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CAUSE NO. 362,516

C 8353

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

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk
By_____Deputy

STATEMENT OF FACTS

VOLUME XLI OF XLVI

FILED
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THIRD COURT OF APPEALS
SUSAN K. BAGE, CLERK

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1987
v.41-43

TAKEN APRIL 9, 1987

AFFILIATED REPORTERS
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1 CAUSE NO. 362, 516

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

---

8 STATEMENT OF FACTS
9

---

10 BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

11

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MAY 18 1994

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4 the law firm of HUTCHISON, PRICE, BOYLE & BROOKS,
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6 ATTORNEYS FOR THE DEFENDANT-INTERVENORS

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17 BE IT REMEMBERED that on this the 9th day of April,
18 1987, the foregoing entitled and numbered cause came on
19 for trial before the said Honorable Court, Honorable
20 Harley Clark, Judge Presiding, whereupon the following
21 proceedings were had, to-wit:

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2 AFTERNOON SESSION

3 THE COURT: Anybody have anything else to
4 give to me? What I have here are some of the
5 Plaintiffs' and Plaintiff-Intervenors' proposed
6 findings and then an outline of fact issues.
7 MR. R. LUNA: Your Honor, I laid a set also
8 on that desk over there.
9 MR. O'HANLON: Here are some proposed
10 findings with respect to the first issue of what's an
11 education part of it.
12 MR. TURNER: Here is our set, Your Honor.
13 Your Honor, we have one matter too, I think I'd
14 like to just bring your attention to. This is house
15 cleaning here. Yesterday, you granted our motion for
16 leave to file an amended pleading to reflect all of
17 the Defendant-Intervenors' plea for declaratory
18 judgment of attorney fees, and I have given a copy to
19 opposing counsel. This is the order that does that,
20 and I was going to ask you if it looks all right,
21 Your Honor, and I'll file all that.
22 MR. GRAY: We haven't had a chance to
23 review it, but I trust Mr. Turner when he says it
24 does nothing more than seek declaratory judgment and
25 seek attorney's fees like we discussed on the record

1 and then agreed to on the record yesterday.
2 MR. TURNER: It picks it up in really the
3 same language as the other pleadings have, so it's
4 identical, basically.
5 MR. GRAY: We don't have any objection,
6 Your Honor.
7 THE COURT: Okay. I've just signed the
8 order granting motion for leave to file a second
9 amended pleading intervention for the Eanes
10 Independent School District.
11 MR. TURNER: Would you like for me to file
12 all that?
13 THE COURT: Yes.
14 MR. TURNER: Thank you, Judge.
15 MR. KAUFFMAN: Your Honor, we will be
16 giving to the Court our proposed conclusions of law.
17 They're being brought over right now by Mr. Richards.
18 He should be here in a minute. That's the only
19 addition we will have to the conclusions that we have
20 given the Court. The proposed findings we have
21 already given you.
22 THE COURT: It seems to me like that I need
23 to settle down on what the law is, and then once I
24 have settled down on what the law is, it seems to me
25 like that from that, we can decide what the law

1 requires.

2 Once we settle down on what the law requires,

3 then we can settle down on what facts there are in

4 the case that shows that the state is or is not doing

5 what the law requires. It seems to me like it's that

6 easy. Do you all think otherwise?

7 MR. GRAY: No, sir.

8 THE COURT: What I'm going to need from

9 you is, what you think the law is. Fact one, the

10 Constitution says, whatever it says. Fact two, such

11 and such case stands for, whatever idea you think

12 is says. Conclusion of law, the state is obligated,

13 whatever. The facts that show the state isn't doing

14 what they are obligated to do is follows: Number one,

15 two, three, four, five, whatever.

16 Now, the state may have more than one

17 obligation. They might have several obligations, as

18 you see the law, you know. Let's just talk by way of

19 illustration for a minute. Let's suppose that the

20 law is that the right to an education is a

21 fundamental right. Okay?

22 MR. GRAY: Yes, sir.

23 THE COURT: What do you think that

24 obligates the state to do?

25 MR. GRAY: Do you want us to respond?

1 THE COURT: Yes.

2 MR. GRAY: In our eyes, it obligates the
3 state to see that all children in the state receive
4 substantially the same educational opportunities and
5 the state can only justify any failure to do that if
6 they can show a compelling state interest that would
7 justify Child 1 getting a different level of
8 educational opportunity as opposed to Child 2.

9 THE COURT: Okay. Stop right there.

10 So the way I would suggest you go about that
11 is, that you set out facts like what the Constitution
12 says, whatever the statutes say it is or any other
13 fact that is contained in the law -- let me clarify
14 that a little bit.

15 I think it is a fact that the Constitution says
16 what it says. I think that's a fact. Or that a
17 statute says what it says. Or that history has been
18 what it has been. And that you can make a conclusion
19 of law from what the Constitution says or what cases
20 say or so on. I suppose that in your argument,
21 you're going to argue that the Constitution and laws
22 of the state say that the right to a public education
23 is a fundamental right.

24 As a corollary to that, you're going to say
25 what that means is that all children must receive

1 substantially the same opportunity to get an
2 education, and that if there is any failure by the
3 state in doing so, that there must be a compelling
4 reason for the state to fail to do so.
5 MR. GRAY: That's right. In fact, our view
6 of it is whether it be fundamental or not, the
7 measure of the state's justification or excuse for
8 not providing is the only thing that differs. If
9 it's not a fundamental interest, then the state has
10 to have some rational basis by which to justify
11 Student 1 getting better than Student 2, just that
12 they have an easier excuse standard, so to speak.
13 So I think, if I'm understanding the Court
14 correctly, when we mold all this together, we could
15 say the Constitution says "X", the Declaration of
16 Independence says "X", based upon these, the Court
17 concludes that education is a fundamental right, for
18 example, and the Court then finds that students in
19 this state are not getting the same substantially
20 equal educational opportunities based upon the
21 following list of things, and then have the Court
22 find that the state has been unable to demonstrate
23 any compelling interest to justify this disparity.
24 That could be the section on fundamental.
25 Then we could propose an alternative submission

1 to rational basis that would be basically the same
2 thing, but instead of having the Court conclude that
3 education is a fundamental right, just have the Court
4 conclude that education is a right guaranteed by the
5 State Constitution and the standard then is -- and
6 kids do not get the same -- the same finding is not
7 equal educational opportunities, and then have the
8 Court find that the state has not shown a rational
9 basis for that differentiation.
10 That's, I think, how we would be proposing our
11 findings and conclusions if I am understanding the
12 Court correctly.
13 THE COURT: Uh-huh. I think you're
14 understanding me correctly. I think that you need to
15 set out what you think the law is and what that
16 requires or doesn't require. Then I think you need
17 to propose facts that prove each legal theory. The
18 same facts might be used for all your theories.
19 MR. GRAY: Sure.
20 THE COURT: There may be some differences,
21 and I wouldn't worry about repeating because I think
22 you need to do that.
23 MR. GRAY: I think we have gone about this
24 somewhat differently than the Court is now
25 suggesting. I think it will be easy for us to take

1 our proposed conclusions of law and break them down
2 into individual categories, facts that support the
3 Court's reaching that conclusion of law, and then the
4 facts that would support a finding that the state is
5 not complying with the conclusion of law that the
6 Court has reached above in each of these instances.
7 More like jury issues, basically, I think.
8 THE COURT: That's right. The only
9 difference between this and a charge to a jury would
10 be that in a charge to the jury, you're just asking
11 about facts assuming the Court has already made its
12 mind up what the law is. So it only has to have fact
13 determinations to see if the law was complied with or
14 not.
15 But in this situation, we need to set out what
16 the law is, then I think you all need to state what
17 that means the state has to do. Then you need to set
18 out facts showing -- and your theory -- that the
19 state has failed to do what you say it should do or
20 the state is doing what it should not do. I don't
21 know exactly how that would be phrased by you.
22 I think it's a better idea to take each of your
23 legal theories and state what you think the law is in
24 regard to each legal theory, what you think that
25 requires the state to do or not do, and how the state

1 has failed with facts, each one individually.
2 Now, as to the Defendants, I don't see any
3 reason why you should not -- I haven't looked at the
4 ones I just got -- I don't see why you should not do
5 the same thing. I think you ought to state what the
6 law is and I think you ought to state what you think
7 that means the state should do, and I think you ought
8 to propose facts showing that the state's doing what
9 you think it ought to do.
10 MR. TURNER: Your Honor, there is one thing
11 I might bring up at this point along this line.
12 Over on Page 5 of our proposed conclusions of
13 law, the one that we inserted -- of course, the first
14 one is that education is not a fundamental right to
15 the constitutional sense.
16 But secondly, in the alternative, if education
17 were a fundamental right, it would be necessary to
18 determine as to what identifiable quantum of
19 education there is a fundamental right. In other
20 words, how much or what type or how do we define
21 education. That quantum that would be required
22 constitutionally would be such as is necessary to
23 provide, according to the Constitution, Article VII,
24 Section 1, a general diffusion of knowledge.
25 So we would suggest that following along with

1 what the Court said, if the first question is what is
2 the law and what does the law require, if education
3 is a fundamental right, then we would suggest that we
4 have to really in either sense define what education
5 is. And what we would submit is that the
6 Constitution says that education is a general
7 diffusion of knowledge. If that requires and the
8 courts take another step and say that's what the
9 Constitution said, now what is the Constitution
10 talking about when it says general diffusion of
11 knowledge. We would submit that what that means is a
12 basic educational opportunity.
13 So to miss that step, which I think the other
14 analysis would miss, the question of what is
15 education is an important element that must be shown.
16 THE COURT: Okay. I'm not sure that I hit
17 on all the steps with my analysis. That may fit in
18 there somewhere.
19 MR. O'HANLON: To follow that up, and I
20 think if I could summarize the basic difference
21 between the two sides in this case, if you say
22 education is a fundamental right, you have run
23 yourself into a trap, because unless you can define
24 that, unless you can say that the nature of the
25 constitutional entitlement is something specific,

1 then there is still no standard about which to review
2 the state's compliance with whether or not it is
3 being provided.
4 For example, if we're defining educate, the
5 entitlement as access, just access, then there is no
6 dispute that there is access in this case.
7 If, on the other hand, you're at the extreme
8 position, and I think that if I can categorize their
9 position, it's that education is what everybody is
10 doing out there. Well, then, in the extreme then,
11 because someone offers a course, they can't do it
12 unless everybody else does.
13 Now, I don't think that they're arguing that
14 precisely. I don't think we need agriculture in a
15 Center City school necessarily. So that there has
16 got to be some flexibility here in terms of what is
17 provided. I think that requires, in its essence, a
18 definition of that educational entitlement as the
19 fundamental factual issue in this case.
20 If we are going to talk about some kind of
21 constitutional entitlement, we have to define it. We
22 have to say what it is or at least review the
23 legislative and administrative actions that define
24 that entitlement to see whether they can meet either
25 rational basis or strict scrutiny standard. That's

1 the starting point. Otherwise, you're allowing the
2 definition of a constitutional right to be defined by
3 what everybody does out there.
4 I don't think that's how it was designed to be.
5 If there is a constitutional entitlement, we need to
6 explore as the initial point of departure exactly
7 what the nature of that constitutional entitlement
8 is. I think that's the key factual issue that
9 underlies this entire case.
10 THE COURT: I think that that may be
11 covered when I said to the Plaintiffs that I suggest
12 they state what the law is, and that they state then
13 what that requires. See, by them doing so, we will
14 know at least what they think the law requires.
15 First, we will have the foundation upon which they
16 think what is required is required by making them set
17 out both facts and law as to what the law is. I say
18 facts, I mean it is a fact there are certain clauses
19 in the Constitution, there are certain facts that the
20 Education Code provides what it provides, and that's
21 a fact.
22 There are facts that certain Texas Supreme
23 Court or United States Supreme Court opinions have
24 been written, and you can conclude from that what the
25 law is. Once you conclude what the law is, then you

1 have to conclude from your conclusion what it is the
2 state's got to do.
3 We need to set out what the state has to do.
4 That may entail deciding what an education is, as you
5 say. That may be important. I'm not sure yet, but
6 I'm saying I think Mr. O'Hanlon may be correct, we
7 may need to decide, I'm not really sure, what an
8 education is, how is it measured, how far do you have
9 to go and so on, if that's what the law requires.
10 If the law is talking about a certain level of
11 instructional activity, that's one thing. If the law
12 is talking about opportunity, that's something
13 different. We'll have to hash that out when we get
14 to hashing out -- at least I'm going to have to hash
15 it out in my mind -- as to what I think the law
16 requires.
17 MR. TURNER: Your Honor, I was going to
18 suggest that with the Supreme Court of Texas already
19 having ruled on two occasions just recently that
20 extracurricular activities -- there is no fundamental
21 right to participation in those, we begin to see, at
22 least from our own highest court, that there are some
23 things that go on in the public schools that we don't
24 have fundamental right to.
25 What I was suggesting a minute ago is that when

1 we look at the constitutional requirement of the
2 general diffusion of knowledge, it seems to show us
3 that what the Supreme Court has already said about
4 extracurricular activities not being a fundamental
5 right would say to us, at least by inference, that
6 participating in extracurricular activities is not
7 part of a general diffusion of knowledge.
8 I think that maybe at this point it might be
9 appropriate for us to mention to the Court that we
10 will be urging to the Court that fundamental right
11 analysis itself is inappropriate, should not be
12 followed in this particular area. And of course, I
13 think we mentioned sometime ago, about half the
14 states have rejected fundamental right analysis.
15 But that question of what is education in terms
16 of what the Constitution says, what Stamos and Lowe
17 said, and in terms of -- that seems to limit it to
18 some degree. Then, of course, there are probably
19 still some fact issues left to talk about what's
20 being provided out there that is, in fact, education
21 in the constitutional sense.
22 I suppose, if I understood the Court correctly,
23 what you're saying is that is just part of what the
24 law is. In other words, that's up in that initial
25 step that you were describing for us to make that

1 determination, when we say what is the law, to deal
2 with that at that point rather than at the later
3 stage in the analysis, as was being suggested.
4 THE COURT: I think that's right.
5 Now, you remember at the very beginning of the
6 case, Mr. O'Hanlon was talking about -- I remember we
7 were up in judge Cofer's courtroom, and he was
8 talking about what is it exactly that the state is
9 failing to do. That is to say, he was making an
10 argument that if the current system of educational
11 finance is held to be unconstitutional, then it would
12 seem appropriate to tell the Legislature, as well as
13 the appellate courts, where the system has failed.
14 By your findings of fact, that is what I intend
15 for you to do. I intend for you to show what the law
16 is and what that requires, and then show how there's
17 been a failure, if there has been, your version that
18 there has been a failure. It seems to me like that
19 when you get down to that place, in a way, you will
20 be fashioning a remedy.
21 MR. GRAY: Or multiple options for
22 potential remedies. If, for example, from our point
23 of view, in a global sense, the state hasn't taken
24 into consideration the disparities in wealth out
25 there sufficiently, and you can look at the funding

1 formula or you can look at district lines, you can
2 look at a combination of both, but that type of
3 analysis is, I think, is what the Court is looking
4 for in our proposed findings.
5 THE COURT: Say that again.
6 MR. GRAY: Okay. I'm just picking an
7 example out of the air, but a finding that would say
8 that the current methodology or scheme by which the
9 state finances public schools does not take into
10 sufficient consideration the disparities of wealth
11 that you find in individual districts and the
12 resultant affect of that is, different levels of
13 educational opportunity being spent on children.
14 This is a result of one or more of the following:
15 One, the formula itself placing too much emphasis on
16 local tax base as opposed to state tax base and/or
17 two, the district lines as they are configured with
18 the vast disparate property values in them. That's
19 the type of -- is that what you were looking for? Am
20 I misreading the Court?
21 Or are you talking about putting in, for
22 example, that -- are you talking about like the
23 witness testified about California, that type of a --
24 THE COURT: I'm not really sure that I can
25 answer your question now. But it seems to me like

1 that when you fashion findings that will indicate
2 what is wrong, that in a way, you're going to be
3 fashioning for yourself a remedy. That's all I have
4 to say about that right now.
5 MR. GRAY: Yes, sir.
6 THE COURT: Yes, sir?
7 MR. O'HANLON: If I can follow up, and I
8 have the same problem with their proposed findings
9 that the Court has mentioned.
10 To say that there is simply not enough money
11 doesn't solve any problems, it doesn't provide any
12 guidance. If they tell us that the funding formulas
13 don't do enough, we would propose that they tell us
14 why the funding formulas don't do enough.
15 THE COURT: I think that's fair.
16 MR. O'HANLON: If they say that the -- or
17 alternatively, the real problem is that the funding
18 formulas are okay, but there is not a high enough
19 level of appropriation, or that the real problem is
20 that the disparities in wealth is simply too great
21 and cannot be overcome.
22 THE COURT: That's right. When they select
23 what they think they have proven as being the
24 failures, in a way, they will be indicating to us
25 what they see as a remedy.

1 MR. O'HANLON: On the other hand, with
2 respect to that, if, for example, the way I look at
3 this case, is that I tend to look at this case under
4 a rational basis test, and that if, for example, and
5 the way I look at it is, you look at the state system
6 and you look at the requirements and you determine
7 whether or not there is enough money to meet the
8 state requirements.
9 If there isn't, it's no answer to say that
10 there isn't enough money to meet the state
11 requirements. We would like to know which
12 requirements are being underfunded, specifically, so
13 that there is some guidance with respect to how to
14 correct it.
15 THE COURT: Okay. I'm not arguing. I
16 wouldn't argue with that.
17 MR. O'HANLON: So if the remedy is to get
18 rid of some of the requirements, we know which ones
19 we're dealing with.
20 THE COURT: That's the reason that I'm
21 saying that by what they find is in a way they're
22 going to be fashioning a remedy with their findings.
23 MR. KAUFFMAN: Your Honor, we'll do our
24 best. I want to say ahead of time that we very well
25 might, I think as we have already proposed findings

1 that would show violation by the state in several
2 different arenas, so my guess is that we would -- and
3 we think we have proved enough facts to show several
4 problems in the state's system of financing public
5 schools in various areas, the way the formulas work,
6 the numbers put into the formulas, some of the
7 district lines themselves, the whole structure of
8 finance, so I do not want to by silence mean to
9 approve that we will come up with one set of facts
10 which supports one way of remedying the problem.
11 In fact, I would try my best to show different
12 sets of facts and show how each one points out
13 problems in the state system and thereby, I guess, to
14 some extent, apply several different remedies.
15 But I do not think that we can structure a set
16 of proposed facts that in a way will lead just to one
17 conclusion. That is, only one system is the proper
18 constitutional system since we feel there probably
19 are more than one system that's a proper
20 constitutional system. It's just that they haven't
21 found it.
22 I understand the Court's instructions. We'll
23 do our best, but --
24 THE COURT: Let me go further.
25 MR. KAUFFMAN: Okay.

1 THE COURT: It may be not very judicial.
2 I will tell you frankly that I have a little
3 problem with how you're going to propose -- if you
4 propose findings that there is a disparity of
5 opportunity, and if you think that's a significant
6 basis for your case, then I find it difficult how,
7 looking at the total system, that there cannot
8 continue to be disparity of opportunity so long as
9 there is disparity in tax bases.
10 Now, I understand Mr. Foster's plan in general.
11 I wouldn't attempt specificness. And I understand
12 Mr. Richard's --
13 MR. KAUFFMAN: It's on Page 18.
14 THE COURT: Let's see. On Page 10, Finding
15 H. See, because if you consider that state aid to be --
16 the way we've been talking about state aid is money
17 that comes from Austin to the various school
18 districts -- but if you consider that the totality of
19 the money that school districts get is local taxes
20 and state aid, and if disparity of tax base is the
21 root cause of unequal opportunity, then I have
22 difficulty conceptualizing how that's going to be
23 cured with an appropriations act.
24 MR. RICHARDS: With simply an
25 appropriations act.

1 THE COURT: Yeah, or a change in the
2 formulas of House Bill 72. That has been why I have
3 indicated an interest in, through several of my
4 questions, about the effect of larger districts that
5 puts everybody on an equal tax footing basis.
6 But there may be something I don't know or
7 understand about the formulas in House Bill 72 and
8 how they can operate to give true equal opportunity.
9 I will grant I may have missed something. So --
10 MR. RICHARDS: If I may say, Your Honor, I
11 think actually, we were trying at least this case on
12 two theories. One is that if we just focused on the
13 narrow theory of the state funding formulas, it could
14 be better if you didn't look at anything else, or we
15 think the correct way is to look at the totality of
16 the system. So I think our evidence may have, to
17 some degree, sought against each other because we
18 have had both theories trying to work in harmony here
19 that if you just isolate the funding formula, you
20 could do better. If you look at the total system,
21 you're going to have to obviously look at what I
22 think the Court is looking at. I think that may have
23 caused the confusion to the Court.
24 THE COURT: No.
25 MR. RICHARDS: We've had both of those

1 theories working here and they do not necessitate
2 total harmony. I think that's clear.
3 THE COURT: Okay.
4 MR. RICHARDS: But that's not to say that
5 there couldn't be district base consolidations that
6 produced a tax base working with altered formulas
7 that might achieve equality, too. I mean, I think
8 that there are at least -- there is massive state
9 money that would totally equalize, there are tax base
10 consolidations that might not totally equalize tax
11 base, but coupled with funding from the state might
12 or there is -- as the Court asked some witnesses,
13 providing a totally equalized tax base. We've always
14 assumed that all of those three are out there. Which
15 one the Legislature ought to look to is not a matter
16 of choice.
17 MR. O'HANLON: That's the kind of soft
18 response that doesn't give us any other way to react.
19 MR. KAUFFMAN: We haven't written it yet.
20 THE COURT: No. They haven't written it
21 yet, but I don't disagree with what you're saying,
22 you see, because I'm going to have to decide.
23 MR. O'HANLON: We have one additional
24 problem here with respect to proof. In 1909 -- I'm
25 not sure whether the Court is aware -- we

1 constitutionalized the district boundaries in the
2 state under Article VII, Section 3(a). Although that
3 statute was repealed in 1969, the concurrent
4 resolution that repealed it said that it was repealed
5 because it was no longer necessary and there was no
6 substantive change in the law.
7 We have some problem with proof in this case.
8 The Plaintiffs are demonstrating that when these came
9 into existence, because we know at least as of 1909
10 that they were constitutional, Article VII, Section
11 3(b) specifically authorizes -- we do know that there
12 has been substantial consolidation since that time.
13 Article VII Section 3(b) of the Texas
14 Constitution which was promulgated in 1966
15 specifically authorizes and ratifies the
16 consolidation of districts and specifically empowers
17 those folks in the consolidated districts or any kind
18 of boundary changes to levy taxes.
19 So we have a proof problem here in
20 demonstrating when with respect to any of these
21 particular district boundaries. They simply haven't
22 proven it.
23 MR. RICHARDS: Well, we know that there
24 were over 5,000 in 1930, and now there are a
25 thousand. So we know that's what the record shows.

1 MR. O'HANLON: Well, we don't know which
2 ones or -- you're asking the Court to intuit an awful
3 lot from that fact in terms of specific districts
4 that you say create the problems.
5 I do have copies of those constitutional
6 provisions and a Supreme Court decision construing
7 Article VII, Section 3. The concurrent resolution
8 that set up the vote is attached to the back.
9 If I can follow up just briefly, the whole
10 issue, the essence, in our opinion, of an equal
11 protection claim is a system of classification and
12 that somehow we classify impermissibly.
13 To follow up on that thought, I think we have
14 multiple systems of classifications in the funding
15 formulas and in the district lines and in a number of
16 things in the way we handle students. I think it is
17 encumbent, if there is a problem here, to focus on
18 which of the classifications or specific combinations
19 that create the problem, rather than just say the
20 whole system is somehow flawed.
21 THE COURT: I think it is fair to be
22 specific about identifying what facts lead to a
23 faulty system or what facts lead to a constitutional
24 system.
25 MR. O'HANLON: Well, let me respond to

1 that. I agree. The thing is, and I don't think
2 there is going to be any great surprise here, is that
3 the problem that we've got in this state is clearly
4 the unequal tax basis. The state is doing what it
5 does to account for that.
6 Now, if it's the unequal tax basis that is the
7 problem, the legal question then becomes, can we do
8 anything about it? Is there something that a court
9 can do, given the fact and manner of their creation,
10 where the Court can redress that problem?
11 I think in some respects, that really needs to
12 be handled first, because if the Court can do
13 something about it, I think it's clear that's the
14 essence of the problem that we've got here. If it
15 can't do anything about it, after we've made that
16 threshold determination, then I think we have to --
17 against that background, we have to examine what the
18 state has done to determine whether that meets
19 constitutional --
20 THE COURT: Okay. When I say okay, that
21 means I hear you. That doesn't mean I agree, doesn't
22 mean I disagree.
23 I don't particularly want to hurry you all. I
24 know everybody is in a hurry, but I'm not. I don't
25 particularly want to hurry either side about this.

1 So I'm thinking that what I want to do is get
2 these down to a place where I'm pretty satisfied
3 before I let you all argue. So I guess I need to be
4 told how much time you all need.
5 MR. RICHARDS: Give us a moment, Your
6 Honor.
7 THE COURT: Okay.
8 (Off-the-record discussion.)
9 MR. GRAY: Judge, after kind of huddling
10 amongst ourselves, and with not entire agreement on
11 our side, but with a compromise, we would propose to
12 have our revised proposed conclusions and findings to
13 the Court by a week from tomorrow.
14 We would hope we could schedule a follow-up
15 conference with the Court on that day to see how
16 close both sides have come to addressing the Court's
17 concerns with the thinking being a second follow-up
18 meeting very shortly thereafter early in that next
19 week, and argument to be as soon thereafter as
20 possible.
21 I guess we're proposing to delay the argument
22 from this coming Monday for at least a week and
23 possibly a week and a couple or three days.
24 THE COURT: Uh-huh.
25 MR. O'HANLON: I think maybe a more sane

1 way of doing it is to give them a week and give us a
2 week to respond, and then see where we are. We might
3 be able to get closure better on the issues that way.
4 MR. R. LUNA: What we're trying to do is
5 just get coordinated a little bit. For example, we
6 got their findings of fact a little bit before noon
7 today. In the meantime, all three of us were on
8 three different horses, therefore nothing is meshing,
9 and it may be that once they have crystalized their
10 position, we can all three try to merge our position
11 into one so that the issues directly address one
12 another, and I think that will make it easier for the
13 Court to look at it in a crystalized fashion.
14 MR. GRAY: We're easy and flexible on that.
15 Obviously, we want to address it in as expeditious a
16 framework as possible, and if that in the Court's
17 mind is likely to focus sooner, that's fine. But, I
18 mean, we --
19 THE COURT: The only question I've got is,
20 why do you need theirs to know what you're going to
21 say?
22 MR. R. LUNA: In actuality, we don't. In
23 fact, that's why we went ahead and tendered ours
24 today.
25 We could as least, of course, have the

1 opportunity on ours to try and get it together in one
2 document. We will be happy to do that if that's what
3 the Court would like. I feel sure, though, our
4 points are not going to match up and it may be easier
5 for the Court to have them point for point in terms
6 of argument and looking at it just as you would a
7 legal brief.
8 But we can certainly submit it any way the
9 Court would like for us to do.
10 MR. O'HANLON: It is simply a matter of
11 tailoring our response to theirs so that we can look
12 down Section 1 to Section 1 and look at them that way
13 and just a particular way of organizing it, I guess.
14 If the Court wants to do it the same time, we
15 can talk about -- I would propose that we look at
16 this outline that I drafted and I think I included
17 all the issues, and we can set it out that way and
18 respond categorically to that.
19 THE COURT: Do you have a copy of his
20 outline?
21 MR. GRAY: Yes, sir. But it is not what I
22 heard the Court say the Court wanted.
23 THE COURT: No, it isn't.
24 MR. GRAY: Were you just saying it as a
25 format?

