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EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

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

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk
By _____ Deputy

STATEMENT OF FACTS
VOLUME XXXIX OF XLVI

FILED
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THIRD COURT OF APPEALS
SUSAN K. BAGE, CLERK

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

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

APPEARANCES:

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APPEARANCES CONT'D

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

ATTORNEYS FOR THE DEFENDANT-INTERVENORS

BE IT REMEMBERED that on this the 7th day of April,
1987, the foregoing entitled and numbered cause came on
for trial before the said Honorable Court, Honorable
Harley Clark, Judge Presiding, whereupon the following
proceedings were had, to-wit:

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
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7
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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

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:

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
---	-----

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
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9
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11
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14
15
16
17
18
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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

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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. Kaufman -	1815
Further Recross Examination by Mr. O'Hanlon --	1822
Further Recross Examination by Mr. Turner ----	1839

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
--------------------------------------	------

I N D E X (Continued)

FEBRUARY 11, 1987
VOLUME XIV

WITNESSES:

MS. GLORIA ZAMORA

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
Cross Examination by Ms. Milford -----	2519
Examination by the Court -----	2521

MR. LEONARD VALVERDE

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

MR. JOHN SAWYER, III

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

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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. Kauffman -----	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

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
	Cross Examination by Mr. Turner -----	4042
7	Cross Examination by Mr. R. Luna -----	4083
	Cross Examination by Mr. Gray -----	4091
8	Redirect Examination by Mr. Thompson -----	4113
	Recross Examination by Mr. Turner -----	4120
9	Recross Examination by Mr. R. Luna -----	4129
	Examination by the Court -----	4133
10	Further Redirect Examination by Mr. Thompson -	4150
	Examination by the Court -----	4155
11	Further Recross Examination by Mr. Turner ----	4160
	Further Recross Examination by Mr. R. Luna ---	4172
12	Examination by the Court -----	4178

FEBRUARY 26, 1987
VOLUME XXIV

WITNESSES:

DR. DEBORAH VERSTEGEN

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

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

DR. RICHARD KIRKPATRICK

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

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24
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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

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I N D E X (CONTINUED)

MARCH 24, 1987

VOLUME XXXI

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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

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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
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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

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
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24
25

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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

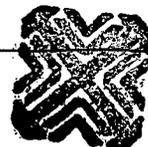
By Mr. Kauffman -----	7610
By Mr. Richards -----	7625
By Mr. Gray -----	7633
By Mr. Turner -----	7643
By Mr. R. Luna -----	7669
By Mr. Boyle -----	7685
By Mr. O'Hanlon -----	7696

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
2
3
4
5
6
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APRIL 7, 1987

MORNING SESSION

THE COURT: Here we go.

DR. ARTHUR E. WISE

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

CROSS EXAMINATION (Continued)

BY MR. HALL:

Q. Dr. Wise, I want to direct your attention to the chart on the board we discussed yesterday. I have made a couple of additional notations on it to try to clarify what we discussed. One was to list over the checkmarks on that chart the fact that these were the alternative definitions that you view as acceptable; is that correct?

A. In a general way, yes.

Q. All right. The other notation I made on it in red was the product of our discussion. And as I recall, our conclusion was that you believe that all of the definitions save the Foundation definition required either a cap on district spending or some kind of other limit --

A. No, sir.

Q. -- in taking it away?

A. No, sir.

1 Q. How am I incorrect on that?

2 A. Because the Foundation program exists in relation to
3 a particular mechanism for raising funds for schools,
4 it does entail within it the notion that there might
5 be a cap.

6 The other definitions, however, do not
7 necessarily entail any limitation on spending. The
8 limitation on spending would be a function solely of
9 the plan which the legislature would adopt together
10 with the amount of revenue which the legislature
11 would put into it.

12 In no sense would I agree with the conclusion
13 that there is some kind of limit placed on
14 educational spending under the various other plans.
15 They are not plans. I underscore they are
16 definitions or standards. Plans are much more
17 detailed and require attention to taxation plans and
18 attention to distribution plans and formulas and so
19 on. So these are just standards.

20 As standards, they imply no limit. They do not
21 imply that any child would suffer the loss of a
22 single dollar dedicated to his or her education.

23 Q. Now, let's make sure that you're understanding my
24 question.

25 When I say a limit on district spending, I'm

1 not saying a limit on state spending. Are you saying
2 that none of these definitions --

3 A. I do not accept the distinction between district
4 spending and state spending because in my
5 conceptualization and under most laws with which I'm
6 familiar --

7 MR. O'HANLON: Objection, Your Honor. This
8 witness hasn't been qualified to give a legal
9 conclusion.

10 THE COURT: I'll overrule. I don't know if
11 it is a legal conclusion.

12 A. Conceptually, I see dollars raised for education as
13 being state dollars whether they happen to be raised
14 through local property taxes or happen to be raised
15 through state revenue sources.

16 Q. I understand that conceptual belief on your part.
17 But you do see the distinction between dollars that a
18 state raises and dollars that, on a practical level,
19 are raised by a local school district?

20 A. No, sir, because we are talking about an entirely new
21 system, and therefore, the distinction which you seek
22 to draw is no longer a distinction which would be
23 meaningful under the design of a new system.

24 Q. Let's talk about the present system, then. There is
25 a difference between dollars raised and collected by

1 individual districts and dollars raised and collected
2 by a state; is there not?

3 A. Difference in what sense?

4 Q. Different governmental entities are raising and
5 collecting the dollars.

6 A. That is correct.

7 Q. All right.

8 A. They are, however, school dollars raised under
9 formulas which are mandated by state law.

10 Q. We understand that belief. There is a difference,
11 however, between the practical realities of
12 collecting by different governmental entities.

13 A. Well, certainly there is a property tax which is the
14 source for locally generated funds, and there are
15 state sources which are the source of state funds.

16 Q. So tell me, does any of these definitions of equal
17 educational opportunity require a limit or an
18 otherwise taking away of a local district's ability
19 to raise and collect funds for education?

20 A. I'm sorry, but I'm going to have to repeat myself,
21 sir. You are now shifting from what is to what might
22 be. Under these new definitions of what might be, it
23 is no longer meaningful. The state might, for
24 example, in response to a court decision, might
25 eliminate local property taxation altogether.

1 Q. So then, a local district would not have the ability
2 to raise or collect funds from a property tax.

3 A. That would depend.

4 Q. How would it depend and on what would it depend?

5 A. It would depend upon the nature of the plan which the
6 Court or state legislature would mandate. The state
7 legislature might as well require or continue to
8 require local property taxes.

9 Q. Explain that to me, local property taxes.

10 A. Well, it is part of a mixed system by which funds
11 would be generated for a new school finance system.
12 A state could, as presently, continue to require a
13 mixture of tax revenue sources, local property taxes,
14 state property taxes or other state taxes.

15 Q. Under that scenario, would the local district
16 continue to have the ability to raise however much it
17 wanted from property taxes to spend on the education
18 within its boundaries?

19 A. No.

20 Q. No. That's what I'm trying to find out. I thought
21 we had this tied down yesterday.

22 Which of these definitions implicate either a
23 cap or some other limit or taking away a local
24 district's ability to raise however much money it
25 wants?

1 A. Well, you mean that under the principle that you're
2 trying to establish that districts would receive
3 whatever they were entitled to receive under the new
4 state plan, but that rich districts would be free to
5 continue to raise even more revenue.

6 You remind me, sir, of "Animal Farm." The pigs
7 are all equal, but some pigs are more equal than
8 other pigs.

9 Q. Excuse me, Dr. Wise. First let me ask you if you
10 understand the distinction I'm trying to draw.

11 A. I think I understand your distinction very well.

12 Q. Okay. Can you answer me straightfoward which of
13 these definitions require either that you put a cap
14 on local district's spending or that in some manner,
15 you take away from local districts the ability to
16 raise and spend the amount of money they want?

17 A. Well, the answer is that under a new system, apart
18 from the Foundation system, a new concept of school
19 finance would be in place and that concept would be
20 that the state legislature and/or the Court would
21 determine how much money is to be raised for
22 education in the State of Texas, how that money was
23 to be raised, and how that money was to be
24 distributed.

25 Local discretion, in that sense, to raise

1 taxes, to restore the inequalities which now exist
2 would, of course, I would assume, violate a standard
3 of equal protection that may emerge from this
4 litigation.

5 Q. That's fine.

6 MR. HALL: Your Honor, I would like to have
7 this marked.

8 (Defendant's Exhibit No. 69 marked.)

9 MR. HALL: Your Honor, I offer what's been
10 marked as Defendant's Exhibit No. 69.

11 MR. KAUFFMAN: Your Honor, we object. The
12 witness has specifically objected to what has been
13 written in red on the proposed Exhibit 69.

14 The witness also said that the numbers under
15 the maximum variance ratio meant nothing. They were
16 just to explain the point, but nothing he would
17 recommend for maximum variance ratio.

18 Under Foundation definition, the witness said
19 that the Foundation program in Texas has some of the
20 structure elements of the Foundation program, but he
21 did not say his definition fit Texas', and this
22 exhibit says what Texas has.

23 So mainly we object to it because of what is in
24 red, which the witness specifically objected to
25 today.

1 THE COURT: I don't know if that's right or
2 not, to tell you the truth. I don't know.

3 MR. HALL: Your Honor, if what's right?

4 THE COURT: If what he just said is right.

5 MR. HALL: I thought we just clarified that
6 what I have written in red is what Mr. Wise, after a
7 lengthy discussion, agreed is correct.

8 THE WITNESS: No, sir, I did not. I
9 hypothesized --

10 THE COURT: Tell me what you want to know
11 from him. You tell me what you want to know from
12 him.

13 MR. HALL: I want to know from him which of
14 these definitions require either a cap on local
15 spending or in some other way, some limit on a local
16 district's ability to raise and spend money.

17 THE COURT: Can you tell me that, please,
18 sir?

19 THE WITNESS: Yes, sir.

20 What I said was that -- well, I need to say
21 that under most of these definitions which are listed
22 as acceptable by me, the state would almost certainly
23 establish an entirely new approach to the financing
24 of education and would determine how to allocate
25 funds to school districts, which is what these

1 standards speak to.

2 It would also have to come up with a system for
3 raising those funds, and therefore, determine how
4 much is to be raised and how much is to be spent.

5 The concept, then, of a local contribution in
6 addition to whatever the state would allow would, in
7 my estimation, restore the very inequalities that are
8 to be eliminated should the Court so rule.

9 THE COURT: Okay. You may proceed.

10 MR. HALL: I want to offer Defendant's
11 Exhibit No. 69.

12 THE COURT: Okay.

13 MR. KAUFFMAN: We object again on the basis
14 the witness has not said that this is his testimony
15 under the red part under all the definitions, and
16 similarly the maximum variance ratio having those
17 numbers there is misleading and not the witness'
18 testimony.

19 MR. HALL: Your Honor, let me respond to
20 the --

21 MR. KAUFFMAN: Let me finish my objection,
22 first, please.

23 The maximum variance ratio is not what the
24 witness testified was what he would see as the
25 maximum variance ratio either.

1 MR. HALL: Your Honor, let me respond to
2 the maximum variance ratio. We took that straight
3 out of Dr. Wise's book where he suggests that a court
4 might accept a variance of those ratios, two-to-one
5 or one and a half-to-one. I'm not even --

6 MR. KAUFFMAN: That was not his testimony.
7 That was a mischaracterization of testimony.

8 MR. LUNA: Your Honor, in fact, that's
9 nothing more than a summary of the exhibit we put
10 into evidence, two pages out of his book very early
11 in this trial. I have forgotten the number, but that
12 particular exhibit and those numbers have been before
13 this Court for probably eight weeks, so that's just a
14 summary.

15 MR. KAUFFMAN: Your Honor, we do not object
16 to having the two pages from his book as exhibits in
17 evidence. We do not object to that, but this does
18 not say what the exhibit which the Defendants purport
19 to put into the record says.

20 MR. HALL: Your Honor, I don't understand
21 what Mr. Kauffman thinks the exhibit is saying other
22 than what the book says. The exhibit does not say
23 these are the ratios that Mr. Wise is recommending.
24 It simply lists them after his maximum variance ratio
25 just as they are listed in his book under that

1 definition.

2 In his book, he states that the courts might
3 require that the maximum variation in average per
4 pupil expenditure be more than 2 to 1, or 1 and a half
5 to 1, or 1 and a third to 1. That's all that is up
6 there is to give some kind of context to the kind of
7 ratios that Mr. Wise suggested as possible ratios
8 that a court might accept from his book.

9 THE COURT: Let me see that, please.

10 THE WITNESS: What's the page, please?

11 MR. HALL: 156 and 157.

12 THE COURT: Okay. I'm not upset about the
13 1.5 and the 2.0, and I realize the importance of
14 that. I realize what the book says and I also
15 realize what the witness said about he was using
16 those ratios as just illustrations of ratios. I also
17 realize what the book says. So we'll have 1.5, 2.0
18 up there as a memorial about both versions.

19 Now, the red bothers me a little bit more
20 because I don't know that he has answered that
21 straight out. At least I don't remember that he has
22 answered that straight out. He might, but I don't
23 know that he has.

24 So why don't you put the red question to him
25 point-blank. We'll see where we stand.

1 MR. HALL: All right.

2 BY MR. HALL:

3 Q. Dr. Wise, I'm understanding your position to be that
4 all of these definitions, save the Foundation
5 definition, envision that a state will set up a new
6 system for collecting and distributing revenues to
7 public schools; is that right?

8 A. Yes.

9 Q. You likewise envision that all of these definitions,
10 save the Foundation definition -- for all of these
11 definitions, save the Foundation definition, under
12 that new system, local school districts would not
13 have the ability to raise and spend any amount of
14 money they wanted.

15 A. If a local district wanted to see more money invested
16 in education, it would have to work with the state
17 legislature to insure that the benefits that they
18 were securing for their own youngsters were secured
19 for the benefit of all the youngsters in Texas
20 similarly situated.

21 Q. All right. I understand that.

22 We're trying to come up with something that
23 will help me to understand what you're saying, so I'm
24 going to ask you some questions to try to reach this
25 understanding. I'm going to ask you to answer either

1 yes or no or to indicate to me that it's not possible
2 for you to answer yes or no. In that event, I will
3 try to rephrase the question. All right?

4 MR. KAUFFMAN: Your Honor, he can answer
5 any way he thinks is a truthful answer. He's not
6 limited by the options given by Counsel.

7 MR. HALL: Your Honor, I'm making a
8 reasonable request that the witness either respond to
9 my questions with a yes or no or indicate to me that
10 he cannot, in which case I'll ask a new question.

11 THE COURT: We'll let him try this, but
12 he'll get half way through and bog down and -- I
13 never could pull one off. Let's see if you can. Go
14 ahead.

15 BY MR. HALL:

16 Q. All right, Mr. Wise, let me give you the last
17 question I asked you again, as far as I remember it.

18 Under the new state system that you would see
19 envisioned by all of these definitions on what has
20 been identified as Plaintiffs' Exhibit No. 69 (sic.),
21 save the Foundation definition, is it not true that
22 local school districts would not have the ability to
23 raise and spend any amount of money they wanted?

24 A. Well, to tell you the truth, I think at the very
25 least, the minimum attainment definition would permit

1 local augmentation as well.

2 Q. Okay. Can we use, then, this word "local
3 augmentation" to mean the ability of a school
4 district to raise additional funds over and above
5 what the state requires?

6 A. Sure.

7 Q. All right. So when I say local augmentation, that's
8 what I'm talking about. Will you accept that?

9 A. Fine.

10 Q. All right. So now, under two of your definitions,
11 the full opportunity definition and the minimum
12 attainment definition, local school districts would
13 retain the ability to augment funds.

14 A. I'll correct you. I said the minimum attainment
15 definition and Foundation definition. I think you
16 meant to say that.

17 Q. All right. If I didn't say that, that's what I
18 meant. Under the Foundation definition and minimum
19 attainment definition, local districts would retain
20 the ability to augment funds, would they not?

21 A. I'm sorry?

22 Q. Under the Foundation definition and the minimum
23 attainment definition, local districts would retain
24 the ability to augment educational funds?

25 A. Yes, because, of course, the definitions envision the

1 continued existence of a mixture of state and local
2 revenues in the sense that we all understand that.

3 Q. Is it likewise true that under all of the other
4 definitions listed on Defendant's Exhibit No. 69,
5 besides the Foundation definition and the minimum
6 attainment definitions, local districts would not
7 retain the ability to augment educational funds?

8 A. Well, now that I'm also taking a closer look, I would
9 say the maximum variance ratio definition might allow
10 local augmentation as well within whatever the
11 permissible ratio might have been -- might be.

12 Q. So under the maximum variance ratio, given the amount
13 of variance, that amount of variance might be
14 augmented to local funds?

15 A. Yes.

16 Q. All right. Now, so then except for the Foundation
17 definition and the minimum attainment definition and
18 the maximum variance ratio definition, does any other
19 definition envision that local districts would retain
20 the ability to augment educational funds?

21 A. No.

22 Q. Let me write that down so I will remember it.

23 Except for the Foundation definition, and the
24 minimum attainment definition, and the maximum
25 variance ratio definition, no other definition listed

1 on Defendant's Exhibit 69 would envision that local
2 school districts would retain the ability to augment
3 funds?

4 A. That's correct.

5 That's not bad. We have -- of the six
6 realistic definitions, three of them allow it and
7 three of them do not.

8 Q. I'm going to go back and correct that chart. I just
9 want to get this written down here so we both agree
10 on it.

11 So except for the Foundation definition, and
12 minimum attainment definition, and the maximum
13 variance ratio definition, no other definition
14 envisions that local school districts would retain
15 the ability to augment educational funds. Is that
16 what you're saying?

17 A. Yes.

18 Q. So if I write that down on the chart that's been
19 marked as Defendant's Exhibit No. 69, it is going to
20 correctly summarize what you've testified?

21 A. I would say so.

22 THE COURT: Put an asterisk on your first
23 chart there. Put an asterisks right there and you
24 will have it done, except I think after school
25 districts, you ought to put a caret and "would"

1 between school district and retain. Right there.
2 Now we're going.

3 MR. HALL: An asterisk here (indicating)?

4 THE COURT: Well, it depends on whether or
5 not you want to scratch out your red there.

6 MR. KAUFFMAN: Your Honor, we would request
7 that, as we had to do off our pictures, scratch out
8 that dangerous language. We would like him to
9 scratch out the entire red section there.

10 MR. HALL: I will do that, Your Honor.

11 THE COURT: You think the red is not
12 accurate any longer?

13 MR. HALL: I think the red still says what
14 he said.

15 THE COURT: Let me stay out of this. Go on
16 and do what you want to do.

17 (Defendant's Exhibit No. 69-A marked.)

18 MR. HALL: Your Honor, I'm going to offer
19 what has been marked as Defendant's Exhibit No. 69
20 and 69-A into evidence.

21 MR. KAUFFMAN: Your Honor, I reurge our
22 objection. The section that is in red, the witness
23 has not testified to. He said that it is not true.
24 He has rephrased it on Exhibit 69-A. If 69-A
25 replaces this part in red, we can withdraw that part

1 of our objection, but we would want this part in red
2 on Exhibit 69 to be completely deleted from the
3 exhibit.

4 MR. HALL: I will admit, Your Honor, that
5 he has now expanded his testimony to include these
6 other definitions, so we --

7 MR. KAUFFMAN: We appreciate the admission,
8 but we don't agree with it. He never did testify to
9 what was in red.

10 MR. O'HANLON: This is the difference
11 between the old Dr. Wise, which was yesterday, and
12 the new Dr. Wise today.

13 THE COURT: See, they're not going to let
14 you get by with that.

15 MR. HALL: We reoffer Defendant's Exhibit
16 No. 69 and 69-A.

17 MR. KAUFFMAN: We make the same other
18 objections, Your Honor.

19 THE COURT: Okay.

20 MR. HALL: Will it be admitted, Your Honor?

21 THE COURT: I believe so. I probably need
22 it in evidence. It will be admitted.

23 (Defendant's Exhibit Nos.
24 69 and 69-A admitted.)

25 THE COURT: I'll settle down here in a

1 minute and take my morning nap. You'll have to put
2 up with me.

3 BY MR. HALL:

4 Q. Now, Dr. Wise, if I recall where we left off
5 yesterday, we were talking about Dr. Charles Benson's
6 report. What I want to ask you first thing today to
7 help me get a kind of grip on this is if you could
8 help me identify some of the people in the field of
9 school finance that you might call theoretical types.

10 A. How would you define "theoretical"?

11 Q. Well, maybe I can contrast. You testified yesterday
12 that during the period of time in which you were most
13 involved with school finance reform, you didn't do
14 any original empirical research except for some
15 interviews in connection, I believe, with the
16 Maryland study; is that correct?

17 A. Not interviews in connection with Maryland; data
18 analysis in connection with Maryland.

19 Q. Data analysis in connection with Maryland.

20 Now, there are people involved in school
21 finance who are more involved in original empirical
22 research in that field; is that not correct?

23 A. Well, I think we are quibbling with terms here. In
24 the field of education, there is a noteworthy text
25 published by the noteworthy National Academy of

1 Education, which speaks of the nature of inquiry
2 which is used in the field of education, and speaks
3 of the term "discipline inquiry." It is a treatise on
4 the various methods of inquiry that are appropriate
5 to be used in order to extend educational knowledge.

6 There are a variety of modes of inquiry that
7 are regarded as highly acceptable within that
8 framework.

9 Q. Dr. Wise, I think I can save us some time. I'm not
10 trying to imply that some method is acceptable and
11 some is not. I'm asking if you understand the
12 distinction between folks who do original empirical
13 research and folks who don't.

14 A. Well, I certainly do.

15 Q. All right. Now, who are some of those in the field
16 of school finance who do original empirical research?

17 A. The list is so numerous that I, you know --

18 Q. Who comes to mind first?

19 A. Do you have somebody that you are wanting to ask me
20 about? I think that would be constructive.

21 Q. Well, I asked this question of Charles Benson on
22 deposition.

23 A. Yes.

24 Q. "Who are some of the theoretical people in the
25 field?" He said he thinks very highly of Norton

- 1 Grubb, he mentioned Richard Mernean (Phon.) and
2 Eric Hanushek and Henry Levin. Would you agree --
- 3 A. As people who do empirical work?
- 4 Q. He called them theoretical types.
- 5 A. Oh, gee, I regard them as people who do empirical
6 work, frankly.
- 7 Q. That's fine. That's the question I was asking.
8 These people do empirical research.
- 9 A. Yes.
- 10 Q. They are reputable people in the field?
- 11 A. Yes.
- 12 Q. All right. Now, Dr. Wise, another question I had
13 was, yesterday you voiced some criticisms of the
14 Coleman study and studies like that.
- 15 A. Yes.
- 16 Q. What is a good source for those criticisms? What
17 kind of literature are you relying on?
- 18 A. Professor Henry Levin has done some work in that
19 arena. Mosteller and Moynihan have done a
20 major critique of the Coleman report. Steven
21 Kline (Phon.) has done a major critique of the
22 Coleman report. Those are some of the sources I have
23 relied upon, as well as my own training in this field --
- 24 Q. Do you remember that I asked -- excuse me. I didn't
25 mean to interrupt you.

1 A. -- which, by the way, because it doesn't appear on my
2 resume, I feel compelled to point out that for the
3 two years I was at the military academy, I did
4 nothing but multi-regression analyses. That did not
5 appear in published form.

6 Q. That Steven Kline essay that you referred to --

7 A. Yes.

8 Q. -- that's the one in this book, "Indeterminacy in
9 Education"?

10 A. Yes.

11 Q. This is the one you recommended to me at the
12 deposition; do you recall that?

13 A. I may have, yes.

14 Q. Okay. Dr. Wise, I want to refer you to --

15 MR. HALL: Your Honor, if I might borrow
16 that book back from you.

17 THE COURT: All right.

18 BY MR. HALL:

19 Q. Can you tell me just a little bit, Dr. Wise -- we
20 talked in passive terms about the Coleman Report on
21 several occasions.

22 A. Yes.

23 Q. What was the source of the Coleman Report? How did
24 it come about?

25 A. As I recollect, it was a congressionally mandated

1 study that funds were allocated to the U.S. Office
2 of Education and they selected Professor Coleman to
3 conduct that study, as I recall. That's really a
4 long time ago and before I was actively in the field.

5 Q. It was conducted pursuant to the requirements of the
6 United States Civil Rights Act of '64?

7 A. I honestly don't remember, but if you say so, I
8 presume you are correct.

9 Q. But it was conducted out of the U.S. Department of
10 Education?

11 A. United States Office of Education, I believe.

12 Q. Office of Education.

13 What was the scope of the Coleman study? How
14 many students were involved in the study?

15 A. Well, it was certainly a sample of students, a large
16 sample. I frankly do not recall the number.

17 Q. Almost 600,000?

18 A. That might be correct. I really don't recall the
19 number.

20 Q. Do you know what grades were included in the Coleman
21 Report?

22 A. I believe there were two grade levels, but I don't
23 recall now for sure.

24 Q. Isn't it true that it was grades 1 through 12?

25 A. Perhaps. It has been a long time since I looked at

1 the study.

2 Q. More than 3,000 school districts were involved?

3 A. If you say so.

4 Q. I want to ask you about a passage from "Rich Schools,
5 Poor Schools," Page 140 of that book. Do you have a
6 copy, Dr. Wise?

7 A. I bet I can guess what you're going to read.

8 Q. Now, beginning on Page 139 in "Rich Schools, Poor
9 Schools," you start a section entitled "The Effects
10 of Different Services and Goods."

11 A. Uh-huh.

12 Q. That's the effects on student achievement; is it not?

13 A. Yes.

14 Q. You discuss a study done by J. Alan Thomas; do you
15 not?

16 A. Yes.

17 Q. In the beginning in the middle of Page 140, you say
18 his study apparently stated that numerous specific
19 resources were correlated with test scores.

20 A. Yes.

21 Q. On Page 140, after discussing that study, you say
22 this. "Unfortunately, a later and more comprehensive
23 study does not appear to support this conclusion."

24 Then you launch into a discussion of Coleman's
25 report. Why did you say "unfortunately"?

1 A. Maybe an unfortunate choice of terminology, actually.

2 Q. Doesn't it reflect the fact you wanted the reports to
3 say that money made a difference and Coleman didn't?

4 A. Well, it certainly would have been more comfortable
5 if it had. But let me say this. This particular
6 paragraph was added to this report perhaps a week or
7 two after the Coleman Report was issued and before
8 the extensive analysis that was subsequently
9 conducted by a wide variety of analysts, Professor
10 Mosteller, Professor Monahan, Professor Kline,
11 Professor Levin, Professor Guthrie. So I was in the
12 position of having to review this study before it had
13 had the benefit of intellectual scrutiny of a kind
14 that such studies really ought to have.

15 Q. I understand. So when you wrote on Page 141, "The
16 import of the Coleman study would seem to be that the
17 effects of school variables with the possible
18 exception of teacher variables are extremely limited.
19 At best, then, the generalization that educational
20 resources are related to educational achievement must
21 be regarded as tentative. At worst, it must be
22 concluded that there is no relationship."

23 You would not agree with that statement any
24 longer?

25 A. Well, you need to have -- this statement needs to be

1 read in the contemporary history or contemporary --
2 it has to be placed in the context of the time when
3 it was written.

4 Q. I understand that. So you're simply saying that now,
5 at a later time after more studies, you would not say
6 the same thing?

7 A. I would not.

8 Q. That's right.

9 I understand what you're saying now from your
10 testimony yesterday in regard to the relationship
11 between cost and quality, that you believe the court
12 should find that there is such a relationship; is
13 that correct?

14 A. Yes.

15 Q. As I understand, you offer three basic sources to
16 demonstrate that relationship. One is a rise in test
17 scores; two is certain studies, the main ones that
18 you mentioned are the Glass and Smith study and the
19 MacPhail-Wilcox study.

20 A. Dozens of studies reviewed by MacPhail-Wilcox.

21 Q. Then finally, a kind of a common sense argument that
22 parents, teachers, administrators, legislators all
23 seem to think that money makes a difference and spend
24 money like it did?

25 A. Yes, including school districts which are wealthy

1 enough to employ attorneys to protect their rights to
2 spend as much as they wish.

3 Q. I understand.

4 Is that a basic summary of your testimony,
5 then? Am I getting it correctly?

6 A. I'm not sure that I would want to, without further
7 thought, accept that as a full characterization of my
8 testimony. I certainly have made those several
9 points. I may have made other points as well.

10 Q. We're going to consider these several points. If you
11 recall other points that don't fall under these
12 headings, you just feel free to put them in and we'll
13 talk about those, too.

14 Let's first talk about the test scores that you
15 see as an indication that there is a connection
16 between cost and quality.

17 A. Maybe. I don't know that I ever said is.

18 Q. That there may be a connection.

19 A. Yes.

20 Q. Could you first give me some indication of the
21 historic trend of educational expenses in this
22 country, say, from the 1960s through the late 1970s
23 or even to the present?

24 A. I don't think I could without a more specific
25 question. Even then, I might not be able to.

1 Q. Isn't it true that national expenditures on education
2 have gone up since the 1960s?

3 A. Yes.

4 Q. In fact, they have gone up somewhere in the vicinity,
5 taking inflation into account, of 80 percent.

6 A. Go ahead. Are you going somewhere with it?

7 Q. No, I'm asking you a question. Have they gone up 80
8 percent?

9 A. They have gone up substantially. I do not know that
10 I would agree to any particular characterization, but
11 I will agree that they have gone up.

12 MR. HALL: Your Honor, may I approach the
13 witness?

14 BY MR. HALL:

15 Q. I want to show you an article published in 1981 by
16 Eric Hanushek, one of the people that you identified
17 as reputable theoretical people in the field --

18 A. Empirical.

19 Q. -- empirical people in the field entitled "Throwing
20 Money at Schools."

21 Dr. Hanushek indicates that "in constant 1978
22 dollars, total expenditures per student increased
23 from \$992.00 in 1960 to \$898.00 in 1975, an average
24 growth of 6 percent per year in real expenditures.
25 Moreover, these increases were not simply a

1 reflection of more costly administrative activities,
2 expenditures for per pupil/teacher services rose at
3 the same pace."

4 Do you have any reason to doubt what Mr.
5 Hanushek says?

6 A. No particular reason to doubt it.

7 Q. You will note in his article, "Throwing Money at
8 Schools," that he indicated that total expenditures
9 went from 992 to 1,855; that instructional
10 expenditures went from 571 to \$1,030.00. Am I
11 getting that right off this chart?

12 A. Go ahead.

13 Q. Is that right?

14 A. That's what it says.

15 Q. All right. It also indicates that the source of
16 these figures is the U.S. Statistical Abstract.

17 A. Yes.

18 Q. He also shows that the pupil/teacher ratio --

19 A. Yes.

20 Q. -- has declined from 1960 to 26.5 to, in 1978, 19.9;
21 is that correct?

22 A. Yes. That's what it says.

23 Q. He indicates that average teacher salaries, using
24 constant 1978 dollars, have gone from 11,616 in 1960
25 to 14,247 in 1978.

1 A. I see that, yes.

2 MR. GRAY: Your Honor, I assume this is all
3 cross-examination and he's asking the witness, does
4 this document say these things. But what is
5 contained in the document is not in evidence for real
6 purposes. It is not -- he is trying to introduce
7 hearsay. This is a discussion we had several weeks
8 ago, but I want to make sure it is an ongoing
9 realization.

10 MR. HALL: Your Honor, I'm using this
11 precisely according to the rule. He has admitted
12 this is a reliable source, and I'm confronting him
13 with the data from it.

14 A. No. I said that Mr. Hanushek has a reputation in the
15 field. That's all I have said.

16 Q. He is one of the reputable people in the field.

17 A. He is reputable in the field, yes.

18 MR. HALL: I think that meets the
19 requirements of the rule. Besides that, Dr. Walberg
20 has already brought this article up.

21 THE COURT: Okay.

22 BY MR. HALL:

23 Q. So the basic conclusion from Dr. Hanushek's article
24 is that educational expenditures have gone up in the
25 vicinity of 80 percent since 1960, taking into

1 account inflation?

2 A. Yes. But he fails to take into account another fact,
3 which is --

4 Q. But that --

5 MR. KAUFFMAN: Excuse me, Your Honor. He's
6 trying to answer and he's trying to answer honestly.
7 He should be allowed to finish his answer.

8 MR. HALL: Your Honor, he's trying to add
9 something in addition. He's answering another
10 question --

11 THE COURT: He needs to answer only the
12 question he's asked. When you get him back on
13 redirect, you can do what you want.

14 BY MR. HALL:

15 Q. So what Dr. Hanushek indicates is that expenditures
16 have gone up 80 percent --

17 A. I guess he has, yes.

18 Q. -- for the period from 1960 to 1978?

19 A. Yes.

20 MR. HALL: May I approach the witness, Your
21 Honor?

22 BY MR. HALL:

23 Q. Now, Dr. Hanushek also made some comments about test
24 scores for the same period of time. I understand
25 your objections to the use of SAT, and I don't

1 believe we're going to need to go back into that
2 right now.

3 But Dr. Hanushek indicates, does he not, that
4 "The most celebrated evidence of actual declines in
5 the progressive drop in average SAT scores, a fall of
6 some 10 percent since the mid-1960s. While this
7 change could be explained by a variety of factors
8 such as changes in the composition of those taking
9 the tests, there is evidence that this is not simply
10 a statistical artifact."

11 And it continues. It says, "Longitudinal data
12 for a national sample of 17-year-olds from the
13 National Assessment of Educational Progress also
14 suggests constancy or decline in performance. Test
15 scores in science knowledge, civics and social
16 studies fell from 1970 to the middle-1970s, while
17 reading ability remained virtually constant."

18 That's what Dr. Hanushek says, is it not?

19 A. That's what he says. He is incorrect, however.

20 Q. Now yesterday, you testified that test scores, as
21 demonstrated by the National Assessment of
22 Educational Progress, improved.

23 A. That's correct. I said they improved among certain
24 groups.

25 Q. Yes. For the groups in the cities and in the

1 southeastern United States.

2 A. Correct. He is speaking of the national picture.
3 Obviously, when you aggregate it at the national
4 level, you may get a different picture.

5 Q. Now, which test scores for the people in the cities
6 and the southeastern --

7 A. Reading and arithmetic at the 4th grade level and 7th
8 grade level improved.

9 Q. What about the social studies, civics and science
10 knowledge?

11 A. I believe there are not enough of those to -- only
12 reading and arithmetic, I believe, have been surveyed
13 long enough and regularly enough to draw that
14 conclusion about changes at the subregional level.

15 Q. Now, I believe you said yesterday that your analysis
16 of these test scores from the National Assessment of
17 Educational Progress was just kind of informal; is
18 that not right?

19 A. Well, I read their reports.

20 Q. But it's just a kind of an informal analysis.

21 A. No. I read their reports and I'm quoting them to
22 you. I mean, when I say "informal," I meant to imply
23 that I personally had not conducted the study, but I
24 have read the report and that is what I'm drawing on
25 and bringing to your attention.

1 Q. But your review of those reports was informal in
2 nature.

3 A. I don't know. I wouldn't accept that
4 characterization.

5 Q. Well, you remember that we discussed this topic just
6 a little bit at your deposition that I took in
7 Cambridge. I believe I asked you at that deposition,
8 on Page 7 -- I just have one volume.

9 A. I don't have any --

10 Q. On Page 5, excuse me. I ask you about your analysis
11 and you said, "My own informal examination of the
12 rise in test scores nationally over the last decade
13 and a half, I believe, is related to the fact that we
14 have been having greater resources at lower achieving
15 children in the last decade and a half.

16 "QUESTION: Any other significant studies?

17 "ANSWER: Not that I particularly single
18 out.

19 "QUESTION: Let me ask you, then, about
20 your own -- what you termed informal study, a rise in
21 test scores. Would you describe your methodology.

22 "ANSWER: That is not a formal study, which
23 is why I said informal. The National Assessment of
24 Educational Progress, which is a national test that
25 is given regularly to a sample of youngsters, shows

1 that scores among low achieving black students have
2 been rising for much of the last decade and a half."

3 So you haven't done a formal study of this
4 matter.

5 MR. BUSTILLO: Your Honor, may I --

6 A. I have read regularly the reports of the National
7 Assessment of Educational Progress and I was
8 reporting -- I was drawing on those, and perhaps I
9 was -- that was an unfortunate characterization of
10 that circumstance by me. I just distinguished that
11 as -- I don't know why I characterized that as
12 informal, frankly.

13 It is the same method that you just employed,
14 namely that you read Dr. Hanushek's report and you
15 told me about it. Well, in quite the same way, I
16 have read the National Assessment of Educational
17 Progress reports and that's what I was reporting on
18 to you at that time.

19 Q. That's fine.

20 MR. BUSTILLO: May I give the witness the
21 copy of his deposition if it is going to be referred
22 to?

23 THE COURT: Yes.

24 MR. BUSTILLO: Thank you.

25

1 BY MR. HALL:

2 Q. Now, the result of your reading the test scores are
3 inconclusive, are they not?

4 A. Well, they're not conclusive. Absolutely, they are
5 not conclusive.

6 Q. They are not conclusive.

7 A. They rest on -- one does not know why -- one cannot
8 easily determine why changes such as that occur
9 because there are many phenomenon occurring at the
10 same time.

11 As I suggested yesterday, we were desegregating
12 schools, we were providing somewhat greater resources
13 to them, we were providing Sesame Street on
14 television, we were providing early childhood care
15 and early childhood education in places that we were
16 not before. All of these things taken together were
17 beginning to show good effects among low-income
18 children.

19 I can't say any particular one thing, however,
20 led to that.

21 Q. Now, when I first showed you Dr. Hanushek's article,
22 you said that he was wrong. Now, was he wrong in
23 your view simply because he didn't consider this
24 narrow range of students that you're talking about
25 from the cities in the southeastern United States or

1 are you saying his overall conclusion about overall
2 test scores was wrong?

3 A. Well, I do not believe that he properly characterized
4 the SAT score decline or explained it. I mean, the
5 SAT score decline did occur. No one has definitively
6 been able to explain why that has occurred or why
7 that did occur.

8 Q. That's fine.

9 So he's not wrong in simply saying the SAT
10 scores went down?

11 A. He is wrong in attributing that to other than the
12 fact that whereas a million people used to take the
13 test, a million and a half were taking it, which was
14 an expansion of opportunity to many people who in the
15 past had been denied the opportunity to go to college
16 and, therefore, had to take the college board. That,
17 in my view, is the primary reason why those scores
18 went down.

19 Q. I understand you've got a different reason, but the
20 scores went down. We're clear on that?

21 A. I cannot accept that characterization because if we
22 talk about the million people in the past -- if the
23 pool of people taking the SAT score continue to
24 remain the same over that period of time, then the
25 scores did not decline. The decline was produced by

1 the half million or so people who are gradually
2 entitled to attend college during the period in
3 question.

4 Q. But you just said --

5 A. The mean went down, yes, because larger numbers of
6 people who, in the past, were not eligible to take
7 the test or were not entitled to take the test took
8 it. So we have to be very careful about our terms.
9 That's all I'm saying.

10 Q. All right. What I want you to be very careful about
11 and what I'm asking you is to separate your reason
12 for why the scores went down and the conclusion that
13 the scores went down. Did they go down?

14 A. The average score taken by the people taking the test
15 went down.

16 Q. Thank you.

17 Now, was he also correct in asserting that for
18 a national sample, not just the southeastern United
19 States, not just of the cities, but for a national
20 sample, that test scores from the National Assessment
21 of Educational Progress either stayed constant or
22 declined?

23 A. Well, for the life of me, I can't understand why he
24 was selective in restricting it to 17-year-olds, when
25 you form a quite different picture among younger

1 children who are beneficiaries of the --

2 Q. Dr. Wise, I'm not asking you about why he talked
3 about 17-year-olds. I'm asking you whether his
4 conclusion about the sample, based on 17-year-olds,
5 the test scores staying constant or declining, is
6 correct.

7 A. It is evidently correct that --

8 Q. That's fine.

9 MR. KAUFFMAN: Excuse me, Your Honor. He
10 must be given -- that time, he was trying to give a
11 complete answer and he was interrupted in the middle.

12 THE COURT: All right. He may finish.

13 A. It is correct that the decline -- I presume it is
14 correct that when one looks solely at 17-year-olds,
15 one forms the impression that test scores decline.
16 However, the same data set --

17 MR. HALL: Your Honor, he's not being
18 responsive now.

19 THE COURT: Okay. I'll sustain. Here we
20 go.

21 MR. HALL: May I approach the witness?

22 THE COURT: Yes.

23 BY MR. HALL:

24 Q. Dr. Hanushek's conclusion from this analysis of
25 expenditures and test scores is as follows. "The

1 aggregate picture, thus, is one of steadily
2 increasing expenditures on schools accompanied by
3 constancy or actual declines in student performance."

4 Did I read that correct?

5 A. You read that correct, I presume. I don't have my
6 glasses on.

7 That does not mean that I accept that
8 characterization.

9 Q. I understand that. Yesterday, you referred to a
10 study by Glass and Smith.

11 A. Yes.

12 Q. You referred to it as a meta-analysis.

13 A. Yes.

14 Q. Is that right? Could you explain what a
15 meta-analysis is.

16 A. Yes. It is a procedure wherein one reviews a large
17 number of studies on a single topic and rather than
18 looking at each study one at a time, one sort of
19 reaches into the data which is contained in the study
20 and uses that in a new analysis to form a set of
21 conclusions about what the studies, as a whole,
22 indicate.

23 Q. What are the kind of things that you do with the
24 underlying studies when you are doing a meta-analysis
25 to insure accuracy of your overall results?

1 A. Well, there are different procedures and different
2 techniques. You might look for and restrict yourself
3 to well-controlled studies as opposed to not so well
4 controlled studies. That's sometimes done.

5 But the point is, you use the data that is in
6 the studies rather than simply relying upon the
7 conclusions of the studies.

8 Q. Is it part of meta-analysis, as used by Glass and
9 Smith, that you scrutinize the underlying study to
10 determine how properly it was conducted?

11 A. Yes.

12 Q. So you discount studies to some extent that were done
13 improperly in respects?

14 A. That were not well-controlled studies is the term,
15 yes, not necessarily studies that fit in with your
16 conclusion, but studies which are not done observing
17 the scientific canons.

18 Q. Now, as I understand the conclusion of the
19 Glass/Smith meta-analysis, it is that there is some
20 significant relationship between student achievement
21 and class sizes at a 15th.

22 Your testimony yesterday that was when you get
23 above the number of 15, then their study would fail
24 to show you any significant relationship.

25 A. I believe there is a modest relationship beyond that

1 level.

2 Q. Now, what I want to ask you is what you know about
3 Texas that would lead you to believe that school
4 districts, rich school districts, poor school
5 districts, any school districts are spending money to
6 get class sizes of 15?

7 A. Well, I don't know anything about Texas. I would say
8 in addition that the test score approach is, itself --

9 Q. Dr. Wise, this is another question. Let's just focus
10 on this question.

11 A. Will you rephrase the question, please.

12 Q. The question was, what do you know about Texas that
13 leads you to believe that school districts in Texas
14 are spending their money to get class sizes of 15?

15 A. Well, the only thing that I can say is the recent
16 education reform legislation pushed school districts
17 to reduce class size to, I believe, 22 at the
18 elementary school level which would indicate whoever
19 was in charge of that reform was moving --

20 Q. That's not my question, Dr. Wise.

21 MR. KAUFFMAN: He's trying to answer it,
22 Your Honor.

23 MR. HALL: Your Honor, he's not answering
24 this question.

25 THE COURT: Okay. Next question.

1 BY MR. HALL:

2 Q. So it just comes down to it that you have no
3 knowledge of any school districts in Texas spending
4 their money to get 15-student classrooms?

5 A. I don't think I'm going to answer you.

6 Q. Can you tell me yes, I have knowledge, or no, I don't
7 have knowledge?

8 A. The only relevant knowledge I have is that the
9 education reform legislation encouraged and required
10 school districts to reduce their class size in that
11 direction.

12 Q. But we're not talking about 15. What is your
13 knowledge about 15?

14 A. I have no knowledge about 15.

15 Q. That's fine.

16 A. That doesn't mean it doesn't exist. I just have no
17 knowledge.

18 Q. That's right. You certainly wouldn't know whether or
19 not if there are any school districts that are having
20 15-student classrooms, they're just some rural school
21 district that can't even get a basketball team on the
22 floor?

23 A. I have no knowledge of that.

24 Q. Now yesterday, you quoted at length from an article
25 by MacPhail-Wilcox and I want us to look at that.

1 Who is Bettye MacPhail-Wilcox?

2 A. She's a professor at North Carolina State University,
3 and a specialist in school finance and an active
4 member of the American Educational Finance
5 Association.

6 Q. Associate professor of educational administration?

7 A. I believe that's her title.

8 Q. Is the study that you cited by Bettye MacPhail-Wilcox
9 yesterday entitled, "Production Functions Revisited
10 in the Context of Educational Reform" a
11 meta-analysis?

12 A. No, sir.

13 Q. How does it differ from a meta-analysis?

14 A. It is a look one at a time at each of a number of
15 studies. She and he, King, the co-author, looked at
16 the studies one at a time and looked at what
17 directions each particular study pointed in.

18 Q. They don't make judgments in this article about the
19 appropriateness of the techniques used in the
20 underlying studies.

21 A. That's correct.

22 Q. Just kind of group them all together and summarize
23 the results.

24 A. Well, many of them are among some of -- by some of
25 the noted authorities I have heard you so fervently

1 relying upon.

2 Q. I understand. But she and he just kind of lumps them
3 all together.

4 A. (Nodded head affirmatively.)

5 Professor Hanushek is prominent among them, I
6 would note.

7 Q. Yes, he is cited frequently in the article.

8 Now, in this article -- do you still have your
9 copy with you? I can provide you this one.

10 Look, for example, on Page 203 of the article.
11 Have you got that table?

12 A. Yes.

13 Q. This is a first of several tables in the article.

14 A. Yes.

15 Q. There is a column called "Teacher Characteristic and
16 Unit of Analysis, Level of Schooling, Primary
17 Methodology," and then "Significant" and
18 "Non-Significant."

19 A. Yes.

20 Q. Does the article tell you what significant and
21 non-significant are defined as?

22 A. My recollection is that the article speaks of
23 statistical significance and statistical
24 non-significance.

25 Q. Does it indicate what specific coefficient is being

1 defined as statistically significant?

2 A. I believe not.

3 Q. Now, that article came out of the fall 1986 Journal
4 of Education Finance.

5 A. Yes.

6 Q. Did you read that issue of Education Finance or just
7 kind of pull this article out of it?

8 A. I can't remember, honestly. I do subscribe to it.

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

11 THE COURT: Yes.

12 BY MR. HALL:

13 Q. There was another article kind of pertinent for our
14 purposes here in that issue entitled, "A
15 Meta-Analysis of Research on the Relationship Between
16 Educational Expenditures and Student Achievement."

17 A. Uh-huh.

18 Q. Did you read that article --

19 A. I have not read that article.

20 Q. -- by Steven Childs (Phon.) and Carol Shakeshaft
21 (Phon.)?

22 A. I'm not familiar with those people and I have not
23 seen that article.

24 Q. This is a meta-analysis. I want to read the
25 conclusion and ask you if you agree with it or not.

1 MR. KAUFFMAN: I think he has said he is
2 not familiar with these authors at all. Now, if I
3 understand the rules here, until he has somehow given
4 a sense of propriety or a sense of agreement with the
5 authors, he cannot be asked about whether he agrees
6 with the conclusions.

7 MR. TURNER: I think we've been through
8 that before, Your Honor.

9 MR. O'HANLON: I think what we decided was
10 he could read him and ask him whether he agrees with
11 it or not. If the answer is --

12 A. I could save some time, I'm sure, by saying that I --

13 THE COURT: Excuse me, please.

14 I think, Mr. Kauffman, what you're thinking
15 about is 803.18. He's not trying to do that. He's
16 not trying to establish -- or at least he's not going
17 to be able to do so with this witness -- what he is
18 fixing to go read from there is a learned treatise
19 under 803.18, but that doesn't mean he can't ask the
20 witness if he agrees with the statement in there.

21 MR. GRAY: Your Honor, from
22 Plaintiff-Intervenors, that's our understanding of
23 this whole line of questioning that he could ask and
24 read all sorts of things and ask the witness do you
25 agree or not agree. The answer is in evidence. The

1 quote or whatever was read is nothing more than a
2 question. It is not evidence.

3 THE COURT: That's right. I'm glad you all
4 remembered that.

5 BY MR. HALL:

6 Q. Let me read to you, Doctor, what is listed as
7 conclusions and recommendations and see if you agree
8 with it or not.

9 "This meta-analysis indicates that the
10 relationship between student achievement and level of
11 educational expenditures is minimal with those
12 expenditures which relate directly to instruction,
13 such as teacher salary and instructional salary,
14 having the most positive relation to student
15 achievement. There are a number of explanations of
16 this finding. One may be that there is no
17 relationship between how much or how little is spent
18 and student achievement. Such a conclusion flies in
19 the face of the experiences and beliefs of most
20 educators. Obviously, if there were no money for
21 books or teachers, there would be no school and
22 achievement would not exist. While such a condition
23 is only hypothetical, so too is the other end of the
24 spectrum. We have no studies comparing schools with
25 unlimited dollars because such schools do not exist.

1 What we do have are schools that spend different
2 amounts of money per pupil, but not enormously
3 different amounts. Thus, we really do not know at
4 what point expenditures make a difference since this
5 study is bound by what exists and what has already
6 been studied. A more reasonable interpretation of
7 the findings of this study might be that past a
8 certain point, it may well be that the amount of
9 money a school district spends is not so vital as how
10 much money is spent."

11 Do you agree with that conclusion?

12 A. I would be reluctant to agree with that conclusion in
13 its entirety.

14 Q. It is a different conclusion than the one drawn by
15 MacPhail-Wilcox, is it not?

16 A. But I am not familiar with these authors, I have not
17 read the study; therefore, I would be loathe to
18 accept or reject their conclusion without having an
19 opportunity to read and study the entire document.

20 Q. I'm not asking you to accept or reject. I'm just
21 asking you, on the basis of what I just read,
22 assuming that's their conclusion, that's different
23 from what MacPhail-Wilcox said.

24 A. Well, I can't accept it or reject -- I can do nothing
25 in response because I would urge that you read first

1 the introductory material to MacPhail-Wilcox and King
2 and you will see why it is that we have such a hard
3 time talking about this relationship between
4 expenditures and educational outcomes.

5 Q. All I'm asking, Doctor, is whether, on the face of
6 what you know about MacPhail-Wilcox and its study and
7 conclusions that it reaches and what I just read you,
8 if we're hearing two different things.

9 A. There is a certain similarity between them. There is
10 a different measure of language. There is a
11 different intonation, if you will, but I would not
12 say that they are altogether different in their
13 overall thrust.

14 MR. HALL: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes.

17 BY MR. HALL:

18 Q. There's one other thing about this article that you
19 didn't read, "A Meta-Analysis of Research." Did you
20 notice in the tables of this article where they are
21 summarizing their conclusions or the data that
22 they're using that they list the actual correlation
23 coefficients?

24 A. Apparently, yes.

25 Q. They don't just say significant and non-significant.

1 A. Apparently so.

2 Q. They make another conclusion I want to ask you if you
3 agree with. "An appropriate trend in the educational
4 expenditure student achievement relationship is the
5 decline of the relationship over decades. Studies
6 prior to 1960 had a mean R of .2528. For the studies
7 conducted in the 1960s the mean R was .1593, and for
8 the studies conducted in the 1970s, the mean R was
9 negative .0413. This trend indicates that studies in
10 recent decades indicate less of a relationship
11 between achievement and expenditures than do earlier
12 studies."

13 Do you agree with that conclusion?

14 A. No.

15 Q. I want to direct your attention to the article we
16 have already looked at by Eric Hanushek. Are you
17 familiar with that article?

18 A. It's been a long time since I looked at it.

19 Q. You know that Eric Hanushek, in this article,
20 analyzes 130 cost quality studies. Do you recall
21 that?

22 A. I'm prepared to accept your statement.

23 MR. HALL: May I approach the witness?

24 THE COURT: Yes.

25

1 BY MR. HALL:

2 Q. It indicates on Page 23 of the study that, "Some
3 studies were probably missed; nevertheless, they're
4 shown in Appendix. 29 published works covering 130
5 separate analyses are included."

