

3-87-190-CV

CAUSE NO. 362,516

C 8353

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

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IN THE 250TH JUDICIAL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

STATEMENT OF FACTS
VOLUME III OF XLVI

JOHN T. ADAMS, Clerk

By _____ Deputy

FILED
OCT 09 87
THIRD COURT OF APPEALS
SUSAN K. BAGE, CLERK

TAKEN JANUARY 22, 1987

KFT
1590
E33
1987
v. 3-4

MONICA ROSS WEIDMANN

Official Court Reporter
250th Judicial District Court

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18
19 BE IT REMEMBERED that on this the 22nd day of
20 January, 1987, the foregoing entitled and numbered
21 cause came on for trial before the said Honorable Court,
22 Honorable Harley Clark, Judge Presiding, whereupon the
23 following proceedings were had, to-wit:
24
25

1 FEBRUARY 22, 1987

2 MR. KAUFFMAN: Your Honor, I met with the
3 attorneys for the Defendants at the end of yesterday
4 and I asked them if they would agree if we could
5 change the order of witnesses somewhat. We have an
6 individual Plaintiff here to testify from El Paso.
7 She's been here two or three days waiting. And they
8 have agreed that she could go ahead and testify today
9 and we'll pick up Dr. Hooker's cross examination, I
10 suppose, on Monday morning when we reconvene.

11 I would like to introduce to the Court Camilo
12 Perez-Bustillo, from Boston, who is a member of the
13 Massachusetts Bar, graduate of Northeastern Law
14 School, been practicing for six years, working with
15 me on the case now for about three years. And he'd
16 like to do the next witness. And if he could
17 practice for awhile here in Texas, we would sure
18 appreciate it. I don't think there's any objection.

19 THE COURT: Looks to me like the others are
20 going to extend a welcome to you, so I may as well
21 also.

22 MR. PEREZ: Thank you, Your Honor.

23 Your Honor, Plaintiffs would like to call their
24 next witness, Mrs. Estela Padilla from Socorro.
25

1 MRS. ESTELA PADILLA,
2 was called as a witness, and after having been first duly
3 sworn, testified as follows, to-wit:

4 DIRECT EXAMINATION

5 BY MR. PEREZ:

6 Q. State your name for the record again.

7 A. My name is Estela Padilla.

8 Q. And where do you live, Mrs. Padilla?

9 A. I live in Socorro, Texas, in the county of El Paso.

10 Q. And your address?

11 A. 377 Buford.

12 Q. And do you have any children, Mrs. Padilla?

13 A. Two.

14 Q. And what are their names?

15 A. Gabriel and Celina.

16 Q. And what are their ages?

17 A. Gabriel is nine and Celina will be six in March.

18 Q. And do they go to school in Socorro?

19 A. Yes, they do.

20 Q. Where is that?

21 A. They go to the Escontrias primary campus on Buford
22 Road.

23 Q. Now a little bit about your background, Mrs. Padilla.

24 Are you a taxpayer in Socorro?

25 A. Yes, we are taxpayers.

1 Q. And do you live there with your husband?

2 A. Yes, I live there with my husband.

3 Q. And what is his name?

4 A. Carlos.

5 Q. And how long have you lived in Socorro?

6 A. All of my life, 41 years.

7 Q. You were born there?

8 A. I was born in Socorro.

9 Q. And have you moved around within the El Paso County
10 area?

11 A. No. We've always lived -- well, when we were
12 newlyweds, we lived for six months about seven miles
13 from Socorro while the house was being built, but we
14 literally lived there all of our lives.

15 Q. And where did you go to school, Mrs. Padilla?

16 A. I went to school in Socorro. Back then, there was
17 only one building and it only went through the eighth
18 grade, so I went to the Socorro school until I
19 graduated from the eighth grade. And then we went
20 on, we transferred to the Ysleta High School because
21 that was the only high school that was around or
22 Clint. We could choose which one of the two we
23 wanted to go to, but we went to Ysleta.

24 Q. Are there a few different school districts within the
25 El Paso County area?

- 1 A. I beg your pardon?
- 2 Q. Are there a few different school districts within the
3 El Paso area?
- 4 A. There are several school districts.
- 5 Q. What are the neighboring ones, just so we have some
6 idea what we're talking about?
- 7 A. Well, to the east there's Clint and to the southeast
8 there's San Elizario. To the east, immediately east
9 of us, is Ysleta. And then further, I beg your
10 pardon, I'm sorry, I meant to the west side is Ysleta
11 and then further west is El Paso.
- 12 Q. Now, have you had any kind of teaching experience
13 Mrs. Padilla?
- 14 A. I have taught CCD children at the kindergarten
15 level-- five year olds.
- 16 Q. I'm sorry. Just so we all understand, what does CCD
17 stand for?
- 18 A. Catechism, Catholic doctrine.
- 19 Q. And you've been doing that for how long?
- 20 A. I did that for one year, from September to May in
21 1982 and '83. And I am currently teaching about
22 twenty seventh and eighth graders, also in the
23 catholic doctrine.
- 24 Q. And are these children from the Socorro area?
- 25 A. They are all from the Socorro area.

1 Q. And have you ever taught before, before this year,
2 before the current year?

3 A. No, that's my teaching experience.

4 Q. Now, a little bit about your roots in the community --
5 does your family go back in Socorro?

6 A. All of our ancestors are from that area, from Socorro
7 and San Elizario, all of that area in the valley of
8 El Paso County. My mother's parents are from Socorro
9 and my father's parents are from San Elizario. We
10 can trace our roots back to -- for over 300 years.

11 Q. Now, can you tell me a little bit about the community
12 that you live in? If you had to describe Socorro,
13 the conditions of life at Socorro?

14 A. Well, when I was growing up in Socorro, we lived in a
15 place that was very rural. It's a farming -- it was
16 a farming community back then. Lots of cotton,
17 alfalfa fields. There were only probably about 200
18 families living in that part of Socorro, that part of
19 the valley. We all knew one another and it was a
20 very small community. We all used to go home and
21 pick cotton after school. And we all went to the
22 same church. We all went to the same school. It was
23 just like one large family.

24 35 years later, Socorro has -- has changed
25 very, very much. The rate of growth right now is

1 about 17 percent. And farmers have taken their land
2 and subdivided it. Farming is just not profitable
3 any more and so they -- they sell their land to
4 developers who come in and develop it and lot it up
5 and sell it.

6 There are many illegal subdivisions in Socorro,
7 there are about 90 suspected illegal subdivisions in
8 that valley now.

9 There are very weak county building codes and
10 zoning laws and so we have junkyards next to
11 churches, next to bars, next to shops of, you know,
12 every imaginable type of business, just spread out.
13 And so it has changed a lot.

14 Q. Do you have any nuclear power plants or oil wells on
15 your property there?

16 A. There are no nuclear plants. There is no industry.
17 There are no services. We don't have water. We
18 don't have a water system out there. People used to
19 have -- when I was young, we used to have a water
20 well -- either a well or a pump, a hand pump. And
21 even back then, not everyone had good drinking water,
22 but now no one has -- the water, you just cannot
23 drink what comes out of the ground, because there has
24 been such a proliferation of septic tanks and
25 whatnot, that the water is contaminated. We have a

1 tremendous high incidence of hepatitis and other
2 illnesses that are related to food and water

3 We don't have any other services no public
4 transportation. Most of the roads are in very poor
5 condition These illegal subdivisions are in such
6 bad shape that the school buses will not go through
7 there to pick up the children They have to walk to
8 the best road that neighbors their area so that the
9 school buses will pick them up The mailman will not
10 go into those areas to deliver mail There is like
11 I said- no industry but just a lot of -- a lot of
12 growth People come in and bring their trailers in
13 and gradually add on to them or build a home It's
14 part of the American dream to have your own piece of
15 land and build a home on it. And they keep on moving
16 out there even though there are no services There
17 are areas out there where people live without
18 electricity. And they would prefer to live out there
19 without any services than to live in the public
20 housing which is available downtown with a waiting
21 list of 5 000 people -- 5 000 families And so
22 there's a list that has been frozen And they would
23 rather live out there so people just keep coming out
24 to settle in the valley

25 Q. Now is there a high unemployment rate in your area?

1 A Very high unemployment rate In our areas and in
2 Socorro there are areas that have 30 percent --

3 MR E LUNA: May it please the Court the
4 thing that is before the Court is whether or not the
5 statute is constitutional Now building roads of
6 course is not something that's done with school
7 funds and junkyards or zoning And we object to
8 going into all of the history of the communities If
9 we all do that and tell the history and contents and
10 what the city councils do and don't do that we like
11 it's -- it's just something that is interesting but
12 we submit that it's not material to the -- whether or
13 not this school statute is constitutional

14 And in the interest of time and this is going
15 to be a long case at best we ask the Court to
16 sustain this objection that that type of testimony
17 is not material to the things that are before the
18 Court

19 If that testimony comes in it will be
20 necessary for us to go into that sort of thing and
21 show what other communities are like for example
22 And it can unduly elongate a case that's already
23 going to be long so we would like to ask the Court
24 to keep it on the issues that are -- that are
25 necessary to decide whether or not this statute is

1 constitutional.

2 MR. PEREZ: Your Honor, if I may be heard.
3 Really what we're doing now is background into the
4 characteristics of the community from which Mrs.
5 Padilla comes and where she resides and where her
6 family resides is relevant to the issue of the
7 characteristics of the school population, their needs
8 and therefore the issue of underfunding or lack of
9 educational opportunities. Really what this is is a
10 preface to that testimony which I think will be much
11 more central.

12 THE COURT: All right, sir.

13 MR. PEREZ: Thank you.

14 THE COURT: I'll overrule. I understand,
15 but I'll overrule.

16 BY MR. PEREZ:

17 Q. Now, Mrs. Padilla, have you been involved as a parent
18 in the affairs of the schools in Socorro?

19 A. Yes, I have.

20 Q. When did that begin and how?

21 A. Well, I guess when we found out we were going to be
22 parents. And we, I guess, all -- I know that all of
23 my priorities shifted and I was suddenly very
24 interested in the environment that the children were
25 going to grow up in. We wanted them to grow up right

1 there where we had been raised and around all of the
2 cousins and aunts and grandpas and grandmas. And the
3 education that they received was -- was very
4 important to us. And we started working -- I started
5 reading a lot about the things that are important in
6 child development and in early education, early
7 childhood experiences and education. And our son was
8 probably four years old when -- when we got involved
9 with the school issue in Socorro. He was not in
10 school yet, but there was a decision that had been
11 made on the school board to place a new school that
12 was needed in the district, quite a distance from the
13 population of the district. And we took that issue
14 on and we worked on it for about three months before
15 we found a solution.

16 Q. Now, what year was this, about?

17 A. This was 1982, the summer of 1982.

18 Q. Now, was that the end of your involvement with the
19 schools?

20 Q. No. From there, it just progressed. There were
21 other issues that came up. We have worked with -- we
22 also worked with a situation in the district where
23 children were having to walk just inside the two mile
24 limit. The law prohibits that the school buses pick
25 them up if they live inside the two mile radius from

1 the school, and they were having to walk, little tiny
2 children, the kindergarten children and the first
3 graders and second graders were having to walk almost
4 two miles, just barely inside that two mile limit,
5 crossing two main thoroughfares, tracks, railroad
6 tracks, a drainage canal, heavy traffic from a cement
7 plant, windy narrow roads with no sidewalks. And it
8 was a very dangerous route. The school didn't have
9 any solutions and we had a -- we had a decision to
10 make on it, what we could -- you know, we had to find
11 a solution. So we put the money together to pay the
12 school. They found a bus, an extra bus, that they
13 had, and we paid for the children to be picked up and
14 taken -- and taken to school. We paid the school.
15 Parents, you know, it was just like bus fare, we had
16 to pay for the expense of getting that bus.

17 And after that, we have worked on several other
18 issues. We are currently working to find a solution
19 to a problem that surfaced a couple of weeks ago.
20 It's about placing all of the support services for
21 the district on the campus that our children went to
22 school in. And this is going to have a tremendous
23 impact on that area. It's -- in many ways. It's
24 congested with traffic already. It's going to change
25 the environment of that campus into a warehousing and

1 services kind of environment. It's just not a school
2 environment. And we're working on that issue.

3 We have put together a volunteer parents'
4 group. I organized a PTA on that campus. I have
5 represented the -- the Ysleta primary campus on the
6 Parents' Communication Council for four years.

7 Q. Excuse me, Mrs. Padilla, what is the Parents'
8 Communication Council?

9 A. Parents' Communication Council is a council comprised
10 of representative parents from each campus who meet
11 with the superintendent and some of the
12 administrators and even some of the board, school
13 board members, periodically during the school year,
14 to communicate about situations on the campus. Just
15 to work together to provide a better -- better
16 education for the children.

17 Q. Now, this building that you described that would
18 contain all of the support services for the district,
19 what did you mean by support services -- what does
20 that include?

21 A. Support services are carpenter shops, electrical
22 shops, plumbing, locksmiths, all of the services that
23 the school provides for them -- that the district
24 provides for the schools. Warehousing for food
25 personnel. There will be books stored in that

1 warehouse. There will be shipping and receiving
2 activities. Dispatching of repair services to all of
3 the schools in the district. It's all of the support
4 services that the district needs to run the district.

5 Q. And what's the problem with locating it where it's
6 being located?

7 A. The problem is that it's being located in the
8 building that our little kindergarten-age daughter
9 goes to school in. It's the same building. And it
10 is adjacent to the building that our son goes to
11 school in. It's an old metal building that was
12 supposed to be dismantled and transported up into the
13 desert and reassembled as a warehouse, but because of
14 the shortage of funds, instead of paying to have it
15 dismantled and reassembled, it is less expensive just
16 to bring down the services from where they are right
17 now in rented facilities, save money on the rental,
18 have the school personnel move everything into that
19 campus. There will be fences, you know, high fencing
20 put around it with barbed wire at the top. And this
21 is a -- this is a change in the plan that we had put
22 together about three years ago, we had a five year
23 plan. And that plan had -- had brought about the --
24 the decision to move that building, to take it down
25 and to move it into the district. And so now,

1 because of the lack of money, the district has made
2 that decision to ...

3 Q. So, are you concerned about the impact on the
4 education of your child -- is it Gabriel who is in
5 the old building?

6 A. Celina is in the old building and Gabriel is in the
7 new building next to it.

8 Q. And what are the real differences between the
9 buildings?

10 A. Well, one is that -- the building that Gabriel goes
11 to school in is a beautiful building. It is new, it
12 is brand new; we opened it up in September. And it
13 is -- it is something to be proud of.

14 The old school, the old building is a rotting
15 metal building. The roofs leak; they're smelly. The
16 bathrooms in those little classrooms cannot be
17 cleaned to where they don't smell of urine.

18 My children have both started their -- their
19 schooling in that building. And Celina is presently
20 still in that building because we -- we are doing
21 everything in phases, we don't have the money to do
22 everything all at once. And so she goes to school
23 there, but they wait to go to the bathroom when they
24 get home because the bathrooms smell. And they are
25 cold in the winter and hot in the summer. They are

1 metal buildings.

2 They have -- they have to walk out in the
3 elements to get to the cafeteria. It's just -- it's
4 just not -- it's not a good building for the children
5 to go to school in.

6 Q. And have you seen any impact of that situation on
7 Celina?

8 A. Celina is five years old. She started school in
9 September and she did not understand why she couldn't
10 go to the new building. She understands the work
11 that I do with the schools very well. She
12 understands that we worked very hard to pass that
13 \$30,000,000.00 bond election that brought the money
14 to build a new school with. And of course, when we
15 were doing all of that, we didn't know that she was
16 not going to start school in that building. So it
17 was very difficult to have to explain to her that she
18 could not go to school in that building, that she had
19 to go to the old building. She is very eager to go
20 to school in the new building.

21 I -- to her, one of the biggest treats is to go
22 to the library, and there is no library in that
23 building. I think that the impact is just the fact
24 that it's a loss of enthusiasm in the children
25 because they have to go to school in that building.

1 It's not -- it's not exciting for them to -- or
2 interesting to go to school in that building.
3 Especially when there are some of the conditions that
4 I've mentioned. They see those things and that is --
5 that is demoralizing for the children.

6 Q. Now, the other school that Gabriel attends, is that
7 the Escontrias school?

8 A. Yes, that's the Escontrias primary school.

9 Q. What's the capacity of that school?

10 A. I know it's over a 1,000 children, I believe it's
11 probably about 1,100 or 1,200.

12 Q. And for what grades?

13 A. Well, right now they have first, second, third and
14 fourth grades in it. Like I say, we are working in
15 phases. And I'll see it when I'll believe it, but
16 that school is supposed to eventually have the fifth
17 graders -- well the fifth -- it's supposed to be a K
18 through eight, but the kindergarten children and the
19 early, well, all of the early childhood classes are
20 supposed to be transferred to the old, old campus
21 that I went to school in. It's just a matter of
22 situating and accommodating the growth. So it's
23 projected that that building will, in September of
24 this year, will have first through eighth grade
25 students in it.

1 Q. And do you have any sense of why the building was
2 made so large for an elementary school?

3 A. Well, it's -- it's a matter of economics. It's a lot
4 cheaper to run one big building with lots of children
5 in it than to set up several small buildings or
6 several campuses.

7 Q. Now, can you tell us a little bit about Gabriel and
8 his situation. Do you have any concerns about his
9 education at this point?

10 A. We are very concerned about Gabriel because he
11 started out with a lot of enthusiasm for school. I
12 represent parents on problems. We have a lot of
13 parents who don't speak English. And I have worked
14 with many, many cases where -- involving children in
15 ages nine through twelve. And Gabriel is nine. And
16 I'm beginning to see and to feel what some of those
17 problems are. It's -- it's a problem that we are
18 working with and trying very much to resolve, because
19 it's just the lack of -- a lack of interest, it
20 appears to be.

21 Gabriel is bright. He is especially strong in
22 math and he is -- he is gifted in intelligent
23 material. His teachers have told us that, but we
24 have been unsuccessful in bringing that about in --
25 in him, you know, in bringing out the best in him.

1 And he has started to -- to lack responsibility in
2 his studies and in his homework. Even though he does
3 his homework, he just, you know, happens to lose it,
4 or -- it's hard to explain. It's like a lack of
5 interest. It's like a lack of interest or a lack of
6 motivation.

7 Q. Do you think the school is set up to bring out the
8 best in him?

9 A. No. I don't believe that the school is set up. It --
10 despite the fact that it's a lovely new building and
11 the fact that we have qualified teachers and teachers
12 who work very hard to do a good job with the
13 children, it's impossible for them to -- to be
14 successful when they are drowning in children and
15 lacking money to provide so many things that would
16 make it a rewarding experience for the children.
17 Gabriel loves science. He enjoys and -- we buy him
18 these experiments to do at home, you know, scientific
19 little experiments for -- he would love to have that
20 kind of experience in school.

21 As I understand it, there's a science lab in
22 the building, but they don't get to use it -- it's on
23 a rotating basis and so far he has not used it.

24 There are many things that he enjoys doing.
25 There are many things that interest him. He plays

1 piano. He's been playing since he was two and a
2 half. And they don't have music in school.

3 They don't have a place to do P.E.. They go
4 outside and do physical education out on the ground.
5 And it's the homeroom teacher who leads them in
6 whatever physical activity they call P.E..

7 They're not exposed to the arts, you know. I
8 wish that they could have a place where they could do
9 crafts and arts. And just expose them to a variety
10 of experiences that would make school interesting.

11 It's a matter of not having -- not having the
12 teachers to teach the individual classes, that
13 homeroom teacher does everything. She's a P.E.
14 teacher. She is -- they go to that room and they
15 stay in there and it's a nice new room, but they're
16 very limited by the lack of money in what they can do
17 and what they can offer the children.

18 Q. Is there any problem with the instructional
19 materials, for example?

20 A. There are -- I would say that they are adequate. I
21 would say they are adequate, but nothing unusual,
22 nothing exciting, nothing above the ordinary.

23 Q. Are computers available for the children?

24 A. There are no computers available and that is
25 something that interests my son very very much -- and

1 Celina. There is a computer at church at the office
2 and they are allowed to work with the computer there
3 and they love it. And there are no computers at
4 school.

5 Q. Why aren't there any, do you know?

6 A. There's no money to buy them.

7 Q. Now, have you spent any time in school with Gabriel?

8 A. With Gabriel, when he started school, I was there
9 almost on a daily basis helping the teacher. At that
10 time, the district had just laid off the teacher aids
11 due to the lack of money. And teachers were having
12 to, especially in the kindergarten grades, were
13 having large classes, I believe it was 26 that year,
14 26 children in that classroom. And with no aid.

15 One of the biggest problems that I see as a
16 parent is the fact that the kindergarten classes are
17 done on a half day schedule, so the children go to
18 school from 8:00 until 11:15. They have lunch before
19 11:00, so they have less than three hours of
20 instructional time, and even less than that, because
21 they take time in the morning for announcements and
22 the Pledge of Allegiance. And so they have a little
23 over two hours probably, of actually instructed time.
24 That teacher is expected to teach those children five
25 or six concepts in that amount of time. And it's the

1 same teacher for two sessions. In other words, she
2 has a group right now in Celina's class, there are, I
3 believe, 19 children and I think she has 20 in the
4 afternoon, so, it's two sessions a day for the same
5 teacher and the same pay.

6 MR. O'HANLON: Judge, with respect to this
7 line of questioning, I think it's intentionally -- I
8 don't know whether this witness knows, but it's
9 misleading the Court. A state program provides, at
10 the district's option, for the operation of a full
11 day kindergarten. And that's specifically up to the
12 district, not -- the state will fund full day
13 kindergarten, should the district choose to do so.
14 So what they're trying to do is tie, say something
15 bad about the state system because the district has
16 made an intentional decision not to operate the
17 program. This is misleading the Court with respect
18 to that, because if they decide to run one, the state
19 will pay for it.

20 MR. PEREZ: If we're permitted to ask the
21 next question, Your Honor, it would be "Do you know
22 why the district is not providing a full day
23 kindergarten?"

24 THE COURT: Okay, go right ahead.

25 THE WITNESS: The reason that the district

1 has had to go to these half day schedules for
2 kindergarten is that --

3 MR. O'HANLON: That would be hearsay as to
4 this witness, Your Honor.

5 MR. RICHARDS: Well, I think he invited it.

6 MR. PEREZ: Your Honor, I don't think
7 Counsel can have it both ways. If we're going to
8 have the answer, I think he will have the answer he
9 needs.

10 THE COURT: Okay. I'll overrule. If the
11 objection is hearsay in the sense that she has a lack
12 of personal knowledge -- is that what you mean?

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

14 MR. PEREZ: The witness has testified that
15 she's had two children in kindergarten, and currently
16 has one child in kindergarten --

17 MR. O'HANLON: And that makes this witness
18 a spokesman for a governmental entity, I suppose.
19 That makes her an authority on everything.

20 THE COURT: I'll let you test on how she
21 knows. I'll let her testify if she has personal
22 knowledge. You can test her source of information if
23 you want to.

24 BY MR. PEREZ:

25 Q. Do you have any personal knowledge of why there isn't

1 any full day kindergarten in Socorro?

2 A. Yes, I do.

3 Q. And what is the source of that knowledge?

4 A. The source of the knowledge, in particular about the
5 kindergarten situation, is that over the past three
6 and four years, I have been as closely involved, I
7 think, as a parent can be in working with a school to
8 understand why it works the way it does and what the
9 needs of that district are and what we as parents can
10 do to improve the situations that exist in the
11 district. It is my knowledge that the reason and --
12 and I don't doubt this because I'm familiar with the
13 -- with the finances of the district and the needs of
14 the district and the taxing capacity of -- of the
15 area. And so I believe very firmly that the reason
16 that we are on that schedule is the fact that we
17 don't have the facilities and the teachers. We don't
18 have the money to build the number of classrooms that
19 it would take and to hire the number of teachers that
20 it would take to let our children go to a full day
21 program. There just isn't money to buy that with.

22 So the children are put into a half day
23 schedule, which literally creates havoc. These
24 children are just getting introduced into the idea of --
25 of going to school and it's a very hurried child that

1 goes to school on a half day schedule. They are
2 herded from one, you know, from the classroom to the
3 cafeteria. It's like -- they're like little
4 machines. They just have to walk and get there as
5 fast as they can and do what needs to be done and
6 come back and hurry. I mean, there is no time to --
7 there is no time for the teacher, as good as she may
8 be, for her to have that one on one with a child
9 where you -- where you literally listen to that child
10 and take care of the needs of each individual child.
11 She has 20 children and she wants to devote one
12 minute to each child, that's 20 minutes out of a
13 little over two hours that she has to present all
14 kinds of information, and it's an impossibility.

15 Children have a very rude introduction into
16 their schooling. And it just gets worse. It just,
17 you know, from there on it continues to be
18 overcrowding and lack of facilities and -- and lack
19 of so many things that would make school interesting.
20 So we're doing the best that we can but ...

21 To get back to your question, when we first
22 started sending the children to school, I was there
23 almost every day to help that teacher out because she
24 was working under that situation of half day schedule
25 with so many things and crying children because

1 they're just coming to school for the first time.
2 And so I was there almost on a daily basis that first
3 year.

4 Q. Now, do you have an idea about the extent to which
5 counseling services are available to children in the
6 elementary grades?

7 A. There are no counseling services to speak of. I know
8 that there's a counselor somewhere in the district,
9 but there are no counseling services. We have dealt
10 with that when -- when I worked with parents with --
11 when they have problems with their children. Like I
12 say, a lot of problems between nine and twelve year
13 olds, and there are no counselors.

14 Q. Now, what you are testifying is that there's only one
15 counselor for the entire district?

16 A. There is one counselor that I am aware of for the
17 entire district.

18 Q. And is that at the elementary level or at the
19 secondary level?

20 A. He is at the administration building and he travels
21 around from campus to campus, as I understand it.

22 Q. Now, about how many children are we talking about in
23 the district?

24 A. By now I think it's either right at 9,000 or over
25 9,000 children.

1 Q. So, one counselor for that group of children is what
2 we're talking about?

3 A. (Witness nodded head to the affirmative.) That's --
4 that's what I understand.

5 Q. Now, looking at this group of children between nine
6 and twelve, is there any other person that they have
7 access to besides this counselor if there's a problem
8 that comes up for them?

9 A. Not as a counselor.

10 Q. And do you think that a counselor could play an
11 important role for those children?

12 A. Very definitely.

13 Q. Why? What would they do?

14 A. We feel -- as parents, we feel that children --
15 children have pressures regardless of where they come
16 from or what kind of community it is that produces
17 them, or -- or what kind of situations exist.
18 There's always peer pressure, there are always
19 problems. And children need to know that they can
20 confide in, apart from the parents sometimes, apart
21 from the teachers, someone in a counselor's capacity.

22 As a parent, I believe that the children in
23 that area, in the Socorro school district have more
24 than the usual stresses to -- to deal with and we
25 feel that it would be extremely useful to have

1 counselors in the schools.

2 Q. Now, Mrs. Padilla, do you have any thoughts about the
3 relationship between the home environment and the
4 school, in your experience?

5 MR. O'HANLON: Judge, we're running mighty
6 far afield in this, with respect to this. I think
7 now they're trying to lay in addition to streets and
8 sewers and water, they're trying to lay home
9 environment at the schools -- at the feet of the
10 school system. There are certain limits here. The
11 school system is there to educate children, not to
12 solve all social harms in this society. If you do,
13 they're alleging we don't have enough money to even
14 educate them, much less to do all of these other
15 things. This testimony is simply not relevant to any
16 issue in this case.

17 MR. PEREZ: Your Honor, what you will hear
18 throughout the trial of this case from the other
19 side, and it's also a line of argument that's evident
20 in the depositions up until now of expert witnesses,
21 is at least in part of an argument that the
22 socioeconomic status and the conditions of the
23 community outweigh the importance of the role of the
24 school. And the testimony I'm seeking to elicit is
25 to address that question -- what the relationship is

1 and the witness' experience between the home
2 environment and school, the extent to which those
3 environments are interdependent and what difference
4 school can make, if any.

5 MR. O'HANLON: Quite frankly, Your Honor,
6 that's not -- that's not relevant. It's not
7 relevant. There is no entitlement to a weighted
8 program in this state. The case is -- what has been
9 pled and what's at issue in this case is whether or
10 not there's discrimination based on a suspect
11 classification or whether or not the system is
12 inequitable. Whether or not someone has to have more
13 money spent on them or not is not a judicial
14 determination. That's for the Legislature to decide.
15 It's simply not relevant to any issue before the
16 Court.

17 MR. PEREZ: Your Honor, I believe Counsel
18 on the other side, in effect, is assuming that it's
19 his argument that governs, his advocacy argument that
20 governs the course of the proceedings in this case
21 and we would certainly take a different stance.
22 There are contentions that are being fought out in
23 this courtroom on each side. And we are seeking to
24 elicit testimony which is directly relevant to one of
25 those contentions, which is, on the other side, that

1 somehow schools don't make a difference really, that
2 dollars ultimately don't make a difference, and that
3 if there are poor people and there are poor
4 communities, then there are just going to be poor
5 schools. And that that's constitutional and that
6 that's acceptable. And we don't buy that, Your
7 Honor.

8 MR. O'HANLON: That's not the argument at
9 all. The argument is that what is prohibited is
10 discrimination based on suspect classification. And
11 this testimony doesn't have anything to do with that.

12 THE COURT: Okay. I'm not sure that it is
13 not relevant, so I will not exclude the testimony.

14 MR. O'HANLON: May we have a running bill?

15 THE COURT: Yes, you may.

16 MR. E. LUNA: We want in that bill, too,
17 Your Honor.

18 THE COURT: We'll have all of the
19 Defendants and Defendant-Intervenors have a running
20 objection to this line of testimony. That's fine.

21 BY MR. PEREZ:

22 Q. Mrs. Padilla, do you recall the question?

23 A. Would you restate the question, please?

24 Q. In your experience, is there any relationship between
25 the home environment and the school environment in

1 successful children?

2 A. There's a -- I believe that there's a tremendous
3 relationship between the home environment and the
4 school environment. As parents, we have -- sometimes
5 we are with our children fewer hours than what the
6 teacher at school spends with them. At home, we can
7 -- we can do just so much as far as guiding our
8 children, teaching them, setting the example for
9 them, helping them with their studies. Once they get
10 to school, it's a very different situation. There's
11 peer pressure. There are situations that we have no
12 control over.

13 If the school can compliment what we do at
14 home, it can be a tremendous partnership. We can
15 work -- I work very closely with the teachers for my
16 children. I want to know what I can do at home from
17 my end to reinforce what that teacher is doing at
18 school. They send letters home. Like in Celina's
19 classroom, there's a letter that comes out every week
20 telling us as parents what the children are learning
21 at school. In the beginning, when it was shapes, one
22 week they would study the triangle. And certain
23 numbers and certain letters. And so when we know
24 this at home, we can -- we can integrate that into
25 the daily experiences of the child at home. And do

1 our part at home. If the child is needing help in a
2 particular area and the teacher lets us know, we work
3 with them at home. And like I say, it can be a
4 beautiful partnership.

5 Now, when -- when teachers don't have the time
6 to work with -- with students with -- who come to
7 school with all of the needs that they have, when
8 they don't have time to -- we have children in
9 Socorro who come to school needing baths because they
10 don't have water. They come to school needing
11 medical attention. There are no clinics in Socorro.
12 They come to school hungry. Some children eat only
13 the meals that they get at school. Teachers have to
14 work with that whole child that they get in the
15 classrooms. If they don't have the time or the
16 facilities or the -- if they don't complement them,
17 if they don't understand the full child, then, you
18 know, it's very difficult to work with all of that.
19 That child is a victim twice. He's a victim to the
20 circumstances at home and to the community, the
21 socioeconomic makeup of that home environment and
22 that community. And then he's victimized again at
23 school because of the lack of money to provide the
24 kinds of things that would complement, that would
25 make it better. In other words, it's bad all the way

1 across. It's a deadly combination because the
2 teacher has to be -- you have to expect more from a
3 teacher who works with children like that. And it's
4 a double challenge for a teacher.

5 Q. Do you think the Socorro school district is living up
6 to that challenge right now?

7 A. It can't. The Socorro school district has tried --
8 has tried it's best. It's not a lack of leadership,
9 it is not a lack of leadership, it is not a lack of
10 parental concern, it's not a lack of a combined
11 effort in the community. We work very hard through
12 the church. We have a partnership between parents
13 and church and school to -- to work together to
14 provide a better education and to upgrade the
15 district and to work as best as we can for the
16 children of the community, but we're -- there's just
17 so much you can do. You know, at a certain point,
18 you just have to have more money to do what needs to
19 be done. We are just -- we just have children coming
20 and coming and coming into the district and we just
21 don't have the money to -- to provide the kind of
22 education that -- and to provide the kind of services
23 that we need to provide through the district.

24 Q. Do you think that \$500.00 more a child per year would
25 make a difference in Socorro for education?

1 MR. O'HANLON: Objection, Your Honor,
2 unless we can show a foundation for that testimony.

3 MR. E. LUNA: And she is now testifying on
4 -- as an expert in education. There's been no
5 foundation laid, not shown that she's qualified to
6 testify in this area at all, we object to it.

7 MR. PEREZ: Your Honor, again, what we're
8 seeking to elicit is the fact that the witness has
9 already laid the foundation in the form of pointing
10 at the problem time and again of lack of money and
11 lack of resources, has been involved in a struggle to
12 obtain more resources for Socorro. What I was
13 seeking to get into was that line of testimony.

14 THE COURT: Okay. I think the objections
15 are lack of expertise. The question is would \$500.00
16 help things. I don't know that you need to be an
17 expert to know that. I'll overrule.

18 BY MR. PEREZ:

19 Q. Mrs. Padilla?

20 A. \$500.00 more per child would be a great help. It
21 would be a help. But I dare say that it's going to
22 take a lot more than \$500.00 per child. We are
23 playing catch-up and in every situation that you look
24 at, it's a matter of catching up. We are catching up
25 in salaries for teachers, in the number of teachers,

1 and the facilities and the offerings that we have for
2 the children. Everywhere we look, it's catch-up.
3 It's try -- it would take more than -- I know that it
4 would take more than \$500.00 per child. Especially
5 having to tend with the rate of growth that we have
6 in that area. Like I said, it's 17 percent in the
7 community, it's 13 percent in the schools.

8 Q. Do you feel that you're making an effort as a
9 taxpayer to contribute to that effort?

10 A. I believe that we are. We're paying 95 cents school
11 tax. We have recently, in the last few years, had to
12 borrow money at the end of the year to pay those
13 taxes. We pay over \$500.00 in school taxes. And
14 when we combine that with all of the taxes that we
15 pay, it's over a thousand dollars and I don't work
16 outside the home. I believe that we are -- that we
17 are making an effort, a very real effort as far as
18 taxes are concerned.

19 Q. Now, Mrs. Padilla, are you a Plaintiff in this
20 matter, in this case?

21 A. I am a Plaintiff in this matter.

22 Q. And how long have you been involved in issues of
23 school finance in regard to this case?

24 A. I've been involved in this kind of issue on school
25 finance since 1982. When we first started looking at

1 that problem, which was the -- the building of that
2 school that was needing to be built, and we started
3 understanding how much money was available for how
4 many projects, and started, you know, learning,
5 educating ourselves on the rate of growth and how
6 much money we can generate through taxes and what
7 that money goes for, and what kind of aid that we get
8 for the school from this state and what that money
9 goes for. So it was a gradual process of becoming
10 involved and becoming informed.

11 Q. And from what -- your perspective, what is this case
12 all about?

13 A. I don't want to over-simplify what I believe this
14 case is about. But to me, it's about providing every
15 child in Texas with an equal opportunity for
16 education. And I see the State of Texas as a parent.
17 If you can look at the state as a family, the State
18 of Texas is like a family. And the government of the
19 state is a parent. And there are many children with
20 a variety of needs. And when you look at the Socorro
21 school district, that child has many many needs, many
22 different needs from the rest of the State of Texas.
23 I imagine that every district is different in one way
24 or another.

25 We are, for example, the district in Socorro is

1 spread over a large area, a land area. So,
2 immediately there are different transportation needs
3 involved when you compare that to a district which
4 perhaps is small and concentrated. Our population is
5 spread over a wide area. Part of the district is a
6 little better off than other parts of the district,
7 but the district as a whole doesn't generate much in
8 taxes. I believe that the average parcel is about
9 \$46,000.00 worth of value to tax from.

10 We don't have any mineral exploration or
11 natural resources that we can depend on to generate
12 money from. And industry is not expected to come in
13 when there are no services and high taxes. I mean,
14 we're not attractive for industry.

15 And so -- we're right next to the border. We
16 have a tremendous problem with language. Many
17 parents don't speak English and understand it. Many
18 children who come to school can't speak English. So
19 the needs of this particular child are very different
20 and very severe. I'm sure when you compare them to
21 the needs of "other children", quote, unquote, in the
22 State of Texas. And it is the duty of the government
23 of the state to tend to the needs of that child.

24 At home, when Gabriel needed speech therapy,
25 and it was going to be \$20.00 a week to provide that

1 speech therapy for him, we had to cut in other areas
2 and prioritize our spendings, our budget, so we could
3 meet the special needs of our child or when they
4 develop those needs. We, you know, as parents, we --
5 we take care of the needs of the children. And I see
6 the State of Texas that way. I don't want to
7 over-simplify it, but I believe we have very special
8 needs in the district of Socorro.

