

3-87-190-CV

CAUSE NO. 362,516

C 8353

EDGEWOOD INDEPENDENT SCHOOL  
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

> IN THE 250TH JUDICIAL  
>  
>  
>  
> DISTRICT COURT OF  
>  
>  
>  
> TRAVIS COUNTY, TEXAS

FILED  
IN SUPREME COURT  
OF TEXAS

JUN 21 1989

STATEMENT OF FACTS

JOHN T. COAMS, Clerk

By \_\_\_\_\_ Deputy

VOLUME XXXIV OF XLVI

FILED

0 9 87

KFT  
1570  
E33  
1987  
v.34

TAKEN MARCH 27, 1987

MONICA ROSS WEIDMANN

Official Court Reporter  
250th Judicial District Court

CAUSE NO. 362, 516

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

-----

STATEMENT OF FACTS

-----

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

-----

APPEARANCES:

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

-and-

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

-and-

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

-and-

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

ATTORNEYS FOR THE PLAINTIFFS

## 1 APPEARANCES CONT'D

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

6 -and-

7 MR. DAVID R. RICHARDS, with the law firm  
8 of RICHARDS & DURST, Attorneys at Law, 600 West  
9 7th Street, Austin, Texas 78701

10 ATTORNEYS FOR THE PLAINTIFF-INTERVENORS

11 MR. KEVIN THOMAS O'HANLON, Assistant  
12 Attorney General, P. O. Box 12548, Austin, Texas  
13 78711-2548

14 -and-

15 MR. DAVID THOMPSON, Office of Legal Services,  
16 Texas Education Agency, General Counsel, 1701 N.  
17 Congress, Austin, Texas 78701

18 ATTORNEYS FOR THE DEFENDANTS

19 MR. JIM TURNER and MR. TIMOTHY L. HALL,  
20 with the law firm of HUGHES & LUCE, Attorneys  
21 at Law, 1500 United Bank Tower, Austin, Texas  
22 78701

23 -and-

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

-and-

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

-and-

1 APPEARANCES CONT'D

2  
3 MR. KENNETH C. DIPPEL, MR. JOHN BOYLE,  
4 MR. RAY HUTCHISON, and MR. ROBERT F. BROWN, with  
5 the law firm of HUTCHISON, PRICE, BOYLE & BROOKS,  
6 Attorneys at Law, 3900 First City Center,

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17 ATTORNEYS FOR THE DEFENDANT-INTERVENORS

18 BE IT REMEMBERED that on this the 27th day of March,  
19 1987, the foregoing entitled and numbered cause came on  
20 for trial before the said Honorable Court, Honorable  
21 Harley Clark, Judge Presiding, whereupon the following  
22 proceedings were had, to-wit:  
23  
24  
25

I N D E X

JANUARY 20, 1987  
VOLUME I

Page

Opening Statements:

By Mr. Earl Luna -----	6
By Mr. Turner -----	9
By Mr. O'Hanlon -----	16
By Mr. Deatherage -----	30

PLAINTIFFS' and PLAINTIFF-INTERVENORS' EVIDENCE

WITNESSES:

DR. RICHARD HOOKER

Direct Examination by Mr. Gray -----	35
Voir Dire Examination by Mr. E. Luna -----	73
Direct Examination (Resumed) by Mr. Gray ----	76

JANUARY 21, 1987  
VOLUME II

WITNESSES:

DR. RICHARD HOOKER

Direct Examination (Resumed) by Mr. Gray ----	105
Voir Dire Examination by Mr. O'Hanlon -----	143
Voir Dire Examination by Mr. Kauffman -----	144
Direct Examination (Resumed) by Mr. Gray ----	146
Examination by the Court -----	160
Direct Examination (Resumed) by Mr. Gray ----	161
Voir Dire Examination by Mr. O'Hanlon -----	165
Direct Examination (Resumed) by Mr. Gray ----	177
Cross Examination by Mr. Kauffman -----	182
Cross Examination by Mr. O'Hanlon -----	184

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (Continued)

JANUARY 22, 1987  
VOLUME III

WITNESSES:		Page
MS. ESTELA PADILLA		
Direct Examination by Mr. Perez -----		309
Cross Examination by Mr. E. Luna -----		344
Cross Examination by Mr. Turner -----		370
Cross Examination by Mr. O'Hanlon -----		379
Recross Examination by Mr. E. Luna -----		399

JANUARY 26, 1987  
VOLUME IV

WITNESSES:		
DR. RICHARD HOOKER		
Cross Examination (Resumed) by Mr. O'Hanlon -		416
Cross Examination by Mr. Turner -----		546

I N D E X (CONTINUED)

JANUARY 27, 1987  
VOLUME V

WITNESSES:

DR. RICHARD HOOKER

Cross Examination (Resumed) by Mr. Turner ---	614
Cross Examination by Mr. E. Luna -----	653
Cross Examination by Mr. Deatherage -----	678
Redirect Examination by Mr. Gray -----	683
Recross Examination by Mr. Kaufman -----	704
Recross Examination by Mr. O'Hanlon -----	714

MR. BILL SYBERT

Direct Examination by Mr. Kaufman -----	760
---	-----

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

JANUARY 28, 1987

VOLUME VI

WITNESSES:

MR. BILL SYBERT

Direct Examination (Resumed) by Mr. Kauffman -	821
Cross Examination by Mr. O'Hanlon -----	840
Cross Examination by Mr. Turner -----	879
Cross Examination by Mr. R. Luna -----	899
Redirect Examination by Mr. Kauffman -----	913
Recross Examination by Mr. O'Hanlon -----	934
Recross Examination by Mr. Turner -----	942
Recross Examination by Mr. R. Luna -----	950

MS. NELDA JONES

Direct Examination by Mr. Gray -----	955
Cross Examination by Mr. O'Hanlon -----	987
Cross Examination by Mr. Turner -----	1004
Cross Examination by Mr. R. Luna -----	1022

MR. CRAIG FOSTER

Direct Examination by Mr. Kauffman -----	1033
--	------

JANUARY 29, 1987

VOLUME VII

WITNESSES:

MR. CRAIG FOSTER

Direct Examination (Resumed) by Mr. Kauffman -	1055
Voir Dire Examination by Mr. R. Luna -----	1209
Direct Examination (Resumed) by Mr. Kauffman -	1210

I N D E X (CONTINUED)

FEBRUARY 2, 1987  
VOLUME VIII

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESSES:

MR. CRAIG FOSTER

Direct Examination (Cont.) by Mr. Kauffman ---	1252
Examination by the Court -----	1273
Cross Examination by Mr. Richards -----	1282
Voir Dire by Mr. O'Hanlon -----	1299
Cross Examination (Resumed) by Mr. Richards --	1313
Redirect Examination by Mr. Kauffman -----	1366
Voir Dire Examination by Mr. O'Hanlon -----	1376
Cross Examination by Mr. Turner -----	1379

DR. RICHARD HOOKER

Recross Examination (Resumed) by Mr. O'Hanlon-	1411
Recross Examination by Mr. Turner -----	1428
Further Recross Examination by Mr. O'Hanlon --	1456
Further Recross Examination by Mr. Kauffman --	1458

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

FEBRUARY 3, 1987  
VOLUME IX

WITNESSES:

MR. CRAIG FOSTER

Cross Examination by Mr. O'Hanlon -----	1463
Recross Examination by Mr. Turner -----	1616

FEBRUARY 4, 1987  
VOLUME X

WITNESSES:

MR. CRAIG FOSTER

Cross Examination by Mr. R. Luna -----	1643
Further Recross Examination by Mr. Turner ----	1667
Cross Examination by Mr. Deatherage -----	1762
Recross Examination by Mr. O'Hanlon -----	1777
Recross Examination by Mr. Richards -----	1783
Voir Dire Examination by Mr. O'Hanlon -----	1789
Recross Examination (Resumed) by Mr. Richards-	1791
Voir Dire Examination by Mr. O'Hanlon -----	1804
Voir Dire Examination by Mr. Turner -----	1807
Further Redirect Examination by Mr. Kauffman -	1815
Further Recross Examination by Mr. O'Hanlon --	1822
Further Recross Examination by Mr. Turner ----	1839

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

FEBRUARY 5, 1987  
VOLUME XI

WITNESSES:

MR. CRAIG FOSTER

Further Recross Examination (Cont.)	
by Mr. Turner -----	1846
Further Recross Examination by Mr. O'Hanlon -	1911
Recross Examination by Mr. R. Luna -----	1914

MR. BILLY DON WALKER

Direct Examination by Mr. Gray -----	1918
Cross Examination by Mr. O'Hanlon -----	2041

FEBRUARY 9, 1987  
VOLUME XII

WITNESSES:

MR. BILLY DON WALKER

Cross Examination (Cont'd) by Mr. O'Hanlon --	2060
Cross Examination by Mr. Turner -----	2119

AFTERNOON SESSION

MR. BILLY DON WALKER

Cross Examination (Res.) by Mr. Turner -----	2142
Cross Examination by Mr. R. Luna -----	2163
Redirect Examination by Mr. Gray -----	2169
Recross Examination by Mr. Turner -----	2178
Examination by the Court -----	2181

MR. JERRY CHRISTIAN

Direct Examination by Mr. Gray -----	2184
Cross Examination by Mr. O'Hanlon -----	2237

I N D E X (CONTINUED)

FEBRUARY 10, 1987  
VOLUME XIII

WITNESSES:

MR. JERRY CHRISTIAN

Cross Examination (Cont'd) by Mr. O'Hanlon --	2253
Cross Examination by Turner -----	2277
Cross Examination by Ms. Milford -----	2352
Recross Examination by Mr. O'Hanlon -----	2361
Examination by the Court -----	2372
Further Recross Examination by Mr. O'Hanlon -	2384
Recross Examination by Mr. Turner -----	2391
Recross Examination by Ms. Milford -----	2408
Redirect Examination by Mr. Gray -----	2412

MS. LIBBY LANCASTER

Direct Examination by Mr. Gray -----	2414
Cross Examination by Mr. O'Hanlon -----	2435

MS. GLORIA ZAMORA

Direct Examination by Mr. Roos -----	2441
--------------------------------------	------

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## I N D E X (Continued)

FEBRUARY 11, 1987  
VOLUME XIV

## WITNESSES:

## MS. GLORIA ZAMORA

6	Direct Examination (Cont'd) By Mr. Roos -----	2480
	Cross Examination by Mr. Richards -----	2487
/	Cross Examination by Mr. O'Hanlon -----	2487
	Cross Examination by Mr. Turner -----	2506
8	Cross Examination by Ms. Milford -----	2519
	Examination by the Court -----	2521

## MR. LEONARD VALVERDE

11	Direct Examination by Mr. Roos -----	2527
	Cross Examination by Mr. Turner -----	2549
12	Cross Examination by Mr. O'Hanlon -----	2568
	Redirect Examination by Mr. Roos -----	2569

## MR. JOHN SAWYER, III

15	Direct Examination by Mr. Kauffman -----	2570
	Cross Examination by Mr. Richards -----	2635
16	Cross Examination by Mr. O'Hanlon -----	2636
	Cross Examination by Mr. Turner -----	2678

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## I N D E X (Continued)

FEBRUARY 12, 1986  
VOLUME XV

## WITNESSES:

MR. JOHN SAWYER, III

Cross Examination (Cont'd) by Mr. Turner ----	2699
Cross Examination by Mr. R. Luna -----	2800
Recross Examination by Mr. O'Hanlon -----	2808

MRS. HILDA S. ORTIZ

Direct Examination by Ms. Cantu -----	2816
Cross Examination by Mr. O'Hanlon -----	2838
Cross Examination by Ms. Milford -----	2844

MR. HAROLD HAWKINS

Direct Examination by Mr. Gray -----	2849
Cross Examination by Mr. Kaufman -----	2878
Cross Examination by Mr. O'Hanlon -----	2879

FEBRUARY 13, 1987  
VOLUME XVI

## WITNESSES:

MR. HAROLD HAWKINS

Cross Examination (Cont'd) by Mr. O'Hanlon --	2896
Cross Examination by Mr. Turner -----	2950

## I N D E X (CONTINUED)

FEBRUARY 17, 1987  
VOLUME XVII

## WITNESSES:

## MR. CRAIG FOSTER

Further Redirect Examination by Mr. Kauffman - 3006  
Further Recross Examination by Mr. O'Hanlon -- 3013  
Further Recross Examination by Mr. Turner ---- 3046

## DR. FRANK W. LUTZ

Direct Examination by Mr. Gray ----- 3072  
Cross Examination by Mr. O'Hanlon ----- 3088  
Cross Examination by Mr. Turner ----- 3098  
Cross Examination by Ms. Milford ----- 3103  
Recross Examination by Mr. O'Hanlon ----- 3110  
Redirect Examination by Mr. Gray ----- 3118

## MR. CRAIG FOSTER

Further Recross Examination (Resumed) by  
Mr. Turner ----- 3121  
Further Recross Examination by Mr. R. Luna --- 3157  
Examination by the Court ----- 3176

## MR. ALAN POGUE

Direct Examination by Mr. Richards ----- 3194  
Voir Dire Examination by Mr. R. Luna ----- 3202  
Voir Dire Examination by Mr. O'Hanlon ----- 3205  
Voir Dire Examination by Mr. Turner ----- 3207

I N D E X (CONTINUED)

FEBRUARY 18, 1987  
VOLUME XVIII

WITNESSES:

MR. CRAIG FOSTER

Further Recross Examination by Mr. O'Hanlon --	3226
Further Recross Examination by Mr. Turner ----	3286
Further Recross Examination by Mr. R. Luna ---	3353
Further Recross Examination by Mr. O'Hanlon --	3356
Cross Examination by Mr. Gray -----	3371
Further Recross Examination by Mr. O'Hanlon --	3375
Further Recross Examination by Mr. Turner ----	3377
Further Recross Examination by Mr. R. Luna ---	3385
Further Redirect Examination by Mr. Kauffman -	3386

MR. ALLEN BOYD

Direct Examination by Mr. Kauffman -----	3388
Cross Examination by Mr. O'Hanlon -----	3418
Cross Examination by Mr. Turner -----	3438
Cross Examination by Ms. Milford -----	3441
Redirect Examination by Mr. Kauffman -----	3444

FEBRUARY 19, 1987  
VOLUME IX

DR. JOSE CARDENAS

Direct Examination by Mr. Kauffman -----	3449
Cross Examination by Mr. O'Hanlon -----	3484
Cross Examination by Mr. Turner -----	3487
Cross Examination by Ms. Milford -----	3491
Examination by the Court -----	3496

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

FEBRUARY 20, 1987  
VOLUME XX

Defendants Motion for Judgment ----- 3548

FEBRUARY 23, 1987  
VOLUME XXI

DEFENDANTS' EVIDENCE

WITNESSES:

MR. LYNN MOAK

Direct Examination by Mr. Thompson ----- 3661  
Voir Dire Examination by Mr. Kauffman ----- 3683  
Direct Examination (Resumed) by Mr. Thompson - 3684  
Voir Dire Examination by Mr. Kauffman ----- 3692  
Direct Examination (Resumed) by Mr. Thompson - 3693  
Examination by the Court ----- 3699  
Direct Examination (Resumed) by Mr. Thompson - 3701  
Voir Dire Examination by Mr. Kauffman ----- 3741  
Direct Examination (Resumed) by Mr. Thompson - 3750

FEBRUARY 24, 1987  
VOLUME XXII

WITNESSES:

MR. LYNN MOAK

Direct Examination (Cont.) by Mr. Thompson --- 3854  
Examination by Mr. Richards ----- 3890  
Examination by Mr. Kauffman ----- 3891  
Direct Examination (Resumed) by Mr. Thompson - 3895  
Voir Dire Examination by Mr. Kauffman ----- 3934  
Voir Dire Examination by Mr. Gray ----- 3935  
Direct Examination (Resumed) by Mr. Thompson - 3937

## I N D E X (CONTINUED)

FEBRUARY 25, 1987  
VOLUME XXIII

## WITNESSES:

MR. ROBBY V. COLLINS

6	Direct Examination by Mr. Thompson -----	3976
7	Cross Examination by Mr. Turner -----	4042
8	Cross Examination by Mr. R. Luna -----	4083
9	Cross Examination by Mr. Gray -----	4091
10	Redirect Examination by Mr. Thompson -----	4113
11	Recross Examination by Mr. Turner -----	4120
12	Recross Examination by Mr. R. Luna -----	4129
13	Examination by the Court -----	4133
14	Further Redirect Examination by Mr. Thompson -	4150
15	Examination by the Court -----	4155
16	Further Recross Examination by Mr. Turner ----	4160
17	Further Recross Examination by Mr. R. Luna ---	4172
18	Examination by the Court -----	4178

FEBRUARY 26, 1987  
VOLUME XXIV

## WITNESSES:

DR. DEBORAH VERSTEGEN

18	Direct Examination by Mr. O'Hanlon -----	4190
19	Voir Dire Examination by Mr. Kauffman -----	4194
20	Direct Examination (Resumed) by Mr. O'Hanlon -	4195
21	Examination by the Court -----	4271
22	Direct Examination (Resumed) by Mr. O'Hanlon -	4276
23	Voir Dire Examination by Mr. Kauffman -----	4280
24	Direct Examination (Resumed) by Mr. O'Hanlon -	4281
25	Cross Examination by Mr. Turner -----	4288
	Cross Examination by Mr. Gray -----	4307

I N D E X (CONTINUED)

FEBRUARY 27, 1987  
VOLUME XXV

WITNESSES:

DR. DEBORAH VERSTEGEN

Cross Examination by Mr. Perez-Bustillo -----	4380
Cross Examination by Mr. Kauffman -----	4427
Redirect Examination by Mr. O'Hanlon -----	4599

MARCH 2, 1987  
VOLUME XXVI

WITNESSES:

MR. LYNN MOAK

Direct Examination (Cont.) by Mr. Thompson ---	4604
Voir Dire Examination by Mr. Kauffman -----	4672
Direct Examination (Resumed) by Mr. Thompson -	4672
Voir Dire Examination by Mr. Kauffman -----	4703
Voir Dire Examination by Mr. Richards -----	4704
Direct Examination (Resumed) by Mr. Thompson -	4705
Voir Dire Examination by Mr. Kauffman -----	4731
Direct Examination (Resumed) by Mr. Thompson -	4731
Voir Dire Examination by Mr. Richards -----	4754
Direct Examination (Resumed) by Mr. Thompson -	4756
Examination by the Court -----	4772
Direct Examination (Resumed) by Mr. Thompson -	4773
Examination by the Court -----	4774
Direct Examination (Resumed) by Mr. Thompson -	4775
Voir Dire Examination by Mr. Kauffman -----	4789
Direct Examination (Resumed) by Mr. Thompson -	4790
Voir Dire Examination by Mr. Gray -----	4792
Examination by the Court -----	4792
Direct Examination (Resumed) by Mr. Thompson -	4794

I N D E X (CONTINUED)

MARCH 3, 1987  
VOLUME XXVII

WITNESSES:

MR. LYNN MOAK

Direct Examination (Cont.) by Mr. Thompson ---	4799
Voir Dire Examination by Mr. Richards -----	4800
Direct Examination (Resumed) by Mr. Thompson -	4803
Voir Dire Examination by Mr. Kauffman -----	4817
Voir Dire Examination by Mr. Richards -----	4819
Direct Examination (Resumed) by Mr. Thompson -	4823
Cross Examination by Mr. Turner -----	4879
Cross Examination by Mr. R. Luna -----	4904
Cross Examination by Mr. Gray -----	4917

MARCH 4, 1987  
VOLUME XXVIII

WITNESSES:

MR. LYNN MOAK

Cross Examination (Cont.) by Mr. Gray -----	4986
Discussion by attorneys -----	5017
Cross Examination (Resumed) by Mr. Gray -----	5126

I N D E X (CONTINUED)

MARCH 5, 1987  
VOLUME XXIX

WITNESSES:

MR. LYNN MOAK

Cross Examination (Cont.) by Mr. Gray -----	5155
Redirect Examination by Mr. Thompson -----	5159
Recross Examination by Mr. R. Luna -----	5186
Recross Examination by Mr. Gray -----	5189
Examination by the Court -----	5192
Cross Examination by Mr. Hall -----	5206
Further Redirect Examination by Mr. Thompson -	5210
Further Recross Examination by Mr. R. Luna ---	5213
Further Examination by the Court -----	5215

DR. RICHARD KIRKPATRICK

Direct Examination by Mr. O'Hanlon -----	5231
Cross Examination by Mr. R. Luna -----	5282
Cross Examination by Mr. Gray -----	5300
Redirect Examination by Mr. O'Hanlon -----	5306
Examination by the Court -----	5309
Further Redirect Examination by Mr. O'Hanlon -	5311
Examination by the Court -----	5318

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

MARCH 23, 1987  
VOLUME XXX

WITNESSES:

DR. HERBERT WALBERG

Direct Examination by Mr. R. Luna -----	5326
Examination by the Court -----	5354
Direct Examination (Resumed) by Mr. R. Luna --	5358
Cross Examination by Mr. Turner -----	5401
Cross Examination by Mr. O'Hanlon -----	5411
Cross Examination by Mr. Roos -----	5420
Cross Examination by Mr. Gray -----	5482
Redirect Examination by Mr. R. Luna -----	5526
Examination by the Court -----	5529
Recross Examination by Mr. Roos -----	5538

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

MARCH 24, 1987

VOLUME XXXI

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WITNESSES:

MR. MARVIN DAMERON

Direct Examination by Mr. E. Luna -----	5544
Cross Examination by Mr. O'Hanlon -----	5563
Cross Examination by Mr. Richards -----	5578
Cross Examination by Mr. Kauffman -----	5593
Redirect Examination by Mr. E. Luna -----	5610
Recross Examination by Mr. O'Hanlon -----	5616
Cross Examination by Mr. Turner -----	5620
Recross Examination by Mr. Richards -----	5624
Recross Examination by Mr. Kauffman -----	5629
Further Redirect Examination by Mr. E. Luna --	5637
Further Recross Examination by Mr. O'Hanlon --	5637
Further Recross Examination by Mr. Kauffman --	5638
Recross Examination by Mr. Turner -----	5638
Examination by the Court -----	5639

MR. DAN LONG

Direct Examination by Mr. E. Luna -----	5640
Cross Examination by Mr. Turner -----	5657
Cross Examination by Mr. O'Hanlon -----	5675
Cross Examination by Mr. Kauffman -----	5692

## I N D E X (CONTINUED)

MARCH 25, 1987  
VOLUME XXXII

## WITNESSES:

## DR. ROBERT JEWELL

Direct Examination by Mr. R. Luna ----- 5724  
Voir Dire Examination by Mr. Gray ----- 5782  
Direct Examination (Resumed) by Mr. R. Luna --- 5783

## MR. RUBEN ESQUIVEL

Direct Examination by Mr. E. Luna ----- 5796  
Cross Examination by Mr. Kauffman ----- 5810  
Cross Examination by Mr. Gray ----- 5820  
Redirect Examination by Mr. E. Luna ----- 5823

## DR. DAN LONG

Cross Examination (Resumed) by Mr. Kauffman --- 5829

MARCH 26, 1987  
VOLUME XXXIII

## WITNESSES:

## DR. DAN LONG

Cross Examination (Cont.) by Mr. Kauffman ----- 5874  
Cross Examination by Mr. Richards ----- 5907  
Redirect Examination by Mr. R. Luna ----- 5936  
Recross Examination by Mr. Turner ----- 5974  
Recross Examination by Mr. O'Hanlon ----- 6025  
Recross Examination by Mr. Richards ----- 6029  
Recross Examination by Mr. Kauffman ----- 6037  
Further Redirect Examination by Mr. R. Luna --- 6053  
Examination by the Court ----- 6061

I N D E X (Continued)

MARCH 27, 1987  
VOLUME XXXIV

WITNESSES:

DR. ROBERT JEWELL

Cross Examination by Mr. Roos -----	6086
Cross Examination by Mr. Gray -----	6128
Redirect Examination by Mr. R. Luna -----	6167
Cross Examination by Mr. O'Hanlon -----	6191

DR. BUDDY L. DAVIS

Direct Examination by Mr. Turner -----	6198
Cross Examination by Mr. Gray -----	6229
Cross Examination by Mr. Kauffman -----	6240
Redirect Examination by Mr. Turner -----	6242
Recross Examination by Mr. Gray -----	6245
Cross Examination by Mr. O'Hanlon -----	6246
Further Redirect Examination by Mr. Turner ----	6247
Examination by the Court -----	6251

DR. VICTORIA BERGIN

Direct Examination by Mr. Thompson -----	6252
--	------

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

MARCH 30, 1987  
VOLUME XXXV

WITNESSES:

DR. VICTORIA BERGIN

Direct Examination (Cont.) by Mr. Thompson	----	6281
Cross Examination by Mr. Turner	-----	6366
Cross Examination by Mr. R. Luna	-----	6422
Cross Examination by Mr. Kauffman	-----	6428

MARCH 31, 1987  
VOLUME XXXVI

WITNESSES:

DR. VICTORIA BERGIN

Cross Examination (Cont.) by Mr. Kauffman	-----	6493
Cross Examination by Mr. Gray	-----	6498
Redirect Examination by Mr. Thompson	-----	6558
Recross Examination by Mr. Turner	-----	6570
Recross Examination by Mr. Gray	-----	6580
Examination by the Court	-----	6584

DR. WILLIAM N. KIRBY

Direct Examination by Mr. Thompson	-----	6597
Cross Examination by Mr. Richards	-----	6672

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

APRIL 1, 1987  
VOLUME XXXVII

WITNESSES:

DR. WILLIAM N. KIRBY

Cross Examination (Res.) by Mr. Richards -----	6715
Cross Examination by Mr. Kauffman -----	6732
Redirect Examination by Mr. Thompson -----	6783
Cross Examination by Mr. Turner -----	6797
Cross Examination by Mr. R. Luna -----	6818
Recross Examination by Mr. Richards -----	6824
Recross Examination by Mr. Kauffman -----	6829
Recross Examination by Mr. Turner -----	6832
Examination by the Court -----	6833

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

APRIL 6, 1987  
VOLUME XXXVIII

WITNESSES:

DR. ARTHUR E. WISE

Direct Examination by Mr. Bustillo ----- 6852  
Cross Examination by Mr. Hall ----- 6939

APRIL 7, 1981  
VOLUME XXXIX

WITNESSES:

DR. ARTHUR E. WISE

Cross Examination (Cont.) by Mr. Hall ----- 7063  
Cross Examination by Mr. O'Hanlon ----- 7134  
Cross Examination by Mr. R. Luna ----- 7205  
Examination by the Court ----- 7221

## I N D E X (CONTINUED)

APRIL 8, 1987  
VOLUME XL

## WITNESSES:

## DR. JAMES WARD

Direct Examination by Mr. R. Luna -----	7236
Cross Examination by Mr. Turner -----	7277
Cross Examination by Mr. O'Hanlon -----	7284
Cross Examination by Mr. Kauffman -----	7285
Cross Examination by Mr. Gray -----	7314
Redirect Examination by Mr. R. Luna -----	7340
Recross Examination by Mr. O'Hanlon -----	7343
Examination by the Court -----	7345

## MR. ALBERT CORTEZ

Direct Examination by Mr. Kauffman -----	7359
Voir Dire Examination by Mr. O'Hanlon -----	7373
Voir Dire Examination by Mr. Turner -----	7377
Direct Examination (Res.) by Mr. Kauffman -----	7379
Cross Examination by Mr. O'Hanlon -----	7397
Cross Examination by Mr. Turner -----	7421
Cross Examination by Mr. R. Luna -----	7442
Further Cross Examination by Mr. O'Hanlon -----	7451
Examination by the Court -----	7455

ALL PARTIES REST AND CLOSE ----- 7488

APRIL 9, 1987  
VOLUME XLI

Discussion -----	7493
------------------	------

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

APRIL 21, 1987  
VOLUME XLII

Findings of Fact Argument ----- 7529

APRIL 23, 1987  
VOLUME XLIII

FINAL ARGUMENT

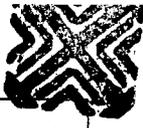
By Mr. Kauffman -----	7610
By Mr. Richards -----	7625
By Mr. Gray -----	7633
By Mr. Turner -----	7643
By Mr. R. Luna -----	7669
By Mr. Boyle -----	7685
By Mr. O'Hanlon -----	7696

APRIL 29, 1987  
VOLUME XLIV

Decision announced by Judge Harley Clark ----- 7717

MAY 22, 1987  
VOLUME XLV

Discussion by Counsel ----- 7755



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X (CONTINUED)

JUNE 1, 1987  
VOLUME XLVI

WITNESSES:

MR. ALBERT H. KAUFFMAN

Direct Examination by Mr. Larson -----	7908
Cross Examination by Mr. O'Hanlon -----	7921
Redirect Examination by Mr. Larson -----	7951

MR. RICHARD E. GRAY, III

Statement by Mr. Gray -----	7952
Cross Examination by Mr. O'Hanlon -----	7957

MR. DAVID R. RICHARDS

Statement by Mr. Richards -----	7970
Cross Examination by Mr. Kauffman -----	7972
Cross Examination by Mr. O'Hanlon -----	7974

Statement by Mr. Kauffman -----	7978
---------------------------------	------

Discussion -----	7980
------------------	------

Reporter's Certificate -----	7994
------------------------------	------

1 MARCH 27, 1987

2 MR. KAUFFMAN: Your Honor, if I may, before  
3 we proceed, we would like to introduce into evidence  
4 what we will mark as Plaintiffs' Exhibit 32. It is  
5 the Texas Public School Fall Membership by Ethnic  
6 Group, a campus report count and percent per '86-'87.  
7 And what it shows, is, Your Honor, it shows the  
8 racial ethnic composition of every school and every  
9 school district in the State of Texas as well as the  
10 state, as a whole. And it is a TEA document, which  
11 has not been changed at all. So we move to admit  
12 Plaintiffs' Exhibit 32 -- Plaintiffs' Exhibit 33,  
13 Your Honor.

