. This is among the various property categories which
3 the State Property Tax Board, the SPTB, reports on,
4 is -- they report to us on an evaluation by type of
5 property. For this purpose, we have chosen the
6 largest category of property within each district and
7 classified the district accordingly, and only once.
8 So there are 322 districts that, which the largest
9 single property category is residential. 314, in
10 which the largest category is land; 282, which is the
11 largest category is minerals or oil and gas; 125,
12 which the largest category is one of the business
13 groups.

14 Q. So, as we look at those categories, am I correct,
15 then, that for the districts where either residential
16 or land are the largest category or the highest
17 category, that the state share in those districts is
18 respectively 51 percent and 58.9 percent?

19 A. Yes.

20 Q. And the local shares, respectively, are 29.4 percent
21 and 24.99 percent?

22 A. Yes.

23 Q. And then we seem to see a reverse pattern when we
24 look at the districts where either oil or gas and
25 business property are the highest categories, where

1 the state shares decreased to 33.4 percent and 37.36
2 percent, and the local shares increase to 38.04 and
3 40.97 percent?

4 A. Yes.

5 Q. Okay. So generally, then, as we look around the
6 State of Texas, those districts that tend to be more
7 residential in land will tend to have higher state
8 value -- higher state shares and lower local shares.
9 And you'll tend to see a converse pattern in a
10 district that is predominantly either oil and gas or
11 business property?

12 A. Yes, the -- you'll tend to see that. I'm always
13 leery of relationships I haven't explored too
14 carefully.

15 Q. Okay.

16 A. One of the nice things about this little routine is
17 that it presents you a lot of information that takes
18 you a good deal of time to look at.

19 Q. Right.

20 A. So you don't know the exact -- from this, you know a
21 crude indicator of what the top property value
22 category is, but you don't -- it doesn't give you an
23 analysis, really, in the total makeup of the
24 district, as to whether this is a business district
25 in which, for instance, residential is very close, or

1 is this a business district in which residential is
2 really a relatively meaningless number, so...

3 Q. If we could particularly look at the 282 districts
4 where oil and gas appears to be the highest category --

5 A. Yes.

6 Q. -- if we come across on that line, I note that under
7 Other Local Revenue, those districts tend to have, as
8 a group, 17.19 percent of their total revenues being
9 in this category of Other Local Revenue?

10 A. Yes.

11 Q. Mr. Moak, is that related to something that you
12 discussed this morning and that is, some of the
13 disparity that exists in Texas because of the
14 inclusion of oil and gas properties and local
15 property tax bases?

16 A. Yes, it is. Those districts have 22 percent of the
17 total other-local revenue in the state compared to
18 about 10 percent of the total revenue in the state.

19 Q. Okay. And then if we look at the heading right below
20 that, which is the PDI Level.

21 A. Yes.

22 Q. I note that for the 212 districts with low PDIs, with
23 PDIs under 1.04, those districts as a group, if I
24 read this correctly, 18.71 percent of their revenues
25 fall into this category of Other Local Revenue?

1 A. Yes.

2 Q. Okay. Is there a particular reason for that, that
3 you're aware of?

4 A. No, I noticed that myself. I had some interest in --
5 it was kind of interesting that the lowest price
6 districts at the lowest price levels have the highest
7 total revenues per student. And there certainly is
8 some size association with that. Where the other
9 factors might be, I'm not sure. But I haven't had
10 the opportunity to explore --

11 Q. Okay.

12 A. -- the impact of that other local revenue being so
13 high in the districts with low Price Differential
14 Indexes.

15 Q. Do you regard that number as significant and worth
16 some further investigation?

17 A. Well, in terms of analyzing all of the patterns in
18 school finance, one of the fascinations in this field
19 for me for 20 years has been that there's an unending
20 set of patterns to explore and to discuss. So
21 certainly, it's one worth exploring. I'm not sure
22 what particular relevance it would have to the
23 immediate issue.

24 Q. Okay. And then if we look at the very back page that
25 groups the data that we were looking at by students,

1 again into our five percent of students, 30 percent,
2 30 percent, 30 percent and then five percent of
3 student categories, if I'm reading this correctly,
4 then if we look at the column that is entitled "State
5 Share," we've seen the same pattern we've seen
6 previously where the state share is very high for
7 those districts with the five percent of the students
8 with the lowest property value per student. And then
9 the state share decreases dramatically, as we move
10 toward the five percent of the students that have the
11 highest property value per student?

12 A. Yes, sir.

13 Q. And we see a converse relationship for the Local
14 Share category, where it is very low for the poorest
15 districts and increases dramatically for those
16 districts with the five percent of the students at
17 the top end?

18 A. With again, the addition of the local share, if one
19 is only looking at local shares as opposed to total
20 percent local, which would be three columns there
21 added together --

22 Q. Okay.

23 A. -- it somewhat tops out, rising only in that last
24 group from 46 percent to 51 percent.

25 Q. Okay. And then under Other Local Revenue, we see a

1 pattern, I guess, that we've looked at a little bit
2 before on Page 1 when we were looking at the wealth
3 categories. And that is a gradual increase in the
4 percentage that other local revenue is of the total
5 until you get to the very top districts?

6 A. I essentially contend that it's a pattern that we've
7 been looking at for several weeks.

8 Q. Okay.

9 A. But there is this -- again, that we continue to deal
10 with this set of districts that has a set of
11 characteristics to it which make it, essentially, the
12 exceptions in the world of school finance taxes.

13 Q. So what we keep seeing over and over and over, are a
14 group of districts at the very top end that are just
15 exceptions to the Foundation School Program pattern
16 as it exists for other districts?

17 A. Yes.

18 Q. Okay. And Mr. Moak, Exhibits 57 and 58, these are
19 the definitions that are used in developing the
20 material and the printouts that we just looked at?

21 A. Yes, 57 is a detailed calculation which involves a
22 series of variable names and budgetary terms that go
23 back to the -- that go back to the calculations that
24 were made from the budgets and from our modeling
25 efforts to come up with our various calculations on

1 the state total number of students and the percentage
2 of the state total revenue. This is utilizing
3 revenue as we've been discussing it in the series of
4 printouts we've been going through. Attached to it
5 are -- is a district listing from low to high, total
6 revenue per ADA, and showing the cumulative number of
7 students and the cumulative amount of total revenue
8 with each level of revenue per student.

9 Q. Okay. And this does take the general fund revenue
10 information we've been looking at and simply presents
11 it in a different formula?

12 A. That's correct.

13 MR. THOMPSON: Your Honor, this was
14 provided to the Plaintiffs over the break. At this
15 time, we do offer Defendants' 59.

16 MR. RICHARDS: State's general fund
17 distribution, is that --

18 THE WITNESS: It's the same thing. If you
19 go to Exhibit 54, it's the same thing as Total
20 Revenue on Exhibit 54 that we've been looking at.

21 MR. THOMPSON: But this presents it on a
22 district by district basis?

23 THE WITNESS: Yes.

24 MR. KAUFFMAN: So these figures will add up
25 to the \$10,083,000,000.00 on 54?

1 THE WITNESS: Yes. If you go to the last
2 line of the printout, you have a cumulative total
3 revenue of \$10,083,171,000.00.

4 MR. GRAY: And these figures contain the
5 federal funds that you've described previously?

6 THE WITNESS: Federal education revenue and
7 federal food revenue, yes.

8 MR. RICHARDS: Textbooks --

9 THE WITNESS: Textbooks, teacher
10 retirement. This printout is part of the same
11 series, effectively, drawn from the same data that
12 we've just been discussing.

13 MR. THOMPSON: This printout uses the same
14 definition of general fund revenue that we've looked
15 at in detail on the previous exhibits?

16 THE WITNESS: That's correct.

17 THE COURT: Just a minute. Let me get
18 myself straight on this, please.

19 MR. THOMPSON: Okay.

20 Your Honor, we've offered Exhibit 59. I
21 haven't heard an objection.

22 MR. KAUFFMAN: I'm sorry, Your Honor, I do
23 object until I can ask two questions to make sure
24 I've got this then.

25

VOIR DIRE EXAMINATION

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BY MR. KAUFFMAN:

Q. So Exhibit 59 shows the total revenue, but excludes debt service, is that right?

A. It is the same total revenue that we've been using in the analysis that was on Exhibits 54, 55 and 56.

MR. THOMPSON: I think we've made that clear that what we're presenting here is the same revenue information that we've been talking about, simply in a different manner.

THE WITNESS: Except to the extent that debt service is paid out of the general fund, which is a very small amount of the general fund, which actually adds up in debt service.

MR. KAUFFMAN: One more.

BY MR. KAUFFMAN:

Q. It includes the revenue that a district would have raised if it had the maximum tax rate necessary, the minimum tax rate necessary to get full equalization aid, is that right?

A. That's correct. It's all based on the same premise and the same...

MR. KAUFFMAN: No objection, Your Honor.

MR. RICHARDS: No objection.

THE COURT: Okay. Just a minute.

1 Okay. It will be admitted, 59.

2 MR. THOMPSON: Thank you.

3 (Defendants' Exhibit No. 59 admitted.)

4 (Defendants' Exhibit No. 60 marked.)

5 DIRECT EXAMINATION (RESUMED)

6 BY MR. THOMPSON:

7 Q. Mr. Moak, I'm now handing you what has been marked as
8 Defendants' Exhibit 60. It is entitled "Districts,
9 Students per ADA, Total General Revenue and State
10 Support by Percent, Other Local Revenue Groups."

11 And I would ask you to identify that.

12 A. Okay. This utilizes the same -- again, is drawn from
13 the same data base we've been discussing. And so it
14 -- other local revenue here has the same meaning that
15 other local revenue has had previous to this. What
16 we have done is take the other local revenue as a
17 percentage of the total general fund revenue for each
18 district. We have rank ordered that from the --
19 below of -- no other local revenue, to the high of
20 Spring Creek Independent School District, which shows
21 76 percent other local revenue.

22 Q. Okay.

23 A. And then we have constructed a summary table that
24 shows, by various breaks of percent, other local
25 revenue. Percent dependence on other local revenue,

1 if you will, the number of districts, the percentage
2 of the state total average daily attendance, the
3 percentage of the state -- I mean, of the -- excuse
4 me, the percentage of the state total of general fund
5 revenue as we've been describing it, and the
6 percentage of the state total of state support.
7 State support is defined as state cost plus state
8 share, as we have been using it in Exhibits 55 and
9 elsewhere. I guess it's more relevant to Exhibit 56.

10 So on 56, we saw that Other Local Revenue was
11 7.95 percent of total. This effectively provides the
12 distribution by that percentage from 340 districts
13 with no other local revenue, to the 89 districts with
14 33 -- 30 percent -- in which other revenue is 30
15 percent or more of the total budget.

16 Q. Okay.

17 A. The printout provides cumulative information at each
18 level -- at each percentage point for other local
19 revenue of -- for cumulative students in average
20 daily attendance, cumulative other local revenue,
21 cumulative total revenue and cumulative state share
22 plus state cost, which is the same thing as I mean by
23 state support on the table on the front page.

24 Q. Thank you for that explanation.

25 MR. THOMPSON: Your Honor, at this time, we

1 offer Defendants' Exhibit 60.

2 MR. GRAY: I would like the witness on voir
3 dire for two questions, Your Honor.

4 THE COURT: Okay.

5 VOIR DIRE EXAMINATION

6 BY MR. GRAY:

7 Q. Am I reading this right, Mr. Moak, that there are 340
8 districts who have no other local revenue?

9 A. That's correct.

10 Q. And then whatever -- if I go to the very back page,
11 1,063 minus 340, there's some 700 districts who do
12 have other revenue, is that what this --

13 A. That's one of the conclusions you could draw from
14 this information, yes.

15 Q. Okay. I just wanted to make sure I'm reading it.

16 MR. GRAY: I don't have any objections,
17 Your Honor.

18 THE COURT: Okay. Wait just a minute.

19 EXAMINATION

20 BY THE COURT:

21 Q. Well, to make sure I understand your replies to Mr.
22 Gray. Looking at Other Local Revenue percent --

23 A. Yes

24 Q. -- and percent ADA --

25 A. Yes.

1 Q. You take the first two figures, zero percent and then
2 the next one, .1 - 4.9, then you've got 57 or 58
3 percent from the ADA that has other local revenue and
4 not over 4.9 percent, right?

5 A. That's correct.

6 Q. Well, you must have had a point in preparing this.
7 What was your point in preparing this?

8 A. The point in analyzing this information in this
9 particular case, is that a great deal of the
10 discussion in the case has surrounded the point of
11 the extremes of revenues and the extremes of the
12 amount of enrichment of the Foundation Program. To
13 me, the point of this is contained in the -- the
14 relatively large -- the relatively small amount of
15 the percentage of ADA and of general fund revenue and
16 of the state support that exists in the higher levels
17 of percent, other than local revenue. So when you
18 are up at 15 percent, for instance, or more other
19 local revenue, there are sizable number of districts,
20 some 250 districts or about 25 percent of the
21 districts, but these have 15 percent of the students.
22 They have about less than 20 percent, but close to 20
23 percent of the revenue. And they have a very small
24 amount of the state support on -- 11 percent of the
25 state support. Much of the -- that when we analyze

1 that -- general concept being, that when we have
2 analyzed data, if you look at the aggregate amount of
3 where the students live and where the state's dollars
4 are, where the total general fund dollars are, they
5 are not in these districts with extremes. They --
6 that most students, most dollars are in districts
7 that do not exist at the kind of extreme levels that
8 have been discussed and represented at various times
9 during the case.

10 THE COURT: Any objection to 60?

11 MR. GRAY: No objections, Your Honor.

12 THE COURT: All right. It will be
13 admitted.

14 (Defendants' Exhibit No. 60 admitted.)

15 MR. THOMPSON: Your Honor, we just have one
16 more in this series. And this will be the
17 information that we need to get in at this time.

18 (Defendants' Exhibit No. 61 marked.)

19 DIRECT EXAMINATION (RESUMED)

20 BY MR. THOMPSON:

21 Q. Mr. Moak, I'm now handing you what has been marked as
22 Defendants' Exhibit No. 61. It is titled "Districts,
23 Students per ADA, Total Revenue, State Support by
24 Percent, Low Income Groups." And I would ask you to
25 identify that document.

1 A. One of the major factors in the --

2 THE COURT: Let's do this. This is
3 Defendants' 61?

4 THE WITNESS: Yes.

5 THE COURT: Let's start there in the
6 morning.

7 Are there going to be any objections to 61?

8 MR. RICHARDS: Probably not.

9 MR. GRAY: I doubt it.

10 MR. RICHARDS: We'll tell you first thing
11 in the morning, how's that?

12 MR. THOMPSON: All right.

13 THE COURT: See you all tomorrow morning at
14 9:00.

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(Proceedings recessed

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(until March 3, 1987.

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3-87-190-0V

CAUSE NO. 362,516

C 8353

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL

IN THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

VS.

WILLIAM KIRBY, ET AL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk

By _____ Deputy

STATEMENT OF FACTS

VOLUME XXVII OF XLVI

FILED
OCT 09 87
THIRD COUNTY OF APPEALS
SUSAN K. BAGE, CLERK

TAKEN MARCH 3, 1987

MONICA ROSS WEIDMANN

Official Court Reporter
250th Judicial District Court

Travis County Courthouse • Austin, Texas 78701

CAUSE NO. 362, 516

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

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

APPEARANCES:

MR. ALBERT H. KAUFFMAN and MS. NORMA V. CANTU,
Attorneys at Law, 517 Petroleum Commerce Building,
201 N. St. Mary's Street, San Antonio, Texas 78205.

-and-

MR. PETER ROOS, Attorney at Law, 2111
Missions Street, Room 401, San Francisco, California
94110

-and-

MR. CAMILO PEREZ-BUSTILLO and MR. ROGER RICE,
META, Inc., Attorneys at Law, 7 Story Street,
Cambridge, MA 02138

-and-

MR. RICHARD F. FAJARDO, MALDEF, Attorney at Law,
634 South Spring Street, 11th Floor, Los Angeles,
California 90014

ATTORNEYS FOR THE PLAINTIFFS

J

1 APPEARANCES CONT'D

2 MR. RICHARD E. GRAY III, and MR. STEVE J.
3 MARTIN, with the law firm of GRAY & BECKER,
4 Attorneys at Law, 323 Congress, Suite 300,
Austin, Texas 78701

5 -and-

6 MR. DAVID R. RICHARDS, with the law firm
7 of RICHARDS & DURST, Attorneys at Law, 600 West
8 7th Street, Austin, Texas 78701

9 ATTORNEYS FOR THE PLAINTIFF-INTERVENORS

10 MR. KEVIN THOMAS O'HANLON, Assistant
11 Attorney General, P. O. Box 12548, Austin, Texas
78711-2548

12 -and-

13 MR. DAVID THOMPSON, Office of Legal Services,
14 Texas Education Agency, General Counsel, 1701 N.
Congress, Austin, Texas 78701

15 ATTORNEYS FOR THE DEFENDANTS

16
17 MR. JIM TURNER and MR. TIMOTHY L. HALL,
18 with the law firm of HUGHES & LUCE, Attorneys
at Law, 1500 United Bank Tower, Austin, Texas
78701

19 -and-

20 MR. ROBERT E. LUNA, MR. EARL LUNA, and
21 MS. MARY MILFORD, with the Law Office of EARL
22 LUNA, P.C., 2416 LTV Tower, Dallas, Texas 75201

23 -and-

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

25 -and-

1 APPEARANCES CONT'D

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

7
8
9
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11
12
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17 ATTORNEYS FOR THE DEFENDANT-INTERVENORS

18 BE IT REMEMBERED that on this the 3rd day of March,
19 1987, the foregoing entitled and numbered cause came on
20 for trial before the said Honorable Court, Honorable
21 Harley Clark, Judge Presiding, whereupon the following
22 proceedings were had, to-wit:
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25

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1 MARCH 3, 1987

2 THE COURT: Okay.

3 MR. THOMPSON: Your Honor, I believe when
4 we concluded yesterday afternoon, we had offered
5 Defendants' Exhibit 61 and I don't remember if we had
6 a ruling on it or not.

7 THE COURT: I show it in evidence. It will
8 be admitted.

9 MR. THOMPSON: Okay. Thank you.

10 (Defendants' Exhibit No. 61 admitted.)

11 (Defendants' Exhibit No. 62 marked.)

12 MR. LYNN MOAK

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

15 DIRECT EXAMINATION (CONTINUED)

16 BY MR. THOMPSON:

17 Q. Mr. Moak, I'm now handing you what has been marked as
18 Defendants' Exhibit No. 62 and would ask you to
19 identify this document.

20 A. These are the results of four sets of multiple
21 regression analyses that were performed, comparing a
22 variety of variables to determine their influence on
23 general fund revenue per pupil that has been taken
24 from the same analysis that we were working on
25 yesterday and other local revenue per pupil also

1 taken from the same analysis we were working on
2 yesterday. Data is also presented on correlations
3 between a series of variables that were utilized in
4 that and the definitions -- general definitions of
5 the variables used.

6 MR. THOMPSON: Your Honor, at this time, we
7 offer Defendants' Exhibit 62.

8 MR. KAUFFMAN: Your Honor, I object until I
9 get a chance to look at it. We've never seen this
10 one --

11 THE COURT: Okay.

12 MR. KAUFFMAN: -- and this is pretty
13 complex stuff.

14 THE COURT: Okay.

15 MR. RICHARDS: May I ask you a question
16 about 61 while they're looking at that? Is that all
17 right, David?

18 MR. THOMPSON: Go ahead, Mr. Richards.

19 VOIR DIRE EXAMINATION

20 BY MR. RICHARDS:

21 Q. 61, do I understand correctly, Mr. Moak, this is
22 simply a ranking of percent of low income students --
23 I mean, districts ranked from lowest to highest in
24 terms of the numbers, am I correct in that, Mr. Moak?

25 A. Yes, that's what the ranking is based on is the

1 percentage of low income students in '85-'86, and
2 showing various cumulative data.

3 Q. Cumulus data as it goes along. I know this is a
4 terribly stupid question, but why do we hit 145
5 percent -- or do we?

6 A. Essentially, we're taking accounts from two separate
7 sets of data that aren't matched together. And we're
8 using the numbers that -- one is an ADA number, based
9 on a fall count and the other is a six month long
10 count that -- and essentially, it's saying in those
11 districts which are extremely small districts that
12 you're dealing with there, that there was something
13 about the way we counted the kids for school lunch
14 and the way we counted the kids for average daily
15 attendance that produced a relatively absurd result
16 at that particular point. In general terms, the
17 analysis holds, but it does produce some odd results
18 at the very top end.

19 Q. All right.

20 A. In other words, we don't have counts that are
21 established for the same time period, so we're taking
22 counts for two different time periods and taking one
23 as a percentage of the other. In general terms, it's
24 a good relationship, but in some small districts, as
25 in so much of the Texas school finance data, you get

1 some relatively illogical results.

2 MR. THOMPSON: Thank you, Mr. Moak.

3 BY MR. RICHARDS:

4 Q. Now as I understand it, then, of course I'm looking
5 at Lakeview ISD. We can assume that the percent low
6 income students -- I'm on the back page, now -- is
7 somewhere in the 90 percent, is that even -- am I
8 correct about that?

9 A. That's correct.

10 Q. Okay. Thank you.

11 MR. THOMPSON: Your Honor, we have offered
12 Defendants' Exhibit 62.

13 MR. KAUFFMAN: Your Honor, I have to admit
14 I'm a little confused. I don't quite understand what
15 it means. I mean, I'm certainly willing to stipulate
16 that it's a document that Mr. Moak has drawn from his
17 computer, but I just have never seen it before, and
18 it's fairly complex stuff to understand. I'll be
19 happy to let him go ahead and talk to the witness
20 about it and hold the offer until I've had a chance
21 to review it.

22 THE COURT: Okay. Why don't we talk about
23 it and then you can offer it?

24 MR. THOMPSON: Okay.

25

DIRECT EXAMINATION (RESUMED)

1
2 BY MR. THOMPSON:

3 Q. Mr. Moak, there's been some discussion by previous
4 witnesses in this trial about an analytical technique
5 that's known as multiple regression analysis. Is
6 what we see here on Table 1 of Defendants' Exhibit 62
7 an example of multiple regression analysis?

8 A. It displays the results, or a portion of the full
9 results, from a run -- from a multiple regression
10 analysis involving five so-called independent
11 variables and their relationship to a specific
12 dependent variable that is general fund revenue per
13 ADA.

14 Q. Okay. So in this method of analysis, you pick one
15 thing that you want to compare other things to, and
16 that's your dependent variable. In this case, that
17 is total general fund revenue?

18 A. You pick the variable you're seeking to explain the
19 variations in.

20 Q. Okay. And in this particular table, that dependent
21 variable that we are seeking to explain is total
22 general fund revenue?

23 A. That's correct.

24 Q. And we're going to look at a number of independent
25 variables and those are the ones that are displayed

1 on the left-hand side of the page, and look at their
2 relationship to the dependent variable?

3 A. That's correct.

4 Q. Okay. Mr. Moak, if you would start with the heading
5 that is labeled "Variable." And if we can work across
6 with Variable and Parameter Estimate and T-statistic
7 and Partial R-Square and Percent of Total R-Square
8 and explain what the headings are, so that we all
9 understand what is displayed in the columns. Will
10 you start with the heading labeled "Variable,"
11 please?

12 A. Well, Variable describes the particular independent
13 variables being utilized. It also -- the first
14 variable listed is Intercept, which is a statistical
15 -- the statistical point of origin, if you will, for
16 the equation that's produced by this overall
17 analysis.

18 Parameter Estimate provides the data for an
19 equation, effectively, that could be utilized to
20 predict the -- by this analysis, the general fund
21 revenue with a dependent variable. So we have, for
22 instance, the way one would read that would be that
23 for a given district, you would take 2600.25 as a
24 base value. You would add to that their taxable
25 value per pupil, multiplied by .001848. You would

1 add to that their total effective tax rate,
2 multiplied 1083.532 and so on.

3 The T-statistic has to do with the statistical
4 competence that we have with the particular variable
5 involved. The T-statistics are not comparable to
6 each other, but rather are used as a measure of
7 comparability from one run to another for the same
8 variable.

9 The Partial R-Square defines the percentage of
10 variation, in this analysis, that that particular
11 variable explains of the total variation within the
12 general fund revenue. So, effectively, Taxable
13 Property Value, in this analysis, explains 38.3
14 percent of the variation that we find in total
15 general fund --

16 Q. Okay.

17 A. -- revenue per pupil. When one has already
18 established Taxable Property Value, the addition of
19 Total Effective Tax Rate explains an additional 8.52
20 percent. You'll notice that that comes down to a
21 total of .5164. This means that these variables, in
22 combination, explain 51.6 percent of the variation
23 that we find in general fund revenue.

24 And then the last column distributes that 51.64
25 amongst the various items. So, of the 51.64 percent,

1 74 percent -- or 74 percent of what we can explain
2 about this variation from these variables, is
3 explained by Taxable Property Value per Pupil, 16.5
4 percent Total Effective Tax Rate, and so on.