6 A. Fine.

7 Q. I want to direct your attention to that appendix on
8 Page 38 of that article and let you look at it there
9 for a second. Would you tell me which one of those
10 studies you've read yourself?

11 A. Is this is a test?

12 Q. I'm just curious.

13 A. Which ones of the studies that I have read?

14 Q. Yes.

15 A. Oh, well --

16 Q. Have you read most of them or some of them?

17 A. Some of them.

18 Q. You haven't read most of them?

19 A. Let me try to look at the number that I have read. I
20 think it would be correct that I have read what are
21 generally regarded as some of the more important
22 ones.

23 Q. All right. Now, of these 130 studies that Dr.
24 Hanushek considers -- remember yesterday that one of
25 the weaknesses that you perceived in the cost quality

1 studies was that they invariably or almost always
2 relied upon a test of standardized achievement
3 test?

4 A. Yes.

5 Q. Would you notice what Dr. Hanushek describes on Page
6 23 of his article as being the characterization of
7 those studies in terms of what they measured. He
8 says, "Three-fifths of the available studies measured
9 performance on the basis of standardized test, while
10 the remainder were based on other outcome measures
11 such as school dropout rates, rates of continuation
12 to further schooling, attendance patterns, attitudes
13 or school grades."

14 Now, the question I want to ask you is that if
15 you left the impression yesterday that by far and
16 away, most all of these tests just measured student
17 achievement by standard achievement, that impression
18 would be wrong?

19 A. Two-thirds of the studies including the most cited
20 and most recognized among them, are relied upon
21 results on standardized achievement tests. I believe
22 you said two-thirds.

23 Q. Well, he summarizes on Page 24 the actual numbers.
24 The ones that relied upon test scores, the number was
25 79 out of 130. The non-test scores measures were 51

1 out of 130.

2 A. Okay. I stand corrected. But I repeat that the most
3 well-known and most well-constructed of those have
4 relied upon results on standardized tests.

5 Q. Now, the conclusion that Dr. Hanushek draws from his
6 analysis of these 130 studies is on Page 30 of his
7 article. He states, "What we currently know about
8 student performance can be stated succinctly. First,
9 there is a large dispersion in student achievement.
10 Second, while not reviewed here, there is
11 overwhelming evidence that a student's performance is
12 strongly affected by the student's family background.
13 Third, there are important differences among
14 teachers, differences that lead different student
15 performance over and above the influence of family
16 background. Fourth, differences in teacher
17 performance cannot be described by any simple set of
18 characteristics such as the backgrounds of the
19 teachers, classroom, organizational techniques,
20 presentation styles and so forth. Finally, and most
21 important for this discussion, higher school
22 expenditures per pupil bear no visible relationship
23 to higher student performance."

24 Do you agree with that conclusion?

25 A. No, sir.

1 Q. Now, when we were talking back at the very beginning
2 about the empirical people in this field and I was
3 trying to get you to name me some folks and we went
4 over the list by Charles Benson?

5 A. Uh-huh.

6 Q. Dr. Benson mentioned Hanushek as one of these people.

7 A. Yes.

8 Q. Neither he nor you mentioned MacPhail-Wilcox, did
9 you?

10 A. Well, she's a younger person.

11 MR. HALL: Your Honor, I'm about to move to
12 something slightly different, if you want to take a
13 break here.

14 THE COURT: We'll take a break and we'll
15 get started up again at ten till.

16 (Morning break.)

17 BY MR. HALL:

18 Q. Dr. Wise, we had talked a little bit about some of
19 the sources of the criticisms that you leveled
20 against the Coleman Report and reports like the
21 Coleman Report. That would include Walberg's
22 analysis, would it not? Your criticisms would apply
23 to him?

24 A. Well, we need to be specific about which of my
25 criticisms and which aspects of his work.

- 1 Q. The criticisms of the multi-regression type studies.
- 2 A. Multi-regression approaches to understanding these
3 issues are fraught with difficulties.
- 4 Q. Have you read Dr. Deborah Verstegen's study on Texas?
- 5 A. I have skimmed it.
- 6 Q. I would assume that your criticisms would apply to
7 that study as well?
- 8 A. It is not a multi-regression analysis.
- 9 Q. So the criticisms that you have leveled would not
10 apply?
- 11 A. I can't say what aspect. Her study is very
12 comprehensive, so I can't say.
- 13 Q. I understand. Now, you recommended an article in
14 this book called, "Indeterminacy in Education" by
15 Steven Kline as a good source for these types of
16 criticisms, the Coleman Report and reports like it?
- 17 A. It is one line of criticism of them, yes.
- 18 Q. I was just curious, who is John McDermott?
- 19 A. He is an attorney in California who was involved with
20 the Serrano litigation.
- 21 Q. He was trial counsel for the Serrano litigation,
22 wasn't he?
- 23 A. That's correct.
- 24 Q. Plaintiffs' trial counsel?
- 25 A. (Nodded head affirmatively.)

1 Q. Sort of like Al Kauffman here; is that correct?

2 A. That's correct.

3 MR. KAUFFMAN: Is that proof of his
4 reputability?

5 MR. HALL: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes.

8 BY MR. HALL:

9 Q. You wrote a foreword to this book, didn't you, Dr.
10 Wise?

11 A. That's correct.

12 Q. I guess you would have read the acknowledgements to
13 the book?

14 A. I can't remember now. It has been a long time.

15 Q. I note here it says, "A major issue in that trial" --
16 and it is talking about Serrano -- "in which I was
17 privileged to serve as trial counsel was the
18 existence, if any, of a relationship between school
19 spending levels and student achievement patterns and
20 the role with social science research in examining
21 that relationship."

22 A. Uh-huh.

23 A. "Out of our discussions of this issue during the
24 trial came the idea for this volume of essays."

25 That's what it says. The Steven Kline essay is

1 one of this volume of essays that you recommended.
2 "Cost Quality Research Limitations, The Problem of
3 Poor Indacies" is the title of the article.

4 I note that there is a kind of footnote to that
5 article that you recommended that says, "Adapted with
6 permission from John E. McDermott and Steven P.
7 Kline, "The Cost Quality Debate in School Finance
8 Litigation, Do Dollars Make a Difference?" The
9 original article from which Steven Kline adapted this
10 article was an article written with plaintiff's
11 counsel in Serrano litigation.

12 A. Yes, I take it.

13 Q. That's right?

14 Now, we kind of talked about two of the areas
15 that you presented in your direct examination as
16 reasons for why this court ought to determine that
17 there is a relationship between cost and quality.
18 The final one was your kind of common sense
19 arguments. I want to spend a few minutes talking
20 about that right now.

21 Am I understanding your position correctly that
22 since parents and educators and administrators and
23 legislators want more money for education and like
24 more money for education, it must mean that more
25 money counts. Is that the argument?

1 A. No, not fully.

2 Q. Why don't you state it again just so that we'll be on
3 the same track.

4 A. What I think I may have said or what I think I did
5 say was, most people involved in the education
6 enterprise believe that there is a relationship
7 between resources provided and educational outcomes
8 and exercise their respective responsibilities to
9 achieve as high a level as possible consistent, of
10 course, with the need for taxation, maintaining --
11 well, proper levels of taxation. And most people
12 believe they can improve the quality of education by
13 providing more resources.

14 Q. These most people you are talking about initially
15 here are the people involved in education?

16 A. State legislators, state Department of Education
17 officials, commissioners of education who regularly
18 appear before legislatures to ask for funds for
19 Foundation programs, school board members who plead
20 with county councils in order to raise funds for
21 schools, and other officials charged with
22 responsibilities.

23 MR. HALL: Your Honor, may I approach the
24 witness?

25 THE COURT: You need not ask me if you want

1 to do that.

2 BY MR. HALL:

3 Q. Now, Dr. Wise, I know what your position is now. I
4 understand your argument. But for the purpose of
5 clarity and so the Court might be able to have other
6 possibilities, I want to ask you to consider with me
7 some other implications that might be drawn from the
8 fact that teachers, administrators and school
9 officials, in the first place, want more money for
10 schools.

11 I want to direct your attention to this article
12 that we've looked at by Dr. Hanushek. As you recall,
13 the article came to some conclusions that you
14 disagreed with about the effect of spending upon
15 education, the most final of which was, "Most
16 important for this discussion, higher school
17 expenditures per pupil bear no visible relationship
18 to higher student performance."

19 Dr. Hanushek addresses the question of how does
20 that comport with common sense. I want to read you
21 what he says. He asks, "Why is school policy so
22 impervious to the facts? An obvious starting place
23 is the organizational structure of schools and the
24 incentives facing decision-makers. Schools are
25 complex organizations and decisions are not made by

1 any single identifiable individual. State and
2 federal agencies, local school board, administrators,
3 teachers, and even students make decisions that have
4 direct bearing on the educational process and the
5 performance of schools. However, many of these
6 actors face a real conflict of interest. They are
7 torn between the interest of the community, the
8 welfare of the students and their own private
9 interests."

10 He picks up teachers first. He says, "The
11 conflict is most obvious in the case of teachers and
12 teacher unions. Teachers have traditionally served
13 as experts determining both what is taught and how it
14 is taught. Yet teacher unions have traditionally
15 union objectives of securing favorable pay and
16 working conditions. At the beginning of the movement
17 toward collective bargaining by teachers, teachers
18 openly discussed whether traditional unions were
19 consistent with professionalism and unionization was
20 not instantly accepted. Today, teacher unions are
21 expected to act just like any other union, attempting
22 to secure favorable pay and working conditions for
23 their members. Decisions on class size, length of
24 the school day, curriculum and similar matters may
25 affect the quality of education offered, but at the

1 same time, they have an unmistakable influence on the
2 demand for teachers and the conditions under which
3 they work. Such issues now frequently appear on
4 contract negotiation agenda and the discussions and
5 outcomes appear seldom to turn on the educational
6 merits of the policy."

7 What I want to ask you is directed first just
8 to teachers. And that is, knowing your overall
9 position, would you yet admit that it is possible to
10 view the desire of teachers for smaller classes and
11 nicer schools not necessarily with the belief that it
12 gets better education, but just that it is nicer
13 working conditions?

14 A. It is also possible that --

15 Q. First, let's ask that possibility. Is that possible?

16 A. Rephrase the question, please.

17 Q. Is it possible that the desire of teachers for
18 smaller class and their support for the same, for
19 nicer working facilities, for more materials, better
20 materials, is influenced, at least in part, not by
21 educational objectives, but by a desire to have nice
22 working conditions?

23 A. Both can be operative.

24 Q. Both can be operative.

25 For example, I gather that you wouldn't believe

1 the Pentagon every time it says it needs more money
2 for defense is giving a realistic representation of
3 national defense needs.

4 A. I would have to look into the matter in each
5 particular occasion.

6 Q. But going in, one of the reasons you would want to
7 look into it is because you know that they have a
8 vested interest in getting more money.

9 A. I can't accept that.

10 Q. That a guy who works in some administrative agency
11 wants more money, not because it will make him more
12 effective at his job, but because he can have a nicer
13 desk, a nicer office, some nicer supplies, and all of
14 the nice things that everybody who works likes to
15 have, you do not recognize that as any kind of --

16 A. It is not that simple.

17 Q. I'm not saying that is the only thing, but that is a
18 factor. That's all I'm asking.

19 A. Well, the question is what the budget would be being
20 requested for. Typically, the Pentagon is looking
21 for a new weapon system, quite apart from a request
22 for new office supplies or a new desk. You can look
23 at each item one at a time.

24 Q. I know, but common sense would tell you that you look
25 at it a little bit more closely because of who is

1 asking for it?

2 A. Common sense suggests you look at every request for
3 increased expenditures closely. Good prudent
4 management would suggest that you look at each
5 request for an increase in funds prudently.

6 Q. One of the things you look at and recognize is the
7 built-in possibility of conflicts of interest.

8 A. Public policy-makers have that as their job, to
9 scrutinize such situations.

10 Q. That's common sense.

11 A. That's correct. Good management, I prefer to call it
12 in that circumstance.

13 Q. Well, we've used common sense so frequently during
14 this trial. I'm just trying to use it again here.
15 Is that all right?

16 A. Not necessarily.

17 Q. Hanushek writes about administrators and says, "It
18 generally serves the interest of administrators to
19 accept teachers' arguments about reducing class
20 sizes, raising salaries and increasing expenditures.
21 Such policies increase the administrators' domain,
22 lessen conflicts with their employees, and ultimately
23 must affect their own salaries. Teacher training
24 institutions, the chief purveyors of conventional
25 wisdom about organization and teaching methods and

1 through the traditional source of most research in
2 education, have a direct stake in choices that
3 influence the aggregate demand for teachers and for
4 teacher training, particularly class size, and
5 requirements for graduate degrees."

6 I'll skip on.

7 It says, "Finally, even local school boards are
8 affected by such conflicts. Rarely representative of
9 the general population, they are usually been
10 composed of individuals closely associated with the
11 schools and individuals generally favoring quality
12 education."

13 Do you agree or disagree with Dr. Hanushek?

14 A. You said a lot. I'm not sure that I can easily agree
15 or disagree with that. I think you need to give me a
16 crisper question.

17 Q. Okay. Let me break it down into smaller portions.

18 Do you agree that it is common sense to
19 recognize that school administrators may have a
20 built-in personal interest in more money spent on
21 education?

22 A. Well, they certainly have a need to continue to
23 recruit good teachers in order to look good
24 themselves. If they are in a position to offer
25 higher salaries, they are then able to attract a more

1 qualified pool, which then makes them look good, yes.

2 Q. But looking good themselves, you see as one of the
3 things that must be recognized as a motivation of
4 administrators?

5 A. Well, certainly an administrator is accountable for
6 insuring to his constituency or her constituency the
7 highest quality of education possible.

8 Q. Let me ask you finally about consumers.

9 Dr. Hanushek writes this. "The evidence
10 summarized earlier indicates that the public makes
11 expenditures that yield no apparent benefits. Why?
12 One explanation may be that consumers of school
13 service are simply poor buyers. A variety of factors
14 may explain poor buying behavior. Again, performance
15 measurement is difficult and the effects of good or
16 bad education are not usually observed until after
17 the student leaves school, when it is too late to
18 correct any mistakes. Besides, the arguments for
19 reducing class size, hiring more qualified teachers,
20 and so forth seem, on first consideration, inherently
21 plausible. Anyone who argues that such policies will
22 improve student performance is arguing on the side of
23 reason even if not supported by the evidence."

24 He goes on to say, "Other possibilities,
25 however, could explain the behavior of the American

1 public in buying school services. One such
2 possibility is that in choosing a school, parents do
3 not see themselves as primarily buying differences in
4 educational services. Instead, they may be selecting
5 a social and physical environment for themselves and
6 their children, including pleasant surroundings,
7 athletic facilities, cultural advantages, and other
8 students with compatible backgrounds. Simply put,
9 higher expenditures may have a consumption element
10 and may aid higher income parents in segregating
11 their children."

12 What I want to ask you is, if you agree that
13 the fact that rich parents want to spend more money
14 on their children may have what Hanushek calls a
15 consumption element?

16 A. I'm not sure that I understand the point.

17 Q. Well, maybe I can rephrase it.

18 A. What do you mean by consumption element? I don't
19 know that you gave me his definition exactly.

20 Q. Maybe I can rephrase it in my own words, and I'll
21 just ask you the question.

22 MR. BUSTILLO: Excuse me, Your Honor. May
23 I give the witness a copy of the article?

24 THE COURT: All right, sir.
25

1 BY MR. HALL:

2 Q. Again, Dr. Wise, we're looking at the article called,
3 "Throwing Money at Schools" by Eric Hanushek
4 published in the Journal of Policy Analysis and
5 Managements, Volume I, fall of 1981.

6 The question I'll ask -- this is my own words,
7 not necessarily Dr. Hanushek's -- is this. Do you
8 see it as a possibility that parents desiring to
9 spend more money for schools are not simply desiring
10 more money for education, but for rather some of the
11 nice things that go into nice school buildings,
12 athletic facilities, et cetera?

13 A. No, I don't accept that.

14 Q. So you would believe that every parent out there who
15 is voting on the budgets for schools, say, in a rich
16 district, is seeing in their mind that every dollar
17 they spend means more student achievement?

18 A. Better educational opportunities, certainly. Whether
19 that is related to academic achievement is not
20 necessarily clear, but if they want to have
21 facilities in order to teach their youngsters
22 swimming, or basketball, or basketweaving, then they
23 are buying some educational beneficial consequence
24 which they regard as important for their youngster.

25 Q. I guess that's the chief question, isn't it? What is

1 education, in their minds? Lots of things happen at
2 schools, don't they?

3 A. Yes.

4 Q. We have co-curricular activities. We have plenty of
5 things that a previous age would have never even
6 viewed as educational, per se, right?

7 A. Well, your choice of words is interesting. Many
8 people used to refer to the extracurricular
9 activities, and increasingly they no longer do. They
10 refer to them as co-curricular activities to indicate
11 that they do have educational consequences such as
12 teaching youngsters how to get along in groups or
13 teaching them physical activities or sports. They
14 see them as an extension of the curriculum as leading
15 not simply to increases in measured achievement on
16 test scores, but having other beneficial
17 consequences, such as preparing young people better
18 to take part in the great race of life.

19 Q. Uh-huh. So it is your belief that that parent out
20 there who is paying the taxes, whether a lot of money
21 or a little money, believes honestly that every
22 dollar out of the pocket is going into better
23 education?

24 A. Every dollar well managed is going into that area of
25 education.

1 Q. So to that extent, you would disagree with Dr.
2 Hanushek?

3 A. With regard to parents, absolutely.

4 Q. How do you define -- well, that's not the question.
5 It is, how do you measure equal educational
6 opportunity?

7 A. Well, we went through that already. It's in your
8 exhibit.

9 Q. No, these are definitions. I guess I'm not being
10 clear enough.

11 What kind of real-life measures would you use
12 to tell whether equal educational opportunity, as
13 you've defined it in nine possibilities, is being
14 attained?

15 A. I would say, to introduce a new idea, that all
16 parents should be equally satisfied with the quality
17 of the educational experience that their youngsters
18 receive at the hands of the state.

19 When that can be said, then I would be
20 satisfied. When I do not hear disproportionate
21 complaints coming from parents in poor communities,
22 then I would know we have reached a state I would
23 like to be in and I would like to see America in.

24 Q. Haven't you frequently advocated that we simply use
25 dollars as the measurement of equal educational

1 opportunity?

2 A. No.

3 Q. You haven't said that we should use dollars, a
4 difference in dollars spent is prima facie evidence
5 that there is not equal educational opportunity?

6 A. Yes, when those differences are shown to be related
7 to socioeconomic status and not to educational
8 considerations. That is a proof of inequality. I
9 have said equality is something else.

10 In practical terms, it is related to having
11 equal or relatively equivalent programmatic offerings
12 in all kinds of school districts, rich and poor
13 alike. That is the genesis of my statement, that
14 when all parents are equally satisfied, then I will
15 know that we have reached the happy state.

16 Q. But that definition builds in the fact that unless a
17 parent perceives that they are getting exactly what
18 somebody else is getting, they won't be satisfied?

19 A. I doubt that. All parents do not want the same
20 things for their children. I didn't say that. When
21 rich parents are unsatisfied with the quality of
22 education which is experienced in their districts,
23 they frequently send their children to private
24 schools where classes are smaller, and attention is
25 more individualized, and children are given better

1 ability to develop all of their potentials, academic
2 and co-curricular. That's how rich people display
3 their dissatisfaction with the quality of education.

4 So there are practical signs of people's
5 satisfaction or dissatisfaction with the schools.
6 All I'm saying is when poor people are at least as
7 content as people in more affluent communities, I
8 will judge we have reached a pretty happy state of
9 equality of educational opportunity.

10 I would produce that through a financing system
11 which reduced the inequality, which is the result of
12 differences in resources which happen to be available
13 to rich people and poor people. And I would produce
14 programmatic offerings that enable people in
15 different classes of school districts to have the
16 opportunity to have their children have all of their
17 abilities developed.

18 MR. HALL: I pass the witness, Your Honor.

19 MR. O'HANLON: May I approach the board,
20 Your Honor?

21 THE COURT: Yes.

22 CROSS EXAMINATION

23 BY MR. O'HANLON:

24 Q. Dr. Wise, you have been involved in the redesign of
25 the Connecticut school finance system; is that

1 correct?

2 A. Specifically, I would like to detail my involvement.
3 I was the chief consultant to the Governor's
4 Commission on Equity and Excellence in Education,
5 which developed a concept for the reform of school
6 finance in the state of Connecticut --

7 Q. Okay.

8 A. -- among other features of the -- there were other
9 parts of the plan that were also advanced.

10 Q. If I can take a little literary license here, I want
11 to play the Connecticut Yankees in Port Arthur's
12 court and ask you to describe some of the salient
13 features of the redesigned, tuned-up Connecticut
14 school finance system. Is it fair to characterize
15 that system as a Foundation Program?

16 A. In part.

17 Q. Okay. You're familiar with what a Foundation School
18 Program is?

19 A. Yes.

20 Q. So we start off with the basic notion of Foundation
21 School Program; is that correct?

22 A. Correct.

23 Q. It sets out, I assume, a basic allotment of a certain
24 amount of dollars?

25 A. (Nodded head affirmatively.)

1 Q. All right. When you retool that system, how many
2 districts are there in the state?

3 A. Oh, around 180, I believe.

4 Q. Okay. How many did you get rid of?

5 A. None.

6 Q. Okay. What is the wealth variation in the state from
7 district to district?

8 A. Well, I repeat I was not involved in the design of
9 the formula, per se. I was involved in advancing the
10 concepts, which -- the concepts were a new form of
11 state aid which are over and above the Foundation
12 Program.

13 Q. Okay. We'll talk about that in a second. But before
14 you design a concept, you will admit that you have to
15 have some kind of notion about what the wealth
16 variation is out there.

17 A. Actually not. We had a different starting point for
18 our work, which was someplace else. If you want me
19 to explain that, I will.

20 Q. Please do.

21 A. Our commission began its work with the realization
22 that teacher salaries in Connecticut began anywhere
23 from 11,000 to 20,000. There was some districts
24 offering -- excuse me -- about 18,000 at that point
25 in time, and others were offering salaries of 11,000.

1 I believe I said 18. I corrected myself.

2 Q. Okay.

3 A. Beginning teacher salaries when this commission began
4 its work were on that order of magnitude from one
5 district to another. The first thing which the
6 commission did was begin to consider the notion of a
7 floor on teachers -- on beginning teacher's salaries.

8 Q. Is it fair to characterize that as minimum salary
9 schedule?

10 A. No. It is not correct. It is correct to
11 characterize that as a minimum starting salary.

12 Q. Okay, minimum starting salary. Did you put that in
13 place?

14 A. It has been put in place with local discretion either
15 to accept it or reject it, but the state is financing
16 the full cost of that.

17 Q. Do you recall what the amount was?

18 A. As finally implemented under the legislation passed
19 last June, I think it was nineteen-five.

20 Q. Okay.

21 A. Districts are free, however, to accept or reject, and
22 three districts out of the 180 have rejected it.

23 Q. Okay. So that's not even mandatory. That doesn't
24 guarantee that teacher that salary. It is just if
25 they want to.

1 A. Remember, I said yesterday there is a lot of tension
2 between local control and state direction in
3 Connecticut.

4 Q. Okay. So how did you get the money to the district?

5 A. The concept is a straight line that this particular
6 feature delivers money to the districts based on the
7 number of teachers at the beginning of the schedule.

8 Q. Personnel units?

9 A. Teacher units.

10 Q. Oh, okay.

11 A. Teachers, persons on pay.

12 Q. Okay, teacher units. And salaries distributed on the
13 basis of teacher units?

14 A. Remember now, I only participated in this process at
15 the conceptual level. They went through another
16 whole year of work before it was implemented in
17 specific terms.

18 The recommendation was -- and, in fact, as it
19 was implemented, yes, to base the number of teachers
20 at the beginning of the schedule that the state
21 finances that.

22 Q. So the state distributes money on the basis of
23 teacher units. This was the big reform?

24 A. This is not the whole story.

25 Q. Okay. Let's talk about that.

1 Are you aware that Texas for years had a
2 teacher unit system and that every witness that has
3 testified in this case has uniformly praised the
4 rejection of that system for the State of Texas as
5 being disequalizing?

6 A. I'm not familiar with what you're talking about, but
7 I haven't finished describing the plan.

8 Q. I'm just asking you about that now.

9 Are you aware of what happened in Texas and
10 that every witness --

11 A. I'm not aware of what happened in Texas, but I am
12 aware that the \$11,000.00 beginning salaries were
13 being offered in poor school districts in the state
14 of Connecticut.

15 I am not advancing this plan for the State of
16 Texas. Please understand that. This was done after
17 a year of study or a year and a half of study by a
18 group and by me. So I'm not advocating this for this
19 state by any stretch. That responds to the unique
20 circumstances of Connecticut.

21 Q. Uh-huh.

22 A. That particular provision was particularly equalizing
23 in its effect because it disproportionately gave
24 money to poor school districts.

25 Q. How did it do that conceptually? How did it

1 disproportionately give money to poor districts?

2 A. It gave money to school districts on the basis of the
3 number of teacher units.

4 Q. Okay. How did it do that? Did it let the rich
5 districts say, "We're going to have 15 people in the
6 classroom," when the poor districts have 30 kids in
7 the classroom, so they would have two teacher units
8 and they'd have one teacher unit? Is that how you
9 did it? Did you just count the --

10 A. No. The total package does not allow the school
11 district to reduce -- in fact, it encourages them to
12 reduce class size at the same time. I haven't gotten
13 to that part of it yet.

14 Q. Okay. So it encourages them to do it. But how did
15 you allocate it to start off with? Do you just count
16 the noses?

17 Well, let's go on. How does it encourage them
18 to reduce class sizes?

19 A. Because the rest of the bill, as designed, reduces
20 the -- it enforces a minimum ratio so that they
21 cannot use the -- well, I really can't talk without
22 beginning to explain more about the plan.

23 Q. Please do.

24 A. The rest of the plan distributes money on an
25 equalized basis to school districts to upgrade the

1 rest of their salary schedule. That's where the big
2 money is. Around 5 million or so was involved in
3 beginning teacher salaries at the initial inception
4 and around 40 to 50 million is involved in this part,
5 which is equalized.

6 Q. Okay. So what it does is, it -- how does it do that?
7 What is the mechanism for doing that?

8 A. There are several mechanisms for doing that. The
9 first mechanism takes into account local wealth. The
10 second mechanism is that there is a provision that
11 prevents school districts from increasing class size
12 as a way of otherwise absorbing money, and districts
13 are then free with this \$40 or \$50 million to --

14 Q. Just a second. I don't want to cut you off. I want
15 to write this down. Okay. First of all, you said
16 based on local wealth --

17 A. Yes.

18 Q. -- the provision says you can't increase class sizes --

19 A. Correct.

20 Q. -- to absorb money?

21 A. Right.

22 Q. What was the third thing?

23 A. The third thing is school districts are then free to
24 decide how they wish to allocate that money among
25 their more experienced teachers, those beyond the

1 first year of teaching.

2 Q. Districts' discretion for salary distribution.

3 A. Right.

4 Q. Okay. Now, take local wealth out. How do you
5 distribute it? Is it fair to characterize this as
6 saying that what you do, in some respects, is you
7 take the district's share as a percentage of the
8 wealth of the state as a whole and allocate based on
9 that basis?

10 A. I have not studied the final formula as it was
11 implemented. It is, however, a formula which takes
12 into account local wealth and distributes more
13 resources to poorer districts than it does to richer
14 districts.

15 Q. And a system that does that is equalizing, isn't it?

16 A. Yes.

17 Q. And that's good?

18 A. Well, if you favor equalization, it is good.

19 Q. Okay. And when is it enough?

20 A. When is it enough?

21 Q. Yeah, when is it enough? When do you say, "We've
22 equalized enough"?

23 A. Well, that's certainly not for me to say. That is
24 for the legislature of Connecticut to say, and
25 perhaps for the state court in Connecticut to say.

1 Q. And similarly, I guess, it is not for you to say in
2 this case, is it?

3 A. I would say that it must fall to policy-makers to
4 decide how much is enough, certainly.

5 Q. Okay. Is that what you're saying to the
6 policy-makers in this case, that you can't say that
7 the State of Texas has got a sufficiently equalized
8 system or not?

9 A. I can form my own judgments about that, certainly.

10 Q. Well, if you didn't do it with --

11 A. It is not my job.

12 Q. If you didn't do it with Connecticut after studying
13 it and working on it for a year and a half, how can
14 you do it in Texas without looking at any data?

15 A. The circumstances were entirely different.

16 Q. Yes. In Connecticut you looked at it and in Texas
17 you haven't.

18 A. I think that's the wrong way to characterize the
19 distinction.

20 Q. Well, how would you characterize it?

21 A. I would characterize it as a circumstance in which
22 this commission hired me and asked me for advice and
23 certainly informed me about the parameters of change
24 that they intended and thought politically feasible
25 to implement.

1 Q. Oh, so they couldn't get it all in Connecticut and
2 you're perfectly willing to accept that?

3 A. They did not want it all in Connecticut.

4 Q. So therefore, you didn't think it was necessary to
5 get it all in Connecticut, but in this case you were
6 hired for the purpose of getting it all, so your
7 conclusions are different; is that right?

8 A. No.

9 Q. Then how can you, as a social scientist, given the
10 canons that you talked about, the scientific canons
11 as a sociologist, come to different conclusions based
12 on the purpose of your involvement?

13 A. Well, the fact of the matter is that when one begins
14 to give advice, one ceases to be a social scientist
15 in the true sense of the term. One becomes a policy
16 advisor.

17 In the circumstance of Connecticut, I was a
18 policy advisor to the governor and the legislature.
19 In this circumstance, as it were, I'm a policy
20 advisor to the Court.

21 Q. Okay. So you are not here as a social scientist,
22 then. You are a policy advisor to the Court?

23 A. Well, I would say that it's a mixed picture. It
24 always is a mixed picture for somebody in my
25 situation.

1 Q. I see. We know you're not here as a social scientist
2 because if you were here as a social scientist,
3 wouldn't you have looked at the data in Texas?

4 A. Well, I have looked at enough of the data for me to
5 be persuaded that the State of Texas could do better.

6 Q. I see. Have you looked at test scores and what the
7 correlation between test scores and spending in Texas
8 is? Have you looked at it?

9 A. That's not material to me.

10 Q. Oh, it is not material. So we can disregard that.
11 Okay. Have you looked at the correlation between
12 dropout rates --

13 A. I did not say you could disregard it. I said I did
14 not regard it as material.

15 Q. Okay. Have you looked at the correlation between
16 dropout rates and expenditures in Texas?

17 A. Not carefully, no.

18 Q. Okay. Is that not important to you either?

19 A. It is not important to me.

20 Q. I see. Have you looked at the correlation between
21 teacher quality, as measured by the district's
22 assessment, and salaries?

23 A. I know that poor districts had disproportionate
24 failure rates on teacher competency tests.

25 Q. Okay. What about appraisals? How about their

1 classroom skills? How do you know that poor
2 districts have higher failure rates?

3 A. I read about it in the New York Times.

4 Q. Oh, you read about one district in the state, didn't
5 you?

6 A. Well, I think I read about more than one.

7 Q. No. That article in the New York Times spoke about
8 one district, the North Forest District, which we've
9 heard about in this case.

10 A. Perhaps I read it in some other national periodical.

11 Q. Which one?

12 A. I can't recall now. I read a lot of magazines and a
13 lot of journals.

14 Q. You think you might have picked it up in Reader's
15 Digest or some scientific journal like that?

16 A. More likely, it was an educational journal.

17 Q. Well, who wrote it?

18 A. I cannot now recall.

19 Q. What if I told you that we've looked at correlational
20 analysis on state data and we don't find any
21 disproportionate failure on a statewide basis
22 depending on what district they come from, rich or
23 poor? You would hold your Reader's Digest up to
24 that?

25 A. Not likely.

1 Q. What if I told you that there isn't any difference
2 between the way the rich and the poor districts
3 appraise their teachers in terms of their own
4 assessment as to how good they are?

5 MR. KAUFFMAN: Your Honor, I assume these
6 last two were hypothetical questions. I don't think
7 there is any record he has put on to support either
8 one of these hypothetical assertions.

9 BY MR. O'HANLON:

10 Q. I will flesh out the hypothetical situation a little
11 bit.

12 In connection with the discovery in this case,
13 we asked the Plaintiff districts to produce the
14 results of their appraisals in this state on a
15 uniform statewide appraisal, and that looking at it,
16 we can't find any difference between the way any
17 district -- substantial difference -- appraises their
18 teachers in this state. Is that important to look at
19 as a social scientist?

20 A. Are you referring to the scores which they receive on
21 their teacher evaluation forms? Is that what you're
22 saying?

23 Q. Yes, sir, I am.

24 A. Are you saying to me that the scores are the same
25 from one district to another?

1 Q. There is no material difference based upon the
2 expenditure on average teachers' salaries. We
3 couldn't find one. Is that important to look at as a
4 social scientist?

5 A. Well, in our teacher evaluation work, we have
6 described how such procedures are inherently
7 unreliable.

8 Q. We can throw that out, too?

9 A. No, I wouldn't say that.

10 Q. So what measures are we going to use to determine if
11 money makes a difference?

12 A. Do you want to --

13 Q. We have thrown out test scores because they're
14 unreliable. We have thrown out teacher appraisals
15 because they're unreliable.

16 A. You have thrown them out. I haven't agreed with you
17 on any of those.

18 Q. Oh, I'm sorry. Then they are reliable. Then they're
19 something you should look at; is that right?

20 A. Yes.

21 Q. Then as a social scientist, why haven't you looked at
22 them in Texas?

23 A. Well, I think it is only correct to say that I am
24 sufficiently persuaded that there is a correlation
25 between the provision of education and the wealth of

1 local school districts.

2 Q. Do you know what it is in Texas?

3 A. Well, I know a correlation that Deborah Verstegen has
4 on that. It is a pretty good correlation between
5 district wealth and district spending.

6 Q. What is a pretty good -- how about --

7 A. How about .4.

8 Q. -- .136?

9 A. That's not correct.

10 Q. How about the relationship between expenditures from
11 total state and local revenue per pupil to test
12 scores, and the relationship is .136.

13 A. You didn't hear me, sir. You asked me, I think, what
14 the basis was for my judgment that there is a problem
15 here. My judgment that there is a problem here is
16 revealed by the fact that there is an approximately
17 .4 correlation between district wealth and district
18 spending.

19 Therefore, the quality of a child's education
20 in this state is dependent on how wealthy his local
21 school district is.

22 Q. But what makes you think that spending gets you
23 quality? Isn't that an intuitive leap that you're
24 willing to make that we need to examine with some
25 depth?

1 A. It is a conclusion which I feel comfortable with, but
2 perhaps you don't.

3 Q. What is the basis of it when you've got a test score --
4 when the relationship between expenditures and test
5 scores don't show the relationship that you are
6 attempting to intuit (sic.), especially in Texas?

7 A. Well, for all of the reasons that I have earlier
8 described, those kinds of studies are absolutely
9 inadequate to reach the conclusion that you want to
10 reach.

11 Q. Oh, I see. Do you know what the TEAMS test scores --
12 what attests in Texas? Have you looked at it?

13 A. Not in detail.

14 Q. Is it important to look at it, do you think?

15 A. It is a standardized test of basic skills.

16 Q. In what subjects, sir?

17 A. Reading and arithmetic.

18 Q. Uh-huh. What about geometry?

19 A. It is part of arithmetic.

20 Q. What about writing? What about history? What about
21 social studies? What if it happens to be upon --
22 have you ever looked at the statewide curriculum in
23 this state?

24 A. Not in detail.

25 Q. Do you think it's important that you might take a

1 look at it as a social scientist?

2 A. Well, if you would like to retain me for that
3 purpose, I would be happy to do so.

4 Q. Well, you're in here telling the Court -- you're
5 trying to get the Court to believe you, I assume.

6 A. Yes.

7 Q. And isn't it important as a social scientist to have
8 some empirical basis and some knowledge of that
9 system which you're attempting to analyze?

10 A. Well, I base my knowledge, as I think was made quite
11 clear, on my general experience over 22 years across
12 the country. I have no reason for thinking that
13 Texas is that deviant from the rest of the country.

14 Q. Isn't that an assumption?

15 A. That is an assumption, yes, sir.

16 Q. Have you attempted to look at that assumption in
17 terms of empirical facts?

18 A. I have looked at sufficient empirical facts to make
19 me feel comfortable being here --

20 Q. For Texas?

21 A. -- and speaking in general terms, as I have
22 endeavored to do.

23 Q. Okay. But you wouldn't contest -- if witnesses have
24 spent some time examining the empirical facts, then,
25 you wouldn't have any particular reason to discount

1 what they said?

2 A. I wouldn't have any reason to discount what they say,
3 but I think that one has to draw quite careful -- one
4 has to be very careful about the conclusions which
5 one draws from simplistic correlational analysis
6 because, as I stated at great length yesterday, it
7 fails to capture the full range of the purposes of
8 public education.

9 Q. What if the purposes of public education are to
10 encompass both basic skills and higher order thinking
11 skills?

12 A. That is the beginning of a better definition of
13 educational opportunity, but it is not a sufficient
14 one.

15 Q. What if that is set out in great detail in a document
16 that's 350 pages long that defines educational
17 quality both in terms of scope and sequence, and
18 mandates the provision of that educational
19 opportunity to every student in the state? You don't
20 think it's important to look at that?

21 A. I certainly think it's important for you to look at
22 that, yes.

23 Q. Okay, but you haven't?

24 A. The Texas Education Code is well known for its
25 length. I have not studied it in great detail.

1 Texas is well known nationally as one of the most
2 prescriptive states. Texas is well known for its
3 textbook adoption policies which create some degree
4 of uniform curriculum across the state.

5 Q. What if the standardized test that we're talking
6 about is drawn specifically from the uniform
7 curriculum, all elements, including both higher order
8 thinking skills and the basic skills? Would you
9 start to think that that test is starting to make a
10 little difference here?

11 A. I'm not here disputing the utility of that test.

12 Q. It's not the same as looking at the SAT, is it?

13 A. Absolutely not.

14 Q. It's not the same looking at anything because if you
15 set out a requirement and then test on it, that's how
16 we do education, isn't it?

17 A. That's how you do it in the State of Texas.

18 Q. That's how you do it everywhere, isn't it?

19 A. Well, some states prefer to leave that discretion at
20 the local district level.

21 Q. Uh-huh. That's how you do it in a classroom, isn't
22 it? You give your students assignments, and then
23 give them tests; isn't that right?

24 A. That's correct.

25 Q. That's how it is done.

1 The question is, is whether or not it tests.
2 Isn't it important to look at that? Isn't it
3 important to know that before you just merely
4 out-of-hand discount test results?

5 A. I'm not discounting the test results.

6 Q. So when Dr. Verstegen gets a 1.36 correlation between
7 expenditures and test results in this state, then
8 you're not discounting that?

9 A. I would say there are a lot of factors which go into
10 explaining why she finds that relatively low level of
11 correlation, including the fact that takes no account
12 of the fact that it costs different amounts of money
13 to produce education in different parts of Texas, in
14 different school districts of Texas, and those
15 differences in cost are not reflected in any way in
16 that particular regression analysis.

17 Q. I see. So you think that a state has some obligation
18 to take into account differential costs for
19 differential students?

20 A. I think I have said that in different ways.

21 Q. How does Connecticut do it?

22 A. They have provisions for programs for the handicapped
23 and compensatory education programs.

24 Q. State funded?

25 A. Some state funding, yes.

- 1 Q. Okay. Let's talk about that for a second.
- 2 Would you consider Connecticut to be forward
- 3 looking in their terms of -- their treatment of
- 4 special population?
- 5 A. No, not especially.
- 6 Q. They are under court supervision. Does their
- 7 treatment of special populations in Connecticut
- 8 comport with the Court's supervision?
- 9 A. Apparently.
- 10 Q. Okay. So they have a provision for comp. ed.?
- 11 A. Yes.
- 12 Q. Special ed.?
- 13 A. Yes.
- 14 Q. Are these weighted programs? Are you familiar with
- 15 that concept?
- 16 A. I believe so.
- 17 Q. That's how they do it up there?
- 18 A. I believe so.
- 19 Q. Okay. What else?
- 20 A. I don't recall.
- 21 Q. Bilingual?
- 22 A. I'm not sure. I'm not sure.
- 23 Q. Vocational ed.?
- 24 A. They operate vocational education differently.
- 25 Q. Do they weight them to make it -- vocational ed.

1 costs more, doesn't it?

2 A. They operate the vocational system entirely outside
3 of the structure of local school districts on a
4 statewide basis.

5 Q. Okay. Is there any attempt in Connecticut to account
6 for differences associated with where in the state
7 somebody happens to be?

8 A. No.

9 Q. Are you familiar with the concept of Price
10 Differential Index?

11 A. Yes.

12 Q. Do you think that's a good idea?

13 A. May make some sense.

14 Q. Okay. But Connecticut doesn't do that, does it?

15 A. You can drive from one end of Connecticut to the
16 other in about an hour.

17 Q. Yeah, but there is a lot of difference between New
18 Haven and upstate Connecticut, isn't there?

19 A. Some difference.

20 Q. Uh-huh. And there's a whole lot of difference in the
21 population and the cost associated there, isn't
22 there?

23 A. That's a disputable area.

24 Q. I could drive from here to east Austin in 10 minutes,
25 but there is a heck of a lot of difference between

- 1 here and there, isn't there?
- 2 A. Perhaps.
- 3 Q. So there is no Price Differential Index?
- 4 A. No.
- 5 Q. Is there any adjustment for the size of the
- 6 districts, for small districts, for sparse districts?
- 7 A. I believe they have sparsity and density factors.
- 8 Q. Okay. Now, one of the things that you said was a
- 9 salient portion of the Connecticut reform was the 25
- 10 percent increase in the state expenditure.
- 11 A. Yes.
- 12 Q. Can you tell me how much to how much approximately?
- 13 A. Yes, about 400 to 500.
- 14 Q. 400 to 500 million?
- 15 A. Uh-huh.
- 16 Q. How many students are there in the state?
- 17 A. Oh, I don't recall.
- 18 Q. Okay. So a \$4 billion to a \$5 billion increase would
- 19 be a 25 percent increase too, wouldn't it?
- 20 A. Yes.
- 21 Q. Okay. It's important to couple that with the reform,
- 22 isn't it, that increase?
- 23 A. One can.
- 24 Q. That's what you said yesterday.
- 25 A. I don't know that I -- I don't understand what you

1 mean.

2 Q. Well, in terms of making it go down easy and in terms
3 of making it work, it's important to kind of couple
4 an increase in state aid because it's a win/win
5 situation for everybody, right?

6 A. I don't understand.

7 Q. Well, you understood yesterday. Remember when you
8 were talking about that the problem here is that it's
9 harder when you're actually taking away money from
10 districts, and when you couple a reform with an
11 increase, you could put all the money in the poor
12 districts and just keep the quote "rich districts"
13 the same, and that will be a lot easier than actually
14 taking money away from the rich district.

15 A. I guess I said that. I said something like that.

16 Q. Okay. So it's important to couple a systemic change
17 with an increase?

18 A. That is stated too broadly for me to agree with it.

19 Q. I see. Well, did you decrease the funding for the
20 rich districts in Connecticut?

21 A. No, sir.

22 Q. How many hold-harmless provisions did you put in?

23 A. None.

24 Q. So districts could lose money, they just didn't.

25 A. This new provision was added to the existing

1 provisions.

2 Q. How many hold-harmless provisions were there in the
3 existing provision?

4 A. I don't know.

5 Q. They are there though, aren't they?

6 A. I don't know. I am not here --

7 Q. That's the standard practice, isn't it?

8 A. I am not here to hold up Connecticut as a paragon.

9 Q. That's a standard practice. You've looked at school
10 state finance systems. You've been a witness in a
11 bunch of cases. There is hold-harmless provisions.
12 You know what a hold-harmless provision is, don't
13 you?

14 A. Yes, sir.

15 Q. It means that whatever district -- at the
16 implementation of a statute, whatever level the
17 district is getting in terms of state aid, it won't
18 ever go below that. It's guaranteed; isn't that
19 right?

20 A. It was not an issue in Connecticut.

21 Q. I see. Because they were already in the law, weren't
22 they?

23 A. Perhaps. It was not an issue with reference to this
24 new plan which I have described here. That's all I'm
25 saying.

1 Q. Would you consider a state that didn't have
2 hold-harmless provisions forward looking in its
3 school finance system?

4 A. That's a little too hypothetical for me to respond
5 to.

6 Q. Okay. Let's take a district that is getting richer,
7 and we'll call this district Carrollton-Farmers
8 Branch. That district, as it gets richer, loses
9 state aid. Now, if we had a hold-harmless provision,
10 it would never loose state aid, would it?

11 A. Correct.

12 Q. It wouldn't grow, but it would stay the same.

13 A. Okay.

14 Q. Most states have exactly those kinds of provisions,
15 don't they?

16 A. Yes.

17 Q. Would you consider a state that doesn't have that
18 provision, that actually removes state aid from a
19 district as it gains in wealth in proportion to the
20 state and flows that money to poor districts, to be a
21 forward looking state?

22 A. I would say that is a state which is taking a step
23 toward the equalization of school support.

24 Q. And by being in there, that kind of adjusts itself
25 automatically, doesn't it? As districts get richer,

1 then that money flows on down the line to the poorer
2 districts, doesn't it?

3 A. Well, one has to look at the extent -- how extensive
4 it was and how much money was involved and what the
5 ultimate effects were, but it would sound like it
6 would be moving in the right direction, but perhaps
7 very slowly.

8 Q. Okay. How do we know when we get there?

9 Well, let's go back for a second. Let's take
10 one step back.

11 You say that what we're here arguing about and
12 Mr. Hall talked to you about is equal educational
13 opportunity.

14 A. Yes, sir.

15 Q. I'm asking you before we can define equal educational
16 opportunity, we have to define education, don't we?

17 A. Yes, we do.

18 Q. What is it?

19 A. Well, that's not my job to do. That is the job of
20 the powers that be in any particular jurisdiction.

21 In Texas, it would be the state legislature,
22 the State Board of Education, and the various local
23 boards of education.

24 Q. I submit to you that they've done that and that
25 nobody has really challenged their right to do that

1 in this case. So what they say goes, right?

2 A. With respect to that issue, I would say they are
3 fully within their constitutional rights to define
4 education as they see fit.

5 Q. Okay. Now, when we're talking about -- and I will
6 submit to you that the evidence in this case says
7 every district can provide that level of education.

8 MR. KAUFFMAN: Is this a hypothetical?

9 MR. O'HANLON: No, sir.

10 MR. KAUFFMAN: Well, we don't think the
11 evidence shows that for sure.

12 MR. O'HANLON: I think the evidence does
13 show that.

14 THE COURT: Well, why don't you phrase it
15 hypothetically.

16 MR. O'HANLON: All right. Well, I'll do it
17 this way.

18 BY MR. O'HANLON:

19 Q. The Commissioner of Education testified that every
20 district can provide the essential elements; that is,
21 that education which is defined by the mandatory
22 curriculum in this state. Okay?

23 A. I hear you.

24 Q. Got any reason to doubt the Commissioner of
25 Education?

- 1 A. I hear you. Would you just repeat that so I can get
2 it a little more clearly in mind?
- 3 Q. Yes. We start off with -- the first thing that we've
4 got to decide before we can look at equal educational
5 opportunity is, what is an education? You said that
6 states pick.
- 7 A. I didn't exactly say that. I said state
8 legislatures, state boards of education, and local
9 boards of education pick.
- 10 Q. Okay.
- 11 A. Okay.
- 12 Q. It's the legislative job to define it in broad
13 parameters?
- 14 A. Yes.
- 15 Q. Have you looked at the curriculum bill in this state?
- 16 A. I have perused it from -- not recently, but I have
17 perused it.
- 18 Q. Got any problem with it?
- 19 A. Not especially.
- 20 Q. Then it's the State Board of Education's job to
21 flesh it out in some detail?
- 22 A. That's the traditional division of labor, yes.
- 23 Q. It's the local I.S.D.'s jobs to administer it and to
24 fill it in where they deem it appropriate to their
25 local situation?

1 A. Well, that's where I'm not so sure. That's where it
2 gets a little bit tricky.

3 Q. How so?

4 A. Well, unless the state legislature means to
5 disenfranchise the local board of education from its
6 decision-making prerogatives entirely, then school
7 districts will choose to define additionally or
8 differently the state's general provisions.

9 Q. What if the provision calls for -- the whole
10 curriculum package calls for -- are you familiar with
11 the concept of time on task?

12 A. Yes.

13 Q. Okay. The state-mandated curriculum requires 60
14 percent of the school day with 40 percent to be used
15 at the discretion of the local independent school
16 district.

17 A. Uh-huh.

18 Q. That's the kind of state and local sharing that
19 you're familiar with, aren't you?

20 A. That, I think, is relatively unique, that sort of
21 prescription; unique perhaps to this state.

22 Q. There's nothing wrong with it though, is there?

23 A. I would say that's within the rights of the state to
24 decide.

25 Q. Okay. So this total package is what an education is.

1 That's the first question that we've got to ask
2 before we determine -- whether we can determine
3 whether somebody's equal educational opportunity has
4 been deprived.

5 A. Okay.

6 Q. Okay. Does that make sense?

7 A. In a general way, yes.

8 Q. Okay. Now, let's see what it isn't. Okay.

9 What if the Supreme Court in the state said
10 there's no fundamental right to extracurricular
11 activities? That's not really part of the education
12 system, there's no entitlement to that at all?

13 MR. KAUFFMAN: Your Honor, of course, he is
14 asking for a legal question. I don't think he is
15 even stating the law right. Just because there's no
16 fundamental doesn't mean there's no entitlement, as
17 far as I know. And anyway, it's asking for legal
18 conclusion, I guess.

19 THE COURT: Okay. I'll overrule.

20 BY MR. O'HANLON:

21 Q. So that's not part of the picture, is it?

22 A. What's not part of the picture?

23 Q. Extracurricular activities: Band, track, football,
24 basketball.

25 A. I don't know about that. I don't know about that

1 because some of those local districts will have
2 defined that co-curricular activity program as
3 integral to their educational program.

4 Q. So that the local district can tell the Supreme Court
5 what the law should be?

6 A. I wasn't drawing a legal conclusion. Perhaps you
7 need to back up and frame the question for me again.

8 Q. Okay. Let's assume that the state's Supreme Court
9 has totally pulled extracurricular activities out of
10 the constitutional entitlement.

11 A. Yes.

12 Q. Local prerogative?

13 A. That's very --

14 Q. That the state's right to do that kind of thing?

15 A. I don't know. I don't know.

16 Q. Well, you've testified in all these cases and you've
17 talked about in other context what the state's local
18 prerogative is. Is it okay to take football out?
19 You're not arguing -- the ironic, indeed, is somebody
20 from the East Coast was telling us that football
21 ought to be a constitutional right.

22 A. I would say it's up to the Court to figure out what
23 it wants to define as the objectives of -- I mean,
24 it's up to these parties in the first instance to
25 figure things out. It's also up to the Court to

1 review those under constitutional and other statutory
2 provisions.

3 Q. All right. So assume with me that the Supreme Court
4 has said, "Nuh-uh, we're not buying extracurricular
5 activities," so we can't include that, can we?

6 A. I suppose.

7 Q. Okay. So this is an appropriate definition, isn't
8 it, what the state legislature and the State Board of
9 Education and what the local independent school
10 districts come up with?

11 A. What the state comes up with and what the locals come
12 up with is any particular local district's definition
13 of education.

14 Q. Uh-huh.

15 A. Yes.

16 Q. Okay. And the ability of the local district to do
17 that and to modify or emphasize certain things that
18 they think is important to their local citizenship is
19 one of those things called local control, isn't it?

20 A. Yes.

21 Q. That's important to retain that in the system?

22 A. Well, I'm more enamored of that concept than the
23 State of Texas is.

24 Q. Okay. You think it ought to be 60/40 the other way?

25 A. Oh, I get the impression that the state is moving

1 well beyond 60, yes.

2 Q. No. Actually, the testimony in this case is that it
3 was designed specifically to be 60. That's the
4 state-mandated curriculum.

5 MR. KAUFFMAN: Actually, Your Honor, I
6 think the testimony was that direction was given to
7 the people who drew it up to do it as 60, but I don't
8 think the testimony has ever been that was the result
9 of it.