1 MR. O'HANLON: Yes. Item one, this is an
2 education -- yeah.
3 MR. RICHARDS: That's your theory of the
4 case, and it's not our theory of the case, so I don't
5 want to -- that's your theory, not ours. That's the
6 problem.
7 MR. GRAY: I'm not at all sure that it
8 makes any difference how the two proposed summations
9 track each other identical, paragraph one, paragraph
10 one, paragraph two, paragraph two. But I would think
11 if we were all working on the same track, where a
12 week from tomorrow we both submitted something to the
13 Court and to each other, and we saw where we were,
14 and then given that next weekend, even if the Court
15 wanted them blended, we would have the weekend to
16 order each others issues basically to make sure that
17 they all matched each other. I just didn't want to
18 lose what I think to be -- if we do ours next week,
19 give them a week to respond, I'm afraid we're losing
20 a week in the process.
21 MR. O'HANLON: We'll do it that way, too.
22 THE COURT: I think that's just as well,
23 because see, the format is going to need to be what
24 the law is and what the law requires and what the
25 facts are for everybody. You all may not match up in

1 the sense of what you put number one, two, three with
2 theirs. But you may not want to organize yours that
3 way, either. I can see some utility to that, you
4 know, ease of comprehension of the differences in the
5 argument and the difference in the viewpoint about
6 the facts.
7 Let me reserve that. Let's go at it this way.
8 Let's turn them in at the same time and let me look
9 at them and if I think there is any utility for an
10 appellate court of having a need for things to match
11 up, maybe we can go back and try to match the things
12 up.
13 MR. TURNER: Judge, I think it would help
14 us if we exchanged a few days before you wanted to
15 call us together again to discuss them if we're going
16 to have another session like this because that
17 handicapped us today as far as knowing --
18 THE COURT: Yes. That's a good idea. They
19 can be handed to me a certain day, and then two or
20 three days later, we come together again and talk
21 about them. I think that's a good idea.
22 MR. O'HANLON: Could I buy a couple more
23 days? I'm fixing to have to try another lawsuit next
24 week.
25 THE COURT: Let's look specifically then at

1 schedules.
2 Today is number nine. We could exchange on the
3 16th and maybe discuss on the 21st. What does that
4 do to your trial schedule?
5 MR. O'HANLON: What's the 16th?
6 THE COURT: The 16th is the third week from
7 now. The 21st is a Tuesday.
8 MR. O'HANLON: I am supposed to start trial
9 next Wednesday.
10 THE COURT: Here in this county?
11 MR. O'HANLON: Yes. Federal court. It
12 will last three days.
13 THE COURT: We can talk Wednesday, the
14 22nd. That gives you a little more time.
15 MR. O'HANLON: I'm not worried about
16 talking about it. I'm worried about a chance to
17 write it.
18 THE COURT: So you're worried about what
19 comes between now and Thursday, a week.
20 MR. R. LUNA: What if we turned them in,
21 Judge, say, like on the 22nd, then met on the 24th.
22 Instead of a week, that's about a week and a half.
23 MR. O'HANLON: It would sure help me out.
24 THE COURT: Well, I want you all to stay on
25 task of this case.

1 (Off-the-record discussion.)
2 THE COURT: Let me say this before I send
3 you all away. It has been really an interesting
4 case. I appreciate the way that you all have
5 conducted yourselves in a good natured way about
6 getting down to the business of this. I think the
7 witnesses have been good, both sides, and the issues,
8 I think, have been really interesting.
9 It is really interesting to think about how
10 come people learn, and what does it take to make a
11 good school. It has been interesting to listen to
12 people who struggle with that idea, you know, what is
13 a good school? How much education is enough? What
14 do we need to be doing as a society, and so on. It
15 has been very interesting to me from that standpoint.
16 I appreciate the fact it has been conducted by
17 all of you in a good natured, but a very high quality
18 way, because that makes it easier for me to absorb
19 it.
20 So everybody knows what you need to do? Okay.
21 MR. KAUFFMAN: Your Honor, before we close,
22 I have often taken the position of asking the Court
23 about scheduling things, and all the problems,
24 whatever we have had. I would like to say I think
25 all of the attorneys have talked among each other and

1 we do appreciate the patience and caring of the
2 Court.
3 THE COURT: You all have been patient with
4 me, so I appreciate that.
5 MR. KAUFFMAN: We might change our mind
6 after the final decision is out.
7 THE COURT: You might.
8 MR. KAUFFMAN: But for now, we would like
9 to say that.
10 THE COURT: That's fine.
11
12
13 (Proceedings adjourned
14 until April 21, 1987.)
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25

1 STATE OF TEXAS)
2)
3 COUNTY OF TRAVIS)
4
5
6 I, Kim Strating, Certified Shorthand
7 Reporter in and for the County of Travis, State
8 of Texas, do hereby certify that the foregoing
9 typewritten pages contain a true and correct
10 transcription of my shorthand notes of the
11 proceedings taken upon the occasion set forth in
12 the caption hereof, as reduced to typewriting by
13 computer-aided transcription under my direction.
14 I further certify that the cost of the
15 preparation of this Statement of Facts is
16 _____.
17 WITNESS MY HAND this the _____ day of
18 October, 1987.
19
20
21
22
23
24
25

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Pages 7526-7527 Missing in Original

3-87-190-CV

CAUSE NO. 361,516

C 8353

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

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk
By_____Deputy

STATEMENT OF FACTS

VOLUME XLII OF XLVI

FILED
OCT 0 9 87
THIRD COURT OF APPEALS
SUSAN K. BAGE, CLERK

TAKEN APRIL 21, 1987

MONICA ROSS WEIDMANN
Official Court Reporter
250th Judicial District Court

Travis County Courthouse • Austin, Texas 78701

1 APPEARANCES CONT'D

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

22

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1 APRIL 21, 1987

2 THE COURT: Okay. Are you ready, Monica?

3 Let me put this question to the Plaintiffs. If
4 education is a fundamental right, as you contend,
5 what specifically is the state required to do?

6 Now, I've listed some possibilities. You get
7 to pick one. Is the state required to devise a
8 system that gives each student an equal opportunity;
9 is that what you all are after? Or is the state
10 obligated to devise a system that spends the same on
11 each student?

12 Then I sloughed off into, is the state required
13 to devise a system that maximizes each student's
14 potential? I've got an asterisk by that one. Or is
15 the state required to devise a system that is
16 minimally adequate to -- and I sort of sloughed off,
17 dot, dot, dot, (do what, educate) whatever that
18 means. Asterisk by that one.

19 It seems to me like that the two that I've
20 indicated, that is to devise a system that maximizes
21 each student's potential or devise a system that is
22 minimally adequate to educate, seems to me like those
23 are rather subjective. All of us probably wouldn't
24 be able to agree on a system that maximizes potential
25 or that educates, minimally educates. We're just not

1 going to be able to -- no one is going to be able to
2 agree on that.
3 Or there may be something else that you think
4 that the state is required to do, if education is a
5 fundamental right. And if so, tell me what that is.
6 What is the state required to do?
7 MR. GRAY: Your Honor, for
8 Plaintiff-Intervenors, I'll respond first. We
9 believe that the state is required to design a system
10 that ensures equal educational opportunity for equal
11 tax effort, so we would select Option 1.
12 THE COURT: Okay.
13 MR. GRAY: That and spending the same, in
14 many instances, may be very, very close, but the
15 reasons spending the same is not what we believe is
16 the standard is because there are indeed cost
17 differences that all parties recognize, and a dollar
18 spent on education in Houston may not get you as much
19 as a dollar spent on education in someplace where the
20 cost of educating is not as high.
21 THE COURT: Okay.
22 MR. GRAY: So, we have maintained pretty
23 much from the start, I believe, and in our proposed
24 findings and conclusions, continue that position.
25 THE COURT: Okay. So you think that if

1 education is a fundamental right, the state has a
2 requirement to devise a system that gives each
3 student an equal opportunity for education for equal
4 tax effort --
5 MR. GRAY: Yes, sir.
6 THE COURT: -- from whatever district they
7 may live in --
8 MR. GRAY: Yes, sir.
9 THE COURT: -- however that district may be
10 configured?
11 MR. GRAY: Configured or comprised or
12 whatever else.
13 THE COURT: Okay.
14 All right. Now, question, if you were to
15 revise the formulas, I'll say, is that a way to
16 devise a system that gives each student an equal
17 opportunity for equal tax effort?
18 MR. GRAY: Standing alone, we do not think
19 so. You can come significantly -- you can make
20 significant progress in that direction, but you, by
21 doing nothing more than revising the formulas, the
22 divergent tax base is probably such that you cannot
23 get to true equal educational opportunity. It would,
24 indeed, be a giant, giant step in the right direction
25 that Plaintiff-Intervenors -- if the formula was

1 revised sufficiently to move it, to maximize the
2 progress forward -- would be pleased with. But if
3 you're asking my honest opinion, I don't think you
4 can get entirely there by just maximizing the
5 formulas, but you can get far enough along that
6 Plaintiff-Intervenors would be very happy.
7 THE COURT: Well --
8 MR. O'HANLON: What kind of legal standard
9 is that?
10 MR. GRAY: Well, I'm not giving a legal
11 standard.
12 THE COURT: It's the happiness standard.
13 I'll take what I can get standard.
14 Well --
15 MR. GRAY: I mean, Your Honor, if in fact
16 district lines, either for tax purposes, regional tax
17 authorities, if they are inviolate, if they are
18 untouchable, then revising the formula is, indeed, as
19 much as you can do. I mean, if that's part of the
20 context.
21 But in any event, if the formula was revised
22 such that spending disparities that we now see and
23 educational opportunity disparities that we now see,
24 that gap was greatly closed, Plaintiff-Intervenors
25 would feel that they had been satisfied.

1 THE COURT: Well, okay. Let's talk about
2 the formula for a little bit, that's the second page.
3 As we've been calling it -- as I've been
4 calling it, Mr. Foster's plan, would cause more
5 districts to become budget balanced?
6 MR. GRAY: Yes, sir.
7 THE COURT: But it would give more
8 discretionary money, let's call it, to the poorer
9 districts, right?
10 MR. GRAY: Yes, sir.
11 THE COURT: But it would have -- and I
12 consider it a bad effect of budget balancing more
13 districts, it would have that effect?
14 MR. GRAY: Yes, sir.
15 THE COURT: Well, you think that's a bad
16 effect? Do you think it's a bad effect to have
17 Dallas and Houston and Austin budget balanced?
18 MR. GRAY: Yes, sir. I mean, it would not
19 be -- given, having to pick one or the other, greater
20 funding for poor districts and/or budget balancing
21 some more wealthy districts, I would pick budget
22 balancing the wealthy districts, but it is the best
23 of a bad -- of two bad choices.
24 THE COURT: Okay.
25 MR. GRAY: Now, a lot of the potential

1 problems that I think the Court is concerned with,
2 the budget balancing effect of the Foster formula, if
3 that was -- if a revised -- if the Foster formula was
4 implemented along with a consolidation at a
5 countywide level for tax purposes, at that point,
6 alone, you don't have any budget balances or have --
7 you have a few, but they're primarily West Texas
8 extremely wealthy counties, but you don't have a
9 budget balanced Dallas or a budget balanced Houston
10 or a budget balanced Travis, for example.
11 THE COURT: Why do you keep coming back to
12 consolidate along the county lines? Why do you keep
13 coming back to that idea? Tell me that again.
14 MR. GRAY: The reason I think we raised
15 county lines for tax base consolidation purposes is
16 that historically, the county and the county line has
17 been the most sacred of all political boundaries in
18 this state.
19 THE COURT: Now do school districts go
20 across county lines?
21 MR. GRAY: Now school districts go across
22 county lines, they go across city lines. You have
23 school districts that are in three or more counties.
24 And we have never believed -- although the Defense
25 has postulated that there's some community of

1 interest surrounding school districts -- to the
2 extent there is a community of interest that is
3 definable in this state, historically and we believe
4 today, it is more in the county than it is in any
5 other political subdivision. And, for example, with
6 the Texas Constitution requiring house districts to
7 cut as few county lines as possible, does nothing
8 more than reemphasize that the county has been the
9 political unit that has been so focused on from an
10 historical perspective forward. And, in fact, with
11 the Education Code already having made some provision
12 for at least consideration of equalization at the
13 countywide level, this is not a concept that is --
14 that's foreign, by any means.
15 THE COURT: But if you're going to go to
16 the trouble of consolidation, then it seems to me
17 like if you're going to go to the trouble, that you
18 ought to just really do it right and make them all
19 equal.
20 MR. GRAY: Yes, sir.
21 THE COURT: I mean really equal. And I
22 think that can be done.
23 MR. GRAY: We are very confident that it
24 can be done.
25 THE COURT: So what advantage is there -- I

1 understand the concept of county -- makes it a little
2 bit smaller and people in a county sort of have a
3 county spirit, maybe, but you're not going to get an
4 equal tax base for all of those counties all over
5 Texas; there are going to be wide disparities again.
6 MR. GRAY: There are going to be wide
7 disparities again. The disparities will be greatly
8 reduced and, in our judgment, to a very large degree;
9 the disparities can be compensated for by the state
10 funding formula that would then overplay it. I mean,
11 the problem that we have in the current funding
12 formula is it works on top of two great disparities
13 in wealth. If you could close that disparity in
14 wealth and have the current funding -- a funding
15 formula like the Foundation School Program, not
16 necessarily the exact current one, but one similar to
17 it, you can go very, very far. But with the giant
18 wealth disparities that we have right now, in
19 existence now, you can't get nearly as far as we
20 would like.
21 THE COURT: Okay.
22 MR. GRAY: But you're absolutely right. I
23 mean, as we see it, the options are a tax base
24 consolidation purposes that is indeed equal, and you
25 can't do that at the county basis. But that to the

1 extent that there is a community of interest
2 surrounding school districts, that would be the most
3 violative, I guess, of that principle, to the extent
4 there is any.
5 The next best step, in our judgment, is using
6 the counties. And we don't believe there would be
7 any violation of any community of interest
8 surrounding the counties because, indeed, there
9 already is existing the county community of interest.
10 But the Court is accurate and the Court is right, and
11 we do indeed state that you cannot get to total or
12 true equalized tax base that indeed will provide true
13 equal opportunity for equal tax effort unless you
14 have tax bases out there for districts that indeed
15 are substantially equal, and that cannot be done at
16 the county level.
17 THE COURT: Let me chase it -- either one
18 of you -- or anybody can reply. If you go -- as I
19 talk -- as I say the Foster formula, you create more
20 budget balanced -- or districts closer to being
21 budget balanced, the idea being that the State has to
22 spend less money on wealthy districts and therefore
23 has more money available to put into poor districts.
24 But what guarantee is there that that will happen?
25 MR. GRAY: There is none, other than the

1 good faith and conscience of the Legislature, that
2 they will indeed take seriously the obligation to
3 provide education for all children.
4 MR. KAUFFMAN: Your Honor, before he gets
5 in, can I -- I'm sorry, before we get into a debate,
6 I -- you've talked to Plaintiff-Intervenors, and as
7 Plaintiff, I do want to be able to respond to some of
8 the Court's questions before we get into a heated
9 debate here.
10 THE COURT: Okay. Go ahead. I'll get over
11 here in just a minute. Go ahead.
12 MR. KAUFFMAN: In terms of the issues that
13 the Court has given us, for the Plaintiffs, we would
14 certainly -- spending the same on each student is, I
15 guess, our goal as long as we say that the same on
16 each student is after you've weighted the students
17 and looked at their special needs. So to some
18 extent, it is a combination between one and two under
19 fundamental right. And we will argue on Thursday
20 that there is a good degree of law on what a state
21 must do if it has violated a fundamental right and we
22 quoted some of that in our brief. And one of those
23 is selecting the least drastic means for affecting
24 its objectives, and the least drastic means, I guess,
25 is where the Court's questions are going.

1 In terms of the structure of the district, we
2 are not as concerned about making some of these
3 districts budget balanced as -- certainly as the
4 Defendants are, because those also happen to be
5 wealthy districts that can make up those differences
6 fairly easily. And we feel like we have more than
7 enough evidence on that, to show that those districts
8 that you mentioned, the Houston and Dallas and Austin
9 can make up those differences easily. And I think as
10 the witness has testified, even the man from Dallas,
11 there would still hopefully be an interest from those
12 communities enough to support education in the state.
13 And the other thing Mr. Gray was talking about,
14 there certainly are ways to remunerate that
15 situation. And one is, certainly at least taxing
16 authorities at the county level or even a larger
17 level.
18 As far as credence to county lines, in terms of
19 the people that I represent, the county unit would be
20 helpful, but not very helpful because there is such a
21 concentration of the poor and of minorities in most
22 of the counties that I represent people in. So that
23 would certainly go toward a larger -- a larger region
24 with more nearly equal taxing wealth. And that's
25 certainly where we would go, asking -- being asked

1 that question. Just because in the confines of El
2 Paso County and Cameron County and Hidalgo County and
3 Bexar County, where the majority of my clients come
4 from, that would be some help, but not very much
5 help, compared to a larger area.
6 In terms of why, giving credence to county
7 lines, at that point, to be honest, we have to give
8 you both -- at least I do, both an advocate's answer
9 as what is right for my client is right, and nothing
10 should be looked at. And also putting on my hat in
11 terms of if we do prevail, defending the judgment.
12 And to be honest, it's certainly the larger the areas
13 -- if this Court were to say that only a system with
14 larger the county -- county lines would be
15 acceptable, I'll be very happy to support that going
16 up. But as a lawyer, I think maybe what Rick is
17 trying to say is, that the larger those areas are, to
18 some extent, the harder they might be to defend.
19 They're still defensible and still the only way that
20 probably the state can meet compelling state interest
21 as defined in the Rodriquez decision.
22 But I think that that's the only reason, to be
23 honest, to look at the county lines is that if there
24 is any community of interest anywhere, certainly
25 there's more there than in the district lines. But

1 we feel that that argument is sort of a Johnny come
2 lately argument in the area of school finance. That
3 that's not the reason why the districts were drawn
4 and that's not the reason the system is why it is,
5 was because of community interest or for local
6 control. It was just that -- well, I don't want to
7 go too far in my argument, but -- so in terms of
8 answering the Court's questions, we would think that
9 the only way that the state could meet their burden,
10 under compelling state interest, is to as close as
11 possible come to spending the same on each student
12 after you look at the student's special needs, and
13 any system that fell short of that would probably
14 fall short of the state's responsibilities to show a
15 compelling state interest. And we tried to summarize
16 that in our brief, and we could go even farther with
17 the argument, if the Court goes into that. But that
18 is the way we see it, whatever help that gives you.
19 MR. O'HANLON: I just want to respond.
20 Something, I'm not sure whether the Court -- when
21 we're talking about Mr. Foster's plan, we're talking
22 about the exact same system of school finance that
23 exists in the state. There's only been two changes
24 that he makes to get to where he is, and those are --
25 those are, one, he increases the basic allotment and

1 then -- to a level. And then second, he recoups that
2 money by -- in essence, if you're going to spend at
3 the levels that he said are going to be yielded by
4 that, you have to -- you're pushing a large local tax
5 increase on the local independent school districts.
6 Those are the only two things that are changed from
7 the existing formulas.
8 THE COURT: Wait just a minute. You get
9 Foster's result by increasing --
10 MR. RICHARDS: The basic allotment.
11 MR. O'HANLON: Increasing the basic
12 allotment.
13 THE COURT: -- increasing the basic
14 allotment.
15 MR. O'HANLON: That's correct.
16 MR. GRAY: And increasing the local fund
17 assignment.
18 MR. O'HANLON: And increasing the local --
19 MR. GRAY: You do not get your maximum
20 state money unless you tax at that level. You don't
21 have to tax at that level, but you just don't get the
22 full state money if you don't.
23 MR. O'HANLON: I might say that even though
24 we had agreed to try this case on '85-'86 data, that
25 we're increasing the basic allotment to a level that

1 the Accountable Cost Committee said should be funded
2 for the '88-'89 -- or the '87-'88 year.
3 THE COURT: Well, but if the idea is to
4 free up money to equalize the poor districts, you've
5 got to figure out what's going to equalize the poor
6 districts. Now, who knows that?
7 MR. GRAY: There is not a --
8 MR. O'HANLON: It's still a matter of local
9 choice. It's got to be determined by the local
10 taxpayers who are assessing their own tax rates. You
11 still -- I mean, anything that we deal with, in any
12 of the fixes here, other than just pure state system,
13 requires local effort and you're never going to get
14 it unless you can have the same amount of local
15 effort. Now, you can increase the ability of local
16 districts to do it, but that doesn't guarantee that
17 they will. And, in fact, I think it's clear that
18 there are all kinds of tax rates all over this state.
19 There's no reason to believe that that's going to
20 change.
21 Now you can remunerate in some respects some of
22 the differences based on purely the local tax base,
23 but as long as -- even if you go to a countywide
24 system, as long as you do that, you've still got the
25 situation -- and let's assume we go from 200-to-1

1 ratio of tax base to 50-to-1 in -- or even 10-to-1.
2 And you run it through a Foundation School program,
3 you can equalize the same way we're doing now, but if
4 that district -- if that county that's got 10 times
5 the other wealth -- the wealth of another county
6 decides that they're going to raise their tax rates
7 because they want better schools, we're going to be
8 right back in the same problem.
9 I mean, the problem here is not the formula.
10 The problem here is the fact that the state allows --
11 given the wealth variations in the state, the state
12 allows independent school districts to raise and
13 spend money above the level of the Foundation School
14 Program. That's the problem. That's where you get
15 into the inequities, if they're significant. That's
16 where you get into the spending differential. Not at
17 the Foundation School Program level, but at the level
18 above that. And by simply -- unless you balance
19 completely the tax bases, you're still going to have
20 that problem, unless you count spending. And I don't
21 think anybody has advocated that.
22 So by simply grouping into groups of counties,
23 then I'm not sure that you're going to get any closer
24 to theoretical equity than we are at this point.
25 THE COURT: Do you think there's a cap on

1 spending in the poor districts now?
2 MR. O'HANLON: No. And the reason I --
3 there's a theoretical cap.
4 THE COURT: No, practical. Practical cap
5 on the spending in the poor districts.
6 MR. O'HANLON: No. The problem that we've
7 got at this point is that there's a situation in
8 which -- if we had a district, and which we don't in
9 this case, that was at -- there is a cap, it's $1.50
10 for maintenance and operations. There's nobody even
11 close to it.
12 THE COURT: My question is, isn't there
13 really, in the poor districts, a practical cap on
14 what they can spend?
15 MR. O'HANLON: Well, obviously there are
16 limitations imposed by the property tax, there's no
17 question about it, but nobody is at --
18 THE COURT: There are limitations imposed
19 by law not over $1.50.
20 MR. O'HANLON: Right.
21 THE COURT: There are limitations imposed
22 by the fact that they don't have much of a tax base.
23 MR. O'HANLON: That's correct.
24 THE COURT: And there may limitations
25 imposed on account of some of those poor districts

1 may have a lot of people, and they may have a lot of
2 students.
3 MR. O'HANLON: That's correct.
4 THE COURT: Okay. So there's -- right now
5 in Texas, there's caps on the poor, but there's not
6 caps on the wealthier districts. They're more likely
7 to be able to manage and take care of their people
8 better than the other people, okay?
9 MR. O'HANLON: It relates back to the tax
10 base, sure.
11 THE COURT: So, do we all agree that we
12 would rather not have caps on anybody? Can we all
13 agree to that?
14 MR. GRAY: Yes, sir.
15 MR. O'HANLON: Well --
16 THE COURT: Okay.
17 MR. O'HANLON: -- the problem here is that
18 I can't agree on behalf of the Legislature, that
19 they're not going to do that if --
20 THE COURT: I'm not talking about the
21 Legislature, I'm just talking about everybody in this
22 room. Can we all agree that we would rather not have
23 caps on anybody?
24 MR. R. LUNA: Sure.
25 THE COURT: Okay.

1 MR. O'HANLON: What I'm saying, Judge, is
2 that if it's raw, pure spending differential that
3 drives this, I'm not sure that that may not be the
4 first remedy that the Legislature reaches for.
5 THE COURT: What?
6 MR. O'HANLON: Capping spending. Because
7 that's something that they can do to equalize and
8 meet a court's judgment without a huge problem with
9 redistricting or increasing expenditures.
10 THE COURT: Okay. Let me ask you this.
11 Suppose right now this case is entirely different.
12 Suppose right now that we have got this fundamental
13 right idea being kicked around. Suppose right now
14 that the state only provides for or perhaps even
15 allows a ninth-grade education. Now then, suppose
16 everybody's child in this room wants a twelfth-grade
17 education. Now, would you say that the state is
18 violating your right as a parent and the rights of
19 your children as citizens a fundamental right to an
20 education by disallowing, in effect, a twelfth-year
21 education.
22 MR. O'HANLON: In my opinion?
23 THE COURT: Yeah.
24 MR. O'HANLON: In my opinion, no.
25 THE COURT: Okay.

1 MR. O'HANLON: And the reason is that the
2 Legislature must -- because obviously this is
3 evaluating education. We're still back to education,
4 and we're dealing with a very evaluating term that
5 changes from year to year, from decade to decade,
6 what we consider to be an appropriate education.
7 Now, it may not have been considered -- or it may
8 contain things that were not considered to be
9 important 10 or 15 years ago. What we're going to be
10 looking at 10 years from now may be entirely
11 different from what we're looking at. So you're
12 dealing with an evaluating term, and somebody has got
13 to define it. And we said -- it is our position that
14 the Legislature has got to be that body. That's what
15 they were charged with in the Constitution to define.
16 THE COURT: Let me ask it to you in a
17 different way. Do you think that it's conceivable
18 that the state's provisions for education could be so
19 invisible, so paltry, that the state's efforts in
20 education could be attacked just on the basis of
21 paltriness as violating the fundamental right?
22 MR. O'HANLON: No. And the reason why is
23 that it doesn't get you -- it's a blind alley. It
24 doesn't get you anywhere because the state -- the
25 Legislature has still got to pay for it.

1 Now, it does -- I will say that we have to
2 provide -- the one constitutional standard that
3 exists is that schools have got to last for six
4 months, not less than six months. Now, we have to do
5 that. That's in the Constitution. But other than
6 that, let's talk about -- in terms of cutting off
7 years, we can do the same thing in terms of
8 expenditures by cutting down from the present nine
9 months to six months.
10 Now, in terms of -- instead of lopping off a
11 quarter of a year, if we lop off a quarter of each
12 year and we spread it out over 12 years. Is that
13 constitutionally permissible? I say it certainly is.
14 It says not less than six months in the Texas
15 Constitution, itself.
16 THE COURT: Let me ask you all this. Is
17 there anybody here that thinks that if all of us were
18 to devise a system, if it was just up to us, that we
19 would want to have school districts that are solely
20 dependent upon their own money, so to speak, and
21 other school districts that are almost completely
22 reliant on the state money, it taking the votes of
23 those districts in the Legislature that are budget
24 balanced to get the money necessary for the poor
25 districts in order to approach some sort of equal

1 opportunity idea. Now, does anybody here think
2 that's a good idea?
3 MR. O'HANLON: I think the model is
4 California. It has gone from way above average to
5 below average in expenditures per student.
6 THE COURT: So what we want is --
7 MR. RICHARDS: I don't think that's
8 California. 85 percent of the money is state money
9 in California.
10 MR. O'HANLON: I know, but their
11 expenditures per student -- while the state
12 expenditure has gone way up, their expenditures per
13 student, compared to the national average, it has
14 gone from way above the national average to below it.
15 MR. RICHARDS: That's Proposition 13, I
16 think.
17 MR. O'HANLON: No.
18 THE COURT: Well, we don't want what I've
19 been calling in my mind political isolation, that is,
20 where the senators from Houston and the legislators
21 from Houston just really don't much care what the
22 basic allotment is if they think that their people
23 aren't going to benefit top side or bottom. I think
24 that's a real problem that Mr. Turner has put his
25 finger on early on in the case, as well as yourself.