5 Q. Okay. Under the column on the left-hand side
6 entitled "Variable," let's work down through those
7 variables and make sure that we understand what the
8 five independent variables are that we're looking at
9 in this particular table. Is Taxable Property Value
10 per Pupil the same property value per pupil that
11 we've been looking at in other analyses and that's
12 the State Property Tax Board value --

13 A. Yes, it is.

14 Q. -- divided by its Refined ADA?

15 A. Yes, it is.

16 Q. Okay. Is Total Effective Tax Rate the M & O tax rate
17 plus the I & S tax rate?

18 A. Yes, it is.

19 Q. And it's an effective, or it's a computed rate, it's
20 not the nominal rate that's formally adopted by the
21 district?

22 A. That's correct.

23 Q. Okay. And Percent Low Income Students, is this that
24 same percentage of comp. ed. students that we've
25 looked at in the earlier analyses?

1 A. Yes, it is.

2 Q. Okay. And Refined ADA is just the refined average
3 daily attendance?

4 A. Yes.

5 Q. It's a measure of the size of the district --

6 A. Yes.

7 Q. -- in this particular analysis?

8 A. (Witness nodded head to the affirmative.)

9 Q. Okay. And Price Differential Index is the index that
10 was adopted by the State Board of Education for all
11 districts in the State of Texas?

12 A. Yes.

13 Q. Okay. So, if I understood what you said just a
14 moment ago, if we go over to that heading entitled
15 "Partial R-Square," the next to the last on the
16 right, at the very bottom there's a number, .5164.
17 If I understood you, what you're saying is that these
18 five variables, together, explain 51 percent of the
19 variation in total general fund revenue, is that
20 correct?

21 A. Total general fund revenue per pupil, yes.

22 Q. Okay. So there's still another 49 percent of the
23 variation in general fund revenue per pupil that are
24 not explained by these variables. But these
25 variables, in combination, do account for 51 percent

1 of that variation?

2 A. They're not only not explained by these variables,
3 but there were a long list of additional variables
4 which were originally input which did not come up as
5 significantly adding to this 51.6 percent.

6 Q. Okay. So you've attempted to identify the variables
7 that might account for that other 49 percent?

8 A. Yes.

9 Q. And have not been able to do so?

10 A. That's correct.

11 Q. Okay. Is what we see here with these five
12 independent variables, are these the variables that,
13 in your analysis, in looking at alternatives
14 variables, et cetera, fell out as being the most
15 important variables?

16 A. Yes.

17 Q. Okay. So, any other variables that were looked at in
18 the course of the analysis were less important than
19 the ones we have displayed here?

20 A. That's correct.

21 Q. Okay. Am I --

22 A. Essentially, would not add -- I mean, by less
23 important, meaning that they would not increase that
24 .5164 --

25 Q. Okay.

1 A. -- to a higher level of explanation.

2 Q. Okay. Now, if I understand the relationship between
3 the Partial R-Square column and the Percent of Total
4 R-Square column, and let's take Taxable Property
5 Value per Pupil as an example and I'll ask the
6 question and see if I understand what those numbers
7 represent.

8 We have 100 percent of variation, only 51
9 percent of which is accounted for by these
10 independent variables.

11 A. Yes.

12 Q. 38 percent of that 100 percent is explained by
13 Taxable Property Value per Pupil?

14 A. That's correct, yes.

15 Q. And if we moved over to the next column where it's
16 Percent of Total R-Squared, what is the 74.20, again?

17 A. Effectively, the percent that we can explain, that 38
18 percent is of 51 percent.

19 Q. Okay.

20 A. The percent that we can explain out of this analysis.

21 Q. Okay. So we can explain 38 percent out of 100
22 percent with this particular independent variable,
23 and 74 percent of the 51 percent by this variable?

24 A. That's correct.

25 Q. Okay. So, if we look down the Partial R-Square

- 1 column for just a moment, then on this particular
2 table, it seems to indicate that if we look at the
3 relationship between total general fund revenue per
4 pupil and selected local district characteristics for
5 all districts, it appears that out of the 51 percent
6 that is explainable, Taxable Property Value per Pupil
7 is far and away the most important independent
8 variable in that explanation, is that correct?
- 9 A. That's correct.
- 10 Q. Accounting for 38 percent out of the 51 percent?
- 11 A. Correct.
- 12 Q. And then it drops off significantly, so that Total
13 Effective Tax Rate only explains an additional eight
14 percent?
- 15 A. Correct.
- 16 Q. And Low Income Students explained an additional three
17 percent?
- 18 A. Yes.
- 19 Q. And Refined ADA, an additional 1.2 percent?
- 20 A. Yes.
- 21 Q. And Price Differential Index, an additional one-tenth
22 of a percent?
- 23 A. Correct.
- 24 Q. Okay. Is there any overlap between these independent
25 variables, Mr. Moak? Or in your analysis, have you

1 used statistical techniques to make sure you're not
2 measuring the same thing in different ways?

3 A. Well, to the extent possible. I mean, it's not
4 entirely possible.

5 Q. Okay.

6 A. But the entire point of this kind of analysis, is
7 that as long as you're not using variables which are
8 substantially overlapping, that you could get a --
9 you should get an effective contribution of each
10 variable.

11 Q. Okay.

12 A. We don't see any variation. We don't see anything in
13 particular that tells us that any of these variables
14 should overlap --

15 Q. Okay.

16 A. -- in a meaningful way.

17 Q. Okay. That is something --

18 A. You do look at the correlations which are presented
19 later on between these variables to make sure that
20 you don't have a high correlation between two
21 variables when you're doing this kind of analysis.

22 Q. Okay. That is something you've looked for, and to
23 the extent possible, you've tried to identify and
24 eliminate?

25 A. That's correct.

1 Q. Okay. Mr. Moak, if you would look at Table 2, which
2 is the second page of this exhibit. What is the
3 difference between Table 1 and Table 2?

4 A. On Table 2, as we've discussed a number of times,
5 there are a group of districts whose characteristics
6 are very different from the rest of the state with
7 respect to wealth per pupil and with respect to
8 certain other kinds of characteristics within that.
9 In this case, rather than looking at all 1,064
10 districts, we have looked at 90 percent of the
11 districts, or 884 districts. I'm sorry, we've -- the
12 districts where 95 percent of the students live. So
13 we have excluded 160 districts from the 180 districts
14 from the original analysis, those with property value
15 of more than \$423,565.00. If you recall the tables
16 from yesterday, this was the fifth group in the
17 revenue analysis. I mean, in the distribution of
18 students within wealth groups. So in effect, we're
19 looking at what kind of variation do we get here if
20 we look at the districts where 95 percent of the
21 students live, as opposed to looking at the full 100
22 percent.

23 Q. Okay.

24 A. So this table displays a similar analysis to the one
25 on Table 1, but for the districts where 95 percent of

1 the students live.

2 Q. Okay. So those districts at the very top end, in
3 terms of wealth per pupil that you've talked about as
4 being kind of exceptions to a number of our patterns,
5 and that we identified as having five percent of the
6 students, and we've looked at those separately on a
7 number of previous exhibits. The difference between
8 Table 1 and Table 2, is that Table 1 looks at all
9 districts, and Table 2 excludes those 180 districts
10 with the five percent of students at the top end of
11 the scale in terms of wealth per pupil?

12 A. That's correct.

13 Q. Okay. So, what we get is a picture of how the system
14 works, if you will, for 95 percent of the kids. And
15 the attempt is to eliminate any confusion that may be
16 caused by the inclusion of that group of districts at
17 the top, with their unusual characteristics?

18 A. The original attempt of the analysis, because we
19 didn't know what it was going to show --

20 Q. Okay.

21 A. -- when we started out, was to determine that we --
22 that there was reason to believe that there were
23 different characteristics. That operationally, the
24 districts where 95 percent of the students lived had
25 a different set of factors, or at least a different

1 set of strengths of those factors, operating on their
2 total system and on their -- in particular, on their
3 revenue pattern.

4 So we -- after looking at the data that we had
5 gotten by wealth group, we determined to make an
6 analysis to see if there, in fact, was a difference
7 in those patterns. And in fact, there was a
8 difference in the patterns.

9 Q. Okay.

10 A. So we have included that in our analysis.

11 Q. Okay. So you were curious if there would be a
12 difference. And so this analysis was run to see if,
13 in fact, that was true? And what we see on Table 2
14 indicates that, in fact, there was a difference?

15 A. That's correct.

16 Q. Okay. Now, as you rank the independent variables, is
17 there an order in which the independent variables are
18 displayed?

19 A. Yes, they're ranked in terms of degree of
20 significance in explaining the variation in the
21 dependent variable.

22 Q. Okay. So, in this form of analysis, on a multiple
23 regression of analysis, you'll always find -- or you
24 should find, at least the way we have presented the
25 material, the variables that are the most important

1 or that explain the biggest piece of the variation
2 will be first, and then diminishing as you move down
3 the list?

4 A. Yes, in terms of the -- we've come to -- as a result
5 of being involved in a great deal of multiple
6 regression analysis at the Education Agency over the
7 last year, working primarily on price differential
8 indices, that the data is best displayed in this
9 fashion for ease of communication.

10 Q. All right. So if I look at the bottom of the Partial
11 R-Squared column, where it says Total Explained
12 Variation, I see that Table 2, even after eliminating
13 those districts, those top 180 districts in terms of
14 wealth per pupil, we still, with these five
15 independent variables, explain a total of 51 percent
16 of the variation in general fund revenue per pupil,
17 is that correct?

18 A. Right. We explained that it isn't whether we
19 excluded them, but within -- I mean, this becomes a
20 separate analysis.

21 Q. Okay.

22 A. So, within these 884 districts, we explained 51.4
23 percent of the variation.

24 Q. Okay. So the bottom line is still pretty much the
25 same, we're still explaining 51 percent of the

1 variation. But as I look back up that column, I note
2 some significant changes in terms of the importance
3 of particular variables, is that correct?

4 A. Yes.

5 Q. Okay. So, for example, on Table 1, for Total
6 Effective Tax Rate, only explained 8.5 percent of the
7 variation, and was, in fact, the second variable
8 listed. When you get to Table 2 and exclude those
9 wealthy districts at the top end, am I correct, then,
10 the Total Effective Tax Rate now becomes the most
11 important variable and explains 17.7 percent of the
12 variation?

13 A. Yes, you are. And one of the significant pieces of
14 this is that this entire analysis is done on the
15 basis in which the results, effectively, are weighted
16 by the numbers of students involved in the district.

17 Q. Okay.

18 A. So, by the exclusion of just really a relatively
19 small number of districts and a relatively small
20 number of students, we find a surprising swing. Not
21 a surprising swing, but a major swing, in the extent
22 to which the effective tax rate becomes a far more
23 powerful variable than it had when we had those five
24 percent of students in.

25 Q. Okay.

1 MR. KAUFFMAN: Your Honor, if I may, before
2 he goes too much into his opinions on his exhibit.
3 If I could ask some Voir Dire questions on it?

4 THE COURT: Okay.

5 VOIR DIRE EXAMINATION

6 BY MR. KAUFFMAN:

7 Q. Mr. Moak, you talk about general fund revenue.
8 Again, that excludes debt fund and building funds, is
9 that correct?

10 A. Yes. As I explained yesterday, I believe that's
11 inappropriate for this kind of analysis.

12 Q. When you put your total effective tax rates, do you
13 include both maintenance and operations and interest
14 and sinking fund tax rates?

15 A. Yes, we do.

16 MR. THOMPSON: I believe he answered that
17 earlier.

18 BY MR. KAUFFMAN:

19 Q. Mr. Moak, when did you complete the analyses that are
20 reflected on this exhibit?

21 A. Friday of last week.

22 Q. Do you have before you some computer printouts that
23 were the basis for these tables?

24 A. These were partially -- these are computer printouts
25 that are produced by -- I do have a computer printout

1 formula that was part of the statistics that is
2 produced by the SAS routine that does the multiple
3 regression analysis.

4 Q. Before you produced Exhibit 62, did you do some other
5 regressions to look at before you decided which data
6 to put on this exhibit?

7 A. No. In terms of regressions, these were the -- we do
8 a stepwise regression procedure which identifies the
9 -- which I don't have the results of with me, which
10 identifies the variables in their order of
11 significance.

12 Q. Okay.

13 A. So, we chose those that -- out of the total range of
14 variables we were using, that were, in fact, the most
15 significant -- were, in fact, contributing to the
16 variation.

17 Q. Okay.

18 A. We did examine certain other variables and exclude
19 them as inappropriate for -- because they were not
20 truly independent variables. For instance, one of
21 the variables that was run in an original analysis
22 that came out as significant, but did not seem to be
23 appropriate in these circumstances, was the
24 pupil/teacher ratio. But to say that the
25 pupil/teacher ratio is an independent variable which

1 assists in defining the general fund revenue per
2 student appeared to be inappropriate. So we excluded
3 -- we did exclude, I think, two variables of that
4 type, pupil/teacher ratio and average salary.

5 MR. KAUFFMAN: Your Honor, I will not
6 object to the exhibit if I can be given the computer
7 printouts upon which this exhibit is based, and the
8 other one that Mr. Moak testified about that included
9 some variables that they decided not to use.

10 MR. RICHARDS: May I have some questions on
11 voir dire? Because I'm not sure I'm not going to
12 object to it. So, before you give up on it...

13 MR. KAUFFMAN: Sure. I'm not giving up,
14 yet.

15 VOIR DIRE EXAMINATION

16 BY MR. RICHARDS:

17 Q. As I understand it, Mr. Moak, this general fund
18 revenue includes revenue from federal sources, is
19 that correct?

20 A. It includes the specific revenue from federal sources
21 that I testified to, yesterday, as the federal lunch
22 revenue and a very minor amount of additional federal
23 revenue.

24 Q. All right.

25 A. It does not include federal revenue for categorical

1 grants, such as programs for the disadvantaged, or
2 the programs for the -- excuse me, funding for the
3 education for the disadvantaged programs, or
4 vocational education federal funds.

5 Q. And it includes local co-curricular revenue?

6 A. Yes, it does.

7 Q. Now, as I understand your calculation, it excludes
8 revenue that the districts generate for the purpose
9 of building facilities and paying the debt for
10 facilities, is that correct?

11 A. The purpose of this analysis was to examine
12 variations and general fund revenues per pupil. By
13 definition, general fund revenues per pupil exclude
14 categorical federal funds, exclude the debt service
15 funds and the building funds of the districts.

16 Secondly, as I testified --

17 Q. I guess the answer to my question is yes, is that
18 right?

19 A. It excludes them on proper grounds.

20 Q. But it does exclude them?

21 A. It does exclude them.

22 Q. And it includes in the tax revenue -- or the tax base
23 that you calculate here, however, the tax required to
24 generate and pay for the buildings, is that correct?

25 A. There is a specific reason for that, if I might --

1 Q. First, if you can just tell me yes or no, does it
2 include the tax that is generated --

3 A. I've already testified to the effect that the total
4 effective tax rate is the total effective tax rate of
5 the district for maintenance and debt service.

6 MR. THOMPSON: Mr. Richards, if you're just
7 attempting to explain or to understand what is
8 displayed on the material, I think we've already
9 explained that. If you're getting into what's more
10 appropriately cross examination, you'll have plenty
11 of opportunity for that later. If you'll let us
12 proceed to explain the exhibit.

13 MR. RICHARDS: Counsel, we tolerated hours
14 of voir dire examination on your side for exhibits
15 that are proffered by us. And I don't think I've
16 exceeded the bounds of it. I have asked my questions
17 and I happen -- well...

18 MR. THOMPSON: Thank you.

19 MR. KAUFFMAN: Your Honor, I think based on
20 that, we both do object to the exhibit to the extent
21 that it seeks to predict revenues that do not include
22 buildings, while using taxes that do include
23 buildings.

24 THE COURT: Run that by me again, now.

25 MR. KAUFFMAN: Okay. What he's trying to

1 predict here is the general fund revenue, which does
2 not include the revenues that are used to pay off
3 debt service and for building expenses, those two
4 categories. One of his -- things he's looking at,
5 the total effective tax rate, includes tax rates of
6 districts, both for maintenance and operations and
7 for what they call interest and sinking, the tax
8 rates that go to build buildings. So we object to
9 it, because it seeks to use some variables that do
10 not relate to what he's trying to predict. And it is
11 misleading for that reason.

12 If he had done one, and maybe the next exhibit
13 is this, then we'll see. If he had done one where he
14 sought to use the effective maintenance and
15 operations tax rate in order to predict, basically,
16 maintenance and operations revenues, we would not
17 have this particular objection. But we object to it
18 as misleading.

19 MR. THOMPSON: It is not misleading, Your
20 Honor. And Mr. Kauffman is familiar with statistical
21 analysis. And the purpose of the multiple regression
22 analysis is to find the variables, whatever they may
23 be, that explain variations in the dependent variable
24 that you're looking at. If that happens to be just
25 M & O tax rate, that's fine. If it happens to be

1 I & S tax rate, that's fine. If it happens to be a
2 total combined tax rate that explains the variation
3 in general fund revenue, what we are trying to give
4 the Court is an accurate representation of what other
5 variables have the most effect, in terms of
6 explaining variations in general fund revenue. And
7 Mr. Kauffman is familiar with multiple regression
8 analysis, I'm sure. And he understands that that's
9 what this simply seeks to portray. We're not hiding
10 any balls and we're not attempting to misrepresent
11 material, we're trying to inform the Court as to what
12 independent variables most explain variations in
13 general fund revenue.

14 MR. O'HANLON: What Mr. Kauffman made, in
15 essence, was a speech, rather than an objection. If
16 he doesn't like the methodology, that's a subject of
17 cross examination, not a proper subject of --

18 THE COURT: Overrule. Here we go.

19 DIRECT EXAMINATION (RESUMED)

20 BY MR. THOMPSON:

21 Q. Mr. Moak, if we could pick up where we were on Table
22 2, looking at that Total Effective Tax Rate. Now, if
23 I understand the difference between Table 1 and Table
24 2, when you exclude that small band of districts at
25 the top, with their unusual characteristics, on Table

- 1 1, Total Effective Tax Rate only accounts for 8.5
2 percent of the variation in general fund revenue per
3 pupil, is that correct?
- 4 A. That's correct.
- 5 Q. But when you look at Table 2, that particular
6 independent variable jumps to the head of the list,
7 and out of these five variables, now becomes the most
8 important variable in terms of explaining variations
9 in total general fund revenue per pupil, and now
10 explains 17.7 percent of that variation?
- 11 A. That is correct.
- 12 Q. Okay. So total effective tax rate, which is within
13 the control of the district, now becomes the most
14 important variable in terms of explaining that
15 variation in general fund revenue?
- 16 A. Correct.
- 17 Q. Okay. And comparing to that, if we could look at
18 Table 1 and Table 2 and look at the impact of Taxable
19 Property Value per Pupil. On Table 1, which looks at
20 all districts, Taxable Property Value per Pupil is
21 far and away the biggest variable, explaining 38.3
22 percent out of the 51 percent. And if that is
23 contrasted with Table 2, where we've excluded those
24 unusual districts, Taxable Property Value per Pupil
25 drops to second place and only accounts for 16.8

1 percent of the variation, is that correct?

2 A. That's correct.

3 Q. Okay. So, when we take off this band of districts at
4 the top, that you have testified to as having unusual
5 characteristics --

6 MR. RICHARDS: Can we object to leading?
7 Can't we get it a little more from the witness and a
8 little less from Mr. Thompson?

9 MR. THOMPSON: Okay.

10 BY MR. THOMPSON:

11 Q. Mr. Moak, when we look at Table 1 and look at Table
12 2, and we note this switching of positions between
13 Effective Tax Rate and Taxable Property Value, what
14 explains that dramatic change to the impact of those
15 variables?

16 A. Well, the difference between the two analyses is the
17 exclusion of -- in the second analysis, the districts
18 with extremely high property values per pupil. To
19 me, it is reinforcing of substantial other work that
20 has been done that says that the -- that although
21 taxable value -- property value per pupil is a major
22 factor, in that there is a relationship between it
23 and total revenues per pupil within the state as a
24 whole, that the -- that relationship, although it
25 does not disappear, is substantially decreased

1 through the -- when it's considered in concert for
2 those districts that do not -- are not in that top
3 five percent. And in terms of what accounts for it,
4 there's nothing in particular that accounts for it.
5 The analysis stands on its own.

6 Q. Okay.

7 A. That it simply does account for less of the
8 variation. It reinforces the basic concept, that
9 when you look at our state as a whole, and you look
10 to include that top five percent, that we get some --
11 we get a significantly different pattern than when we
12 look at the state as a whole including that top five
13 percent.

14 Q. Okay. Mr. Moak, if you look at Table 1 and Table 2
15 and compare them, is there a change in the amount of
16 variation in general fund revenue that is explained
17 by the percent of low income or compensatory ed.
18 students?

19 A. Well, the percent low income students would be the
20 correct definition. And its value somewhat increases
21 between the two analyses.

22 Q. Okay. So, if I read that correctly, then on Table 1,
23 the percent low income students explains 3.4 percent
24 of the variation. But if we look at Table 2, where
25 we've excluded those top districts, the percent low

- 1 income students explains 9.7 percent of the
2 variation?
- 3 A. That's correct.
- 4 Q. Okay. Mr. Moak, if we could look at Table 3. What
5 does Table 3 represent?
- 6 A. Tables 3 and 4 are a similar analysis of what was in
7 the earlier data, discussed in terms of other local
8 revenue per pupil. And it was a similar analysis,
9 using the variables which we had available and
10 looking at all districts in Table 3 and looking at
11 the districts with the -- with 95 percent of the
12 students in Table 4.
- 13 Q. So we're looking in these two tables -- and what
14 you've identified and described in previous testimony
15 as other local revenue?
- 16 A. That's correct.
- 17 Q. Okay. And the same five variables?
- 18 A. That's correct.
- 19 Q. Okay. Same five independent variables?
- 20 A. Well, in this particular case, you'll note that there
21 are four variables.
- 22 Q. Okay.
- 23 A. Percent low income students was not significant in
24 this analysis --
- 25 Q. Okay.

1 A. -- did not add to the explanatory variation of the
2 equation and therefore, is not shown.

3 Q. Okay. So you didn't just arbitrarily drop it, it
4 just didn't show up as an important variable?

5 A. That's correct.

6 Q. Okay. So, if I understand these two tables, then on
7 Table 3, which looks at all districts, Taxable
8 Property Value per Pupil explains 42.8 percent of the
9 variation in other local revenue per pupil?

10 A. Yes, the -- it explains 48 -- 2.8 percent of the
11 variation within the concept of this analysis.

12 Q. Okay. And that's out of a total of 62.8 percent
13 that's explained by these four variables?

14 A. That's correct.

15 Q. Okay.

16 MR. RICHARDS: Or that's explainable, which
17 way is it?

18 THE WITNESS: Variations in Taxable Value
19 per Pupil explained 43 percent of the variations in
20 other local revenue per pupil.

21 MR. RICHARDS: Of a universe that was
22 explainable, I thought, was that right or wrong?

23 THE WITNESS: No, in this case, the 43
24 percent would be of the total universe. The
25 comparable number that you're referring to is 68

1 percent.

2 MR. RICHARDS: Okay.

3 BY MR. THOMPSON:

4 Q. So 42.8 percent of the total universe, or 68.25
5 percent out of the total 62.8 percent that is
6 explainable by these variables, is attributable to
7 taxable property value per pupil?

8 A. That's correct.

9 Q. Okay. And total effective tax rate accounts for an
10 additional 17 percent of the variation?

11 A. Yes. In concert with the taxable property value per
12 pupil, it adds 17 percent to the explanatory value.

13 Q. Okay. If we could look at Table 4 for just a moment.
14 In Table 4, have we excluded the same districts that
15 we excluded in Table 2?

16 A. Yes, we have.

17 Q. Okay. So again, we're taking off those districts at
18 the top, with the five percent of the students at the
19 top end in terms of wealth per student?

20 A. That's correct.

21 Q. Okay. And if I read this correctly, then, the total
22 variation that is explained by these variables has
23 actually increased very slightly from 62.8 percent to
24 65.3 percent?

25 A. That's correct.

- 1 Q. Okay. And has there again been a reversal in the
2 impact of effective tax rate and property value per
3 pupil in terms of explaining the dependent variable
4 of other local revenue per pupil?
- 5 A. Yes, there has.
- 6 Q. Okay. So if I read these two charts correctly, if we
7 compare Table 3 and Table 4, Taxable Property Value
8 per Pupil drops from 42.8 percent, if we're looking
9 at all districts, to 28.6 percent, if we look at the
10 884 districts excluding those top 180 districts?
- 11 A. Yes, it does.
- 12 Q. Okay. And total effective tax rate increases from 17
13 percent to slightly over 29 percent?
- 14 A. Total -- it increases from 17 percent, in concert
15 with property value, to 29 percent.
- 16 Q. Okay.
- 17 A. Uh-huh.
- 18 Q. Okay. Is what we see on Table 4 somewhat analogous
19 to what we saw on Table 2?
- 20 A. Yes. Again, the basic -- or the variables remain
21 significant. The order of them changes.
22 Effectively, the explanatory power changes between
23 tax rate and taxable value. It's saying that, as
24 much of the -- it's saying that in -- when you
25 exclude the top line of those districts, the

1 effective tax rate becomes the most significant among
2 these variables in explaining variation.

3 Q. Mr. Moak, we did have a question about it earlier and
4 I would ask you to clarify, is there a particular
5 reason why total effective tax rate is included in
6 this analysis?