14 MR. O'HANLON: It's clearly hearsay.

15 MR. TURNER: Your Honor, it's clearly a TEA  
16 document. I might just note it's for '86-'87. And  
17 we've all been talking about the fact that we're  
18 looking at '85-'86 data through this lawsuit. And  
19 with that notation, and I guess, a caution about its  
20 relevancy, I don't see that it matters one way or  
21 another.

22 MR. R. LUNA: I would like to ask a  
23 question of Counsel.

24 MR. KAUFFMAN: Sure.

25 MR. R. LUNA: I have, myself, had a copy of

1 the October report of that same, and I wasn't aware  
2 that they did more than one each year.

3 MR. KAUFFMAN: I think that this is exactly  
4 the same information that's on the October report, as  
5 far as I know. It's from the October's fall survey  
6 is where this information comes from.

7 MR. R. LUNA: How many do they do a year?

8 MR. KAUFFMAN: I don't know. Maybe Kevin  
9 knows.

10 MR. O'HANLON: I don't.

11 MR. GRAY: Dr. Kirby may tell you that when  
12 he takes the stand.

13 MR. KAUFFMAN: They do one a year.

14 MR. R. LUNA: One a year?

15 MR. KAUFFMAN: So this is for '86-'87. I  
16 move that Plaintiffs' Exhibit 33, the fall survey  
17 information for Texas for '86-'87, be admitted, Your  
18 honor.

19 MR. R. LUNA: Again, at this time, Your  
20 Honor, rather than agree to it's admission, we  
21 haven't even seen that document. We -- I feel sure  
22 that there's probably nothing wrong with it. We  
23 would perhaps prefer to go ahead and lodge the  
24 objection to the exhibit. One, we haven't had a  
25 chance to examine it; two, on relevancy. But we

1 don't have any problems with him questioning the  
2 witness about its contents.

3 THE COURT: I'll overrule, but I don't want  
4 to be inconsistent. I think I've given you all time  
5 to look over these documents before I force them on  
6 anybody. So do you want some time to do that? The  
7 other part of your objection, I'll overrule.

8 MR. KAUFFMAN: Your Honor, if you will  
9 allow us to talk with Mr. -- to question the witness  
10 on the document, we will reurge the admission after  
11 lunch and give them a chance to look at it.

12 THE COURT: Okay. That sounds good. Is  
13 this the document you want in evidence, or is this an  
14 extra one?

15 MR. KAUFFMAN: Yes, Your Honor, that's the  
16 document.

17 (Plaintiffs' Exhibit No. 33 marked.)

18 THE COURT: It will be offered later. 33  
19 will be offered later. Here we go.

20 MR. GRAY: I believe it's Dr. Jewell's  
21 cross examination.

22 THE COURT: That's right.  
23  
24  
25

DR. ROBERT JEWELL

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

CROSS EXAMINATION

BY MR. ROOS:

Q. Dr. Jewell, I think we might as well start at the beginning with your resume. You submitted Defendants' Exhibit 26, your resume; are you familiar with that document?

A. Yes.

Q. Could you tell us what this represents, what it -- why it was compiled and what it represents; what's in there?

A. The resume is one that I have in my file, which might be used for a variety of purposes, including job hunting. I think everybody has a resume.

Q. Sure. It basically sets forth your professional and educational activities and accomplishments?

A. Yes.

Q. Okay. So we can depend upon this as a full statement of your educational attainment -- what you've attained?

A. Well, it doesn't include everything. I would hope it doesn't, it's only two pages long.

Q. Do you have any other degrees that are not listed

1           here?

2       A.    No.

3       Q.    Okay.  And I note that there aren't any publications,  
4            as such, other than your dissertation that's listed  
5            on here.  Do you have any publications that you would  
6            care to mention?

7       A.    I've published a couple of articles that are not on  
8            there.

9       Q.    Could you tell us what those are, sir?

10      A.    I published an article in the American School Board's  
11            Journal, which talked about the -- what I viewed as  
12            some of the problems with the modern American high  
13            school, relative to -- oh, a variety of course  
14            offerings which were too extensive, and the  
15            specialization that we've fallen into in the high  
16            schools, with students changing teachers every 45  
17            minutes, and the problems that result from the  
18            teachers and students not developing a strong,  
19            personal kind of relationship, which I think is  
20            necessary to enhance education and for the teacher to  
21            have an influence on the life of the student.

22      Q.    Uh-huh.  When was that, when did you publish that?

23      A.    I think about '79.

24      Q.    All right.  Is that pretty much it, in terms of  
25            publications?

1 A. I published a financial article, which was local, for  
2 the Illinois school districts on a retirement issue --

3 Q. Okay.

4 A. -- earlier than that. It was -- we were trying to  
5 figure out a technical matter on retirement. And I  
6 wrote an article that was published in a local  
7 journal for school administrators in the Illinois  
8 area.

9 Q. That was sometime before 1979, that that was written?

10 A. Shortly before.

11 Q. I gather from this that you've never received a  
12 degree of any sort in educational finance, is that  
13 right? You don't have any degree in educational  
14 finance, Master's, or a Ph.D?

15 A. I have a Ph.D in educational administration and I  
16 specialized in finance.

17 Q. Okay. That was back in 1969?

18 A. Yes.

19 Q. Okay. And you don't have any particular specialized  
20 degree with respect to research, do you?

21 A. I don't know that there is such a degree.

22 Q. Uh-huh. And you've, I gather, never published with  
23 respect to technical issues involving research, is  
24 that correct?

25 A. No.

1 Q. Okay. And I gather, from what you've just told us,  
2 that you really don't have any publications with  
3 respect to school finance issues?

4 A. No, I am a practicing administrator.

5 Q. No, I understand that. We just wanted to clarify  
6 that for the record.

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

8 Q. As respects that, you mentioned that you teach a  
9 course at the University of Chicago in school  
10 finance?

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

12 Q. How frequently do you do that?

13 A. I teach it every year -- annually.

14 Q. You're not a full-time faculty member, I gather, at  
15 the University of Chicago?

16 A. I hope I didn't give that impression.

17 Q. I don't think you did. I just wanted to --

18 A. I'm a lecturer at the university.

19 Q. You're going to lecture this coming year on school  
20 law, is that correct?

21 A. Well, I'm in the process of going out of public  
22 school administration and working more for  
23 universities. I'm going to be working for them  
24 full-time beginning July of '88, so I'm in a  
25 transition state.

- 1 Q. Do you have a law degree?
- 2 A. No.
- 3 Q. Okay. But you are going to be teaching the school of  
4 law?
- 5 A. Sure.
- 6 Q. I didn't realize that there are schools that --
- 7 A. I'll be getting a lot of help from lawyers that come  
8 in and lecture to my students.
- 9 Q. Okay. While we've had a few days sitting around  
10 here, we've had an opportunity to find out a little  
11 bit about the school district that you work in and  
12 the one that you worked in previously. And I would  
13 like to ask you a few questions and see if you agree  
14 with the information that we've been able to gather.  
15 First of all, the current school district you work  
16 in, is Community High School District 218, is that  
17 right?
- 18 A. That's correct.
- 19 Q. That's in Oak Lawn?
- 20 A. The administrative center is in Oak Lawn, it serves  
21 ten communities.
- 22 Q. Blue Island --
- 23 A. Yes.
- 24 Q. First of all, do you know what the state average per  
25 pupil expenditure is in the State of Illinois?

1 A. It's about \$3,700.00, I think.

2 Q. You're very close. I'm told that it was \$3,526.00  
3 this year, does that sound about correct?

4 A. Yes.

5 Q. Okay. I was also told that the per pupil expenditure  
6 in Community School District 218 is \$5,924.00, does  
7 that sound correct?

8 A. No, that's not the operating costs. That includes  
9 some of our big facilities projects that we happened  
10 to do this year. It's a very distorted figure, the  
11 way we report that information in Illinois. The  
12 previous year would have been about \$4,200.00, but we  
13 did some roofs and some running tracks, and some  
14 building renovations, and some boilers went out, and  
15 we had massive facility work that we had to do that  
16 got put into that figure. But that's not a per pupil  
17 cost, it includes capital expenditures.

18 Q. But including capital expenditures, that would jump  
19 it up to, approximately, \$5,924.00?

20 A. Right. It will go back down to below \$5,000.00 next  
21 year.

22 Q. And the average teacher's salary in your district is  
23 \$32,800.00, does that sound about right?

24 A. Yes.

25 Q. We also, with a little bit of inquiry about your

1 prior school district, which you indicated was a low  
2 income school district --

3 A. Yes.

4 Q. A low wealth district -- that's the North Chicago  
5 Community High School?

6 A. Yes.

7 Q. And -- okay. And I gather that we understand that  
8 the low SES population is approximately 30 percent,  
9 does that sound about right? Low socioeconomic  
10 status figure in that district is about 30 percent?

11 A. I don't know what that means, 30 percent of what?

12 Q. 30 percent of the population is below the poverty  
13 line, or below -- however it's computed, in the State  
14 of Illinois?

15 A. I don't know. It's a very poor district and family  
16 incomes are very low.

17 Q. All right. We were told that for the current year,  
18 the per pupil expenditure in that district is  
19 \$4,575.00, does that sound --

20 A. I don't know. I haven't been in that district in  
21 five years.

22 Q. If that were correct, that would be approximately  
23 \$1,000.00 above the state average, is that correct?

24 MR. R. LUNA: Objection. If that's  
25 correct, he doesn't know. If Counsel's testified,

1 we'd be happy to accept that, but otherwise, it's  
2 hearsay and we object to it.

3 THE COURT: Okay.

4 MR. ROOS: I'll appreciate the objection.

5 BY MR. ROOS:

6 Q. Does the \$4,575.00 sound off-base to you?

7 A. Yes.

8 Q. It does?

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

10 Q. Okay. I believe, sir, that you stated in your direct  
11 testimony that socioeconomic status is the highest  
12 predictor of school achievement, did you not?

13 A. I don't think so.

14 Q. You didn't?

15 A. I think I said family factors.

16 Q. Okay. Maybe you could amplify what you mean by  
17 family factors?

18 A. Well, family factors includes family income, but it  
19 also includes the educational level of the family.  
20 And it includes the age of the parents, the value  
21 that the parents place on education, if you can  
22 measure that. Size of the household, value of the  
23 home.

24 Q. Well, you've given us, although you're obviously not  
25 an educational researcher, as such, that's a fair

1 statement, isn't it?

2 A. I think so.

3 Q. All right. Notwithstanding that fact, you have tried  
4 to draw some correlations between certain inputs and  
5 certain achievement test scores, have you not, while  
6 you've been here, is that correct?

7 A. Yes.

8 Q. And I gather that you would know that, if there's one  
9 thing that's certain in research, it is that  
10 socioeconomic status -- which may serve as a proxy  
11 for a number of other things -- is, indeed, the most  
12 powerful predictor of scores and achievement test  
13 scores, is that correct?

14 A. It's a very powerful predictor, yes.

15 Q. All right. That being the case, we're not saying  
16 that schools can't make a difference with low income  
17 kids, are we?

18 A. I don't think I said that.

19 Q. No, I wasn't trying to put those words in your mouth.  
20 That's not the case, is it? I mean, that wouldn't be  
21 your view?

22 A. That schools can't make a difference?

23 Q. Yes.

24 A. No, that would not be my view.

25 Q. Indeed, I would assume it would be your position,

1           being a lifetime educator, that schools can make a  
2           difference.

3       A.    Yes.

4       Q.    I suppose you would agree with me that schools could  
5           make especially a difference with poor kids, who,  
6           especially, need the sort of help schools can  
7           provide, is that correct?

8       A.    It's certainly possible for schools to make a  
9           difference with some poor kids.

10      Q.    Going back to the research -- and again, I don't want  
11           to pin you down, because obviously, you're not an  
12           educational researcher, as such, but you have said a  
13           few things in that vein -- are you aware that one of  
14           the biggest problems that those who do research, in  
15           trying to figure out what sorts of inputs make a  
16           difference in terms of achievement and outcome, is  
17           trying to disentangle socioeconomic status --

18      A.    Right.

19      Q.    -- from other status?

20      A.    Trying to hold these things, constantly looking at  
21           other things, is very difficult.

22      Q.    Very, very difficult, isn't it?

23      A.    Yes, it is.

24      Q.    Really sort of bedevils the researchers, as I  
25           understand it, am I correct?

1 A. Gives them a lot of trouble.

2 Q. Yes. Okay. Without obviously drawing an  
3 overgeneralization, but -- in this country and  
4 through much of the research, we know that low -- or  
5 racial minority status, particularly Black and  
6 Hispanic status, typically associates highly with low  
7 socioeconomic status, isn't that correct?

8 A. Yes.

9 Q. All right.

10 MR. ROOS: I would like to go over to the  
11 board, Your Honor.

12 THE WITNESS: Your Honor, that plant is  
13 right in my sight.

14 Q. What we've done here, sir, in this first exhibit is  
15 to take your -- what's been marked as  
16 Defendant-Intervenors' No. 27, and added some  
17 additional figures to it. Do you recognize your old  
18 exhibit with the additions?

19 A. Yes, I recognize it. If you've copied all of the  
20 numbers right, I recognize it.

21 Q. Okay. We can check those, but we did our best.

22 And this is the exhibit that took the lowest  
23 spending districts in Texas, that you were able to  
24 find, one to 14. And then looked at the achievement  
25 test scores of those districts, is it not?

1 A. Yes, it is.

2 Q. And you've found, if I remember correctly, that  
3 although these were low spending districts, the  
4 achievement test scores are typically above the  
5 statewide average, on the whole, is that correct?

6 A. Yes.

7 Q. Okay. What we have added in here, sir, is the  
8 percent minority, which is a combination of Black and  
9 Hispanic here.

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

11 Q. And as you can see, well, first of all, let me  
12 represent to you that the statewide percent of Black  
13 and Hispanic, which is in the exhibit that's just  
14 been introduced, is approximately 45 percent?

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

16 Q. Anyway in any event, these are the districts that are  
17 low spending with high test scores, are they not?

18 A. Those are the low spending districts with the test  
19 scores I found --

20 Q. That's right. I'm sorry, I sort of got myself mixed  
21 up here. Okay. What we see here are the racial  
22 percentages in the first column?

23 A. Minority percentages.

24 Q. Minority percentages. And as you can see, of the 14  
25 districts, there are two districts that are above the

1           45 percent minority statewide average, are there not,  
2           Floresville and Orange Grove?

3           A.    Yes.

4           Q.    Okay.  And otherwise, the percentages range from  
5           eight percent -- four percent at Kennedale, 11  
6           percent in White House, five percent in Aledo, six  
7           percent in Buna, 33 percent in Pittsburg, 12 percent  
8           in Caddo Mills, the 53 percent we previously  
9           mentioned in Floresville, the five percent in China  
10          Springs, 13 percent in Robinson, seven percent in  
11          West, eight percent in Whitney, and six percent in  
12          Lorena, isn't that what this shows?

13          A.    That's what the chart shows, yes.

14          Q.    And you indicated that you were surprised that there  
15          was -- there were these districts that were the  
16          lowest spending districts that had above average test  
17          scores, were you not?

18          A.    I was.

19          Q.    Previously, based upon --

20          A.    Yes, I was surprised that they were that high.

21          Q.    Now, in light of the new information that's been  
22          added, that is, with the exception of the two  
23          districts, the very low racial minority -- Hispanics,  
24          Blacks -- population in these districts, would you  
25          like to revise your surprise about this?

1 A. I would revise it from being surprised to being  
2 astonished.

3 Q. You're astonished?

4 A. I wish I had included those in my earlier figures.  
5 My guess would have been, not looking at these, that  
6 these would have been predominantly districts of  
7 small minorities, seeing they rank from four percent  
8 to 58 percent. Particularly that one on top. Look  
9 how -- 58 percent minority, above average test  
10 scores.

11 Q. That's true. That's one of 14 districts, is it not,  
12 sir?

13 A. That's one of 14, but --

14 Q. Eight percent is fairly substantially below 45  
15 percent, isn't it, sir?

16 A. Oh, yes, it is.

17 Q. And four percent is fairly substantially below that  
18 figure, isn't it?

19 A. Yes.

20 Q. And so is 11 percent, substantially below 58 percent?

21 A. Yes.

22 Q. And so is five percent?

23 A. And so forth.

24 Q. But you're still astonished?

25 A. Yes, I am. Floresville, you know, is pretty much

1 average, more than half minority. Pittsburgh isn't  
2 that far below. My guess would have been that not  
3 knowing that these -- poor districts that don't spend  
4 very much would have very small minorities in every  
5 instance. But I'll look it up. I wish I had.

6 Q. Okay. You've had sort of the flipside exhibit, which  
7 was Defendant-Intervenors' 28, was it not?

8 A. Right.

9 Q. In that one, you took the districts with the lowest  
10 test scores and looked at the per pupil expenditures,  
11 did you not?

12 A. Yes.

13 Q. And if I remember your conclusions from that, was  
14 that the districts with low test scores had  
15 relatively high per pupil expenditures?

16 A. Those are the low test score districts I could find,  
17 and the per pupil expenditure that I found associated  
18 with them.

19 Q. Right. Okay. Well, you -- what you looked at were  
20 those that had low student test scores?

21 A. Yes.

22 Q. And what sort of conclusions did you draw with  
23 respect to per pupil expenditures?

24 A. As I recall, I found that the per pupil expenditures  
25 was over \$4,000.00 on the average, and over -- I

1 don't remember the number, I had it on the exhibit --  
2 was it 24 percent above average? 14 percent?

3 Q. Something above average.

4 A. Significantly --

5 Q. And 24 percent in your memory is correct.

6 A. 24 percent.

7 Q. Okay. What we have done, here, is similarly added in  
8 minority figures and ADA, the student counts in those  
9 districts, did we not?

10 A. Yes.

11 Q. Okay. And what we find here in these districts with  
12 below test scores, are Union Hill, which was the  
13 first one on your list, the 34 percent; and  
14 Brookeland, with 23 percent. And then we went up to  
15 Cotulla, with 84 percent; Wilmer-Hutchins, with 91  
16 percent; Goodrich, with 40 percent; Hidalgo, with 99;  
17 Crystal City with 99; Laneville was 65; and Tenaha,  
18 with 46; and Woodson, with 11, did we not?

19 A. Yes.

20 Q. Okay. Now, a number of those -- indeed, one, two,  
21 three, four, five -- five of them have well above the  
22 45 percent --

23 A. Yes.

24 Q. -- Black and Hispanic population, do they not?

25 A. Half are above average, and half are below.

1 Q. Okay. Now, let's take a look -- and one of them is  
2 right about average, is it not?

3 A. Right.

4 Q. Tenaha, which is at 46 percent.

5 Let's take a look at the high -- the districts  
6 with the low minority population. Union Hill, which  
7 was 34 percent, has a population of 278 students in  
8 the entire school district, does it not?

9 A. Yes.

10 Q. And Brookeland has a population of 195, does it not?

11 A. Yes.

12 Q. And Goodrich, which is slightly below average, has  
13 306, does it not?

14 A. Yes.

15 Q. That's the entire school district?

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

17 Q. Laneville, which is above average, is 328, Tenaha is  
18 409, and Woodson is 109, is it not?

19 A. Yes.

20 Q. Now, I've just sort of -- roughly adding up those  
21 numbers for those five districts, we come to about  
22 1,700 students, do we not?

23 A. I don't think -- I don't remember if I added up that  
24 total.

25 Q. You didn't.

1 A. Okay.

2 Q. You didn't, but it's a very small number of students,  
3 isn't it?

4 A. Yes.

5 Q. Okay.

6 A. Compared to the states, yes.

7 Q. Compared to the states?

8 A. Yeah.

9 Q. Be pretty hard to draw any real judgments from a  
10 population -- well, of say, 15 to 100 to 2,000  
11 students out of a statewide population of three  
12 million, would it not?

13 A. The only judgment I tried to draw is the ten lowest  
14 testing districts had relatively high per pupil  
15 expenditures.

16 Q. That's it?

17 A. Yeah.

18 Q. Without looking at race, is that correct?

19 A. I didn't -- I didn't have that information, you have.

20 Q. I understand that. I'm just trying to put it in some  
21 sort of perspective, I'm not --

22 A. Right.

23 Q. This is only an accumulator. You didn't have that --  
24 and that's not in the exhibit.

25 A. If I had had it, I would have looked at it.

1 Q. Right. And you didn't look at or didn't have the  
2 ADA, is that correct?

3 A. I had the ADA.

4 Q. But you didn't put it in the exhibit -- your exhibit?

5 A. No, I didn't put it in the exhibit.

6 Q. In a district, say, like Woodson, that's presumably a  
7 K through 12 district. That would mean that there  
8 are approximately what, ten -- nine, ten kids per  
9 grade, isn't that correct?

10 A. Well, if it was evenly divided, there would be nine.

11 Q. Sure. We don't know exactly, but there would be some  
12 sort of a division like that. They wouldn't all be  
13 grouped in one grade, is that correct?

14 A. No, I wouldn't imagine.

15 Q. And indeed, the test scores that you used were the  
16 test scores just that were given to one grade of  
17 students one year, isn't that right?

18 A. TEAM scores, eleventh grade.

19 Q. Eleventh grade, that's right. So the number of  
20 students who are represented, say, in Woodson, would  
21 be probably a very small number of students, wouldn't  
22 it?

23 A. I would expect it would be, you know, some --  
24 one-twelfth or one-tenth of that total --

25 Q. Sure. And we don't know exactly.

1 A. But I don't know.

2 Q. But it would be a very small number of students,  
3 wouldn't it?

4 A. Yes.

5 Q. Let's talk a little bit about achievement test  
6 scores. You drew some correlations, some general  
7 correlations, concerning achievement test scores?

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

9 Q. You would agree with me, would you not, that the full  
10 measure of whether a school district is providing an  
11 appropriate education to the children cannot be  
12 measured by how well they do on an achievement test  
13 score, would you not?

14 A. Yes, I would agree with that.

15 Q. What are some of the other things that are important  
16 aspects of the educational process?

17 A. Well, we don't know how to measure the degree to  
18 which a school makes the student a good person --

19 Q. Uh-huh.

20 A. -- with good work habits, and a good attitude, and a  
21 person who knows how to lead, or relates well to  
22 other people, or has a full appreciation of art and  
23 music, the finer things in life. We don't know how  
24 to measure those things.

25 Q. Those are all important goals of a school system, I

1 would gather, is that correct?

2 A. Well, they are to me.

3 Q. But they're not picked up, per se, in achievement  
4 test scores?

5 A. We don't know how to measure them.

6 Q. Right. I gather, as a school administrator, do you  
7 use standardized achievement test scores in Illinois  
8 to, sort of, measure various things?

9 A. We discard it.

10 Q. Are you pleased about that?

11 A. Well, I don't mind it, as long as people understand  
12 -- understand what they are.

13 Q. Uh-huh. What are the limitations? I mean, we've  
14 obviously talked about one just now. Do you have  
15 other sorts of limitations that you would like to  
16 share with us?

17 A. Well, I -- the test scores are a score. And the  
18 public -- the State of Illinois requires not only  
19 that we give standardized tests, but that we mail  
20 copies of them to all of the parents and then publish  
21 them in the paper. And if the public doesn't  
22 understand the characteristics of the district and  
23 the characteristics of the community, they can decide  
24 that the school district, or the schools have low  
25 test scores and it's because you run bad schools.

1 Q. It might be because that they've got hard to educate  
2 children, for example?

3 A. Might well.

4 Q. I gather that Illinois isn't immune to the problem of  
5 what I would call teaching to the test. That there  
6 are certain districts that make a special emphasis on  
7 making certain that they get high test scores, and  
8 would you like to say anything about that?

9 A. We're working on it.

10 Q. What do you mean you're working on it?

11 A. Well, they just started testing. And this, of  
12 course, forces -- forces districts to look at the  
13 kinds of tests and try to do the kinds of things that  
14 will enable your students to do better on those  
15 tests. That's a concern of ours.

16 Q. But there are -- I mean, we've seen around the  
17 country that there are certain principals who say,  
18 "Doggone it, I'm going to have high test scores,  
19 because I'm going to get pats on the back." They --  
20 isn't that one of the products of the achievement  
21 test score movement?

22 A. Yes, I think it's not uncharacteristic for a district  
23 that has high test scores to publicize them and be  
24 proud of them.

25 Q. And indeed to particularly emphasize doing well on

1           them, isn't that correct?

2       A.    Yes.

3       Q.    And indeed there are other districts that say, "Well,  
4           we've got to take them, but indeed, our primary  
5           business is to go about educating kids," isn't that  
6           correct?

7       A.    Those districts explain them.

8       Q.    Right.  Are those legitimate differential views about  
9           how to approach tests?

10      A.    Well, I don't know whether they're legitimate, I  
11           think they're real.

12      Q.    Uh-huh.  You spoke during your direct testimony about  
13           a correlation you did on a statewide basis involving  
14           school expenditures and dropouts; do you remember  
15           that?

16      A.    The relationship was average per pupil expenditure of  
17           the states to graduation rates.

18      Q.    Uh-huh.  By the way, before we go on, I would like to  
19           ask you one further question about achievement test  
20           scores.  When we talk about 50th percentile versus  
21           20th percentile, it's a comparison versus other  
22           students in the nation, is it not?  Those 50  
23           percentiles or 50 percent as measured against other  
24           students in the -- whatever the grouping is, is that  
25           correct?

1 A. If the -- it's hard to define. It's better with an  
2 example. A 50 percentile means 50 percent -- or 49  
3 percent -- 50 percent of all those who took it had a  
4 higher score, and 50 percent had a lower score.

5 Q. I assume you know the difference between a criterion  
6 reference test and a norm reference test, is that  
7 correct?

8 A. Yes.

9 Q. And when we're talking about these sorts of  
10 percentiles, we're talking about norm reference  
11 tests, are we not?

12 A. Yes.

13 Q. Could you tell us what the difference between the two  
14 is?

15 A. Well, criterion -- not very well. Norms are what  
16 they imply. They refer back to norms. Averages,  
17 numbers, how people do in relation to other people.

18 Criterion is how well you do relative to the  
19 material on the test.

20 Q. So, when we are talking about a 50th percentile, we  
21 are not directly talking about whether someone  
22 learned certain set amounts of material, are we?

23 A. No, 50 percentile is how well the district, or the  
24 student did, relative to how other districts or  
25 students did.

1 Q. That's right.

2 A. It doesn't mean that -- a 50 percentile doesn't mean  
3 that the student got half the questions wrong.

4 Q. Right. Going back to the correlations you did  
5 between state expenditures and dropouts, you did do a  
6 correlation of that effect, or represent it to the  
7 Court, or something --

8 A. Graduation rates.

9 Q. Okay. You also did one on dropouts, didn't you?  
10 Didn't you or at least represent something to the  
11 Court on that to that effect? I'm sure you did. You  
12 don't remember that?

13 A. I don't think I did.

14 Q. Well, my notes have you indicating -- and maybe I'm  
15 thinking about something other than dropouts -- in  
16 which you indicated that a low spending state,  
17 Minnesota, had done either particularly well on  
18 graduation rates, or had been particularly low on  
19 dropout rates. Do you remember that reference to  
20 Minnesota?

21 A. Well, I do remember saying that of all of the  
22 students who start high school, 71 percent complete  
23 high school and 29 percent don't.

