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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

78-3311

J. and R. DOE et al X
VS. X
JAMES PLYLER et al X

CIVIL ACTION NO.
TY-77-261-CA

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

DEC 30 1977

MURRAY L. HARRIS, CLERK
By
Deputy *Louise Carroll*

RECORD OF PROCEEDINGS

HEARD AT: TYLER, TEXAS
ON: DECEMBER 12 and 16, 1977

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BE IT REMEMBERED that heretofore on the 12th and 16th days of December, 1977, before the HONORABLE WILLIAM WAYNE JUSTICE, United States District Judge, the above civil action came on for trial, and the following proceedings were had:

THE COURT: Civil Action No. TY-77-261-CA, John and R. Doe and others, as plaintiffs, against James Plyler and others, as defendants.

Are the plaintiffs ready to proceed?

MR. ROOS: Plaintiffs are ready, Your Honor.

THE COURT: Are the defendants ready?

MR. HARDY: Defendants Tyler Independent School District and Board of Trustees are ready, Your Honor.

MS. CARDWELL: State of Texas is ready, Your Honor.

THE COURT: Is the United States of America represented?

MR. HANNAH: Yes, Your Honor, the United States of America is represented by Mr. Mike Wise.

THE COURT: Do you have any motion to address to the court, sir?

MR. WISE: Yes, I do, Your Honor.

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THE COURT: All right, if you would, go to that microphone over there (indicating).

MR. WISE: Your Honor, the United States would like to move the court that it be allowed to participate as amicus curiae in this action. While we would ask that we be allowed to participate with the full rights of a party in the action, our intention would be, in fact, to limit our participation to listening to the proceedings, ~~not~~ presenting evidence, and filing a post-trial brief in the matter, if the court should deem that that's appropriate. As our role as amicus in this case, we would like to suggest that we play a role more in the traditional common-law notion of amicus, and that be that we not necessarily be aligned with either party, but, rather, try to present the views of the federal government on the issues involved.

We think that our participation would be appropriate, because there are substantial questions of federal law and policy involved in the action. Several agencies' policies and statutes are at issue, including the Immigration Service and the Department of State, and we would like to relate to the court the position of the

1 government relevant to their concerns.

2 In addition, the Fourteenth Amendment
3 is, perhaps, the central issue in this case, and
4 we have a continuing role in attempting to enforce
5 and to interpret that provision. I think that,
6 as the Supreme Court said in Universal Oil Company
7 versus Root Refining Company, which is at 328 U.S.
8 575, 1946, a federal court can always call on
9 officers of the United States as amici. We don't
10 know if there would be any opposition to our
11 participation, but we would be happy to cite
12 other authorities, if the court would want some.

13 THE COURT: Since the court has invited the
14 United States to participate as amicus curiae,
15 I am going to grant your motion. You may
16 participate with full rights of a party.

17 MR. WISE: Thank you, Your Honor.

18 MS. CARDWELL: Your Honor, since they are
19 participating with full rights of a party, we
20 would like to know their position on the issues,
21 on those that they may have at this time.

22 THE COURT: I have no notion as to what
23 their position is. Do you want to reveal it at
24 this time?

25 MR. WISE: Your Honor, might I make a brief

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statement to that effect?

THE COURT: Yes.

MR. WISE: Unfortunately, the Department of State thought this involved questions of significance to them, and they wanted to take full time to prepare their position, and their tentative positions were just conveyed to us on Friday, so we are not at this point fully able to relate at this point what our position would be, but I would indicate that, in general, what our position is on two questions, first, the question of preemption under the Immigration and Naturalization laws. On that issue we believe those laws do not preempt the state statute involved, and that it is, if anything, a less compelling case than the DeCanas---

THE COURT: I'm sorry, I didn't hear you.

MR. WISE: It is, I would think, if anything, less compelling than the DeCanas situation, that there's much less justification for preemption here.

On the question of the Protocol of Buenos Aires, the State Department has provided detailed information concerning reservations which were attached to that treaty at the time

1 of ratification, which indicated that it was not
 2 intended to affect state rights in any way, and
 3 they have made such representation on other
 4 occasions in the past---.

5 THE COURT: It was not intended to do what
 6 now?

7 MR. WISE: To affect state rights and state
 8 control of such things as education. However, I
 9 would like to state that the State Department has
 10 also brought to our attention a number of other
 11 international conventions and treaties, which
 12 may have relevance to the case and which may
 13 from that perspective of international law
 14 establish education as a fundamental human right,
 15 and in that context, while we're not prepared at
 16 this time to fully state our position, we would
 17 like to in our post-trial brief address that
 18 question as to its relevance in two senses, first,
 19 whether under these documents, treaties being
 20 ratified and becoming the supreme law of the land,
 21 whether they have the direct implications for the
 22 state statute in question, and, secondly, whether
 23 to address the question raised in the Rodriguez
 24 decision, whether these documents were not con-
 25 sidered in Rodriguez may have some relevance to

1 the position of education under our own Fourteenth
2 Amendment constitutional system.

3 These are, perhaps, tangential in some
4 way, but I think they are relevant to the con-
5 sideration, particularly, in a period of increased
6 concern with international human rights, so, as
7 you can see, the tentative positions of the United
8 States are not really aligned with either party,
9 so I think it is appropriate that we play this
10 non-aligned role.

11 THE COURT: Thank you, sir. Does this
12 suffice for your purposes?

13 MS. CARDWELL: Yes, Your Honor.

14 THE COURT: Do the plaintiffs have any
15 additional statement to make in relation to the
16 case?

17 MR. ROOS: Yes, I would like to make a brief
18 opening statement, if you please, sir.

19 THE COURT: Yes, go to the lectern. You
20 may move that lectern closer to the table, if
21 you choose to do so.

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PLAINTIFFS' OPENING STATEMENT

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MR. ROOS: Court please, this morning the plaintiffs will present four expert witnesses. Their testimony and the testimony and exhibits presented at the preliminary injunction, which we will move into evidence, will constitute our case. It is our belief, as reflected in the trial brief, which we filed this morning, that, as a matter of law, the Texas statute and the Tyler regulations are unconstitutional in their exclusion of undocumented children in receiving an education.

Although as a matter of law, it is our belief that the statute is unconstitutional, we have prepared testimony which we believe will provide a setting for the case to put it in some perspective.

Our first witness, Gilbert Cardenas, is a sociologist from U. T. Austin, and he will provide a historical framework for the consideration of this legislation. That framework should highlight, among other matters, the fact that, as one commentator has observed, the border is not a barrier, but a permeable membrane. Many

1 times, including the present governmental policy,
2 in its interest of obtaining cheap labor has
3 encouraged illegal migration to the United States.
4 That interest in cheap labor has, however, been
5 historically offset with the mistreatment of
6 this powerless and vulnerable group.

7 Our second witness, Marion Houston,
8 co-author of one of the leading studies of
9 illegal migration to the United States, and a
10 consultant to various governmental agencies,
11 will provide the court with a picture of the
12 illegal migrant. Her testimony will provide us
13 primarily a picture of the scope of illegal
14 migration to the United States and, more par-
15 ticularly, the scope of migrations of persons
16 with families. She, further, will present a
17 picture of the illegal migrant as a worker, who
18 is generally underpaid, overworked, who pays
19 taxes, but is unlikely to receive social services.

20 Our third witness this morning will
21 be Robert Firestine, political economist from
22 the University of Texas at Dallas. He has been
23 heavily involved through the years with the
24 financing of schools, and the primary thrust of
25 his testimony will be to show that the exclusion

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of children from schools is not likely to provide the financial benefits which are sought by this legislation.

Finally, our fourth witness, Jose Cardenas, probably the most knowledgeable educator in the country of the educational needs of Chicano and Mexican youth, will discuss the educational needs of these children, particularly, the children involved in this case, and the limited additional cost of providing special programming for them. He further will discuss the financing issues -- will lightly touch upon some of the financing issues that Dr. Firestine will address in more detail.

Thank you, Your Honor. At this time I would like---

THE COURT: One moment, if you please. Do the defendants desire to make any statement to the court at this time?

MR. HARDY: We wish to withhold our statement at this time, Your Honor, until we put on our case.

MS. CARDWELL: We also want to wait until we put on our testimony.

THE COURT: Very well. You may call your

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first witness.

MR. ROOS: Your Honor, before we do that, we would like to move the admission of the testimony from the preliminary injunction hearing into evidence, I suppose that would be as Plaintiffs' Exhibit 1. One problem we would like to address is that the testimony does reflect the actual names of the named plaintiffs, and we would request that we be permitted to submit to the court a copy of the transcript with the names covered over and substituted therefor the Doe, Boe and Roe names, if we may.

THE COURT: Very well. The testimony adduced at the hearing on the preliminary injunction is received in evidence, and the transcript that you submit and which will be received may contain the omissions you have mentioned.

MR. ROOS: Thank you very much, Your Honor.

(COPY OF TRANSCRIPT OF
PRELIMINARY INJUNCTION
HEARING --

was duly marked as:

PLAINTIFFS' EXHIBIT NO. 1)

PLAINTIFFS' CASE IN CHIEF

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MS. HANTEN: Plaintiffs would call Gilbert Cardenas.

THE COURT: Please come forward, sir.

GILBERT CARDENAS,

a witness called by the plaintiffs, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. HANTEN:

Q Sir, could you state your name and address for the record?

A My name is Gilbert Cardenas of the Department of Sociology of the University of Texas at Austin.

Q Could you please state all degrees you have received from institutions of higher education, including the date and the degree received and the name of the institution?

A I received an Associate of Arts Degree from

1 (words unintelligible to reporter) Junior College, a
2 Bachelor's Degree from California State University at
3 Los Angeles, Master's Degree at University of Notre Dame
4 in 1973, and in 1977 a Ph.D. Degree in sociology from the
5 University of Notre Dame.