9 Q. Thank you, Mrs. Padilla.

10 MR. KAUFFMAN: Excuse me just a second.

11 THE COURT: All right, sir. He passes the
12 witness.

13 CROSS EXAMINATION

14 BY MR. E. LUNA:

15 Q. Mrs. Padilla, my name is Earl Luna. And I represent
16 several school districts in this case who are
17 Defendant-Intervenors and I have a few questions I
18 would like to ask you if that's all right?

19 A. That's fine.

20 Q. I believe you described Socorro as being a -- back
21 when you were a small child, a small, generally
22 farming area, is that about right?

23 A. Yes, sir.

24 Q. Kind of sounds like you just described where I grew
25 up. I live out in Garland. I grew up on a farm

1 where we didn't have any electric lights, all the way
2 throughout high school. And sounds like that was the
3 way a lot of people were where you grew up, is that
4 right?

5 A. Well, we always had electricity when I grew up. It's
6 now in the, you know, the later stages of development
7 that some areas don't have electricity.

8 Q. You all had electric lights then?

9 A. We have electric lights in Socorro.

10 Q. On our farm, we didn't. So that starts out a little
11 bit better.

12 It's grown from about, how many students were
13 there when you were young?

14 A. When I graduated from eighth grade, there were 25
15 graduates in that eighth grade class.

16 Q. 25?

17 A. And right now there are -- last year there were only
18 700 eighth graders in it.

19 Q. Do you remember when you were in the ninth grade, how
20 many were, say about that -- I think you went to the
21 eighth and then you started to another school in the
22 ninth?

23 A. We had to go to another district, yes, to go to high
24 school.

25 Q. How many were in the ninth?

1 A. Well in the ninth grade, you know, Ysleta High School
2 had a combination of students from all over, so it
3 was a very large group.

4 Q. It was large then?

5 A. It was much larger. I mean, it was a regular high
6 school, where you went to different classes, you
7 know, different rooms. It was a very different
8 environment from the grade school.

9 Q. Your area sounds a little larger than mine. I was the
10 only one in the ninth grade at mine. But the farmer,
11 as you have pointed out, got to where they didn't
12 produce so well, and they started selling them,
13 didn't they? The people in the areas did subdividers
14 over the years?

15 A. As I recall, it was not a matter of not producing.
16 The land in the valley is very fertile and very rich.
17 It's an old riverbed because the Rio Grande used to
18 spill over the banks and find new routes, you know,
19 all of the time. It's very fertile land and very
20 productive.

21 Q. They weren't profitable?

22 A. They were not profitable. The government started
23 paying farmers not to plant cotton.

24 Q. And where I lived, the Garland school district, from
25 when World War II started, we were 2,700 to 180,000

1 and about 32,000 students now.

2 Socorro has how many?

3 A. In the whole district?

4 Q. Yes. Do you know?

5 A. Over 9,000 students.

6 Q. Over 9,000?

7 A. Over 9,000.

8 Q. And the junkyards, of course, as we begin to grow,
9 junkyards show up as they have in Socorro and as they
10 did in Garland, don't they?

11 A. I'm not familiar with -- with your part of the state,
12 but --

13 Q. Well, at least they did in Socorro?

14 A. In Socorro they started -- they started developing
15 when the land was sold, when the cotton fields were
16 sold to developers and the developers came in, and
17 you know, they --

18 Q. Yeah.

19 A. They started to selling to people who put up
20 junkyards.

21 Q. Now, we went to our City Council and got them to do
22 away with junkyards. Have y'all done that yet in
23 Socorro?

24 A. Well, the problem in Socorro is that it is not -- it
25 is not a city. It -- not until very recently, as a

1 matter of fact, this past year in April, there was an
2 election to revive an old incorporation that was on
3 the books.

4 Q. It's a city now, though?

5 A. Well, it's -- part of the district is, but not all of
6 the district is in that -- in that city. And there
7 are different -- different governing bodies.

8 Now the part of Socorro that has the junkyards
9 in it, has been county and has been run by the county
10 up until -- and it still is run by the county. The
11 county doesn't have the kinds of zoning laws and
12 regulations that regulate junkyards. They are
13 powerless to regulate where the junkyards come up.
14 As a matter of fact, even now, there are no codes
15 there to enforce.

16 Q. But the City of Socorro has more than 5,000 people in
17 it and is a home-ruled chartered city, is it not?

18 A. They don't have a charter, yet.

19 Q. You don't have a charter, yet?

20 A. There is no charter in existence.

21 Q. Now, you said -- I want to start with the end of your
22 testimony first. You said that this case is about
23 providing every child in Texas with an equal
24 education.

25 A. Equal opportunity.

1 Q. Equal opportunity. How about education?

2 A. For an education, for a public education.

3 Q. Well, equal opportunity for what?

4 A. Would you restate your question, please?

5 Q. I wrote down what I understood you to say, that this
6 case is about providing every child in Texas with an
7 equal opportunity. I thought you were talking
8 perhaps about an equal opportunity for an education,
9 is that what you had in mind?

10 A. Yes, I am, for an equal opportunity in education.

11 Q. In education?

12 A. Excuse me. I believe that this case is about
13 providing every child in Texas with an opportunity
14 for an equal education. I believe that there are
15 some areas that don't provide children with the same
16 opportunities that other areas do. I believe that my
17 children go to school in a district that cannot
18 provide them the same opportunity for an education
19 that other areas in Texas do for their children. And
20 I believe that this case is about equalizing those
21 situations, so that all of the children in the state
22 have more or less the same opportunities.

23 Q. I'm a little confused about some of the things you've
24 testified to as to whether you think the state needs
25 to cure those things in order for them to have an

1 equal opportunity. For example, what do the
2 junkyards have to do with it? Do you feel in order
3 for the kids in Socorro to get an equal opportunity
4 for education that the junkyards need to be done away
5 with by the state?

6 A. No, sir. The reason that I described the area in
7 Socorro is because I was trying to paint a picture
8 for you of what my community is like. What the
9 children in our district have to tend with, you know,
10 what kind of a community they come from and to -- to
11 show what we are like down there, that's my
12 experience. I don't -- I'm not here to ask the state
13 to take care of the junkyards.

14 Q. So the junkyards don't have anything to do with
15 education?

16 A. Well, everything is related, isn't it?

17 Q. Are they?

18 A. There is some relationship, because, you know, we
19 have junkyards and some places in Texas have oil
20 fields and a junkyard cannot provide the kind of tax
21 base that an oil field does.

22 Q. I see.

23 A. You know, for a tax base. There could be a relation.

24 Q. So are we talking about tax base or are we simply
25 talking about junkyards hurt because they are

1 unsightly?

2 A. We're talking about the things that come into play in
3 providing children an education. Now, the fact that
4 we were born in Socorro, in an area that doesn't have
5 the kind of tax base that other parts of the state
6 do, is something that -- that impacts upon the
7 opportunities that our children have for an
8 education. And the State of Texas, as the parent
9 figure in the parallel that I described, I believe
10 has a duty to look at those situations and do
11 something about it. The fact that we can't all be
12 born into a wealthy and solid tax base shouldn't mean
13 that some of us don't get a good education. I
14 believe that the purpose of government is to equalize
15 those -- those situations.

16 Q. All right. So you're talking about tax base, not the
17 environment of a junkyard, is that what you are
18 telling us?

19 A. I'm talking about the educational opportunities that
20 our children have.

21 Q. Well, that's what I'm asking you, are you saying that
22 because the junkyards are present, until and unless
23 the junkyards are removed, the kids can never have an
24 opportunity for an equal education or are you saying --

25 A. No, that is not true --

1 MR. PEREZ: Your Honor, I object to this
2 point, I think we've been over this three or four
3 times in different ways --

4 MR. E. LUNA: I didn't interrupt counsel,
5 Your Honor, and I would like to finish my question
6 before he objects.

7 THE COURT: I don't think it's repetitious,
8 I'll overrule.

9 MR. E. LUNA: Let me start over with my
10 question, if I might.

11 Q. Are you saying that the students in Socorro can never
12 have an equal opportunity for an education until and
13 unless the junkyards are removed or are you saying
14 it's -- the junkyards don't have anything to do with
15 education, but you just need more money.

16 A. I don't believe I was saying either one of those
17 things because when I was talking about the junkyards
18 and the conditions of the community, I was not
19 talking about replacing them with anything in
20 particular. I believe we all -- there are things
21 that are -- that we just have to work with, but we
22 are not here to talk about removing the junkyards and
23 replacing them with oil fields, although that is a
24 wonderful idea.

25 Q. Let me ask you, if you will, please, ma'am, to tell

1 the Court whether or not in your opinion, if the
2 students -- while you were not addressing it, I would
3 like to ask you to now address it -- in your opinion,
4 can the students in Socorro ever get an equal
5 opportunity for an education as long as those
6 junkyards remain there?

7 A. I believe that they -- that the students in Socorro
8 could have a better opportunity, even if the
9 junkyards stayed there, if the state did something
10 about equalizing the situation that exists.

11 Q. In fact -- did you finish?

12 A. I believe that the fact that we have junkyards in
13 that community and that we are lacking industry and
14 services, is a definite factor in what kind of money
15 we can put into -- into the district to provide
16 education with, but short of bringing about a
17 miracle, those things are going to be there for
18 awhile. And in the meantime, in order for our
19 children to get a better opportunity for an
20 education, the state -- I believe the state needs to
21 do something, put some money into that area to
22 provide a better opportunity for the children.

23 Q. Let's say the \$500.00 at least that you talked about
24 that they need, what would we do if we had another
25 \$500.00 per student. What would you do with it?

- 1 A. Well, as a parent, at the Escontrias primary, the
2 first thing I would want for those \$500.00 to do is
3 to build a services complex where it belongs in the
4 desert and upgrade the facilities at the primary, so
5 that my children could go to a real campus.
- 6 Q. A real what?
- 7 A. A real school campus and not a warehouse environment.
- 8 Q. A real counselor, did you say?
- 9 A. Campus, a school campus environment.
- 10 Q. Oh, campus. So you need a new building, that's part
11 of what you need.
- 12 A. We need many buildings, but that is only one of the
13 buildings we need.
- 14 Q. All right. To build this services complex, you told
15 us. Anything else you would do with that \$500.00?
- 16 A. We need some more schools, better salaries for
17 teachers, we need more teachers, we need to have
18 science laboratories for our children, computers, all
19 kinds of exciting hands-on type of -- of experiences,
20 exposure to the arts, a swimming pool, my children
21 love to swim. There is not a swimming pool anywhere
22 close. We go up into the city to a Y.W.C.A. to take
23 them swimming. We would love to have a swimming pool
24 somewhere in the district that the children might be
25 able to use.

1 Q. So you would spend some of it for a swimming pool?

2 A. I beg your pardon?

3 Q. So you would spend some of that \$500.00 per student
4 for a swimming pool?

5 A. It wouldn't be the top priority -- at some point down
6 the line, that would be something that would be nice
7 to have, but for the immediate needs, it would be
8 buildings. It would be schools. We need two schools
9 right now.

10 Q. All right. Now, I want to talk about something about
11 some of the things that you've talked about. You
12 said that the streets are in bad shape. You're not
13 charging that to the school system, are you?

14 A. No, I'm not.

15 Q. And you wouldn't want to spend any of that \$500.00 to
16 upgrade the streets, would you?

17 A. No, I wasn't talking about putting money into the
18 streets.

19 The reason that I talked, Mr. Luna, about the
20 streets is, again, to show you what kind of community
21 these children come from. And the fact that many
22 times those children get to school in conditions that
23 other children in the State of Texas don't have to
24 face in the morning to get to school. Those children
25 and in those illegal subdivisions have to walk to the

1 highway because the school buses will not pick them
2 up because of the condition of the roads. And be it
3 snowing or raining or whatever, they have to walk to
4 the main road. We have had so many near misses where
5 they have almost been run over by traffic that will
6 not slow down for those children. And when they get
7 to the classroom, they have to deal with several
8 stresses -- many things and situations that many of
9 the children in the State of Texas don't have to deal
10 with. And that's why I was talking about the roads.

11 Q. But you don't say that roads have something to do
12 with the quality of the education, do you? For
13 example, some of us like me, grew up on the farm
14 where there wasn't even a school bus, you walked all
15 the way to school.

16 A. That -- I'm not saying that the bad roads are the
17 responsibility of the school. I am not saying that.
18 What I am saying, is that the conditions that the
19 children live in has something to do with how they
20 learn at school. And so that somewhere along the
21 line, the children -- the teachers who teach these
22 children have a tougher job to do. We have children
23 who come to class worrying about things like -- well,
24 I went through that before, but children come to
25 school without bathing, they come to school hungry,

1 they come to school walking in those conditions and
2 having to deal with a lot of stresses that other
3 children don't have to even think about -- they
4 wouldn't even know how to imagine those situations.

5 Q. I understand. But now you're not talking about that
6 being -- you're not talking about the school making
7 some bathing arrangements, either before they get to
8 school or after, are you, or the kids?

9 A. No, I'm not.

10 Q. And does that have something to do with the
11 responsibility of the education system in your
12 opinion?

13 A. Would you restate your question?

14 Q. You've talked about some of the kiddos coming to
15 school -- you said they need a bath and you said
16 others come to school hungry. You're not saying that
17 -- well, let me withdraw that and rephrase it a
18 little bit.

19 First of all, you've got a breakfast program
20 for those kids, haven't you, the ones you think -- so
21 they get fed, wouldn't you say?

22 A. We have a breakfast program.

23 Q. But you don't have a bathing program?

24 A. Well, we have talked with one of the principals at
25 one of the schools where this is a problem. Children --

1 sometimes they have water to bathe in, but the water
2 is contaminated because, like I told you, there is so
3 many septic tanks out there they have contaminated
4 the water level. And many of these children cannot
5 bathe in the water at home because it gives them skin
6 rashes and problems with their skin. And we talked
7 with the principal at one of these campuses and she
8 told us that when children wanted to come to school
9 and bathe at school, they are welcome to. And so we
10 worked that out with that particular campus. I don't
11 believe that the school has to provide, you know, to
12 take care of that problem, but like I say, the --
13 when this is the reality in the community, then we
14 all work together to do the best that we can.

15 Q. That's some family problems, isn't it? The way the
16 family has to live rather than anything the school
17 does, right?

18 A. That's a -- that's a family problem.

19 Q. So, in the spending of that \$500.00, you're not
20 asking that some of that be allocated either to a
21 water system for the students at home, or to some
22 additional personnel to bathe them when they get to
23 school, are you?

24 A. No, sir, I am not.

25 Q. All right. Now, you mentioned that you taught in --

1 was it primary grades or kindergarten -- or was it
2 pre-kindergarten where you taught?

3 A. The children that I taught?

4 Q. Yes.

5 A. I taught children at church -- at the five year -- in
6 the five year age level.

7 Q. Oh, I see, you taught at church, not kindergarten
8 school?

9 A. I actually taught at church. I am not a certified
10 teacher in the State of Texas.

11 Q. What is your educational background?

12 A. I have about 60 hours of college hours. I have gone
13 to school on and off at night and I'm enrolled at
14 UTEP right now, I'm taking a course at night.

15 Q. I see. Now, the kids -- you said they come to school
16 hungry, but you have a breakfast program, so first
17 thing that would happen, they would get fed when they
18 get there. The school does that, don't they?

19 A. The school feeds them when they get there.

20 Q. And they also have a lunch program.

21 A. They also have a lunch program.

22 Q. All right. Now, I understood you to say that in your
23 district, the problem was not a lack of parental
24 concern, is that right?

25 A. It's not a lack of parent participation and parental

1 concern. It's not -- we can't pin it on that and we
2 can't pin it on a lack of leadership from the
3 schools, or lack of concern from the church. Like I
4 said, we have all worked together for many years now
5 to improve and upgrade the conditions in the
6 district.

7 Q. Yet some of the students do come to school, you say,
8 badly needing a bath and the only meals they get is
9 at school?

10 A. For some children, yes.

11 Q. Do those same children, do they have parents at home
12 that help them with their lessons?

13 A. That brings up another situation. We have parents at
14 home who are not able to help their children with
15 their homework because they don't speak English or
16 write English, so we, as parents, and through the
17 church, have -- are working with the schools to
18 provide tutoring in the community so that parents can
19 come in -- we're hoping to set it up in the churches,
20 to set up an after school program so that parents and
21 children can come in and get help with homework. We
22 have many parents who are very concerned about the
23 fact that they cannot help their children with their
24 homework.

25 Q. So, while there's not a lack -- maybe a real concern --

1 a parents' concern, there is a lack, then, is there,
2 of the parents actually being able to help them with
3 their lessons at home because of maybe a language
4 difficulty or something else?

5 A. That is one problem. There are other problems.
6 There are many reasons why children sometimes don't
7 have the same choices that other children in the
8 state do. Some parents are single parents. We have
9 single mothers who work at night, who -- in the local
10 garment factories and are not home to help their
11 children.

12 Q. Do you -- excuse me.

13 A. There are just many different reasons. It's just a
14 lack of choices in general that people have.

15 Q. Mrs. Padilla, do you consider it important for a
16 child's overall educational well-being for the
17 parents to be able to help that child with the
18 lessons and to put a high priority on education?

19 A. That is part of it. I believe that it is -- it is a
20 very big plus if parents are able to help their
21 children with their homework, but we have many, many
22 cases where parents have not been able to help their
23 children and their children have done well because
24 other things are at work, other things are at play.
25 There are opportunities that the school can offer a

1 child that can -- that can balance things out, if the
2 parent is not able to help at home.

3 Q. Mrs. Padilla, I understood you to say that we're
4 doing things in phases because we don't have the
5 money to do it all at once, is that right?

6 A. Yes, sir.

7 Q. Are you aware that in your school fund balances and
8 in the general operating funds in 1983 and '84, as
9 far back as that, that you had \$686,000.00 that they
10 didn't spend?

11 A. There may have been that balance. I'm not intimately
12 familiar with all of the figures. What I do know,
13 Mr. Luna, is in the district, we are working in
14 phases. For example, in the high school, we -- the
15 high school is not fully accredited and does not have
16 a good library and is lacking in many, many ways.
17 And so we have a comprehensive plan to upgrade that
18 campus, that we are having to do it in phases, and we
19 had to prioritize how that \$30,000,000.00 was going
20 to be spent. We, of course, prior --

21 Q. What \$30,000,000.00 is that?

22 A. I beg your pardon?

23 Q. What \$30,000,000.00 is that?

24 A. That was a bond election that we passed back in --
25 well, it's been about three years now. And we had a

1 five year plan at that time to build, I believe it
2 was six schools in six years. That was -- that was
3 underestimated in reality, because we have needed
4 more than six schools in six years. And those were
5 the phases that I was talking about. We -- we had to --
6 had to spend that \$30,000,000.00 in phases to -- to
7 upgrade the high school and to upgrade the primary
8 campus in phases. For example, at the primary
9 campus, we -- the building was built this last year
10 and we moved into it in September, but the old
11 building had to remain because that was another phase
12 or the construction.

13 Q. When was that you passed the bond issue?

14 A. I believe it was in 1983.

15 Q. 1983. All right.

16 A. I believe so, but I'm not sure.

17 Q. So, in 1983, you had \$30,000,000.00, but you decided
18 not to spend it all, to spend it in phases?

19 A. Well, as I understand it, Mr. Luna, and I'm going to
20 try to remember as accurately as I can, those
21 \$30,000,000.00 -- the people vote on taking on that
22 indebtedness. And I -- I'm not going to pretend to
23 understand all of the -- all of the details of how it
24 works, but it doesn't mean you have \$30,000,000.00
25 instantly at your disposal.

1 Q. Maybe you haven't sold them all, is that what you're
2 telling me, or do you know?

3 A. Yes. Yes, we were going to do that in phases over a
4 period of six years to accommodate the needs of the
5 district as best as we could.

6 Q. Do you know how many -- excuse me.

7 A. And those are the phases that I was talking about.

8 Q. Do you know how many millions in unsold bonds you
9 have now?

10 A. No, I don't. I wouldn't be accurate on that.

11 Q. But you do know you have some?

12 A. We have some money left, yes.

13 Q. Because you've got until '89 in that six year program
14 to spend them all?

15 A. Well, at the rate of growth, and at the rate of
16 necessity that the district has, as I understand it,
17 it's not going to be enough. And that is -- that is
18 part of the problem with putting all of those
19 services for the district on the campus that our
20 children go to -- it's because that five year plan
21 was under -- the projected growth was underestimated
22 or the projected needs over that period of time were
23 really underestimated and so it was not sufficient to
24 keep up with the needs of the district. And now they
25 had to re-do their priorities and make some changes

1 as to how they're going to accommodate the needs of
2 the district.

3 Q. Did you know that in 1984-'85, that the school
4 districts had an additional or had \$748,000.00 in its
5 general operating fund that it didn't spend. And in
6 addition to that, it transferred out of that general
7 operating fund \$2,000,001.00 -- \$2,001,020.00 to the
8 capital improvement program out of the general
9 operating fund; did you know that?

10 A. I'm not intimately, like I told you before, I don't
11 pretend to be intimately involved in every
12 transaction. What I am familiar with are the general
13 needs and the growth rate of the district and how
14 we're accommodating it. It's possible there was
15 money left over, but it's probably money that we're
16 saving for the next project. I mean, we -- you know,
17 I'm not going to get into that.

18 Q. Well, Mrs. Padilla, you told the Court under oath you
19 didn't have money to do those things, who told you
20 you didn't have the money to do them? You told the
21 Court that the school district didn't have -- they
22 didn't have the money to buy even a computer. Who
23 told you that?

24 A. Our administrators did.

25 Q. Your administrators told you you didn't?

1 A. In the district. You know, we have to prioritize the
2 needs of the district. They could buy computers for
3 my campus, but they're taking money that they should
4 be putting aside for building buildings. I mean, we
5 have to -- they have to make choices just like we
6 have to make choices like we do now. We may have
7 right now in our bank account at home, we may have
8 \$300.00, but that doesn't mean we're going to go
9 invest it on a computer for my son, which I would
10 love to be able to do -- I mean, we're gonna take
11 that to buy food and to pay doctor bills, and to pay
12 utilities with.

13 The school works on more or less the same --
14 the same level, you know, of deciding what comes
15 first. And the fact that there may have been money
16 there, I am not going to interpret that as a -- you
17 know, it doesn't mean to me that they have money
18 available to do all of the things that need to be
19 done and that they're not doing it.

20 Q. But when the administrator told you that there wasn't
21 any money to buy any computers, he didn't tell you
22 that they had, before they transferred out the
23 \$2,000,000.00, that they had a total of over
24 \$6,000,000.00 left over in the operating fund for
25 that year, did they?

1 A. I didn't ask him how much money he had or how much he
2 was not spending, or et cetera. Like I said, Mr.
3 Luna, we are familiar with the way that the district
4 is having to handle the growth -- population growth.

5 Q. Sure.

6 A. And now, you know, what schools are going to go up
7 next or where they're going to go up next and what
8 facilities are going to be needed for that particular
9 campus. We have a campus right now, that we're
10 having to build a septic tank, I mean a septic system
11 for a sewer system for and that was an unexpected
12 expense, you know. When we projected building that
13 school with those \$30,000,000.00, we didn't know we
14 were going to have to put in a septic system for that
15 campus. It's a lot of money that we were not
16 projecting.

17 Q. I'm just trying to find out what you knew when you
18 told the Court that they didn't have the money. At
19 least when you told the Court that they didn't have
20 the money to do these things, you were not aware of
21 that \$6,000,000.00 that was in the operating fund at
22 the end of '84 and '85, were you?

23 A. I had not asked any questions about what money was
24 left.

25 Q. All right. Fine. Thank you, ma'am. Now then, are

1 you also aware or are you unaware that the tax rate
2 in '83 and '84 was \$1.14 and that it went down from
3 \$1.14 -- the overall tax rate to \$1.03 for '84-'85,
4 are you aware of that.

5 A. Yes, I'm aware of that.

6 Q. And are you aware that from '85 and '86, the tax rate
7 went down from \$1.03 to \$.7503?

8 A. Yes, I'm aware of that.

9 Q. So, while you say the school needs more money, we've
10 had 34.2 percent decrease in the tax rate since 19 --
11 in two years since 1984?

12 A. It's back up to 95 cents and it's -- it looks like
13 it's going to be increased again, and I don't know
14 how we're going to pay those taxes.

15 Q. Now, '85 and '86?

16 A. It was.

17 Q. Wasn't the tax rate 7 -- .7503?

18 A. In '86, it went up to the 95 cents.

19 Q. In '86 it went up?

20 A. In '86 it went up to 95 cents, and that is in fact,
21 what we have paid in 1986 is 95 cents.

22 Q. All right.

23 A. We have our receipts with us.

24 Q. Are you aware that House Bill 84 went into effect in
25 September of 19 -- I mean, House Bill 72 went into

1 effect in September of '84? Do you know that?

2 A. Yes, yes, I am aware of that.

3 Q. So then, since House Bill 72 has gone into effect,
4 your school district has had decreases in its tax
5 rate, hasn't it?

6 A. It had some decreases in its taxes in part because of
7 that added assistance, but it also went down because
8 the district grew or developed in areas that had a
9 more solid tax base. The eastern -- the west --
10 let's see, east El Paso, but it's west -- the west
11 side of our district is developing quite rapidly in
12 an area that does have services, it's within the city
13 limits of El Paso. And there was a particular
14 developer who went out there and did some substantial
15 developing and that helped the tax base. And that is
16 a factor, also.

17 And also, the fact that that part of the
18 district does have more commerce and more industry
19 or, you know, just a better tax -- a healthier tax
20 base than the rest of the district. So all of those
21 things were at play when that reduction was made.

22 Q. Are you familiar with the fact that from the time
23 House Bill 72 -- immediately before House Bill 72
24 went into effect, during the same period your taxes
25 are going down, that the expenditures of your

1 district more than doubled?

2 A. That may be true. We were in the process of catching
3 up with construction and upgrading the, you know, the
4 services that the school district was providing for
5 the children. And it's very likely that they
6 doubled.

7 Q. And are you also familiar with the fact that 85
8 percent of the money that's spent in your district
9 comes from the state?

10 A. That may be true.

11 MR. E. LUNA: Pass the witness.

12 MR. DETHERAGE: We have no questions.

13 CROSS EXAMINATION

14 BY MR. TURNER:

15 Q. Mrs. Padilla, I'm Jim Turner. I represent a group of
16 school districts who've intervened as Defendants,
17 much like Mr. Luna's districts have. I want to ask
18 you just a very few questions.

19 You mentioned a minute ago that you were
20 familiar with House Bill 72?

21 A. Yes, I'm familiar with it.

22 Q. Were you involved when the effort was made to try to
23 persuade the Legislature to pass House Bill 72?

24 A. I was involved in educating the community about the
25 needs of the school district and the need for more

1 money from this state and -- and I worked at the
2 community level during that time.

3 Q. Were you a part of any organized effort to try to
4 persuade the Legislature to enact House Bill 72?

5 A. You could say that, you know, it's -- part of the
6 community organizing that we did.

7 Q. And in what kind of community organizing did you
8 engage in?

9 A. We worked through the church in Socorro and we
10 educated people about different community issues.
11 And that was one issue that we worked very, very
12 diligently with to find solutions for the problem of
13 -- of financing, financing the schools in the state.
14 We organized at the local level and through sister
15 organizations throughout the State of Texas to inform
16 ourselves and to -- to work to bring about more money
17 for the schools.

18 Q. And what was the name of your organization in El
19 Paso?

20 A. In El Paso, it's the El Paso Interreligious
21 Sponsoring Organization.

22 Q. And did that organization unite with others across
23 the state in an effort?

24 A. Yes, it did.

25 Q. And what was the overall state organization known as?

1 A. It's the IES network.

2 Q. And did you come to Austin during that time with some
3 of those individuals and work with the Legislature?

4 A. Yes, we did.

5 Q. And did you visit with your own state representatives
6 and senators about the issue?

7 A. Yes, we did.

8 Q. And were they responsive in assisting and supporting
9 the passage of House Bill 72?

10 A. Yes, they were.

11 Q. Mrs. Padilla, during the time that you were working
12 on behalf of the passage of that bill, and after the
13 bill was passed, did you view it as a significant
14 step forward in public school finance for that bill
15 to have passed?

16 A. I believe that we were going in the right direction,
17 yes. And we felt, you know, after we worked with
18 that issue and the school got additional monies, we
19 felt the relief -- we were able to do some things
20 that -- that needed to be done in the school to -- we
21 were alleviated to match the salaries with other
22 districts. For a long, long time, Socorro has been
23 at the bottom of the pay scale. We have been unable
24 to attract good teachers because they go first to the
25 El Paso Independent School District, which is the

1 highest paying. And then when they don't get hired
2 there, they go down to the Ysleta Independent School
3 District. And when they don't get hired there, then
4 they come down to Socorro. And it was like that for
5 a long, long time.

6 And, so like I say, that's another catch-up
7 game that we play is catching up with teachers. And
8 when we brought this money in, we were immediately
9 able to improve the salaries and attract better
10 teachers.

11 Q. Were you here in Austin in the Capitol rotunda when
12 House Bill 72 was signed?

13 A. No, I was not.

14 Q. Mrs. Parilla, when you --

15 A. Padilla, it's Padilla.

16 Q. Padilla, excuse me.

17 A. Uh-huh.

18 Q. When you talk about your involvement there locally
19 with Socorro Independent School District, have you
20 ever appeared before your local school board on
21 behalf of these issues that you're mentioning here
22 today?

23 A. Yes, many times.

24 Q. Have you ever served as a member of the school board
25 or run for the school board?

1 A. No, I have not. I have not run and I have not
2 served.

3 Q. Do you know the individuals who currently serve on
4 your school board there?

5 A. Yes. Well, there are some new people on the board
6 that I have not met with.

7 Q. Could you tell me the names of the members of your
8 board and what -- something about their occupations
9 and interests in the school system?

10 A. Mr. James Cardwell is one of the members of the
11 board. He's the President of the school board. Mr.
12 Joe Carrasco is another member of the school board.
13 Mr. Mario Aguilar is a member of the board, and he is
14 the representative from our particular area in the
15 district. Mr. Slider is from the Horizon area. I
16 believe there is a Mr. Jones and a Mr. Clark. And I --
17 I have not met them -- I mean, I don't know them as
18 well as I know the other members of the board. They
19 are newer to the board. There may be someone else on
20 the board that I'm not -- a new person on the board.
21 Let me think. No, I can't -- I can't say I remember
22 their names. I think there may be someone else on
23 the board that I'm not familiar with or someone that
24 may have replaced one of the other members.

25 Q. You mentioned the member of the board that is from

1 your area, do you have districts -- are you elected
2 by districts?

3 A. Yes, we have different areas and then we have two
4 members at large.

5 Q. The individual --

6 A. Oh, I'm sorry, I missed Mr. Roberto Rojas.

7 Q. The individual that represents your area, has he been
8 an advocate of these same kinds of things that you
9 have talked about as a member of the board?

10 A. He is relatively new on the board. He's been in
11 about, I believe maybe under a year. So, he was not
12 around when all of this was taking place.

13 Q. Have you been able to see some things change in your
14 district as a result of House Bill 72?

15 A. Yes, we have. Like I told you, the most significant
16 change was the fact that we could now offer better
17 salaries for teachers and actually go out and recruit
18 teachers to bring into the district. We -- you know,
19 that was a major area of concern for us as parents.
20 And it was very good to see that we could now do
21 that.

22 Q. I've noticed that you have -- your district has
23 planned construction on this school that you
24 mentioned a moment ago that needed to be constructed,
25 the elementary school. Is that underway presently?

1 A. Which school, the Bauman School?

2 Q. I believe it's -- let's see what it is --

3 A. Or the high school. The high school is under
4 renovation right now.

5 Q. The high school is under renovation?

6 A. The high school is in phase one. And I believe that
7 phase two and phase three have to be stepped up and
8 that's another reason that money had to be found for
9 bringing up those phases a little earlier. And that
10 is why that warehouse is being put down there on the
11 campus that our children go to school in.

12 Q. I don't see a name of that K through eighth school.
13 It just mentions that it has an estimated 960
14 students and costs 2.9 million dollars.

15 A. Is it on North Loop or do you have an address?

16 Q. I don't have any information.

17 A. It's probably Bauman School. It was probably the
18 school that's being built right now on Bauman Road
19 and is scheduled to be opened in September.

20 Q. All right.

21 A. Are you talking about the one that needs the sewer
22 system?

23 Q. I don't know that, either.

24 THE COURT: Yes, sir. Let's stop here for
25 a break. We'll start up again at five after.

(Morning Recess.)

THE COURT: All right, sir.

CROSS EXAMINATION (Resumed)

BY MR. TURNER:

Q. Mrs. Padilla, would you give me the name, again -- I missed it -- of the organization that you were a member of in El Paso that worked for the passage of House Bill 72?

A. Yes, sir. My name is Padilla, with "a-d."

Q. Excuse me.

A. And the name of the organization that I worked with during that time is the El Paso Interreligious Sponsoring Organization.

Q. And again, tell me how that's associated with the other organizations?

A. We have a network of sister organizations throughout the State of Texas. It is the IAF network, Industrial Areas Foundation.

Q. Now, is the organizations like Valley Interfaith, is that one of the area organizations?

A. That is one of the organizations in the network.

Q. And EPISO, is that another organization that is like your organization that was a part of this network?

A. EPISO is the El Paso Interreligious Sponsoring Organization.

1 Q. All right -- all right.

2 A. EPISO is the acronym for the El Paso Interreligious
3 Sponsoring Organization.

4 Q. Now, I believe you filed this lawsuit prior to the
5 special session of the Legislature that passed House
6 Bill 72, is that correct?

7 A. Yes, sir.

8 Q. And after the passage of House Bill 72, as I recall,
9 your organization and the other organizations that
10 had formed this coalition to urge it's passage,
11 considered House Bill 72 to be a major victory, is
12 that correct?

13 A. We considered it to be a step in the right direction.
14 We knew it was not going to cure everything or be the
15 only solution, but it was considered a victory, yes.

16 Q. In your years of experience in working with your
17 school system and in urging greater funding, had you
18 ever seen the Legislature be more responsive to the
19 needs of public education than it was when it passed
20 House Bill 72?

21 A. Well, I haven't been involved, you know, in prior
22 years. It's -- this is the only time that I've seen
23 the Legislature at work. I understand that this is
24 the most significant reform that has taken place in
25 this State on education and it's the only experience

1 I've had. I can't compare it to any other time that
2 they may have dealt with this issue.

3 MR. TURNER: I'll pass the witness. Thank
4 you.

5 MR. O'HANLON: May I proceed, Your Honor?

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. O'HANLON:

9 Q. Mrs. Padilla, your school superintendent is sitting
10 right out there in the audience, isn't he?

11 A. Yes, sir.

12 Q. Okay. It's Mr. Sybert?

13 A. Mr. Sybert.

14 Q. Okay. I kind of want you to talk to me and I, both,
15 at the same time here. Your tax rate went from \$1.14
16 to 75 cents in the first two years that you got
17 additional funding from House Bill 72, isn't that
18 right?

19 A. From \$1.14 to --

20 Q. 75 cents.

21 A. 75 cents in the first two years of the funding?

22 Q. Uh-huh.

23 A. Yes.

24 Q. Okay. Did you ever tell Mr. Sybert or the board that
25 "Don't lower our taxes. We need the resources in the

1 schools"?

2 A. Actually, what happened at the same time, is that our
3 properties were reevaluated, or the value of our
4 properties came up. And so we ended up paying about
5 the same thing. It evened out.

6 Q. I understand that. But didn't you say -- why didn't
7 you say, "We need the extra money. We need that
8 \$500.00 more per child, why don't we leave our tax
9 rates the same?"

10 A. Quite frankly, it was a relief to see that there was
11 there was a little room for reducing it. We had not
12 anticipated that. We were glad to have the relief.
13 And no, we were not going to ask them to bring them
14 up again. We will do that if it's necessary,
15 obviously. We haven't demanded to get something for
16 nothing. We've been willing to pay. But we, you
17 know, our tax effort is a very strong tax effort.
18 And that temporary relief that we got, as I say, was
19 very temporary and very small, because our property
20 values had gone up, so we ended up paying almost the
21 same thing that we had been paying before.

22 And we were glad to see that there were some
23 changes taking place in the district like development
24 in the more solid tax base. And we've been wanting
25 to see that happen more and more, so that there can

1 be some relief in the tax rate. So, no, we were not
2 going to go and beg them to put it back up again.

3 We have been -- we have worked together very
4 well. We have supported their decisions and -- but
5 at that time, when the rates went down, like I say,
6 it was a relief. And we --

7 Q. Well, it wasn't a relief for those kids in that
8 school that needed that \$500.00 that you testified
9 that they needed, is it?

10 A. Well, the State was working with this. I mean, it
11 wasn't like the children were losing money from all
12 sides. We had received money from the State and that
13 was -- that was a tremendous help.

14 Q. In fact, you received approximately \$1,000.00 per
15 student increase in state aid, didn't you, over those
16 two years?

17 A. Perhaps it was that much or that close.

18 Q. And then you made a judgment that that \$1,000.00 was
19 enough to operate your school system?

20 A. I don't recall making that judgment at any time.

21 Q. Well, don't you kind of make those judgments when you
22 talk about tax rates?

23 A. We're in a constant process of improving and
24 upgrading the opportunities for the children. It may
25 not graph out to be going up. The tax rate may go up

1 and fluctuate somewhat. But the needs are there; the
2 growth is there; and the overall effort to equalize
3 things is there. We cannot expect the taxpayer to do
4 all of it. And so at the same time that we are
5 making our tax effort, we believe the State should be
6 working to help us out, because on that tax base that
7 we have out there, we can't keep increasing the tax
8 rate. It doesn't -- at a certain point, people just
9 don't pay it because they don't have it, so it
10 doesn't do any good to keep increasing the tax rate.