7 A. Well, I think it was run both ways.

8 Q. When you say both ways, what do you mean, "both
9 ways?"

10 A. Let me back up. First of all, it was a very high
11 correlation between total effective tax rate and
12 maintenance tax rate.

13 Q. Okay.

14 A. So you don't want to run both of them, because then
15 you would be running two variables that had a great
16 deal in common with each other. And would have a --
17 as a result, would tend to show a lack of -- a degree
18 of dependence between the variables, which would be
19 inappropriate. The analysis was run with maintenance
20 tax rate, the analysis was run with total effective
21 tax rate. As an independent variable, total
22 effective tax rate is a better predictor, if you
23 will. It contributes more to the very -- to
24 explaining the variations in revenue per student than
25 the M & O tax rate does.

1 Q. Okay. So the inclusion of total effective tax rate
2 is not an effort to confuse the issue or present
3 misleading information?

4 A. Not at all.

5 Q. Okay. But merely to display those variables that
6 actually have the most influence on variations in our
7 dependent variables?

8 A. That's correct.

9 MR. KAUFFMAN: Your Honor, I would reurge
10 my objection to the exhibit based on that testimony.
11 It appears that what was done, is they did it both
12 ways and used the way that turned out better for
13 them. They did ones with M & O and ones with total
14 and decided to use the one that showed the most
15 importance of the tax rate, rather than setting ahead
16 of time the criteria for what variables they felt
17 were relevant and useful, and then doing that
18 analysis and showing what came out. Instead, I think
19 as the witness just testified, he did it all with
20 M & O tax rates, he did it all with total effective
21 tax rates. If you do it with total, that explains
22 more, so he used the total on here. By explaining
23 more by total tax rate, of course, it decreases the
24 amount explained by the property values, which is
25 obviously the thrust of the exhibit. So we object

1 again on that basis.

2 MR. O'HANLON: Mr. Kauffman is wrong about
3 his statistical analysis. Actually, this comes out a
4 little bit worse for us, by explaining more of the
5 variation. And besides, it's a speech, again, it
6 goes to the way -- he can cross-examine when he
7 wants. It's not an objection.

8 THE COURT: All right. Overrule.

9 BY MR. THOMPSON:

10 Q. Mr. Moak, if you would turn to Tables 5 and 6. What
11 do we have represented on these two tables? They're
12 a different format to what we've been looking at
13 previously. What is the information that's presented
14 on these two tables?

15 A. In Tables 1 through 4, we are effectively looking at
16 the relationship of the series of variables in
17 concert with -- to a single variable. What Table 5
18 presents is the relationship between -- the
19 correlation coefficient between each of the variables
20 that was utilized within the analysis. And so there
21 was a variable local, the variable other local
22 revenue and the variable total revenue per pupil.
23 There was a correlation between these of .8841.

24 Table 6 presents the data, again excluding
25 those, for those -- excluding those 180 districts.

1 with five percent of the students that are above
2 \$423,000. So it is two sets of correlation
3 coefficients, looking at the relationship of the
4 correlations between the -- a series of variables,
5 the series of variables that was utilized in this
6 analysis.

7 Q. Okay. Let me make sure I understand that.

8 So this method of analysis is different than
9 what we were looking at on the first four tables.
10 And let me see if I understand that difference. In a
11 multiple regression analysis, such as we've seen on
12 the first four tables, you have a single dependent
13 variable and a variety of independent variables that
14 you seek to use to explain variations in the
15 dependent variable, is that correct?

16 A. That's correct.

17 Q. And what we have in Table 5 and 6, with a Pearson
18 Correlation Coefficient, is to take a variety of
19 variables, but compare them one at a time to each
20 other to see what the relationship is between them in
21 pairs?

22 A. That's correct.

23 Q. Is that correct?

24 A. (Witness nodded head to the affirmative.)

25 Q. Okay.

- 1 A. There is a very -- it is not meaningful to the
2 analysis, but I've just noted a very minor error on
3 the two tables.
- 4 Q. Okay.
- 5 A. If I could, to correct those.
- 6 Q. Would you please point those out?
- 7 A. The Refined Average Daily Attendance at the bottom
8 line is shown to have a correlation to a variable
9 RADA of .0007. Those variables are the same, the
10 .0007 belongs to Percent Low Income Students up above
11 it. So that .0007 is misplaced by one line, as is
12 the .00 -- negative .0028 on the next page.
- 13 Q. Okay. So for purposes of that correction, then, on
14 Table 5, if we take the .0007 that appears in the
15 bottom right-hand corner and just move it up a line,
16 so that it's on the same line with Low -- Percent Low
17 Income Students?
- 18 A. Yes.
- 19 Q. And then do the same thing on Table 6, with the
20 .0028?
- 21 A. Yes.
- 22 Q. Okay. Mr. Moak, I believe Dr. Verstegen testified to
23 some extent about a Pearson Correlation Coefficient.
24 I note that some of these numbers are positive
25 numbers, and some of them are negative numbers.

1 Would you explain how this particular method of
2 analyzing material works?

3 A. Well, essentially, you would have a value correlation
4 coefficient between a plus one and a minus one. As
5 one approaches minus one, you're dealing with a
6 perfect inverse correlation. As one approaches plus
7 one, you're dealing with a perfect positive
8 correlation. Positive correlation being one in which
9 the two values in question grow in the same
10 direction. The inverse correlation being in which
11 one grows in the opposite direction. The
12 relationship of one is the opposite to the other. So
13 as one variable increases, another variable
14 decreases. So a negative correlation, here, simply
15 indicates that a Price Differential Index -- for
16 instance, in total revenue per pupil on Table 5, that
17 as the total revenue per pupil increases, the Price
18 Differential Index decreases.

19 Q. Mr. Moak, would you go across the column heads,
20 starting with the one that's entitled LOCREV? And
21 just to make sure we all understand, would you define
22 what those column heads represent?

23 A. They're defined in a summary fashion down the side of
24 the page as well.

25 Q. Oh, okay.

- 1 A. The LOCREV is other local revenue per pupil. TAXVAL
2 is taxable value per pupil, PDI is the unadjusted
3 '85-'86 Price Differential Index. I said,
4 incidentally earlier, that that was the index that
5 was adopted -- I agreed with you that was an index
6 adopted by the State Board of Education. This was
7 the index for the research study that was submitted
8 to the State Board of Education.
- 9 Q. Okay.
- 10 A. Total Effective Tax Rate is the total effective tax
11 rate for the districts; calculated Percent Low Income
12 Students, percentage of students on free and reduced
13 lunch programs; and RADA, the size of the district in
14 terms of the refined average daily attendance for
15 1985-'86.
- 16 Q. Okay. If we look on the page at the very end of this
17 exhibit behind Table 6, are those the definitions
18 that are used in the Tables 5 and 6 that we're
19 looking at?
- 20 A. Yes, they are.
- 21 Q. Okay. So Mr. Moak, if we could look at Table 5 for
22 just a moment. On the line entitled -- on the
23 left-hand side, the line that is -- the first line
24 that is entitled Total Revenue per Pupil, if we came
25 out to the column head for Taxable Value, I see a

1 number of .6289. What does that represent?

2 A. I'm sorry, I was looking at Table 6. .6289? That
3 there's a correlation between those two variables of
4 .6289.

5 Q. And that is a positive correlation indicating that
6 they tend to move in the same direction?

7 A. Yes, they do, although the extent to which that is
8 true, or the extent to which we can be certain of
9 that, is somewhat offset by the fact that we're not
10 dealing -- we're dealing with a good correlation, but
11 not an extremely high correlation when we're dealing
12 with .6289.

13 Q. But not an extremely high correlation?

14 A. That's correct.

15 Q. That's your judgment, that a .62 is -- would you call
16 it moderate, as opposed to a high correlation?

17 A. Yes, I would.

18 Q. Okay. And if we come out on that same line, to the
19 column heading for Total Effective Rate, TEFFRATE, I
20 see a minus .1028. What does that represent?

21 A. That if you look at the relationship solely between
22 total revenue per pupil and total effective tax rate,
23 without taking into account as the regression
24 analysis does other variables, that you have a
25 negative correlation between those two, indicating

1 that to some extent that the -- you would expect to
2 find a lower tax rate in those districts with higher
3 revenue per pupil. Again, however, in this case, one
4 has to take into account the degree of correlation
5 which one finds. And a .1028 really comes out in the
6 -- essentially, in the meaningless range.

7 Q. Okay. You would call that a very low to
8 insignificant correlation?

9 A. I would call that insignificant.

10 Q. Okay. And if we come on over to the next column,
11 which is low income, I see a positive .0715. What
12 does that number represent?

13 A. Again, that there is a -- it find a positive
14 correlation between the two variables, but an
15 extremely low correlation --

16 Q. Okay.

17 A. -- in which one would not expect to find any --
18 certainly, any meaningful relationship between those
19 variables.

20 Q. And if we come down on the left-hand side to Taxable
21 Value of Property per Pupil. If we come across on
22 that column to the Low Income column, do you see
23 where I am?

24 A. Yes.

25 Q. And I'm at an intersection where the number displayed

1 is minus 0.1377. What does that number represent?

2 A. That as the -- again, there is a -- somewhat of a
3 negative correlation between those two. A negative
4 relationship between those two variables, again with
5 an extremely low correlation, indicating that any
6 confidence in expressing a relationship there would
7 be highly suspect.

8 Q. But this number does not support a conclusion that
9 you tend to find larger numbers of low income
10 students in poor districts, for example?

11 A. Not taking this as a system as a whole, no.

12 Q. Okay. You're getting very close to a value of 0.00,
13 are you not, with a minus .13 correlation?

14 A. Well, it is close to --

15 Q. Okay.

16 A. -- it is low and it is certainly closer to zero than
17 it is to one.

18 Q. Okay. And on a Pearson Correlation, is a value of
19 zero pure randomness?

20 A. It would indicate a random relationship, yes.

21 Q. Okay. Then if we look at Table 6, if I understand,
22 again, the distinction between Tables 5 and 6, is
23 we've taken out the same districts that we've taken
24 out in Exhibits 2 and Exhibit 4 -- or Table 2 and
25 Table 4 of this exhibit?

1 A. That's correct.

2 Q. Okay. So Table 5 looks at all districts and then
3 Table 6 takes out those districts at the top end?

4 A. That's correct.

5 Q. If we look at some of those same variables that we
6 looked at on Table 5, for just a moment. If we take
7 the total revenue line and look under Taxable Value --

8 A. Yes.

9 Q. -- we now find a coefficient of .3184?

10 A. That's correct.

11 Q. As compared to a coefficient of .6289?

12 A. Yes.

13 Q. What does that represent?

14 A. Well, the -- we find that if we just look at these --
15 if we look at these districts where 95 percent of the
16 students are located without the five percent at the
17 top end, that -- or five -- without the districts,
18 wealthiest districts where five percent of the
19 students live, that we have a substantially lower
20 correlation between total revenue per pupil and
21 taxable value, just looking at those two variables.

22 Q. Okay. So if you take out those five -- those
23 districts with five percent of the students, that
24 relationship between total revenue and taxable value
25 drops?

- 1 A. Yes.
- 2 Q. Would you regard a coefficient of .3184 as
3 insignificant, low, moderate, high -- how would you
4 characterize that number?
- 5 A. Low.
- 6 Q. Okay. So we drop from a coefficient of .6289, which
7 you characterized as moderate, to a coefficient of
8 .3184, which you characterize as low?
- 9 A. Yes.
- 10 Q. Okay. If we come on out that line to Total Effective
11 Tax Rate on Table 6, I note that the coefficient is
12 now .2950?
- 13 A. Yes.
- 14 Q. As contrasted to a negative .1028 on Table 5?
- 15 A. Yes.
- 16 Q. What does that represent? What does that change
17 represent?
- 18 A. Well, that in looking at these districts, we now find
19 a positive correlation, albeit a low one. A positive
20 correlation between effective tax rate and revenue
21 per pupil. Whereas before, we found a negative
22 correlation.
- 23 Q. So we've gone from a somewhat insignificant inverse
24 relationship to a low positive relationship?
- 25 A. That's correct.

1 Q. Okay. And if we look at the next column heading on
2 that particular line under Low Income, I note that
3 the coefficient is .2081, as compared to a
4 coefficient of .0715 on the previous page. What does
5 that change represent?

6 A. It indicates a slightly stronger correlation between
7 low income and total revenue, when you exclude those
8 -- or percent low income and total revenue per pupil
9 and you exclude those districts at the top end. The
10 movement, however, is not great. And I would not
11 place any great confidence, in fact, that it moved
12 from a .07 to a .2.

13 Q. Would you still regard that as a very low
14 correlation?

15 A. It's gotten up to the bottom end of the low range, I
16 guess.

17 Q. Okay.

18 A. But the exact -- there are not exact boundaries for
19 where those might be found.

20 MR. THOMPSON: Your Honor, we reoffer
21 Defendants' Exhibit 62 at this time.

22 THE COURT: Okay.

23 MR. KAUFFMAN: Your Honor, I think our
24 objection stands. And the Court has overruled us
25 already, so --

1 MR. RICHARDS: That's what I thought.

2 THE COURT: Okay. 62 will be admitted.

3 MR. THOMPSON: Thank you.

4 (Defendants' Exhibit No. 62 admitted.)

5 BY MR. THOMPSON:

6 Q. Mr. Moak, we have looked at an awfully large amount
7 of material in the past few days. And I guess I
8 would like to shift gears a little bit, now, and ask
9 you if you have drawn some conclusions from the
10 material that we have been discussing?

11 Do you have an opinion regarding whether the
12 current Foundation School Program system is an
13 equitable system and whether it provides an
14 opportunity for an adequate revenue base?

15 THE COURT: Just a minute. Ask your
16 question again, please?

17 Q. Mr. Moak, do you have an opinion, based upon the
18 information that we have presented in this court, as
19 to whether the current Foundation Program system is
20 an equitable system and whether it provides districts
21 with an opportunity for an adequate revenue base, to
22 operate a basic educational program?

23 MR. GRAY: Your Honor, I would object.
24 It's two questions in one. I would ask him to break
25 it out, because I think he's asking two separate

1 essentially relying on looking at whether there are
2 significant variations in total cost of the program
3 per student, whether there are significant variations
4 in the state and local share by type of district
5 according to the two groupings of wealth that are
6 displayed on those two exhibits. We find that there
7 -- that although there is a -- in terms of the
8 definitions of total cost per student, that within
9 wealth groups, that no major variation occurs that
10 cannot be explained by size or other kinds of
11 variables, to the extent that we end up with a slight
12 higher total cost per student in the wealthiest
13 groups. That is at least substantially explained by
14 the fact that these districts who are small districts
15 that are recognized as higher cost districts by the
16 Foundation Program.

17 And with regard to the equitable nature of the
18 distribution of money within the Foundation Program,
19 the very clear evident relationship by wealth between
20 the state share and the local share, ranging from,
21 for instance, for the poorest 10 percent of the
22 districts, an 88 percent state share compared to a 12
23 percent local share, on up to the wealthiest 10
24 percent of the districts with a 12 percent local
25 share and an 88 percent state share. A similar

1 relationship is found in looking at the data on the
2 basis and numbers of pupils. That the districts at
3 the top five percent -- the five percent of the
4 pupils at the low end of the wealth spectrum have a
5 state share of 90 percent compared to 10 percent
6 local share. At the high end of the spectrum is a
7 state share of 19 percent compared to an 81 percent
8 of local share.

9 So with respect to the Foundation Program, it
10 is, I think, extremely clear that the Foundation
11 Program accomplishes both from a point of view of the
12 provision of overall revenues per pupil and from a
13 point of view of the distribution of that revenue
14 between state and local share, that it is
15 accomplished within an equitable fashion and it
16 constitutes an equitable program.

17 Q. And do you have a single magic definition of equity
18 that you use in reaching that ultimate conclusion?

19 A. I don't think there is a magic definition or a single
20 definition of equity -- or adequacy, for that matter.
21 We're dealing with a -- with one of the most complex
22 governmental finance systems that exists, both in
23 this state and because of its size, within many other
24 states. And to use any single measure or single
25 comparison to make that judgment is inappropriate.

1 Certainly that that judgment, on my part in
2 particular, although it's exemplified by the data
3 that we have here, it is also born of some years of
4 inspection of this information. It's born of
5 reviewing reports such as that of Dr. Verstegen and
6 others. But I don't think there is a single
7 definition to be found that identifies whether the
8 Foundation Program, or any other system, is an
9 equitable system. But we would not expect to find
10 these very strong relationships, consistently, in
11 pattern after pattern after pattern, if there were
12 not an equitable system.

13 Q. Okay. Mr. Moak, do you have an opinion as to whether
14 the system provides school districts with the
15 opportunity to have an adequate revenue base for the
16 operation of a basic educational program?

17 A. Yes, I do.

18 Q. And what is your opinion?

19 A. My opinion is that the program does provide districts
20 with the opportunity to have an adequate revenue
21 base, overall, for the support of a basic or a
22 foundation level of educational revenues.

23 Q. And what is the basis within the testimony that has
24 been presented in this trial for that opinion?

25 A. I think that -- twofold. In particular, I feel the

1 work of the accountable cost research effort
2 substantially supports the notion in those areas that
3 examine -- that it examined, that an adequate
4 education program could be offered within the
5 revenues provided under the Foundation Program.

6 I think secondly--

7 THE COURT: Say that again.

8 A. That the accountable cost research demonstrates that
9 in 1985-'86, that the Foundation Program affords
10 districts the opportunity to have the revenues to
11 offer a basic educational program that meets the
12 standards of accreditation, that meets the standards
13 of good educational practice.

14 THE COURT: So you would say that the
15 study, the results of the study through the
16 accountable cost committee process, shows that
17 through the Foundation School Program, everybody can
18 have an education that meets the minimum
19 requirements; is that what you're saying?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. THOMPSON:

23 Q. Was there additional information that --

24 A. Yes.

25 Q. -- that has been included in the record that supports

1 that conclusion, Mr. Moak?

2 A. In addition to that, there's the analysis of what
3 happens when we compare that Foundation Program to
4 what school districts are doing. We have an
5 extremely significant number of school districts and
6 an extremely significant number of students in those
7 districts who are operating at or below a foundation
8 this Foundation Program level that we've established.
9 And that lends credibility to me, to the fact that
10 when we take the research work and the bits and
11 pieces from the accountable cost study, and we take
12 it into the real world of how school districts are
13 operating, that if we looked at -- just at those at
14 less than -- within 10 percent of the Foundation
15 Program or within even five percent of the Foundation
16 Program, that we're dealing with very significant
17 numbers of students and very significant numbers of
18 districts that are operating at that level.

19 I have no reason to believe that these -- and
20 certainly, in my capacity at the Education Agency
21 where I do read and review annual accreditation
22 reports and look at other information, there is no
23 indication that these -- that we have any -- that we
24 have a large number of districts that are not
25 offering a basic educational program, as determined

1 in those reports.

2 So I think that the analysis, such as that
3 presented in Defendants' Exhibit 60, regarding the
4 percent of other local revenue, helps support the
5 fact that many districts are operating very close to
6 this or even at this level of financing.

7 This is in strong contrast to the days in which
8 I first analyzed the Foundation Program data many
9 years ago, in which there was not a single district
10 in the state, in the early 1970s, that was operating
11 at the Foundation Program level, as far as general
12 funds were concerned.

13 Q. Were all the districts at that time operating at a
14 level much above the level of the Foundation Program?

15 A. Well, every district was operating somewhat above the
16 level of the Foundation Program.

17 Q. Okay. Mr. Moak, do you have an opinion as to whether
18 the basic system of school finance is characterized
19 by a high degree of equity and adequacy for most
20 students? Let's talk about kids for a moment.

21 A. It would appear to me, from all of the data that we
22 have available, both -- that which was commissioned
23 in an independent study, as well as the work that
24 I've undertaken. That most students live in
25 districts that are characterized by a reasonable

1 degree of equity. But most -- and that most students
2 live in a -- in districts that are characterized by a
3 reasonable degree of adequacy. That doesn't say
4 variation doesn't exist. But it is the question of
5 using the measures that have been established
6 nationally, certainly, in Dr. Verstegen's work.
7 Applying those to the kind of data analysis that we
8 have here, we find that there are not large numbers
9 of students living in districts which have extreme
10 variation in their revenues per pupil.

11 Q. Okay. Mr. Moak, you have talked about in your
12 testimony the group of districts at the very top end,
13 in terms of wealth per student, as having some
14 unusual characteristics. Do you have an opinion
15 regarding the impact of those districts on an
16 analysis of equity?

17 MR. GRAY: Are you referring to those
18 districts above \$423 thousand?

19 MR. THOMPSON: Yes.

20 MR. GRAY: Okay.

21 A. Well, I'm not sure where the level is. We've used
22 various levels in discussion, first of all. We've
23 used those above \$423 thousand in one analysis, we've
24 used the top -- we've used the ones over \$630
25 thousand in another analysis. Regardless of how you

1 look at it, though, it appears that there are
2 significant -- there is a set of districts that are
3 characterized by a set of information. The absence
4 of which changes substantially what kinds of analysis
5 you arrive at or what kinds of significance you find
6 in the system. These 180 districts are characterized
7 by a small number -- relatively small number of
8 students, extremely low state aid levels, extremely
9 high property values per student, a good -- in many
10 cases, a good deal of geographic isolation, a
11 relatively high concentration of mineral values, in
12 the past. So -- and there's no doubt in my mind, and
13 I found it very interesting in the process of going
14 through this analysis, to determine again and again
15 how much influence these districts had on the basic
16 equations of school finance. But there is no doubt
17 in my mind that there is this set of districts that
18 exists, that essentially change the components of so
19 much of the analysis as we go through. And that if
20 you include them, you come up with one kind of view
21 of the total system of the state. And if you exclude
22 them, you come up with a different kind of view.

23 Q. In your opinion, in analyzing the equity of the total
24 system, is it more appropriate to exclude those
25 districts from the analysis, or to include those

1 districts in the analysis?

2 A. In terms of the equity of the total system, I think
3 it's much more appropriate to exclude those districts
4 from the analysis. There's several reasons for that.
5 But this is not to say that the equity of the system
6 wouldn't be improved, if one could do something about
7 those districts. But first, I would prefer to look
8 -- and we have traditionally looked, when we have
9 measured the Foundation Program and measured other
10 kinds of variations to the Foundation Program, we've
11 looked at those districts that exist in the
12 mainstream. And these districts exist outside the
13 mainstream. They exist in a different -- with a
14 whole set of different financial characteristics and
15 abilities. And they're largely based on accidents of
16 where the property value is. I grant that, without
17 any reservation. But they are, as far as the state
18 aid system is concerned, we've done about all we can
19 to them in terms of changing state aid patterns and
20 of making sure that we flow as little money as
21 possible to those districts under our system.

22 Beyond that -- so I am convinced, even more so
23 after having undertaken these studies, that in the
24 future, that our analysis in many different kinds of
25 studies really should automatically look at both the

1 system as a whole, but also look at the system
2 without this top realm of districts or this top realm
3 of students.

4 Q. And could including those districts in an analysis
5 create a distorted perspective of the overall
6 adequacy within the remaining 95 percent of the
7 program?

8 A. Depending on what measures one used, yes, it could.

9 Q. Mr. Moak, do you have an opinion as to whether major
10 modifications in the existing Foundation Program
11 would have significant impacts on equity?

12 A. Well, part of this goes to how you measure equity.
13 But from a measurement of equity in a disparity
14 sense, from looking at what one finds, for instance,
15 from a top end to a bottom end, I do have an opinion
16 as to whether you would find substantial variations
17 through changes in the basic operations of the
18 Foundation Program, yes.

19 Q. And what is your opinion?

20 A. That you would not significantly impact those
21 measures of equity by changes in the Foundation
22 Program system. That essentially, the problem, if
23 one looks at this in terms of disparity analysis, is
24 the districts at the top end of the scale. And that
25 since there's no state aid currently -- so little

1 state aid currently going to those districts, that
2 one would not significantly change the financial
3 characteristics of those districts. And could, by
4 changing the Foundation Program formulas, it would
5 have the effect -- one could, with changes in the
6 Foundation Program formulas, raise the bottom end
7 somewhat. But this would not significantly effect
8 the degree of disparity when we're talking about
9 districts that are at the top end that are as high as
10 they are.

11 Q. Okay. Just so I understand that. You're saying,
12 because those districts at the top end receive very
13 little benefit at present from the state system in
14 terms of state aid, simply changing the formulas is
15 not going to do a great deal to the disparity if we
16 look at an analysis that focuses on the extremes?

17 A. That's correct. I mean, just as an example, in an --
18 well, any wide variety, in Exhibit 55, we find that
19 370 -- that the districts at the top end with the top
20 five percent of the students, have a revenue level of
21 \$4,800.00 per student. They have a state share of
22 \$595.00 per student, with a state cost of \$274.00 per
23 student. The state costs are largely driven by
24 provisions of the State Constitution. The state
25 share is largely driven by the contribution -- about

1 half of that state share is from the available school
2 fund distribution under the Constitution. And that
3 leaves very little money within the Foundation
4 Program allocations to move out of those districts.
5 So you have a \$4,800.00 level in those districts.
6 The most you could do, in terms of shifts in the
7 state aid formula, would be to move a few hundred
8 dollars of state aid from those districts, which
9 could easily, frankly, be replaced by those districts
10 in terms of local revenue, given where their tax
11 efforts are and what kind of revenue base they have
12 to draw from. The removal of that few hundred
13 dollars, therefore, I would not expect to affect the
14 top end of the scale.