24 Q. Okay. That was in Minnesota?

25 A. No, that's the nation's average. Minnesota is like

1           89 percent.

2       Q.    Complete high school?

3       A.    Right.

4       Q.    And as I remember, you said that was one of the  
5            relatively very low spending districts in the states?

6       A.    Minnesota was below average --

7       Q.    Uh-huh.

8       A.    28 out of 50.

9       Q.    Okay. It seemed to me that you compared that with  
10           the District of Columbia. Do you remember that  
11           comparison that you gave to the Court?

12      A.    District of Columbia has high per pupil expenditures  
13           and low graduation rates.

14      Q.    Do you happen to know -- indeed, not to the nth  
15           percentage, the relative minority populations in  
16           Washington D.C. and Minnesota?

17      A.    Well, in Washington D.C., minority populations are  
18           over 90 percent.

19      Q.    Uh-huh.

20      A.    And in Minnesota, I would expect that they would be  
21           around ten percent.

22      Q.    Uh-huh.

23      A.    I don't know. That's what I should have said, I  
24           don't know.

25      Q.    But generally -- indeed, I wasn't trying to hold you

1 to an exact figure, but generally, that sort of ratio  
2 is roughly correct, is that correct?

3 A. The ratio?

4 Q. The 90 versus ten percent, give or take --

5 A. I don't know.

6 Q. But generally that's true?

7 A. I'm just guessing.

8 Q. My notes further reflect that you did some  
9 comparisons between New York and Washington as high  
10 spending districts. And I believe this was on  
11 dropouts, maybe, versus North Dakota and Iowa; do you  
12 remember those comparisons?

13 A. Yes.

14 Q. What were you comparing there?

15 A. Graduation rates and college test scores.

16 Q. Uh-huh. And what was your conclusion again?

17 A. Well, New York is very high in spending and very low  
18 in graduation rates.

19 Q. Uh-huh.

20 A. District of Columbia is very high in spending, and  
21 very low in graduation rates and test scores.

22 Q. Before we go on to North Dakota and Iowa, those are  
23 two heavily urban areas, are they not?

24 A. Well, District of Columbia is. New York is -- New  
25 York is a big state. Not all of the people in New

1 York live in New York City.

2 Q. Sure. But there are larger urban areas in New York  
3 State, are there not?

4 A. Yes.

5 Q. Okay. And again, District of Columbia has a high  
6 minority population?

7 A. Yes.

8 Q. The State of New York has a high minority population,  
9 does it not?

10 A. I don't know what that -- what it is.

11 Q. As opposed to North Dakota and Iowa, do you -- what  
12 were your correlations with respect to North Dakota  
13 and Iowa?

14 A. Well, North Dakota has a high graduation rate. And  
15 Iowa has high graduation rate and high college test  
16 scores.

17 Q. Uh-huh. And those were -- compared to Washington  
18 D.C. and to New York, they were relatively low  
19 spending, is that right?

20 A. If you -- yes.

21 Q. Isn't that what you represented -- not represented,  
22 that's what you told us?

23 A. Yes, I -- New York and Washington D.C. are like No.  
24 2 and 3 in spending.

25 Q. Uh-huh.

1 Q. Are you familiar, generally, with the racial  
2 composition of Blacks and Hispanics in North Dakota  
3 and Iowa?

4 A. No.

5 Q. You have no idea what the racial composition is in  
6 those states?

7 A. No.

8 Q. As opposed to New York or Washington?

9 A. I don't have any numbers on them.

10 Q. All right.

11 A. Those numbers apparently don't get published.

12 Q. I see. Would you have the basis for giving an  
13 opinion, just having been around those states,  
14 whether they are likely to have or not to have the  
15 same number of percentage of minority students as  
16 Washington D.C.?

17 A. I've never set foot in North Dakota, and only been to  
18 Iowa once.

19 Q. So you have no basis in making those sorts of  
20 comparisons for us?

21 A. I don't know. I -- if you're asking me do I think  
22 there are fewer minorities in North Dakota than  
23 Washington D.C., yes, I do believe that.

24 Q. Okay. North Dakota has somewhat more world than  
25 Washington D.C., does it not?

1 A. I haven't been there, but I imagine that it is.

2 Q. Okay. Sir, sort of changing the subject for the  
3 moment. Will you agree with me that dollars, per se,  
4 that is, strict dollar comparisons -- or strict  
5 flowing money at a school or at a place doesn't, per  
6 se, guarantee any particular outcome, is that -- will  
7 you agree with me on that?

8 A. Yes.

9 Q. Uh-huh. I gather that -- will you also agree with me  
10 that it is what you do with the money that makes a  
11 difference, is that correct?

12 A. Yes.

13 Q. So, indeed -- I mean, one can certainly be wasteful  
14 of money, is that correct?

15 A. Yes.

16 Q. On the other hand, one could put it to good use?

17 A. Yes.

18 Q. Assuming that you had two school teachers equally  
19 efficient, or one not equally efficient -- one who is  
20 quite efficient and one who is not efficient, and you  
21 gave them the same amount of resources, what sorts of  
22 expectations would you have?

23 A. I would be -- based on experience, I would expect  
24 that their level of performance would not change.

25 Q. You're saying that the efficient teacher could not,

1           in any way, utilize the additional resources that  
2           were provided to her, and to any good result for the  
3           children, is that what you're saying?

4   A.   Well -- I'm sorry, would you tell me your name?

5   Q.   Mr. Roos.

6   A.   Mr. Roos, if you provided additional resources, the  
7           resources would appear in the increased salary of the  
8           teacher more than likely -- that's what we do. And I  
9           suspect that giving both teachers an increase in  
10          salary would result in no appreciable effect on their  
11          efficiency or effect of this.

12   Q.   Let's not talk about salaries for the moment. Let's  
13          assume we've got a little bit of money left over.

14   A.   Okay.

15   Q.   Are you telling me that if you've got -- well, let's  
16          put yourself in a classroom.

17   A.   Okay.

18   Q.   I assume you've been in a classroom?

19   A.   Yes.

20   Q.   Awhile back, I gather?

21   A.   I taught for seven years.

22   Q.   Uh-huh. If someone gave you the financial resources  
23          to use only on educating the children in that  
24          classroom, would you tell them to keep their money?

25   A.   Well, I might. I mean I think -- I hope I would be a

1           little more tactful about it than that, but if I  
2           didn't need more money or more resources, and I had  
3           everything I needed to do the job I needed to do --

4   Q.    Uh-huh.

5   A.    I wouldn't know what to do with money.

6   Q.    Sure.  But having some money to buy certain materials  
7           and other things would certainly be helpful to you,  
8           would it not -- assuming you hadn't reached the point  
9           of diminishing returns, if you will?

10  A.    Well, like what kinds of things?

11  Q.    Well, what would you buy -- what would you want to  
12           have in your classroom?  What sorts of things, in  
13           today's world, would you want to see in your  
14           classroom?

15  A.    Well, in my classroom, I have a piece of chalk and an  
16           eraser, and the students have a textbook, and we have  
17           pocket calculators.  And I bring in the research that  
18           I've gathered and distribute it to them.  In my  
19           classroom, 97 percent of the costs of educating my  
20           students are my salary.

21  Q.    Okay.  Now, you're putting yourself in an elementary  
22           school classroom.  What sorts of things would we see  
23           in a well equipped elementary school classroom?  
24           Let's take it a little bit from the hypothetical.  
25           You were in New Trier for awhile?

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

2 Q. What sorts of things might one see at New Trier High  
3 School? What sorts of -- if one were to visually  
4 walk into New Trier High School, what kinds of things  
5 would we see?

6 A. You would see a beautiful looking building.

7 Q. Okay.

8 A. You would see terrazzo tile floors, you would see an  
9 olympic-size swimming pool, you would see a beautiful  
10 football stadium.

11 Q. Uh-huh.

12 A. You would see more television sets.

13 Q. What do they use the television sets for?

14 A. For teaching. And you would see a lot of VCR's.

15 Q. VCR's? I'm -- sounds like I'm back in a prior age.

16 A. Video cassette recorders.

17 Q. What do they do with those?

18 A. Put a tape in the VCR and show it to the students.  
19 And you can, in effect, watch a -- watch something on  
20 television rather than teach.

21 Q. Uh-huh. Okay. Anything else, particularly, that you  
22 could think you would see at New Trier High School?

23 A. Well, at New Trier, they had office space for every  
24 teacher.

25 Q. Uh-huh.

1 A. And they had a faculty lounge with a pool table in  
2 it.

3 Q. Uh-huh.

4 A. And they had a lot of carpeting on the floors.

5 Q. Uh-huh.

6 A. It was a great place to work, wonderful.

7 Q. Probably made it fairly easy to recruit teachers for  
8 New Trier High School, didn't it?

9 A. Yeah. And then they stay there until they retire.

10 Q. Okay. Probably made it tough for you to compete with  
11 New Trier when you were at North Chicago Community  
12 High School?

13 A. I didn't try.

14 Q. I gather that the salaries that they pay at New Trier  
15 assisted them in -- indeed, in attracting the sorts  
16 of teachers that they wanted to get, didn't it?

17 A. They paid good salaries. The basic teacher's salary  
18 at New Trier now has a maximum, which is just at  
19 about \$50,000.00. You can earn \$50,000.00 by being a  
20 classroom teacher with no additional assignments for  
21 the school year.

22 Q. Uh-huh. The average salary, as I understand it, is  
23 \$39,900.00, does that correspond?

24 A. Sounds about right.

25 Q. Okay. And those salaries help them to recruit

1 teachers, I assume, and to retain them?

2 A. Yes -- well, I mean the salaries -- they have good  
3 kids, and a good board, and good administration. And  
4 I hope I haven't given you any other impression.

5 Q. No.

6 A. And it's a fine place to work.

7 Q. Sure. I assume that one of the things that makes it  
8 a fine place to work is, indeed, having all of those  
9 amenities at New Trier High School?

10 A. Sure.

11 Q. So if you've got a facility such as New Trier High  
12 School, that also helps attract and retain teachers,  
13 doesn't it?

14 A. I would imagine so.

15 Q. Uh-huh.

16 A. The whole package is very attractive.

17 Q. Uh-huh.

18 A. Illinois teachers, who want to go out and get a  
19 teaching job, would be thrilled to death to be  
20 offered a job in New Trier.

21 Q. I assume that lower student/teacher ratios -- I don't  
22 know what the student/teacher -- of all of the data  
23 I've got, I don't have anything on student/teacher  
24 ratios of New Trier. I assume that would also be at  
25 least one factor that a teacher might look at, or a

1 prospective teacher might look at, whether they --

2 A. Another factor to make working conditions very nice,  
3 they have relatively small class sizes.

4 Q. That might attract them to the district, or convince  
5 them to stay on, is that correct?

6 A. Yes.

7 Q. My notes, which have proven to be notably off-base,  
8 but my notes indicate that you gave an opinion that  
9 if there was a greater shift of taxing authority to  
10 the state, there might be less local concern for  
11 schools, do you remember that?

12 A. Well, I recall that I had an opinion that if there's  
13 a greater shift of funding to the state, that the  
14 localities might do less. There might be a lessening  
15 of financial effort.

16 Q. Uh-huh.

17 A. But I don't recall saying that.

18 Q. You didn't have any study to back that up, I gather?

19 A. No, no.

20 Q. You haven't seen any study to that effect, have you?

21 A. No, the only thing I had was, that I expected to find  
22 where the state did more, the local districts spent  
23 more. And I found slightly the opposite. So I found  
24 where states were spending more, the per pupil  
25 expenditures weren't greater, they were a little bit

1           less.

2       Q.    Right.  That's all you found?

3       A.    That's it.

4       Q.    Yeah.  Sir, again, this may be a little bit out of  
5           your range of expertise, since you are not a  
6           researcher in all of this, but do you have any  
7           knowledge as to whether there are states that  
8           contribute to capital improvements -- give physical  
9           support to school districts with respect to capital  
10          improvements?

11       A.    I was asked that question on deposition, and I really  
12          don't know.  I understand there's some limitation in  
13          that regard in Texas.  And --

14       Q.    What about in Illinois?

15       A.    There's -- that limitation does not exist.  We can  
16          spend money from our general state aid for --

17       Q.    Uh-huh.

18       A.    -- capital improvement.  If we want to build a  
19          building, we have to go out and pass a referendum and  
20          sell bonds, that's done entirely locally.

21       Q.    Uh-huh.

22       A.    But we can make capital improvements from general  
23          state aid in Illinois.

24       Q.    Do you know, as a fact, whether there are states  
25          that, in fact, earmark money for a facilities

1 building and improvement?

2 A. From state aid?

3 Q. Yeah. Particular set-asides for capital improvement?

4 A. That can only be used for capital improvement from  
5 the state?

6 Q. Yes.

7 A. No, I don't know. That would surprise me. I don't  
8 know how the state would know what each locality  
9 needs, okay?

10 Q. They might apply for it.

11 A. Oh, I don't know.

12 Q. You just don't know that?

13 A. I just don't know that.

14 Q. All right. You stated -- if I can quote you,  
15 probably incorrectly, that in your view, a state has  
16 an obligation to provide a fundamental, basic program  
17 for students, is that roughly your words?

18 A. Basic program.

19 Q. And I gather that you looked at some papers that were  
20 provided to you in preparation for this case and  
21 concluded that in Texas, there is such a basic,  
22 fundamental program. Is that -- was that your  
23 testimony?

24 A. Well, let's take a conclusion for me to try to draw  
25 on. I can only say that I found that there were only

1 14 districts that spent below \$2,500.00. And that  
2 \$2,500.00 is only 25 percent below the state average.

3 Q. Right.

4 A. And that -- you know, as I think about it, what you  
5 can do for \$2,500.00, if you're concentrating on the  
6 basics of education, I would think that it could be  
7 done.

8 Q. It could be done?

9 A. Can be done, and probably is being done.

10 Q. But in fact, indeed, if I remember your testimony, it  
11 was -- and this, I know, is a direct quote, "Perhaps  
12 Texas is doing better than other states."

13 A. Oh, sure, on total plan.

14 Q. Now, you've never visited a classroom in the State of  
15 Texas, have you?

16 A. No, I haven't.

17 Q. Never?

18 A. No.

19 Q. Okay. So you don't know what \$2,500.00, in fact, is  
20 translating to on the school level?

21 A. Well, I know something about what it translates to on  
22 test scores.

23 Q. Uh-huh. But you've never actually been in a Texas --

24 A. I haven't visited any Texas schools.

25 Q. Have you ever worked in a district that spends

1           \$2,500.00 per pupil?

2       A.     Sure, North Chicago.

3       Q.     Where was that?

4       A.     In North Chicago. I superintended a district that  
5           spent a lot less than that.

6       Q.     When was that?

7       A.     Five or six years ago. You want me to tell you how  
8           we did it there?

9       Q.     If you want to.

10                   I was interested in your thesis, although it  
11           was obviously a while back, 1969?

12       A.     I could hardly remember the title.

13       Q.     If I can refresh your recollection, sir.

14       A.     Household Demand for Public Education.

15       Q.     That's right. And what you were looking at, if I  
16           understand correctly, were those factors that lead  
17           households, or individuals, to support, through tax  
18           effort, the public schools, is that correct?

19       A.     Right.

20       Q.     What were some of the three or four -- it seems to  
21           me, in your deposition, you listed three or four  
22           major factors that go into the willingness to  
23           support --

24       A.     Right.

25       Q.     -- schools on a tax basis?

- 1 A. I did a multiple regression analysis, which is a  
2 fancy word for putting into the computer many  
3 variables to try to find which ones are significant,  
4 which variables in the household are significantly  
5 related to the willingness of the household to pay  
6 more money for schools. And I found age, income,  
7 level of education, having children in public school,  
8 or having children who will be in public school is a  
9 very powerful variable. People who have children in  
10 school are more willing to pay money for education  
11 than people who don't.
- 12 Q. Let's talk about that latter one; that's sort of  
13 interesting. I would gather that in a district with  
14 a high number of retired people, for example, that it  
15 is very hard to generate the willingness to tax for  
16 the schools?
- 17 A. Well, retired people are older, have lower levels of  
18 education, and have lower fixed income.
- 19 Q. Uh-huh.
- 20 A. So it hurts.
- 21 Q. The kids who are attending school in one of those  
22 districts may well suffer as a result of this lack of  
23 willingness of these retired people on support?
- 24 A. If you're trying to pass a referendum, and you've got  
25 a lot of older retired people in your community, and

1           they get out and vote, the chances are that group  
2           will not hold in favor of a referendum. They tend to  
3           vote against them.

4    Q.    I gather, also, that if you've got large numbers of  
5           low income people, irrespective of their concern for  
6           education, the amount of money that they have in  
7           their pocket, and their needs to pay for the  
8           necessities of life would also weigh heavily on their  
9           ability, or willingness, to tax themselves?

10   A.    Well, low income people usually don't vote in  
11           referendum, No. 1. No. 2, if they do vote, they're  
12           more apt to vote in favor of it because they don't  
13           own homes. And they generally don't see the  
14           relationship between the level of rent and the level  
15           of property taxes. They tend to view that that  
16           wouldn't affect them.

17   Q.    To the extent that they own homes?

18   A.    I don't know.

19   Q.    You just don't know?

20   A.    There aren't very many low income people who own  
21           homes.

22   Q.    I see. Do you know -- you indicated you've done some  
23           correlations and the like, do you know what is a  
24           statistically significant correlation in the general  
25           literature?

1 A. Slight significance begins at about .2.

2 Q. Uh-huh.

3 A. And substantial statistical significance begins at  
4 about .5.

5 Q. Thank you.

6 MR. ROOS: Nothing further.

7 MR. GRAY: May I proceed, Your Honor?

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. GRAY:

11 Q. Dr. Jewell, I think I can be fairly brief with you.  
12 Looking at your two exhibits, 27 and 28, which are  
13 the handwritten sheets where you had listed the  
14 scores.

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

16 Q. I note, looking at the bottom on 27, that, as you  
17 spend less, your score goes up, on 27. You see where  
18 you have a statewide average and they were spending  
19 \$3,346.00, they score 53. The lowest 14 is  
20 \$2,337.00, it's 55, and the lowest five --

21 A. Would it be possible to flip that chart?

22 Q. Sure. Let me just --

23 MR. GRAY: May I approach the witness, Your  
24 Honor? And I'll just question him from it.

25 THE COURT: Yes.

1 A. I just thought if you flip the chart, we could all  
2 look at the numbers. I think it's on the previous  
3 numbers --

4 Q. Sure. The averages are not on there.

5 A. Okay.

6 Q. I'm questioning you where you'd actually done the  
7 averages for us.

8 A. Yes.

9 Q. You can see that in every category, math, reading or  
10 writing, the statewide average, the lowest -- the  
11 average of the lowest 14 districts, and the average  
12 of the lowest five districts, you see a clearer trend  
13 that the less you spend, the better you do on scores,  
14 right?

15 A. No, I -- I mean, if you're talking about causation,  
16 no. I mean, that shows that the lowest spending  
17 districts do better on scores, but --

18 Q. And the average of the lowest -- five lowest spending  
19 districts is \$2,165.00, and they clearly had done  
20 better than everything else. So, I'm assuming if you  
21 had found even lower districts, districts spending  
22 \$1,500.00, \$1,600.00, they would have done even  
23 better than that?

24 A. It's a shaky assumption, Mr. Gray.

25 Q. I mean --

- 1 A. That's what I found about the five lowest spending  
2 districts in Texas. And I think I indicated that  
3 that certainly didn't indicate that if you spend more  
4 money, you get better educational results. I think  
5 it indicates that -- per pupil expenditures taken in  
6 isolation do not relate to student achievement.
- 7 Q. In fact, what this -- what Exhibit 27 and 28 indicate  
8 is just the contrary. The more you spend, the less  
9 results you get?
- 10 A. Mr. Gray, I'm only showing you what I found. I'm not  
11 trying to project trends.
- 12 Q. And you're certainly not basing an opinion on what  
13 you found, because what you found showed the more you  
14 spent, the less well children performed, and we know  
15 that's not true, right?
- 16 A. My opinion was that spending, taken alone, is not  
17 significantly related to how well students do on that  
18 test.
- 19 Q. Okay. Now, are you aware, say, for example, in  
20 California, their test scores have reached the all  
21 time high, are you aware of that?
- 22 A. No.
- 23 Q. Okay. And I assume you're also not aware that that  
24 is attributable, at least according to the California  
25 officials and the March 24th New York Times, to

1           having an influx of additional monies over the last  
2           four years that have raised the scores to the largest  
3           gain, ever, in the academic history in California?

4   A.    No, I'm not aware of that.

5   Q.    Okay. Now, the -- your example on Exhibit 30, which  
6           is your relationship of class size to teacher cost.

7   A.    Yes.

8   Q.    And you were showing a hypothetical 120 third-grade  
9           students. And I'm assuming if you had carried this  
10          out to its logical conclusion, you could have had a  
11          District G, that would have eight classes of 15,  
12          which would have a cost of \$200,000.00?

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

14   Q.    And a District H, say, for example, a poor district.  
15          And let's just put all 120 in one class and only pay  
16          \$25,000.00, right?

17   A.    I could have shown that.

18   Q.    And that would have shown you that you could have had  
19          a cost savings of 800 percent, if a district had gone  
20          that way?

21   A.    Well, it would show that. I stopped at the level  
22          which we normally find high class sizes in this  
23          country, I stopped at, what -- 40, 30?

24   Q.    30.

25   A.    30? I think I mentioned that you could have three

1 classes of 40, it's not unrealistic. But one class  
2 of a 120 third graders would -- I've never seen one.

3 Q. Now --

4 A. Or two of 60, for that matter.

5 Q. Of course, you have rendered the opinion that class  
6 size, anything above eight or ten doesn't make any  
7 difference?

8 A. That's not my opinion, that's the opinion of other  
9 researchers.

10 Q. Well, you espoused -- or repeated that opinion from  
11 the witness stand, did you not?

12 A. Yes.

13 Q. So, now, let me ask you the next follow-up question.  
14 I assume you're aware that in Texas, the legislature  
15 and the State Board of Education, in their collective  
16 wisdom, the law is such that in the early grades,  
17 right now, it's mandated that the class ratio be  
18 1-to-22 and that that is expanding, in the immediate  
19 future years, for grades three and four, I recall.

20 A. '89-'90.

21 Q. Are you aware of that?

22 A. Yeah.

23 Q. Now, obviously, meeting a 1-to-22 ratio has financial  
24 implications?

25 A. Yes.

- 1 Q. And it is much easier for a district who has ample  
2 financial resources to meet that ratio than it would  
3 be for a district who doesn't have ample financial  
4 resources, correct?
- 5 A. Yes.
- 6 Q. For example, if you took a very wealthy district and  
7 a very poor district, you would assume that it would  
8 be much tougher for a poor district to meet the  
9 1-to-22 ratio than it would be for the wealthy  
10 district?
- 11 A. Wealthy district is probably already meeting it.
- 12 Q. That's right. Wealthy districts probably already had  
13 a 1-to-22 ratio, or better, even prior to law,  
14 correct?
- 15 A. The poor district might, too, I don't know. It all  
16 depends on what their priorities are.
- 17 Q. Now, as I understand your district, and Mr. Roos was  
18 asking you questions about your Community High School  
19 District 218, and he had your last year's  
20 expenditures of \$5,924.00, and you said, "Well,  
21 that's right, but that's kind of an apparition,  
22 because we did some capital stuff?"
- 23 A. Yes.
- 24 Q. And was I correct in hearing you say that this year  
25 you're not going to do as much capital stuff, and so

1 your operating budget is going to be in the \$5,000.00  
2 range, is that right?

3 A. Right, it will be, I expect, somewhere between  
4 \$4,500.00 and \$5,000.00.

5 Q. Okay. And I assume that you were spending \$4,500.00  
6 to \$5,000.00, because you think that is what is  
7 needed to provide an adequate education for the  
8 students that you are charged with educating?

9 A. Well, I don't decide, by myself, how we spend our  
10 money in District 218.

11 Q. Uh-huh. Well, you had, in response to Mr. Roos'  
12 questions, I believe he said, "Well, would you give  
13 the money back, or tell them don't give me any money  
14 if you didn't need it." And you said, "Well, I might  
15 very well." Do you recall that statement?

16 A. Well, that was an example. If I -- that example had  
17 me in the classroom as a teacher.

18 Q. Well, I mean, as an administrator, have you gone to  
19 your school board, or your principal, or your  
20 superintendent, excuse me -- and said, "We don't need  
21 this money. We don't need --

22 A. No, I haven't.

23 Q. -- \$4,500.00 to \$5,000.00." I take it you have not  
24 done that, have you?

25 A. No, I'm a public school administrator. Give us the

1 money, we'll spend it.

2 Q. And I take it, you, upon occasion, have advocated  
3 increased funding as opposed to decreasing funding,  
4 correct?

5 A. Personally, I think we have enough money in our  
6 district to do what we want to do. We have fund  
7 balances, we have pupil/teacher ratio of, like,  
8 12-to-1, and I'm not -- I haven't advocated  
9 increasing any expenditures since I've been there.

10 Q. Okay. And I take it that there is -- your community  
11 feels, at least, that they are getting some bang for  
12 their buck, that they're providing some educational  
13 opportunities to their children by spending this  
14 \$4,500.00 to \$5,000.00, correct?

15 A. Mr. Gray, I can't tell you what our community thinks.  
16 I mean, I'm sure some people in our community think  
17 that, and some think otherwise.

18 Q. Explain to me how Community High School 218, or  
19 Community District, excuse me --

20 A. Community High School District.

21 Q. District 218, how do you get your money? Are you a  
22 school district, that you have a school board that  
23 sets property taxes, that taxes?

24 A. Sure.

25 Q. And the money is raised, totally, locally?

1 A. We -- I mean, in Illinois, some is. And in its  
2 results, is not that different from Texas. As a  
3 relatively wealthy district, we get most of our money  
4 from local sources.

5 Q. And you get some money from the state?

6 A. We get some money from the state. And I think our  
7 level of state funding, relative to our spending, is  
8 in the 15 percent range.

9 Q. Okay. So, 85 percent or so of your money is coming  
10 from local sources?

11 A. Well, not quite. Some of it is federal money; we  
12 don't get too much of that.

13 Q. Okay.

14 A. The vast majority of our money comes from local  
15 sources.

16 Q. I take it you have a school board who is charged with  
17 having -- hearing from the administrators, the  
18 teachers, and determining what budget amount is  
19 necessary to provide the education that the community  
20 expects?

21 A. The board has to approve the budget the  
22 administration prepares. And we have to have a  
23 public hearing on the budget, in Illinois.

24 Q. And I guess I'm safe in stating, then, that the  
25 school board, which is intended to be the voice of

1 the community on school matters, correct?

2 A. Yes.

3 Q. That that school board has made the decision that  
4 spending \$4,500.00 to \$5,000.00 per child is  
5 educationally advantageous to the children in your  
6 school district, correct?

7 A. Yes.

8 Q. And what types of things would you give up if you  
9 were told instead of spending \$5,000.00 per child,  
10 you're going to spend \$2,500.00 per child, if you cut  
11 your budget by 50 percent? Where would the axe fall,  
12 or could you do that and not destroy the education of  
13 your kids?

14 A. Well, it would be -- I don't want to use the word  
15 impossible, but it would be virtually impossible to  
16 do that in a district that's operated the way ours  
17 has. Now, if you can let me go in and set up a new  
18 district with \$2,500.00 per year, so we can start out  
19 and plan for that, I think it can be done in Texas --  
20 well, in Illinois, and I don't know about Texas.

21 Q. And I take it that if given time, then even in your  
22 district that's spending, say, \$5,000.00, if you had  
23 time to plan to get down to \$2,500.00, it likewise  
24 could be done?

25 A. Well, I -- anything can be done that can be done.

1 But it would be extremely difficult and there would  
2 be a lot of disruptions, dislocations, and a lot of  
3 community unhappiness. It would impose a real  
4 hardship on a district such as ours.

5 Q. Now, your Exhibit 31 --

6 A. Which is?

7 Q. I'm sorry, it's the Impact of Leveling High Spending  
8 Texas Districts Down to Average. --

9 A. Yes.

10 Q. And to make sure I understood what this was doing is,  
11 any district that was spending \$6,701.00 or more got  
12 brought down to --

13 A. Average.

14 Q. Average, which was 33 --

15 A. 50.

16 Q. -- 50. But if you were spending \$6,699.00?

17 A. Wasn't included.

18 Q. You're not included?

19 A. No. I just wanted to gather up those really high  
20 spending districts, that have so much discussion in  
21 cases like this, so the Court could see the number of  
22 districts, the number of students and, you know, that  
23 -- they're very dramatic, but they don't really  
24 involve very many kids or very much money.