11 Q. I'm not asking you about increasing the tax rate,
12 ma'am, I'm asking you about keeping it the same.
13 Now, if you needed extra money in the district, why
14 didn't you leave the tax rate that you had in place
15 at the same levels?

16 A. If we had left the tax rate -- which tax rate are you
17 talking about?

18 Q. Both your maintenance and operations and your
19 interest and seeking fund tax rates, both of them,
20 your combined tax rates?

21 A. Okay. Was it \$1.14?

22 Q. Yes, ma'am, it was.

23 A. Okay. If we were taxing ourselves at \$1.14, even now --
24 you know, the fact that we had gone up to \$1.14 was --
25 it was a struggle to do that and to charge people --

1 to charge ourselves that tax rate without relief from
2 the state. Now, when the relief from the the state
3 came, when we were able to get some money, it was a
4 tremendous help to us as taxpayers. And it was a
5 relief to be able to put it down -- take that rate
6 down a little bit. At the same time, like I say,
7 there were other things at play. It would be unfair,
8 I think, to keep taxing ourselves at that rate and
9 expect ourselves to make that kind of a tax effort,
10 given the kind of tax base that we have, and given
11 all the givens that we have in our situation and what
12 those givens are for the rest of the state. I just
13 don't believe it's fair to ask us to do that.

14 Q. Well, if it was fair -- it was fair in 1983-'84, to
15 ask yourselves to do that, wasn't it?

16 A. It was an emergency measure. You know, it was
17 something that we had to do.

18 Q. So you don't have an emergency anymore?

19 A. We have an ongoing situation that is very critical.
20 But at that time, the money hadn't come in from the
21 state and we were taxing ourselves at that rate and
22 we continue to work in many ways to improve the
23 situation. It doesn't mean that -- I don't believe
24 that it's -- as taxpayers, we should continue to come
25 back to our pocket over and over and over again,

1 without trying other solutions.

2 Q. Now, you say that as taxpayers you don't want to pay
3 additional money for school. Now, you're going to
4 pay it one way or another. The taxpayers of this
5 state are going to pay it one way or another, aren't
6 they? The only way that the state gets money to
7 disburse is through taxes, isn't it?

8 A. Well, it's a shared responsibility. It doesn't come
9 out of that district where there's nothing to tax.
10 When you're taxing parcels that contain nothing but
11 an old trailer that falls under the \$5,000.00
12 homestead reduction that they give us, then you don't
13 get anything out of it. And believe me there are
14 many, many trailer houses in the lower valley right
15 now. And so to keep coming back to that property and
16 to increase and increase and increase the taxes and
17 look to that source of revenue every time, is not
18 really sharing the responsibility.

19 Q. What I don't understand, ma'am, is, is that is, from
20 what your testimony is, is that you've got a lot more
21 in the district now -- you've got a lot fewer
22 trailers in comparison to houses out in east El Paso
23 than you did. And that's why you've got a lot of
24 development in your district.

25 A. I'm not willing to say that. I'm not willing to say

1 that, because we have had such great growth in the
2 lower valley in the area of trailer homes. Right
3 around our house right now in the neighborhood that
4 we live in, there have been many trailer homes. As a
5 matter of fact, there's a mobile home park just a
6 couple of streets up that came on in the last year.
7 There's a -- there are many, many, many trailer homes
8 out there. And I would not be willing to say that we
9 have more homes than trailers or whatever in the
10 district. I wouldn't be willing to say that.

11 Q. What I'm wondering, ma'am, is, is why, at the time
12 when because of a -- because of development in your
13 district, because of happenstance or the good fortune
14 or having development -- if your, if the property
15 wealth is going along and all of a sudden your
16 property wealth jumps up -- which it has in the last
17 couple of years, hasn't it?

18 A. In parts of the district the property wealth has gone
19 up.

20 Q. Okay. And that inures to the benefit of every
21 citizen in that district, because you spread the tax
22 load over all of the property in the district, don't
23 you?

24 A. It is some relief. Yes, it is some relief.

25 Q. Okay. Why, at the same time, when your tax base is

1 jumping up, do you keep your revenues from local
2 sources as functionally the same by lowering your tax
3 rate? Do you realize that in -- despite the
4 inflation, is about 40 percent?

5 A. Can you explain that to me again? You're saying that
6 when parts of the district improved, as far as the
7 tax base was concerned --

8 Q. Yes, ma'am. I'll tell you.

9 A. Your question is what?

10 Q. And here is how I'll explain it to you. In 1983-'84,
11 you had a value in your district of \$277,000,000.00
12 as a total appraised value of the district. And in
13 1985-'86, you had an appraised value of
14 \$437,000,000.00.

15 A. Uh-huh.

16 Q. That's a big old increase, isn't it?

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

18 Q. Now, the tax rate is -- you multiply the base times
19 the rate and you get a yield, isn't that right?

20 A. I'm -- I'm not going to pretend to know all of how
21 that works, okay?

22 Q. Okay.

23 A. What I can tell you is that -- that parts of the
24 district improved as far as the tax base was
25 concerned. At the same time, our property values

1 went up because our homes were reevaluated and we
2 ended up paying about the same thing. We did get
3 some relief from the State. We knew that House Bill
4 72 was not going to be the final solution to
5 everything. And we continued to work and to try as
6 many sources as we can and as many solutions as we
7 can. I am not going to say that I understand what
8 you multiply by what to get what and, and --

9 Q. Okay. What I'm saying is, is that if you've got a
10 rate of growth in your property tax base and your
11 revenues from local resources go from 3.1 million to
12 3.2 million over that same period, despite the
13 increase in your property wealth, your district made
14 a decision that it's not going to get any more money
15 out of the local pockets despite the fact that you
16 say you need \$500.00 more per student. And what I
17 want to know is why did you make that decision if you
18 think you need the money?

19 A. You are bringing information into hypothetical
20 situations. The \$500.00 is a figure that was
21 mentioned this morning. At no time in those years
22 that you are describing up there, did we talk about
23 an additional \$500.00. We were dealing with the
24 situation as it was then, with the growth that we
25 were experiencing at the time, both in population and

1 in property wealth. We are in a constant state of
2 flux. Everything is changing day to day. We cannot
3 project the kind of growth that we are going to have
4 a year from today. We may think it's going to be a
5 particular rate, and it may surprise us and be higher
6 than that. At the same time, maybe it would be
7 lower. The area is changing so rapidly, that it is
8 very hard to predict exactly what is going to happen.

9 Q. Did you ever -- Mr. Sybert back there, I assume you
10 know him? You know Mr. Sybert, don't you?

11 A. I know Mr. Sybert as the superintendent of the school
12 district in Socorro.

13 Q. Okay. Did you ever sit down with Mr. Sybert and say
14 -- and tell him that you thought you needed \$500.00
15 more?

16 A. We have not sat down and talked specific figures. I
17 have not sat down and told Mr. Sybert what I believe
18 every -- we should increase per child. What we do
19 is, we sit down and we say, you know, why can't we
20 move that warehouse out of here. Why is it we have
21 to have that warehouse where it is?

22 Q. And what do they tell you?

23 A. At that --

24 MR. PEREZ: I would just like to make sure
25 the witness can finish her answers.

1 MR. O'HANLON: I'm sorry.

2 A. At that point, we sit down with Mr. Sybert and with
3 administrators and they show us what the budget is,
4 what the projected -- what we had projected
5 originally to be the situation, what it had turned
6 out to be, and what that means as far as making
7 decisions on where the money is going to go.

8 Q. Okay. Did you ever sit down -- when you're making
9 those decisions, did Mr. Sybert ever tell you that --
10 we've had a 50, 60 percent increase in our tax base
11 and that we have the ability to raise in a whole lot
12 of additional money, now we need to make a decision,
13 the citizens in this community, whether we're willing
14 to make that effort?

15 A. The reality in the community is that -- I wish you
16 could come and visit Socorro, so that you could --
17 and then pose that question. For us to say at that
18 time, when this kind of growth was taking place in
19 the tax base, it was a relief to know that we could
20 make a reduction in the tax rate. That the community
21 cannot support a continued effort at \$1.14, when the
22 property values come up. It would have been a tax
23 rate that -- that many, many families could not
24 support and wouldn't pay money. We have many
25 families who cannot pay their taxes, who just cannot

1 pay their taxes. We borrow money to pay our taxes.
2 We, for several years now, we've had to borrow money
3 at the end of the year. Now, we're doing the very
4 best that we can, we're pushing ourselves to the
5 limit. But to say that -- that we can continue to
6 tax ourselves at \$1.14 on that kind of property
7 wealth is a -- is a very -- to me as a taxpayer, is a
8 very unfair expectation. The rest of the state, I
9 believe, is far from \$1.14 in taxing effort.

10 At a certain point, then something else has to
11 come into play and that has to be state assistance to
12 equalize those opportunities.

13 Q. Do you know that you're within less than \$200.00 of
14 the statewide average?

15 A. Well, we're talking \$1.14. We're discussing --

16 Q. No ma'am, we're talking 75 cents.

17 A. No, you're asking me why we didn't ask the school
18 board to maintain that \$1.14 rate.

19 MR. PEREZ: Your Honor, I also object to
20 questions that are based on a premise of a 75 cent
21 rate, when it's mischaracterizing the record. The
22 record is very clear from this morning that the
23 current rate is 95 cents. If Counsel wants to ask
24 questions about 95, I have no problem.

25 THE COURT: He's talking about right after

1 House Bill 72 was passed, 75 cents.

2 MR. O'HANLON: That's the last information
3 I've got data on. I'm referring back to the
4 Benchmarks. This is all coming out of the document
5 they introduced, Your Honor.

6 MR. RICHARDS: Well, you have the witness'
7 testimony, Mr. O'Hanlon, which I assume you can use
8 as information.

9 MR. O'HANLON: Okay.

10 A. I believe that the information that you have is
11 outdated. And we have our tax receipts with us and
12 we are taxed at the rate of 95 cents. That has been
13 the tax rate since last year.

14 Q. Okay. So you did make a decision. And how much more
15 money did that put into the budget, do you know?

16 A. I wouldn't have specific figures on that.

17 Q. Okay. Now, Socorro built a brand new administration
18 building in this process too, didn't they?

19 A. Yes, yes, we did.

20 Q. And that brand new administration building cost
21 \$2,000,000.00, didn't it?

22 A. I believe it did. I wouldn't be sure of the exact
23 cost.

24 Q. And the new elementary school cost only
25 \$2,500,000.00, right?

1 A. More or less.

2 Q. Or less?

3 A. More or less.

4 Q. Did you ever tell Mr. Sybert or the board out there
5 at the Socorro Independent School District, that
6 you've got your priorities mixed up here. That what
7 we need is a new elementary school and not a new
8 administration building?

9 A. We were working out of a building that was extremely
10 limited in size when that administration building was
11 built. We had an offer -- there was a trade-off in
12 properties. The school owned some land on one side
13 of the freeway, and there was a developer on the
14 other side of the freeway who owned property there,
15 and to the best of my recollection, it was to our --
16 it was in our interest that that decision be made at
17 that time, because there were some other built-in
18 benefits. That if we made a trade-off on the
19 properties, that the property that this developer was
20 willing to give us in exchange for the one that the
21 district owned, that it would be, I believe a bigger
22 piece of land, that he would put in the road, et
23 cetera. It was -- it was a mutually -- there was --
24 there was something in it for both sides. And we
25 needed that building. We were working out of a very

1 small building on a campus of one of the elementary's
2 and it was very limited in size and we were not --
3 the district needed a proper place to function from.
4 And we believed that -- you know, we had been working
5 on priorities all along with them. We believed that
6 this was something that the district needed.

7 Q. And you made a decision with respect to priorities
8 that a new office for the superintendent and a place
9 for the board of trustees to meet was more important
10 than an elementary school, didn't you?

11 A. At that time, it was -- it was -- it was a very
12 critical need. And not only a place for them, but
13 it's a place for parents, also, to come to -- to
14 voice their concerns and to meet with the school
15 board and to meet with administrators when problems
16 come up. It was just part of the growth and part of
17 the needs of the district. And while it would have
18 been great not to have had that particular need, and
19 to put that money into a school, we had to -- we had
20 to deal with that particular need. So at that time,
21 it was -- it has been a tremendous benefit to have
22 that building now, and to have a proper place to
23 administer that district from.

24 THE COURT: Okay. Next question.

25 Q. But that's a decision -- that's not a state -- that

1 kind of choice is a decision that's made at the
2 district level. State didn't make you do that, did
3 they?

4 A. That's a district decision.

5 Q. And you could have had another elementary school, but
6 you decided to have a new administration building?

7 A. I'm trying to remember what year that was in. We
8 opened that up in July of 1985.

9 Q. Uh-huh.

10 A. July of 1985 is when -- when that building was
11 opened. We had been working out of the elementary
12 since I could remember, when we first worked on the
13 first issue in 1982. And the district had just grown
14 in leaps and bounds. And we would try to attend
15 school board meetings and we couldn't. I believe
16 that there was a -- a limitation of ten parents,
17 something like ten people could fit into the room.
18 There was no way that the community could participate
19 in the decisions of the school board, because there
20 was no -- no room for us.

21 Q. Well, now you've got a high school in the district,
22 don't you?

23 A. We would meet at the high school, sometimes.

24 Q. The high school has got a gymnasium or an auditorium,
25 don't they?

1 A. At the junior high -- we would meet at the old junior
2 high, sometimes.

3 Q. And you can get more than ten people in the high
4 school gymnasium, couldn't you?

5 A. Oh, you can. But what happens is that the building
6 we put up is more central to the district and that
7 way, it's easier for a greater number of people to
8 participate. They were just -- it's part of the
9 facilities that the district needed. It was a
10 decision that we had to make -- that we needed that
11 building and we needed proper facilities to
12 administer the school from.

13 If we had continued to work out of that
14 building that we were in, there was not even room for
15 the staff. It takes quite a bit of staff to run a
16 district the size of the Socorro Independent School
17 District. And to house them out of a gym in a high
18 school, I think would have further intruded upon the
19 activities of the high school and the students. I
20 mean, I can't picture doing that.

21 Q. Well, you could have closed down the old smelly
22 elementary school and put the administration in
23 there, couldn't you; and built a brand new elementary
24 school for the kids?

25 A. Put them --

1 Q. Yeah, you could have closed down the bad elementary
2 school and put the administration in there. That
3 would have taken the kids out of that situation,
4 wouldn't it?

5 A. That would have put the administration in a -- in a
6 part of the district that is on one extreme side of
7 the district. There are choices that are made, you
8 know. There are priorities that -- that are set up.
9 At the time that that decision was made, we were very
10 fortunate to have the kind of arrangement that we
11 made with that developer. It would have been -- it
12 would have been a more expensive venture had we
13 waited, or had we taken a different route. In the
14 long run, we always end up paying more. If we had
15 set up the administration out of that old -- well,
16 actually it couldn't work, because we are still using
17 that building to house students. So where would we
18 have put the students, I mean --

19 Q. In the new elementary school.

20 A. Well, but it's not built overnight. What I'm saying,
21 is that until -- see, we moved into that elementary
22 in September, this September, this past September.
23 And up to that date, when that school was ready to
24 open, students were still in that old metal building
25 and they continue to be in there. So it's not like

1 we have empty space. And to put the staff in there,
2 it would have displaced students. Where would we
3 have sent them until the new school was built? I
4 mean, there's no room to --

5 Q. You talked at some length about the bus route. And
6 even though it was under two miles, the state
7 wouldn't support it. Did you talk about that with
8 Mr. Sybert?

9 A. Oh, yes.

10 Q. Okay. Did he read you -- I'm going to read you
11 something, and I'm going to ask you whether Mr.
12 Sybert told you about this. What I'm going to read
13 you is Section D of Article 16.156 of the Texas
14 Education Code. And it says: "A district or
15 county may apply for, and on approval of the
16 Commissioner of Education, receive an additional
17 amount of up to 10 percent of its regular
18 transportation allotment to be used for the
19 transportation of children living within two miles of
20 the school they attend, who would be subject to
21 hazardous traffic conditions if they walked to
22 school. Each board of trustees shall provide to the
23 Commissioner the definition of hazardous conditions
24 applicable to that district and shall identify the
25 specific hazardous areas for which the allocation is

1 requested. A hazardous condition exists where no
2 walkway is provided, and the children must walk
3 along, across a freeway or expressway, an underpass,
4 an overpass, or a bridge, an uncontrolled major
5 traffic artery, an industrial or commercial area, or
6 other comparable conditions."

7 Did Mr. Sybert ever tell you about that
8 provision?

9 A. We knew that that money could be asked for.

10 Q. Did they ask for it?

11 A. I'm trying real hard to remember why that didn't work
12 and I'm not real certain right now, but I know that
13 we were aware of that hazardous route -- hazardous
14 route help that was available from the state. And
15 I'm not -- I really don't remember that part, you
16 know, why that was not available to us, why it was
17 not made available at this time.

18 Q. It may not have been made available because the
19 district didn't ask for it, isn't that right?

20 A. I don't -- you know, I would have to go back and
21 remember if -- what was happening to us, is that we
22 needed it -- See, there was another school being
23 built and this was going to be a one year -- it was
24 from September to May that the children were going to
25 be walking that route. And until that school was

1 built and ready for them to go into, we had to deal
2 with the problem like now. And it seems to me, but
3 I'm not even sure, because it's been -- it's been
4 since 1982. It seems to me that -- that what may
5 have played into it was either the time that it was
6 going to take to process that request or the fact
7 that there was something missing. And I cannot
8 remember what it was, in order to get that. But we
9 dealt with that. I remember that. I -- we knew that
10 there was -- that there was help available for
11 special situations like that.

12 MR. O'HANLON: No further questions.

13 MR. E. LUNA: I've got just a couple more.

14 RECROSS EXAMINATION

15 BY MR. E. LUNA:

16 Q. Mrs. Sybert -- Mr. Sybert, is it Mr. Sybert or Dr.?

17 MR. KAUFFMAN: Excuse me, Your Honor.

18 Actually, I think they've gone around and we didn't
19 ask any more questions. This should be the end, I
20 think. Unless, the Defense -- --

21 MR. E. LUNA: Is he trying to cut us off or
22 object to it?

23 THE COURT: I don't do that, because see,
24 what happens is, if I don't let him ask now, then he
25 asks me to have her stay here until his case opens

1 when he calls her to the stand and asks what he wants
2 to.

3 MR. KAUFFMAN: Sorry.

4 THE COURT: Okay. Here we go.

5 BY MR. E. LUNA:

6 Q. Is it Dr. Sybert or Mr. Sybert, your superintendent?

7 A. Mr. Sybert.

8 Q. Ma'am?

9 A. Mr. Sybert.

10 Q. Mr. Sybert. All right. So, I take it from what you
11 were talking about, about priorities, at the time the
12 decision was made to build the administration
13 building, and you were setting priorities, you needed
14 at least two things -- you needed more than two, but
15 two things you needed badly. One was an elementary
16 school and another was an administration building,
17 right?

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

19 Q. She doesn't get it when you shake your head.

20 A. I'm sorry. Yes, there were several needs.

21 Q. Sure.

22 A. The district was needing a place for the district to
23 administer all of its business from, and we were
24 needing school space, and just an endless list of
25 needs, yes.

1 Q. And in setting those priorities, you decided that one
2 of the several things you needed, that you needed
3 worse at that time, was the administration building?

4 A. That was -- we decided that was a very pressing need
5 in the district.

6 Q. Now, your school district believes pretty strongly in
7 administrative services, don't you? Strong
8 administration?

9 A. Would you rephrase your question or ask me that --

10 Q. Let me rephrase it a little better. You're in Region
11 19, are you not?

12 A. Yes.

13 Q. And while -- we have what we call in evidence here,
14 some Benchmarks and we're talking about teachers'
15 salaries. And looking at your teachers' salaries for
16 example, in comparing them to in Carrollton-Farmers
17 Branch, one of the Defendants, it appears that you
18 pay your teachers more than Carrollton-Farmers Branch
19 pays it's teachers.

20 A. That may be true. I'm not familiar with that
21 Benchmark that you're talking about.

22 MR. KAUFFMAN: That's so completely untrue.
23 I mean, it's just unfair to have a witness even think
24 that for a moment.

25 MR. O'HANLON: On a per ADA basis, it is

1 true.

2 MR. E. LUNA: Oh, you bet it is.

3 A. I cannot comment on your question, because I am not
4 familiar with the information that you are --

5 Q. We're talking about on an ADA basis, your teachers
6 are paid more per ADA than one of the Defendants. You
7 don't know that?

8 A. I have no knowledge of that.

9 Q. Okay. Now, are you familiar with the facts as to
10 when you got to where you could pay more, how many
11 teachers were let go?

12 A. When would that be, sir?

13 Q. Well, you told me -- I understood you to say awhile
14 ago, that pre-House Bill 72, your salaries were
15 lower?

16 A. Yes.

17 Q. And you therefore couldn't get good teachers.

18 A. Yes, we couldn't attract the -- the first -- the
19 first -- at the first try, we couldn't, you know,
20 they would go to the other systems and then come down
21 to ours. And when they weren't hired somewhere else,
22 then they would end up in our district.

23 Q. Are you saying that before House Bill 72, you had
24 some inferior teachers?

25 A. That's very possible.

1 Q. Do you believe you did?

2 A. I believe that the system still has some teachers
3 that are interior. We are still playing catch-up
4 with teachers. Because we have had teachers in the
5 district who are qualified, but who are not -- I
6 believe who are not able to deal with the kind of
7 situations that we have.

8 Q. Why don't you terminate them and get some who can?

9 A. Well, it's not only a matter of teachers. It's a
10 matter of facilities, it's a matter of having -- of
11 keeping up with the growth rate and keeping up in a
12 manner in which the children can -- where the
13 teachers can deal with them in -- in a manner which
14 enhances the opportunities that they have.

15 Q. I'm going to keep talking just about these teachers,
16 now. Are you saying --

17 A. Okay.

18 MR. KAUFFMAN: Your Honor, excuse me -- I'm
19 very sorry, but since she's being asked to respond as
20 though these were facts, I would like to quote from
21 the Benchmarks on these matters. In
22 Carrollton-Farmers, the average per student payroll
23 is \$3,108.00. In Socorro, the average per student
24 expenditure on payroll is \$2,354.00, about \$750.00
25 less per pupil. In Carrollton-Farmers Branch, the

1 average salary for teachers is \$26,227.00; in
2 Socorro, the average salary for a teacher is
3 \$19,873.00, which is about \$7,000.00 difference. In
4 each case, Socorro is worse off. So, to the extent
5 that he's asking these questions as though they were
6 facts, I did want to clarify it.

7 MR. E. LUNA: Counsel had him back on cross
8 examination, Your Honor, and that question that's
9 before this witness, that's not the question that's
10 before the witness at this time.

11 THE COURT: All right. Put your question.

12 BY MR. E. LUNA:

13 Q. The question that I had asked you that Counsel
14 apparently misunderstood was, whether or not you have
15 teachers in your school system at this time that are
16 inferior and unqualified to do what they're doing?

17 A. We don't have teachers -- in my experience as a
18 parent in the district, I don't believe that we have
19 teachers -- teachers who are not qualified to be
20 teachers. I think that we have teachers -- we don't
21 have, like I say, the teachers who come in, you know,
22 straight to the district. We still have teachers who
23 have come to the district after they were not hired
24 at the other districts, but I -- I am fairly positive
25 that every teacher is qualified to be a teacher.

1 What we do have, what I can very, very well testify
2 to, is that the district has -- that the teachers
3 have so many students and so many responsibilities
4 that they are hard pressed to do their jobs and to
5 cope with all of the many problems of many students,
6 and not enough money to have the kinds of things
7 available to them that would make their job a little
8 more -- a little easier. They are -- they are having
9 to deal with many, many problems.

10 Q. The question that I would like for you to answer --
11 we do not have teachers, now, who are unqualified to
12 teach the subjects they are teaching, is that true or
13 not?

14 A. We don't have teachers now who are -- I can't read
15 it.

16 Q. We do not have teachers now who are unqualified to
17 teach the subjects they are teaching. Is that true
18 or not?

19 A. That may be a true statement. I wouldn't have -- I
20 wouldn't have absolute knowledge of whether every
21 teacher who teaches in the district is qualified to
22 teach the subjects that they are teaching, because I
23 don't -- I just don't have that way -- I can't verify
24 that.

25 Q. That's what I want to know. You're not here telling

1 this Court that you have got teachers who are not
2 qualified to teach what they're teaching, are you?

3 A. I'm not here to tell the Court what?

4 Q. You're not here to tell this Court that any teacher
5 in your system is not qualified to teach what they
6 are teaching, are you?

7 A. No.

8 Q. All right. Now then, before House Bill 72, would you
9 tell me the answer to the same question -- before
10 House Bill 72, and before you raised your salaries of
11 your teachers, did you then have teachers who were --
12 I'm trying to get out of the way of the attorneys
13 here.

14 Now then, before House Bill 72, did you have
15 any teachers that were not qualified to teach the
16 subjects they were teaching?

17 A. We may have had. I don't know. The problem has
18 been, like I said before, that before House Bill 72,
19 we were not able to attract teachers first off.

20 Q. Uh-huh.

21 A. We only got -- we got a third try at it. If they
22 didn't get hired at El Paso or Ysleta, then they
23 would come down to us. And we had many of those
24 teachers. I'm not saying that those teachers were
25 not qualified to teach. I believe that the teachers

1 we have are probably qualified to teach. I cannot be
2 specific about what they are teaching or whether
3 they're qualified to teach that particular subject.
4 I cannot testify to that.

5 What I can testify to, is the fact that our
6 salaries were very low in comparison to the other
7 districts and that those salaries improved greatly
8 after House Bill 72. And that we are now able to
9 attract teachers at an earlier stage than we did
10 before.

11 Q. But just before House Bill 72 went into effect, you
12 can't give me a list of the names of any teachers
13 that were fired so you could hire the better
14 teachers?

15 A. Well, I don't have names, but I have -- I am familiar
16 with some situations of some teachers who -- who were
17 let go. And I'm familiar with some situations in the
18 schools -- incidents with students and problems and --
19 but I don't have names of teachers who were fired.

20 Q. Are you familiar with your school being in a region
21 called Region 19? You know, the El Paso and all of
22 the other schools in your immediate area are in what
23 they call a region?

24 A. Yes, sir, I am.

25 Q. And of those 13 schools that are in that region, can

1 you tell us why it is that your administrative --
2 average administrative salaries are the highest of
3 everybody's, but you say your teachers' are lowest?

4 A. There are teachers who were lowest before House Bill
5 72. Is this figure from before House Bill 72?

6 Q. No, we're talking about right now, after House Bill
7 72. Why is it that your administrative salaries are
8 an average of \$39,454.00, are the very highest of any
9 of those 13, and let me just run down some of them
10 with you. Clint I.S.D., do you know where that is?

11 A. Yes, I do.

12 Q. Been \$37,595.00. And El Paso been \$39,089.00 -- even
13 El Paso's lower than yours. And Fabens, \$34,133.00.
14 And on down. Your's being the highest of all of the
15 13. Why is it you pay your teachers less than El
16 Paso and some of the other schools in your area, but
17 your administrators more?

18 A. The teachers' salaries were lower before House Bill
19 72. I believe that they are now compatible with the
20 other districts.

21 Q. I understand that. Now, you think they're compatible
22 with the other districts?

23 A. I believe at this time that they are. And I believe
24 that there for awhile, we were higher than the
25 others. Our teachers' salaries were above the other

1 districts. I believe at this time, they may have
2 evened out.

3 Q. I was asking you though, about the administrative
4 salaries. You say you're satisfied with your
5 teachers' salaries; you think they're plenty high, is
6 that right?

7 A. Well, what I understand very recently that has
8 happened, is that -- well, El Paso Independent School
9 District has just about stopped growing and Ysleta is
10 well on the way of doing that, so they are probably
11 going to be offering their teachers more, and we
12 haven't. We're going to continue to grow for a long
13 time, for several years. And so what I understand is
14 that recently, they increased their salaries and so
15 now we're back at the catch-up game again. We may be
16 a little lower than they are on teachers' salaries at
17 this time. I'm not familiar with all of the exact
18 figures for right now.

19 Q. We're talking about our Bench Marks, which are in
20 evidence, and they show the average salary for '84
21 and '85. And of those 13, your teachers' salaries
22 were the lowest in the whole region except for one.
23 There was only one that was at \$19,180.00. And that
24 appears to be San Elizario.

25 A. San Elizario.

1 Q. How do you pronounce it?

2 A. San Elizario.

3 Q. All right. Your's were the lowest of anybody except
4 that one, but your administrators' salaries were the
5 highest. Is there any reason why you had the lowest
6 teachers, next to the lowest teachers, and the very
7 highest administrative salaries, plus a new
8 administration building?

9 A. You said those teachers' salaries were for the year
10 '84 and '85.

11 Q. Yes.

12 A. What were they before that '84-'85 period?

13 Q. Ma'am?

14 A. What are you comparing them to?

15 Q. I'm comparing them to those of the 13 in your region,
16 El Paso and -- and all of the rest of them in Region
17 13.

18 A. Well, I would like to know -- what I don't have
19 available to me is what the increase was from --
20 before House Bill 72 up to that level. And also what
21 kind of increases the administrators may have had.
22 It's very possible that the administrators may be
23 making more than the other administrators of the
24 other districts because they have a tougher job to
25 do. I mean, that is information that, at this time,

1 I cannot compare the salaries. All I know is that
2 the salaries of the teachers were substantially
3 enhanced after House Bill 72. That is what I
4 understand. And that we are now able to attract
5 teachers and to go out and hire teachers, even though
6 we are still competing in that area. There are other
7 districts that pay much, much better in the State of
8 Texas and outside of the State of Texas.

9 Q. All right. So, I take it then, your answer is that
10 you don't know why your school district pays the
11 highest salaries to the administrators in the region,
12 but next to the lowest teachers' salaries of '84-'85?

13 A. No, I am not prepared to discuss that at great
14 length.

15 Q. All right.

16 MR. E. LUNA: I believe that's all. Thank
17 you, ma'am.

18 THE COURT: Anything else over here?

19 MR. PEREZ: Nothing else, Your Honor, thank
20 you.

21 THE COURT: All right. Let's let her step
22 down. You may step down, ma'am.

23 I take it she would like to be excused?

24 MR. PEREZ: She would, Your Honor.

25 THE COURT: I'm going to let her be

1 excused.

2 MR. PEREZ: Thank you.

3 (Witness excused.)

4 MR. KAUFFMAN: Your Honor, we thought we
5 might -- we're not going to call the witness for the
6 last five minutes.

7 THE COURT: Well, all right. We're going
8 to meet again Monday.

9 (Off-the-record discussion.)

10 THE COURT: I'll see you all Monday
11 morning.

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15 (Proceedings recessed until

16 (Monday morning, January 26, 1987.)

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3-87-190-EV

CAUSE NO. 32,510 **C 8353**

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

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IN THE 250TH JUDICIAL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk

By _____ Deputy

STATEMENT OF FACTS

VOLUME IV OF XLVI

FILED
OCT 09 87
THIRD COURT OF APPEALS
SUSAN K. BAGE, CLERK

TAKEN JANUARY 26, 1987

MONICA ROSS WEIDMANN

Official Court Reporter
250th Judicial District Court

Travis County Courthouse • Austin, Texas 78701

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CAUSE NO. 362,516

1
2 EDGEWOOD INDEPENDENT SCHOOL > IN THE 250TH JUDICIAL
DISTRICT, ET AL >
3 >
4 VS. > DISTRICT COURT OF
5 >
6 WILLIAM KIRBY, ET AL > TRAVIS COUNTY, TEXAS

7
8 STATEMENT OF FACTS

9 BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING
10
11

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BE IT REMEMBERED that on this the 26th day of
January, 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:

1 MR. O'HANLON: Is the Court ready to
2 proceed?

3 THE COURT: I think we're about ready.

4 CROSS EXAMINATION (RESUMED)

5 BY MR. O'HANLON:

6 Q. Dr. Hooker, the last time that we talked, what we
7 were doing -- and I'm going to try to take you back
8 there -- is trying to add up what it would take to
9 finance what you thought would be a constitutional
10 system in the state. And what we did at this point
11 was so -- what we've been talking about so far is the
12 1,350 basic allotment, the 1,050 that you would add,
13 that you testified in your direct, that you would add
14 to bring that basic allotment up to a programatic
15 level --

16 A. In the current year.

17 Q. That's right. Okay.

18 And we had some discussion about the 296 that
19 was out here. And I think the last time we were
20 talking was about whether or not to include that or
21 not. That's why we've got some of these numbers
22 here.

23 A. Well, not in that framework, but in the amount of
24 money that needs to be equalized and the opportunity
25 to raise and spend it, yes.

- 1 Q. Okay. And the way we do that is with the local fund
2 assignment; is that right?
- 3 A. In terms of the debt service equalization?
- 4 Q. Yeah.
- 5 A. No.
- 6 Q. You would do that with a whole, completely different
7 methodology?
- 8 A. I would do it with a different formula structure, it
9 that's what you mean.
- 10 Q. You wouldn't equalize it like the way we're
11 equalizing now?
- 12 A. I would not put that \$300.00 in as a cost component
13 in the Foundation School Program subjected to the
14 local fund assignment. No, sir, I wouldn't.
- 15 Q. How would you disperse that money? What I'm trying
16 to do is I'm trying to figure out whether I need to
17 add that up. What I'm going do to here is figure out
18 how much it's going to cost the state. So what I
19 want to know is, is whether the state is going to pay
20 that 296 or is something else?
- 21 A. Well, the state wouldn't be, in quotes, "paying the
22 296 necessarily," but there would be an equalization
23 framework based on a guaranteed tax base, if you
24 would, kinds of concepts that would allow school
25 districts to raise that on an equalized tax effort

1 kind of a basis.

2 And needless to say, the higher their tax base,
3 the lower the state's share in helping them to raise
4 it would be.

5 Q. Okay. Isn't that what we've got now?

6 A. In terms of formula structure, no. In terms of the
7 general outcome of the local fund assignment process,
8 yes.

9 Q. Okay. Well, what I'm trying to get to now is the
10 number. How much in your system is the state going
11 to pay of this \$296.00?

12 A. I don't know. I would have to do a computer
13 simulation to determine that.

14 Q. Would it be fair that, just for rough estimates right
15 now, to say that the state is going to pick up 60
16 percent of it and locals are going to pick up 40?

17 A. I couldn't say without a computer simulation.

18 Q. Okay. What other figures are you going to add in
19 this to set up your constitutional system here?

20 A. Well, in the first place, I'm not adding to set up a
21 constitutional system. You, I think, were the one
22 that was trying to add the costs of a constitutional
23 system. And I'm certainly not saying that we
24 necessarily have to increase state costs in order to
25 arrive at a constitutional system.

1 Q. Okay. If we don't, how can we do that then? Let's
2 get back on the no cost. How are we going to do
3 that? How are we going to get there?

4 A. Well, it's certainly not a solution that is
5 politically palatable, but neither is buying your
6 way out of the problem palatable in terms of
7 political acceptability.

8 Q. Well, there is no way on this earth that we can get
9 to this \$2,600.00 Foundation Program -- let's forget
10 the 296 -- the \$2,300.00 without increasing state
11 spending, is there?

12 A. Yes.

13 Q. The only way we can do that is make every local
14 district out there pay for it, isn't it, or make 70
15 percent of them in the state pay for it?

16 A. In terms of achieving that figure, which is an
17 adequacy discussion, the question is: Somebody has
18 to pay for it if you're going to achieve, you know, a
19 \$2,400.00 basic allotment in this school year, and
20 \$2,600.00 basic allotment in the next school year,
21 and a \$2,800.00 in the following school year. If you
22 achieve that, that's an adequacy issue, not an equity
23 issue.

24 Q. Okay. Are you saying they don't have anything to do
25 with one another?

1 A. I'm saying that a system can be perfectly equitable
2 for kids and taxpayers and be grossly inadequate in
3 terms of providing a quality educational opportunity.

4 Q. Okay. We'll get back to equity in a minute.

5 So, you can have one without the other, either
6 side, right? You can have an equitable system that's
7 inadequate and you can have an adequate system that's
8 inequitable.

9 A. Yes, sir, in terms of general adequacy.

10 Q. As a matter of fact, the State of Texas is real close
11 to having an adequate system right now, even though
12 you say it's not equitable.

13 A. In my opinion, no.

14 Q. Well, now, Dr. Hooker, aren't we spending that
15 \$2,400.00 that we identified in the Accountable Cost
16 Commission Study as being the average? Doesn't the
17 State of Texas right now provide an equalized
18 opportunity to spend at the level that has been
19 identified by that Accountable Cost Study as being
20 the average in the State? Don't we do that?

21 A. No, it's on that chart.

22 Q. By what, \$40.00 or \$50.00?

23 A. It's according to what kinds of manipulations that
24 you wish to make, whether or not you can say that. I
25 do not accept your methodology of counting

1 equalization aid as a part of regular program costs.

2 Q. Well, it's money though, right? It's money that goes
3 to the students?

4 A. It's money, but it is enrichment equalization aid.
5 It is not regular program basic allotment.

6 Q. But that's simply calling it a different name, isn't
7 it? It's still money that goes -- regardless of what
8 we call it, it's still money that goes into the hands
9 or the public school officials to be spent on
10 education of the normal student is what we added up,
11 isn't that right? No special ed --

12 A. On the normal student?

13 Q. Yes, or the average student, not --

14 A. Say you're saying all enrichment equalization aid is
15 supposed to be spent on regular kids?

16 Q. No, sir. What I'm saying is, and I'm asking you
17 whether or not you agree with me that that number
18 that we added up and got to \$2,381.00 or something
19 like that -- and by the way, I can find another 30 in
20 there because it was 681 rather than 651 as the
21 highest Foundation Program in Bench Marks.