15 MR. KAUFFMAN: You mean a few hundred
16 dollars per student?

17 THE WITNESS: A few hundred dollars per
18 student. I'm sorry, I was looking at that from the
19 concept of 55 districts in the basis of dollars per
20 student.

21 BY MR. THOMPSON:

22 Q. Mr. Moak, is it your understanding that the
23 Foundation School Program has a major purpose of
24 compensating for disparities in local property wealth
25 that would otherwise exist?

1 A. It certainly is a major purpose of the sharing of the
2 Foundation Programs, the formulas used in dividing
3 the Foundation Program between the state share and
4 the local share, yes.

5 Q. And does that process, in your opinion, reasonably
6 serve to compensate for many of the disparities in
7 local taxable wealth that we find in Texas?

8 A. Well, it has a tremendous -- without that kind of
9 relationship, we would find a much greater variation
10 than we have. Foundation Program very effectively --
11 sharing formulas very effectively, direct additional
12 revenue to the districts that do not have the
13 resources available to meet their own -- do not have
14 local property value resources necessary to meet an
15 adequate education program.

16 THE COURT: Let's stop for a morning break.
17 We'll get started up again at five 'til.

18 (Morning Recess)

19 DIRECT EXAMINATION (RESUMED)

20 BY MR. THOMPSON:

21 Q. Mr. Moak, I'm handing you what has been marked as
22 Defendants' Exhibit 48 and ask you if you are
23 familiar with that document?

24 A. Yes, I am.

25 Q. Is that the report prepared by Dr. Verstegen for the

1 Texas Education Agency?

2 A. Yes, it is.

3 Q. Mr. Moak, did the staff of the Texas Education Agency
4 assist in the preparation of the research for this
5 document?

6 A. Well, there was one staff member. In fact, it's
7 acknowledged on the front page of the report, Nancy
8 Stevens, who is a programmer in our division of --
9 programmer and analyst in our division of resource
10 planning, who spent a very significant amount of time
11 working with Dr. Verstegen on the various analyses
12 that were undertaken.

13 Q. What kind of directions did Nancy Stevens have? What
14 kind of involvement did the agency staff have with
15 Dr. Verstegen in the preparation of this report?

16 A. Well, the report was an outgrowth of -- originally,
17 actually it was an outgrowth of some instructions
18 that we received from the legislative budget board
19 staff last summer, regarding the relationship, a
20 desire for the examination of various options for
21 reduction of state funding to -- on the goals for
22 public education as it has been adopted by the State
23 Board of Education and on educational performance.

24 I discussed that requirement with our staff in
25 determining that we really didn't have the resources

1 to undertake it. And was aware of Dr. Verstegen's
2 availability, who was then at the University of
3 Texas, and contracted with her for the preparation of
4 that document.

5 In the process of discussing the contract, she
6 inquired as to whether computer support could be
7 available from the Education Agency, with special
8 reference to the running of statistical analyses and
9 to the running of various models, to examine the
10 effects of reductions in state aid over the -- under
11 the variety of options that were to be discussed.

12 And so I indicated that Nancy Stevens would be
13 available to function in that regard. And that the
14 relationship, however, needed to be directly between
15 Dr. Verstegen and Nancy Stevens and not through any
16 of the intermediary staff that was associated.

17 And secondly, that there would be limitations
18 to Nancy's availability, based on other work that
19 needed to be undertaken. Mrs. Stevens is our lead
20 analyst, with regard to operation of the large school
21 finance model which we run, and had that under her
22 direct supervision for a couple of years. About two
23 years now, a year and a half. And is the only
24 programmer and analyst we have who is thoroughly
25 familiar with that model. So, her relationship was

1 one of receiving specifications from Dr. Verstegen.
2 And she received specifications from many other
3 individuals, including myself, for other kinds of
4 runs, inputting that into the model and then
5 communicating the results of that to Dr. Verstegen.

6 She was not there to undertake an evaluation of
7 any type of the work to be done, but rather simply to
8 provide data and analyses to Dr. Verstegen of the
9 areas that she had under question.

10 Q. At the time Dr. Verstegen began her work, did you
11 know what her conclusions would be, regarding the
12 equity of this Texas school finance system?

13 A. No, I -- my major interest at the time, in arranging
14 the initial contract, was actually that she establish
15 a benchmark of whatever our equity was. And then be
16 able to measure that against these options of
17 reduction, being that one of the objectives of the
18 State Board of Education, under the goals and
19 objectives, relates specifically to equity.

20 So I was not aware of what her conclusion would
21 be with regard to that. And it wasn't really a major
22 purpose at that, other than establishing, at that
23 time, a benchmark to measure these other alternative
24 solutions to reductions in funding.

25 Q. As Dr. Verstegen developed her report, the final copy

1 of which you have in your hands, did you attempt to
2 influence the conclusions that she reached regarding
3 the equity of the Texas school finance system?

4 A. Not at all. I had very little contact with Dr.
5 Verstegen. And that contact which I did have was
6 primarily limited to -- or was focused on the
7 different options she was exploring with regards to
8 reduction of state funding, and whether those covered
9 the full range of options that I wished to see
10 included in the report. In terms of the Bench Marks,
11 Bench Mark chapter of the analysis of 1985-'86
12 system, I did not undertake -- do not recall any
13 contact that we had on that particular chapter, other
14 than a general discussion, when it was in the late
15 draft stage, of understanding what its meaning was.
16 But that -- there, I was simply asking questions as
17 to what conclusions she had come to. She did
18 undertake to explain to me, at that time, what had
19 happened with regard to the operation of a particular
20 SAS routine that we ran for a unified analysis. But
21 other than that, we had no conversation on the
22 chapter.

23 Q. Do you regard her analysis of the equity of the Texas
24 school finance system as being completely independent
25 of your analysis which we have discussed for the past

1 several days?

2 A. Absolutely.

3 Q. So, although it was an independent analysis, it is an
4 analysis that you are familiar with?

5 A. Yes.

6 Q. As you read and understand that particular report
7 prepared by Dr. Verstegen, do you believe that the
8 conclusions that you have already testified to are
9 supported by the information contained in that
10 report?

11 A. Yes, I do. I understand the statistical methodology
12 that she employed. I understand and have reviewed
13 the works that she drew primarily upon to come up
14 with that type of analysis. I think it is a good
15 formal analysis procedure, especially for analyzing
16 school finance systems, wherever they might be, as
17 opposed to analyzing school finance systems in states
18 in which one has a great familiarity. But it is a --
19 it involves the -- recognized in the formal
20 procedural methods of analysis that she came to, that
21 have been discussed in the literature and other
22 places, conferences, for some years now. The
23 conclusions that she drew from that, I believe, are
24 supportive of the conclusions that I've drawn from
25 the analysis that I've done in the school finance

1 system, as well, where appropriate.

2 Q. Mr. Moak, when we began your testimony, when you
3 began your testimony last week, we began by talking
4 about some historical overview and analysis of the
5 development of the school finance system in Texas.
6 And I believe you testified that you saw a central
7 theme running through House Bill 72 as being an
8 emphasis on performance and outcomes and
9 accountability, and an emphasis in areas such as
10 those. Do you recall that discussion?

11 A. Yes, I do recall it. And I do feel that that has
12 become, both during the time which House Bill 72 was
13 debated, but particularly since the enactment of
14 House Bill 72, the central focus of concern with
15 regard to the educational finance system and the
16 overall performance of the education system, itself.

17 Q. And has the research staff in the Texas Education
18 Agency, under your direction, undertaken an analysis
19 of those factors that actually contribute to
20 increased performance by students?

21 A. We have undertaken an analysis of some of the data
22 that we have available. It is not an analysis which
23 goes as far as we would like for it to go in total.
24 And in the future, we would expect to expand it. But
25 we have undertaken an analysis that relates certain

1 -- using the statistics available, have undertaken
2 the relationship between various independent
3 variables and educational performance data, as we
4 have it available at TEA.

5 (Defendants' Exhibit No. 63 marked.)

6 Q. Mr. Moak, I'm handing you what has been marked as
7 Defendants' Exhibit 63, the first page of which is
8 entitled "Table 7, Regression Analysis of the
9 Relationship Between District Weighted Average TEAMS
10 Scores and Selected Local District and Personnel
11 Characteristics." Would you identify that document,
12 please?

13 A. Yes, these are the results of two regressions and a
14 series of correlations which were run between the --
15 utilizing the district weighted average TEAMS score,
16 which is a single score for each district in the
17 state, which has been recently developed by staff,
18 under my direction. And various -- again, various
19 independent variables to determine the overall
20 relationship between an explanatory power between
21 those independent variables and the test scores.
22 This district weighted average test score from our
23 statewide testing program that we have utilized for
24 this analysis.

25 MR. THOMPSON: Your Honor, at this time, we

1 offer Defendants' Exhibit 63. Copies were given to
2 the Plaintiffs' attorneys during the break.

3 MR. KAUFFMAN: Your Honor, if I -- I
4 wouldn't object. I want to know which grade TEAMS
5 scores, at least.

6 THE WITNESS: It's not any grade. It is a
7 single score per district.

8 MR. KAUFFMAN: Weighing all of the grades
9 in the district?

10 THE WITNESS: Taking into account an
11 average score for all grades. Three through -- I'm
12 sorry, grades three through eleven, for the 1985-'86
13 year. It did not include the grade one test.

14 MR. KAUFFMAN: Are those numbers listed
15 somewhere?

16 THE WITNESS: I'm sorry, I'm not sure what
17 you mean by --

18 MR. KAUFFMAN: I mean, is there a list,
19 like a district with the weighted TEAMS scores for
20 each district?

21 THE WITNESS: Yes, those lists are
22 available. I don't have them here with me, but they
23 are available and have been -- were distributed to
24 the State Board of Education Committee on Awards and
25 Performance at its last meeting, in January,

1 February.

2 MR. THOMPSON: February.

3 THE WITNESS: February, I'm sorry.

4 MR. KAUFFMAN: Your Honor, I will not
5 object if I can have the list of --

6 MR. THOMPSON: We'll bring you a copy of
7 that. We'll bring a couple of sets of it.

8 MR. GRAY: Thank you, sir.

9 THE COURT: All right. 63 will be
10 admitted.

11 (Defendants' Exhibit No. 63 admitted.)

12 BY MR. THOMPSON:

13 Q. Mr. Moak, on Page 1 of this exhibit which is marked
14 as Exhibit 63, we find Table 7. I believe you begun
15 a discussion of what a district weighted average
16 TEAMS score is, but would you explain that in a
17 little bit more detail?

18 A. Well, as we have indicated before, with reference to
19 the performance testing program at TEA, there is a
20 statewide testing program that is known under the
21 rubric of TEAMS, that test for basic skills in
22 various alternatives -- in the alternative grade
23 levels, grades one, three, five, seven, nine and
24 eleven, in the areas of reading, mathematics and
25 language arts.

1 One of the things we have worked on during the
2 past year has been how to present that particular
3 data. And since the presentation of the data was
4 often by grade level, this made it difficult to --
5 and often by test, itself, we have problems in the
6 characterization of overall educational performance
7 utilizing that data. Each of those tests has a
8 scale, produces a scaled score for each one of the
9 tests involved. And so it's possible to get the --
10 to take the scaled score for average for the
11 mathematic's test and for a reading test and for a
12 writing test, and to construct an average for the
13 district by taking those -- the averages of each
14 test, adding them together and dividing them by
15 three. Those were then adjusted in relationship to
16 work that we had done at the national testing concern
17 for the degree of difficulty of the five tests that
18 were associated. And so we had a scaled score for
19 each grade. We weighted that scaled score, which was
20 very minor weighting, but we weighted that scale
21 score for the degree of difficulty of the test,
22 relative to, I believe, the seventh-grade test. And
23 then that produced an overall average scaled score,
24 mathematically and algebraically, would then produce
25 an overall scaled score for the district as a whole.

1 We also produced scaled scores for individual
2 campuses. And these are being utilized within our
3 analysis framework at the Education Agency for work
4 within accreditation modeling and for work in
5 recognition and performance of school districts and
6 campuses.

7 Q. So that's a methodology that was used to take all of
8 these different scores in a district and convert them
9 into a single index score that could be compared
10 district by district?

11 A. That's correct.

12 Q. Okay. On Table 7, do we find the same multiple
13 regression analysis format that we have looked at in
14 earlier exhibits?

15 A. Yes, we do.

16 Q. And what is the dependent variable in this particular
17 multiple regression analysis?

18 A. It is the district weighted average TEAMS score.

19 Q. Okay. So, what we're going to try to explain, by
20 independent variables, are variations in TEAMS scores
21 that are district weighted average TEAMS scores?

22 A. That's correct.

23 Q. Okay. And what are the independent variables that
24 are used in this multiple regression analysis?

25 A. Well, there's -- again, percent low income students.

1 That is, a percentage of students qualifying for free
2 and reduced lunches, we've discussed before. The
3 number of students in refined average daily
4 attendance, the 1985-'86 average salary of teachers,
5 and the pupil/teacher ratio of -- the average
6 pupil/teacher ratio within the district. Those are
7 within Table 7.

8 In Table 8, there are a similar set of
9 variables. Essentially, Refined ADA dropped out and
10 we made a conscious choice, there, of substituting
11 percent minority students for percent low income
12 students. Those two variables have a high
13 correlation and therefore, should not be run
14 together. But we wanted to analyze the data, both on
15 the basis of low income and on the basis of minority.

16 Q. Mr. Moak, there are a number of independent variables
17 that we've looked at in previous multiple regression
18 analyses, that one might expect to find on an
19 analysis such as this. And those might include
20 property wealth per ADA, or factors of that nature.
21 Why are not some of those factors included as
22 independent variables in this analysis? And what
23 other factors, perhaps, are not included, that you
24 might have considered?

25 A. Well, as I testified this morning, that in these

1 kinds of analysis, you include those variables which
2 contribute to the explanatory value of the equation.
3 It makes no particular sense to include a variable
4 that does not contribute to the explanatory value of
5 the equation. So overall, in this analysis with
6 these four variables in the analysis, we were able to
7 explain 73 and a half percent, roughly, of the -- of
8 the variation. We did include -- we did look at
9 other variables, including tax rates, Price
10 Differential Index, the taxable value per pupil, but
11 they added nothing to the explanatory value of the
12 equation, by being presented. And so they were not
13 -- they were included in the original analysis in the
14 sense that they were in the data set that we started
15 with. But they were dropped out because of their
16 failure to improve the overall equation.

17 Q. So a variety of financial factors such as effective
18 tax rates and wealth per student and PDI and
19 characteristics such as that were considered, but
20 were not included, because they don't explain much of
21 the variation in TEAMS scores?

22 A. That's correct.

23 Q. Okay. So if I read this multiple regression table
24 correctly, these four variables on Table 7, the
25 independent variables combined, explains 73.49

1 percent of total variation in weighted average TEAMS
2 scores, is that correct?

3 A. That's correct.

4 Q. And the percent low income students explains over 70
5 percent of that variation?

6 A. That's correct.

7 Q. Okay.

8 A. 70 percent of the variation.

9 Q. 70 percent of the total variation?

10 A. Yes.

11 Q. Is that an extremely high percentage, in your
12 experience with multiple regression analyses, to be
13 explained by any one independent variable?

14 A. Well, it -- I've seen ones that are higher, but it
15 certainly is a -- it's an indication that you have an
16 extremely powerful variable within the equation.

17 Q. If we could look at Table 8 for just a moment.

18 Are we still talking about the same district
19 weighted average TEAMS score on this analysis, that
20 we were on Table 7?

21 A. Yes.

22 Q. Okay. And did I understand you, the differences are
23 that you have substituted minority student percentage
24 for percentage low income, and you've dropped Refined
25 ADA as an independent variable?

- 1 A. Yes, that's correct.
- 2 Q. Okay. So, on this particular table, we're only
3 looking at three independent variables?
- 4 A. Yes.
- 5 Q. And would you explain one more time why you didn't
6 want to include percent low income and percent
7 minority in the same regression analysis?
- 8 A. Well, again, to have two variables which essentially
9 have a high degree of relationship is inappropriate
10 to place in this kind of analysis.
- 11 Q. Okay. So, as I read Table 8, these three variables,
12 in combination, explains 67 percent of the variation
13 of weighted average TEAMS scores. And the percentage
14 minority students explains the largest piece of that,
15 and that's 61.49 percent?
- 16 A. That's correct.
- 17 Q. Okay. And there's a high correlation between that
18 variable and the percent low income students which
19 was included on Table 7?
- 20 A. That's correct.
- 21 Q. Okay. Mr. Moak, if we could turn to Table 9. Is
22 this a Pearson Correlation Coefficient table of the
23 same type that we've seen on previous exhibits?
- 24 A. Yes, it is.
- 25 Q. And do your column heads and the definitions down the

1 left-hand side, are they the same as included on the
2 previous exhibits?

3 A. Yes, with the exception of this has an added variable
4 of the TEAMS score.

5 Q. Okay.

6 A. This district average weighted TEAMS score, which is
7 printed down the right-hand side of the page.

8 Q. So the primary difference is that we've added a new
9 column, over on that right-hand side, for TEAMS
10 scores?

11 A. Yes.

12 Q. Okay. Let's look down that column for just a moment.
13 If we start with Total Revenue per Pupil, on the
14 left-hand side, and come across to the TEAMS column,
15 I find a coefficient of .1021. What does that
16 coefficient mean?

17 A. Well, that is again, the correlation of coefficient,
18 as we discussed in the earlier analysis, between the
19 TEAMS score and total revenue per student.

20 Q. And is that an insignificant correlation, in your
21 estimation?

22 A. Yes, it is. It shows an insignificant relationship
23 to the low correlation, very low.

24 Q. And if we move down to the next column on the
25 left-hand side, which is Other Local Revenue per

1 Pupil, and if we come across to the TEAMS column, we
2 find a coefficient of .1716. What does that
3 represent?

4 A. Well, again, the correlation between other local
5 revenue per pupil and the TEAMS score. Again, a low
6 correlation, which would show very little meaning
7 between -- very little meaningful relationship
8 between the two variables.

9 Q. Would you also regard a .17 positive correlation as
10 an insignificant correlation?

11 A. Yes.

12 Q. Okay. And if we come down to the next column on the
13 left-hand side, which is Taxable Value of Property
14 per Pupil, and come across to the TEAMS column, we
15 find a correlation of .0982. What does that
16 correlation mean?

17 A. Again, we have an insignificant -- we have a
18 correlation at a very low level -- insignificant
19 level of relating the taxable value per pupil to the
20 TEAMS score.

21 Q. Okay. And if we come on down to Total Effective Tax
22 Rates on the left-hand side, and come over to the
23 TEAMS column, we find a relationship or a coefficient
24 of minus .077. What does that negative correlation
25 in that column mean?

- 1 A. You have a slightly inverse relationship, but it's
2 .077. It's beginning -- it's approaching random
3 rapidly --
- 4 Q. Okay.
- 5 A. -- in terms of the -- what this says about the
6 relationship between the two variables.
- 7 Q. Okay. So, is it fair to say, from this particular
8 Table 9, that there is not a strong or even a
9 moderate relationship between either TEAMS scores and
10 total revenue per pupil, other local revenue per
11 pupil, taxable value of property per pupil, or
12 effective tax rates?
- 13 A. Yes, it is.
- 14 Q. Okay. And finally, on the left-hand side, as we move
15 down to the next to the last category, which is
16 Percent Low Income Student, and we come across under
17 the TEAMS scores and we find a coefficient of minus
18 .5885. What does that mean?
- 19 A. Show a high -- a moderately -- a moderate -- strong
20 moderate, I guess I would phrase it, correlation
21 between the two variables.
- 22 Q. And does that confirm the information that we looked
23 at, for example on Table 7, that indicates the
24 importance of percent low income students as an
25 explainer, if you will, of variations in weighted

1 average TEAMS scores?

2 A. Yes.

3 Q. Okay. Mr. Moak, we have talked quite a bit about
4 wealth in this trial. And during your testimony,
5 you've also talked quite a bit and we've looked at a
6 number of exhibits that focus on the percent low
7 income or percent comp. ed. students that there may
8 be in a district. I would ask you to reflect on that
9 information. And I would ask you, is there any
10 information available that indicates that we have a
11 problem with the distribution of state aid or with
12 the state funding system with regard to low income
13 students?

14 A. In terms of the information that I've reviewed in the
15 course of the various analyses that have been
16 presented, it would appear that there is -- we've not
17 shown any significant relationship to the -- in the
18 overall financing pattern versus the incidence of low
19 income students.

20 Q. And is it a correct conclusion to draw from some of
21 the previous exhibits, that for the districts with
22 the very highest percentage of comp. ed. or low
23 income students, that the state share significantly
24 increases?

25 A. Yes, it is.

1 Q. Okay. And do we see from Table 7 and Table 9, that
2 this percentage of low income students appears to be
3 the factor that more explains variations in this
4 measure of student performance than other factors?

5 A. Yes, it -- it is a -- it's an independent variable
6 that clearly indicates that there's a major
7 relationship between educational performances. We're
8 able to measure it through the testing program that
9 we have and the percentage of low income students
10 that's found in the district.

11 Q. And is there any information that you have reviewed
12 that indicates that low income students live
13 predominantly in poor districts?

14 A. No, there is not. There is some information that
15 suggests that we have -- that there's a relationship
16 between very high concentrations of low income
17 students, and that those districts tend to have low
18 property values. But in terms of the overall
19 relationship of the percentage of low income students
20 to property values, quite the reverse, we do not find
21 a relationship.

22 Q. Okay.

23 MR. THOMPSON: Your Honor, we pass the
24 witness.

25 THE COURT: All right, sir. Mr. Thompson,

1 thank you.

2 MR. THOMPSON: Thank you.

3 CROSS EXAMINATION

4 BY MR. TURNER:

5 Q. Mr. Moak, looking at Tables 7, 8 and 9, I want to be
6 sure that I understand the difference between Table 7
7 and Table 9. Table 7, the Partial R-Squared number,
8 or column, shows the percentage of total variation
9 that is explained by that independent variable, is
10 that correct?

11 A. Within the context of the total analysis. I mean,
12 not by the variable by itself, necessarily. For
13 instance, it is not saying that ADA represents .0125,
14 but rather, it adds .0125 to the R-square that is
15 explained -- to the -- what is explained by percent
16 low income students.

17 Q. All right. Now, when we look over on Table 9, and
18 you show the negative .58 relationship between TEAMS
19 scores and the percent low income, distinguish for me
20 that -- the meaning of that Pearson Correlation
21 Coefficient. Distinguish that from the number that
22 we were looking at on the previous page.

23 A. Well, the correlation simply looks at the
24 relationship between two variables. And in this
25 case, I believe, the correlation -- the correlation

1 was run on -- without weighting the data, if you
2 will, but rather looking at the straight correlation
3 between the units. Whereas in the first table, the
4 analysis was run weighting the data by district size.
5 But they're both indicative of a significant degree
6 of variation being explained by the percent low
7 income students.

8 Q. Mr. Moak, from your experience, what kind of factors
9 are present that would cause this relationship
10 between low income students and TEAMS scores to
11 exist?

12 A. This is an area that there's been a great deal of
13 research in. And I wouldn't try to qualify myself as
14 an expert in that field. As a general matter,
15 there's been a good deal of national research which
16 has focused on a variety of relationships to
17 educational performance, that has to do with
18 background of the student. Could a family income,
19 could a degree of both parents in the home, and a
20 variety of other type -- types and kinds of family
21 support variables. But beyond that, I wouldn't want
22 to say that I would be prepared to give an opinion as
23 to what this -- the totality of this research has
24 shown, being its an area outside of my expertise.

25 Q. Those factors that you are aware of that you

1 mentioned, are those factors that are factors -- that
2 are affected by influences outside the realm of the
3 school environment?

4 MR. KAUFFMAN: Your Honor, I guess we would
5 object to that. The witness just said he did not
6 have expertise in that area. And now the attorney is
7 trying to elicit opinions from him on that area.

8 MR. RICHARDS: He's also trying to lead
9 him.

10 MR. TURNER: He did name those factors.
11 The ones that he did name and was familiar with were
12 those factors that were outside of the school
13 environment.

14 THE COURT: Okay. I'll overrule.

15 A. Yes, those factors are outside the school
16 environment.

17 BY MR. TURNER:

18 Q. Mr. Moak, in reviewing the TEAMS score data, I have
19 noted and I want to ask you if you have noted this,
20 and if so, is there any explanation for it? I've
21 noted that in certain districts which seem to have
22 higher than average -- or lower than average
23 percentages of low income, that as a general rule, we
24 see that the TEAMS scores in the early grades, for
25 those early years, seem to be much higher than

1 average. And in the districts where we have a high
2 percentage of low income students, the TEAMS scores
3 in the earlier grades seem to be lower than state
4 average?

5 MR. RICHARDS: Excuse me, Your Honor. This
6 is leading in a compound question to evidence the
7 witness hasn't testified to, nor is it in evidence,
8 at this point.