10 MR. O'HANLON: I didn't say that. I said
11 that's what it was designed to be was 60.

12 THE COURT: Okay.

13 BY MR. O'HANLON:

14 Q. Okay. Do you support that notion?

15 A. Which notion?

16 Q. That 60/40 split between state and local kinds of
17 decision-making in terms of what the content of the
18 curriculum should be?

19 A. I really perhaps don't know enough to agree or
20 disagree with you --

21 Q. Okay.

22 A. -- because you're talking about specific Texas-based
23 results now that I do not have direct apprehension
24 of.

25 Q. Okay. Now, if we are to design an empirical model to

1 determine that -- let's assume that we've arrived at
2 a definition of education, and we're going to design
3 an empirical model in which to find out whether or
4 not there is a provision of that in the State of
5 Texas. How do we do that?

6 A. I would seek to ascertain that all children in the
7 state have an equal opportunity to acquire the skills
8 which are mandated by the state curriculum.

9 Q. Okay. Now, how do we do that? How do we execute
10 that design?

11 A. Well, if I -- oh, boy, you're asking a lot.

12 Q. Well, one of the things we would look at would be
13 test scores, wouldn't it, if we give a test on this
14 curriculum?

15 A. You might.

16 Q. Okay. So that's one.

17 It probably would be better to look at those on
18 a campus-by-campus basis than a district basis,
19 wouldn't it?

20 A. Yes.

21 Q. So if the state was doing that, you would applaud
22 that as a social scientist, wouldn't you, because you
23 get more discerning in your ability to find out where
24 the problems are?

25 A. Well, let's leave my applause or lack of applause

1 aside. I think the state is certainly within its
2 right to do that.

3 Q. Okay. What if we go in and we find in any given
4 district that there is a high level of differential
5 scoring between two campuses?

6 A. Yes.

7 Q. Doesn't surprise you, does it?

8 A. No. I expect we would find that.

9 Q. We look closer and we find that the demographics of
10 those two campuses are substantially the same.
11 Wouldn't surprise you?

12 A. I would prefer a different hypothetical which is a
13 little more realistic.

14 Q. Okay. It's not realistic that two campuses in a
15 single district might have widely diverging test
16 scores?

17 A. That's realistic. They might. That's fine. Go
18 ahead.

19 Q. Okay. What would you attribute that to? What do we
20 do with that situation?

21 A. We might determine that there is different skill
22 level on the part of the personnel in the two
23 schools.

24 Q. Uh-huh. Unrelated to salary?

25 A. Well, it might be related to salary. We don't know.

1 You have constrained the examples, so presumably,
2 there won't be dramatic differences in salaries. But
3 if those differences were found across districts, I
4 would first look there to see if there were
5 differences in the quality of personnel in the two
6 districts.

7 Q. What if the districts are at least as great or
8 greater within districts as they are across
9 districts?

10 A. Then that's a management problem internal to the
11 district.

12 Q. Uh-huh.

13 A. And it behooves the district administrator to
14 understand what the nature of the problem is and try
15 to do something about it.

16 Q. Uh-huh.

17 THE COURT: We're going to stop for lunch.
18 We'll see you at 2:00 o'clock.

19

20

(Lunch recess.)

21

22

23

24

25

AFTERNOON SESSION

CROSS EXAMINATION (Resumed)

1
2
3 BY MR. O'HANLON:

4 Q. Dr. Wise, when we broke, we were talking about test
5 scores and whatnot. That's a measurement of an
6 educational output, is it not?

7 A. Some people so characterize it, yes.

8 Q. Do you?

9 A. Sometimes.

10 Q. Okay. Now, in determining whether education is being
11 provided, another way we can do it, I suppose, is to
12 go into the school districts and see what is going on
13 in the classrooms.

14 A. We can also look at the test scores, if you want to.

15 Q. Okay. Well, we've talked about test scores. That's
16 one way to measure output.

17 Another way to measure output is to see what is
18 going on in the classroom.

19 A. Yes.

20 Q. Okay. Check a district's documentation of their
21 scope and sequence testing or teaching and things of
22 that nature, correct?

23 A. Well, it would not be sufficient really to look at
24 their documents. One would have to see what is
25 actually going on.

1 Q. Right. But a combination of both, you actually check
2 the documents to see what they're doing on paper, at
3 least, and then check the actual classrooms to see
4 whether their documents actually reflect what is
5 going on in the classroom, correct?

6 A. You could. It depends what their purpose was.

7 Q. Well, that sounds a lot like an accreditation visit
8 to me. Isn't that another way of measuring
9 educational outputs, accreditation visits? You're
10 familiar with those, aren't you?

11 A. It is not a way to measure educational outputs. It
12 is a way to measure whether a school district meets
13 some standard.

14 Q. Okay. What if the purpose of it is to determine
15 educational outputs, what's being taught?

16 A. I'm not sure what the question is.

17 Q. Okay. Well, is what is being taught an educational
18 output?

19 A. I wouldn't want to get highly technical with you, but
20 according to some people's models, that might be an
21 output; according to other people's models, it might
22 not be.

23 Q. A way of measuring that is accreditation visits?

24 A. Well, I don't know how accreditation visits are
25 conducted in this state, so I couldn't say.

1 Q. Okay. Another way that you can determine what's
2 going on in the classroom is to appraise teachers?

3 A. Yes.

4 Q. Okay. If you want to do it on a uniform basis
5 statewide, then you have to make sure everybody has
6 the same appraisal system in place?

7 A. That might be the first requirement.

8 Q. It would be helpful, wouldn't it, if you wanted to do
9 some empirical studies to determine what is going on?

10 A. Yes.

11 Q. Okay. Would you think that a state that put a
12 uniform appraisal system in place would be forward
13 thinking?

14 A. I would have to know their appraisal system.

15 Q. There is a good notion.

16 A. Well, not necessarily. Actually, I have written
17 quite extensively against the notion of uniform
18 appraisal systems at the statewide level.

19 Q. I see. Because you don't think it is a good idea to
20 measure between districts --

21 A. No, because I think that the kinds of systems which
22 are currently employed are not very good ones; that
23 is to say, they are not useful for helping teachers
24 to improve their performance, they are not useful for
25 firing teachers, they are not useful for promoting

1 teachers.

2 Q. They're useful for providing data that would give you
3 some notion about the comparative conflicts of
4 teachers' studies.

5 A. Not if the underlying theory or premises of the
6 instrument are incorrect.

7 Q. So you would rather just use your gut hunch to
8 determine what the relative composition of teaching
9 forces are, relative competency rather than a uniform
10 instrument?

11 A. I can't accept that. I don't know exactly what
12 you're saying.

13 Q. Well, you say that we've got a situation here where
14 the poor districts are getting short-stripped on
15 teachers. Isn't that what you're saying here?

16 A. That's my implication, yes.

17 Q. Then you say that one way to determine that is to
18 appraise them uniformly across the state. One way to
19 make a determination is to --

20 A. You said that, I didn't.

21 Q. Oh, so the best way to assure uniform appraisal is to
22 do it differently for every district in the state?

23 A. Hardly not. It depends upon what one's purpose is.

24 Q. Well, how are we going to know unless we measure on a
25 uniform instrument?

1 A. Well, if I were concerned about knowing what was
2 going on in the school districts of the state, I
3 would begin by observing that the state's high
4 expectations as laid forth in the various policies
5 that you have reported are leading in several
6 directions.

7 They lead to unequal educational outcomes.
8 Your own test scores to which you have alluded reveal
9 that fact, that in urban areas and rural areas and in
10 low income areas, the performance of children, on the
11 average, is lower than in some other places.

12 That would mean to me the beginning of the
13 realization that the state is not doing all that it
14 might to improve the performance of youngsters in
15 those districts. That to me is the beginning of the
16 problem.

17 Q. But see, I don't know whether you're familiar with
18 the demographics -- are you familiar with the
19 demographics of Texas?

20 A. In a general sense.

21 Q. Okay. One of the problems is with the urban areas,
22 in your experience as an educator; is that right?

23 A. Well, the dropout rates are typically higher in such
24 areas and so on.

25 Q. Do you know that one of the remedies that the

1 Plaintiffs in this case are proposing is to take
2 money away from the urban districts?

3 MR. KAUFFMAN: Objection, Your Honor.
4 There is no such proposal of the Plaintiffs.

5 MR. O'HANLON: I'm sorry, but there is.
6 I'm sorry, but the Dallas and Houston and Austin are
7 rich districts that they're trying to take money away
8 from.

9 THE COURT: Put your question again.

10 BY MR. O'HANLON:

11 Q. Would you advocate taking money away from the urban
12 districts?

13 A. No.

14 Q. Okay. So a plan that took substantial sums of money
15 away from urban districts, you wouldn't recommend?

16 A. I would not recommend, no.

17 Q. Okay. On the other hand, the plan that provided
18 additional money for compensatory education, you
19 would recommend?

20 A. Well, taken together with a whole host of other
21 considerations, I might surely contain a provision
22 for compensatory education. Right now, the
23 recipients of compensatory education funds may be in
24 a position where they are not receiving their fair
25 share of the basic funds.

1 Q. Do you have any evidence to support that in Texas,
2 sir?

3 A. Well, I have the knowledge that compensatory
4 education funds flow to school districts under the --
5 at least under the federal program, flow to school
6 districts on the basis of the numbers of children who
7 are low income.

8 I'm also aware that many youngsters who are
9 recipients of those funds reside in low wealth
10 districts. Low wealth districts spend less than high
11 wealth districts, therefore, even with the addition
12 of federal compensatory aid and even with the
13 addition of Texas compensatory aid, they still may be
14 beneficiaries of less than what is offered to
15 youngsters in other school districts under the
16 regular school laws.

17 Q. But because a district has that phenomenon, do we
18 throw out the whole state system? Don't we have to
19 look at the state system as a whole?

20 A. Well, if some youngsters are receiving the benefits
21 of a significantly lesser educational opportunity,
22 then that would be sufficient.

23 But let me assert to you, sir, that I have data
24 in my pocket which suggests that the number of people
25 that we're talking about here is not inconsequential.

1 Let me just, if I may, cite statistics and a
2 couple of numbers from 103-B which I guess has been
3 introduced.

4 There, we can observe that the bottom fifth of
5 students, approximately 600,000 in number, receive
6 the benefit of an expenditure of approximately
7 \$2,620.00, and 600,000 children in the top fifth of
8 school districts receive the benefits of a \$4,371.00
9 education.

10 Q. How was that computed?

11 A. How was that computed? That is a standardized total
12 expenditure --

13 Q. What's in and what's out?

14 A. That adjusts for the costs associated with the
15 production of education in different kinds of school
16 districts.

17 Q. Uh-huh. Is that per student or per standardized
18 student?

19 A. Per standardized student.

20 Q. How many standardized students are there to one
21 student?

22 A. It varies.

23 Q. Uh-huh. How much money are we really spending on a
24 student based on that?

25 A. Well, there are different ways of looking at this.

1 However, which way --

2 Q. Wait a minute. Tell me about this. How much money
3 are we spending per student in the state? What does
4 that tell us? You're quoting statistics to me. How
5 much money are we spending per student, not per
6 standardized student?

7 A. Well, per student unit, as it is called in this
8 instance, the range again for the bottom fifth is
9 \$1,711.00, and for the top fifth it is \$2,855.00.

10 Q. Okay. What if in the bottom fifth there is two
11 student units per student, and in the top fifth there
12 was one student unit per student? How much money
13 would be spent?

14 A. This last figure that I just cited is on the basis of
15 student units.

16 Q. Uh-huh.

17 A. Yes.

18 Q. What does that tell us about how much we're spending
19 per student?

20 A. It tells us how much we are spending per student
21 unit.

22 Q. Not per student, does it?

23 A. Not per student.

24 Q. If in the bottom fifth a student unit was a half a
25 student, and in the top fifth a student unit was a

1 full student, we would be spending more on the bottom
2 half, wouldn't we?

3 A. Well, I can't accept your hypothetical example.

4 Q. Tell me what factual basis you have not to accept my
5 hypothetical, sir.

6 MR. KAUFFMAN: It's not true.

7 A. These are the exhibits which have been introduced.

8 Q. You're drawing a conclusion from that one exhibit,
9 and I want to know whether you've got a factual
10 basis, if you know what that exhibit says.

11 A. I am relying on the plain meaning of these terms and
12 numbers.

13 Q. And student unit has a plain meaning?

14 A. Yes. It has been defined quite accurately for the
15 Court.

16 Q. I'm asking you if you know what the definition is.

17 A. I cannot now give you a careful definition of the
18 term.

19 Q. So as a social scientist, you're going to rely on
20 data that you can't even define to draw conclusions
21 from.

22 A. A variety of numbers that I have looked at, not just
23 these, but ones which are less complicated, in
24 addition, reveal the unquestionable fact that some
25 districts are able to offer richer programs to some

1 students than to other students, for example.

2 Q. Define richer programs.

3 A. A school district which is able to offer, as some
4 school districts in this state do, offer several
5 foreign languages and several years of a foreign
6 language, provide a richer program than do districts
7 which provide one year of a foreign language or three
8 years of a foreign language or no foreign language.
9 That is one criterion for me for a richer program.
10 There are districts in all three categories in this
11 state.

12 Q. I see. So this is the after-lunch Wise testimony, as
13 opposed to the before, so we can take this and throw
14 it out because what an education is is what any
15 district says it is rather than what the state is?

16 A. If you will carefully review what I said prior to
17 lunch, I never accepted what was your effort to box
18 me into the corner of saying that whatever the state
19 said was the program was the program. I explicitly
20 always added to that the concept that the local
21 district's efforts to further define and specify
22 education were also part of the picture, as far as I
23 was concerned.

24 Q. I see. So that if one district in this state offers
25 astronomy, then every district in this state has to

1 offer astronomy?

2 A. I would not necessarily adhere to that view, sir.

3 Q. Okay. Then if one district in this state offers
4 agriculture, then every district in this state has to
5 offer agriculture, even though that district is in
6 the middle of town and there is nobody interested in
7 taking it.

8 A. Well, clearly the question of whether there is
9 somebody interested in the program is important. But
10 I would like to point out that the uniform curriculum
11 that is mandated at the state level is apparently not
12 being uniformly administered and implemented and
13 enforced as revealed by a recent State Board of
14 Education report.

15 Q. Let's talk about content and what is required. You
16 know how many electives a student can take in the
17 normal course of high school in this state?

18 A. No, I do not.

19 Q. All right. It is seven. So a district that could
20 offer 50 electives or 250 electives -- and a student
21 would only have to be able to take seven.

22 A. Yes. But the student who has a choice of 250 is
23 certainly in a better posture than the student who
24 has only 50.

25 Q. Better posture for what?

- 1 A. In terms of developing his chosen ability as his
2 parents or he sees fit.
- 3 Q. His chosen abilities as what?
- 4 A. As whatever he and his parents see fit.
- 5 Q. So if I take physics in high school, then I can go
6 out and be a physicist immediately?
- 7 A. No, but if you haven't had physics in high school,
8 you have a pretty hard time getting into MIT these
9 days.
- 10 Q. What if you can take it in junior college while
11 you're in high school?
- 12 A. That might be just fine.
- 13 Q. Do you know whether the State of Texas allows that?
- 14 A. I do not.
- 15 Q. Would it make a difference?
- 16 A. Might.
- 17 Q. It does. Does it make a difference?
- 18 A. If all students in the State of Texas are equally
19 able to access that opportunity, then I would say
20 that that would solve that particular problem.
- 21 Q. What about if 85 percent of the population in the
22 state was within 50 miles of the college or junior
23 college?
- 24 A. I doubt a high school student could avail himself of
25 an opportunity that is 50 miles away during the

1 course of the school day since it would require three
2 hours out of the school day for him to take that
3 course.

4 Q. I see. Because it's hard, you just -- we can't make
5 it hard for anybody. We have to spoon-feed them?

6 A. The young person would not be able to avail himself
7 of the rest of the school curriculum.

8 Q. I see. And you can say that with some certainty,
9 even though you don't know how the system works in
10 Texas and you weren't aware until I just told you
11 that it even allows it.

12 A. I wish the picture in Texas were as rosy as you seem
13 to be making it out, but I can't sit here and not
14 read for the benefit --

15 Q. Will you answer my question, please, sir?

16 A. Which was the question?

17 Q. Are you willing to tell us now that a student can't
18 take advantage of that when you didn't even know
19 about the existence of that program until I just told
20 you?

21 A. It is not for me to apply the specific facts of this
22 state against what a court may decide are
23 constitutionally guaranteed rights. That is a
24 judgment -- that is the purpose of a judicial
25 proceeding of this nature.

1 Q. Okay.

2 A. It is not for me to say. I can only speak in general
3 terms in the way that I have.

4 Q. Okay.

5 A. I am not making any decision here, sir.

6 Q. So now we can take out -- since we have this
7 provision for going to college if your high school
8 doesn't offer a program, we can take out a full range
9 of electives as one of the factors that would lead
10 you to believe there is an inequitable system?

11 A. I repeat sir, it is hard for me to imagine that all
12 students -- but maybe it is possible that people can
13 equally access that opportunity.

14 If, for example, a child is in a poor school
15 district and has also failed to acquire the
16 mathematical skills necessary to study physics the
17 way it would be taught at a junior college level,
18 then that child would not, in fact, have that
19 opportunity.

20 Q. That's right. That's what we're talking about when
21 we talk about the definitions in the curriculum, the
22 acquisition of those mathematical skills; isn't that
23 right?

24 A. I don't know what you're implying.

25 Q. And isn't the acquisition of mathematical skills, and

1 reading skills, and writing and punctuation skills,
2 the basics upon which we build the entire educational
3 system?

4 A. Well, not apparently in this state.

5 Q. I'm asking you -- so you don't think that applies to
6 Texas?

7 A. That is not a sufficient basis according to the
8 document that I hold in my hands.

9 Q. I'm asking you your opinion, sir. You don't think
10 it's important to know, as a building block for
11 education, reading, writing and basic math?

12 A. Of course it is. It is a building block.

13 Q. All right. Then what are we missing, then? How many
14 extracurricular activities, how many electives do we
15 need to provide to have a basic education?

16 A. Let's see. According to the long-range plan of the
17 State Board of Education for Texas public education,
18 the first goal, according to that document, is
19 student performance. "All students will be expected
20 to meet or exceed educational performance standards."

21 According to the document, "A further concern
22 is that minimum skills testing is not a wholly
23 adequate measure of learning. As schools concentrate
24 on preparing students to pass TEAMS, they may tend to
25 devote less time to the development of analysis,

1 synthesis and other critical thinking and problem
2 solving skills. Tests of reading, writing and
3 mathematics with a relatively low passing threshold"
4 by which I presume they mean TEAMS -- "should neither
5 substitute for measures of more sophisticated
6 learning nor limit the curriculum to the tests."

7 Q. Well, you've been trying to read that into the record
8 for a while. Do you agree with that statement?

9 A. Absolutely.

10 Q. Okay. So Texas is doing the right thing. They're
11 looking in the right direction.

12 A. Not yet. This is a oratory statement as I would read
13 it.

14 Q. Oh, I see. So they had their fingers crossed behind
15 their back when they wrote it?

16 A. I said oratory. That means exhortation. That means
17 hope for the future, not a realization of a set of
18 conditions that now exist.

19 Q. Let's talk about how we -- what do we need to put in
20 we're still trying to define an education here. If
21 we're going to determine that we're not providing it,
22 we have to define it, don't we?

23 A. That's right.

24 Q. Okay. Now, we've talked about the basic curriculum.
25 What else do we need in a well-balanced curriculum,

1 if you're --

2 A. I think probably the easiest and most convenient way
3 that we might define a well-balanced and good
4 curriculum might be to take a look at the educational
5 practices in the defendant school districts. That
6 might give us some sense of what a well-rounded
7 program looks like.

8 Q. Oh, I see. Now, let's talk about something for a
9 second. Are you familiar with the phenomenon of
10 Catholic education?

11 A. To some degree, yes, sir.

12 Q. And Catholic education has for a long time been
13 substantially cheaper in terms of its delivery than
14 public education, hadn't it?

15 A. That's because they don't pay nuns.

16 Q. Uh-huh. And they also don't offer many electives, do
17 they?

18 A. According to that philosophy of education, that is
19 correct.

20 Q. Their kids do real well, don't they? They get into
21 colleges, they do well, they have higher order
22 thinking skills?

23 A. Some do.

24 Q. They do better on tests?

25 A. Some do.

1 Q. They do better in some respects on the few studies
2 that we've looked at longitudinally in terms of
3 employment.

4 A. I'm not aware of those.

5 Q. But they do it for less money. They do it with fewer
6 electives.

7 A. Well, as soon as we can get voluntary teachers to
8 work in our schools, then we might be able to do the
9 same thing as the Catholic schools.

10 Q. You say that glibly. How many districts have tried?

11 A. Have tried what, sir?

12 Q. To get people in to teach voluntarily a course.

13 A. I really don't know. Most people feel it is fair to
14 pay people for the work they do rather than to turn
15 our public schools into a charity proposition.

16 Q. You don't think that's a legitimate thing to do to
17 say, "Community, I need a mathematics teacher and we
18 need a volunteer"?

19 A. The record across the country on that score would
20 generally corroborate the notion or the finding that
21 wealthy school districts, which have professionally
22 educated parents, are much more able to draw on
23 sophisticated resources to come in to the schools on
24 a voluntary basis.

25 Q. In a poor district, there's nobody that's educated.

1 Is that what you're saying?

2 A. I didn't say that.

3 Q. And there's no doctors, and there's no lawyers, and
4 there's no engineers in poor districts.

5 A. We are speaking of proportions.

6 Q. What studies do you have that demonstrate that?

7 A. That school volunteering is a privilege that is
8 enjoyed in wealthier school districts rather more
9 than poor school districts. Most poor people have to
10 have both members of the family working. I don't
11 have any data.

12 Q. Another one of these intuitive leaps that you --

13 A. No, just my observation. I travel around the country
14 a good bit, I visit school districts, meet with PTAs,
15 meet with school administrators, teachers all over
16 the country from all kinds of school districts.
17 That's the impression that I have formed.

18 Q. Okay. Let's go back to our definition of education,
19 then. What are we missing here? How else are we
20 going to define it?

21 A. I need to read you another statement, sir. This
22 apparently is not now going on uniformly in the State
23 of Texas. This report is calling for certain results
24 that it hopes would be achieved sometime -- it says
25 here by 1989-'90.

1 "By the 1987-'88 school year, a curriculum that
2 includes essential elements for all students to
3 function effectively in society will be continually
4 provided to all students regardless of their
5 physical, emotional or linguistic abilities or needs.
6 It will have been expanded" -- evidently it does not
7 now exist -- "It will have been expanded to provide
8 content to improve self-esteem, respect for others,
9 responsible behavior, citizenship skills,
10 interpersonal effectiveness and critical thinking and
11 problem solving skills."

12 Q. And as a social scientist, you take the fact that the
13 verb tense in that statement to indicate rather than
14 looking at the curriculum, that it isn't there?

15 A. Well, it says the expected results, and this is an
16 official document of the State Board of Education.

17 Q. Okay. But you're going to rely, as a social
18 scientist, on verb tense rather than looking at the
19 curriculum itself?

20 A. If I had time, I would be happy to take a look, sir.

21 Q. Well, you had lunch time. You had time to find that.
22 Why didn't you look at the curriculum itself?

23 A. Couldn't find it.

24 Q. You couldn't find it.

25 A. This, I take it, is a better measure of what is going

1 on than a verbal statement in a state code or state
2 document that purports to describe what is going on.

3 Q. I see.

4 A. This, I take it, was written by experts who have been
5 out in the field, not by theoreticians who sit in the
6 state capitol.

7 Q. I see. Anything else? So that definition is what
8 you want in place. That's what an education is, that
9 definition --

10 A. It begins to move in the direction of a good
11 definition of education, I would say.

12 Q. Okay. What else? What else should be going on out
13 there? What that we can measure?

14 A. Well, I don't have to measure everything that's going
15 on as you apparently have a need to do.

16 Q. So you're asking the Court to buy your intuition
17 because there isn't anything you can measure that
18 says there isn't a sufficient education going on out
19 there?

20 A. Well, if the authorities who wrote this document
21 assert that, I have reason to believe that the State
22 Board of Education would employ responsible officials
23 before it makes this kind of document and publicizes
24 it.

25 Q. You mean because they're not satisfied, that means

1 that we don't have a fair system. That's kind of
2 like your equalization theory, isn't it -- and your
3 equalization theory, I was thinking about it at
4 lunch. Remember when you said that we're going to
5 determine equalization by virtue of the relative
6 complaint levels?

7 A. I did say that, yes.

8 Q. That sounds to me like -- remember an old show called
9 "Queen For A Day?" The people used to complain, and
10 then they'd measure the amount of ruckus that it
11 created, and then whoever had the most ruckus won.

12 MR. KAUFFMAN: Did you ever compete?

13 BY MR. O'HANLON:

14 Q. So can we call that the "Queen For A Day" theory of
15 school equity?

16 A. I would not accept that characterization, sir. I
17 think this is far too serious a matter to be played
18 with like that.

19 Q. But you don't call letters to the editors playing
20 with it?

21 A. I didn't say that. What I said was, I would look for
22 the existence of roughly equivalent levels of
23 satisfaction on the part of all consumers of
24 education, by which I mean parents in behalf of their
25 children. I would look for them to be equally

1 satisfied across the state as one measure of a
2 relative provision of equal educational opportunity.

3 Q. Okay. There is a measure. Have you done it in
4 Texas?

5 A. No, sir.

6 Q. Then how do you know that that isn't the case right
7 now?

8 A. Well, I doubt that when one looks at the dropout
9 statistics, for example, from certain school
10 districts, that we could say that the parents of the
11 children in those school districts are happy about
12 the quality of the educational experience that their
13 youngsters are having.

14 Q. Uh-huh. Do you know what the district with the
15 highest dropout rate in the State of Texas is?

16 A. Not offhand.

17 Q. Okay. It's the Dallas Independent School District.
18 That district is the district that these folks are
19 trying to take money from. That's a rich district.
20 They're at the 95th percentile of wealth in this
21 state. Do you think those people are happy? Is that
22 the kind of balance that you were talking about with
23 respect to wealth?

24 A. What I suggested yesterday, sir, and earlier today,
25 was there are really two questions. What kind of

1 educational opportunity, what kind of educational
2 provision, what kind of educational resources do we
3 wish to make available for the education of
4 youngsters. And secondly, and separately, how do we
5 go about raising the money on behalf of those
6 youngsters.

7 Q. Okay.

8 A. That does not imply to me any effort to remove
9 resources from the school district of Dallas.

10 Q. Like back to what we said earlier, you wouldn't agree
11 with that, taking money away from Dallas?

12 A. I said that earlier, yes.

13 Q. Okay.

14 MR. KAUFFMAN: Your Honor, since this is a
15 possible stopping point here, I would request that
16 Counsel, as the rest of us have done, sit in his
17 chair. Maybe it doesn't irritate the witness, but
18 somebody screaming in my ear bothers me. I'm sorry.

19 THE COURT: Well, I'm going to let him move
20 around. I think it might do him good, but stay on
21 your side of the room. Don't get up behind Counsel,
22 but otherwise you can move around.

23 MR. O'HANLON: All right. Thank you,
24 Judge. I'm having a little trouble seeing.

25

1 BY MR. O'HANLON:

2 Q. Once again, Dr. Wise, how do we measure? How do we
3 determine what the basic education is? Isn't that
4 the fundamental question that we've got to ask first
5 of all?

6 A. Well, we've talked about several ways by which to
7 judge what's going on. We can note that different
8 school districts have different degrees of success in
9 preparing their children for the TEAMS test. That
10 would suggest that some districts have greater
11 difficulty doing that, perhaps because they lack
12 resources.

13 Q. Well, then you would expect that to show up in a
14 correlational analysis, wouldn't you?

15 A. No, not at all.

16 Q. You wouldn't?

17 A. No.

18 Q. The district that's spending well below state average
19 that shows terrific TEAMS scores wouldn't give you a
20 little pause on that one?

21 A. Well, I would surely want to take a good look at it.
22 But further, I'd say that school districts with low
23 scores are school districts which have had low levels
24 of resources for many, many years. The fact that one
25 would begin to move them up a little bit in terms of

1 resources, you might have a long way to go in
2 providing equal educational opportunity to youngsters
3 from disadvantaged backgrounds.

4 Q. I see. So you would want to look at -- one way that
5 we could do that would be to look at, for example,
6 the 3rd grade scores rather than 11th grade scores of
7 districts?

8 A. For what purpose?

9 Q. Well, to see that those kids are compared to only
10 three years that they've been in school under the
11 educational reform bill. So we're comparing kids
12 that have been to school --

13 A. We're comparing, then, children who have been to
14 school in school districts where the school district
15 for the last 20 years has had an inadequate capacity
16 to attract and retain highly talented teachers.

17 So just because you passed a reform bill does
18 not mean that you suddenly have replaced your
19 teaching force with a highly qualified teaching
20 force.

21 Q. What if those kids in the 3rd grade in the district,
22 say, the North Forest District, were achieving
23 significantly above state average in the 3rd grade?
24 Would that give you some pause about whether or not
25 that program was working?

1 A. There are too many factors that I don't understand
2 for me to conclude -- to quickly agree with you.

3 Q. I'm not asking you to agree with me. I'm asking
4 whether it would give you some pause. Would it make
5 you wonder or ponder whether or not what was in place
6 was working?

7 A. Surely there are, at all income levels, more and less
8 effective schools. I would not dispute that.

9 But it is also true, in my opinion, that
10 districts which have more are able to provide more.

11 Q. Uh-huh. What if we're looking at districts and we
12 look on the basis of percentage of comp. ed. kids,
13 and the districts with the highest number of comp.
14 ed. kids have posted gains in the last couple of
15 years that are significantly above the state as a
16 whole?

17 A. I would be real pleased.

18 Q. Make you think that maybe the situation is turning
19 around and starting to work?

20 A. Well, I would be pleased that progress had been made.
21 I would continue to examine any gaps that might exist
22 across the full range of educational outcomes, as I
23 have tried to explicate them here this afternoon, and
24 wonder still about the distance that we have to go.
25 But surely I will be happy about progress that had

1 been made.

2 Q. The same thing would go with respect to minority
3 kids; that is, is that if the districts with the high
4 percentage of minority kids posted gains in
5 standardized test scores that were substantially
6 above the state average as a whole in the last couple
7 of years. Make you think that maybe the system is
8 starting to work?

9 A. I would say that -- I would not be content, as I
10 suspect you might be, to simply look at results on
11 TEAMS scores, if that's what you are alluding to.

12 Q. Tell me what you look at.

13 A. I would look at the full range of educational
14 outcomes, as I just read them from your State Board
15 of Education.

16 Q. How do we measure any of those on a statewide basis?

17 A. Well, first of all, I would like to correct something
18 which I think you said this morning. Apparently, the
19 TEAMS test is a basic skills test of reading, writing
20 and arithmetic, not a test of critical thinking
21 skills. Such does not yet apparently exist across
22 the state. But that can be --

23 Q. Who told you that?

24 A. It's right here in this document.

25 Q. Is that the verb tense again?

1 A. It's not the verb tense. I wish you wouldn't
2 disparage the State Department of Education report
3 that way.

4 If, for example, the report calls for the
5 creation of measures of citizenship skills,
6 interpersonal effectiveness, self-esteem, respect for
7 others and responsible behavior. It says it hopes or
8 it wishes that these measures will have been created.

9 Q. Uh-huh.

10 A. They do not now exist.

11 Your question was, how would one measure these
12 higher order and other than basic skills outcomes.
13 The state apparently has in mind ways by which to do
14 that.

15 Q. Well, higher order thinking skills can be as -- word
16 problems in algebra develop higher order thinking
17 skills, don't they, and tests?

18 A. I wouldn't want to quibble with you, but I think a
19 person reveals, for example, his capacity or her
20 capacity to think and reason best when they are
21 called upon to write essays.

22 Q. Well, and the TEAMS score has an essay on it, doesn't
23 it, the TEAMS test?

24 A. I guess it does. So that's a good move. I'm not
25 suggesting that it by -- all I'm suggesting is

1 apparently, according to the state, that it, by
2 itself, is not adequate. The State Board of
3 Education does not feel that way.

4 Q. But they're not done yet. The State Board thinks
5 they're not done yet. If you ever do think you're
6 done, you're dead, right? We should never think that
7 we're done yet, should we?

8 A. I would hope that we will continue to raise our
9 aspirations for all children in the State of Texas.

10 Q. But how do we measure? How can we prove -- you say
11 that "intuitively, I think the dollars make a
12 difference." How can I prove --

13 A. I don't believe I have said that, no. Go ahead.

14 Q. How can you prove that thesis? We've talked about
15 other than test scores, which you don't like very
16 much --

17 A. But that's all right. You don't have to have my
18 particular distaste for test scores.

19 Q. Other than dropout rates, which we've talked about,
20 what other things?

21 A. Well, the substantial reduction in the dropout rate
22 in districts which have a high dropout rate is
23 something not to be sneezed at. College going
24 behavior on the part of youngsters from all
25 socioeconomic statuses is also an outcome to be

1 expected and desired and applauded.

2 Q. Uh-huh.

3 A. So I would look at those, for example, as two outcome
4 measures to be considered as measures of a growing
5 equalization of educational opportunity.

6 If I saw the same percentages of youngsters
7 from poor school districts going to college as I saw
8 from rich school districts going to college, then I
9 would begin to conclude that Texas was making real
10 progress.

11 Q. Have you seen any data on that at all?

12 A. No, sir, I have not. But you asked me how I would
13 judge it --

14 Q. Okay.

15 A. -- and I'm telling you how I would judge it.

16 Q. Okay. So that would be another way. Anything else?

17 A. I have mentioned parental satisfaction as another
18 measure.

19 Q. How do we measure it?

20 A. We could take a survey. Take a survey and ask
21 parents how satisfied they are with the quality of
22 schooling that their youngsters receive.

23 Q. Okay.

24 A. Parents are, all after, the ultimate consumers here,
25 and their satisfaction with the system is, I judge,

1 probably the best single indicator.

2 Q. Well, you said they were the ultimate consumers;
3 relatively, the ultimate problem, too, aren't they?

4 A. Yes. If they didn't have children, there would be no
5 problem of education.

6 Q. Well, your definition, I believe, in your first --
7 with Mr. Hall -- your first negative definition says
8 that the quality of your education shouldn't depend
9 upon the wealth or where you live, or, I suppose, the
10 caprice of your neighbor.

11 A. That is what I said.

12 Q. Okay. Now, the neighbors are probably parents, too,
13 aren't they?

14 A. Some are.

15 Q. No matter how big the district we've got, you're
16 still going to have to be dependent on the caprice of
17 that neighbor because they're taxpayers in the state
18 and they get to vote, too?

19 A. I said the quality of a child's education should not
20 depend upon these extraneous considerations. It will
21 clearly depend upon the nature of education which the
22 power structure in that school district will decide
23 to offer.

24 Q. Uh-huh. And the neighbors always -- no matter where
25 we get to fund them, the neighbors have got to pay

1 for the taxes, so they get some voice in how much you
2 spend.

3 A. Not under certain plans that might come into being
4 down the road.

5 Q. Oh, you mean instead of some kind of statewide
6 funding?

7 A. That's what I was alluding to.

8 Q. Uh-huh. Don't the citizens get some input on how
9 much taxes are raised on a statewide basis?

10 A. Absolutely. All of the citizens of Texas, all of the
11 voters of Texas will be able to express their will
12 with respect to what the proper level of taxation
13 will be in the state.

14 Q. Okay. So you're just getting more neighbors, that's
15 all. You're not saying that the citizens shouldn't,
16 you're just saying that maybe we need more neighbors?

17 A. For purposes of raising funds, I'd say we need more
18 neighbors, yes.

19 MR. O'HANLON: I'll pass the witness.

20 CROSS EXAMINATION

21 BY MR. R. LUNA:

22 Q. Dr. Wise, you understand obviously that the problem
23 that Texas has in trying to distribute these funds is
24 perhaps Texas may be a little unique compared to
25 other states in that it is not quite as homogenous as

1 some of the states you've worked with, and let's use
2 Connecticut as an example. Connecticut is a fairly
3 small state. I'm not familiar with the details of
4 the population in Connecticut, but could you
5 generally classify it as a fairly homogenous group?

6 A. No.

7 Q. All right. What kind of brains does it have within
8 that state?

9 A. Well, they have a very large hispanic population, a
10 very significant black population, and a white
11 population of all social classes.

12 Q. All right.

13 A. They probably would mirror Texas to a surprising
14 degree in that respect. It is not a homogenous
15 state.

16 Q. Well, you know, of course, that Texas certainly is
17 not either and has wide disparities of everything in
18 this state?

19 A. Absolutely.

20 Q. That creates something of a problem in trying to
21 figure out exactly what to do. Perhaps the easiest
22 way for everybody to handle the situation would be
23 simply to peg a dollar value, some dollar value, say,
24 \$3,500.00, and say every student in this state is to
25 get \$3,500.00 for their education, and forget it and

1 go home. That's certainly equal. Yet, there is
2 something wrong with that, isn't there?

3 A. I would say so, yes.

4 Q. So Texas is not taking the easy route out because
5 what is technically equal in the field of education
6 most educators feel that there needs to be some
7 adjustments made to it for a lot of different
8 reasons. That's where we get into the problems,
9 because we're not taking the easy way out of this
10 problem. We're taking the rough road and we're
11 trying to make it work in a state with a lot of
12 unique problems.

13 All right. Let me ask you what kind of
14 standards -- well, first of all, let's review the
15 matter just very briefly that if we're not going to
16 make everything equal, then obviously, we're going to
17 have some kind of variation in expenditures among the
18 students and among districts; is that correct?

19 A. Correct.

20 Q. In fact, do you advocate equal expenditures, first of
21 all?

22 A. No.

23 Q. Do you advocate a disparity of expenditures?

24 A. I assert that differences in expenditures ought to be
25 rationally related either to the costs of producing

1 education, or to the educational characteristics of
2 youngsters or preferably both.

3 Q. All right. So what you're saying is that you
4 advocate disparities so long as there is a reason for
5 those disparities?

6 A. A constitutionally relevant basis for those
7 disparities.

8 Q. So that's really the crux of the whole argument. We
9 all advocate not equality, but disparity. But the
10 question is to what degree of disparity. Is that
11 this whole lawsuit in a nutshell?

12 A. Would you rephrase your question, please?

13 Q. Well, we're just trying to figure out the degree of
14 disparity, how much disparity we can have, how much
15 is constitutionally tolerable, and how much is not.

16 A. Well, first, we must understand the nature of the
17 disparity which now exists and the causes of that
18 disparity. Then we must, in my opinion, frame a
19 system that will perhaps result in some apparent
20 disparities, but these disparities will be related
21 either to the cost of producing education, or to the
22 educational characteristics of the children being
23 served.

24 Q. Some of it depends upon the characteristics of the
25 state, does it not?

1 A. Overall, of course, the amount of money which the
2 state would chose to spend on education is related to
3 the wealth of the state as a whole.

4 Q. Does it also depend upon such state characteristics
5 as the number of school districts, the range of those
6 school districts and the size of those school
7 districts?

8 A. Surely there are practical problems associated with
9 developing a mechanism to respond to the many
10 concerns that have been raised.

11 Q. Well, those standards that I just gave you, the
12 number of school districts, the range of those school
13 districts and the sizes of those school districts,
14 you don't disagree with that, do you?

15 A. I don't disagree that there are a lot of school
16 districts in this state and that they are of varying
17 size.

18 Q. All right. Well, that's the information you gave me
19 in your deposition is what those characteristics are.
20 I just want to make sure you weren't disagreeing with
21 yourself.

22 A. Never.

23 Q. You know, of course, that the number of school
24 districts in Texas is fairly large, it's 1,064. Do
25 you know of any state in the union that has more

1 school districts than Texas?

2 A. I believe California is pretty close, but not -- I
3 think probably -- I'm not real sure. Texas is
4 certainly among -- the state is among the most
5 numerous.

6 Q. All right. You know, of course, that the range of
7 the school districts in Texas is extreme from the
8 urban areas to the sparse areas of West Texas and
9 Southwest Texas?

10 A. Yes.

11 Q. And that the size of the school districts varies
12 greatly from very small districts to extremely large
13 areas out in the unpopulated portions of the state;
14 you know that?

15 A. Yes.

16 Q. So based upon these standards which you have set for
17 acceptable deviations, it would appear, based upon
18 your own standards, that Texas would be allowed a
19 larger deviation because of its state characteristics
20 than perhaps would other states without those same
21 characteristics. Is that a safe assumption?

22 A. I would say it is an empirical matter. It is an
23 empirical matter.

24 Q. You told me in your deposition that it would be very
25 difficult to have total equality because if we

1 insisted upon exact equality, things would get crazy.
2 We'd be redrawing district lines every year.

3 Do you remember telling me that?

4 A. I do not literally recall the context within which
5 that was said, but if you have a question, I would be
6 happy to try to answer it.

7 Q. Well, I assume from your comments that for some
8 reason you find a problem with trying to redraw
9 district lines every year.

10 A. Well, I would see no reason to redraw district lines
11 at all unless, for example, the State of Texas would
12 decide that some school districts are too small. But
13 that is an entirely different matter.

14 What is your question?

15 Q. What is wrong -- what special problems are generated
16 if you try to redraw district lines every year?

17 A. Well, I have never suggested the need for redrawing
18 district lines every year. I'm not suggesting the
19 need for redrawing districts at all.

20 Q. I understand that. But let's assume for a moment
21 that that suggestion had been made in this courtroom.
22 What's wrong with redrawing district lines every
23 year?

24 A. I don't know who would ever advocate such a thing.

25 Q. Have you ever heard of it before?

1 A. No, sir.

2 Q. Let me move to a different subject. You've made
3 reference to Dr. Verstegen's report.

4 A. Yes.

5 Q. You referred to it earlier in your testimony as a
6 very comprehensive and detailed report; is that
7 right?

8 A. Well, it covered a lot of different areas, yes.

9 Q. This is not the first time you've ever seen a report
10 from Dr. Verstegen or a research paper done by her,
11 is it?

12 A. That is correct.

13 Q. When was the first time you've ever seen a paper done
14 by her?

15 A. I chaired a committee for the American Educational
16 Finance Association to select a winner for a prize
17 for the most outstanding education dissertation in
18 that particular year in the field of school finance.

19 Q. That committee was sponsored by who?

20 A. The American Educational Finance Association, which
21 is the association of most of the folks in the
22 country who work in this field.

23 Q. All right. So it's not directly sponsored by a
24 university?

25 A. No.

1 Q. Okay. And she won the top prize?

2 A. That's correct.

3 Q. You were chairman of that committee?

4 A. That's correct.

5 Q. So she does reasonably good work, doesn't she?

6 A. She did reasonably good work in her dissertation. I
7 would have some quarrels with some of the present
8 report, but --

9 Q. You comment on Dr. Jewell that you knew Dr. Jewell
10 when both of you were working on your theses at the
11 same time.

12 A. Both of us were in graduate school at the same time.

13 Q. Thank you. You also noted that you hadn't seen any
14 publications by Dr. Jewell to your recollection; is
15 that right?

16 A. That is correct.

17 Q. Well, it wouldn't surprise you if Dr. Jewell
18 described himself not as a researcher or writer, but
19 more of a practitioner and everyday administrator in
20 school systems. That wouldn't surprise you, then, if
21 you wouldn't see any papers by him, would it?

22 A. I think that seems reasonable to me. I think he is a
23 practicing school administrator most of the time.

24 Q. When you described yourself and your role here today
25 as an advisor to the Court, you seemed to draw a

1 distinction between advisors and being a social
2 scientist, which is your official title, senior
3 social scientist, as I understand it.

4 A. Correct.

5 Q. At the same time, I think you drew a very general
6 analogy or description of rich districts. You said
7 that students in rich districts come from, and I
8 wrote this down, "fine families."

9 A. Well, not all of them, but --

10 Q. Well, I guess that's my point. Some of your
11 testimony has probably been overly broad and very
12 generalized and perhaps it might not apply to
13 specific situations in Texas.

14 A. I think the record speaks more clearly than I can on
15 those points.

16 Q. Well, if I told you that the record shows that the
17 Dallas Independent School District has a high degree
18 of wealth because of its commercial and industrial
19 properties, but that the residents there are low
20 income and it's basically a minority district with a
21 high percentage of blacks and hispanics, that unusual
22 combination wouldn't surprise you, would it?

23 A. It is not unheard of in other parts of the country as
24 well, yes.

25 Q. All right. I think that I understood your testimony

1 fairly clearly on these points. Let me see if I can
2 summarize it and if I'm incorrect, just tell me.

3 I think you have stated that you're not able to
4 say when a district or state is spending enough money
5 in regard to a dollar amount; is that right?

6 A. I would not ever say that.

7 Q. All right.

8 A. I would say instead that it is up to the powers that
9 be in the state legislature to decide each year how
10 heavily it wishes to see the state taxed for
11 educational purposes as against the kinds of
12 educational benefits that the state legislature hopes
13 to see achieved. As the state looks to the future in
14 the preparation of young people for the year 2000 and
15 beyond, it must always weigh and balance the desire
16 to keep taxes down and the desire to improve the
17 productivity of the state as a whole.

18 Q. Okay. Are you here today to tell this Court what
19 dollar amount is enough money to be spent in Texas?

20 A. Absolutely not.

21 Q. Are you here to tell this Court how many dollars per
22 pupil constitutes a basic education in Texas?

23 A. No, sir.

24 Q. Are you here to tell this Court how many dollars in
25 Texas constitutes a quality education?

1 A. No, sir.

2 Q. You discussed Connecticut and the feelings throughout
3 the Northeast of very strong local control of those
4 school districts. I guess it wouldn't come as any
5 surprise to you to know that the testimony in this
6 courtroom about the school districts in Texas has
7 been the very same thing both from rich and poor
8 districts.

9 A. I can believe that representatives of local boards of
10 education, local administrators and so on, believe
11 very much in the importance of local control of the
12 schools.

13 Q. You know, that's somewhat troublesome because that
14 issue gets in the way of us neatly dividing a lot of
15 funds and doing a lot of other things. If we didn't
16 have that issue to contend with, we would have an
17 easier task. Is this a feeling that you have seen
18 nationally, and apparently, you feel, yourself, very
19 strongly about the issue of local control must be
20 figured into these equations; is that right?

21 A. I do. I think that local boards of education and the
22 election of local board of education officials is one
23 of the cornerstones of American democracy.

24 Further, I think that people at that level are
25 in the best position to judge the exact kind of

1 education that should be delivered to the youngsters
2 in their particular jurisdiction.

3 Q. So I assume, then, from your testimony that in your
4 opinion, while it's troublesome, it's an issue that
5 nevertheless we need to give some thought about and
6 some concern to?

7 A. Well, democracy is troublesome. Dictatorship is a
8 lot more efficient. That's been said before by
9 people wiser than me.

10 Q. So when it comes right down to it, we really cannot
11 be totally equal, nor can we be totally efficient
12 unless we want something other than a democracy?

13 A. I would say we have to balance things very carefully.

14 Q. You made one statement that I didn't fully understand
15 and I would like for you to expand a little bit.

16 You said earlier that you could not imagine
17 that a court would order consolidation; that the
18 legislature might do that. I didn't understand what
19 you meant by that. Could you explain it a little
20 further?

21 A. Well, the function of the Court, as I would
22 understand it, would be to enunciate a standard of
23 what it thinks are the rights of individual
24 youngsters and their protection under state law.

25 The function of the legislature is different.

1 The function of the legislature is to figure out how
2 to create and finance a system of education.

3 I can see no reason why a court would ever have
4 to enter into the thicket of consolidation, but I can
5 see that a state legislature might decide that some
6 school districts are too small to provide the kind of
7 educational opportunity that they must provide under
8 a court order demanding equal educational
9 opportunity.

10 Q. Okay. Finally, you've made a statement that "parents
11 who can vote with their feet do so and move to the
12 best districts." In fact, I think you said you,
13 yourself, lived in such a school district; is that
14 right?

15 A. That's correct.

16 Q. What analogy can we draw from that to our democratic
17 process, if any, that if you disagree with what local
18 officials are doing in your school district, that you
19 may simply vote with your feet?

20 A. Well, we are, of course, also a free country. We
21 allow mobility among the populace. People are free
22 to move to districts which better provide the kind of
23 services, including education, that they may wish to
24 have.

25 Now, obviously wealthier people have more

1 degrees of freedom, more resources to be able to
2 choose whether they value education a lot or a
3 little.

4 Poor people do not have that option. They have
5 lesser options. They must reside in school districts
6 in which they have the economic wherewithal to
7 reside.

8 Therefore, of course -- and this in many ways
9 is the root of the problem that we're here discussing --
10 wealthy parents have prerogatives that poor parents
11 do not have to find, under our public school system,
12 under the system operated by the State of Texas,
13 situations where they are able to provide fine
14 educational opportunities for their youngsters. That
15 is a privilege which wealthy people have. It is a
16 privilege which is denied to those of lesser wealth.

17 Therefore, the need for equalization of
18 educational opportunity is exactly the need that is
19 presented.

20 The point of it all in a democracy is that
21 youngsters ought to have an equal chance at life.
22 The way that we begin to give youngsters an equal
23 chance at life is to provide them with an equal
24 educational opportunity to begin with, not to hobble
25 them by giving some a less good education than we

1 give others.

2 As it stands now, at least on a broad range
3 basis, we provide more to children who come from
4 advantaged homes as a matter of general principles or
5 as a matter of general findings than we give to
6 children who come from less advantaged homes.

7 Q. Which brings us full circle back to our original
8 question; that is, when we talk about equality, we
9 really don't mean that everyone should receive the
10 same amount of dollars.

11 A. Correct.

12 MR. R. LUNA: Pass the witness.

13 MR. BUSTILLO: Your Honor, all we have on
14 redirect would be, we would like to have the book
15 that's been referred to throughout Dr. Wise's
16 testimony, "Rich Schools, Poor Schools," marked as
17 the next exhibit, Exhibit 45, and Dr. Wise can
18 identify it.

19 THE COURT: Okay. You have it marked?
20 It's somebody's library book, isn't it?

21 MR. BUSTILLO: We'll have to get a clean
22 copy, Your Honor, but that's what we have today.

23 MR. O'HANLON: Judge, if it is somebody's
24 library book, I don't have any objection to
25 substituting it at some point.

1 MR. BUSTILLO: Oh, we will certainly do
2 that, yes.

3 MR. HALL: Are we going to put in the most
4 recent edition or the most recent preface?

5 MR. BUSTILLO: If we can arrange to have a
6 copy from Dr. Wise, I think we can probably do that.

7 MR. BUSTILLO: Is that the 1972 preface?

8 MR. HALL: I believe so.

9 MR. BUSTILLO: That's all we would have,
10 Your Honor, at this time.

11 THE COURT: Okay.

12 (Plaintiffs' Exhibit No. 45 marked and admitted.)

13 EXAMINATION

14 BY THE COURT:

15 Q. I know there are tests that measure reading, writing,
16 and math, but do you know of any tests anywhere in
17 the United States or elsewhere that measure the
18 degree of social responsibility a student may pick up
19 that may measure the degree of appreciation for, say,
20 literature? Are there any tests that are
21 administered that would indicate a student's general
22 attitude about what is necessary to make a free
23 society operate? Any tests like that that you know
24 of, anywhere?

25 A. Your Honor, I am not a full-fledged expert on testing

1 by any stretch. I would say, however, that I think
2 with one or two exceptions on your list, there are
3 tests which are in existence which measure those
4 outcomes.

5 Q. Are any of those tests regularly given and used as
6 guidelines for whether or not the schools are doing
7 what they should be doing?

8 A. Not to my knowledge, sir, on a regular basis, let's
9 say on a statewide basis, in any case. They may be
10 used on -- they tend to be used by individual school
11 districts. As far as I know, I am not aware of any
12 state that does more than, at this time, test on the
13 basic skills area; in other words, reading, writing
14 and arithmetic.

15 Q. Okay. Do you think that there is some truth to the
16 fact that students who come out of advantaged homes,
17 not necessarily related to money, but from families
18 that appreciate education, and tend to their
19 children, and pay attention to their children, pay
20 attention to what's going on, they don't have to be
21 rich, but just that type of family, because there are
22 those districts in Texas that are not rich, but there
23 are people living there that are good old stock. You
24 understand what I'm talking about?