22 A. Well, then you're also assuming that the equalization
23 enrichment money that's earned for the school
24 district by special populations programs is all that
25 is supposed to be spent on regular kids; is that

1 correct?

2 Q. Yeah. Let me go back a second to your notion of what
3 enrichment was designed to do.

4 Now, you said, did you not, that that
5 enrichment was set up to add 15 percent to districts.
6 That's what your notion was, to add an additional 15
7 percent for enrichment; isn't that right?

8 A. On top of a quality Foundation School Program
9 structure.

10 Q. Which would have been what in 1982 or '83, \$1,800.00?

11 A. In terms of the basic allotment level, yes.

12 Q. All right. So, we're talking about \$1,800.00 plus 15
13 percent. 15 percent would be \$270.00, wouldn't it?

14 A. I'm not following.

15 Q. Well, 15 percent on top of \$1,800.00 is \$270.00.

16 A. What we were recommending as a starting point was
17 \$1,842.00 per ADA. We didn't couch it that way. In
18 the bill, it was a 1,715 per ADM. But when you
19 translate it to ADA, it's 1,842. And that was what
20 we felt was a minimum level of basic allotment.

21 And then on top of that, yes, we add a 15
22 percent of other Foundation School Program costs,
23 which included all of the PDI, small/sparse and all
24 of the special populations adjustments.

25 Q. Where did you add the 15 percent for enrichment?

- 1 A. At the end.
- 2 Q. What kind of figure was that, more than \$300.00? It
3 couldn't have been more than \$300.00, could it?
- 4 A. The answer is, I don't recall.
- 5 Q. Okay. But you will concede, will you not, that the
6 enrichment that's going on out there can go as high
7 as \$650.00 or \$681.00?
- 8 A. I believe Bench Marks reports 685 as the --
- 9 Q. Okay.
- 10 A. -- highest level.
- 11 Q. So there's something else in that component, isn't
12 there? The Legislature didn't take the biggest blue
13 sky proposition and then double it, did they?
- 14 A. No. What they did was take the cheapest way out in
15 terms of trying to deal with the equity issue.
- 16 Q. That's right. They took that \$2,400.00 figure and
17 they told you to go back and figure out how to get to
18 \$2,400.00 for the poorest districts, didn't they?
- 19 A. Not in that manner, but that was the thrust of the
20 message.
- 21 Q. Okay. And you did that, didn't you? You figured out
22 a way by adding all of these things up and calling
23 something equalization rather than the local fund
24 assignment to insure that \$2,400.00 per kid, regular
25 program, got flown to the poorest districts in the

1 State, didn't you? You made that target?

2 A. Close.

3 Q. Okay. So, we've got a system right now that meets
4 the targets that were set up, isn't that right?

5 A. No, sir, not totally, but certainly positively in
6 that direction.

7 Q. Okay. We identified \$2,400.00 by a number of ways,
8 didn't we?

9 A. Yes, sir.

10 Q. We took the \$2,100.00, the modeling theory.

11 A. Yes.

12 Q. Well, let's talk about it for a second. Let's write
13 all of these up.

14 The modeling methodology came up with
15 \$2,100.00, didn't it?

16 A. Yes, sir.

17 Q. Let's call this 1983 accountable cost methodology,
18 came up with 1,800 and what?

19 A. Well, in terms of the non-inflation adjusted, just
20 our cost analysis on '82-'83 data, it was \$1,800.00
21 in the sample of districts that we utilized.

22 Q. Okay. The 1986 accountable cost methodology came up
23 to 2,414, right --

24 A. For a standard program, not a quality program.

25 Q. That meets all state and federal requirements for

1 adequacy program. Isn't that in the definition?

2 A. That's what we attempted to determine, but the
3 problem that we ran into is that the accreditation
4 standards are so vague and there's no specific
5 operational criteria associated with so many of them,
6 and the visitation schedule of the Texas Education
7 Agency in terms of monitoring districts, made it
8 impossible for us to make that assumption.

9 All we could say was that according to the
10 Texas Education Agency, there were no waivers and
11 they were fully accredited.

12 Q. Well, now, recommendation No. 1 of the Accountable
13 Cost Committee says it doesn't hedge like that, does
14 it?

15 A. I didn't write it.

16 Q. Did you vote for it?

17 A. I didn't vote on the final report as a drafted
18 report. We voted on numbers.

19 Q. Would you look at Exhibit 212, please, sir. Do you
20 have it? Look at Page 5. Up at the very top of the
21 page, I'm going to read you a paragraph. "The
22 Accountable Costs Advisory Committee recommends that
23 the State Board of Education advised the Legislature
24 that the annual average per pupil costs to districts
25 providing a regular education program that meets

1 current accreditation legal and regulatory
2 requirements is \$2,414.00 based on '85-'86 data."
3 Isn't that what it says?

4 A. That's what it says.

5 Q. Did you have your fingers crossed behind your back
6 when you wrote that one, Dr. Hooker?

7 A. I didn't write that one, Mr. Moak wrote that one.

8 Q. Did you dissent from that? Did you file a minority
9 report?

10 A. I did not vote in terms of the wording of the report,
11 whether I agreed with it or disagreed with it.

12 Q. Did you disagree with it?

13 A. The term "average per pupil cost meeting
14 accreditation standards," if you're defining
15 accreditation standards as they had not been found by
16 the Texas Education Agency to be out of compliance,
17 yes, I agree with that. Whether or not they were
18 truly meeting accreditation standards and all the
19 legal standards, I cannot attest to.

20 Q. That's what the Committee found, and you didn't file
21 a dissent, did you?

22 A. No, I did not.

23 Q. So, and the current system right now in the State of
24 Texas meets that number, doesn't it, that 2,414?
25 Every district in the State of Texas, if they raised

1 the average tax rate, can spend \$2,414.00 on a
2 regular program if they want to, can't they?

3 A. Close to that number, if they are willing not to
4 spend equalization aid on special populations and et
5 cetera.

6 Q. Well, now, equalization aid goes to special
7 populations, too, because it's figured on an adjusted
8 ADA, isn't it?

9 A. As a matter of fact, it is figured on a 30 percent of
10 other Foundation School Program costs, which means
11 that all of the special populations costs, PDI,
12 small/sparse is a part of determining the amount of
13 equalization aid, yes, sir.

14 Q. Sure. So in equalization aid for a bilingual child
15 that also happens to be Comp. Ed. would be 1.3, so
16 that would be figured in there. They'd get their
17 share of equalization aid, too, wouldn't they?

18 A. Well, my point being that the assumptions you're
19 making would force the school district to spend all
20 of its equalization aid on regular program to get to
21 that level.

22 Q. Well, now, all kids get to participate in regular
23 program, don't they?

24 A. They have certainly the potential of being assigned
25 to the regular program for part of the day, yes.

- 1 Q. And there are certainly other things, there's other
2 sources of money in there because we know, for
3 example, that Edgewood, even though the program was
4 designed to yield \$2,414.00 for a regular program,
5 they're spending an average of \$3,600.00 on every
6 student in that district, aren't they?
- 7 Q. Including all federal funds, which is not a point of
8 discussion here as far as I know.
- 9 Q. Should we just forget about federal funds? Are those
10 federal funds not being spent on educating kids in
11 the district?
- 12 A. As far as I am concerned, the question before the
13 Court is the constitutionality of the State system of
14 school finance, which is state and local revenues.
- 15 Q. All right. But should we just take -- let's assume
16 that Federal Chapter 1 funding yields about \$400.00
17 per student on people that are identified as Comp.
18 Ed. Should we just forget about it and ignore it?
19 Should we say this money doesn't exist? It's not
20 being spent on kids?
- 21 A. As far as this Court is concerned, I don't see how it
22 can take federal money into consideration.
- 23 Q. Should it put on blinders and not pay any attention
24 to the fact that \$700 million is being sent to the
25 State of Texas for educating children in this state

1 and it is being flown almost certainly to the Comp.
2 Ed. kids and the poorest kids in this state? Should
3 we just ignore that?

4 A. You asked for my opinion. My opinion is that federal
5 money is not a part of the discussion in this case,
6 no.

7 Q. Okay. Would you recognize at least that these
8 hard-to-educate kids have another source of funding?

9 A. There are some federal monies available to kids for
10 compensatory education, bilingual education, special
11 education, migrant education.

12 However most of that 700 million, in terms of
13 the largest expenditure program, happens to be free
14 and reduced-price lunch.

15 Q. Okay.

16 A. And another chunk of it is impact aid, which is money
17 that the federal government gives to local school
18 districts in lieu of ad valorem taxes which they
19 can't collect.

20 Q. That's right. So, like a poor district like Copperas
21 Cove is going to get an awful lot of money directly
22 from the federal government, aren't they?

23 A. School districts like Copperas Cove, I haven't seen
24 their profile, but potentially they could receive
25 federal money in what you might determine is a

1 substantial amount.

2 Q. Okay. So there are other sources of revenues and
3 that's why there's a difference between the \$2,400.00
4 that the State is putting out there and the total
5 amount of money that's being spent per child, right?

6 Q. Well, there are two things that are involved in that.
7 One is the special populations and transportation
8 component of the Foundation School Program. And the
9 other, of course, is federal aid.

10 A. Okay. Now, back to this \$2,400.00. That's how much,
11 under the system as it's designed, a school is
12 guaranteed for regular program, isn't it?

13 Q. It's somewhat short of that amount, but it's close.
14 If you are going to make the assumption, which I do
15 not, that equalization aid is basic allotment,
16 regular program costs support from the state.

17 Q. Okay. So what we're going to do then, according to
18 your assumption, is just like we did with the federal
19 programs is ignore it, we're going to take \$685.00
20 that goes to certain districts and we're going to say
21 it's enrichment, so it doesn't count?

22 A. In the analysis of the constitutionality of the state
23 system of school finance, certainly no, you would not
24 ignore that money.

25 But at the same time, the Legislature, I am

1 assuming, since it put an equalization enrichment
2 label on it, meant that it was enrichment in the
3 common definition of the term, which means that it's
4 over and above the level of the Foundation School
5 Program which is subjected to the local fund
6 assignment for purposes of enrichment, for buying
7 things that you can't buy with your basic Foundation
8 School Program money.

9 Q. Well, \$681.00 would provide you money to do -- buy a
10 lot of things that you couldn't buy, wouldn't it?

11 A. I certainly think it would.

12 Q. And you say that that's what it is by the title of
13 it, but you were involved in drafting it. And the
14 purpose of that enrichment allotment was to equalize,
15 wasn't it, was to flow substantial amounts of extra
16 money to the poorest districts, wasn't it? Isn't
17 that what you were designed to do, at a lower cost to
18 the state than just raising the basic allotment and
19 raising the local fund assignment?

20 A. They accomplished essentially three things with the
21 maneuver. One is they saved themselves some money by
22 not -- for the average wealth and above school
23 district having a higher floor in the Foundation
24 School Program, they saved money by not providing
25 money to those school districts.

1 They also cut the number of school districts
2 that were "losing state aid" through that sort of a
3 mechanism.

4 And third, yes, they did what you said in terms
5 of focusing scarce state resources in property poor
6 school districts.

7 Q. Okay. So what they did was -- let's forget about
8 what the title of it is. What they did was they
9 designed this component into the system to flow a
10 heck of a lot of money to the poorest districts in
11 the state; isn't that right?

12 A. The purpose of equalization aid is to equalize the
13 opportunity to enrich above the level of the
14 Foundation School Program with some state support.

15 Q. Now, let's talk about a couple of -- you weren't
16 here, but the woman by the name of Padilla testified
17 on Thursday. And she testified that the Socorro
18 District, before and after House Bill 72, got
19 \$1,000.00 per student increase in the amount of state
20 aid. Does that surprise you?

21 A. I don't know a lot about the Socorro District, but
22 certainly there were some small, extremely poor
23 school districts that received that much increase in
24 state aid, which just shows you how bad the system
25 was.

- 1 Q. And \$1,000.000 increase. So they're getting money
2 other than that equalization allotment, aren't they?
3 They're getting some from someplace else as well?
- 4 A. Well, they got an increase floor in the Foundation
5 School Program and increased program components for
6 special populations. And all of that works together
7 to produce, I guess, \$1,000.00 increase.
- 8 Q. Okay. Now, and this \$2,400.00, this number keeps
9 coming up, doesn't it, that all of the empirical
10 research that we've got says that what we ought to be
11 spending for basic program is somewhere between
12 \$1,800.00 based on '83, and \$2,414.00; isn't that
13 right?
- 14 A. If you're accepting averaging kinds of methodologies
15 and you're not inflation adjusting and you're not
16 looking toward next year, the answer to that is yes.
- 17 Q. Well, do you know who Dr. Benson is?
- 18 A. Yes. He's one of the writers of school finance
19 books.
- 20 Q. And he testified in his deposition in this case that
21 the way you determine adequacy of program is the
22 collective judgment of all of the taxpayers out there
23 expressed through their school boards as to what the
24 average state spending is.
- 25 A. Would you say that about the State of Mississippi,

1 which is the lowest spending state in the nation?

2 Q. I didn't say that, Dr. Benson said that.

3 A. Well, okay. I would beg to differ with Dr. Benson.
4 You don't determine adequacy totally by averaging.

5 Q. Okay. So you disagree with his notion of determining
6 adequacy of program?

7 A. I would certainly disagree that that is the only
8 thing that ought to be looked at.

9 Q. Okay. Would you agree, though, that all of the
10 empirical research that we've got in this state so
11 far says that we're right where we ought to be?

12 A. If you assume that our current average spending level
13 produces the opportunity to provide quality
14 regardless of the incidence factors of high cost
15 kids, then, you know -- I'm not arguing with the fact
16 that we found that the basic allotment needed to be
17 \$2,100.00 based on 1982-'83 school data, you know.
18 I'm not arguing that at all.

19 Q. Well, no, based on 1982-'83 -- you found that it
20 ought to be \$1,800.00; isn't that right?

21 A. That was what the average school district was
22 spending.

23 Q. That's right. And the reason --

24 A. The model building exercise included some
25 professional judgments about what we ought to be

1 spending on a regular program versus what we are
2 spending on a regular program.

3 Q. The reason why the average went up from \$1,800.00 to
4 \$2,400.00 was precisely because House Bill 72 came
5 into effect and we put, in essence, \$600.00 more per
6 child -- actually \$690.00, I think we can flip back
7 to what we did a couple of days ago -- per child into
8 education in this state, isn't that right?

9 A. Through both local and state effort, if you want to
10 assume that all local effort was, you know, involved
11 in this of House Bill 72.

12 Q. So we drove the average up \$690.00, didn't we, or
13 thereabouts?

14 A. If you want to make the assumption that House Bill 72
15 is totally responsible for what local school
16 districts did, yes.

17 Q. And then if we use this new average, we never -- what
18 I'm trying to get to here is -- well, if we use the
19 average every time we put money in and then we use
20 the average to compute and then add on top of it,
21 we'll never get there, will we?

22 A. That is one of the precise reasons that that's not
23 the only methodology that I think ought to be looked
24 at when you're determining adequacy.

25 Q. Okay. And that's why you looked at the modeling?

1 A. That's one reason we looked at the modeling.

2 Q. And what you've got here is the convergence of
3 methodologies on a fairly narrow range of numbers,
4 don't we?

5 A. It takes Edgewood about a dollar in tax rate to raise
6 that \$300.00 difference that you see up there. So
7 you can say it's a minor range if you want to, but
8 for some school districts, that's not a minor issue.

9 Q. Now, wait a minute. Let's talk about Edgewood. Do
10 you know what Edgewood's state and local tax revenues
11 were in 1985-'86?

12 A. I believe you walked through that with me, yes.

13 Q. \$2,900.00, wasn't it?

14 A. State and local revenues was 2,940, as I recall.

15 Q. Okay. So, they're not quite at a 50 something cent,
16 53.6 percent tax rate, if I'm not mistaken, something
17 like that?

18 A. Well, obviously they're not raising all of that
19 money. 53 cents on their tax rate would probably
20 raise \$150.00 or thereabouts.

21 Q. That's right. So the state is sending them \$2,700.00
22 or more, isn't it?

23 A. In all probability, it's about that number.

24 Q. So we're talking averages here, aren't we, that
25 because of your particular situation, you could get

1 substantially more than that average. It the right
2 situation --

3 A. If you have every conceivable thing working for you,
4 and I would assume that Edgewood does, since they are
5 generally a focus of everybody's attention. You put
6 out a computer run on a simulation, most people are
7 going to look at Edgewood to see what happens to
8 Edgewood.

9 Q. Okay. And so they're getting substantially more than
10 even this \$2,414.00. They're getting \$2,700.00,
11 \$2,800.00 from the state, aren't they?

12 A. Well, in that -- I would assume so. The Bench Marks
13 report reflect that there were, what, 22 districts in
14 the state that were spending less than \$2,500.00 a
15 student. So I guess all of those things work
16 together to do what it does for Edgewood.

17 Q. Right. In fact, the districts that are spending less
18 than that would have to almost -- would surely,
19 either not spend the money that they've got available
20 to them, or have a tax rate lower than statewide
21 average so as not to entitle themselves to maximum
22 state aid, isn't that right?

23 A. I couldn't explain. I would have to look at the
24 individual district data to do that, but --

25 Q. Well, let's look at some of the individual district

1 data. Let's look at the Killeen school district.

2 I'm handing you now what's been admitted into
3 evidence as Plaintiffs' Exhibit No. 216.

4 Now, the Killeen school district is what, you
5 say, second on spending?

6 A. I find that hard to believe, but that's what the
7 report reflects it is.

8 Q. Okay. Well, let's look at Killeen. I'm going to
9 hand you now Exhibit 205.

10 Now, what is Killeen taxing itself at?

11 A. If I have --

12 Q. Well, first of all, tell me what their spending is,
13 orf or 216?

14 A. They're spending at 2,809.

15 Q. They're spending --

16 A. But the state and local revenues are obviously not
17 that high.

18 Q. Okay. Do you have other state and local revenues?

19 Can you tell me what their tax rate is, their
20 M&O tax rate?

21 A. Killeen has never been a terribly high tax effort
22 school district.

23 Their state and local revenues are shown to be
24 \$2,339.00 on this report.

25 Q. 2,339?

1 A. If I'm reading it correctly, it's a long way across
2 the page.

3 Q. Okay.

4 A. And in old age, a number of things are failing.
5 \$2,339.00.

6 Q. Okay. Uh-nuh.

7 A. The tax rates in Killeen total is 47 cents.

8 Q. Okay. What is their maintenance and operations tax
9 rate?

10 A. 37 cents.

11 Q. And what's their property value?

12 A. Their market value per ADA is 79,307.

13 Q. Okay. Do you have your calculator there? Are we
14 going to have to do this?

15 A. Judge, do I have to?

16 THE COURT: Somebody else give him some
17 help.

18 MR. GRAY: I'll do it.

19 MR. KAUFFMAN: We'll do it for him.

20 MR. O'HANLON: Okay. That's fair enough.

21 BY MR. O'HANLON:

22 Q. Now, let's go back. What's the average M&O tax rate
23 in the state?

24 A. Well, in terms of current operations, I think it's
25 somewhere around 55 cents.

1 Q. All right. Now, to find out what they're taxing
2 themselves below average, then what we would do is we
3 subtract that and get 18 cents and multiply that
4 times the tax rate, wouldn't we?

5 A. Yes, sir.

6 Q. Would you do that for me? The average maintenance
7 tax rate is 64 cents, isn't it?

8 A. I thought that that was total. We're dealing with
9 apples and oranges.

10 Q. Well, I want to get the right columns. Let's use --

11 MR. GRAY: Let him finish answering his
12 question, though, before you cut him off.

13 A. These tax rates, as I understand them, that he's
14 showing here is, in fact, what the school district is
15 claiming in applying to assess value. And they have
16 only computed what is referred to as the true rate or
17 the total rate of the district.

18 Q. Okay. So we can add apples and apples. Let's use
19 their official adopted rate; is that fair?

20 A. Okay. All right.

21 Q. Now, would you tell me what their adopted rate is?

22 A. That's the 37. That's the one that shows up.

23 Q. Okay. And the statewide average on adopted rates?

24 A. The statewide average column at the bottom of the
25 page shows 64 cents.

1 Q. All right. So, the same methodology here, what we
2 would do then would be to subtract the 37 from the 64
3 and multiply that times the value in the district,
4 right?

5 A. Yes, sir.

6 MR. GRAY: 21,412.89.

7 THE WITNESS: It was what?

8 MR. O'HANLON: I think you missed a decimal
9 point a little bit. I think we have the same problem
10 here. I think it's \$210.00.

11 A. My assumption would be it would be somewhere in the
12 \$200.00 range.

13 Q. About \$210.00? Okay. So this shows the statewide
14 average at 210. Now, the way the state system of
15 equalization works, then they're not only missing the
16 boat here, they're losing a lot of state aid, isn't
17 that right, because their tax effort isn't up?

18 A. It would certainly appear to be that they're losing
19 some equalization aid because of their unwillingness
20 to tax themselves.

21 Q. Okay. Now, give me a ball park on what they're
22 losing, \$200.00?

23 A. I can't give you a ball park that I would want to
24 testify to.

25 Q. Now, I just want -- you helped design this system.

1 Give me your best guess of about how much state aid
2 they're losing?

3 A. Yeah, probably 200 to 225.

4 Q. You want to split the difference to another 210?

5 A. Oh, just put down \$200.00 and let's go.

6 Q. Okay. So --

7 A. It's at least that.

8 Q. All right. So, if Killeen, to summarize, if Killeen
9 spent or taxed themselves at only the statewide
10 average, that they would get at least \$410.00 more
11 per kid in that district?

12 A. I would assume that's close.

13 Q. All right. Would you take Exhibit 216 and take
14 Killeen's total, which is 2,131, and let's add
15 \$410.00, would be 2,541, right? Figure -- where
16 would Killeen come out then? They would move on down
17 the list, wouldn't they?

18 A. Oh, yes.

19 Q. Okay.

20 A. They would move down to probably 35 school districts
21 or so --

22 Q. Okay.

23 A. -- into the distribution.

24 Q. And that certainly -- Killeen's certainly a lot
25 bigger district than Lorena or China Spring or

1 Floresville, aren't they, isn't it?

2 A. Yes. I can't remember, but I think they probably
3 have at least 5,000 or more students in average daily
4 attendance.

5 Q. Now, more like 17,000, isn't it?

6 A. I said I don't know. I just know that they're larger
7 than 5,000.

8 Q. Okay. So --

9 A. I've never been to Killeen.

10 Q. Is it safe then to assume that the state helps those
11 who helps themselves a little bit here?

12 A. Yes, sir. I personally work very hard to put an
13 effort factor in the equalization aid to see that
14 they would.

15 Q. And the reason why Killeen is spending below is
16 because they want to; isn't that right? They're not
17 even making a statewide average effort.

18 A. The political power structure of their community
19 converges in a way that keeps them from doing it,
20 yes.

21 Q. Okay. And they can certainly move well up the list
22 on spending. It's not that they can't move up the
23 list. It's not that they can't spend more money.
24 It's that they don't have the political will power to
25 do so.

1 A. No question.

2 Q. How much is a constitutional system going to cost us,
3 Dr. Hooker?

4 A. A constitutional system can conceivably cost you
5 nothing.

6 Q. Well, I'm trying to pin you down on that. I'm trying
7 to figure out how we do it.

8 A. How we do it.

9 Q. Pardon me?

10 A. I was repeating your question, I'm sorry.

11 MR. GRAY: Why don't you just tell him.

12 A. Can I go to your little board here?

13 Q. Sure.

14 A. I'm using very round numbers, too.

15 MR. RICHARDS: You're going to have to
16 speak up for the court reporter.

17 THE WITNESS: I'm sorry.

18 MR. RICHARDS: That's all right. You'll be
19 fine.

20 A. At any rate, I'm not quibbling about the numbers.

21 The problem which exists is that you have a
22 school district with roughly \$21,000.00 per student
23 in average daily attendance. On the other end,
24 you've got one with 14 million.

25 Now, quite obviously you have a tremendous

1 disparity in local property tax value per student and
2 a tremendous disparity in terms of what one might
3 think of as the opportunity of this school district
4 to raise a lot of money with a very low tax effort.

5 If you are going to create a system which is
6 equitable for the taxpayers, you have one of two
7 choices. You can make those school districts out
8 there able to spend at the level this one can with
9 the same tax effort, okay.

10 Q. Now, how would you do that?

11 A. I don't think that the -- well, the way you could do
12 that is simply power equalize the system to the
13 richest school district in the state.

14 Q. Which would mean that everybody would be entitled to
15 raise a whole lot. That's going to end up costing a
16 neck or a lot more money though, isn't it, because
17 what you're doing is you're setting a level at what
18 the richest district can spend.

19 A. It determines whether or not you're going to
20 establish limits on what they do, once you power
21 equalize it.

22 Q. Okay.

23 A. But conceptually, you can do that without it costing
24 a dime. But what that means is that those
25 \$14,000.00, \$15,000.00, \$19,000.00 expenditures are

1 probably not going to be possible by the time the
2 Legislature gets through doing it. But conceptually,
3 that is a possibility in terms of dealing with the
4 issue.

5 Another issue is to attack this variance. The
6 Legislature created the school districts by law,
7 okay. Do you have any problem with that?

8 Q. No, I certainly don't. They actually -- not
9 completely. They authorized the independent creation
10 in some respects.

11 A. Okay. Would you agree that the Legislature changes --

12 Q. I think we've switched here. Can I go sit in the
13 witness chair?

14 A. The Legislature every ten years redraws the district
15 boundaries for representatives for State Senate for
16 everything in the world to create one man, one vote.
17 There is nothing sacred about the school district's
18 boundaries, period. And there is certainly nothing
19 sacred about the taxing jurisdiction boundary. It
20 would be quite possible to create 20 taxing
21 jurisdictions in which the tax base was relatively
22 equitable or 50 or four or whatever they might choose
23 to do.

24 Q. Can you really, now? Here is the -- have you studied
25 that option? Have you looked at what those

1 jurisdictions are going to look like?

2 A. I'm talking about school finance concepts. I am not
3 discussing this as a lawyer.

4 Q. Well, no. What I'm asking you now is there just so
5 happens to be out in the Permian Basin a vast area
6 with not very many people in it and a whole lot of
7 oil; isn't that right?

8 A. Yeah.

9 Q. And what we're going to end up doing is to have to
10 couple that somehow with some district down in South
11 Texas or some poor district in Central Texas and the
12 districts start to look long and skinny and not very
13 cumbersome, don't they?

14 A. It would be, in my opinion, possible to do that
15 without it being long and skinny and cumbersome, but
16 I'm not trying to testify to any more than the
17 concept that's involved in establishing taxing
18 jurisdictions that look different than current school
19 district boundaries.

20 Q. Yeah. But there's two things I want you to address,
21 not only the concept and how you would apply that
22 concept to the geography of Texas -- I mean, the fact
23 that you could theoretically design a system, if
24 we're going to design a system that, from scratch, in
25 a theoretical basis, if we can design one that had an

1 equal property value across the entire state, we
2 wouldn't have a problem, would we?

3 A. That is what I am simply saying, that you can create
4 districts in which you either perfectly equalize the
5 tax basis and redraw them every five years or ten
6 years or whatever to see that they are continued to
7 be balanced, or you can create a situation where I
8 looked at the region data in Bench Marks and I
9 believe that the lowest region would wind up --
10 Region 1 -- with something like a \$90,000.00 tax base
11 and the Permian Basin Region, 18 or whatever it is
12 out there, would wind up with about a 440,000.

13 So you reduce the disparity from one to seven
14 hundred to one to six or thereabouts.

15 Q. Okay.

16 A. And you could --

17 MR. GRAY: One to five.

18 THE WITNESS: And you could put in an
19 equalization -- A five?

20 MR. GRAY: One to five.

21 THE WITNESS: Okay, one to five.

22 A. With this kind of disparity, you can create an
23 equalization framework much as our current
24 equalization aid system works and you could actually
25 equalize the difference in a power equalization

1 scheme between here and here. Now, you have
2 manageable, from an equalization perspective,
3 disparities between the tax bases that you create.

4 Q. Okay, a couple of questions. One, that unless I take
5 money away from that fifth district, okay, now, our
6 present system allows taxing of up to \$1.50 of that
7 number, correct?

8 A. You wouldn't, in my opinion, have to take any money
9 away from these people if you went to this kind of
10 tax base structure.

11 Q. Well, you've got to limit them at a lower tax rate,
12 don't you, or you still don't meet your own
13 definition of equity, do you?

14 A. I am assuming that that district would be budget
15 balanced in your system.

16 Q. Okay.

17 A. They would be supporting education in their district.

18 Q. But unless you kept the spending or unless you take
19 money away from them, you still ain't equalized
20 according to your definition because if they can tax
21 it at that \$1.50, they can raise a heck of a lot more
22 money than the theoretical first district, can't
23 they?

24 A. If you're going to allow them to tax at a \$1.50 and
25 you are not going to limit their expenditures, the

1 answer to your question is correct.

2 Q. Okay. So we're still back to -- regardless of
3 whether we go from 1,063 districts to five, or to
4 six, or to 20, I guess 20, you've still got the same
5 problem, don't we? That is, that the existence of
6 that tax rate allows differential spending, the
7 existence of that variation allows differential
8 spending?

9 A. It is possible to set up a structure where that would
10 not exist.

11 Q. But only if you put enough state money into that
12 \$90,000.00 district -- well, how much is that going
13 to take? Let's figure out what district 44 --
14 \$440,000.00, multiply that times a \$1.50 tax rate.

15 MR. GRAY: Mr. O'Hanlon, are you assuming
16 the existing regions as opposed to the 20 equal
17 regions he said you could draw?

18 MR. O'HANLON: No, I believe this witness
19 said that if --

20 A. I just said that I had looked at the data in Bench
21 Marks. And even doing this, would create a more
22 manageable problem.

23 Q. Okay.

24 A. We could draw 20 districts that have equal tax bases,
25 that's what I'm saying.

1 Q. I want to see them. I want to see them. Will you
2 work on that tonight and come back to Court and show
3 me those?

4 MR. GRAY: Your Honor, the answer is --
5 I'll answer for the witness, and the answer is no.
6 We are prepared to offer this type of testimony when
7 and if we get to the remedy stage.

8 I think Mr. O'Hanlon's questions are going way,
9 way far afield. We do not have a specific map to
10 offer the Court at this time.

11 But I think his testimony is very clear that
12 such a proposal could be developed and could work and
13 would work. But unless we're prepared to start
14 litigating remedy, which we had thought was not the
15 case, but if the State wants us now to move into
16 remedy, if they are satisfied liability is
17 established and let's go to remedy, we're ready.

18 MR. O'HANLON: I challenge the Plaintiffs
19 to do that. You can't do it. We've looked at it for
20 a long time. You can't do it because the situation
21 is this, and it goes to the credibility of this
22 witness --

23 THE WITNESS: You mean you tried to devise
24 a remedy of that kind?

25 MR. O'HANLON: If the State Constitution,

1 Article VII, Section 3, that authorizes local ad
2 valorem taxes authorizes their levying collections by
3 districts -- not by other entities, is what it says --
4 and if you draw a district that has equal tax wealth,
5 they're going to be spread out in such a way as to be
6 totally unmanageable.

7 I challenge them to do that. They're offering
8 that as a remedy and I challenge them to draw a map
9 of this state in which you can put 20 districts that
10 have the equal property wealth and have them not look
11 like some of the senatorial and house districts that
12 Mr. Gray and Mr. Richards get into fights over about
13 every ten years. You can't do it in this state.

14 MR. KAUFFMAN: Your Honor, if I can, I
15 guess object to this to this extent. It was a
16 question asked by counsel. He asked the question,
17 can you do it. The witness said yes.

18 The next question was how, the witness is
19 trying to explain how.

20 The --

21 MR. O'HANLON: No, I --

22 MR. KAUFFMAN: Let me finish.

23 We have never offered this as testimony of what
24 the remedy would be. We've objected to any
25 discussion of remedy.

1 But Dr. Hooker, who is an expert, says it could
2 be done and he's trying to explain how it can be
3 done.

4 Now, counsel is not allowing him to finish his
5 explanation. Counsel is not apparently interested in
6 how Dr. Hooker would -- the concepts that he would
7 use.

8 So we object to the harassing of the witness
9 until the witness can explain his theories or his
10 theories to the Court. Dr. Hooker's expertise in
11 this area has been recognized by the defense counsels
12 who said he's the most experienced witness we have,
13 and he can certainly discuss these matters and he's
14 trying to do so.

15 But we do not offer him or we do not offer him
16 as evidence of what the remedy is. We did not enter
17 the prey and we cannot be expected to come up with a
18 definite remedy.

19 Now, counsel has said that they've looked at it
20 and it can't be done. We would be happy to look at
21 whatever proposals they have that are anywhere close
22 to this and review those and let Dr. Hooker comment
23 on them.

24 MR. O'HANLON: I keep thinking about the
25 little kid that keeps looking under the hand and

1 telling me they can't see stuff, Judge. This whole
2 conversation ensued when he said he wouldn't come up
3 with a plan. And I think that's a legitimate cross
4 examination to say that "Well, I've got a secret
5 plan, again. And I can design a system in this state
6 that has equal property wealth." And all I'm saying
7 is let's see it. And I think that's a legitimate
8 cross examination.

9 MR. KAUFFMAN: He never said he could
10 design a secret system. He never said he could
11 design a system of equal property wealth. He said he
12 could design a system using present state aid that
13 would be an equitable system.

14 THE COURT: Are you all objecting to this
15 line of cross-examination?

16 MR. GRAY: Your Honor, up to this point,
17 no.

18 As of now, I am objecting when he asked the
19 witness to go do something over the night hour.

20 THE COURT: Okay.

21 MR. GRAY: And we object on grounds that
22 that's improper. It's getting into the realm of
23 argumentative.

24 It is our position that, if we have any burden
25 at all at this stage of the litigation, it's merely

1 to present testimony that there can and there are
2 options out there that go to a much more equitable
3 and a more constitutional system than what the
4 currently unconstitutional system we're faced with
5 today.

6 THE COURT: Okay. Let's hash this out
7 right now.

8 It's dangerous for trial courts to read, but
9 I've been doing a little reading over the weekend.
10 Let's hash this remedy business out right now.

11 Dr. Hooker, this might take a while. You sit
12 yourself back down and we'll get you back up there in
13 a minute.

14 Over here, your notion is you're not going to
15 argue and not going to present the Court with
16 remedies to your liability case, let's say. Okay.
17 You flesh that idea out for me now, please.

18 MR. GRAY: Sure. It is quite simply. Our
19 position is that the system either does or does not
20 meet Article VII and Article VIII, which is the equal
21 taxation provision and the equal protection provision
22 of the State Constitution, irrespective of any
23 options.

24 This plan, the current scheme of school
25 financing on its face, either is or is not

1 constitutional. You don't look at a scheme and
2 decide is this more constitutional than another
3 scheme or another scheme or another scheme. It
4 either is or it is not constitutional.

5 At that point, at the determination that it
6 does not meet constitutional standards, then the
7 Court, we would urge, should enjoin the state, after
8 a reasonable period of time, from operating this
9 unconstitutional system and for the Legislature to
10 come up with a constitutional system, retain
11 jurisdiction, and determine if whatever scheme or
12 plan the state then redevelops, does it meet
13 constitutional standards.

14 THE COURT: And the test that you would
15 urge on me is, to decide constitutionality is --

16 MR. GRAY: The test that we urge on you is
17 that does this current scheme provide equal
18 educational opportunity for all children in this
19 state irrespective of varying local economic factors,
20 is test one.

21 Test two we urge on you is the education that
22 is a state responsibility and mandated by this state,
23 are the taxpayers in this state paying the same tax
24 rate for the same service no matter where those
25 taxpayers happen to be located, i.e., does Rick Gray

1 pay the same tax rate for the same educational
2 opportunity for my children if I live in Austin or
3 Eanes or Highland Park or Socorro school districts.
4 That's my taxation claim.

5 And our third standard that we urge on the
6 Court is the straight out of Article VII, which is,
7 is the state providing an adequate education for
8 today's children in this high tech society and high
9 tech world?

10 The state is obviously taking the position that
11 if we provide 2,400, that's that. And we're taking
12 the position, one, we don't agree that 2,400 is
13 adequate. But even if it is, when you have the kind
14 of disparities that the numbers on their face show --
15 and no one can get around the numbers -- you have
16 this giant gulf in spending out there. And you have
17 the giant gulf in ability to raise the money to spend
18 out there because of the tax base.

19 And quite simply, we don't think they can ever
20 get by an equal protection case. But that's where we
21 are. We are on -- no matter what basis, we obviously
22 say that education is fundamental. It's a
23 fundamental right under the State Constitution and as
24 such, it has got to be viewed with strict scrutiny,
25 which means that it's got to be shown a compelling

1 state need to allow the disparities that exist. And
2 we don't think that can be shown.

3 Two, if for some reason the Court decides no,
4 education is not a fundamental interest in this
5 state, you still have to -- the state has got to come
6 forward and show a rational basis, some rational
7 reason that justifies this gulf in expenditures, and
8 gulf in ability to raise and spend money on
9 education, and that justifies this gulf in what
10 taxpayers have to pay out there.

11 And we don't think, even if they're viewed at
12 the lesser standard, that they've got a rational
13 basis, much less the compelling state need, that they
14 can meet that.