9 MR. TURNER: Your Honor, I'm just referring
10 to the data as I have reviewed it, in asking this
11 witness if he agrees if those trends are evident in
12 the data. And then I'm going to ask him if he
13 agrees, if there's an explanation for it.

14 MR. RICHARDS: That's what leading
15 questions are, I think: I have determined this; do
16 you agree?

17 MR. TURNER: Well, I can say just
18 hypothetically, I suppose, Your Honor.

19 THE COURT: All right, sir.

20 BY MR. TURNER:

21 Q. Mr. Moak, in terms of looking at TEAMS scores, if
22 hypothetically we were to see that in districts where
23 there are low percentages of low income, the TEAMS
24 scores in early grades appear to be higher, and in
25 those districts where there is a high percentage of

1 low income students, the early grade TEAMS scores
2 appear to be lower. And in all districts, there
3 appears to be a trend through time, from the early
4 grades up through the higher grades, of those numbers
5 converging, in terms of TEAMS scores, in that the
6 differences between districts with low percentage of
7 low income and high percentages of high income, seem
8 to converge at the higher grades. What would
9 account, if that were the case, for those differences
10 in earlier grades and the conversions that appears to
11 exist?

12 MR. KAUFFMAN: Your Honor, I guess we would
13 object to the question, again. As I understand it,
14 we're going under the process that if you mention a
15 hypothetical like that, you're going to offer proof
16 at a later time, if that's in fact the case. There's
17 no proof in the record, to this extent, that that's
18 in fact the case.

19 MR. TURNER: Your Honor, again, I'm asking
20 hypothetically. I guess I'd have to say I've
21 observed it. I think it can be shown, I don't know
22 if Mr. Moak has that data available and could show it
23 to us or not. I guess I could inquire.

24 THE COURT: Let's see, are you suggesting a
25 hypothetical that the evidence will show whatever it

1 is that you are fixing to say?

2 MR. TURNER: I think the evidence will show
3 that. I will inquire of Mr. Moak, if you would like
4 for me to, Your Honor, to establish that.

5 THE COURT: Well, all right, then. I guess
6 for the moment I'll sustain and see what happens
7 here.

8 BY MR. TURNER:

9 Q. Mr. Moak, the hypothetical which I have mentioned,
10 would that hypothetical be supported in general terms
11 by the actual data?

12 A. I would really have to review the data to determine
13 that. The data does exist -- substantial amounts of
14 data does exist by grade level and by type of
15 district. But I have not reviewed the data in the
16 context in which you're mentioning it, so I really --
17 really am not quite sure, without going back to the
18 data, to -- as to whether that is the pattern or not.

19 Q. All right. Mr. Moak, during Dr. Verstegen's
20 testimony, she spoke of the relationship between
21 wealth per ADA and revenue per ADA, and produced
22 coefficients that approximated the data that you have
23 produced. Are you aware of that?

24 A. I'm aware that she did an analysis based on her data
25 that showed correlations between a variety of

1 variables, including those you mentioned.

2 Q. She took one step beyond the development of
3 correlation and did a slope analysis between wealth
4 per ADA and revenue per ADA.

5 A. Yes.

6 Q. And came up with a number, or a measurement of a
7 slope of that relationship, of .001, do you recall
8 that?

9 A. Yes, I do.

10 Q. As I understand the explanation of that, it was that
11 even though a relationship exists between wealth and
12 revenue, that for every change in say, a wealth of
13 say, a dollar, that revenue would change very little.
14 For example, maybe one tenth of one cent. And that
15 would be the meaning of a .001 slope number. Did
16 your data confirm that kind of slope relationship?

17 A. I did not look at the data in terms of slope. I
18 understood the research that was presented in Dr.
19 Verstegen's work and would feel fairly certain that
20 it would come out with a similar conclusion.

21 It does show, as you mentioned, that there is a
22 slope of -- in those particular variations -- in that
23 particular variable, .0001, which would lead one to
24 the conclusion that for a half million dollar change
25 in property value, you would be looking at a \$500.00

1 change in revenue.

2 Q. Mr. Moak, I was looking at your Defendants' Exhibit
3 No. 60, which is an analysis of total general revenue
4 or percentage -- or other total revenue as a percent.
5 And I would like for you, if you will, to take that
6 exhibit and look at it with me, beginning at the back
7 page of that exhibit.

8 A. Okay.

9 Q. As we begin on the back page, Page 22, and begin to
10 look at the Cumulative Refined ADA column, it can be
11 calculated -- or the Refined ADA of the named
12 district can be calculated, is that correct?

13 A. Yes.

14 Q. So we start off at the bottom with the Spring Creek
15 Independent School District, which is the district
16 having the highest other local revenue as a percent
17 of their total. And we can determine that it's a
18 district with 25 students. Am I correct in reading
19 that data?

20 A. Yes, you are.

21 Q. And as we move up, we can calculate the ADA for each
22 district. And I noted that we had to get over onto
23 the second page, Page 21, second page from the back,
24 to the Barbers Hill Independent School District,
25 before we found a district of any significant size,

1 it being a district of 1,559 Refined ADA.

2 Would it be true, that throughout this end of
3 the chart, that we would find a large number of
4 districts with very low student populations?

5 A. In general terms, that would be true. The data on
6 the front page, for instance, indicates that there --
7 the top 89 districts, which is something approaching
8 9 percent of the districts, have but two percent of
9 the students. I haven't looked at the -- at each one
10 of those 89 to determine which district might be the
11 largest district, but certainly in general terms,
12 these districts at the top end tend to be very small
13 districts.

14 Q. Now, you did some tables, I believe, on your
15 Defendants' Exhibit No. 62, that tried to show the
16 relationship between total general revenue per pupil
17 and certain other district characteristics, one of
18 which was Refined ADA?

19 A. Yes.

20 Q. Inasmuch as it appears, from just a cursory review of
21 Exhibit 60, that in the top end, top five percent of
22 pupil, that we find a large number of districts with
23 very low ADA. Why did not that relationship show up
24 on Table 1?

25 A. Well, part of that can be determined by looking back

1 at, as an example, Defendants' Exhibit 55, which
2 shows the amounts per student total revenue analysis
3 that this data is based on. And that begins with
4 \$3,400.00 of cost per student at the top end, and
5 then goes down to 30 for districts over 50,000
6 students, for districts 25,000 to 50,000 students,
7 the numbers \$3,284.00 and progresses into \$3,300.00
8 and \$3,400.00 range, until you reach the top end of
9 that scale -- bottom end of the scale, in terms of
10 size of district, where you do see some increase.

11 A correlation doesn't look at just one end of
12 the spectrum, it looks at the entire spectrum. It's
13 saying that we're not seeing a significant amount of
14 variation between that total revenue and the size of
15 district --

16 Q. So --

17 A. -- in terms of that correlation. Other than that, I
18 don't have a particular explanation.

19 Q. So, if we had just looked at the smaller districts,
20 rather than looking at all districts, we would see
21 that relationship better than if we are doing as we
22 were doing on Defendants' 62 and looking at all
23 districts?

24 A. Yes.

25 Q. So, the data I'm looking at on Defendants' 62 would

1 not tell us that there is no relationship between
2 size of districts and the general -- total general
3 fund revenue per pupil of districts?

4 A. If you look at very small districts, there's clearly
5 a higher revenues per pupil back on 55. If you look
6 at districts other than those very smallest ones,
7 there's not much variation. What the data is saying
8 in the correlations, is that when you look at the
9 system as a whole, you don't find much variation,
10 despite the fact that when you look at the very
11 smallest ones, you do get some variation.

12 Q. Mr. Moak, if we were to analyze the geographic
13 location of the districts in the top five percent of
14 other local revenue percent on Defendants' Exhibit
15 60, geographically, where would most of those
16 districts be located?

17 A. Well, a good many of them would probably be in West
18 Texas. I have not run an analysis that tells me
19 precisely what regions they're located, but I assume
20 that a good many of them would be in the West Texas
21 area, associated with high concentrations of property
22 value and low concentrations of students.

23 Q. And if we observe, as we could by looking at the
24 average daily attendance figures for those top five
25 percent, would the size of those districts -- or the

1 Refined ADA of those districts give us any indication
2 of the geographic size of those particular districts?

3 A. No.

4 Q. And do we know from -- or do you know from your
5 experience, anything about the general geographic
6 size of West Texas, small West Texas school
7 districts?

8 A. In general terms, there are certainly a good many
9 larger districts in total geographic area in the West
10 Texas area than there are in areas throughout the
11 rest of the state.

12 THE COURT: Counselor, I want to stop there
13 for lunch, please. Let's do this, can we get started
14 at 2:30 and work until around 5:30, same difference.

15 Okay. Let's do that. We'll get started up
16 again around 2:30.

17

18

19

(Lunch Recess)

20

21

22

23

24

25

AFTERNOON SESSION

CROSS EXAMINATION (RESUMED)

1
2
3 BY MR. TURNER:

4 Q. Mr. Moak, you had offered some testimony early on
5 about the Connally Committee report?

6 A. Yes.

7 Q. Back in the '60s?

8 A. Right.

9 Q. And as I recall, you are a staff member of that
10 committee, is that correct?

11 A. That's correct.

12 Q. Could you tell us what the consolidation proposals
13 were generally of the Connally Committee?

14 A. Well, the Governor's Committee proposed that school
15 districts be consolidated. It further proposed that
16 county committees be created to affect the process of
17 consolidation, but it did also propose a specific
18 series of standards and, actually, proposed school
19 district consolidation maps to go into effect if the
20 county committees did not come up with an alternative
21 school district reorganization proposal.

22 The basic standard for those proposals was that
23 the school district was to either be countywide or be
24 1600 in average daily attendance. It used a somewhat
25 variable standard of 1600 to -- used a 2600 standard

1 in the metropolitan areas and the 1600 standard in
2 the rural areas. When we drew the maps for the
3 committee in applying those standards -- I'm not sure
4 how many -- but most counties in Texas would end up
5 with -- ended up with a single countywide district
6 with only the metropolitan counties having more than
7 one district effectively.

8 Q. Was equalization of property tax basis a principle
9 motivation for the consolidation proposals made by
10 the Connally Committee?

11 A. No, not as I recall the information or the
12 recommendations of the committee. It was to create
13 an efficient size operating unit for -- in order to
14 be able to offer an adequate education program
15 without additional state subsidy.

16 Essentially, much of the question was
17 characterized around the degree of state subsidy that
18 would be necessary for the offering of adequate
19 education programs in small school districts. It was
20 held as a more cost efficient method of offering the
21 kind of program the Governor's Committee was
22 proposing to the Legislature. There was a degree of
23 realization, especially in the report, that in
24 certain cases the elimination of tax havens would
25 result in some greater overall utilization of

1 educational -- of the wealth of the state. But
2 equalization, in general terms, was not a primary
3 objective.

4 Q. Mr. Moak, we've had several witnesses who have told
5 this Court that progress toward equity in Texas
6 oftentimes is accompanied by an infusion of state
7 dollars into the educational program. Is that your
8 experience?

9 A. Well, in general terms, yes. When we have made
10 substantial progress towards equity, those particular
11 occasions have generally involved a substantial
12 amount of additional state dollars. Some of that
13 depends upon what was happening at given points in
14 time. For instance, today we will probably score
15 better in future years on certain kinds of equity
16 tests than we do today simply because of property
17 values changing in all rich school districts.
18 There's no accompanying change in state money
19 associated with that.

20 But in general terms, yes, that over time, when
21 we have made major strides forward, we have made them
22 on the basis of -- when we made major strides in
23 equity, there has been a major increase in state aid
24 at the same time.

25 Q. Mr. Moak, could you tell me whether or not the -- an

1 increased dependence on the property tax for
2 financing of public education would be more
3 equalizing or disequalizing on our educational
4 system?

5 A. That would really depend upon how it was done. In
6 general terms if we relied more on the property tax
7 and it was administered and distributed in the same
8 pattern as we have today, that might well tend to be
9 more disequalizing. If we increased dependence on
10 the property tax with changes in the way we utilize
11 money, it could be more equalizing. But it would
12 really depend on exactly what the change was that was
13 involved.

14 Q. Mr. Moak, we have had testimony in this Court about
15 the beginnings of the concept of Minimum Foundation
16 Programs. Are you generally familiar with the
17 historical origins of Minimum Foundation Programs?

18 A. I'm generally familiar with the concept of Foundation
19 Program and that they go back some point -- they go
20 back a fairly substantive amount of time and
21 specifically familiar with what happened in Texas and
22 a few other states. I don't know whether I am
23 comprehensively familiar with the background of the
24 concept.

25 Q. Would you agree or disagree with me that one of the

1 principle purposes of the concept of Minimum
2 Foundation Programs is to equalize educational
3 opportunity and to have an affect of offsetting
4 differences in property wealth from district to
5 district?

6 A. Well, I would say that it would be to equalize
7 educational revenue more than it would necessarily
8 opportunity, but to provide a greater degree of
9 equalization and to offset variations in local wealth
10 is certainly normal and very oft mentioned purposes
11 of the Foundation Program concept.

12 Q. So even though we have a sharing of state and local
13 responsibility for education in Texas, as we do in
14 most other states, that sharing of responsibility is
15 only one of the elements of what is accomplished by
16 the creation of a Foundation School Program, is that
17 correct?

18 A. Yes.

19 Q. Mr. Moak, when we were talking before lunch about the
20 work that Dr. Verstegen did, you commented regarding
21 the slope that Dr. Verstegen had utilized in
22 evaluating equity which resulted in a .001 slope
23 measurement. Being familiar with her work, what --
24 can you tell us what accounts for the fact that that
25 slope number is almost zero? Whereas, some of the

1 data that you have shown us indicates that there is
2 some change in wealth per ADA as it relates to
3 operating or general fund revenues. How does that
4 study that you performed equate with her finding that
5 there is actually no relationship -- virtually no at
6 .001 between revenue per ADA and wealth, property
7 wealth per ADA?

8 A. I'm not sure I characterize the .001 as no
9 relationship. I mean, it says that for a change of
10 \$100,000.00 in property value per student, that you
11 would expect \$100.00 worth of change in revenue per
12 student. So there is some relationship there, first
13 of all. A slope of .001 is not to the point of being
14 negligible.

15 I would characterize the data as coming
16 together on this basis that what much of the analysis
17 that I showed would suggest that there were great
18 numbers of districts in which there was relatively
19 little variation in revenue per student associated --
20 relatively little variation of revenue per student
21 regardless of what wealth group the districts were
22 in. Whereas, there were some districts at the top
23 end of the spectrum in which I showed that there was
24 very substantial relationship between wealth and
25 revenues per student.

1 The slope of .001 in Dr. Verstegen's work is
2 associated with the system as a whole as opposed to
3 looking at component parts of the system. So she was
4 taking both those areas in which I was showing a
5 substantial degree of relationship, those areas in
6 which I was showing no relationship, and when she put
7 that through a statistical analysis, it came out with
8 this relatively low slope, which would indicate that
9 which is for the system as a whole and not just for
10 particular component parts, if that answers your
11 general question in that area.

12 Q. I noted Dr. Verstegen when she looked at some of the
13 correlations with numbers, such as .001 or .015,
14 would not permit us to call those numbers in that
15 range insignificant but rather to suggest to us that
16 they are merely meaningless or show little or no
17 relationship.

18 Is it proper for us to say that a .001 or .015
19 number -- correlation number is significant, as she
20 would say it, in that it's telling you there is no
21 relationship between the two variables?

22 A. Well, if you're using -- part of this becomes the
23 question of significance as a statistical test versus
24 the word significance used in a more standardized
25 kind of terminology, more normal kind of terminology.

1 Generally, those who are involved with those kinds of
2 statistical tests, you deal with tests of
3 significance at various levels. You don't have
4 significant or insignificant automatically. So
5 correlations are not generally described by
6 statisticians as being significant or insignificant
7 but rather having a low or moderate or a high degree
8 of correlation.

9 The question of significance, if you turn that
10 to a more standardized usage kind of terminology of
11 just the English language meaning of the word, what
12 are shown as very low correlations, certainly show
13 very insignificant relationships in many ways.

14 So I would characterize this more as a
15 conversation that -- or problem that had to do with
16 the terms that aren't relative to significance as a
17 statistical concept thing, the relationship between
18 the words insignificant and a low correlation. I
19 wasn't here for the -- I was not here for that
20 particular portion of the testimony, but that would
21 be my assumption on which those comments were made.

22 Q. Mr. Moak, when we looked with you at Defendants'
23 Exhibit No. 54, which is a revenue analysis for
24 '85-'86, figures expressed in thousands --

25 A. Mr. Turner, I'm sorry. I need access to the exhibit.

1 Q. Oh, I'm sorry.

2 On that Defendants' 54, there is a column,
3 "other local revenue," which you characterized as
4 being enrichment monies. You made note of the fact
5 that at the bottom of the page on the line "state
6 total," that there was \$801,376,000.00 in other local
7 revenue or enrichment revenue out there somewhere
8 among the school districts of the state. Do you
9 recall referring us to that figure?

10 A. Yes, I believe I said some might call it enrichment
11 revenue. I think I've characterized it as other
12 local revenue but --

13 Q. You mentioned when you were looking at that \$801
14 million figure, that we do not know what it's used
15 for. Could you tell me what you meant by the
16 statement, "We don't know what that \$801 million in
17 local revenue is used for"?

18 A. This is money that is contained within the general
19 fund of the district. And by definition of what a
20 general fund is, is a co-mingling of various sources
21 of revenue, the total of which together often
22 imbalances. It then budgeted amongst a variety of
23 sources and functions or functions and objects of
24 expenditure, various programs. It's therefore not
25 possible to attribute to any particular expenditure

1 what its exact source of financing might be.

2 One can make inferences, one can make algebraic
3 equations, but one cannot specifically tell by -- for
4 any source of revenue within the general fund of a
5 district how that money was spent or on what specific
6 purpose it was spent.

7 Q. Would there be any available method whereby we could
8 determine if this other local revenue, that you have
9 said we could equally call local enrichment funds,
10 are used for enrichment of educational programs
11 within those districts or whether they are used for
12 purposes such as football stadiums or a little bit
13 nicer building rather than building a basic building
14 and factors that may not be related to the actual
15 enriching of educational opportunity or educational
16 programs within a given district?

17 MR. RICHARDS: Excuse me. I think the
18 exhibit does not carry with it any of the cost of
19 facilities. So I assume that that would be -- unless
20 I misunderstood the exhibit from the beginning.

21 THE COURT: All right.

22 THE WITNESS: Money is money within the
23 general fund of the district. The general fund of
24 the district is spent for a variety of purposes. In
25 some districts that may well include facilities and

1 capital outlay items to a greater or lesser extent,
2 whatever the district spends that general fund money
3 for. I believe, for instance, in the case of one
4 district that was discussed in this case, there was
5 evidence that general fund money had been expended
6 for a building.

7 But in any case, there is really on a -- from
8 the basic data at my disposal, it would not be
9 possible to make the judgment as to whether the money
10 had been utilized for educational enrichment or for a
11 specific purpose. It might well be that if one was
12 extremely familiar with the circumstances of a
13 particular district on a year-to-year basis, that one
14 could make that judgment. But from the standardized
15 kinds of information reports which we receive at the
16 Education Agency, it is not possible to make the
17 judgments as to the specific purpose for which any
18 particular revenue within the overall fund is
19 expended.

20 BY MR. TURNER:

21 Q. Would you hold the opinion then that we should not
22 make any assumptions about enhanced educational
23 program offerings simply based upon a review of the
24 amount or percent of other local revenue that might
25 be available to any given district?

- 1 A. On the other local revenue is just that. It's
2 revenue dollars for whatever expenditures the
3 district chooses to make of it. If one were to try
4 to examine the question of educational offerings or
5 enhanced educational offerings, it would require a
6 different kind of study and different kind of set of
7 statistics than this information contains.
- 8 Q. I take it then in your view it would be or would it
9 be -- or would it not be possible to find a district,
10 say, a small district in West Texas, that had well
11 above state average wealth per pupil that was not
12 providing staffing at a level that some expert in
13 this lawsuit might say was necessary for them to
14 provide an adequate or quality level of education
15 within that district?
- 16 A. I guess one thing over the years that has tended to
17 be the case is that with 1,000 school districts and
18 as many problems in reporting data that Texas has and
19 other kinds of problems, I'm not going to say
20 anything is not possible. The -- I believe there are
21 districts, for instance, in this category, in the
22 highest wealth categories very few, but there are
23 even a district or two in some of the wealth
24 categories at the upper end that aren't providing any
25 additional local revenue under this other revenue

1 column.

2 But again, I would not -- I don't know whether
3 your statement would be correct, but I would not
4 assume it to be incorrect. We seem to have at least
5 one of everything in Texas, and I imagine we probably
6 have one or more school districts that have above
7 average staffing ratios with the above average
8 revenues per student.

9 Q. Would it be your opinion, Mr. Moak, that in order to
10 fairly evaluate the impact of other local revenue
11 available to districts -- to certain districts in
12 this state, to evaluate the impact of that upon the
13 quality of educational offering, that we would need
14 some method whereby we could trace that additional
15 revenue into substantive program offerings or certain
16 enrichment programs that would, in fact, enhance the
17 quality of educational offerings being made in those
18 districts?

19 A. Yes. Again, I'm not sure you could ever trace the
20 other local revenue directly there in most cases.
21 But again, if you were looking for enrichment
22 activities of various kinds, they would have to first
23 be defined and analyzed and studied and then some
24 attempt to determine what method of financing used
25 for those would have to be allocated amongst the

1 various revenue sources of the district.

2 MR. TURNER: I'll pass the witness, Your
3 Honor.

4 CROSS EXAMINATION

5 BY MR. R. LUNA:

6 Q. Can I ask you to come to the board for a moment,
7 please, sir, and assist us with a diagram?

8 A. (Witness complies.)

9 Q. Mr. Moak, it has occurred to me that in the course of
10 our weeks and weeks of testimony in regard to this
11 case, there's not really a single piece of evidence
12 in this record as to exactly what the Texas school
13 finance system looks like in a diagram form. And if
14 I could, I'm going to hand you what has been marked
15 Plaintiff-Intervenors' Exhibit 235, entitled School
16 Board Members' Library. And on Page 24 is a basic
17 diagram of the school finance system in Texas, but
18 it's a rather simplified diagram.

19 I'm going to ask you, if you would, Mr. Moak,
20 to start with this diagram and expand on it a little
21 bit, if you would, showing us how the basic allotment
22 and other figures, using '85-'86 data, fit into that
23 diagram, if you could, beginning with the bottom with
24 the constitutional funds, which are designated in
25 this diagram as available school funds of \$280.00 per

1 student.

2 MR. RICHARDS: Which figure are you using?

3 MR. GRAY: Figure 2 on Page 24.

4 THE WITNESS: I'm sorry. Are you asking to
5 put this diagram on the board or use my data to -- as
6 it follows here to create a diagram similar to this?

7 MR. R. LUNA: Either way. Whatever is
8 simplest, but I would like to use the data for
9 '85-'86, so we can see exactly how this works
10 together. I would like for it to be as close to this
11 diagram as possible, if you could.

12 MR. GRAY: The data is in the book.

13 MR. R. LUNA: The data for '85-'86 is not
14 in the book. That's what I am asking him to put up
15 here.

16 BY MR. R. LUNA:

17 Q. Mr. Moak, while you are drawing, I'm going to go
18 ahead and ask you a few questions.

19 MR. RICHARDS: You don't like the drawing --

20 BY MR. R. LUNA:

21 Q. At the base are the available school funds and --

22 MR. RICHARDS: Excuse me. Let's let him
23 get it on the board so we can figure out what you're
24 asking him before he starts, okay?

25 MR. R. LUNA: Well, let me review some

1 testimony while he is drawing to save time.

2 BY MR. R. LUNA:

3 Q. The available -- in this trial, one witness has
4 described the available school fund --

5 MR. RICHARDS: Excuse me. Is this a
6 question or speech? The witness is drawing a
7 picture. He can't answer your question while he is
8 drawing. So I object unless you are going to frame a
9 question.

10 MR. R. LUNA: I will be happy to wait until
11 he finishes.

12 THE COURT: Okay.

13 THE WITNESS: In order to fit this to my
14 data, I'm going to need to make some modifications to
15 it, if we are going to use '85-'86 data to show what
16 it is we're trying to show. Forgive me for a few
17 editorial modifications to the diagram.

18 MR. R. LUNA: That will be fine. I'd just
19 like it to be as accurate as possible.

20 MR. RICHARDS: We would like you to copy
21 the one in the book.

22 THE WITNESS: I didn't draw the one in the
23 book.

24 MR. GRAY: Dr. Kirby did.

25 THE WITNESS: Dr. Kirby didn't draw the one

1 in the book, either.

2 MR. KAUFFMAN: Your Honor, here is a copy
3 for the Court.

4 THE WITNESS: Okay. I've tried to take the
5 chart in the -- just a minute. One more.

6 I've tried to take the chart and utilize my
7 data to show how such a chart would work within the
8 context of the data that I have come up with an
9 overall \$4100.00 per student cost. It begins with
10 the available school fund -- begins with the
11 Foundation Program, which has a basic allotment of
12 1350 --

13 BY MR. R. LUNA:

14 Q. All right. Now, let's slow down. Begin at the very
15 bottom and work up.

16 A. I'm sorry. That's a method of financing issue. If I
17 can, the 280 is part -- okay. You have \$280.00 basic
18 constitutional allotment available school fund.
19 That's simply a method of finance that is utilized to
20 help finance the state's share of the Foundation
21 School Program.