6 Q Could you please describe your major areas
7 of professional study and activity?

8 A Yes. Within sociology, my major area of
9 concentration has been migration. I have worked in this
10 field since 1969, first, under the auspices of the United
11 States-Mexican government, the United States Mexican
12 Studies project at the University of Notre Dame. I have
13 continued my work to the present with other interested
14 forces of the consideration of (words unintelligible to
15 reporter) and immigrant study, and I have done various
16 work with the National Archives and field work in South
17 Texas.

18 Q Could you briefly describe each position
19 you have held which reflects your professional interest
20 and study?

21 A At the University of Notre Dame I was
22 research assistant to Julian Samora in the U. S. and
23 Mexican Border Studies project. I was the acting and
24 former director of the Centro de Estudios Chicanos at
25 Notre Dame, did numerous field research in Chicago and

1 library research and archival research in Washington, and
2 I am currently assistant professor at the University of
3 Texas Austin.

4 Q Have you had occasion to write articles,
5 books, et cetera, concerning migration, both legal and
6 illegal, from Mexico into Texas?

7 A Yes. In 1971 the University of Notre Dame
8 published a book which I helped co-author with Julian
9 Samora as the principal author entitled Los Mojados, and
10 since that time, in 1975, I published an article in the
11 Chicano Law Review on the historical background of the
12 United States immigration policy toward Mexican migration.
13 I published in Gideon Sjoberg and Boyd Littrell's book,
14 Current Issues in Social Policy Research, an article
15 dealing with the Immigration and Naturalization Service
16 data on migrations. My dissertation that's been published
17 for University Microfilm Services, a conceptual approach
18 to the study of Mexican migration. I have done numerous
19 other types of reports that have been published in books
20 and been distributed through their auspices.

21 Q And have you studied and evaluated other
22 works and studies concerning emigration from Mexico to
23 Texas and other areas of the United States?

24 A Yes. The work that I've done there -- we
25 did a comprehensive bibliography on the subject of migration

1 and essentially reviewed all the federal documents and
2 state documents that we were able to obtain pertaining to
3 migration of all the congressional hearings, the various
4 presidential commissions that have been established to
5 study migration, the entire record of the Congressional
6 Index relating to Mexican migration, various departmental --
7 federal and state departmental reports pertaining to the
8 aspects of migration.

9 MS. HANTEN: Thank you. Your Honor, at
10 this time I would move to qualify Dr. Cardenas
11 as an expert witness.

12 THE COURT: Very well. Your motion is
13 granted.

14 Q Dr. Cardenas, have you had an opportunity
15 to study the historical treatment of Mexican migration to
16 the United States?

17 A Yes.

18 Q Could you briefly describe the historical
19 overview of this process?

20 A I'll try to be brief. I think from my
21 standpoint and from the work that I have been able to see
22 and study I find three major areas that we could identify
23 for this historical sketch.

24 One is the historical role of immigrant
25 labor in the United States as one of the salient issues

1 pertaining to the migration of Mexicans to the United
2 States. The other is a cyclical pattern in which workers
3 have been imported and deported from this country,
4 primarily Mexican workers, and the third is the desirability
5 for Mexican Nationals to work in the United States and not
6 to become settlers, and this policy in a sense can be
7 construed as U.S. immigration policy toward Mexico.

8 In 1911 the Dillingham Commission published
9 a report, a series of reports, fifty-two volumes, a study
10 on migration to the United States, and this study con-
11 cluded that Mexican workers were desirable as laborers but
12 not settlers, and this had a lot to do with the assumed
13 alleged biological inferiority of the Mexican National.
14 There's a great deal of concern about the racial composi-
15 tion of the population at this time, and many people,
16 particularly in the State of Texas, were also concerned
17 about the homogeneity of the native stock and were opposed
18 to the incoming migration of Mexican workers.

19 On the other hand -- this is in the 1910's --
20 you also have the rise of various types of industries,
21 particularly in agriculture, large-scale agriculture, the
22 railroad industries, the transportation systems that were
23 being developed in the Southwest. These two interests
24 clashed. On the one hand, employers wanting to import
25 Mexican workers and trying to work out ways by which

1 Mexican workers could otherwise be brought into the country,
2 and then the racial concern, the racial attitude against
3 Mexicans. This clash was finally resolved by the United
4 States Department of Labor through the institutionalization
5 of the temporary contract worker program. This continued
6 until 1924. In fact, something like a hundred thousand
7 Mexican workers were imported on a temporary basis to work
8 in U.S. agriculture, particularly in Texas and the Midwest,
9 and expected to return back to Mexico. This satisfied the
10 persons who were concerned about the racial composition of
11 the population, and yet, also satisfied the employers who
12 were seeking to utilize Mexican labor, because it was
13 allegedly cheap and more manageable.

14 This I argue through the work that I have
15 done has been the foundation point of all U. S. emigration
16 policy to Mexico. We repeated this in 19 -- well, actually,
17 in the thirties but in the reverse situation. After the
18 numbers of immigrants had continued to accumulate in the
19 country legally and illegally during the depression, large
20 numbers, perhaps one-sixth of the total Mexican population
21 were deported or otherwise sent back to Mexico.

22 In World War II, just as in World War I,
23 there was another great demand and a need for immigrant
24 labor. Mexicans were, in turn, sought after for the
25 importation of more workers, which was also to become a

1 temporary work program, but, in effect, became a -- actually
2 starts in 1942 to 1964 -- and went beyond the war, and
3 virtually thousands and millions of Mexican workers were
4 contracted to work in the United States temporarily and
5 sent back after the work was completed. In 1954 we had
6 the large-scale deportations in Operation Wetback of excess
7 numbers of immigration workers that had been here. In
8 many cases, as in the case of the 1930's, in 1954 many
9 people who were deported were also legal U.S. citizens,
10 that is, their children were born here in the country
11 during the time that the immigrants were working in the
12 country.

13 Now, what this tells us is that there have
14 been many interests, employer interests, and interests
15 within the United States government and within the state
16 governments in utilizing Mexican workers. Yet, there has
17 not been a corresponding interest in providing Mexican
18 workers the same opportunities that the immigrant workers
19 had from Europe to remain and to settle in the country,
20 and this policy, in effect, by extending employment to the
21 Mexican workers of the United States without providing the
22 legal machinery by which they could either adjust their
23 status and become legal permanent residents, in effect,
24 extended the border all the way to Mexico. We have the
25 formal border, but in terms of our practices and historical

1 interests in utilizing Mexican workers, this border has
2 been very flexible.

3 Q Dr. Cardenas, in the course of your work
4 have you had an opportunity to observe whether or not this
5 trend continues to the present day?

6 A Well, in my last field work experience last
7 month in El Paso I had an opportunity to visit the United
8 States Border Patrol office and talked to some of the
9 border patrolmen, as well as to visit the border line right
10 outside the metropolitan area of El Paso, and I was sur-
11 prised to see the same practices being continued in the
12 sense that we saw people walking across the border, walking
13 across the river, which is only about eight feet wide and
14 very shallow, coming in and hitchhiking into the city to
15 work. We saw on one occasion up to twelve persons walking
16 with virtually no efforts to apprehend them, no border
17 patrolmen in the area.

18 In effect, the same practices are being
19 continued today as they were in the 1969-1970-'71 period
20 in which we did our field work. We had the same observa-
21 tions at that time. I was particularly struck in light
22 of the attention given to the magnitude of the problem,
23 allegedly stated, with regard to the influx of the illegal
24 aliens that there was no diligent efforts to control the
25 border.

1 Q Have you observed in your work a history of
2 discrimination against Mexican aliens in activities with
3 Mexican aliens?

4 A There have been many references to this in
5 the literature, and the field work that we did in the
6 1969-1970 period -- I think to put it into perspective
7 and to talk about discrimination against Mexican aliens,
8 Mexican Nationals, we have to really look at the relation-
9 ship between all Mexicans in the United States and other
10 groups, and, particularly, what we call Anglos, and the
11 State of Texas, I think, perhaps has the most notorious
12 history in adverse relationships between these two groups,
13 this history starting from the Texas Revolution, the
14 hostility generated after the Texas Revolution, United
15 States and Mexican War that was settled in 1948, the
16 hostilities that generated after that war between Anglos
17 and Mexicans in the country, the various border skirmishes
18 that have developed and continued up to 1912, the lynchings
19 of Mexicans in the State of Texas.

20 I think -- I don't think -- I know there
21 are more lynchings in the State of Texas of Mexicans than
22 anywhere else in the country. This is, I think, illustra-
23 tive of that adverse kind of relationship and, in particular,
24 Mexican Nationals being more vulnerable, particularly if
25 they have no papers, more susceptible to this type of

1 treatment, but from their perspective and from the work
2 that we are able to uncover most of their complaints
3 centered around loss of wages, where workers would be hired
4 by employers to work in agriculture and in some cases
5 industry, were brought in to work for two or three weeks,
6 and at the time when they were supposed to be paid, the
7 employers all of a sudden discovered that they had Mexican
8 Nationals, so they would call the Border Patrol and have
9 them rounded up. Well, in the large-scale mass-type
10 roundups there was very little provision to collect back
11 wages and personal belongings of these undocumented workers,
12 and this has been the principal complaint that the Mexican
13 Consuls have received and the same types of complaints
14 that we were told by the workers, particularly in the
15 detention centers, so that has been their major criticism
16 that they related to us.

17 Q So you in your work have had an opportunity
18 to discuss complaints with detained Mexican aliens?

19 A Yes.

20 Q Based on your research, could you describe
21 the general characteristics of the undocumented Mexican
22 population in the State of Texas?

23 A The undocumented Mexican population in the
24 State of Texas from the work that we did in 1969-1970 were
25 very similar to the characteristics of legal Mexican

1 immigrants in that they are generally young, single workers,
2 former landless agricultural workers in Mexico. They are
3 generally here on their own. If they are married, and
4 spouses do not normally accompany them in their migration
5 to the United States, their children also, if they have
6 children, in many cases some of the children being born
7 in the United States, if their spouses happen to be with
8 them, generally were not with the immigrant workers in
9 the studies that we did in the 1960-'70 period, and, more
10 recently, I had an opportunity to study the influx of
11 legal emigrants from Cuba and Mexico with Alexandro Portes,
12 and the data that we have been looking at also shows that
13 most of the workers who are here were formerly illegal
14 aliens. It was something very significant in our work,
15 like fifty or sixty percent of the sample had previous
16 residence in the United States prior to legal admission.