15 So what we're urging upon the Court --

16 THE COURT: Okay. Stop right there.

17 MR. GRAY: Sure.

18 THE COURT: You would say that that's the
19 state's burden to come forward with the rationality
20 of the current system?

21 MR. GRAY: Yes, sir, on the lesser
22 standard. I think -- really the burden I think they
23 have is to come forward and convince this Court that
24 there's some compelling state need out there that
25 justifies this gulf in expenditures. And I think

1 it's poppycock to think they can ever do that, but I
2 think that's what their burden is.

3 I think we have put it in issue, and we're
4 prepared to go witness after witness to hammer home
5 just how bad this system is.

6 But I think the state has the burden to come
7 forward and show that there's some compelling state
8 interest that justifies kids that happen to live in a
9 property wealthy area getting a lot of educational
10 opportunity and kids that live in a property poor
11 area get had, you know. If the state has a reason
12 that can justify that where you happen to live means
13 what kind of education you get, they've got to show
14 it.

15 But that's the burden -- the burden, in my
16 opinion, has now shifted. We're still putting on,
17 you know, have witnesses that will come forward with
18 all of this, you know, the gulf of disparities. And
19 frankly, our witnesses, as you look at the weighted
20 student concept, the students with handicaps, special
21 needs, and bilingual, that they cost more to educate.
22 When you start calculating that in, the gulf doesn't
23 get smaller, it gets wider. And that's what some of
24 our later witnesses are going to be able to show the
25 Court.

1 But at this point, I, at least, maintain that
2 we have shown the Court just how big this gulf is,
3 both on a kid basis and on a taxpayer basis, that
4 they've got to come forward and show that there's
5 some compelling need to justify this. And if they
6 can do it, then we've got problems. If they can't do
7 it, I think they've got problems.

8 And at that point in time, if they can't do it,
9 the system falls, then the Legislature has got to
10 come up with a system or the Court has got to impose
11 a system. And we would -- have always urged that we
12 ought to give this Legislature one more shot at
13 coming up with a fair system.

14 MR. O'HANLON: If I can respond on why it's
15 important that we talk about remedy, because it's
16 precisely what Mr. Gray is saying, if you define the
17 game according to his rules, you can't win. Here is
18 why.

19 Article VII, Section 3, says ad valorem tax by
20 district, constitutional limitation.

21 Article VIII, Section 1, says no statewide ad
22 valorem taxes.

23 We have a state in which, due to an act of God,
24 essentially, and certain developers, I suppose, we
25 have a variation in the state of wealth between

1 21,000 per ADA and 14 million.

2 Now, what we're attempting to show is that
3 given the constitutional constraints, we can't do a
4 whole lot better. And here is why.

5 I can stop this district out here spending \$14
6 million from spending more money than the low end of
7 the spectrum, but I've got to take money away from
8 them. I've got to literally go out and take money
9 that they are constitutionally entitled to collect
10 away from them, or I can say you can't raise any more
11 than \$1,000.00. I don't have to take money away from
12 them to actually make them write me a check, but I
13 can say you can't spend any more than \$2,400.00. But
14 then we run into the taxpayers.

15 See, if I tell this \$14 million district out
16 here that you can't raise any more than \$2,400.00 for
17 basic program, then I have given them an .009 cent
18 tax rate. I've ordered that tax rate. So, you can't
19 they're arguing taxpayer and student and you can't do
20 it. You can't balance those interests. If you allow
21 them to set the test, there can't be a constitutional
22 system unless the state collects all of the money and
23 disperses it. But we can't do that, ad valorem tax,
24 we can't go take over the ability of the district to
25 do ad valorem tax because we're specifically

1 constitutionally prohibited by Article VIII, Section
2 1(e) from doing that.

3 So, if I balance the students here, I've given
4 some taxpayers an incredible low amount of taxes. So
5 you can't do it.

6 And that's the rational basis and that's a
7 compelling state interest, is that you can't, given
8 the parameters that the Plaintiffs have, it's a
9 stacked game. What we're saying is, is the state,
10 given the constitutional limitation on the ability --
11 on the way the taxing system is set up in this state,
12 given the amount of money that was appropriated --
13 and this Court does not have the authority to say
14 that that appropriation is too low -- that we're
15 doing the best we can, that it's the best system that
16 could have been. And I'll see if I don't do Mr.
17 Hooker or Dr. Hooker any harm -- it's the best system
18 that could have been devised and passed by the
19 Legislature, the one we've got now.

20 And where I'm talking about remedies, and
21 that's what he said in his deposition, when I'm
22 talking about remedies, I want to look at -- I want
23 to see what their ideas are so that we can find out
24 whether they meet their definition. I can come up
25 with any set of definitions and define -- if I get

1 the definitions on the front end. It's a pure
2 sucronic dialogue. If you make a first premise
3 that's impossible to make, all the other second
4 things are going to still be unconstitutional. There
5 is no question about that.

6 If I'm limited to districts -- and we're
7 raising \$6 billion from the local districts right
8 now. To simply say in a cavalier fashion that "Well,
9 we can do away with that in the name of equalization,
10 and the state can raise that \$6 billion," is absurd.
11 And in the economic situation that we're in right
12 now, it's absolutely absurd.

13 So, we can't do that. That's impossible.

14 If we balance on the students' side, given the
15 constitutional limitations, I'm either going to have
16 to treat the taxpayers differently, or I'm going to
17 have to treat the students differently. And what the
18 state has done is they've identified a \$2,400.00
19 figure as required for basic program and they have
20 insured that every district in this state can have
21 that amount of money to provide a basic program. And
22 this gentleman's empirical research supports that.
23 All of the empirical research that we've found so far
24 has supported that.

25 And what I want to do is if -- you can't just

1 say that it's bad. Let's start off with the
2 constitutional constraints and let's see if we can't,
3 within the realm of the constitutional constraints,
4 define a better system. And that's what I'm saying,
5 is that it cannot be done and meet these gentlemen's
6 definitions of equity. You can't do it.

7 If you cut down to 20 districts, like we said,
8 like Dr. Hooker said, if you cut it down to 20
9 districts, this disparity, right here, unless you
10 limit their ability to tax or you multiply this times
11 a \$1.50 which is \$6,600.00, we could provide an
12 equalized program at the \$6,600.00 level, but unless
13 you're flowing that much state aid down on this end,
14 you're going to have to just purely say you can't
15 spend any more; you can't equalize it.

16 So that's the problem. They're defining a
17 system. And what I want to do is, I want to examine
18 these witnesses, not just this one, but every one
19 they've got on how we can do it better within the
20 constitutional parameters.

21 And then they're saying, well, that's not
22 relevant to the consideration. Of course it is. The
23 issue here is whether there is a rational basis for
24 it. Sure. And the rational basis is, is the same as
25 the compelling interest, is that we can't do any

1 better. Given the financial constraints that we're
2 operating under, which is a legitimate governmental
3 interest, given the constitutional constraints that
4 we're operating under, which obviously it's a
5 legitimate governmental interest, that we cannot do
6 any better than what we're doing right now without
7 spending a heck of a lot more money or changing the
8 Texas Constitution.

9 Now, if the Plaintiffs want to change the Texas
10 Constitution, there's a way to do that. But the
11 courts are not the way.

12 So, what we're trying to do is find out, within
13 the constitutional parameters, what can be done. And
14 that's certainly got to be relevant for a
15 determination of whether or not this can meet a
16 compelling interest test, because it's our position
17 that we cannot do much better. There's some little
18 adjustments that can be done. Certainly, there
19 always are. But on a systemic-wide basis, this is
20 about as good as we can do.

21 And this gentleman said it in his deposition.
22 And certainly, that's relevant. And certainly, what
23 would be better within these constraints has got to
24 be relevant, not to a determination of remedies.
25 That's an artificial categorization.

1 The issue here is whether we can design and
2 implement a better system, given the constraints that
3 we're operating under. And you've got to know what
4 it is. You can't say, "Well, we'll talk about that
5 later."

6 And besides, if you're talking about a
7 situation where the Court is going to tell the
8 Legislature that their entire system, the biggest
9 that the -- the single largest item in the Texas
10 budget is unconstitutional, the Plaintiffs would have
11 -- and the Legislature is going to say -- the first
12 thing they're going to say is "Why?" And the
13 Plaintiffs are arguing that, in essence, that, "Well,
14 we're not going to tell you why. We'll tell you why
15 when we order you to do something. We're not going
16 to give you any guidance because you've got to come
17 up with something. We're just going to say it's no
18 good. We're not going to tell you why it's no good.
19 We're not going to tell you what things you need to
20 do to make it constitutional. We're just going to
21 say, 'throw it out and come up with a new one.' And
22 let's have an injunction to go along with it that
23 says we can't spend any more money. We can't spend
24 any more money while this thing is being
25 unconstitutional." Can a public official disperse

1 funds pursuant to an unconstitutional statute?
2 That's an ultra vires act.

3 So let's not only give them no guidance, let's
4 go back and fight with no guidance. And in a time
5 constraint where they can't disperse any money under
6 this system that you've now held unconstitutional.
7 It's absolute chaos. That's what they're advocating,
8 it's absolute chaos. And they won't even tell us,
9 they won't even give us a notion about what might be
10 better. And they're objecting and saying that has to
11 do with remedies every time we get into how do we fix
12 it. And it's just not fair.

13 THE COURT: Okay.

14 MR. RICHARDS: Could I just add one thing,
15 Your Honor, just very briefly.

16 THE COURT: Yes.

17 MR. RICHARDS: The one thing that seems to
18 me the state assumes, which in each of their
19 arguments about the impossibility, is that there is
20 some sanctity about the current configuration of
21 school districts as local taxing authorities.

22 And keep in mind that we are dealing with a
23 state program. Education is a state function in
24 Texas and the courts have so held. It has two
25 components in terms of funding, direct state funds

1 and funds that are generated by local taxes.

2 We are saying that in both respects, it fails
3 to meet the constitutional test. One, the state's
4 funds that go in do not go in as equalized fashion as
5 they should. And if education is, indeed, a
6 fundamental interest, as we say, then that state
7 funding level has to be critically analyzed in terms
8 or whether, indeed, you could either reduce the
9 disparities carried by the taxpayer or the
10 disadvantages suffered by children.

11 The second aspect of it is I want -- just a
12 case which it seems to me states it for us in terms
13 of the districts -- keep in mind this is quoting from
14 a Court of Appeals opinion, error refused -- "School
15 districts are but subdivisions of the state
16 government organized for convenience in exercising
17 the governmental function of establishing and
18 maintaining public, free schools for the benefit of
19 the people. The school trustees are public officers
20 with powers under the control of the Legislature."

21 Now, the Legislature and part of this system
22 is, of course, the chaotic lines of the school
23 districts which does create these inorbitant
24 disparities.

25 Now when Dr. Hooker was asked were there

1 options, he did respond. One option would be the
2 Legislature would look to see could they, even
3 preserving the districts, create new taxing districts
4 based on school districts. That is an option, one
5 that is wholly within the power of the Legislature to
6 do if it chose, it's within the configuration of the
7 Constitution, and certainly is something that the
8 Court can take in mind as it looks to whether or not
9 this system does, indeed, meet a compelling interest
10 or a rational one given the chaotic nature of the
11 districts involved.

12 Thank you.

13 THE COURT: Yes, sir.

14 MR. TURNER: Your Honor, the question that
15 you asked, that precipitated, the discussion that's
16 ongoing now is whether or not it was appropriate to
17 bifurcate this trial and talk about remedies separate
18 from the constitutional issues.

19 I think it's very apparent that both sides
20 acknowledge that there are two lines of law that have
21 been followed by the state. Same states, five out of
22 16, have ruled in cases like this and say that
23 education is a fundamental right. The balance of the
24 states or at least nine of them clearly say that they
25 reject the fundamental right analysis and that the

1 rational basis test is the appropriate one to be
2 applied.

3 It's very clear, Your Honor, in all of those
4 cases where rational basis is applied, that what
5 you're looking for is a rational basis for the action
6 that the Legislature took. And it seems so clear and
7 so obvious that if you're going to analysis whether
8 the Legislature acted rationally, you must look at
9 what are the other alternatives out there that they
10 were looking at and could have looked at in making
11 their decision.

12 So to suggest that we should not talk about
13 remedies or we should limit ourselves in talking
14 about remedies clearly puts blinders on the Court and
15 it's inconsistent with the law if the Court chooses
16 to determine that the rule of law is that there must
17 be a rational basis for what the Legislature did.

18 So we submit that we can't bifurcate this
19 trial. We have to look at the options and we have to
20 test all of the witnesses on cross-examination to
21 determine their view of the options that may be out
22 there.

23 MR. DEATHERAGE: If the Court please, I
24 would like to make just a remark or two.

25 Whether or not you want to argue about

1 bifurcating remedy or not, I'm not sure we're even
2 there yet.

3 The first issue is whether or not Article VII,
4 Section 1, has been violated; that is, whether the
5 Legislature has provided suitable support and
6 maintenance for an efficient system of public
7 schools. The Court must determine whether the
8 legislation has provided suitable support for an
9 efficient system.

10 We never get to the equal protection argument
11 until we've addressed this issue. If we have
12 satisfied, if the state system satisfies Article VII,
13 Section 1, the Court never deals with equal
14 protection arguments. It doesn't deal with what kind
15 of a test to apply, bear their fundamental right
16 found, or a suspect class. To hold otherwise is to
17 say Article VII, Section 1, violates equal
18 protection, which is saying the Constitution violates
19 itself.

20 So, the first burden on the Plaintiffs is, is
21 to determine and show this Court that the Legislature
22 of this state has failed to provide a suitable system
23 for an efficient -- I mean suitable support for an
24 efficient system. The Supreme Court of this state
25 has already held that it's up to the Legislature to

1 determine what is suitable. We don't have a case of
2 first impression on what is efficient in this state.
3 What is efficient in this state is necessarily going
4 to be determined by constitutional provisions and the
5 history of those provisions.

6 Dr. Hooker seems to testify that to be
7 constitutional, to satisfy Section 7, Article VII,
8 the system must be equitable. We would disagree with
9 that, but we haven't had a chance to get to that
10 point yet.

11 So if he is going to tell the Court that the
12 system is not efficient because it is not equitable,
13 then it seems incumbent upon Dr. Hooker and the
14 Plaintiffs to tell this Court what is equitable.

15 Second, remarks of Mr. Richards. If today,
16 we've done away with the constitutional limits that
17 provide that the power to levy school taxes must be
18 expressly granted in the Constitution and cannot be
19 conferred, if we've gotten away from that, we're
20 forgetting the very reason the power to create
21 independent school districts and give them taxing
22 power in the Constitution came about as a result of
23 the City of Fort Worth versus Davis in 1882, which
24 held that the attempted power to give school
25 districts to tax was unconstitutional because it

1 wasn't expressly granted.

2 Now, we want to be here today and say that
3 somehow we can create, by educational service center
4 regions or something, and give them the power to tax
5 when the Constitution is completely silent on it.
6 That's completely misleading the Court.

7 MR. KAUFFMAN: Well, Your Honor, I hate to
8 do it, but since I started this whole thing, I
9 suppose by filing it, I wanted to share a few
10 thoughts here.

11 The Constitution in Article VII, Section 3,
12 that talks about local ad valorem taxation of course
13 doesn't list all of the districts in the state with
14 their maps. It talks about local ad valorem
15 taxation, but there used to be 5,000 districts in
16 this state not too many years ago. Now there are
17 263. It's a fairly flexible thing in how many
18 districts there are. And that is certainly within
19 the jurisdiction of the Legislature. The same
20 Legislature that passed this school finance system
21 wrote the laws that created the district lines and
22 that allows them to continue.

23 In terms of a remedy, there's a difference
24 between our coming in with a proposal of an entire
25 new school finance statute versus our coming in with

1 certain principles that any fair constitutional
2 system must meet. And we are spending a good deal of
3 time talking about that. If we have not stated it
4 with sufficient clarity, that's our fault. But we're
5 certainly developing that and let me just outline
6 what some of those are.

7 Certainly we feel that the tremendous
8 disparities between money that is spent on kids in
9 this state is unfair and unconstitutional. And any
10 constitutional system would have to greatly reduce
11 those.

12 Certainly the tremendous disparities between
13 what people in one district can buy with \$1.00 and
14 people in another district can buy with \$1.00
15 violates their equal protection rights and is not a
16 fair and uniform system of taxation. Both of those
17 things will be proved here and are things that can be
18 remedied.

19 Third, the state's system, the way it has
20 reacted to the reality as it finds it, is not
21 sufficient in that the way the state's money as it is
22 distributed is not sufficient, is not fair. But
23 secondly, the way that the state has implemented and
24 allowed to continue the districts with their various
25 taxing authorities is irrational and is unnecessary.

1 And if this Court finds basic principles such
2 as this, orders that the system is unconstitutional
3 because of the tremendous disparities in the pupil
4 expenditures, the tremendous disparities in what
5 people in different parts of this state can buy with
6 the same dollar, the tremendous irrationality of the
7 system of taxing authorities as the state has
8 designed them, then we feel that the Legislature can
9 respond to the Court's order.

10 If the Legislature does not respond meeting
11 what we consider to be the Court's standards, then we
12 will object and we will fight over them.

13 If the Legislature still does not respond, we
14 will offer what we consider to be a fair remedy,
15 after -- first of all, after seeing what the Court
16 decides the standards are; and secondly, after seeing
17 what apparently is appropriate in the state's eyes.

18 So, to say that the Court will have a
19 meaningless order if it just defines the system
20 unconstitutional is not correct. As in any other
21 case that we've seen, a court, when finding a system
22 unconstitutional, will have to set basic standards of
23 what the Court has found to be wrong and what it
24 wants to be remedied.

25 And then this Court, and I assume eventually

1 with the guidance and advice of the Supreme Court,
2 will have to look at those plans and see whether it
3 meets the standards, just like other cases.

4 This witness has already testified that within
5 the system as it is, even with the irrational
6 borders, there could be major improvements. He has
7 gone farther. He has said that with changes in the
8 revenue authorities, the way the lines are set up, an
9 even better system could be composed. He has set all
10 this within the present amount of state funding.

11 I think he was about to say, if you go farther,
12 again, if he can have the system as he wishes as to
13 meet an adequate educational opportunity for every
14 child, that could probably be done within the present
15 system. If not, additional state aid would be
16 necessary. But we're not proposing that. The
17 witness, however, can testify to it as he wishes.

18 So again, my point is -- and I'm sorry if I've
19 made too many words of it, but this Court can
20 certainly issue an enforceable order setting
21 standards for the parties in this case to respond to
22 without ordering the exact formula that is
23 appropriate.

24 MR. O'HANLON: If I can respond just real
25 briefly to one point on this consolidation issue.

1 It's kind of like a situation where there's a
2 bunch of these districts over here that are
3 Plaintiffs in this case that want to commit suicide,
4 but they can't pull the trigger. So they want you to
5 give the gun to the Legislature to shoot them for
6 them.

7 You see, because the state statutes provide
8 that the districts can consolidate if they want to,
9 that they can go out there and expand their tax base
10 by joining with their -- with other districts if they
11 want to do that, and there haven't been any that have
12 tried.

13 MR. KAUFFMAN: That is an incorrect
14 statement, nowhere close.

15 MR. O'HANLON: That's right, Edgewood did.
16 Edgewood did before they filed the Rodriguez case.

17 THE WITNESS: Orange Independent School
18 District.

19 MR. O'HANLON: And they did it, too, didn't
20 they.

21 THE WITNESS: Beaumont Independent School
22 District.

23 MR. O'HANLON: And Beaumont joined with
24 South Park, and there's been some. But there's a lot
25 of districts in here among the Plaintiffs that have

1 average daily attendances of less than 500. And
2 they're going to be the first ones to go.

3 So rather than to go over to the Legislature
4 and either try and join with another district or
5 directly go over to the Legislature and say "Take me
6 out of existence, I'm not economically feasible."
7 They want to file a lawsuit. And Mr. Richards said,
8 and Mr. Gray said, they're state agencies. So we're
9 going to sue. We've got a state agency here that's
10 going to sue the state to make the state kill them.
11 That's the argument that they're making, rather than
12 going over to the Legislature.

13 If they're going on consolidation, is that the
14 state's tolerance of these districts is somehow a
15 problem, they can do something about it, too.

16 MR. KAUFFMAN: It takes two to tango, Your
17 Honor. Both districts have to agree to consolidate.
18 If the counsel representing individual districts will
19 agree with us that any district of ours that wants to
20 consolidate with one of theirs can do it, I think we
21 can settle a lot of this.

22 MR. GRAY: I've got 55 that volunteer to
23 join Highland Park real fast. But, I mean, that is
24 the absurdity of the position he's taking.

25 MR. O'HANLON: The problem is you've got to

1 join -- the statute requires contiguous districts.
2 There's a good reason for it. You don't want
3 districts -- you don't want gerrymandered districts.
4 You've got kids that go to school, they need to be
5 contiguous.

6 So there's a methodology to do it. There's a
7 methodology to do it, and they can do it on their
8 own. They can try it under local consolidation
9 efforts or they can go directly over to the
10 Legislature and say "Look, we can't make it."

11 But why is this lawsuit to order the
12 Legislature. We're doing, by subterfuge and through
13 a court case, what they could do directly.

14 THE COURT: Yes, sir.

15 MR. R. LUNA: Your Honor, there's only one
16 issue that hasn't been addressed thus far in our
17 discussion, I think. And it's going to prove to be
18 an important one, in particular, on the remedies
19 issue.

20 The Plaintiffs, several places in their
21 petition, have asked for two things. So far, we've
22 only discussed one. They, first of all, have asked
23 the courts for an equitable system. But in addition,
24 their Third Amended Petition asks for damages,
25 damages for past violations of the State

1 Constitution.

2 Now, it would appear that whenever a party has
3 an injury, the injury is not measured by the injury,
4 but certainly by some other standard normally in
5 terms of dollars for damages. Presumably, that's
6 what they're seeking here and will ultimately bring
7 up to the Court's attention. They want dollars for
8 past damages in addition to an equitable system.

9 Now, if we're examining the second part of
10 dollars for past damages, certainly there's got to be
11 a standard by which to judge how many dollars they
12 would be entitled to under their own pleadings. The
13 only standards you could have to examine to determine
14 those number of dollars is going to be what type of
15 equitable system should have been in place at that
16 time in order to compute those damages.

17 If we have that, the Plaintiffs are obligated
18 to tell us what that system had to have been, in
19 effect, their remedy. And they are obligated to tell
20 the Court what that would have been at this time.

21 THE COURT: Okay. I don't know that I'm
22 going to make any specific requirement on the
23 Plaintiffs to come up with a plan in the liability
24 stage of the case. But I'm certainly not going to
25 limit the Defendants or limit the Defendant

1 involved in the concept. Obviously you would be
2 working for reducing the fiscal disparities and I
3 don't know how many it would take.

4 Q. Okay. But obviously, if you've got 20 districts,
5 you're going to have to have multi-county districts?

6 A. Well, there are 254 counties and 20 districts, yes,
7 sir, that is a multi-county district.

8 Q. Are you familiar with the provisions of Article VIII,
9 Section 19, of the Texas Constitution which prohibits
10 statewide uniform appraisal for ad valorem tax
11 purposes?

12 A. Yes, sir, I am, not in the sense of knowing where
13 it's cited in the law, but I know that such a thing
14 does exist.

15 Q. So, in essence, it is constitutionally mandated that
16 appraisals be done on a county-by-county basis?

17 A. By statute, yes.

18 Q. Uh-huh. And so we'd have a constitutional problem
19 even thinking about this. We would have to probably
20 repeal that constitutional amendment, wouldn't we, on
21 the way?

22 A. In my opinion, no. But I am not a constitutional
23 lawyer, so I really have no basis for comment.

24 Q. How would you make sure, without a statewide uniform
25 system, how would you make sure that the counties

1 purposes, our \$1.50 cap on maintenance and operations
2 taxes.

3 A. Which is established by statute and can be changed by
4 the Legislature.

5 Q. That's right. But let's use -- well, let's use
6 \$1.00, because it will make the math easier, right
7 now. Let's assume \$1.00 maintenance and operations
8 tax.

9 The districts over here would be able to raise
10 \$4,400.00 per ADA, right?

11 A. Unless the state was willing to equalize the
12 opportunity to raise and spend money at a \$4,400.00
13 level, it would have to set a lower tax rate.

14 Q. Okay. So, what are we going to do out here? Are we
15 just going to lower this down to some number?

16 A. To whatever the state is willing to equalize for the
17 poorest district that you create, yes.

18 Q. Okay. Let's assume we lower it down to the \$2,400.00
19 level. And in fact, to do it at the level of state
20 aid, that's essentially what we would have to do,
21 isn't it?

22 A. I'm not making that assumption without computer
23 simulations, no.

24 Q. Isn't it fair to assume -- I thought you said that
25 we're doing about as good a job as equalizing --

1 given the financial constraints, we're doing about --
2 within the levels of that program at 24, we're doing
3 about as good a job of equalizing as we can do?

4 A. I don't believe that was my testimony.

5 Q. Okay. So you would disagree with that notion?

6 A. I think that within current available state revenues,
7 we can do a more equitable job of distributing those
8 state revenues in relationship to local property
9 wealth, yes, and the needs of kids.

10 Q. Okay. So you don't think the system right now, where
11 Edgewood and Dallas at two opposite ends of the
12 spectrum, are spending more -- where Edgewood, with a
13 lower tax rate, is spending more money per child than
14 Dallas, despite their property wealth, you're not
15 satisfied with that kind of equalization. You want
16 more than that. You want to give Edgewood a higher
17 opportunity. You want them to be able to spend more
18 money than Dallas?

19 A. I thought I made clear at the end of my testimony on
20 Wednesday that I have no vested interest in any
21 school district in the state. And what I would like
22 to see is a fair and equitable system for kids and
23 for taxpayers. And I don't care who wins or who
24 loses. If Edgewood loses money in that kind of a
25 situation, so be it.

1 And in the case of Dallas, I think you'll find
2 your example does not work quite so neatly. Their
3 property wealth is higher and their tax effort is
4 lower.

5 Q. That's right. And they're getting less money per
6 child than Edgewood?

7 A. They should in a fair and equitable system.

8 Q. Well, they are; isn't that right?

9 A. In terms of state aid or in terms of state local
10 revenues available to spend, period?

11 Q. Well, let's go back.

12 A. Your example the other day, by the way, was Houston
13 and not Dallas.

14 Q. Well, we did Dallas, didn't we?

15 A. We didn't do Dallas. It didn't fit your example
16 quite as well as you liked, so you went to Houston.

17 Q. Well, there it is.

18 Isn't Dallas spending \$3,500.00 with the 53, 54
19 cent tax rate?

20 A. I believe that's what I read to you, yes.

21 Q. All right. And Edgewood is spending comparable --
22 spending a little more with just a little bit higher
23 tax rate. And Houston has got a higher tax rate and
24 still is spending less than Edgewood.

25 Now, how can you get much more equitable than

1 that?

2 MR. KAUFFMAN: Your Honor, I would object
3 to the question as -- I'm going to try to do my
4 objections a little bit more formally today.

5 It's assuming facts not in evidence. These are
6 not the numbers that line up with each other. If
7 it's 563 for Edgewood, it's 539 for Dallas, and it's
8 59/ for Houston, not 68. So knock out the 68 and put
9 .59/.

10 Secondly, these numbers here, Dr. Hooker
11 testified earlier today include federal funds which
12 he thinks shouldn't be included.

13 THE WITNESS: Correct.

14 THE COURT: Well, I'll overrule the
15 objection. The objection was it assumes facts not in
16 evidence. I'm not altogether certain that that's
17 correct.

18 MR. KAUFFMAN: Well, with regard to the
19 .597, will you go with me that far and look back in
20 the book, it's .597 in Houston.

21 MR. O'HANLON: The witness put them up
22 there. If he wants to recant his earlier testimony,
23 that's fine. I drew them, he read them to me.

24 THE COURT: I'll let you straighten that
25 out later if you want to, sir.

1 MR. KAUFFMAN: Sure.

2 BY MR. O'HANLON:

3 Q. Okay. I'll just put down here .597 to make Mr.
4 Kauffman happy.

5 It's still a higher tax rate and less money
6 than Edgewood?

7 A. Including federal funds available to be spent, yes.

8 Q. Okay. Now, that's not a whole lot of range in
9 between here, is it?

10 A. In those three districts, it's a limited range, yes.

11 Q. And in these three districts, we're talking about
12 more than -- just in these three districts, we're
13 talking about more than 10 percent of the kids in the
14 state, aren't we?

15 A. Including federal funds.

16 Q. That's right.

17 A. You're continuously seeming to want to include
18 federal funds in your equalization system.

19 Q. Well, no. What I'm asking is, is it fair to include
20 that's money that's available to the districts for
21 expenditure upon education, isn't it?

22 A. I didn't deny that it was available. I just thought
23 it was not the question before the Court.

24 Q. So we're just going to put those blinders back on and
25 not pay any attention to what the federal -- we're

1 going to ignore \$700 million for provision of
2 education to the school children in this state, we're
3 just going to ignore it because it doesn't count?

4 A. In the constitutional argument about the state local
5 system, I don't see how that it does. But I'm not a
6 constitutional lawyer. That's for somebody else to
7 decide.

8 Q. Well, as a school finance expert, are you going to go
9 over and tell the Legislature that we should ignore
10 the \$700 million in our economic times? Are you
11 going to go over and tell the Texas Legislature that
12 "Golly, guys, we're talking about the
13 constitutionality of the Texas system here and I
14 think we ought to ignore \$700 million."

15 Now is that rational to just ignore that, to
16 decide that, to just put blinders on and forget about
17 that amount of money?

18 A. Well, I would like for the system to be so equitable
19 that that could be an issue, but we haven't reached
20 that point yet.

21 Q. So we can't, can we? We can't ignore \$700 million.
22 We can't afford to ignore \$700 million in this state,
23 can we?

24 A. I am not a constitutional lawyer. But in my lay
25 opinion, the federal money has to be ignored in this

1 case.

2 Q. Oh, even though that constitutes -- even though
3 there's a lot of that money that's being spent on
4 Comp. Ed., it's being spent on the state kids, isn't
5 it?

6 A. Potentially, maybe spent on different kids.

7 Q. Well, there's not any kids that are getting
8 exclusively federal money, are they, that we're going
9 to forget --

10 A. Without state and local money, no.

11 Q. Okay. So it's spent on this same \$3 million
12 population, isn't it? I mean 3,000,000 kid
13 population. We're not forgetting anybody, are we?

14 A. No. I think 3,000,000 is about all we have.

15 Q. Okay. And this money, this \$700 million, is
16 dispersed throughout the system, you would concede in
17 a manner, would you not, that is probably
18 disproportionately favorable to the poorer districts
19 or would you?

20 A. My assumption would be that it is. But you indicated
21 to me the other day that you were going to introduce
22 into evidence that it's not. So, I don't know what
23 to believe without seeing the data.

24 Q. How about disproportionately favorable to the poorer
25 kids. That's what Chapter 1, money, and that's what

1 Chapter 1 migrant money goes to, isn't it?

2 A. That's what free and reduced priced lunch is about.
3 Bilingual doesn't have poor associated with it, but
4 purely free and reduced price lunch Comp. Ed. does.

5 Q. Okay. In fact, it mirrors some of the state's
6 components, doesn't it? The state picks up a lot of
7 the same kinds of components that the federal
8 government does?

9 A. In terms of special populations that are recognized
10 as higher costs, yes.

11 Q. Do you think it's rational for the state to say for --
12 let's say, a Comp. Ed. child, when it's set in the
13 budget, to say -- to take into account that the
14 federal government is going to give a district
15 \$200.00 or \$300.00 extra dollars for additional
16 services for a child? Do you think that's a rational
17 legislative budgetary decision to take into account
18 alternative funding sources?

19 A. If the system were truly equitable in terms of state
20 and local revenues and expenditures, I could agree
21 with you. But since it is grossly inequitable in
22 terms of state and local revenues, I still don't see
23 how that's an issue in this case.

24 Q. No, I'm asking you whether it's rational, whether a
25 rational legislator would think about \$700 million

1 and how it is dispersed throughout the state and come
2 into a budgetary determination, or they would simply
3 ignore it?

4 A. Well, we don't systematically take it into
5 consideration in building our state formulas, so I
6 guess that the Legislature has chosen not to
7 rationally consider it. I don't know. I haven't
8 discussed that issue with them.

9 Q. What would you do? Would you just kind of take a
10 little peek and say, "Hey, this is where the federal
11 government is sending its money"?

12 A. What I would do is create a system that's equitable
13 for kids and equitable for taxpayers and, yes, I
14 would give consideration to federal revenues as it
15 interacted with the state and local system --

16 Q. Okay.

17 A. -- to the extent that the federal government would
18 let me.

19 Q. Okay. So you think it's rational to take that into
20 account?

21 A. Only in the limited perspective of a school finance
22 person who is dealing with an already truly equalized
23 state local revenue system, yes.

24 Q. Now, let's go back to the super districts.

25 Now, in a super district, how are we going to

1 account for this, for the difference in wealth here?

2 A. The power equalization scheme of some kind.

3 Q. Power equalization requires that we take money away
4 from the district, doesn't it?

5 A. Well, in the purest sense of the word, yes. But it's
6 commonly thrown around in relationship to guaranteed
7 tax base yields kind of concepts and recapture is
8 seldom a part of the discussion.

9 Q. Okay. So we can say -- how are we going -- I mean,
10 let's assume we can lower the rate then --

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

12 Q. -- to such where the state can make up the
13 difference, right? And we can say that at the
14 \$2,400.00 level, we're going to allow you 90 -- let's
15 say a 50 cent tax rate. No, I guess we would have to
16 be looking over here, wouldn't we?

17 A. At what the state is willing to equalize, yes.

18 Q. Okay. Let's say a 50 cent tax rate. That would be
19 \$2,200.00. That would get us in the ball park for
20 discussion. And the state is willing to equalize
21 that.

22 Now, we do that, don't we? We provide that
23 \$2,400.00 in Texas?

24 A. Well, if you're going to limit the tax rate to 50
25 cents, the answer is, yes, we do to that level, yes.

1 Q. Okay. But actually it's going to be something -- to
2 get 24, it's going to be something like that 52,
3 that's statewide average?

4 A. Yes.

5 Q. Okay. And it's going to yield \$2,400.00?

6 A. Yes.

7 Q. So, in essence, we've made everything equal, haven't
8 we?

9 A. No, sir.

10 Q. Why not?

11 A. Because we have only equalized the opportunity to
12 raise and spend in your construction, not mine --
13 including equalization aid is regular basic program
14 allotment -- the opportunity to raise and spend
15 \$2,400.00, while other school districts of greater
16 wealth have the opportunity to spend a lot more money
17 for less tax effort.

18 Q. Even in the super districts, that happens, doesn't
19 it?

20 A. The super districts could be created so that that
21 doesn't happen. The super districts could be created
22 so that their tax bases are, in fact, equal.

23 Q. Who are you going to put West Texas with?

24 A. I am talking about a conceptual framework only. I
25 have not worked out the secret plan which you keep

1 accusing me of.

2 Q. Okay. So the secret plan remains a secret at this
3 point?

4 A. There is no secret plan that I am aware of, unless
5 the Plaintiffs' attorneys are denying me access to
6 some information.

7 Q. Okay.

8 A. They felt that that wasn't their obligation at this
9 point in the litigation.

10 Q. Okay. But let's assume -- even here, we've got a
11 problem, don't we, because of just the gross
12 disparity in income that can't be -- if we're going
13 to make the districts regularly contiguous, we're
14 going to have a problem, aren't we?

15 A. It's according to how you fund the districts. And
16 all I'm saying is that conceptually, that's an option
17 which is available. That's certainly not an option
18 which I am standing here before the Court and
19 strongly advocating. I'm simply saying that
20 conceptually, it's an option.

21 Q. Okay. Now, one of the problems that we've got here
22 is that if you allow a disparity in income -- I mean
23 in property wealth -- then any time you rely on that
24 local property tax base, you're going to have a
25 problem, right?

1 A. If it's a reasonable range that the state can
2 equalize, no. If it is an unreasonable range that
3 the state is unwilling to equalize, then yes.

4 Q. Okay. Let's see if we can't conceptualize this again
5 one other way.

6 Let's assume that we've got an average wealth
7 of \$250,000.00 in the state. That's about right,
8 isn't it?

9 A. It's close enough for government work.

10 Q. Okay. And what the state's system does, in essence,
11 is equalizes up to this average wealth, doesn't it?
12 Doesn't it, in essence, guarantee this yield?

13 A. To the limit of how far the Foundation School Program
14 currently goes, yes.

15 Q. And that, in essence, is this level, isn't it, about
16 the state average wealth? That was the design of the
17 system, isn't it?

18 A. The design of the system was to try to get to that
19 level, yes.

20 Q. Okay. Any time you've got -- so up to the point, in
21 essence, the state system has guaranteed every
22 district in this state the ability to raise taxes,
23 that's essentially average wealth?

24 A. For the Foundation School Program.

25 Q. Okay.

1 A. As far as it goes.

2 Q. Okay. So there's really nobody below this line for
3 the Foundation School Program. Everybody is at the
4 average.

5 A. In your equalized framework of being able to raise
6 and spend \$2,400.0 a kid on a regular program,
7 including equalization enrichment.

8 Q. So then everybody at that program is, in essence, got
9 an average tax wealth; is that right?

10 MR. KAUFFMAN: I would, again, object to
11 the form of the question in that it assumes facts not
12 in evidence. I think Dr. Hooker is talking about the
13 facilities at an earlier time and has always said
14 that that has to be included. In fact, Mr.
15 O'Hanlon's first example today did include a number
16 for facilities.