22 Q. All right. Let's start with the available school
23 fund of \$280.00. Will you put a dollar sign in front
24 of the 280 to indicate what that is.

25 Is every number on your page there, are all of

1 those dollars?

2 A. All of those are dollars, yes.

3 Q. All right. Now, the \$280.00 is an amount per capita
4 that is per student that changes -- I want to say
5 every year, is that correct, or every other year?

6 A. Sometimes it changes within a year, but it's -- in
7 this case it's every year. It's set by the State
8 Board of Education.

9 Q. And Dr. Walker testified that that's the money that
10 the State of Texas got when it gave up its claims
11 around 1850 to all the lands northwest of Texas, as I
12 understand, is that correct?

13 MR. RICHARDS: Excuse me. I object to
14 leading. This witness is perfectly capable of
15 framing answers to questions without your telling him --

16 THE COURT: It was leading. I'll sustain.

17 BY MR. R. LUNA:

18 Q. Would you describe very briefly the source of those
19 funds that compose the bottom line on your chart?

20 A. The available school fund is a combination of funds
21 taken from the earnings of the permanent school fund
22 plus one-quarter of the motor fuel tax proceeds plus
23 in 1985-'86, funds that were taken from a federal
24 offshore oil recovery settlement that were, in part,
25 put in that fund to come to a total of -- the total

1 of those come to \$280.00 per student.

2 Q. How was that fund set up originally and why?

3 A. Well, the fund, again, is an earnings fund. If your
4 question is, is the -- how is the permanent school
5 fund originally established as opposed to the
6 available school fund?

7 Q. Yes, sir.

8 A. I know it had to do with the total of the --
9 initially of the settlement between Texas and the
10 United States with respect to its boundary. In terms
11 of the details of it, I'm not familiar with those
12 exact -- the exact details of how this was originally
13 set up. Its primary source over the years was, and
14 still is, revenue from state-owned lands of various
15 types; in particular, mineral leases on state-owned
16 lands.

17 Q. All right. What is the difference between the term
18 permanent school fund and available school fund?

19 A. Available school fund is -- permanent school fund is
20 an investment fund. The investment income other than
21 capital gains from that permanent school fund are
22 then deposited in the available school fund to the
23 available -- to that is added revenue from -- a
24 portion of the revenue from the state's motor fuel
25 tax. At various times in the state's history, other

1 revenues have also been placed in the available
2 school fund for distribution, but currently, it's
3 just the earnings from the permanent school fund plus
4 the motor fuel tax.

5 Q. So available school funds are those funds that are
6 available to be spent for educational purposes?

7 A. The available school fund is a protected
8 constitutional fund.

9 Q. Okay.

10 A. Which is given title in the Constitution of the
11 available school fund.

12 Q. All right. Now, those funds go to every school
13 district by virtue of the Constitution, including
14 those districts that receive no state aid, such as
15 budget balanced districts, is that correct?

16 A. The Constitution directs that they be distributed
17 amongst the several counties on the basis of
18 scholastic population, which we have defined as
19 students in average daily attendance. The statutes
20 have further described that the allocation would be
21 to the individual school district. But there is a
22 distinction between the constitutional designation by
23 the county and the statutory designation by school
24 district.

25 Q. All right. Now, if you would, let's go to the next

1 step. Explain to us what you have done and how you
2 have described the Foundation Program.

3 A. Well, as I said, the available school fund, which at
4 one time was an extremely -- is still significant,
5 but at one time was an extremely important element of
6 the financing of education, is by and large for most
7 school districts today simply a method of financing
8 towards the state's share of the Foundation Program.

9 The Foundation Program baseline, from a
10 calculation standpoint, starts with the \$1350.00
11 basic allotment. To that are added a series of
12 programs, adjustments, price differential index,
13 small school index, program -- special program
14 support, such that the actual Foundation Program is
15 \$2,000.00 per student.

16 From the data that I have -- that I displayed
17 in Defendants' Exhibit 52, the difference between the
18 2,000 and the \$280.00 is financed between state and
19 local, over on this side of the chart, as \$1108.00
20 state and \$643.00 local. So that gets us to the
21 Foundation -- to this basic Foundation Program line
22 of about \$2,000.00 per student, which includes this
23 280.

24 Q. All right. Good. Now, then you move into the
25 equalization portion of your chart. Would you

1 explain that?

2 A. The equalization portion of the chart and my -- I was
3 following somewhat the portions that were in the
4 diagram in the book, but -- so I'm out of -- our
5 numbers are not properly drawn with respect to the
6 size of the blocks, but is the \$600.00 -- essentially
7 about a \$600.00 allotment above the Foundation
8 Program level calculated this 30 percent of the
9 Foundation Program, divided on the data that we had
10 between \$174.00 per student in the state money and
11 \$436.00 per student in local money.

12 Q. Now, the parenthesis you have around those numbers
13 are merely to show the distinction there, that's not
14 a negative figure in any way?

15 A. That's correct.

16 Above that, and coming to the total of the
17 state supported programs that I showed, other than
18 the teacher retirement and textbook money, is \$94.00
19 in experienced teacher and equalization transition.
20 That is divided up \$24.00 for local and \$70.00 for
21 state. I would also then show a very minor
22 additional line here for other state revenue, which
23 is \$20.00 per pupil, as shown on Exhibit 55.

24 The next \$230.00 are federal funds. As I
25 indicated earlier, certain federal funds are in the

1 general fund of the district. 103 of these \$230.00
2 are in the general fund of the district. The balance
3 is in categorical funds budgeted by the school
4 district.

5 What the book refers to as unequalized local
6 enrichment from the definitions that we use in the
7 budget would be local co-curricular revenue and other
8 local revenue. These total \$382.00 per student. The
9 other -- local co-curricular is \$108.00 and the other
10 local revenue is \$274.00. It was this size block
11 that was shown in the book proportionately.
12 Actually, of course, it would be a much smaller block
13 of the totals that we're dealing with here.

14 And then finally, in the book at the top, there
15 was a block for revenue and bonds and debt service,
16 construction. By the data that we had budgeted for
17 debt service and capital outlay, that was \$794.00,
18 which is financed primarily from either the debt
19 service portion, of which is financed from property
20 taxes primarily, and the construction portion of
21 funding, which is financed from bonds.

22 So effectively, to get to this \$4100.00 number,
23 one takes the \$2000.00 level of the Foundation
24 Program, the \$600.00 level of equalization, the
25 \$94.00 level of experienced teacher, the \$20.00 of

1 additional state money, the \$230.00 of federal funds,
2 the \$108.00 of local co-curricular, the 274 of other
3 local revenue that's referred to in -- the
4 combination of which is referred to in the book as
5 unequalized local enrichment. I suppose, I'm not
6 exactly familiar with what the authors meant by that.
7 And then \$794.00 in debt service and construction
8 revenue, which gives us \$4100.00 total.

9 Q. Thank you, Mr. Moak.

10 MR. R. LUNA: I'd ask the court reporter to
11 mark this as an exhibit, please.

12 (Defendants' Exhibit No. 64 marked.)

13 MR. R. LUNA: I assume that's been marked
14 Defendants' Exhibit 64?

15 THE COURT REPORTER: Yes, sir.

16 MR. R. LUNA: And at this time, Your Honor,
17 we move for admission of that exhibit.

18 MR. GRAY: No objections.

19 MR. KAUFFMAN: No objection, Your Honor.

20 THE COURT: It will be admitted, 64.

21 (Defendants' Exhibit No. 64 admitted.)

22 BY MR. R. LUNA:

23 Q. Mr. Moak, I'd like to ask you whether or not you are
24 familiar with the applications of the school laws in
25 Texas, and in particular House Bill 72 and the way

1 it's been implemented across this state.

2 A. I'm familiar with much of the application and
3 implementation of House Bill 72.

4 Q. Has it been implemented generally in an equal manner
5 all the way across the State of Texas?

6 A. It has been implemented as it applied across the
7 State of Texas. Sometimes that was -- it had many
8 provisions which were designed as in the revenue to
9 be -- the new revenue flow to be implemented in an
10 unequal manner. But it was implemented in the manner
11 it was intended, I believe, across the state.

12 Q. Based upon your knowledge of that particular reform
13 measure and its implementation in the state, do you
14 have an opinion as to whether or not it was the
15 product of any purposeful discrimination against any
16 group or class?

17 A. To the best of my knowledge, it was not intended to
18 be discriminatory against any group or class other
19 than through the funding formulas where it was
20 specifically intended to flow additional state money
21 to local -- to poor districts and less state money to
22 richer districts.

23 Q. Based upon your knowledge and experience, do you have
24 an opinion as to whether or not these particular
25 measures were what we might call a rough

1 accommodation of interest in an effort to arrive at
2 practical and workable solutions to the educational
3 problem of this state?

4 A. Well, I'm not entirely sure what is meant by the
5 rough accommodation of interest. Certainly as I was
6 aware, the process of debate over the bill and
7 provisions of the bill, there were various interests
8 that were represented and various balances were
9 struck in the funding provisions and in some other
10 provisions between various interests that were
11 represented before the Legislature.

12 Q. Do you know whether or not there have been numerous
13 studies or any studies, for that matter, made of the
14 implementation of the bill, both before and since its
15 application?

16 A. The bill is still being applied. Still being -- is
17 not fully applied yet.

18 There have been studies of implementation of
19 various portions of the bill. I'm not sure that
20 there's been any single study which has addressed all
21 of the implications of all the aspects of the bill,
22 but there have been several studies of various
23 portions of the bill and our continuing set of
24 studies designed to -- there are a continuing set of
25 studies designed to assess the condition of education

1 or the condition of educational performance currently
2 under the provisions of the bill.

3 Q. Would you describe the system of educational finance
4 that's in place in Texas as being peculiar to this
5 state or is it something that's generally found in
6 other states as well?

7 A. Well, there are certainly elements which are found in
8 other states. In fact, perhaps more so after the
9 passage of House Bill 72 than before the passage of
10 House Bill 72. On the other hand, there are elements
11 within the system which are unique or close to unique
12 to Texas as adjustments within the Foundation
13 Program.

14 A good example is the use and wide dependence
15 upon the price differential index, which is --
16 although it has been contained substantively in
17 literature, it is in effect in very few states across
18 the nation.

19 MR. R. LUNA: Pass the witness.

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

21 THE COURT: Yes.

22 CROSS EXAMINATION

23 BY MR. GRAY:

24 Q. Mr. Moak, I take it you are familiar with Section
25 16.001 of the Education Code?

1 A. Yes, I'm aware of that section.

2 Q. That has already been introduced and marked as an
3 exhibit in the trial, but it is the state policy
4 dealing with education, is it not, sir?

5 A. Well, it is set forth as a section of state policy.
6 I'm not sure whether it is the state policy when all
7 factors are taken into consideration of all the other
8 expressions of state policy that are effectively in
9 law and regulation. But it is set forth as a
10 statement of state policy in the beginning of Chapter
11 16 of the Texas Education Code, which is the chapter
12 which references -- sets forth the Foundation School
13 Program.

14 Q. It, in fact, is the very first section in the
15 Education Code in the chapter dealing with thereafter
16 the whole Foundation School Program, correct?

17 A. Yes. And it has been for some years.

18 Q. Now, so you and I make sure we'll be talking on the
19 same wavelength, I want to ask you a few questions
20 about that state policy, okay? And it reads, "It is
21 the policy of the State of Texas that the provision
22 of public education is a state responsibility and
23 that a thorough and efficient system be provided and
24 substantially financed through state revenue."

25 Now, I want to stop right there at that point.

1 As I understand the methodology of financing public
2 education in this state, it's roughly a 50/50
3 partnership between state revenue and local revenue,
4 is that correct?

5 A. If you only look at state and local revenue, it is
6 approximately that, yes.

7 Q. And in fact, the local revenue is greater than state
8 revenue, is it not?

9 A. I think that is varied from time to time. I think
10 currently the total local revenue is greater than
11 state revenue.

12 Q. So as to the provision that it be substantially
13 financed through state revenue, the system does not
14 meet the standards set forth in 16.001, correct?

15 MR. O'HANLON: Objection, Your Honor. It
16 calls for a legal conclusion.

17 MR. GRAY: I'm asking him to use his
18 definition of substantially financed. I'm assuming
19 it means more than half.

20 MR. O'HANLON: I think he assumes too much.
21 The question of interpretation of a statute is a
22 question of law.

23 THE COURT: Okay. I agree. I'll overrule --
24 I mean, I'll sustain.

25

1 BY MR. GRAY:

2 Q. It goes on to read, "So that each student enrolled in
3 the public school system shall have access to
4 programs and services that are appropriate to his or
5 her educational needs and that are substantially
6 equal to those available to any similar student
7 notwithstanding varying local economic factors."

8 Is it your statement that you believe that the
9 current school financing scheme in Texas does indeed
10 provide substantially equal services that are
11 appropriate to his or her educational needs
12 notwithstanding the varying local economic factors?

13 A. I believe the Foundation Program is predicated on
14 trying to provide fulfillment of that statement as
15 contained in the first section of the Foundation
16 Program statute.

17 Q. Now, you're aware, are you not, that the level of the
18 expenditures for education in this state ranges, I
19 believe, from \$2,112.00, give or take, per student up
20 to a high of 19,000, give or take, per student?
21 You're aware of that range of disparity on
22 expenditures?

23 A. Not precisely, but I will take your word for it that
24 expenditure variations of that type exist.

25 Q. And is it your position that the -- and the reason

1 for that disparity is, again, local economic factors,
2 correct?

3 A. Well, I'm not sure that local economic factors in
4 terms of the background of that statute was -- is
5 considered to be wealth as opposed to local economic
6 factors being size of school district and cost of
7 goods and services as measured through such devices
8 as the price differential index and small district
9 factor judgment.

10 Q. Well, I'll address that in a second.

11 You will agree with me that property wealth,
12 property tax base, is the reason that you have the
13 kind of disparities that we just talked about, 2,100
14 and some-odd dollars per ADA up to 19,000 per ADA.
15 That's because we have vast disparities of property
16 wealth in this state, correct?

17 A. In terms of looking at those two districts, I would
18 prefer and be more comfortable to say simply that,
19 yes, wealth plays a role in variations in local
20 revenues per student.

21 As to why that particular -- why one particular
22 district spends 2,100 and one 19,000, without
23 examining the data for those individual districts, I
24 wouldn't automatically make an assumption for those
25 two districts or for any other two districts that

1 wealth was the contributing factor.

2 Q. And --

3 A. Or sole contributing factor.

4 Q. The State Board of Education has adopted its
5 philosophy pertaining to curriculum, has it not, in
6 Chapter 75?

7 A. Chapter 75 is the curriculum -- Chapter 75 of the
8 Texas Administrative Code is the curriculum rules of
9 the State Board of Education, yes.

10 Q. And Section 75.1, Subsection A, of that provides that
11 "Public elementary and secondary education is
12 responsible for providing each student with the
13 development of personal knowledge, skill and
14 competence to maximum capacity. The fulfillment of
15 this responsibility by the state and its school
16 districts is fundamental to enabling citizens to lead
17 productive and effective lives and is further in the
18 interest of the state and the nation." Do you agree
19 with that policy?

20 A. Read through it one more time, please.

21 Q. "Public elementary and secondary education is
22 responsible for providing each student with the
23 development of personal knowledge, skill and
24 competence to maximum capacity. The fulfillment of
25 this responsibility by the state and its school

1 districts is fundamental to enabling citizens to lead
2 productive and effective lives and is further in the
3 interest of the state and the nation."

4 A. I essentially agree with the wording of the statement
5 as a goal statement that's associated again in this
6 particular case rather than being associated with the
7 Foundation Program as associated with a set of rules
8 for the offering of a curriculum -- statewide
9 curriculum throughout the state at a minimum level.

10 I have a little problem with the portion of the
11 statement that places the emphasis on public
12 elementary and secondary education regardless of the
13 attitude or background of the student to provide --
14 for the state to provide this or to assure that the
15 student receives these kinds of services.

16 Q. But do you --

17 A. As opposed to making them available.

18 Q. I assume that you read, as did I, during the House
19 Bill 72 process and House Bill 246 process the
20 literal statement after statement by various state
21 leaders, Mr. Perot, Governor Hobby, Speaker Lewis,
22 Governor White, all to the effect one way or the
23 other that the future of this state was dependent
24 upon our meeting the educational needs of today's
25 students. And I know those are my words but that

1 context. You are aware of all those statements, are
2 you not?

3 A. Well, I'm aware that certainly statements were made
4 and basically agree that the -- to educate the future
5 of the state does have a relationship to its
6 educational enterprise.

7 I believe those statements were made during
8 House Bill 72, not during House Bill 246, as you
9 indicated by that.

10 Q. May well have been.

11 So there is no dispute that educating the youth
12 of this state is indeed critical to the future of the
13 state's economy, correct?

14 A. Well, I don't know that there is no dispute, but I
15 have no dispute with those that --

16 Q. You and I don't have a dispute on that, correct?

17 A. That's correct.

18 Q. Okay. Now, I take it that when you and I agree that
19 educating the children of this state is critical for
20 the state's future, we're talking about all the
21 children, not just those who are lucky enough to live
22 in property wealthy areas, correct?

23 A. I believe it's associated with the affirmative
24 responsibility and, in fact, is carried out to
25 provide adequate resources to all the districts with

1 all the students of the state, yes.

2 Q. I take it that you and the Texas Education Agency do
3 not espouse a policy that provides one student with
4 greater educational opportunities than another
5 student?

6 A. That's correct.

7 Q. And indeed, you believe that all students ought to
8 have equal educational opportunity living within the
9 State of Texas, correct?

10 A. I believe that all students ought to have -- equal
11 educational opportunity as defined as series of ways.
12 But in terms of the exact definition of your
13 statement, I'm not sure. If you could help me with
14 your meaning of equal educational opportunity, I
15 perhaps could respond better.

16 Q. Do you think it is in the best interest of the State
17 of Texas to have a system that provides one level of
18 educational opportunity by and large for children who
19 live in property poor areas and another level of
20 educational opportunity for children who live in
21 property wealthy areas?

22 A. Well, I have no evidence that such a system exists
23 and, therefore, would not be able to judge its
24 impact.

25 Q. Will you turn to your Exhibit No. 47, Defendants'

1 Exhibit No. 47?

2 A. (Witness complies.) Yes.

3 (Plaintiff-Intervenors'
4 (Exhibit No. 238 marked.

4 BY MR. GRAY:

5 Q. Let me hand you what I have marked as
6 Plaintiff-Intervenors' Exhibit 238 and get you to
7 compare this document with your Exhibit 47, and for
8 speed, let me tell you what I have done.

9 I have taken, on your wealth categories that
10 are listed on these pages, the local revenue and
11 state revenue and come with up with a total revenue
12 figure excluding the federal revenue that you
13 included in your exhibit. Do you see that?

14 A. When you say my exhibit, you're referring to Exhibit
15 47?

16 Q. 47, yes, sir, the one that was introduced through
17 your testimony.

18 A. Yes.

19 Q. And then on the expenditures, I've taken your figure --
20 or the Defendants' Exhibit 47's expenditure figure
21 for total expenditures and backed out all federal
22 revenue. Do you see what I have done?

23 A. Yes, I see that you have made that calculation.

24 Q. Okay. Now -- and with the representation to you and to
25 the Court that to the best of my ability these

1 figures are correct, do you see that this is a rough
2 comparison of your Exhibit 47 on the categories that
3 are mentioned deleting federal revenue?

4 A. Yes. However, I would say that I would not find a
5 basis for subtracting a revenue from an expenditure.
6 I'm not sure what the last total means as a result
7 when one takes total expenditures and subtracts a
8 revenue number.

9 I would also point out in passing it was my
10 testimony during this exhibit that there was a degree
11 of underbudgeting of both local revenue and state
12 revenue.

13 Q. Now, the --

14 MR. GRAY: Well, with that, Your Honor, I
15 would now offer Exhibit 238.

16 MR. O'HANLON: I don't have any objection.

17 THE COURT: It will be admitted, 238.

18 (Plaintiff-Intervenors'
19 (Exhibit No. 238 admitted.

19 BY MR. GRAY:

20 Q. Now, looking at the two poorest categories by wealth,
21 which is under 87,371, and then the second category,
22 which goes up to 105,654, looking at your exhibit,
23 that covers 486,538 kids in ADA, does it not?

24 A. I'll take your word for it, yes.

25 Q. I can speed up the process because I believe I had an

1 exhibit with Dr. Verstegen. If you would just look
2 over here briefly. Do you see what I have done?

3 A. Okay.

4 Q. Likewise, if you take the two wealthiest categories
5 at the very top, you come up with 421,060 students?

6 A. Yes.

7 Q. And so the combined -- those two combined numbers is
8 right at 900,000 kids, correct?

9 A. Yes.

10 Q. And using my exhibit numbers, if you give the state
11 the benefit of the doubt and take the highest
12 expenditure number for the poor districts, you come
13 up with an expenditure level across the board of
14 \$3,199.00 for that roughly half million students,
15 correct?

16 A. Again, given the fact that you have taken an
17 expenditure number, which is inclusive of debt
18 service and capital outlay, and subtracted a federal
19 revenue from it and arrived at something, you have
20 \$3199.00 of something.

21 Q. Okay. If you use your number, giving the benefit of
22 the doubt, you're at about 34,3500, are you not, for
23 expenditure levels for the poor children?

24 A. Well, if you will note the expenditure levels for the
25 highest -- for the poorest districts are 3600 and the

1 second group is 3480 on Defendants' 47, so it would
2 be --

3 Q. Between 35 and 3600?

4 A. Yes, it would be higher than the 3400 and 35 that you
5 mentioned before.

6 Q. Now, again, if you exclude federal revenue and look
7 at the expenditure levels for the 421,000 kids who
8 are lucky to go to school in the wealthy districts,
9 you see, again giving the benefit to the state, an
10 expenditure level of \$4,736.00, correct, on Exhibit
11 238?

12 A. Again, I see the number 4,736.

13 Q. Okay. So you will agree, will you, with me -- you
14 will agree with me, will you not, that using my
15 numbers, that's a \$1500.00 difference per child
16 that's getting spent on the half million that live in
17 the poor compared to the 400 plus thousand that live
18 in the wealthy areas?

19 A. Well, I will agree that the difference is \$1500.00
20 between those two numbers, since you -- in terms of
21 the total definitions here and the relationship to
22 educational opportunity and there -- what you have
23 done is a calculation as far as any expenditures and
24 subtracting revenue numbers, I can't necessarily
25 agree, but I agree there is a \$1500.00 difference

1 between the two numbers you stipulated.

2 Q. Okay. Now, let's go back to Exhibit 47 and use those
3 numbers again. We had talked about again the poor
4 end being 3500, 3600 expenditures per child, your
5 numbers off Defendants' 47, correct?

6 A. Yes.

7 Q. For that half million children living in the poor
8 areas? And if you use your numbers for the 421 plus
9 thousand kids living in the two wealthiest areas, you
10 will come up with an average expenditure in excess of
11 5,000 per ADA, will you not?

12 A. In terms of all expenditures and all funds per
13 student, that's correct.

14 Q. So the same -- you have at least a gap of another
15 \$1500.00, the same gap that we used -- using no
16 federal revenue, the gap continues, does it not?

17 A. There is a gap between those numbers, yes.

18 Q. The gap is in the magnitude of \$1500.00 per child?

19 A. There is a gap of \$1500.00, yes.

20 Q. Okay. Now, I take it that after we have gone through
21 this exercise, you still say that there is no -- you
22 contend there is no evidence that there is a
23 disparity between what is spent on children living in
24 wealthy areas compared to children living in poor
25 areas?

1 A. I don't think I have contended that, Mr. Gray. You
2 asked if there was a question of educational
3 opportunity differential between the two. In terms
4 of your defining educational opportunity in terms of
5 dollars per student, that are inclusive of capital
6 outlay expenditures, inclusive of expenditures for
7 past debt, I have no basis on which to say that that
8 is an appropriate measure of educational opportunity
9 and, in fact, would rather doubt that it is.

10 So my testimony would stand that as far as
11 educational opportunity, I do not see a variation.
12 As far as whether there are expenditure patterns that
13 differ between wealthy districts and poor districts,
14 I believe that I've testified at some length that
15 there, in fact, are differences and what the cause of
16 those differences are.

17 Q. And the cause of those differences primarily are the
18 property tax base that an individual district has,
19 correct?

20 A. Well, the cause of them is revenues that the
21 wealthier districts do raise, and I would render it
22 is easier to raise at that level.

23 I have analyzed that issue in terms of
24 operating costs for general fund costs about -- in
25 your example somewhere in the range of eight or

1 \$900.00. I guess, \$800.00 of your difference is
2 associated with debt service and capital outlay
3 expenditures, which I have not analyzed, but I
4 believe have indicated that I don't think a single
5 year's worth of data is an appropriate basis on which
6 to make comparisons of the type -- draw major
7 implications from simply looking at debt service
8 expenditures per student and capital outlay per
9 student.

10 Q. You will agree with me, will you not, that poor
11 children living in poor districts are entitled to
12 have school buildings to go to school in as are
13 children living in wealthy districts?