1 Is there anybody here who thinks there ought to
2 be unequal tax bases?
3 MR. O'HANLON: There ought to be legal or
4 there ought to be from a moral sense?
5 THE COURT: No, I'm talking about just --
6 no, we're just talking about how we would like things
7 to be. Does anybody here think that there ought to
8 be unequal tax bases?
9 MR. RICHARDS: We don't.
10 THE COURT: Mr. Turner thinks -- let's see
11 how he handles this.
12 MR. TURNER: I think the presence of
13 unequal tax bases, one, is a reality that --
14 THE COURT: No, no, I'm not arguing that.
15 I'm arguing if we could have it the way we want it,
16 would you want unequal tax bases?
17 MR. TURNER: Well, I think we would lose
18 state support of public education if we had equal tax
19 bases because --
20 THE COURT: Tell me how that's going to
21 happen.
22 MR. TURNER: Well, the Legislature would
23 look out there and say, "You know, we have created a
24 system where everybody can raise money for education
25 locally on an equalized basis, therefore what do you

1 need state money for any more."
2 And as Mr. Collins testified, one of the prime
3 moving forces historically in Texas to move
4 educational funding forward has been the equity
5 argument. We're always having to put in more money
6 to try to bring the lower property wealth districts
7 up to where we think they ought to be, and that has
8 driven the system, and it does that in every state in
9 the union. And, of course, when you get into a
10 system where you have equalized tax bases, that
11 motivation is no longer there. Now, of course, we
12 don't guarantee, even if we have that, Judge, equal
13 spending because we're already saying everybody still
14 has the right to make their own judgments about how
15 much tax they raise. So this theoretical idea of we
16 get equal education because we have equal tax bases
17 is not true unless we also mandate tax rates.
18 THE COURT: Well, if we get education as a
19 fundamental right and if what you're looking for is
20 equal opportunity, then if every school district in
21 the state has the same tax base, do you think that
22 that equals an equal opportunity for everybody?
23 MR. TURNER: Well, the equal opportunity we
24 have to be talking about here is for the child to get
25 the education. And if we've still got that barrier

1 inserted in there where local property taxpayers,
2 some of whom don't even have children in public
3 education, they get to make the decision, then we're
4 still one step shy of getting that equal spending
5 that we somehow miraculously conclude would give
6 equal education, which all the experts we know differ
7 on whether it does or doesn't.
8 THE COURT: Well, that is a barrier. I
9 mean, that may not work. Let's suppose we create
10 equalized -- districts that have equal tax base.
11 There may be unequal taxation in there, that's true,
12 but at least there's an opportunity there for it to
13 be that each student has the same resources available
14 if whoever is in power were to choose to take
15 advantage of that. But there's barriers now. Aren't
16 there barriers now? There's barriers now the way the
17 school districts are drawn up. In addition to that,
18 there is the barrier as to the amount of money that
19 the Legislature has got to spend and/or the
20 willingness or the interest in it, those are
21 barriers.
22 MR. TURNER: I think what that probably
23 shows us, Your Honor, is the fallacy of trying to
24 adopt fundamental right analysis in education,
25 because if education is a fundamental right, I'm not

1 sure some third party, i.e. taxpayers, can stand in
2 the way of somebody getting them. I think there's a
3 fundamental right. Somehow the government has got to
4 provide it and I guess we conclude that quality
5 education -- equal dollars equal equal quality.
6 Somehow we jumped over that hoop -- through that
7 hoop, then we've got to do it.
8 THE COURT: If you say what they say, that
9 that fundamental right is a fundamental right to the
10 opportunity, then the closer you get to having that
11 opportunity to be in the hands of those who live in a
12 particular place, then you may not be able to provide
13 it at precisely, but at least you get as close as you
14 can to giving them the equal opportunity with an
15 equal tax base.
16 MR. RICHARDS: Equal protection -- I think
17 that's the correct equal protection analysis, equal
18 protection analysis doesn't require perfection. I
19 don't think anyone -- whether it was all delivered
20 with speed or anything else. I mean, the point is
21 you create the system -- or at least you try to
22 eliminate from the state part of the system, that
23 part that is erected, the built-in discrimination,
24 and that's what I think we've been saying, and that's --
25 THE COURT: There's really two ways to look

1 at this. You can look at it like the system we've
2 got now is the unequal tax bases are a real stumbling
3 block to equal opportunity, the way it's rigged up
4 now. If you cure that evil, assuming that it is an
5 evil, then -- and you set in its place something
6 that's neutral, so to speak, it seems to me like that
7 maybe you've done what the equal protection argument
8 would require for you to do.
9 Yes, sir.
10 MR. O'HANLON: Well, the problem that I've
11 got is that where have we been for the last 111 years
12 is that we've got a system here that has been created
13 and operating in essentially the same manner. And
14 it's gotten better; I don't think there's any dispute
15 about that. But the basic reliance on the property
16 tax base is built into the Constitution.
17 Differential taxation was built into the
18 Constitution. We had two different rates for
19 municipals and rurals at one time, that was
20 constitutionally enshrined. Did they know at the
21 time that they wrote it that there was going to be
22 differential ability to tax? Sure, there's no
23 question about it.
24 So for 111 years, we've been going along
25 operating this system with the Legislature doing the

1 best they can to make up the difference in the poor
2 districts. And all of a sudden, after 111 years, we
3 jump up and say, "Whoa, we've been wrong for the
4 whole time. And the system that we've been operating
5 in the state for 111 years has been
6 unconstitutional." If it's unconstitutional now, it's
7 been more unconstitutional in the past. So all of a
8 sudden, we're asking the Court to -- that the answer
9 to equity is to pass a constitutional amendment.
10 MR. RICHARDS: This argument has been made
11 for racial segregation, for political gerrymandering,
12 for every single -- that's the 111 years argument is
13 drawn out as a last resort by anyone who says
14 something -- just because something is wrong, you
15 shouldn't ever change it. I mean, that's -- we've
16 heard that argument every time we try to make any
17 social change in our society.
18 MR. O'HANLON: I'm not saying don't change
19 it. What I'm saying is -- and Mr. Gray said it, he
20 said that well, when push comes to shove, we're going
21 to have to go back and rely on the good faith of the
22 Texas Legislature to work out a solution, to figure
23 out how to do this.
24 We don't know about tax bases. The only thing
25 that we know is what Lynn Moak said. And Mr. Gray

1 can't tell you that it can be done or how it can be
2 done or anything else, so we have to take it back to
3 the Legislature.
4 I'm not arguing that we don't change the
5 system. There's a lot of ways to change the system.
6 The Legislature can change the system. The voters
7 and the citizens in the State of Texas, both in small
8 groups by district consolidation or a statewide
9 amendment, can change the Constitution. There's a
10 lot of ways to do it. The way not to do it is to all
11 of a sudden ask the Court to jump up and say
12 everything we've been doing for 111 years is wrong,
13 we've been wrong the whole time, and the Texas
14 Supreme Court was wrong when they decided Mumme vs.
15 Marrs, when they decided the very same issue.
16 Now, one other thing with respect to the issue
17 of -- we still have to define -- when we're talking
18 about education, we still have to define somehow the
19 entitlement. If education is inherently going to be
20 unequal, you can't talk about spending. My third
21 grade teacher may not be as good as the one down the
22 hall. Now, that -- I don't have the same educational
23 opportunity that the kid down the hall does, in any
24 kind of realistic mode, because my teacher isn't as
25 good. And that happens. Now, is that going to be a

1 constitutional violation? What happens if we create
2 a fundamental right? And we talked about education
3 being a fundamental right to the school districts.
4 How many lawsuits are they going to get filed on for?
5 And have they demonstrated that they are doing
6 everything in their power, given -- and we talked
7 about this, about whether or not every school
8 district in the state needed to be, before the trial,
9 a Defendant in this case, not a Plaintiff, because
10 the state -- the state doesn't provide education.
11 What the state provides are standards and finances.
12 The education, itself, is provided by the independent
13 school districts. That's why they exist, is to
14 provide that quantum of education for the students
15 out there.
16 Now, because an individual district is not
17 doing a very good job, has it violated the
18 constitutional rights? I mean, you get into, have
19 the Plaintiffs in this case demonstrated that the
20 districts in this case are doing everything in their
21 power, so as that they're not violating the
22 constitutional rights of the kids in their district
23 as well. Are they doing everything that they can to
24 provide that educational opportunity?
25 So the problem is that once you do it without a

1 standard, then where do you end up? We end up with
2 the situation like, I suppose, California, where we
3 never -- it never ends. We end up in a situation
4 like Bleak House (Phon.), where a trial goes on for
5 about 120 years or so, and you keep getting dragged
6 back to court and dragged back to court and you never
7 -- and you've taken away from the Legislature the
8 control over what's going on and you've invested it
9 in the courts. And the problem with the court system
10 is that it has to say it's constitutional or it's
11 unconstitutional. And this is not a situation that
12 lends itself to that. This is a situation that -- I
13 think the Court has heard -- that lends itself to
14 compromise, to working out and balancing various
15 kinds of competing interests that -- to deal with
16 very specific situations.
17 We can raise the basic allotment, like we said,
18 substantially, up to $2,400.00, but we do it at the
19 cost of all of the special allotments, of the extra
20 weight -- of the extra weighting for bilingual, for
21 comp. ed., for voc. ed., for handicapped kids. So
22 there's a real balancing that has to take place. And
23 the courts are not the place to engage in that kind
24 of discussion. And to literally say, "Well, we're
25 just going to say you did it wrong," and throw it

1 back to the Legislature, doesn't really advance the
2 issue because it's the same decision-maker has to --
3 ultimately is going to have to call it.
4 THE COURT: All right.
5 MR. R. LUNA: I want to come back, Your
6 Honor, to the one thing we've been discussing in
7 regard to the regionalized tax base, and so forth,
8 because we probably haven't gone far enough in the
9 analysis and I just want to remind the Court of some
10 of the evidence on that point.
11 If we say that everyone is simply going to have
12 the same tax base, and we stop there, we really have
13 not yet covered the one other issue that the Court
14 would have to take a good hard look at in that
15 situation. And as you'll recall, according to the
16 evidence, what's going to happen in that situation is
17 that the local districts can no longer set their
18 local tax rates. And we went through that example,
19 it was 70-some-odd school districts that would be
20 sending out tax bills to someone in another area
21 that's not voting on it. I think the Court may
22 recall, I went through that with a witness on the
23 board. I showed how a man who -- say, if we had a
24 regionalized system -- who was in Hunt County, and
25 Wilmer-Hutchins raised their taxes or

1 Carrollton-Farmers Branch raised their taxes, he
2 would not be in a position to vote on those tax
3 rates. That, in itself, is a violation of the
4 Constitution. We went through -- excuse me.
5 THE COURT: Well, it seemed like that if
6 you went to a system where you would have school
7 districts with equal tax wealth, you would go to a
8 system where you had 20 to 25 independent school
9 districts and maybe 1,063 schools districts.
10 MR. R. LUNA: Yes, sir.
11 THE COURT: So I don't know that I follow
12 what you're saying.
13 MR. R. LUNA: All right. There are only
14 two ways to get to where the Court is talking about.
15 One, of course, if you let the school districts
16 handle it the way they are now, that simply can't
17 work on a regionalized tax bases. Therefore, you're
18 going to have to have some type of new authority who
19 is going to oversee that tax base and, most
20 importantly, set the tax rate. But that's the issue
21 right there, the Court is going to have to take a
22 look at.
23 And that would mean, for example, in Region 10
24 or whatever region the Court might choose, if you had
25 20 regions in the state and you had an equalized tax

1 bases for that region, some central authority will
2 have to set the tax rate and not the individual
3 school districts. And I think that's pretty clear
4 from the evidence that that's the way it would have
5 to work.
6 THE COURT: Uh-huh.
7 MR. R. LUNA: Therefore, the Court just
8 needs to remember that it would have to deal with the
9 fact that a new central authority would have to be
10 established and that central authority would have the
11 power to set the tax rate for -- and I think in the
12 case of Region 10, it was 12 or 14 counties and over
13 70 school districts.
14 There again, there are probably many political
15 considerations to that that we may not have taken a
16 good hard look at, and that is who is going to
17 control that tax rate. I assume it probably would be
18 the most populous areas. I don't know what effect
19 that would have. And there are many other, you know,
20 considerations the Court at least would need to take
21 a look at if it was going to seriously consider that
22 alternative.
23 MR. O'HANLON: I've got one other little
24 problem that we need to talk about at least with
25 respect to large-scale taxing authorities. Now

1 that's a problem that we've adjusted for at the
2 present time because we don't have a major large
3 group of counties. But given the State of Texas
4 Constitution, the appraisal of property is mandated
5 under the Texas Constitution to be done on a
6 countywide basis by the county appraisal system.
7 Now, right now, we've got a range in terms of
8 true assessed values from about 75 percent to about
9 104 or something like that in the state. Now, when
10 we disperse formulas -- when we disperse formula
11 funding pursuant to the Foundation School Program, we
12 are -- the state is authorized to compute a true
13 ratio and adjust the tax rate for purposes of
14 disbursement of state aid, but not for purposes of
15 collections of taxes. In other words, the tax levy
16 has got to be on the assessed value of the property.
17 So if we have a region in which we have this kind of
18 spread, and this isn't uncommon, you have a single
19 tax rate that is in some counties being assessed
20 against 104 percent of the true value of the property
21 and in some counties against 75 percent of the total
22 value of the property. And there's nothing that we
23 can do about it right now, because this county here
24 with the 75 is constitutionally authorized and
25 mandated to set that appraisal rate. I mean, there's -

1 that's how it is. And we can't -- we can account for
2 it in the disbursement of state funds, but that would
3 have to be to that taxing authority. And to put the
4 individual tax burden that a citizen has to pay in
5 the various counties cannot be regressed under the
6 present system, those inequities.
7 So we're building in another problem if we do
8 that, that we don't already have, unless we go back
9 and take that control away from the local appraisal
10 districts, but that would require undoing the
11 constitutional system that we set up in the early
12 '80s. I mean, that problem is a real problem that
13 exists out there that would have to be dealt with and
14 the only way that we can deal with that problem is to
15 do away with the county appraisal districts that
16 exist out there. Now, that exists slightly in the
17 current state.
18 There are county line districts where this
19 problem exists, but they're not very frequent and it
20 hasn't been a large-scale problem. Once you
21 aggregate large-scale groups, it could be an enormous
22 problem. You may run back to the competitive
23 undervaluation, because what's going to happen is
24 that the state is going to have to distribute its
25 funds to the super district, if we call it that,

1 based on the state values, which is the adjusted for
2 the ratio value. But when you go to collect an
3 individual's taxes within that district, you can't do
4 it except on the countywide appraised. So you've got
5 that kind of little problem in dealing with it under
6 our present system. We just simply can't ask the
7 Legislature to deal with that because they can't.
8 They're constitutionally unable to deal with it
9 unless they change that constitution.
10 THE COURT: Mr. Turner, what school
11 districts do you represent?
12 MR. TURNER: Well, I represent 22, Your
13 Honor. They're spread all over the state.
14 THE COURT: Suppose Foster's programs were
15 adopted by the Legislature as a way to -- well, just
16 suppose the Legislature adopted Foster's program and
17 upped the basic allotment. Are some of your
18 districts budget balanced now?
19 MR. TURNER: Well, yes, some of them are
20 close and some of them are not. I mean, I have a few
21 that -- a couple that are below state average wealth,
22 so...
23 THE COURT: Okay. Suppose the basic
24 allotment is increased, as per Foster's suggestion,
25 are some of your school districts going to lose their

1 money?

2 MR. TURNER: Yes. Yes, they will. Not all

3 of them, but most of them lost state money under

4 House Bill 72.

5 THE COURT: Okay. To hold where they are,

6 they would have to increase local taxes?

7 MR. TURNER: That's correct.

8 THE COURT: They're not going to get some

9 money from some other place, they have to increase

10 local taxes?

11 MR. TURNER: (Nodded head to the

12 affirmative.) And, of course, that's what many of

13 them did in the aftermath of House Bill 72. And

14 which is one of the political considerations in

15 trying to move toward equity, that the Legislature

16 had to weigh, and that is, how much damage are we

17 causing to the system as a whole and to these

18 districts that are in the upper half of wealth by the

19 movement we're making.

20 THE COURT: I'm trying to see if there's an

21 inconsistency of what you're telling me, because a

22 minute ago, now, you were arguing that it's

23 preferable to leave things like it is so that you

24 could use the poor districts as sort of the catalyst

25 or the whipping boy to cause the Legislature to fund

1 totally more money into education. But maybe -- is
2 there another way for the state to funnel money into
3 education that would not cause your districts
4 hardship, and at the same time, provide them with
5 more discretionary funding, so to speak? See, I
6 don't know that you can have it both ways.
7 MR. TURNER: Well, you know, if you
8 followed Foster's plan, clearly you cause most of the
9 districts that I represent, not all of them, most of
10 them to lose money, some of them lose substantial
11 money, some of them become budget balanced. And you
12 know, it seems to me one of the problems that we're
13 up against here -- you ask the question of everybody
14 here, "Are you in favor of caps?" And nobody voted
15 "Aye."
16 THE COURT: Uh-huh.
17 MR. TURNER: You know, as long as there are
18 no caps and you can still spend above whatever you
19 get from the state, you know, we're still going to
20 have a tendency to have unequal spending from place
21 to place.
22 And if you impose a system like Foster's plan
23 upon us immediately, which is just about -- I think
24 we roughly figure it, and I may be off on this a
25 little bit, but the Foster plan was kind of like

1 going about as far again as the Legislature went
2 under House Bill 72 formula change. You remember
3 North Forest ended up with about twice as much
4 additional money as it already got under House Bill
5 72. But if you do that, you put districts in a
6 posture where they've got to make a choice, do they
7 cut back or do they raise their local taxes. If they
8 raise their local taxes -- if they raise their local
9 taxes, they're back into doing and creating the
10 unequal spending that we're talking about.
11 THE COURT: But just a minute ago, you were
12 arguing, I think -- I asked -- you were the only guy
13 who put their hand up and said they didn't want an
14 equal tax base. And the argument that you started
15 off with was that if you do that to us, then we won't
16 have these inequities to argue with the Legislature
17 to get more total money out of the state into the
18 total educational stream. And I'm saying I think
19 that's inconsistent with what your real position is,
20 with what you're really trying to defend here.
21 MR. TURNER: Well, when I answered that
22 question, I'm talking about what I think would be the
23 total impact upon the state system of public
24 education. That is, I think there would be a
25 lessened amount of state support for education.

1 THE COURT: If what?

2 MR. TURNER: If we end up with equalized --
3 more equalized or equalized -- perfectly equalized
4 tax bases, because there wouldn't be any motivation
5 to spend money from Austin to a local school district
6 because everybody could do it in property taxes and,
7 as you know, the state is in a financial bind anyway.
8 And so the equity argument is no longer able to be a
9 part of the school finance argument. And that's been
10 the major element of it all along.

11 THE COURT: Seems to me like the equity
12 argument jeopardizes your clients with decreased
13 state aid to them, more to the poor districts, and
14 the threat of increased taxes to you, doesn't it?

15 MR. TURNER: Well, I suppose that's right,
16 Your Honor, in the sense that as long as that equity
17 argument is out there, you know, our clients are
18 going to be under continued pressure. And that's
19 fine, that's a legislative battle that's been fought
20 for years, it's still being fought, it's still being
21 adjusted. And the reason the Legislature, I think,
22 doesn't just move immediately toward total equal
23 spending out there is because -- you know, as the
24 state board, I think, showed us in the little booklet
25 they put out this year, there are about seven other

1 goals other than equity in terms of education in this
2 state.
3 So if we take financial equity, and by that I
4 mean equal dollars, that's -- if that's one of the
5 things, and it may be, that we're -- it is one of the
6 things, clearly the state objective to obtain
7 financial equity. If that was the only goal, that
8 was the only thing we had to consider, well, we could
9 get that overnight, the Legislature would do it. But
10 there are many other things the Legislature considers
11 in structuring a system of public education.
12 For example, what if we did this super district
13 idea? Well, is it right to conclude that -- you
14 know, we've had witnesses on the stand tell us that
15 when you get into the size of Houston and Dallas,
16 some people think that that is an inefficient setup.
17 And what we're saying here is to get dollar equity,
18 we might just create 12 or 20 super districts in this
19 state. And in terms of an educator's view as to what
20 provides a good adequate quality education, to have
21 20 super school districts in this state would be
22 abhorrent.
23 So, we've fallen into that trap again of trying
24 to say if a fundamental right analysis applies here
25 and it applies specifically to -- it means equal

1 dollar equity, then we've got to sacrifice all of
2 these other educational goals that we have in order
3 to achieve, in an overnight manner, equal dollar
4 equity. So that's what I meant by -- in terms of the
5 state's interest. I mean, if you had equal tax bases
6 out there and the Legislature loses interest in
7 funding education, then I suppose they are going to
8 sort of say, "Well, I guess since we don't have much
9 to do with this anymore, you know, maybe we can't be
10 as active in the field as we have been." And we all
11 know that a lot of the progress that has been made in
12 education in Texas, and in other states, has been as
13 a result of the prodding of the Legislature.
14 Legislature says, "We're going to put more dollars
15 in, but while we're doing it, we want you to do this
16 and we want you to do this. We want you" -- in
17 Texas, we even have, unique to all of the states, a
18 standardized curriculum, almost unheard of to have
19 the states say what's being taught. Well, some have
20 argued in this Court, well, that's eating away and
21 eroding at local control. Well, sure it is, in the
22 sense that it is now state mandated curriculum. But
23 we have many other elements of day-to-day operation
24 of school districts that still remain in the hands of
25 local administrators and local school boards. And we

1 have all along believed in Texas, that that is
2 productive, that that produces efficiency, which is
3 one of the constitutional goals. So, the goal of
4 equity, though it's a laudable goal and we all seek
5 it, it's not the only goal that ends up providing the
6 education opportunity.
7 THE COURT: Let me ask you this. If this
8 lawsuit did not exist, I suppose that the
9 representatives of the poor districts could be at the
10 Legislature arguing that you ought to increase that
11 basic allotment, you ought to be over there taking
12 money out of the -- in effect, having money pour into
13 the state coffer, so that you can give it to the poor
14 districts by giving less to the wealthy districts.
15 Now, question, you want the situation to stay that
16 way so that you're in that kind of jeopardy?
17 MR. TURNER: Yes. I think the whole
18 reasoning when this big fellow, Mort and Strayer,
19 I believe are the names, in the '20s, devised the
20 minimum Foundation Program. The reason they devised
21 it is because they looked out there and recognized
22 that there were unequal tax bases within school
23 districts in the various states. And they came up
24 with this theory called the minimum Foundation
25 Program and at its base -- its purpose was to try to

1 overcome these disparities and wealth from district
2 to district. And virtually every state in the union
3 has that type of system in place, which is designed
4 specifically to offset these variations in wealth.
5 So, though we don't have perfection under it,
6 Texas has shown great progress toward moving toward
7 equity. And while we've moved toward equity, I think
8 the other goals of other legitimate state goals of
9 education, which ultimately comprise that equal
10 educational opportunity for that child out there,
11 those other goals have been promoted as well.
12 THE COURT: Thank you. Mr. Turner.
13 If every school district had a $250,000.00 tax
14 base, what would happen?
15 MR. RICHARDS: They would still be lobbying
16 for state money, that would be the whole point.
17 THE COURT: They would still be lobbying
18 for state money?
19 MR. KAUFFMAN: Oh God, yes. They would be
20 complaining that their local taxes are too high, and
21 why not use the state money, that gets it from sale's
22 tax and statewide sources. I mean --
23 MR. O'HANLON: Either way, you would be
24 getting it from statewide sources.
25 MR. KAUFFMAN: Well, at any rate, there is

1 simply no doubt, and even the witnesses testified to
2 it, said that they would still be up here. In fact,
3 I think it would be beneficial because they probably
4 want the funding to go to each of the school
5 districts on some sort of equal terms, instead of
6 fighting over, "Well, let's move the formula this
7 way, give us a little bit more, or let's move the
8 formula this way, give us a little bit more."
9 Instead, I think there would be more of a common
10 purpose, in fact, in coming to the state and asking
11 for additional funds. And to think that because
12 everybody had the same tax rate, they wouldn't want
13 any money from the state, is -- I think is ingenuous
14 at best.
15 MR. GRAY: The Court asked that identical
16 question of Mr. Collins. And he responded that from
17 his point of view, Dallas, which is one of the
18 largest districts and one of the wealthiest, that
19 they obviously would still be down here lobbying for
20 more state money that would benefit everybody.
21 MR. O'HANLON: If everybody has the same
22 tax base, you're talking about a statewide -- you're
23 talking about a statewide property tax. Okay, let's
24 assume that. Then the situation that you've got is,
25 is the Legislature has a choice. It's not a question

1 of how much money to spend. That -- you separate
2 that question. You talk about that and then you
3 decide where you can get it from. And you can get it
4 from two choices. You can get it from the general
5 revenue fund and sale's tax, or something of that
6 nature, or you can play with the formulas and, in
7 essence, put it right back on the property tax. What
8 that does is that it lets the state directly
9 recapture the property tax, because they can -- they
10 know, at that point, that they can rely on the local
11 property tax, without having to deal with equity
12 issues, to raise funds for the provision of
13 education.
14 So it then becomes a matter of legislative
15 consideration, I think, realistically, as to what pot
16 we're going to get this money out of then. We can
17 get it out the local property tax now, because we
18 don't have to rely -- we don't have to equalize, so
19 we can use that as a funding source as opposed to the
20 general revenue. And what they do in a given year is
21 going to depend on where they think they can get away
22 with it, where they think the taxpayers are going to
23 holler the least. Quite frankly, that's how you
24 raise taxes, you do it in a way that hurts the least
25 if you can. So, in any given year, they could be

1 putting it on the local taxpayers if they're isn't a
2 big hue and cry over local property tax, or they may
3 have to take it out the general revenue source. But
4 if you've got an equal tax base, that question then
5 becomes a legislative determination about just what
6 pot because it's all money that would be, I think,
7 realistically, at their discretion.
8 THE COURT: I suppose it's pointless to ask
9 if every school district has a $250,000.00 tax base
10 and we used the current House Bill 72 formulas, what
11 would happen? I suppose that's pointless.
12 MR. O'HANLON: Well, it's simply a matter
13 that every district would look like the district at
14 the median on the present system. Every district
15 would get, at least as far as the Foundation School
16 Program, probably close to a third of its money from
17 local tax sources for the Foundation Program, and two
18 thirds of its money from the state, and then would be
19 back to whether -- the decision about whether they
20 wanted to raise their taxes beyond that for local
21 enrichment. So it would look like probably that
22 group of districts right in the middle.
23 MR. RICHARDS: There would be no
24 equalization money in the formula. That would either
25 go -- I guess go somewhere else, I mean that would be

1 unnecessary, I suppose, if that was the case. But
2 Dallas' formula would work, I assume, pretty much the
3 same.
4 MR. KAUFFMAN: There's no doubt in our
5 minds there would a much fairer system and much more
6 equalized system if you did that. I mean that's, I
7 guess, the guts of the question. If you did that,
8 that is what would happen, you would have a much
9 fairer, more equalized system.
10 MR. BOYLE: Your Honor, for the record, the
11 Irving Independent School District, by not raising
12 its hand was not shown as responding one way or the
13 other. Irving Independent School District would be
14 adamantly opposed to a super imposement of districts
15 on the state that delineated Eanes District with the
16 same amount of value for the reason that, one, it
17 eliminates totally, in our judgment, the local
18 control. It eliminates all of the provisions and
19 negates the provisions of the Constitution that
20 permit and allow it. The Irving Independent School
21 District does have a community of interest. It has
22 an historical community of interest in relation to
23 the town. And, in our judgment, in order to create
24 the super district, it could not be done historically
25 and legally through a court action. It would be

1 necessary to amend the Constitution to give taxing
2 power, just like on the appraisal district when it
3 was -- the Peveto Bill was first passed, it was
4 passed statutorily; there were challenges made to it.
5 I think most concluded that without the
6 constitutional ability that was authorized the Peveto
7 Bill, that it would have some very, very serious
8 lending of credit questions between one public entity
9 and another public entity. The public entity are
10 precluded to lending their credit to other public
11 entities, just as they are from the private. So we
12 would oppose that -- the Foster plan for the Irving
13 Independent School District would impact us by 13.9
14 million or 23 cents on the tax rates, so it would
15 have a very, very serious impact on us.
16 THE COURT: If the Legislature increased
17 the basic allotment -- is Irving budget balanced
18 these days?
19 MR. BOYLE: No.
20 THE COURT: So if the Legislature got on an
21 equity kick and really wanted to increase the basic
22 allotment and channel a lot more money to the poorer
23 school districts, however you might want to define
24 that, that means that the school districts with more
25 wealth in them are going to get drained. And the

1 thing could shift to where there are practical limits
2 on the amount of discretionary money that the
3 wealthier school districts can raise, it seems to me
4 like. Do you think you could foresee that happening
5 to you?
6 MR. BOYLE: Or would raise, yes.
7 THE COURT: Or would raise.
8 MR. BOYLE: Certainly the citizens in local
9 government, as their ages change -- for instance,
10 each community and areas ages change, and as their
11 ages change, as their children get out of school,
12 they have a different attitude toward the school
13 system. I don't care what you look at historically,
14 you look at it differently. One way, you become at
15 age 50 a major property owner of the town with a
16 commercial interest and all of your children are gone
17 off, you have one difficult way I think you look at
18 the question, and particularly if every dollar that
19 you're placing on yourself is going for another area,
20 I think that there is a significant incentive that's
21 taken away from the local taxpayer.
22 THE COURT: I don't know if your citizens
23 have caught on to it, but I suppose they could catch
24 on to the argument that the Legislature has increased
25 the basic allotment, and what that means -- and the

1 Legislature has seen to it that the poorer school
2 districts get an increase over and above, say, what
3 they're getting this year. And what that means to
4 the Irving taxpayer is that the Irving taxpayer is
5 going to have to increase the taxes he pays in order
6 just to maintain what you've got and, in effect,
7 Irving taxpayer is sending money to South Texas.
8 Now, do you think that kind of argument might
9 engender some bitterness on the part of your
10 taxpayers?
11 MR. BOYLE: Oh I think, certainly, Your
12 Honor, as the matter would generate into greater
13 percentages, I'm not sure that the taxpayer has
14 understood the full blunt of House Bill 72 right now.
15 I think they've concentrated on things like "No
16 Pass/No Play." They really haven't looked at the
17 aspects of --
18 THE COURT: Sir, somebody in Irving that
19 doesn't want to increase taxes for the local schools
20 up there, do you think that that clever person could
21 make a very good argument against increasing taxes
22 for schools in Irving?
23 MR. BOYLE: I think that could be used,
24 certainly, and certainly on a bond issue.
25 THE COURT: That's right.