25 A. Exactly, sir, I do.

1 Q. Those students make good scores and they don't
2 necessarily spend a lot of money on their schools.
3 There are schools in Texas paying more money. The
4 evidence has shown that.

5 A. Yes, sir.

6 Q. So do you put some belief in the fact that a lot of
7 how a student performs comes on account of his or her
8 family setting?

9 A. Absolutely, sir. I would say --

10 Q. All right. Next. There has been talk about
11 methodology; how teachers go about teaching.

12 A. Yes, sir.

13 Q. There is the delivery of the subject, I guess, to the
14 student that is important. You think that's
15 important?

16 A. Yes, sir.

17 Q. I'm not sure I know, but I guess there is more than
18 one way to go about teaching, right?

19 A. Absolutely, yes.

20 Q. Okay. There is probably a debate among educators as
21 to which is the best way for various subjects and
22 various students of different ages.

23 A. Yes, sir. In some areas, there is a lot of debate;
24 in other areas, there is less debate.

25 Q. So even that, there is not necessarily an agreed

1 upon --

2 A. There is no one best system of instruction that is
3 widely endorsed, let's say.

4 Q. Okay. There has been some talk that once you get
5 above 15 students in a classroom, that the educators
6 that have done surveying and testing and so on
7 indicate that once the classroom gets above 15, then
8 there is not much difference in, say, a math class
9 that's got 20 students and one that has 35 students.
10 There is not much difference in how those students
11 will test out. Do you agree with that?

12 A. With a qualification, sir, yes. There is not that
13 much -- it is very hard to study these phenomenon,
14 which is why it is that when researchers get to
15 working on them, we have such a troubling time
16 finding out what the truth is.

17 But most practicing educators, certainly, and
18 many other folks think that children get more
19 individualized attention and that not everything is
20 captured by the achievement test results. In other
21 words, many of these other variables that you were
22 asking about before are not measured.

23 Q. Let me ask you, do you have children?

24 A. Yes, sir.

25 Q. Okay. If you had your choice, would you rather have

1 your child in a math class where there is 12 or 22,
2 which would you rather have your choice?

3 A. I would say 12, but of course, I would like to know
4 who the teachers are.

5 Q. Okay. Let's suppose it's a good teacher. Why would
6 you rather have your child in a class of 12?

7 A. The kind of individualized attention which the
8 youngster receives generally, in my opinion, both as
9 a parent and as a professional, help that child to
10 further develop not only his mathematical ability,
11 even if this kind of research doesn't show it, I
12 believe it.

13 Q. Okay. Tell me what it is that you believe that a
14 child gets out of a small class.

15 A. I believe that they get attention from the teacher.
16 I believe that they learn more, even if some of these
17 researchers can't show that. I, as a parent, believe
18 that.

19 Q. Okay.

20 A. One of the most poignant moments I ever had in doing
21 this kind of work was a few years ago. I was
22 participating in a conference that happened to be
23 taking place at Exeter Academy in New Hampshire,
24 which is one of the finest private schools in
25 the country. We were there -- it had nothing to

1 do with Exeter, we just happened to be using the
2 place for the summer, this conference that I was
3 attending, and we were discussing exactly this issue
4 with regard to New Hampshire.

5 Somebody in the room said, "Well, here we are
6 sitting on the campus here at Exeter Prep School.
7 Does anybody here know how big the English
8 composition classes are?" Whereupon one individual in
9 the group knew, and the English classes at that
10 school, which is one of the most prestigious in the
11 country, have 12 students, and each teacher teaches
12 four sections. The reason for that is so that they
13 can assign compositions on a regular basis, review
14 those compositions, grade those compositions, give
15 that back, feed that back to the students. They
16 believe that that is the way that one prepares a
17 student to write and to think.

18 Contrast that with a public school system where
19 a typical teacher might have five classes with 30 or
20 35 kids, that's 150 to 175. You start assigning an
21 essay that takes you even five minutes to grade, you
22 multiply 175 times 5 minutes per essay, you can see
23 that you cannot assign essays very often.

24 Whereas at Exeter, they can assign many more
25 essays. The teachers have time to review those

1 essays, give immediate feedback to the students, help
2 them, give them personal guidance.

3 That, to me, is one of the most poignant
4 moments that I experienced in looking at the effects
5 of class size on one aspect of the curriculum, the
6 writing side.

7 Q. Okay. Did you ever attend a private school?

8 A. No, sir.

9 Q. Your children attend public school?

10 A. Yes, sir.

11 Q. Did I hear you say that New York City comprises a
12 school district?

13 A. Yes, sir.

14 Q. That would include all of the borough --

15 A. All of the boroughs.

16 Q. So New York City which includes all the boroughs is a
17 school district?

18 A. Correct, although they have organized into
19 subdistricts. I forget what the number is now; maybe
20 20, 22 subdistricts, something like that.

21 Q. Do they have equal taxation throughout all the --

22 A. One tax structure for the city.

23 Q. But the subdistricts are responsible, maybe, for
24 personnel or that sort of thing?

25 A. They receive the same tax dollars, the same source of

1 revenue, but they are administered on a decentralized
2 basis and they make student assignments and teacher
3 assignments and generally mediate with the community
4 and so on. They have community boards. They have a
5 decentralized system with community boards of
6 education. Each subdistrict has a superintendent of
7 schools.

8 Q. You mention Florida has 67 school districts.

9 A. Yes, sir.

10 Q. Is that a recent creation or has it been that way a
11 long time?

12 A. No, I think it has been that way for years.

13 Q. What type of student needs the most individual
14 attention? Let's say one from good stock, as we'll
15 call it, that's really not much of a particular
16 behavior problem, or one that is sort of off the
17 streets, if you understand what I'm talking about,
18 and let's say he has got a language problem. Now,
19 which of those student needs the most individual
20 attention?

21 A. Well, the youngster from the more advantaged
22 background, especially as he or she moves up the
23 grades, is capable of independent action, independent
24 study; the kind of youngster that you can give a task
25 to and put them off doing that task.

1 Oftentimes youngsters who are off the street,
2 as you put it, you know, require more direct
3 supervision all the time. They cannot be put off on
4 their own. They require the constant monitoring by
5 an adult to make sure they are staying on the task.

6 Q. Okay. Are there school districts that go out into
7 the community, say, if they know I'm going to have a
8 child that's going to be pre-K next year, that will
9 come and visit me this year and maybe invite me to
10 participate in some sort of program either at the
11 school or at home or elsewhere? I went to the 4th
12 grade and I work some of the time. You understand?
13 I'm not an appreciator of education much. I'm just
14 trying to get by.

15 A. I'm sorry. You're a student or a parent?

16 Q. I'm a parent, but I have a child that's going to be
17 pre-K next year.

18 Are there any districts that go to that kind of
19 family or even any other type of family, say, a year
20 before the child gets into either pre-K or K or the
21 1st grade to invite the parent to allow the person to
22 come back and discuss with them what the parent can
23 be doing that will help the child or invite the
24 parent to special meetings, that would help educate
25 the parent as to what the parent can do to help the

1 child?

2 A. I can't, from my direct knowledge, call to your
3 attention a specific school district that does that
4 on a regular basis. But there have been many
5 programs, and I'm sure some still in existence, where
6 something like that goes on where the school -- I
7 take that back. I even directed a program of this
8 nature many, many years ago in the Woodlawn region of
9 Chicago, which is the poor black area of Chicago.

10 We had a program that had been a grant made by
11 the federal government to the University of Chicago.
12 I didn't start it, but I administered it after I got
13 there. The purpose of this program was to train
14 mothers in the community. It is not exactly what
15 you're saying.

16 It trained these mothers to help them work with
17 other mothers; that is, the mothers who were selected
18 for this program were the more sophisticated, more
19 education-minded. They were actually put on the
20 payroll of the school district or on the project to
21 work with other mothers to help them along.

22 There have been any number of efforts over the
23 years to do exactly that. Many people speak of it as
24 parenting courses.

25 There have been special programs designed to

1 have parents learn how to work with their youngsters
2 in reading; that is, teaching the parents, typically
3 the mother, how to read along with the youngster, why
4 it is important to read along with the youngster.

5 So many of the things which go on in middle
6 class homes automatically lead to the education of
7 children. In many middle class homes, almost from
8 the time the child is born, the child will have cloth
9 books to play with. Then the parents will read to
10 the child. Even when they think the child cannot
11 even understand what is going on, many parents will
12 read to their children.

13 Then, of course, as kids get older, middle
14 class parents will read with the child, have the
15 child read to them, that sort of thing.

16 There is a growing realization that working
17 with parents from low income families, teaching them
18 how to do that or encouraging them to do that can be
19 very useful.

20 Q. Okay.

21 THE COURT: All right, sir. We'll stop.
22 We'll going to let him be excused.

23 Thank you very much. You may step down and be
24 permanently excused.

25 (Witness excused.)

1 MR. KAUFFMAN: Your Honor, as I understand
2 it, I think we're through for the day. We will pick
3 up in the morning with Dr. Ward. I'm going to talk
4 to him this evening.

5 THE COURT: Is that so?

6 MR. R. LUNA: Yes, sir. He is in town now
7 waiting to see us.

8 THE COURT: Okay.

9 MR. KAUFFMAN: After that witness, Dr.
10 Ward, we have one more witness. As far as I know,
11 that's it.

12 THE COURT: Is that it?

13 MR. KAUFFMAN: As far as I know.

14 THE COURT: Okay. I'll see you all
15 tomorrow morning at 9:00 o'clock.

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(Proceedings adjourned

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(until April 8, 1987.

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3-87-190-CV

CAUSE NO. 8353
C 8353

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, ET AL

VS.

WILLIAM KIRBY, ET AL

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IN THE 250TH JUDICIAL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk

By _____ Deputy

STATEMENT OF FACTS

VOLUME XL OF XLVI

FILED
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THIRD COURT OF APPEALS
SUSAN K. BADE, CLERK

TAKEN APRIL 8, 1987

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CAUSE NO. 362, 516

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

STATEMENT OF FACTS

BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

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18 BE IT REMEMBERED that on this the 8th day of April,
19 1987, the foregoing entitled and numbered cause came on
20 for trial before the said Honorable Court, Honorable
21 Harley Clark, Judge Presiding, whereupon the following
22 proceedings were had, to-wit:
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25

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

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

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

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. Kauffman -----	704
Recross Examination by Mr. O'Hanlon -----	714

MR. BILL SYBERT

Direct Examination by Mr. Kauffman -----	760
--	-----

1
2
3
4
5
6
7
8
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12
13
14
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17
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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

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. 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

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
Cross Examination by Ms. Milford -----	2519
Examination by the Court -----	2521

MR. LEONARD VALVERDE

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

MR. JOHN SAWYER, III

Direct Examination by Mr. Kauffman -----	2570
Cross Examination by Mr. Richards -----	2635
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. Kauffman -----	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, 1967
VOLUME XVII

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

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

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 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

Direct Examination by Mr. Thompson -----	3976
Cross Examination by Mr. Turner -----	4042
Cross Examination by Mr. R. Luna -----	4083
Cross Examination by Mr. Gray -----	4091
Redirect Examination by Mr. Thompson -----	4113
Recross Examination by Mr. Turner -----	4120
Recross Examination by Mr. R. Luna -----	4129
Examination by the Court -----	4133
Further Redirect Examination by Mr. Thompson -	4150
Examination by the Court -----	4155
Further Recross Examination by Mr. Turner ----	4160
Further Recross Examination by Mr. R. Luna ---	4172
Examination by the Court -----	4178

FEBRUARY 26, 1987

VOLUME XXIV

WITNESSES:

DR. DEBORAH VERSTEGEN

Direct Examination by Mr. O'Hanlon -----	4190
Voir Dire Examination by Mr. Kauffman -----	4194
Direct Examination (Resumed) by Mr. O'Hanlon -	4195
Examination by the Court -----	4271
Direct Examination (Resumed) by Mr. O'Hanlon -	4276
Voir Dire Examination by Mr. Kauffman -----	4280
Direct Examination (Resumed) by Mr. O'Hanlon -	4281
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 MOAR

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

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

DR. RICHARD KIRKPATRICK

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

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

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 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

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
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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

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
2
3
4
5
6
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(Defendant-Intervenors' Exhibit
Nos. 59 and 60 marked.)

APRIL 8, 1987

MORNING SESSION

THE COURT: Okay.

MR. R. LUNA: Your Honor, we call to the
stand Dr. James Ward.

THE COURT: Okay.

DR. JAMES WARD

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

DIRECT EXAMINATION

BY MR. R. LUNA:

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

A. My name is James Gordon Ward.

Q. Where do you reside?

A. I reside in 703 West Iowa Street, Urbana, Illinois.

Q. Dr. Ward, how are you employed?

A. I am an Assistant Professor of Educational
Administration at the University of Illinois in
Urbana/Champaign.

Q. Would you briefly describe for the Court what your
educational background is beginning with, for
example, even where you went to high school, whether
it was private or public school, and all the way up

1 through your last degree?

2 A. Sure. I attended public schools from kindergarten
3 through 12th grade in Auburn, New York. I attended
4 the State University of New York at Albany, which is
5 part of the public system of that state. I received
6 a Bachelor of Arts degree in history, a Master of
7 Arts degree in history, a Master of Public
8 Administration degree from that institution, and also
9 earned a Doctorate in Educational Administration at
10 Virginia Polytechnical Institute and State
11 University.

12 Q. Are you a member of any professional organizations
13 having to do with your profession?

14 A. I'm a member of a number of professional
15 organizations having to do with my profession.
16 Probably the most pertinent is the American Education
17 Finance Association, which is the academic society of
18 school finance specialists in the United States and
19 Canada, and I just completed about ten days ago the
20 term as president of that organization.

21 Q. Have you held any other positions with the American
22 Education Finance Association?

23 A. I was a member of the board of directors prior to
24 being elected president elect and vice-president.

25 Q. Do you have any other members of that particular

1 organization who have been witnesses in this trial in
2 regard to school finance?

3 A. I knew Deborah Verstegen has been a witness in this
4 trial. She's a member of the board of directors of
5 that organization.

6 Q. What about Dr. Arthur Wise?

7 A. Dr. Wise is a member of the organization, as well.

8 Q. Does Dr. Verstegen also serve as a book review editor
9 of your finance organization?

10 A. She serves as a book review editor of the Journal of
11 Education and Finance which is co-sponsored by that
12 organization.

13 Q. All right. Have you also held that position?

14 A. I also served as one of the book review editors.

15 Q. Does that mean in that position that you review all
16 the current literature on school finance?

17 A. It's our function to review the current literature on
18 school finance and commission other school finance
19 experts to write reviews of those books.

20 Q. All right. Let me ask you about some of the people
21 you just named. First of all, Dr. Wise. Do you know
22 him personally?

23 A. Yes, I do.

24 Q. How do you know him and how long have you known Dr.
25 Wise?

- 1 A. I've known Dr. Wise for approximately ten years.
2 Previous to my -- in the current position, I worked
3 in Washington D. C. and knew Dr. Wise professionally
4 during that period.
- 5 Q. What about Dr. Versteegen, do you know her personally?
- 6 A. I know her personally. I've known her for
7 approximately four to five years.
- 8 Q. What other memberships do you hold in professional
9 organizations?
- 10 A. I'm currently a member of the American Association of
11 School Administrators, which is the superintendent of
12 schools organization. I'm a member of the American
13 Society for Public Administration. I'm a member of
14 the National Organization on Legal Problems of
15 Education, and have been a member of their national
16 membership committee since approximately 1984. I'm a
17 member of the Politics of Education Association, the
18 Policy Studies Organization, the Illinois Economic
19 Association. There are probably two or three more
20 that I have deleted, but those are the major
21 organizations.
- 22 Q. Have you ever authored any books or been co-author of
23 any books in regard to educational finance?
- 24 A. Not any complete books. I have written chapters in
25 books and published articles and monographs, but not

1 any complete books.

2 Q. How many books have you written a part of?

3 A. I've probably completed chapters in four or five
4 different books.

5 Q. What about articles, how often do you write various
6 articles?

7 A. That varies. Since I've been at the university where
8 writing articles is part of the promotion and merit
9 pay system, I've been producing about five to seven
10 articles a year, although because I'm only in my
11 second year at the university and given the time it
12 takes between acceptance and publication, most of
13 those are just beginning to emerge. Prior to that on
14 my previous job, I probably published on the average
15 of two or three articles a year.

16 Q. Do you ever prepare papers that are unpublished for
17 other groups or --

18 A. Yes.

19 Q. What are examples of those?

20 A. I've produced quite a few papers over the last couple
21 of years on Illinois school finance that were
22 presented at various professional conferences and
23 background papers for organizations such as the
24 Illinois Association of School Administrators, the
25 Illinois Association of School Boards.

1 I also serve as a consultant to the Citizens
2 Council on School Problems, which is a creature of
3 the Legislature of the State of Illinois and produce
4 background research and papers for them on Illinois
5 school finance.

6 In my previous position with the American
7 Federation of Teachers, I produced any number of
8 unpublished papers relating to school finance and
9 economic topics that were of interest to the
10 teacher's union.

11 Q. Do you know Dr. Walberg personally?

12 A. I've never met him. I've talked to him on the
13 telephone and I certainly know him by reputation.

14 Q. There seems to be a lot of interest in Illinois in
15 school finance. Is there any reason for that?

16 A. Well, I would like to say it is because of the high
17 quality of people we have working in the field in
18 that state. In 1985 the Legislature of the State of
19 Illinois repealed the general state aid formula for
20 distribution of state funds to local school
21 districts. That repeal becomes effective August 1st
22 of this year. As a result of that, there has been a
23 great deal of activity since 1985 in the state to
24 develop a new school finance formula. I think that's
25 one of the reasons why many school finance

1 specialists are quite active in the state at this
2 point.

3 THE COURT: I don't think I understood what
4 the Legislature did. What did the Legislature do?

5 THE WITNESS: They repealed the general
6 state aid formula for distribution of monies to local
7 school districts, but they made that repeal effective
8 August 1st of this year.

9 THE COURT: Has it been supplanted with
10 something else?

11 THE WITNESS: We're in the process of
12 developing something else, but at this point, nothing
13 has been adopted by the Legislature.

14 THE COURT: You have until August to do
15 that?

16 THE WITNESS: Right.

17 BY MR. R. LUNA:

18 Q. In fact, is that one reason why you've had trouble
19 getting down here and being available for this trial?

20 A. Exactly. I've been spending much of my time in
21 Springfield in the State Capitol working with the
22 Legislature and other groups developing a new
23 formula.

24 Q. What are your particular areas of interest in school
25 finance research?

- 1 A. Much of my research is really centered around the
2 development of state school finance policies and most
3 particularly, the politics of state school finance.
4 I also have a strong interest in the broader economic
5 social and political factors that go into the
6 development of school finance policy.
- 7 Q. Now, you mentioned that you were a member of the
8 Politics of Education Association.
- 9 A. That's correct.
- 10 Q. And that the political side is a particular interest
11 of yours. What is there about the politics of
12 education that relates to school finance?
- 13 A. Well, school finance is probably the ultimate
14 political question in the sense that all monies for
15 any particular public purpose must be appropriated
16 through the legislative process and be approved by
17 the governor, so they are the subject of a great deal
18 of political inquiry and political debate. Any time
19 that you deal with public funds, you're dealing with
20 politics.
- 21 Q. Have you ever been a teacher?
- 22 A. Yes, I have.
- 23 Q. Would you review your educational background briefly
24 with us?
- 25 A. My teaching background?

1 Q. Yes, sir, and up to the present time with your
2 position at the University of Illinois.

3 A. Okay. Upon receipt of my Master's degree, I was
4 hired as a junior high school social studies and
5 English teacher in the Waterloo, New York public
6 school system. It's a small rural school district in
7 upstate New York.

8 Q. Would that be classified as a rich or a poor
9 district?

10 A. As an extremely poor district, as a matter of fact.

11 Q. All right.

12 A. I taught primarily American history and English there
13 for a five-year period. After that, I was employed
14 by the New York State United Teachers, which is a
15 statewide teacher organization in the State of New
16 York, and worked for them one year as an
17 administrative intern, followed by four years as a
18 writer and researcher and policy analyst.

19 Q. Is that a teacher's union, by the way?

20 A. That is a teacher's union.

21 Q. Okay.

22 A. In 1977, I was hired to become director of research
23 for the American Federation of Teachers in Washington
24 D.C. and I held that position for eight years until
25 1985 when I moved to the university.

1 Q. Now, as head and director of research for the
2 American Federation of Teachers, how many years did
3 you say that was?

4 A. Eight years.

5 Q. Eight years. Was it during that period of time that
6 you authored many of the articles that you referred
7 to earlier for union members and union organizations?

8 A. Yes, that's correct.

9 Q. I hand you what's been marked Defendant-Intervenors'
10 Exhibit No. 59 and ask you if you can identify that.

11 A. It is my curriculum vita.

12 MR. R. LUNA: Your Honor, we move for the
13 admission of that exhibit.

14 THE COURT: Any objection?

15 MR. GRAY: No objection.

16 MR. KAUFFMAN: No objection.

17 THE COURT: It will be admitted.

18 (Defendant-Intervenors'

19 (Exhibit No. 59 admitted.

20 BY MR. R. LUNA:

21 Q. I'm now going to hand you what's been marked as
22 Defendant-Intervenors' Exhibit No. 60 and ask you to
23 identify that.

24 A. It is an article analyzing the latest Serrano court
25 decision in California that I authored, and it was

1 published in February in West Education Law Reporter.

2 Q. Is this your latest publication?

3 A. No.

4 Q. All right. But this was done in early February?

5 A. That's correct.

6 MR. R. LUNA: I move for the admission of
7 Defendant-Intervenors' Exhibit No. 60.

8 MR. KAUFFMAN: No objection.

9 THE COURT: It will be admitted, 60.

10 (Defendant-Intervenors'
11 Exhibit No. 60 admitted.)

12 BY MR. R. LUNA:

13 Q. Dr. Ward, if you would, briefly, and without going
14 through the article in West in detail, because we
15 have the article, tell us just generally, if you
16 could, the background of the Serrano litigation in
17 California and what significance has come out of
18 those three separate pieces of litigation.

19 A. Okay. In the late 1960s, a group of parents in
20 property poor school districts in California brought
21 suit against the state on behalf of their children
22 alleging that the state system of financing public
23 schools as then existed in California was contrary to
24 the California and the United States Constitution
25 primarily on equal protection grounds claiming that

1 the quantity of the amount of money spent and hence,
2 their argument, the quality of a child's education
3 depended upon the property wealth of the district in
4 which they lived.

5 That suit went through various courts and
6 ultimately in 1976 in a decision that has now come to
7 be called Serrano II, the California Supreme Court
8 held that the state system is unconstitutional and
9 asked that the state remedy that situation and at
10 that time set guidelines that said that per-pupil
11 expenditures for regular education programs, that is
12 deleting all categorical and funding for special
13 needs children, on a per-pupil basis be in the range
14 of \$100.00 of one another in the State of California.

15 That was their definition of equity, and they
16 had the trial court in the decision retain
17 jurisdiction saying that either party to the suit
18 could come before that court at any time for any
19 action.

20 Q. All right. Were they able to adjust the tax
21 structure so that they could reach that goal?

22 A. In the beginning, very little happened at the state
23 level. But in 1978, the voters of the State of
24 California passed a referendum, Proposition 13, which
25 severely curtailed the ability of all local

1 governmental units, including local school districts,
2 to tax real property.

3 Q. How did it do that, roughly?

4 A. Generally, it was a very technical sort of thing. It
5 limited the total tax rate to 2 and a half percent of
6 the market value of all local property. What this
7 did was deprive all local governments including local
8 school districts of a great deal of the revenue that
9 they heretofore had, and in order to make up for
10 those lost dollars, the state had to assume a much
11 greater share of the funding of the public schools,
12 as well as other public services in California.

13 Q. Well, then they just shifted the tax burden from the
14 local school district to the state?

15 A. That's correct.

16 Q. But generated the same number of dollars for the
17 system?

18 A. Well, actually over time, the number of dollars
19 compared to the national average declined. Prior to
20 Proposition 13, on most measures such as expenditures
21 per pupil, which was commonly accepted in the field,
22 California was above the United States average in
23 their spending level. After Proposition 13, they
24 dropped well below the national average. So if you
25 compare California's school system against the

1 national average, the amount of money has actually
2 declined on a per-pupil basis as a result of this.

3 Q. Were there any other effects from California's new
4 system?

5 A. The major other effect besides the decline in the
6 real funding level was that with the increase in the
7 state's share of funding came a great increase in
8 state rules and regulations and decision making. If
9 the California school code were to be stacked in this
10 room, it would probably reach from the floor to the
11 ceiling. In effect, it removed a tremendous amount
12 of local discretionary power from local school
13 boards. Today, the system as it exists in California
14 means that local school districts really are arms of
15 the state.

16 Q. In your opinion, is that a good result?

17 A. No. In my opinion, it is not.

18 Q. Why?

19 A. Because I believe that local schools are a part of
20 the community and that the community should have
21 broad decision making power over how those schools
22 are operated, and that it's very important if we're
23 to maintain political support of the schools, and
24 when local taxpayers are paying property taxes, I
25 think that they feel that they want to have some say

1 in how those property tax monies are spent.

2 Q. Have you had a chance to review any material in
3 regard to Texas school finance equity?

4 A. Not so much in terms of equity. The one document
5 that I have reviewed in that area was the report that
6 Dr. Verstegen produced.

7 Q. Now, you mentioned that you know Dr. Verstegen, and
8 you've been familiar with her work?

9 A. That's correct.

10 Q. I think Dr. Wise testified yesterday that when she
11 was receiving her Ph.D., he was chairman of the
12 committee that gave her the award for the outstanding
13 thesis.

14 A. She won the outstanding dissertation award from the
15 American Education Finance Association, and I believe
16 Dr. Wise was the chairman of that committee at that
17 time.

18 Q. I understand that that has also been placed in the
19 LBJ school, or the museum. I'm not sure which. Are
20 you familiar with that?

21 A. No, I'm not.

22 Q. Okay. Being familiar with Dr. Verstegen and her
23 work, what was your impression of her analysis which
24 you've read and what we have commonly called in this
25 courtroom, "The Verstegen Report"?

1 A. In my opinion, it's an outstanding piece of research
2 and is probably the most comprehensive and best piece
3 on Texas school finance that I have had occasion to
4 see.

5 Q. As compared to research done in other states, as
6 well?

7 A. Definitely.

8 Q. All right. Would you say it's a complete report?

9 A. In my opinion, it is.

10 Q. All right. What makes it complete, compared to, for
11 example, someone who has not done any actual research
12 on Texas school finance, but is just familiar
13 generally with the way the schools operate?

14 A. I think there are a couple of features that make it
15 an outstanding report. One is its comprehensiveness,
16 the fact that Dr. Verstegen used probably all the
17 available measures of equity that exist in the
18 literature and computed equity measures on each one
19 of those and produced statistics on each one of
20 those. And the fact that I know that it was based on
21 a tremendous amount of computer manipulation of the
22 data and was based on, my understanding, a complete
23 account of all Texas school districts.

24 Q. Would you say that her methods were proper and
25 generally acceptable?

1 A. Yes.

2 Q. She has a number of different methodologies set out
3 in that particular report. Would you say that from a
4 research viewpoint, you should use only one
5 methodology or is it good to have different measures
6 of equity?

7 A. Well, it's generally accepted in the field of school
8 finance that no one single measure of equity in
9 itself tells the whole story. That's why school
10 finance researchers tend to produce a broad array of
11 measures and look at them all in conjunction with one
12 another.

13 Q. Was there any particular measure which you noticed in
14 her report and which you formed any conclusion about?

15 A. Well, I think the one that's the easiest to interpret
16 if one is not going to do a complete study yourself
17 is the restricted range ratio that was used in that
18 report. One of the reasons why that's the simplest
19 to interpret is conceptually, it's a fairly simple
20 measure to compute and to understand what it means.

21 Q. What did she say about that in her report?

22 A. I believe in her report she calculated that the
23 restricted range ratio was 1.48 for the State of
24 Texas in the year in which she did the calculations.

25 Q. Do you find that to be an acceptable ratio?

1 A. Yes.

2 Q. What conclusions do you draw from Dr. Verstegen's
3 report?

4 A. On the basis of that particular measure, I would
5 conclude that Texas has managed to achieve a very
6 high degree of equity in its school finance system.

7 Q. Okay. Are the methods which she set out also set out
8 in various finance books on how to interpret equity
9 and measure it?

10 A. That's correct.

11 Q. Were some of those same methods mentioned in the
12 Serrano III decision as to how to measure equity in
13 California?

14 A. Yes. There was a very high degree of congruence
15 between what the court accepted as measures of equity
16 in California and measures that Dr. Verstegen used.

17 Q. Dr. Ward, I have talked to you briefly about the
18 political aspects of education. Could you go into
19 that in a little bit more detail, because this is
20 your area of expertise and an area of particular
21 interest to you? What significance does that have
22 for those states that are reviewing questions of
23 equity in regard to school finance?

24 A. Well, I think the significance of the political
25 aspects of looking at equity in school finance in

1 other states is that ultimately, the degree of equity
2 achieved depends upon the amount of money that's
3 available to distribute among school districts for
4 the purposes of public education. That money is
5 determined through the political process. This is
6 essentially a legislative issue. Only the
7 Legislature may appropriate monies and that if in any
8 state, if we were going to achieve a high degree of
9 equity, it's necessary for the Legislature to provide
10 additional funding on a regular basis for public
11 education. And of course, then that becomes a
12 political issue because simply you must achieve a
13 majority vote among the legislators and build a kind
14 of political support among the individual members of
15 the Legislature to get that kind of an appropriation.

16 Q. What kind of support do we need to have at the local
17 level for education to make education work on a
18 statewide basis?

19 A. I think we need very strong public support of the
20 concept and the operations of public education. This
21 is becoming an increasingly more difficult issue as
22 time goes on.

23 Just to use one fairly simple set of
24 statistics, in the 1950s, approximately 50 percent of
25 the voters in the United States had children in

1 school, as a result, had a very direct interest in
2 the public schools and were willing to vote monies,
3 both property tax money at the local level and to
4 support legislators who are willing to support more
5 state monies for schools, because they could see that
6 direct benefit. We started out with at least half
7 the voters having that direct interest.

8 The latest figures that I've seen indicate that
9 the percentage of voters who have children in the
10 public schools somewhere around 22 percent, which
11 means we start out with a much lower natural base for
12 public education, and it makes it much more difficult
13 to build that kind of broad political support both
14 for voting taxes at the local level for schools and
15 for supporting legislators who will support
16 appropriations for education at the state level.

17 Q. All right. So I take it by your comments, then, that
18 the political base for education has decreased by
19 over 50 percent in the last 30 years?

20 A. That's correct.

21 Q. All right. What then does that mean for people in
22 support of education in any state including Texas
23 insofar as the local support for educational programs
24 is concerned?

25 A. Well, what that means is that it's much more

1 difficult to build a majority in favor of increased
2 education funding and it makes the preservation of
3 that base that already exists even more critical;
4 that if we were to do anything that would cause any
5 of those people who currently have children in the
6 public schools to no longer feel that the public
7 schools are meeting their needs or supporting their
8 interest, then it makes it just even increasingly
9 more difficult to build any kind of political support
10 for increased funding.

11 Q. We've heard a lot of comments in this courtroom about
12 the importance of a subject called local control.
13 Dr. Wise testified that that was a very strong
14 feeling in the Northeast and Connecticut, in
15 particular, where he had worked. We've had testimony
16 in this courtroom that a lot of the superintendents
17 and school districts in this state, both from poor
18 and rich districts, feel very strongly about that
19 particular subject.

20 Is this a part of that political process as
21 well?

22 A. Yes, it is. It's something which I'm familiar
23 because it's not only an important issue in the areas
24 of the country or the states you mentioned, but in my
25 own state of Illinois. It's been one of the

1 strongest political issues in education over the last
2 two years.

3 Q. All right. How has that come about?

4 A. Well, Illinois has 994 public school districts. I
5 think it ranks third in the country in terms of the
6 number of public school districts. Many of those
7 public school districts are small and there has been
8 a serious question whether they have the ability to
9 support an adequate curriculum and an adequate
10 education program.

11 In 1985, the Illinois general assembly passed
12 legislation that set up regional committees in each
13 area of the state to study the reorganization and
14 consolidation of local school districts.
15 Essentially, any school district below a certain
16 minimum size had to be included in the plan for
17 consolidation.

18 The legislation was permissive in the sense
19 that once those plans were developed and approved by
20 the State Board of Education, they had to be
21 submitted to the voters in each individual school
22 district that was involved. If the voters did not
23 approve the consolidation plan, they were submitted
24 to the voters again six months later. If they were
25 not approved the second time, nothing happens. So

1 this was not forced consolidation. It really was
2 voluntary consolidation.

3 But even this law raised such political
4 opposition within the State of Illinois that in less
5 than a year, the Legislature and the governor, in
6 effect, repealed the major features of the law and
7 eliminated any state initiative towards consolidation
8 and reorganization.

9 Q. I guess the obvious question is why. Why did that
10 run into such opposition in Illinois?

11 A. Well, it was the issue of local control. The
12 individuals in a local community felt very strongly
13 about their schools and retaining the schools in the
14 local community and retaining control of those
15 schools. In many communities, particularly outside
16 of major urban areas, the school is not simply an
17 educational institution, but it's a social
18 institution, and it performs many functions other
19 than simply providing basic educational services for
20 children 5 through 18.

21 One of the arguments is once you lose that
22 local school through consolidation, you've lost the
23 social center of the community and you may lose the
24 community. The comment was made that you can build a
25 community around a school, but you can't build a

1 community around a Seven-Eleven or a Standard
2 station; that it did perform an important social
3 function.

4 The local people were willing to support those
5 schools because they felt they had some control over
6 how those schools were operated and they could see
7 the tax monies that they levied upon themselves,
8 local property tax monies, used right there in the
9 local community.

10 In fact, in research that two of my graduate
11 students and I are now conducting on small school
12 districts in east central Illinois, we have found
13 very clear and conclusive evidence that many of those
14 small school districts were willing to tax themselves
15 on local property taxes at a higher than normal rate
16 simply to retain control and power over their local
17 schools.

18 Q. We found the issue perhaps of local control to be a
19 little bit troublesome because we've got to deal with
20 it in an area involving numbers and dollars. Yet, it
21 seems fairly consistent from Dr. Wise's testimony
22 yesterday about Connecticut and the testimony we've
23 had from other superintendents here, and now your
24 testimony, that this is an important matter which
25 must be figured into the politics of educational

1 finance.

2 Is there any way we can separate finance from
3 the issue of local control or is that an integral
4 part of it?

5 A. Well, in my opinion, it's an integral part of it. A
6 number of people have attempted to do that, but I
7 think that the studies in political science,
8 particularly some of the research that Frederick Work
9 at the University of Illinois has done, shows
10 that generally control follows dollars. Where there
11 is a great deal of local discretion over finance,
12 there is a great deal of local control.

13 In states like California, which we mentioned
14 before, where the state is assuming a much greater
15 burden of financing, they've also assumed a much
16 greater burden of control. There is a simple reason
17 for that, and the reason being that when a higher
18 level of government assumes responsibility for
19 financing a function, they want to regulate that
20 function. They want to make sure that, in their
21 opinion, the money is spent wisely and in a way in
22 which they want, and so control tends to follow
23 money.

24 Q. All right. If I could, let me walk you through a
25 practical example here for the State of Texas for a

1 moment, something that we have been playing with in
2 this courtroom a little bit as a theoretical remedy.

3 If I could, I would like to hand you -- I think
4 you've already been provided with a copy of Bench
5 Marks, and let us assume for a moment that we wanted
6 to consider how practical it would be to set up some
7 kind of regional taxing authority, and that in doing
8 that, the State of Texas is set up in 20 regions, so
9 for the moment, let's assume that our taxing
10 authority would be based upon those 20 educational
11 regions that we currently have in place.

12 First of all, let's assume for the moment that
13 we're going to try to retain all of the elements of
14 local control that now exist in Texas, and school
15 districts structured the way they are now with one
16 exception. That is, that we're going to merge the
17 tax bases within that region so that each districts
18 is then operating off of some kind of equalized tax
19 base.

20 To give you a concrete example, let me ask you
21 to look at what's been called Region 10, which
22 includes the Dallas Independent School District and
23 all of Dallas County. First of all, how many
24 counties would be included in Region 10?

25 A. I count eight counties.

1 Q. All right. Let's start with that. What is the
2 average tax base for the region?

3 A. In 1985 --

4 Q. When I say tax base, technically we're talking about
5 the 1985 market value per ADA.

6 A. Okay. For Region 10, that was \$328,940.00.

7 Q. That's above the state average of 251,500. So Region
8 10, compared to the state, would be above average
9 significantly?

10 A. Yes.

11 Q. All right. First of all, would it appear to you that
12 there would be a variation between the regions in
13 terms of tax base?

14 A. Yes, definitely.

15 Q. All right. But now, let's assume for a moment,
16 though, that there was no variation at all, and play
17 with that average figure.

18 In particular, we've talked about in this
19 courtroom many times two districts,
20 Carrollton-Farmers Branch and the Wilmer-Hutchins
21 Independent School Districts, both in Dallas County.
22 What is the tax base of Carrollton-Farmers Branch?

23 A. \$542,245.00.

24 Q. Significantly above the region average?

25 A. Right.

1 Q. What is the tax base for Wilmer-Hutchins?

2 A. \$99,097.00, considerably below the region and
3 statewide average.

4 Q. What is the true rate of each of those two districts?

5 A. The true rate for Carrollton-Farmers is .609, and for
6 Wilmer-Hutchins, it's 1.144.

7 Q. All right. If we did some simplified calculations
8 for those two districts on some kind of equalized tax
9 base, would it look something like the chart I'm now
10 showing you, showing the average market value, the
11 true rate, which is an average for the region, the
12 current Wilmer-Hutchins tax base, which is \$1.14, and
13 what that would raise on a per-ADA basis so we can
14 simplify it, the current Carrollton-Farmers Branch
15 figures minus the tax base, which is the average,
16 showing first of all that Carrollton-Farmers Branch
17 would lose a tax base of \$213,305.00, is that right?

18 A. Right.

19 Q. All right. Now, we also show what the current tax
20 base in the tax rate shown would generate. In the
21 case of Wilmer-Hutchins, it generates \$113,366.00 per
22 ADA. In the case of Carrollton-Farmers Branch, their
23 current tax base at .609 generates \$330,227.00 per
24 ADA, is that correct?

25 A. I trust your arithmetic. I haven't calculated it.

1 Q. Okay. All right. Then, if we turn around and we
2 equalize that same tax base at the region average of
3 328,940, first of all, if we try to generate the same
4 number of dollars that we currently have, 330 for
5 Carrollton-Farmers Branch and 113, in thousands, for
6 Wilmer-Hutchins, in order to do that, what would we
7 have to do to the tax rate?

8 A. You would have to adjust the tax rate accordingly for
9 the change in the tax base, and in Carrollton-Farmers
10 Branch, since you're decreasing the tax base
11 available, you'd have to increase the tax rate to
12 achieve the same number of dollars. In the other
13 district, Wilmer-Hutchins, because you've increased
14 their tax base, you should be able to decrease their
15 tax rate to achieve the same number of dollars.

16 Q. Okay. So now everyone has the same tax base.
17 Everyone has to adjust their tax rates, and now, we
18 have achieved our goal, which is an equalized tax
19 base.

20 A. That's correct.

21 Q. But does that achieve the result that we're really
22 after?

23 A. No, because the amount of money that you're raising
24 per pupil still is very different between the two
25 school districts.

1 Q. Okay.

2 MR. KAUFFMAN: Your Honor, if I may, just
3 so the record is not completely confused, I think
4 rather than coming back on cross-examination on this,
5 I would rather clarify it now. I think these figures
6 are off quite a bit because the tax rates he used, he
7 didn't put per \$100.00. So Wilmer-Hutchins for
8 \$99,000.00 per student, you actually, at \$1.14, I
9 think you raise something like \$1,000.00.

10 MR. R. LUNA: Counsel is right, but this is
11 merely for illustration to show what happens here in
12 terms of the equalization of the rates versus amounts
13 raised, not the actually dollars.

14 MR. KAUFFMAN: I agree, except the witness
15 is testifying that Wilmer-Hutchins can raise
16 \$113,000.00 per student at their tax rate.

17 THE WITNESS: You need a decimal point in
18 there two places from the right, then the figures are
19 correct.

20 MR. KAUFFMAN: Okay.

21 THE COURT: May I ask you a question? What
22 you're trying to do is get to the same amount of
23 money per student with the area -- is that red or
24 black, that square?

25 MR. R. LUNA: Red.

1 THE COURT: Okay. Have you done any
2 calculations about what averaged tax rate would be
3 necessary in those two school districts to come up
4 with the same total amount of money? You would have
5 to be somewhere between 60 and \$1.14.

6 MR. R. LUNA: It would be .642, your
7 average rate.

8 THE COURT: Okay. So if you had a .642
9 rate for Carrollton-Farmers Branch and
10 Wilmer-Hutchins, are you telling me you would raise
11 the same amount of gross money?

12 THE WITNESS: Across the region, if I
13 understand this correctly, you would.

14 BY MR. R. LUNA:

15 Q. All right. Now, the reason, of course, that
16 Carrollton-Farmers Branch School District would be
17 likely to go from .642, the average, to \$1.005 is to
18 raise the same amount of dollars that they had
19 before.

20 A. That's right.

21 Q. And likewise, Wilmer-Hutchins, because we've now
22 equalized, would have the opportunity to drop down to
23 .345, 34 and a half cents?

24 A. To raise the same amount of money that they raised
25 before --

1 Q. Right.

2 A. -- although they would probably be likely to raise
3 their tax rate to try to generate more dollars
4 because the increased tax base is not coming from
5 taxpayers within that district, it's coming from
6 taxpayers outside the district. So by raising their
7 tax rate, they could generate more dollars per pupil
8 and they wouldn't have to pay for it themselves,
9 somebody else in the region would pay for it.

10 Q. All right. That's the issue we need to explore a
11 little bit.

12 Wilmer-Hutchins is probably not going to stay
13 at that rate because they have an opportunity to
14 generate more dollars, and that's what this is all
15 about?

16 A. That's right.

17 Q. So they're going to raise that tax rate just as
18 Carrollton-Farmers Branch is probably going to raise
19 their tax rate?

20 A. Yes.

21 Q. But now, we have regionalized that tax base. Now,
22 let's assume that I am or someone is a resident in
23 that region and lives in -- pick any school district
24 -- Royce City, for example. I think that's in Hunt
25 County, is that right?

1 A. I don't even see it --

2 Q. Well, let's assume that we have a resident of Hunt
3 County, one of the eight counties within that region.
4 Now, if we have maintained all the elements of local
5 control, he's going to get a tax bill from somebody.
6 Who is he going to get a tax bill from?

7 A. Well, since --

8 Q. If we do everything the way we're doing it now?

9 A. I don't know who that tax bill is going to come from
10 because now, districts that are below the regional
11 average in tax base are going to be receiving tax
12 monies, property tax monies, from all districts that
13 are above the average of the region. All districts
14 that are above the average of the region are going to
15 be shipping some of their property tax dollars to all
16 the school districts that are below the regional
17 average.

18 So I guess that in the below average school
19 district, they are going to receive monies from half
20 the school districts in the region, if half of them
21 are above the average.

22 Q. If you were to go through -- and let's just assume
23 for a moment that each school district within that
24 region that is below the average here as is
25 Wilmer-Hutchins might want to raise its taxes. We'll

1 assume for a moment that the districts that are above
2 the average do not want to raise it, although it's
3 obvious that apparently some of them probably would.

4 A. Well, in order to maintain their same level of
5 spending, they would have to because they have lost
6 tax base.

7 Q. All right. So if especially the bottom group were to
8 raise taxes, how many school districts are there in
9 those eight counties?

10 A. I haven't counted them, but I would guess somewhere
11 in the vicinity of 100 school districts all together.

12 Q. At least it would be well over 70, somewhere between
13 70 and 100?

14 A. I think so.

15 Q. So as a taxpayer in Hunt County, if I got 70
16 statements for increased taxes in these various
17 school districts, because we're maintaining local
18 control, who do I go see about my increased taxes to
19 complain?

20 A. I guess if tax bills come from all those districts,
21 you would have to go to all those districts to
22 complain unless you had some kind of a regional
23 taxing authority that was created by state law or a
24 statewide taxing system, which I understand is not
25 constitutional in Texas.

1 Q. All right. So that person, then, would have to go to
2 70 different taxing jurisdictions to complain about
3 their rate?

4 A. Yes.

5 Q. Is that possible?

6 A. Well, it strikes me that the local taxpayers are
7 losing all control over their own tax bills; that
8 they're receiving tax bills from jurisdictions where
9 they do not vote, where they have no say, where they
10 have no discretion.

11 Q. Where they don't vote?

12 A. Where they don't vote, where they have no
13 representation at all. It strikes me as being a
14 rather strange and convoluted system.

15 Q. Because the fellow in Hunt County doesn't vote for
16 the school board members in Carrollton-Farmers Branch
17 or Wilmer-Hutchins that are setting the tax rate on
18 his property?

19 A. That's correct. I guess he would have to attend 70
20 school board hearings or budget hearings or whatever
21 to protest.

22 Q. All right. Does that sound very feasible to you?

23 A. No. It doesn't sound feasible at all.

24 Q. Let's go a different route. Let's assume for a
25 moment that we -- instead of using the local tax

1 authorities, the local school boards, that now we
2 shift -- we're talking about local taxes -- that now
3 we shift to some kind of regional authority -- let's
4 call it a super school board or whatever you want to
5 do --

6 A. Sure.

7 A. -- that now sets the rate for all of the school
8 districts within that eight county area.

9 A. A common rate for all school districts?

10 Q. Common rate.

11 A. Okay.

12 Q. Let's assume because you pointed out that the fellow
13 in Hunt County can't vote for the school board member
14 in Wilmer-Hutchins and Carrollton-Farmers Branch, and
15 that's taxation without representation. I think we
16 have had a revolution over that already.

17 A. I recall something like that. It was before I was
18 born, though.

19 Q. If we have a regional taxing authority, and let's
20 assume that it's an elective body so that he's got
21 representation, and they set one tax rate on that
22 equalized tax base for everybody and it's elected,
23 what problems, if any, do you see with that in regard
24 to the political process?

25 A. I see a couple of major problems. One is that you're

1 really removing a great deal of control and ownership
2 in the system for the local taxpayer when you have --
3 I don't know how many members you have on the school
4 boards in Texas, but typically across the country, 79
5 members comprise a local school board. In a small
6 school district, you're likely to know those
7 individuals, they're from your neighborhood, they're
8 people you voted for. On a regional basis, and I
9 have no idea how many people would be in this region,
10 but certainly if Dallas County is included, you're
11 talking about a region with literally millions of
12 people, and these school board members then would be
13 very remote from the local community and wouldn't be
14 in touch with the feelings of the voters in the local
15 community. So that's the first political problem
16 that I see with it.

17 A second political problem is that if you have
18 a common tax rate for the entire region and assess
19 that on a regional tax base, somehow those monies
20 have to be allocated back to the local school
21 districts. So in essence, somebody outside the
22 school district is determining the size of the budget
23 of that district because no longer does a locally
24 elected school board have discretion over how much
25 money is raised locally and how much money is

1 available to spend. So in effect, you have created
2 20 school districts, if that's the number of regions
3 you have in the State of Texas, that are very remote
4 from the people.

5 Q. Let's talk about the budget process versus the tax
6 rate process. First of all, who sets a budget for an
7 individual school district?

8 A. The school board.

9 Q. In order to set a budget, they draw up a set of
10 expenses and I presume income at the same time, is
11 that correct?

12 A. That's correct.

13 Q. But the income has got to be based upon something,
14 and I assume that's a projected tax rate --

15 A. Yes.

16 Q. -- maybe at several different levels?

17 A. That's right.

18 Q. All right. So the budget, then, that they draw up is
19 directly dependent upon the amount of tax which is
20 going to be set?

21 A. That's right.

22 Q. Now, if we separate the tax function, setting the tax
23 rate, to a regional authority, but the budget process
24 is still left at the local level, how is anyone going
25 to draw up their budget when they're not the ones who

1 set the tax rate?

2 A. They have very little discretion in that budget
3 because there is very little, to use the technical
4 term, legal room in that budget because the total
5 amount of the budget is set outside the district.

6 Q. It's set outside the district which in turn controls
7 your budget?

8 A. That's correct.

9 Q. So then, if a local person needs to discuss their
10 budget and tell someone why they need a larger
11 budget, who are you going to have to go see?

12 A. The regional school board.

13 Q. The regional school board. Is that when you see your
14 shift of power that follows --

15 A. Most clearly, yes.

16 Q. Has that been documented by a political scientist in
17 your field?

18 A. I mentioned the work of Frederick Work before who has
19 studied centralization of public schools and, in
20 fact, developed centralization scores for the various
21 states across the country and has clearly documented
22 that when fiscal control is removed from the local
23 level of government, the government's control moves
24 with it.

25 Q. What's wrong with that?

1 A. What's wrong with that is that it removes the strong
2 interest that the local taxpayer has in his or her
3 own system, and is likely to cause the taxpayer not
4 to favor increased taxes.

5 The way the system currently exists, if I'm a
6 voter in a school district and I vote a tax increase
7 upon myself, that money is used in my own school
8 district, in my own community, and I can see the
9 benefits of that.

10 If, on the other hand, the regional system, as
11 I understand the way you describe it, if I were to
12 vote on a local tax increase, much of that money
13 would be used two or three counties away or across
14 the region.

15 I believe in education and I believe in
16 education for children, but I'm much less likely to
17 support a tax increase if I don't see the direct
18 benefit of it.

19 Q. You think that would have an affect upon the quality
20 of education?

21 A. I think it would decrease the amount of monies
22 available for education.

23 Q. You talked initially about the support for education
24 being even more critical now with the number of
25 parents in the population going from 50 percent to 22

1 percent.

2 A. Uh-huh.

3 Q. Is that something that's liable to affect that
4 particular critical issue that you started out
5 talking about?

6 A. I think it would affect it in a number of direct
7 ways. I think the parents who live in some of the
8 districts that would be most adversely affected tend
9 to be better educated, tend to be more politically
10 active, tend to be the kind of parents that in
11 political science, we call political influentials. I
12 think if they become less adamant in their support
13 for the public schools because they're limited in the
14 amount of money they are able to vote in their own
15 district to increase their public schools, that
16 they're going to be much less likely to support any
17 kind of tax increases, either at the regional basis
18 now as you have created the system or at the state
19 level, for increased funding.

20 I think another likely effect of this is that
21 if this decreased the amount of dollars that were
22 available in some of the above average school
23 districts, some of these parents, being strong
24 supporters of education for their own children, might
25 choose to remove their children from the public

1 schools and send them to private schools at their own
2 expense in order to maintain what they consider to be
3 a high level of educational services. And again,
4 that might cause them to lessen their support for
5 public schools and public school funding.

6 Q. Has anyone to your knowledge in the United States
7 tried to do anything like this, form some kind of
8 regional tax authority that's separate and distinct
9 from the actual budget functions of school districts?

10 A. No. It's a rather innovative but strange proposal,
11 and to my knowledge, no one has ever attempted it.

12 THE COURT: No one has ever attempted what?

13 MR. R. LUNA: To form any kind of regional
14 taxing authority to separate the taxing function from
15 the budgetary function.

16 THE COURT: Okay.

17 BY MR. R. LUNA:

18 Q. In your opinion, would anything like that work?

19 A. No.

20 MR. R. LUNA: Pass the witness.

21 THE COURT: Wake up Mr. Turner over there.

22 CROSS EXAMINATION

23 BY MR. TURNER:

24 Q. Dr. Ward, have you, in your experience, seen any
25 examples of states moving toward creation of large

1 regional school districts that had both the taxing
2 and the governance function removed from the then
3 existing local district to some larger regional
4 district?

5 A. Well, that's been a trend that has occurred in
6 probably all 50 states since the 1920s. If you look
7 at the statistics on the number of school districts
8 in the United States, we have dropped from over
9 100,000 individual local school districts around the
10 time of World War II to just under 16,000 public
11 school districts in the country today. So clearly,
12 there has been reorganization and consolidation of
13 school districts into larger units. In most states,
14 this typically occurred in the late 1940s and early
15 1950s, the post World War II period.