17 In fifty-one percent of the sample their
18 eldest child had been born in the United States, so many
19 of these new legal immigrants are former illegal aliens,
20 undocumented workers, and, therefore, many of them have
21 children who were born here.

22 Q In your work what have you found to be the
23 primary motivation for Mexican migration to the United
24 States?

25 A Primarily economic, the desire on the part

1 of the U.S. employers to extend employment opportunities
2 to Mexican workers, the efforts of the United States
3 government to realize this desire in the various programs
4 which I outlined in the first part of my testimony, and
5 the absolute destitute situation that the Mexican workers
6 find themselves in in Mexico.

7 In many cases the illegal today were the
8 children of the braceros of yesterday, and this is what I
9 mean in terms of that dependency that has been established
10 to work in the United States.

11 Now, there's never or rarely a situation
12 where the needs of Mexican workers are compatible with the
13 needs of the U.S. immigration policy. At times when it
14 is conducive to our interests to be permissive regarding
15 the border for the influx of Mexican workers, and then
16 when it's to our interest to close those borders, the
17 Mexican worker is still in need. Having worked here
18 before, he has no alternative but to seek further employ-
19 ment in the United States, if possible.

20 Q During the course of your work have you
21 discovered whether or not a significant portion of the
22 undocumented Mexican alien population avails itself of
23 the social services available in the United States?

24 A Yes. The work that I have encountered, the
25 available evidence that I have been able to locate, in three

1 studies, in particular, one by Wayne Cornelius, which is a
2 study in Jalisco, Mexico, in the various communities,
3 asking the sample of residents questions regarding the
4 migration history to the United States, and questions were
5 asked regarding the use of services in the United States,
6 and most of the aliens reported that they did not utilize
7 formal resources. Most of them reported that they did not
8 utilize, for example, the health clinics and hospital
9 facilities in the United States. Most of them reported
10 that they did not utilize legal services, and the conclusion
11 that Cornelius drew on the basis of his study was that they
12 were not utilizing the government benefit programs or formal
13 services.

14 In our studies of 1969-'70 we found that
15 aliens, in particular, undocumented workers have a
16 tremendous fear of institutions because of the possibilities
17 of them being identified as illegal aliens, and they
18 preferred not to use these services. On the other hand,
19 there is not a tradition in Mexico in terms of welfare,
20 in terms of the large-scale welfare programs we have in
21 the United States, so, therefore, undocumented workers
22 aren't orientated (sic) towards welfare-type programs that
23 might be, for example, comparable to native Americans who
24 were born here and have grown up utilizing U.S. institutions.

25 The other study by Vic Villapondo in San Diego

1 under the County Board of Supervisors, they did a study on
2 the use of formal services there and found essentially the
3 same thing that Cornelius found, that they were not
4 utilizing these services.

5 The other study by Jorge Bustamante in 1973
6 also reported that these are returned immigrants who had
7 been deported or otherwise removed from the United States.
8 He interviewed them after they were returned to Mexico and
9 picked out a sample of a hundred nineteen persons, and on
10 the basis of interviewing these returnees found that ninety-
11 six percent of them did not utilize the services, the health
12 services, the clinics or hospitals.

13 MS. HANTEN: Thank you. I have no further
14 questions at this time.

15 THE COURT: You may cross-examine the witness.

16 MS. CARDWELL: Your Honor, we didn't get to
17 look at the proposed testimony ahead of time, and
18 we'll need just a minute or two, please.

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CROSS-EXAMINATION

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BY MR. HARDY:

Q Doctor, have you in your studies worked on the immigration statutes or any study toward immigration, what it takes to be legally admitted to the United States?

A Yes; that is, we studied the history of the development of U.S. immigration policy permitted by the federal government on this matter and the various laws that have been proposed in the Congress, the debates that ensued before Congress, and we had opportunity to review the various hearings of congressional committees pertaining to immigration legislation.

Q Has it been your experience in your studies whether or not many of these illegal aliens try for legal admission to the United States?

A Yes, when asked the question if they would prefer to be here on a legal basis, they invariably claimed that they would prefer to be here with documentation. The immigrant workers, in effect, cannot often meet the barriers set up by immigration policy. Way back when the head tax was utilized, when the literacy law was in effect they could not meet this. Now, from our experience, if the United States wanted to bring Mexican workers into this

1 country, they would have either removed some of these
2 barriers that were causing Mexicans not to be eligible for
3 legal admission and bring them in under legal status. This
4 did not happen.

5 Q When you were discussing this with---. Well,
6 let me ask you this. Have you personally interviewed these
7 people, or has this been done by field assistants or
8 research assistants?

9 A No, I personally interviewed undocumented
10 workers in the detention centers. We were in Laguna Prison,
11 which is a minimum security prison in Texas. We interviewed
12 them at the Port of Duval detention center. We interviewed
13 them on the other side of the border just on spot inter-
14 views. We interviewed undocumented workers in Chicago,
15 and that's pretty much been my field experience on this
16 question.

17 Q Has your general experience been that the
18 illegal alien that has entered this country normally follows
19 a job of doing menial tasks? Is that correct?

20 A They are primarily recruited for what we
21 call the secondary labor market, which includes agriculture,
22 menial jobs and many categories of just general labor
23 categories.

24 Q What about the mobility of these individuals?

25 A It depends. On the border in the areas that

1 are contiguous, that is, between the United States and
2 Mexico, there is a great deal of what we call border running,
3 people just on the basis of employment or further reasons
4 would continually cross the border and return.

5 Q Day laborers coming over for the day?

6 A Day laborers, or they could even be perhaps
7 longer time entrants in that they might work in an area
8 close to the border for a period of two or three weeks and
9 return back or for a period of two or three months, but
10 the further we got from the border, the greater likelihood
11 there is for the workers to remain on a more continuous
12 basis in the United States, that is, in terms of continuous
13 residence. I think this is true, for example, between
14 McAllen, San Antonio, Dallas, Chicago. The further away
15 we get from the border, the more we're talking about the
16 more integrated type immigrant worker.

17 Q Are a great number of these workers the
18 type that follow seasonal work, be that work in the fields
19 or harvesting or something like this?

20 A In the past that has been the experience.
21 The book that I referred to on Los Mojados primarily dealt
22 with agricultural migration. That had been the major work
23 in which workers had been recruited. Since 1970 there's
24 been a shift -- agriculture is still important, but more
25 workers also are moving into other areas of non-agriculture

1 pursuits.

2 Q What would you estimate those percentages to
3 be?

4 A I would still think that perhaps seventy
5 percent are still in agricultural pursuits. That's just a
6 guess.

7 Q I understand. Based on that seventy percent,
8 would you say that seventy percent of the illegal aliens
9 that come within the borders of the United States are on a
10 constant move?

11 A Well, if they're in the State of Texas, they
12 would move with the crops, if that's where they are at, but
13 if they're on the border or in South Texas, their mobility
14 is not that great; that is, they pretty much stay along
15 areas that are contiguous to the border. That's where the
16 majority of agricultural workers are at that come into the
17 State of Texas. These are, in effect, very often border
18 running people too, so if we're talking about mobility,
19 we're talking about constant crossing of the border.

20 Outside of South Texas I think this number
21 rapidly declines, since the number who are in agriculture
22 is opposed, I would say, to a more stable type of migrant.

23 Q Has your experience given you information
24 on what you believe that after an alien comes into this
25 country and maybe works in South Texas, that he would -- or

1 his family would normally move farther north as they got
2 accustomed maybe to some of the ways of the United States?

3 A Well, surprisingly, that's not the case.
4 I can compare South Texas undocumented workers with Chicago
5 undocumented workers. We found that because of past
6 experience of many workers in the State of Texas, new
7 entrants often try to bypass the State of Texas because
8 of the low rates that are paid, because of the harsh treat-
9 ment accorded to undocumented workers, and go directly to
10 Chicago or might come directly to Dallas or might come
11 from an urban or semi-urban area in Mexico to an urban
12 area such as San Antonio, and this is one of the ways in
13 which they are able to bypass the whole problem of the
14 agricultural migrant worker.

15 Q In your research have you encountered
16 instances where maybe the father or a head of a family
17 would come into the country and work for a period of weeks
18 or maybe months and then have the money to bring his family
19 into the country?

20 A There's been many reported instances where
21 that's occurred, yes. I don't have any data to show to
22 what extent that is the case, that is, on the basis of the
23 studies we have done. My feeling is that it still con-
24 tinues. My suspicion is that it is not very great in terms
25 of the overall number of immigrants who are in this country

1 and working. The general pattern has been that even when
2 they legalize the status, they still have the tendency to
3 bring their spouses to the country. The last study that
4 we did on legal migration shows the overwhelming majority
5 of the immigrant workers, legally admitted immigrant workers,
6 a former undocumented worker that I was talking about, did
7 not bring their spouses, nor did they bring their children
8 with them to the United States, and we have no evidence to
9 suggest that the undocumented worker situation would be
10 any different than the legal. In fact, if anybody is going
11 to have their spouse and children, we would think it would
12 be the legal immigrant, so on that basis I would say that
13 the undocumented worker is not likely to bring his spouse
14 or his children to the United States on any great -- com-
15 pared to the total undocumented workers we have studied
16 and the evidence that we have seen.

17 Now, this, nevertheless, is not an absolute
18 situation. There are cases where families will come
19 together after a period of time. That is, they reunite
20 once an undocumented worker has secured a job and has
21 considered the situation rather safe. I think this is
22 particularly true in areas where they have worked for a
23 long period of time, people know they are undocumented;
24 yet, nobody has any problem with that, and once they feel
25 relatively safe in a community at that point, if it's

1 economically possible, at that point they'll try to bring
2 in -- they may try to bring in the families.