1 MR. O'HANLON: One thing I want to make
2 clear, and you may be using these terms
3 interchangeably, but increasing the basic allotment
4 in and of itself pushes -- makes districts less
5 likely to be budget balanced, because what it does is
6 -- remember the basic allotment sets the peg and then
7 you subtract the local fund assignment.
8 THE COURT: Uh-huh.
9 MR. O'HANLON: So when you increase -- if
10 you increase by itself the basic allotment, you're
11 making fewer districts budget balanced. Now then, of
12 course, you've got to pay for it. That just sets a
13 target, that sets a numerand and then you have got to
14 figure out the subtrahend. The subtrahend is figured
15 out by running it through the local fund assignment.
16 THE COURT: Uh-huh.
17 MR. O'HANLON: So that's how you really
18 adjust for kinds of equity purposes, and who gets
19 what money is by adjusting the local fund assignment.
20 Just increasing the basic allotment without adjusting
21 the local fund assignment would require an increase
22 in state money and that would make actually
23 districts, by itself, less likely to be budget
24 balanced without adjusting the basic allotment -- I
25 mean the local fund assignment.

1 THE COURT: Well, the Legislature is going
2 to have to pay for it some way, that is by --
3 MR. O'HANLON: That's correct.
4 THE COURT: -- increasing the basic
5 allotment, they would do it with the local fund
6 assignment.
7 MR. O'HANLON: They can or they can put
8 additional money in.
9 THE COURT: Yeah.
10 MR. R. LUNA: I know the Court was not
11 taking an official vote on this side over here, but I
12 want to make sure you understand that we are in favor
13 of disequalized tax bases.
14 THE COURT: In ya'll's finding, I think you
15 leave it open in a way where -- I think you're
16 equivocal some.
17 MR. GRAY: We are.
18 MR. RICHARDS: Let's find out where he says
19 we're equivocal first.
20 MR. GRAY: If you are referring to the
21 statement that we make in our findings that the
22 Legislature -- it's the state's obligation to either
23 have a funding formula that fully compensates for
24 disparities in local district tax wealth or creates a
25 system that is not based on disparate wealth, in

1 fact, has an equal wealth. We do have an either/or,
2 if that is what the Court is referring to. And we do
3 maintain that equal protection does not require
4 perfection, but it does require that substantially --
5 for a substantially equal tax effort, substantially
6 equal educational opportunity must be provided, and
7 that that system is clearly not being met under the
8 current system. We do believe that if you had equal
9 tax bases out there, that it would be solved. You,
10 indeed, would ensure substantially equal educational
11 opportunity for a substantially same tax rate.
12 However, we maintain that there are formula
13 adjustments and procedures that although they don't
14 go all the way, go a long ways down the road that
15 have not -- further down the road than we are right
16 now. So you can make substantial improvement without
17 looking towards the tax base problem, but a cost of
18 making that improvement is indeed the running the
19 risk of budget balancing some districts.
20 Now, there are other options in -- and the
21 reason we didn't go specifically in our findings is
22 there are aspects of a funding formula that would be
23 based on tax effort as opposed to tax base. Some of
24 the preliminary indications that we've looked at
25 substantially equalizes, but does not -- you don't

1 have the budget balance impact that you would under
2 the Foster formula that was imposed.
3 And another thing that, I guess, in fairness I
4 ought to add is that whenever you -- we think it's
5 unfortunate that so much money is already lost to the
6 budget balance phenomena. And by lost, I mean money
7 that is outside of the educational process that
8 otherwise would be in if you have no budget balanced
9 districts. It is clear that the more budget balanced
10 districts that you create, the more that loss that's
11 there. And that hurts, in our judgment, the
12 educational opportunity of all kids because that's
13 money that ought to be in the educational system that
14 is just flat not.
15 I'm not sure if I've addressed the Court's
16 concern, and I may have anticipated what -- where you
17 were saying we were equivocating, but -- and if I
18 haven't fully answered you, I will be happy to.
19 THE COURT: Well --
20 MR. O'HANLON: With all due respect, the
21 Court is probably having the same problem that we
22 have had through this whole case, it's like trying to
23 fight a marshmallow, you can't find anything solid to
24 hit on. And to simply kind of glibly say, "Well, the
25 Legislature can figure this out. They are smart

1 people," doesn't give us a whole heck of a lot of
2 guidance. If we're doing something wrong, we sure as
3 heck would like to know what it is exactly, and what
4 aspects of the formulas, and what it is that we are
5 doing wrong so we can go get some guidance and go fix
6 it.
7 MR. TURNER: Your Honor, you know, we've
8 brought experts in here who tried to testify to this
9 Court regarding whether or not our state system is
10 equitable based on some national standards of equity.
11 And we've brought people in this courtroom to point
12 out to the Court that dollars don't equal necessarily
13 learning past some basic level of expenditure of
14 dollars. And it's just hard to see how, you know --
15 Mr. O'Hanlon called it hitting at a marshmallow --
16 you know, Plaintiffs say, "We're not asking for
17 perfection on dollars." And so, if they say they're
18 not asking for perfection on dollars, that's not what
19 fundamental right means, and they're backing off
20 saying something less than that. Well, how do you
21 show what less than that is? Dollars don't equate to
22 learning, we hear, and of course, we've heard there's
23 some controversy about exactly how you express that,
24 but there's really, in my view, not that much
25 difference in what those experts are saying. They

1 are all saying that there's some basic level of
2 spending necessary to provide a basic adequate
3 education, but beyond that, what it means we're not
4 sure.
5 THE COURT: Would they differ on what the
6 basic level is, minimal level is? Probably.
7 MR. TURNER: They probably would, Your
8 Honor, and I think that's why, I think, we've argued
9 that, you know, in Texas, the state uniquely to
10 Texas, has tried to define what the state thinks
11 education is and what we're going to teach, and what
12 we're going to provide. Without, you know, the state
13 assuming that responsibility of kind of defining
14 education for us and what it should be, then I guess
15 we're left to kind of wade through all of these
16 various experts as to what is education and decide
17 -- you know, let the Court decide. But at least in
18 Texas, the state has taken the position that we're
19 going to define more specifically -- at least than
20 many other places, most other places -- what
21 education is.
22 So, you know, if we say that Texas is providing
23 a minimally adequate education for all of its
24 children, and if we have national experts come in and
25 say "Looking at Texas and the variations in spending,

1 based on nationally accepted methods of analysis,
2 Texas has an equitable system." It's kind of like
3 what more can you do?
4 You know, it's -- you know, if Plaintiffs
5 concede that equal dollars is not the test -- and of
6 course, we all know the different distinction between
7 adjusted dollars and adjusted equal dollars. But,
8 you know, if perfection is not required, if we're
9 going to say it's fundamental, but it's not so
10 fundamental that all of that fits together so neatly
11 that equal dollars equals it, it's kind of like where
12 do you go?
13 And that's where I think the danger and the
14 problem comes in here of trying to use this
15 fundamental rights analysis, which puts the Court in
16 a position of trying to say, you know, what
17 compelling interest mandates the system we have got
18 and, in essence, I'm supposed to devise the perfect
19 one, because education is a fundamental right. And
20 in the area that we're operating in, it's just real
21 difficult to get there. And that's exactly what the
22 United States Supreme Court acknowledged when they
23 wrote Rodriquez. The reasoning is present in the
24 Rodriquez case, even though there is one section that
25 left open the opportunity for a state, under its own

1 constitution, to determine if education is a
2 fundamental right. If you read 99 percent of the
3 opinion, the reasoning of Rodriquez fits this case
4 precisely. And fortunately, for the State of Texas
5 and the position that we take, you can read in that
6 case, particularly when you read some of the things
7 that are mentioned in the dissenting opinion, which
8 talks about the unfairness of some wealthy districts
9 getting more money from the state than some poor
10 districts, a situation that doesn't exist at all
11 today in Texas. But when you recognize what
12 Rodriquez was saying and read the majority of the
13 opinion, the reasoning fits perfectly today. And
14 just the fact that they throw in the statement that
15 "Well, maybe under some state constitution, education
16 may be a fundamental right," to leave open the door,
17 so to speak, in that respect, doesn't discount the
18 fact that the reasoning that's in that majority
19 opinion meshes perfectly with the lawsuit that we've
20 got before us today.
21 So I think, Your Honor, that the difficulty of
22 equating dollars with learning, which was
23 acknowledged in Rodriquez, the difficulty in trying
24 to turn taxpayer equity into a constitutional
25 argument, both of those things were dealt with and

1 reasoned very adequately and very well in the
2 majority opinion in the original Rodriquez case. And
3 they were done so in an atmosphere and with a state
4 of facts that is much less desirable than what we
5 have before us today. In fact, we've had witnesses
6 on our side acknowledged that.
7 And I guess the amazing thing as we come into
8 this case is the simple fact that even after the
9 state won in Rodriquez, the Legislature started
10 moving forward and has continued to move forward.
11 And even though these Plaintiffs filed this lawsuit
12 back before House Bill 72 was passed, Texas is in a
13 much better position than it has ever been.
14 Comparing it to other states, it's in an excellent
15 posture. And how we somehow think that we can reduce
16 education with this multitude of considerations to a
17 pure equity argument and decide that fundamental
18 right analysis fits and it ought to apply to equal
19 dollar equity or approximate equal dollar equity, it
20 really -- what the Rodriquez case was all about in
21 the majority opinion. We think it ought to be the
22 kind of reason this Court would apply.
23 MR. O'HANLON: One other thing, if you
24 apply the fundamental right analysis, the Plaintiffs
25 are making an argument that to me appears to be

1 independent to itself, and that is this: is that if
2 you're going to define under the Texas Constitution a
3 fundamental right and say that each student -- and
4 you're going to take a position that dollars make a
5 difference, and things of that nature -- okay? And
6 you're going to say that each student has this right.
7 Then how do we address the situation in which one
8 district decides it needs a 30 cent tax rate and
9 another district thinks it needs a dollar tax rate?
10 Let's assume we have an equal tax base and that
11 everybody is pulling that same amount of money off
12 the $250,000.00 per student tax base. Now, if that
13 right exists, it's the students right, not the
14 taxpayers right. It's the students right. If that
15 student has an a fundamental right to an education,
16 then -- and an education that is the same as that
17 $1.14 tax rate education, he's not going to get it if
18 the Plaintiffs are right.
19 And then they say, "Well, we're not talking
20 about equal educational opportunity in terms of the
21 student, we're talking about the -- we're talking
22 about the ability to raise money from taxes." Well,
23 that doesn't make a doggone bit of difference to the
24 student, because the student is going to have "X"
25 numbers of dollars spent on him regardless of

1 whatever. And if that's the crucial element, then
2 how can they glibly say that we -- well, we can
3 tolerate differential taxing because that's not what
4 we really mean. Well, if the fundamental right
5 exists, then we can't tolerate that kind of
6 differential because it's the student's right, it's
7 the right to the education, not to -- it's not a
8 right to access to a tax base. It's a right to an
9 education, if that right exists. And their response
10 is to say, "Well, no, it's not really. What it
11 really is is access to some kind of tax base, and
12 we'll leave ourselves at the mercy of the local
13 voters." Well, if it's a fundamental right, you don't
14 do it. And they're not happy with leaving ourselves
15 at the mercy of the statewide voters as they've
16 adopted the Constitution and the law speaking to
17 their elected representative, but they may be in some
18 other system.
19 So, they've got two notions that are simply
20 antithetical to each other and that's -- and I don't
21 see how they can argue them. And we would like to
22 know which one of those that we're dealing with. We
23 want to know whether they want to equalize the tax
24 base or equalize expenditures. And there's a heck of
25 a lot of difference. Even if you equalize the tax

1 base, you don't equalize the expenditures. I think
2 that evidence is absolutely clear. And if it's the
3 students right, then we're ignoring the student,
4 then, to get back to some kind of tax base, which is
5 only an analogue, expenditures and all of that. I
6 mean, we can talk about whether or not they make a
7 difference, but that's an analogue for education.
8 Education is what happens to go on in the mind of the
9 student and how much they know. And we can talk
10 about what's the most significant analogue and things
11 of that nature, but if they're saying a tax base,
12 you're getting way removed from the real issue if
13 you've created a fundamental right, and that's the
14 entitlement of that individual student sitting in
15 that specific classroom to exposure to a certain
16 amount of material. And to say it's a local voters'
17 decision is not really any different from the present
18 system.
19 MR. KAUFFMAN: Your Honor, in terms of what
20 we want or what we don't want, I tried, I think, in
21 my brief to outline, I guess, six or seven points
22 that I thought where the state had violated their
23 duties and things that they had to do. And when you
24 put those together, I think the gist of them
25 certainly is that the state must -- students,

1 depending on their various needs, must have the same
2 amount spent on them; that's always been our
3 fundamental position. It has to be within an
4 insignificant range, as they said in Serrano v.
5 Priest, every child has to be given some sort of
6 adequate education at a minimum. And we've had
7 testimony that some were not.
8 The state must participate in and help with the
9 building of facilities through some sort of formula.
10 Whatever formula is used has to have the actual
11 proper real cost of running an education.
12 And I specifically said the state must use its
13 resources -- must design its resources in terms of
14 district lines in order to roughly equivalent tax
15 bases. Now that is not an end in itself, it's just
16 that given the situation in Texas with a tremendous
17 range of tax bases, something has to be done to
18 compensate for that sufficiently. It hasn't been
19 done to date. And that's our position. We're not
20 just after equal tax bases just for the sake of it,
21 we're after it because it looks as though, in the
22 present system, you can't equalize the amount spent
23 on kids taking into account their needs unless you do
24 something like that.
25 We've talked about some consideration of the

1 historical inequities in terms of districts. And I
2 think that one of the counsel has said it's been the
3 same for 110 years. Well, we feel it's inadequate
4 now and it's been just as inadequate or more so in
5 the past, and that's had its effects. That the state
6 will have to consider Mexican American and low income
7 persons and their special educational needs. And we
8 also have taxpayer equity. And I think that
9 certainly within the system, to the extent that they
10 can, the system must be designed to give taxpayers
11 the same sort of bang for their buck.
12 It was no accident that I put first equality of
13 students. The expenditures on students after you
14 weight them should vary by only an insignificant
15 amount. And that's our position.
16 MR. RICHARDS: May I just say something in
17 response to Mr. O'Hanlon? I mean, it's perfectly
18 obvious that equal expenditures would solve the equal
19 protection argument; I think that that's clear. The
20 question is, are we -- you asked us were we insisting
21 that that was the only solution. I believe that was
22 your question. It seems to us from the equal
23 protection analysis is that the question -- the state
24 really does two things here, it places substantial
25 reliance on a local property tax base to fund public

1 education to about 50 percent and then it has created
2 local tax bases which are radically inadequate. And
3 the result of that is, what we think this record
4 shows, that is significant disparities and
5 expenditures for public education, depending on where
6 one lives, the wealth of that district.
7 That is what we've chosen to focus on as being
8 the denial of equal protection as we see it. That
9 is, the state has constructed a system which has, in
10 effect, for four more days, that certain children are
11 going to get less spent on them and a less adequate
12 education or less education simply because of the
13 action of property wealth in their district. And
14 that is what we think has to be cured. And that's
15 what we think, by the way, violates either
16 fundamental right analysis or rational bases
17 analysis, whether you analyze it in terms of the less
18 restrictive means sort of analysis of Sullivan, you
19 really get the same place.
20 How can the state justify, under any theory,
21 leaving students out here victimized in this fashion,
22 when it serves no purpose that the state has
23 articulated or shown here. And what it results in is
24 grave disparities for education, a right that we deem
25 both to be fundamental or, as we say, the rational

1 basis analysis. I think we get to the same spot.
2 But, again, it's the state that has chosen to do
3 this, fund education through a local property tax
4 bases and then create local property tax bases that
5 are radically inadequate. And that's the evil as we
6 perceive it.
7 MR. O'HANLON: Two things, one is that the
8 Constitution did that, not the Legislature.
9 MR. RICHARDS: Well, that's not the law,
10 Mr. O'Hanlon. The Legislature -- the Constitution
11 doesn't say the Santa Gertrudis sits down there in
12 Kleberg County with 14 million dollars of wealth --
13 MR. O'HANLON: It did in 1909, Counsel.
14 And there has been no evidence to show when any of
15 these fruition. The Constitution did exactly that in
16 1909. And in Article VII, Section 3b allowed for
17 further consolidation or merger of districts. I beg
18 to differ. The Constitution actually fixed,
19 constitutionally, the existence of a certain number
20 of school districts, the ones that were in existence
21 in 1909.
22 Now, the other issue that we've got here, once
23 again -- has it become clear to the Court now that
24 we're really talking about consolidation mandatory of
25 districts and that that argument we had, lo these

1 many weeks ago, has to be a legitimate concern here
2 to the state? I mean, if you read their findings of
3 facts, Mr. Richard's especially, that's his sole
4 remedy here. And we've got a real problem to try the
5 rational bases of school districts in absentia, that
6 the Santa Gertrudis district may be able to come in
7 and explain, but they haven't been invited to explain
8 why they exist. There's a number of things and we're
9 trying them without them here. And that still
10 remains a concern to me, that we're trying a bunch of
11 districts and their right to exist, their very
12 existence, without inviting them to their own
13 funeral, I suppose, if that's what you want to call
14 it. At least I think they ought to be invited to
15 come in here and talk about whether or not they
16 should be allowed to exist as political entities.
17 THE COURT: Let me say this: With all due
18 respect, the Plaintiff and Plaintiff-Intervenors --
19 maybe because we have had so much evidence and it's
20 such a big topic, maybe it can't be done in any other
21 fashion, but maybe it's just been maybe the way I've
22 been reading this, but it seems like that I'm not
23 quite satisfied. It seems like that you need to
24 state your law and state what it requires, you know,
25 succinctly and then state the facts that show that

1 the state is not doing what is required. Succinctly
2 and not much editorial, you know, not much -- I mean
3 you're stating facts, not much interpretation, just
4 facts that would support whatever you think the state
5 is not doing that it should be doing.
6 And I don't know that that -- from what I hear
7 you all saying now, I'm not sure that that would
8 require an analysis of the House Bill 72 formula, as
9 such, in its failures. I'm not sure. I might leave
10 that up to you all, you know, in terms of being
11 pretty doggone specific. And I'm not really saying
12 that all of your ideas are not found here, but they
13 are not really clean and crisp. And I think they
14 need to be. That is to say, I think that -- now, I
15 think that I could hand defendants to somebody, like
16 an appellate judge, and he or she could read through
17 it. And, you know, one thing leads to another, leads
18 to another, although -- so what I would like the
19 Plaintiffs to do...
20 We've got this set for argument at 9:00
21 Thursday. I think I would like to change argument to
22 9:00 Friday and I would like to see a crisper
23 addition of the Plaintiffs' proposed findings on 9:00
24 Thursday. We're going to argue Friday at 9:00
25 anyway, period. But I think -- that gives you a

1 couple of days. I think that I would like to see
2 more facts and more analysis and less editorializing
3 in the Plaintiffs' and Plaintiff-Intervenors'
4 findings. And I think you need to use your evidence.
5 I think you need to state the law and state what the
6 law requires, and then use the evidence in the case
7 with just flat statements of the evidence. And if
8 you're going to attribute it to someone, make your
9 statement of evidence. And if you're going to
10 attribute it to someone, you can draw a parenthesis
11 and you know, exhibit so and so or witness so and so,
12 or whatever.
13 And if where you are is that the fundamental
14 right that is violated is that the state has not
15 devised a system that gives each student an equal
16 opportunity for an equal tax effort, then I think you
17 need to have -- I think you need to state that as
18 your basic proposition and then recite very succinct,
19 cogent, noneditorial, no-flowers-in-the-language
20 facts that show that, to show that failure, if that's
21 your position.
22 And if you are not really saying that it's
23 unequal expenditure that's the problem, then I don't
24 know why you even have to worry with that. I guess
25 that would be up to you. But if it is unequal

1 expenditure, I think you need to state frankly that
2 what's wrong here -- or in the alternative, what's
3 wrong here is there's unequal expenditure. And I
4 think you need to be very, very specific as to what's
5 wrong with the formula so that an appellate court can
6 analyze what you say as being right or wrong from the
7 evidence that they're going to have in this record.
8 And anybody else that's interested in going into it
9 in any depth.
10 All right.
11 MR. TURNER: Your Honor.
12 THE COURT: Yes.
13 MR. TURNER: I have a conflict Friday. I
14 don't know if anybody else has one, but I have a
15 matter scheduled away from here at 10:00 o'clock on
16 Friday morning. I don't know if anyone else has a
17 similar problem.
18 THE COURT: What season is it? Nobody
19 picked up on that.
20 MR. TURNER: You know, Monday, Tuesday, any
21 of those times are fine, but Friday, I do have a
22 conflict.
23 THE COURT: What about Monday the 27th?
24 MR. O'HANLON: I was supposed to be out of
25 town on Monday.

1 MR. R. LUNA: And I have a hearing also
2 scheduled on Monday.
3 THE COURT: Well, let's do this, maybe we
4 can argue Thursday afternoon. Let me look at your
5 revised findings Thursday morning, and we could argue
6 Thursday afternoon.
7 Let's argue at 2:00 Thursday afternoon. Does
8 that make everybody happy?
9 MR. GRAY: That's fine, Your Honor.
10 MR. R. LUNA: Well, I have a 6:00 o'clock
11 commitment in Dallas for a standing commitment for a
12 school board meeting.
13 THE COURT: Yeah.
14 MR. R. LUNA: Obviously if we start arguing
15 at 2:00, there won't be any way I can make that, but
16 we really want to work the Court's schedule, whatever
17 the Court recommends, we'll do it.
18 MR. TURNER: Judge, I know the burden is
19 all on the Plaintiffs. I guess I shouldn't suggest
20 it, but I wondered if it's possible for us to meet
21 again tomorrow or tomorrow afternoon and then keep on
22 our schedule --
23 MR. RICHARDS: I don't think we can do it
24 within that --
25 MR. TURNER: -- stay on our Thursday

1 morning schedule.
2 THE COURT: Is your business out of town or
3 in town?
4 MR. TURNER: Out of town.
5 MR. O'HANLON: How about Thursday at 1:30,
6 that way Mr. Luna can get a little earlier...
7 MR. RICHARDS: Let Bob start first.
8 THE COURT: Yeah, you could be here for
9 most of it.
10 MR. R. LUNA: Yes, sir.
11 THE COURT: I don't know that I'm going to
12 decide anything then.
13 Okay. That's probably the best.
14 All right. We'll argue Thursday at 1:30 and at
15 9:00. I don't even know that I need to have
16 everybody come back. I don't know if we'll have a
17 discussion, actually, of their revised findings. But
18 maybe you all would like to see them prior to
19 argument if that would be at all possible.
20 MR. O'HANLON: If you have them turn them
21 in at 9:00 --
22 MR. KAUFFMAN: We'll drop them off at the
23 Attorney General's office.
24 THE COURT: Let's make it at 10:30, that
25 gives them a little more time, because I'm not going

1 to have another conference about this.
2 So why don't you bring them up here to me at
3 10:30 on Thursday morning, and why don't you just
4 bring enough copies for everybody and they can come
5 over here and get them.
6 MR. KAUFFMAN: Okay.
7 MR. RICHARDS: Can I ask you just a format
8 question, Your Honor, not a substantive. In terms at
9 least for ours, is the notion of starting with the
10 legal analysis, irrespective whether you like the
11 legal analysis or not, is that consistent with what
12 you wanted?
13 THE COURT: Yes, it is.
14 MR. RICHARDS: And then it's just that you
15 find the fact finding, among other things, too
16 editorial and not drawn specifically enough to the
17 record. And I think you want references to both
18 either exhibits and/or witnesses, is that correct, if
19 we are quoting or if we are relying on specific fact
20 finding? I think we can do that, and we've done it
21 in some instances.
22 THE COURT: I don't know if you need to do
23 that, but if you're going to attribute some statement
24 or some fact -- I mean, if you think it works to your
25 advantage -- see, throughout these fact findings,

1 you've got "Dr. so and so says." Well, if you want to
2 state a fact and then attribute it to somebody, you
3 can put that parenthetical reference. I'm not
4 requiring that.
5 MR. RICHARDS: I understand.
6 THE COURT: What I don't particularly want
7 is that "Dr. so and so said such and such." I just
8 want a -- I just think you need some straight out
9 fact findings.
10 MR. RICHARDS: I think we understand.
11 Thank you very much, Your Honor.
12 THE COURT: And I think they need to lead
13 to your conclusion, you know, one group leads to this
14 conclusion, another group leads to that conclusion,
15 and anybody can sort of read through it and see where
16 you're going with it. If they agree with your
17 interpretation of facts, then it leads logically to
18 the place where you want it to.
19 Again, I think that if you're looking for equal
20 spending, that you need to state, number one, how
21 come it's not equal spending now and what it would
22 take to have equal spending, if you're looking for
23 equal expenditure. But from what you've told me at
24 least is that that's not really what you're looking
25 for.