25 Q. And the dollar figure that you used on this exhibit,

1           this came out of the operating cost figures out of  
2           Bench Marks, correct?

3   A.    Yes.

4   Q.    So the debt service numbers, the capital outlay  
5           numbers --

6   A.    Are not included.

7   Q.    None of those are included, correct?

8   A.    No.

9   Q.    And I'll assume you will agree with me that debt  
10          service, capital outlay, building of facilities, are  
11          all part and partial to the educational process in  
12          today's society?

13   A.    Yes.

14   Q.    So this includes part of the cost of education, but  
15          there's a -- your Exhibit 31 does, but there's a  
16          whole other aspect of cost of education that's  
17          excluded from this exhibit, correct?

18   A.    It excludes capital outlay and interest on debt.

19   Q.    Okay. And the assumptions that this exhibit made was  
20          that you would leave -- that it would have no impact  
21          on taxes at all, right?

22   A.    No, wrong.

23   Q.    Okay. Well, let me explain to you what I'm meaning.

24   A.    Okay.

25   Q.    Because I think -- I do believe I'm right.

1                   You were taking, for example, a district that  
2                   is taxing at eight cents --

3           A.    Uh-huh.

4           Q.    -- in raising and spending \$19,000.00-plus per child.

5           A.    Uh-huh.

6           Q.    What you did, was, you said, "Okay, I'm going to take  
7                   the difference between \$19,000.00 and \$6,700.00 --"

8           A.    \$3,350.00.

9           Q.    Excuse me, "and \$3,350.00, and roll that difference  
10                  back into this pot that I can distribute."

11          A.    Uh-huh.

12          Q.    You had no effect on changing that district that's  
13                  taxing at eight cents -- it stays taxing at eight  
14                  cents. You don't have any effect on changing how  
15                  that district taxes, correct?

16          A.    Yes. Okay, I see what you mean. In this example,  
17                  where you take a local property tax money away from  
18                  the community and sending it to the state for  
19                  redistribution, it would not have an effect. The  
20                  taxes would remain the same.

21          Q.    Okay. And you have not done any review at all of  
22                  looking at the amount of dollars out there that are  
23                  being lost to extremely low taxing school districts  
24                  if they were to tax at the average tax rate? You  
25                  don't have any idea what we're talking about, do you?

1 A. No.

2 Q. For example, you would agree with me, that if a  
3 district can raise \$19,000.00 per child, taxing at  
4 eight cents, it can raise a whole bunch more than  
5 that if it taxes at 50 or 60 cents?

6 A. Yes, I would agree with that.

7 Q. Okay. And whatever that combined number may be, by  
8 raising these low taxing districts up to average,  
9 whatever that combined number may be, that is  
10 numbers, now, that are just being lost in the shuffle  
11 and aren't getting -- they are not available to be  
12 spent on anybody's education, correct?

13 A. I don't understand the question.

14 Q. Okay. Let me pose a hypothetical to you.

15 Assume with me that I have a lot of ranch land  
16 that happens to be very mineral rich. And I have had  
17 a good bit of power, over the years, and I have  
18 created a school district that encompasses my wealthy  
19 ranch land, and my neighbor's ranch land, and  
20 whatever. And we have -- I don't know, 200 kids,  
21 however many kids you want to pick. And we have our  
22 school board meeting, and we set a tax rate at eight  
23 cents, and that raises all the money that we need.  
24 And assume, even further, that we say, "Well, shoot --  
25 it's too much of a trouble to raise -- to have a full

1 K through 12 program, so we're only going to have K  
2 through 6 and K through 8, and then when the kids get  
3 ready for junior high and high school, we're gonna  
4 bus them to Pampa, Texas, or some other school  
5 district that's running a full program and pay  
6 tuition." You would -- assuming that's the scenario,  
7 the difference, that is, money that could be raised  
8 for educational purposes if that wealthy oil and gas  
9 land is taxed at 63 cents, or 66 cents, whatever the  
10 state average is, compared to what it's raised now by  
11 taxing at eight cents, there is a huge chunk of cash  
12 out there that's getting lost, for education, in the  
13 shuffle, correct?

14 A. I don't think -- okay, I don't think the rancher, or  
15 the oil well owner, would feel that it's being lost.  
16 I'm sure --

17 Q. It's being kept in his pocket.

18 A. Well, one of them would -- you would have to pay that  
19 tax -- would be large numbers of dollars that would  
20 have some impact on his business, I would think.

21 Q. Okay. So, I mean, I don't -- I think the point has  
22 been made, but so you and I -- it is clear, that if  
23 that hypothetical district was taxing at or about  
24 average, there would be a lot more money available  
25 for education than by taxing at the eight cent level,

1           which I suggested to you.

2   A.   Assuming that the state that we're talking about is  
3       willing to take local property taxes, which have  
4       traditionally been used for local purposes, and  
5       redistribute them at the state level.

6   Q.   Right.  Or --

7   A.   And I said that just isn't done in this country,  
8       okay?

9   Q.   Or assuming that the state that we're talking about  
10       is not willing to tolerate that kind of -- and these  
11       are, again, my words -- tax haven, but rather is  
12       going to tell that kind of tax haven district, "You  
13       are now going to be part of a district, another  
14       district, where you can't get by with taxing at such  
15       a low rate." That also would be a solution, correct?

16  A.   I don't know it's a tax haven.

17  Q.   Again, those are my words.

18  A.   Okay.

19  Q.   I didn't mean to debate terminology with you.  But  
20       that is a solution, correct?

21  A.   I don't understand the question.

22  Q.   Okay.  The question to you is, you said this would  
23       only work if the state made a determination to take  
24       money away from a district and bring it back and then  
25       redistribute it.

1 A. Right. And the state must do that, not just for  
2 these 6,000 kids, but for -- you know, it has to be a  
3 statewide plan. All right?

4 Q. And what I was saying is, in the hypothetical  
5 district that I have described to you, those monies,  
6 however much money there is that's being lost because  
7 of the low tax effort, could, in fact, be recouped,  
8 if my small ranching district is combined with an  
9 adjacent district, say, for example, that may be  
10 poor, sitting side by side?

11 A. I guess I -- if I have to respond to a hypothetical  
12 question, I have to respond, hypothetically, I agree  
13 with you. But, if you triple those rates, and made  
14 them available for the state, instead of having \$29  
15 million to redistribute, you'd have \$90 million to  
16 redistribute. And the impact of that on the 3  
17 million youngsters in Texas, instead of being \$10.00  
18 a child, it would be \$30.00 a child.

19 Q. Right. Okay. Now, let me ask you a few questions  
20 that I -- going from some of the material you  
21 provided, yesterday, in your testimony.

22 I believe Texas has more school districts than  
23 any other state in the country, correct?

24 A. Yes, I think you are correct.

25 Q. And I believe Texas pays its teachers below average

1 for the United States, correct?

2 A. Well, \$150.00 below average.

3 Q. Below average, correct? And I believe that the  
4 entire -- if you look at the entire instructional  
5 staff, which is teachers and aides, and everybody  
6 else involved in the process, Texas is below -- pays  
7 below average in the United States?

8 A. I don't recall.

9 Q. Okay. I'll get that to verify for you.

10 A. Okay.

11 Q. And I believe you said, yesterday, that Texas' per  
12 pupil expenditures are below the average of the  
13 United States?

14 A. Yes.

15 Q. Okay. And I believe you said, yesterday, that Texas'  
16 graduation rate is below the average in the United  
17 States?

18 A. Three percent below.

19 Q. Okay. You said the average was 71 and Texas was 68.  
20 Would it surprise you to find out that -- I assume  
21 you know that William Bennett is Commissioner of  
22 Education in the United States?

23 A. Yes.

24 Q. Would it surprise you to find out that Commissioner  
25 Bennett, on February 10, 1987, from his Washington

1 office, said that Texas was, instead of the 68  
2 graduation percentages you said, was 63.2, or 43rd  
3 out of the 51 states?

4 A. No, that wouldn't surprise me. In my testimony, I  
5 said the national rates had just gone down, because I  
6 heard that on the news reports. But I hadn't seen  
7 the actual reports that came out on February 10.

8 Texas is raising its educational standards.  
9 And you know the -- which is wonderful, but the down  
10 side of that is that as you raise your standards, it  
11 tends to drive more kids out of school.

12 Q. Actually, the United States average has stayed right  
13 -- consistent, right at 71 percent.

14 A. No, it dropped a little.

15 Q. It's 70.6, according to Commissioner Bennett, on  
16 February 10.

17 A. Okay. The last report I saw, it was only 72.

18 Q. And then the last thing I want to ask you about,  
19 Texas is below average on SAT scores, correct?

20 A. Correct.

21 Q. And in fact, according to Commissioner Bennett, Texas  
22 -- of the 22 states that reported, Texas ranked 17th  
23 out of the 22, which is right at the bottom.

24 A. Again, I haven't seen that report.

25 Q. Okay. Now, when you did your -- I'm referring to

- 1 C18, which is on the material you furnished, and it  
2 does, indeed, verify that Texas is about \$300.00,  
3 \$350.00 below average on the instructional salaries,  
4 does that sound right to you?
- 5 A. Yes, it does. You don't have to show it to me.
- 6 Q. Now, speaking of the SAT scores that we were just  
7 talking about, you did, indeed, find a correlation --  
8 positive correlation between how much money a state  
9 was spending on its education compared to how well  
10 its children were doing on college entrance tests,  
11 correct?
- 12 A. The correlation was .21.
- 13 Q. And I believe you have described that as at the  
14 bottom of the significance category --
- 15 A. Right.
- 16 Q. But it is indeed significant?
- 17 A. It's a very weak relationship.
- 18 Q. Okay. Have you ever looked at the Texas TEAMS test?
- 19 A. No.
- 20 Q. Well, assume with me that it has been described as a  
21 minimum skills test, and -- nothing more than just  
22 bare bones, rock bottom minimum skills. I assume  
23 that you would agree that the SAT test is certainly  
24 more than a minimum skills test?
- 25 A. Well, I haven't taken that, either.

1 Q. Okay. So, I take it you -- do you hold the opinion  
2 that the SAT test, which is determined how do people  
3 get in college, is on the same level of difficulty as  
4 the Texas TEAMS test?

5 A. I assume it's more difficult.

6 Q. Okay. I mean, it's a more challenging test designed  
7 to --

8 A. It's a test for people who want to go to college.

9 Q. Okay.

10 A. And the TEAMS test is for people who are in the  
11 eleventh grade.

12 Q. Now, in your district, in Chicago, what tax rate do  
13 your taxpayers pay?

14 A. That would be a meaningless figure, we have  
15 fractional assessments. We assess residential  
16 property at one-third of the market value in  
17 Illinois. Therefore, the rates are a lot higher.

18 Q. What is your rate?

19 A. I think it's about \$2.00 a quarter.

20 Q. If we were to divide that by three, that would be  
21 appropriate -- you're looking at 80 -- you know, 80  
22 cents, give or take?

23 A. Listen to your friend, he's good.

24 Q. 75 cents?

25 A. Yeah, but that really is -- there's a lot more that

1 goes into it than that.

2 Q. Okay.

3 A. I mean, if you're going to refer that figure to  
4 Texas, you just can't.

5 Q. Okay. I take it -- you said, yesterday, that based  
6 upon your review, that Texas' tax rates, across the  
7 board, are low, in your judgment, correct?

8 A. For all public services.

9 Q. Right.

10 A. You know, the dollar amounts paid in taxes for public  
11 service are low relative to other states.

12 Q. Okay.

13 A. And high for education relative to other services.

14 Q. But below average for education -- below average,  
15 even for education, on a national average?

16 A. No, above average for education.

17 Q. Well, we just established that Texas spends less per  
18 child --

19 A. You're talking about the per pupil expenditure, but  
20 I'm talking about the expenditure per person in the  
21 State of Texas. The per capita expenditure for  
22 education, in Texas, is above the national average.

23 Q. Oh, is that that \$800.00 or \$850.00 figure you're  
24 talking about?

25 A. Right. It shows effort. It shows effort.

1 Q. Now, let me ask you one -- I believe, one last series  
2 of questions.

3 First, I take it you're charging for your time  
4 and testimony, and whatever?

5 A. Yes.

6 Q. What rate did y'all finally decide on?

7 A. Well, \$500.00 a day.

8 Q. Okay.

9 A. At the hourly rate, that results from that.

10 Q. Okay. And is that irrespective of waiting time  
11 versus testimony time? I mean, I know you were stuck  
12 here through this process.

13 A. I don't know, we haven't talked about it.

14 Q. I wish you well.

15 A. Well, if I do well, I'll thank you. Thanks.

16 Q. At your deposition, you recall we talked briefly  
17 about does classroom climate make a difference? And  
18 you offered the opinion that, yes, you were equating  
19 it to Chicago cold, and said that if a classroom was  
20 abnormally cold, you thought that, indeed, would have  
21 an adverse impact on the students' ability to learn  
22 and the teacher's ability to teach. Do you still  
23 hold that opinion?

24 A. It's very hypothetical. I don't think there's a  
25 classroom in Chicago that's uncomfortably cold. And

1 I think you wanted to talk about classrooms being  
2 uncomfortably hot. And boy, you can't compare  
3 Illinois to Texas in that regard. We don't have air  
4 conditioning in the classrooms in Illinois. We run  
5 summer school.

6 Q. I understand. Let me ask you this, your last exhibit  
7 is Exhibit 32, which was a copy out of Bench Marks?

8 A. Right.

9 MR. GRAY: May I approach the witness, Your  
10 Honor?

11 THE COURT: Yes, sir.

12 Q. And the total spending of the very highest group of  
13 districts in this state, those districts that are  
14 over \$5,000.00 --

15 A. Yeah.

16 Q. Which are -- excuse me, over \$500,000.00, you  
17 described as these are the wealthiest group of  
18 districts in the state, right?

19 A. Yes.

20 Q. They're spending, almost identically, to what your  
21 own district in Chicago is spending right now,  
22 correct?

23 A. Right, that's Texas. This is Texas, that's Illinois.

24 Q. That's Chicago, that's right. But we're --

25 A. Different economies.

- 1 Q. We're just looking at what your district is spending,  
2 and what your boards of trustees has determined as  
3 educationally necessary for the kids. It's the same  
4 as what the very wealthiest districts in Texas have  
5 determined, correct?
- 6 A. Correct.
- 7 Q. Okay. And you see that the poorest districts in the  
8 state, those districts that have values under  
9 \$100,000.00, they, by their own tax rates -- and  
10 assume with me, by the way, that testimony has  
11 already come in that poorest districts tend to have a  
12 little higher tax rates than the richer districts,  
13 across the board.
- 14 A. Yes.
- 15 Q. By their making a higher tax effort, they're able to  
16 raise \$2,890.00 per child, correct?
- 17 A. Well, they don't raise it, they only raise 14 percent  
18 of it.
- 19 Q. Yeah, and with the state aid coming in for the  
20 difference?
- 21 A. Yes.
- 22 Q. They have, available to be spent, \$2,890.00 per  
23 child.
- 24 A. Just so we're talking on the same page -- I assume  
25 they're raising \$474.00 per child and the state is

1 giving them \$2,400.00?

2 Q. Granted. They have, available to spend, \$2,890.00.

3 A. Correct.

4 Q. Okay. Compared to the wealthy districts, who have  
5 \$5,020.00 available to spend.

6 A. Correct.

7 Q. Now, the state is giving the wealthy districts, who,  
8 by their lower tax rates, we know already lower than  
9 the poor districts, they're able to raise, strictly  
10 by the low tax rate, better than one and a half times  
11 the money that the poor districts have available.  
12 They raise -- the wealthy raise \$4,566.00 by their  
13 low tax rate, which is more than one and a half times  
14 the \$2,890.00, which is all the poor have available,  
15 correct?

16 A. Yes. Well, the wealthy district is spending  
17 \$4,500.00 plus, of that \$5,000.00, from local  
18 sources.

19 Q. That's what I'm saying.

20 A. Sure.

21 Q. From local sources, based strictly on their low tax  
22 rate, they're able to still raise and spend one and a  
23 half times what the poor district is able to spend  
24 with -- which has already been established, a higher  
25 tax rate, right?

- 1 A. Right.
- 2 Q. Okay.
- 3 A. I don't know that it means anything, but yeah, that's  
4 correct.
- 5 Q. I'll tie this together. Now, the state, though,  
6 given that -- given the fact that the wealthy  
7 district can raise and spend one and a half times  
8 what the poor district is able to raise and spend by  
9 -- given, with a higher tax rate, goes on and still  
10 gives the wealthy district an additional \$454.00 per  
11 child?
- 12 A. Well, yeah, but they've got to give them \$250.00 of  
13 that \$454.00.
- 14 Q. Who told you that?
- 15 A. Well, I've been told that the Constitution requires  
16 \$250.00 per student regardless of the wealth of the  
17 district.
- 18 Q. Who told you that?
- 19 A. My attorneys, or, -- well, I've heard it from other  
20 school administrators and from the attorneys.
- 21 Q. I take it you heard it from -- when you say "your  
22 attorneys," you're referring to the wealthy district  
23 attorneys, correct?
- 24 A. I've --
- 25 Q. Mr. Luna and his --

1 MR. O'HANLON: I'll tell it to him. It  
2 says that that number varies, Your Honor. And the  
3 Constitution does require the distribution of state  
4 aids to the available funds. Last distribution,  
5 '85-'86, which is what that came from, is  
6 approximately \$280.00.

7 MR. GRAY: I'm merely trying to establish  
8 where he got his opinions, and through Dr. Long, who  
9 has been established as the superintendent from  
10 Carrollton-Farmers Branch.

11 A. I've asked the question to three or four people. And  
12 I've been told, and maybe there's a misunderstanding,  
13 that the Constitution requires somewhere in the  
14 neighborhood of \$250.00 be paid by the state to the  
15 locality for each student enrolled.

16 Q. Okay. That is very much an issue in this case.

17 A. Oh, it is?

18 Q. Yes, sir.

19 A. I'm sorry.

20 Q. But in any event --

21 MR. O'HANLON: That's news to me.

22 Q. There is \$454.00 of state money --

23 MR. O'HANLON: Your Honor, I object. I  
24 wasn't sure that -- I'm surprised, again, at the  
25 issues that are in this case. I wasn't aware that

1           this case was challenging Article VII, Section 5, or  
2           that we had to show a rational basis for a  
3           constitutional provision. So, I am surprised and I'm  
4           going to object.

5                       MR. GRAY: Your Honor, we have talked --  
6           we've had this surprise statement four weeks ago --  
7           at least round one, or two, of it.

8                       The Constitution says that it goes to the  
9           counties. The state has, for some reason, decided to  
10          give it to the school districts within the counties.  
11          And what has resulted is, you have very poor  
12          districts and very wealthy districts within the same  
13          county that the state is giving all of them the same  
14          amount of money, when the Constitution says to the  
15          counties. It doesn't say to the school districts.

16                      MR. O'HANLON: Well, they haven't pled it.  
17          They simply haven't pled it. Once again, they said,  
18          when they talked about the school finance system,  
19          they're talking about 16.001. Once again, I don't  
20          want to go through that same thing, because they  
21          haven't pled any of this stuff, Judge. And we're  
22          going to object to trying stuff that they just happen  
23          to think up as they're going through this case. The  
24          Rules of Civil Procedure are fairly expressed with  
25          respect to things have to be pled before they become

1 issue in the case. And this simply has not been  
2 pled.

3 MR. TURNER: Your Honor, I think the record  
4 would show in this case that the first time that  
5 argument was ever made was about halfway through the  
6 case. And I submit to you, as Mr. O'Hanlon did, that  
7 was an argument that came up in the course of the  
8 Plaintiffs trying to find a basis for this lawsuit  
9 and they've now brought it forth. And again, Mr.  
10 O'Hanlon is correct. They did not plead that that  
11 statute is not being -- not fulfilling the  
12 Constitutional mandate regarding the expenditure of  
13 those available school funds.

14 MR. GRAY: In order to avoid another day of  
15 argument, I can ask my same question striking out the  
16 Constitutional money. They're giving -- even  
17 assuming that they're right, we think they're wrong,  
18 \$200.00 in just gratis money to these wealthy  
19 districts.

20 MR. O'HANLON: Absolutely not. That's an  
21 aggregation. That's absolutely a misstatement.  
22 There's an awful lot of districts that don't get any  
23 money at all, but for the constitutional money, Mr.  
24 Gray. And he doggone well knows it. That's a  
25 distribution system. By aggregating in that thing,

1 they don't give it to wealthy districts. They give  
2 it in varying rates, depending on the relative wealth  
3 of the particular district involved.

4 MR. KAUFFMAN: Your Honor, if I may -- I  
5 haven't learned, yet, not to enter these things --  
6 these phrase, but I do have two statements.

7 First of all, the first time this concept was  
8 presented was not in the middle of the trial, I think  
9 it was the second or third day. When Dr. Hooker was  
10 testifying, he talked about the available school fund  
11 that could go directly into the county.

12 Secondly, in our petition, which was filed,  
13 originally, in March -- I guess in May of 1984, and  
14 amended in May of -- in March of 1985, I said the  
15 following, in Paragraph 104, the Third Amended  
16 Petition, "The available school fund allotment  
17 granted to each school district is based solely on  
18 the total average daily attendance of the school  
19 district. It does not take into account the fact  
20 that many high wealth school districts in the state  
21 can tax at a low rate and still raise more than  
22 sufficient monies to support their local educational  
23 programs. By providing for a flat per capita amount  
24 of money, based on the average daily attendance, the  
25 state dilutes its total funds for public education

1 and reduces the amount available to low wealth  
2 districts."

3 MR. O'HANLON: Well, there you go. There  
4 he's asking that the constitutional amendment be held  
5 unconstitutional. There he's saying that Article  
6 VII, Section 5, is, itself, unconstitutional because  
7 it doesn't distribute to people based on wealth.  
8 That makes a whole -- that's a direct challenge to  
9 the constitutional article. I've never heard of that  
10 kind of a theory of law.

11 MR. KAUFFMAN: Well, I think Mr. Gray is  
12 going to go on, anyway, so maybe we could save the  
13 debate for a better day.

14 THE COURT: Are you going to stick with  
15 your question, or are you going to withdraw your  
16 question?

17 MR. GRAY: I'm going to withdraw my  
18 question and try to modify it where I won't draw a  
19 three hour debate like we've had in the past. I just  
20 want to proceed.

21 THE COURT: Okay. We're going to stop for  
22 morning break. We'll start again at 11.00.

23 (Morning Recess)

24 MR. GRAY: May I continue, Your Honor?

25 THE COURT: Yes.

## CROSS EXAMINATION (RESUMED)

1  
2 BY MR. GRAY:

3 Q. Doctor, at the break, I had determined to try to  
4 reword my question to avoid getting into a legal  
5 technical argument. And I was showing you, on the  
6 exhibit that you introduced as Exhibit 32, the  
7 wealthy districts that have over \$500,000.00. And we  
8 had established that their total funds available to  
9 be spent on education is \$5,020.00, that's made up of  
10 \$4,566.00 that comes from, what we've already  
11 established to be the relatively low property taxes,  
12 and \$454.00 state dollars, correct?

13 A. Correct.

14 Q. Okay. Now, it's clear, is it not, that these  
15 districts are getting state money, this \$454.00, even  
16 when their own local property taxes are raising and  
17 generating more than one and a half times what is  
18 raised by local tax and state aid to the poor  
19 districts, correct?

20 A. This is -- this is true. And it's true in every  
21 state in the union. The state gives something to  
22 every district, regardless of wealth.

23 Q. So, it is clear that these districts are getting  
24 money, even though they've got one and a half times  
25 what the poor districts have, based on a lower tax

1 rate?

2 A. Right.

3 Q. Okay. Now, assume with me, that the money that these  
4 districts are now getting from state money -- assume  
5 that the full \$454.00 that they did -- they did not  
6 get it, but rather, that that \$454.00 was moved or  
7 given to the poorest districts, okay?

8 A. Well, if you can assume that --

9 Q. And I'm just asking you, hypothetically, to work  
10 through the math with me, okay? What that would --  
11 result would be, the poorest districts would now be  
12 spending approximately \$3,300.00 per child?

13 A. I'm sorry, Mr. Gray, you can't do that. You have to  
14 assume that district for district they match up, so  
15 that you can make the direct transfer. The only way  
16 being far fewer, these districts, by the time you  
17 transfer this money over, it might affect these  
18 people \$50.00.

19 Q. What you're saying is, you have to assume there's  
20 equal groups of people out there.

21 A. Right, because there are not.

22 Q. The district actual population figures for these  
23 various groups are already in evidence. That's  
24 already been established, okay?

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

1 Q. And all that I'm saying is, it's clear, is it not,  
2 that if you were to move the \$454.00 per student that  
3 is now going to the wealthy districts, into the poor  
4 districts, it would -- the poor districts would have  
5 more to spend?

6 A. Yes.

7 Q. Okay. But they would still be at least one and a  
8 half times below what the wealthy districts have to  
9 spend, even if the wealthy districts don't get any  
10 state aid?

11 A. If you took all of the state money away from the  
12 wealthy districts and gave it to all of the districts  
13 that are below average, the districts that are below  
14 average would have more per student, but they would  
15 still be below average.

16 Q. Right. And the wealthy districts would still beat  
17 them by at least one and a half times?

18 A. In this example, that group of --

19 Q. The wealthiest and the poorest?

20 A. Sure.

21 Q. Okay. Now, the --

22 A. It's kind of the way it works...

23 Q. You had, at your deposition, and in your direct  
24 testimony, were -- had talked a little bit about  
25 local control?

1 A. Yes.

2 Q. And I believe you said in your direct testimony that  
3 you think local control is an important thing to  
4 have, correct?

5 A. Yes, I do.

6 Q. And local control, getting down to the basics, is the  
7 ability to control funds, right?

8 A. Control, I think, doesn't mean too much, unless it  
9 involves money.

10 Q. Cutting through all of the mumbo jumbo, if you've got  
11 money that does not have to be spent on certain  
12 things, then you've got some local control to decide  
13 how the surplus money gets spent, correct?

14 A. Yes, that's correct.

15 Q. While, if you don't have any money that's not already  
16 committed, you have to spend it on item A, B and C,  
17 you don't have any local control, do you?

18 A. Well, you have less local control as you have lesser  
19 share of the control to financing, I would agree with  
20 that.

21 Q. For example, if you have a district who has  
22 \$10,000.00 available to be spent per child, and you  
23 have a state that has mandated state requirements  
24 that they -- that costs \$2,500.00 per child --

25 A. Uh-huh.

1 Q. In that hypothetical situation, that district with  
2 \$10,000.00 has, now, \$7,500.00 of money in which to  
3 use in their local control and spend it as they see  
4 fit, correct?

5 A. That's correct.

6 Q. Likewise, if you've got a district who has no more  
7 than \$2,500.00 per child, and you've got the state  
8 mandating programs, and things that they do, that  
9 cost \$2,500.00 per child, that district has no  
10 meaningful local control, correct?

11 A. Well, I can't agree with that entirely. I mean, the  
12 local districts still has the option of making  
13 certain choices about operations that can make the  
14 operation -- even with limited funds, more efficient,  
15 and can make decisions that will enable the district  
16 to do things that it has to do at a lower cost, and  
17 perhaps free up money for optional spending if  
18 they're well managed and they have the board of  
19 trustees.

20 Q. Do you recall at your deposition that I asked almost  
21 that identical question to you?

22 A. No, I don't recall.

23 Q. Okay.

24 MR. GRAY: May I approach the witness, Your  
25 Honor?

1 THE COURT: Yes, sir.

2 Q. Instead of \$2,500.00, I was using \$2,000.00. But  
3 my question on Page 68, Line 8, was:

4 "QUESTION: I suppose, if you had a school  
5 district that was able to tax and raise \$2,000.00 per  
6 pupil, say, for example, and the state had state  
7 requirements, state mandates that required that they  
8 spend \$2,000.00 per student to fulfill each of these  
9 state mandates, that they would then have no local  
10 control?"

11 That's my question, right?

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

13 Q. And your answer was:

14 "ANSWER: They wouldn't have very  
15 meaningful control, if they had to -- if all of their  
16 discretionary spending were not discretionary, no,  
17 they sure wouldn't."

18 That's correct, right?

19 A. Right.

20 Q. That's still your testimony, right?

21 A. Right. You asked the question two different ways.  
22 That question, you said that all \$2,000.00 must be  
23 spent in order to reach state mandates.