3 Q Has your area of research been primarily on
4 a national basis or a State of Texas basis?

5 A It's primarily been national, but the field
6 work that I have done has been primarily in the State of
7 Texas. That is, the scope of our studies have been
8 national, but the actual field work that I have participated
9 in has been primarily in the State of Texas, the undocumented
10 as well as the legal migration.

11 Q Have you formed an opinion on how many
12 illegal entrants there are in the State of Texas at this
13 time?

14 A No, I have not. Many people have played
15 around with statistics, and, really, the numbers that have
16 been proposed are exaggerated guesses from my perspective.
17 There is really no reliable basis of coming up with an
18 estimate. The I.N.S., for example, polled its district
19 directors and border patrolmen, asking them in terms of
20 what they thought these numbers were, and this type of
21 methodology has been pretty much ridiculed nationally by
22 scholars and people who are more knowledgeable, that is,
23 in terms of the research aspects, so I'm very hesitant to
24 come up with any type of estimates.

25 Q I believe you stated earlier that most of

1 the people that were in this country were single males.

2 Is that correct?

3 A The available evidence in terms of research
4 of the small samples that have been taken on the basis of
5 people who have been deported, on the basis of the people
6 who have been apprehended, involuntarily sent back to
7 Mexico, this is the case, yes.

8 Q Going for a moment to the institutions that
9 are available here in the United States or government
10 programs that you testified that maybe illegal aliens do
11 not use, do you think that one of the reasons they may not
12 use those is that they may not feel justified or they know
13 that they have not contributed to support those programs?

14 A No, on the contrary, I think they are aware
15 that they are entitled to the use of these services, but
16 they're very fearful of institutions because of the possi-
17 bility of being identified. In fact, the actual empirical
18 studies that have been undertaken to test this social cost
19 question has been to the contrary to what the government
20 has been arguing for the last couple of years. The argument
21 has been that undocumented workers are a drain to the
22 economy, that they utilize welfare services and different
23 social benefit programs. When the studies have been under-
24 taken, the Vic Villapondo study in San Diego, another study
25 by Gilbert Cardenas, labor economist at Pan American

1 University, did a study on the impact of illegal aliens in
2 the Southwest and, in fact, did a case study in San Antonio,
3 and he also found that aliens were not utilizing formal
4 resources. In other words, these same people were employed
5 and in many cases where taxes were applicable, they were
6 being taxed, that is, income tax. They were being taxed
7 like Social Security. If state income taxes, like, say,
8 in the State of California, and as consumers they are
9 paying taxes.

10 Where studies have been undertaken, the
11 evidence has been contrary to what the government's position
12 has been on this matter. In fact, they found that aliens
13 are contributing much more to the economy through the
14 taxation than they are to formal utilization of these
15 government benefit programs.

16 MR. HARDY: Pass the witness.

17

18 CROSS-EXAMINATION

19

20 BY MS. CARDWELL:

21

22 Q Doctor, the study that you referred to where
23 the interviews were conducted in Jalisco---

24 A Yes, Jalisco.

25 Q ---and also the Bustamante survey were

1 University, did a study on the impact of illegal aliens in
2 the Southwest and, in fact, did a case study in San Antonio,
3 and he also found that aliens were not utilizing formal
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12 has been on this matter. In fact, they found that aliens
13 are contributing much more to the economy through the
14 taxation than they are to formal utilization of these
15 government benefit programs.

16 MR. HARDY: Pass the witness.

17

18 CROSS-EXAMINATION

19

20 BY MS. CARDWELL:

21

22 Q Doctor, the study that you referred to where
23 the interviews were conducted in Jalisco---

24 A Yes, Jalisco.

25 Q ---and also the Bustamante survey were

1 samples where the illegal aliens were returned to Mexico.

2 Is that correct?

3 A Yes.

4 Q So this would not be people who were long-
5 time residents here and had more assimilated into American
6 society or Texas society?

7 A Not necessarily. I don't know -- I couldn't
8 say, you know, with any certainty how long these persons
9 had resided in the United States. For example, if they
10 are residing now in Jalisco, you know, some of them could
11 have been here in the United States for twenty years and
12 decided to retire in Jalisco. Then there could be persons
13 who, perhaps, were just here two days, were caught within
14 seventy-two hours, and returned, so you have a full range
15 of possibilities. I don't recall what Cornelius said like,
16 you know, the characteristics of his sample on that question.

17 Q So then you don't know if the use of services
18 by the illegal alien is related to the length of time which
19 he has been in the States?

20 A Not from that research, no.

21 Q But from your own knowledge do you find
22 indications that the longer the illegal Mexican alien is
23 here, the freer he feels about utilizing social services?

24 A No. In fact, our general knowledge in
25 sociology, regarding the poor in general, which the

1 immigrants are a class of, the segment of the poor, that
2 is, persons in poverty, even people with legal papers,
3 native-born Americans, don't tend to utilize fully the
4 full benefits of government services that are available
5 to them. Comparisons have been made by Charles Anderson,
6 a sociologist, in a book called Torino (phonetic) Sociology,
7 where he points out the data on the tax dollars that are
8 coming from the poor segment of our society and the amount
9 of money of government programs that are directed to help
10 this segment in poverty, and there's a big discrepancy in
11 terms of how much they are contributing and how much they
12 are utilizing.

13 A study by Jo Moore on the Mexican population
14 of the United States in general---

15 THE COURT: You say there's a big difference.
16 What is the difference?

17 THE WITNESS: Sir, I can't cite the data.

18 THE COURT: Well, I mean in general terms.

19 THE WITNESS: The difference is they are
20 contributing much more in their tax dollars
21 than the government is setting up for programs
22 directed to get them out of poverty or to benefit
23 them through education. That's the difference
24 that I was referring to.

25 A The study by Jo Moore on the Mexican

1 population in the United States found also that Mexicans,
2 irregardless of status, are less likely to utilize formal
3 resources than the rest of the American population.

4 Q But the other study you're talking about is
5 just in regard to poor and areas of services in relation
6 to tax dollars, not just Mexican Americans. Is that right?

7 A No, this refers to all poor.

8 Q All poor.

9 A All poor people, and we say that illegal
10 aliens are a part of that, then the study was done---

11 Q In regard to the---

12 A ---on Mexicans by Jo Moore.

13 Q Right.

14 A She argued that traditional cultural patterns
15 had a lot to do with the ways by which the poor are able to
16 make ends meet, that is, the family structure, the family
17 network, the familia, where people utilize personal, pure
18 relationships, kinship networks, to get needed services
19 and help, and were not likely---

20 Q Because the---

21 THE COURT: Let the witness finish his
22 answer.

23 A They are not likely to get -- utilize formal
24 constant services. They are not likely to utilize institu-
25 tional programs, where there is a bureaucracy, because of

1 the cultural differences in terms of Mexican families, and
2 if there's a choice between going to a relative for assis-
3 tance than going to a public institution, it would show
4 greater likelihood to go to a relative, if the relative
5 can meet the type of need that the persons are finding
6 themselves in, such as the need to borrow money, perhaps,
7 the need to have -- rather than to go for day care services,
8 for instance, they might leave their child with an aunt or
9 something of this nature, and then in our study with
10 undocumented workers, in particular, we saw that the
11 undocumented worker was very fearful of institutions because
12 of the possibility of being apprehended, and this possibility
13 is true if he's here for forty-eight hours. It's also true
14 if he's here for a hundred fifty days. There's really no
15 difference.

16 Q Well then, what he's working for is anonymity.
17 Is that right?

18 A I'm sorry?

19 Q He's looking to be anonymous. He's seeking
20 anonymity, so he's more likely to go to relatives. He's
21 more likely to go to the Mexican-American enclave to seek
22 his anonymity.

23 A Right.

24 Q And because he is seeking anonymity, it's
25 more difficult -- the illegal alien is more difficult to

1 count and to find. Is that correct?

2 A That would be true. It's more difficult to
3 study that population than other populations.

4 Q In regard to the immigration statistics
5 and numbers that you referred to, although you think they
6 may be somewhat inflated, what are those numbers?

7 A The numbers that I have seen, particularly,
8 by press releases or quotes from the previous administra-
9 tion, General Chapman, had ranged as high as twenty million.
10 In other cases they would talk about the possibility of
11 four million undocumented workers, and other times twelve
12 million. When we see this type of range of variability,
13 immediately we take these statistics as suspect. When he's
14 further questioned and the administration is further
15 questioned as to how these numbers have been obtained and
16 pressed for answers, in a sense what it comes down to is
17 street wisdom, that is, pooling various members of various
18 members of the I.N.S. structure in terms of getting an
19 estimate.

20 For instance, they might call a district
21 director in Dallas and ask him, "On the basis of your
22 information how many aliens do you think are undocumented?"
23 and then they would compile this on a national basis. Well,
24 this proved to be very unreliable. Another attempt the
25 government attempted to utilize was to get expert persons

1 to come up with an educated guess on the basis of the
2 number of illegal aliens, and then by putting this informa-
3 tion together came up with an estimate, and this, again,
4 also proved unreliable. The methodology was not sound,
5 and again, there's no basis of checking the accuracy of
6 the estimate. There's no range of confidence in the
7 estimates.

8 Q So then is it your testimony that it's
9 pretty much impossible to come up with a reliable estimate
10 or number of illegal aliens in the country?

11 A Yes.

12 Q It would be very difficult to plan an
13 education for those people, if you don't know how many
14 there are, wouldn't you agree?

15 A To plan an education?

16 Q To plan an educational program for them if
17 you don't know how many there are.

18 A If you have to make a distinction between
19 legals and illegal, I don't know if that is necessary in
20 planning an education, because, presumably, they would
21 have the same needs as other children.

22 Q Well, just in terms of numbers, though, it
23 would be virtually impossible to come up with a figure that
24 you would think would be reliable.