16 Q. I noticed you have done some research regarding rural
17 schools.

18 A. That's correct.

19 Q. What kind of characteristics or particular problems
20 have you found with rural schools, and has that been
21 a part of the consolidation trend?

22 A. Rural schools have certainly been targeted for
23 consolidation because the difficulty with rural
24 schools in my own research is that they have greater
25 difficulty because of their small size in maintaining

1 a viable curriculum, particularly at the high school
2 level -- it does not seem to be a problem at the
3 elementary school level -- but at the high school
4 level; things like being able to offer physics and
5 chemistry on an annual basis, being able to offer
6 three or more years of a couple of foreign languages.
7 So that's been one problem that has existed with
8 small rural school districts.

9 The second problem that has existed with small
10 rural school districts is that because of the
11 administrative overhead in small districts, they tend
12 to have higher costs. It doesn't make any difference
13 whether you have a small rural district or whether
14 you have a Chicago, they have one superintendent that
15 has to be paid and that's an overhead cost you cannot
16 eliminate with small size.

17 Another problem with consolidation in rural
18 districts that makes it particularly troublesome is
19 that when you're dealing with sparse geographic
20 areas, if you consolidate small rural districts into
21 larger units you tend to increase your transportation
22 costs both in terms of dollar outlay for
23 transportation, and also the amount of time that
24 children spend on a school bus going to and from
25 school.

1 Q. Was the interest in consolidation in your home state
2 brought about primarily because of the concerns for
3 the educational programs of small rural districts?

4 A. Yes.

5 Q. Was the concern based upon equalizing tax bases?

6 A. No, that was not the primary concern. That was a
7 concern, but that was not made part of the
8 consolidation and reorganization effort. That
9 concern for equalizing resources was pursued instead
10 through the state school finance formula rather than
11 through consolidation and reorganization because in
12 Illinois, we felt that was a far more efficient way
13 to accomplish that purpose.

14 Q. Dr. Ward, we had Dr. Wise testify before this court
15 yesterday, and he went through various definitions of
16 what he called optional definitions of how to provide
17 equal educational opportunity. Several of these
18 definitions that he listed involved a requirement to
19 accomplish the definition of placing a cap on
20 spending within individual school districts to create
21 equity.

22 Could you tell us what your view is regarding
23 the placement of caps on spending within individual
24 school districts?

25 A. I'm very much opposed to placing any kind of cap on

1 spending in individual school districts because, in
2 effect, what that does is it limits the ability of
3 moderately wealthy and wealthy school districts to
4 offer the array of educational services that the
5 local community desires, and once the school district
6 ceases to offer the services that the local voters,
7 the local clientele wants -- political science would
8 call legitimacy; the board ceases to have a
9 legitimate program in the eyes of the voters -- then
10 there tends to be a lessening of support and
11 dissipation of the public schools.

12 Q. Do you see a relationship between these elements that
13 you have referred to that promote interest in local
14 taxes and in generating local taxes, a relationship
15 between that and the current -- what is generally
16 followed in most all our states, a current sharing of
17 state/local responsibility for generating funds for
18 education?

19 A. There is a clear relationship. As you point out,
20 education, with the exception of Hawaii, is a shared
21 state and local function. I'm not denying the fact
22 that inequities may exist in various states.

23 I think the critical question is, how do you
24 fashion a remedy that does not cause the lessening of
25 political support for the schools, still provides the

1 local taxpayers and voters with a sense of ownership
2 and support, but at the same time, tends to equalize
3 or more equalize resources.

4 In my opinion, and what we are pursuing in
5 Illinois, the only way to do that is through an
6 increase in state appropriations for education and to
7 drive those monies, then, through some kind of an
8 equalization formula at the state level to attempt to
9 compensate for differences in local property wealth.

10 Then add a second tier on top of that which are
11 categorical aid programs that provide additional
12 funding for school districts based on some
13 demonstration of local need, whether it be the number
14 of special education students, the number of students
15 that are limited English proficient, or for districts
16 that are large in geographic area that need
17 additional transportation aid, or in Illinois, we
18 have additional aid for school districts that have a
19 very high incidence of poverty children within the
20 district.

21 What that does, then, is target monies to
22 school districts with children with specific
23 problems. But in my opinion, that's a much more
24 efficient and effective way of achieving
25 equalization, and at the same time, maintaining some

1 strong political support for the public school
2 system. I think that's the whole rationale behind
3 the system of shared state and local financing in
4 governments.

5 Q. That system you described, is that the one that we
6 commonly refer to as the Minimum Foundation Program
7 or the Foundation Program?

8 A. Yes. In the school finance literature, there are
9 varieties of kinds of formulas. There is the
10 Foundation formula, which to the extent I understand
11 the system in Texas, and I'm not an expert in Texas,
12 is that you have a Foundation formula.

13 There is something called a guaranteed tax base
14 formula.

15 There is something called percentage equalizing
16 formula. Although there was an article written in
17 approximately 1977 in the Journal of Education
18 Finance that showed that mathematically these
19 formulas are all identical, that by a series of
20 algebraic manipulations, you can convert one to the
21 other by a series of substitutions.

22 I'm not a mathematician and I'm not prepared to
23 do that for you, but it is generally accepted that
24 all of these formulas achieve the same purpose. In
25 my personal opinion, a Foundation formula is probably

1 the best kind of formula to use, and if you funded at
2 the state level at a high enough level, it can be
3 highly equalizing. The difficulty in many states is
4 simply the insufficiency of state funds through the
5 formula.

6 MR. TURNER: I'll pass the witness.

7 CROSS EXAMINATION

8 BY MR. O'HANLON:

9 Q. Dr. Ward, is it fair to characterize that Proposition
10 13 is, in essence, a cap on a local district's
11 spending?

12 A. It's a cap on the local district's ability to raise
13 local tax revenue, therefore, the amount of monies
14 available depends upon what the state provides. In
15 that sense, it's a cap.

16 Q. Okay. How many other states have caps, do you know?

17 A. Massachusetts, as a result of Proposition 2 and a
18 half, has a cap. Those are the only two states that
19 I'm aware of that have that kind of stringent limit
20 on the ability of local governments to raise property
21 taxes.

22 Q. You said that one of the vestiges of that cap is that
23 California's expenditures declined as a percentage of
24 the national average.

25 A. Uh-huh.

1 Q. Are they related?

2 A. Yes. There's two ways you can equalize. You can
3 level up to a higher level or you can level down to a
4 lower level. What California and Massachusetts both
5 did by limiting the power of local school boards to
6 raise property taxes and make them more dependent
7 upon the state is they leveled down. They decreased
8 the amount of dollars relatively that were available
9 for education.

10 Q. All right. Would you advocate that kind of system?
11 I guess I'll call it, for lack of a better term,
12 "Californication" for Illinois?

13 A. I'm not sure I want to carry that analogy any
14 farther. A couple of good comments come to mind, but
15 I would not want to use them.

16 No. I would not advocate that system. It
17 generally depresses the amount of money available for
18 schools, period. As an advocate of public schools
19 and as an advocate and specialist in school finance,
20 I always like to see more funding for schools.

21 MR. O'HANLON: Pass the witness.

22 CROSS EXAMINATION

23 BY MR. KAUFFMAN:

24 Q. Dr. Ward, in Defendant-Intervenors' Exhibit 60 is
25 your article on the Serrano litigation, is that

1 right?

2 A. Right.

3 Q. You had a chance to review the court cases in the
4 Serrano district court opinions and supreme court
5 opinions?

6 A. Yes.

7 Q. I think on Page 1 of your exhibit, you summarize the
8 state school finance cases and you found the
9 following, that "if the Plaintiffs were successful,
10 if the school finance system allows impermissably
11 large variations in per-pupil expenditures and finds
12 that those variations are a function of differences
13 in school district wealth," do you recall that?

14 A. Yes, I do.

15 Q. Would you agree that a state school finance system
16 that has impermissably large variations in per-pupil
17 expenditures and if those variations are a function
18 of differences in school district wealth, that that
19 system violates the rights of students going to
20 school in that state system?

21 A. I was simply quoting what the courts have said. The
22 courts have generally found that to be true.

23 Q. Do you personally agree with that as an expert?

24 A. The problem I have with either agreeing or
25 disagreeing with that statement is what comprises

1 impermissably large variations. What makes this
2 whole area of litigation interesting is how that is
3 defined. In fact, California to date is the only
4 state where the courts have given us some kind of a
5 measure, hence, the reason for that article.

6 Q. But if a court were, in its wisdom, to find that
7 there were impermissably large variations and that
8 those are a function of a school district's wealth,
9 would you agree that that system denies the rights to
10 equal educational opportunity of students going to
11 school in that system?

12 A. Well, the courts have been very divided on that.
13 There have been --

14 Q. Well, my question is, do you agree with that,
15 personally?

16 A. Would you repeat that?

17 MR. O'HANLON: That invades the privacy of
18 the Court. I think the question was, if the judge
19 finds that unconstitutional, would you agree with it.

20 THE COURT: Oh, I'll let him put the
21 question. Go ahead. I appreciate you worrying about
22 my province. But go ahead and ask it.

23 BY MR. KAUFFMAN:

24 Q. Dr. Ward, what I'm saying is, if a court were to find
25 there were impermissably large variations in

1 per-pupil expenditures and that those variations were
2 a function of differences in school district wealth,
3 would you see that as a denial of equal educational
4 opportunity to the students going to school in that
5 system?

6 A. If those variations were very large and the wealth
7 were the only factor that was causing those
8 variations, then, yes. The fact of the matter is
9 that variations in school spending are a product of a
10 lot of other factors besides wealth.

11 Q. In the article you wrote on Serrano, you quoted the
12 holding of the court, and I want to make sure we
13 understand it. I think you said that in California,
14 in 1982-'83, that 93 percent of the state's students
15 were in districts that were spending within \$198.00
16 of each other, is that --

17 A. That's correct, but spending on a measure that is set
18 up by the Court. That is not per-pupil expenditure.
19 That is per-pupil expenditure for regular education
20 programs, which is deleting all aid to special
21 education, special needs students that are intended
22 to disqualize.

23 Q. Well, let me make sure we have the concept. 93
24 percent of students within \$198.00 of each other on
25 expenditures, is that right?

1 A. Right. Within the range of \$198.00.

2 Q. So let's just call it 200, so we can make it simple.

3 A. Fine.

4 Q. If the average expenditure were \$2,500.00, then 93
5 percent of the students would be between \$2,600.00
6 and \$2,400.00, is that right?

7 A. That's correct.

8 Q. You have said that expenditure figure was -- I think
9 you explained it some in your article, but the guts
10 of what you're saying is that if you take off all the
11 add-ons and multipliers that are supposed to adapt
12 the system to the special needs of students in
13 districts, then you get to some core number?

14 A. That's correct.

15 Q. That core number is the number that has to fit within
16 this range?

17 A. That's correct.

18 Q. Earlier in the testimony in this trial, we have had
19 two witnesses talk about their efforts, and I think
20 successful efforts, to take out those extra
21 expenditures in the State of Texas and to come up
22 with a basic cost number. Is that done in states
23 from time to time to try to do that?

24 A. I'm sure researchers have attempted to do it. The
25 only state that I know that does that on a systematic

1 basis is Illinois. In the state law, we have a
2 procedure for doing that.

3 Q. Back to the Serrano decision a second, I think in
4 1982-'83, 93 percent of the students were within that
5 \$200.00 range, and I think you said the comparable
6 figure for 1974 was 56 percent. Do you recall saying
7 that?

8 A. I believe that's what's in the article.

9 Q. 93 percent in '82-'83 and 56 percent in 1974. So
10 again, if we for the moment forget about inflation or
11 whatever, in California, in 1974, if the average was
12 2,500, then 56 percent of the kids went to districts
13 that were spending between \$2,400.00 and \$2,600.00,
14 is that right?

15 A. Yes.

16 Q. Would you agree that certainly there was an
17 improvement in the equity of the school finance
18 system in California between 1974 and 1982-'83 as
19 shown by this increase in the percentage of students
20 within that range?

21 A. By this measure, there was clearly an increase in
22 equity.

23 Q. Do you feel that if a state is able to set up a
24 system that has a very limited range of expenditures
25 where most of its students fit within a close range

1 of expenditures per student after you take out these
2 extra factors, that that is a good and equitable way
3 to set up a school finance system?

4 A. Yes.

5 Q. Do you agree that the 56 percent of the students in
6 California who were within that roughly \$200.00 range
7 in 1974, that that percentage is too small, that
8 California should have continued to strive to have
9 additional percentages of its students within a close
10 range of expenditures per student?

11 A. That, in essence, is a political decision, not a
12 personal and preferential decision. Obviously, the
13 Court felt it was too small. In my opinion, 56 would
14 be too small, but there are no rational standards in
15 this area.

16 Q. I understand. When you say that 56 percent is too
17 small, I think what you're saying is that to have a
18 more equitable and fair system, that the State of
19 California, in 1974, should have had a greater
20 percentage of its students falling within a range of
21 \$200.00 on expenditures per student after those
22 expenditures are adapted for extra costs. Is that
23 what your testimony is?

24 A. As long as your 56 is built around a mid-point. If
25 they're all above the average, then I don't have as

1 much of a problem with 56. But if half are above and
2 half are below, I would agree with you.

3 Q. Okay. Well, let me make sure I understand this,
4 then. You're saying if half are above and half are
5 below some middle level -- and that middle level for
6 purposes of my example is \$2,500.00 -- then you would
7 suggest that to have a fairer system, that California
8 should have more than 56 percent of its students
9 within \$100.00 of the middle one way or another to
10 have a fair and equitable system, is that right?

11 A. That's right. And that should be achieved by
12 bringing the bottom up. I'm less concerned about
13 what happens to the above average. I'm concerned
14 about what happens to the below average.

15 Q. Well, but my question is correct, is that right? You
16 agree with my statement?

17 A. Yes.

18 Q. Dr. Ward, I would like to show you what has been
19 marked as Plaintiffs' Exhibit 103-D. There was about
20 a week of testimony about these exhibits which you
21 had the fortune or misfortune to miss at the
22 beginning of this trial. But these are documents
23 that were collated and gathered by Mr. Craig Foster,
24 who has worked in the area of school finance in Texas
25 for 10 or 15 years and been accepted as evidence

1 before the Court.

2 If I can represent to you that he has shown us
3 the maintenance and operations expenditures of school
4 districts in the State of Texas per student unit. If
5 you will believe me that finding expenditures per
6 student unit does take out the effects of all of the
7 add-ons in Texas, such as bilingual allotments and
8 the special ed. allotments and the comp. ed.
9 allotments, as well as small/sparse and all that.
10 Will you agree with my representation for the time
11 being at least?

12 A. I have to accept it on faith. I have no other basis.

13 Q. Okay. If I can just sort of share this document with
14 you.

15 Mr. Foster also listed all of the districts in
16 the State of Texas in rank of their maintenance and
17 operations expenditure. If you will look at this
18 document with me. I think we see that the -- well,
19 let me ask you a question first.

20 In California, do you know the range of the
21 districts? If you look at this measure of
22 expenditures per student after you have taken out the
23 extra costs, do you know the range of the
24 expenditures per student in the districts in
25 California --

1 A. No.

2 Q. -- from the top to the bottom?

3 A. No, I don't.

4 Q. What you do know is that 93 percent of the students
5 fit within this \$200.00 range?

6 A. That's correct. Those figures come from the Court's
7 decision and I accept them.

8 Q. Okay. If I can show you this document, I think it
9 shows the range in the State of Texas for this
10 expenditure per student unit figure to go from
11 \$1,060.00 to \$9,523.00. Does that seem like a fairly
12 large range to you?

13 A. We're talking about two different ranges, but it's a
14 large range.

15 Q. Okay. You agree.

16 In order to compare Mr. Foster's figures to the
17 figures that you used in your article regarding
18 California, we would have to find the middle level of
19 those expenditures, and then look at \$100.00 on each
20 side and find the number of students who went to
21 districts and districts that spent that middle range
22 of expenditures, is that right?

23 A. That's correct.

24 Q. Okay. The average on Mr. Foster's expenditures per
25 student unit was \$1,967.00. If we can look at that,

1 I guess what we'll be looking at, then, is -- I'm
2 just not tall enough to --

3 A. I can sympathize with that problem.

4 Q. Sure. Okay. We'll be looking at Texas in 1985-'86,
5 and the average expenditure per student unit in Texas
6 was \$1,967.00. So what we would do is look \$100.00
7 above and \$100.00 below that, is that right?

8 A. Right.

9 Q. Okay. So we go up to \$2,067.00 and we would go down
10 to \$1,867.00, is that correct?

11 A. Yes.

12 Q. If we were to then compare Texas and California, what
13 we would look to see would be whether 93 percent of
14 the students in the State of Texas attended districts
15 with expenditures per student between \$1,867.00 and
16 \$2,067.00, is that right?

17 A. Yes.

18 Q. If California were analogous to Texas, we would
19 expect to find a figure of 93 percent, is that right?

20 A. If we were identical to California, sure.

21 Q. 93 percent in California.

22 If you can look at this document with me, Mr.
23 Foster has added up the cumulative percentage of
24 student units which -- what he has done is each time
25 you add a district on, you add on the number of

1 students, then you find the new sum and find what
2 percentage that is of all the kids. You're familiar
3 with that sort of --

4 A. Sure.

5 MR. O'HANLON: It's student units, Counsel,
6 not students.

7 BY MR. KAUFFMAN:

8 Q. Student units. Okay.

9 So if we can look at this and we can find the
10 average here of \$1,967.00 and I think that we have
11 given you the benefit -- I hope that we have given
12 you the benefit of our work here and found the
13 average. I think we found -- we yellowed in
14 something here at \$1,959.00, which is about the
15 middle, is that about right?

16 A. Yes.

17 Q. Okay. So what we would do is to go back \$100.00
18 lower than that and \$100.00 higher than that, okay?

19 A. Uh-huh.

20 Q. So for Texas, at the 1,967, we have 64.48 percentile
21 in terms of cumulative percentage of student units,
22 is that right, right here, this --

23 A. I'm just trying to see how this is computed.

24 Q. Sure. You bet. Go ahead and take a look.

25 A. Yes, coming from the top down.

1 Q. Sure. Okay. So what we want to do now is, we can
2 look \$100.00 up and \$100.00 below and find out the
3 cumulative percentage of student units up there, is
4 that okay?

5 A. Yes.

6 Q. Would that do what was done in California?

7 A. No.

8 Q. So if we started at 1,967, we're going to go up and
9 look for --

10 A. It's done very differently in California.

11 MR. R. LUNA: Excuse me. I object.

12 He keeps saying this is what they've done in
13 California. I think the witness was just fixing to
14 say that's not what they've done in California. He's
15 comparing student units, which is not students, to
16 students, which they've used in California. He needs
17 to make it clear to the witness that he's not using
18 the same thing.

19 A. And the methodology is not the same that California
20 uses that you're using here with cumulative. You
21 might end up with approximately the same result, but
22 I'm not a statistician and that's not the same way
23 that California did it.

24 Q. Well, what California did, though, and you testified
25 previously, is they looked at the number of students

1 that went to districts that expended within that
2 \$200.00 range, is that right?

3 A. They took those that expended above that range and
4 counted the number of students in those districts and
5 those that expended below the range and counted the
6 number of students that went to those districts in
7 average daily attendance, added those two figures
8 together and divided it by the total attendance in
9 the state, which is quite a bit different from what
10 has been done in that document.

11 Q. Okay. Well, let's go through that a second, then.
12 They took the students that were above the \$100.00
13 figure and the students that were below the \$100.00
14 figure, added up all those students and found out
15 what percentage that was of all the students in the
16 state, is that right?

17 A. That's right, in average daily attendance.

18 Q. Okay. What they found was that was 7 percent of the
19 students in the state outside the range?

20 A. Yes.

21 Q. That left 93 percent in the middle, then, didn't it?

22 A. That's correct.

23 Q. Well, let's go back to Exhibit 103-D. We started out
24 with \$1,967.00, and we're going to go up \$100.00 to
25 2,067, and do we get about 71 percent up there? That

1 at that level, 71 percent of the student units are
2 involved?

3 A. Yes.

4 Q. Okay.

5 MR. R. LUNA: Well, at this point I would
6 like to object. Our analogy to student units is
7 simply not the same as to students. At least he
8 ought to tell the witness how a student unit is
9 weighted, why it's different from students, and why
10 those figures couldn't possibly work out the same.

11 MR. O'HANLON: It's got a now obvious
12 dampening effect because expenditures is different
13 for student units than for students.

14 THE COURT: Well, I think that's right.

15 What is your objection, that he should tell the
16 witness that? I don't know what the witness is going
17 to do with that.

18 MR. R. LUNA: The objection is it's simply
19 not relevant to anything because he's trying to make
20 a comparison here and that's not a comparison.

21 A. I don't know what a student unit is.

22 Q. Okay. Well, my representation at the beginning of
23 this was that we have a figure of expenditure per
24 student unit and that that takes out the effects of
25 all the add-ons and all the extra figures that you

1 talked about in your article. You come up with the
2 basic expenditure per student unit as related to the
3 basic revenue figure you talked about in your
4 article. Do you --

5 A. I understand what you're doing on the expenditure
6 side. What's the difference between a student unit
7 and a student?

8 Q. All right. Let me try that and see if we're close
9 enough now. What we've done here is, Dr. Ward, we've
10 taken the total cost in the Foundation School Program
11 for a school district and that adds up to a certain
12 number of dollars, then we have divided that by the
13 basic allotment in Texas, which is \$1,350.00. You
14 run up with a number of student units in the
15 district. So what it does is, if you have a high
16 cost district that has a lot of -- a high Foundation
17 School Program cost level with a lot of add-ons like
18 special ed. and bilingual ed. and comp. ed. and
19 whatever, then you get a comparatively large number
20 of student units in the district.

21 If you have, on the other hand, a district with
22 very low cost, very low numbers of high cost students
23 like bilingual or comp. ed., very -- you know, no
24 small and sparse, add-ons, that sort of thing, then
25 you get a comparatively low number of student units.

1 Do you understand the basic concept now?

2 A. I understand the basic concept, which makes those
3 calculations totally false because you're
4 subtracting out the special money that enumerated
5 your equation, but keeping the extra weightings for
6 those students in the denominator of your equation,
7 and the figure is a meaningless figure.

8 Q. Well, let's continue just to see my examples, and
9 maybe we can pull it out later. But let me just say
10 that this has been represented as a figure which
11 takes out the extra cost of the Foundation School
12 Program and gives you the basic amount spent per
13 student adjusted for all the cost factors. If you
14 will agree with that representation, let's see if we
15 can proceed here.

16 A. On the basis of your description, that would not seem
17 to be true, but --

18 Q. Okay. Well, let's go down \$100.00 from 1,967 --

19 MR. O'HANLON: Your Honor, I'm going to
20 have to object at this point on relevance. This
21 witness is not willing to ascribe to the methodology
22 Counsel is attempting to put to him, and therefore, I
23 don't think this is relevant to any matter before the
24 Court.

25 I think if Mr. Kauffman wants to get up there

1 and testify about it or something -- this witness
2 isn't willing to ascribe to the methodology.

3 MR. TURNER: Your Honor, it seems like he
4 is trying to take this witness and make a point to
5 the Court, and this witness is saying he doesn't
6 agree with the methodology. It just doesn't seem
7 appropriate for Counsel to be able to try to make his
8 point through a witness who is not ascribing to his
9 methodology to begin with. To put that in the record
10 just doesn't seem to be appropriate.

11 THE COURT: Okay. I'm going to sustain.

12 BY MR. KAUFFMAN:

13 Q. Well, let me ask you this, Dr. Ward. If my figures
14 are correct and there is a difference of roughly 22
15 percent in Texas -- in other words, 22 percent of the
16 students in this state are within \$100.00 of the
17 average expenditure per student unit -- and let us
18 say that somehow I can convince the Court on final
19 argument that this is a fair analogy to the
20 California figures, would you agree with me under
21 those assumptions that California clearly has a
22 higher percentage of students within \$200.00 range of
23 the average than does Texas and, in fact, California
24 had a higher percentage in 1974 than Texas does in
25 1987? Would you agree with that?

1 MR. O'HANLON: Objection. That assumption
2 assumes facts not in evidence. What Mr. Kauffman
3 said is that 22 percent of the students are within
4 this range, and that's not correct, by his own
5 calculations. 22 percent of the student units which
6 -- his resemblance to students is the point of this
7 whole running kind of objection.

8 MR. TURNER: Mr. Kauffman is persisting in
9 doing the very thing I think the Court ruled upon
10 earlier. If he wants to argue this in closing
11 argument, Mr. Kauffman is free to do it and try to
12 explain to the Court through the evidence that he has
13 in this record to make this point. But he is
14 persisting trying to make his point through this
15 witness who said that he does not agree with this
16 methodology thus far. So Mr. Kauffman is persisting
17 in doing what I think the Court sustained earlier.

18 MR. KAUFFMAN: Your Honor, I've asked him a
19 question based on, I guess to some extent, a
20 hypothetical, then, which I hope to argue at the end
21 is a hypothetical representing the state of the
22 record, which I think it is. I think I have the
23 right to ask him questions about what his
24 interpretation of the state would be.

25 THE COURT: I'm going to sustain.

1 BY MR. KAUFFMAN:

2 Q. Dr. Ward, you used in your analysis Dr. Verstegen's
3 figures, I think, is that right?

4 A. In what analysis?

5 Q. During your testimony, you quoted Dr. Verstegen and
6 her figure of 1.48 as the restricted range ratio for
7 the State of Texas?

8 A. That's correct.

9 Q. Do you know whether she based her computations on any
10 sort of weighted expenditure or revenue figures?

11 A. No, I do not.

12 Q. Well, first of all, before I go on, then, you have
13 testified to the Court that Texas has an equitable
14 system of school finance and you have based that on
15 Dr. Verstegen's work, is that right?

16 A. That's correct.

17 Q. And specifically, the number you base that on is the
18 1.48 number she found to be the restricted range
19 ratio, is that right?

20 A. That's correct.

21 Q. You do not know whether that restricted range was
22 based on any sort of revenues that had taken out
23 extra program revenues or not, is that right?

24 A. I do not know how those are calculated. I trust Dr.
25 Verstegen as a professional to know if she takes it

1 out of the numerator, she will take it out of the
2 denominator and include it in one and not include it
3 in the other.

4 Q. Okay.

5 A. So I'm accepting it on her professional reputation.

6 Q. If I were to show you the numbers that Dr. Verstegen
7 used in her analysis and the figures that she used
8 for revenue per student upon which she based her
9 calculation of 1.48, would that give you more
10 confidence in terms of understanding the range of
11 students going to schools in districts with various
12 revenues in the State of Texas?

13 A. If I could sit down and discuss with her how she did
14 this and what was included in those figures, I would
15 probably be in a position to further judge that.

16 Q. But you have testified to the Court today that the
17 system of school finance in Texas is equitable based
18 on your reading of her report already, is that right?

19 A. That's correct.

20 Q. Dr. Ward, I happen to have it. I happen to have what
21 Dr. Verstegen used in her analysis. It was and it is
22 attached to the deposition of Dr. Rossmiller. He
23 used the same figures. This is Exhibit B to Dr.
24 Rossmiller's deposition. If I can show you this, she
25 used a figure called "Revenue Per Pupil for the State

1 of Texas." Do you see that?

2 A. I see that column, yes.

3 Q. Okay. She has also run something called ADA as a
4 percentage of state and not a cumulative percentage
5 for the State of Texas, is that right?

6 A. That's correct.

7 Q. Okay. In her study, do you recall if she found the
8 average revenue per student to be \$2,390.00?

9 A. I don't recall that figure, but it would seem like a
10 reasonable figure based on this array.

11 Q. So she had an average revenue per pupil of \$2,390.00.
12 If Texas were like California, then, and then 93
13 percent of the students in the State of Texas would
14 go to school districts that had revenues per pupil
15 between \$2,490.00 and \$2,290.00, is that right?

16 A. No.

17 Q. Why is that not right?

18 A. Because this is according to the table. That is
19 total revenue, which is a very, very different figure
20 than what the California court was discussing.

21 Q. But it also says, "Total revenue excluding
22 transportation and adjusted for size, price
23 differential and special programs," is that right?

24 A. I don't know what adjusted means. It doesn't say
25 that those were excluded, it says adjusted. Until I

1 can see the calculations, I have no way to pass
2 judgment on whether those figures are meaningful at
3 all.

4 Q. Okay. So until you have had a chance to look further
5 into Dr. Verstegen's work and determine the method of
6 her calculation, you would not be willing to rely on
7 her figures for any inferences or testimony on your
8 part, is that right?

9 A. To the extent that she did the work, Dr. Rossmiller
10 has testified to it, they are both two highly
11 respected individuals in the field, and in my
12 professional judgment, I would trust that they used
13 the correct methodology.

14 Q. Okay. Well, if Dr. Verstegen is correct and what she
15 has written here is the total revenue excluding
16 transportation and adjusted for size, price
17 differentials and special programs and she has ranked
18 the districts in terms of their revenue per pupil, if
19 she is correct, can we look at these revenues per
20 pupil as though they are similar to those figures
21 used in California where you use a revenue after you
22 take out the effects of all the special programs?

23 A. I'm not willing to say that. I just don't think I
24 have enough information to say that with any degree
25 of surety.

1 Q. Okay. Well, let me ask you to assume with me that
2 her figures are comparable to the California figures,
3 and that I might in some future day be able to
4 convince someone of that, and if you will go through
5 these computations with me --

6 MR. O'HANLON: Is that document in
7 evidence?

8 MR. KAUFFMAN: Nope.

9 MR. O'HANLON: All right. We're going to
10 object to the use of it unless it is placed in
11 evidence.

12 MR. KAUFFMAN: Your Honor, I will proffer
13 to the Court as part of my rebuttal case, I will
14 enter three lines of Dr. Rossmiller's deposition
15 where he authenticates this as the document that he
16 used to base his calculations on. It is in Dr.
17 Rossmiller's deposition, and it's an exhibit attached
18 to his deposition, too.

19 MR. O'HANLON: I will have to go check and
20 make sure it is the same copy. I haven't seen this
21 particular one.

22 MR. KAUFFMAN: Well, I've got it right
23 here.

24 THE COURT: Go ahead and get it marked and
25 make an offer.

1 It's break time. You all use your break to
2 fiddle with that. See you at ten till.

3 (Short break.)

4 (Plaintiffs' Exhibit No. 46 marked.)

5 MR. KAUFFMAN: During the break we met, and
6 I think the Counsel agree that the document I'm
7 speaking from is an authentic document. They don't
8 agree to the relevance of it, but they do agree with
9 the authenticity, so if I can proceed and try to
10 establish the point.

11 THE COURT: All right.

12 BY MR. KAUFFMAN:

13 Q. Dr. Ward, then, if you will agree with me that Dr.
14 Verstegen has called this and Dr. Rossmiller has
15 called this the total revenue excluding
16 transportation and adjusted for size, price
17 differentials and special programs ranked by revenue
18 per pupil, and that she has listed revenues per pupil
19 as she has so adjusted them and listed cumulative
20 percentages as she has so adjusted them. Do you
21 agree that we can look, then, at this document which
22 Dr. Verstegen used and find the number of students in
23 the State of Texas that are within \$100.00 of the
24 average revenue per pupil as adjusted for size, price
25 differentials and special programs?

1 A. Obviously, you can do that. I still don't know what
2 adjusted means, so I don't know what's in that
3 figure, and I have no sense that that's at all
4 comparable to what the California court used.

5 Q. Well, let's see what Dr. Verstegen's figures would
6 have shown us. Her average is twenty-three ninety,
7 so --

8 A. Is that a mean or a median?

9 MR. O'HANLON: Same objection, Your Honor,
10 that we made earlier. There's no showing that this
11 is relevant. This witness is not willing to ascribe
12 to the comparability of these numbers with the
13 analysis that the California court made. So the same
14 objection that we made a little while ago.

15 MR. R. LUNA: I think also, Your Honor, the
16 witness has testified he's written an article
17 reviewing the Serrano decision. He has testified
18 he's an expert in the political matters. We are now
19 having him go behind Serrano and make certain
20 analogies from this and I don't think he's testified
21 that he's qualified to go into that kind of depth
22 analysis. That's simply not his field. Again, we
23 would object on the basis of relevancy.

24 MR. TURNER: Your Honor, I think that Mr.
25 Kauffman, again, if he has any point to make, he can

1 make it on closing argument. I frankly don't know
2 where in the record he's going to show what
3 California's numbers are and what they mean and where
4 they are coming from. But if it's in the Court
5 decision, I guess the Court decision will be
6 mentioned in closing argument in Serrano. But I
7 don't think anybody has testified before this Court
8 as to what methodology was used by the Court, what
9 numbers were developed by the Court that were used in
10 California.

11 So he is again trying them first on
12 comparability when we're not ever going of get there
13 even if this witness did know what the numbers were
14 on the document that Mr. Kauffman holds in his hands,
15 which he said he doesn't.

16 THE COURT: I'm going to sustain.

17 BY MR. KAUFFMAN:

18 Q. Dr. Ward, when you testified that the school finance
19 system in Texas was equitable, you based that on the
20 restricted range ratio of Dr. Verstegen, the 1.48
21 figure?

22 A. That's correct.

23 Q. Do you feel that your testimony on that and the
24 conclusion you have drawn is consistent with good
25 practice of school finance experts when making

1 opinions as to the equity of a school finance system?

2 A. I think I testified quite clearly that the Verstegen
3 report as well as the California court refused to
4 accept one measure and use multiple measures. The
5 measure we're talking about here wasn't the only
6 measure the California court used. I thought I made
7 it very clear that I was just forming my tentative
8 opinion on the basis of one measure. Obviously, you
9 need to use multiple measures to make that kind of
10 decision.

11 Q. But the opinion that you gave the Court on the equity
12 of the school finance system is a tentative opinion
13 based on this one measure, is that right?

14 A. That's correct. It's been indicated I'm not an
15 expert in the area of equity measurement.

16 Q. So just to make it clear, as you looked at the data,
17 you did not consider the TEAMS test in Texas or look
18 at the TEAMS test, did you?

19 A. I looked at whatever measures were included in Dr.
20 Verstegen's report and I don't recall all the
21 measures that were there by name.

22 Q. You haven't seen the TEAMS test or the documents
23 behind the TEAMS test, though, have you?

24 A. No.

25 Q. You haven't reviewed the curriculum documents of the

1 State Board of Education?

2 A. No, I have not.

3 Q. You have not reviewed the accreditation standards or
4 the accreditation reports on the State of Texas?

5 A. No, I have not.

6 Q. You have not reviewed teacher appraisal instruments
7 or reports of teacher appraisal instruments?

8 A. No.

9 Q. You have not reviewed the populations of minorities
10 or the socioeconomic status of the residents of
11 various districts around the State of Texas, is that
12 right?

13 A. That's correct.

14 Q. You have not reviewed the structure of each
15 individual district to determine the effect its
16 infrastructure would have on the district?

17 A. That's correct.

18 Q. When you testified about the effects of more state
19 money and less local money, you were not basing this
20 on any statewide studies that you have done in any
21 states looking at systems statewide in determining
22 the overall effect of changes in the system, are you?

23 A. It is based on the experience and research that's
24 been done -- it's my own experience and research of
25 others done in various states throughout the United

1 States and those research findings generally have
2 been consistent with one another.

3 Q. Those research in various states, though, they were
4 based on looking at individual districts and the
5 changes in the funding in those individual districts,
6 is that right?

7 A. Many were done as well on the state financial
8 politics of education and looking at what factors had
9 an effect on broad base support at the state level as
10 well as the local level. They were a combination.

11 Q. When you talked about the decrease of percentage of
12 the voters who have kids in school, you will agree
13 with the other testimony in this case that there has
14 been an overall great increase in the amount of money
15 spent on education in the states around the State of
16 Texas -- around the country during the last 20 or 30
17 years, won't you?

18 A. Yes.

19 MR. KAUFFMAN: I pass the witness.

20 CROSS EXAMINATION

21 BY MR. GRAY:

22 Q. Doctor, my name is Rick Gray. You, in 1978 and 1979,
23 did an analysis of the Texas school finance system as
24 you found it then, correct?

25 A. I participated in an analysis. That work that I

1 think you're referring to was done under my
2 supervision and two of us were involved in it.

3 Q. The work I'm referring to is entitled "Money in
4 Education, a Guide to Texas School Finance,"
5 published under the auspices of the National
6 Institute of Education and the authors are Brenda
7 Biles and James F. Ward.

8 A. Right.

9 Q. I'm assuming although you're James Gordon Ward, James
10 F. Ward is you and the publisher made a mistake in
11 printing your name?

12 A. Even the government printing office is not
13 infallible. It's their error.

14 Q. I have an extra copy of this for you, if you care to
15 review it during the course of my questioning.

16 A. Sure.

17 Q. One of the things you found back in the late '70s was
18 that there was a range of property wealth from which
19 districts could draw at approximately \$12,000.00 per
20 ADA up to as high as 9 million per ADA. Do you
21 recall that range, in general?

22 A. I don't recall those precise numbers. I think it's
23 fair to say that the chapter on the state fiscal
24 structure was the chapter that I wrote, and the
25 specific chapters on the school finance system in

1 Texas Mrs. Biles wrote. So I think you're
2 referring to material in the portion that I was not
3 even the author of.

4 Q. Okay.

5 MR. GRAY: Your Honor, may I approach the
6 witness? I'll try to run through this line of
7 questioning fairly quickly.

8 Q. In your opinion, the book with Mrs. Biles, or Ms.
9 Biles -- let me point to your attention Page 15 of
10 that. "The property wealth among school districts
11 varies extremely from 12,238 per ADA to 9,221,669 per
12 ADA." That was the statement that was made in the
13 book in 1981, correct?

14 A. Yes.

15 Q. Does it come as a surprise to you to find that that
16 gap or the extreme, as you called it, the extreme
17 range of about \$9 million has grown over the last six
18 years to being what the gap today is, 21,000 per ADA
19 up to 14,661,000 per ADA?

20 A. I wasn't familiar with those figures, but it doesn't
21 surprise me. Inflation has probably caused them to
22 change considerably.

23 Q. So we will agree that from the time you and Ms. Biles
24 studied the Texas finance system, the range has grown
25 about \$5 million, correct?

- 1 A. Correct.
- 2 Q. Now, the book talked about the Foundation School
3 Program. I believe the book refers to the
4 terminology "Minimum Foundation Program," but I'm
5 going to use the term "Foundation School Program,"
6 okay?
- 7 A. Okay.
- 8 Q. And made the comment that districts by and large
9 spent above that Foundation Program so they could
10 provide a higher quality of education than the
11 Foundation School Program would allow them to
12 provide. Do you recall that comment?
- 13 A. As I indicated, I didn't write that portion of the
14 book. I'll trust you that that's there, but those
15 aren't my words and I don't recall them.
- 16 Q. But you are the co-author of this book?
- 17 A. As I indicated, I wrote one chapter, and therefore,
18 two names went on the book.
- 19 Q. Okay. On Page 43, the quote is "Most districts take
20 advantage of this provision" -- which is under the
21 title 'Local Enrichment'" -- to offer a higher
22 quality educational program than provided for under
23 the Foundation School Program." Do you see that
24 direct quote?
- 25 A. Yes, I do.

1 Q. I take it that what that was meant to convey is that
2 most districts chose to spend more money than the
3 Foundation School Program in and of itself contained
4 in order to provide a higher quality educational
5 program to their students?

6 A. I assume that's what it meant.

7 Q. Okay. On Page 49 of your book with Ms. Biles -- I'll
8 just ask you this. The author's reference that "More
9 money on the part of school districts provides the
10 ability to hire additional or more experienced
11 teachers, to offer more innovative instruction,
12 materials, et cetera." Do you believe that?

13 A. Not necessarily. I don't think there's a direct
14 correlation.

15 Q. Okay. So although it was contained in your book that
16 was published by the National Institute of Education
17 in 1981, you're now disavowing that?

18 A. I'm disavowing what's in the book. I didn't write
19 that in the first place, and I do not now agree with
20 that nor at that time did I agree there was a direct
21 correlation.

22 Q. Okay. Now, you are involved, are you not, according
23 to your testimony, in a restructuring of the Illinois
24 finance system?

25 A. Yes.

1 Q. I believe you said Illinois has some 900 districts?

2 A. 994.

3 Q. Does Illinois have any districts that are tax havens?

4 A. Yes.

5 Q. By tax haven, so you and I will understand the
6 terminology that I'm using, and you correct me if I'm
7 wrong, I'm referring to a school district whose
8 purpose for being in existence is to have the
9 citizens who are lucky enough to live within that
10 district have the ability to avoid paying any
11 significant property tax that would then go to
12 provide for a meaningful education.

13 A. I would define it differently. I think what I'm
14 talking about, when you said tax haven, are small
15 school districts that have very high property wealth
16 per pupil because of their unique circumstances who
17 wish to remain in that situation and not consolidate
18 with other districts for the purpose of maintaining a
19 lower tax rate.

20 Q. We will agree, will we not -- will you agree with me
21 that the purpose of a school district is to provide
22 education?

23 A. Yes.

24 Q. And that any district that exists for a purpose other
25 than educating students is not what you and I would

1 call a real school district?

2 A. I would disagree with that entirely. Society has
3 imposed any number of functions on the public schools
4 in addition to plain education. We provide free
5 breakfast and lunch for children, we provide
6 psychological services, we provide guidance about
7 communicable diseases. Those are hardly what I would
8 call educational functions. I would say that public
9 schools have a broad array of social functions, the
10 primary one being education.

11 Q. Well, let me ask you this. Do the school districts
12 in Illinois have to be accredited by the state?

13 A. No.

14 Q. Assume with me in Texas that you have to -- school
15 districts are accredited, and before a student can
16 receive a diploma from a school district that has any
17 meaning whatsoever, it has to be from an accredited
18 school district.

19 A. We call it recognized by the state rather than
20 accredited, but I think it's the same concept.

21 Q. The same process?

22 A. Yes.

23 Q. Does the state in Illinois recognize -- excuse me,
24 I'm using the wrong term. Does the State of Illinois
25 allow to exist any school districts that are not

1 recognized by Illinois such that students who
2 graduate from those school districts can't even get
3 diplomas?

4 A. To my knowledge, there are no schools in Illinois
5 that are not recognized. All that I understand -- if
6 the school district is not recognized, it does not
7 mean dissolution of the school district. It means
8 that the State Board of Education works with the
9 school district to bring them up to the status where
10 they can be recognized.

11 Q. What is the smallest school district that you are
12 aware of in Illinois?

13 A. There is a school district on the Mississippi River
14 on the Rock Island area that has 16 students.

15 Q. Are there many school districts that small in
16 Illinois?

17 A. Yes. We have a very, very large number of school
18 districts with fewer than 300 students in the state
19 of Illinois.

20 Q. Are you, as part of your reform process, recommending
21 that all those small school districts be left intact?

22 A. Yes.

23 Q. I take it that if I was to tell you in Texas, we have
24 school districts as low as 3 students and several --
25 I believe the names are Allamoore and Juno, but I'm

1 not sure on that -- that have under 15 or 15 or below
2 that aren't even recognized, using your term and
3 using my term, aren't even accredited by the state,
4 and yet have huge property values. I assume that
5 doesn't cause you any trepidation or problem
6 whatsoever.

7 A. Not those facts on the face of it.

8 Q. I assume if I was to show you --

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

11 THE COURT: Yes.

12 Q. For example, let's take an urban area, the Dallas
13 area, and let's take, for example, the
14 Wilmer-Hutchins district, which I believe you had a
15 chance to discuss with Mr. Luna a little bit, take
16 that district and believe me when I say or let me
17 represent to you that they have a property value
18 figure of about 90,000 per child and are taxing
19 themselves at \$1.14, \$1.15 per \$100.00 valuation, and
20 within 10 or 12 miles of that district is another
21 district in the same county called the Highland Park
22 School District who have a property value in excess
23 of a million dollars per child who are taxing
24 themselves at one-third or less of what
25 Wilmer-Hutchins -- I believe their tax rate is 30

1 cents, 35 cents, something like that -- and who
2 indeed are spending substantially more, one and a
3 half times, two times more on their kids than the
4 Wilmer-Hutchins kids. I assume you have absolutely
5 no problems with that circumstance existing side by
6 side in counties across this state?

7 A. As long as we have a state equalization program and
8 categorical aid programs that are supposed to provide
9 some rectification for that, I have no problem with
10 that situation existing.

11 Q. Well, let me further tell you that the numbers I just
12 quoted to you are after the state equalization
13 program has done all the equalizing it's going to do.
14 Do you still have no problem with that?

15 A. I have no problem with disparities as long as the
16 poorer districts are able to provide an adequate
17 level of education as defined by the state.

18 Q. Okay. So your posture is whatever the state chooses
19 to define as an adequate education -- for example, if
20 the state says, "If you can say the ABC's correctly
21 three times in a row, you've got all the education
22 that you need," and so that some districts have
23 virtually no money to spend while other districts
24 have literally multiple thousands of dollars to spend
25 on their students and their students not only can say

1 the ABC's three times in a row, but also go to
2 college and take physics and take advance placement
3 courses and things of that sort, that you have no
4 problem, as long as the state says, "Say ABC's,"
5 that's that?

6 A. As long as the State of Texas says that. That's what
7 it means to live in a democracy.

8 MR. R. LUNA: I would object. I mean,
9 that's a ridiculous example. That's not in evidence.
10 Counsel hasn't framed a hypothetical, and we object.

11 THE COURT: I'll overrule.

12 BY MR. GRAY:

13 Q. Now, so I take it if I was to show you some maps in
14 evidence -- I'll do this real fast -- that you
15 likewise will have no problem with it.

16 For example, Exhibit 241, which is Val Verde
17 County. I know you don't know enough about Texas to
18 know what Val Verde County is, but assume with me you
19 have two school districts in Val Verde County side by
20 side, one of which is the Juno School District that
21 is not accredited and not recognized by the state,
22 students can't get a diploma from, who has right at
23 \$3 million per child in value. Right next to that is
24 the San Felipe-Del Rio School District who has 8,669
25 students, virtually all the students in the county,

1 who only have 69,000 and four hundred some-odd
2 dollars per child.

3 Assume with me further -- and these not only
4 are assumptions, they are facts -- that Juno is
5 taxing itself at the tax rate of 13 cents while San
6 Felipe-Del Rio is about four times that. I don't
7 have the numbers on here, but rest assured that you
8 will see substantial -- I mean, two or three times,
9 maybe four or five times the amount of dollars as
10 being spent higher than that's being spent on the kids in
11 Juno than on the kids in San Felipe-Del Rio.

12 I assume that those facts don't cause you any
13 problem at all?

14 A. I need to know how much is spent in San Felipe-Del
15 Rio, and my judgment will be based on whether that is
16 an adequate amount to educate the children in that
17 district. That's the important factor, not how it
18 compares to a neighboring district in terms of
19 property tax base.

20 Q. What number can you tell us is an adequate number to
21 educate kids?

22 A. That number would vary depending upon the cost of
23 hiring employees in that district, the sparsity of
24 that district, transportation costs, the number of
25 percentage of special needs children, a whole variety

- 1 of factors that have an impact on the cost of
2 education in a district. So you're asking a question
3 that's simply not possible to answer in the abstract.
- 4 Q. Okay. Without going through all these, there have
5 been literally dozens of maps and even more examples
6 of these -- what I would characterize as absolutely
7 tremendous disparities side by side in counties. If
8 I was to go through each of them with you one at a
9 time your answer would be, "No, that doesn't cause me
10 any particular concern"?
- 11 A. If I have a Chevrolet and you have a Mercedes, and I
12 have adequate transportation, that's what concerns
13 me, not whether your car is better than my car.
- 14 Q. Okay. I take it, then, that your view of public
15 education is if I get a grade, say, on the scale of
16 education, you have -- what's the minimum passing
17 grade in Illinois? Let me ask you that.
- 18 A. There's no such animal.
- 19 Q. Okay. Well, when I went to school, you had A's, B's,
20 C's, and D's.
- 21 A. Right.
- 22 Q. And assuming that you graded educational programs
23 such that you and I both live in the same state, you
24 and I both live in the same county. Your parents pay
25 a tax rate that is one-third what my parents pay.

1 You're paying 33 cents, my parents are paying a
2 dollar. I get a grade D education program and you
3 get a grade A-plus education program, are you telling
4 me you have no problem with that?

5 A. I think everyone should have a grade A educational
6 program, but I don't think that the letter grade you
7 assign to an education program in a jurisdiction is
8 necessarily a function of either the tax rate or the
9 tax base in that particular school district. The
10 connection just isn't that easy to make. You're
11 taking a very complex area and trying to oversimplify
12 it.

13 Q. Well, I'm just assuming. The point I want to make
14 sure I understand with you is, you don't have any
15 problem with one set of students in a state getting a
16 substantially different higher level, better
17 education than another set of students as long as the
18 students who get the less level of education, as long
19 as in your mind it's a D or better, it's passing or
20 better?

21 A. I didn't say D or better, and I said this before. My
22 emphasis and what I attach importance to is to make
23 sure that every child in the state receives an
24 adequate education. I don't mean minimally adequate,
25 I mean adequate. And then if there are school

1 districts that because of their circumstances or
2 because of local preferences choose to offer an array
3 of educational services that are different than that,
4 then that doesn't trouble me. What troubles me is
5 where inadequate educational services exist. I think
6 the state has an obligation to correct that
7 situation.

8 Q. So using your terminology, if you deemed that I was
9 getting an adequate education and yet you were
10 getting a substantially more than adequate education,
11 you would just tell me it was "Tough luck, Rick,
12 that's the facts of life."

13 A. That's not tough luck. It may be that my district
14 has chosen to tax itself at a higher level or any
15 number of reasons.

16 Q. Assume with me your district is not taxing at a
17 higher level, but, in fact, is taxing at a lower
18 level.

19 A. That on the face of it doesn't bother me, as long as
20 one district is receiving the adequate education.

21 Q. Now, as I understand your testimony about California,
22 I'm not asking you about the Serrano case, but the
23 imposition of what I think Mr. O'Hanlon characterized
24 as the cap in California, that was not part of the
25 Court mandated reforms of Serrano, that was the

1 voters passing Proposition 13, correct?

2 A. Correct.

3 Q. And Proposition 13, whether it be good or bad, put a
4 limit on how much property tax you could tax on local
5 property, which meant that any number of public
6 services that had in the past been paid for by local
7 property tax had to be paid for by some other
8 fashion?

9 A. That's right.

10 Q. Now, on local -- and I believe you said you were a
11 supporter of local control and felt that local
12 decision-making was important, correct?

13 A. Yes, right.

14 Q. Have you done any review on Texas to have an opinion
15 as to today, as we sit here in this courtroom, to the
16 extent to which local control has been honored in
17 Texas or has been diminished in Texas for whatever
18 reason?

19 A. Over what period?

20 Q. Since you studied it and 1979-'80.

21 A. My sense from reading the literature is that local
22 control has not increased or decreased during that
23 period.

24 Q. Are you aware since that period that the state has
25 imposed a test that will determine who does and who

1 does not graduate from any high school in this state?

2 A. No. I was not aware of that.

3 Q. Are you aware that since that time, the state has
4 imposed standards that will determine who does or who
5 does not participate in any extracurricular activity
6 in this state?

7 A. I have read about that.

8 Q. The "No Pass/No Play"?

9 A. Yes.

10 Q. Are you aware that since that time the state has
11 imposed requirements on college persons who want to
12 become teachers, that they have to take and pass a
13 test before any school district in this state can
14 hire that teacher?

15 A. Yes.

16 Q. Are you aware that today in Texas, a teacher can
17 appeal beyond his or her local school board all the
18 way to Austin to the Commissioner of Education any
19 form of disciplinary violation or contract problem or
20 sanction that a local district may or may not want to
21 impose on that teacher?

22 A. Yes.

23 Q. Are you aware that the state today has a state
24 mandated curriculum that all school districts must
25 teach?

1 A. Yes.

2 Q. Are you aware that today, the state mandates how many
3 minutes a day a teacher must teach and how many
4 minutes a day a certain subject matter must be
5 taught?

6 A. I was not aware of that.

7 Q. Are you aware that the state today mandates how many
8 days a year a school district must hold school and
9 for how many minutes a year a school district must
10 hold school?

11 A. Yes.

12 Q. Are you aware that today, the state mandates what
13 textbooks are to be used in schools?

14 A. I know there is a textbook selection process at the
15 state level.

16 Q. Are you aware that today, the state mandates how many
17 library books per student you have to have in your
18 library?