24 Q. Right. And that's --

25 A. And my last answer was, you know, if you have the

1 ability to be efficient and to save money, you can  
2 free up money for other purposes.

3 Q. And so it is safe to say, is it not, that local  
4 control is indeed a function of finances?

5 A. It is one of -- one of -- more than one function of  
6 finance, yes.

7 Q. And the more money you have available for  
8 discretionary spending purposes, the more local  
9 control you have?

10 A. The more money you have for discretionary spending,  
11 the more money you can spend at your discretion.

12 Q. Which means the more local control you have?

13 A. Well, if you say so.

14 Q. Okay. And likewise, the less money you have  
15 available for discretionary spending, the less local  
16 control you have, correct?

17 A. The less you can spend at your discretion.

18 Q. Okay. And you have described and defined  
19 discretionary spending as the primary measure of  
20 local control?

21 A. Okay. I'd say, if you have more money and you meet  
22 state mandates, you can do more things -- you know,  
23 you can do more things, educationally.

24 Q. Okay. Thank you, sir.

25 MR. GRAY: I have no further questions,

1           Your Honor.

2   REDIRECT EXAMINATION

3 BY MR. R. LUNA:

4 Q.    Dr. Jewell, let me ask you a couple of questions in  
5        regard to some of the matters that you just reviewed.

6                First of all, you talked about a period of time  
7        in which you were the superintendent of schools in  
8        North Chicago, and that your per pupil expenditure  
9        was less than \$2,500.00, is that right?

10   A.   Yes.

11 Q.    Now, after describing that district, where you were  
12        superintendent, and describing the other district at  
13        New Trier, is that the way you say it?

14   A.   Yes, yes.

15 Q.    It sounds like those districts contrast greatly.

16   A.   Yes, they do.

17 Q.    I think you mentioned, at one time, that you didn't  
18        even attempt to compete with New Trier?

19   A.   No, we couldn't.

20 Q.    Well, I would like to do two things.

21   A.   We beat them at basketball.

22 Q.    I would like to do two things.  First of all, I would  
23        like for you to describe to us a little bit about the  
24        -- that ideal situation at New Trier.  And then,  
25        secondly, how is the superintendent of the opposite

1 type of school in North Chicago -- how you can  
2 compete with a so-called wealthy school?

3 A. Right.

4 Q. And first of all, does the fact that a school is  
5 wealthy mean that it has no problems?

6 A. No.

7 Q. All right. So let's talk a little bit about that  
8 high teacher's salary -- that high average salary of  
9 \$39,000.00; that's your average salary?

10 A. Right.

11 Q. I'm sure that would sound pretty good to a new  
12 teacher coming out of college?

13 A. Oh, yes, yes.

14 Q. Now, let's assume that a new teacher, who had just  
15 graduated from college, in Illinois, submitted an  
16 application to teach at New Trier. What are the  
17 chances that that new teacher would get hired at that  
18 wealthy district?

19 A. Well, there would probably be a lot of applications  
20 for the job. And you know -- any new teacher?

21 Q. Well, in particular, with regard to your high average  
22 salary of \$39,000.00, let me ask you, first of all --

23 A. Right.

24 Q. What is your turnover rate there?

25 A. At New Trier?

1 Q. Yes, sir.

2 A. I don't know the rate. But, you know, we all  
3 understand at New Trier, that once you're in the  
4 system, you stay in the system until you retire from  
5 the system or until you pass away. People just don't  
6 leave New Trier to go to another school system.

7 Q. All right.

8 A. And we don't, by the way, and I don't know what the  
9 policies are, now, because I haven't been there -- I  
10 left New Trier in '76, but at that time, we didn't  
11 hire rookie teachers. We wouldn't hire teachers  
12 unless they had two or three years experience.

13 Q. All right. So a brand new teacher, probably, is not  
14 going to get hired at that district. Or at least the  
15 odds are very low of being hired at that district, is  
16 that right?

17 A. A brand new teacher, unless they changed their  
18 policy, couldn't be hired, wouldn't be considered, at  
19 New Trier.

20 Q. All right. In regard to that average teacher salary  
21 of \$39,000.00, then, if that's not going to new  
22 teachers, who is it that's drawing a \$39,000.00  
23 salary? What's the average age of the teacher in  
24 that district?

25 A. Right. Well, you haven't had this in Texas, but in

1 the Midwest, we've had declining enrollments and  
2 we've had to reduce teaching staffs. And the State  
3 of Illinois has concluded you have to do this by  
4 seniority. When you lay off teachers, you have to  
5 lay off those who are most recently into the system.

6 So with New Trier, with people not leaving to  
7 go to other systems, and with the staff reductions  
8 that they made when their enrollment declined from  
9 7,000 to 4,000, they laid off all of the younger,  
10 less experienced teachers. To answer your question,  
11 the average age of teachers at New Trier is 51 -- 51  
12 years of age, and that's not good.

13 Q. All right. Let's stop right there. Why is that not  
14 good?

15 A. Well --

16 Q. Now we're talking about a teacher in a classroom.

17 A. Right.

18 Q. And I want to draw on your experiences, now, as being  
19 a teacher in a classroom, also, and having seen that  
20 school system, why is that situation not good?

21 A. I don't want to express too many opinions, but I  
22 think people won't quarrel with this; people in the  
23 business think that a good staff is a diverse staff.  
24 And with a diverse staff, you have some younger  
25 teachers and you have some teachers that are in their

1 middle years, and then you have some older teachers,  
2 too.

3 In schools, you have to pay your dues as a  
4 teacher. I'm talking about high schools, now. If  
5 you're young, you're expected to chaperone the  
6 dances, you're expected to coach the sports, do the  
7 extras. Those are the kinds of duties that fall to  
8 your younger staff. Then as you get older and  
9 acquire more experience, you go to the principal and  
10 say, "I don't want to coach anymore. I don't want to  
11 chaperone the dances anymore. I don't want to  
12 sponsor the club anymore." And the principal will  
13 usually say, "Fine. You've given us loyal, faithful  
14 service. You don't have to do that anymore."

15 At New Trier, almost all the teachers are in  
16 that category. They don't have anybody that wants to  
17 coach, they don't have anybody that wants to sponsor  
18 a club. They certainly don't have anybody that wants  
19 to chaperone a teenage dance. And so, they're  
20 hurting for the youth and vitality that does these  
21 extra things. And they're hurting for the  
22 identification that the kids feel with younger  
23 teachers. You know, everything else equal, kids like  
24 younger teachers. They can identify with them more.

25 Q. Well, what about the experience level of teachers?

1 Does the fact that the average age is 51 years --  
2 wouldn't that indicate that they have more years of  
3 teaching experience and are therefore better teachers  
4 than a younger teacher?

5 A. They have considerable experience. But I do have  
6 some research I've conducted, myself, on this  
7 subject. I'd ask my students each year in my finance  
8 class, "At what level of experience do you think a  
9 teacher reaches his or her peak of efficiency and  
10 effectiveness?" And I've done this with every class  
11 I've ever had, and I've done it with other groups of  
12 teachers, because it's a question that interests me.  
13 Their answers are based upon their feelings about  
14 themselves and their feelings about their colleagues.  
15 It's an opinion, but I think it's a considered  
16 opinion. Usually, teachers say, "Well you reach a  
17 peak in your third, fourth or fifth year." Some will  
18 say the sixth or seventh year. I've never had a  
19 respondent who thought that any teacher got any  
20 better after ten years' experience. Most of them  
21 believe that at some point, you're not as good as you  
22 once were. And that this can come after "X" number  
23 of years of experience, "X" being, certainly, more  
24 than ten, 15 or 20 years, or it can happen when your  
25 age reaches "Y" -- 50, 55. If you ask them, "Are

1 teachers in their sixties as good as they were when  
2 they were in their thirties and forties?" Almost,  
3 without exception, they say, "No." They think  
4 teachers lose something, you know, when they get to  
5 that age.

6 Now, if that's the case, if the teacher's  
7 efficiency rises to the third or fourth year, and  
8 then levels and eventually goes down, the teacher's  
9 salary continues to rise. All of the salary  
10 schedules take the salary right on up, at least to  
11 the twentieth year of experience. So you're paying  
12 these older folks 50, 60, 70 percent more than your  
13 younger teachers. And they aren't any better than  
14 they were when they reached their fourth, or third,  
15 or seventh year of experience. Now, that's not at a  
16 criticism of teachers, that's just the way the  
17 business is.

18 You're a better lawyer after 10 or 15 years,  
19 I'm sure. And these fellows are, too. Teaching is  
20 that way. You reach your peak of efficiency and  
21 effectiveness fairly new in your career.

22 Q. Now, you said this is based upon your, sort of,  
23 informal surveys?

24 A. Yes. The subject has interested me for a number of  
25 years.

1 Q. This is not a scientific study of the United States  
2 or anything like that?

3 A. No, but I do pass out -- I have them write down their  
4 answers, and then I survey the answers with my class.  
5 And I say, "See, I found in this class what I've  
6 found with every other class. None of them thinks  
7 the teacher gets any better after the tenth year."  
8 And then I add up the numbers and take the average  
9 each time. It's usually 50, 55 years, and most of  
10 them think that's when a teacher is as good as he or  
11 she is going to be.

12 Q. This is a personal observation you've made in  
13 Illinois?

14 A. Yes.

15 Q. All right. Now, having seen that phenomenon, and  
16 knowing what happens in a wealthy district like that,  
17 and the concentration of the dollars there to the  
18 older teachers, how then does another district, like  
19 North Chicago, that you said can't compete --

20 A. Right.

21 Q. -- with New Trier, how, in effect, do they wind up  
22 competing?

23 A. Well, what -- when I got there at North Chicago --  
24 and I was thrilled to be there, because it was a  
25 district that had a lot of disadvantages and I wanted

1 to see what I could do -- but after I got a feel for  
2 the system, I went to the Board of Education and I  
3 said, "You know, your salary schedule is structured  
4 all wrong. We're not gonna get good teachers in here  
5 unless we raise the beginning salaries. So let's  
6 concentrate on that, getting good, young teachers  
7 coming out of college."

8 Q. What's the beginning salary?

9 A. I don't recall. At that time, it was probably  
10 \$10,000.00 or less. And "Well, we can't afford to  
11 pay higher salaries." To which, I said, "Well, we're  
12 going to have to renegotiate," because we negotiate  
13 salaries in Illinois. "We're going to negotiate  
14 those beginning salaries up. We're going to  
15 negotiate the salaries of the more experienced  
16 teachers down. And we're not going to let them  
17 increase as rapidly, so that we can go out and  
18 recruit promising young teachers," knowing, that  
19 after a few years of experience, they're going to  
20 leave us and go to a higher paying district. But  
21 then, that leaves a vacancy and we go out and get  
22 another promising youngster to help us with our  
23 program. And I argued, then, that I don't think  
24 we're losing that much by giving up the experience,  
25 because the experience isn't worth that much after

1 four or five years. That's the way we did it.

2 And I didn't compete with New Trier on  
3 recruiting teachers. They wouldn't -- they wouldn't  
4 recruit anybody that didn't have two years of  
5 experience and they wouldn't recruit anybody that  
6 didn't have a master's degree.

7 If you look around, there's a lot of good,  
8 young, beginning teachers, inexperienced. And there  
9 are a lot of them that are very good without a  
10 master's degree. So I was able to get good, young  
11 teachers within the system, but I wasn't very  
12 successful of holding them there.

13 Q. All right. So you moved your salary schedule from  
14 high salaries to your extremely experienced teachers  
15 to high salaries on the beginning end --

16 A. Right.

17 Q. -- to attract those teachers that you need?

18 A. Right.

19 Q. Is that possible to other school districts in  
20 Illinois? Can anybody do that by adjusting the  
21 schedule?

22 A. It takes time. I mean, you can't do it all at once,  
23 but yes, I think so.

24 Q. Why does that take a little time?

25 A. Well, nobody likes change in education. And any time

1           you make a change in the policy matters, as important  
2           as salaries, it disrupts things and causes them  
3           unhappiness. So you do a little bit at a time, so  
4           people can get used to it.

5   Q.   All right. What about the State of Texas, do you  
6       know whether or not they maintain, generally, salary  
7       schedules in the same type of fashion that Illinois  
8       does?

9   A.   I presume they do, although, there might be some  
10      differences that I've heard about. In 99 percent of  
11      the districts in the country, you know, you pay  
12      according to a single salary schedule. And you give  
13      increases according to a single salary schedule.

14           And some people told me, at least in one school  
15      district in Texas, that you can pay higher beginning  
16      salaries to teachers that are hard to find -- in  
17      science, I believe. That normally isn't done.

18           And now the State of Texas has a merit pay  
19      element which has been mandated by the state. That's  
20      practically unheard of in other districts. Teachers  
21      normally argue that merit pay is fine as long as they  
22      all get the same amount.

23   Q.   So, in Illinois, you have no merit pay system at all?

24   A.   No, not by the state. And not in the localities.  
25      Probably five districts out of a 1,000 have some

1 merit pay element, and it's usually an adjunct to the  
2 single salary schedule.

3 Q. And you talked about that you were also -- were  
4 teaching collective bargaining or were going to teach  
5 it?

6 A. Right.

7 Q. You currently teach it?

8 A. No, I have taught it.

9 Q. You have taught it?

10 A. Yeah.

11 Q. Does that mean that, in Illinois, that the teachers'  
12 unions bargain with the districts --

13 A. Yes.

14 Q. -- for their pay?

15 A. Right. In every district, the state legislature,  
16 now, has made it legal to have collective bargaining.  
17 And a couple of years ago, they made it legal to have  
18 teachers' strikes.

19 Q. Okay. So, you have certain elements that affect your  
20 schools, there, that don't necessarily apply to  
21 Texas?

22 A. Right. As I look at Texas, it looks like you have  
23 enormous freedom to do a variety of things that we  
24 can't do in Illinois.

25 Q. Including the element that you don't have there -- of

1 merit pay, which apparently, teachers and their union  
2 representatives oppose, is that right?

3 A. Always. They always oppose merit pay. Also, what  
4 you don't have in Texas that you have in most other  
5 states in the union, is teacher tenure, which is --  
6 to simplify teacher tenure is, after they have it,  
7 you can't fire them, unless you can catch them  
8 stealing something or unless they molest one of the  
9 children. Those are about the only grounds for  
10 firing a tenure teacher. I understand, in Texas, you  
11 can actually dismiss a teacher for not being good at  
12 his job.

13 Q. Is that unusual to you?

14 A. I've never heard of such a thing, but I like it.

15 Q. You mentioned several times about the board of  
16 trustees in these various districts. There's been  
17 testimony, in this case, that the board of trustees  
18 in Texas are elected, receive no pay for their job in  
19 these local communities, and spend a large number of  
20 hours, both at public meetings and working on the  
21 budgets, and the work sessions and so forth, and in  
22 special training for those positions after they're  
23 elected.

24 A. Right.

25 Q. How does Illinois handle that? Is that similar or

1 different in any way?

2 A. Well, it's similar, in that in Illinois, board  
3 members are elected and not paid, but there are no  
4 requirements. There are no training requirements. I  
5 wish there were. I think they have to be 19 years of  
6 age and have to be a citizen of the United States.  
7 And if they are, they can run for school board.

8 Q. Do they spend a lot of time, their own time, in  
9 Illinois, significant amounts of time during the year  
10 serving as a non-paid member of the board?

11 A. They spend increasingly more time, each year, on that  
12 job. They help the administrations.

13 Q. Is it ever a surprise to newly elected board members  
14 that perhaps a field of education is a bit more  
15 complex after they get involved in it than what they  
16 originally thought when they were elected?

17 A. Almost without exception. Usually, a person who  
18 wants to run for the board to do the things that they  
19 very -- that they see very clearly should be done,  
20 and they can do them. And then when they get  
21 elected, they find it is enormously complicated and  
22 extremely difficult to change.

23 Q. And yet people continue to want to do that and run  
24 for those positions and spend that kind of personal  
25 time?

1 A. Yes, they do.

2 Q. Why?

3 A. Well, I'm not sure I fully understand it, but when  
4 you talk to school board members, they talk about  
5 wanting to give something back to the community --  
6 stress very hard. A classic example, this example,  
7 "I want to give something back to the community."  
8 Frequently they have children in school and they want  
9 to have a voice in policy making. Frequently they  
10 want to represent their friends and neighbors.  
11 Sometimes they are concerned about spending and they  
12 want to get in and make sure we do a good job on  
13 that.

14 Q. Do sometimes the board members think the district is  
15 wasting money?

16 A. Yes.

17 Q. Sometimes they think it's not spending enough?

18 A. Yes, or not spending enough on a certain program, or  
19 not spending enough on sports, or too much.

20 Q. You mean you have differences of opinion in the  
21 communities in Illinois?

22 A. Yes, we do. Yes, we do.

23 Q. All right. Well, considering those differences in  
24 opinion, and I assume that, in a given community,  
25 opinions even change from year to year and -- every

1           few years --

2   A.    Sure.

3   Q.    -- on some subjects.

4                    Are there -- and again, I now want to address  
5                    this question beyond the basic courses.  First of  
6                    all, are school districts in Illinois pretty well  
7                    providing to the students, there, the basic courses  
8                    in education?

9   A.    Yes, very comparable to Texas, in that regard, I  
10           believe.

11   Q.    All right.  So the state mandates a certain core  
12           curriculum group that must be presented to everyone  
13           in Illinois?

14   A.    Right.

15   Q.    Now, you've indicated that in some of the high  
16           spending districts, there, there are additional  
17           things of some type that are offered.  In your direct  
18           testimony, originally, you differentiated between  
19           course offerings, or that is, student learning, and  
20           employee benefits.

21   A.    Right.

22   Q.    You made a very clear distinction on that.  I think,  
23           many times, when we're talking about the additional  
24           dollars, we tend to melt those two elements together.

25   A.    Yes.

1 Q. But let me ask you, first of all, in regard to  
2 courses, whether that be extracurricular courses and  
3 activities, or actual classes --

4 A. Uh-huh.

5 Q. What, in Illinois, do those districts with available  
6 local funds, that you have described, do with their  
7 dollars over and above the basic curriculum?

8 A. Well, Mr. Luna, education is a system which is  
9 controlled by values and opinions. And we all agree  
10 that children should have reading, writing and  
11 arithmetic and that those are important. But in  
12 wealthier communities, you have the normal groups of  
13 people who think that a certain part of the  
14 curriculum is important.

15 Q. Like what?

16 A. Music -- music appreciations, art -- performing arts,  
17 ceramics, foreign language.

18 As you have more money, you can cater to those  
19 groups. And to have -- you can have more course  
20 offerings. You can have a more diverse curriculum,  
21 which, incidentally, is expensive, because there is a  
22 direct relationship between the diversity of  
23 curriculum and the cost of providing education.

24 I'm in a district that has 250 course offerings  
25 at the high school level. And we're cutting them

1 down. There's too many. When you have 250 course  
2 offerings, you're going to have a lot of classes,  
3 after the registrations, got six, seven, eight kids  
4 in them. If you run those classes, they're  
5 expensive. Costs you three times as much to run a  
6 class of eight as it will a class of 25. But it does  
7 permit the locality to -- and this varies from  
8 locality to locality -- to provide for their  
9 youngsters the things that they consider important.  
10 Or, if you have a lot of money, you can provide a lot  
11 of different things for a lot of different groups of  
12 people that think that certain things are important.

13 For your football parents, you can have a  
14 terrific football program and lots of coaches, well  
15 coached, good uniforms, good athletic facilities.

16 And for the foreign language crowd, you can  
17 have fourth-year Latin. I know at New Trier, we had  
18 a language course, which was -- I think the  
19 youngsters would study in Russian and then they'd  
20 study in Chinese, or they'd study Chinese in the  
21 Russian language, you know, because there were people  
22 in the community that just felt that foreign  
23 languages are wonderful. Those are the kind of  
24 things you can do when you have a lot of money.

25 Q. As an educator, do you necessarily agree that

1           football is important, or that a lot of the other  
2           programs might be important, such as band, or certain  
3           elements of the fine arts, or so forth, versus what  
4           different communities may consider to be important?

5       A.   Well, as an educator, I'm just like everybody else,  
6           you know, I've got my own opinions. But if I'm in a  
7           district that has a lot of money, it makes me happy  
8           that we can provide, you know, that kind of  
9           diversity. But I don't think football is important,  
10          so far as education is concerned. It does a lot of  
11          things for your school spirit. You know, if you've  
12          got a good football team, everybody in the community  
13          thinks they've got a great school. When they start  
14          thinking you've got a great school, you're halfway  
15          home.

16       Q.   A lot of people feel very strongly about that  
17          football program in Texas. Do they in Illinois?

18       A.   Maybe not as strongly as they do in Texas.

19       Q.   All right. You've discussed a pool table in the  
20          teachers' lounge?

21       A.   Right.

22       Q.   Does that have anything to do with learning?

23       A.   No.

24       Q.   What about employee benefits?

25       A.   Wonderful. Bridge tables, pool tables, pipe racks,

1 coffee pot. You have to put a nickel in the cup if  
2 you want a cup of coffee. When you finish your  
3 teaching, you go down to this wonderful teachers'  
4 lounge and shoot pool. Magazine subscriptions  
5 around, play bridge, visit with your colleagues.  
6 It's great.

7 I was a teacher there for a couple of years,  
8 and I sometimes wonder why I ever decided to become  
9 an administrator.

10 Q. Is there any merit to the concept that some districts  
11 that are willing to try new ideas in education, such  
12 as the open classroom concept, or the new math  
13 programs that have been advocated, is there any merit  
14 in allowing some districts to attempt these new  
15 programs and see if they fly or bomb, either one?

16 A. Right. If you're a wealthy district, you're expected  
17 to pilot new programs, to be a lighthouse district,  
18 to try something that you can afford to fail on. And  
19 to assess it and to let your colleagues in other  
20 districts know how well it worked. That's kind of  
21 the unwritten responsibility of wealthy districts, to  
22 pilot those programs. And we did it at New Trier.

23 Q. And I assume that some of them -- there's been some  
24 testimony that some of them in Texas have failed?

25 A. Yeah, they fail. And you know, if you're in a

1           wealthy district with wonderful parents, the failure  
2           is forgiven. And we're patted on the back for  
3           trying.

4   Q.   All right.

5   A.   But we can afford to fail.

6   Q.   That wouldn't keep you from trying another one, if it  
7           were a good idea?

8   A.   No. In fact, the district takes pride that it tries  
9           new things educationally.

10   Q.   Several news articles have been mentioned to you  
11           before. And let me ask you if you have mentioned to  
12           me any other newspaper articles -- about the New York  
13           Times, is the one I think I remember, in particular,  
14           that have commented on the Texas school reforms?

15   A.   Yes. Can I -- Judge Clark, may I look at an article  
16           -- the New York Times article that I've brought with  
17           me?

18                   THE COURT: All right, sir.

19   A.   Well, this caught my eye, because I already made  
20           contact on this case. And the New York Times, on  
21           January 4, had a feature article on Texas education  
22           reform.

23   Q.   What year is that?

24   A.   This year.

25   Q.   1987?

1 A. Yeah, so -- but I was interested in how the New York  
2 Times feels about Texas education reform, as we are  
3 all interested in what the New York Times feels about  
4 everything. But the subtitle was "Texas seems  
5 determined to succeed with one of the most ambitious  
6 overhauls of the state education system ever  
7 attempted." They quote Mr. Frank Newman, who is  
8 president of the Education Commission of the States  
9 in Denver, that's an agency that monitors education  
10 trends.

11 MR. ROOS: Your Honor, I think we ought to  
12 object. This is hearsay. And it's becoming hearsay  
13 upon hearsay. I don't think this document ought to  
14 be read into evidence.

15 MR. R. LUNA: Counsel is probably right,  
16 but I didn't object to their reading from their  
17 newspaper articles. Mr. Gray did it several times.  
18 And in addition, even if it is hearsay, he's an  
19 expert and he's entitled to rely upon reliable  
20 hearsay.

21 MR. GRAY: All I did, on cross examination,  
22 was ask him if he knew this to be true or not. And  
23 he said yes, or no, I forget what his answer was.  
24 But I was not attempting to offer into testimony or  
25 read a newspaper article into testimony.

1 THE COURT: Well, put a question to him,  
2 please. I don't even know if there was a question  
3 going. Just put a question to him, and let's see  
4 where we go.

5 MR. R. LUNA: All right.

6 BY MR. R. LUNA:

7 Q. Dr. Jewell, based upon your review of nationally  
8 known publications, including the New York Times,  
9 have you seen any expressions, or any reports of  
10 studies that have been done on the Texas educational  
11 reforms and generally, just what the opinions of  
12 those research groups are, and not that they've done  
13 any studies to back up those opinions?

14 A. I've just seen the one article, and obviously, the  
15 writer had --

16 MR. ROOS: If he's just relying upon this  
17 one article, then -- if there were true research, and  
18 he was an expert and qualified in talking about  
19 research, it would be something else. But he's now  
20 alluding to the New York Times article, again. We  
21 object.

22 MR. O'HANLON: I think an expert can rely  
23 on opinions of other experts. If we can establish  
24 that he regards the individual from the Education  
25 Commission of the States as an expert...

1 THE COURT: I don't know what -- I don't  
2 know what kind of opinion you're trying to get from  
3 the witness. If -- I'm not even sure you want an  
4 opinion. I really don't know what you're --

5 MR. R. LUNA: It really isn't worth very  
6 much.

7 THE COURT: Okay. I'll overrule. I'll see  
8 whether it's not worth very much.

9 THE WITNESS: I feel as if I'm being  
10 tested.

11 No, the article just talked about the education  
12 reform in Texas. That generated a lot of excitement,  
13 a lot of interest. And the experts, around the  
14 nation, were very excited about it and thought that  
15 it was an enormous departure and diffused great sums  
16 of additional money into the system. And then went  
17 on to point out that it has created the kinds of  
18 disruptions and dislocations that normally occur when  
19 you impose massive change on a system. And that the  
20 system now needed time to catch its breath and to  
21 adjust to House Bill 72, and the additional money  
22 that they had. And that they would wait and see how  
23 Texas did in the future. That's about what it said.

24 Q. Thank you.

25 MR. R. LUNA: Pass the witness.

1                   MR. O'HANLON: I've got a couple of  
2                   questions, Your Honor.

3                   CROSS EXAMINATION

4 BY MR. O'HANLON:

5 Q.   Mr. Roos asked you somewhat about teaching to the  
6       test. And he did it in the context that kind of  
7       indicated that there is something wrong, or immoral  
8       about teaching to the test. Let's talk about that  
9       for a minute.

10                   If a test -- if one element of a test is to  
11                   write a paragraph, in good English, that expresses  
12                   your idea in an orderly fashion, how do you teach to  
13                   the test?

14 A.   Well, in writing, I guess it's kind of hard. You  
15       have to -- you have to work on composition and see if  
16       a student can write a good paragraph, a good topic  
17       sentence, and communicate clearly.

18 Q.   In other words, in order to teach to the test, you  
19       have to teach them how to write a clear paragraph?

20 A.   I -- in teaching my class in finance, the first thing  
21       I do is prepare a final examination. I do that  
22       before the class meets. And that is my guide for --  
23       it's my test. I mean, the state hasn't given it to  
24       me. But I prepare a final examination and I try to  
25       teach the students the things that they will have to

1 know to do well on that final examination -- is the  
2 way I teach.

3 Q. Okay. And let's assume that there's mathematics on  
4 the test -- that there's arithmetic, for example. To  
5 teach to the test, you have to teach arithmetic,  
6 don't you?

7 A. Yes.

8 Q. And to teach grammar and spelling, you have to teach  
9 grammar and spelling?

10 A. Right, that's correct.

11 Q. Now, when you're teaching to the test, you're not  
12 teaching them how to cheat, are you?

13 A. No, I don't think so. I think it's just -- you know,  
14 you probably focus a little bit more on how that  
15 particular test is done.

16 Q. That's right.

17 A. And they change it every year, anyway. So you can't  
18 really -- there isn't a standard test where you have  
19 it and you can read it and know what your students  
20 are going to be tested on. They're gonna change it  
21 every year, anyway. You get some idea of how they do  
22 it.