14 A. Well, I certainly believe that school buildings to
15 some level just as educational programs to some level
16 play a role. The question here deals with the annual
17 expenditures or the annual budgeted expenditures even
18 more so because we are not dealing with actual
19 expenditures here for capital outlay and for debt
20 service.

21 As I believe I have indicated before, I don't
22 think that that's an appropriate basis of comparison
23 in terms of if one were to look at the issues of
24 equity of debt service or systems to raise an issue
25 of debt or the equity of capital outlays, I would not

1 think that a basis of expenditures per student was
2 appropriate.

3 Q. Well, the fact of the matter is under the current
4 system in Texas, that there is no equity when it
5 comes to paying for school buildings in this state,
6 is there, sir?

7 A. Well, I think you are considering that equity means --
8 I'm not sure what your definition of equity is. If
9 you can give me a definition of equity in that
10 regard, I will try to answer your question.

11 Q. For an equal tax effort, can all districts in this
12 state have equal facilities or substantially equal
13 facilities?

14 A. So you are using taxpayer equity, so-called, as your
15 definition of equity?

16 Q. Yes, sir.

17 A. From that standpoint, I would say no.

18 Q. And in fact, school facilities and debt service are
19 not even incorporated within the Foundation School
20 Program, are they, sir?

21 A. No, they are not.

22 Q. And the extent to which children living in property
23 poor districts have any facilities whatsoever, it is
24 totally dependent upon that local district's ability
25 to raise the money necessary to build the buildings

1 and pay for the buildings, correct?

2 A. Well, except in those -- when we said that there was
3 no provision made in the Foundation Program, there is
4 upon occasion evidence that general fund money is
5 expended for capital outlays and for debt service,
6 but capital outlays in particular.

7 The ability of a school district and the needs
8 of a school district to provide facilities and what
9 type of and kind of facilities is not an issue that I
10 have seen substantively explored in Texas, but I will
11 grant that debt is secured under the laws of the
12 State of Texas by property taxes and property --
13 ability to raise property taxes are associated with
14 wealth. That does not say that it is impossible for
15 school districts to offer or poorer school districts
16 to have adequate facilities.

17 Q. Now, you have previously testified, I believe, that
18 there is indeed an immense disparity in property
19 wealth from district to district throughout the
20 state, correct?

21 A. I think I -- immense would be described as from top
22 to bottom, yes.

23 Q. 21,000 per ADA, up to over 14 million per ADA,
24 correct?

25 A. Yes.

1 Q. And that indeed is an immense disparity, correct?

2 A. Yes.

3 Q. Now, likewise, the tax efforts that we see in
4 districts have a range of 8 and a half cents to an
5 excess of \$1.50. Does that surprise you?

6 A. If you're referring by -- if you're analyzing
7 disparity from the point of view of the top of the
8 range to the bottom of the range, no, it does not
9 surprise me.

10 Q. And in fact, does it surprise you that the districts
11 that have the eight cent and ten cent rates are also
12 the same districts who have the property value in the
13 millions per ADA?

14 A. Well, it doesn't surprise me, but it isn't an
15 automatic relationship that districts that have low
16 property value or high property value automatically
17 have low tax rates or vice versa that districts that
18 have low property value automatically have high tax
19 rates.

20 Q. Would you disagree with me if I told you that there
21 is not a district in this state that has a tax rate
22 of under 15 cents that's not extremely wealthy?

23 A. No. But the question related to the relationship of
24 wealth to tax effort.

25 There are ten districts in this state that are

1 in the top 10 percent of the districts in wealth that
2 have tax effort in excess of 73 cents, made its tax
3 effort in excess of 73 cents which places them in the
4 top quarter of the districts in the state. So there
5 are variables.

6 There is a good deal of variation regardless of
7 what grouping pattern you look at.

8 THE COURT: I want to stop there for
9 afternoon break. We'll start again in ten minutes.
10 We will work until around 5:30.

11 (Afternoon break.)

12 BY MR. GRAY:

13 Q. Now, Mr. Moak, before I leave Defendants' 47 and
14 Plaintiff-Intervenors' 238, I want to focus your
15 attention on the wealth category under and over
16 240,000. I understand that to be what you chose as
17 the break point to show half above and half below,
18 correct?

19 A. Above and below the state average, yes.

20 Q. And as I understand it, there are 1,763,000-plus kids
21 that go to school in districts that are below the
22 state average on expenditure or on wealth per child,
23 right?

24 A. Yes.

25 Q. And there are a million 156-plus thousand kids who go

1 to school in districts who have wealth above average,
2 correct?

3 A. Yes.

4 Q. And if I -- looking at your printout, Defendants' 47,
5 on the expenditure column, I see that the 1,107,000 --
6 million seven hundred and some-odd thousand kids who
7 have below average wealth have about \$600.00 per
8 child less spent on them than is spent on the
9 children, the 1,100,000 who have above average
10 wealth, correct? To be precise, \$601.00, correct?

11 A. Yes.

12 Q. And that looks at the entire universe. That looks at
13 all kids, all districts, right?

14 A. And all types of budgeted expenditures.

15 Q. That's right. That is the whole picture of the
16 current system?

17 A. Well, not quite, because that does not include the
18 money that is spent by the state for teacher
19 retirement, textbooks and other kinds of costs that
20 have been referred to.

21 Q. Okay. And we know that textbooks, those expenditures
22 are every child gets the same books, right?

23 A. Right.

24 Q. But when it comes to teacher retirement, we know that
25 the state actually gives more money to the wealthy

1 districts than to the poor districts for teacher
2 retirement, correct?

3 A. Well, it doesn't give money to districts at all.

4 Q. Well, more money is paid that goes to -- on behalf of
5 the teachers that are teaching in wealthy districts
6 as opposed to teachers that are teaching in poor
7 districts, correct?

8 A. That may be correct. I'm not exactly sure given all
9 the current provisions of which involve a certain
10 degree of reimbursement by the districts, but --

11 Q. And the reason that's correct is that the wealthy
12 districts have more teachers and pay higher salaries.
13 So when you pay a percentage for teacher retirement,
14 you have to pay -- the state has to pay more because
15 it's paying a percentage on a higher number in the
16 wealthy districts, correct?

17 A. Well, it would be a minimal amount. My analysis
18 without adjustment for the prepayments involved shows
19 a difference of some \$32.00 in state costs between
20 the wealthy and the poor.

21 Q. Well, the bottom line is if you take into
22 consideration textbooks and teacher retirement that
23 you raised, you make that \$600.00 gap bigger, not
24 smaller between the bottom half and top half of the
25 wealth, correct?

1 A. Yes. You simply indicated that that was all the
2 expenditures there were. I was simply indicating
3 that wasn't all of the expenditures.

4 Q. I appreciate your bringing that to my attention.

5 Now, likewise, if you look on Page 3 of
6 Defendants' 47 on comp. ed., and am I correct in
7 generally stating that under 20 percent comp. ed.
8 means -- well, first, comp. ed., to a large extent,
9 means low income kids, right?

10 A. That is the same thing as percent of kids -- percent
11 of students qualifying for free and reduced lunch.

12 Q. So the greater the percentage of comp. ed. means the
13 greater the percentage of poor kids you have in your
14 district, right?

15 A. Yes.

16 Q. And your numbers indicate, do they not, that on total
17 expenditures that the kids -- that the wealthiest
18 kids, the districts that have under 20 percent comp.
19 ed. kids, they have \$600.00-plus more spent on them
20 than the districts per child that have a lot of poor
21 kids, 80 percent or more comp. ed., right?

22 A. In terms of comparisons of those two groups, that is
23 the case.

24 However, with regard to the relationship that
25 you are trying to establish there between the percent

1 of low income and expenditure and wealth patterns,
2 the correlation analyses would suggest that there is
3 no statewide relationship.

4 Q. Well, whatever the correlation analysis indicates,
5 the dollars show that rich kids, according to the
6 comp. ed. percentages, have \$600.00 more spent on
7 them than districts with poor kids, right?

8 A. It represents that expenditure -- I mean, the phrase
9 of dollars expended on them as opposed to dollars
10 expended within the district on a per student basis,
11 looking at individual -- the individual child --
12 there is no basis on which, from this data, to look
13 at the individual child in one district or another
14 district and say automatically that relationship
15 takes place, that automatically that a district that
16 has less than 20 percent low income students has a
17 greater level of expenditures per student than one in
18 which there is 80 percent or more.

19 But there is a difference in the average per
20 student cost between those districts as represented
21 on Exhibit 47, yes.

22 Q. And what that is saying is, on average, a district
23 that has under 20 percent poor children is going to
24 spend \$600.00 more on its kids than a district that
25 has 80 percent or more poor children, right?

1 A. Yes, that's when you include debt service and capital
2 outlay.

3 I would point out to you that when you do not
4 include debt service and capital outlay, that the
5 \$600.00 difference shrinks to about \$34.00.

6 Q. And if you look at that without federal funds, you
7 end up with a large gap, do you not? You're back at
8 the \$600.00 gap.

9 A. Look at what? I'm sorry.

10 Q. When you look at current operating expenses, putting
11 aside for the time being debt service and capital
12 outlay, buildings, assuming that they are important
13 for the wealthy but they're not important for the
14 rich and just strip them aside, if you look at total
15 current operating expenditures and subtract the
16 \$72.00 federal revenue and subtract the 587 -- I have
17 my numbers confused.

18 The bottom line is, on total expenditures,
19 there is a \$600.00 difference, right?

20 A. You are saying if you take current operating
21 expenditures and subtract federal revenue, is there a
22 resulting difference of some \$500.00 between the top --
23 the average that you would have at the top and the
24 average you would have at the bottom, yes.

25 Q. Okay. And if you add local revenue and state

1 revenue, the bottom line is the difference then
2 becomes 3600 to 2800, right?

3 A. I'll accept your word for it.

4 Q. The additional -- look on my exhibit, 238. Add local
5 revenue and state revenue for the districts that have
6 under 20 percent poor kids and they have \$3632.00 per
7 child.

8 If you look at the districts that have 80
9 percent or more poor kids, add local revenue and
10 state revenue and they have \$2,883.00 per child.

11 A. Yes, a great deal of which is accounted for by debt
12 service.

13 Q. The gap then is \$800.00, correct?

14 A. Yes. The gap that you are referring to is the
15 difference between 3632 and 2883, is that --

16 Q. Yes. The bottom line is that for total revenue,
17 districts that have a very few poor kids, 20 percent
18 or less of their population is poor, they have
19 \$800.00 more money to spend on their kids than
20 districts that have 80 percent or more poor children,
21 right?

22 A. If you take out federal funds. You have taken two
23 elements of what they have to spend and added them
24 together and made a comparison.

25 Q. I'm looking at just what the state system controls.

1 A. The state system doesn't control state and local
2 revenue.

3 Q. Well, are you saying that the State Legislature can
4 pass a law that appropriates federal funds to
5 districts?

6 A. Well, actually, they have to pass a law appropriating
7 the federal funds because if they don't pass a law
8 appropriating federal funds, well, then there is no
9 power to disburse the funds to the districts to the
10 extent they flow through the Education Agency.

11 Q. The point I'm trying to make, I think it is very
12 obvious, is that the State of Texas cannot determine
13 what federal funds the federal government gives the
14 State of Texas to give to various districts, correct?

15 A. In general terms, no. I think there are exceptions
16 to that, but in general terms, no.

17 Q. So what the state system of disbursing funds does is
18 it disburses state and local revenues, correct?

19 A. The state system is the system that I have described
20 in earlier exhibits.

21 I haven't described the state system as being
22 the effect of the budgeted state and local revenue,
23 but rather looking at a state supported program with
24 a state and local component and state costs added in.

25 But I will not -- I will not argue with you

1 that if you take the -- make the calculation that you
2 made and you compare the top group to the bottom
3 group, that you get the distinctions that you are
4 referring to. But those distinctions also occur not
5 just at top to bottom, but there are sizable
6 distinctions that occur at all the other groups
7 compared to the group under 20 percent.

8 Q. So the answer then -- the bottom line to my question
9 is that if you look at districts that have a lot of
10 poor kids compared to districts that have very few
11 poor kids, the districts that have few poor kids have
12 \$800.00 more per child to spend on the children --
13 those wealthy children, compared to being spent on
14 the poor children, correct?

15 A. About half of which is protracted obligations for
16 debt service, yes.

17 Q. But the answer to my question is yes, right?

18 A. I think I have answered your question yes, Mr. Gray.

19 Q. Mr. Moak, I want you to look at your 47 on comp. ed.
20 and look at our 238 on comp. ed., and I want you to
21 verify the statement you just made on debt service.

22 A. I said that debt service -- a good deal of variation
23 was tied up in revenues for debt service. Revenues
24 for debt service and expenditures for debt service
25 are very much keyed together.

1 If you look on Exhibit 47, you will see that
2 there is a \$330.00 differential between that top
3 group to the bottom group on debt service
4 expenditures from 469 to 133, which is effectively a
5 part of the reason that you find such a large gap --
6 a significant part of the reason you find such a
7 large difference between the top group and the bottom
8 group when you add local and state revenue together.

9 Q. And if you roll back in -- what you don't have in
10 there is capital outlay, buildings, right?

11 A. In where? I'm sorry.

12 Q. In the \$800.00 difference we were talking about in --
13 as far as what is available to be spent in districts
14 that have rich kids compared to districts that have
15 poor kids.

16 A. Well, to the extent that they are using revenue from
17 state or local sources to pay for capital outlay, you
18 do have it. The issue deals with whether there are --
19 the extent to which bonds have been issued that are
20 paying for that capital outlay -- to the extent to
21 which bonds are being issued for that capital outlay,
22 you don't have it.

23 Q. Okay. And if you subtract the federal revenue out
24 totally, if you get it totally from the total
25 expenditures, you see that the difference that is

1 being spent on rich kids compared to poor kids is
2 little more than \$1100.00.

3 MR. O'HANLON: I am going to object to this
4 line of questioning right now. I have let it go on
5 and he keeps persisting and it's argumentative.

6 There is no evidence in this case about rich
7 kids. We have established low income, and we've
8 established districts in which there are not low
9 income. I think it's argumentative. And I think it
10 assumes many facts that are not in the record at all.

11 MR. GRAY: I'm not trying to be
12 argumentative. I'll try to be more careful with the
13 way I phrase it.

14 BY MR. GRAY:

15 Q. Districts that have 20 percent or less children who
16 have to have a free lunch, they have total expended
17 on them, if you subtract out federal revenue,
18 \$4,254.00, correct, looking at my 238?

19 A. Yes, that shows a number of 4,254.

20 Q. And districts that have 80 percent or more children
21 who do qualify for a free lunch, those children have
22 \$3,127.00 spent on them subtracting out federal
23 revenue, correct?

24 MR. O'HANLON: Objection, Your Honor. The
25 premise is misleading. What Counsel is doing is he

1 is subtracting out primarily the lunch money, which
2 is that \$587.00 figure, and then using that as a
3 basis for comparison. The largest single element, I
4 believe, of that expenditure under this is lunch
5 money.

6 So what he is saying is that if we compare a
7 district where we count the lunch money and we
8 compare a district where we don't count it, then the
9 differential is going to be greater. Well, of course
10 it is.

11 It is a misleading question.

12 MR. GRAY: Well, Your Honor, one, it's
13 cross-examination. Two, I'm looking at what's
14 available to be spent on education. And I am,
15 indeed, subtracting out the lunch money to see what
16 is left to be spent for kids' education out there.

17 When I subtract out the lunch money that they
18 added back in, that's where you see there is an
19 \$1100.00 difference that is being actually available
20 to be spent on children compared to if you have 20
21 percent or less free lunch kids compared to 80
22 percent or more free lunch kids.

23 MR. O'HANLON: Actually, it's not. He
24 hasn't made the similar calculation with respect to
25 backing out all the revenues associated with

1 co-curricular enterprising activities for districts
2 that have under 20 percent comp. ed.

3 What he is doing is, because there is askew
4 there of federal funds by virtue of the more directed
5 program for purposes of lunch money, he is taking
6 advantage of that for purposes of calculation and is
7 misleading the Court.

8 MR. GRAY: It is all cross-examination from
9 their own numbers -- from their own exhibit.

10 MR. O'HANLON: No, actually this is from
11 his exhibit. If he wants to take it from our
12 exhibit, that's fine.

13 MR. GRAY: That is the basis of every one
14 of my numbers on 238, is your exhibit.

15 THE COURT: Let me have Defendants' 47. Is
16 this it, actually?

17 MR. GRAY: Well, that's my copy of it, but
18 that's actually it.

19 THE COURT: Does the witness have a copy of
20 237?

21 MR. GRAY: Do you have a copy of 247 --

22 THE COURT: I mean 247?

23 MR. GRAY: 47?

24 THE WITNESS: No, I don't.

25 MR. GRAY: Do you want to look at my copy?

1 THE COURT: All right. Start over.

2 MR. GRAY: What I have done, Your Honor, is
3 taken the -- for comp. ed. under 20 percent, the
4 total expenditure, according to the state in
5 Defendants' 47, is \$4,326.00 per student. If you
6 look at comp. ed. 80 percent or over, the total
7 expenditure on the state's Exhibit is \$3,714.00 per
8 student. That includes -- those expenditures include
9 federal revenue that are expended.

10 I have taken from the state's own exhibit --
11 they have a column that is one, two, three, four,
12 five columns over, titled "federal revenue," that
13 these districts get. I have subtracted the federal
14 revenue number from -- in the case of the under 20
15 percent comp. ed. kids -- 4,326 minus \$72.00 federal
16 revenue to show that state and local revenue that's
17 available to be spent is \$4,254.00 in those districts
18 that have less than 20 percent free and reduced lunch
19 children.

20 THE COURT: On the 80 percent and over if
21 you take 587 off?

22 MR. GRAY: I've taken 587 off. And that
23 gets you a number of \$3,127.00 that's available to be
24 spent on those children that gives you the \$1100.00
25 gap I'm trying to question this witness about.

1 MR. O'HANLON: And what I am saying is, he
2 is mixing up revenue with expenditures in the first
3 place, which is --

4 MR. RICHARDS: But your exhibit does that.

5 MR. O'HANLON: And the second place what he
6 is doing here is, by focusing on that particular
7 calculation, he's grossly understating lunch money.
8 He is treating like things differently. Because what
9 happens is, as the Court will recall the testimony,
10 for those districts in which you have 80 percent
11 comp. ed. kids, they are also entitled to free and
12 reduced price lunches, which increases the amount of
13 federal revenue that comes into the district, which
14 is expended once it comes to the district like local
15 revenue. That's what happens. Once it comes in, it
16 is expended by local revenue.

17 It is simply an invalid calculation, and it
18 doesn't make any sense here, see? By mixing those,
19 he can skew the results. But it is not a valid
20 calculation because we would have to subtract out --
21 if you're going to take out all the lunch money from
22 the federal revenue side, we would have to take out
23 all the local revenue for those districts that have
24 20 percent or less comp. ed. kids that is associated
25 with the revenues generated from enterprising

1 co-curricular activities.

2 In other words, we are not subtracting apples
3 and apples. The calculation is simply invalid.

4 THE COURT: Okay. I'll let him have his
5 question and answer.

6 BY MR. GRAY:

7 Q. Mr. Moak, having looked at the exhibits and gone
8 through all that discussion, the bottom line is, on
9 state and local revenue, after you subtract out
10 federal revenue from total expenditures, you see that
11 there is \$1100.00 difference --

12 A. Mr. Gray, that is not a proper characterization of
13 what you have got. That is not state and local
14 revenue. State and local revenue is presented on
15 your same exhibit as the difference between \$3600.00
16 and \$2800.00, and I have already agreed that that's a
17 representation of the difference between state and
18 local revenue.

19 When you take expenditures and you subtract
20 federal revenues and you're counting in the
21 expenditures, which are from the prior sale of bond
22 proceeds that are coming out of balances in the
23 capital projects funds, I cannot characterize that as
24 expenditures from state and local funds.

25 My analysis on this issue was based on

1 Defendants' Exhibit 55 with respect to the general
2 operating funds of the district and where I found --
3 what relationship I found between percent low income
4 students and expenditures or revenue per student as
5 portrayed there.

6 Q. Okay.

7 A. But I have agreed that on 47 that when you take local
8 revenue and state revenue and add it together, you
9 get a number and you can compare that number and find
10 the difference. When you get -- when you do a
11 comparison between expenditures that are current
12 operating expenditures plus debt service and capital
13 outlay, that you get a difference. But I don't have
14 the exhibit in front of me any longer.

15 I will not agree to -- that from the exhibit
16 that was prepared by me that you can take
17 expenditures and subtract federal revenue and call
18 that expenditures from state and local funds.

19 Q. Okay. So let's back up then. You will agree that
20 looking just at state and local revenue, there is a
21 difference of right at \$800.00 between what is
22 available to be spent on children in districts with
23 less than 20 percent free and reduced lunch compared
24 to districts with more than 80 percent free and
25 reduced lunch, correct?

- 1 A. I will agree that that is the amounts budgeted by the
2 districts in total local revenue inclusive of debt
3 service funds.
- 4 Q. And you're looking at your Exhibit 47. There are
5 874,000-plus kids who live in districts that have
6 less than 20 percent free and reduced lunch people,
7 right?
- 8 A. I'm sorry. I don't have 47 in front of me right now.
9 I assume you are right, yes.
- 10 Q. 800 -- I'm sorry. 829,424.
- 11 A. I say I assumed you were correct. I wasn't
12 questioning you -- your statement. Just that I
13 didn't have it in front of me.
- 14 Q. So that 829,000 kids has available to be spent on
15 them approximately \$800.00 more than the 171,000-plus
16 children living in districts that have 80 percent or
17 more kids who are on free and reduced lunch, correct?
- 18 A. Inclusive of all the elements of state and local
19 revenue, yes, and on average.
- 20 Q. Now, you talked -- I want to try to go through your
21 exhibits that are the exhibits that were introduced
22 through you in approximately the same order in which
23 they were introduced. And the first exhibit I want
24 to talk to you about is Defendants' Exhibit No. 30.
25 I put them all up there. To make it easy, why don't

1 you give the Court the copy that's in the record. I
2 can question you from my copy right here.

3 Now, Mr. Moak, as I understand this, after
4 House Bill 72 and all the new revenue that you
5 described was put into the system, the second poorest
6 category of districts, that of districts that ranges
7 from property values of 87,000 to 105,000, they got
8 \$289.4 million in new state money, correct?

9 A. In total state money.

10 Q. In total state money?

11 A. Correct.

12 Q. That's after House Bill 72?

13 A. Yes.

14 Q. The second poorest category of districts got 289.4
15 million?

16 A. Yes.

17 Q. And the next to the highest category of districts,
18 districts whose property value ranges from 369,000 up
19 to 630,000, and in fact, that is the district or the
20 category in which many of those districts in which
21 you said that have property of 423,000 or above that
22 skewed the whole system, remember that interchange
23 you had with Mr. O'Hanlon -- or excuse me, Mr.
24 Thompson?

25 A. Yes.

- 1 Q. Most of those districts fall within that category, do
2 they not, or a large number of those districts?
- 3 A. Well, some of those districts, yes.
- 4 Q. And those districts -- and they all have property
5 well above state average, right?
- 6 A. Yes.
- 7 Q. They got \$417.9 million in state revenue because of
8 House Bill 72, correct?
- 9 A. Yes.
- 10 Q. So the affect is that the second richest group of
11 districts got not quite twice or at least one and a
12 half times state revenue that the second poorest
13 group of districts got, correct?
- 14 A. Yes. I'm not sure where you are going. I mean --
- 15 Q. The answer is yes, right?
- 16 A. The answer is yes without taking into account the
17 number of students that are associated, though I'm
18 not sure that the -- where your comparison leads.
- 19 Q. The bottom line is that districts that have property
20 values above \$369,000.00 because of House Bill 72 got
21 in excess of \$450 million in state revenue, which are
22 the two highest or two richest categories of
23 districts combined, 417.9 million and 36.4 million,
24 correct?
- 25 A. Yes.

1 Q. So the system, as we know it today, provided for
2 districts that have property base well in excess of
3 the state average, state average being 240, right?

4 A. Yes.

5 Q. And the lowest district in this category we're
6 talking about is 369, correct?

7 A. In which category?

8 Q. Category No. 9 on your 30.

9 A. Yes.

10 Q. Which is one and a half times the state average,
11 right?

12 A. Yes.

13 Q. Districts that had property wealth one and a half
14 times the state average and greater got because of
15 House Bill 72 and under the current financing scheme
16 in excess of \$450 million in state revenue, right?

17 MR. O'HANLON: Objection, Your Honor.
18 That's actually not true. Because of House Bill 72,
19 they only got a small increase of -- in state
20 revenue. Most of that sum was pre-existing revenues
21 that were associated.

22 MR. GRAY: House Bill 72 is part of the
23 appropriations process that is appropriated every two
24 years, as I understand it.

25 MR. O'HANLON: No. Actually, the

1 appropriations is a separate process for the '85-'86
2 year according to House Bill 20.

3 BY MR. GRAY:

4 Q. The bottom line is, under the current method of
5 school financing, districts that had one and a half
6 times or greater the state average have gotten in
7 excess of \$450 million in state revenue, according to
8 Defendants' Exhibit No. 30, correct?