1 And the reason I keep coming back to that is
2 Mr. Gray's saying, "Well, you know, we would take a
3 revision of the formulas." But although I've let my
4 mind range far and wide and I've discussed with you
5 all outcomes, I'm not sure that when it comes down to
6 making a decision, that's how I'm going to be guided.
7 So, I need to know specifically what you say the law
8 requires, how the law is and how that isn't being
9 done, so I can see if I agree.
10 Okay. Why don't we have the drop-off place,
11 let's say, right there on that right there
12 (indicating). If you all want to come get your set
13 of findings at 10:30, you can do so, and they'll be
14 right there. And I'll see everybody again at 1:30
15 for argument.
16 Thank you very much.
17 MR. KAUFFMAN: Thank you.
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21 (Proceedings recessed
22 (until April 23, 1987.
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3-87-190-CV

CAUSE NO. 362,516

C 8353

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

FILED
IN SUPREME COURT
OF TEXAS

JUN 21 1989

JOHN T. ADAMS, Clerk
By_____Deputy

STATEMENT OF FACTS

VOLUME XLIII OF XLVI

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THIRD COURT OF APPEALS
SUSAN R. BAKE, CLERK

TAKEN APRIL 23, 1987

MONICA ROSS WEIDMANN
Official Court Reporter
250th Judicial District Court

Travis County Courthouse • Austin, Texas 78701

1 CAUSE NO. 362, 516

2

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

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8 STATEMENT OF FACTS
9

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10 BEFORE THE HONORABLE HARLEY CLARK, JUDGE PRESIDING

11

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16

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

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1 APRIL 23, 1987

2 THE COURT: I think we decided we were
3 going to allow an hour and a half of time. Some of
4 my associates over on this side of the table may have
5 their planes to catch, is that so?
6 MR. R. LUNA: Yes, sir.
7 THE COURT: Okay. How do you propose to
8 split up your time over here?
9 MR. KAUFFMAN: Your Honor, I'll go first
10 for the Plaintiffs, about 20 to 30 minutes, and then
11 Mr. Richards and Mr. Gray for Plaintiff-Intervenors,
12 about the same amount of time.
13 MR. RICHARDS: Not for me, Your Honor, 15
14 minutes at the most for me.
15 MR. GRAY: And I would expect no more than
16 15 from me, Your Honor.
17 MR. KAUFFMAN: And then we would probably
18 save some time for rebuttal, if we decide to use
19 that, but we should be through by 2:30, I think.
20 THE COURT: Then Mr. Luna, is he going to
21 get to argue first over here?
22 MR. TURNER: I'm going to argue first, Your
23 Honor, about 30 minutes, and then I suspect we're
24 going to have about 20 with Mr. Luna.
25 MR. R. LUNA: We've got it worked out.

1 We're trying to take all of the time up front. It's
2 going to work out.
3 THE COURT: I'm ready, if you're ready.
4 MR. KAUFFMAN: Yes, sir.
5 THE COURT: You can either argue from where
6 you are or you can use the podium, it doesn't matter
7 to me.
8 MR. KAUFFMAN: May it please the Court, on
9 behalf of the Plaintiffs, we request from the Court
10 an order that the school finance system in the State
11 of Texas is unconstitutional.
12 I have now been working on this issue for about
13 three years and when I began it and talked to people
14 about it, I saw that the most important issue is the
15 children that go to schools in the State of Texas.
16 As lawyers would want to do, we have made that issue
17 incredibly complex because it is necessary, I guess,
18 under legal proceedings. But the gut issue of the
19 case is a fairly simple matter, and that is that the
20 State of Texas has created a school finance system
21 that treats hundreds of thousands of children
22 differently than it treats other hundreds of
23 thousands of children in this state. And it treats
24 them different by not giving them as good of an
25 education. This hurts the children; it hurts the

1 state. And the state has no good or sufficient
2 reason for the system that it has enacted, the system
3 that it continues to implement. And if we can
4 concentrate on the interest of those children in the
5 state, I think the case will be a simple one to
6 decide.
7 Our legal theories are also, at least in their
8 description, fairly simple. We claim that this
9 system of school finance in the state denies equal
10 protection to the children in the state. It denies
11 equal protection to the taxpayers and the school
12 districts, themselves, but the main matter is that
13 those children who go to school in low wealth
14 districts are denied equal protection which is
15 guaranteed by the Texas Constitution.
16 We have during the course of the case talked in
17 great detail about the fundamental analysis and
18 rational analysis. And our position is clear that
19 the Plaintiffs here prevail under either. We
20 certainly do feel that elementary and secondary
21 education in this state is a fundamental right. That
22 both Mexican Americans and the poor persons who live
23 in low wealth districts are suspect categories and
24 that, therefore, the Court must consider the case in
25 that framework.

1 We also prevail, if you look at it, to see
2 whether the Texas school finance system is rational.
3 We think it it is not, and the state has not shown a
4 reason for it.
5 We also claim under Article VII of the state
6 Constitution that the school finance system is not
7 adequate. And we are talking there about it is not
8 adequate for children going to low wealth school
9 districts in the state in terms of the inadequate
10 education for them.
11 We also claim that the school finance system
12 denies the constitutional provision that taxation be
13 equal and uniform.
14 We see this case, Your Honor, as looking at the
15 state. The state Legislature is given the
16 responsibility under Article VII to create and to
17 maintain a school finance system and a system of
18 education. And the state has created districts, the
19 state has created formulas, the state has created a
20 history, and we have to concentrate on that.
21 In terms of the equal in uniform, the state
22 creates some of the people in the state, in some
23 districts, low wealth districts, differently than it
24 does persons in other districts in terms of the taxes
25 that they must pay to get something for their

1 students.

2 We would want to stress here that in terms of
3 our approach to this case, and we think in the
4 approach of all of the parties, that the only way to
5 look at the system is the total system. We cannot
6 concentrate only on what the state calls its
7 Foundation School Program, but we have to look at the
8 Foundation School Program as it works in conjunction
9 with the ability of districts to supplement that
10 program. And, of course, the ability of rich
11 districts to enrich their programs, to give an
12 adequate education to their students and the
13 inability of poor districts to do that. But the
14 whole system must be looked at in that manner.

15 I went back in preparation for this and looked
16 at some of my notes on the early witnesses, and it's
17 now been three months, I guess, since they started,
18 and I had forgotten, really, all of the ground that
19 we had covered. And I would like to spend no more
20 than five minutes talking about some of that ground
21 that we have covered.

22 We started out with Dr. Hooker who described
23 the history of the system and the inadequacies of the
24 system. And his opinion was that it was not an
25 equitable system for the children in low wealth

1 districts and that it had never been an equitable
2 system for the children in low wealth districts. And
3 that under the present formula as designed by the
4 State of Texas and under the school districts as
5 designed by the State of Texas, it was not going to
6 be an adequate system and a fair and equitable system
7 for the children in the State of Texas.
8 He talked in some detail about how the formulas
9 worked and the inadequacies of those formulas, but
10 constantly stressed that they must be considered in
11 light of the total state program. He specifically
12 said that the basic allotment in the state formula is
13 too low, that the cost add-ons are too low. The
14 state must, but does not, include facilities in its
15 formulas and, therefore, the low wealth districts
16 must pay all of this out of their tax basis.
17 We then had a witness, an individual witness,
18 Estela Padilla who, at least in my mind, brought a
19 little bit more of a personal note to what it's like
20 to send a kid to a poor school district. And she
21 talked about the inadequacies of the programs in
22 Socorro. The inadequacy in that there are no art
23 programs; there are no enrichment programs; the
24 buildings are -- that she is sending her kids to are
25 in bad shape; that her kid was losing interest in

1 public schools because of the shape of that district;
2 that the district is like a factory, it discourages
3 kids from an early date. And she concluded that she
4 does not feel that her children are given an equal
5 opportunity or an adequate education within the
6 state.
7 We then talked to Craig Foster who gave us a
8 great detail about what we call the numbers in the
9 school finance formula and showed us the tremendous
10 disparities in the state in terms of wealth, ranges
11 from $14 million a student down to $20 thousand a
12 student of wealth to use to create a school finance
13 program in the local districts. But he also stressed
14 the range of expenditures. That for some reason, the
15 State of Texas feels that a system that spends over
16 $5,000.00 on some students and under $2,000.00 on
17 others is a fair system.
18 And in order to rebut an argument -- there's an
19 argument about that this affects few students -- we
20 looked at it in terms of hundreds of thousands of
21 students. There are 3 million students in the state,
22 and if you look at 150,000, the top five percent at
23 the top, and 150,000 at the bottom, you see a
24 discrepancy of over $2,000.00 per student that those
25 districts are spending. And that discrepancy holds,

1 no matter how you analyze the numbers. If you look
2 at in terms of weighted students we talked about,
3 look at it in terms of average daily attendance, no
4 matter how you look at it, the discrepancy is real
5 and it is consistent.
6 He also talked about the range of tax rates.
7 There are hundreds of thousands of families in the
8 state who pay less than 50 cents for taxes in their
9 districts, other hundreds of thousands spent more
10 than $1.00 for taxes. And he concentrated on the
11 fact that if you're a poor district with high taxes,
12 you still don't get an education for your kids. As
13 Dr. Hooker said, it is tax low spend high, tax high
14 spend low has been a pattern in the school districts
15 in the state.
16 We also heard from superintendents, those who
17 are on the front lines trying to run the school
18 districts. We heard from Mr. Boyd and Mr. Sawyer.
19 We heard from Mr. Sybert and Dr. Christian. And all
20 of them talked about the impossible situation of
21 trying to coordinate the needs of those students,
22 especially the extra needs that their students have
23 with state requirements and with their own sense of
24 what you need to give a good education for the
25 children. And their conclusion was unanimously that

1 they just could not do it under the present school
2 finance system.
3 We also talked to Dr. Cardenas, Dr. Zamora, Dr.
4 Valverde, Mr. Cortez, as well as some of the
5 Defendants experts, who talked about what is it in
6 schools that is bought with money that is good for
7 kids. And we spent a good deal of time trying to
8 show the Court that these things do matter to
9 children in the districts. Having enough counselors
10 is important for the children in the classes; having
11 aides is important; having library services is
12 important; having adequate facilities is important;
13 having the money to be able to attract and maintain
14 teachers is all very important. And the thrust of
15 these witnesses, as well as the rest, was that these
16 are things that low wealth districts cannot afford to
17 buy under the present system.
18 We had arguments on this at the end of our case
19 and summarized these things in more detail and I, of
20 course, depend on that, I guess, for further
21 information.
22 Now, in terms of the Defendants' case, they had
23 presented two or three issues. One is that money
24 doesn't matter, which of course, is probably true if
25 you have it and don't need it. As the Court has

1 pointed out and we have, too, those districts that do
2 have the money, who are joined in this case as
3 Defendant-Intervenors, feel that money doesn't
4 matter, but then they have it and they're not giving
5 it back to us. And they're fighting doing that, of
6 course.
7 Also in terms of their experts, people can do
8 statistical tests, but no one could really say that
9 it's not important to the children to have more
10 teachers, to have better facilities, to be able to
11 attract and retain better teachers. The things that
12 you can buy with money is very important to the
13 children in the districts. We have not said that
14 nothing else matters. We have not said that if you
15 have an administrator who is no good or teachers who
16 are no good or community people who don't care, that
17 that doesn't have an effect. But the fact is - and
18 this has been pointed out in the other cases that
19 have talked about these issues -- that unless you
20 have that money, you can't do it. It is an essential
21 and it is required and unless you have the funds, you
22 cannot run a program.
23 We talked in some detail about the extra needs
24 of low income -- students from low income families
25 and Mexican Americans in the state. In general,

1 every one has said that because of the lack of
2 educational opportunities in the past, if anything,
3 costs extra amounts to educate what the state people
4 call high risk students or atypical students. We
5 have shown, Your Honor, a clear pattern of a
6 concentration of these students in the low wealth
7 districts. Those districts that have less money to
8 spend on their children have the extra burden of
9 having children who cost more to educate. It's a
10 double whammy and it has not been solved by the
11 state. In fact, no solution is in the offing as far
12 as we can tell.
13 The Defendants also put on some statistics and
14 they sought by the use of different arcane
15 statistical measures to show that things are not all
16 that bad. But if you look at it in light of the real
17 numbers and look at it in terms of Mr. Foster's
18 statistics, in terms of the Bench Marks publication,
19 in terms of the testimony here, the statistics went
20 very little toward weakening any case that we have on
21 the differences in expenditures in the districts.
22 The Defendants also talked something about
23 local control and community of interests. And in the
24 California Supreme Court case that threw out their
25 school finance system, Serrano, they talked about

1 this some. And they said, in their case, local
2 control is the ability to spend more than the state
3 gives you. And that's the way they have defined it.
4 And if you look at that in terms of Texas or if you
5 look at that in terms of the testimony in the trial
6 here, it is clear that the low wealth districts do
7 not have this local control that the Defendants say
8 is important. The high wealth districts do.
9 And we have produced many exhibits, Your Honor,
10 talking about what a district can do with a certain
11 tax rate. The high wealth districts with three or
12 four or five cents tax rate can raise an extra
13 $100.00 for their kids, the low wealth districts, it
14 takes 30 or 40 or 50 cents to raise $100.00. So you
15 can see the disability -- the inability to construct
16 your program around the needs of your students that
17 the low wealth districts and the children in those
18 districts have.
19 In terms of the other states, Your Honor, there
20 have been, I think, eight states that have found
21 their school finance systems unconstitutional. And
22 as I've looked at the cases and I've looked at the
23 constitutions, it is clear that those clauses are
24 similar to the State of Texas, almost exactly the
25 same. On the other hand, it's also true that the

1 clauses are similar to those states that have upheld
2 their constitutional systems. So all we can really
3 tell by looking at those cases is that most of the
4 problems that this Court is confronting, have been
5 dealt with before and state supreme courts have still
6 found their systems unconstitutional. First the
7 state supreme courts have found that even though
8 Rodriguez said that under the Federal Constitution,
9 education is not a fundamental right, it still is
10 under state constitution. And all of the cases that
11 have gone our way have found that.
12 But they've also looked at other problems in
13 the Constitution, the Defendants have sought to bring
14 up in this case. They've talked about school
15 districts, themselves. Every state has a provision
16 that creates school districts to provide education.
17 This is not a unique thing in Texas to have school
18 districts or to have a constitution that speaks of
19 them. Every one of the states has a provision that
20 school districts can raise taxes and that school
21 districts can raise taxes for buildings and for their
22 programs. But none of these states have found these
23 matters to prevent a finding of unconstitutionality
24 of those school finance systems.
25 The Supreme Court of California dealt with this

1 in the greatest detail. And as I reread that opinion
2 this morning, I was amazed at how close it is to the
3 facts we have in this case. And I think that the
4 defense attorneys are going to give the Court some
5 opinions. If they haven't given you that one, we'll
6 give you that one. But needless to say, they have
7 summarized all of arguments and Serrano is considered
8 the major piece of state litigation in the area.
9 The Supreme Court of West Virginia reviewed all
10 the state constitutions and their education clauses
11 and came up with a definition of a thorough and
12 efficient education, which I've quoted in my brief.
13 But the important point is that all of these cases
14 have said that you cannot define either an adequate
15 or a thorough or an efficient education based just on
16 test scores, that you have to look at the total gamut
17 of what is in an educational program. You have to
18 look at the ability of those children to interact
19 with other children; you have to look at their
20 ability to have jobs when they get out of school.
21 Have you taught them any citizenship? Have you
22 taught them to learn for themselves? Have you given
23 them an opportunity equal to that of other children
24 in other districts? Have you given them adequate
25 facilities and programs? All of these things go into

1 a definition of an adequate education, not just have
2 you scored the right thing on the TEAMS test.
3 Now, we have spent during the course of the
4 litigation some time talking about what a better
5 system might look like. And although we originally
6 had objected to it, feeling that it should await a
7 final decision on the merits, in fact, the
8 discussions have probably been helpful in showing the
9 weaknesses of the present system.
10 It is clear, under the present system, that
11 unless the state spends either significantly more
12 money or else the state reconstructs the taxing
13 authorities, that the state will not give equal
14 opportunity to the children in the districts in the
15 state.
16 In terms of that equal opportunity, we had a
17 discussion with the Court about the difference
18 between spending the same amount and equal
19 opportunity for children. And I went sort of with
20 the option of spending the same amount after you
21 accounted for cost. That still is my position
22 because I think it is -- equal opportunity is at its
23 heart the same right, the same chance at resources to
24 use in your education. And in terms of the equal
25 expenditures, of course, that would have to be

1 dependent on the cost of education in the districts.
2 The concept that Mr. Foster has given us in terms of
3 student unit would be a good place to start.
4 Dr. Verstegen, one of the Defendants' experts,
5 spoke of a weighted student approach. But after you
6 look at the special needs of these students, the
7 state must design a system that within some -- within
8 an insignificant range, as the Serrano case called
9 it, gives students the same resources per year for
10 their education.
11 And that's the thrust of our prayer in this
12 case.
13 Your Honor, I'm going to pass it on to my
14 co-counsel and I would like to preserve a few minutes
15 at the end, if we all still have the energy to do
16 that, to respond.
17 I would like to thank the Court, again, for
18 your patience and we've certainly enjoyed the battle.
19 But again, I want to stress that we started this case
20 and we must, at least, end our portion of it talking
21 about the children in the state and they are being
22 denied equal educational opportunity for sure.
23 Thank you.
24 THE COURT: Thank you, Mr. Kauffman.
25 Mr. Richards.

1 MR. RICHARDS: May it please the Court,
2 I'll try to talk a little bit about what we see to be
3 some of the legal concepts that are here and try to
4 see if I can put some in content.
5 We are attacking a system of public school
6 finance in Texas, which is, as Mr. Kauffman says, a
7 statewide system mandated by -- as such by the Texas
8 Constitution that does require, at least permits an
9 interaction between directly appropriated state funds
10 and locally raised taxes. As the evidence shows, in
11 our current system, that's approximately a 50/50
12 split, although now we are actually taxing, I think,
13 as I recall the figures are -- at least from the
14 Walker and Kirby publication and the test year, the
15 local taxpayers are producing 49 percent of the cost,
16 I believe. That's contrasted with 42 percent being
17 furnished by the state. And that may be slightly
18 off, in any event. And it's clear that those figures --
19 that is, that reliance on the local tax base produces
20 what we see to be grave disparities in the amount of
21 money being spent for children in their education.
22 We obviously do argue and feel -- it's a word I
23 always want to get to use, and I want to use it here.
24 We feel that it's ineluctable that the amount of
25 money spent on public education does indeed make a

1 difference to the children. That's just inescapable
2 and we think that's here, and we think the
3 differences are extraordinary.
4 Now, we've said to the Court, because lawyers
5 don't have -- are unable to communicate real words,
6 we've said that this is a fundamental right. That
7 is, the right to education created such under the
8 Texas Constitution. I think lawyers use that because
9 in that, things fall out from that. And I think we
10 -- all sides seem to agree here, as I read their
11 proposal as well as ours, if we have persuaded the
12 Court that it's a fundamental right as a legal
13 proposition, then the burden falls upon the State to
14 justify by some -- I think the word used is
15 compelling interest, the disparities and
16 discrimination that flow from the system. That is
17 the State's burden.
18 That's a burden which is a heavy one. It's one
19 we feel clearly they have not met. And indeed, as we
20 pointed out in our brief, United States Supreme Court
21 has said in Rodriguez if we found education to be a
22 fundamental right under the United States
23 Constitution, we would affirm the lower courts
24 finding that the Texas system is unconstitutional.
25 But we also attack the system under the

1 rational basis analysis. And here we are comforted
2 by the fact that there is a very recent Texas Supreme
3 Court opinion in Whitworth vs. Bynum, which we
4 discussed at length in our finding which sets forth
5 how Texas applies the rational basis standard.
6 That's the two issues sort of that I want to talk
7 about.
8 Now, you asked us very early on, maybe the
9 first time we came over and started arguing about
10 this case, which it seems to be a fairly trenchant
11 question, how do you determine whether something is
12 fundamental in a constitution?
13 And I, at least, have got some thoughts, I
14 would say. I suppose what I would suggest the first
15 thing we do is we look at the document, itself, and
16 see does it say anything about the subject of
17 education. And then I guess the next thing you would
18 do is what does it say about it. And then you might,
19 we think, properly look to see how did it get there.
20 And all of these are sort of relevant considerations
21 for the Court in determining what role education is
22 in Texas, in the Texas Constitution. Indeed, if I
23 read again, I think it's the Irving Intervenor's
24 briefs in this case, they suggest a test as to
25 whether or not education is a core concept in a

1 constitution. We think that it clearly is.
2 The Constitution, itself, says in Article VII,
3 Section 1 -- and we've said it so many times to the
4 Court, but I think it's still worth repeating -- "A
5 general diffusion of knowledge being essential to the
6 preservation of the liberties and the rights of the
7 people, it shall be the duty of the Legislature of a
8 state to establish and make suitable provision for
9 the support and maintenance of an efficient system of
10 public free schools." And so, one, we find the
11 concept in the Constitution and we find it linked in
12 the Constitution with the whole purpose of being
13 here. I mean, the only reason we've had government,
14 the only reason we've entered the social contract, as
15 I understand, or social compact, whichever way you
16 choose to say it, is provide for the liberities and
17 rights of the people. That's why we did this. And
18 education, the framers of this Constitution said,
19 these are inexplicably linked. That is, the rights
20 of the people, the freedom of the people to a system
21 of education.
22 I do not know how in a constitutional document
23 one could say with any greater strength that this is
24 a core -- a central concept. Well, how did it get
25 there? Well, how it got there -- I mean, I would

1 assume how it got there, since we got here, as far as
2 the State of Texas, with a unanimous Declaration of
3 Independence by the people -- I mean by the delegates
4 of the people of Texas, in the town of Washington,
5 March -- 2nd day of March, 1836 in which they --
6 there the delegates described what it was that sent
7 them on what was a fairly radical course at the time,
8 that is revolution and war with Mexico. And they
9 recited their grievances and they placed this
10 particular recitation right up cheek by jowl, a term
11 I like, with a right to trial by jury. They said
12 that Mexico hadn't given us a right to trial by jury,
13 that palladium of civil liberty, and it has failed to
14 establish any public system of education, although
15 possessed of almost boundless resources of the public
16 domain. And although it is an axiom in political
17 science, that unless the people are educated and
18 enlightened, it is idle to expect the continuance of
19 civil liberty or the capacity for self-government.
20 Of course, that is the same strain that reappears in
21 Article VII, Section 1, that is education being
22 linked inexplicably to a preservation of liberty and
23 life. So we think, in a conceptual way, that
24 education is indeed a fundamental right under the
25 Texas Constitution.

1 We also have argued and feel quite comfortable
2 in saying that when the Texas courts apply the
3 rational basis standard, you reach the same result.
4 Whitworth vs. Bynum, as the Court knows, Texas
5 Supreme Court found unconstitutional the Texas Guest
6 statute. It had been on the books for many, many
7 years, indeed had been held constitutional by the
8 Texas Supreme Court in an earlier dicision. In fact,
9 I think a dicision issued the same year as Mumme vs.
10 Marrs, which upheld the constitutionality of the
11 Texas Guest statute.
12 The Supreme Court applying rational basis
13 analysis said that, one -- and this is so Mr.
14 O'Hanlon -- and I'm going to anticipate his intent
15 argument, if he's going to still make that one -- but
16 that even where the purposes of legislation are
17 legitimate, even where the statutory purpose is
18 legitimate, nonetheless, in a rational basis analysis
19 we look to what the Legislature said it was going to
20 do, its purpose, and see if that's what they came
21 about and what they accomplished when they did it.
22 Same analysis that the Supreme Court applied
23 essentially in the University Interscholastic League
24 vs. Sullivan. Here, as we've said, the Legislature
25 at first, I think, looked at the Constitution. The

1 Constitution said, "We're going to make it an
2 efficient system and we're going to generally diffuse
3 knowledge.
4 And what we think the evidence in this case
5 shows to date is, we didn't get there with this
6 system of funding. The evidence of massive
7 inefficiencies, admissions indeed by the State's own
8 witnesses of inefficiencies. And it's clear that the
9 diffusion of knowledge, as uneven as it can be,
10 depending upon the wealth of the particular school
11 district involved. We look to Article 16.001 of the
12 Texas Education Code, says the purpose of all this is
13 to ensure that everyone gets an education appropriate
14 to their needs irrespective of local economic
15 conditions, which I would assume meant irrespective
16 of property wealth of the district. So if you look
17 purpose and result, they don't jive.
18 Now the state has come forward with two
19 defenses. And these are -- I like to call them the
20 last refuge of scoundrels. And that is the defenses
21 of community of interest and local control. Now the
22 first time someone got up and said to a court, it's
23 not fair that where -- isn't one person, one vote.
24 It's unfair that my vote is only worth one-hundredth
25 of a vote of those people living next door who have

1 that big cattle ranch. And the defendants say, well,
2 wait, that's necessary to preserve local control and
3 the communities of interest that are there protected
4 by this system. And it seems to me, it gets trodded
5 out any time anyone says, well, there's something
6 wrong with the system. We have suggested in our
7 findings and elsewhere, that indeed the system
8 doesn't preserve it and even if it did, that it is
9 not an adequate justification in any sense of the
10 word for the disparities that exists in the
11 educational system in Texas.
12 Now, I have written up on the board -- and
13 you've had so many numbers thrown at you -- and if
14 anybody wants to take a shot at these numbers, they
15 can do so because it's been analyzed 1,000 different
16 ways. But the 100 poorest districts in Texas have an
17 average tax rate of 74 cents per hundred. Those same
18 districts had an average expenditure per student of
19 $2,978.00 per student. The 100 richest districts
20 have a tax rate of 47 cents, some 27 cents per
21 hundred less, and spend an average of $7,233 per
22 student, a difference of somewhat over $4,000.00.
23 Now, I don't see how, no matter how you slice it,
24 that is screamingly unfair. And no amount of
25 lawyer's sophistry or wisdom or ingenuity could ever

1 paint that over as being a rational or just system.
2 And that's essentially what we say. Thank you, Your
3 Honor.
4 THE COURT: All right, sir. Thank you,
5 sir.
6 Yes, sir, Counselor.
7 MR. GRAY: Yes, sir. Your Honor, I will be
8 very brief, as my co-counsel has covered an awful lot
9 of ground. But I do want to put into focus, I don't
10 think there's any dispute but that this system is
11 discriminatory. It indeed provides a lot more
12 resources for one set of children and a lot less for
13 another. And the range is just beyond pale. You
14 have a system that at one end provides $2,112.00 per
15 student compared to $19,333.00 per student. And it's
16 not isolated. You know, a lot of people say, "Well,
17 this is just an isolated example." You've got it in
18 Bexar County, where Alamo Heights is taxing at 56
19 cents and spending $4,127.00. Their neighbor,
20 Southside, taxing at $1.10, right at twice the tax
21 rate, only able to raise and spend $2,853.00, almost
22 half as much to be spent and they tax twice as much.
23 Dallas County, the exact same example with Highland
24 Park in Dallas, taxing at 35 cents and raising and
25 spending over $4,800.00 per child, and yet their

1 neighbor Wilmer-Hutchins taxing, again, at $1.05 is
2 only able to raise and spend $3,500.00, taxing at
3 three times the rate and not even yet coming close to
4 what their neighbor is spending.
5 In this very county, Travis County, you've got
6 the Lake Travis School District taxing at 63 cents
7 and spending $7,227.00 per child, compared with their
8 neighbor, you can pick anyone you want to. I'll pick
9 Pflugerville, taxing at 68 cents, again taxing more,
10 and yet only able to raise and spend $2,800.00 per
11 child.
12 You go to Houston and look in Harris County,
13 you've got the Deer Park District in Harris County.
14 They're taxing at 64 cents and are raising and
15 spending $4,800.00 plus per child, compared to their
16 neighbor North Forest, taxing at $1.05, again almost
17 twice as much tax rate, and yet they're only able to
18 raise and spend $3,100.00 per child.
19 In every metropolitan county in this state, you
20 see these kind of stark comparisons side by side, but
21 it's not just in the urban areas. Exhibit 211 looked
22 at every single region in this state. The 20 service
23 regions that were broken down by the Texas Education
24 Agency and looked at how did those regions compare.
25 And on every single region, North Texas, South Texas,

1 East Texas, West Texas, urban, rural, you have these
2 kind of stark dramatic disparities, where you have
3 poor districts that are working their tail off,
4 taxing themselves at substantially higher rates than
5 their wealthy neighbors, and yet are able to only
6 raise and spend a paltry sum compared to what their
7 wealthy neighbors are able to raise and spend.
8 Now, what does the state respond and what do
9 the wealthy districts respond to that? They say
10 money doesn't make any difference. And they bring in
11 experts from Chicago to tell you that money doesn't
12 make any difference and I've looked at the TEAMS test
13 scores and that's it. But we're here to tell you
14 that education is a lot more than a TEAMS test. And
15 if money doesn't make any difference, why did the
16 state put in over $1 billion in education to the
17 House Bill 72 process? Why are the wealthy
18 districts, who have the money, fighting so, so hard
19 to make sure they don't have to give up any money, or
20 share any of the money with their poor neighbors?
21 And why is the state -- as we sit here today, why is
22 the Texas Education Agency telling the Legislature
23 that you have to fund an additional 2.4 billion
24 dollars for education? If money doesn't make any
25 difference, how do you ever, ever explain those

1 facts?