25 A It's impossible to come up with a national

1 estimate, yes.

2 Q Have you seen any immigration figures, or
3 have you in your reading come across any immigration
4 figures of illegal aliens strictly for the State of Texas?

5 A Yes, I had occasion to see them in the I.N.S.
6 annual reports, an official tabulation for I.N.S., in terms
7 of illegal aliens that have been apprehended. Now, this is
8 only one aspect of the total alien population of the United
9 States, which does not include all persons, for obvious
10 reasons.

11 Q Your figures are illegal aliens apprehended
12 in the State of Texas?

13 A These are the figures that I have seen.

14 Q Approximately what are those figures?

15 A I cannot remember.

16 Q Do you remember if they are over a hundred
17 thousand?

18 A O.K., the last figure that I heard thrown
19 out for 1975, there were -- and I'm just doing this by
20 recall now -- there were something like seven hundred
21 sixty-six thousand illegal aliens apprehended and sent back.
22 Out of that eighty-eight percent or close to that were
23 Mexican illegal aliens. Yet, within that category of
24 Mexican illegal aliens, a high proportion of them were
25 border runners, people who were caught within a forty-eight

1 or seventy-two-hour period. Perhaps seventy-two percent
2 of that eighty-eight percent were what would be in this
3 category of border runners. The remaining Mexican segment
4 of the total illegal alien population would be people who
5 were apprehended away from the border, and out of that
6 number for the State of Texas I can't even guess.

7 Q Isn't it a generally accepted term or rule
8 that there are more illegal aliens who are not apprehended
9 that stay in the country than there are apprehended and
10 deported?

11 A The government has been arguing that, I
12 think, since 1947, if I recall, and perhaps even longer.
13 For years they threw out the figures that for every illegal
14 alien apprehended two get by. Again, it's street wisdom.
15 There's no valid basis for believing it or disproving it.
16 I mean it's still an empirical question.

17 Q In regard to the fifty-one percent factor
18 you spoke of who were formerly illegal aliens and are now
19 legal aliens---.

20 A Yes.

21 Q ---these were aliens who had become legally
22 admitted who were not under some special work permit in
23 terms that they had a particular skill, like they were a
24 doctor, that allowed them to come into the country. Isn't
25 that right?

1 A Right.

2 Q So they were just your average worker who
3 had become a legal entrant?

4 A Most of them had adjusted their status, or
5 perhaps were on waiting lists and had visas or on the list
6 for visas with applications and had been in the country
7 working, and when the time for the visa was granted, they
8 just picked them up and came across legally. We don't
9 have a great deal of information because of the nature of
10 the segment in which we did the surveys, and we didn't
11 have time to probe, you know, and get into those types of
12 questions.

13 Q Well, all in all, is it fair to say that
14 the main reason that the illegal Mexican alien is present
15 in Texas is for jobs?

16 THE COURT: Is what?

17 Q For jobs, for money, better salary?

18 A Yes, they are here because they are in need.
19 They are poor in Mexico, and for years there has been a
20 pattern where American employers -- as I pointed out, the
21 American government has supported immigration of Mexican
22 workers and extended employment opportunities for the
23 Mexican worker, and they, in effect, have created a
24 dependency situation where workers now are dependent upon
25 employment in the United States for their livelihood. This

1 may not have been the case if we had a different policy
2 years back. From my perspective and the conclusions that
3 I have drawn on this question, had it not been in our
4 interest to utilize Mexican workers, we would not have the
5 same problem that we do have today regarding the undocu-
6 mented worker. In effect, I argue that the decisions made
7 in Washington are more important in explaining the migration
8 and status of Mexican workers in the United States today
9 than the decisions made in Mexico City, that is, in terms
10 of our policy, our permissiveness and our desire to utilize
11 Mexican workers in the United States.

12 In effect, I assign the major responsibility
13 to the United States. There's a tremendous amount of
14 poverty in the world. Yet, this poverty doesn't always
15 affect us, because we don't let it affect us, but to the
16 extent that Mexican workers were utilized and were easily
17 exploitable, to that extent, very few people were concerned
18 about the migration and entrance to this country.

19 Q So that means the answer is, yes, they do
20 come over for jobs and money is why they come over here?

21 A That's a very simplistic way of reducing
22 this. I wouldn't make that conclusion solely on the basis
23 that they are coming here seeking jobs. They have been
24 recruited. They have been recruited in the past to work
25 in the State of Texas. Efforts have been made by employers

1 on an individual basis with regard to Mexico in violation
2 of the contract labor laws, and they have recruited Mexican
3 workers where labor advertisers were sent into Mexico to
4 advertise about the availability of jobs here in the State
5 of Texas. Labor contractors were sent down to organize and
6 recruit teams of workers to work in the State of Texas where
7 even the border patrol and agriculture in the past, in
8 effect, turned their back on the entrance of illegal aliens
9 during times of prosperity when farmers needed employees,
10 and certain industries were utilizing Mexican workers in
11 El Paso, for example, in the textiles.

12 So to that extent, in a fuller context, I
13 would say that illegal aliens are seeking to survive on a
14 subsistence-type basis for their survival. When employment
15 opportunities are extended to them, they have no other
16 choice than to come here to work.

17 Q So it is employment. The way you describe
18 all that is that it is employment they are coming for,
19 recruited or coming on their own volition.

20 A Yes, we asked questions in 1969-1970, as
21 well as the legal study that we did, the study on legal
22 immigrants that we did in 1975, in terms of various
23 categories that they could select from, asking them if
24 they were coming here for employment or for education or
25 for welfare or what, and the overwhelming majority were

1 seeking to work.

2 Q There hasn't been any drop-off or change in
3 the increase of illegal alien flow into the State of Texas
4 since 1975, has there? Hasn't it continued to increase in
5 '76 and '77?

6 A Well, only on the basis of apprehensions,
7 and apprehensions is not a sound basis to make a decision
8 regarding actual flows, because the apprehensions reflect
9 the number of personnel that are utilized in any particular
10 time.

11 Q Does that mean you don't know if it's con-
12 tinued to increase? Is that what you're saying?

13 A Right, we don't know either way. The only
14 available evidence we have in terms of looking at those
15 trends is on the basis of apprehension rates, and appre-
16 hension rates very often depend upon the number of
17 personnel working in a particular area than the actual
18 movement of illegal aliens.

19 Q I may have asked you this, but in the thirty
20 percent that you said are shifting to cities, don't they,
21 while they are going to where jobs are available, don't
22 they generally try to get into the Mexican-American enclave?
23 Isn't that where they most often are found where there's a
24 legal Mexican-American?

25 A Yes, we call that in the cluster hypothesis.

1 It may not be just on the basis of nationality. It could
2 be on the basis of language. Where there's a Spanish-
3 speaking community, this would be a place where, again,
4 given the kinship ties, perhaps, or informal networks, this
5 is the place that they would choose to reside and very often
6 might be the only place they could afford to live. The
7 Mexican American is generally situated in poor areas of
8 town, and this might be a place where, really, there's no
9 alternative but to live in that poor area.

10 Q Have you seen, do you have, or in your
11 experience have you calculated the numbers of illegal alien
12 children in the State of Texas?

13 A No, I have not.

14 Q Do you know of any statistics in regard to
15 the numbers of illegal alien children in the State of Texas?

16 A No, I do not.

17 MS. CARDWELL: We have no further questions
18 at this time.

19 THE COURT: Is there redirect examination?

20 MS. HANTEN: No, Your Honor. However, we
21 have filed a vita of Dr. Cardenas with the clerk,
22 and we would move that it be admitted into evi-
23 dence at this time as Plaintiffs' Exhibit No. 2.

24 THE COURT: Have you shown it to your
25 opposing counsel?

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MS. HANTEN: Yes, we have.

THE COURT: Is there objection to its being admitted in evidence?

MS. CARDWELL: I don't think there's an objection. Of course, we haven't had time to look at it, because we got it just before he went on the stand.

THE COURT: Well, look at it, and determine if you have an objection.

(PAUSE)

MR. ROOS: Your Honor, may I take one of the transcripts to the clerk while she's doing that?

THE COURT: Yes.

(PAUSE)

THE COURT: It appears to me that this would be a good time to declare a recess.

The court will be in recess for fifteen minutes.

(REPORTER'S NOTE: The court then, at 10:12 o'clock, a.m., December 12, 1977, recessed until 10:27 o'clock, a.m., the same date, at which time it was reconvened.)

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THE COURT: Please be seated. Is there objection to the receipt in evidence of the vita?

MR. HARDY: We have no objection, Your Honor.

THE COURT: It will be received in evidence.

(RESUME OF GILBERT
CARDENAS --
was duly marked as:

PLAINTIFFS' EXHIBIT NO. 2)

THE COURT: Is there any further examination of the witness?

MS. HANTEN: No, Your Honor.

THE COURT: You may call your next witness.

(WITNESS STANDS ASIDE)

MR. ROOS: Plaintiffs call Marion Houston to the stand, Your Honor. Your Honor, we have provided the other parties and the court with Ms. Houston's vita, and if there is no objection, we request that it be admitted into evidence as Plaintiffs' Exhibit 3, I guess.

THE COURT: It will be received in evidence.

(RESUME OF MARION HOUSTON --
was duly marked as:

PLAINTIFFS' EXHIBIT NO. 3)

MARION HOUSTON,

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a witness called by the plaintiffs, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. ROOS:

Q Please state your name for the record.

A I am Marion Houston.

Q Ms. Houston, will you please state your present residence?

A Washington, D. C.

Q Could you briefly summarize all degrees that you have received from institutions of higher learning?

A I have a B.A. from the College of William & Mary and an M.A. from the University of North Carolina. I have done all my doctoral work at Bryn Mawr College except for my Doctor's dissertation.

Q And your majors and your doctoral work have been---?

A In the field of contemporary philosophy.

Q Thank you. Could you please describe your

1 major areas of professional study and activity?