9 A. In 1984-'85 those districts received \$450 million in
10 state revenue.

11 Q. Okay. Now, turn to Defendants' Exhibit No. 31.

12 A. Yes.

13 Q. And if you will look at the column on the bottom
14 that's labeled "percent state of total revenue" --

15 A. Yes.

16 Q. -- you will see, will you not, that a comparison of
17 today, '85-'86, with ten years ago, '76, that the
18 state percentage of the total revenue going into the
19 system is less today than it was ten years ago by a
20 very small amount, correct?

21 A. Yes.

22 Q. And likewise, if you look at the very next column,
23 "percent of local revenue," you will see that local
24 revenue is greater today than it was ten years ago,
25 correct?

- 1 A. Correct. There is a footnote which impacts somewhat
2 on that, but basically correct.
- 3 Q. And going back to the state revenue as a percent of
4 the total, the state revenue is almost at its all
5 time low for the last ten years, correct?
- 6 A. Yes.
- 7 Q. And in fact, local revenue over the last ten years as
8 a percent of the total cost of the system is indeed
9 at its all time high, correct?
- 10 A. Yes.
- 11 Q. Which indicates a greater reliance on local revenue
12 for the funding of the total system than in the past,
13 correct?
- 14 A. For the total funding of the system, yes.
- 15 Q. And in fact, a greater reliance on local revenue for
16 the total funding of the system than at any time
17 during the last ten years?
- 18 A. Yes.
- 19 Q. And that local revenue is raised through local
20 property taxes, correct?
- 21 A. In substantial part. I testified, I believe, on
22 another exhibit that there was a variation -- that
23 there was some additional revenues involved besides
24 property taxes.
- 25 Q. And the -- I believe you have already established

1 that because of the vast disparity in property
2 wealth, the tax rate necessary to raise that local
3 revenue varies from district to district based upon
4 the tax base a district may have, correct?

5 A. Yes.

6 Q. Okay. Now, if you will turn to Exhibit No. 32.

7 A. (Witness complies.)

8 Q. I think you are actually the one who wrote or drew
9 this chart that I have now before you, correct?

10 A. I went through it with Mr. Thompson, the calculations
11 explaining it.

12 Q. Okay. And what you, in essence, explained to the
13 Court, using an example here of a district that
14 happened to have 20 percent of the total state
15 wealth, that there would be -- and using the
16 assumption she set out as far as the Foundation
17 School Program cost -- a lost to budget balanced of
18 \$17 million that meant that the state out of its
19 revenues would have to come back in and add that
20 money back into the system because it would not be
21 raised by local revenues because it was kind of lost
22 in the system, correct?

23 A. Yes.

24 Q. The --

25 A. Not kind of lost in the system. It was -- I think

- 1 the explanation was fairly precise.
- 2 Q. It is just not raised because the district is so
3 wealthy that they are able to raise their share
4 without taxing or going to the full extent of their
5 property base, right?
- 6 A. It may be raised. It is not utilized in financing
7 the Foundation Program.
- 8 Q. Okay. Now, the -- you use the example of \$17 million
9 as the budget balanced loss. I have seen through the
10 exhibits that have been introduced through you two
11 numbers as to the total statewide loss that we have
12 to budget balanced, one is in Defendants' 32, which
13 is \$91.5 million, and the other is in another exhibit
14 that is in the area of closer to 60 some-odd million
15 dollars. Do you know which figure is, indeed, the
16 lost to budget balanced?
- 17 A. Could you point out the source of the second one?
- 18 Q. Sure. Let me find it for you. It is the total --
19 state total sheet that you used, Defendants' 35.
- 20 A. Yes.
- 21 Q. And you have lost to budget balanced amount on that
22 as \$65,147,000.00?
- 23 A. Yes.
- 24 Q. And on Defendants' 32, you have lost to budge
25 balanced as 91.5 million for -- so we lost about \$15

1 million in the translation, and I'm asking you which
2 number is indeed the number?

3 A. It varies from week to week.

4 There is an interconnection between lost to
5 budget balanced, if you look at Printout 35, and
6 what's right below it, loss to LFA appeal. What
7 you're seeing is two different characterizations of
8 that number with a little bit of change. If you add
9 the two together, budget balanced amount and lost to
10 LFA appeal, you get \$131 million in this estimate
11 that was prepared in February.

12 If you add the two numbers together that are
13 compared in November, you get 121 million that is on
14 Page 2-8 of Exhibit 32, 91 million plus 30 million is
15 121 million.

16 What happened was, in between we got a new set
17 of values that allowed us to update our numbers on
18 loss to property value decline that, in turn, led to
19 a change in our estimated lost to budget balanced.

20 Q. You will acknowledge, will you not, that you have
21 introduced two different exhibits that show right at
22 a 15 or a \$16 million difference for what is titled
23 at least the same thing, lost to budget balanced?

24 A. I have introduced two different exhibits at two
25 different times. The estimates cost to the

1 Foundation -- this is by no means the only change in
2 the estimates cost to the Foundation Program between
3 these two exhibits. There is a number of other
4 substantial changes that took place between the two
5 exhibits.

6 Q. Maybe the better way to do it this way is, what is
7 the lost to budget balanced? How many dollars are
8 lost out there because of -- that we have budget
9 balanced districts?

10 A. Our current estimate for 1986-'87 is contained on
11 Exhibit 35 as \$65,148,000.00.

12 Q. And as I understand your description before, that \$65
13 million is money that ultimately will have to come
14 out of general revenue that -- state general revenue
15 that would not have to come out if we didn't have the
16 budget balanced district phenomenon, correct?

17 A. That's correct.

18 Q. Now, the -- there are -- how many budget balanced
19 districts do we have?

20 A. On Exhibit 35, the number is given as 74 districts
21 for the current school year.

22 Q. So am I correct in stating then that there are 74
23 districts out there who receive no state aid other
24 than the \$280.00 per child that is available to the
25 available school fund?

1 A. No.

2 Q. Okay.

3 A. The reason for that is that those districts are
4 eligible for, in addition to the available school
5 fund, the experienced teacher allotment funding and
6 transition funding for 1986-'87. So I'm not quite
7 sure how many districts receive only the available
8 school fund, but it would be less than the 74 budget
9 balanced districts.

10 Q. Okay. So even the budget balanced districts, a
11 number of them are getting general revenue funds out
12 of the state?

13 A. Yes.

14 Q. The revenues that all budget balanced districts get,
15 according to how the state distributes its money, at
16 least \$280.00 per child out of the available school
17 fund, correct?

18 A. Yes. I'm sorry. The \$280.00 you are referring to is
19 for 1985-'86. The number varies somewhat. It's down
20 to about 220, 230 now.

21 Q. Depending on how much interest is available and how
22 many kids are out there to take it, right?

23 A. Yes. It temporarily reached 280 in 1985-'86 because
24 of the settlement of offshore oil.

25 Q. Okay. The constitutional provision that deals with

1 the available school fund doesn't say that that money
2 goes to all districts, does it?

3 A. No. I believe I testified to that earlier, that the
4 constitutional provision addresses counties.

5 Q. And in fact, Section 5 of Article VII in the
6 Constitution specifically says, "The available school
7 fund herein provided shall be distributed to the
8 several counties according to their scholastic
9 population," correct?

10 A. Yes. That was based upon -- that language took into
11 account the school systems as it existed at the time
12 that the system was -- that the language was written,
13 however, and not the school system structure that
14 exists today. Specifically, that school systems at
15 the time that language was written, were, in fact,
16 the county function.

17 Q. Now, to put into perspective how much money we are
18 actually talking about, how much money was indeed
19 distributed out of the available school fund in
20 '85-'86?

21 A. I could give you an estimate. Well, if I can give
22 you -- the number I have right in front of me is the
23 1986-'87 number of \$780.00. It was somewhat higher
24 for 1985-'86 because of that temporary increase.

25 Q. So ballpark-wise, we're talking about there is \$700

1 million or so that is distributed to all districts
2 out there irregardless of their wealth, correct?

3 A. Well, it is distributed to districts and utilized as
4 a portion of -- it is then offset, except in the case
5 of budget balanced districts or near budget balanced
6 districts -- except in the case of budget balanced
7 districts, it is then offset by -- it is distributed
8 not regardless of wealth but as a -- simply a method
9 of financing of a system which does take into account
10 wealth.

11 Q. So what you're saying is that the budget balanced
12 districts, those who have a wealth that is so high
13 that they qualify for little or no state aid under
14 the Foundation School Program, the state has still
15 seen fit to provide those districts, last year, at
16 least, \$280.00 per student regardless of how many
17 districts there are in a particular county of that
18 nature, correct?

19 A. If that's what you mean by seeing -- the state seeing
20 fit --

21 Q. The state doesn't.

22 A. That's what, in fact, happens, yes.

23 Q. For example, in Dallas County, you have Highland
24 Park, which is a budget balanced district, with
25 property in excess of a million dollars per student,

1 right?

2 A. I would have to verify that that data is correct for
3 Highland Park, but I will accept your word for it.

4 Q. And likewise, you have in Dallas County a very poor
5 district by the name of Wilmer-Hutchins?

6 A. Yes.

7 Q. Highland Park gets the same \$280.00 per child out of
8 the available school fund that Wilmer-Hutchins gets
9 credit for under the Foundation School Program,
10 correct?

11 A. Yes.

12 Q. And obviously, if the state distributed all of the
13 available school fund money to Dallas County and then
14 had the county distribute it according to need, it is
15 doubtful that Highland Park would be able to
16 establish need, correct?

17 A. Depending on how one measured need. There are many
18 different ways to measure need.

19 MR. R. LUNA: I would object to the
20 question, number one. This witness has not been
21 qualified to know what Dallas County's needs are.
22 And so we are delving off into an area here of
23 speculation. I'm not sure that's relevant to the
24 position of whether or not he's qualified to discuss
25 what Dallas County needs.

1 MR. GRAY: I'm talking about the relevant
2 needs of two districts that are already set forth,
3 and the witness has all the information to know
4 exactly what I am talking about, which is a district
5 with property in excess of a million and one that has
6 very little property per student. And yet they both
7 for some reason get the same \$280.00 when the
8 Constitution says it goes to the county, and yet the
9 state's interpreted that to say every district in the
10 county gets the same money per student.

11 MR. TURNER: I don't believe that's the
12 subject of this lawsuit, Your Honor. I don't think
13 any pleadings have ever challenged the distribution
14 of the available school fund and the statutes that
15 carry out the constitutional mandates.

16 It is outside of this lawsuit to suggest that
17 that distribution is not being carried out properly.
18 No pleadings to support that.

19 MR. R. LUNA: Yes. We claim surprise with
20 respect to Article VII, Section 5 argument. That
21 hadn't been raised in connection with their
22 pleadings, and we would object. And I think that
23 that hasn't been called into question at least at
24 this point in the lawsuit.

25 MR. GRAY: Your Honor, we have made, again,

1 a global attack on the state's method of financing
2 public schools. There has been testimony
3 substantially about the available school fund, and
4 Mr. Luna had the witness write the chart showing the
5 \$280.00 and said that the Constitution requires that
6 all districts get that, and the witness corrected the
7 lawyer that he is -- that was questioning him. And
8 I'm merely furthering the testimony that was elicited
9 from direct.

10 MR. O'HANLON: If I can respond. I'm not
11 sure that a global attack on the school financing
12 system is set forth in their pleadings. As I
13 understand their pleadings, they are raising Article
14 VII, Section 1; Article VII, Section 3; Article VIII,
15 Section 1 and a couple of statutes. No where in
16 their pleadings --

17 MR. GRAY: Equal protection.

18 MR. O'HANLON: -- is Article VII, Section 5
19 not raised by the pleadings.

20 MR. GRAY: We are alleging equal
21 protection. And it is clear that this \$280.00 is --
22 has to be paid for somewhere if a district needs to
23 raise it.

24 MR. O'HANLON: What he is arguing then is,
25 once again, is that one constitutional article,

1 Article VII, Section 5, violates equal protection, or
2 that an equal per capita distribution of finance
3 somehow violates the equal protection clause. I
4 think that's a ludicrous argument.

5 MR. GRAY: What we are saying is, Article
6 VII, Section 5, says that it goes to the counties.
7 The state has chosen to then distribute it to all
8 districts within the counties equally, irregardless
9 of wealth, need, whatever.

10 We have said that the way the state distributes
11 money under its control places an undo burden on poor
12 districts that is not placed on wealthy districts,
13 both from a taxpayer point of view and from a child
14 attending school point of view.

15 It is very clear that if the state wanted to,
16 they could take the available school money that is
17 earmarked for Dallas County and distribute that
18 according to need. That indeed would have a
19 beneficial affect of offsetting, to some extent, the
20 harm that we claim is violative of the equal
21 protection clause of the Constitution.

22 MR. O'HANLON: It is not clear that the
23 state can do that. The state has consistently
24 interpreted the mandates of the distribution of the
25 available school fund for a long period of time to be

1 on a per capita basis and contemporary
2 interpretations of constitutional provisions are some
3 evidence with respect to that. The state has done it
4 this way from time in memorial. That they could do
5 it a different way, is not raised in the pleadings.
6 He has not challenged their pleadings, and simply not
7 challenged the distribution of aid under Article VII,
8 Section 5, nor as they haven't with respect to
9 textbooks or teacher retirement.

10 Now, it becomes -- as a funding mechanism, it
11 has some interest, I suppose, to the Court because it
12 is accounted for. It is a method of how the money
13 gets in for distribution but -- for distribution to
14 the students under the Foundation School Program.
15 But now they are specifically challenging the
16 allegation of the per capita distribution aid under
17 Article VII, Section 5, and that is simply not raised
18 by their pleadings. And this is the first time we
19 have heard that that is a specific challenge in this
20 lawsuit. We object to it.

21 MR. TURNER: We join in that, Your Honor.

22 THE COURT: You say available school fund
23 money cannot be distributed according to need, it has
24 to be distributed per capita?

25 MR. O'HANLON: No. What I'm saying is,

1 whether -- the state has long interpreted the
2 distribution of state aid under Article VII, Section
3 5, to be on a per capita basis. They have not plead
4 a problem with Article VII, Section 5, in this
5 lawsuit. It may be, we may get into it, but they
6 haven't raised that. We haven't briefed it. We
7 haven't gone back into the historical analysis of it --

8 MR. GRAY: Here is Article VII, Section 5.

9 MR. O'HANLON: And I commend their
10 pleadings, Your Honor, because it doesn't say a word
11 about Article VII, Section 5, in any of the myriad
12 pleadings and the constant revisions and amendments
13 that have been on file in this lawsuit. It is simply
14 not raised.

15 I think before they raise an issue, the
16 requirements of the Texas Rules of Civil Procedure
17 are that they have to plead it, and they haven't
18 plead it. We don't want to be in a position of
19 trying this issue back in --

20 THE COURT: Well, Article VII, Section 5,
21 says that "The money is to be distributed to the
22 several counties according to their scholastic
23 population." That sounds like per capita, doesn't it?
24 Then it says, "And applied in such a manner as may be
25 provided by law," which I suppose you could argue

1 that that means it would not necessarily have to be
2 applied per capita. I don't know. I guess that's
3 what he is arguing. I don't know.

4 MR. O'HANLON: That's right. They have not
5 raised that issue in this lawsuit.

6 THE COURT: Well, as I understand it, the
7 Plaintiffs have raised that the scheme in general --
8 you can correct me if I am wrong -- the scheme in
9 general, in its totality, and it has many parts, is
10 not constitutional. It seems like that if your
11 interpretation is right, that this money has to be
12 spent per capita-wise, that's another element to take
13 into consideration.

14 In the sense that \$280.00, if your
15 interpretation is correct, at least the practice is
16 certain to be that way, of having to spend that money
17 per capita, which I suppose they can make an argument
18 is part of a scheme with a lot of parts that don't
19 fit, you know, according to the way they look at it.

20 Then, I guess, he can argue that, well, the
21 language applied in such a manner as may be provided
22 by law means it can be distributed according to need.
23 And that the fact that it is not is part of the
24 system that they think is inappropriately
25 inequitable.

1 MR. GRAY: Your Honor, that's exactly
2 right. Our contention is that under Article VII,
3 Section 5, the available school money goes to the
4 county on a per capita basis, but once it's at the
5 county level, it is then distributed as may be set
6 out by law and that under the overall scheme that
7 very well could distribute that money based on need,
8 and they are not.

9 MR. O'HANLON: We are seven weeks into this
10 trial. They have been through five weeks of direct
11 testimony. We have not heard a word of this new
12 theory. It has not been plead under any of the
13 pleadings in this case. And then all of a sudden out
14 of the clear blue sky on cross-examination, we come
15 up with a new constitutional violation that we have
16 not had the opportunity to brief, that we have not
17 had the opportunity to put evidence on. It simply is
18 too late in the game for this.

19 If he wants to file a new lawsuit sometime in
20 the future that says, "We are not doing it right,"
21 but after they have rested, it's a little late to
22 come into a brand new theory. That is not raised in
23 the pleadings.

24 MR. GRAY: Your Honor, the way they are
25 distributing it right now does not necessarily

1 violate Article VII, Section 5. Under Article VII,
2 Section 5, they can conceivably distribute it however
3 they see fit.

4 What we're saying is that on an equal
5 protection basis, that having the availability under
6 Article VII, Section 5, to distribute it based on
7 need, based on wealth, and they choose not to, and
8 that has the overall affect of all the harm that we
9 have gone through and testified, that's a violation
10 of equal protection.

11 I also might raise and inform Counsel and
12 inform the Court that Dr. Hooker testified about this
13 on his first day or second day of testimony seven
14 weeks ago.

15 MR. O'HANLON: He mentioned the number.
16 They haven't raised the issue. And with respect to
17 equal protection, let's talk about equal protection
18 for a minute. Equal protection requires, under Texas
19 law, the -- they prove an invidious intent, a
20 discriminatory intent, and there is no evidence in
21 the record of a discriminatory intent in this case
22 whatsoever.

23 What they are attempting to make is an impact
24 case, which doesn't exist under the Texas
25 Constitution purely and simply. They have no

1 evidence with respect to discriminatory intent in
2 this record whatsoever. I mean, we are a little late
3 for an equal protection case as well. To bolster on
4 cross-examination some theory with respect to where
5 they have not on their direct case proved intent at
6 all, which is an element of their cause of action.

7 So we are seven weeks into trial. We're trying
8 to get done. And here we come with a brand new
9 constitutional theory that we're doing something else
10 wrong because Mr. Gray happened to think of it right
11 now. I think it's a little late to be bringing these
12 kinds of issues up. It's certainly not fair to us.
13 And we are claiming surprise.

14 MR. GRAY: Your Honor, they control the
15 purse strings. They have controlled the purse
16 strings from day one. And our kids have suffered
17 from day one. I mean -- well, I can't say anything
18 more.

19 It's all part and parcel of the overall system
20 of distribution of state revenue. It is part of the
21 method of financing the state -- that the state puts
22 forward.

23 THE COURT: Okay. Are you now urging the
24 fact that, one, this can be distributed according to
25 need? Are you urging that? And that because it is

1 not, then that's an additional violation in terms of
2 your constitutional arguments?

3 MR. GRAY: No. We are saying that it can
4 be distributed according to need, but we are saying
5 it is part and parcel of all the other things the
6 state could do that it's not doing, all the state
7 revenue that it's giving to wealthy districts that
8 don't need it that they could give to poor districts
9 who do need it. It's part and parcel of that same
10 litany of episode after episode after episode.

11 MR. O'HANLON: And what I say, Your Honor,
12 is what they're challenging is Chapter 16 of the
13 Texas Education Code. The distribution of the
14 available school fund is governed by Chapter 15 of
15 the Texas Education Code. It has not been raised in
16 connection with this case. It just simply hasn't
17 been plead. It's a different matter that is totally
18 outside the scope of their pleadings.

19 MR. GRAY: I don't intend to go in -- I
20 mean, I have made my point with the witness on the
21 questions. I mean, we are now getting into all this
22 argument. But I was merely going back into a topic
23 that was raised directly by Mr. Luna with this
24 witness on direct.

25 THE COURT: Are you through with this?

1 MR. GRAY: Yes, sir.

2 THE COURT: Your objection then would be
3 what?

4 MR. O'HANLON: It is not relevant -- that
5 this matter of inquiry is not relevant to any matter
6 raised by the pleadings in this case. We don't want
7 to be put in a position of trying the issue back --
8 it hasn't been raised. The distribution of the
9 available school fund is not an issue -- viable issue
10 in this case and it hasn't been plead.

11 THE COURT: Okay. Well, I've been looking
12 at the way the Plaintiffs have been going at this in
13 the sense that they say that the general scheme of
14 things, if you total them up, works out inequitably
15 for them.

16 So I'm going to let this be in the sense that
17 it is one of several, but I'm not going to let it be
18 one of itself. Does that make sense? That is, if
19 they have not specifically plead that Article VII,
20 Section 5, of the section -- the part that I just
21 read, that it alone specifically would somehow itself
22 constitute -- or the way the state itself is applying
23 that would be then unconstitutional as a separate
24 category or offense, I'm not going -- if they have
25 not specifically plead that, I will not let them do

1 that.

2 But it seems to me like that if you take the
3 several characteristics of the total scheme, that
4 this should be something one would think about in
5 terms of this would be part of a total scheme that at
6 least -- that the state in the past has been
7 distributing this on a per capita basis.

8 MR. O'HANLON: My problem there is that do
9 we not then get into an argument that the state's own
10 interpretation of Article VII, Section 5, violates
11 Article I, Section 3? That's what, in essence, Mr.
12 Gray is saying. Because it raises equal protection --
13 or Article III -- Article I, Section 3(a).

14 MR. GRAY: Your Honor, I would also point
15 out that we have been reluctantly, but nevertheless,
16 have been encouraged to come forward with some form
17 of options for possible remedies, and this certainly
18 would fall within that category.

19 MR. O'HANLON: Changing the constitutional
20 interpretation requires, I think, some kind of notice
21 in pleading. To say that we are now violating
22 Article VII, Section 5, requires them to put us on
23 some kind of fair notice.

24 Once again, the reference -- the statutory
25 reference in their pleadings are constrained or

1 confind to Chapter 16 of the Texas Education Code.
2 This simply -- the distribution of the available
3 school fund simply is not governed by Chapter 16.
4 It's governed by Chapter 15 of the Texas Education
5 Code. We are getting into a whole new area.

6 MR. GRAY: I'm not going to go any -- I
7 made my point, and I asked the witness the question,
8 and he answered it. I have nothing further to ask
9 this witness about. I'm prepared to go forward with
10 cross.

11 MR. O'HANLON: And I move the Court to rule
12 that that's not relevant; that the distribution under
13 the available school fund is not relevant to a
14 determination of constitutionality of the
15 distribution under a separate chapter of the Texas
16 Education Code.

17 THE COURT: I'll take it under advisement.
18 I'm not sure it is not, but I understand what you're
19 saying.

20 MR. GRAY: May I proceed?

21 THE COURT: All right.

22 CROSS EXAMINATION (RESUMED)

23 BY MR. GRAY:

24 Q. Now, Mr. Moak, we have heard a lot of testimony about
25 the various reforms involved in House Bill 72 and the

1 related legislation that went along with it. Without
2 going through each and every one of them, is it fair
3 to say that the state, for whatever reason, felt that
4 it was time that the state impose more mandates on
5 local districts as far as how local districts went
6 about fulfilling their educational -- their job of
7 educating their children?

8 A. House Bill 72 contains a substantial number of
9 mandates to local districts.

10 Q. If you looked at the education world before House
11 Bill 72 and after House Bill 72, you would see that
12 the state is exerting more control over what is going
13 on in local districts today than it did before,
14 correct?

15 A. Somewhat, but not exorbitantly so.

16 Q. Now, if you look at just briefly Defendants' Exhibits
17 33 and 34. Do you have them in front of you?

18 A. Yes.

19 Q. And these are the printouts of, as I understand it,
20 the Defendant districts and the Plaintiff districts,
21 correct?

22 A. That's correct.

23 Q. And these were offered, these printouts, as being the
24 type of printout that was shown to the Legislature as
25 they went through the deliberative process for House

1 Bill 72, correct?

2 A. No. I don't think these were ever discussed in terms
3 of the type of information which was shown the
4 Legislature during House Bill 72 because this was --
5 this whole format and approach to the development of
6 this computer model was not developed until after
7 House Bill 72 passed.

8 Q. So if the Court was left with the impression that
9 this format was what was available and distributed to
10 members of the Legislature as they deliberated House
11 Bill 72, whether intentionally or unintentionally,
12 that was an erroneous impression, correct, because
13 this format wasn't even developed?

14 A. This format was not developed. This format -- there
15 was another format developed which was available to --
16 which had much of the same information, which was
17 available to members of the Legislature, and a
18 summary of that was distributed to all members of the
19 Legislature.

20 I am personally aware that a number of members
21 of the Legislature came over and looked at the more
22 substantive detail, which was closer to this kind of
23 format.

24 Q. Okay. Now, the -- do you have Exhibit -- Defendants'
25 Exhibit No. 62? Analyses?

1 A. Which set was that?

2 Q. It's general revenue funds. Relationship between
3 general funds --

4 THE COURT: Let's stop there for the
5 afternoon. We'll start up with Defendants' 62.
6 We'll start there in the morning. See you all at
7 9:00 o'clock.

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(Proceedings adjourned

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(until March 4, 1987.

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