19 A. No.

20 Q. Are you aware, for example, that not only on
21 mandating, say, science courses, but they mandate how
22 much of the science course must be in the lab and how
23 much must be in the classroom?

24 A. No.

25 Q. I take it now that I've informed you that that is a

1 fact, and I'm sure I've left out something, but that
2 is where we are today in Texas, you hold the opinion
3 that Texas -- that that's all evidence of a lot of
4 local control?

5 A. That's things that most other states had 30 years
6 ago. I don't think it has been perceived as local
7 control in other states. Frankly, you could tell me
8 it has all come in the last five years. I'm
9 surprised that Texas didn't have this before.

10 Q. So I take it that that is evidence of Texas moving
11 away from local control, then?

12 MR. O'HANLON: That's misleading. The
13 witness is correct. Most of the things that Mr. Gray
14 talked about existed in some form or another for many
15 years in this state.

16 THE COURT: I'll let him ask the question.

17 A. Would you repeat the question, please?

18 Q. If the majority or the vast number of what I have
19 just gone through, this litany of state mandated
20 functions are of recent vintage, do you hold the
21 opinion that is an indication of a movement away from
22 or towards or no movement at all pertaining to local
23 control?

24 A. I would have to say it is somewhat of a movement away
25 from local control.

1 Q. Okay. Now, just a minor point. I believe you said
2 that there is not as many parents of school age kids
3 today as there used to be, and because of that, there
4 is not as many people in your perception who were
5 advocates of public education, correct?

6 A. That's true.

7 Q. That's a function of the gap between the Baby
8 Boomers, right?

9 A. Primarily.

10 Q. Although you may not be, I am a prodigy of the Baby
11 Boom. I assume that you are aware that the cycle has
12 now turned and those of us that came from the Baby
13 Boom are now beginning to have school age kids and so
14 the trend is going to be just the opposite?

15 A. It is, although all the demographic studies I've seen
16 show that the increase in enrollment that's going to
17 come about will bring us nowhere back to the point
18 where we were even 15 years ago. It's very much a
19 mini-boomlet.

20 Q. Now, I take it that in Illinois or in Texas or
21 wherever else you want to look at -- let me put it
22 this way. There has been testimony in this record
23 both recently and dating back to when it was called
24 the Connally Commission, who was a former governor of
25 this state who had, back in the middle '60s, had a

1 school study done.

2 As I recall, the thrust of that, and my numbers
3 may be slightly off, but the concensus was that a
4 school district that had below 2,500 give or take in
5 attendance was not an efficient system to operate
6 because of the cost differentials. And again, I
7 don't want to represent to you 2,500 is the exact
8 number because I don't have it off the top of my
9 head, but it's in that ballpark.

10 Do you know enough about school district
11 operation to have an opinion as to, one, is there a
12 size below which it's just not efficient to operate?

13 A. Looking at a study that was done in Illinois on the
14 same issue, we found that the relationship between
15 efficient operation and school district size tended
16 to be a U-shaped curve; that very, very small school
17 districts tended to be inefficient; very, very large
18 school districts tended to be inefficient. The most
19 efficient school districts existed in the middle,
20 although I must say that when absolute numbers were
21 attempted to be assigned to that point where
22 efficiency moved into inefficiency, that the people
23 who did the study in the Illinois State Board of
24 Education could not do that. They found that that
25 varied from circumstances to circumstances.

1 Q. So for whatever reason, why one of these small
2 districts may be allowed to exist or whatever, you
3 will agree with me that, say, for example, a district
4 of three students that is providing six grades or
5 twelve grades or whatever of education supposedly for
6 these three students is not an efficient district?

7 A. I couldn't answer that with any degree of surety.
8 It's possible to have a district that small that it
9 might, in fact, be efficient. I can't agree or
10 disagree with that.

11 Q. I take it, then, that although there is a general
12 number below which you would assume districts are not
13 inefficient, that a closer look may tell you that
14 they are, but you couldn't tell me that off the
15 stand?

16 A. There are certainly small school districts that are
17 inefficient. I wouldn't be willing to say a blanket
18 statement that below a certain size, that they're
19 automatically inefficient.

20 Q. Okay. I take it you are an advocate of -- let me ask
21 you this. Are you an advocate of increased resources
22 being used either from the state level or from the
23 local level for public education?

24 A. In general, I'm in favor of increased funding for
25 public education.

1 Q. Why, in general, are you in favor of increased
2 funding for public education?

3 A. Because I think there are many school districts that
4 do not have the resources to provide an adequate
5 education. We need to increase funding to funnel
6 through the state more resources into those school
7 districts.

8 Q. I take it that you, as an educator, will continue to
9 be stressing the need for more money for public
10 education until you are satisfied that all that can
11 be done productively with that money is, in fact,
12 being done?

13 A. I would continue to be an advocate for increased
14 funding for education as long as I'm convinced that
15 that money is going to those school districts that
16 need it. I'm not necessarily an advocate for
17 increased funding for many school districts that I
18 think have reached an adequate level of educational
19 funding.

20 Q. I'm assuming that you, as a professional educator,
21 would not, for example, be advocating increased
22 funding that would be wasted; that you are not
23 advocating just burning money.

24 A. I'm not advocating burning money, but if the local
25 preferences in a school district are to provide a

1 different array of services or facilities and a
2 school district wants to tax itself to provide those,
3 I'm not opposed to it.

4 Q. I'm not talking about -- let me make it clear for
5 you. Put yourself at the state level, where you
6 don't have a vested interest in a particular school
7 district or school community, but you are looking at
8 the education that is being provided to the students
9 of a state.

10 A. Uh-huh.

11 Q. You would not anticipate that a state would be
12 requesting more money for public education, unless
13 the state thought that it could be put to a
14 productive use and improve the educational
15 opportunities of that state's children, correct?

16 A. Yes.

17 Q. Okay. In your book with Ms. Biles, you made on Page
18 66 the statement that, "We see the poorer districts
19 taxing themselves at higher rates than the wealthier
20 districts." That is the statement that was made on
21 Page 66. Have you been shown any information in the
22 preparation of your testimony today that would
23 contradict the statement that was made in 1981 in
24 your book?

25 A. I see no evidence that would contradict that nor did

1 I see any evidence at that time that would support
2 that. That was Mrs. Biles' analysis and she wrote
3 that section.

4 I can say in the state of Illinois, that that
5 relationship is not at all clear, and I would assume
6 things might not be all that different in Texas.

7 Q. Assume with me that the record here is abundantly
8 clear that on -- I think if you look at the 1,000
9 districts and I think if you look at the 500 richest
10 and the 500 poorest and just average them so you're
11 right at the middle, you will see an 8 cent
12 difference in tax rate.

13 As you go to the extremes, you see that that
14 gap -- again, using my terms -- gets to be very, very
15 extreme in the 80, \$90.00 set range.

16 A. What is fundamental in Illinois is that there are
17 wealthy districts that tax themselves very low and
18 there are wealthy districts that tax themselves very
19 high. Likewise with poor districts. If you were to
20 compute an average, which is like taking a person
21 with his feet in the oven and head in the
22 refrigerator, he's comfortable on the average. It
23 really masks the true data.

24 Q. Now, I take it that you will agree with me when you
25 talk about tax rates and using local tax rates on

1 local property taxes as a vehicle by which you fund
2 your public education, that a wealthy district -- by
3 wealthy, I'm meaning property wealthy that has large
4 amounts of taxable property to tax -- they can tax at
5 a relatively low tax rate and still raise and
6 generate a lot of money to spend on educating their
7 children, correct?

8 A. A lot of local money, yes.

9 Q. I take it that you will also agree with me that that
10 luxury -- and by that, I mean the ability to tax at a
11 low rate -- is not held by the property poor
12 districts if they, too, want to be able to spend
13 substantial sums of money educating their kids?

14 A. You just mixed two things. You talked about local
15 money available and total amount of money available,
16 and ostensibly a state equalization system is
17 designed to compensate for the difference. So just
18 because the poor district is poor doesn't mean it has
19 less money to spend. It has less local money to
20 spend.

21 Q. You're assuming, I take it by your answers, that the
22 state equalization formula would or should offset the
23 difference in the advantage that the wealthy district
24 has based upon its much larger tax rate?

25 A. That's the purpose of a state equalization formula.

1 Q. If a state formula does not offset that advantage,
2 then it's not doing its job, correct?

3 A. It will never reach absolute perfection. That's
4 probably impossible without going to a state system.
5 I think that's what we talked about earlier, that Dr.
6 Verstegen's report produced a number of those
7 measures, and there seemed to be some indication,
8 particularly in recent years, that Texas was making
9 significant strides towards equity.

10 Q. So the bottom line for my question then is, if you
11 have a state system that is allowing two districts to
12 exist side by side, one that has all the wealth and
13 very few of the students, the other that has little
14 or none of the wealth but all of the students, in
15 Texas, at least, that's just the luck of the draw and
16 you don't have a problem with it?

17 A. I don't have a problem with that if the state
18 equalization system provides enough money for that
19 poorer district with all the students so that they
20 offer an adequate level of education.

21 MR. GRAY: I have no further questions,
22 Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. R. LUNA:

25 Q. A couple of quick questions.

1 Doctor, have you ever been a witness before in
2 a trial?

3 A. No.

4 Q. Have you ever had your deposition taken before?

5 A. No.

6 Q. In your article commentary, you made reference in one
7 of the footnotes, I noticed, to a book which you
8 apparently considered to be authoritative on the area
9 of measurement of equities, and it's a book by Berne
10 and Stiefel, is that right?

11 A. I footnoted that book because that was also cited in
12 the California court decision and is generally
13 regarded by specialists in equity measurement that
14 that is the standard source.

15 Q. All right. That's a book that's been mentioned in
16 this court, and that's the reason I just wanted to
17 mention it.

18 A. Sure.

19 Q. As a general rule in the school reform area, as a
20 part of the political process, do the wealthy
21 districts lose money as a part of the reform measure?

22 A. No.

23 Q. Why is that?

24 A. Well, in any kind of reform measure where you alter a
25 distribution formula, there are always winners and

1 losers, when you change any kind of distribution
2 formula.

3 It has generally been regarded in the United
4 States that in school finance reform, you must
5 provide additional dollars so that you hold harmless
6 the losers or somehow cause them not to lose money so
7 there are winners, but no losers, and that builds
8 broad based political support for the reform.

9 To do otherwise, I think, is risking losing
10 political support where there are significant numbers
11 of losers.

12 Q. If I told you that in the Texas reform system, there
13 was no hold harmless provision and, in fact, the
14 wealthy districts by design lose money as they become
15 wealthier and, in fact, lost significant dollars
16 under House Bill 72, how would that compare to the
17 general reform movement across the United States?

18 A. If that, in fact, was true, it's the only state in
19 the United States that I'm aware of where that's ever
20 happened.

21 MR. R. LUNA: Pass the witness.

22 MR. TURNER: No questions, Your Honor.

23 MR. O'HANLON: I have just a couple.
24
25

RE CROSS EXAMINATION

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BY MR. O'HANLON:

Q. Dr. Ward, when you're talking about equalizing, we can equalize up and we can equalize down, is that right?

A. That's correct.

Q. What is the difference?

A. Equalizing up is to say that we have a goal and we want to move all school districts up to that goal by increasing funding. Equalizing down is saying that we're going to deal kind of with the least common denominator and we're going to cap certain districts and hold their spending down until we can reach their lower level.

Q. Given the vicissitudes of the variances in property tax bases, the only way you can equalize up, then, would be from state expenditures, is that correct?

A. That's correct.

Q. When you're talking about equalizing down, I assume you're talking about some kind of restriction on the local district's ability to expend local funds?

A. That's correct.

Q. Okay. Does equalizing down or restricting the wealthy districts generally do any good for the poorer districts?

1 A. No. It simply caps the wealthy districts and the
2 poor districts receive whatever state money they
3 receive.

4 Q. All right. So what you're doing, then, is you've got
5 kind of a lose/lose situation I assume, then?

6 A. California is a perfect example of that. They
7 equalized down, and that was the only way they
8 achieved equity. Over time, through the infusion of
9 state monies, the poorer districts' spending levels
10 were brought up, but the richer districts were capped
11 and made no improvements.

12 Q. All right. Speaking as a political analyst, I assume
13 you're aware of the situation where local districts
14 can spend money and they may tend to pull away.

15 A. I'm sorry, I didn't hear that.

16 Q. That as the wealthier districts -- any time you
17 equalize, according to a given formula, and you allow
18 some districts to enrich above that, they may tend to
19 pull away over time?

20 A. Uh-huh.

21 Q. Does that have the tendency to create the next reform
22 movement or an impetus for further funding?

23 A. Well, sure. In education, they are called lighthouse
24 districts. They serve as examples for all of us, and
25 I think all districts strive to achieve what they

1 achieve.

2 Historically, they have been centers of
3 innovation, experimentation. Most of the new ideas
4 and new techniques we have derived in education have
5 characteristically come out of these lighthouse
6 districts.

7 In our state of Illinois, there is a district
8 north of Chicago and in terms of curriculum and
9 instructional program, it is generally regarded as
10 being one of the most innovative in the state. Other
11 districts use it as a laboratory. It happens to be a
12 high wealth, high spending district.

13 MR. O'HANLON: I don't have any further
14 questions.

15 MR. KAUFFMAN: No questions.

16 THE COURT: Will you turn the chart back
17 over to the one that Mr. Luna made?

18 EXAMINATION

19 BY THE COURT:

20 Q. You were talking about what social scientists
21 referred to as politically influential people.

22 A. Uh-huh.

23 Q. Would you care to do a caricature of a politically
24 influential person?

25 A. Okay. This is a generalization. In general, poor

1 people do not vote as often or the percentage of the
2 potential voters that come from poverty neighborhoods
3 is much less than from wealthier neighborhoods.

4 People that are more better educated tend to be more
5 politically active, vote more often, tend to be more
6 politically influential. I would say it's largely a
7 function of social class and of education.

8 Q. Okay. So if you've got in the form of a single
9 individual, if you have, say, above average income or
10 wealth, and you've got some education, and you've got
11 some social consciousness, those three elements
12 wrapped up in one person makes that person as least
13 potentially politically influential?

14 A. Yes.

15 Q. I mean, you've got a nice citizen, and you've got
16 what you want in a citizen in that type of a person.

17 A. Yes.

18 Q. Well, have there been any studies by you who are
19 interested in the politics of education as to where
20 those people live?

21 A. There was a study conducted by Howard Nelson when he
22 was at the University of Wisconsin entitled "Do Poor
23 People Live in Poor School Districts." He also wrote
24 "Do Rich People Live in Rich School Districts." His
25 unit of analysis was the State of Wisconsin. He

1 concluded that poor people do not live in poor
2 districts and rich people do not live in rich
3 districts, although there's a tendency towards
4 concentration; that most school districts have a
5 broad range of individuals that live in those
6 districts.

7 Q. In Illinois, do you think -- and I'm speaking of some
8 of your more influential suburban school districts --
9 do you think there are school districts in Illinois
10 that have substantial numbers of politically
11 influential people and school districts that don't
12 have very many?

13 A. Yes.

14 Q. I think that's true of Texas, also.

15 A. I would agree.

16 Q. All right. So we've had for maybe centuries in some
17 states, but for a very long time in Texas, local
18 school districts. In Texas, we have suburban school
19 districts where the main element of wealth is a nice
20 home.

21 A. Uh-huh.

22 Q. Well, living in those homes are people with
23 education, above average income, and lots of times, a
24 social consciousness, and they have the wherewithal
25 to get things done in society that they want to see

1 done.

2 A. That's right.

3 Q. Yet in Texas, which is not probably uniformly true,
4 but if you take this county, you could probably pick
5 out two or three school districts in this county
6 where those people live. Is that true of Illinois?

7 A. I'm not sure that the contrast would be quite as
8 stark as you're pointing out. I don't think if you
9 took a typical suburban county or county with a large
10 metropolitan center like Austin, that there would be
11 two or three school districts in which they would be
12 concentrated. In my state of Illinois, they are
13 probably spread a little bit more.

14 Q. But there are school districts in Illinois that are
15 filled obviously with politically influential people?

16 A. Sure.

17 Q. And there are school districts in Illinois, like
18 there are in Texas, that have only a very few
19 politically influential people?

20 A. That's right, sure.

21 Q. All right. So at least the system, the local school
22 district system as we have seen it in the United
23 States in all the states except Hawaii, as I
24 understand it, would tend to concentrate, at least in
25 some instances, not only wealth, but also influence.

- 1 A. Uh-huh.
- 2 Q. Okay. Sometimes those two things come together, but
3 not always.
- 4 A. That's right.
- 5 Q. Well, is that a good idea?
- 6 A. Well, sometimes that comes together. Yet --
- 7 Q. No. My question is, is having a system that would
8 tend to isolate politically influential people into
9 districts and wealth into districts, is that a good
10 idea?
- 11 A. I'm still not sure I can answer that question. Is it
12 a good idea in what way? I mean, I --
- 13 Q. Do you like that idea? Do you like that system?
- 14 A. Unless we tell people where to live, I don't see any
15 alternative to that system, so I accept that system.
16 I don't know what you mean by like it.
- 17 Q. Well, all right. Let me let you have the floor and
18 you take all the time you want and you justify that
19 to me, in any way you want to. You justify a system
20 that does that.
- 21 A. That allows people to --
- 22 Q. It's ten till twelve. You can have until 5:00
23 o'clock. You just go ahead and tell me every reason
24 why that ought to be.
- 25 A. Why should we allow people to live where they want to

1 live?

2 Q. No. Why should any state support a school finance
3 system that would tend to aggregate wealth in some
4 districts and not in others, and tend to congregate
5 politically influential people in some districts and
6 not in others.

7 A. When we have any kind of substate geographic
8 boundaries, you're going to have differences in the
9 kind of people that live in those geographic
10 jurisdictions. Likewise, you're going to have
11 differences in wealth. The purpose for having the
12 state equalization system is to try to compensate for
13 those differences in wealth to insure an adequate
14 level of educational services in every school
15 district. I would be upset about that situation if
16 we didn't have a state equalization system of school
17 finance.

18 Q. Okay. Let's use this Region 10 board for a minute.

19 A. Sure.

20 Q. We've got two school districts there. We've got
21 Carrollton-Farmers Branch and we've got
22 Wilmer-Hutchins. Let's assume -- this may not be
23 exactly right, but Carrollton-Farmers Branch has
24 politically influential people in it. That's not
25 exactly right, but I just want to use this as an

1 illustration because there are school districts that
2 have a lot of people in it, politically influential
3 people, and that have high property values. This may
4 not be exactly true of Carrollton-Farmers Branch, but
5 it is true of another school district that it is 90
6 to 99 percent minority, and low income minorities.
7 We can assume there are not very many politically
8 influential people there. Let's suppose I'm going to
9 wave a magic wand and I make one school district,
10 Carrollton-Farmers Branch and the other and I combine
11 them. Now, what are the politically influential
12 people going to do?

- 13 A. I think it has been the experience over the past
14 couple of decades in places where something like this
15 has happened that some of those wealthier politically
16 influential people, if you combine the two school
17 systems so you're bringing the poorer one up to a
18 medium level and the rich one down -- I mean, if you
19 brought everybody up to the top level, it may be a
20 different situation. But if you suppressed the level
21 of spending in the wealthier district and raise it in
22 the poorer by combining them so that you've got one
23 expenditure level overall, there would be a tendency
24 for the people who can afford it and who have been
25 used to a high level of educational services from the

1 public system to remove their children from the
2 public school, send them to the private school, and
3 cease to be as active politically on behalf of the
4 public schools and their support of the public
5 schools.

6 Q. Okay. Now, if we put Wilmer-Hutchins, the minority
7 district, in with a wealthy district so that they
8 have a unified tax base, then that makes those two
9 school districts combined into one have -- at least
10 for the people living in those two districts combined
11 -- would have more local access to funds, right?

12 A. The part of the district that was formally the poor
13 district would have greater access. The part of the
14 district that was formerly a wealthier district would
15 have less access.

16 Q. Okay. Now, which would you prefer? Would you prefer
17 that Wilmer-Hutchins be left to the whims of the
18 Legislature about supplying it money to make up the
19 difference, or would you rather Wilmer-Hutchins have
20 within its own capacity to tax the property in its
21 district in order for itself to supply itself with a
22 minimally adequate educational system?

23 A. Over the long run, I would much rather depend upon
24 the Legislature and depend on the entire wealth of
25 the state as a whole rather than depending upon the

1 wealth of individual school districts.

2 Q. Well, okay. So you would prefer to leave some school
3 districts with inadequate tax bases and rely on the
4 Legislature to make up the difference on the long
5 run?

6 A. Yes.

7 Q. You would rather do that?

8 A. Yes.

9 Q. Well, you said that if a state defines what a
10 minimally adequate education is, then that function
11 of the state is acceptable to you, right?

12 A. I may not choose to live in that state, but I happen
13 to be a firm believer in democracy and believe it is
14 through the political process that society makes
15 these decisions.

16 Q. Okay. You tell me what you would rather -- would you
17 rather the local districts define what is minimally
18 adequate or the state?

19 A. The state.

20 Q. You would rather states do that?

21 A. I would, yes.

22 Q. Okay. Well, by doing that, haven't you divided who
23 gets to say what is minimally adequate from the power
24 to tax and raise the money to do it? You have
25 divided those functions, haven't you?

1 A. The power to define what an adequate education is is
2 a state function. I think in all 50 states it's a
3 constitutional function of the state, and the system
4 of financing is a shared system as the system of
5 governance is a shared system.

6 My own personal feeling -- and I've testified
7 before a committee of the Legislature in Illinois --
8 is that I would make sure that through a state
9 financing system that each school district had enough
10 resources to offer an adequate level of education,
11 but then leave it up to the local school district to
12 define how those educational services are delivered.

13 The example I've given is I don't really care
14 whether you teach reading in third grade by having
15 individual tutors or whether you have 500 children in
16 an auditorium and one lecture, if it's effective.
17 I'm interested in the effectiveness, not how it is
18 actually carried out.

19 To continue, I agree very much with what Arthur
20 Wise wrote in his book, "Legislative Learning," that
21 once you start ending up with increasing, increasing,
22 increasing state regulations, state rules, state
23 bureaucratization, you end up with much less
24 efficient education.

25 Q. But I thought that's what you indicated you would

1 prefer.

2 A. No. I prefer that the state provide, through a
3 shared system of financing governance, an adequate
4 level of resources and the state clearly define what
5 its goals and objectives are in public education;
6 that is, defining an adequate level of education, but
7 then allow the implementation of that up to local
8 school districts and school boards.

9 Q. Okay. So you would prefer that the defining be done
10 at the state level?

11 A. Yes.

12 Q. Okay. So the state is going to define for the locals
13 how to spend the money?

14 A. It's going to define what it expects in terms of
15 educational results.

16 Q. The state is going to leave it up, at least in Texas,
17 to large measure the locals to raise the money to
18 meet the definition that the state has come up with?

19 A. I think it should be a shared financing system. My
20 opinion is that Texas has made tremendous strides
21 over the last two or three years to add more state
22 money to the system. I think it's moving in the
23 right direction. I think it has a ways to go, but I
24 think that's the proper direction.

25 I would prefer to see Texas add additional

1 states funds into the state formula. My
2 understanding of the current state formula is that if
3 it's funded by the state at a high enough level, it
4 will have the intended effect of substantially
5 equalizing resources among school districts in the
6 state.

7 Q. If you do, as at least one of the experts of the
8 Plaintiffs has indicated, and increase funding in a
9 certain way to poor districts, a way to get the money
10 to do that is to create what we've been calling more
11 budget balanced school districts; that is, there
12 would be more wealthy districts who will get no state
13 money.

14 For Texas, that could work out where there are
15 large metropolitan areas in this county, Dallas and
16 Houston, or at least those school districts that
17 would become budget balanced. There are a lot of
18 people there. There are a lot of votes in the
19 Legislature there. So --

20 A. That's my concern.

21 Q. Well, sir, that phenomenon might also exist in
22 Illinois. I don't know, if some of those downtowns
23 and some of those big cities or their school
24 districts have probably high wealth.

25 A. Sure. Illinois is slightly different. Chicago has a

1 high number of political influentials and high wealth
2 people. It also has a large number of low wealth
3 people and it's actually below the state average in
4 terms of its wealth per pupil. I don't know what the
5 situation is in Texas, whether the large cities tend
6 to be below the state average or not.

7 Q. Well, okay. So you would be happy with a system of
8 state financing that let disparity, disparity in
9 terms of tax base, exist?

10 A. If there was enough state money to insure that every
11 school district had the resources to offer an
12 adequate education, I would continue to allow the
13 local people and school boards to determine their
14 local tax rate.

15 Q. But that means that the locals don't get to define
16 what is minimally adequate and that many locals, even
17 if they could define it, don't have the means to get
18 it for themselves. So you're dependent upon the
19 state, and how does that jive with your idea about
20 all of this local control?

21 A. You depend upon the state, at least in Illinois. I
22 think it's probably true in Texas. The Constitution
23 simply states that the state has responsibility for
24 education.

25 Now, if the State Legislature in someone's

1 opinion is not living up to its responsibility, you
2 have a political problem that has to be solved
3 through the political process.

4 But in the context of what we're talking about
5 here, I harken back to New Jersey, where the state
6 system was found unconstitutional in the '70s, and
7 Connecticut, where it was found unconstitutional in
8 the '70s, and they still haven't solved the problem
9 because the Legislature, through the political
10 process, still hasn't appropriated enough money.

11 I just question what's happened to those states
12 -- how those states differ from the states where the
13 courts have upheld the state school finance system
14 because they're still dependent upon the Legislature
15 to appropriate the funds to provide for education.

16 THE COURT: Let's stop for lunch. See you
17 at 2:00 o'clock.

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(Lunch recess.)

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AFTERNOON SESSION

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MR. KAUFFMAN: Your Honor,

it is my understanding at this time that each of the Defendants has rested. We've already put on one of our rebuttal witnesses. We now have our last rebuttal witness. I think that's right.

THE COURT: Okay.

MR. KAUFFMAN: The Plaintiffs call Mr. Al Cortez.

MR. ALBERT CORTEZ

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

DIRECT EXAMINATION

BY MR. KAUFFMAN:

Q. Good afternoon, Mr. Cortez. How are you, sir?

A. Good afternoon.

Q. Will you state your full name and address for the record, please?

A. My name is Albert Cortez. I reside at 226 Newson in San Antonio.

Q. Who do you work for now?

A. I work with the Intercultural Development Research Association based in San Antonio.

Q. Is that the same IDRA that has Dr. Cardenas as its director and founder?

1 A. Yes, it is.

2 Q. Will you give us an idea of your educational
3 background?

4 A. Yes, sir. I was educated in the Edgewood School
5 District, graduating from Kennedy High School, got my
6 Bachelor of Arts degree from Our Lady of the Lake
7 University in San Antonio with a specialization in
8 bilingual education, picked up a Master of Arts
9 degree at the University of Texas at Austin, with a
10 concentration in cultural foundations in education.
11 I'm currently a doctoral candidate at the University
12 of Texas at Austin, also in the area of foundations
13 of education.

14 Q. Mr. Cortez, you're now working on your Ph.D., and you
15 finished your course work and are working on your
16 dissertation?

17 A. Yes. I've done all the course work and I'm currently
18 in the process of meeting with my committee to get
19 the feedback on the dissertation I just submitted.

20 Q. Does your dissertation have anything to do with
21 school finance, by any chance?

22 A. Yes, it is. It's on the politics that surrounded the
23 passage of House Bill 72 here in Texas.

24 Q. Will you give us an idea of your work background,
25 starting from the first job out of college?

1 A. Yes, sir. I was the assistant director of financial
2 aid at Our Lady of the Lake University right after
3 graduation. I held that position for two years. I
4 went back and got my Master's -- there was a break
5 there. I went back and worked as a college placement
6 specialist with a group called Project Stay in San
7 Antonio. The responsibilities in terms of that
8 position were to provide counseling and information
9 to high school seniors and high school juniors on
10 post-secondary educational opportunities, assisting
11 them with acquisition of admissions forms and also
12 financial aid information.

13 Q. Was that counseling aimed at any particular groups of
14 students?

15 A. Yes, sir. The primary focus groups were minority and
16 low income students in San Antonio school districts.

17 Q. How long did you have that position in Project Stay?

18 A. I was there a year and a half.

19 Q. What was your next position?

20 A. I was hired as an education specialist with the
21 Intercultural Development Research Association, IDRA.
22 I was an education specialist for approximately one
23 year and was promoted and given responsibility for
24 directing the school finance reform project that the
25 organization was funded to operate for over a

1 seven-year period.

2 Q. You began at IDRA in -- what year was that?

3 A. In 1975.

4 Q. When you were an education specialist, give us just a
5 brief idea of the sort of work you did and the number
6 of districts you worked in.

7 A. As an education specialist, I was primarily
8 responsible for providing evaluation-related training
9 and technical assistance to school people, teachers,
10 administrators, counselors, other people that worked
11 with -- primarily focusing on limited English
12 proficient students. So we worked -- individually, I
13 worked with some 40 or 50 school districts during my
14 tenure in that position.

15 Q. Those 40 or 50 school districts, were they in Texas,
16 all of them?

17 A. Yes, sir. They were.

18 Q. When you evaluated programs, what are some of the
19 things you evaluated in school districts in Texas?

20 A. We looked primarily at things -- okay, programs that
21 were servicing limited English proficient,
22 economically disadvantaged individuals, looking at
23 issues like the impact that various innovations had
24 on academic achievement, looked at district staff
25 development activities and kinds of effects it was

1 having on teaching personnel and the like, parental
2 involvement activities and whether or not they were
3 producing increased levels of participation among
4 minority parents.

5 Q. You said that you actually worked in about 40 or 50
6 districts. About how many other districts from the
7 State of Texas have you looked at information about
8 and evaluated?

9 A. Over the span of the ten years that I have been with
10 IDRA, I would estimate 300 or 400 districts that we
11 worked with.

12 Q. Okay. 300 or 400 districts in Texas?

13 A. Yes, sir.

14 Q. You looked at issues regarding low income and
15 minority children in those districts?

16 A. Yes, sir, including school finance. As part of the
17 responsibilities in the school finance project, we
18 did a lot of research on the Texas school finance
19 system, particularly focusing on the effects that the
20 system had on poor and minority children.

21 Those kinds of activities range from conducting
22 primary research, acquiring information from the
23 agency and analyzing trends to providing actual
24 training to school personnel administrators, teachers
25 and community persons on the workings of the Texas

1 finance system and some of the critical issues we had
2 identified in our research.

3 We also provided technical assistance to the
4 members of the Legislature for the last four or five
5 sessions. I was the legislative liaison person for
6 the organization, provided technical assistance
7 relating to any legislation focusing on minority
8 education issues and monitored the session, provided
9 expert testimony when it was requested by legislators
10 at committee hearings and the like, and in the
11 process, also developed several publications related
12 to education finance, one of them being a primer on
13 the workings of the Texas system, and also generated
14 some 60 some-odd articles on education finance issues
15 in the State of Texas.

16 Q. Starting at the beginning, you were the director of
17 the school finance project at IDRA starting around
18 '77?

19 A. Yes, sir. That's correct.

20 Q. While you were the director, did IDRA undertake any
21 study of school finance in Texas and other states?

22 A. Yes, sir. One of the activities that was funded was
23 to conduct a comprehensive study of the effect of
24 reform legislation in six states around the country.
25 It was funded by the National -- I'll come back to

1 that in a second.

2 Q. Okay. Sure.

3 A. The states that were analyzed included Texas,
4 California, Colorado, New Mexico, Michigan, and
5 Florida. The work itself was conducted by Dr. Robert
6 Brischetto, and he basically found in terms of the
7 studies that in Texas, the school finance system had
8 a negative disequalizing effect on the educational
9 opportunities that were available.

10 MR. TURNER: Your Honor, I'm going to
11 object. I don't think that answer is responsive to
12 the question, and it's also going into some studies
13 for a time frame that's not at issue before this
14 Court.

15 THE COURT: Sustain.

16 BY MR. KAUFFMAN:

17 Q. Mr. Cortez, that study was about school finance,
18 eight volume study, what, about a foot high by the
19 time you finished it?

20 A. It was about 1,000 pages. That's correct.

21 Q. Did you work with Dr. Brischetto and help to develop
22 that?

23 A. Yes, sir.

24 Q. Okay. During your time on school finance, you said
25 you were involved in some testimony. Did you testify

1 before the Legislature regarding school finance
2 issues?

3 A. Yes, sir. I testified before both the House and
4 Senate Education Committees at numerous times. I was
5 also asked to present testimony at the Select
6 Committee on Public Education when they looked at the
7 school finance issue.

8 Q. That was in 1983-'84?

9 A. Yes.

10 Q. Did you change to the position of director of
11 research and evaluation for IDRA in, what, '83 was
12 it?

13 A. Yes, sir. My duties basically were expanded to
14 include all research and evaluation activities that
15 was conducted by the organization. However, I was
16 asked to continue working in the school finance area
17 on a more limited basis and continued to follow the
18 activities related to school finance in Texas.

19 Q. Okay. As director of research and evaluation, do you
20 evaluate programs in school districts in Texas?

21 A. Yes, sir. We currently have several contracts to do
22 evaluations of Title 7 bilingual programs, state
23 bilingual programs, Chapter 1 federal compensatory
24 education, and state compensatory education.

25 Q. About how many district's programs have you evaluated

1 during your last few years as director of research
2 and evaluation?

3 A. Approximately 20 or 30.

4 Q. Are those school districts in Texas?

5 A. Yes, sir. All of them are in Texas.

6 Q. During your work in research and evaluation, have you
7 used Texas Education Agency materials and census
8 materials?

9 A. Yes, sir, quite extensively, because of the nature of
10 research that we have conducted.

11 Q. Have you evaluated those materials and written
12 reports that were later written or published by the
13 government or by state agencies?

14 A. Yes, sir. We have.

15 Q. Okay. You said you testified before legislative
16 committees and SCOPE. Have you ever testified in
17 court, in federal court?

18 A. Yes, sir. I testified in the litigation related to
19 the exclusion of undocumented children in Texas
20 public schools.

21 Q. Was the thrust of that testimony regarding the
22 effects it would have on a school district if the
23 children of undocumented persons were allowed to have
24 free tuition in the public schools of Texas?

25 A. Yes, sir. It was an analysis of the impact of the

1 enrollment of undocumented children in all school
2 districts in the state.

3 Q. Okay. On the school finance structure of the state?

4 A. Yes, sir.

5 Q. Mr. Cortez, as I understand during the last 17 years
6 of your professional life, you have spent full time
7 working on issues of education in the State of Texas?

8 A. Yes, sir. That would be accurate.

9 Q. About 80 to 90 percent of your time during the last
10 17 years has been spent on issues of public school
11 finance and education issues, especially as they have
12 an effect on minority and Mexican/American youth and
13 poor youth, is that right?

14 A. Yes, sir. That's correct.

15 Q. Mr. Cortez, I asked you to gather together some
16 materials showing the location of low income and
17 Mexican/American youth and low income and
18 Mexican/American families in districts around the
19 State of Texas and relate that to the wealth of those
20 school districts. Do you recall my requesting that?

21 A. Yes, sir. I do.

22 Q. Have you prepared some information in response to
23 that?

24 A. Yes, I have.

25 MR. KAUFFMAN: Your Honor, before I go on,

1 I would like to introduce Mr. Cortez' resume and
2 label that as Plaintiffs' Exhibit 46. I'm giving a
3 copy to Counsel.

4 MR. O'HANLON: No objection.

5 THE COURT: All right. It will be
6 admitted.

7 (Plaintiffs' Exhibit No. 46 admitted.)

8 MR. KAUFFMAN: Your Honor, I would also
9 like to mark Plaintiffs' Exhibit 47 and Plaintiffs'
10 Exhibit 48.

11 Plaintiffs' Exhibit 47 is a table regarding the
12 concentration of Spanish surnamed population and
13 Hispanic pupils within the Texas school systems
14 grouped by wealth.

15 Plaintiffs' Exhibit 48 is labeled "Table 2,
16 Median Family Income Percent Below Poverty and
17 Percent Compensatory Education Eligible Pupils in
18 Texas School Districts Grouped by Wealth."

19 THE COURT: Any objection to 47?

20 MR. O'HANLON: Yes, I do. I want to ask --
21 may I take the witness on voir dire?

22 MR. KAUFFMAN: Your Honor, before he does
23 that, I'll go ahead and ask him some questions about
24 how he produced the document and maybe that will
25 answer Counsel's questions.

1 THE COURT: Okay.

2 MR. KAUFFMAN: Your Honor, I guess
3 Plaintiffs' Exhibit 46, the resume, has been
4 admitted. Okay.

5 BY MR. KAUFFMAN:

6 Q. Mr. Cortez, look at Plaintiffs' Exhibit 47 regarding
7 the concentration of Spanish surnamed population and
8 Hispanic pupils within Texas school systems. Can you
9 tell the Court the methodology you followed to draw
10 up this chart and where you got your information?

11 A. The information that was used to compile the table
12 you see before you was obtained from Dr. Richard
13 Harris from the University of Texas at San Antonio,
14 who has developed a comprehensive data base on
15 education finance.

16 The property wealth per ADA information came
17 from the Texas Education Agency data base.

18 The percent of Spanish surnamed population was
19 compiled from census information that was organized
20 in a way to correspond to Texas school district
21 boundaries.

22 The percent of Hispanic student enrollment data
23 was also information that was acquired from the Texas
24 Education Agency directed by Dr. Harris.

25 The information for individual districts then

1 was put together in terms of this data base and the
2 districts were rank ordered according to property
3 wealth per student all the way from District No. 1 to
4 1,063.

5 Then the data was arranged in subgroups of
6 students with each subgroup containing 5 percent of
7 the statewide ADA. So that first group incorporates
8 the 5 percent of students that are concentrated in
9 the lowest property wealth districts in the State of
10 Texas and on up the scale all the way through 20. So
11 that the poorest subgrouping, No. 1, is at the top of
12 the chart, and the 5 percent of the students in the
13 wealthiest district are at the bottom of the scale.

14 Q. Okay. Each one of these 20 groups contains 5 percent
15 of the average daily attendance --

16 A. Yes, sir. Approximately 150,000 within each
17 subgroup, 150,000 students.

18 Q. There are approximately what amount, 3,000,000
19 students in the state?

20 A. There are approximately 2.9 million students in
21 average daily attendance statewide in '85-'86.

22 Q. I think we ought to make that clear. The information
23 from the TEA regarding district property wealth per
24 ADA and percent Hispanic student enrollment, that is
25 1985-'86 information on school districts in the State

1 of Texas as provided by the Texas Education Agency,
2 is that right?

3 A. That is correct.

4 Q. The percent Spanish surnamed population in the middle
5 group, that's 1980 census information?

6 A. Yes, sir.

7 Q. Now, you said that you broke them up into groups.
8 The poorest group, No. 1, is the 5 percent of the
9 students living in the poorest districts and No. 20
10 is the 5 percent of the students living in the
11 richest districts. Is there a consistent pattern
12 from Group 1 through Group 20, as you go down the
13 line, the groups get richer and richer and richer?

14 A. Yes, sir. That is the pattern. The wealth of the
15 groupings increases as you go down the scale from 1
16 to 20.

17 Q. Okay. If we can then look at the percent Spanish
18 surnamed population, you have a figure of 83.5. What
19 does that 83.5 mean?

20 A. That figure basically is the ratio of the number of
21 Spanish surnamed individuals that reside in that
22 district as a percentage of the total statewide
23 Spanish surnamed population in Texas. That basically
24 reflects in the first group, of all the individuals
25 that live in that district, 83.5 percent are Spanish

1 surnamed.

2 Q. When you said district, you mean group of districts?

3 A. Yes, sir. Group of districts. I'm sorry.

4 MR. O'HANLON: That's why I want to take
5 the witness on voir dire. I don't think that answer
6 is correct. I want to establish -- I think on the
7 face of it -- the problem I've got with it is that
8 Column 2 there is 1980, and we're comparing 1985
9 populations to 1980 populations. There have been
10 significant demographic shifts in the state since
11 then that's been testified by a number of witnesses.

12 THE COURT: Excuse me. You want to take
13 him on voir dire?

14 MR. O'HANLON: Yes, sir.

15 THE COURT: Go ahead.

16 VOIR DIRE EXAMINATION

17 BY MR. O'HANLON:

18 Q. Your middle column there is 1980 data?

19 A. Yes, sir.

20 Q. All right. Your rank order is 1985 data?

21 A. 1985 wealth data, yes, sir.

22 Q. Okay. So what you're trying to do there is compare
23 1980 to 1985?

24 A. I'm not real clear on your question.

25 Q. Well, isn't what you're trying to do there is, you're

1 rank ordering districts by combining two different
2 years that are five, six, seven years apart, maybe?

3 A. There is a difference between the property wealth
4 data and the Spanish surnamed population data because
5 of the data bases that were used. But it's my
6 impression that there has not been a major shift in
7 terms of concentrations of those individuals within
8 those groupings.

9 Q. You don't think there has been a major shift of
10 concentration of Hispanic students, say, within the
11 city of Austin?

12 A. No, sir. I'm talking about the groupings of students
13 that we're using as a unit of analysis.

14 Q. There hasn't been any demographic shifts that would
15 cause you to question that information?

16 A. There has been some shift, but I'm not -- I don't
17 believe that the shift has been dramatically
18 significant statewide.

19 Q. What indication do you have that that shift has not
20 been dramatic?

21 MR. KAUFFMAN: Your Honor, I think this is
22 getting into cross-examination. If I can ask two
23 more questions, I will tender the exhibit.

24 THE COURT: I'm going to let him have his
25 voir dire a little bit more.

1 BY MR. O'HANLON:

2 Q. Have you looked at the percentage of Spanish surnamed
3 population on '86 data?

4 A. There is currently no census data available to look
5 at, you know, in the way that you are suggesting we
6 look at it. If we had the data available, we would
7 have done that.

8 Q. But what you're comparing is that -- and when is the
9 '80 census data accumulated actually?

10 A. In the latter part of --

11 Q. The '70s?

12 A. Yes, sir.

13 Q. The census comes out in 1980, but there is a year and
14 a half period of accumulation of the data, right?

15 A. It was taken in 1980.

16 MR. KAUFFMAN: The census was taken April
17 1, 1980.

18 BY MR. O'HANLON:

19 Q. Okay. So April 1, 1980, that would be the '79-'80
20 scholastic year?

21 A. Yes, sir.

22 Q. Okay. So you're comparing '79-'80 populations with
23 '85-'86 populations?

24 A. That's correct.

25 Q. Okay. Do you know the growth in the school

1 districts?

2 A. Within the individual school districts?

3 Q. Uh-huh.

4 A. I'm generally familiar with the growth in the
5 individual districts.

6 Q. Well, do you know how many districts might have moved
7 from categories between 1985 -- in wealth categories
8 from '79-'80 to '85-'86?

9 A. We didn't look at the data, so I couldn't answer
10 that.

11 Q. Now, that data is available, isn't it?

12 A. Yes, it is, in terms of enrollment, yes.

13 Q. Okay. So you could have looked at it comparison year
14 by year?

15 A. In terms of the variable that we were looking at in
16 terms of Spanish surnamed population, we could have
17 looked at the scholastic data, but not in conjunction
18 with the population data because it just wasn't
19 available.

20 Q. Okay. So what you're doing is, you're comparing
21 demographic information from the same state
22 population, but six years apart?

23 A. Yes, sir. During different periods.

24 MR. O'HANLON: Okay. That completes my
25 voir dire, Your Honor.

1 MR. TURNER: Your Honor, I have a couple of
2 questions I'd like to ask.

3 THE COURT: Okay.

4 VOIR DIRE EXAMINATION

5 BY MR. TURNER:

6 Q. Mr. Cortez, the last column --

7 A. Yes, sir.

8 Q. -- that data you footnoted here comes from the Texas
9 Education Agency?

10 A. Yes, sir.

11 Q. Do you know what document that comes from and what
12 year it pertains to?

13 A. It's 1985-'86 Hispanic enrollment data that's
14 collected by the Texas Education Agency in the fall
15 survey.

16 Q. Okay. Is that data summarized in that fashion on
17 that Texas Education Agency data or did you have to
18 manipulate that data to come up with this?

19 A. We have to tabulate the data to come up with the
20 figures.

21 Q. In the first column, the wealth -- district property
22 wealth per ADA, did you say that was for '85-'86?

23 A. Yes, sir. The latest available.

24 Q. You made reference to Mr. Harris?

25 A. Yes, sir.

1 Q. What did Mr. Harris have to do with this document?

2 A. Dr. Harris is the person who actually has the data
3 tape and compiled the analysis according to a request
4 from me.

5 Q. So you didn't prepare this table yourself, Mr. Harris
6 prepared it?

7 A. No, sir. He provided the printout, and I took the
8 data then and prepared the exhibits.

9 Q. As far as the manipulation of the data, Mr. Harris
10 did that?

11 A. He did that. But he did it in a manner that I'm
12 thoroughly familiar with. From a research procedure
13 perspective, I have no problems with the approach
14 that he used.

15 Q. Why did you include that middle column on that
16 exhibit? What significance does the middle column
17 have?

18 A. Well, we felt there was a relationship between the
19 concentration of Spanish surnamed population and the
20 percent Hispanic enrollment in the district.

21 MR. TURNER: That's all I have, Your Honor.

22 MR. R. LUNA: Your Honor, my question goes
23 to the area of expertise that this witness has
24 alleged to have and (a) whether or not he is being
25 tendered as an expert witness or (b) merely as

1 director of IDRA.

2 MR. KAUFFMAN: I'll answer that. He is
3 tendered as an expert in dealing with information
4 regarding Spanish surnamed population, Hispanic
5 enrollment population, Hispanic enrollment, census
6 information, and TEA information and its application
7 to school districts in the State of Texas, which is
8 what he has been doing for the last 12 years full
9 time.

10 THE COURT: Okay.

11 MR. KAUFFMAN: Your Honor, if I may
12 proceed.

13 DIRECT EXAMINATION (CONTINUED)

14 BY MR. KAUFFMAN:

15 Q. In the last column on Plaintiffs' Exhibit 47, Mr.
16 Cortez, you have Hispanic student enrollment. I
17 understand those are figures based on the '85-'86
18 enrollment showing the percent of all the students in
19 each group that are Hispanic, is that right?

20 A. Yes, sir.

21 Q. So someone can tell by looking at Table 1, if you
22 look in those districts which include 5 percent of
23 the students, you can tell two things. You can tell
24 the percent of the total population in those
25 districts as of 1980 census that were Spanish

1 surnamed, and you can also tell the percent of all
2 the students in those districts that are Hispanic
3 students as of '85-'86, is that right?

4 A. That's correct, sir.

5 MR. KAUFFMAN: Your Honor, we move that
6 Plaintiffs' Exhibit 47 be admitted.

7 MR. O'HANLON: Objection. The 1980 census
8 data is irrelevant to any consideration before this
9 Court. It is misleading.

10 THE COURT: I'll overrule.

11 I think what he's trying to show is that in a
12 way, he's checking his percent of Hispanic student
13 enrollment '85-'86 figures, but showing '80 census
14 data that would show a large Spanish surnamed
15 population. In a way, he is just checking his
16 '85-'86 figures with '80 census data. It is probably
17 as current a data as he could get.

18 It would be nice to have '85-'86 in both
19 columns, but I don't think that makes it inadmissible.

20 (Plaintiffs' Exhibit No. 47 admitted.)

21 BY MR. KAUFFMAN:

22 Q. Mr. Cortez, looking now at Plaintiffs' Exhibit 47, if
23 you look then at the poorest group of districts in
24 the State of Texas in terms of property wealth per
25 student in 1985-'86, what percentage Spanish surnamed

1 population did they have in 1980 and what percent of
2 the students in those districts were Hispanic in
3 '85-'86?

4 A. We would be talking about Group No. 1 which has 83.5
5 percent Spanish surnamed population within this
6 group. Of the students enrolled in that, 94.6
7 percent were Hispanic.

8 Q. I think at the bottom of this chart on Plaintiffs'
9 Exhibit 47, you have some statewide figures.
10 According to the census as of 1980, what percentage
11 of the total population in the State of Texas was
12 Spanish surnamed?

13 A. Approximately 21 percent.

14 Q. In 1985-'86, what percentage of all the students in
15 the public schools of Texas were Hispanic?

16 A. Approximately 30 percent.

17 Q. So although the statewide percentage population in
18 1980 of Spanish surnamed people is 21 percent, 83.5
19 percent of all people in the poorest districts in
20 1980 were Spanish surnamed, is that right?

21 A. That's right.

22 Q. Although 30.4 percent of all the students in the
23 state are Hispanic, 94.6 percent of the students in
24 the poorest districts in 1985-'86 are
25 Mexican/American or Hispanic, is that right?

1 A. That's a correct interpretation of the data on the
2 table.

3 Q. Okay. Regarding that, do you have any interpretation
4 of this poorest group in terms of its percent Spanish
5 surnamed population in 1980 and its percent of
6 Hispanic student enrollment in '85-'86?

7 A. Again, based on the information that was analyzed, we
8 conclude that there is a significant
9 over-representation of both Spanish surnamed
10 population and percent Hispanic students in that
11 lower wealth grouping, with a ratio in terms of the
12 percent Spanish surnamed population being almost
13 4-to-1 against the state average and the percent
14 Hispanic student enrollment having a 3-to-1 ratio.

15 Q. Okay. Now, did you also look at the percent of
16 Hispanic student enrollment in, let's say, the bottom
17 25 percent of all the districts?

18 A. Yes, sir. We calculated it for the bottom wealth
19 grouping and determined that of these 732,000
20 students that were found in the bottom five
21 subgroupings which constitute 25 percent of all
22 students, 58 percent of these were Hispanic students.

23 Q. So in the poorest districts -- I guess it's 25
24 percent of the districts around 740,000 students in
25 the state -- in those districts, 58 percent of those

1 students are Mexican/American while statewide, 30
2 percent are Mexican/American, is that right?

3 A. That's right.

4 Q. Let's go on to Table 2 for a second, if we could.
5 Mr. Cortez, on Table 2 the property wealth per ADA
6 groups, are those the same exact groups as you used
7 on Plaintiffs' Exhibit 47?

8 A. Yes, they are.

9 Q. Okay. Will you explain for the Court the source of
10 your figures on median family income and percent
11 below poverty?

12 A. Okay. The median family income data and the percent
13 below poverty data were both acquired, you know, from
14 the census information that was available on the
15 state.

16 The median family income was determined by
17 taking the total income within those categories and
18 subdividing it by the total number of families to
19 come up with a median family income for the group.

20 The percent below poverty was the percentage of
21 students identified as meeting poverty criteria as a
22 percentage of the total population within that
23 subgroup.

24 In the 4th column, the percent of compensatory
25 education eligible students represents the numbers of

1 the students in 1985-'86 that were identified as
2 eligible for the national free/reduced lunch program
3 as a percentage of the district's ADA.

4 Q. So in this, did you follow basically the same
5 procedures you followed on the material in Table 1?

6 A. Yes, sir. I did.

7 Q. So I think what you have said, then, it shows is the
8 median family income means that in those districts
9 that have 5 percent of the kids, the poorest
10 districts that have 5 percent of the kids, the median
11 family income for those -- if you look at those
12 districts, the median family income of the families
13 that live in those districts in 1980 was \$11,590.00,
14 is that right?

15 A. That is correct.

16 Q. In 1980, the average median family income for the
17 State of Texas was what?

18 A. 19,760, and it's reflected on the bottom of that
19 column.

20 Q. Percent below poverty, does that show the percent of
21 all the people in the district -- I mean, adults,
22 kids, everyone -- who were below the federal poverty
23 guidelines?

24 A. Yes. That's total population below poverty.

25 Q. As of 1980?

1 A. That's right.

2 Q. So in that Group No. 1, it has around 35 percent of
3 all people in those districts were below the poverty
4 guidelines in 1980, is that right?

5 A. That is correct.

6 Q. That compares to what percent for the State of Texas
7 in 1980?

8 A. It compares to 14.3 percent for the statewide
9 average.

10 Q. The last column there, the comp. ed. eligible, is
11 that the percentage on free and reduced cost lunch
12 for the '85-'86 school year information supplied by
13 TEA?

14 A. Yes, it does.

15 Q. What was that percentage in the poorest districts
16 compared to the statewide percentage?

17 A. Well, in the grouping of 5 percent of the students,
18 it was 85.3 percent as opposed to the state average
19 of 35.7.