17 THE COURT: Well, I'll overrule.

18 BY MR. O'HANLON:

19 Q. We've guaranteed everybody to have the average wealth
20 in the state for maintenance and operations for the
21 basic program?

22 A. Yes, sir. As it is defined in law, yes, sir.

23 Q. Okay. Now, conceptually, the notion of an average
24 means that there's districts down here and then
25 there's districts up here.

1 A. Yes, sir.

2 Q. Okay. Now, for districts that have a higher than
3 average wealth up here, we could level them by any
4 number. We can take tax money away from them or we
5 can preclude them from raising additional taxes,
6 right? That will bring us back to equalization.

7 A. According to your statement, you couldn't take money
8 away from them, but you could reduce their capacity
9 to raise revenue, yes.

10 Q. Okay. And when we reduce their capacity to raise
11 revenue by saying that you cannot raise more than
12 \$2,400.00 per child, if we're going to bring them
13 back to this state average?

14 A. For regular education, yes.

15 Q. Okay. Now, to do that, if they are fortunate enough
16 to have higher wealth, the methodology we're going to
17 do is to cap spending, which would lock in a
18 theoretically very small tax rate in some of these
19 districts, right?

20 A. It would if that's the methodology that was employed.

21 Q. Okay.

22 A. That is not the methodology that I was discussing.

23 Q. Okay. But we'll talk about various methodologies in
24 a minute here.

25 This methodology, while it equalizes spending,

1 locks in differential treatment of taxpayers, doesn't
2 it?

3 A. For a small number of taxpayers, yes.

4 Q. It assures, it guarantees unequal taxation, doesn't
5 it?

6 A. I would think that Exxon would enjoy that
7 opportunity.

8 Q. Okay. And to a large extent, that is what would
9 happen out in these West Texas districts. You would
10 create a bonanza for the big oil and gas holders out
11 there, wouldn't you?

12 A. Well, in the sense that you would force a reduction
13 in their local tax effort, yes.

14 Q. Okay. Now, if we did it on the other side, now, what
15 other ways can we, to guarantee equity, we could stop --
16 if we stopped spending here, for example, if we say --
17 if we do this, okay, if we tell these districts out
18 here that they can't spend any more than \$2,400.00
19 dollars, it makes things equal, but does it do any
20 good for the people down here that are yielding
21 \$2,400.00, that have below tax effort?

22 A. It's according to how you define good. If you define
23 good as to mean that every child is just as important
24 to the state system of public education as every
25 other child, that makes it good.

1 If you're saying that that automatically shifts
2 money, certainly it does not.

3 Q. Okay. So what we're doing is, is in the name of
4 leveling or equalization, we're simply saying "You
5 can't spend any more money." That makes things more
6 equal, but it doesn't give a dime more for the less
7 than average property tax districts, does it? It
8 doesn't give them any money at all?

9 A. Not unless you institute recapture, no.

10 Q. And recapture is the notion where you tell this
11 district that it must raise a certain amount of
12 taxes?

13 A. Either that or give them the option and they only get
14 to keep "X" percent of what they, in fact, raise,
15 yes.

16 Q. Now human nature is such that they're not going to
17 raise a bunch of taxes just to send them down to
18 Austin, are they?

19 A. The answer is I don't know. It's according to how
20 much they care about their kids.

21 Q. Okay.

22 A. And who the non-resident major payer is.

23 Q. Okay. All right. Let me ask you this: If they're
24 going to raise -- if I tell this district here that
25 anything that you raise over this \$2,400.00 level,

1 that you're going to send it all to Austin, you don't
2 expect anybody to do that, right?

3 A. I certainly wouldn't.

4 Q. Okay. So what you end up saying is that "We'll let
5 you keep some of it if you send a bunch of it to
6 Austin." You've got to do that, don't you?

7 A. That is one conceptual framework that could be
8 employed, yes.

9 Q. But even then, you're going to get disequities
10 because of the differential ability, aren't you?

11 A. It's according to how you design the system, but if
12 you leave the current tax bases in their existing
13 form, yes.

14 Q. Okay. So, let's assume these districts want to spend
15 more, you're not going to do anything. If you allow
16 them -- even if they send some of it to Austin,
17 you're still going to create a situation where
18 there's a high level of differential spending, aren't
19 you?

20 A. It just depends on the framework that you establish.

21 Q. And that's the only way that the state could --
22 that's the only way that the state -- the people down
23 here would make any money at all. If this is the
24 average line, this is the mean. The only way that it
25 does any good is if the state allows a certain amount

1 of differential here, disequity in order to recapture
2 some of the money that they can send down to the poor
3 districts?

4 A. Yes, and in the alternative, they could restructure
5 the tax base of the district where they were more
6 equal --

7 Q. So --

8 A. -- which is the proposition which I first stated.

9 Q. Well, that's a proposition that you were not willing
10 to make concrete?

11 A. Well, I was just talking about a conceptual
12 alternative which would be available to the Court if
13 it wished to pursue it.

14 Q. You think the Court could order more people to have
15 oil wells and, thereby, increase the property taxes
16 wealth?

17 A. No. But I think the Court can order the state school
18 finance system to be more equitable. California did
19 it.

20 Q. California did it in an interesting way. They made,
21 in essence, everything a state tax, didn't they?
22 They made the whole system state operative?

23 A. I am not an expert on the California system, but I
24 thought they had local ad valorem taxes.

25 Q. At a set rate, don't they?

1 A. Well, it's still an ad valorem tax at the local
2 level, whether the state established a rate or not.

3 Q. If the state sets a rate, it kind of changes the
4 nature of the game, doesn't it?

5 A. Well, in my opinion, there are only state taxes,
6 whatever we choose to call them.

7 Q. Okay. Now, what I'm saying here is in order to
8 create more money going to the low end of the
9 spectrum, we're going to have to tolerate
10 differential spending, aren't we, if we're going to
11 allow these districts to raise additional funds?
12 We've got to provide an incentive for them, that is,
13 you get to keep some of it, in order to convince them
14 that it's in their best interest to send some money
15 down to Austin to help the rest of the kids in the
16 state?

17 A. You keep changing the name of the game. You continue
18 to assume that the current taxing jurisdiction stay
19 like they are. And the fundamental proposition which
20 I stated to the Court was that it's possible to
21 restructure those taxing jurisdictions to make them
22 more balanced in terms of wealth per student.

23 Q. Okay. So, in essence, that's what we're going to
24 have to do here in order -- that's the only way we
25 can get an equal system, isn't it, is to just

1 first. I believe this is where you were.

2 THE WITNESS: Yeah.

3 MR. O'HANLON: I'll correct that
4 deficiency, Your Honor.

5 THE WITNESS: I was not trying to get the
6 Court to place any creditability in the numbers. All
7 I was trying to do was communicate a concept.

8 THE COURT: Yes.

9 THE WITNESS: And the concept being that
10 you have school districts that have a wealth range
11 from 21,000 to over 14 million. And that there is,
12 as far as I can tell, nothing sacred about school
13 district boundaries, particularly in terms of
14 creating a taxing jurisdiction. And that the state
15 could, in fact, create different taxing jurisdictions
16 than the ones that now exist.

17 And I'm simply saying that a conceptual
18 alternative available to the Court would be the
19 restructuring of the taxing jurisdictions to reduce
20 the disparities.

21 Now, it's one to 700. Obviously, the lower you
22 reduce the disparities, the more opportunity you have
23 to create an equitable finance system. And I just
24 pulled this number and this number out in terms of
25 you could reduce the range from one to 700 to one to

1 five or so, simply by looking at what the existing
2 regions have.

3 I am not proposing the existing regions. I am
4 simply saying that the problem of one to five is a
5 lot easier to deal with in creating equalization than
6 one to 700, but that's the --

7 MR. GRAY: Show the Judge the map of the
8 existing regions.

9 THE COURT: Okay, maybe I misunderstood. I
10 understand what you've just said there. I thought
11 that was a second idea that you were talking about.

12 THE WITNESS: No, sir.

13 THE COURT: Maybe there was not a first one
14 that was different from what you've just talked
15 about. I understand what you've just been talking
16 about.

17 THE WITNESS: That was the only one that I
18 presented to that point.

19 THE COURT: Okay.

20 THE WITNESS: Those are the existing
21 regional districts.

22 BY MR. O'HANLON:

23 Q. Well, just to get an idea of scale here, one, two,
24 three, four, five, six, one, two, three, four, five.
25 Now, Region 16, if you're going to create these super

1 school districts, Dr. Hooker, Region 16 --

2 A. Not the school districts, taxing jurisdictions.

3 Q. All right. And you're saying that you can do that,
4 despite the admonition in Article VII, Section 3?

5 A. You all are the constitutional lawyers. You all
6 argue about that.

7 All I said is this is a conceptual idea from a
8 finance perspective.

9 Q. This Region 16, for example, is approximately 180
10 miles by 150. That's a big old school district,
11 isn't it, if it was a school district?

12 A. Again, we're talking about taxing jurisdictions and
13 not school districts. But it is certainly a large
14 district. Texas is a large state.

15 Q. Okay. You think if it had to be a school district,
16 do you think that would be a school district that
17 could be manageable?

18 A. I am not advocating that you reorganize the
19 administrative and government units to create that
20 kind of a school district.

21 On the other hand, if we can manage the whole
22 state by the Texas Education Agency, in a manner of
23 speaking, I suppose you could create a school
24 district of that size which it would, in fact, be
25 manageable by breaking it into smaller units for

1 administrative purposes.

2 Q. All right. Let me ask you to assume something with
3 me. I'm going to ask you to assume that the
4 Constitution requires a choice and the Constitution
5 requires the Legislature shall be authorized to pass
6 for the assessment and collections of taxes in all
7 said districts. Okay, that you create these
8 districts and that of the constitutional necessity,
9 that that has to be a school district, okay?

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

11 Q. Now, is that school district that is approximately --
12 I don't know, 20,000 square miles -- is that a school
13 district that you could run in the real world?

14 A. The TEA does a pretty good job of running the state.

15 Q. The TEA doesn't run the school district, does it?

16 A. No, but it governs from a central location 1,063
17 districts.

18 Q. That's right.

19 A. It sets the accreditation standards. It distributes
20 the state revenues. It sets all sorts of parameters
21 within which local school districts operate.

22 Q. That's right. You're not really talking about
23 setting up another school district. You're talking
24 about setting up a mini Texas Education Agency in
25 each one of these regions, aren't you?

- 1 A. No, sir, I'm not. You are.
- 2 Q. Now, can you run a school -- let's assume that the
3 Constitution requires you to create a school
4 district?
- 5 A. That's your assumption.
- 6 Q. I know it's my assumption.
- 7 A. I'm not making any assumptions.
- 8 Q. I'm asking you, assuming that to be correct, could
9 you run a school district that was that size?
- 10 A. Your assumption, my response is, yes, you could.
- 11 Q. Okay. That's fine.
- 12 All right. Let's go up -- what's your next
13 proposal?
- 14 A. I wouldn't want to do that, but you could.
- 15 Q. Why not?
- 16 A. What?
- 17 Q. Why not?
- 18 A. I just wouldn't want to do that.
- 19 Q. Because you --
- 20 A. I don't think it's necessary.
- 21 Q. Because you couldn't adjust to the local
22 circumstances that existed in each individual
23 community, could you?
- 24 A. Sure you could. Houston ISD does it and they have
25 233 campuses. Their communities are as different as

1 daylight and dark.

2 Q. They're as different as the difference between what's
3 going on in Dallas County and what's going on in
4 Childress?

5 A. I'm sure they are.

6 Q. Okay. All right. What's your next proposal?

7 A. The current structures which exist in law have us
8 creating a basic allotment by statute. And the
9 generally accepted premise is that this is the cost
10 of regular education for current operations. That
11 number could be established at what somebody
12 determines to be an adequate number in terms of the
13 '85-'86 school year in question, somewhere in that
14 ball park.

15 Skipping this year and going over to -- excuse
16 me, '86-'87 and -- well, we don't want to skip that,
17 '87 to '88, '88 to '89 -- the quality number, not the
18 standard number, would be approximately \$2,600.00 and
19 all of the leadership of the education organizations
20 in the school finance symposium unequivocally
21 endorsed that and recommended it to the State Board
22 of Education without dissent, saying that that at a
23 minimum, since our definition of quality was doing
24 well on a minimum scales test, that hardly can be
25 equated to quality education.

1 So, you could set the basic allotment where it
2 somebody thinks it belonged in terms of the
3 opportunity physically to create a quality
4 educational opportunity, you could adjust a PDI -- I
5 don't know what one would have to do to that, but the
6 Price Differential Index Committee made some
7 recommendations in relationship to it. The
8 small/sparse formulas, according to the Senate passed
9 bill and the recommendations of the Ad Hoc Advisory
10 Committee in establishing the formulas that were
11 represented in that bill are underfunded and they
12 would need to be made adequate.

13 We have been through two weighting studies
14 since the implementation of the law and most of those
15 weights are shown to be inadequate in terms of
16 reflecting appropriately the special cost of the
17 special programs for special kids versus regular
18 education. So those could be adjusted based on that
19 research.

20 And the transportation formulas, which we did
21 not do any research on, but which the current rates
22 approximately 60 percent fund current operations and
23 do nothing about the bus replacement matter, would
24 have to be adjusted upward to reflect true and actual
25 necessary costs in the transportation and school

1 districts including bus replacement.

2 We would get down to a bottom line as a result
3 of this of a total Foundation School Program cost in
4 the state.

5 We would then subtract whatever available
6 school fund revenues were paid to local school
7 districts. And I'm not sure I agree with your
8 earlier contentions about the necessity of
9 distributing it the way that we do, but we can talk
10 about that later.

11 Q. All right. Go on.

12 A. And the local fund assignment, the local school
13 districts fair share of the costs, and come up with a
14 state obligation, okay?

15 Q. Okay. Let's just take something here. Let's take
16 that \$2,400.00 and let's multiply it times 3,000,000,
17 and what do you get?

18 MR. KAUFFMAN: Your Honor, if I may, I'm
19 objecting, I guess, to the form in that I don't think
20 Dr. Hooker is through with his example. If he is,
21 fine. If not, I think if he could complete it, and
22 then go through cross-examination, it would be
23 clearer for all of us.

24 THE COURT: Okay.

25 THE WITNESS: I'm not through.

1 MR. KAUFFMAN: If he could continue before
2 the cross-examination.

3 MR. O'HANLON: That's fine. I don't care.

4 A. This would create the state's obligation to support
5 what educators are willing to say is a minimum
6 attempt to address a fiscal opportunity to create
7 quality. And it would include all of the aspects of
8 current operations.

9 Q. Uh-huh.

10 A. In addition to that, because of the inability of the
11 state through biennial appropriations processes and
12 so forth to absolutely ensure it's current because of
13 the research methodologies it involved, there needs
14 to be created, in my opinion, a 15 percent
15 opportunity in a power-equalized system or a
16 guaranteed tax base yield system to raise and spend
17 15 percent above the level of what we have determined
18 through the formulas structures to give opportunities
19 for both local choice and to make up disparities
20 which exist in the formula structure.

21 Then a facilities component which, at a
22 minimum, creates the opportunity, again, in a
23 guaranteed tax base yield system, to equalize the
24 opportunity in current cost terms to raise and spend
25 at least \$300.00 per student.

1 All of these components would be put together,
2 and that would reflect the total cost of the fiscal
3 opportunity to provide a quality educational
4 opportunity. Obviously, there is state costs
5 associated with this and there are some state costs
6 that are associated with this.

7 Then this would create the state's Foundation
8 School Program, total Foundation School Program
9 obligation, okay?

10 Then the state could decide how much of the
11 fiscal opportunity to create quality they're willing
12 to support.

13 And let's just say, for example, that they are
14 willing to support a program level which leaves them
15 short a billion dollars.

16 Q. Let's assume \$5 billion. I think that's where we're
17 going to get.

18 A. I'm just giving an example of how it works. I'm not
19 trying to argue numbers.

20 A million dollars short, okay? The state
21 admits, we know what quality education costs and we
22 know what it costs in terms of the current
23 operations, including transportation, bus
24 replacement, facilities. And we know that there
25 ought to be some opportunity for enrichment above

1 whatever program structures we established. And
2 we're just not willing to raise the taxes that's
3 necessary to support the state's end of this thing.
4 So we're going to shift the obligation, not
5 necessarily require, but shift the obligation to
6 local school districts to raise this billion dollars.
7 Assuming, again, a tax base of \$700 billion,
8 approximately, for government work. We can mark out
9 nine zeros and make our map a little easier. And
10 because we tax in units of a hundred, we can divide
11 seven into one to determine the effective tax rate in
12 every school district that would be necessary to
13 generate on a statewide basis the billion bucks.
14 Seven into ten -- what?

15 MR. KAUFFMAN: 14, 15 cents.

- 16 A. Okay. Rounding, we're dealing with the opportunity
17 here. The state's refusal to do this creates a
18 shortfall, if it is to be made up by local school
19 districts on a statewide basis that the same tax
20 effort, 14 cents of tax effort.
- 21 Q. For every billion dollars short?
- 22 A. For every billion dollars shortfall.
- 23 Q. Would you agree with the notion that a billion
24 dollars here and a billion dollars there, pretty soon
25 that adds up to real money?

1 A. It certainly does, even though we are one of the
2 least taxed states in the nation, one of six without
3 a state income tax.

4 Q. We're not constitutionally required to impose a state
5 income tax, are we?

6 A. I didn't say anything about that. I just pointed
7 that out.

8 Q. Okay.

9 A. I got out the wrong piece of paper. In fact, I may
10 not have the right piece of paper.

11 I took a district, Poteet, to be exact -- which
12 on one distribution fell at the 5th percentile of the
13 number of pupils that are involved -- and looked in
14 Bench Marks to find their tax base.

15 Poteet at the 5th percentile has a \$54,921.00
16 tax base last year.

17 Dallas at the 95th percentile, a \$443,998.00
18 stuck on the end there.

19 We're going to have to go to units of a
20 hundred, so we round this off and we round off here,
21 which would create a zero here and a four here. And
22 we multiply the tax rate and we wind up with \$77.00
23 here and in Dallas, \$622.00 rounding and so forth.

24 So, the tax rate that would be required if they
25 made up the shortfall on an effective tax rate

1 proration system, would, in fact, cause the state to
2 reduce its obligation to Poteet at the rate of \$77.00
3 and to Dallas at the rate of \$622.00. 14 cents in
4 both districts would make up the shortfall. Okay?

5 Q. Okay. And that's for every billion dollars we're
6 short?

7 A. That's for every billion dollars you're short.

8 And if you're going to point out that we would
9 be several billion dollars short if you put all of
10 these formulas in place, the point is, that just
11 shows you how grossly inequitable the system is,
12 because by underfunding the fiscal opportunity to
13 create a quality educational system in every school
14 district, you have forced these people into the
15 situation where they simply cannot raise the money,
16 unless you're going to put it on an effective tax
17 rate basis. This would not make the system purely
18 equitable, but it would certainly move giant steps in
19 the directions of creating greater equity.

20 Q. Okay. Now, are you done?

21 A. I'm done with this example.

22 THE COURT: Wait just a minute. It's
23 noontime. You can refuel yourself and rest yourself,
24 Mr. O'Hanlon.

25 THE WITNESS: Shucks, that will make him

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fresher, too.

THE COURT: We'll be back downstairs at
2:00. See you all at that time.

(Lunch recess.)

AFTERNOON SESSION

CROSS EXAMINATION (RESUMED)

1
2
3 BY MR. O'HANLON:

4 Q. This is where we left off at lunch. And what I want
5 to do with you, Dr. Hooker, is let's see if we can't
6 tote out this new system here and see how much --
7 what kind of money we're going to be talking about
8 here, okay?

9 A. (Witness shrugged shoulders.)

10 Q. Now, to start off with, I suppose we need to set what
11 the basic allotment ought to be?

12 A. Correct.

13 Q. And you say -- I guess let's talk about -- can't do
14 much about '85-'86, that's already gone. I guess we
15 ought to be talking about '86-'87?

16 A. If we're talking about opportunity to put the system
17 in, yes.

18 Q. Okay. And you say that the basic allotment ought to
19 be \$2,600.00?

20 A. I testified that that was my opinion if the state
21 wished to fund any fiscal opportunity for equality,
22 which was agreed to by the leaders of most of the
23 statewide education organizations, if not all of
24 them.

25 Q. Well, now, that's kind of the low ball, isn't it,

- 1 wasn't it 27 -- \$2,725?
- 2 A. \$2,725 was before discounting for price differential
3 index, small sparse.
- 4 Q. Okay. So we'll start off with the \$2,600.00 basic
5 allotment, okay? Now, how do we figure price
6 differential index into that amount?
- 7 A. Well, Mr. Moak figured it into the tables in the APAC
8 Committee. In that year, I think he figured it at
9 somewhere in the neighborhood of \$350.00.
- 10 Q. How about \$432.00?
- 11 A. Without seeing his report, I couldn't say "yes" or
12 "no."
- 13 Q. Okay. I've got both the percentage and the dollar
14 figure, do you want to look at this accountable cost
15 and give me that number? That relates back to the --
16 that 432 is a multiple. Now, we've got to up that
17 for changing from 24 to 2,600, too, don't we?
- 18 A. Well, I think that the only thing that changes that
19 to 26 is -- in his table is not discounting for
20 equalization aid.
- 21 Q. I'll put a red circle around that because that's the
22 number we're focusing on right now, 26.
- 23 A. The number in his table for combination of PDI and
24 small sparse is 351.
- 25 Q. Okay. And small and sparse, right, that's both of

1 them?

2 A. What, sir?

3 Q. 351 is both PDI and small sparse?

4 A. Yes, sir, that's the way he ran it.

5 Q. Okay. So right here, we're at 2,951 subtotal so far?

6 A. Well, if you want to go back and do the things that
7 we did, there are other kinds of factors in terms of
8 -- well, I guess they are essentially plowed in. Go
9 ahead.

10 Q. Okay. Now, we went back over lunch and calculated
11 what the weights are, what the accumulated weights
12 are in the state right now and got a figure of 17
13 percent add on. Does that sound about right to you?

14 A. Without doing it myself, I'll be glad to accept your
15 numbers --

16 Q. Okay.

17 A. -- but I can't testify to that.

18 Q. Okay. Now, you said that the weights ought to be
19 increased, didn't you?

20 A. Yes, sir, that's what the research indicates is that
21 the weights for special education in current law are
22 on the average 3.13 and the research showed that they
23 are 3.6 in terms of the true cost relationships. And
24 the Accountable Cost Advisory Committee had on it
25 some people with expertise in special ed that

1 indicated that that still did not appropriately deal
2 with a couple of the instructional arrangements and
3 it resulted in an average of 3.78.

4 Q. Okay. How much should I -- how much should I figure,
5 then, for weights, 25 percent?

6 A. I do not know without running computer simulations,
7 and I have not done that.

8 Q. Give me a ball park. If the current system said 17 --
9 if that's what we're adding on is 17 percent of these
10 other numbers for weighted students right now and you
11 want to increase it, give me a number.

12 A. 25 percent.

13 Q. Okay. 25 percent of 2,951 is how much?

14 A. Well, you're -- you're adding -- you're adding back
15 in the cost of PDI, okay. Now, you're going to do
16 what?

17 Q. I'm trying to figure out how much more money we add
18 on top of what we've already done to get weights.

19 A. Well --

20 Q. Should we just take 25 percent of this 2,600, is that
21 what you're saying?

22 A. You may be in a position to do that. I am not
23 because I have not done that.

24 My whole point was to show, in response to your
25 question, a conceptual framework where you could make

1 the system more equitable for students and more
2 equitable for taxpayers without increasing state
3 expenditures. And that was my point. And I have not
4 done computer simulations on this and so, you know,
5 I'm just guessing.

6 Q. Well, the point is is that you've thrown some numbers
7 out here and we're already spending more than the
8 state system will yield and I'm trying to figure out
9 how we can -- I want to add up how much everything
10 you want is going to cost and then try and figure out
11 how much of that money local districts are going to
12 have to pay if the state doesn't pay any more?

13 A. What difference does it make if the conceptual
14 structure is one alternative which is available no
15 matter what it costs local school districts.

16 Q. Well, it matters to the local school districts how
17 much it's going to cost them, doesn't it?

18 A. I understand it does, but in terms of answering the
19 constitutional question of equity for kids and equity
20 for taxpayers, if that's the one that's being asked
21 and the one that's being answered by the Court, you
22 know, the discomfort of some local school districts
23 in dealing with consequences is not the issue here.

24 Q. Well, it's not the discomfort of some school
25 districts, is it, Dr. Hooker? It's a question of

1 whether or not a district that we're going to take --
2 it's a question of whether or not Dallas, who under
3 your system it's obvious we're going to take
4 substantial sums of money away from is going to be in
5 a position to make it up. And it's not the district,
6 it's the children.

7 A. It's not my system. All it is is one conceptual
8 framework which the Court might utilize in addressing
9 the problem.

10 Q. Well, now, the Court -- if we can't sit up here and
11 explain to the Judge how that conceptual framework is
12 going to work, how in the heck can he order it?

13 A. I explained how the conceptual framework worked.
14 What you're trying to explain is exactly how much the
15 shortfall would be.

16 Q. That's right.

17 A. I understand.

18 Q. It's going to be in the billions of dollars, isn't
19 it?

20 A. There's no question that it will be.

21 Q. And we're going to have to push it off on the local
22 districts, aren't we?

23 A. Unless the State is willing to bare the
24 responsibility, that's what they have historically
25 always done is push it off on the local school

1 districts. And some local school districts happen to
2 have the tax base to deal with that and others don't.
3 By understating the cost of equality education and
4 the foundation school program structure, that's
5 exactly what the Legislature does.

6 Q. Uh-huh. So that nothing we're going to do is going
7 to make it -- is this system going to make a
8 difference?

9 A. Sure it is.

10 Q. Okay. Then let's add it up and see how it's going to
11 make a difference.

12 A. Be my guest. I am not prepared to tell you what
13 those factors would cost.

14 Q. Okay. But you said 25 percent on the weights. Now,
15 25 percent of this \$2,900.00 figure or the \$2,600.00
16 figure?

17 A. I am assuming that it's somewhere in the neighborhood
18 of 25 percent on the \$2,951 figure.

19 Q. Okay. What's 25 percent of \$2,951?

20 MR. GRAY: 3,688.

21 MR. KAUFFMAN: 3,688.

22 MR. O'HANLON: It's actually 3,688.

23 Q. And this is at 25 percent.

24 Now, your new system isn't going to require any
25 additional transportation, probably, is it?

- 1 A. Yes, sir, it would.
- 2 Q. All right.
- 3 A. Because it's only now yielding about 60 percent of
4 the average cost of providing transportation without
5 considering bus replacement.
- 6 Q. All right. So transportation statewide average is
7 9,566 right now, how much more should we figure into
8 that over 9,566?
- 9 A. Another 50, \$60.00 --
- 10 Q. Shall we say --
- 11 A. -- in terms of current operations, not dealing with
12 bus replacement.
- 13 Q. Well, do you want to deal with bus replacement?
- 14 A. Yes, I do.
- 15 Q. How much do we add in there for that?
- 16 A. Without doing a lot of research on the issue, I can't
17 tell you.
- 18 Q. We're at a 150 just for transportation. Give me a
19 number for bus replacement, a \$100.00?
- 20 A. A year? 50.
- 21 Q. Okay. \$200.00, then, for transportation? And that
22 would be 150 for actual transportation costs and 50
23 for bus replacement.
- 24 Okay. So we're at 3,888.
- 25 Now, we subtract out the available school fund

1 now?

2 A. Yes, but I would deal with the available school fund
3 in a different way than we currently deal with it, if
4 you're getting in all of the little wrinkles here.

5 Q. Which counties are you going to take it away from?

6 A. I'm not going to take it away from the counties at
7 all. But it is within the power of the Legislature
8 to define what our motor fuel taxes are. It's within
9 the power of the Legislature to define what an
10 occupational tax is. And by a different definition,
11 you can lessen the revenue that was associated with
12 that. If you didn't do that, there is also the other
13 alternative. What the Constitution says, as I read
14 it is it shall be distributed among the counties, not
15 to school districts, per se --

16 Q. On a per --

17 A. -- on a scholastic basis. And the way we do it now
18 is by district and prior ADA.

19 Q. Well, that's certainly by counties and by students,
20 isn't it?

21 A. So it would be possible to distribute it to the
22 counties and then distribute it among the school
23 districts within the county on a need basis.

24 Q. Now, who is going to make that decision, the County
25 Commissioner?

- 1 A. I don't know who would make that decision. But if it
2 were made somebody's responsibility, I guess they
3 would make it.
- 4 Q. Okay. You'd say you subtract that out. Should we --
5 to the state --
- 6 A. Well, for purposes of the discussion, just subtract
7 it out like it is.
- 8 Q. \$280.00?
- 9 A. Yeah.
- 10 Q. Minus -- okay. Now, we've got 15 percent. Do we
11 figure that now before we figure out the local fund
12 assignment or do we --
- 13 A. The local fund assignment comes here at this point.
14 And under current law, it's .333.
- 15 Q. Okay. So to do that -- let me flip over a page.
16 Let's remember that 3,608. What we would have to do
17 is we go 3,608 times 3,000,000, right? And then
18 subtract off a third of that.
- 19 A. Okay.
- 20 Q. Is that right?
- 21 A. Okay.
- 22 Q. \$10,824,000,000.00?
- 23 A. Yes, sir.
- 24 Q. Okay. And then we divide by three.
- 25 A. Yes, sir.

- 1 Q. I guess we could have multiplied by two, couldn't we?
- 2 A. That would have worked.
- 3 Q. Well, let's just do that then. Now, I'm getting lost
- 4 here. \$7,216,000,000.00?
- 5 A. Yes, sir.
- 6 Q. Okay. And that's the state's share?
- 7 A. Yes, sir.
- 8 Q. Okay. Now, we've got this other 15 percent.
- 9 A. We do.
- 10 Q. Now, do we handle that in the same way as we do with
- 11 respect to the local fund assignment? Do we handle
- 12 that in the same way as we do -- how do we equalize
- 13 this 15 percent?
- 14 A. Guaranteed tax base yield.
- 15 Q. Okay. In essence, then, we have to equalize that.
- 16 What would the state's share of that be?
- 17 A. Depends upon what point you were going to equalize
- 18 to. If you were going to equalize to the level of
- 19 Dallas, that's one thing. If you're going to
- 20 equalize to the state average, plus ten percent,
- 21 that's another.
- 22 Q. What would you do?
- 23 A. Well, if I were going to make the system as equitable
- 24 as possible, I would target to Dallas.
- 25 Q. Okay. So how much is that going to cost?

1 A. My assumption is that it would probably cost, what,
2 15 percent?

3 Q. Uh-huh.

4 A. Without a computer simulation, I don't know.

5 Q. Well, that would be 15 percent of 10 billion,
6 wouldn't it?

7 A. Yes.

8 Q. Okay. So we're talking a billion and a half?

9 A. Yes. And the state's share of that would probably --

10 Q. Be two-thirds of it?

11 A. -- would run half of that, 750 million.

12 Q. Okay. So then we'll add 750 million here, and this
13 is for equalization?

14 A. And just for purposes of your example, facilities,
15 the same kind of formula structure except
16 specifically for facilities.

17 Q. Okay. Let me transfer this 7,966 up here; and that's
18 million. How much is facilities going to cost the
19 state?

20 A. Well, considering that the wealth base of the school
21 districts that have the high construction
22 responsibilities are not in the bottom third in
23 wealth per pupil, my assumption is that if you're
24 equalizing \$300.00, probably the most that the
25 state's share could cost probably would be \$200.00 a

- 1 youngster --
- 2 Q. Two hundred --
- 3 A. -- statewide, which would --
- 4 Q. 600 million?
- 5 A. 600 million, five or 600 million.
- 6 Q. Five or six?
- 7 A. Five.
- 8 Q. Okay. Anything else? Do you want to go back?
- 9 A. No.
- 10 Q. Anything else?
- 11 A. No.
- 12 Q. Okay. Now, we're spending -- the State of Texas is
- 13 spending \$5 billion.
- 14 A. That's correct.
- 15 Q. Now, we've already put a local assignment on this
- 16 district, a local fund assignment of 33 percent,
- 17 right?
- 18 A. Yes, sir.
- 19 Q. Okay. And yet we're still \$3,466,000,000.00 short.
- 20 A. That's correct.
- 21 Q. Now, where are we going to get that money?
- 22 A. Where you're going to get that money is that you're
- 23 not going to get that money. What you are going to
- 24 do is declare that a state shortfall in funding the
- 25 opportunity for quality education. And you are going

1 to prorate the shortfall among the school districts
2 of the state based on an effective tax effort
3 necessary to make it up, which means you're going to
4 reduce the state's obligation to school districts on
5 a differential basis in relationship to their tax
6 base, which is the example that I made on the other
7 pages of Poteet being reduced \$76.00 and Dallas being
8 reduced \$622.00.

9 Q. Now, what if Dallas doesn't get \$622.00 in state aid?

10 A. They don't, as a matter of fact, I don't think.

11 Q. Okay.

12 A. And the point being that that, in quotes, "revenue"
13 in the school districts that are at those extremes of
14 wealth, that state loss obviously is, in quotes,
15 "lost" to this kind of a system.

16 Q. Okay. As a matter of fact, your \$622.00 was based on
17 the presumption of a billion dollar shortfall, wasn't
18 it?

19 A. That's correct.

20 Q. So to recover under your system, what would happen --

21 A. It would be 3.4 times that.

22 Q. So you're going to have to take over \$2,000.00 away
23 from Dallas --

24 A. It would simply mean that Dallas would be budget
25 balanced. They would receive no state revenue other

1 than the available school fund distribution.

2 Q. Okay. So we're saying, "Dallas, you're gone, you're
3 history. You're not getting another nickel from the
4 State of Texas."

5 A. In an equitable school finance system that was
6 equitable for kids and taxpayers and no new state
7 revenue, I'm afraid that that would be the harsh
8 reality.

9 Q. Okay. And by the same token, Houston -- now Houston
10 is not getting any \$2,000.00 in state revenue, are
11 they?

12 A. No, sir. They are not.

13 Q. So Houston is history, too, aren't they?

14 A. It's a potential that they also could go budget
15 balanced under that kind of a proration system, yes.

16 Q. Okay. So we're taking all this \$5 billion and we're
17 going to end up putting it all in a very small
18 percentage of the school districts, aren't we?

19 A. Not necessarily, no.

20 Q. Well, let's take -- if you've taken off Dallas and
21 Houston, you've taken off more than 10 percent of the
22 kids. Regardless of school districts, you're going
23 to be focusing on very few kids, aren't you?

24 A. The answer is I don't know in terms of specifics
25 because we have not designed such a system. We have

1 not done computer simulations on such a system.

2 Once again, all I am saying is that if the
3 state is not willing to put up the money, then you
4 have to equitably prorate the shortfall between a
5 quality comprehensive Foundation School Program and
6 whatever the state is willing to put up.

7 Q. So what you're arguing then is that you want to
8 clobber everybody equally.

9 A. I am not arguing that at all. I was asked what are
10 some things that the state could, in fact, consider
11 in a no new revenue to school finance from the state
12 level.

13 You were the one who forced this discussion. I
14 was totally unprepared to deal with it except for
15 general experience.

16 Q. Okay. Would you make this recommendation to the
17 Legislature right now, Dr. Hooker? Would you go tell
18 them to budget balance Dallas and Houston and Austin
19 and Fort Worth? Let's throw them in there at the
20 same time because they've got higher property wealth
21 than Houston does.

22 A. No, sir. I wouldn't.

23 Q. So this system --

24 A. I would tell the Legislature that they needed to
25 raise taxes to more adequately support the public

1 schools of Texas.

2 Q. Uh-huh. And do you have any notion of what it would
3 take to raise \$3.4 billion on top of the \$6 billion
4 that we're in deficit on right now as \$10 billion?

5 A. I am not an expert on state revenues. But I do know
6 that the service economy of this state makes up a
7 substantial portion of it, more than oil and gas, and
8 is not currently taxed.

9 I also know that we're one of six states
10 without an income tax. We're also one of four states
11 without a corporate income tax.

12 So there are a lot of revenue potentials that
13 exist in the State of Texas which are not currently
14 being utilized.

15 Q. Okay. Now, let me ask you something else, that if
16 you go to this system up here --

17 A. Yes.

18 Q. -- you really, by and large, you're taking the state
19 out of it, out of the game more than putting it in,
20 aren't you?

21 A. That's where the state is now to the extent that the
22 state is in the game.

23 Q. Well, you're making the Dallas taxpayers tell you
24 now, totally out of their own pockets, how much
25 they're going to spend on education, aren't you?

1 A. Except for your \$280.00, yes, sir. That's exactly
2 what would happen.

3 Q. And Houston and Austin?

4 A. Possibly Austin, too, yes.

5 Q. Okay. And presumably Andrews and Seminole and those
6 districts out there that are spending 15,000? It's
7 not going to make any difference to them, is it,
8 because they're not getting any state aid?

9 A. That's correct.

10 Q. So, we've still got the problem with these folks.
11 That's not going to be any more of an equalized
12 system, is it?

13 A. Yes, sir, it will be a substantially more equalized
14 system.

15 Q. Well, if your range is between -- if you can't have a
16 ratio of 1.15, we're not going to get anywhere close
17 to 15 percent of this \$15,000.00, are we?

18 A. I have no idea of what standards the Court might set
19 in terms of what meets the Court's definition of a
20 constitutional system.

21 Furthermore, I have never testified that the
22 system is unconstitutional. All I've testified to is
23 it's not fair and it's not equitable.