2 And the simple answer is, money makes a big

3 difference. What does it mean? It means facilities;

4 it means teaching materials; it means counselors to

5 keep kids in school, to help solve problems when

6 they're having them; it means administrators; it

7 means more teachers and more qualified teachers; it

8 means more aides and more qualified aides; it means

9 greater library resources; it means electronic aids,

10 such as calculators and computers; it means

11 everything that is a fabric of our educational

12 system, has as its basis, dollars. And the fact of

13 the matter is, you get what you pay for. And those

14 are Dr. Kirby's own words. He said it in a speech,

15 and he said it from this witness stand. And what you

16 see in the state is proof of that.

17 The poor, who don't have the money -- you saw

18 the pictures, they're in evidence, they are just as

19 stark as they can be, about the conditions that you

20 see, the leaking roofs, the dilapidated classrooms,

21 facilities that are clearly inadequate. Of course,

22 the state says, that doesn't make any difference.

23 Facilities don't have anything to do with the

24 educational process. That's not reality.

25 Now, education in today's society, has got to

1 mean teaching people to be productive citizens. And
2 our state has suffered a great, great failure at
3 that. And the Texas Education Agency has recognized
4 that. And in fact, in Exhibit 68 that was
5 introduced, they talk about the failures of this
6 system. And the fact of the matter is, for better or
7 for worse, poor districts, by and large, are having
8 to suffer a greater degree of failure than the
9 wealthy districts, because they don't have the
10 resources. But what is so, so critical is when the
11 state says, on its own, by its own Exhibit 68, that
12 these figures -- and they're talking about the
13 dropout rate -- represent a catastrophic loss, not
14 only to the individuals and to the educational
15 system, but also to the economy of the states. Over
16 one-third of the state's population over the age of
17 18 has not completed high school, and one-fifth has
18 not completed eighth grade. Almost two-thirds of the
19 household heads in the state that receive aid to
20 dependent families, do not have a high school
21 diploma.
22 And then they make the point that I think is
23 so, so telling. The state furthermore expends over
24 $11,000.00 each year for every prison inmate. 85
25 percent who left school early. And yet the system

1 that the state is defending, and that these wealthy
2 districts are defending, provide poor districts less
3 than one-fifth of what the state is spending on its
4 prisoners. Just to house prisoners who did not
5 finish school. And I submit to you, that that's not
6 a rational use of state resources. And most
7 importantly, it's not a rational use of human
8 resources.
9 The justifications that you come back at the
10 state in the wealthy districts -- stop saying that
11 money doesn't make a difference, they then step back,
12 and their defense is, local control and community of
13 interest, like Mr. Richards talked about.
14 And I need to pose a few questions to you.
15 First, local control for whom? We maintain, and I
16 think the record is very clear, the only districts
17 who have the luxury of local control in this state
18 right now, are the wealthy districts, who are able to
19 raise and spend unlimited sums at virtually nominal
20 tax rates compared to our clients, the poor
21 districts. They have no local control. And to them,
22 local control was just a cruel myth, because all of
23 their resources are having to go to spend for the
24 educational mandated laws by the state. All, which
25 we say, are fine, by and large, but they've got to be

1 paid for, and for facilities, and for debt service.
2 The poor districts do not have the discretionary
3 funds that the wealthy districts say are so, so
4 important to their program.
5 Then they say, "Well, but you, as a local
6 district, you can determine your destiny. You can
7 set your own pace." The state dictates what has to be
8 taught. The state dictates who gets out of school by
9 mandating exiting tests. The state dictates minimum
10 teachers' salaries. The state dictates teacher
11 discipline. Teachers can appeal discipline hearings
12 all the way up to the Commissioner of Education. The
13 state says how many minutes you must teach in a given
14 day, in a given year. The state says how many
15 library books you have to have in your library, per
16 student. The state says what textbooks you use. The
17 state dictates how many pupils you have to have in
18 the class, minimum pupils it has. The state dictates
19 who can and who cannot participate in extracurricular
20 activities.
21 We maintain that those are all meaningful
22 elements of local control. That the state has, by
23 its own intent and design, has taken away from the
24 districts. And they have taken that local control
25 away, possibly for a very, very good reason. But

1 now, when it suits their purposes to defend an
2 extremely discriminatory system, they come back and
3 say, it's all because of local control. And I submit
4 to you, the only people in this state, and the only
5 school districts in this state who enjoy local
6 control, are those school districts that are
7 advantaged under the current system. Those districts
8 who have an ability to raise and spend virtually
9 unlimited sums on the education of their children.
10 And those districts that don't have local control are
11 those poor districts who are barely getting by, doing
12 what the state mandates they must do, and are having
13 to pay tax rates that are three and four times what
14 the wealthy are doing, just to get to that point.
15 The last defensive measure the state takes, and
16 the wealthy districts take, is community of interest.
17 And they say that you can't do anything about this
18 system, because it would adversely effect the great
19 and deep communities of interest for running school
20 districts. Yet, the evidence shows you that school
21 districts cross multiple cities' lines, they cross
22 multiple county lines. If you look at their maps,
23 you'll see they're an absolute hodgepodge of chaotic
24 lines that are drawn in every different direction,
25 for inexplicable reasons. The Carrollton-Farmers

1 Branch superintendent, when he testified, I believe
2 he said that his district was in parts of four or
3 five different cities. And it was in parts of two
4 different counties. And yet they say there's a
5 community of interest. And yet its cutting five
6 different cities in pieces to put together this
7 school district. And that's not atypical. In fact,
8 that is typical. That you will see, looking through
9 the maps, as I know the Court has, that they are a
10 hodgepodge chaotic assembly of lines that, from our
11 point of view, are drawn for one and only one reason,
12 and that is to ensure that the haves continue to be
13 the haves, and the have nots continue to be the have
14 nots.
15 And the bottom line to all this, is what's the
16 result? And the result is, that under the state's
17 system -- which is a function of two things. It's a
18 function of the formula, but more importantly, it's a
19 function of the wealth within the respective district
20 lines. And those two things in combination, lead to
21 one result, and only one result. Which is, you're
22 going to have poor districts forever, that will tax
23 at rates higher than the wealthy districts forever,
24 and yet will never be able to raise and spend
25 sufficient sums of money to educate their children on

1 levels comparable to what the wealthy districts are
2 doing right now.
3 And the end result of it is, that we will
4 educate another generation of children, where one set
5 has an education far superior to another set. We
6 have dropouts that continue to run rampant. And we
7 have a society that in many, many ways, is choosing
8 to turn its head against those children, who for no
9 fault of their own, through pure luck of the draw,
10 happen to reside in a property poor district.
11 And we submit to Your Honor, that that, no
12 matter what standard you apply, whether education be
13 a fundamental right, or whether you just look at the
14 system and say, is this rational? Is this rationally
15 related to any legitimate state purpose? A system
16 that forever mandates one group of citizens to an
17 education that is inferior to others? And we submit
18 to you that it's not rational. It cannot be made to
19 be rational, and that's it.
20 Thank you, Your Honor.
21 THE COURT: All right, sir. Thank you,
22 sir.
23 Who is going to argue first, over here?
24 MR. TURNER: I am, Your Honor.
25 THE COURT: That's right, Mr. Turner.

1 MR. TURNER: May it please the Court, it
2 gives me a great deal of pleasure to rise to begin
3 the argument on behalf of the Defendant and
4 Defendant-Intervenors. Particularly in light of the
5 poll, Your Honor, we took among attorneys in this
6 case a few weeks ago, where it was determined that I
7 was a graduate of the property poor school district
8 among all of the attorneys in the case.
9 THE COURT: All right, sir.
10 Well, that's obvious. But I have to say,
11 you've come a long way.
12 MR. TURNER: Thank you, Your Honor.
13 Your Honor, this is a case that challenges a
14 state system of public school finance that has, in
15 the last three years here in Texas, infused 2.7
16 million dollars into public schools. A state system
17 that distributed two-thirds of that new money to the
18 poorest one-third of the school districts in the
19 state.
20 This is a case about a law that we've all
21 referred to as House Bill 72, which was a bill
22 lobbied for vigorously by the Plaintiffs and the
23 Plaintiff-Intervenors in this case, who acknowledge
24 that this was the most far-reaching reform ever
25 enacted in the state. And yet they contend before

1 this Court, that it was not enough. This case before
2 us was filed before House Bill 72 passed. But it
3 really dates back to the early 1970s, when some of
4 these same Plaintiffs brought this suit in federal
5 court to declare the Texas system of school finance
6 unconstitutional. That suit, San Antonio versus
7 Rodriguez, the Plaintiffs lost before the United
8 States Supreme Court. But their loss did not
9 interrupt Texas' commitment to the pursuit of equity
10 in school finance, along with other important
11 educational goals. And we can look to the Plaintiff --
12 the lead Plaintiff in this case, Edgewood Independent
13 School District, to see just how far this state has
14 come. When the Supreme Court wrote its opinion in
15 San Antonio vs. Rodriguez, in 1973, it quoted 1967
16 figures to show that Edgewood, at that time, was
17 spending $222.00 per pupil in state and local funds.
18 For the 1985-'86 year, Edgewood was spending at least
19 $2,646.00 per student in state and local funds. By
20 my calculation, that's an increase of over 1,100
21 percent, for an average of more than 60 percent each
22 year for the last 18 years.
23 When the Supreme Court wrote, in 1973, some of
24 the wealthier districts are actually receiving more
25 state funds than poor districts, such as Alamo

1 Heights, when compared to Edgewood, we can see that
2 today, in the case before you, that is no longer the
3 case. Now the state spends overwhelmingly more money
4 on the property poor districts than it does on the
5 wealthier districts. The change from then to now did
6 not come all at once. But a major part of it came in
7 1984 when House Bill 72 was passed.
8 I've already mentioned the 2.7 billion dollar
9 increase in state aid, that was a part of House Bill
10 72. And this Court has seen Defendants' Exhibit 30,
11 which shows that as a result of House Bill 72, from
12 1983-'84 to '84-'85, state revenues in the bottom
13 tenth of school districts in wealth went up almost
14 $266 million, while the top tenth of school
15 districts' state revenues went down almost $10
16 million. So the bottom tenth increased by 53
17 percent, while the top tenth decreased almost 13
18 percent.
19 In fact, in the first year of the
20 implementation of House Bill 72, several hundred of
21 our wealthiest school districts lost $124 million.
22 And in the second year, additional districts lost
23 additional millions, and those dollars went to the
24 poorer districts. House Bill 72 not only gave the
25 poorer school districts more money, it also reduced

1 the amounts going to many wealthier districts, and
2 gave it to the poor districts.
3 But for these Plaintiffs, the commitment to
4 equity shown by the state in these years since
5 Rodriguez, has not been enough. Plaintiff school
6 districts in this state would say to us that this
7 suit is brought to secure more money for the poor
8 districts. If that were in fact the case, the issue
9 before the Court could be summarily dismissed, for
10 the level of funding is clearly a legislative
11 function. While the progress toward greater and
12 greater equity in the Texas system of school finance
13 is undisputed, Plaintiffs now contend that equal
14 dollar expenditures are required by the Texas
15 Constitution. Knowing full well that unless there
16 are caps on spending at the local level, or massive
17 consolidation and redrawing of districts lines to
18 equalize property wealth, a system that is dependent
19 upon state taxes for almost one-half of its funding,
20 and local taxes for the other half, can't be
21 reasonably expected to produce equal dollar
22 expenditures.
23 The sharing of responsibility for the funding
24 of education is enshrined in our Texas Constitution.
25 And it has been a part of the tradition of our

1 country, since the Massachusettes Bay Colony in 1647,
2 passed the very first law in the subject requiring
3 local communities to establish public schooling.
4 As Defendants, we have pointed out that the
5 Texas Foundation School Program, which funds the bulk
6 of all state dollars to property poor districts, is,
7 by accepted national standards, an equitable system
8 of public school finance. The Plaintiffs have not
9 offered any contradiction of the compliance of the
10 Texas system to accepted national standards. Dr.
11 Hooker, who testified on behalf of the Plaintiffs,
12 said in his view, from his armchair position as an
13 observer, he didn't think it was equitable. We have
14 had other suggestions that the system is not
15 equitable. But the ranges of equity that are looked
16 at on the national level are complied with in the
17 Texas system. Mr. Gray continues to point out to the
18 Court, the very lowest spending district, and the
19 very highest spending district in the state.
20 Clearly, again, to acknowledge to the Court, that the
21 highest spending district is probably a district of
22 14 or 15 students, clearly requiring an excess of
23 expenditures per pupil.
24 The very heart of the minimum Foundation School
25 Program concept, which was devised in the 1920s and

1 adopted by virtually every state in the union, is to
2 provide a basic mechanism for equalizing the wealth
3 that exists in -- the variations in wealth that
4 exists between school districts. In Texas, this
5 system has preserved local control, stimulated
6 additional new dollars in support of education,
7 maintained broad political support for educational
8 funding, and promoted the constitutional goal of
9 efficiency in the providing of public education. For
10 a multitude of reasons, which we will set forth
11 today, we believe this system should be upheld.
12 I want to refer the Court to the San Antonio
13 versus Rodriguez case, because I think the reasoning
14 and the rationale followed by the court in that case
15 is applicable to the case at hand. Virtually every
16 issue that this Court faces today was decided by the
17 United States Supreme Court in Rodriguez. The issues
18 in Rodriguez were as follows: first, is there
19 discrimination against a suspect class on the basis
20 of wealth? In Rodriguez, the court said no. The
21 court had several reasons for saying no to that
22 question. First of all, there is no reason to
23 believe that poor people are necessarily clustered in
24 the poor school districts.
25 Secondly, there is no absolute deprivation of

1 any benefit. The court wrote, "Where wealth is
2 involved, the equal protection clause does not
3 require absolute equality, or precisely equal
4 advantages."
5 Further, when Texas asserts "that the Minimum
6 Foundation Program provides an adequate education for
7 all children in the state..." No evidence had been
8 presented to persuasively show the court that that is
9 not the case. There is no suspect class, according to
10 the Court in Rodriguez. And quoting from the Court,
11 they said, "However described, it is clear that
12 appellees' suit asks this Court to extend its most
13 exacting scrutiny to review a system that allegedly
14 discriminates against a large, diverse, and amorphous
15 class, unified only by the common factor of residence
16 in districts that happen to have less taxable wealth
17 than all other districts."
18 Next, the court addressed the question, which
19 is before this Court, is there a fundamental right to
20 an education? The court clearly said no, and for
21 these reasons: first of all, importance is not the
22 issue. On both sides of this counsel table, I think
23 it's abundantly clear we all respect the importance
24 of education. But in Rodriguez, the court said
25 importance is not the issue.

1 Secondly, education is not guaranteed, in that
2 case, by the Federal Constitution.
3 Thirdly, education falls within the court's
4 general rule of not subjecting a state's social and
5 economic legislation to strict scrutiny.
6 Fourthly, even if some identifiable quantum of
7 education is constitutionally protected, Texas has
8 provided that. And quoting from the court, "Even if
9 it were conceded that some identifiable quantum of
10 education is a constitutionally protected
11 prerequisite to the meaningful exercise of either
12 right to vote or to speak, we have no indication that
13 the present levels of educational expenditures in
14 Texas provide an education that falls short."
15 Nextly, the court said that "The court should
16 not use strict scrutiny where the state system has
17 clearly proceeded forward, historically, with
18 reform."
19 Next, the Court should refrain from intruding
20 upon problems relating to the raising and disposing
21 of public revenues. Quoting from the Court, "We
22 stand on familiar ground when we continue to
23 acknowledge that the Justices of this Court lack both
24 the expertise and the familiarity with local problems
25 so necessary to the making of wise decisions with

1 respect to the raising and disposition of public
2 revenues....In such a complex arena in which no
3 perfect alternatives exist, the Court does well not
4 to impose too rigorous a standard of scrutiny lest
5 all local fiscal schemes become subjects of criticism
6 under the Equal Protection Clause." The Court also
7 said, "Education, itself, is a complicated subject
8 that the Court does well to avoid intruding upon."
9 Quoting from the Court, they wrote, "The very
10 complexity of the problems of financing and managing
11 a statewide public school system suggests that 'there
12 will be more than one constitutionally permissible
13 method of solving them,' and that, within the limits
14 of rationality, 'the Legislature's efforts to tackle
15 the problems' should be entitled to respect. On even
16 the most basic questions in this area the scholars
17 and educational experts are divided. Indeed, one of
18 the major sources of controversy concerns the extent
19 to which there is a demonstrable correlation between
20 educational expenditures and the quality of
21 education....Related to the questioned relationship
22 between cost and quality is the equally unsettled
23 controversy as to the proper goals of a system of
24 public education."
25 Testimony in this case, Your Honor, clearly

1 indicates that controversy still exists.
2 And finally, in determining whether or not
3 there should be a fundamental right to education, the
4 court said, or asked, is there a rationally -- is the
5 Texas system rationally related to a legitimate state
6 interest? To which the court answered, yes, there
7 clearly was a rational relationship to a legitimate
8 state interest, that state interest being local
9 control.
10 Your Honor, Mr. Richards and Mr. Gray would
11 attempt to suggest to the Court that the test of
12 rationality is one that suggests that the Court may
13 simply look at the system in place and determine
14 whether or not, in the Court's view, it's rational.
15 Whether or not the scheme of school districts that we
16 have, and the disparities of wealth that we have, and
17 the efforts of the state offset those disparities,
18 whether or not that is rational. Whether differences
19 in levels of spending are rational. But Your Honor,
20 that is not the test of rationality under the equal
21 protection clause. The test is simply, is the Texas
22 system related -- rationally related to a legitimate
23 state interest? So first we must find what is the
24 legitimate state interest that's present here, and is
25 the system rationally related to that specific state

1 interest? A much narrower concept of rational basis
2 than the one suggested to you by Mr. Richards and Mr.
3 Gray.
4 Plaintiffs have raised in this case the same
5 argument that was raised in the United States Supreme
6 Court, in Rodriguez, regarding local control. They
7 have suggested that poor school districts do not have
8 the same amount of local control as rich school
9 districts. But the Supreme Court in the United
10 States rejected that argument. The court said,
11 "Appellees do not question the propriety of Texas'
12 dedication to local control of education. To the
13 contrary, they attack the school-financing system
14 precisely because, in their view, it does not provide
15 the same level of local control and fiscal
16 flexibility in all districts. While it is no doubt
17 true that reliance on local property taxations for
18 school revenues provides less freedom of choice with
19 respect to expenditures for some districts than for
20 others, the existence of some inequality in the
21 manner in which the State's rationale is achieved is
22 not alone a sufficient basis for striking down the
23 entire system. It is also well to remember that even
24 those districts that have reduced ability to make
25 free decisions with respect to how much they spend on

1 education still retain under the present system a
2 large measure of authority as to how available
3 resources are allocated."
4 For each of those reasons, Your Honor, we think
5 that the rationale of the original Rodriguez case are
6 appropriate to be applied by this Court, today.
7 I want to spend my closing time discussing, in
8 some greater detail, the nature of the fundamental
9 right analysis that we think appropriate for this
10 Court to apply. Plaintiffs, in this case, have
11 fastened upon the language of San Antonio versus
12 Rodriguez to advocate that education be found to be a
13 fundamental right under the Texas Constitution
14 because it is explicitly or implicitly guaranteed in
15 that Constitution. The attempt to use a Supreme
16 Court of the United States' language in Rodriguez, to
17 create a fundamental right to education under the
18 Texas Constitution is, we believe, inappropriate for
19 several reasons: first of all, the context of the
20 Supreme Court's language refutes the simplistic
21 position taken by the Plaintiffs. Rejecting the
22 proposition that fundamental rights under the United
23 States Constitution were to be determined by
24 evaluating the centrality or importance of a given
25 right to society, the Supreme Court in Rodriguez held

1 that the answer to whether education was a
2 fundamental right lies in assessing, and I'm quoting,
3 "Lies in assessing whether there is a right to
4 education explicitly or implicitly guaranteed in the
5 Constitution." Capital C, Constitution, referring to
6 the Federal Constitution.
7 The court specifically pointed to the example
8 of welfare benefits discussed in Dandridge versus
9 Williams, another United States Supreme Court
10 decision in 1970. And noted, "that while such
11 welfare benefits were of central importance, and
12 involved the most basic economic needs, the benefits
13 were nevertheless not of such a fundamental nature as
14 to require strict scrutiny." The Rodriguez analysis,
15 itself, would therefore reject as constitutionally
16 significant Plaintiffs' appeal to the, quote,
17 "central role that the issue of public education has
18 played in this state." According to Rodriguez,
19 centrality is not the issue. Importance is not the
20 issue. It does not even matter whether in common
21 speech, the adjective "fundamental" might be used to
22 describe a right. In Plyler versus Doe, where the
23 United States Supreme Court said that Texas must
24 educate illegal aliens. The majority writing for the
25 court acknowledged that education is a fundamental --

1 has a fundamental role in maintaining the fabric of
2 our society. And yet they nevertheless, in that
3 majority opinion, reiterated the holding in
4 Rodriguez, that education is not a fundamental right.
5 The court found in Rodriguez, that before a
6 governmental classification would be subjected to
7 exacting scrutiny, it required when its, quote,
8 "fundamental" rights are implicated, it had to be
9 demonstrated that the right was explicitly or
10 implicitly guaranteed in the Federal Constitution.
11 Now, when we take that language, as the
12 Plaintiffs have done, and try to lift that out of
13 context and say it should apply today before this
14 Court, therefore, since education is mentioned in our
15 Constitution, from their view, they must prevail in
16 declaring education a fundamental right. We simply
17 point out to the Court that there is a great deal of
18 difference in the nature of the State and the Federal
19 Constitution.
20 The actual test proposed by the Supreme Court
21 for determining whether a right was fundamental was
22 based upon a clear analysis of the U. S.
23 Constitution. The Supreme Court did not purport to
24 lay down a principle to be used in the construction
25 of state constitutions. To have done so, as

1 Plaintiffs attempt to do here, would have
2 demonstrated gross disregard for the fundamental
3 differences between Federal and State Constitution.
4 Texas, as many other states, has many laws
5 which are usually considered legislation, inserted
6 into its Constitution. Unlike the United States
7 Constitution, which is a document of restricted
8 authority and delegated powers, the Texas
9 Constitution does not restrict itself to addressing
10 only those areas that are fundamental. The Texas
11 Constitution is, in this regard, similar to the
12 constitutions of most other states. It is therefore
13 not surprising that a majority of the states faced
14 with the question of whether education should be
15 found fundamental under their constitutions have held
16 that it is not, and have declined to take the
17 Rodriguez test out of context and to apply it to
18 their state constitutions.
19 The use of the phrase, quote, "explicitly or
20 implicitly guaranteed" test is therefore
21 inappropriate in view of the nature of the Texas
22 Constitution. To apply this test to the Texas
23 Constitution was imminently reasonable in view of the
24 nature of the United States Constitution -- or excuse
25 me, to apply the test to the Texas Constitution,

1 which was reasonable, in view of the United States
2 Constitution, would turn the equal protection clause
3 into a growing monster that would devour innumerable
4 other government services involving rights that
5 might, along with education, be viewed as "explicitly
6 or implicitly guaranteed" in the Texas Constitution.
7 In any event, education is not guaranteed under
8 the Texas Constitution. So irrespective of the
9 reasoning of Rodriguez, and the previously mentioned
10 point, it's important for us to understand that the
11 Texas Constitution makes a clear distinction between
12 those rights guaranteed to individuals as set forth
13 in Article I of our Texas Constitution, known as the
14 Texas Bill of Rights, and the declarations of
15 legislative responsibility discussed further on in
16 our Texas Constitution, such as Article VII, Section
17 1, which says, "It shall be the duty of the
18 Legislature of the State to establish and make
19 suitable provision for the support and maintenance of
20 an efficient system of public free schools."
21 In Lujan versus Colorado State Board of
22 Education, the Colorado Supreme Court acknowledged
23 this distinction by reasoning, as follows: on its
24 face, Article IX, Section 2, of the Colorado
25 Constitution, which is like our Article VII, Section

1 1, merely mandates action by the General Assembly.
2 It does not establish education as a fundamental
3 right, and it does not require that the General
4 Assembly establish a central public school finance
5 system restricting each school district to equal
6 expenditures per student.
7 It would also, Your Honor, be improper, we
8 think, to identify a fundamental interest in an area
9 which is essentially an area of social and economic
10 legislation.
11 The Plaintiffs' appeal again to the language of
12 Rodriguez to establish education as a fundamental
13 right ignores the broader context of the Supreme
14 Court's decisions relating to issues comparable to
15 that addressed in Rodriguez. A review of that
16 context reveals that the Court wisely rejected
17 attempts to implicate fundamental interests in areas
18 of essentially social and economic legislation.
19 For example, in Dandridge versus Williams,
20 decided by the United States Supreme Court in 1970,
21 the Court upheld a provision of Maryland's aid to
22 families with dependent children program that limited
23 the monthly grant to any one family to $250.00,
24 regardless of the size of the family or the computed
25 need of the family. Although the Court recognized

1 that the subsistence benefits were of central
2 importance, and involved the most basic economic
3 needs, it concluded the benefits were nevertheless
4 not of such a fundamental nature as to require strict
5 scrutiny. In so concluding, the court remarked, and
6 I quote, "Here we deal with state regulation in the
7 social and economic field, not affecting freedoms
8 guaranteed by the Bill of Rights, and claimed to
9 violate the Fourteenth Amendment only because the
10 regulation results in some disparity in grants of
11 welfare payments to the largest AFDC families. For
12 this Court to approve the invalidation of state
13 economic or social regulation as overreaching would
14 be far too reminiscent of an era when the Court
15 thought the Fourteenth Amendment gave it power to
16 strike down state laws 'because they may be unwise,
17 improvident, or out of harmony with a particular
18 school of thought.' That era long ago passed into
19 history." End of quote.
20 Rodriguez, therefore, Your Honor, was rooted in
21 the Court's steadfast refusal to give constitutional
22 statute to wealth distribution schemes,
23 redistribution schemes, under the guise of a
24 fundamental right analysis. The complex problems
25 involved in addressing traditional social ills were

1 to be left to the legislatures. Thus, in Rodriguez,
2 against the challenge that Texas impermissibly relied
3 upon local property taxes to finance education, the
4 Court said this: "No scheme of taxation, whether the
5 tax is imposed on property, income, or purchases of
6 goods and services, has yet been devised which is
7 free of all discriminatory impact. In such a complex
8 arena in which no perfect alternatives exist, the
9 Court does well not to impose too rigorous a standard
10 of scrutiny lest all local fiscal schemes become
11 subjects of criticism under the Equal Protection
12 Clause."
13 And regarding the appropriate standard for
14 review of legislative attempts to provide schooling
15 to the state's children, the Court further had this
16 to say: "The very complexity of the problems of
17 financing and managing a statewide public school
18 system suggests that 'there will be more than one
19 constitutionally permissible method of solving them,
20 and that, within the limits of rationality, the
21 Legislature's efforts to tackle the problems' should
22 be entitled to respect."
23 What Rodriguez represents, Your Honor,
24 therefore, is not a case that can be so readily
25 dismissed from this Court's consideration as

1 Plaintiffs would desire, with the exception of
2 lifting out of context the language that refers to
3 "explicitly or implicitly guaranteed by the
4 Constitution." But rather, the Rodriguez case is a
5 very well reasoned justification, consistent with a
6 broader range of cases, for a court to refrain from
7 subjecting the providing of education to a
8 fundamental right analysis. The clear application of
9 the reasoning of Rodriguez should be decisive in our
10 present case.
11 Additionally, Your Honor, we think that the
12 defining of education as a fundamental right would
13 expose state and local school districts to
14 potentially crippling litigation. The use of the
15 test that has been suggested by Plaintiffs to make
16 education a fundamental right would also raise the
17 possibility of creating a constitutional cause of
18 action on the part of individual students against
19 local school districts, or against the State, itself,
20 for educational malpractice in the administration of
21 this allegedly, quote, "fundamental" right. The
22 impact of such a new cause of action on the delivery
23 of education services is difficult to predict, but it
24 could be particularly significant in the areas such
25 as the rendition of education to handicapped

1 students.