20 For the 25 percent of students which were
21 combined with the five subgroupings, of the total
22 number of students, which was about 728,000 students,
23 429,000 or approximately 59 percent of students in
24 the low wealth quarter, 59 percent were eligible for
25 compensatory education.

1 Q. So although the statewide percentage for comp. ed.
2 students is around 36 percent, if you take all the
3 kids who live in the poorest quarter of the districts
4 with about 740,000 kids, 59 percent of those kids are
5 comp. ed., is that right?

6 A. That's right.

7 Q. Looking at this information on Plaintiffs' Exhibit
8 48, do you have any conclusions about any patterns
9 regarding median family income percent below poverty
10 or percent comp. ed. eligible in poor versus rich
11 districts?

12 A. On the basis of our review of the data, we concluded
13 that the median family income in the lowest wealth
14 groupings was significantly below the state average,
15 particularly the bottom quarter of students, that the
16 percent of individuals below poverty within those
17 same areas was also significantly higher than the
18 state average, and that the percent of compensatory
19 education pupils residing in those districts showed a
20 clear pattern that there were significantly greater
21 numbers of those kind of students concentrated in the
22 bottom quarter of those districts.

23 Q. So if you look in the poorest districts there, they
24 have families -- in 1980 at least -- they had
25 families with lower median family income, they had

1 more of their population below poverty, and in
2 1985-'86, they had more of their students on comp.
3 ed. and in each case more than the statewide
4 percentages for sure?

5 A. That was clearly reflected by the data we analyzed.

6 MR. KAUFFMAN: Your Honor, I move that
7 Plaintiffs' Exhibit 48 be admitted.

8 MR. O'HANLON: Same objection, Your Honor.
9 It contains information that isn't relevant to this
10 proceeding. It is not even -- I don't even think
11 it's good demography. It's irrelevant and I think
12 it's misleading.

13 THE COURT: I'll overrule.

14 It will be admitted.

15 (Plaintiffs' Exhibit No. 48 admitted.)

16 BY MR. KAUFFMAN:

17 Q. Mr. Cortez, if we can look at Plaintiffs' Exhibit 48.
18 Can you tell us which one of the property wealth
19 groups that Houston fits into and which one Dallas
20 fits into?

21 A. Yes, sir.

22 Q. Okay. Which are those?

23 A. Group No. 16 in the property wealth groups contains
24 the Houston Independent School District. Group No.
25 19 in the subgroupings contains the Dallas

1 Independent School District.

2 THE COURT: That's true on 47, I take it?

3 THE WITNESS: Yes, sir. It is.

4 BY MR. KAUFFMAN:

5 Q. Mr. Cortez, has the IDRA, under your section of IDRA,
6 undertaken a study of dropout rates in the State of
7 Texas?

8 A. Yes, we did. We just finished completing a major
9 study that was funded by the Texas Department of
10 Community Affairs with a small portion funded by the
11 Texas Education Agency in November of 1986.

12 Q. Has this come to be known as the dropout study?

13 A. Yes, sir.

14 Q. You said it was funded by a Texas agency?

15 A. Yes, sir. Two different agencies.

16 Q. What were those?

17 A. One was the Texas Department of Community Affairs.
18 Then the Texas Education Agency wanted a separate
19 type of analysis done and they provided some
20 additional money to conduct the study.

21 Q. When the study was conducted, it was conducted at
22 IDRA in your section under your direction and
23 control?

24 A. Yes, sir. We did a lot of the data analysis. It was
25 conducted by the Center for the Prevention and

1 Recovery of Dropouts, which is a subcomponent of
2 IDRA.

3 Q. Are you familiar with that study and can you tell the
4 Court whether you have before you as what I will
5 label Exhibit 49 is a true and correct copy of your
6 report entitled "Texas School Dropout Survey Project,
7 A Summary of Findings."

8 A. Yes, sir.

9 MR. KAUFFMAN: Your Honor, I mark
10 Plaintiffs' Exhibit 49, which is the Texas School
11 Dropout Survey Project, A Summary of Findings, which
12 this witness has identified. I've given it to
13 Counsel.

14 (Plaintiffs' Exhibit No. 49 marked.)

15 BY MR. KAUFFMAN:

16 Q. Now, Mr. Cortez, I know this is one of those
17 questions that could be long, it could be short, and
18 I want you to give me the short one. Why was it
19 important to study dropouts?

20 A. Well, the Legislature mandated that a study be
21 conducted as part of the reform provisions of House
22 Bill 72. There was a feeling that there was a
23 problem out there and the state wanted to get a
24 handle on the magnitude on the cost to the state in
25 terms of remediation and to have an idea as to the

1 kinds of programs that were already in operation.

2 Q. Can you give us again a very brief idea of the
3 methodology that went into the report?

4 A. There were two different analyses conducted to arrive
5 at an estimate of the magnitude of the number of
6 dropouts in the state. One of them used school
7 district enrollment data at the 9th grade level,
8 following students for a three-year period until they
9 became seniors, and determining how many students
10 were still enrolled in school after that three-year
11 period.

12 There was an adjustment made in that part of
13 the study that was called the attrition analysis to
14 take into account increases or decreases in school
15 district enrollment and the projected number of 12th
16 graders was adjusted for that.

17 We then took a percentage -- we then calculated
18 the number of students that were still enrolled that
19 were originally 9th graders and took them as a
20 percentage of the original 9th grade class and came
21 up with an estimate of the statewide attrition rate.

22 We also looked at the data in a variety of
23 different ways besides the statewide totals.

24 Q. As part of the study, was there any study made of
25 census information on the percent of various

1 populations in the state anywhere between 16 and 24
2 who have not had up to 12 years of education and not
3 had up to nine years of education?

4 A. Yes, sir. We get a secondary indicator of the extent
5 of dropouts and looking at students who are already
6 out of school during the period we looked at. We had
7 an analysis done of census information, looking at
8 the numbers of students that reported either that
9 they were not enrolled and had not completed 12 years
10 of schooling, and we did an analysis of the numbers
11 of such individuals in the State of Texas and looked
12 at them by sex and by many other ways.

13 Q. Now, if I can go back to your first measure, did you
14 look then at the state -- look at the number of all
15 students in the 9th grade and look at the number of
16 students in the 12th grade three years later to see
17 how many of them were still around three years later?

18 A. That's right.

19 Q. The years, as I recall, was '82-'83. You looked at
20 '82-'83 9th graders and tried to see how many of them
21 were left in '85-'86 as 12th graders?

22 A. That's right.

23 Q. You also looked for the state as a whole, and for
24 various districts or group of districts, you looked
25 at the change in general enrollment patterns in those

1 schools to account for that in your analysis, is that
2 right?

3 A. Yes, we did.

4 Q. Can you tell us statewide what you found about the
5 number of 9th graders in '82-'83 in public schools in
6 Texas and how many of them were left in '85-'86 in
7 public schools in Texas?

8 A. Yes, we can. I think to facilitate the discussion,
9 if you all will turn to Page 11 of the document that
10 you have before you, it will be easier to follow the
11 discussion.

12 Q. Okay.

13 A. First of all, in terms of the data, if you look at
14 the 9th grade enrollment at the very last figure that
15 has the total for all groups, we were talking about
16 the class of 9th graders in 1982-'83 of about 243,000
17 students.

18 The 12th grade projected enrollment, which is
19 reflected on there, reflected an enrollment of
20 258,563. That many students should have been
21 enrolled.

22 Given the changes in increase in the enrollment
23 statewide that had occurred during that time period,
24 we found, however, that 86,000 students from that
25 original 9th grade group adjusted for growth were

1 unaccounted for by school districts. Therefore, that
2 converted to a 33 percent statewide attrition rate.

3 Q. So the approximately 240,000 9th graders in '82-'83,
4 three years later in '85-'86 in public schools of
5 Texas, about 86,000 or 33 percent of those 9th
6 graders had gone and were unaccounted for from the
7 school systems?

8 A. That's correct.

9 Q. Now, did you do that same analysis by racial group in
10 the State of Texas?

11 A. Yes, we did. That same table reflects the pattern
12 that we found. In summary, what the data revealed
13 was that 27 percent of White students in the state
14 were unaccounted for in terms of that 9th grade
15 group.

16 In terms of Black students, 34 percent of that
17 group was missing.

18 Among Hispanics, they had the highest attrition
19 rate, which was 45 percent of the total.

20 Q. When you say attrition rate, is this the figure that
21 is being used -- and I think it was used by Dr. Kirby
22 in this litigation -- as the dropout rate?

23 A. Yes, sir. It is being used extensively and is quoted
24 by various different sources.

25 Q. So of the 66,000 Hispanic students in the 9th grade

1 in '82-'83, only about 33,000 of them left by the
2 12th grade, is that right?

3 A. According to the data we had, yes, sir.

4 Q. Okay. Which means 45 percent of them, according to
5 your analysis and data, 45 percent of those 66,000
6 have dropped out of schools in three years, is that
7 right?

8 A. Yes, sir.

9 Q. Okay.

10 A. I would like to point out that the findings that we
11 had for our study, both for the statewide level
12 analyses as well as the ethnic subgroup samples, were
13 pretty consistent with research that's been done in
14 other states looking at dropout patterns, both
15 statewide as well as for individual groups.

16 As a matter of fact, the Texas estimated
17 graduation rate was estimated about 62 percent, which
18 is pretty much in line with the figure that we had,
19 if you look at the graduation rate being a mirror of
20 the dropout rate in the state.

21 Q. Now, as far as your census analysis is concerned, did
22 you, by looking at the census, come up with any
23 figures for various racial ethnic groups in the State
24 of Texas as far as how many young people between 16
25 and 24 did not get to finish high school?

1 A. Yes, sir. We did.

2 Q. What did you find out there?

3 A. That data is summarized on Page 19 of the report.

4 What we basically did was looked at the age
5 population between 16 and 24, but analyzed the
6 subgroups looking at the 16 to 19 age group and 20 to
7 24 age group separately. What we found, first of
8 all, was that among the 16 to 19 age group, Hispanics
9 were twice as likely as White students to have left
10 school prior to graduation, which was a 2-to-1 ratio.

11 Then between the age of 20 to 24, for that
12 group, the ratio was 41 percent for Hispanics as
13 opposed to 15 percent for White students, which is a
14 ratio of almost 3-to-1 among those groupings.

15 We also, in that table -- if I can direct you
16 to Table 1.9 of that same Page 19 -- looked at the
17 numbers of students that had left school prior to the
18 9th grade and found that among Hispanics, almost 50
19 percent of the students that reported dropping out of
20 school did so before the 9th grade for this group.
21 This was significantly higher than for the other two
22 major ethnic groups in the state.

23 Q. So your major dropout figures, as you said, the 45
24 percent Mexican-American dropout figure, that's just
25 based on 9th through 12th grades. It doesn't include

1 whatever dropouts might have occurred even before the
2 9th grade?

3 A. Yes, sir. That would be considered a relatively
4 conservative estimate, given what the census data
5 told us about pre-9th grade dropouts.

6 MR. KAUFFMAN: Your Honor, I move that
7 Plaintiffs' Exhibit No. 49 be admitted into evidence.

8 MR. O'HANLON: No objection.

9 THE COURT: All right. It will be
10 admitted, 49.

11 MR. TURNER: Your Honor, I haven't
12 completely read this, but there is a section in there
13 I would like to read and maybe ask the witness about.
14 There's a section on economic impact starting on
15 about Page 27. I don't believe we've had any
16 questions asked on that section and I'm not sure if
17 this witness participated in that or not. But I
18 would like the opportunity to at least read it before
19 that section is admitted.

20 THE COURT: Okay. That's fair enough.

21 It will be admitted except for what is called
22 Part 2 beginning on Page 27.

23 (P Plaintiffs' Exhibit No. 49 admitted.)

24 BY MR. KAUFFMAN:

25 Q. Mr. Cortez, are you familiar with Part 2 of the

1 economic impact of the dropout problem?

2 A. Yes, sir. I helped work on some of the data.

3 Q. Are you familiar with each of the parts of this study
4 and was it all part of one study, which is
5 Plaintiffs' Exhibit 49?

6 A. Yes, sir. It is.

7 MR. KAUFFMAN: Your Honor, I guess we would
8 pass the witness, but we reserve the right to call
9 him back if there is any further questions on Part 2,
10 if necessary, if it isn't finished by the end of
11 cross-examination at the end of the day. We pass the
12 witness, Your Honor.

13 CROSS EXAMINATION

14 BY MR. O'HANLON:

15 Q. Mr. Cortez, would you turn to Page 19 of your report,
16 please?

17 A. Yes, sir.

18 Q. Look at Table 1.8. Now, you said in the 16 to 24 age
19 group, you've got a 35 percent dropout rate, is that
20 correct, by the census data?

21 A. Yes, sir.

22 Q. Okay. Now, let's look at it, though -- let's split
23 the 16 to 19 year olds off from the 20 to 24 year
24 olds. There is a significant difference there, isn't
25 there?

1 A. There was a change.

2 Q. What that shows is the kids that have gone to school
3 more recently are staying in a heck of a lot longer,
4 isn't it?

5 A. It reflects greater holding power for that younger
6 group.

7 Q. That's the difference between 28 percent and 41
8 percent, isn't that right?

9 A. I'm not following. Where did you get 28 percent?

10 Q. Well, your 27.9 in the 16 to 19 year olds --

11 A. Uh-huh.

12 Q. -- and you've got a 41.4 in the 20 to 24 year olds.

13 A. I see.

14 Q. What that indicates is a significant improvement over
15 time, doesn't it?

16 A. It reflects improvement over time. I'm not sure how
17 significant that might be.

18 Q. You don't think an increase of 13 percent is a
19 significant improvement? That's a 50 percent
20 reduction, isn't it? Actually, it's a 33 percent
21 reduction if you figure it out to 41 percent, 42
22 percent.

23 A. The improvement is reflected there.

24 Q. Okay. In fact, the Hispanics did better than any of
25 the other groups, didn't they, in terms of their

1 improvement?

2 A. In terms of the figure decreasing yes, sir, that's
3 what it reflects.

4 Q. Okay. Do you know what some of the historical data
5 is in the State of Texas?

6 A. Not in great detail.

7 Q. Do you know Senator Carlos Truan?

8 A. Yes, sir. I do.

9 Q. Do you know he refers to himself as a 20 percenter?

10 A. No, I did not.

11 Q. Do you know what that means?

12 A. No, sir. Would you clarify it for me?

13 Q. Okay. What it means is that when he was going to
14 school, the probability of a Hispanic graduating from
15 high school was about 20 percent.

16 A. Uh-huh.

17 Q. Have you looked at any of the historical data?

18 A. We've seen some of the historical data and one of the
19 things that one has to take into account in terms of
20 analyzing the data is the number of students actually
21 enrolled. We do know that the number of Hispanic
22 students has been increasing proportionately as part
23 of the statewide ADA so that on a percentage basis,
24 even though there may be some improvement, if you
25 look at it as a percentage, if we look at the

1 absolute numbers of students that are actually
2 dropping out because of the greater numbers of
3 Hispanics overall, the numbers probably have not
4 changed real drastically.

5 Q. Okay. So you have the same number of Hispanic
6 dropouts, but there is three times as many Hispanic
7 students as there used to be, right?

8 A. That's part of the relationship that I am talking
9 about.

10 Q. If you're looking for some kind of ratio grouping and
11 how the Hispanics are doing, you've got to consider
12 all of the Hispanics, don't you?

13 A. Yes, sir. You look at it as a percentage of the
14 total population.

15 Q. Okay. If you look at this information, they're doing
16 a heck of a lot better. In fact, they've been doing
17 a heck of a lot better over time for a long time.

18 MR. KAUFFMAN: Your Honor, I think this is
19 all 1980 census data.

20 MR. O'HANLON: Well, he's a demographer.
21 I'm trying to find out what he knows.

22 A. I'm not sure that I would concur that it's been
23 consistently better for a long time over time. I
24 would have to look at the data that verifies it.

25 Q. Have you looked at the data?

1 A. I haven't seen anything real conclusive.

2 If I may point out this dropout study was one
3 of the first ones that had been done in the state.
4 Even though there's been a lot of speculation and a
5 lot of opinions as to what those numbers might be,
6 this study was one of the first comprehensive
7 analyses of what those numbers really are.

8 Q. Well, would that change from 41 to 27 give you some
9 grounds for optimism?

10 A. Yes, sir. It would give me some grounds for optimism
11 on proportions.

12 Q. Okay. Let's talk about some other things.

13 Can you tell me how the Hispanic population has
14 grown in the State of Texas over the last, say, 20
15 years?

16 A. I know proportionately in terms of the research I
17 have looked at that there has been an incremental
18 increase in the numbers of Hispanics that reside in
19 Texas.

20 Q. Okay. Now, when you look at these poor districts, do
21 you have any idea where they are?

22 A. Yes, sir.

23 Q. Where are they?

24 A. That bottom grouping, I would say the greater
25 majority are in South Texas.

1 Q. Okay. How many district lines have changed in the
2 last 20 to 25 years?

3 A. Within those districts?

4 Q. Yes.

5 A. I'm not sure, sir. I haven't seen the data.

6 Q. Well, what has the state done, what state action has
7 been involved in arraying this population in this
8 particular manner?

9 A. Would you explain that?

10 Q. Yes, sir. What has the state done to insure this
11 kind of population distribution? Has it done
12 anything?

13 A. I don't know that the state's done anything, sir.

14 Q. Okay. So the people live there because they moved
15 there.

16 A. They moved there or they had already lived there.

17 Q. Okay. Well, now, you know that the kids in primary
18 and secondary school didn't live there 20 years ago.

19 MR. KAUFFMAN: That's a third option, where
20 they were born.

21 A. Where they were born.

22 Q. Well, what I'm trying to find out is has the state
23 done anything to array this population in the
24 particular manner that it's done?

25 A. I don't know that it has, but I don't know that it

1 hasn't. I haven't seen any information to that
2 effect.

3 Q. Do you know of any districts that have gone out and
4 redrawn their lines to exclude Hispanics or include
5 them in South Texas? It would be pretty hard to do,
6 wouldn't it?

7 A. There was one study done in San Antonio that analyzed
8 the history related to the Edgewood School District
9 and concluded that district boundaries had been drawn
10 in such a way as to create that situation.

11 Q. In Edgewood. But Edgewood is not in South Texas, is
12 it? Edgewood is one district?

13 A. Yes, sir.

14 Q. Okay. In South Texas, was there any attempt -- most
15 of the population down there is Hispanic.

16 A. I don't know that that was purposefully done in any
17 district in South Texas.

18 Q. Okay. So the array of the population is not
19 something over which the state has any control, does
20 it?

21 A. Are you talking about legal control?

22 Q. Yes, sir.

23 A. That I know of, no.

24 Q. Okay. People are, as far as you know, free to move
25 or not to move?

- 1 A. With qualifications.
- 2 Q. Well, I mean, there is no state compulsion keeping
3 them there?
- 4 A. That I know of, no, sir.
- 5 Q. Okay. What has happened to median family income
6 since 1980?
- 7 A. Are you talking about the State of Texas?
- 8 Q. Uh-huh.
- 9 A. I haven't seen data that looks at that real
10 comprehensively.
- 11 Q. Okay. So you can't tell whether the people in the
12 poorer districts are doing better now than they used
13 to be vis-a-vis the state average?
- 14 A. I don't know that they're doing significantly better
15 or worse. I haven't seen data.
- 16 Q. Okay. So the best you have is what was going on in
17 1980?
- 18 A. That's what is currently available, sir.
- 19 Q. Okay. Now, I notice that you put the array of
20 Hispanic student enrollment. Now, as a demographer,
21 when we look at discrimination, we generally look at
22 Anglos and minorities, is that right?
- 23 A. You look at it in different ways, aggregated and
24 disaggregated.
- 25 Q. Well, what I'm wondering about is, are you saying

1 that we shouldn't think about where the Black
2 students in this state live by displaying this data
3 in this particular manner?

4 A. No, sir. I'm not saying that. I was asked to look
5 at the Hispanic enrollment data and that's what we
6 did.

7 Q. I see. But as a demographer, isn't it important to
8 know where the Black students live?

9 A. In terms of an analysis, it would certainly add
10 information. But again, we weren't asked to perform
11 that task.

12 Q. I'm asking you as a demographer.

13 A. Yes, it's useful to look at the data.

14 Q. So you know that Blacks tend to live in more wealthy
15 districts?

16 A. If you could expand on that. I know that Blacks tend
17 to be concentrated in the state's major urban areas,
18 Houston, Dallas, Fort Worth accounting for a
19 significant percentage. Where the rest of the
20 students distribute, I haven't seen detailed
21 information.

22 Q. Well, isn't it important to look at all the kids in
23 Texas? We only have one system, don't we, of
24 education?

25 A. I think it is important to look at all the children,

1 yes, sir.

2 Q. Then why did you leave them off?

3 A. In terms of this analysis was very focused looking at
4 one subgroup in the population.

5 Q. Well, can you draw any conclusions about the state
6 system as a whole without looking at where all the
7 minority kids in this state live?

8 A. Again, I think you can draw inferences concerning
9 different subgroups by looking at the subgroup data,
10 and then looking at it in the aggregate, you can get
11 a broader picture. But I'm not sure that it's a case
12 of one view versus another view.

13 Q. Well, we've got to have one system. You're not
14 advocating a system of school finance for the
15 Hispanics and one for the Blacks and one for the
16 Anglos, are you?

17 A. No, sir.

18 Q. Okay. So we've got to look at all of it together,
19 don't we?

20 A. You can look at all of it together, yes, sir.

21 Q. Unless we do look at all of it together, we're going
22 to miss something.

23 A. I would say you look at it both ways. If you look at
24 all of it as one piece, there may be subtleties in
25 terms of the system that are masked if you look at it

1 as a group. So you want to look at it different
2 ways.

3 Q. Do you know what a correlational analysis is?

4 A. Yes, sir. I do.

5 Q. Okay. Do you have any number that you would consider
6 meaningful, any correlation coefficient that you
7 would start to attribute some significance to?

8 A. Some of that is related to the size of your sample,
9 and the second factor that you have to take into
10 account is the effect that other variables might have
11 on the data that you're looking at. So there is no
12 magical one level that one can say is significant.

13 Q. We've heard some numbers talked about being a .2
14 correlation as starting to run into a number where
15 you start to think of having some meaning.
16 Significant, I know, is a statistical term and I hate
17 to use that term. But we've heard a bunch of
18 witnesses say they started attributing a little bit
19 more than random importance to a correlation
20 coefficient when it's about at the .2 mark.

21 A. I wouldn't necessarily concur without having looked
22 at the data that's being considered and the factors
23 that might be involved. Sometimes correlation may
24 not be the appropriate statistical technique to use
25 at looking at a relationship.

1 Q. Have you looked at the correlation coefficients on
2 this?

3 A. Not in detail.

4 Q. Why not?

5 A. Again, we didn't get an opportunity to run the
6 analysis that way. There were thoughts of running
7 several different correlations. We didn't have
8 sufficient time.

9 Q. All right. Well, I've got some here and let's talk
10 about them.

11 A. Sure.

12 Q. On 3.1, Page 28 of Dr. Verstegen's report. Have you
13 ever looked at Dr. Verstegen's report?

14 A. No, sir. I have not seen that document.

15 Q. Have you ever looked at -- you spoke of Dr. Harris.
16 Did you ever look at his correlations?

17 A. Not in detail. I know he was beginning to run them,
18 but I didn't get a chance to look at them.

19 Q. Did you know he gave us some at his deposition?

20 A. No, sir. I did not.

21 Q. Okay. All right. Dr. Verstegen reports that doing --

22 MR. KAUFFMAN: Your Honor, I object to his
23 using any of Dr. Verstegen's figures. He has said he
24 is not familiar with Dr. Verstegen's figures, he's
25 not familiar with this report, he wasn't familiar

1 with whatever correlations Dr. Harris did, and
2 therefore, cannot be questioned about what these
3 numbers mean. He said he doesn't know exactly what
4 system they used, the data they looked at. It is an
5 unfair question for that reason.

6 MR. O'HANLON: It's in evidence, Judge.

7 THE COURT: I'll overrule.

8 BY MR. O'HANLON:

9 Q. Dr. Verstegen reports in her report, using a Pearson
10 product moment correlation -- you know what that is?

11 A. Yes, sir.

12 Q. Okay. -- that the correlation between Hispanic
13 percentage and wealth is negative .202. All right?

14 A. Okay.

15 Q. Some significance there?

16 A. Again, I would be reluctant to make that statement
17 without having looked at the information in the
18 analysis.

19 Q. Okay. What would you need to know about it?

20 A. The kinds of variables that were cranked in. Beyond
21 that, the -- one of the questions in my mind is
22 whether there is an assumption of a linear
23 relationship between wealth and percent Hispanic
24 students. A Pearson product moment correlation
25 assumes that linear relationship.

1 Q. It looks for that linear relationship, doesn't it?
2 It's there to compute that linear relationship.

3 A. One of my questions is in terms of this kind of data
4 that that may not be the most appropriate statistic
5 to use.

6 Q. Okay. You need to know things like slope and things
7 of that nature?

8 A. Exactly.

9 Q. Okay.

10 A. But beyond that, I think -- I need access to the data
11 set itself, running the analysis using multiple
12 variables and correcting for the impact of different
13 variables.

14 Q. Well, you see, sir, what I'm asking you about is this
15 data set was the exact same data set that you used
16 for your Plaintiffs' Exhibits 47 and 48.

17 A. Okay.

18 Q. Okay? Does that tell you something?

19 A. It was the same data, but it doesn't tell me the
20 kinds of analysis that you went through and the kinds
21 of data you went through to come up with that number.

22 Q. Okay. Let's talk about -- this is Hispanic. Now, if
23 you look at Black, we have a positive correlation of
24 .111. That tells you that Blacks tend to live in
25 wealthier districts, is that correct?

1 A. Again, I haven't looked at the report and haven't
2 analyzed the statistics and don't feel comfortable
3 making those statements.

4 Q. You can't tell me that a positive correlation tends
5 to mean that things move in tandem with one another?

6 A. I can tell you about the correlations, but I can't
7 tell you the significance of those correlations given
8 the data.

9 Q. Okay. And then if we look at minorities as a total --

10 A. Yes, sir.

11 Q. -- what's going to happen if we look instead of
12 Hispanics and Blacks individually and we look at them
13 as a total? What's going to happen to these two
14 numbers?

15 A. They will offset one another.

16 Q. We find out that minority percentage in the state,
17 when they're added together, has got a negative .122.
18 That's the offset that you're talking about.

19 A. That's assuming that the relationship should be a
20 linear one, and again, there are other ways that the
21 relationship might be there that are masked by the
22 figure that you're using.

23 Q. Well, when you're dealing with the state system as a
24 whole, you've got to kind of assume that linear
25 relationship, don't you?

1 A. No, sir.

2 Q. We distribute funds in a linear relationship, don't
3 we, pursuant to a formula that has a linear capacity
4 because it deals with wealth?

5 A. But it also incorporates a lot of other factors like
6 percent comp. ed. students, special education, et
7 cetera. So when you start cranking those kinds of
8 funding mechanisms in, I'm not sure that you're
9 description is --

10 Q. Okay. Right. So when we look at these numbers that
11 came off of this same data set, 47 and 48, then we
12 have to, in addition to looking at just the
13 percentage in the district, we've got to see what
14 else is available in that district by virtue of the
15 state aid program to help educate those kids, don't
16 we?

17 A. Yes, sir.

18 Q. Okay. How many of those kids do you think that are
19 comp. ed. eligible are also bilingual ed. eligible?

20 A. I didn't look at the data, so I didn't calculate
21 those percentages.

22 Q. Okay. Do you know that you can add the weights in
23 the program of comp. ed. and bilingual ed. together?

24 A. Yes, sir.

25 Q. Okay. So that these districts with these high

1 percentage of kids are getting 30 percent if you add
2 them both together more than other districts for
3 these kids?

4 A. Well, that 30 percent would be adjusted for local
5 property wealth, of course, so it is not quite pure,
6 but yes, that does --

7 Q. Well, yes, it sure would. And these guys down at the
8 poor end are going to get even more still of state
9 aid, aren't they?

10 A. They're going to get additional state aid in
11 recognition of the special needs of those students.
12 Yes, sir.

13 Q. Uh-huh, and because they're the poorest, they're
14 going to get the most state aid because there is less
15 of an offset for the local fund assignment?

16 A. They're going to get more state aid. I'm not sure
17 they're going to get the most state aid as a
18 proportion.

19 Q. Okay. So do you think that we need, as an analyst of
20 school finance, that we need to look at several
21 things at once? We need to look -- we can't just
22 distribute funds based on the wealth of the district.
23 We've also got to look at comp. ed.

24 A. There needs to be a comprehensive analysis. Yes,
25 sir.

1 Q. Is this a comprehensive analysis?

2 A. That particular one is a focused analysis on one part
3 of the system.

4 Q. You can't look at the system with a focused analysis.
5 You've got to look at the whole thing, don't you?

6 A. No, sir. I think you need to look at it in a variety
7 of ways, otherwise you're not getting a total picture
8 in terms of what may be happening within the system.

9 Q. But you can't draw conclusions or inferences unless
10 you look at the whole picture, can you?

11 A. I wouldn't agree with that. I think you can draw
12 conclusions in terms of the data that you're looking
13 at, but then again, expand that when you look at
14 additional information.

15 Q. Okay. So you can only -- what do these two documents
16 tell us?

17 A. Those are for Hispanics, that there is a
18 disproportionate concentration in the lowest wealth
19 districts, that the median family income is below
20 state average, that the number of comp. ed. eligible
21 students is proportionately higher than other
22 districts around the state.

23 Q. Okay. But it doesn't tell us where the other
24 minority kids are?

25 A. Those two tables do not, sir.

1 Q. Okay. It doesn't tell us -- when you said dropout,
2 is it fair to say that early education has something
3 to do with dropout?

4 A. How would you define early education?

5 Q. 1st, 2nd and 3rd grade.

6 A. It has -- our review of the research indicates that
7 all education, including early education, has a
8 significant effect on dropouts.

9 Q. Okay. When you look at the impacts of the reform of
10 House Bill 72, you think we ought to look at the
11 younger kids to see, because we've got a more pure
12 laboratory here?

13 A. I think it would be useful to focus on the younger
14 kids that are affected, but in the meantime, you've
15 got several hundred thousand students at the junior
16 high and secondary level that need to be looked at.

17 Q. Okay. Well, let's look at all of them for a second.
18 Do you know what the test score increases were based
19 on percent comp. ed. in a district? How they arrayed
20 themselves for the '85-'86 year?

21 A. We didn't look at the TEAMS data. No, sir.

22 Q. Do you think that's important?

23 A. That's one of the variables that could be looked at.

24 Q. Okay. Do you know that they did substantially better
25 than the state as a whole?

1 A. I was not aware of that.

2 Q. Does that tell you something about the education that
3 they're getting?

4 MR. KAUFFMAN: Your Honor, he's testifying
5 now, Mr. O'Hanlon is. I'm not sure I agree with all
6 these facts. If he wants to ask him a hypothetical,
7 he may.

8 MR. O'HANLON: We've got it in evidence,
9 Judge. Let me see if I can find it.

10 MR. GRAY: Mr. O'Hanlon, I believe your
11 Exhibit 68 on Page 8 contradicts what you were
12 hypothecating here.

13 MR. O'HANLON: No. Actually, I'm
14 referring, Mr. Gray, to Exhibit 26, and we'll talk
15 about that.

16 May I approach the witness?

17 THE COURT: Yes.

18 BY MR. O'HANLON:

19 Q. Mr. Cortez, I'm handing you now what's been marked as
20 Defendants' Exhibit No. 26. Have you ever looked at
21 the TEAMS score data?

22 A. Not within the last year or so, sir.

23 Q. Okay. Is it important to look at that to analyze how
24 successful an educational program is doing?

25 A. That's one indicator.

1 Q. Okay. Now, when we look at mathematics -- and this
2 is the statewide average -- we see that in '85 and
3 '86, we saw an increase in both mathematics and
4 English language arts in the state as a whole.

5 A. Yes, sir.

6 Q. Okay. So the state is doing a little better in '86
7 than they were in '85, is that correct?

8 A. That's what the data shows.

9 Q. Now, let's look at how minority kids did and
10 disadvantaged kids. Those are two things that you
11 looked at, isn't that right?

12 A. Yes, sir.

13 Q. Okay. Can you tell us from those two charts there
14 how they did vis-a-vis as you go up the line? This
15 thing here is arrayed in groupings on minority
16 students by district groupings with, say, less than
17 10 percent, 10 to 19 percent, things of that nature,
18 correct?

19 A. Okay.

20 Q. All right. In the districts that are over 75 percent
21 minority, and those are those same districts that
22 you're talking about here, I guess, in your ADA Group
23 No. 1 --

24 A. Yes, sir.

25 Q. -- they saw the most significant increase, didn't

1 they, in test scores?

2 A. Yes, sir.

3 Q. Well above the state average?

4 A. Above the state average? Part of that may be a
5 function of the range issue. The fact is that
6 minorities historically have performed 20 to 30
7 points below the other groups so that they've got
8 more room to show gains in terms of topping out on
9 the exam.

10 In terms of other data that I've looked at,
11 that tends to inflate the relative improvement of
12 those groups if you look at the test data from year
13 to year.

14 Q. Yes. But if you're looking at just '86, if they're
15 20 to 30 points behind, they got 10 points back in
16 this year, didn't they?

17 A. Yes, sir. They showed improvement.

18 Q. Okay. Now, let's look at disadvantaged students.
19 That's another thing that you're looking at when
20 you're looking at Exhibit No. 48 for comp. ed. or
21 below poverty level, right?

22 A. Yes, sir.

23 Q. Okay. Now, how did they do versus the state as a
24 whole, districts in which there are high
25 concentrations of disadvantaged kids?

1 A. Shows improvement also.

2 Q. Significantly more improvement than the state as a
3 whole.

4 A. I wouldn't necessarily say significantly more.

5 Q. Well, what does it take to be significant for you?
6 Twice as much? Because it is twice as much, isn't
7 it?

8 A. I don't know if there is any magic figure in terms of
9 significance.

10 Q. Okay. So a gain in the state as a whole by twice as
11 much in terms of their gain scores isn't significant
12 to you?

13 A. It's an improvement, but many of those factors are
14 relevant against the statistically significant -- it
15 may be statistically significant, but not
16 educationally significant.

17 Q. Is that a way to measure the effectiveness of an
18 educational program?

19 A. That's one indicator, not necessarily the only
20 indicator or the best indicator.

21 Q. Well, how they do on scores is certainly a better
22 indicator of a school system than their wealth, isn't
23 it?

24 A. I'm not sure, sir.

25 Q. You would rather evaluate a school system by how

1 wealthy its patrons are than how well they do on test
2 scores?

3 A. No, sir. But I would not use test scores exclusively
4 as the sole criterion to look at the adequacy of
5 education provided children, particularly the TEAMS,
6 since it is a test of basic skills and doesn't really
7 give you a clear indication of those students' life
8 chances in terms of success over time.

9 Q. Well, now, higher level thinking skills are not basic
10 skills, are they?

11 A. Yes, sir, they are. But if you look at the data on
12 most students in general and minority in particular
13 seem to do significantly less well in higher order
14 thinking skills on the TEAMS.

15 Q. Does it display it in that information?

16 A. I don't see it there, but it's data that I've seen.

17 Q. What source? How do we grade TEAMS scores by higher
18 order thinking skills?

19 A. Well, higher order thinking skills -- higher order
20 cognitive skills are some of the skills that are
21 measured on TEAMS.

22 Q. I understand that. But how do we differentiate?
23 What source of data that you've seen has
24 differentiated that versus basic skills in the
25 reporting?

1 A. In the data, the way the state reports it, they look
2 at individual group performance on each of the
3 different subobjectives with the higher order
4 thinking skills being one subgrouping.

5 Q. Okay. So the test does measure, in addition to basic
6 skills, higher order thinking skills?

7 A. It measures them, but students were reflected as not
8 doing very well on that measure.

9 Q. Okay. But they're doing better than they were
10 relative to the state as a whole, aren't they?

11 A. On higher order thinking skills --

12 Q. Yes, sir.

13 A. -- I haven't seen that data in terms of relative
14 performance. This data is a composite.

15 Q. Okay.

16 MR. O'HANLON: I'll pass the witness.

17 CROSS EXAMINATION

18 BY MR. TURNER:

19 Q. Mr. Cortez, on Page 1 of the IDRA report --

20 A. Yes, sir.

21 Q. -- on the second column there, about one-third of the
22 way down in that Paragraph No. 3, it says "No causal
23 data are included in this IDRA report."

24 A. That's correct, sir.

25 Q. Is that saying to us that there is no analysis here

1 made or attempted to be made of what causes dropouts?
2 Is that what it's --

3 A. Not in this study, sir. That was done by Texas A&M
4 Prairie View under separate subcontract of the TECA.

5 Q. All right. So there is nothing in here about the
6 causes of dropouts?

7 A. Not in this study.

8 Q. I note on Page 18 -- and I believe you alluded to
9 this -- it's in the second column not quite halfway
10 down. It says "Nearly half of the 1980 Hispanic
11 dropouts had completed less than 9th grade when they
12 ended their schooling."

13 Is there anything in here that attempted to try
14 to analyze why that dropout rate was so high in the
15 first eight years of schooling?

16 A. No, sir. Again, the analysis involved the census
17 data, and there was no actual direct contact with
18 those individuals.

19 Q. On page -- it's in the executive summary, the third
20 page, there's a statement at the top of the
21 right-hand column. Actually, I guess that paragraph
22 starts at the bottom of the first column. It says
23 "In order to serve the diverse migrant population,
24 for example, a graduation enhancement model is being
25 developed by TEA and the Texas Migrant Interstate

1 Program. According to data compiled by the
2 coordinator of the program, migrant dropout rates are
3 estimated to be in the 60 to 90 percent range. It's
4 obvious then that more and varied programs are
5 needed."

6 Does the data that we are looking at for
7 Hispanic dropouts include any Hispanics who may be
8 migrants that would be included in this study that's
9 referred to here where it says the migrant dropout
10 rate is 60 to 90 percent?

11 A. The data on Hispanics would include migrant, but we
12 didn't do any separate analysis on migrant students.

13 Q. So if this study that you referred to here is
14 correct, then the migrant dropout rate is estimated
15 to be 60 to 90 percent, the presence of migrants in
16 the Hispanic count would cause the Hispanic dropout
17 count to be as high as it is. That would be one of
18 the elements that would --

19 A. That may be a distinct possibility.

20 Q. You say you made no effort in this study to separate
21 the migrant population of Hispanics from other
22 Hispanics?

23 A. We did not because the contract did not call for that
24 kind of analysis and it was done under relatively
25 constrained financial sources and time frames.

1 Q. Over on Page 22, at the top of the left-hand column,
2 the second sentence, there is a statement that says
3 "Nearly half of the civilian dropouts age 16 to 19 in
4 1980 lived in central cities in 1980. All together,
5 about four out of five of the 16 to 19 year old
6 civilians who had not completed high school lived in
7 urban places."

8 Is that saying to us that the four out of five
9 of the dropouts live in urban areas?

10 A. Could you tell me again? You were reading from Page
11 22?

12 Q. Page 22. Yes, sir. At the top of the left-hand
13 column, I started reading there with the second
14 sentence.

15 A. The data did show that -- and again, this is to
16 clarify. This is for the 1980 census data which are
17 the older individuals. The data did show a
18 concentration or higher propensity of dropout by
19 students living in urban areas or by individuals in
20 urban areas.

21 Q. Over on the right-hand column, in the second
22 paragraph, it says "The largest groups of dropouts
23 were in the City of Houston with 69,000, and the
24 Alamo SDA" -- what does SDA stand for?

25 A. Service delivery area. That's part of the -- it

1 relates to the Job Training Partnership Act and post
2 high school training and other services provided to
3 individuals. That just reflects a geographic area
4 that was drawn by the state.

5 Q. Is that San Antonio and surrounding counties?

6 A. The Alamo would be South Texas, parts of South Texas.

7 Q. Let's see. I believe there is a map over here
8 somewhere that shows us those service delivery areas
9 on Page 16.

10 A. Okay.

11 Q. It's actually, I guess, San Antonio and every county
12 that touches Bexar County.

13 A. Down to Atascosa.

14 Q. And it looks like three others that aren't actually
15 touching Bexar County. That's what we mean by the
16 Alamo service delivery area under the Job Partnership
17 Training Act?

18 A. Yes, sir.

19 Q. So 40,000, it says on Page 22, were there. The City
20 of Dallas had 35,000 and the balance of the Gulf
21 Coast Planning Region SDA, the area around Houston,
22 had 32,000.

23 A. Yes.

24 Q. Now, is that saying to us again, making the point
25 again that the highest numbers, the large bulk of

1 dropouts in this state are in urban areas, that four
2 out of five number we read in the first paragraph, is
3 that what that's talking about and illustrating to
4 us?

5 A. It says there is a high number of dropouts in urban
6 areas. However, if we look at dropouts as a
7 percentage of district enrollment or percentage of
8 enrollment in certain areas, the dropout problem is
9 widely distributed throughout the State of Texas and
10 includes rural communities as well as urban areas.

11 Q. On the chart or the table on Page 23, that gives us
12 some data by standard metropolitan statistical areas.
13 Is that what that's intended to represent?

14 A. Yes, sir.

15 Q. So we can see how many dropouts -- or actually, I
16 guess it's not proper to use the word dropouts.
17 These are students age 16 to 24 who are not enrolled
18 in school and who have not completed high school?

19 A. That's right.

20 Q. This gives us actual numbers in these urban areas,
21 and then there is a column there labeled "Rate." Is
22 that the dropout rate? Is that what that is
23 attempting to show there?

24 A. Yes, sir.

25 Q. So we can see there that in the Dallas/Fort Worth

1 area, there are 98 individuals 16 through 24 who have
2 not completed high school and who are not enrolled in
3 school.

4 A. Yes, sir.

5 Q. And in Harris County, there are 93,000. Bexar County
6 is third with 33,000. Then we go to El Paso with
7 16,000 and Austin with 15,000. Then the numbers get
8 smaller as we go on down for the other areas. The
9 information that I read in Column 1, the first column
10 on Page 22 would tell us that four out of five of the
11 age group that have not graduated from high school
12 and are not enrolled in school, four out of five of
13 them would be located in these urban areas that are
14 shown on this table on Page 23?

15 A. Yes, sir. It would be consistent with the
16 concentration of the population statewide.

17 Q. All right. When we look back on Plaintiffs' Exhibit
18 47 or 48, either one, and we look at that property
19 wealth per ADA Group No. 1, poorest --

20 A. Yes, sir.

21 Q. -- do you know if we have any standard metropolitan
22 urban areas in that first group?

23 A. We do not, sir.

24 Q. How far down do you have to go in that grouping
25 before you come across a district that would be in an

1 urban area and would be an urban district?

2 A. How are you defining urban?

3 Q. Well, I was defining it by these standard
4 metropolitan statistical areas that are shown on
5 Table 1.12 on Page 23.

6 A. Okay. We use SMSA. I stand corrected. The
7 Brownsville/Harlingen area and McAllen Pharr/Edinburg
8 area would be reflected in the first grouping,
9 possibly the second grouping. San Antonio is
10 reflected in the fifth grouping. So if we're talking
11 about SMSAs, you're talking about the inclusion of
12 some of those areas within each of those groupings.

13 Q. Okay. Well, would the Brownsville Independent School
14 District be in Group No. 1?

15 A. I would have to doublecheck the subgroups, but I
16 suspect it is.

17 Q. And looking back to our chart on Page 23, that's
18 where that Brownsville/Harlingen/San Benito standard
19 metropolitan area would have 9,200 young people from
20 age 16 to 24 who are not enrolled in high school or
21 have not completed high school?

22 A. According to the data, yes, sir.

23 THE COURT: Counsel, let's stop there for
24 afternoon break. We'll start again at 4:00.

25

(Short recess.)

(Plaintiffs' Exhibit Nos.
47 and 48 marked.)

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BY MR. TURNER:

Q. Mr. Cortez, on Page 17 -- excuse me, I think I have the wrong page here. On Page 22 and 23 --

A. Yes, sir.

Q. -- that table on 23 gives us the raw numbers of the number of students or number of young people 16 to 24 not enrolled in school and have not completed high school, which shows us that the largest numbers, bulk of the numbers are in urban areas. I suppose that the next two tables give us the same kind of indication of the trend?

A. They look at it in a different way. The first one looks at it by SMSAs and the others are just basically geographically different arrangements. Frankly, I haven't looked at this data in real detail and can't tell you what the trends are.

Q. All right. On Page 26, the second full or complete paragraph on that page, says "Most Hispanic dropout rates were well over 20 percent and they ranged up to 51.3 in Dallas."

I guess that means the Dallas Independent School District.

"There are 12 other" --

1 A. No, sir. I'm not real sure that it says that. I
2 think they're talking about service delivery areas
3 versus school districts in that section.

4 Q. All right. Let me see if I can get my map here again
5 on service delivery areas.

6 The City of Dallas is listed on Page 16 as a
7 service delivery area. The balance of Dallas County
8 is a separate service delivery area. So I assume
9 they mean there that the dropout rate for Hispanics
10 in the City of Dallas was 51.3 percent?

11 A. Yes, sir. But that includes several different school
12 districts within that. It is not necessarily Dallas
13 ISD.

14 Q. All right. It would include Dallas ISD?

15 A. As one of the subgroups, yes, sir.

16 Q. It says "There are 12 other service delivery areas in
17 which 40 to 50 percent of Hispanics age 16 to 24 have
18 not completed secondary school. Among the service
19 delivery areas with the largest proportions of
20 Hispanics, the rates were lower. Fewer than three in
21 ten young Hispanics in Alamo and Hidalgo and Willacy
22 Counties service delivery areas were dropouts. About
23 one in four Hispanics in the upper Rio Grand service
24 delivery area was a dropout."

25 A. Pardon me, sir. Where are you reading from?

1 Q. On Page 26, the second full paragraph.

2 A. Okay.

3 Q. When we look back on Exhibit 47 and 48, which shows
4 that -- in particular, I guess 47 would be the one we
5 would look at -- that in the poorest groups of
6 districts based on property wealth, we have some of
7 the highest percentage of Hispanic enrollment.

8 This paragraph on Page 26 of the dropout study
9 would be telling us that in those areas where we have
10 the highest Hispanic enrollments, we have lower
11 dropout rates than we do in those areas such as
12 Dallas and Houston where we have high numbers of
13 Hispanics and yet they may not be as high percentage
14 Hispanic as they are in some of these low wealth
15 areas of the state that are referred to on
16 Plaintiffs' Exhibit No. 47, is that correct?

17 A. I'm not sure, sir. On the one hand, this analysis
18 that you're referring to in the dropout study has to
19 do with service delivery areas and different
20 groupings of school districts versus the table that
21 we looked at. So I'm not real sure that one can
22 automatically make the inference that you're making.
23 I would have to look at the data.

24 Q. Okay. Were you ever able to uncover any explanation
25 for the reason that, as stated on Page 26 of the

1 report, that in areas where there are high Hispanic
2 student population percentages, the dropout rates are
3 lower than they are in other areas of Hispanic
4 concentration, which may not have as high a
5 percentage Hispanic such as some of our areas like
6 Houston and Dallas and Austin?

7 A. No, sir. We weren't able to isolate the factors
8 contributing to that. I'm sure that future research
9 is going to be looking at that very closely.

10 Q. Over on Page 40, there is a section entitled "Summary
11 of Responses to Requests for Evaluation Reports."

12 A. Yes, sir.

13 Q. The first full paragraph on that page says -- this I
14 assume is a summary. It's a summary, I suppose, of
15 the material contained in the latter part of Page 37,
16 which is entitled "Components of Effective Programs."
17 I guess we're talking about effective dropout
18 programs here?

19 A. Yes, sir.

20 Q. It says on Page 40, "Thus, the question remains what
21 constitutes an effective or even an adequate dropout
22 program? Reviews of the literature and results of
23 this study indicate that 'what works' is generally
24 not known. While some exemplary or model programs
25 are in operation across the country, there is little

1 systematic generalizable information which would
2 permit program replication."

3 In the next generalizable paragraph, it says --
4 I'll summarize here -- despite the fact that we don't
5 really know evidently what works in addressing the
6 dropout problem, it lists -- in that next paragraph
7 it says "Effective strategies include." So it's
8 suggesting some things here I guess might work. Is
9 that the idea? Or maybe it's shown to have worked in
10 the limited knowledge we have about how to deal with
11 dropouts, is that correct?

12 A. It's possible. Possible things that may work.

13 Q. It lists these kinds of things: Teaching basic
14 skills, survival skills training. And I think I know
15 what teaching basic skills are. We have talked about
16 that a lot in this courtroom about our curriculum in
17 Texas. Survival skill training is a suggestion.
18 Could you tell me what survival skills training is?

19 A. Within this context, I'm not real sure what the
20 authors, which were another group of individuals in
21 the office, I'm not real sure what they're referring
22 to.

23 Q. Okay. Work study programs. I read a little bit and
24 didn't catch what that is. That is a program where
25 you're able to have a job and at the same time you're

1 going to school and having that income?

2 A. Yes.

3 Q. That helps. I read over here on Page 41 that dropout
4 rates increase by 50 percent when students work 15 to
5 21 hours a week. I guess that means on outside
6 employment.

7 A. Yes, sir. There is a point of diminishing returns in
8 terms of hours of employment.

9 Q. Then if they have an outside job while they're going
10 to school of 22 hours or more, it increases their
11 risk of dropping out by 100 percent. So I guess a
12 work study program is the idea where you're able to
13 work and have some income and that kind of helps you
14 not want to be a dropout and work full time or
15 something like that, is that the idea?

16 A. Yes, sir. It's a controlled work study situation
17 where numbers of work hours are limited.

18 Q. The next suggestion is individualized instruction.
19 The next one is strengthen guidance and counseling.
20 The next one is highly committed caring teachers with
21 high expectations for their students and community
22 parent business liasons.

23 Over on Page 42, it says in the second column,
24 first full paragraph, it says "To summarize, several
25 components have been identified which might be

1 included in a prototype of a successful dropout
2 program. These components are" -- it says -- "high
3 expectations for students, caring and committed
4 teachers who can counsel students, individualized or
5 small group instruction, basic skills instruction,
6 and survival skills training, work study, and
7 community, business and parent involvement."

8 I take it those are the things that even though
9 we don't know really too much about how to deal with
10 dropouts, those are the things that people have noted
11 in studies that might make a difference?

12 A. I would say that they are some of the things, but I
13 don't believe that the list was intended to be all
14 inclusive.

15 Q. Okay. Each of those components were discussed in the
16 previous paragraph, I noted. For example, in the
17 first paragraph on Page 42, the first full paragraph,
18 second sentence says "Teachers must be committed and
19 dedicated to program plans and goals, be interested
20 in each student and have high expectations of
21 students."

22 I gather, then, when we turn on Page 44, and in
23 the summary, I think there is an attempt made here to
24 try to explain why we haven't implemented these
25 strategies that I've just mentioned.

1 In the second full paragraph under the summary,
2 did you find that to be the case as described there
3 in that second paragraph under summary on Page 44 in
4 the work that you did?

5 A. I'm not clear on your question, sir.

6 Q. I'm asking you to refer to the second paragraph --

7 A. Okay.

8 Q. -- under summary on Page 44 and ask you if, in your
9 work on this project, you found that our inability to
10 implement these strategies that are suggested in your
11 report were a result of what is mentioned there in
12 this second paragraph of the summary?

13 A. I don't believe so, sir. I think -- if I'm reading
14 Page 44, the second paragraph, what I think we were --
15 what our finding was that we really didn't know what
16 programs were having an effect on students, not
17 necessarily why those strategies that you just listed
18 weren't being implemented. That whole section deals
19 with the lack of valuative information on those
20 programs and detailed information on what actually
21 was being delivered to kids and the kinds of effects
22 it was having on them. So I'm not sure your
23 inference is correct.

24 Q. So you're saying that -- when that second paragraph
25 there says "Additionally many of the program persons

1 contacted seemed confused, embarrassed or even
2 defensive when requests for evaluation data and
3 reports were made," that didn't indicate to you that
4 there is a lot of misunderstanding or maybe lack of
5 knowledge about how to deal with the dropout problem
6 out there and there is just a need for a better
7 understanding of how to implement strategies and to
8 apply some of the very basic things that are
9 mentioned on Page 40, 41 and 42 in solving the
10 problem?