24 Q. Okay. Let's talk about an equitable system.

25 Your system back here which yields -- I think

1 we added up \$3,800.00, that's not within 15 percent
2 of 15,000, is it?

3 A. No, sir. I would certainly agree with that math.

4 Q. And even this system that you've designed that
5 probably we couldn't afford anyway, isn't going to
6 meet your own definition of equity, is it?

7 A. I didn't design the system. I simply said that this
8 is a conceptual framework which the Court might
9 consider in seeking remedies. That's all I said.

10 Q. But this conceptual framework that the Court might
11 look at in designing remedies isn't going to meet
12 your own definition of equity, is it?

13 A. The answer is, if you create a situation where you've
14 still got broad disparities, no, probably not.

15 Q. Well, even if you consolidate down to 20 super
16 districts, you still aren't going to get there, are
17 you?

18 A. Potentially, we could.

19 Q. If they all have the same property value. If we took
20 the regions, the --

21 A. I didn't advocate the regional structures. I simply
22 took the numbers that were out there to give an
23 example that you could reduce the range from one to
24 700 to one to five --

25 Q. Right.

1 A. -- simply by taking the ones that are there.

2 Q. Okay. But if we did take those and we made mega
3 school districts and we only add 20 in this state --

4 A. Mega taxing jurisdictions.

5 Q. Well, now, I think the district doesn't -- Article
6 VII, Section 3, says school districts. I don't think
7 it says taxing subdivision.

8 A. You can argue that with the Plaintiffs' attorneys,
9 please.

10 Q. Okay. But it's still not going to make an equitable
11 system that's going to fit your definition of equity,
12 is it?

13 A. It is not going to be as equitable as I would like,
14 no.

15 Q. Okay. So, no matter how much we spend, unless we
16 just flat out tell districts that they can't spend
17 money on kids, we ain't going to get there, are we?

18 A. Well, in terms of the 1.15, that was my response to
19 the ratio between the 5th and the 95th. And I think
20 we could get extremely close using this kind of a
21 process. Now, how close we could get, I don't know.
22 Obviously, you would still have 5 percent of the kids
23 in the super rich school districts that are out there
24 beyond everyone else --

25 Q. Okay.

- 1 A. -- unless you put a cap on them.
- 2 Q. Okay. And that really is the only way to do it,
3 isn't it, is to just say -- to make an arbitrary
4 distinction and say, "We don't care how much your
5 taxpayers are willing to spend on their kids, we
6 ain't going to let you."
- 7 A. Well, that's what you're saying to property poor
8 school districts right now.
- 9 Q. Like property poor districts like Socorro that have
10 actually reduced their tax rate?
- 11 A. I don't know what Socorro did. The superintendent is
12 back there saying they didn't do that.
- 13 Q. Well, now, did we introduce -- you heard testimony
14 about --
- 15 A. I wasn't here.
- 16 Q. Okay.
- 17 A. I was pleasantly absent.
- 18 Q. Okay. And this definition, even doing all this,
19 isn't going to meet the federal range ratios, is it,
20 of 1.25?
- 21 A. From 95 to the 95th using that system, I bet we could
22 make it.
- 23 Q. What if Dallas once said, "The heck with this, we're
24 going to spend \$4,800.00," then you couldn't, could
25 you?

1 A. What do they do in California?

2 Q. What they do in California is that they don't let
3 schools raise any money. They've got a statewide
4 tax.

5 A. What do they do in Hawaii?

6 Q. They've got a single school district.

7 A. What do they do in Florida?

8 My point is that there are other states that
9 have dealt with this issue. No, it wasn't
10 comfortable. No, it wasn't popular with a lot of
11 folks. But the point is that human ingenuity and
12 will and, in some cases, with some assistance from
13 the courts, they have dealt with the issue.

14 Q. Do you know whether Florida or California or Hawaii
15 have got constitutional prohibitions against
16 statewide ad valorem taxation?

17 A. I do not.

18 Q. That would make a difference, wouldn't it?

19 A. Not to me.

20 Q. A couple of quick questions. Does equal aid, under
21 your theory, equal aid and debt service work on the
22 same percentage as the basic Foundation School
23 Program?

24 A. On the same percentage?

25 Q. Uh-huh.

- 1 A. Not necessarily. It's according to how the
2 structures are set up, but the general kinds of
3 dynamics are involved, yes. You're distributing
4 state aid and inverse relationship to taxing ability,
5 and also involved is the local school district's tax
6 effort --
- 7 Q. Okay. So in terms of --
- 8 A. -- which is not involved in the local fund assignment
9 process.
- 10 Q. All right. Why I'm asking you is to give us some
11 numbers -- we're going to take your invitation and
12 we're going to run some computer models and I want to
13 know what figure to plug in there. Should we figure
14 the distribution on the same basis as the Foundation
15 School Program?
- 16 A. If the Court wants me to work with you and Mr. Moak
17 or whoever in terms of setting specifications on the
18 model, I'll be glad to do that, but I need some time
19 to give some consideration to those matters.
- 20 Q. All right. What would you testify is the fair share
21 or what is the local fair share of the Foundation
22 School Program?
- 23 A. The fair share?
- 24 Q. Yes, sir.
- 25 A. In the current context in our state, 50 percent, but

1 that takes us away from this alternative and starts
2 us talking about another alternative which could be
3 considered by the Court.

4 Q. Do you want to do that right now?

5 A. Fine with me.

6 The current state share equals about \$5
7 billion. The current local share -- I'm talking
8 about the total cost of financing public education, I
9 am not talking about the Foundation School Program
10 structure -- is approaching another five billion, if
11 Texas Research League's guesstimates about what
12 school districts are going to do this year is
13 correct, so that we have essentially a 50/50 sharing
14 ratio.

15 This is not a fictionalized ratio of the
16 Foundation School Program structures. This is the
17 true state/local sharing of the cost of public
18 education. And it is certainly within the ability of
19 the Court to think about conceptual alternatives
20 which increase the local fund assignment to the true
21 state/local ratio of sharing.

22 As a matter of fact, the Senate-passed bill had
23 a 40 percent local fund assignment relationship.

24 Now, this, of course, involves both facilities
25 and current operations. That's total expenditures.

1 And needless to say, it wouldn't be that high if you
2 were going to exclude facilities from consideration.

3 But there is no question but what this does is
4 to force property rich school districts to pay their
5 own bill. It frees up state revenue to put into the
6 property poor school districts. So you create the
7 opportunity with the same level of state funding that
8 we currently have to have a much higher floor in the
9 Foundation School Program than currently exists. How
10 high that could go, I don't know.

11 Q. But it doesn't do anything for equity, again, does
12 it, because we've still got Andrews and Seminole and
13 the districts out there that aren't getting any state
14 aid and are still spending \$15,000.00.

15 A. It depends on what the Court establishes. If it
16 establishes a restricted range ratio of 1.25, which
17 is touted as the federal standard, my assumption is
18 you might get pretty close to that.

19 Needless to say, there would still be the super
20 rich school districts out there with a small
21 percentage of the kids that would be outside of this
22 equalization framework, too.

23 Q. So, what do we do with those? Do we let them go? Do
24 we let them get away with it or do we stop them?

25 A. Well, that is an option of the Court.

1 Q. What do you say?

2 A. To tell them they can only spend 15 percent above the
3 Foundation School Program framework for current
4 operations and that's it, that's all.

5 Q. Is that what you recommend?

6 A. That is not what I recommend. But if I were put in
7 the position of that being my only alternative, I
8 would certainly give serious consideration to that,
9 yes, I would.

10 Q. But if you do that, you're locking up those fortunate
11 taxpayers -- you're locking Phillips Petroleum into
12 having a 9 cent tax rate, aren't you?

13 A. No, because I would handle that situation by removing
14 oil and gas from the local tax base and taxing it at
15 the state level and not a property tax, but another
16 form of taxation which would allow them to
17 participate in the support of the educational law of
18 the kids of the state instead of those little tax
19 saving school districts that exist in many cases.

20 Q. If you took oil and gas out, then you would have to
21 put Andrews and those school districts in the poor
22 districts then, wouldn't you?

23 A. The world would certainly look different if you did
24 that, and you would certainly solve some of the
25 problems that are created by that 5 percent that's

1 sticking out there past the 95th percentile.

2 And as I understand it, Louisiana taxes those
3 things at the state level. It's not a part of the
4 local tax base. I understand there's some other
5 states. I can't name them.

6 And it is certainly within the constitutional
7 options available to the Legislature to remove those
8 and to tax them with some other form of taxation in
9 lieu of the ad valorem tax.

10 Q. Right. You can't put a property tax on them, so you
11 would have to find some other way to tax them.

12 A. That is correct, but it is within the option of the
13 state to do that.

14 And then you wouldn't have the problem of those
15 5 percent sticking out there because that's what
16 makes them property rich, and that's the reason many
17 of them have been maintained over the years. So they
18 don't have to help support greater numbers of
19 students.

20 Q. Well, now, there's not just a whole lot of students
21 out there in West Texas anyway. You'd have to kind
22 of bus them in or something to get those students out
23 there in West Texas, wouldn't you?

24 A. I'll let Mr. Moak testify on that. I understand he
25 helped work out a plan to eliminate some of the tax

1 saving school districts. Maybe he knows more about
2 that than I do.

3 Q. Okay. So at any rate, just going to a 50/50 local
4 fund assignment is not going to solve the problem by
5 itself, is it?

6 A. It will substantially address the problem. It
7 depends upon the standards set by the Court as to
8 what it will accept as being a constitutional system.

9 My assumption is that you can certainly get
10 very close to a restricted range ratio of 1.25 from
11 the 5th to the 95th percentile without instituting
12 caps.

13 Q. Okay.

14 MR. O'HANLON: I'll pass the witness.

15 CROSS EXAMINATION

16 BY MR. TURNER:

17 Q. Dr. Hooker, I'm Jim Turner. As you know, I represent
18 a group of the Defendant Intervenors who are seeking
19 to uphold the constitutionality of our current
20 system.

21 I think you and I have been around each other
22 at least on occasion heretofore, around the Capitol.
23 In fact, I guess -- I was looking at your resume. I
24 was on the House Appropriations Committee in 1981 or
25 '83, and I notice you had done quite a bit of work at

1 that time. I'm not sure, we may have met at that
2 time or before, I really can't place it.

3 A. I'm sure we had.

4 Q. I do know that when I was in the Governor's office --

5 A. I appeared from time to time.

6 Q. You did appear from time to time and we visited on
7 occasion.

8 A. Yes, sir.

9 Q. I was interested in asking you a little bit about
10 your background for the benefit of the Court.

11 I noticed on your resume on Page 4, that you
12 worked in the drafting of House Bill 72 and as a
13 chief financial consultant to the Select Committee on
14 Public Education.

15 And I also notice that you have worked on
16 Senate Bill 699 and House Bill 1258 back in 1983.

17 And I want to inquire a little bit. I think we
18 know pretty well from your previous testimony about
19 House Bill 72 and how that came out.

20 Do you recall what you were proposing in 1983?

21 A. No, sir.

22 Q. All right.

23 A. I generally participated in the creation of anywhere
24 from four to five school finance alternatives per
25 session for conservatives and liberals and so forth

1 and so on. I generally try to participate and help
2 anybody who really asks me. I believe in the open
3 competition of ideas.

4 Right now, I do not remember specifically what
5 those proposals were.

6 Q. All right. I believe you testified that your
7 earliest work on making proposals for state
8 government began actually when you were employed by
9 Governor Briscoe.

10 A. That was the first time I had had the opportunity to
11 work with a major power figure to establish a
12 comprehensive proposal for the restructuring of the
13 system, yes, sir.

14 Q. Was that the first time that you recall proposing
15 consolidation of school districts?

16 A. I did not propose consolidation of school districts
17 at that time. I have never carried a consolidation
18 proposal to the Legislature.

19 Q. I believe during Governor Connally's administration,
20 there was a proposal made for consolidation of school
21 districts. Did you work at all on that proposal?

22 A. All I did was to review it and write about it and
23 describe what it was. I did that for the Texas
24 Association of School Boards. The Texas Association
25 of School Boards voted to support their whole package

1 except consolidation.

2 Q. Did I understand you to say you have never been an
3 advocate of consolidation before the Legislature?

4 A. I did not say I had never been an advocate of
5 consolidation. I said I had never presented a plan
6 to the Legislature to consolidate school districts.

7 In terms of the reorganization of school
8 districts into cost effective units that can deliver
9 a quality education to boys and girls, I have argued
10 that we are in need of some of that sort of stuff;
11 under what kind of a system, I'm not sure.

12 I happen to come from an area -- I'm a piney
13 woods critter that happened to reside with my
14 grandparents for the first years of my life in an
15 area where it was 15 miles from a central location to
16 five different extremely small public schools, and
17 none of which could offer a comprehensive program to
18 their kids. And it was costing a lot per pupil, more
19 than would have been necessary if they had had a
20 consolidated secondary school program out in the
21 middle of the county.

22 And so I had been aware for quite some time
23 that there's some places that are so sparse that
24 reorganization is not feasible, but there are other
25 places where it is feasible and should be considered.

1 But I have never proposed a mandatory consolidation
2 effort of any kind and have never devised such a
3 plan.

4 Q. Dr. Hooker, over on Page 9 of your resume, you make
5 mention of the fact that since you joined the faculty
6 of the University of Houston, you have consulted
7 extensively regarding legislative program
8 development, tactical lobbying strategies, candidate
9 platform development and campaign strategies.

10 I take it by that statement that you feel very
11 familiar with the political realities of school
12 finance in the Texas Legislature?

13 A. Shall I take off my shirt and show you my scars?

14 Q. I might ask you, you have presented two alternatives
15 to the Court.

16 A. Three alternatives and one additional wrinkle.

17 Q. Three, right.

18 I take it, it wouldn't be too difficult for you
19 to acknowledge that none of those three alternatives
20 would be acceptable --

21 A. Politically.

22 Q. -- politically.

23 A. Absolutely not.

24 Q. In your work in drafting House Bill 72, as I recall,
25 you served as a consultant to the SCOPE Committee; is

1 that correct?

2 A. Technically speaking. Obviously, the Comptroller was
3 the Chairman of the Finance Subcommittee, and that
4 responsibility got delegated to him essentially.

5 And primarily my direct relationships were to
6 the Comptroller's staff and to an ad hoc advisory
7 committee which had been assembled by the
8 Comptroller. But technically they were doing the
9 work for the Select Committee.

10 Q. And Dr. Hooker, were you during that time, or before
11 that time, a consultant to the Equity Center?

12 A. I have not been a consultant to the Equity Center and
13 have not received one dime in consulting fees from
14 the Equity Center.

15 I have helped the Equity Center, I hope, in
16 terms of free advice when asked. But I've had no
17 financial relationship with the Equity Center.

18 Q. All right. I believe on your resume, what I guess
19 had caught my eye was on a review of your service
20 activities, you had mentioned that you were a
21 consultant to the Equity Center Urban Council of
22 Coalition.

23 A. Well, if you want to define a consultancy as only a
24 paid consultancy, that coalition did not pay me. And
25 during that period of time, I received no

1 compensation from the Urban Council. But I have
2 before that period and I have after that period.

3 Q. You have what?

4 A. But during that time, I had no linkages financially
5 to either the Urban Council or the Equity Center.

6 Q. During the time that you were a consultant to the
7 SCOPE Committee?

8 A. That's right, no.

9 Q. But you have been a consultant to the Equity Center
10 and to the Urban Council, both before and after your
11 work with the SCOPE Committee?

12 A. That, and a number of other organizations, yes, Texas
13 Association of School Boards for a period of time.
14 I've worked with the Texas Secondary School
15 Principals. I've worked with -- I don't know who all
16 over time.

17 Q. All right. And when we speak of the Equity Center,
18 we're talking about the group of what has been
19 referred to as the property poor school districts in
20 the state?

21 A. I believe the criteria for membership is a bottom
22 third of the wealth per pupil.

23 Q. And the Plaintiffs in this case, Plaintiff-Intervenor
24 school districts are members of that Equity Center
25 organization, is that correct?

1 A. I assume that most of them are. I don't know that
2 they all are. I don't know. I can't answer that
3 question.

4 Q. All right.

5 MR. GRAY: We obviously don't know.
6 They're all poor, but whether or not they're members
7 of the Equity Center, I don't know.

8 BY MR. TURNER:

9 Q. Dr. Hooker, I would like for you to tell us just a
10 little bit about the politics that were at work in
11 the passage of House Bill 72, which I believe you
12 stated earlier was the most comprehensive reform in
13 education that has occurred, I believe you said, in
14 the nation?

15 A. The total package in terms of school finance plus all
16 of the other factors related to teacher appraisal,
17 and "No Pass/No Play," and having to pass exit tests,
18 and no social promotion, and mandatory opportunity
19 for tutorials, and the discipline management system,
20 and the alternative schools, and on and on and on,
21 with all of the programatic kinds of interventions as
22 well as finance interventions.

23 Q. And I believe, isn't it correct, that we have been --
24 that we have been told, at least it seems to be
25 generally acknowledged, that the tax bill that was

1 passed to go along with House Bill 72 represented the
2 largest tax bill that has ever been enacted in the
3 State of Texas?

4 A. We historically have been very conservative in such
5 activity, yes.

6 Q. In fact, I wonder -- I've heard comparisons, but I
7 don't know the source of them, regarding the size of
8 that tax bill for education with other tax bills
9 passed in other states for education and I'm told it
10 is the largest or at least one of the largest tax
11 bills ever passed for education in any state in the
12 Union?

13 A. I could not testify regarding that one way or the
14 other.

15 I do know that the Texas Legislature had
16 increased funding on an annual basis at least three
17 times before in an amount greater than it did in
18 House Bill 72, both in 1979 -- '77, '79 and 1981, the
19 Legislature put in more new state money on an annual
20 basis than it did in House Bill 72.

21 Q. Dr. Hooker, I was beginning to ask you about House
22 Bill 72 and its passage. This Equity Center group,
23 as you referred to, consists of -- or at least the
24 bottom third of the school districts in property
25 wealth are eligible for membership -- formed a

1 coalition, the one that you referred to here, with
2 the Urban Council to successfully pass House Bill 72;
3 is that not correct?

4 A. Yes. That was a very unusual marriage of
5 convenience.

6 Q. And tell us for the record who the Urban Council is?

7 A. Urban Council consists of the eight largest school
8 districts in the state. I think the criteria for
9 membership is over 40,000 ADA, and they also must
10 have certain kinds of demographic characteristics
11 that cause them to share in common the center city,
12 high density, high cost kids kinds of concerns that
13 those -- the school districts who formed the
14 organization in 1969 have. And the school districts
15 that formed it were, at that point in time, the big
16 seven.

17 Q. All right. And if you will, enumerate for us the
18 common ground that was found by the membership of the
19 Equity Center and the membership of the Urban
20 Coalition that enabled there to be, within that
21 group, the votes that were necessary to pass House
22 Bill 72.

23 A. The common ground was a high basic allotment in terms
24 of the urban school districts, a price differential
25 index which provided them with cost equalization and

1 recognizing their higher cost of purchasing goods and
2 services equivalent to folks in other places, simply
3 the high cost of living in Dallas and Houston
4 primarily, the compensatory education allotment which
5 obviously created a high Foundation School Program
6 cost for both Dallas and Houston. Let's see what
7 else were they specifically after. Those were the
8 primary things that the urban school districts were
9 after.

10 The property poor school districts, on the
11 other hand, were after mutually a high basic
12 allotment, but they also wanted a high local fund
13 assignment in order to free up as much money as
14 possible to the property poor school districts. And
15 a lot of the property poor school districts also
16 happen to be small. So it's not just the small
17 districts are rich. And so they had some interest in
18 the small/sparse kinds of formulas. And needless to
19 say, equalization aid at some level that gave some
20 local choice in those kinds of school districts to
21 exceed the level of the Foundation School Program
22 structures.

23 And so, those interests were put together and
24 compromised, I might add, by both parties to an
25 honest kind of a compromise.

1 Q. The Price Differential Index, you said, was of
2 greatest interest to urban districts. What was
3 placed in the PDI that was advantageous for the
4 property poor districts?

5 A. Not anything in particular. If they happened to be
6 poor and urban, obviously there was a substantial
7 benefit to San Antonio, to El Paso, Ysleta, Corpus
8 Christi.

9 Q. And did you mention the weighted pupil concept in the
10 mutual --

11 A. Well, yes, they were advocates of a weighted pupil
12 concept, both groups were.

13 Q. Now, in truth and in fact, this group or this
14 coalition actually got together and ended up writing
15 House Bill 72, did they not?

16 A. I wouldn't describe it that way at all, but certainly
17 they had a substantial influence on the drafting of
18 the product, yes, because they were available as a
19 political base to also help pass it.

20 Q. And that was generally acknowledged, was it not, that
21 that coalition represented the means of passing that
22 legislation?

23 A. I suppose some folks thought it would be helpful.

24 Q. The clients that I represent, Dr. Hooker -- I think
25 you've been in the courtroom before when we talked

1 about the state aid that was lost by my clients as a
2 result of House Bill 72. And you wouldn't disagree
3 with the statement that basically the clients that I
4 represent were the losers, so to speak, in that
5 legislative battle?

6 A. I would have no trouble with your statement except to
7 point out that your clients would have not had that
8 state money in a fair and equitable system in the
9 first place.

10 Q. But the coalition of Plaintiffs that are in this
11 lawsuit, Plaintiff-Intervenor districts and the large
12 urban districts who are noticeably absent from this
13 litigation represented the political force that
14 passed House Bill 72; is that a fair statement?

15 A. I think that's an over simplification. I tried to
16 agree with you to the extent that I could in that,
17 sure, as a lobby force, they were extremely helpful
18 in passing House Bill 72.

19 On the other hand, I think that you are aware
20 that there are political forces in the Legislature,
21 itself, that have been trying to move in some of
22 these kinds of directions and I wouldn't, at any
23 point, belittle Mr. Perot's personal contribution to
24 the passage of the legislation. He made up his mind
25 that it was good and he used his influence wherever

1 he could to pass it.

2 Those districts, themselves, could have never
3 passed that piece of legislation without other kinds
4 of forces intervening into the process. It would
5 have been politically impossible. They just don't
6 have that many votes. It only takes 11 votes, as you
7 well know, to kill anything in the Senate.

8 Q. So what we're saying is it did take the combination
9 of the votes from the property poor districts and the
10 big urban districts to provide the base for the
11 passage of that legislation?

12 A. It certainly helped, yes, sir.

13 Q. And Dr. Hooker, in your experience, have you ever
14 seen a time in the legislative process in Texas when
15 the property poor districts accomplished more in that
16 process?

17 A. In my opinion, they accomplished almost as much in
18 1975, being totally absent from the process.

19 Q. Would you repeat that again. I missed that.

20 A. Well, in 1975, my staff and I put together for
21 Governor Briscoe a comprehensive restructuring
22 package of the state system of school finance which,
23 by the way, looks conceptually very much like House
24 Bill 72 structure. And we were, I think, four votes
25 short of passing it in the House and created enough

1 political pressures for the achievement of equity
2 that the gains for equity were somewhere close to
3 House Bill 72 gains, obviously not in dollars, but in
4 percentages of changes, as House Bill 72. And that
5 was done totally without the property poor school
6 districts. They did not understand the issues at
7 that point in time and were not a political force for
8 reform.

9 As a matter of fact, most of them, their
10 superintendents, were down here working against the
11 passage of those pieces of legislation.

12 Q. And as I recall, and I'm sure you recall, when House
13 Bill 72 was under consideration, large numbers of
14 individuals from property poor districts came in and
15 lobbied on behalf of that issue?

16 A. They were in here in force. They had learned their
17 lessons. And they had developed some political
18 sophistication. And under some new leadership from
19 their group, suddenly realized that nobody else is
20 going to look out for their interest in the political
21 process and they'd better be here. And yes, they
22 were here in force.

23 Q. So the presence of the Plaintiffs and the
24 Plaintiff-Intervenors before this Court, if not -- I
25 would take it your judgment is reflective of their

1 inability to be effective in the legislative process,
2 but rather a desire, I take it on their part, to
3 receive something even better?

4 A. My opinion of that is that they feel that it is
5 impossible within the political process to accomplish
6 a state school finance system that substantially
7 equalizes educational opportunities and substantially
8 equalizes taxpayers' efforts in the state system.

9 They report to me that they do not believe that
10 that can be accomplished in the political framework.
11 They believe that House Bill 72 is the best that the
12 Legislature can do.

13 Q. Dr. Hooker, I believe you said you're not receiving
14 any fee for being here?

15 A. That is correct.

16 Q. And I take it then, your primary motivation for being
17 here is based on your life-long commitment and
18 interest in improving the quality of education in
19 Texas?

20 A. I hate to sound that goody two-shoes, but as a matter
21 of fact, that happens to be the way it is. I have
22 dedicated my life to the kids of this state. And
23 having taught in a property poor school district, I
24 would like to see those kids be treated equally with
25 kids in every other school district in the state.

1 Q. I believe you told a story about your experience in
2 Warren district --

3 A. Yes, sir.

4 Q. -- where you felt like you had financial support for
5 what you were trying to do in the classroom. And
6 then I believe you moved to a district --

7 A. North Forest --

8 Q. North Forest in Harris County.

9 A. -- which is one of the poorest in the state.

10 Q. And that was back in what year?

11 A. That was -- I left Warren in '61 and went to Smiley
12 High School in North Forest that September.

13 Q. And actually, I guess your interest in the subject
14 even pre-dates that based on your experience in East
15 Texas, looking at smaller schools; is that correct?

16 A. I cannot recall when I didn't have some sensitivity
17 and some concern, yes, sir. I don't know when it
18 started.

19 Q. Dr. Hooker, I would like to direct your attention to
20 Plaintiffs' Exhibit 211, if we can find that exhibit.
21 I want to hand you what's been marked as Plaintiffs'
22 Exhibit 211 and Plaintiffs' Exhibit 205, which is
23 Bench Marks that we've used so often.

24 I believe Plaintiffs' 211 is one that you
25 described early on in your direct examination by Mr.

1 Gray; do you recall that?

2 A. Yes, sir. The idea was that in every region of the
3 state, there are gross inequities in tax base and in
4 per pupil expenditures and it's not a regional issue.

5 I did not select these school districts. That
6 was done either by the Plaintiffs' attorneys or by
7 the Equity Center, I don't know which.

8 Q. All right. I would like for us to look at those for
9 just a moment. There are, shown on that exhibit,
10 certain amounts for maintenance and operation.

11 A. Yes, sir. That's without federal money, state and
12 local current operations revenue.

13 Q. All right.

14 A. Not revenue, but expenditure.

15 Q. Now, I wasn't sure where those figures came from. In
16 order to look at these a little more closely, what I
17 would like to do, if we may, is take a look at the
18 comparable number in Bench Marks.

19 And as you'll note, this 211 is set out by
20 regions, so we can turn in Bench Marks, if you will,
21 to Region 1 and see if we can pick out the total
22 current operating expense figure that's shown in
23 Bench Marks for those two school districts.

24 And I have, if you'll note here, developed a
25 supplement to Plaintiffs' Exhibit 211 where I would

1 like to fill in those figures that come from Bench
2 Marks.

3 Can you find those two districts' current --
4 A. Yes. Rio Grande City and -- what number do you want,
5 the total current operating expense, 3,745, but that
6 includes federal revenue.

7 Q. All right. And the next district?

8 A. Is San Isidro.

9 Q. San Isidro.

10 A. Yes, sir. 6,685.

11 Q. All right. And while you are looking there, could
12 you also give me two other districts, Los Fresnos and
13 Webb Consolidated in that same region?

14 A. Los Fresnos is 2,888. And which other?

15 Q. Webb Consolidated?

16 A. Webb Consolidated, 7,984.

17 Q. All right. The two districts that are shown on your
18 exhibit there that the Plaintiffs have tendered, I
19 take it are designed to show that the district
20 spending more in operating expenses has a lower -- or
21 excuse me -- a greater TEAMS score. Is that what the
22 exhibit would show?

23 A. Those TEAMS test scores are on the exhibit. I was
24 not asked to testify in regard to the TEAMS test
25 scores.

1 Q. All right.

2 A. All I was asked to do was to review the data and to
3 testify to whether or not the inequities in
4 expenditures and tax base were regionally focused or
5 a general problem throughout the state. And I said
6 it was a general problem throughout the state.

7 Q. All right. But you wouldn't deny that the presence
8 of the TEAMS scores on there would tend to reveal
9 that the district spending more money has a higher
10 TEAMS score?

11 A. It would appear since the TEAMS test scores are
12 higher in the property rich districts, which were
13 selected for this exhibit, that that was one of their
14 contentions, but I don't know that. You would have
15 to ask them.

16 Q. All right. Would you mind giving me the TEAMS score
17 results for Los Fresnos and Webb Consolidated?

18 A. Team's test scores, Los Fresnos, one, two, three,
19 four down, okay, 46, 40 and 46.

20 Q. All right. And Webb Consolidated?

21 A. Webb Consolidated, 27, 24 and 20.

22 Q. All right. Dr. Hooker, looking at those two other
23 districts in Region 1, it would seem to be very
24 apparent that Los Fresnos, with the lowest current
25 operating expenses per ADA, has the highest TEAMS

1 score results.

2 A. They, among those four school districts, do have the
3 highest overall results.

4 Q. And the highest spending district, Webb Consolidated,
5 has spent \$7,984.00 per ADA, has the lowest TEAMS
6 score; is that correct?

7 A. That is correct, which demonstrates that money
8 creates the fiscal opportunity for quality, but does
9 not guarantee it.

10 Q. All right. Let's go on down to Region 2 and compare
11 some numbers in Region 2.

12 Would you mind checking out the total current
13 operating expense in both Robstown and Port Aransas,
14 which are the two examples used by the Plaintiffs?

15 A. Robstown, and what do you want for them?

16 Q. The total current operating expense per ADA.

17 A. Six thousand -- oh, excuse me, if I've got it lined
18 up correctly -- Robstown?

19 Q. Yes.

20 A. 3,220 in current operating.

21 Q. And Port Aransas?

22 A. Port Aransas, 6,268.

23 Q. So once again, it would appear that the Plaintiffs
24 are trying to show that the districts spending the
25 most money has the highest TEAMS score. I believe

1 Port Aransas has much higher TEAMS scores than
2 Robstown. Robstown is spending less money.

3 Is that -- am I correct?

4 A. Yes, sir.

5 Q. And let's try two other districts in Region 2, Flour
6 Bluff and McMullen, and see how they look.

7 A. Flour Bluff, 3,040. And the other one?

8 Q. McMullen.

9 A. McMullen is 6,649.

10 Q. All right. And could you give me the TEAMS scores
11 for both of those two districts?

12 A. McMullen is 28, 33 and 43. Flour Bluff is 64, 51 and
13 53.

14 Q. All right. And I believe those two districts, by
15 looking at them, you would see that the district that
16 spends the least in the comparison of the four, has
17 the highest, or at least equivalent TEAMS scores to
18 Port Aransas?

19 A. Again, what is your decision?

20 Q. I'm saying that when you look at the two examples
21 that we've given you there, Flour Bluff and McMullen,
22 McMullen spends about over twice --

23 A. Spends more and gets less.

24 Q. -- and gets less.

25 A. Yes.

1 Q. And in terms of the comparison of the four, the
2 district that spends the least has the best TEAMS
3 scores in the group, or at least substantially
4 equivalent to the Port Aransas results and TEAMS
5 scores?

6 A. If the reports are correct, that's true.

7 Q. All right. Let's go down and look at the two
8 examples given for Region 3 by the Plaintiffs, Ganado
9 and Austwell-Tivoli.

10 If you will, give me the total current
11 operating expense for those two districts.

12 A. For Region 3?

13 Q. Yes, sir.

14 A. And name the district again.

15 Q. Ganado.

16 A. Ganado's expenditure level is 3,393. And the other
17 one?

18 Q. Austwell-Tivoli.

19 A. 7,541.

20 Q. So again, the two districts chosen by the Plaintiffs
21 would lead one to believe that the higher spending
22 district, Austwell-Tivoli, has produced the higher
23 TEAMS test scores. In fact, quite a bit higher than
24 TEAMS score results in Ganado, where they spend less
25 than half per ADA.

1 So let's pick out a couple of more districts
2 out of Region 3 or at least let's pick out one. I
3 have Moulton, let's see what it looks like in terms
4 of spending.

5 A. Moulton, 3,500 in expenditures.

6 Q. And its TEAMS score results?

7 A. 89, 65 and 64.

8 Q. So by simply selecting that district, we would see
9 that the Moulton district that spends not quite as
10 low amount as Ganado, but pretty close, ends up with
11 the highest TEAMS scores of the three districts
12 shown.

13 A. In this report, yes.

14 Q. All right. Let's go down to Region 4 and look at
15 North Forest. I believe that's the district where
16 you worked early in your career.

17 A. Yes, sir.

18 Q. And Barbers Hill, let's see what they have in terms
19 of current operating expense per ADA?

20 A. Barbers Hill is 6,293, a school district where the
21 superintendent told me that he had never made a
22 decision regarding what anything costs. He just
23 decided whether it was quality.

24 Q. And North Forest?

25 A. I'm not getting there from here, so I'm going to have

1 to go to another page. North Forest is at 3,097.

2 Q. Once again, it would appear that the two districts
3 elected by Plaintiff would tend to indicate that the
4 Barbers Hill district, which spends about twice the
5 amount per ADA as North Forest, produced the highest
6 or the higher TEAMS scores; is that correct?

7 A. That's what the chart showed.

8 Q. So let's go and look at Needville and see how much
9 Needville spends per ADA and see what their TEAMS
10 score results are.

11 A. Needville, okay, their expenditure level is
12 \$2,800.00, which tells me they get very little
13 federal aid, which probably tells me they have a very
14 low percentage of minorities. And 65, 55 and 61.

15 Q. All right. So Needville, with the lowest spending
16 per ADA, ends up reporting the highest TEAMS score
17 results.

18 A. In terms of this report, that's what it says.

19 Q. All right.

20 THE COURT: Counselor, let's stop there for
21 afternoon break. We'll get started up again in 20
22 minutes at ten till.

23

24

(Afternoon break.)

25

CROSS EXAMINATION (RESUMED)

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BY MR. TURNER:

Q. Dr. Hooker, I believe we had just completed Region 4, where we had shown Needville as being the lowest spender with the highest TEAMS scores of the three looked at there.

And let's move now, if you will, to Region 5.

A. Region 5, yes, sir.

Q. And could you give me the total current operating expenses for Beaumont and Sabine Pass?

A. Beaumont, 3,713; Sabine Pass at 7,126.

Q. All right. So again, Plaintiffs would have us see that Beaumont, being the district that spends the least, has the lowest TEAMS scores, with Sabine Pass being the larger spender per ADA, having the highest TEAMS scores.

And if you will, look up Port Neches in that same region.

A. Port Neches spending at 3,729, and their TEAMS test scores are 65, 60 and 61.

Q. So Port Neches that spends within \$16.00 per ADA at what Beaumont spends, ends up with TEAMS scores much higher, in fact, TEAMS score comparable to the higher spending per ADA of Sabine Pass.

A. What you have in operation there, which may or may

1 not totally explain it, is that Port Neches has a
2 very low incidence of minority kids and Beaumont has
3 a very high incidence of minority kids.

4 Q. All right. Let's look at Region 6.

5 MR. TURNER: Do you want to stipulate to
6 any of these figures?

7 MR. GRAY: I would be happy to. I just
8 thought you wanted to write on the board.

9 MR. TURNER: All right.

10 MR. GRAY: Judge, we've already introduced
11 205 into evidence with all of its contents. I'm not
12 trying to belabor the trial. You were the one
13 writing on the board. We would be happy to --
14 they're already in evidence.

15 MR. TURNER: Well, the figures I'm using on
16 here are not the same figures that you had on your
17 chart. I'm using the figures that are out of the
18 Bench Marks.

19 MR. GRAY: Yeah. We were using the updated
20 TEA numbers, which are more recent than the Bench
21 Marks because --

22 MR. TURNER: Well, I think, as Dr. Hooker
23 said, the figures I have include federal funds.

24 THE WITNESS: Right.

25 MR. GRAY: Right. But we've already

1 introduced all this. We don't have any objection to
2 this already introduced --

3 BY MR. TURNER:

4 Q. All right. Dr. Hooker, we might just make this a
5 little simpler by letting me fill this in here. If
6 Mr. Gray has agreed to stipulate these figures are
7 correct, we can move along a little bit faster here,
8 which I'm sure the Court would appreciate.

9 In Buffalo in Region 6, the total current
10 operating expense is 3,494. And in Montgomery, the
11 other example chosen by the Plaintiffs, the current
12 operating expense per ADA are 4,234.

13 Again, it would appear that the Plaintiffs
14 would be showing us that the district spending more
15 per ADA has the higher TEAMS scores.

16 And I have suggested that we look at Normangee
17 and Richards. Normangee has 2,971 and Richards has
18 4,863. TEAMS' results in Normangee are 66, 59 and
19 69, with the Richards results being 32, 37 and 40.

20 Again, Dr. Hooker, would that not indicate that
21 the examples of Richards and Normangee would tell us
22 that actually of the four, when we look at the two
23 we've added, the lower spending Normangee district
24 had the highest TEAMS scores in the sample of four.

25 A. In the group, yes, sir.

1 Q. And the Richards, with the highest spending in the
2 group, reveals TEAMS scores which are close to the
3 lowest, being Buckholts.