2 A In general, in my field I have been working
3 in public policy research, as a writer, research and
4 editor and education, and the last three years entirely in
5 the field of immigration, primarily illegal immigration.

6 Q Could you briefly describe in some more
7 detail the positions you have held and the exact activities
8 that you were engaged in with respect to your studies con-
9 cerning illegal immigration?

10 A In 1975 -- in January of 1975 as a research
11 assistant with Linton & Company, working on a study on
12 illegal immigration for the Justice Department and then
13 later with the Labor Department study, I became Associate
14 Director with the Center of Labor and Migration Studies,
15 a New TransCentury Foundation. A year later I am now
16 again with them currently as Associate Director for them.
17 For a brief period I served as Research Associate with the
18 Twentieth Century Fund project on Immigration Law and
19 Public Policy.

20 Q Have you had occasion to be called upon to
21 consult with various government agencies concerning migration
22 and illegal immigration in particular?

23 A Yes, most recently I co-authored with David
24 North, Director of the center for labor and migration
25 studies, two presidential review memoranda, one on Mexican

1 illegal immigration for the Carter-Portillo meeting, the
2 other for the London Economic Summit Meeting in May of last
3 year on the international integration of records.

4 I have also done work for the Justice
5 Department and consultant with the State Department,
6 consultant, however, primarily with the Department of Labor.

7 Q And all these consultancies generally con-
8 cern themselves with migration and to some extent or to a
9 greater extent with illegal migration?

10 A Yes.

11 Q During the course of your work have you
12 had an opportunity not only to conduct studies but to
13 review studies conducted by other people concerning illegal
14 migration to the United States?

15 A Yes, in particular, in 1975 I did an annotated
16 bibliography for the Department of Justice or I.N.S., to be
17 more specific, on illegal immigration of all immigrants
18 between 1968 and 1975.

19 Q During the course of your studies have you
20 had an opportunity to evaluate illegal immigration as a
21 part of your studies, immigration, particularly, to the
22 State of Texas and the Southwest?

23 A The major work that I have done, empirical
24 work that I have done in the field of immigration, is in
25 illegal immigration. I co-authored with David North a

1 study for the Department of Labor on the characteristics
2 and roles of illegal aliens in the labor market. This was
3 published in 1976, but the study took place in 1975. It
4 was an empirical survey of seven hundred ninety-three
5 illegal aliens located in nineteen sites of the United
6 States. That's a major piece of work, and that was an
7 empirical study.

8 Q Some of those studies were here in Texas?

9 A Yes, of those two hundred eight illegal
10 aliens were interviewed in the State of Texas.

11 MR. ROOS: I move to certify the witness
12 as an expert in illegal migration into the
13 United States.

14 THE COURT: Very well. The motion is
15 granted.

16 Q Ms. Houston, in previous testimony there
17 was some discussion concerning estimates of the number of
18 illegal migrants in the United States and, particularly,
19 in the State of Texas. Are you able to shed any light
20 upon the figures that might be utilized to determine the
21 extent of illegal migration into the United States and
22 Texas?

23 A Let me talk a little bit about the estimates
24 that have been given, if I can. When you use the word,
25 "estimate," itself, you are alluding to the fact that you

1 are dealing with an underground population, that is, at
2 best, you're using an estimated guess from a data-based
3 kind of estimate, or you're using very good methodology,
4 as I can give you a couple of estimates on, but the data
5 on which the methodology are based are less than respect-
6 able, so, in essence, there is no indisputable estimate
7 available on illegal aliens, which is not to say that
8 there are not better or worse estimates available, and it's
9 ultimately a question of judgment.

10 The published estimates on illegals in the
11 nation -- and let me make a distinction at the beginning
12 now between flow and stock. Migration takes place across
13 boundaries. Apprehension data, for example, are probably
14 a flow estimate; that is, the influx of population into
15 a given place. Only apprehension data, primarily, is a
16 flow figure and also a gross flow figure. That is, we do
17 not know the net flow of aliens into the United States at
18 any given time. There's a flow figure, the number of a
19 population into a given place, and there is a stock figure
20 that is the number of residents of a particular sort living
21 at a particular place at a particular time. Only in the
22 last two years, I would say, have the questions about how
23 many illegal aliens in the United States become sophisticated
24 to the extent that flow and stock figures are taken into
25 account, and once you ask this much more specific question,

1 it becomes much more difficult to come up with very precise
2 answers.

3 THE COURT: Would you explain those concepts
4 again?

5 THE WITNESS: Sure. A flow figure is a move-
6 ment figure. It's a movement figure of people
7 moving across a particular boundary into a par-
8 ticular place. It's action-oriented.

9 THE COURT: Well, you referred to a net flow.
10 Would you explain that concept?

11 THE WITNESS: Yes, that would look at the
12 action per se. You have the movement in, but you
13 also have a movement back, so you're still dealing
14 with a universe of action, but you want to know
15 how many moved in and how many moved back, O.K.?

16 THE COURT: Now, the stock?

17 THE WITNESS: O. K., the stock is, in effect,
18 the residue, the people who remain at a given
19 place at a particular time, of course. The whole
20 question of permanent migration, in legal immigra-
21 tion is a very "ify" estimate per se, because it's
22 actually a question of illegal immigration, because
23 you may have permanent residents, i.e., people who
24 come here to take up permanent residence, but,
25 in fact, they don't stay. They decide they like

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it better back home and decide to retire back to their home country. They move on to another job in another nation. Migration is one of the most difficult of all human phenomena to talk about in terms of accuracy, whether it is legal or illegal, because people move. They simply change their minds, and they're very difficult people to predict.

O. K., let me go back then to the published estimates of illegal immigration. Now, this was pursuant to a stock figure. There were no distinctions made when it started between the stock and the flow. The estimates of range say beginning in about 1971 when there was a lot of hoopla about illegal immigration, and then the Immigration Service was pressed by the Rodino hearings to give some kind of estimate. Before that, in the preceding years, I.N.S. was not terribly pleased to come up with any kind of estimate, so your earliest estimate about 1971 was some two million, when this gradually increased as apprehension rates increased. The estimates also increased exponentially when General Chapman became the new Commissioner of the Immigration Service in 1974. They went from

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about four to twelve million very rapidly, much more rapidly than apprehension rates were, which is not to say, however, that the apprehension rates have not been rising, because they clearly have.

In 1975 the Immigration Service asked for and received a more scientifically based estimate of illegal aliens, again, a stock figure, and the estimates were provided by consultant Lesko and were 8.3 million, and that's your first scientifically based estimate of illegal immigration in this (word unintelligible to reporter). That study has been very severely disputed and has been completely discredited. The methodology was bound to be less than adequate, and the data was bound to be even more inadequate. Since that time -- after that time, General Chapman tended to use a new figure, rather than the twelve million figure, he tended to reduce it to a six million figure. Since the change in administration and the change of Commissioner, the Immigration Service has been less than happy with offering any kind of estimate, and, indeed, the Domestic Health (phonetic), a committee on illegal aliens, which provided a

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very careful overview, a very helpful overview of all known literature and estimates, facts on illegal immigration generally in January of 1977 was very careful not to provide an estimate, any kind of estimate on illegal immigration. Since that time---

Let me say there was one estimate on the flow figure of illegal immigration in 1975. That was a study prepared by David North for the Immigration Service on fraudulent entrants. Now, these are visa abusers, that is, aliens who come into the United States with documentation. In general, illegal aliens fall into two categories. You can have what I.N.S. calls your E.W.I.'s, that's only "enter without inspection," your wetbacks, and then you have your visa abusers. The E.W.I.'s are undocumented quite literally. This is probably only your Mexican legally, as you may imagine. Your other category is your visa abuser, who enters with documentation. The fraudulent entrant is an alien who enters with documentation, either lies about it, has a counterfeit card or in other ways either illegally uses or claims U.S. citizenship.

(Words unintelligible to reporter) a

1 random sampling was a scientifically validated
2 undertaking that in that fiscal year of 1975
3 that there were one-half million fraudulent
4 entrants into the United States. That's one
5 population of the illegal alien. Again, that's
6 a flow figure, and, again, we're not talking
7 about persons, that is, fraudulent entrants,
8 but fraudulent entries, so it's possible in
9 principle that one person can come into the
10 United States several times fraudulently and
11 be counted each time.

12 Q Somewhat summarizing your testimony, I
13 gather that you would have noticed with the previous
14 witness that at the present time there is really no solid,
15 adequate, scientifically valid basis for making any real
16 estimates as to the number of illegals that are in the
17 United States or in Texas.

18 A I was going to get to one that's just come
19 out, O.K.? Although it's a very crude estimate, it is a
20 scientific estimate. It is based on good, scientific
21 methodology, data different from apprehension data. I
22 have not analyzed it fully. It's a very heavily statistically
23 oriented sort of argument, but in the last couple of months
24 Lancaster and Scheurer of H.E.W. and Social Security
25 Administration have done an estimate of the number of

1 illegal aliens between the ages of eighteen and forty-four
2 in April of 1973, all right? This is based on the 1973
3 C.P.S. -- that's current population survey, and I.R.S.,
4 Internal Revenue Service, and Social Security Administration
5 exact-matched study on the basis of their analysis of that
6 exact-matched study. They have come up with an estimate
7 of 3.9 million illegal aliens in the United States between
8 the ages of eighteen and forty-four in April of 1973.

9 Now, they offer that as a crude estimate,
10 not of itself, but that is the best piece of work that's
11 been done on this question at this time.

12 THE COURT: You used a phrase there that
13 wasn't recognizable to me, "exact matched."

14 THE WITNESS: This is the name of the data
15 that they used.

16 THE COURT: What did you call it?

17 THE WITNESS: O. K., it's C.P.S., I.R.S.,
18 S.S.A. exact-matched study.

19 THE COURT: What do they mean by exact-
20 matched study?

21 THE WITNESS: It's a match-up of three
22 different systems, I.R.S. systems for collecting
23 data, the Social Security Administration for
24 collecting data on individuals, and the Current
25 Population Survey, which is a census count that

1 takes place monthly, and they are trying to get
2 all these systems together and find out if they
3 can match all the individuals in the systems,
4 and in their analysis those who are left over
5 are the illegal aliens.