11 A. No, sir. The thrust of that summary was to indicate
12 that many programs didn't have evaluation-related
13 expertise to give so they weren't able to adequately
14 assess a kind of effect their efforts were having on
15 the problems -- on the students they were trying to
16 affect. So it had to do with their evaluation
17 capability.

18 Q. Okay. So maybe if we look up to the last sentence in
19 the first paragraph under summary, which says
20 "Program staff in both school based and alternative
21 programs expressed a need for centralized and
22 accessible information for effective dropout programs
23 in the state and in other parts of the country," is
24 that saying that these people that are out there in
25 the field in our very school districts are trying to

1 figure out how to structure a dropout program that's
2 effective?

3 A. In terms of that sentence, it indicates that there
4 was a desire for information on effective programs.
5 Part of the problem was the lack of evaluation data
6 on what were effective programs.

7 Q. So, I guess, would it be fair to say in trying to
8 adequately address our dropout problem in this state,
9 that we're sort of in the infancy stage of really not
10 having too clear a direction just yet as to what we
11 ought to put in place to try to deal with the
12 problem? We don't really know, as it says on Page
13 40, what constitutes an effective or adequate dropout
14 program?

15 A. It may not be the case so much that programs aren't
16 out there. It's a question of documentation and
17 centralization of that information and making it
18 available to people that are interested versus lack
19 of programs. There are some programs, but the study
20 did determine that the number and the way they're
21 documented leaves a lot to be desired. It's just
22 basically in that order.

23 Q. If we look at the number, just the raw number of
24 dropouts in places like Houston and Dallas and
25 Austin, would it be fair to say that in terms of

1 trying to deal effectively with the problem, if we
2 determine what we need to do, in terms of affecting
3 most numbers and recognizing that some of those high
4 percentage Hispanic districts don't have near the
5 dropout percentages as places like Houston and Dallas
6 and Austin, would it be your suggestion that when we
7 figure out what to do, that we be sure we're able to
8 commit our efforts and our resources in those urban
9 areas to deal with the problem that exists in the
10 greatest degree?

11 A. Again, based on the data that we helped put together,
12 even though there is a high number of dropouts in
13 urban areas, our conclusion was that the problem
14 really affects all types of school districts all
15 across the state, and that even if we're successful
16 in terms of addressing the problem in urban areas,
17 that won't necessarily mean that we have taken care
18 of the majority of the problem statewide. The
19 problem is pervasive and common to the majority of
20 districts in the state.

21 Q. Well, I guess the question I'm asking you, looking
22 back on Page 26 again, when we recognize that the
23 statewide dropout rate, according to your study, is
24 33 percent, is that correct --

25 A. Yes, sir.

1 Q. -- and we read on Page 26 that in the Alamo service
2 delivery area and Hidalgo and Willacy County service
3 delivery areas, the dropout rate among Hispanics was
4 only 33 percent -- excuse me -- 30 percent, and that
5 in the upper Rio Grande service delivery area, the
6 dropout rate for Hispanics was 25 percent. It seems
7 to me and would you agree with me that the problem of
8 dropouts among Hispanics is lesser in those
9 particular areas -- in fact, less than the state
10 average dropout rate -- whereas in places like
11 Houston and Dallas and Austin, the Hispanic dropout
12 rate is above average?

13 A. Again, I think part of the problem I'm having with
14 your discussion is on the one hand, we're talking
15 about service delivery areas and the rates for those
16 areas, et cetera, then we're trying to convert those
17 over to implications for school districts with
18 different proportions of Hispanics and the like. I'm
19 not real sure that if service delivery area dropout
20 rates were to decline significantly, that
21 automatically indicates that there are no problems
22 within school districts with high Hispanic
23 enrollments. I think we would have to look at the
24 data again in the way you're talking to make that
25 determination.

1 Q. All right. Looking at the table on Page 12, it is
2 clear, is it not, that the dropout rates generally
3 are higher in larger school districts?

4 A. You're talking about Page 12?

5 Q. 12, yes, sir.

6 A. Yes, sir. Slightly higher as compared to -- if you
7 go down the scale, the differences are relatively
8 restricted, if we look at less than 100 students
9 having 25 percent versus those with over 10,000
10 having 37 percent.

11 Q. So we can see from that data alone that the dropout
12 problem seems to be as much an urban large school
13 district problem as anything else, would that be
14 accurate?

15 A. According to the figures I see, the dropout problem
16 is common to districts all the way across the side
17 scale, all the way from one to 100, all the way to
18 over 10,000.

19 Q. Well, in terms of raw numbers, then, the top two
20 groups, school districts over 5,000 in ADA, over half
21 of the dropouts in this state are in those kinds of
22 urban settings, are they not?

23 A. Yes, sir. But part of that's a function of the fact
24 that a significant proportion of the state population
25 is also within those school districts.

1 MR. TURNER: I'll pass the witness, Your
2 Honor.

3 CROSS EXAMINATION

4 BY MR. R. LUNA:

5 Q. I wanted to ask you a couple of questions in regard
6 to your conclusion.

7 The first one is I'm not sure what your
8 conclusion is. Based upon all these exhibits, what
9 is it you're trying to tell the Court in regard to
10 this lawsuit?

11 A. Two exhibits that were introduced on the dropout
12 study?

13 Q. From all these exhibits and all the testimony you've
14 given the Court, what is it you're telling us? What
15 are you asking for?

16 A. I don't believe I volunteered --

17 MR. KAUFFMAN: He has not asked for
18 anything. He is testifying as a witness. He is not
19 a Plaintiff. He's just a witness.

20 BY MR. R. LUNA:

21 Q. Based upon -- assuming then that you haven't asked
22 the Court for anything, which appears obvious to me
23 that you haven't asked for anything, what evidence
24 should we make or conclusions should we draw from the
25 evidence that you've brought to the Court?

1 A. Based on the data that was presented, if we look at
2 the two charts and the dropout information, the
3 population of students concentrated in the lower
4 quarter of districts rank ordered by wealth is
5 significantly greater than it is for the state
6 average.

7 Q. All right. Let's stop there. Do you want us to move
8 somebody? Is that the purpose of your study?

9 A. No, sir. I think we are analyzing the effect of the
10 system on different kinds of students and there are
11 ways that the delivery system can be modified to make
12 the system more equitable for students.

13 Q. Delivery system of what?

14 A. School finance.

15 Q. Of school finance. So you are here asking for
16 something. You're here asking for an adjustment in
17 the school finance system?

18 A. No, sir. I'm here presenting testimony on the effect
19 of the wealth distribution and how it relates to the
20 concentration of students.

21 Q. All right. To solve the problem then, as you see it,
22 of the concentration of Hispanics in low income
23 districts, what do you recommend?

24 A. Individually?

25 Q. That will be fine.

1 A. I recommend we look at the current funding formulas
2 and examine ways that might be modified to make it
3 more equitable for these kinds of students as well as
4 students in general.

5 Q. How are you going to do that?

6 A. There are a variety of different ways of making the
7 system more equitable. I think some of those have
8 already been presented here. If you want my
9 individual recommendations --

10 Q. I want your conclusion of what inference it is we're
11 supposed to draw from these three exhibits you've
12 presented to the Court.

13 A. I think that the system can be modified to make it
14 more equitable to those kinds of students, and it
15 currently does not provide equality of educational
16 opportunity for the kids that are concentrated in the
17 bottom quarter.

18 Q. Why?

19 A. Because they do not have access to comparable tax
20 bases and the related fiscal resources that go with
21 them.

22 Q. Your report is on dropout rates?

23 A. Yes, sir.

24 Q. And yet, on Page 22, you state that Texas dropouts
25 are widely distributed throughout the state.

1 A. Yes, sir.

2 Q. So how are you able to draw a conclusion that we now
3 need to do something for the particular Hispanic
4 students in the districts you're talking about,
5 whatever districts those may be?

6 A. I'm not real sure of your question, sir. Could you
7 clarify?

8 Q. All right. It would appear to me that the statement
9 on the top of Page 22 in the top right-hand column
10 which says "Texas dropouts are widely distributed
11 throughout the state," if you are attempting, by your
12 suggestions, to have the Court infer that by
13 modifying the education formula to perhaps reduce
14 dropout rates in the Valley, that somehow will solve
15 the dropout rate which is distributed throughout the
16 state, that wouldn't seem to make sense. Yet, as I
17 understand it, that's what you're saying.

18 A. No, sir. I think the dropout issue is a separate
19 subissue within the whole finance question. I think
20 the exhibits were separate, the issues are separate,
21 and they have to be dealt with differently.

22 Q. Well, let's deal with them separately then. How are
23 you going to address the dropout issue?

24 A. I think what we recommended in our study is, first of
25 all, that there are a variety of recommendations,

1 part of them being acquiring additional information
2 on the nature of the problem.

3 Q. Right. We've been over that. We've heard those, and
4 none of those suggest amending the state finance
5 formula, do they?

6 A. We didn't address that in this study. No, sir. We
7 did not.

8 Q. No, you didn't. So are we to assume, then, that when
9 you say that part of the reason you're here and you
10 present us statistics on the dropout rate really have
11 nothing to do with the school finance system?

12 A. In the study, we did not infer a relationship between
13 the school finance system and the dropout rate.

14 Q. You are not -- excuse me. Go ahead.

15 A. Go ahead.

16 Q. You're not suggesting, are you, that funds for
17 education be taken away from rich districts such as
18 Dallas and Houston and be moved or transferred to
19 poor districts, are you?

20 A. I didn't suggest that. No, sir.

21 Q. And you wouldn't suggest that to the Court, would
22 you?

23 A. Specifically, I think that the suggestion that money
24 be reallocated from certain kinds of districts to
25 other kinds of districts, high wealth to low wealth,

1 is certainly one of the options that's out there.

2 Q. But you wouldn't suggest that one, would you?

3 A. I might.

4 Q. Oh, did you just change your mind?

5 A. No, sir.

6 Q. I thought a moment ago you said you would not move
7 money from the rich districts of Dallas and Houston
8 to poor districts?

9 A. Not specifically targeting individual districts. Let
10 me clarify my statement. Not targeting individual
11 districts.

12 Q. So as long as you didn't have to discuss Dallas and
13 Houston, you would be in favor of that?

14 A. No, sir. I'm not talking about individual districts
15 coming into the discussion at all.

16 Q. I know. You're more comfortable talking about in a
17 generic "they," but when we get down to specifics as
18 to who "they" is, then that becomes uncomfortable and
19 that's what you don't want to have to say, is that
20 right?

21 A. No, sir.

22 Q. Well, then, let me ask you again, would you take
23 money away from the rich districts of Dallas and
24 Houston and move money away from those districts to
25 any poor district in the state?

1 A. I can't answer the question as stated without
2 qualifying that the reallocation of money from high
3 wealth districts to low wealth districts is one
4 option that's out there.

5 Q. Do you recommend moving it from those particular
6 districts to any poor districts?

7 A. I recommend that all options be explored.

8 Q. Do you recommend that to the Court, that money be
9 taken away from those two districts?

10 A. Again, I didn't specify any specific districts, sir.
11 I said all options should be explored.

12 Q. It's true, of course, that even though Houston and
13 Dallas are classified as rich districts, as we all
14 know, they contain a very large group of very poor
15 students and poor families, isn't that correct?

16 A. Yes, sir.

17 Q. And your study confirms what I think generally
18 everyone knows also that the dropout problem and all
19 of the problems that exist in a district that you
20 might call a Hispanic district exist in the large
21 urban centers of Dallas and Houston even though they
22 might be a rich district. The same problems exist in
23 both, don't they?

24 A. Dropout problems?

25 Q. Yes, sir.

1 A. Yes, sir.

2 Q. If I told you that yesterday on this stand, or maybe
3 it was the day before, the Plaintiffs called as one
4 of the expert witnesses Dr. Arthur Wise from the Rand
5 Corporation in Washington D.C. And when he was asked
6 if he would transfer money away from those urban
7 centers to poor districts, his answer was the same as
8 yours only it was a little more definite. He said
9 no, he would not recommend that. You wouldn't really
10 disagree with his recommendation, would you?

11 MR. KAUFFMAN: I'm not sure he made any
12 recommendations or --

13 A. I wasn't here so I didn't hear the recommendation.
14 I'm not familiar with it.

15 Q. Assume with me for a moment that he did make that
16 statement that he would not agree with any transfer
17 of funds away from the minority Blacks in Dallas and
18 Houston to any poor districts, he couldn't agree with
19 that. Obviously, you find some discomfort with that
20 thought as well.

21 A. In terms of the options targeting individual students
22 or student groups, I'm not real sure where that is
23 coming from.

24 Q. Are you uncomfortable in targeting specific student
25 groups?

1 A. I'm not sure what your question is. I guess that's
2 what I should ask. What is your question, sir?

3 Q. My question is, do you agree, assuming that Dr. Wise
4 said it would not be a good idea to remove funds away
5 from the urban centers, do you agree or disagree that
6 those funds should not be taken away from the Black
7 minority students there?

8 A. I'm not sure that focusing on urban centers or urban
9 districts as urban districts and deciding on
10 reallocation of monies on the basis of that
11 characteristic is something that most school finance
12 individuals would recommend in terms of types of
13 school districts.

14 Q. Do you know what the trends are in those school
15 districts in terms of the ethnic makeup of the Dallas
16 Independent School District and the Houston
17 Independent School District?

18 A. Yes, sir.

19 Q. What are those trends?

20 A. They are growing to be more and more minority.

21 Q. That's right. And which minority group is the
22 fastest growing minority group in those large urban
23 centers?

24 A. That would be Hispanics, as far as the information I
25 have seen.

1 Q. That's right. If the evidence before this Court was
2 that based upon current projections that within three
3 to six years the Dallas Independent School District
4 would become a majority Hispanic district and the
5 same thing would be true of Houston within roughly
6 the same number of years, based on what you've seen,
7 you would tend to agree with those statistical
8 projections as well. Is that what I understand?

9 A. From what I have seen, yes, sir.

10 Q. So the dropout problem is not limited to poor
11 schools. It's present in rich and poor. It's not
12 limited to Hispanics. It includes Hispanics, Blacks
13 and, in fact, even includes Whites in many areas,
14 isn't that right?

15 A. Yes, sir.

16 Q. You don't really have an answer to the dropout
17 problem at this time, do you?

18 A. Not a comprehensive one, sir.

19 MR. R. LUNA: Pass the witness.

20 MR. KAUFFMAN: We have nothing further.

21 MR. O'HANLON: I've got one more question,
22 Your Honor.

23 FURTHER CROSS EXAMINATION

24 BY MR. O'HANLON:

25 Q. On Page 12, Mr. Turner tried to get you to say that

1 the difference between 25 percent and 37 percent was
2 significant. You said that wasn't all that
3 significant to you, right?

4 MR. RICHARDS: I don't believe that's quite
5 what happened.

6 A. Again, I'm not sure if that was the case. I think
7 that the term significant in the context that it's
8 being used is what gives me problems.

9 Q. How so?

10 A. It is a relative term. Statistically significant,
11 proportionately significant.

12 Q. Proportionately significant. All districts have
13 problems, regardless of those percentage differences,
14 right?

15 A. Yes, sir.

16 Q. You can convert these differences in percentage to a
17 ratio, can't you?

18 A. What kind of ratio are you referring to?

19 Q. Well, we can divide 25 into 37 and we can get a ratio
20 of how those districts do.

21 A. You can do that, yes.

22 Q. And you know what that ratio is? It is 1.48-to-1.

23 A. I'm not real sure about the rationale for the ratio.
24 We can do things with numbers, but I want to be clear
25 on the rationale.

1 Q. Okay. So you can't just look at a ratio of 1.48-to-1
2 and tell anything without knowing exactly what is
3 going on.

4 A. I'm not clear on your question.

5 Q. Well, simply looking at ratios, say a ratio of
6 1.48-to-1, and saying that that's good or that's bad
7 or that's tolerable or intolerable --

8 A. That's part of the significance question.

9 Q. -- you've got to examine what's really going on
10 rather than just a ratio and say this is intolerable.

11 A. It is one factor you look at. You wouldn't want to
12 look at one dimension of anything.

13 MR. O'HANLON: No further questions.

14 MR. TURNER: Your Honor, I want to make
15 mention of something in fairness to Mr. Kauffman. I
16 had objected to the admission of Part 2.

17 THE COURT: Yes.

18 MR. TURNER: Page 27 through 35 of the
19 report. And I just want to let it be known that that
20 had not been admitted and I still have my same
21 objection and Mr. Kauffman will deal with that given
22 the opportunity.

23 MR. KAUFFMAN: Your Honor, I move again
24 that all of Plaintiffs' Exhibit 49, including the
25 section which Mr. Turner was talking about on which

1 he cross-examined the witness, be admitted into
2 evidence.

3 MR. TURNER: What that is, Your Honor, it's
4 a section that talks about the economic impact of the
5 dropout problem. And if it were in evidence, I would
6 have several questions about the validity of the
7 methodology used to arrive at a cost benefit ratio on
8 dropouts.

9 As I understood the witness earlier when I
10 jumped on over and talked about Part 3 and asked a
11 few questions out of there, he acknowledged that he
12 hadn't written that section of the report. So I
13 don't really know what the witness' knowledge would
14 be of Part 2 without some further information, and
15 I'm not sure that section is relevant to the trial of
16 this lawsuit anyway.

17 If Mr. Kauffman agrees with that, we can delete
18 that from the report. I guess that would eliminate
19 any potential problem with it being in there.

20 MR. KAUFFMAN: No, I don't agree to that,
21 Your Honor. It's a report prepared for a Texas state
22 agency. It has been adopted and quoted by the Texas
23 Education Agency, and has been testified to by the
24 witness. Although I feel like I'm being blackmailed
25 a little bit on this, I guess if he feels like he

1 better cross-examine him, he better go ahead and do
2 it on that part.

3 THE COURT: What's your objection one more
4 time?

5 MR. TURNER: Well, Your Honor, first of
6 all, Mr. Cortez hadn't talked about that section. I
7 noted on Part 3 when I asked him about that, that
8 that was not a section of the report that he was
9 familiar with or that he had prepared.

10 THE COURT: Okay. I'm going to sustain.

11 That chapter, of course, will stay in the
12 exhibit and it will form part of the Plaintiffs' bill
13 in regard to the tender of that --

14 MR. KAUFFMAN: Your Honor, if I may. I
15 think it has only been objected to by one of the
16 Defendants, so that objection only applies to one of
17 the Defendants.

18 MR. O'HANLON: I'll join.

19 MR. R. LUNA: Likewise, we will too.

20 THE COURT: All right.

21 MR. KAUFFMAN: We appreciate it.

22 THE COURT: Okay.

23 EXAMINATION

24 BY THE COURT:

25 Q. Now, sir, I notice on Page 6 and 7 and 8 of your

1 report, there is some discussion about causes of
2 dropoutism, is that right?

3 A. Yes, sir.

4 Q. Now, all of this report is that -- is there any other
5 part of the report that I have overlooked that talks
6 about the causes of dropoutism?

7 A. Within this document, there is not, Your Honor. But
8 in the more comprehensive documents of which this
9 report is the summary, I believe in the tracking and
10 study and in some of the school district research
11 that was done, there may be some additional
12 information on causes.

13 Q. Well, in this report, you cite Peng 1982 as, I guess,
14 a study having to do with reasons that children leave
15 school?

16 A. Yes, sir.

17 Q. Is that a Texas person, Peng? Is that a Texas study?

18 A. I'm almost sure that it is not, sir.

19 Q. It is not?

20 A. Yes, sir.

21 Q. Well, are there any other studies focusing on Texas
22 dropouts as to why our students drop out?

23 A. There are some in progress, sir.

24 Q. In progress?

25 A. Yes, sir.

1 Q. Well, if we don't know what causes dropoutism, then
2 how do we know what to do about it?

3 A. We've got some research, Your Honor, that indicates
4 some of the factors and it's common and it's
5 reinforced by studies done in other states; under
6 achievement, low socioeconomic status contributes to
7 it, students that are limited English proficient.

8 Q. Okay. Let me go at it a different way. You're the
9 superintendent of Edgewood Independent School
10 District. You've got lots of Hispanics and a lot of
11 dropouts. I'll give you \$10 million. You tell me
12 everything you're going to do with it to stop
13 dropoutism, and start telling me now.

14 A. I would lower pupil/teacher ratios. I would initiate
15 staff training activities.

16 Q. Staff training activities --

17 A. Related to attitudes toward children and expectations
18 and the like. I would do more to get parents
19 involved in meaningful decision-making activities
20 related to schooling of their kids. I would provide
21 early intervention programs for kids at the
22 elementary level focusing on basic skills
23 development.

24 Q. So you would need at the early levels, 1st, 2nd, 3rd
25 and 4th grade, you would need to identify students

1 that are having academic difficulty?

2 A. Yes, sir. Part of the study we're doing in Dallas
3 does explicitly that.

4 Q. Okay. Keep going.

5 A. We would look at combinations of factors, you know.
6 The approach we propose is look at school-related
7 factors like teacher preparation, experience,
8 attitudes, et cetera, again, get the pupil/teacher
9 ratios down to a level of -- modifying your
10 counseling approaches so that counselors do less
11 paperwork processing and more one-to-one work with
12 the students all the way down to the elementary
13 level.

14 We would implement -- get the business
15 community involved with co-sponsoring programs where
16 there would be work incentive, but there would be a
17 tie-in with students staying in school as a condition
18 of continued employment with their companies.

19 In addition to that, the parent training
20 activities probably incorporate parent education
21 programs for parents of very young children,
22 providing them training on how they might provide
23 tutorial assistance and support for what the teachers
24 are trying to do in the classroom.

25 I think a lot of data out that's out there in

1 terms of potential solutions, what districts have had
2 real difficulty doing is coordinating all of that
3 activity and focusing resources in a way that makes a
4 difference.

5 Q. Well, why have districts had difficulty doing that?

6 A. Part of it is momentum, propensity to continue doing
7 what they historically have done in most districts.

8 Q. I get the feeling, although it's not exactly said in
9 Pages 6, 7 and 8, that school districts don't really
10 know who's dropped out, is that right?

11 A. That's a significant -- yes, sir.

12 Q. Well, I find that incredible, if you want my honest
13 opinion.

14 A. Yes, sir.

15 Q. Why don't they know who's dropped out?

16 If I'm a principal of a school and someone has
17 been coming to my school and that person starts
18 missing -- say that person misses a week --

19 A. Yes, sir.

20 Q. -- do the principals send somebody out to call up or
21 send somebody out there to see where that student is?

22 A. Some districts that have the resources have visiting
23 teachers who may do that. But I can't say that there
24 is any standardized statewide required procedure for
25 doing that. That's one of the things we're

1 recommending.

2 Q. Let me ask you this. Is there existing anywhere from
3 credible sources a profile that would outline the
4 characteristics of the student and/or his or her
5 family background and/or what's going on in their
6 life at the moment that would tip the school district
7 off that that person is a candidate for a dropout?
8 Is there a profile?

9 A. Yes, sir. There has been some research developed.
10 Yes, sir.

11 Q. It's been developed?

12 A. Yes, sir.

13 Q. Where is that?

14 A. Right now, the state is compiling -- there is a
15 function that's being funded by the state compiling a
16 clearing house of information on exactly who to
17 profile and the kinds of programs that are out there,
18 et cetera, but it's just in the initial stages.

19 Q. Well, it seems like if you ask for money to fight a
20 problem, it seems to me like, number one, you would
21 have to know what is causing the problem.

22 A. Yes, sir.

23 Q. Right?

24 A. Yes, sir.

25 Q. Then it seems to me like you would have to have a

1 clear idea of what you want to do to fight the
2 problem so that those in charge of the money would
3 believe whether or not you could do it --

4 A. Yes, sir.

5 Q. -- with your program. Well, I don't see that in
6 here.

7 A. It wasn't being done. I know that the State
8 Education Agency is considering rules that were
9 introduced before the State Board of Education to
10 address the problem, at-risk youth, and requiring
11 districts to develop a plan for increasing graduation
12 rates. But this is a brand new initiative and I
13 can't say where it's going to.

14 THE COURT: I don't have any more
15 questions.

16 MR. KAUFFMAN: Your Honor, there are three
17 or four more parts of the study and we would be happy
18 to send them to the Court and opposing counsel. I
19 don't know whether it would be in the record or if
20 there is some stipulation. It's a state report. We
21 would be glad to do that. It does have a lot of
22 other information on some of the causes, on
23 statistics, on who's dropping out, on national
24 samples, and whatever. It's a very important topic
25 to us. We just didn't bring it into the record, to

1 be honest with you, just because it's about five or
2 six inches thick. We would be happy to send copies
3 to the Court, if counsel would agree.

4 Your Honor, if we could, we would mark it as
5 Exhibit 50, but we have a stipulation to put it in.
6 If not, we can't.

7 MR. R. LUNA: We certainly disagree with
8 that. We just got handed this report this afternoon
9 and had to read it during cross-examination and I
10 would hate to get a big one after the trial is over.

11 THE COURT: Now is the time.

12 MR. KAUFFMAN: I don't have it to offer
13 right now.

14 THE COURT: Okay. Thank you, sir.

15 (Witness excused.)

16 MR. KAUFFMAN: Your Honor, that's all the
17 rebuttal witnesses we have. I would like to reurge
18 the admission of an exhibit which I sought to admit
19 at the time we rested. It is Senate Bill 4, which
20 was presented to the State Legislature in June of
21 1984. It was one of the bills before the State
22 Legislature. I think Dr. Hooker and Mr. Foster both
23 testified to it.

24 On Mr. Turner's objection that it was not a
25 certified copy, I went to the legislative library and

1 got a certified copy from the state.

2 I would move it be admitted. I'm
3 doublechecking the number. I'm not sure. I'm sorry.
4 I don't have the number. I think it was Exhibit 11,
5 but I'm not sure. Let me doublecheck. We'll just
6 change the number and call it Plaintiffs' Exhibit 50.
7 Your Honor, I move that Plaintiffs' Exhibit 50, which
8 is Senate Bill 4 introduced in the second part of the
9 session in 1984 of the 68th Legislature of the State
10 of Texas be admitted into evidence. I've given a
11 copy to opposing counsel. I actually gave them a
12 copy a while back.

13 MR. TURNER: If you'll recall, Your Honor,
14 we objected to that. It was not at the time
15 certified to as being a bill filed, and we also, as I
16 recall, objected to it on the grounds of relevancy in
17 that it was just a bill introduced into the
18 Legislature like any other bill can be introduced.
19 At the time, I think we were having trouble on this
20 side of the table understanding how it was relevant
21 to any issue in the trial of this lawsuit since it
22 did not become law.

23 MR. GRAY: Your Honor, I can respond
24 because I was the one offering it, I believe.

25 It is not just a bill that was introduced. It

1 passed the Senate. So half of the Legislature of the
2 State of Texas voted for this bill. It deals
3 directly with school finance. And for whatever
4 reason, the law that was passed lowered the number
5 for the basic allotment, which is one of the things
6 we have contended throughout the trial is what
7 exacerbates this gap we see here.

8 It was offered for the purpose of showing that
9 there were indeed alternatives available to the
10 Legislature and to the state at the time the current
11 funding formula was adopted that would have indeed
12 made the system far more equitable than it currently
13 is.

14 We go further to say not only were they
15 available, but in fact, it passed half the Senate.
16 That was the basis of our offer.

17 MR. O'HANLON: You know, that's a funny
18 thing. I didn't think it worked that way. I thought
19 you needed two houses in order to pass a piece of
20 legislation unless counsel is trying to make the
21 Court take the place of the House of Representatives,
22 which I submit is exactly what counsel is trying to
23 do. That's the purpose of this offer. As I recall,
24 it's the House of Representatives that has to pass
25 the bill first that pays for it.

1 MR. TURNER: All I see here, Your Honor, is
2 that this bill -- certification that it was the
3 introduced version of Senate Bill 4. I don't know --
4 obviously, it didn't pass. I don't think anybody is
5 contending it passed. I don't even really know about
6 whether it passed the Senate based on what I'm
7 looking at here.

8 But again, I think the point is that it's a
9 bill that was introduced into the Legislature and I
10 don't think that it's relevant to try this lawsuit
11 based on what some bill that was introduced might
12 have said or read.

13 We have a lot of variables in addition to this
14 bill. For example, how much money would this bill
15 have required to fund this bill? We don't have that
16 before this Court. I would just speculate a little
17 bit, Your Honor, that if this bill has any different
18 formulas in it than the one that actually passed, it
19 probably represented on the Senate side a bill that
20 was more expensive to fund than what actually ended
21 up passing the House and passing the Legislature in
22 that special session on education.

23 So I hardly see how it can be relevant or
24 admissible just on its face as a bill that purports
25 to have some different formula specification in it

1 than the one we actually got in law, because as I
2 say, I hate to speculate.

3 I can just almost assure you that if we had
4 anyone in here to examine about the history of this
5 bill, we could show very quickly that it was a bill
6 requiring much in excess in terms of dollars than
7 what actually passed the Legislature. So it's only
8 part of the picture and I think it's not relevant,
9 and probably prejudicial.

10 MR. O'HANLON: Judge, this version also, by
11 the way, Mr. Kauffman just informed me, is not the
12 version that passed the Senate, even. It was a bill
13 that was introduced in the Senate.

14 THE COURT: Relevancy.

15 MR. GRAY: Relevancy is strictly to show
16 alternatives that were available. I have sensed a
17 defensive tactic saying there is nothing else, can't
18 do any better, this is the best there is type
19 approach. All that we're offering it for is to
20 establish and show that at the time what the
21 Legislature did passed. There was a better
22 alternative available that had been considered and,
23 in fact, had passed a portion of the Legislature.

24 MR. O'HANLON: (A) Except it's not this
25 bill, and (b), we're not saying that you couldn't do

1 more without a heck of a lot -- if you had a heck of
2 a lot more money, you could probably do a lot more
3 equalization. I think that's been clear throughout
4 this litigation. That's not in dispute. The
5 question is, given the amount of money we're spending
6 right now, whether we're doing a constitutional job.

7 MR. TURNER: This may be one of those
8 bills, Your Honor, like Mr. Foster's exhibit that we
9 went over in the trial of this case earlier that if
10 the formulas that were in this bill ended up the law
11 with the amount of money that was put into it, might
12 be one of those bills that budget balanced Houston
13 and Dallas and Austin, might be one of those kind of
14 bills.

15 But again, I don't see that it's relevant.
16 It's a bill introduced into the Legislature. For Mr.
17 Gray to say, "Well, we're just trying to show what
18 were the other options," the place to do that, Your
19 Honor, is in trial of this lawsuit.

20 MR. KAUFFMAN: Your Honor, it was done in
21 the trial of this lawsuit. It was done for about an
22 hour by these defense attorneys when they talked to
23 Dr. Hooker and they talked to Mr. Foster and they
24 brought up the issue and they said "What would you
25 suggest?" Both of them said there was Senate Bill 4

1 out there which had a higher basic allotment. It
2 also has a higher local share. They talked about
3 what the costs would be that were available for
4 cross-examination. They talked about it in detail.

5 They specifically mentioned this section on the
6 basic entitlement with a basic allotment of \$1,715.00
7 based on students in daily membership which became
8 \$1,843.00, a student in average daily attendance.
9 Both Dr. Hooker and Mr. Foster testified to the
10 matter in great detail and were cross-examined in
11 great detail. This is the document that they were
12 talking about. This is Senate Bill 4.

13 It's certainly relevant as the option that has
14 been discussed as elicited by Defendants on
15 cross-examination, and therefore, we should have the
16 right at least to show exactly what the bill did and
17 it was an alternative before the Legislature.

18 THE COURT: Is there much difference
19 between what you say Senate Bill 4 is and what I've
20 heard and what we've been calling Mr. Foster's
21 proposal?

22 MR. GRAY: In concept, no, Your Honor. The
23 numbers are different, but the concept is the same.
24 It's a higher local fund assignment and a higher
25 basic allotment that does a far better job of

1 equalizing. It's the same concept. The numbers may
2 be slightly different as to what basic allotment is
3 picked in the Foster whatever exhibit --

4 MR. KAUFFMAN: Defendants' exhibit.

5 MR. GRAY: But the concept is exactly the
6 same.

7 MR. TURNER: Well, Your Honor, again the
8 bill is a bill that was introduced in the Senate. We
9 don't know if it was the bill that passed the Senate.
10 If some of these other witnesses testified about the
11 options that were out there at the time and what the
12 proposals were, I guess they've done that and that's
13 fine. But I don't see the relevance of introducing
14 into evidence an introduced bill before the
15 Legislature that never became law.

16 THE COURT: Okay. You say they haven't
17 shown that this is a bill that passed the Senate, is
18 that what you're saying?

19 MR. TURNER: That's right. I'm saying
20 further --

21 MR. O'HANLON: It didn't. Not only that
22 this is the one that was originally introduced, the
23 one that passed the Senate was a substantially
24 amended version of Senate Bill 4.

25 THE COURT: It is not this one?

1 MR. O'HANLON: No. This is what was
2 originally introduced as Senate Bill 4. What passed
3 out of the Senate was substantially different.

4 THE COURT: Okay. So they are going to
5 argue it's for illustration purposes anyway.

6 MR. KAUFFMAN: That's correct, Your Honor.

7 MR. GRAY: That's correct.

8 I think much is being made of this issue. The
9 whole purpose initially when I had Dr. Hooker on the
10 stand was to merely show that there were options out
11 there that would have done more and better. And he
12 was attempting to say Senate Bill 4, as introduced
13 and then as ultimately passed, is one of those
14 options. That drew a series of objections that it
15 wasn't certified, this, that and the other. We said
16 "Fine, we'll just wait until a later day."

17 Then through the course of the trial, Mr.
18 Foster's exhibit is introduced by the Defendants
19 which is in concept the same thing. It's different
20 numbers, but the concept is exactly the same. As
21 long as the Defendants are willing to stipulate or
22 acknowledge that the concept that Mr. Foster laid out
23 was indeed introduced in the Senate and passed the
24 Senate, these numbers are not what's, for my purpose,
25 at least, are not the purpose of the offer. The

1 purpose of the offer was to show a better concept was
2 out there and passed.

3 MR. TURNER: Not passed.

4 MR. GRAY: Passed the Senate.

5 MR. TURNER: A better concept was evidently
6 introduced. You may say this bill is just
7 cumulative. What he is now saying is that the Foster
8 proposal that we looked at in this court has the
9 formulas that this bill has in it. What we then
10 know, if that's the case, is that Foster's plan only
11 differed from evidently this bill in that Foster's
12 plan attempted to utilize the dollars that were
13 actually appropriated, and this bill, as I suggested
14 earlier, would have required additional dollars in
15 order to fund it in a manner that was fair and
16 equitable and acceptable to passage by the
17 Legislature.

18 So if we want to look at this proposal that Mr.
19 Foster has made and the comments that Dr. Hooker has
20 made as being a suggestion that the formulas in this
21 introduced Senate bill would have been a better
22 alternative, evidently we see that alternative in
23 Foster's proposal, which allocates the money that was
24 actually appropriated for education based on these
25 formulas in budget balanced Houston, Dallas and

1 Austin.

2 So maybe we have a clearer picture now even
3 than we did before what Foster's proposal before this
4 Court was. But again, I just don't see, Your Honor,
5 that it's relevant to say that in a trial of this
6 lawsuit something that was introduced represents
7 something that in their judgment was better and
8 somehow that's the way we try this lawsuit by seeing
9 if there was something better.

10 I mean, they're obligated to come forward,
11 we've always thought, with what they've done and show
12 us what those options are now. And they did in the
13 Foster proposal with the existing funds. If they
14 applied these formulas, we know exactly what this
15 bill is.

16 I don't think putting the bill in evidence is
17 anything more than cumulative and prejudicial and
18 tries to give some credence or some picture to the
19 Court that somehow this passed one house of the
20 Legislature, therefore, there is a substantial amount
21 of support for it, because I don't know what they're
22 trying to prove by suggesting that this passed, which
23 has been pointed out in this trial, this bill, as
24 introduced, isn't even the way it passed the Senate.

25 So I don't see why we should prejudice the

1 record by putting an introduced Senate bill into
2 evidence in this trial.

3 MR. O'HANLON: I might add that we're not
4 willing to concede that that's a better option.
5 Whether or not it is a better option or not is
6 something that should have been discussed in this
7 case in their case in chief. This is now rebuttal.
8 This is an attempt to bring in evidence outside the
9 scope of the rebuttal because it wasn't an issue in
10 our defensive case, either.

11 If we're going to get into a discussion and an
12 analysis of whether or not that's better or not or
13 things of that nature, we're going to get back into
14 broadening the scope of the lawsuit once again.

15 THE COURT: I'll overrule the objection.
16 We'll have it in at least for the limited purpose to
17 show, as counsel has stated, it was at least a
18 proposal in terms of legislation that might have been
19 different than what was actually passed in the form
20 of House Bill 72, is that right?

21 MR. GRAY: Yes, sir.

22 THE COURT: Okay.

23 MR. RICHARDS: I have one housekeeping
24 matter. Some weeks ago, maybe months ago now, I
25 offered some photographs and you admitted them if I

1 would white out the editorial comment on them, and I
2 have whited out the editorial comment. You've
3 already admitted them and I was just going to
4 identify them on the record what they are with the
5 editorial comment whited out. They are Plaintiffs'
6 Exhibit 305-D, Plaintiffs' Exhibit 305-H, 305-O,
7 307-A, 308-Z, 309-C, 309-F, 309-H, 309-L, 309-M,
8 312-B, 312-D 312-F, 312-J and 312-I. And I think I
9 have successfully whited out all the editorial
10 comment. I've shown them to counsel. I'll white
11 some more out. I'll make it darker, but I think I
12 have them all whited out.

13 MR. R. LUNA: Those, Your Honor, of course,
14 are just additional photographs from Edgewood, South
15 San Antonio, Brownsville and other school districts.
16 Our original objection to those photographs was that
17 they're simply not relevant.

18 MR. RICHARDS: They've already been
19 admitted, counsel. I'm sorry. They were already
20 admitted if I would just white them out. I've whited
21 out what the Court found to be -- or you objected to
22 as being editorial comment. They were received
23 subject to me whitening them out. I'm not reoffering
24 them. I'm just saying counsel I have whited them
25 out. That's all that's happening.

1 MR. R. LUNA: Well, according to the record
2 of the court reporter, they have not been admitted.
3 I do understand that counsel was trying to white them
4 out. That was part of our objection. We objected to
5 the whole group. The Court did overrule them and
6 allowed some of them in. Our objection to these is
7 the same, that they show additional conditions which
8 we simply say are not representative and are not
9 relevant.

10 MR. RICHARDS: They were already offered
11 and received and that objection was overruled if I
12 would go white out the editorial comment. All I said
13 was I whited out the editorial comment. It is my
14 understanding the state of the record --

15 THE COURT: Did I look at them?

16 MR. RICHARDS: Well, I think what actually
17 happened, Your Honor, was -- and there were a mound
18 of them -- Mr. Luna said there were some of those
19 that had editorial comment on them, and you said,
20 Well, I'll receive -- we had an argument about
21 whether whitening them out and you said you would
22 receive -- you received all the others and said --
23 I'll just have to stand on the record. I don't want
24 to send somebody out to look at it. If you didn't
25 receive them, you didn't receive them, but my

1 understanding of the state of the record is they
2 would be received if I would white out the editorial
3 comment. And I have now whited out the editorial
4 comment. That's the state of the record as I
5 understand it.

6 MR. TURNER: Your Honor, I think, as I
7 recall, what you said was that you didn't make a
8 practice of -- you didn't use these words -- but it
9 amounted to conditionally admit something if it
10 wasn't in shape for admission, then you weren't going
11 to rule on it until it got in shape. So you did not
12 admit them at that time.

13 We did, as the Court will recall, object to the
14 admission of these photographs, the ones that were
15 offered simply to show that they were some pictures
16 of some of the Plaintiff school districts because we
17 felt like they were selected snapshots of certain
18 buildings and that, as the Court recalls, we
19 initially pointed out that there was no consistent
20 pattern of the pictures that were taken, so we didn't
21 have pictures of all high schools in these districts
22 or all elementary schools or all gymnasiums, but
23 these were a selected group of pictures and we
24 contended it was highly prejudicial to place these
25 kinds of pictures into the record. That was our

1 initial objection. Of course, it's one that we still
2 make to the admission of any additional pictures.

3 MR. RICHARDS: I'm happy to stand on the
4 record. I think that's exactly what the Court ruled.
5 If the record later shows you didn't, they're not in.
6 But I think that's exactly what you ruled.

7 THE COURT: Well, is it possible for us to
8 do this, when the record is prepared, if they were
9 admitted conditionally subject to having white out,
10 then they will be taken as admitted. But if there is
11 no such condition found in the record, then the
12 objection will be sustained and we won't have them.

13 MR. RICHARDS: That would be fine with me.
14 In fact, I don't want to test everybody's
15 recollection of the record. I'm prepared to rely on
16 the record.

17 THE COURT: Okay. Let's do that.

18 MR. TURNER: Our objection on prejudice is
19 still the one we made. We've got a group of pictures
20 there that -- one of them shows a leak in the roof
21 somewhere in the building, and I just don't think
22 that they depict anything. We did have a facility
23 study man come in and talk about facilities in Texas.
24 He was an expert. And all we had on these was, as I
25 recall, the photographer who went out who was

1 employed by the Plaintiffs to take some pictures,
2 which he did. And if you look at those pictures and
3 the kind of conditions he centered in on, you know
4 exactly what he was trying to accomplish in taking
5 those pictures. I think that's highly prejudicial
6 and I think you can find those kind of conditions in
7 any school district in this state, and --

8 THE COURT: I sustained an objection to a
9 group of photographs for that reason.

10 MR. RICHARDS: That's correct. You
11 admitted this series and all their counterparts and I
12 think the record will show with the condition -- if
13 the record doesn't show it, they are not in. I mean,
14 it's just that simple.

15 MR. GRAY: What happened, Your Honor, was
16 that there was a comparison of -- photographs were
17 taken of some of their districts as well. They
18 objected on a prejudicial of the comparison basis and
19 you said "None of the Defendant districts come in
20 unless you go out and take pictures of all of them,"
21 is basically what I think happened. And you let in
22 the pictures of the poor districts. That is part of
23 the group of the poor districts that had editorial
24 comments on them.

25 THE COURT: I think what I was considering

1 to be prejudicial was to take selective pictures of
2 the various school districts and that is the
3 comparison between the Defendant school districts and
4 Plaintiff school districts. I think that's what I
5 considered to be -- because the selection process, it
6 looked to me like it was -- well, it was capable of
7 being not really representational of any of the
8 school districts.

9 MR. TURNER: Those were buildings, as I
10 recall, Your Honor. In just thumbing through those,
11 if you would, those aren't even pictures of
12 buildings. Those are just a leaky roof or a crack in
13 some linoleum and they're so isolated and such small
14 shots and they're clearly designed to depict a story
15 of poor conditions in those school districts. And I
16 submit to you, Your Honor, that looking at those
17 pictures is not a fair way to determine the condition
18 of the facilities in any of those school districts
19 because you can't even see the building. All you see
20 is a leaky roof or something.

21 THE COURT: Do we have photographs like
22 this in evidence?

23 MR. RICHARDS: Yes, you do, Your Honor.
24 There must be 40 or 50 in there that were part of
25 that series. The only reason these -- I think the

1 record shows the only reason you did not accept these
2 is because counsel said there was an editorial
3 comment on it. You said the rule you always followed
4 was to white out the editorial comment. And that's
5 what I've done. Now I will stand on the record
6 whatever you ruled. I'm not trying to ask you to
7 reverse the rule, although I think counsel is.

8 THE COURT: Okay. I'll stick with what is
9 in the record. If this batch was excluded for
10 reasons as Mr. Turner has indicated, then this batch
11 I have right here now will be excluded. If this
12 batch was allowed in evidence with other photographs,
13 subject to the white out, then these will be admitted
14 with any objection to them in the record already
15 being overruled. Okay.

16 MR. KAUFFMAN: Your Honor, before we rest
17 our rebuttal, we have not put on evidence, but we do
18 not wish to waive any claim for attorney's fees we
19 have. It's been my practice when I am fortunate to
20 prevail to later come back and put on evidence of
21 attorney's fees. We hope we do prevail, but if we
22 do, we certainly have a claim for attorney's fees,
23 and we wish to be able to come back and put on that
24 record, should we prevail, without unnecessarily
25 putting on the record now or before the decision of

1 the Court.

2 MR. O'HANLON: I think they waived them
3 when they rested. Attorney's fees are not a matter
4 of rebuttal. They're a matter of the case in chief.
5 I think even if they are by some stretch of the
6 imagination entitled to them, I think it's part of
7 their case in chief. They've already waived it.
8 It's not appropriate to rebuttal at all.

9 MR. GRAY: Your Honor, if that's the case,
10 we move to reopen at the appropriate time. We too
11 will be assuming -- or hopefully if we should prevail
12 we will be considering application for attorney's
13 fees and we are prepared to close subject to that
14 becoming an eventuality if, in fact, it's appropriate
15 down stream, but if there is a problem at this point
16 in time with the termination of resting versus
17 closing, we would move to reopen to then rest subject
18 to the opportunity to present evidence on attorney's
19 fees when and if that becomes appropriate.

20 MR. O'HANLON: In the first place, I don't
21 think they're entitled to them. I think we've been
22 down this road a number of times. I think we've got
23 a sovereign immunity here.

24 In the second place, I think they waived them
25 when they didn't put them on in their case in chief.

1 I would object to their reopening.

2 THE COURT: You want some ruling about your
3 motion to reopen at this time?

4 MR. GRAY: I don't know that it's necessary
5 that we have a ruling on our motion to reopen at this
6 time, but I think it may be that we would have to
7 have at least done something at this time before we
8 totally close and the record is gone.

9 THE COURT: Let me ask you this, do you
10 propose to put on evidence about attorney's fees
11 prior to the time this record is prepared?

12 MR. GRAY: No, sir.

13 I suspect we could. I don't know what the
14 Court's timing is or thinking would be on a hearing
15 on attorney's fees. We will be -- as soon as we can
16 prepare the appropriate documentation and assuming we
17 have a basis upon which to claim attorney's fees,
18 which is a prevailing party status, we would be
19 seeking a hearing on those.

20 Now, I don't know what the Court's setting
21 schedule is and I don't want to get into the debate
22 whether or not sovereign immunity precludes them from
23 an award against the state or not. I would point out
24 that there are Defendant-Intervenor districts who
25 have voluntarily intervened in this proceeding who, I

1 don't believe, will have any claim for sovereign
2 immunity, but that's neither here nor there.

3 MR. O'HANLON: Attorney's fees, Your Honor,
4 are a question of fact to be proved as part of the
5 case in chief. They haven't done it. They rested
6 their case without it. That should do it. They have
7 waived it as a matter of proof.

8 THE COURT: Okay. Well, I have often
9 allowed parties, both sides, to reopen the evidence.
10 I think the rule says I'm obligated to do so in order
11 to do justice. I've not been very hard about that
12 during my life as a judge, particularly if the
13 request to reopen occurs at the time that isn't
14 inconvenient.

15 So to be consistent with what I have done in
16 the past, I would entertain a motion or grant a
17 motion to reopen on account of attorney's fees, but I
18 have some reservations about not having that all done
19 prior to the time that this case is typed up and sent
20 off.

21 MR. GRAY: Your Honor, it will be done.

22 THE COURT: Okay.

23 MR. GRAY: We will move at this time to
24 reopen the evidence on attorney's fees and to present
25 such evidence at the Court's first convenient time

1 for a hearing.

2 THE COURT: I don't see any point of doing
3 that prior to the time that the merits decisions are
4 made. That can be done in the interim between that
5 time and the time that the appellate record is
6 completed, you know, assuming you would want to do
7 that after the merits decision is made. So I don't
8 have any problem with that.

9 Did I make sense to everybody?

10 MR. KAUFFMAN: Your Honor, we move that the
11 record be reopened for addition of evidence regarding
12 attorney's fees and that with the Court's -- if the
13 Court would allow us to put on that evidence after a
14 hearing on the merits, if it's so appropriate --
15 after a ruling on the merits, if it's appropriate at
16 that time, but before the final closing of the record
17 and the preparation of the transcript for appeal, if
18 any, and I so move.

19 MR. O'HANLON: I object.

20 MR. GRAY: We join in the motion.

21 MR. TURNER: Your Honor, I think that in
22 the status of the case and they have already rested,
23 the one issue that certainly seems to be pertinent to
24 the Court's ruling on reopening is whether or not
25 they're even entitled to attorney's fees.

1 THE COURT: Well, I guess --

2 MR. TURNER: I think perhaps that the
3 Plaintiffs should show the Court there's some
4 entitlement to attorney's fees in this case before
5 the case is reopened to permit them to prove those
6 attorney's fees up.

7 MR. GRAY: Your Honor, that is the very
8 purpose for our wanting to reserve putting on any
9 evidence because we would not be entitled to
10 attorney's fees if we should not become the
11 prevailing party. But if we are the prevailing
12 party, under the declaratory judgment statute, we
13 clearly are entitled to attorney's fees.

14 MR. O'HANLON: Not against the State of
15 Texas under the doctrine of sovereign immunity.

16 THE COURT: I suppose that we can argue the
17 law and have facts presented later on. I don't see --
18 by allowing them to reopen doesn't mean I'm cutting
19 the Defendants and Defendant-Intervenors from arguing
20 as a matter of law that they are not entitled to it.

21 MR. GRAY: We agree, Your Honor.

22 MR. O'HANLON: Counsel's argument is to say
23 that we don't know whether or not as a plaintiff in a
24 normal civil damage lawsuit that I'm going to get
25 damages so I don't have to prove them. It's part of

1 the element of proof. So I didn't put on any
2 evidence of damages because I didn't know I was going
3 to win. That's exactly what they're doing now. When
4 they rested, they waived them. There is no showing
5 of -- they hadn't made the proper showing for an
6 entitlement to reopen their case.

7 MR. R. LUNA: Let me add one new wrinkle
8 into this, Your Honor. We have not brought up the
9 issue of attorney's fees, but if opposing counsel is
10 going to ask the right to reopen, we have in our
11 pleadings also alleged that the Defendants were
12 likewise entitled to attorney's fees under the
13 declaratory judgment act. I know although Mr.
14 Deatherage is not here, he would make the same
15 request for Irving. I think it would apply generally
16 to all the Defendant-Intervenors under the
17 declaratory judgment act. So if the Court is going
18 to open it up to one, we ask it be open up to
19 everybody.

20 THE COURT: Okay. I'll do that.

21 MR. TURNER: I'm not sure if all the
22 pleadings on Defendant-Intervenors' side pray for
23 attorney's fees, but if that's the case, we would ask
24 we be granted trial amendment to interject the plea
25 for attorney's fees. Declaratory judgment is

1 contained in certain of the Defendant-Intervenor
2 pleadings to show we could make that same proof at
3 the appropriate time.

4 MR. GRAY: We have no objection to that.

5 MR. KAUFFMAN: No objection.

6 THE COURT: Okay. I'll do that.

7 Why don't we meet in the morning and talk final --

8 MR. GRAY: That's what we were going to
9 arrange with you now that we have finished the
10 evidence a day before anticipated. Initially, we had
11 been scheduled for Friday, but we're prepared to do
12 it tomorrow if that's the Court's thinking.

13 MR. RICHARDS: I would only say that I
14 would like to do it mid-morning if you're going to do
15 it tomorrow because mine was -- I dictated some
16 modifications that are still in -- I haven't had a
17 chance to see if they're correct.

18 MR. TURNER: We prefer to do it as
19 originally scheduled, Your Honor. It gives us a
20 little more time.

21 THE COURT: On Friday?

22 (Discussion off the record.)

23 MR. R. LUNA: Now, it was my understanding
24 from the Court's instructions that it was plain that
25 the Plaintiffs, you felt, had the duty to prepare

1 have some time to review them and have a chance to
2 respond.

3 MR. O'HANLON: Judge, I've taken the
4 liberty of producing an outline of what I think are
5 the factual issues in this case. It's a list of
6 questions, I think. I have provided a copy to
7 counsel.

8 THE COURT: Okay.

9 MR. O'HANLON: I provided it to them
10 yesterday, and I think it may give us a framework at
11 least in which to discuss the subsidiary findings.

12 (Plaintiffs' Exhibit No. 50
13 (marked and admitted.

14 THE COURT: See you tomorrow.

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(Proceedings adjourned
until April 9, 1987.)

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