2 And although the Plaintiffs have proposed
3 certain alternatives to the present system of public
4 school finance which would purportedly equalize tax
5 bases without requiring that school districts tax
6 themselves at equal levels, once education is deemed
7 a fundamental right it is almost certain that
8 districts would not be allowed to levy varying tax
9 rates. If education is a fundamental right, how then
10 can its provision to students be gauged by the
11 willingness of taxpayers to tax themselves? The
12 attempt to say that equality of opportunity would
13 satisfy the demands of the equal protection clause
14 once education is deemed fundamental is wholly
15 unsupported by traditional equal protection analysis.

16 Nextly, Your Honor, we would like to point out
17 to the Court that the Texas Supreme Court has already
18 determined the appropriate standard of review for
19 education legislation, and that the standard is
20 inconsistent with the attempt to label education a
21 fundamental right.

22 The Texas Supreme Court has specifically held
23 that the standard of review of legislative provisions
24 for education is mandated by Texas Article VII,
25 Section 1 as the rational basis test. The 1931 case

1 of Mumme versus Marrs clearly held that the rational
2 basis test applied to the provision of education in
3 Texas.
4 Further, in the recent 1985 Supreme Court of
5 Spring Branch ISD versus Stamos, the court wrote, and
6 I quote, "Section 1 of Article VII of the Texas
7 Constitution establishes a mandatory duty upon the
8 Legislature to make suitable provision for the
9 support and maintenance of public free schools. The
10 Constitution leaves to the Legislature alone the
11 determination of which methods, restrictions, and
12 regulations are necessary and appropriate to carry
13 out this duty, so long as that determination is not
14 so arbitrary as to violate the constitutional rights
15 of Texas' citizens."
16 This holding sets forth, essentially, the
17 rational basis test. A test that cannot be applied
18 where a fundamental interest is implicated.
19 Therefore, the question of which level of scrutiny is
20 commanded by Texas Article VII, Section 1, and
21 correspondingly, whether a fundamental right is
22 implicated, has already been answered and affirmed by
23 the Texas Supreme Court. It must be recalled that a
24 determination of whether a right is fundamental is
25 simply a prelude to the determination of what

1 standard of review must be applied to a given state
2 action. In Mumme versus Marrs, however, the latter
3 determination, itself, was made. And therefore, as a
4 matter of law, education cannot be a fundamental
5 right under the Texas Constitution.
6 This is precisely the reasoning adopted by the
7 Texas Supreme Court in the recent Texas Supreme
8 Court, State of Texas versus Project Principle,
9 decided February 18, 1987. There the Appellees
10 argued that the provision of House Bill 72 relating
11 to teacher testing had to meet the strict scrutiny
12 standard because the statute impinged upon the
13 fundamental right to practice a profession.
14 The Court, however, looked at Schware versus
15 Board of Bar Examiners, a United States Supreme Court
16 in 1957, which had stated that a state "can require
17 high standards of qualifications...before it admits
18 an applicant to the bar, but any qualification must
19 have a rational connection with the applicant's
20 fitness or ability to practice law.' Upon that
21 reasoning, the court then found that, quote, "If a
22 state's standards are required only to be rationally
23 related to the state's purpose of licensing only
24 those who are qualified, then a person's interest in
25 practicing law is not a fundamental one. Likewise,

1 we hold a person's interest in teaching is not a
2 fundamental right."
3 The reasoning in Project Principle should be
4 followed here. And in that case, the Texas Supreme
5 Court, in a sense, reasoned backward to the
6 fundamental right question. It had authority that
7 licensing requirements needed only meet a rational
8 basis test; thus, the question of whether the right
9 to teach was fundamental was necessarily determined.
10 It could not be, given the already established
11 standard of scrutiny. The Defendants-Intervenors'
12 argument here is the same. The standard of scrutiny
13 for education legislation has already been determined
14 by Mumme versus Marrs, the rational basis test.
15 Thus, education cannot be a fundamental right.
16 Plaintiffs' attempt to discredit Mumme versus
17 Marrs merely because of its age should be summarily
18 rejected. As indicated above, the test adopted by
19 Texas in that case is precisely the test recognized
20 by a majority of the states that have considered the
21 fundamental right question in relation to education
22 since the early 1970s.
23 Finally, Your Honor, to determine that
24 education is a fundamental right would ignore the
25 provisions and the history of the Texas Constitution.

1 The attempt to find a fundamental right to education
2 under the equal protection clause conflicts with the
3 clear historical intent of Article VII, Section 1.
4 Although the Plaintiffs have fastened upon the
5 requirement in that section that the Legislature
6 provide, "An efficient system of public schools" to
7 justify finding education a fundamental right under
8 the Texas Constitution, this phrase was inserted by
9 way of an amendment in 1876 for purposes exactly
10 opposite those suggested by the Plaintiffs.
11 As testimony in this case has shown, the
12 insertion into the Texas Constitution of 1876 of the
13 language relating to the Legislature's responsibility
14 to provide for an efficient system of public free
15 schools was a deliberate limitation upon the State's
16 role in the provision of education. The new
17 provision was designed to diminish the constitutional
18 significance of education, not turn it into a
19 fundamental right. Moreover, the attempt to amend
20 this section in 1976 to make the Legislature's
21 responsibility that of providing for the equitable
22 support and maintenance of an efficient system was
23 defeated by the voters of this state.
24 In conclusion, Your Honor, we think that the
25 path that has been charted by the Plaintiffs for this

1 Court is the product of a simplistic appeal to San
2 Antonio versus Rodriguez, a rejection of the broader
3 context of that opinion, a departure from the
4 decisions of a majority of state courts, an ignorance
5 of the historical intent of the Texas Constitution,
6 and a willful disregard of the certain and alarming
7 consequences of the designation of education as a
8 fundamental right desired by the Plaintiffs. This
9 Court need not abandon education and its importance
10 in order to remain consistent with the overwhelming
11 weight of existing authority declaring that in spite
12 of its importance, education is not such a
13 "fundamental" interest as to subject a state's
14 financing scheme to strict scrutiny.
15 I would like to leave with the Court a brief
16 which we have prepared on the subject of fundamental
17 right of analysis. Also, I have a collection of
18 excerpts from the other state cases, which represent
19 a majority of state decisions which have held on this
20 subject, and have held favorably to our position in
21 this cause. And I also would leave with the Court a
22 copy of San Antonio versus Rodriguez, because we
23 believe that the rationale and reasoning of the court
24 in Rodriguez so clearly applies to the case before
25 this Court.

1 Thank you, Your Honor.
2 THE COURT: Thank you, sir.
3 All right, sir. Mr. Luna.
4 MR. R. LUNA: Thank you, Your Honor.
5 We again want to express our appreciation for
6 all of the time the Court has spent in the last two
7 and a half months listening to a lot of arguments
8 from lawyers, most of which you probably didn't care
9 to hear. The lawyers, themselves, have enjoyed I
10 think the time in getting to know each other over two
11 and a half months of working with someone on a daily
12 basis, even though we're all here for different
13 purposes, we have enjoyed each other's company. Our
14 competition has been spirited, and yet enjoyable. We
15 have learned everything, I think, from each other,
16 from the brands of cigarettes one prefers to smoke to
17 the types of foods they don't like. In that process,
18 as I've said, we have come to appreciate everyone's
19 efforts and skills and intelligence in working on
20 this case. And of course, we greatly appreciate the
21 Court's indulgence of all of the attorneys.
22 We, here on the defense side of the table,
23 found it interesting, I guess, in one day, on the
24 survey that Mr. Turner briefly alluded to at the
25 beginning of his talk. That in learning a little bit

1 about each other on all sides of the table, we were
2 surprised that the majority of the lawyers in this
3 room are from poor school districts. And I guess
4 that was even more surprising, whenever we put that
5 together with the fact that the Commissioner of
6 Education, Dr. Kirby, is also from a very poor school
7 district. Dr. Long, the superintendent of one of the
8 alleged rich districts, is from the very poorest
9 school district in Texas. And all of those people,
10 including our backgrounds, generally, is molded by
11 the fact that we all came from public schools, poor
12 backgrounds, and yet somehow managed to work our way
13 up to be in this courtroom arguing about education.
14 All of us realize, and we, more than anyone else, can
15 appreciate the importance of education. And yet,
16 there becomes a divergence of opinions on exactly
17 where you get to these different points in this case.
18 The fact of the matter is, that -- in my
19 opinion, from the very beginning of the case, the
20 Plaintiffs have presented to the Court, and very
21 well, very admirably, a very sympathethic case. But
22 as this Court admonishes every jury that has ever sat
23 in the jury box, legal cases cannot be decided upon
24 sympathy. And every juror is always told "Do not
25 decide this case on the basis of sympathy, bias or

1 prejudice, but only on the evidence in the law that
2 is presented in the courtroom."
3 Now, when we get down to the legal points, is
4 where the Plaintiffs' case begins to falter. And in
5 fact, I'm going to isolate one particular area in a
6 moment, and show the Court where they have never met
7 their burden of proof, nor have they met the element
8 of law in one very critical area. I'm going to give
9 -- even though Plaintiffs' attorneys have had over
10 two and a half months to cover this point, and even
11 though we're down to closing argument, I'm going to
12 direct their attention to it, and ask them to answer
13 this one last question, today, even though I won't
14 have an opportunity to respond. But I still want to
15 have them answer that question for the Court.
16 There are three constitutional issues, of
17 course, that are relevant, and in particular to this
18 Court in regard to the Texas Constitution. Article
19 VIII, Section 1, taxation shall be equal and uniform.
20 Article VIII, Section 1e, that no state ad valorem
21 taxes shall be levied on any property in the state.
22 And then Article VII, Section 3, which authorizes
23 local school districts to levy and collect an ad
24 valorem tax. Ad valorem, that's just Latin, means to
25 value. So the tax is to the value of the property.

1 And the only thing that we're doing here, is that the
2 local school districts have the statutory and
3 constitutional authority to levy the individual taxes
4 within their school district. Well, that's an
5 important point.
6 And in Rodriguez, the court said that Texas has
7 adopted a dual approach to the financing of its
8 schools, relying upon mutual participation by the
9 local school districts and the state. Nobody denies
10 that. And yet, in the analysis, when we go through,
11 we're constantly melting the local effort and the
12 state effort. We're constantly flowing from the
13 State Constitution, and it's requirements, versus
14 equal protection requirements. We flow back and
15 forth sometimes without a clear delineation of the
16 rules and the constitutional proof required for each
17 element. In the case of Madeley versus the Trustees
18 of Conroe Independent School District, which is a
19 1939 case out of Beaumont Court of Appeals, they said
20 that the duty of the state is, under Article VII,
21 Section 3, that there is an expressed constitutional
22 mandate to the trustees of an independent school
23 district to levy and collect an ad valorem tax for
24 the maintenance of the public free schools of a
25 district and for the erection and equipment of the

1 school buildings in the district. I don't think
2 there's any dispute about that.
3 And yet now we come to Article VIII, Section 1.
4 Really, this is the crux of the Plaintiffs' entire
5 case. To a certain extent, I'm reminded sometimes of
6 the old West Texas story about the bus to Hobbs.
7 There is a bus line which runs from La Mesa, Texas to
8 Hobbs, New Mexico and crosses a time change at the
9 Texas/New Mexico border. One day, there was a
10 semi-inebriated fellow who stumbled in and asked when
11 the next bus to Hobbs was. The ticket salesman told
12 him that the bus left at 5:00. He asked when it got
13 to Hobbs. The salesman told him the bus got to Hobbs
14 at 4:50. And he nodded and stumbled out. He came
15 back in just a minute, and he said, "What time did
16 you tell me that bus left La Mesa again?" He said,
17 "The bus leaves La Mesa at 5:00 and gets to Hobbs at
18 4:50." He nodded and left again. A few minutes later
19 he was back. And he said, "I want to ask you one
20 more time, when does that bus leave La Mesa?" And the
21 ticket salesman said, "Look, I told you the bus
22 leaves La Mesa at 5:00. Do you want to buy a ticket
23 or not?" And he said, "No, I just want to know when
24 it leaves, because I want to watch when that sucker
25 takes off." Now, of course, what the distinction

1 there is simply that there's an invisible line, a
2 time zone. But we have that same issue here in this
3 case. And when I was trying to think of an analysis
4 of where the Plaintiffs have gone wrong, that's it.
5 There's a line that they have not seen.
6 Now, to show the Court exactly what we're
7 talking about, when we think about all of the issues,
8 the Plaintiffs continually come back to, there's a
9 difference in the tax rates. And you've heard that
10 even today. We've heard that for two and a half
11 months. One school district taxes at a low rate or a
12 high rate. Another district has more or less funds
13 to spend because of those rates. And those rates, of
14 course, are a function of the local property values.
15 I think that's been pretty clear. And they point to
16 the Texas Constitution, Article VIII, Section 1, that
17 taxation shall be equal and uniform. All right.
18 Here we are. This is the crux of their whole case.
19 And the Plaintiffs cannot win on that point. They
20 cannot do it. The reason is very simple.
21 The case of Wheeler versus City of Brownsville,
22 which I have cited early in this case, I cited it
23 when we had our Motions for Summary Judgment. The
24 Plaintiffs did not respond to it. I cited it when we
25 had our Motion for Judgment at the end of their case.

1 The Plaintiffs did not respond to it. In our
2 Findings of Fact and Conclusions of Law, I cited a
3 case, and they did respond to it with two cases,
4 which I'm going to discuss with the Court very
5 briefly.
6 But essentially, Wheeler versus the City of
7 Brownsville is a Supreme Court of Texas case, dated
8 1949, which holds quite simply that the rates that
9 we're talking about when we say equal and uniform,
10 are within a single school district. We're not
11 comparing one school district to another. Those
12 rates have got to be equal within the boundary lines
13 of that taxing unit. The Court -- Texas Supreme
14 Court, in that case, says to hold that each person
15 must receive the same benefit as another may from the
16 expenditures of money raised by taxation, would be to
17 hold that the law required an impossibility. For in
18 the very nature of things, some persons will derive
19 greater pecuniary benefit from the expenditure of
20 money for strictly public purposes than will others.
21 In fact, some may receive no benefit whatever, save
22 such as results to them from the preservation of
23 order, protection of property, and the general
24 prosperity which results therefrom. While others
25 may, and will be directly benefited by the increased

1 value of their property, an increase of their
2 business, which results from the expenditure of money
3 raised by taxation, or purposes in every respect,
4 strictly public.
5 Now, Wheeler sets the stage in 1949, and it was
6 a pure analysis of Article VIII, Section 1. I have
7 cited that case before. I've cited any number of
8 cases that agree with Wheeler. Smith versus Davis, a
9 Texas Supreme Court case in 1968. Norris versus City
10 of Waco, an old 1882 case. And Weatherly Independent
11 School District versus Hughes, a Texas court appeals
12 case out of Amarillo in 1931. It's the last case I
13 want to call your attention to, Weatherly versus
14 Hughes. I knew something was wrong when I saw that
15 very case cited by the Plaintiffs in these last two
16 cases in their Conclusions of Law. When I saw my
17 case cited as authority for their position, I knew it
18 couldn't be right. Because, in fact, up to that
19 point, they had never cited any case in favor of
20 their proposition that the tax rates had to be the
21 same between two school districts. Because the rule
22 is the opposite. Therefore, whenever you pull the
23 Wheeler case -- excuse me, the Weatherly Independent
24 School District case, and review it, it simply says
25 very clearly that taxes are equal and uniform within

1 the Constitution, when no person or class of persons
2 in the territory taxed, is taxed at a higher rate
3 than others in the same district, upon the same
4 values or thing, and when the objects of taxes are
5 the same, by whomsoever owned, or whatever they be.
6 Well, Weatherly doesn't stand at all for the
7 proposition that the Plaintiffs have suggested in
8 their response. In fact, they not only cite
9 Weatherly, but they go on to cite an additional case,
10 Bernhardt versus Port Arthur ISD. Well, I pulled
11 that one as well. And a review of Bernhardt also
12 shows that it, like Weatherly, discusses taxes within
13 a single taxing jurisdiction. Which then brings us
14 down to the bottom line. What authority do the
15 Plaintiffs have, or have they ever had in this entire
16 trial, for that proposition of the rates have got to
17 be equal. So that the Plaintiffs won't forget about
18 the question, I've written it on the chart. This is
19 a question they have ignored for two and a half
20 months. And I submit, that if they can't answer this
21 question, today, and give one case that opposes
22 Wheeler versus the City of Brownsville, they should
23 not win this case.
24 If they have no legal authority to back up
25 their most basic legal argument, then what they're

1 asking this Court to do is to rule on the basis of
2 sympathy, the one thing we should never do. Surely,
3 if the Plaintiffs have any kind of case at all, they
4 can fill in that blank. And I won't even be here to
5 respond to it, but I challenge them to show one case,
6 other than these two that they've already cited,
7 which obviously do not stand for that proposition.
8 "The equal protection and equality and
9 uniformative taxation clauses do not relate or apply
10 to expenditure of taxes." Well, that seems to be
11 opposite of what the Plaintiffs have been saying.
12 And I cited that in our Conclusions of Law. That's
13 from James versus Gulf Insurance Company, and that's
14 a pretty clear analysis of the Texas rule.
15 Now, "The constitutional rule of equality and
16 uniformity of taxation does not require that each
17 person receive the same benefit as others from
18 expenditures of money raised by taxation." That's in
19 Wheeler versus City of Brownsville.
20 "Equal protection does not entitle every
21 citizen to receive equal benefits each time
22 government money is spent. Such a standard would
23 make almost all government spending programs
24 unconstitutional." Weber versus City of Sachse,
25 Dallas Court of Appeals, 1979, citing Mumme versus

1 Marrs.

2 In addition, the Eastland Court, in an n.r.e.
3 case, Carter versus Hamlin Hospital District, held
4 the same thing. And that case went to the United
5 States Supreme Court and a cert. was denied.

6 Rodriguez held that "It has simply never been
7 within the constitutional prerogative of this court
8 to nullify statewide measures for financing public
9 services merely because the burdens or benefits
10 thereof fall unevenly depending upon the relative
11 wealth of the political subdivision in which citizens
12 live." Rodriguez addressed, of course, a number of
13 things, obviously, because it involves the same
14 school districts, the same state, and virtually the
15 same laws. Except, if anything, there's been an
16 improvement in the laws since Rodriguez was decided.
17 Goes on to say that, "Any scheme of local taxation,
18 indeed the very existence of identifiable local
19 governmental units, requires the establishment of
20 jurisdictional boundaries that are inevitably
21 arbitrary."

22 Now, the Plaintiffs have been arguing about
23 school district lines, saying some of them may be
24 irrational, crazy quilt pattern. We've seen that
25 phrase over and over. The U.S. Supreme Court has

1 already said that "Local governmental units are, by
2 definition, may have jurisdictional boundaries that
3 are inevitably arbitrary."
4 And they go on to say, of course, that it's
5 "Equally inevitable that some localities are going to
6 be blessed with more taxable assets than others. Nor
7 is local wealth a static quality." It has simply
8 "never been the prerogative of the court to nullify
9 the statewide measures," and so forth, I've given you
10 that. The court finally holds that "The court has
11 never doubted the propriety of maintaining political
12 subdivisions within the states, and has never found
13 in the equal protection clause any per se rule of
14 territorial uniformity." Again, the court is coming
15 back and shifting, now, from the Texas Constitution
16 on the equal and uniform to an equal protection
17 analysis. They're simply saying, there's no
18 requirement for territory uniformity. "The
19 individual taxing units are clearly authorized by our
20 decisions." And they go back and cite Griffin versus
21 the County School Board of Prince Edward County, and
22 some other federal cases, to show the history that
23 they have always authorized that. So the test then
24 becomes another test. And we move over to see
25 whether or not there is any discriminatory intent in

1 the financing system.

2 But before we get to that point, the one point

3 I want to make certain that I've -- at least I hope

4 that I've made very clear through the Summary

5 Judgment Arguments, Motions for Judgment, and now

6 today, in Closing Argument. The Plaintiffs have

7 never produced one shred of evidence that complies

8 with Article VIII, Section 1, that the taxation is

9 anything but equal and uniform. There are 164 --

10 1,064 school districts in the State of Texas. And

11 yet, they've never once shown that there is any

12 unequal tax effort in a district. Of course not.

13 The only thing they've talked about is the unequal

14 taxation between districts. And there simply is no

15 law on that.

16 The state's requirement, in view of the law, is

17 that the taxation within the boundaries of each

18 school district must be equal and uniform. Texas has

19 that. There's no question about it. There's been no

20 proof otherwise. That the state is not required to

21 assure that an equal local tax effort, as between

22 school districts in the state, raises an equal amount

23 of revenue to be used for education. They've not

24 produced any cases on that. The guarantee of equal

25 and uniform taxation does not require the state to

1 assure that equal amounts of money are spent on
2 education in school districts within the state. And
3 as a matter of law, the allegations of the Plaintiffs
4 concerning the Texas system of public school finance,
5 failed to state a cause of action under Article VIII,
6 Section 1.
7 And again, the only way that the Plaintiffs can
8 view this case successfully is, like the man in La
9 Mesa, is to ignore or not know that there is a
10 boundary line. There is. The Plaintiffs have argued
11 very briefly while ago that some of the boundaries
12 don't make sense. Well, not all of us have been
13 around when these boundary lines were put together.
14 There's been no evidence that they don't make sense.
15 In fact, the only evidence is to the contrary. And
16 the example used, just a moment ago, was of the
17 Carrollton-Farmers Branch boundaries. Dr. Dan Long
18 was up here as a witness, and he explained about the
19 boundaries. And he explained that in their district,
20 there were two cities, Carrollton-Farmers Branch, two
21 separate communities. Each maintained their own
22 individual school district. Now, why does the line
23 now encompass two cities, as was suggested over here?
24 Because the school system at Farmers Branch went
25 broke. They couldn't afford to run school.

1 Therefore, Carrollton Independent School District
2 took in their school district, and they called it
3 Carrollton-Farmers Branch Independent School
4 District.
5 Other cities, of course, the testimony was that
6 the school district lines come early, because all the
7 kids in the state have got to be in a school
8 district. But not all there is of the state are in a
9 city. Cities grow, hopefully. Some of them, of
10 course, may actually reduce in size, if they're not
11 successful cities. But for the most part, most of
12 the cities have grown. And as they grow out, many of
13 the cities cross those boundary lines. That's the
14 historical perspective that Dr. Long pointed out.
15 The City of Dallas has certainly grown; the City of
16 Houston has certainly grown and expanded its
17 boundaries. But the reason is that originally those
18 lines were laid out there as a community of interest
19 in order to educate the school children of this
20 state.
21 The suggestions brought out by the Plaintiffs
22 are probably as shocking, sometimes to me, being from
23 the Dallas area, as is the lack of legal authority
24 for their most basic proposition. And that
25 suggestion was that in order to secure funds for the

1 Mexican-American children along the Valley, they're
2 going to take it away from the rich districts. Well,
3 the rich districts include Houston and Dallas, which
4 have a high concentration of minorities, basically of
5 Blacks. So what they're saying is, in effect, we are
6 willing to take money away from the Black school
7 children of this state in order to transfer it to the
8 Hispanic children of this state. But even their own
9 witness, when confronted with that particular issue,
10 did not want to admit that that's what they were
11 doing. As you will recall, he said, "Well, I'd
12 rather not say specifically Dallas." And I asked him,
13 "No, you would rather speak generically of they, the
14 rich districts. But in effect, what you're talking
15 about is taking money away from the Black students of
16 Dallas and Houston, and transferring it somewhere
17 else." He didn't deny that, and yet I asked him why
18 he was uncomfortable in admitting it. Because that
19 is exactly what was going on. And of course, the
20 reason is, those urban districts will soon be
21 Hispanic.
22 The evidence was that within the next three to
23 six years, based upon current projections, those rich
24 districts will be majority Hispanic districts.
25 Therefore, their own analysis of equal protection to

1 protect Hispanic children cannot work, doesn't apply.
2 The evidence is contrary to that. They have failed
3 to establish any kind of class through the evidence
4 presented in this Court. And because of their
5 failure to present any law, we would submit that the
6 Plaintiffs, while having a sympathetic case, simply
7 cannot prevail in this Court.
8 THE COURT: All right, sir. Mr. Luna,
9 thank you very much.
10 Let's see, anybody else want to argue on this?
11 MR. BOYLE: Yes, Your Honor.
12 THE COURT: All right, sir.
13 Let's go along for about ten minutes with your
14 argument. I don't want to hurry you, but you think
15 we could -- would it be an imposition on you if we
16 interrupted you about 3:30?
17 MR. BOYLE: My argument, Your Honor, is
18 scheduled for ten minutes.
19 THE COURT: All right, sir. That will work
20 out fine then.
21 MR. BOYLE: May it please the Court, John
22 Boyle, along with James Deatherage, and Kenneth
23 Dippel, and Robert Brown, representing the Irving
24 Independent School District.
25 Your Honor, I'm not at all sure what the

1 relevancy of it is, but I was raised in Fort Worth.
2 I have no idea about the quality of the education.
3 We used to fight a lot, and I think that's how I got
4 here.
5 Your Honor, the Plaintiffs have stated
6 periodically and frequently that they are not truly
7 seeking consolidation of school districts. And in
8 fact, many of the Plaintiffs' school districts would
9 be against major realignments of all of 1,064
10 districts in the state. In the final analysis,
11 however, as witnessed by the oral arguments and in
12 their Findings of Fact and Conclusions of Law, this
13 is precisely what is being suggested. A total and
14 major realignment and consolidation of all 1,064
15 school districts, as set out on Pages 16 and Page 23
16 of the proposed Findings of Fact and Conclusions of
17 Law.
18 To achieve, essentially, the Plaintiffs stated
19 purposes, i.e., to have House Bill 72 declared
20 unconstitutional, and come up with some viable
21 alternative, as Mr. Gray stated, there are really
22 only two avenues of relief available. One, to
23 substantially increase the state funding, which would
24 likely result in a large increase in the number of
25 balanced budget school districts and/or a major

1 restructuring of the school district boundaries in
2 such a manner that all such school districts would
3 have the same amount of assessed valuation. As Mr.
4 Gray stated, that, in reality, is really the only
5 true way that you can accomplish what they hope to
6 achieve.
7 Any other alignment by county, for example,
8 would be fraught with the same problems alleged about
9 the current system. The Plaintiffs contend that
10 realignment is an available alternative for the
11 Legislature to consider; an alternative it could have
12 and should have considered when it passed House Bill
13 72. We contend that this is not a viable remedy.
14 And the Legislature does not have the power and
15 authority to pass a bill that would redraw the
16 boundaries of the 1,064 school districts of the
17 state, and in effect, equalize the assessed
18 valuations within each district. The reasons the
19 Legislature cannot do this, in our judgment, are as
20 follows: No. 1, Article VIII, Section 1 of the Texas
21 Constitution does require uniform and equal taxation.
22 That means the same tax rate is to be applied within
23 the district to all property.
24 All of the school districts in the state have
25 voted a maintenance tax. And nearly all districts

1 have outstanding and issued bonds, and voted, but
2 unissued bonds. It would be virtually impossible,
3 even assuming that some of the provisions of Article
4 VII, Section 3b, as addressed in the Magus versus
5 Freer Independent School District case, were
6 applicable to comply with the provisions of Article
7 VIII, Section 1.
8 The cases that have directly addressed the
9 question of uniform and equal are the Wheeler versus
10 City of Brownsville case, the Supreme Court 1949, and
11 that Mr. Luna made reference to; and the San Antonio
12 A.P. Railway Company versus State Commission of
13 Appeals case. Both set out clearly that when you go
14 to expand or to impose one district upon the other,
15 it's absolutely necessary that you address the
16 Article VIII, Section 1 question. And that the tax
17 rate be the same within the district for all parties
18 concerned.
19 This is certainly true in all conservation
20 districts. And holds true equally well for the
21 school districts.
22 No. 2, the Legislature is prohibited from
23 drawing the boundaries of each school district
24 similar, i.e., like the Redistricting Bill, as this
25 would be a special law in violation of Article III,

1 Section 56 of the Constitution.

2 In 1926, Article III, Section 3, was amended to
3 eliminate the specific authorizations that had been
4 in the Constitution up to that time, to give the
5 authority of the Legislature to create individual
6 districts. Up until that time, the Legislature had
7 the specific constitutional authority to delineate
8 those.