23 Q. Okay. So, to teach to the test, you've got to teach  
24 the content areas, don't you?

25 A. Yes.

- 1 Q. And I don't care what you do, if on test taking  
2 skills -- you can teach test taking skills for six  
3 months, and if the student doesn't know how to do the  
4 computation, or write the basic paragraph, how well  
5 do you think they're going to do on the test?
- 6 A. They're not going to do well at all.
- 7 Q. So, isn't that the point of giving a test, to see  
8 whether they've learned the content area over which  
9 the subject matter is being tested?
- 10 A. It's criteria reference testing we talked about  
11 earlier. You teach with the -- with -- having in  
12 mind what it is you want your students to learn, and  
13 then trying to have some system whereby you can  
14 measure that learning. That's what we do as  
15 teachers.
- 16 Q. And if a state sets out, in its curriculum plan, a  
17 very expressed criterion known as essential  
18 elements --
- 19 A. Uh-huh.
- 20 Q. Are you familiar with that concept, in general --  
21 the essential criteria of an educational program?
- 22 A. Right.
- 23 Q. And it tests, by asking the students how much they  
24 know, on those essential elements --
- 25 A. (Witness nodded head to the affirmative.)

- 1 Q. -- there's nothing wrong with that, is there?
- 2 A. I don't think so.
- 3 Q. And if you're teaching to the test, aren't you
- 4 teaching the essential elements?
- 5 A. If it's a good test, and you're teaching well, yes.
- 6 Q. And isn't that the point of giving the test in the
- 7 first place?
- 8 A. I believe the point of giving the test is to try to
- 9 improve the quality of teaching and learning, yes.
- 10 Q. Now, let's talk about -- I don't know whether you've
- 11 seen the constitutional article that we're talking
- 12 about in this case, but I'll hold it up, here, and
- 13 let you look at it. It says a general diffusion of
- 14 knowledge being essential.
- 15 A. Yes.
- 16 Q. Okay. It doesn't say a general diffusion of money
- 17 being essential, does it?
- 18 A. No.
- 19 Q. It doesn't say a general diffusion of air
- 20 conditioning being essential?
- 21 A. No.
- 22 Q. It doesn't say a general diffusion of extracurricular
- 23 activities --
- 24 A. No.
- 25 Q. -- being essential?

1 A. It doesn't say any of those things.

2 Q. Okay. So, before we can talk about -- in terms of  
3 deciding ultimate issue in this case, if we're  
4 talking about knowledge -- if we're talking about  
5 knowledge, in terms of money, we have to make a  
6 direct proportion, do we not, that money equals  
7 education, don't we?

8 A. Yes.

9 Q. And all the research that's been done, all the  
10 national research that we've got, says that ain't so.

11 A. That's not so.

12 Q. Do you agree with that?

13 A. Yes.

14 Q. That you can't say, that based on everything that we  
15 know, that money equals education?

16 A. You can't say that -- not and be correct.

17 Q. So, by simply looking at disparities in education, in  
18 educational expenditures, we can't say, necessarily,  
19 that there are disparities in the quality of an  
20 educational program?

21 A. No, you can't say that.

22 Q. So, it wouldn't surprise you, would it, that the  
23 correlation of wealth in terms -- pupil wealth in a  
24 district, to test scores, is approximately .025 in  
25 this state?

1 A. No, that doesn't surprise me.

2 Q. Which is to say, that there isn't any relationship?

3 A. No relationship.

4 Q. So, this fundamental principle that the Plaintiffs  
5 are espousing in this case, that money equals  
6 education, is simply not supported by any of the  
7 national research, or Texas research, of which you  
8 are aware?

9 A. Right. And I've looked at that research all of my  
10 career. I've been waiting for -- for that kind of --  
11 for a piece of research that shows that connection,  
12 and it hasn't appeared yet.

13 MR. O'HANLON: Pass the witness.

14 MR. TURNER: I'll pass the witness, Your  
15 Honor.

16 MR. KAUFFMAN: Excuse us just a second,  
17 Your Honor.

18 MR. ROOS: Pass the witness, Your Honor.

19 MR. GRAY: No questions, Your Honor.

20 THE COURT: All right, sir. Thank you very  
21 much. I'll let you step down.

22 (Witness excused.)

23 THE COURT: We will stop for lunch, and  
24 start again at 2:00.

25 (Lunch Recess)

1 MARCH 27, 1987

2 MR. KAUFFMAN: Your Honor, if I may, I  
3 would first like to reurge the admission of our  
4 Plaintiffs' Exhibit 33, which is the racial ethnic  
5 breakdown of every school and every school district  
6 in the State of Texas, as well as the state as a  
7 whole.

8 THE COURT: Okay.

9 MR. R. LUNA: No objection.

10 THE COURT: Okay. It will be admitted, 33.

11 (Plaintiffs' Exhibit No. 33 admitted.)

12 MR. KAUFFMAN: And Your Honor, one more  
13 administrative matter. It's my understanding, from  
14 talking to the Defense Counsel, that their case will  
15 end by around next Tuesday. And that originally, Mr.  
16 Luna had said he had one other witness he'd like to  
17 hold over and bring on the next week -- Monday, the  
18 7th, or Tuesday, the 7th of April. So, if we could,  
19 after we finish today, I guess we'd like to possibly  
20 meet with the Court for a short time and talk some  
21 about the schedule, what's the Court's preferences,  
22 or schedule, about that.

23 THE COURT: Okay.

24 MR. TURNER: Your Honor, we would like to  
25 call Dr. Buddy Davis.

1 DR. BUDDY L. DAVIS,  
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. TURNER:

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

7 A. My name is B. L. Davis.

8 Q. Dr. Davis, what is your educational background?

9 A. I have a bachelor's degree from Texas Christian  
10 University, a master's from Texas Christian  
11 University in school administration and my doctorate  
12 from North Texas State University in school  
13 administration and secondary curriculum.

14 Q. Where is your current employment?

15 A. I'm superintendent of schools of Longview Independent  
16 School District.

17 Q. How long have you been a Longview superintendent?

18 A. This is my second year.

19 Q. And where were you prior to that time?

20 A. I was assistant superintendent of the Arlington  
21 Independent School District.

22 Q. Dr. Davis, could you review for us your experience  
23 and background in education, following your  
24 graduation -- your initial graduation from college?

25 A. Yes, sir. I'm finishing 28 years. I began in the

1 Fort Worth Independent School District, and was there  
2 for 11 years as a teacher, a counselor and an  
3 assistant principal. I've been in the Arlington  
4 District for 15 years as an assistant principal,  
5 principal and assistant superintendent. And two  
6 years in the Longview District as superintendent.

7 Q. Dr. Davis, if you will, tell us something about the  
8 type of school district you have there in Longview?

9 A. Our school district has, roughly, 8,500 students. We  
10 are, by state definition, a below average wealth  
11 district. We have 46 percent minority population --  
12 Black population, in our district, two percent  
13 Hispanic, so we're about 51 percent White. We would  
14 be considered, I guess, an inner city school from the  
15 standpoint that we're surrounded by the White/Black  
16 districts around Longview.

17 Q. Dr. Davis, are you familiar with the annual report  
18 that is published by the Texas Education Agency?

19 A. Yes.

20 (Defendant-Intervenors' Exhibit No. 52 marked.)

21 Q. Dr. Davis, I'm going to hand you what's marked as  
22 Defendant-Intervenors' Exhibit 52, and ask you if you  
23 can identify that document for us?

24 A. Yes, sir. This is the Annual Performance Report that  
25 we submitted this year to the Agency.

1 MR. TURNER: I would like to offer this  
2 into evidence, Your Honor, Defendant-Intervenors' 52.

3 MR. KAUFFMAN: No objection.

4 MR. GRAY: No objections, Your Honor.

5 THE COURT: All right. It will be  
6 admitted.

7 (Defendant-Intervenors' Exhibit  
8 (No. 52 admitted.

9 BY MR. TURNER:

10 Q. Dr. Davis, in your school district, would you tell us  
11 a little bit about the type of curriculum that you  
12 have?

13 A. We have a very comprehensive curriculum in our school  
14 district. We're comparable, as I can make the  
15 comparison, between Longview and the Arlington  
16 Independent School District. Our high school  
17 curriculum is very comparable. I have four children,  
18 two in college, and two still there in high school.  
19 And the curriculum there is very comparable to what  
20 we had in Arlington. We have the full range of  
21 pre-kindergarten through grade twelve. And we're  
22 ranged in pre-kindergarten through five in elementary  
23 school; six, seven and eight in middle school; and  
24 nine through twelve in high school.

25 Q. Would you say your district offers a large amount of

1 electives or have you chosen to go the route of not  
2 offering many electives?

3 A. No, sir. We've opted to offer as many as we possibly  
4 can, based on the demand of the student population.

5 Q. Do you have any -- in your district, Dr. Davis, any --  
6 what we might call unique approaches to providing the  
7 education that might differ in what may be done in  
8 Carrollton-Farmers Branch, or Midway ISD, or your old  
9 district of Arlington?

10 A. I believe we do, in that we have a large minority  
11 population. And in that group, there's a large  
12 number of disadvantaged youngsters.

13 In elementary school, we go to the community in  
14 the evenings and offer tutorial courses at night out  
15 there, so that the youngsters can walk to tutorials  
16 without having to worry about transportation, which  
17 is a major problem in the tutorial program in the  
18 state.

19 We also do a membership program in our middle  
20 schools, whereby every youngster at risk is assigned  
21 to an individual teacher. And he reports to that  
22 teacher every morning and goes over his homework,  
23 submits his homework, the teacher looks at it, and  
24 just establishes a one-on-one contact. I'm not aware  
25 of other school districts that do that.

1           I have established what I call the  
2 Superintendent 100 Club. I select the top 100 Black  
3 youngsters out of the high school, and I meet with  
4 them periodically. And I have mentors for every  
5 cohort of about ten of that group. And it's their  
6 job to encourage those kids. We watch their grades,  
7 we encourage them to take advance classes. And then,  
8 as they fall behind a little bit, we're there as a  
9 support group to encourage them and to ask them to do  
10 better -- with the thought that, they, in turn, would  
11 be good role models for their own peers.

12           In our tutorial program at night that we offer,  
13 we encourage the parents to come. And so that's  
14 where we try to excel part of the parenting skills.  
15 That's been alluded to in testimony here, earlier,  
16 that I have heard. We do this same kind of tutorial  
17 program in the high school. And we have a membership  
18 program also there for those youngsters.

19 Q. Dr. Davis, are all of these programs that you just  
20 mentioned, are they designed to assist the minority  
21 student in special problems of the minority students?

22 A. It would tend to work that way, even though any  
23 youngster would be available for that. It would seem  
24 that the largest percentage of our disadvantaged kids  
25 would come from minority groups.

1 Q. Inasmuch as you are a below state average wealth --  
2 property wealth district, do you have difficulty  
3 finding funds to operate these kinds of programs?

4 A. No, sir, because the Superintendent 100 Club and the  
5 membership program that we run are non-expense items.  
6 We do that as a matter of volunteer. The teachers  
7 are happy to do that. It does cost us a little bit  
8 to run the night tutorial programs. However, the  
9 churches and the community center volunteer their  
10 space, so our only expense that we have in that is  
11 the salary that we pay the teachers that we hire to  
12 go out there and teach those -- and work with those  
13 youngsters on their homework.

14 Q. Dr. Davis, I would like to direct your attention to  
15 your annual performance report. The first, or second  
16 section, I believe, is entitled District Report  
17 Longview ISD. And it begins the presentation of the  
18 statistical data. The first page there, No. 1, is  
19 the data that gives the ethnic distribution of your  
20 school district.

21 A. Yes, sir.

22 Q. And if I'm looking at the right column, for your  
23 district, it shows 51.4 percent White, two percent  
24 Hispanic, and 46 percent Black and six-tenths of one  
25 percent others, is that accurate?

1 A. Yes, sir.

2 Q. When we look over on the second page, there's some  
3 data there regarding graduation -- percent graduating  
4 twelfth grade, and percent of graduates who plan to  
5 attend college.

6 I note that you are at the statewide average on  
7 percent of graduates who plan to attend college. And  
8 that you are close to the state average, but not  
9 quite the state average, on percent graduating from  
10 the twelfth grade.

11 A. Yes, sir.

12 Q. Could you share with us what accounts for those two  
13 figures in your district?

14 A. One, is what I think all good schools would do, and  
15 that's hold high expectations for our youngsters. We  
16 have abandoned, or are in the process of abandoning,  
17 most of our basic classes. And we're requiring those  
18 youngsters to take more advanced local courses, as  
19 much as we can require them to do that. Our parents  
20 support the idea, both in the minority community and  
21 in our majority community, the concept of going to  
22 college. It's just something that we push very hard.  
23 We ask our students to perform, and we expect them  
24 to, and they do.

25 Q. Dr. Long testified in this courtroom, and I believe

1           you may have been in here, when he talked about his  
2           learning center, I believe he called it. Do you have  
3           anything comparable to that in the Longview  
4           Independent School District?

5           A. We offer advance courses, and also AP courses,  
6           advance placement courses, in our high school.

7                         In our middle school, we have a full-out gifted  
8           and talented program that we use across our three  
9           middle schools.

10                        In elementary schools, we have a magnet center  
11           that we select and identify youngsters from all over  
12           the community. And it's a very prestigious school.  
13           It happens to be in an old, Black junior high school,  
14           in the ghetto. And it is attended, faithfully, by a  
15           large group of people, in that it is very, very  
16           prestigious in Longview, Texas, to get into that  
17           school. And it's called Hudson Pep School.

18           Q. The use of that kind of, we call it magnet school --

19           A. Uh-huh.

20           Q. Is that a concept that is followed by other school  
21           districts across the state?

22           A. I suppose there are other districts that have magnet  
23           types of schools. I can't site you one off the top  
24           of my head. We did not have that concept in  
25           Arlington, but I understand there are districts that

1 do. But I think ours is unique in that we're the  
2 only one out there, that I know of, in East Texas  
3 that's doing that.

4 Q. Nothing in the state law that mandates this kind of  
5 approach? This was merely a local decision --

6 A. Yes.

7 Q. -- that your board made?

8 A. Some years ago. I wish I could take credit for it,  
9 but I can't.

10 Q. All right. You appear to have, as I mentioned, state  
11 -- the state average in percent of graduates who plan  
12 to attend high school. Is there anything, in  
13 addition to what you've already mentioned, that helps  
14 contribute to that 54 percent of graduates who plan  
15 to attend college?

16 A. I think it's just the fact that we have such strong  
17 community support for our school in what we're trying  
18 to accomplish. I think it's also significant, in  
19 those statistics, that compared to the state average  
20 and the group average, our 46 percent Black  
21 population is significantly higher than either the  
22 group that we are compared to. And also the state  
23 average, which would say that our percent of  
24 graduates, if you can take the hypothesis that more  
25 of those youngsters tend not to go to school, I think

1           that says that our people do a good job of that.

2   Q.   Dr. Davis, on Page 3, there is data presented  
3        regarding the results of the team scores given in the  
4        various grades at your school district.

5   A.   Yes, sir.

6   Q.   How do you -- look at that Page 3, how do you compare  
7        with the state, as a whole, in TEAMS scores?

8   A.   We were above the state in the group in every  
9        category, with the exception, I believe, of ninth  
10       grade reading. We were a little below the group, but  
11       we were above the state in all other categories, I  
12       believe. I take that back. Also in eleventh grade  
13       reading, we were a little below the group, but above  
14       the state. But in other areas, we were equal to or  
15       higher than the state average and the group average.  
16       In given schools -- and given schools, as opposed to  
17       average, we were comparable with anything that you  
18       had on the board from anyone.

19   Q.   Dr. Davis, you had been in Arlington just three years  
20        ago, I believe you said?

21   A.   Yes, sir. I'm finishing my second year in Longview.

22   Q.   Are you aware, or were you aware, that the Arlington  
23        District was a district that is above state average  
24        in wealth?

25   A.   Yes, sir. I certainly -- I served in that district

1 for 15 years.

2 Q. I'm referring to our Bench Marks, that we've used so  
3 often in this trial. It appears that Arlington has a  
4 market value per ADA of \$377,695.00. Does that  
5 appear to be approximately correct from your  
6 recollection?

7 A. I would accept that as a correct number.

8 Q. Could you describe for us, based on your experience  
9 there in Arlington, and now being over in Longview, a  
10 less than average state wealth district, what kind of  
11 contrasts that you observed, advantages or  
12 disadvantages that you may have perceived, that you  
13 might could relate to that variation in tax base from  
14 one place to the other?

15 A. Well, the Arlington District is a very homogeneous  
16 group, and I would stand corrected on the numbers,  
17 but it's a very low percentage of minority students.  
18 The -- there is a very narrow band of wealth, I  
19 think, in Arlington, as I compare it to Longview.  
20 There's a wide range of variance in various wealth in  
21 the social economic brackets of the two communities.  
22 The Longview District is a much poorer district,  
23 dollarwise, than the Arlington District. And because  
24 we do have a large percentage of the minorities, and  
25 from that group we have a larger number of



1 (Defendant-Intervenors' Exhibit  
2 (No. 53 admitted.

3 BY MR. TURNER:

4 Q. Dr. Davis, does this map accurately depict, to the  
5 best of your knowledge, the district boundary lines  
6 of the various school districts within Gregg County?

7 A. Yes, sir, I believe this is correct.

8 (Defendant-Intervenors' Exhibit No. 54 marked.)

9 Q. Dr. Davis, I'm now handing you what's marked as  
10 Defendant-Intervenors' Exhibit 54, which is the  
11 compilation of the annual performance reports from  
12 all of the school districts in Gregg County.

13 MR. TURNER: Your Honor, I would like to  
14 have that exhibit also admitted into evidence. It's  
15 the Texas Education Agency performance reports for  
16 each of these districts in Gregg County.

17 MR. GRAY: We have no objections, Your  
18 Honor.

19 MR. KAUFFMAN: No objections.

20 MR. TURNER: Are 53 and 54 admitted, Your  
21 Honor?

22 THE COURT: 53 is. Any objection to 54?

23 MR. GRAY: No, Your Honor.

24 MR. KAUFFMAN: No, Your Honor.

25 THE COURT: It will be admitted.

1 (Defendant-Intervenors' Exhibit  
2 (No. 54 admitted.  
3

4 (Defendant-Intervenors' Exhibit No. 55 marked.)

5 Q. Dr. Davis, I'm now handing you Defendant-Intervenors'  
6 Exhibit No. 55, and I'll ask you if you can identify  
7 that as data being drawn from these annual  
8 performance reports that were in Defendants' Exhibit  
9 54?

10 A. Yes, sir, it looks correct.

11 MR. TURNER: I would like to offer  
12 Defendants' Exhibit 55 into evidence, Your Honor.

13 MR. KAUFFMAN: Your Honor, I'll object to  
14 that until I have a chance to check it.

15 THE COURT: What is 55, here, now?

16 MR. TURNER: This is data, Your Honor, that  
17 I've drawn from the annual performance reports that  
18 were previously admitted. And I've done this in  
19 summary form to make it a little easier to present  
20 the testimony.

21 THE COURT: Okay. Defendants' 55, you want  
22 a little time to check the figures?

23 MR. KAUFFMAN: Yes, sir, if I could. I  
24 don't know anything about it yet. No objection, Your  
25 Honor.

1 THE COURT: Okay. 55 will be admitted.

2 (Defendant-Intervenors' Exhibit

3 (No. 55 admitted.

4  
5 (Defendant-Intervenors' Exhibit No. 56 marked.)

6 BY MR. TURNER:

7 Q. Dr. Davis, with regard to the Defendant-Intervenors'  
8 Exhibit No. 55, displaying the school districts in  
9 Gregg County, I believe the data would show that  
10 Longview is the largest district in terms of ADA in  
11 that group of seven districts?

12 A. Yes, sir, that's correct.

13 Q. And how do you compare, looking at the second column,  
14 with the other districts in Gregg County with regard  
15 to their wealth per pupil?

16 A. With the exception of Kilgore, we are significantly  
17 lower in wealth per pupil as the other districts in  
18 Gregg County.

19 Q. And with regard to your expenditures per pupil, how  
20 do you rank with respect to the other districts in  
21 Gregg County?

22 A. We're the lowest in per pupil expenditure in Gregg  
23 County.

24 Q. And with regard to your ranking on TEAMS scores, we  
25 have here displayed the third grade and the eleventh

1 grade. Could you look at both of those columns and  
2 tell us how your school district ranks with regard  
3 to TEAMS scores?

4 A. We are certainly behind a couple of the school  
5 districts there, but in several of the areas, you'll  
6 notice that we are ahead of the others. And  
7 considering the fact of our disadvantaged population,  
8 I think we compare very favorably to those other  
9 school districts.

10 Q. I believe the next to the last column shows the  
11 percent of low income students within your district,  
12 is that correct?

13 A. Yes.

14 Q. And you show to have the next to the highest number  
15 of percent of low income?

16 A. Yes, sir, that's correct.

17 Q. Looking at the maintenance and operations tax rate  
18 column, how do you compare with regard to the other  
19 districts within the county?

20 A. Our tax rate in Longview, with the exception of White  
21 Oak, which is a budget-balanced district, is one of  
22 the lowest tax rates there. We are at 68 cents  
23 total, seven cents on this -- this is the effective  
24 tax rate -- the actual tax rate is 61 cents on  
25 maintenance and operating, and seven cents on debt

1 service.

2 Q. And with regard to average teachers' salaries, where  
3 do you rank within the county?

4 A. We would be, it looks like, if I'm correct, next to  
5 the last in average teachers' salaries.

6 Q. Where do you rank, Dr. Davis, within the county with  
7 regard to the beginning teachers' salaries?

8 A. Our beginning teachers' salaries is roughly  
9 equivalent to everyone in the area. We may be  
10 \$200.00 or \$300.00 under several districts, but  
11 basically, the beginning salaries out there -- ours  
12 is \$18,500.00, so it's comparable.

13 Q. Would most of the districts, within the county, pay  
14 about -- within \$200.00 of your beginning teacher's  
15 salary, or are you saying you're within \$200.00 of  
16 the highest?

17 A. No, we're all within, probably, \$200.00 or \$300.00 of  
18 each other.

19 Q. So the variations we see in the right-hand column are  
20 based on variations in the numbers of experienced  
21 teachers?

22 A. Basically it's going to be years of experience. Some  
23 of the schedules out there might be skewed toward  
24 more experienced teachers at the top. Ours does not  
25 askew that much toward the top. But basically, it's

1 going to be based on years of experience.

2 Q. Dr. Davis, looking at the TEAMS scores that are  
3 reflected here, and the variations in wealth that are  
4 reflected here, from a high of \$977,000.00 in wealth,  
5 property wealth per ADA, all the way down to your  
6 number of \$219,000.00 and even a little lower,  
7 Kilgore, at \$193,000.00, and based on your  
8 experience, in that county, and in your knowledge of  
9 those districts, how do you compare what your  
10 district is doing in terms of rendering educational  
11 opportunity and creating and generating student  
12 achievement and learning with these other districts,  
13 particularly these wealthier districts that are  
14 located within your county?

15 A. We believe that we compete very favorably, even  
16 though you'll see a disparity between our numbers and  
17 White Oak's. I don't think that's a function of  
18 dollars, I think it's a function of the youngsters  
19 that we have there in the community. Our top  
20 youngsters, for example, we had 12 youngsters this  
21 year qualify in the national merit program as opposed  
22 to two in Pine Tree. If you use that as an equation,  
23 I think our people have done an outstanding job. Two  
24 of those youngsters, by the way, were Black.

25 Q. Dr. Davis, I'm going to hand you what's marked

1 Defendant-Intervenors' Exhibit 56, and ask you, if  
2 you would, to look at that a minute? Do you  
3 recognize this as data coming from your annual  
4 performance report?

5 A. Yes, sir. That's information that the state  
6 generated for us, a comparison of our elementary  
7 schools.

8 MR. TURNER: Your Honor, we would like to  
9 ask that this Exhibit No. 56 be admitted.

10 THE COURT: Okay.

11 MR. KAUFFMAN: Your Honor, I'll object  
12 until I have a chance to look at it. If I can just  
13 have a minute -- I'm sorry, I want to get some idea  
14 of where it's from.

15 A. It's right out of the information. If you'll find  
16 the Longview -- at the very back, or back portion of  
17 it, you'll see a comparison of each campus. And  
18 these are numbers that are directly from that, by  
19 campus. If you find Bramlette Elementary School, it  
20 will have two or three pages with it. It should be  
21 by elementary, then by middle school, and then by  
22 high school.

23 MR. KAUFFMAN: If I can just check one,  
24 I'll go on.

25 MR. TURNER: If any of these are in error,

1 I'll be happy to correct it. Let the record reflect  
2 it should be correct. If not, we would make them  
3 correct.

4 MR. KAUFFMAN: No objection, Your Honor.

5 THE COURT: Okay. 56, it will be admitted.

6 (Defendant-Intervenors' Exhibit

7 (No. 56 admitted.

8 BY MR. TURNER:

9 Q. Dr. Davis, looking at this Exhibit 56, would you tell  
10 us a little bit about these elementary schools and  
11 their TEAMS scores, and the comparisons of the TEAMS  
12 scores from one school to the other?

13 A. You'll notice that there's eight elementary schools  
14 listed there, we have ten. Two of the elementary  
15 schools do not have third grades. That's why they're  
16 not here. But you'll notice that at Mozelle Johnston  
17 Elementary School, the cost per pupil there is  
18 \$1,243.13, which is the least of all the schools  
19 listed, yet the TEAMS scores are extremely high.  
20 That is not a magnet school, it is just one of our  
21 standard, quote, elementary schools, that does a very  
22 good job of working with youngsters.

23 You'll notice that Ware Elementary School has  
24 an expenditure of \$1,632.62. TEAMS scores there are,  
25 I think, relatively strong. That school does have a

1 significant minority population -- I would say  
2 somewhere in the neighborhood of 50 percent. McClure  
3 Elementary School runs 70 percent minority. Our  
4 expenditure there is \$1,344.20. And you'll see the  
5 scores there are a little lower, but still far above  
6 the state average. You'll see that kind of  
7 comparison through those as you look.

8 Q. Now, Dr. Davis, the cost per pupil that we're looking  
9 at here, are the costs that are expended at that  
10 particular elementary school, without adding into  
11 that figure any administrative costs for the whole  
12 district, is that the number?

13 A. This is the formula that the state used to generate  
14 those numbers, and I believe that's correct.

15 Q. Dr. Davis, with regard to those expenditure levels,  
16 does it surprise you that your highest performance  
17 comes in the elementary school that has the lowest  
18 expenditure per pupil?

19 A. No, sir.

20 Q. And why does that not surprise you?

21 A. That particular elementary school has the most  
22 fantastic parental support I've ever seen in  
23 elementary school. And the people get highly  
24 involved in it. Our volunteer program out there is  
25 extraordinary. We have a superb group of teachers

1 out there. And it's just a wonderful environment for  
2 youngsters to be in.

3 Q. Dr. Davis --

4 A. By the way, that campus has 16 temporary buildings  
5 around it.

6 Q. Based on your experience as an administrator and in  
7 education over these many years, what, in your view,  
8 is the relationship between expenditures -- dollar  
9 expenditures and student achievement, or learning?

10 A. You certainly have to have enough dollars to fund  
11 your program. But the bigger dimension is the  
12 dimension of your parental involvement and the effort  
13 on the part of your teachers. That is the key that  
14 makes a good school, beyond just the dollars.

15 Q. Would you anticipate that if you had more dollars  
16 that were -- could be expended, or had spent more  
17 dollars last year at Johnston Elementary School, that  
18 those tests scores would have been affected?

19 A. I think those tests scores would be hard to affect  
20 anywhere because they're so high as they are.

21 Q. And when we look down at some of the elementary  
22 schools that had the lower TEAMS scores, perhaps the  
23 lowest, it would be either, I guess it would be  
24 Bramlette, would it be your judgment that you could  
25 spend money, additional money there, and affect the

1 TEAMS scores that were generated by the students at  
2 Bramlette?

3 A. Historically, that has not been true. What we have  
4 found, and what we instituted when I came there, was  
5 a strong involvement. We asked our teachers to visit  
6 in the homes of the kids. And when we started doing  
7 that, our test scores started making dramatic  
8 improvements, because the parents had a sense of  
9 ownership. And they took a great sense of pride in  
10 the fact that the school cared enough to come on  
11 their turf, so to speak. And when we started doing  
12 that and started our membership program, our test  
13 scores started making significant improvements.

14 Q. Are these the kinds of things that you would  
15 recommend be instituted in any district in this state  
16 that had high minority students to try to generate  
17 the kind of parental involvement and support that's  
18 necessary for achievement?

19 A. That's the only way that you're going to impact  
20 minority population, in my judgment. I don't have  
21 statistics to prove that, but I have 28 years of  
22 doing it. And I'm firmly convinced that's the only  
23 way you're going to impact the minority scores, or in  
24 essence, scores of most places, because you get  
25 involved on the part of the parents. The kids are

1 spending -- what was the statistic -- 13 percent of  
2 their 12 years in the schoolhouse, and the other 86,  
3 87 percent was outside the school. So I think you  
4 have to, in some way, get the parental involvement  
5 and get into their environment.