6 THE COURT: Thank you.

7 Q That estimate is a nationwide estimate?

8 A Yeah, uh-huh.

9 Q Turning for a moment to legal aliens, are
10 most of the legal aliens in Texas of Mexican origin?

11 A I think that's generally agreed to be the
12 case, yes. That is not to say the case that every illegal
13 alien in the State of Texas would be a Mexican. At present
14 there are three hundred fifty thousand aliens. Most of
15 these are permanent resident aliens in Texas. Only about
16 seventy-five percent are Mexican immigrants. We've got a
17 non-Mexican immigrant population of about twenty-five
18 percent in the State of Texas today, and, normally, illegal
19 immigration tends to follow legal immigration, so it's
20 likely that there are some likely non-Mexican illegal aliens
21 in the State of Texas, but I think everyone would agree
22 that given the history and the geographical factors, that
23 most of the legal aliens in the State of Texas are Mexican.

24 Q Could you briefly describe the character-
25 istics of the Mexican illegal immigrant?

1 A Fortunately, the data on characteristics
2 on illegal aliens are much more reliable and, indeed,
3 increasing in the last couple of years than any kind of
4 data on either the numbers or geographical distribution
5 of illegal immigrants. There have been a number of
6 empirical studies. None of them are definitive. All of
7 them, however, show a remarkable degree of similarity in
8 their findings. Some more, for example, this 1969 study --
9 the Mexican government has done two studies of apprehended
10 illegal aliens, one in 1972 and one in 1974. The major
11 piece of work thus far, although there will be two new
12 studies coming out in the next year, which is the North-
13 Houston study of seven hundred ninety-three apprehended
14 illegal aliens, which was done in May of 1975, and I would
15 use this as the basis.

16 This gives us the most of the data that we
17 now have that is available on the subject---.

18 Q If I may interrupt---.

19 A Yes.

20 Q ---before you go to that, you were a co-
21 author of the North-Houston study?

22 A Yes.

23 Q Please proceed.

24 A We interviewed seven hundred ninety-three
25 illegal aliens in 1975. All of them had been apprehended

1 by the Immigration Service. All of them were interviewed
2 only if they had worked for two weeks in the United States
3 labor market, so our population by definition were
4 reflected as workers. Our findings are similar to other
5 findings on Mexican illegals. Unlike other surveys on
6 Mexican illegals, we had both four hundred eighty-one
7 Mexican respondents. We also had two hundred thirty-seven
8 non-Mexican Western Hemisphere respondents, and we also
9 looked at seventy-five Eastern Hemisphere respondents,
10 and we found the characteristics of these three different
11 groups very similar in recent origin, Mexico, non-Mexico,
12 Western Hemisphere and Eastern Hemisphere, very different
13 in their term of characteristics, less different, however,
14 in terms of their run of the labor market.

15 I will now talk about the Mexican illegal
16 alone.

17 Q Please do.

18 A Our respondents are cast more in the young,
19 the average age of 28.5. That's consistent in all
20 empirical studies of illegal aliens, primarily Mexican.
21 Most of our respondents were male, more than ninety per-
22 cent. That's likewise consistent with other studies.
23 That's likewise likely to be an overestimate, because most
24 studies are apprehended illegals, and the Immigration
25 Service prefers to insure apprehended males. There's likely

1 to be an overcount on that.

2 Q Excuse me---.

3 A Yes.

4 Q The general conclusions are that a vast
5 majority are males?

6 A The great majority, in fact, it's so close
7 that almost all. That's the distinction.

8 Q Thank you.

9 A That would be particularly true of Mexican
10 illegals, because Mexican illegals are non-like un-Mexican
11 illegals in that they tend to have entered the nation
12 without documentation, which means that they have to
13 specifically cross the border in a way that tends to select
14 out women and, certainly, children, so that your Mexican
15 illegal is more than likely any other group to be male.

16 I think that the majority of the Mexican
17 aliens, less than fifty percent, were not married. The
18 majority were, similarly, not likely to have children.
19 They were almost invariably economically motivated. Their
20 chief reason for coming to the United States was to find
21 work, get a better wage. A Mexican illegal alien had a
22 very high dependency ratio at home. They were supporting
23 5.4 dependents in their country of origin, which was quite
24 different from Western or Eastern Hemisphere illegals,
25 who were supporting only 3.6 or 1.8. Our Mexican illegal

1 alien, like all other illegal aliens that have been sampled,
 2 were very badly educated and were unskilled workers in
 3 their country of origin. Further, less than a quarter of
 4 the Mexican illegal aliens of the sample spoke English,
 5 and, again, that's consistent with all the work on the
 6 subject.

7 THE COURT: Less than a quarter?

8 THE WITNESS: Yes, uh-huh.

9 A Those are our chief findings on Mexican
 10 illegal aliens and are completely congruent with other data
 11 on the subject. There are two other characteristics of
 12 Mexican illegal aliens that may be useful to point out,
 13 and that is that they are voluntary migrants. That is,
 14 they're free migrants and, like all free migrants, they are
 15 generally acknowledged to be self-selected, and, therefore,
 16 the best and the brightest of any community, very typical
 17 of all free migration movements, of which the illegal
 18 migration is a new species today.

19 Q Could you estimate the percentage of
 20 undocumented aliens who bring their families with them to
 21 the United States?

22 A There are really no data on that specific
 23 question, whether or not an illegal alien brings his
 24 family. That's unlikely to be the case of the undocumented
 25 worker who would be crossing the border physically because

1 of the method of travel. Your visa abuser who tends very
 2 strongly to be the non-Mexican illegal, would be more
 3 likely to bring family. That in itself, however, is very
 4 unlikely, given the fact that most visa abusers are
 5 tourists, and tourists are screened for the genuineness
 6 of their desire to tour, rather than working in the United
 7 States. It's unlikely for the State Department to issue
 8 a visa to an entire family of a potential illegal alien,
 9 so I would estimate in the area of speculation in terms
 10 of their function and in terms of the process of their
 11 admission, there would be very few illegal aliens who
 12 would bring their families -- this would be a flow
 13 figure -- who would bring their families to the United
 14 States.

15 Q Is it the general consensus of those who
 16 work in the study of illegal migration to the United
 17 States that most illegals are generally employed?

18 A Yes, the Domestic Help Committee report
 19 that came out in '75 (words unintelligible to reporter),
 20 probably the most careful and cautious and most thorough
 21 look at illegal aliens on the basis of knowledge, who did
 22 not want to make a statement which it could not justify,
 23 did, in fact, say that it was the consensus of all experts,
 24 and they too subscribed to the notion that illegal immigra-
 25 tion to the United States is almost entirely a labor migration.

1 Q Are there any statistics concerning what
2 the average hourly wage and working condition is of the
3 Mexican illegal migrant?

4 A The Mexican illegal migrant? Yes, there
5 have been some wage data taken, beginning with Samora's,
6 and then the Mexican government surveys in '72 and '74.
7 Wayne Cornelius has also done some work. The best wage
8 data is still the North-Houston Study. The comparability
9 on Mexican illegal alien wages, again, was as it is with
10 their true characteristics. The Mexican illegal alien
11 in our study earned the least of any group of illegal
12 aliens in the nation. Our average hourly wage of our
13 seven hundred ninety-three workers is \$2.71. The Mexicans
14 earned an average hourly wage of \$2.34 in contrast quite
15 sharply with the Western Hemisphere alien wage of \$3.05
16 and the Eastern Hemisphere of \$4.08.

17 Q Did you do any particular studies of the
18 wage scales in the Southwest or Texas?

19 A Yes, we did. We analyzed our data according
20 to their region of employment, as well as according to
21 their region of origin, and we found that the closer we
22 get to Mexico, the lower the wage. Of the sixty-eight of
23 the sample who worked in the border counties along the
24 Mexican border earned less than the minimum wage, as a
25 group. They earned an average of \$1.74 an hour in May of

1 1975. These were all Mexican illegal aliens. The illegal
2 aliens in what we call the Southwest, predominately Texas,
3 but also a very scattered few in Arizona and Colorado, I
4 believe, but excluding California, the hourly wage of the
5 workers in the Southwest, all of whom were Mexican with
6 one exception, is \$1.98, which is above the minimum wage
7 for agriculture but not for non-agriculture workers.

8 That contrasts sharply with the hourly wage
9 in California where it was \$2.60, and in the West it was
10 \$3.18, and in the East it was \$3.29.

11 Q Were you able to in your studies develop
12 any average weekly wages that Mexican workers were paid
13 and do any data analysis concerning any number of hours
14 that they labored for those wages?

15 A I don't have any weekly wage data for
16 Mexicans besides the general \$106.00 weekly wage. We
17 compared our illegal workers with comparably employed
18 U.S. workers, but we did not do it on the region of origin
19 basis. What we found when we compared the weekly wage of
20 the illegal respondents with the weekly wage which is
21 available to comparably employed production non-supervisory
22 workers, as the Bureau of Labor statistics calls it, we
23 found that our illegals earned a weekly wage of \$117.00,
24 which is roughly two-thirds the wage of comparably employed
25 U.S. production and non-supervisory workers of \$160.00.

1 Although our illegal respondents earned
2 only two-thirds the wage of the U.S. workers comparably
3 employed, they worked an average of 8.6 hours more per
4 week than the U.S. workers.

5 Q Have you had any occasion to study whether
6 Mexican illegal aliens pay Social Security and income tax?

7 A We have some data on that subject. We found
8 that our group of illegal aliens who were workers, that more
9 than three quarters had their Social Security taxes with-
10 held. Almost three quarters had their federal taxes with-
11 held, that a surprising forty-four percent had hospitaliza-
12 tion withheld, which means that forty-four percent were
13 in some sense integrated into the economic mainstream. We
14 found that 31.5 percent of the sample filed federal tax
15 returns. There were very few differences between the
16 Mexicans and non-Mexicans on this. However, we found a
17 very close correlation between employer exploitation and
18 whether or not our sample illegal aliens paid taxes, i.e.,
19 had them withheld.