9 All the cases, in Attorney General's Opinion,
10 since that time in 1926, which there are many, hold
11 that the acts of the Legislature actually created an
12 individual district is a special law in violation of
13 Article III, Section 56. Fritter versus West, and a
14 number of other cases.

15 The Legislature is constitutionally precluded
16 from drawing district lines for one or all of the
17 school districts, in my opinion. Plaintiffs will
18 argue that a general law could be drafted that would
19 have the net effect of creating equalized assessed
20 value school districts. I seriously doubt the
21 ability of the Legislature to draw such a general
22 law.

23 No. 3, the school districts, like conservation
24 districts, Article XVI, Section 59, Article III,
25 Section 52, "Districts are required to vote their tax

1 rate and to approve their debt by a vote of the
2 people."
3 Article III, Section 3, this is the heart, the
4 real heart of local control. "No debt or obligation
5 can be imposed on the parties by anybody, the
6 Legislature or anybody else, without an election."
7 Article III, Section 3b, amended in 1966, after the
8 passage in 1962, did not -- did not eliminate the
9 necessity of an election found in Article III,
10 Section 3. It only addresses the question of a
11 second assumption election. And that is all that
12 Freer Independent School District versus Magus
13 addressed. That's all the Article III, Section 3b
14 addressed. And as stated in Love versus City of
15 Dallas, Supreme Court case, and many cases since that
16 time, the Legislature, nor anyone else, can impose
17 pre-existing debt of one district on another, over a
18 newly created area. There must be an assumption
19 petition, or an assumption election.
20 The election provisions of Article III, Section
21 3 is still in place, has not been repealed, and is
22 meaningful. Therefore, the Legislature has no
23 authority or constitutional power, whatsoever, to
24 unilaterally spread the roughly $7 billion of
25 currently outstanding school debt over all of the new

1 territory. It could not take the debt of a Dallas
2 Independent School District and spread that over the
3 Irving Independent School District under any
4 constitutional authority, in my judgment.
5 No. 4, there is no constitutional authority for
6 the creation of the so-called super districts that
7 was discussed the other day, that would encompass
8 multiples of existing school districts. It's Horne
9 Book law in Texas that express constitutional
10 authority is needed and required to create any
11 political subdivision with taxing power, City of Fort
12 Worth versus Davis, Supreme Court, 1982, and a ream
13 of cases decided since that time. It would take a
14 new constitutional amendment adopted by the voters of
15 the state, to provide the legal authority for the
16 super districts to be created with power to tax, in
17 my opinion.
18 No. 5, the boundaries of all school districts
19 in the state, irrespective of how they were created,
20 were validated by a constitutional enactment by the
21 passage of Article VII, Section 3, on September the
22 24, 1909. All districts in the state at that time,
23 that are still in existence, have been
24 constitutionally validated. And the Legislature, in
25 my opinion, without specific constitutional

1 authority, would have no ability to act -- enact a
2 general law that would disturb those constitutionally
3 validated boundaries. This section was repealed on
4 August the 5th, 1969, but a subsequent repeal of a
5 validation act, or a constitutionally validation act,
6 does not repeal the actual validations, themselves.
7 Consequently, you would have a potentially large
8 number of districts that could defend any attempt at
9 changing their boundaries on this constitutional
10 basis.
11 No. 6, a number of school districts in the
12 state, such as the Dallas Independent School
13 District, Garland, Carrollton-Farmers Branch, and
14 others, are subject to specific orders of federal
15 district courts, relative to functions and operations
16 in a particular fashion, and for them not to even
17 consider any alteration of their boundaries.
18 Mr. Luna and I personally were involved in a
19 fairly recent case involving the Dallas Independent
20 School District and a neighboring school district.
21 And the possibility came up of some relatively slight
22 change in the DISD boundaries. Judge Sanders, in an
23 injunction case that went before him, who has had
24 continuing jurisdiction over the DISD case, made it
25 extraordinarily clear to me and others, that a change

1 of even one square foot, or one scholastic, would
2 potentially jeopardize his order. And that he
3 intended to fully and completely protect his order in
4 that case.
5 Consequently, any attempts at altering or
6 changing school districts' boundaries, involving any
7 districts already covered by a federal court order,
8 invite a substantial federal state confrontation.
9 And I have an idea of which side would prevail in
10 such a situation, because they certainly both involve
11 constitutional principles.
12 Those in my judgment, Your Honor, are six sound
13 and valid reasons, constitutionally, why the
14 Legislature of the State of Texas cannot consider a
15 major reorganization or consolidation of the school
16 districts in the state. And that that would not be
17 available as an alternative.
18 Any decision that raises serious questions
19 about the validity of the existing school district
20 boundaries in this state, not only virtually
21 eliminates the ability of the school districts to
22 issue any future bonds to finance school facilities,
23 but such a decision, in my judgment, calls into
24 question the bond ratings of the existing $7 billion
25 in outstanding debt. And even the validity of those

1 bonds -- the absolute and total security for the
2 bonds of a school district is the value of the
3 property located within their boundaries. If their
4 boundaries are invalid and illegal, then the whole
5 question of the security on those bonds is a mistake.
6 This, in our judgment, would have a disastrous impact
7 on all school districts, Plaintiffs and Defendants,
8 and those school districts that are not present at
9 this hearing.
10 We respectfully urge the Court, for the reasons
11 stated, to find that such a reorganization or major
12 realignment, or the creation of the super districts,
13 is not constitutionally permissible and available as
14 an alternative for the school districts, and for the
15 Legislature of the state. And that any such decision
16 could, and would likely have catastrophic effects on
17 the ability of these school districts to carry out
18 their statutory and constitutional functions.
19 Thank you.
20 THE COURT: All right, sir. Thank you very
21 much.
22 We're going to stop for an afternoon break.
23 Before we do that, I understand Mr. Luna may need to
24 leave us. And if that's so, you may be excused. Of
25 course, you're welcome to stay for the last of this.

1 For those of you who may not want to come back
2 after break, I'm going to, after arguments, take the
3 case under advisement. I'm going to impose upon
4 myself a deadline of making a decision and announcing
5 it, in this courtroom, by 9:30 Wednesday morning. I
6 believe that on account of the interest that the
7 people have in this, and because of the great effort
8 that the lawyers have put into it, it seems
9 appropriate to me to make a formal ruling and/or
10 declaration from the bench. And that will be done at
11 9:30 Wednesday morning.
12 So we'll take 20 minutes, and get back together
13 at five 'til.
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17 (Afternoon Recess)
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1 THE COURT: All right, sir.
2 MR. O'HANLON: May it please the Court.
3 THE COURT: Yes, sir.
4 MR. O'HANLON: As we wind down our little
5 play that courtroom cases tend to be, I'm reminded,
6 as I have been wont to do in the course of this case,
7 of an illusion of literature. This time from the
8 world of theater. And what strikes me out of the
9 Plaintiffs' argument is an illusion to a play known
10 as The Fiddler on the Roof. In this case, I suppose
11 it might be appropriate to call it The Fiddlers With
12 the Proof.
13 In that play, the lead character in the lead
14 opening number of that case, and I'm going to make a
15 little switch in the line, saying that, "If I were a
16 rich school." What followed that, was an interesting
17 line. "I ditty, ditty, ditty bummed. All day long,
18 I ditty, ditty bummed, if I were a wealthy school."
19 That kind of sums up their case. The Plaintiffs in
20 this suit have said that they need more money. But
21 they haven't really said what they would do with it,
22 or how it would improve the educational quality
23 within their districts in a manner that they are
24 unable to do at the present time.
25 Since I've had the occasion to go to the board,

1 I think I shall do so one more time to see if I can't
2 illustrate my point. Now, these numbers that I'm
3 going to write up come from, once again, Plaintiff
4 Exhibit or Plaintiff-Intervenors' Exhibit 205, the
5 Bench Marks, which we are now familiar with. And I'm
6 going to make a couple of assumptions.
7 State law requires that districts, on the
8 average, have a pupil/teacher ratio of no more than
9 20 students per teacher. So we'll use that for our
10 basic benchmark. Let's take Mr. Richards' figure of
11 $2,978.00 per student, and let's multiply that times
12 20 students. Now, it's clear that there's a lot of
13 classes that have considerably more. In fact, the
14 mandates for minimum class size are 22-to-1. But on
15 the average, it's true that the state law requires a
16 district's personnel be no more than 20-to-1, so
17 we'll use that number. We'll multiply that $2,978.00
18 times 20, and we come up with the amount of
19 $59,560.00. That's how much the poorest districts in
20 the state spend per classroom.
21 Now, we have to subtract out some costs. The
22 average teacher's salary in this state is $23,281.00.
23 That leaves $36,279.00, after you pay for the teacher
24 to run that class. Certainly there's other expenses
25 involved. Administrative expense, the statewide

1 average is $422.90. We'll round that to $425.00.
2 That's $8,500.00 for that class, for administrative
3 expenses.
4 THE COURT: Excuse me just a minute.
5 MR. O'HANLON: Transportation expenses,
6 $95.60, on a statewide average. Round to $100.00,
7 that's $2,000.00. Plant maintenance, which includes
8 utilities, repair, things of that nature, cost
9 $401.57, on the average, in the state. We'll round
10 that to $400.00; $8,000.00.
11 Debt service, on the average, $295.65. We'll
12 round it to $300.00; $6,000.00.
13 That totals $24,500.00. If we include the
14 additional sum of capital outlay, which on the
15 statewide average is $527.00, and we round that to
16 $550.00, we get the amount of $11,000.00. All of
17 those expenses are covered in the districts -- in the
18 poorest 100 districts in the state. And those are
19 not their expenses, those are the average expenses.
20 That they might be able to hire -- spend more
21 money on teachers, that they might have -- and we
22 also have to remember the textbooks are required to
23 be provided, under the Texas Constitution, for free
24 to the districts. So textbooks are not a cost.
25 Additional teaching materials, things of that nature,

1 fall within the realm of capital outlay, if it's more
2 than two years. So we've covered the basic cost of
3 education, on the statewide average, under the
4 Foundation School Program.
5 That's why it is not surprising that in the
6 Accountable Cost Committee report, that the
7 Plaintiffs introduced, or the Plaintiff-Intervenors
8 introduced as Exhibit 212. At Page 12, the committee
9 found that the Foundation School Program provided in
10 '85-'86 -- on '85-'86 data, and that is the data, by
11 stipulation, that we are trying this case on --
12 provided sufficient funding to run a program that
13 meets all state requirements.
14 So, have the Plaintiffs, other than some
15 anecdotal testimony -- which I might add that the San
16 Elizario district, which we've heard a lot about, is
17 spending considerably more than that. They're
18 spending in a realm of $3,900.00. We've also heard
19 from districts that are spending $2,600.00,
20 specifically the Midway district, that is offering a
21 program that meets state requirements, and that has,
22 by any measure of test scores, outstanding scores.
23 So certainly, it can be done.
24 While it is true that districts spend a bunch
25 more than that, what are they buying for their money?

1 And how is it important to us in the terms of
2 analysis of this case?
3 To say that education is a fundamental right,
4 whether or not should the Court adopt the Plaintiffs'
5 view and disregard the Texas Supreme Court's holdings
6 on it, doesn't answer any question. Because you have
7 to define what an education is. To say that
8 education is a fundamental right, does not give
9 anybody a standard against which to measure state's
10 compliance. Courts have struggled with the
11 definition. West Virginia has gone as far as to
12 survey all of the other holdings and come up with a
13 list. But it's still -- that list is failing,
14 because it isn't very specific. The question then
15 becomes, who gets to define it? We submit to the
16 Court that the first step of inquiry in a school
17 finance case has got to be what education, what
18 entitlement are we talking about? Because before you
19 can hold anything up to scrutiny, you've got to find
20 out -- you have to have the standard.
21 We submit to the Court that there is such a
22 standard in this case. As the testimony that you've
23 heard over these months indicates, Texas is unique
24 among the 50 states, in that it, alone, has
25 prescribed in excruciating detail, a curriculum that

1 is mandated to be provided by the school districts in
2 the State of Texas.
3 House Bill 246, it was promulgated in 1981,
4 defined the areas in a two and a half year process
5 involving literally thousand of educators in this
6 state, that Dr. Bergin described, arrived at a
7 consensus as to what was an appropriate education to
8 be given, to be mandated to the students in this
9 state.
10 The Plaintiffs in this case have not argued,
11 nor have they offered any testimony or proof that
12 those standards are inadequate. That somehow, there
13 is something else that is not included in Chapter 75,
14 that should be, or that was forgotten. Indeed if
15 they were, the issue would not be over school
16 financing, but over that. It would be an
17 administrative procedure involving whether or not the
18 State Board of Education, in adopting Chapter 75,
19 acted arbitrarily. But that's not the issue in the
20 case.
21 The state has defined the quantum of education.
22 Certainly it is appropriate for the courts to review
23 it. But I submit to the Court that there is no
24 evidence on which to draw anything but the conclusion
25 that Chapter 75 defines the appropriate education to

1 be delivered to the students in this state.
2 The next question becomes, in terms of an
3 analysis, is once you have adopted a standard, is to
4 determine whether or not that standard is being met.
5 That requires a dual analysis. One, because there
6 are several -- there are several entities involved
7 here. To glibly say that since the state -- since
8 education is mentioned in the Constitution, it's a
9 state function, and the state is solely responsible
10 for the maintenance of education, is to ignore,
11 totally, 111 years of Texas history, under which
12 independent school districts in this state as
13 entities have existed and have flourished.
14 Texas, as indicated in the Rodriguez case, has
15 historically adopted a dual system. The state
16 doesn't educate anyone. The state provides minimal
17 requirements, which we submit are the appropriate
18 quantum of education for review in this case, and a
19 financial scheme to ensure each of the district's
20 ability, regardless of their local means, to carry
21 out that mandate.
22 The question then becomes, are the resources
23 that are available to the districts -- to the poorest
24 districts, sufficient to meet the state mandate? Not
25 -- we don't compare spending. To accept that

1 argument is to accept, as a fundamental proposition
2 in this case, that dollars equal education, totally.
3 That's what the Plaintiffs would have the Court
4 believe. That without dollars, there is no
5 education. And that's simply -- we submit to the
6 Court, by all the evidence that has been submitted
7 in this case, from objective observers of the state
8 system, from the objective observations of the state
9 system, it's simply and purely not the case.
10 If dollars made a difference, would we be able
11 to look at the test scores in this state and
12 determine that expenditure -- per pupil expenditures
13 mean absolutely nothing on predicting test score
14 outcomes in this state. I submit to you, we would
15 have a tendency -- we would show something
16 statistically, it doesn't exist. Is Texas an anomaly
17 in that regard? No, all of the national research
18 that's been done since the Coleman Commission has
19 found the same.
20 If the poor districts can't hire good teachers,
21 they say they're being educationally deprived. But
22 wouldn't that deprivation manifest itself in
23 something? Where has it manifested itself?
24 Certainly not in test scores; not in dropout rates;
25 not in anything that we can quantify, or measure, in

1 the way that we have looked at the educational system
2 in this state.
3 Their response is that, well, it's got to mean
4 something or else the Legislature wouldn't want to
5 put more money in. That's the only response. The
6 intuitive gut reaction of people who have a self
7 interest, as do all of us here, in seeing an
8 increased funding for education, because we want to
9 provide more. We want to increase the standards, as
10 time and circumstances permit. We want the
11 Legislature to increase funding, but whose decision
12 is that? Under our notions of separation of power in
13 this state, the determination of expenditures has
14 always been the legislative function. They who pay
15 the piper, call the tune. The legislature, under our
16 constitutional system, is required to raise the
17 money. They get to dictate how its spent.
18 So we have a situation in which the Legislature
19 has determined a level of educational expenditure,
20 and that amount is about $2,900.00, guaranteed. Sure
21 there's districts in this state that only spend
22 $2,000.00. But the reason they do is because they
23 don't tax themselves at a rate sufficient to maximize
24 their state aid. So we have a situation in which
25 we've defined it, we can't measure it. And all the

1 Plaintiffs want to say is that we want to spend more
2 money. Have they offered you a plan as to what they
3 would spend it on? More teachers? Is there any
4 indication that any of that does any good?
5 Is there any indication, that on a statewide
6 basis -- certainly there's districts out there that
7 don't meet accreditation standards. That's a
8 problem. And that's a problem that the state deals
9 with through the accreditation process. And that's a
10 problem that we have to look at on an individual
11 basis. This suit is not about a challenge to a
12 district's ability to perform. Certainly, if a
13 district is not performing, then we need to do
14 something about it. But San Elizario, I submit to
15 you, has got the financial resources if they allocate
16 them properly. The Edgewood, I submit -- and do we
17 need a court supervision in order to assure that the
18 Legislature remains vigilant?
19 Mr. Turner discussed the results of the State
20 of Texas, comparing what the Edgewood Independent
21 School District was spending in 1967 and '68, which
22 prompted the Rodriguez case, $356.00. They are now
23 spending in excess, slightly, of $3,600.00. That was
24 without court supervision.
25 What happened when the court got involved --

1 the Plaintiffs rely on Serrano. What happened when
2 the court got involved in Serrano? Dr. Walker told
3 you what had happened, and it did. It's something
4 known as equalizing down. It's a phenomenon. It
5 certainly creates equal expenditures, but it does so
6 on the basis of the lowest common denominator. And
7 that's precisely what happened in California.
8 California went, prior to the Serrano case, from
9 being one of the leaders in the nation in educational
10 expenditures, to a state that is now below average in
11 educational expenditures. Well, at the same time,
12 the State of Texas went from a state -- went from a
13 situation where it was 48th in expenditures, in
14 1967-'68, the evidence upon which Rodriguez was
15 based, to 23rd. Certainly we're not there, yet.
16 Certainly the Education Agency is over asking the
17 Legislature for more money. But there's a balance
18 here. This Court cannot order a tax increase.
19 That's a legislative function. That issue has got to
20 be debated within the context of the entire state's
21 finances.
22 Let's examine the evidence briefly with respect
23 to how the state distributes its aid. That $2,975.00
24 that's up on the board, approximately $2,650.00 of
25 that money comes from the State of Texas, from the

1 general revenue fund. Well, $250.00 comes from the
2 available school fund. In 100 richest districts, of
3 that $7,233.00, approximately $310.00 comes from the
4 state, of which $250.00 is constitutional money. Has
5 the state rationally allocated its general revenue
6 resources to account for the disparities? Certainly
7 it has.
8 Let's look at the formula aid. And this is
9 what the constitutional analysis requires. Not the
10 issue of is it fair. Is it fair, is a question that
11 must be addressed by the Legislature. The Counsel's
12 argument is good. It's simply in the wrong place.
13 Is it fair, is not an issue for this Court. Is it
14 constitutional? Is there a rational basis? Is there
15 an interest in the state? Does the state have an
16 interest in promoting a particular system of
17 financing? Is there a good reason for it?
18 Certainly, the disproportionate allocation of
19 expenditures in the basic allotment to the poorer
20 districts is rational. And I submit, compelling.
21 Are the additions to the formula, the weighted
22 pupils, the special allotments for small and sparse
23 districts, is it rational? Certainly. Is it
24 compelling? I submit it is. The Supreme Court
25 decided, in 1931, that it was rational. How about

1 the special allotments for handicapped kids; how
2 about for comp. ed. kids; how about for bilingual
3 kids? Is there a rational basis to spend more money
4 on those categorical grants, to flow those to the
5 kids that need them? Certainly there is. There's a
6 compelling interest in doing exactly that.
7 Does a Price Differential Index have a rational
8 basis? Is it rational to give more money to
9 districts that have higher costs because of their
10 geographic situation? Certainly it is. There's a
11 compelling interest there. All of the witnesses
12 testified that we have to measure the true cost. So
13 what's the problem?
14 The problem is, is that we superimpose the
15 state's system of school finance upon a historical
16 antecedent, over which the Legislature has very
17 little control. Since the constitutional amendment
18 to Article VII, Section 3, in 1926, as previously
19 alluded to by Counsel, the Legislature cannot
20 willy-nilly create and abolish districts by special
21 law. That has been taken away. Districts in 1909
22 were constitutionally set, and have an inherent
23 defense to any statutory scheme that the Legislature
24 decides to set out. Districts that have changed
25 through merger or boundary change since 1909, were

1 constitutionally authorized to do so, on article --
2 under Article VII, Section 3b of the Texas
3 Constitution. That's why the Legislature doesn't
4 willy-nilly go out and change boundaries. They can't
5 do it.
6 The Plaintiffs in this case would argue that we
7 can create super districts, and we can equalize tax
8 bases. Well, that's a good idea, but doesn't that
9 start to sound like a statewide property tax?
10 Article VIII, Section 1e prohibited a statewide
11 property tax. So, what we're deciding here is
12 whether or not we can create an artifice -- an
13 artificial concept to evade the specific will of the
14 voters, within the last ten years, in 1981, that said
15 there shall be no statewide property tax. That that
16 will be reserved, under the testimony, if you'll
17 recall, that was reserved for the specific provision
18 of the voters -- of the local taxpayers.
19 The problem in this case does not come from the
20 Foundation School Program. The Foundation School
21 Program is fully equalized with the exception of a
22 few budget balanced districts to the level of the
23 state -- to the level of the state Foundation
24 Program, which is about $2,800.00, $2,900.00.
25 The problem comes when we allow local districts

1 to enrich above that level. There's no question
2 about that. It's not the formulas, that's not the
3 problem. The problem is that we allow districts to
4 spend in addition to that, if their voters within
5 that political subdivision decide they want to spend
6 some more money. Is that any different than
7 counties, than cities, than any kind of the
8 constitutional tax districts? Are we then going to
9 say that any district that allows -- that doesn't
10 account for wealth, is not totally wealth neutral, is
11 unconstitutional? Because those same services for
12 all of the districts that are required to rely on the
13 local property tax base, and there are a myriad of
14 them in the State of Texas, suffer from the same
15 problems. Is it fair?
16 The question should be addressed to the people
17 as to whether it's fair. Either through a
18 constitutional amendment to abolish Article VIII,
19 Section 1e, directly, rather than trying to think of
20 an artifice to abate it, or through the Legislature
21 dealing with the question, the people speaking
22 through their elected representatives, on a statewide
23 basis.
24 THE COURT: You're just about to run over
25 your hour and a half.

1 MR. O'HANLON: Yes, sir.
2 THE COURT: In fact, I think maybe you
3 have, somewhat.
4 MR. O'HANLON: Okay. So the question
5 becomes, is whether or not -- is not whether or not
6 the Plaintiffs have a good argument. The question
7 comes under our Constitution, which separates and
8 defines the relative roles of the judiciary, the
9 Legislature, and the executive branches, as to
10 whether or not that argument is properly lodged in a
11 court, or whether or not it's constitutionally
12 mandated to be brought before the Texas Legislature.
13 We submit that it's the Legislature.
14 THE COURT: All right, sir. Thank you.
15 Any reply over here?
16 MR. RICHARDS: No, Your Honor.
17 MR. GRAY: No, Your Honor.
18 MR. KAUFFMAN: No.
19 THE COURT: Okay. I guess we've come to
20 the end of the argument stage of the case. The
21 lawyers have been working for the last week or so on
22 preparing what we call Findings of Fact and
23 Conclusions of Law. And so we're fairly well down
24 the road towards having things in hand. I think,
25 though, it wouldn't do me any harm to walk around for

1 a day or so and review what they've given to me. And
2 then come back in here at 9:30 Wednesday morning and
3 tell you what I think, in general terms, leaving the
4 details for another day. But decisions will be made
5 by Wednesday at 9:30, and I will announce them
6 formally from this bench at that time.
7 For those of you who are here now, and won't be
8 here then, let me tell you that the lawyers in the
9 case have been persevering and very diligent and very
10 helpful to the Court. And they have indulged my
11 random questions to various witnesses when certain
12 things that they were talking about would interest
13 me. Sometimes my questions may not have been exactly
14 on point. But for me, the case has been not only
15 presented well, by both sides, but it has raised
16 issues that I'm very interested in. And I have told
17 the lawyers that I am deeply gratified by the quality
18 of people that I find in public education supervising
19 our schools. This includes people from the so-called
20 wealthy districts, as well as the so-called poor
21 districts. And I'm moved and touched by the quality
22 of the people that are involved, the superintendents
23 and the teachers, and so on, as well as the
24 dedication that each of those people come, regardless
25 of the kind of school district that they come from.

1 It's been interesting to contemplate what is
2 education. It's been interesting to contemplate what
3 we must do as a society, what obligations we have, in
4 general, and then try to match that up with what the
5 law is. So, at least what I believe, I guess you'll
6 have to wait until 9:30 Wednesday morning. See you
7 at that time.
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10 (Proceedings recessed
11 (until April 29, 1987.
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