4 A. Yes, sir.

5 Q. For the record, Dr. Hooker, tell us what the three
6 numbers on these TEAMS scores mean to us?

7 A. They are proficiency scores on criteria in reference
8 to instruments for reading, and writing, and math.

9 Q. Is the first number --

10 A. Oh, you want which order they're in? They are
11 minimum skills tests of basic skills.

12 THE COURT: Well, on Plaintiffs' Exhibit
13 211, it says that math is first.

14 THE WITNESS: Math is first, reading is
15 second, and writing is third, according to the Bench
16 Marks order.

17 THE COURT: When are these tests given, at
18 what grades?

19 THE WITNESS: We give them at 1st, 3rd,
20 5th, 7th, 9th, and 11th, and we give an exit test.

21 THE COURT: Thank you.

22 MR. O'HANLON: Judge, for the purpose of
23 the Court's information, the tests scores displayed
24 are the October 1985 test scores, and those are
25 national norms. They're not percentages or anything.

1 But that's the national norm and it's based on 11th
2 grade TEAMS tests. This is the test that's given to
3 11th graders and it's also been known as the
4 so-called graduation test.

5 THE COURT: Plaintiffs' 11 is 11th grade?

6 MR. GRAY: Yes, sir. So is all the
7 information in Bench Marks. The scores that are on
8 211 are identical to what comes out of the Bench
9 Marks.

10 MR. O'HANLON: That's the 11th grade TEAMS
11 tests. There's no attempt to accumulate them.

12 BY MR. TURNER:

13 Q. Dr. Hooker, I have now turned to Region 8, and have
14 entered the spending expenses per ADA for North Lamar
15 at 2,619, which results in TEAMS score results of 38,
16 40 and 43. And Daingerfield-Lone Star, which are
17 shown on Plaintiffs' exhibits have TEAMS scores much
18 higher, would spend slightly more, 3,341.

19 And what I've asked here is for you to look at
20 Pleasant Grove with a lower spending level of 2,453
21 per ADA -- and you might check me as we go through
22 these on some of these.

23 A. Region 8?

24 Q. In Region 8, which should reveal for Pleasant Grove a
25 TEAMS score result of 70, 64 and 67, which would

1 indicate that the lowest spending of the group of
2 four accomplishes the highest TEAMS results.

3 In the next district, Jefferson, which has the
4 higher of the four that I've selected to look at the
5 TEAMS results on, we see the results being 33, 34 and
6 37.

7 Thus, the lowest TEAMS score result in that
8 sample also is accompanied by the highest spending
9 per ADA; am I correct?

10 A. It appears that way, yes, sir.

11 Q. All right. In Region 9, Petrolia shows a spending
12 per ADA of \$2,828.00, with lower TEAMS scores of 34,
13 35 and 43.

14 The Plaintiffs chose to compare that to
15 Throckmorton, with a 3,894 spending per ADA,
16 generating a high TEAMS score result of 73, 74 and
17 82.

18 What I've asked you to do here is look at
19 Woodson, which has a \$7,039.00 spending per ADA and
20 TEAMS score results of 17, 17 and 11.

21 THE COURT: Must be all boys in that
22 school.

23 MR. TURNER: Must be.

24 A. They have 86 students in the whole school district,
25 K-12.

1 Q. All right.

2 A. And I have no idea about what the characteristics of
3 that pupil population might be.

4 Q. All right.

5 On into Region 10, Plaintiffs have chosen a
6 comparison of Wilmer-Hutchins and Highland Park.
7 Wilmer-Hutchins spending \$3,476.00 per ADA,
8 generating TEAMS score results of 16, 18 and 25,
9 compared to Highland Park, spending \$4,178 with TEAMS
10 score results of 83, 73 and 78.

11 I have selected Plano, where spending is
12 \$3,461, which is \$15.00 per ADA less than spent for
13 ADA at Wilmer-Hutchins and find TEAMS scores of 80,
14 69 and 69.

15 Let's move now to Region 11, Venus.

16 Plaintiffs have selected Venus for comparison
17 to Grapevine-Colleyville. Venus spends \$2,752 per
18 ADA, generates TEAMS score results of 32, 33 and 40.
19 Grapevine-Colleyville, on the other hand, spending
20 about \$500.00 more, \$3,225.00 per ADA, generates
21 TEAMS scores of 67, 64 and 63.

22 And I have selected Aledo, which spends even
23 less than the other two at 2,457. And they generate
24 TEAMS scores of 74, 63 and 67. For the lowest
25 spending among the group of three, they have

1 generated the best TEAMS score results.

2 So we can move now into District 12, Moody --

3 A. I thought maybe you were through. Obviously I was
4 wrong.

5 Q. -- spending per ADA is \$2,965 in Moody. And in
6 Fairfield, spending per child is \$3,196.

7 Again, the two examples that the Plaintiffs
8 selected on their exhibit would tend to reveal that
9 the lower spending district has lower TEAMS score
10 results.

11 But I selected for your attention two other
12 districts, Whitney, which spends \$2,097; and Morgan,
13 which spends \$4,165.00 per ADA. In Whitney, the
14 lowest spending per ADA of the four, we see the
15 highest TEAMS score results at 69, 63 and 67. And in
16 Morgan, where the spending per child is the highest
17 of the four, the TEAMS score results end up the
18 lowest at 21, 26 and 33.

19 A. I would tend to believe that you've got a data error.
20 However, Alan is pretty good about editing and
21 finding some 600 errors in the TEA data base in 1977.
22 But that's a very low number in terms of Whitney.

23 Q. In terms of Whitney's spending?

24 A. Yes.

25 Q. Okay. That is the --

1 A. The conclusion you're reaching, I'm not arguing with
2 at all, and that is you could have selected low spend
3 districts with high TEAMS scores as well as the
4 Plaintiff attorney selected districts showing higher
5 spending with higher test scores. And certainly, you
6 can do that with every region in the state.

7 Q. All right. Was I correct in using that 297 (sic)
8 figure in terms of what Venus --

9 A. It's in the report. I'm just saying I think it
10 reflects a data error somewhere or a typo.

11 Q. Okay. But it was not my error in writing --

12 A. No, no, not your error. It's in the report.

13 Q. All right. Del Valle in Region 13 spends 3,163 and
14 Lago Vista spends \$4,789 per ADA. Again, the two
15 samples selected by Plaintiffs would seem to show
16 that the higher spending goes along with higher TEAMS
17 scores.

18 I have chosen to look at Pflugerville at \$2,931
19 and -- is it Waelder in Gonzales County? Is it
20 Waelder -- spends \$5,265. In Pflugerville, the TEAMS
21 score results are 75, 59 and 67. And in Waelder, the
22 TEAMS score results are 25, 16 and 23.

23 So again, the highest spending results in the
24 lowest TEAMS scores results, and the lowest spending
25 results in the highest TEAMS score results in the

1 sample of four.

2 A. Again, you have a K-12 district with a 157 kids in
3 it.

4 Q. All right. Merkel, going to District 14, the
5 spending per child in the Merkel district is \$2,839,
6 and in Synder, it's \$3,580. Again, the Plaintiffs
7 attempted to show higher TEAMS scores results
8 associated with higher spending.

9 If we look at Comanche at \$2,552 and McCaulley,
10 at \$5,637, we can see that the Comanche district has
11 TEAMS score results of 73, 57 and 63 and the
12 McCaulley district has TEAMS score results of 25, 24
13 and 34.

14 So once again, the highest spending of the four
15 samples here result in the lowest TEAMS score, and
16 the lowest spending generates the highest TEAMS
17 score.

18 In San Saba, District 15, the spending per
19 child is \$3,211. Sterling City is \$5,233.

20 Again, Plaintiffs would attempt to show higher
21 TEAMS scores with higher spending.

22 In Brady, at \$2,899, and Lohn at \$5,217, we see
23 again just the opposite. The TEAMS scores in Brady
24 are 64, 55 and 67, and in Lohn, they are 32, 32 and
25 29.

1 correct, Dr. Hooker?

2 A. That is correct.

3 Q. In Marfa, we have spending of \$2,828 per child. And
4 in Andrews, the other comparison chosen by
5 Plaintiffs, we have \$4,731.

6 Again, their data would tend to suggest the
7 higher TEAMS scores are associated with higher
8 spending.

9 If we take a look at Alpine, we see \$3,103 per
10 child and TEAMS scores of 63, 45 and 51, for the
11 highest TEAMS score results.

12 Turning our attention to Region 19, Fabens has
13 \$2,984 and El Paso, \$3,098, again suggesting that the
14 quietly small -- the larger spending level generated
15 higher TEAMS score results.

16 Ysleta, that I have selected, has \$2,932 in
17 spending per child and Anthony, \$3,797. TEAM scores
18 results in Ysleta are 55, 46, 49, and in Anthony, 35,
19 36 and 38. So the highest spending in that sample of
20 four, again, has the lowest TEAMS score results; is
21 that correct?

22 A. Yes, sir.

23 Q. And finally, in Region 20, Crystal City --

24 A. I knew somehow you would reach that point.

25 Q. -- has \$3,907.00 spending per ADA with low TEAMS

1 score results.

2 Alamo Heights has \$4,252 with high TEAMS score
3 results.

4 And Utopia, that I have selected, at a
5 \$3,798.00 spending per ADA generates the highest
6 TEAMS score results in that region of 81, 64, 67.

7 Now, Dr. Hooker, none of this, I believe you
8 said, surprises you, does it?

9 A. No, sir. It does not.

10 Q. I might ask you if you might look at this, what I've
11 denominated supplement to Plaintiffs' Exhibit 211.

12 Before I hand it to you, I'll ask the court
13 reporter to mark it as Defendant-Intervenors' Exhibit
14 No. 1.

15 (Defendant-Intervenors' Exhibit No. 1 marked.)

16 As I hand to you what's marked
17 Defendant-Intervenors' Exhibit No. 1, Dr. Hooker,
18 I'll ask you is that the compilation that I have just
19 shared with the Court on the board where I filled in
20 the amounts?

21 A. Yes, sir. It is.

22 MR. TURNER: I would like to offer
23 Defendant-Intervenors' No. 1 into evidence, Your
24 Honor.

25 MR. GRAY: No objection.

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

3 (Defendant-Intervenors' Exhibit No. 1
4 admitted.)

5 MR. GRAY: Your Honor, with the one
6 notation that he chose to omit the tax rates of each
7 of these extra districts he added and Bench Marks
8 shows that the same trend is true on each of his
9 added districts that they tax low and, therefore, are
10 able to spend high. Those that are spending low are
11 taxing high. That was the purpose of our original
12 211 and he chose to omit following through on that,
13 but Bench Marks verifies it.

14 THE COURT: All right, sir.

15 BY MR. TURNER:

16 Q. Dr. Hooker, would it be fair to say that Plaintiffs'
17 Exhibit 211, which purports to show M&O expenditures
18 by district and then show related TEAMS scores has
19 absolutely no meaning. In fact, it's totally useless
20 in terms of comparing TEAMS score results and
21 spending?

22 A. I was not asked to testify to anything on this page
23 except to testify to the fact that there are great
24 discrepancies in expenditures per pupil and in wealth
25 per student and in tax rates among the school

1 districts in all of the regions of the state. And
2 that generalization still holds.

3 In terms of the specific examples, I've already
4 agreed with you that you could have selected other
5 examples, which you did, that show that high spending
6 does not necessarily guarantee high TEAMS test
7 scores.

8 Q. All right, sir. And you would agree with me then
9 that if we were going to try to develop some
10 correlation between spending and TEAMS scores, that
11 we wouldn't go about it this way at all, would we?

12 A. No, sir. That's not the methodology I would use. I
13 would run a coefficient correlation and see what it
14 says.

15 Q. All right, sir.

16 Dr. Hooker. I want to look at the first five
17 regions in the state and look closely at the average
18 daily attendance in those districts, again, referring
19 to Plaintiffs' Exhibit 211.

20 And I'll ask you, if you will, to verify my
21 figures here regarding average daily attendance for
22 each of the districts shown on this one page that
23 I've labeled "Second Supplement to Plaintiffs'
24 Exhibit 211."

25 If you will, help me find the ADA for each of

1 these districts.

2 A. The ADA?

3 Q. Yes.

4 A. I would have to go to TEAMS to do that. Not TEAMS,
5 excuse me, Texas Research Regs.

6 Q. Bench Marks?

7 A. Bench Marks.

8 Region 1, the districts in question are Rio
9 Grande City had six thousand -- whoops, I'm in the
10 wrong column -- 4,934 students in ADA in 1984-'85.

11 San Isidro, however you pronounce that, has 341
12 students.

13 Q. All right, sir. Now, that data is not shown, that
14 ADA data is not shown on Plaintiffs' Exhibit 211, is
15 it?

16 A. No, sir. It is not.

17 Q. And would it not be fair to say that the differential
18 in spending that is found per ADA in those two
19 districts is, in fact, related to the economies of
20 scale of those two districts inasmuch as Rio Grande
21 City has 4,900 plus students and San Isidro has 341?

22 A. Rio Grande City would not be eligible for
23 small/sparse adjustments. The other school district
24 would be. However the small/sparse adjustments do
25 not totally account for the high expenditure level

1 that you see there, but it certainly would account
2 for a chunk of it. How much, I don't know.

3 Q. All right, sir. Then for the Plaintiffs to say or
4 for you to say on their behalf that these
5 expenditures comparisons between these two school
6 districts are meant to indicate the wide disparity of
7 spending in this state per ADA and the wide
8 disparities that exist really wouldn't be a fair
9 statement to make, would it, considering the
10 difference in the size of those two districts?

11 A. Well, obviously, when you take into consideration the
12 high density of high cost kids, small/sparse
13 adjustments for diseconomies of scale, price
14 differential adjustments, which are all legitimate
15 adjustments, you would have to look at those things
16 in order to know whether or not there was a real
17 inequity in each of those cases.

18 Q. All right, sir. So there's really not -- it would be
19 fair to say then, there's not a superintendent in
20 this state that would be surprised to see spending in
21 Rio Grande City at \$2,717 with 3,944 students, and a
22 higher spending level in San Isidro of \$6,602 with
23 only 341 students?

24 A. They would probably be surprised that Rio Grande City
25 was so low until they look at their wealth base. And

1 they would probably be surprised that the smaller
2 district was spending quite that much money.

3 Q. All right. But the variation between the two
4 districts --

5 A. They would expect a larger, more cost-effective
6 district to be spending less money per student than a
7 small, inefficient one where diseconomies of scale
8 drive up cost.

9 Q. All right. Let's look in Region 2, Robstown, that
10 the Plaintiffs compared on their Exhibit 211, with
11 Port Aransas, and let's see what the ADA are in those
12 two districts.

13 A. Region 2 in Robstown?

14 Q. Yes.

15 A. Robstown is 4,221 and Port Aransas --

16 MR. KAUFFMAN: 358.

17 THE WITNESS: I'm sorry. I can't find the
18 right page number on the reports.

19 MR. KAUFFMAN: It's on Page A-8.

20 THE WITNESS: A-8?

21 MR. GRAY: Right above Robstown.

22 A. I'm sorry. I'm getting tired and having trouble.
23 358. And all of the same principles apply.

24 Q. All right. So again --

25 A. Part of the difference can be accounted for by the

1 diseconomies of scale which are in force --

2 Q. All right. Let's try --

3 A. -- but you wouldn't expect that high of an
4 expenditure level to be there just because of
5 diseconomies of scale.

6 Q. All right. Let's try Region 3. Look at two samples
7 selected by the Plaintiffs there, Ganado and
8 Austwell-Tivoli.

9 A. Ganado, 595; and Austwell-Tivoli, 234.

10 Q. Now, Dr. Hooker, when we talk about economies of
11 scale, would it not be fair to say that whether you
12 have a school district with 234 in it, or whether you
13 have a school district with 595 in it, there are
14 certain things that both of those districts are going
15 to have to have, to have a kindergarten-through-12
16 school system?

17 A. I have consistently made that argument over the
18 years.

19 Q. So it really wouldn't be any surprise to see that
20 both of those school systems would have a little
21 higher than average spending per ADA, would it?

22 A. No, sir. It wouldn't surprise me at all. Ganado,
23 considering its size, is understating the true costs.

24 Q. All right. Let's look at Region 4, North Forest and
25 Barbers Hill, two districts selected by Plaintiffs

1 for comparison. And let's look at the average daily
2 attendance there.

3 A. Barbers Hill is 1,525. And the other district?

4 Q. North Forest.

5 A. 14,126.

6 Q. All right. So we can get right on through this,
7 let's look at Region 5.

8 A. The diseconomies of scale in that particular example
9 are not coming into play in a significant amount.

10 Q. And why do you say that?

11 A. Well, at 1,525 K-12 is about where our current
12 formulas plug in. And it's about where the curve
13 kicks up. And all I'm saying is that you would not
14 expect diseconomies of scale to account for that kind
15 of spending difference.

16 Q. All right.

17 A. A modest amount of it, but not much.

18 Q. Even though our state formulas take sparsity into
19 account at the \$1,600.00 figure -- or excuse me --
20 the \$1,600 ADA figure --

21 A. Yeah.

22 Q. -- I believe you testified on your deposition --

23 A. As a matter of fact, I did, that diseconomies of
24 scale begin at somewhere around 3,000 students in
25 average daily attendance. And yes, there would be

1 some diseconomies of scale at that level.

2 I'm simply saying that the slope on the curve
3 would be very gradual and then would begin to kick
4 out at 1,600. And the Legislature chose to put it in
5 at 1,600 where the curve really starts up.

6 Q. So if you're correct in your opinion regarding
7 diseconomies of scale beginning at 3,000 ADA and
8 below --

9 A. There are some in existence there, yes.

10 Q. -- then again, you would not be surprised to see
11 higher spending levels --

12 A. No, sir, I would not.

13 Q. -- in this district?

14 A. But somewhat higher, not in that kind of a magnitude.

15 Q. All right. And Region 5, Beaumont was the district
16 selected by the Plaintiffs to compare to Sabine Pass.
17 Could you give me the ADA on those two districts?

18 A. Beaumont 19,266. By the way, is this the
19 restructured Beaumont/South Park, their total
20 combined ADA is showing up under Beaumont ISD?

21 Q. I don't know.

22 A. Okay. There are several people nodding their heads
23 yes, so I assume it is.

24 And the other district is Sabine Pass?

25 Q. Sabine Pass.

1 A. Sabine Pass says 208, so there would be severe
2 diseconomies of scale, probably in the amount of
3 twice as much revenue needed to produce the same
4 kinds of program opportunities and then you wouldn't
5 even achieve that.

6 MR. TURNER: I'm going to ask for the
7 reporter to mark this as Exhibit 2.

8 (Defendant-Intervenors' Exhibit No. 2 marked.)

9 Q. Dr. Hooker I'm going to hand you what's marked as
10 Defendant-Intervenors' Exhibit 2 and ask you if that
11 is an identical representation of what we have
12 displayed here on the chart on this board.

13 A. It is.

14 MR. TURNER: I would like to offer
15 Defendant-Intervenors' Exhibit No. 2 into evidence.

16 MR. GRAY: Your Honor, we have no
17 objections. If they would make us a copy over the
18 evening hours or something so we could have one, I
19 would appreciate it.

20 MR. TURNER: Be happy to.

21 THE COURT: Okay. 2 will be admitted.

22 (Defendant-Intervenors' Exhibit No. 2
23 admitted.)

24 THE COURT: Did you offer 1? There weren't
25 any objections to 1, were there?

1 MR. GRAY: No objections to 1, either.

2 THE COURT: It will be admitted, also.

3 (Defendant-Intervenors' Exhibit No. 1

4 admitted.)

5 BY MR. TURNER:

6 Q. Dr. Hooker, if the Plaintiffs were to tell this Court
7 that these figures that we see on this chart here
8 indicate or tend to prove, in any respect, the wide
9 diversity of spending per ADA in our state, that
10 would be a misrepresentation of what those figures
11 show, would it not?

12 A. I am not sure I would go that far with you. I would
13 go far enough to say that you can't tell simply by
14 looking at per ADA expenditure ranges whether or not
15 there are inequities occurring per children. And in
16 order to make that determination, you would also have
17 to know what diseconomies of scale were enforced, you
18 would have to know about the high density of high
19 cost kids compared to low densities and so forth in
20 order to make a true comparison.

21 Q. So at best, any representations made about these
22 numbers would be deficient to a large degree, would
23 they not?

24 A. That would not be fully explanatory to the Court, no.

25 Q. Dr. Hooker, you testified earlier that you have done

1 some modeling of school districts; is that correct?

2 A. I have set specifications -- you're talking about
3 computer modeling, or are you talking about building
4 model school districts on judgmental methodologies?

5 Q. Building model school districts is what I was
6 referring to.

7 A. Yes. I have done that, both here and in Oklahoma.

8 Q. Now, I believe you stated it was your opinion that in
9 a district below -- was it 3,000 ADA, there are
10 diseconomies of scale?

11 A. Yes, sir.

12 Q. That is to say that in districts smaller than that,
13 we should anticipate higher costs per ADA.

14 A. Yes, sir. You should.

15 Q. And Dr. Hooker, if we have a district, let's say
16 that's at that level, 3,000 per ADA, to know the true
17 costs of operating that district, would we not have
18 to make some analysis of the campus structure of that
19 district?

20 A. Yes, sir. You would.

21 Q. For example, if this district had one high school,
22 two junior high schools, and three elementary
23 schools, I would assume that it would be more
24 expensive to operate than the same district which
25 might choose to have one high school, one junior high

1 school, and only one elementary school?

2 A. It would be an extremely large elementary school. I
3 don't know a district that would choose to operate
4 one that large, but your general principle is
5 correct.

6 Q. All right. Let's say they had two elementary schools --

7 A. Diseconomies of scale need to be adjustments based on
8 the campuses.

9 Q. All right. And I assume that if we had the same
10 district that chose to have a high school, and an
11 intermediate school, a junior high school, and an
12 elementary school, they would also generate different
13 economies of scale, would they not?

14 A. Yes, sir. That's true. You would.

15 Q. In the state formulas that form the basis of
16 distribution of state aid, is there any factor to
17 take into account the differences in campus structure
18 that may occur from district to district?

19 A. There is not. There was in the Senate-passed version
20 of the Select Committee report, but not in House Bill
21 72 as finally passed.

22 Q. Have you ever engaged in any studies that would
23 indicate what the difference is in cost per ADA might
24 be in a district of 3,000, were the campus structure
25 to vary from one extreme to the other.

1 And by that, I mean having a lesser number of
2 campuses, a lesser number of school buildings, as
3 compared to the district with numerous campuses, with
4 numerous buildings, housing various elementary
5 schools?

6 A. The only manner in which I have tried to do that is
7 building models of smaller and smaller middle schools
8 -- well, high schools, middle schools and elementary
9 schools and trying to maintain the same level of
10 services available to the child. And the smaller the
11 campus, the higher the costs.

12 And the assumption is that the cost-effective
13 high school has about a thousand students in it --
14 well, maybe more, but at that level, it's considered
15 a cost-effective operation, middle schools at 750,
16 elementary schools at 600. And there's nothing
17 really magic about those specific numbers, but
18 somewhere in those ball parks.

19 And the judgmental models that I have worked
20 with in Oklahoma, their decisions were that the
21 cost-effective high school had 1,200 in it, which was
22 somewhat higher than the decisions made by the ad hoc
23 advisory group here in Texas.

24 Q. Have you ever done any studies that would allow you
25 to know what the difference might be in cost per ADA

1 depending on the structure of the campus and the
2 number of schools?

3 A. Accepting the decisions of the ad hoc advisory
4 committee that I worked with, yes, I have the basis
5 of making those calculations.

6 Q. You say you do have the basis?

7 A. I do have a basis for doing that. From memory, at
8 4:35 in the afternoon, I wouldn't even attempt to
9 speculate as to what they would be.

10 Q. Well, let me ask it this way. I take it then, you
11 would agree that since our state formulas do not take
12 into account campus structure, that it would be
13 absolutely a ludicrous position to think we have
14 equalized educational spending if we have arrived at
15 the same dollar amount per child in each district of
16 this state?

17 A. That's true.

18 Q. And the type of variation that we might expect to
19 see, based on different campus structures, would you
20 have any opinion on the variation?

21 A. The smaller the campus for a high school, when you
22 descend from a thousand, you drive up your cost per
23 pupil from 750 in the middle school and from 600 in
24 the elementary school if you're trying to maintain
25 the same level of services that you had at the

1 cost-effective operation.

2 Q. Dr. Hooker, do you know what percent statewide
3 teacher salaries are of total spending?

4 A. Not from my own research, but I remember a figure
5 that came out in a price differential research. If I
6 recall it correctly, it's 61 percent.

7 From looking at the Bench Marks report, I would
8 conclude that that's a little high. So, I would be
9 comfortable with somewhere between 48, 49 percent on
10 the low end, and a high of 61 percent on the other.

11 Q. What did you select? 49, did you say?

12 A. I said the data I have seen would lead me to conclude
13 that it's in that range, but I have not specifically
14 done research on that issue, certainly not recently.

15 Q. All right. So, we might say over half of the cost of
16 operating our school systems is payment of teachers'
17 salaries.

18 A. Yes, sir. And if you want to include other
19 personnel, you're probably going to get in the range
20 of from 70 to 80 percent.

21 If you get into truly property poor school
22 districts or school districts that are unwilling to
23 tax themselves, I have seen that run as high as 89
24 percent in terms of personnel costs as a percentage
25 of total current operating expenditures.

1 Q. Dr. Hooker, is it not true that many of these West
2 Texas districts that show high spending per child
3 also pay very high teachers salaries?

4 A. Yes, sir. It is my impression that many of them do.

5 Q. And are you acquainted -- excuse me.

6 A. Well, I was just going to say I have not, you know,
7 reviewed data on that in quite some time. I'm not
8 sure where they are.

9 Q. And are you acquainted with the reasons why some of
10 those districts pay high teacher salaries?

11 A. I am familiar with the reasons that their
12 superintendents state to me, and that being that the
13 new college graduates are attracted to the bright
14 lights rather than to isolated West Texas towns.

15 When I talk to the teachers in those West Texas
16 towns about why they're there, I find out that their
17 husbands own ranches, their husbands own small
18 businesses, they have relatives, land, business
19 investments. So, a lot went into it aside from the
20 salary that's there in terms of them being there.

21 So, that gets to be a very complicated issue in
22 itself about why teachers choose to teach one place
23 versus another. But money is certainly attractive.
24 I wouldn't argue that at all.

25 Q. Some of those districts, I understand, even furnish

1 housing for those teachers to attract them.

2 A. I have been in school districts that furnish
3 teachers' benefits. I've been in one where the
4 superintendent was furnished a house.

5 Q. So if we were to note certain of our West Texas
6 districts, and particularly some of those smaller
7 West Texas districts having high expenditures per
8 ADA, much of that high spending could be a result of
9 economies of scale and higher salaries paid to both
10 teachers and administrators, could it not?

11 A. Yes. And the question becomes: Are they
12 unnecessarily high? And also, what else is being
13 purchased in the school district?

14 Q. All right.

15 A. Indoor heated swimming pools or whatever.

16 Q. And its also true that there is some variation in
17 other parts of the state in terms of teacher
18 salaries.

19 A. Yes, sir. The general pattern has been that where
20 there is an advantaged tax base, a high property
21 wealth per student, that they tend to pay their
22 teachers more than state minimum salary.

23 Q. And also, I would assume, it's equally true that in
24 urban areas, where salaries are generally higher,
25 that we find higher salaries.

1 A. Where there's intense competition among nearby urban
2 school districts and competition from the economy,
3 yes, sir, that happens. That's a part of what the
4 Price Differential Index is about.

5 Q. Dr. Hooker, considering the fact that the state
6 formulas do not take into account economies of scale
7 other than the sparse formula or at least do not take
8 into account economies of scale that might be
9 generated or lost as a result of campus makeup and
10 taking into account the fact that certain areas of
11 the state pay higher teacher salaries for what I
12 think you would agree would be very legitimate
13 reasons in terms of attracting teachers, would we not
14 expect there to be, just based on those two factors
15 alone, a very significant variation in spending per
16 child across this state based on those two factors
17 alone?

18 A. Yes, but the Price Differential Index is supposed to
19 account for necessary salary enrichment to the
20 district. Now, whether or not it does, I'm not here
21 to defend. But it attempts to do that.

22 Q. Dr. Hooker, I want to direct your attention to
23 another one of the Plaintiffs' exhibits they offered
24 while you were on the witness stand, Plaintiffs'
25 Exhibit No. 207.

1 A. Yes, sir.

2 Q. That Plaintiffs' Exhibit purports to be a comparison
3 of tax rates and expenditures, does it not?

4 A. Yes, it does.

5 Q. What Plaintiffs have attempted to depict -- and I'm
6 going to write this on the chart for the benefit of
7 the Court -- is a comparison in the first column of
8 the 50 poorest school districts to the 50 richest
9 districts. And for purposes of this discussion, I
10 want to only refer to the third column that they have
11 denominated "Expenditure Per Refined ADA."

12 Did I write that down correctly?

13 A. Yes, you did.

14 Q. The Plaintiffs would seek to have us believe that the
15 poorest -- 50 poorest districts are spending 2,941
16 and the 50 richest in the state spending 8,700 per
17 ADA and --

18 A. For less than half the tax or about half the tax
19 rate.

20 Q. All right.

21 MR. GRAY: By the way, these are
22 Plaintiff-Intervenors' exhibits not the Plaintiffs'
23 exhibits.

24 MR. TURNER: I'm sorry.

25 MR. GRAY: The Plaintiffs are going to be

1 introducing exhibits on a weighted student basis. We
2 were just using these to lay out the problem, once
3 you get into the weights and the student units and
4 all these price differentials that you've been
5 talking about. You'll see more evidence as to how it
6 gets worse from that point on.

7 BY MR. TURNER:

8 Q. Dr. Hooker, I'm going to hand you what's marked
9 Plaintiff-Intervenors' Exhibit 216 and ask you if you
10 will look down the cumulative ADA column on that
11 exhibit and determine what percent of the student
12 population in this state resides in the 50 poorest
13 districts.

14 A. The 50, I have 4.23 percent, but I didn't take off my
15 shoes, so --

16 Q. Show me on there where you --

17 A. City View ISD.

18 Q. Okay. 4.2?

19 A. Yes, sir.

20 Q. All right. How many students percentage-wise in this
21 state resides in the 50 richest districts?

22 A. That's easier or I could have figured that out in
23 another manner, yes. Okay. I didn't have to take
24 off my shoes if I had been smart enough.

25 Less than 1 percent.

1 MR. GRAY: That's 4.4 by the way, Jim, on
2 the other one.

3 MR. TURNER: 4.4?

4 MR. GRAY: Yes.

5 BY MR. TURNER:

6 Q. Less than 1 percent? Is it one-half of 1 percent?

7 A. It reads that the 99.66 percentile -- not percentile,
8 but percent of the students have been accounted for
9 at this point. So that would leave less than
10 one-half of 1 percent.

11 Q. Less than one-half of 1 percent. I'll just say .5
12 percent.

13 A. Yes, sir.

14 Q. All right. If we want to calculate how many students
15 is represented as residing in those 50 poorest
16 districts, could we multiply 3 million approximately
17 times 4.4?

18 A. Approximately, yes.

19 Q. And I suppose we could do the same with .5 percent?

20 A. Yes, sir, approximately.

21 Q. I believe .5 would be 15,000 students, would it not?

22 MR. GRAY: Judge, I hate to mess up Mr.
23 Turner's cross-examination, but he's looking at the
24 wrong printout for all these numbers.

25 MR. TURNER: What?

1 MR. GRAY: You're using the wrong printout.
2 You're having him look at 216, which is the
3 expenditures, not the wealth. You're having him look
4 at the wrong printout. He can erase all of that and
5 start over.

6 MR. TURNER: Which number is that?

7 MR. GRAY: 214.

8 MR. TURNER: 214. We'll have to start
9 over.

10 BY MR. TURNER:

11 Q. Be down at the bottom of the page, wouldn't it, Dr.
12 Hooker?

13 A. It should be district, 1,013.

14 Q. All right. Does that show 8.1 percent?

15 A. 8.1 percent, yes.

16 Q. All right. I'll just say 8 percent.

17 And we need to check the back page or next to
18 the last page and see 50 up, and that reveals about
19 the same number you had before, 99.44.

20 A. Yes, sir.

21 Q. It's still less than one-half of 1 percent.

22 A. Yes, sir.

23 Q. All right. 8 percent of the students in the State of
24 Texas would be 240,000 students, would it not?

25 A. That's close. 240,000 students are involved in 50

1 poorest school districts spending an average of
2 2,941.

3 Q. All right. Now the Plaintiffs' Exhibit 207 didn't
4 reveal any of these numbers over here, the number of
5 students or percent of students, did it?

6 A. No, it did not.

7 Q. Just looking at the exhibit, one would tend to think
8 that it means that the poorest districts clearly
9 spend less, much less per ADA than the 50 richest; is
10 that correct?

11 A. Yes, sir. That's what it shows.

12 Q. Now, let's look at how many students reside on
13 average in those 50 poorest and 50 richest districts.
14 I believe we could do that simply by dividing 50 by
15 240,000. I believe we get right at 4,800 as the
16 average ADA in the 50 poorest districts, do we not?

17 A. If you're going to look at a straight average on the
18 50, that would be about right.

19 Q. And if we were to look at the number of students on
20 the average residing in the 50 richest districts, we
21 would divide 50 into 15,000, and we would get an
22 average ADA of 300, would we not?

23 A. Yes, sir. That's approximately correct.

24 Q. Again, Dr. Hooker, would we not have the same
25 consideration of economies of scale to take into

1 account in making a comparison of districts with
2 average ADA of 4,800 as compared to districts with an
3 average ADA of 300?

4 A. Yes, sir. You would, but that would not explain
5 \$8,700.00.

6 Q. All right, sir. If we looked on the same Plaintiffs'
7 Exhibit 207, at the hundred poorest and the hundred
8 richest, Plaintiffs tell us that there is an average
9 ADA expenditure of 2,978 in the hundred poorest, and
10 an average 88 expenditure in the hundred richest of
11 7,233.

12 Could you tell me, Dr. Hooker, by looking on
13 that same exhibit that you have in your hand, what
14 percentage of the total student population reside in
15 the hundred poorest districts?

16 A. 11.72.

17 Q. And in the hundred richest?

18 A. It's 98.43 subtracted from a hundred.

19 Q. 1.57.

20 And I suppose we could figure out the number of
21 students involved here by multiplying 11.72 percent
22 times 3 million. And I'm told that would be 351,600
23 for an average ADA.

24 Does that seem right to you, Dr. Hooker?

25 A. Yes, sir.

1 Q. And in the hundred richest districts, the number of
2 students would be 47,100; is that correct?

3 A. David says it's okay. It's okay.

4 Q. So we can find the average expenditure per child in
5 those hundred poorest districts by dividing by 100,
6 can we not?

7 A. Yes, sir.

8 Q. So we see an ADA expenditure average of 3,516 in the
9 hundred poorest?

10 A. A what? Wait a minute. Back up now.

11 MR. GRAY: Average ADA per district.

12 Q. Excuse me. Average daily attendance of 3,516.

13 Excuse me.

14 A. Yes, sir.

15 Q. And 471 average daily attendance in the hundred
16 richest districts shown on that exhibit.

17 A. Yes, sir.

18 Q. Again, would it not be true that economies of scale
19 would account for a significant part of the
20 differential of spending between those two districts,
21 groups of districts?

22 A. It depends on how you determine significant. In my
23 opinion, yes. There would be substantially higher
24 costs in school districts that average 471 versus
25 3,516.

1 Q. All right. Dr. Hooker, then wouldn't it be fair to
2 say that it would be improper for the Court to look
3 at the expenditures for refined ADA in these two
4 groups of districts without taking into account --

5 A. Diseconomies.

6 Q. -- natural differences based on economies of scale?

7 A. Yes, sir.

8 Are you going to try the next one, 200 and 200?

9 MR. GRAY: If he doesn't, we will.

10 BY MR. TURNER:

11 Q. Dr. Hooker, when this trial began, Mr. Gray made some
12 mention of the wealthiest districts' wealth per ADA,
13 property wealth, as compared to the poorest
14 districts' wealth per ADA; do you recall that?

15 A. He tends to talk a lot about that, yes.

16 Q. In fact, I believe that he calculated and you
17 verified that that was a ratio of 700 to one?

18 A. In terms of the extreme from poorest to richest.

19 Q. Dr. Hooker, I'm holding in my hand a book called the
20 "Measurement of Equity in School Finance" by Robert
21 Berne and Leanna Stiefel. Are you familiar with this
22 text book?

23 A. I wrote a review of that book for the American
24 Association of School Finance Journal, yes, sir, I
25 have seen the book.

1 Q. Dr. Hooker, having written a review of this book --

2 A. That doesn't mean I remember everything that was in
3 it, sir.

4 Q. I understand. Having written a review of this book,
5 then you know that this is known in education finance
6 circles as one of the most complete descriptions of
7 the various measures of school equity that can be
8 found anywhere.

9 A. They tried to show examples of the utilization of
10 almost every accepted way of looking at those kinds
11 of issues, yes, sir.

12 Q. In this text book, Dr. Hooker, on Page 106, Table
13 5.5, it just happens to list a series of measures of
14 what Dr. Berne calls "horizontal equity."

15 I might let you look at those lists and I'll
16 ask you about each of them.

17 First, could you tell us what's meant by the
18 term of "horizontal equity"?

19 THE COURT: Let's do this. Before you get
20 started on horizontal equity, let's stop. It's 5:00
21 o'clock. You can mark your place and start here
22 tomorrow.

23 We'll be here tomorrow morning at 9:00.

24 (Proceedings recessed until

25 (9:00, January 27, 1987.