6 Q. Dr. Davis, looking back, if you will, to the list of  
7 other school districts in Gregg County, and the data  
8 that's contained on there, you have children that  
9 attend Longview schools, do you not?

10 A. Yes, sir, I have two, a junior and a sophomore.

11 Q. If you were not in education, not a superintendent,  
12 would you have a preference with regard to where your  
13 children go to school in Gregg County, if you had a  
14 free option to choose any school district for your  
15 children that you could?

16 A. Yes, sir. I would opt to go to Longview. As a  
17 matter of fact, I would not have come to Longview ISD  
18 as superintendent if I had felt that my youngsters  
19 could not have gotten a top quality education. And I  
20 have found it extremely comparable to the one that my  
21 two older kids got in the Arlington school district.

22 Q. Dr. Davis, what would cause you to conclude that --  
23 looking at the variations in wealth, here, of these  
24 school districts, what factors would cause you to  
25 choose the Longview District for the education of

1 your own children, as opposed to putting them in some  
2 of these other districts, like Spring Hill and White  
3 Oak, where there's substantially greater wealth and  
4 perhaps access to greater dollars to spend on those  
5 children?

6 A. We have more programs to offer in Longview High  
7 School. Longview High School, in my judgment, is  
8 like a cosmos of the real world. I think it's  
9 important that youngsters get exposure to dealing  
10 with minority students. I think that's important.  
11 My two older kids got that advantage in Fort Worth,  
12 when we were there.

13 As I said, at the high school, we offer more  
14 courses that's offered in any other high school in  
15 Gregg County, and frankly, have better teachers.

16 Q. Dr. Davis, if we were to envision a change in the  
17 method of educational finance in Texas, it would  
18 require all of the school districts in Gregg County  
19 to be constituted as one taxing district. And all of  
20 the boards of education remaining in place to govern  
21 those school districts, but receiving all or part of  
22 their money from a county-wide tax district. What  
23 would you view as the advantages and the  
24 disadvantages of that kind of arrangement, and its  
25 impact upon the quality or adequacy of education

1 rendered to the students within that county?

2 A. Of course, that would be difficult, because there's  
3 not a lot of that kind of comparison to make. But if  
4 you look at the tax rate, the Longview Independent  
5 School District people, for years and years and  
6 years, in fact, since oil came into Gregg County, in  
7 that area, have been the low wealth district out  
8 there. But even in spite of that, they have built a  
9 very, very strong school district for a very low tax  
10 rate. They would have to -- if there was a  
11 consolidation and there was some sort of equalization  
12 of the tax rate of those districts, the Longview rate  
13 would go up. It would be, in essence, a penalty to  
14 our district, if you look at the averages of the  
15 other districts. I don't see that it would -- I know  
16 one thing, I think we would lose, if there was  
17 consolidation, would be the sense of ownership and  
18 the sense of effort that the people put into it. I  
19 think they would say, "What would be the use of us  
20 trying," because we have worked hard. We have  
21 buildings in our district that are 50 years old. Our  
22 oldest elementary school is 50. Our youngest  
23 elementary school is 30. My administration building  
24 is an old six-room elementary school that was built  
25 back in the depression. We have 26 temporary

1 buildings in our district. The floor fell out of one  
2 of them this year, as a matter of fact, with kids in  
3 it -- Mozelle Johnston, that school we were talking  
4 about. But still, we have a quality education that  
5 those people take such a pride in, I think it would  
6 be a loss to them.

7 Q. You feel that the educational environment is hampered  
8 in the Longview District because of the fact that you  
9 utilize some older buildings?

10 A. No, sir. In fact, we had the 50 year anniversary of  
11 South Ward Elementary School, which is the building  
12 we're talking about. And we had literally hundreds  
13 of people come. I think if we had even to talk about  
14 closing that building, I think there would be some  
15 major problems within that community. There's that  
16 kind of pride in the schools.

17 Q. Dr. Davis, if we were to envision just outright  
18 consolidation of all districts within Gregg County,  
19 so that there was just one school district up there,  
20 what kind of impact would that have on you, in terms  
21 of this impact, specifically, upon education, in your  
22 ability to render an adequate or quality education to  
23 those children there?

24 A. I don't know that the quality of education would  
25 necessarily change, but I certainly think that the

1 feeling, on the part of the parents toward the  
2 school, would change.

3 Q. In what way would you say it would change, and what  
4 effect or importance would that have?

5 A. Again, there's such a sense of ownership on the part  
6 of the Longview people, I think they would have a  
7 sense of losing that. And I think it would take away  
8 some of the involvement that we have. There's wealth  
9 all around us, but we feel very good about what we've  
10 got and what we're doing. I think our patrons would  
11 have a very hard time giving that up.

12 Q. Dr. Davis, you've seen the state funding formulas in  
13 Texas operate for a number of years, and you've seen  
14 them change over time. As an administrator, as the  
15 superintendent of Longview ISD, a below average  
16 wealth district, what's your opinion about how those  
17 formulas work, the fairness of them, and the equity  
18 of them?

19 A. I feel that, as a matter of fact, on the PDI, out of  
20 House Bill 72, our school district gained money  
21 because we were a low wealth district. It seems to  
22 me that the attempt that's been made in House Bill 72  
23 has been an attempt at equity. And I think that the  
24 formulas that we have now are fair.

25 Q. Dr. Davis, over the years as you've watched education

1 and participated in it, molded the district that you  
2 were a part of, what have you found, in your  
3 experience, to be the factors or elements that affect  
4 student achievement and student performance and  
5 learning on the part of the students?

6 A. First thing is high expectations on the part of the  
7 district. I noticed an article in the paper this  
8 morning from the Dallas Independent School District.  
9 I think President Reagan selected a school in south  
10 Dallas as being one of the two outstanding schools in  
11 the nation. And the principal was saying the thing  
12 that we ask for is high expectations and the kids  
13 perform, and they do.

14 And I think high expectations, parental  
15 involvement, a sense of commitment on the part of the  
16 teachers and the administration of the school  
17 district, I think those things, in conjunction, is  
18 what makes a strong school district.

19 Q. Dr. Davis, do you believe, even though you are a  
20 below average wealth school district, that you, and  
21 your school board, specifically, at the Longview  
22 Independent School District, are able to exercise the  
23 local control over the affairs and governments of  
24 your school district?

25 A. Yes, sir, I believe we do.

1 Q. And could you tell us, from your experience, what  
2 contribution -- that element and right and power and  
3 ability to have some degree of local control, what  
4 effect that has upon the education of the students  
5 that you're charged with educating in Longview?

6 A. We have had such local support that even in a 12 and  
7 14 percent unemployment like we've had in East Texas,  
8 we've just passed a 10.4 million dollar bond issue  
9 with no opposition, no organized opposition. And it  
10 passed two-to-one.

11 Q. Dr. Davis, do you feel that that element of local  
12 control has anything to do with the education that  
13 you're -- been able to render, and the quality of it,  
14 or the adequacy of it?

15 A. Yes, sir, because in our communities, the schools are  
16 sources of pride to the community. And they support  
17 it. We have the local media support, the business  
18 communities that supports it -- they're in our  
19 schools all the time, they participate with the kids.  
20 We have that environment, because we have local  
21 control. And they have the sense that it's theirs,  
22 and that they put it together. And they take that  
23 pride in it.

24 Q. Dr. Davis, if you were given the option of receiving  
25 some additional money from the state through some

1 change in the current school finance law, I suppose  
2 you could use it, couldn't you?

3 A. Yes, sir.

4 Q. And I suppose, when you were over in Arlington, in a  
5 higher wealth district, if the state were to send you  
6 some more money, you could find a use for it over  
7 there, couldn't you?

8 A. Yes, sir. We were very comparable with Dr. Long in  
9 Carrollton. In fact, we compete with those folks all  
10 the time.

11 Q. In terms of improving the quality or the adequacy of  
12 education in Longview, to date, do you think  
13 receiving more money or generating more money would  
14 substantially affect that?

15 A. No, sir. And I might answer you this way, if I could  
16 exchange more money for 100 percent parental support,  
17 then I would take the parental support. And I could  
18 give you some money back.

19 MR. TURNER: I'll pass the witness.

20 MR. R. LUNA: No questions.

21 MR. O'HANLON: No questions.

22 THE COURT: Over here?

23 MR. GRAY: I'll proceed, Your Honor.

24

25

## CROSS EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. GRAY:

Q. Doctor, referring to your Exhibit 55, which was the chart --

A. Yes.

Q. What district, in Gregg County, is doing the best on TEAMS scores?

A. The -- I would assume it would be the White Oak District.

Q. And what district, in Gregg County, spends the most per pupil?

A. Talking about the wealth per pupil?

Q. No, sir, the expenditure per pupil.

A. It would be White Oak in both wealth and expenditure.

Q. Okay. And the next question is, which is the wealthiest district; the answer, again, is White Oak?

A. Yes, sir.

Q. And which district, in Gregg County, has the lowest tax rate?

A. White Oak.

Q. Okay. And which district, in Gregg County, pays the most for its teachers?

A. White Oak.

Q. So, no matter how you look at it, whether it be TEAMS scores, or expenditures per pupil, White Oak is doing

1 the best, in Gregg County, correct?

2 A. They should.

3 Q. Okay. And you had mentioned earlier, in the  
4 beginning of your testimony, you described the  
5 Longview as a district that had -- was surrounded by  
6 White flight districts?

7 A. Yes, sir.

8 Q. And I take it that White Oak is one of those White  
9 flight districts?

10 A. No, sir, Pine Tree, Spring Hill and Hallsville, which  
11 does not show on this district, because it's in  
12 Harrison County.

13 Q. Part of your district, though, does touch White Oak?

14 A. Just for maybe a quarter of a mile up there in the  
15 corner.

16 Q. Right. And what is White Oak, is it a city, or what  
17 is it?

18 A. Yes, it's a small city -- very small. 92 percent of  
19 their value comes out of the ground, I believe.

20 Q. A lot of oil?

21 A. Yes, in total. That's their whole tax base, is oil.  
22 Same thing is true of Spring Hill.

23 Q. And Spring Hill, likewise, it's the second wealthiest  
24 district in Gregg County, and it's oil?

25 A. Yes, sir. I think theirs is -- I stand corrected, I

1 believe it's 87 percent relates to oil.

2 Q. Okay.

3 A. Of their value.

4 Q. And the Spring Hill District, I take it with the  
5 advent of White flight, has grown over the years?

6 A. Yes, sir.

7 Q. And likewise, Pine Tree, being another wealthy  
8 district --

9 A. Yes, sir.

10 Q. -- in Gregg County, it's got oil, too?

11 A. I believe about 50 percent of their value is out of  
12 the ground. The other is manufacturing for them.

13 Q. How much of your value is oil?

14 A. Less than two percent.

15 Q. Everybody around you has got the oil, but you don't  
16 have the oil?

17 A. We were unfortunate at that time, but we may turn out  
18 to be fortunate in the long run.

19 Q. You had mentioned Arlington, from which you came --

20 A. Yes, sir.

21 Q. And basically said, that the program you offer today  
22 is comparable to the program that was offered in  
23 Arlington before you left there?

24 A. Yes, sir. We have just as many elective courses and  
25 course offerings as they offer in any high school in

1 Arlington.

2 Q. And, in fact, you spend more per pupil than Arlington  
3 spends?

4 A. I can't speak to that; I don't have those numbers.

5 Q. Well, let me show you the Bench Marks, which  
6 indicates Arlington's operating cost per child found  
7 on Page -- and this is already in evidence, but found  
8 on Page A-30 --

9 A. I would accept that.

10 Q. -- of Bench Marks, is \$3,150.00 per child?

11 A. I would accept that.

12 Q. So, you --

13 A. Ours is 31 --

14 Q. 78?

15 A. Yeah.

16 Q. So you, in fact, are spending a little bit more than  
17 Arlington is?

18 A. Right.

19 Q. And the difference is, that your taxpayers have to  
20 pay a higher tax in order to spend that additional  
21 money, correct?

22 A. No, sir, total tax, they don't. They pay more in  
23 Arlington than they do in Longview.

24 Q. Well, let me show you that. You have listed on your  
25 exhibit, total tax rate as 63 dollars per -- 63 cents

1 per \$100.00 evaluation?

2 A. Yes.

3 Q. And in Arlington?

4 A. Should be 80 something.

5 Q. I will show you, sir, and it's not. It is 53 cents.

6 A. Look at the total, though, of both of them,  
7 maintenance and operations and that --

8 Q. This is the true rate?

9 A. I know.

10 Q. This is the true rate that's compared to the  
11 maintenance and operation on a statewide basis.

12 A. Yeah.

13 Q. It's 53 cents, do you see that, sir?

14 A. Yes, but --

15 Q. Now, if you compared your --

16 A. 61.

17 Q. On the true rate of 61?

18 A. Yes.

19 Q. Okay. So the tax rate that you reflected in 55,  
20 here, was not the true rate?

21 A. Yes.

22 Q. Okay. So if you look at the two districts on a true  
23 rate, so you're comparing apples to apples, your  
24 citizens are paying more tax than the citizens in  
25 Arlington are, correct?

- 1 A. You might make another comparison, if I may, though.  
2 Look at the --
- 3 Q. If you'll first just answer that question.
- 4 A. The answer to that is yes.
- 5 Q. Okay. And yet, you spend more than Arlington, and  
6 that's why the difference is made up in this higher  
7 tax, because you've got lower property values than  
8 Arlington?
- 9 A. The property value?
- 10 Q. Yes, sir.
- 11 A. I don't have those numbers.
- 12 Q. Well, for example, if you taxed at the rate that  
13 Arlington is taxing, you would not be able to spend  
14 the \$3,178.00 that you're spending?
- 15 A. Again, if you finish your analysis, which you didn't  
16 do, and look at the debt service, we only have seven  
17 cents on debt service in Longview, as opposed to  
18 about 30 in Arlington. So the real difference is 87  
19 cents versus 68 cents, which is significant.
- 20 Q. Well, I'm not sure you have understood --
- 21 A. I understand what you're saying.
- 22 Q. Bench Marks, because Bench Marks is already taken  
23 into those considerations, as I understand it.
- 24 A. I know that. But the people in the community look at  
25 the total difference, I think.

1 Q. And I assume you'll agree with me, that Arlington is  
2 a growing district and you're not a growing district?

3 A. That's true.

4 Q. And obviously, in a growing district, you've got  
5 concerns, because you've got to stay up with your  
6 group, build facilities, or expand facilities to meet  
7 those requirements, correct?

8 A. Yes, sir. I've dealt with that for a long time.

9 Q. If you, in Longview, had the -- I believe we  
10 established it to be 53 cents, if you had that tax  
11 rate that Arlington has, you would not be able to  
12 spend the amount of money you're now spending?

13 A. That's correct.

14 Q. And so the reason you're able to spend the amount of  
15 money you do spend is that you have a higher tax rate  
16 than what you found in Arlington?

17 A. Yes.

18 Q. Okay. Now in the wealth per pupil, Mr. Turner, on a  
19 -- fairly frequently characterized Longview as a  
20 below average wealth district?

21 A. That was from the state.

22 Q. And in reality, let me make sure I get my exact  
23 numbers out of Bench Marks, you're about \$20,000.00  
24 below the state average, are you not?

25 A. I don't have the Bench Marks' information. That is

1 based on what the TEA characterizes us as a wealth  
2 below average district.

3 Q. Okay. Well, let me show you --

4 MR. GRAY: May I approach the witness, Your  
5 Honor, real quick?

6 THE COURT: Yes.

7 Q. In the Bench Marks, you have got \$226,787.00 per  
8 pupil, compared to the statewide average of  
9 \$251,512.00 per pupil --

10 A. Yes.

11 Q. Or which, in essence, gives you 90 percent of the  
12 statewide average?

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

14 Q. So, although you may be characterized as below  
15 average, you're pretty darn close to the average, are  
16 you not?

17 A. Compared to folks around us, we're not.

18 Q. Right. Compared to the folks around you, you're  
19 poor.

20 A. That's right.

21 Q. And that's a happenstance of the fact that they've  
22 got oil and you don't have oil?

23 A. That's correct.

24 Q. Okay. Now, on Exhibit 53, the map --

25 A. Yes, sir.

1 Q. The White Oak District is a very small district as  
2 far as geography, is it not?

3 A. Yes, sir.

4 Q. Only encompasses 16 miles?

5 A. I believe that's correct.

6 Q. And the Spring Hill District, the White flight  
7 district that's also got a lot of oil and a lot of  
8 money, it's even smaller, only has nine miles?

9 A. That's true.

10 Q. So, I take it that if you were to add in Spring Hill  
11 and White Oak into Longview, all you're adding is a  
12 total of 25 square miles into your district?

13 A. That would be, I think, reasonably correct.

14 Q. Okay. And your district is over a hundred square  
15 miles as is, correct?

16 A. East Texas COG (Phon.) says we have 131. I know this  
17 doesn't jive with the numbers here, but we are the  
18 largest district out there.

19 Q. And the entire county is only 275 square miles?

20 A. Yes, sir.

21 Q. Right?

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

23 Q. Okay. Now, your district, it appears to me looking  
24 at 53, is kind of shaped like an L?

25 A. It looks like a one, really.

1 Q. Okay. That's right. And the bottom of it, roughly  
2 estimate for me, how many miles are we talking about  
3 from one end of your district to the other end of  
4 your district?

5 A. I would guess 25. And that's a guess.

6 Q. Okay. Well, it --

7 MR. GRAY: May I approach the witness one  
8 more time, Your Honor?

9 THE COURT: Yes.

10 Q. Looking at the bottom of this L, or this boot, and  
11 driving all the way up to the top of the one up  
12 there, is that what you're estimating be about 25  
13 miles?

14 A. I was going from the line down there, straight up, as  
15 the crow flies. I did not follow the road, so I  
16 really don't know that distance.

17 Q. Well, whatever the distance may be, assuming that  
18 you're not -- the kids aren't being driven by crows,  
19 but rather being driven on roads with school buses, I  
20 take it that it's a lot -- from Longview, going all  
21 the way across either Pine Tree, Spring Hill and into  
22 White Oak, that's actually a shorter distance than it  
23 is from one end to the other end of your existing  
24 district?

25 A. I'm sure that's true.

1 Q. Okay. Did you tell me or tell the Court, that in one  
2 of your portables, the floor fell out with the kids  
3 in it?

4 A. Yes, sir.

5 Q. Did you have any kids hurt?

6 A. No, sir. We spent all of one weekend putting the  
7 floor back in it. That building, I believe, is 14  
8 years old.

9 Q. Okay. And whatever the condition was, something  
10 happened that -- did the whole floor fall?

11 A. One section of it, it just sort of caved in.

12 Q. Okay.

13 A. Mildew had formed underneath it, it had finally  
14 rotted out the stringers that were holding it up.

15 Q. I take it, it was on a Friday afternoon?

16 A. No, sir. As a matter of fact, it was about  
17 Wednesday. So we had to hurry a little bit.

18 Q. That building was out of service for awhile?

19 A. A week.

20 Q. Okay.

21 A. Well, actually three school days.

22 Q. Thank you, sir.

23 MR. GRAY: I don't think I have any further  
24 questions.

25

## CROSS EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. KAUFFMAN:

Q. Dr. Davis, is that it?

A. Yes, sir.

Q. You've spoken a little bit about the programs in your district, special programs you have for children. I assume you're not familiar with the programs, similar programs, that are offered in the Valley or in El Paso, are you?

A. No, sir, I'm not.

Q. From looking at your district, it looks like your minority percentage of 46, 47 percent, is about the average in the state for minority percentage, about 45, 46 percent, is that right?

A. I don't -- I was looking at the annual performance report and if I -- on Page 1 of that --

Q. I think it shows that your district is about 48 percent Black and Hispanic, and the state is about 45?

A. That would make us 40, and the state is 44, so we're a little higher than the state. We're nearly twice the group.

Q. So you're pretty close to the state average minority population, is that right?

A. Close.

1 Q. You mentioned when you spoke about the place that you  
2 would want to have your children attend school, that  
3 you would choose Longview?

4 A. I did.

5 Q. And two of those -- of course, you are the  
6 superintendent there, I suppose you would.

7 A. I would not have come had I not thought it was a good  
8 school, because I was in a good school district.

9 Q. And I think two of the main reasons you offered were  
10 the number of courses and programs you can offer, and  
11 the fact that your district has better teachers, is  
12 that right?

13 A. In my opinion.

14 Q. In your opinion, I understand. And I assume that  
15 both of those factors, a breadth of program offerings  
16 and high quality teachers, are things that you see as  
17 very important to the promotion of the education of  
18 the children in your district?

19 A. That, plus the involvement of the community.

20 Q. You offered some opinions about the effect of local  
21 control on achievement of youngsters and on  
22 participation of the populace in decision making in  
23 the districts, is that right?

24 A. Yes, sir.

25 Q. I assume that you have not tried to compare the

1 participation of the parents in your district or  
2 their achievement, with either of those factors, in  
3 the State of Hawaii, or California, or any other  
4 states, is that right?

5 A. No, just against ourselves.

6 Q. Okay. You said that you would accept -- rather than  
7 have more money, you would rather have 100 percent  
8 parental support, is that right?

9 A. Yes, sir.

10 Q. Assuming that you, like, I guess every other school  
11 district in the world, don't have 100 percent  
12 parental support, could you use a few more dollars to  
13 improve your education program there in Longview?

14 A. I would never turn down dollars as a superintendent.  
15 And I don't think that that, in itself, will change  
16 schools.

17 Q. If you did obtain those additional dollars, could you  
18 spend them on things in your district that would be  
19 good for the education of your kids?

20 A. Yes.

21 MR. KAUFFMAN: I pass the witness, Your  
22 Honor.

23 REDIRECT EXAMINATION

24 BY MR. TURNER:

25 Q. Dr. Davis, in looking at our exhibit again on

1 districts in Gregg County, I want to ask you about  
2 something I've noticed from time to time. It seems  
3 that, in our state, we often times see districts,  
4 like the one that's displayed here, where the TEAMS  
5 scores seem very high in the third grade. And then  
6 we look up to the eleventh grade, at the end of the  
7 educational period, and the TEAMS percentile scores  
8 are lower. And I notice, in particular, that in  
9 White Oak, the TEAMS scores start out very high in  
10 the third grade, as compared to yours, but then, when  
11 we get to the eleventh grade, the TEAMS scores  
12 between -- comparison between your district and White  
13 Oak, are not that far apart. Can you offer any  
14 explanation as to why that occurs here?

15 A. It would be simply speculation on my part, but I do  
16 think the fact that there is diligent effort --

17 MR. KAUFFMAN: Your Honor, excuse me. We  
18 might just object, since it is just speculation on  
19 his part. We appreciate it.

20 THE COURT: I'll overrule.

21 A. I think because there is a commitment and an  
22 involvement, that our -- even though our Black  
23 youngsters start off far behind, by the time we get  
24 them to high school, they're up competing with our  
25 White population. And a high percentage of them go

1 to college. So I think there's just a community  
2 effort that causes that to happen, along with what  
3 we're doing in the district as professionals.

4 Q. Dr. Davis, your school board voted to intervene as a  
5 Defendant in this lawsuit. Could you share with us  
6 your view on why the board of trustees of the  
7 Longview ISD decided to be Defendants in this  
8 lawsuit?

9 A. It's probably a little unique, because we fall more  
10 in line, I suppose, with the other side, in that  
11 we're gaining money on the PDI. But we have such a  
12 strong belief in local control and local involvement,  
13 we feel that's so important, that we would take the  
14 lesser wealth and maintain the programs as we have  
15 them, than possibly losing that -- that, which we  
16 think, is excellent. So that's why our board has  
17 opted to do that. I'm paraphrasing what they said,  
18 but that's the gist of it.

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

21 MR. R. LUNA: No questions.

22 MR. O'HANLON: No questions.

23 MR. GRAY: I just have one more, I think.  
24 Actually, it's two more. And this is more curiosity  
25 than anything else.

## RE CROSS EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. GRAY:

Q. On Exhibit Number 56 --

A. Mine are not numbered. You'll have to tell me what it is.

Q. Your elementary schools.

A. Yes, sir.

Q. At South Ford.

A. Yes, sir.

Q. Looking at the third-grade score and the fifth-grade score?

A. Yes, sir.

Q. Why do you have such a huge gap in TEAMS scores?

A. Because we put a principal over there that is gung ho and he's got his people rolling and they're working.

Q. But it's the third grade did fairly poorly on TEAMS while the fifth grade did very well.

A. That's right.

Q. It all happened at the same time.

A. That's true, but we have had two years, prior to that, of intensive curriculum effort. That even though they were tested at the same time, you're looking at a significant improvement on the part of the curriculum, and the attitude, and the effort, in that community. And that is one of our poorest

1 neighborhoods.

2 Q. And also looking at the elementary schools, and then  
3 looking at the Gregg County comparison as a whole --

4 A. Uh-huh.

5 Q. On Longview, it looks like, to me, and this is, I  
6 guess, typical of a lot of schools, that your -- in  
7 fact, your eleventh graders do worse on the TEAMS  
8 than your third graders and fifth graders have done.

9 A. That's true.

10 Q. And does that indicate that the more you're in  
11 school, the less well you're going to do on TEAMS?

12 A. It would indicate that up to this point. And that's  
13 a major concern of ours, and I think statewide. I  
14 see Vicky Bergin sitting back there, I know that's  
15 her concern too -- what we can do with all the high  
16 school youngsters to do better. I think, again, it's  
17 a product of involvement.

18 MR. GRAY: I have nothing further, Your  
19 Honor.

20 CROSS EXAMINATION

21 BY MR. O'HANLON:

22 Q. Dr. Davis, you've said parental involvement is the  
23 major factor, and that you've got to go out and get  
24 teachers who will go out and knock on doors of homes,  
25 and things of that nature, is that correct?

1 A. Yes, sir.

2 Q. There's some teachers, I assume, that will do that,  
3 and some teachers are a little reluctant to give that  
4 kind of involvement to their students, is that  
5 correct?

6 A. Absolutely true.

7 Q. Do the teachers that get involved with their students  
8 cost any more?

9 A. No, sir.

10 Q. Do the principals that --

11 A. In fact, they typically cost less, because,  
12 typically, the young teachers are the ones that go  
13 out and do that.

14 Q. Do the principals that do a good job of getting  
15 involved with the parents cost any more than the  
16 principals that don't?

17 A. No, sir.

18 Q. When you're talking about the things that make a  
19 difference in the education, additional spending  
20 doesn't necessarily get the job done?

21 A. No, sir.

22 MR. O'HANLON: No further questions.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. TURNER:

25 Q. Dr. Davis, just a couple of questions. I want you to

1 look at, in your annual report, to the pages that  
2 talk about -- have the data on South Ward Elementary  
3 that Mr. Gray was asking you about.

4 A. Yes, sir. Can I get that same data off of this  
5 single sheet comparison?

6 Q. No, I don't think we can get the data off of that  
7 sheet, alone.

8 A. Okay, South Ward?

9 Q. South Ward.

10 A. Just a minute, I've got to get organized here. All  
11 right.

12 Q. The second page there on South Ward reveals the  
13 ethnic distribution -- or I guess it's the first page  
14 -- reveals the ethnic distribution --

15 A. Yes, sir.

16 Q. -- at South Ward. Can you tell us what that is?

17 A. 66.9 percent is Black, 6.1 percent is Hispanic. As I  
18 mentioned awhile ago, roughly 70 percent is minority.

19 Q. So, about two-thirds, close to 70 percent --  
20 two-thirds is minority?

21 A. Yes, sir.

22 Q. Of Black, and six percent is Hispanic?

23 A. Yes.

24 Q. So, that's a 72 percent Black and Hispanic elementary  
25 school?

1 A. I believe it would be 73, rounded off.

2 Q. And the TEAMS scores for the third grade at South  
3 Ward, in math, writing and reading, were -- in the  
4 third grade, were 31, 30 and 49?

5 A. Yes, sir.

6 Q. And then, in the fifth grade, they were 90 --

7 A. Yes, sir.

8 Q. 61 and 78?

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

10 Q. And did I understand you to attribute that difference  
11 to leadership, on the part of the principal, within  
12 that elementary school?

13 A. Yes, sir. And the involvement that she has gotten  
14 from her teachers and the parents in the community.

15 Q. Isn't there anything else that would account for the  
16 improvement of those scores, by the exposure of those  
17 fifth-graders to two years -- or how many years would  
18 they have been under that particular principal's  
19 leadership?

20 A. I know she's been there the two years that I have  
21 been there. And I'm not certain, I think she may  
22 have come the year prior to that.

23 They certainly don't get any more dollars than  
24 any other schools, other than they have a standard  
25 budget, quote, unquote, like everyone else.

1 Q. Any special teachers in the fifth grade, there, that  
2 are paid more, or --

3 A. No.

4 Q. And you're telling this Court, that the difference in  
5 those two grades is brought about by the leadership  
6 of the principal and the influence that they've had  
7 over inspiring teachers to get that kind of  
8 achievement out of a fifth grade class that's  
9 two-thirds percent minority?

10 A. Yes, sir.

11 MR. TURNER: I'll pass the witness, Your  
12 Honor.

13 MR. GRAY: Nothing further, Your Honor.

14 THE COURT: All right, sir. You may step  
15 down. Thank you very much.

16 Do you want to have break, now?

17 MR. GRAY: Yes, sir.

18 THE COURT: Does that make sense to do it  
19 now? Okay. We'll get started up again at, let's say  
20 20 'til.

21 THE WITNESS: You asked a question the  
22 other day about what can the state do? I wanted to  
23 answer that, if that's fair.

24 THE COURT: Okay. Wait just a minute.

25 THE WITNESS: I'm sorry.

1 THE COURT: We're back on the record.

2 EXAMINATION

3 BY THE COURT:

4 Q. Excuse me, what did I ask you the other day?

5 A. You asked what the state's role should be to cause --

6 Q. In a below socioeconomic status?

7 A. Hold the superintendents responsible for coming  
8 forward with a plan of action.

9 Q. My question was, in these areas where you have low  
10 income families, what is the state's responsibility  
11 to those children?

12 A. Which, in fact, is what the state board is doing.  
13 With the new goals that we have, now -- one of them  
14 is to bring forward a plan of dropout reduction. And  
15 that's what we're working on. And I think that's the  
16 responsibility of the districts to do that. And it  
17 basically falls in my door, as superintendent. And  
18 it's not a function of dollars.

19 Q. All right. You say that is not a function of  
20 dollars?

21 A. In the purest sense.

22 Q. An anti-dropout program is not a function of dollars?

23 A. No, I think it goes back to what I was talking about,  
24 here, is you've got to get out in those homes and get  
25 the involvement. You must certainly have the dollars

1 to put the program on, but that, in itself, is not  
2 going to get you there, in my opinion.

3 Q. Okay. All right, sir. Thank you very much.

4 (Witness excused.)

5 THE COURT: See you all at 20 'til.

6 (Afternoon Recess)

7 MR. KAUFFMAN: Your Honor, after  
8 consultation with co-counsel, we would like, if  
9 possible, to stop at 4:30, or thereabouts, and have a  
10 conference with the Court, if we could, about the  
11 scheduling thing.

12 THE COURT: Let's do that.

13 MR. THOMPSON: We call Dr. Vicky Bergin.

14 DR. VICTORIA BERGIN

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

17 DIRECT EXAMINATION

18 BY MR. THOMPSON:

19 Q. Would you please state your full name for the record,  
20 please?

21 A. Victoria Carmen Moscosso Bergin.

22 Q. Dr. Bergin, would you please describe for us,  
23 briefly, your educational background and training?

24 A. I received my bachelor's degree in psychology and  
25 foreign language education at the University of

1 Kansas. I received my master's degree in special  
2 education, also from the University of Kansas. I  
3 received my doctorate in education in administration  
4 and multi-cultural education from the University of  
5 Houston.

6 Q. And would you please describe for us, briefly, your  
7 professional background and experience in the field  
8 of education?

9 A. I have been a foreign language teacher, in Spanish,  
10 at Shawnee Mission in Kansas. I have been a teacher  
11 of special education -- mentally retarded and  
12 emotionally disturbed children at Central Jr. High in  
13 Kansas City, Kansas School District. I have been a  
14 remedial reading teacher and a reading specialist at  
15 Cypress-Fairbanks School District in Houston. I have  
16 been the director of bilingual programs in the  
17 Houston Independent School District, assistant  
18 superintendent for basic curriculum development in  
19 the Houston school district, administrative assistant  
20 to the superintendent of schools in the Houston  
21 school district, associate superintendent for basic  
22 skills and curriculum development, also in the  
23 Houston school district. And in 1981, I came to  
24 Austin, and I took the position of associate  
25 commissioner of education. I was promoted to deputy

1 commissioner of program development and  
2 accreditation, and then became deputy commissioner of  
3 curriculum and program development, which I am right  
4 now.

5 Q. Okay. Has most of your professional experience in  
6 the field of education been generally in the area of  
7 curriculum and curriculum development?

8 A. Yes, it has, most of it.

9 Q. Okay. Dr. Bergin, I believe you said your first  
10 assignment or title with the Texas Education Agency  
11 was associate commissioner for curriculum  
12 development, is that correct?

13 A. That's correct.

14 Q. And when did you take that particular position?

15 A. In October of 1981.

16 Q. And briefly, what were your job responsibilities as  
17 associate commissioner for curriculum development?

18 A. I took the position in October, 1981. And in  
19 September of 1981, the State Board of Education and  
20 the Texas Education Agency had begun the very  
21 preliminary planning process to implement House Bill  
22 246, which was the curriculum reform bill. So my  
23 primary responsibility was to oversee and direct  
24 everything that had to do with curriculum  
25 development, and this is in a generic sense, that

1 would mean the textbook adoption process, the content  
2 of the textbooks, the writing of the proclamations,  
3 the subsequent development of curriculum guides for  
4 the -- all of the areas of curriculum, from reading,  
5 math, science, social studies, vocational education,  
6 everything, K-12, the training of teachers in the  
7 implementation of that curriculum. But specifically,  
8 in October of 1981, my responsibility also was to set  
9 in place the planning process and the implementation  
10 process for House Bill 246 and to follow through with  
11 what the law was requiring.

12 Q. Did you have any responsibilities in that position  
13 relating to the student testing program?

14 A. Yes, in the sense that reading, mathematics and  
15 English Language Arts came under the area of  
16 curriculum. The directors and the staff of those  
17 three areas were to work very closely with the  
18 research and the test construction people to make  
19 sure that the objectives of -- what was then the TABS  
20 test, were consistent with what, hopefully, was being  
21 taught in the schools and with what the best thinking  
22 in reading, math and English Language Arts was at the  
23 time.

24 Q. So, your responsibility was to make sure that the  
25 student testing program and the curriculum were

1 coordinated?

2 A. That's correct.

3 Q. Okay. I believe you mentioned that the second  
4 position that you held in the Texas Education Agency  
5 was deputy commissioner for accreditation of  
6 programs, is that correct?

7 A. That's correct.

8 Q. And when did you assume that particular job?

9 A. I assumed that position in 1980 -- towards the end of  
10 1983.

11 Q. And was that a promotion?

12 A. Yes, it was.

13 Q. Okay. Very briefly, what were your job  
14 responsibilities as deputy commissioner for  
15 accreditation programs?

16 A. To oversee the process of accreditation. And because  
17 that took place in 1983, as we had gotten the new  
18 curriculum in place, the curriculum that emanated  
19 from House Bill 246, it was to direct the  
20 accreditation process. And to direct that, in the  
21 sense that the focus would be on looking at how the  
22 new curriculum was being implemented and review the  
23 implementation plans of the school district and make  
24 sure that the essential elements were, in fact, being  
25 disseminated to the different communities, the

1 teachers were being trained, and the students were --  
2 and plans were underway to teach that curriculum to  
3 the students.

4 Q. Just very briefly, what is the purpose of the  
5 accreditation process?

6 A. Accreditation provides the link between what is  
7 written rule and the implementation of that rule in  
8 the schools. And the main purpose of it is to  
9 improve educational quality, to make sure that the  
10 standards, whatever those standards are that the  
11 State Board of Education sets in place, are being  
12 maintained.

13 Q. Is it fair to describe the curriculum -- the  
14 accreditation process as a quality control process  
15 carried out by the state?

16 A. It is, indeed. It is the state's quality control  
17 process.

18 Q. And very briefly, is the accreditation process, is  
19 that a desk audit? Is that something someone sitting  
20 in an office in Austin does, or is there more to it  
21 than that?

22 A. There's a lot more to it than desk audit. In 1983,  
23 when I assumed that position, every school district  
24 in the state was required to have an accreditation  
25 audit at least once every five years. And what that

1            meant was that we, the agency, would send a team,  
2            would identify a team of people who would go to the  
3            school districts. And the teams could be anywhere  
4            from three people to 40 people, depending on the size  
5            of the school district. And the visit could last  
6            anywhere from three days to two weeks, again,  
7            depending on the size of the district.

8            Before a team would go out to a district, they  
9            would, indeed, look at the district profiles, examine  
10           test scores, examine financial background, examine  
11           the files that we had on the district that might list  
12           any kinds of complaints that we had gotten in the  
13           past, or waivers that they had requested. And, in a  
14           sense, get a feel for what the district was like.

15           At that point, the team would go out to the  
16           district and would spend whatever length of time was  
17           necessary to review documents, review personnel  
18           files, visit the campuses, ask questions about  
19           instruction, about what happened to the students,  
20           what kind of programs the district had or purported  
21           to have, what kind of curriculum was being  
22           implemented in the schools. And they would ask the  
23           questions of the central office staff, they would ask  
24           the questions of the principals in the schools, they  
25           would ask the questions of -- actually sit in

1 classes, visit the teachers, look at lesson plans,  
2 and ask the teachers questions that might verify what  
3 they heard in the central office.

4 At the end of the visit, the teams would get  
5 together and review their notes and come back to the  
6 agency. And anywhere from two or three weeks to  
7 possibly six weeks afterwards, hopefully, they would  
8 have a written report to send back to the district  
9 saying what they found, what was in compliance, where  
10 there were areas that were questionable, asking for  
11 additional information. And if there were areas that  
12 were not easily remediated, or areas of severe  
13 concern, make a recommendation, through my office to  
14 the commissioner, about the accreditation of that  
15 school district.

16 Q. So there were on-site visits?

17 A. Always, always, yes.

18 Q. Follow-up meetings?

19 A. Yes.

20 Q. Action plans to correct deficiencies?

21 A. Yes, uh-huh.

22 Q. During this time, was your particular focus on  
23 accreditation a logical out-growth of your focus on  
24 curriculum?

25 A. Definitely, because House Bill 246 -- well, first of

1 all, we had always looked at the instructional  
2 program when we went out to the school districts.  
3 But prior to House Bill 246, there was no  
4 standardized or statewide mandated curriculum. House  
5 Bill 246 specifically required that there be  
6 essential elements identified, that they be  
7 identified at particular grade levels, and in all  
8 courses that were taught, that school districts be  
9 required to teach those essential elements. And that  
10 accreditation look at whether or not the districts  
11 were actually teaching those essential elements. So  
12 it was incumbent on us to look through the  
13 accreditation process at whether or not the districts  
14 were actually offering instruction in those essential  
15 elements.

16 Once we had gone through the process of  
17 identifying essential elements and listing them,  
18 publishing them, and disseminating that information  
19 to all of the school districts in the state and  
20 required the districts to submit to us a plan on how  
21 they were going to implement, and how they were going  
22 to get ready for implementation of that instruction --

23 Q. Uh-huh.

24 A. -- then the next step was to go out to the schools  
25 and see if they really were doing that.

1 Q. Okay. And I believe you said that the next position  
2 you held with the Texas Education Agency is the  
3 position of deputy commissioner for curriculum and  
4 program development, is that correct?

5 A. That's correct.

6 Q. And is that the position you currently hold?

7 A. Yes, it is.

8 Q. And what are the primary responsibilities of that  
9 position?

10 A. This position is a -- as a result of the  
11 reorganization that came about after House Bill 72.  
12 And one of the main concerns that the commissioner  
13 and the State Board of Education had was that  
14 frequently, in the past, the role of special programs  
15 and the role of special population areas has not  
16 always gone hand-in-hand with curriculum development.  
17 And that where you had one curriculum plan -- that  
18 was the curriculum plan, in our case, the essential  
19 elements for the state that frequently separate  
20 curriculum tracts were set in place. A special  
21 program area or special populations would write up  
22 their own curriculum for their particular area,  
23 rather than looking at how they could use special  
24 methodologies to implement the same curriculum. So,  
25 the main charge for this position was to take

1 curriculum, to take the essential elements or state  
2 mandated curriculum, and to bring all of the special  
3 program areas into sync with that curriculum so that  
4 we really had assurances that all children were being  
5 focused towards the same end.

6 Q. During this period of time, did you continue to have  
7 any responsibilities relating to accreditation?

8 A. Yes, because there were -- there were two possible  
9 deputy positions that were opened. One was the  
10 deputy for curriculum and program development, the  
11 other one was the deputy for accreditation. And I  
12 chose the position in curriculum and program  
13 development because that's -- that's my major field.  
14 But for approximately a year and a half, the deputy  
15 for accreditation stayed a vacant position. So,  
16 somebody had to take over the responsibility for  
17 that, and that fell on me.

18 Q. And has that position since been filled?

19 A. Yes, it was filled in the end of November.

20 Q. By?

21 A. By Dr. Carl Candoli, who is the ex-superintendent of  
22 the Fort Worth School District.

23 Q. So, Dr. Bergin, is it fair to describe your  
24 experience at the Texas Education Agency as focusing,  
25 primarily, in the areas of curriculum and

1 accreditation?

2 A. Yes.

3 Q. Okay. Dr. Bergin, we've had a lot of testimony and  
4 discussion in this trial about education being  
5 important, or essential, or fundamental, but we  
6 haven't focused, specifically, on what education is.

7 In your opinion, and based upon your  
8 experience, what is the central element or key  
9 element of education?

10 A. I believe that it is that which is being taught,  
11 whatever it is that is being taught. And in Texas,  
12 since we have a state mandated curriculum, then we  
13 can say that the essence of education is the  
14 curriculum that is offered to all of the students.

15 Q. Okay. And did I understand you correctly, in 1981,  
16 when you came to the agency, did you come  
17 specifically to be involved in that development  
18 process?

19 A. Yes, I did. I had my home, and my husband, and my  
20 -- a wonderful job in Houston, and I loved what I was  
21 doing.

22 But when I read House Bill 246, and I read what  
23 was being asked of House Bill 246, and that is, that  
24 the legislature defined a well-balanced curriculum  
25 that must be offered to the students and named 12

1 content areas. And then said that we have to  
2 identify the essential elements for each of those by  
3 grade level, require that that be taught, and that  
4 school districts be held accountable for teaching  
5 that. What I read into that was, they're asking for  
6 a state mandated curriculum. And in all of the 50  
7 states, we have never, ever had a state mandated  
8 curriculum.

9 And as far as I know, there has not ever been  
10 an effort that is as comprehensive as this, to start  
11 from scratch and develop a total -- a total  
12 curriculum, which would be required. And the only  
13 similar type of endeavor, that I know of, is in 1949,  
14 at the end of World War II, Japan, in order to bring  
15 its citizenry up to the 20th Century, came up with a  
16 new curriculum. But it was really lifted from the  
17 American curriculum, circa 1949, so they really  
18 didn't start from scratch. The opportunity to do  
19 that is just something that comes once in a lifetime.  
20 And I wanted to be in on it.

21 Q. And did I understand you correctly, you were not  
22 aware, at that time, of any other states that had  
23 done anything of this magnitude?

24 A. That's correct. That's correct.

25 Q. Okay. And in the last six years, have any other

1 states undertaken a curriculum examination process  
2 equivalent to what we've done in Texas?

3 A. Not equivalent to what we have done. Now, there have  
4 always been attempts of reform. There have always  
5 been attempts at upgrading. There have always been  
6 revisions of the curriculum, as technology brings in  
7 new factors, as situations change, as Sputnik brought  
8 about a lot of efforts at curriculum reform. But not  
9 any, where you would start from scratch, decide  
10 what's the most important thing to be taught in math  
11 at the third grade, and go from there, and do a K-12.  
12 Not anything, that I'm aware of.

13 Q. Dr. Bergin, I would like to take you back to 1981  
14 when you began that development process. Were there  
15 any trends, or philosophies in curriculum, either in  
16 Texas, or nationally, that you were responding to?  
17 What was the context within which the State of Texas  
18 began this development process?

19 A. For about -- I'd say, at least the previous decade,  
20 and even longer.

21 No. 1, we were in an era where many needs were  
22 identified and articulated for the first time. The  
23 fact that we were behind, nationally, in math,  
24 science and foreign language education; the fact that  
25 we had populations of disadvantaged students who were

1 not achieving the way we would like them to achieve;  
2 the fact that we had limited English proficiency  
3 students. They weren't identified as that at the  
4 time, but there were populations of students that did  
5 not speak English and that were not in partnership  
6 with our schools.

7 The fact that we had special needs, and that  
8 those special needs had really not been addressed,  
9 was brought to the surface. And educators were asked  
10 to respond to all of those needs. That happened at  
11 the time that there was a lot of money available.  
12 And that's -- that's good, that there was a lot of  
13 money available. But looking back on what resulted  
14 from that, is that educators had a tendency to look  
15 at a problem and to react immediately by wanting to  
16 throw money at that problem. And that led to a  
17 proliferation of programs over programs over  
18 programs. Topics within curriculum areas, new  
19 courses being generated. There was a tendency to  
20 resort to these kinds of programs as pull-out  
21 programs. And you would identify certain students in  
22 a classroom that had special needs.

23 And the most difficult thing to do, in  
24 education, maybe anywhere, but certainly in  
25 education, is to coordinate. That's a very difficult

1           thing to do.

2                   An easier thing to do is just to pull out a  
3           certain group of students and put them over here.  
4           And get your own teacher, your own administrator,  
5           your own staff, your own budget, your own materials,  
6           and deal with them, here, as a separate unit. And  
7           that might work once or twice, but when you had this  
8           tremendous proliferation of courses, what you ended  
9           up with was a tremendous management crisis.

10                   Looking back on it, we realize that we didn't  
11           get the kinds of results that we would have hoped to  
12           get. We learned a great deal. We learned about new  
13           techniques, we learned about new methodologies, but  
14           we just didn't get the results that we wanted.

15                   And ultimately, there was a breakdown in the  
16           accountability for a particular student. If you were  
17           a classroom teacher, and you had 30 students, and you  
18           were constantly seeing six students left in the  
19           middle of the lesson, and then you continued with  
20           your lesson, and then another four students came back  
21           and dropped their pencils and their books and  
22           disrupted the classroom, and then another four left,  
23           and this was constantly happening. And in some  
24           cases, we had students in three or four different  
25           reading programs, three or four different math

1 programs. Then, the question was asked, "Well, who  
2 is really accountable for the reading achievement of  
3 this student?" And the finger was pointed every which  
4 way. So we saw a breakdown in the accountability.

5 Q. Was it possible for a particular child to spend a  
6 substantial portion of his or her day in pull-out  
7 programs, rather than in a regular --

8 A. Yes, there was a point in time, in my experience,  
9 that this was a probability with students that were  
10 -- in fact, the further behind they were, the more  
11 likely that this would be a possibility.

12 Q. Were these pull-out programs encouraged or enhanced  
13 by federal funding patterns, or anything of that  
14 nature?

15 A. They were encouraged and they were enhanced all with  
16 very good intention. And money was made available.  
17 The people at the local district, myself included,  
18 would write programs. What do we think is a good  
19 idea? This isn't working, let's try something else.  
20 And so you would try another thing. And you would go  
21 sometimes for a packaged program, sometimes for  
22 computerized programs, sometimes for a program that  
23 brought in music, or other elements, to try and see  
24 if something would meet the needs of the students.

25 Q. Okay. So, in the decade prior to 1981, we had had a

1 lot of proliferations of courses?

2 A. Yes.

3 Q. We had had a lot of pull-out programs?

4 A. Yes.

5 Q. And did I understand correctly that the combination  
6 of those factors had resulted in fragmentation or  
7 loss of accountability?

8 A. Yes.

9 Q. Okay. And does that generally describe the context  
10 within which the State of Texas set about developing  
11 a uniform curriculum?

12 A. I would like to add one other thing to that.

13 Q. Okay.

14 A. And that is, that during that same period of time,  
15 many very, very dedicated and well-meaning special  
16 interest groups also sought to have impact on the  
17 students and on their particular area of interest.  
18 For example, those that wanted to stress kindness to  
19 animals and the responsibility in taking care of your  
20 pets. The American Dental Association was very  
21 interested in flossing your teeth. The American  
22 Heart Association was very interested in doing away  
23 with smoking and having students think about  
24 cardiovascular fitness. Engineers, in engineering  
25 societies, were concerned about soil erosion, or

1 water in Texas in the future. Any one of those areas  
2 was -- if they got money, would develop curriculum  
3 packets, or packets of instruction, and then want to  
4 get them into the schools and would ask that they be  
5 taught in the third grade, or the fifth grade, or the  
6 seventh grade. So again, there was another burden on  
7 the teacher to respond to those. So with all of  
8 that, the pull-out programs, and additional demands  
9 on the teachers, that was the context within which we  
10 addressed House Bill 246.

11 Q. And given that context, what was the purpose, as you  
12 perceive it, of House Bill 246 and the mandate to  
13 develop a uniform curriculum?

14 A. To get everyone concerned with education, which  
15 included the legislature, teachers, principals,  
16 parents, students, to focus on a common mission at  
17 every grade level. That if you taught a course in  
18 Algebra I, and you taught that course in Booker T.  
19 Washington in Houston, or a high school in  
20 Carrollton-Farmers Branch, or in Longview, that the  
21 content of Algebra I was whatever you would specify.  
22 And that you wouldn't have the wide dichotomy and the --  
23 the shifts in priorities. That students, across the  
24 State of Texas in the third grade, would be expected  
25 to at least know that they -- that certain essential

1 elements would be addressed. And that when you put  
2 all of this together, K through 12, that this was the  
3 common mission and the common goal of the school  
4 system in Texas to make sure that students had access  
5 to these essential elements.

6 Q. Were there any concerns about the mobility of  
7 students, or the mobility of society, generally, that  
8 contributed to the need for a uniform basic  
9 curriculum?

10 A. Yes, that was a very great concern. During the same  
11 period of time, we saw a shift in mobility patterns.  
12 Within our own school district in Houston, we would  
13 see a tremendous variance in the depth and content of  
14 what was offered at particular grade levels. And  
15 even within our own school district, we had students  
16 that would move from one school to another school and  
17 get instruction that could make a student feel that  
18 he was in another world. Besides that, we had  
19 students constantly moving in and out of Texas and  
20 within Texas. And again, there was not a stability  
21 in textbooks and -- nor was there in the content of  
22 what they were being taught.

23 MR. THOMPSON: Your Honor, may I approach  
24 the witness?

25 THE COURT: Yes.

- 1 Q. Dr. Bergin, I'm going to hand you what has been  
2 marked as Defendants' Exhibit 23. I would ask you if  
3 you recognize that document?
- 4 A. Yes, I do. This is what we call Chapter 75.
- 5 Q. Okay. If you would turn to Page 1 of that document.  
6 A. (Witness complying.)
- 7 Q. I notice, on Page 1, something called statutory  
8 citation. Is that House Bill 246, that we see  
9 displayed?
- 10 A. Yes, it is.
- 11 Q. And I notice that that's only about a page and a  
12 little bit on the second page. So it's a very short  
13 statute?
- 14 A. (Witness nodded head to the affirmative.)
- 15 Q. And does everything else we see here, pages three  
16 through 350, or so, the curriculum that was developed  
17 pursuant to that statute?
- 18 A. Yes, it's the curriculum that was developed. It  
19 includes pre-kindergarten through grade 12. And it  
20 constitutes what we call, or what the statute  
21 referred to as the well-balanced curriculum, and also  
22 the rules that support implementation of that  
23 curriculum.
- 24 Q. Dr. Bergin, as you set about developing the uniform  
25 curriculum, that must have been an extraordinary task

1           confronting you at that time. Were there any  
2           particular concerns that you had or particular issues  
3           that you had in mind as you began that development  
4           process?

5       A.    Yes. When we sat down for the first -- and maybe the  
6           first 20 times that we sat down to talk about the  
7           direction that we would take and how would we do  
8           this, we realized that we had to, first of all, take  
9           into account the State of Texas. And Texas is an  
10          enormous state. And it has tremendous geographic  
11          diversity and different kinds of demographics. There  
12          are very small, tiny, isolated rural school  
13          districts. And there are large urban districts that  
14          are as large as any other in the country. And  
15          whatever we put in place had to be appropriate to  
16          that wide diversity.

17                 We thought about the students. That the -- the  
18                 abilities, the profiles, the experiences of the  
19                 students in Texas are probably more varied than in  
20                 any other state. And so we had to put in a  
21                 curriculum that was -- if it was going to be  
22                 mandated, it had to be appropriate for all of those  
23                 -- for each one of those students, so that it would  
24                 be suitable for a particular student.

25                 We had to take a look at what we knew was the

1 reality of the classroom. And that is, that no  
2 matter how much you can go into a typical first grade  
3 or fifth grade, or any teacher's classroom, and say,  
4 "You must address cardiovascular fitness, and you  
5 must also address the court system, and you must take  
6 into account teenage pregnancy," and whatever it is --  
7 there are only 360 instructional minutes in a school  
8 day. And there are only, at that time, 170 school  
9 days. There's a limited amount of time that the  
10 teacher has to work with. And one of two things will  
11 happen. You can keep crowding the curriculum, and  
12 the teacher will address everything, but do it in a  
13 very superficial way, or, once the classroom door is  
14 closed, the teacher will decide what's the priority  
15 and teach that priority. So, the curriculum had to  
16 be realistic in terms of the time that was involved.

17 And last of all, we set about beginning the  
18 planning in 1981, we thought that we might be ready  
19 to implement in 1985, in that a kindergarten student  
20 entering kindergarten and being exposed to the  
21 curriculum would graduate 12 years later ready to  
22 move into the 21st Century. And a lot was going to  
23 change from the curriculum that we put in place, so  
24 it had to be a forward-thinking curriculum that would  
25 prepare the students for what might come. And we

1 didn't even know what might come in the 21st Century.

2 Q. So it had to recognize the diversity of the state?

3 A. Yes.

4 Q. It had to recognize the diversity among students?

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

6 Q. It had to be realistic?

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

8 Q. And it had to be forward-thinking, I think that was  
9 your phrase?

10 A. Uh-huh.

11 Q. Was there any intent, at that point, to mandate a  
12 single curriculum and say, "That's it," for all of  
13 the school districts in the state, or was there a  
14 conception of allowing districts to supplement this  
15 basic curriculum?

16 A. We did not want to fill in all 360 minutes. We knew  
17 we didn't want to do that. We needed to have in  
18 place something that would give teachers their own  
19 flexibility and an opportunity for their own  
20 creativity, and also local priorities. So, we  
21 thought, and we aimed for something that would fill  
22 in 60 percent of the time. And as we began the  
23 process of defining that curriculum, we kept saying  
24 that to the participants that helped us, "Aim at 60  
25 percent of the school day. Aim at 60 percent of the

1 school year." And then, we leave open for the  
2 districts opportunities to add, to reinforce, to have  
3 some level of control for the manner in which it was  
4 implemented.

5 We also knew that it would not be a static  
6 curriculum, because just in keeping with what we were  
7 talking about, a forward-thinking curriculum, we knew  
8 it would have to change. So we allowed for that and  
9 said this is for -- this is what we're doing as a  
10 starting point. And then we'll have to come up with  
11 plans on how we will make additions later on.

12 Q. So from the very beginning, there was a recognition  
13 of a shared responsibility between the state and  
14 local districts, is that correct?

15 A. Yes.

16 Q. Okay.

17 MR. THOMPSON: Your Honor, we're about to  
18 begin a somewhat detailed discussion of the  
19 development of the curriculum. And if we're going to  
20 break early, this might be an appropriate point to --  
21 at the Court's pleasure, to make that break.

22 THE COURT: Okay, let's do that. Shall we  
23 let her step down?

24 MR. THOMPSON: I'm sure she would be  
25 delighted.

1 THE COURT: Let her be excused for the day?  
2 Can you come back at 9:00 Monday morning?

3 THE WITNESS: Yes.

4 THE COURT: It is a non-jury week, so you  
5 don't have that problem.

6 MR. THOMPSON: Dr. Bergin, can you be here  
7 at 9:00?

8 THE WITNESS: 9:30 would be preferable for  
9 me, because I am making a speech in the morning.

10 THE COURT: That's just splendid.

11 MR. THOMPSON: Can we do that, Your Honor?

12 THE COURT: That's fine.

13 MR. THOMPSON: Is that acceptable?

14 MR. GRAY: Absolutely.

15

16

17

(Proceedings recessed until

18

(March 30, 1987.

19

20

21

22

23

24

25