20 We found about a quarter of our sample --
21 talking about the whole sample now -- were not paid minimum
22 wage, i.e., they had been subjected to illegal wages. We
23 found that had been most likely to have happened in the
24 border counties or in the Southwest. The Southwest were
25 three or four times more likely than any other region in

1 the nation to have their illegals to report a legal wage.
2 To the degree of which illegal aliens in our sample reported
3 substandard, i.e., illegal wages and working conditions,
4 they also tended to report that they did not have their
5 Social Security taxes or federal taxes withheld by their
6 employer.

7 Q Did you have any opportunity to evaluate
8 data from the sample of illegal aliens who had been
9 employed in San Antonio, concerning their tax payment?

10 A Yes, to our surprise, San Antonio was the
11 highest of any -- we analyzed our data in terms of cities
12 and metropolitan areas. San Antonio reported the highest
13 incidence of Social Security deductions than any other
14 city. New York was the lowest in the U.S. with seventy-
15 four percent.

16 THE COURT: Let me see if I understand what
17 you said. They do report more in San Antonio?

18 THE WITNESS: To our surprise, sir.

19 THE COURT: Than in New York City?

20 THE WITNESS: Yes.

21 A I think the reason for this was -- this is
22 speculation -- that we had a fair number of Eastern
23 Hemisphere dishwashers, restaurant workers in New York
24 City. Restaurant workers tend to be an underground labor
25 market, where you have illegal wages and working conditions,

1 and, therefore, they tend not to have their Social Security
2 withheld. One benefit illegal aliens bring to employers
3 and also in some cases legal temporary aliens is that
4 employers do not have to pay Social Security taxes. This
5 can mount up and be a considerable saving and, obviously,
6 in the future be even more of a saving.

7 Q In your studies have you had any opportunity
8 to determine whether illegal aliens generally use the social
9 services that are available?

10 A I find that they do not. This is consistent
11 with other data. Dr. Cardenas has mentioned the Vic
12 Villapondo study in San Diego, which looked at welfare
13 cases in terms of a year in San Diego. Of the apprehensions
14 I think a third of all apprehended illegals are located in
15 San Diego County, if I remember correctly, and in examining
16 their welfare rolls for a full year, Villapondo found that
17 one percent of I think it was of the eighty-seven thousand
18 welfare cases were illegal aliens. That's very similar to
19 the kind of findings that we found in our samples in which --
20 again, I'm talking about the sample as a whole and not
21 Mexicans. I'll make that distinction in a second. Only
22 twenty-seven percent of our sample of illegals had used
23 hospitals or clinics. Only 3.9 percent had collected one
24 or more weeks unemployment insurance. Only 3.7 percent
25 had children in U.S. schools. Only 1.4 percent had ever

1 enrolled in U.S. funded job training programs. 1.3 percent
2 reported that they had used food stamps, and .5 percent --
3 that's 0.5 percent -- reported welfare, that they had
4 secured welfare.

5 Now, we also found in talking about the
6 differences between Mexicans and non-Mexicans, that it was
7 the visa abusers, a much more sophisticated illegal alien,
8 a much more highly educated illegal alien, who had to talk
9 a State Department official and an Immigration Service
10 official in saying, "Yes, I want to come into the United
11 States, but, no, I'm not going to stay." These were much
12 more likely to be non-Mexican illegals and were much more
13 likely to report to the hospital, clinic, or children in
14 school or welfare, or food stamps, than your Mexican
15 illegal.

16 MR. ROOS: Thank you very much. No further
17 questions of this witness.

18 THE COURT: Mr. Hardy?

19 MR. ZWIENER: May we have a few minutes,
20 Your Honor?

21 THE COURT: While Mr. Hardy is cross-
22 examining you may examine your data.
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CROSS-EXAMINATION

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BY MR. HARDY:

Q Ms. Houston, would you go over again -- I think you may have gone over this before on direct, but your estimates of the number of illegal aliens within the State of Texas?

A I don't think I mentioned that.

Q Do you have a figure on how many illegal aliens, particularly Mexican Americans or from Mexico, that are in the State of Texas?

A I could give you a number if you want it. I would not wish it to be qualified as scientifically respectable, but I fooled around with some numbers the last couple of days, and I am very conservative on the question of the number of aliens in the United States, particularly, when you think about stock and flow. My own personal feeling, and I am sticking up my finger, you know, testing the wind, on this kind of thing. I would not want this to be regarded as anything except a reasoned opinion. I hope it is reasonable. It is certainly not scientifically grounded. My own estimate would fall in the range of four million illegal aliens. That's a little bit less than the unofficial Immigration Service estimate

1 that's been included in analyzing the funding needed to
2 implement the Carter Proposal. That's a very recent
3 estimate on the part of the Immigration Service. They are
4 now estimating if the Carter Proposal goes through that
5 there would be about five million illegal aliens in the
6 nation who would be eligible for temporary adjustment of
7 status and about three-quarters of a million who would be
8 eligible for permanent resident alien status. I think
9 that's a little high myself. I am much more moved by
10 Elwood Stoddard, an anthropologist at the University of
11 Texas, who has come up with an estimate, and, again, that
12 in itself is a speculative sort of estimate, but to me it
13 sounds right given other calculations. He estimates that
14 between 2.3 million and 3.1 million illegal Mexican aliens
15 in the U.S. That would put the median at about 2.7. I
16 think that's probably a fairly reasonable estimate of the
17 number of illegal aliens in a stock figure in the United
18 States at the time.

19 THE COURT: He had asked specifically about
20 the State of Texas.

21 THE WITNESS: Yeah.

22 A Well, I can't get to the State of Texas
23 until I get the national estimate. I'm giving you the
24 national now, and I'll try to give you a reason how I come
25 up with a figure for Texas.

1 Let's take that you find 2.7 million as
2 your total national population of illegal Mexicans in the
3 country now, O.K.?

4 If you do that, and if you assume that
5 illegal aliens -- like illegal Mexican aliens are like
6 legal Mexican aliens in the nation, that is, in their
7 geographical distribution, which is the most difficult
8 kind of characteristic to determine, you can get a sort
9 of handle on numbers at this point -- people are beginning
10 to -- but when it gets to the next question, which is,
11 "Where are they?" which is a very central question,
12 obviously, for public policy, it becomes much more diffi-
13 cult. What I'm going to do is that I'm going to offer as
14 a hypothesis a notion, and it is a reasonable notion, that
15 illegal aliens tend to settle where legal aliens are.
16 That is, the geographical distribution of Mexican illegal
17 aliens is very similar to that of the distribution of
18 legal Mexican aliens. If that is the case, then it follows
19 that one-quarter of all illegal Mexican aliens are in the
20 State of Texas, one-half in the State of California with
21 one-fourth in the State of Texas. The remaining quarter
22 would be sprinkled in Arizona, the Midwest and Southwest.

23 If you're going to grant me all these
24 assumptions, and there are many people who would take
25 exception to each one of them, then you would come up with

1 the figure, if I can find it -- I think it's six hundred
2 thousand illegal aliens in the State of Texas. That's not
3 quite right.

4 Q Are you taking your assumption of 2.7
5 million and dividing by four?

6 A Right, I am. It's a very straightforward
7 sort of estimate. O. K., yeah, six hundred seventy-five
8 thousand.

9 Q So what you are telling the court today is
10 that Texas already has a great number of legal Mexican
11 Americans in the country, and because of that, it would
12 make it particularly attractive to the illegal entrant,
13 because they can associate with this group or this
14 nationality and somewhat become lost in the group. Is
15 that correct?

16 A I wouldn't quite say that. What I was doing
17 was taking a favorite state of destination. I did not make
18 that estimate on the basis of the absolute number of aliens
19 in Texas. It's their relative choice among all the states
20 of the union.

21 Q Would you agree with the statement that
22 Texas has a unique attractiveness to the illegal Mexican---?

23 A No.

24 Q May I finish my question?

25 A Excuse me.

1 Q Would you agree that Texas, because of its
2 geographical location, has a unique attractiveness to the
3 Mexican American or the illegal entrant from Mexico?

4 A On the basis of the data on legal immigrants,
5 it appears that California is unique, indeed, in the nation
6 for both Mexican and on-Mexican aliens. It's their
7 favorite state of destination for aliens generally and
8 Mexican aliens also.

9 Q I believe on the information on your hypoth-
10 esis a minute ago California had one-half and Texas one-
11 fourth. Are you grouping California and Texas as a group
12 of two that has a unique attractiveness to these sort of
13 people?

14 A I don't quite know what you mean by "these
15 sort of people."

16 Q The people that come into the country
17 illegally.

18 THE COURT: Are you talking about illegal
19 Mexican aliens?

20 MR. HARDY: Yes, Your Honor.

21 A Would you care to repeat that? I'm sorry.
22 I am losing your point.

23 Q You have disagreed with me that Texas has
24 any unique position or attractiveness because of its
25 geographical location to Mexico for illegal Mexican entrants.

1 Is that correct?

2 A Yes, I take exception with the term, "unique."

3 Q All right, and then you mentioned California
4 because, apparently, under your studies or the data that
5 you have found, California has twice the attractiveness
6 based on one-fourth to one-half, being a two times ratio.
7 All right, if we put Texas and California together, are
8 you saying that these two states have a unique problem
9 compared with the other states of the United States?

10 A I would say that the States of California
11 and Texas are more likely to have illegal Mexican aliens
12 than other states.

13 Q Is one of the reasons for this because of
14 the number of people that are here of that descent that
15 are here legally, as well as the geographical location?

16 A I would certainly put geographical location
17 as a primary reason, and, certainly, it is also the case
18 and has been for centuries in every country when there
19 were countries that migration tends to be a self-feeding
20 sort of undertaking. It tends to follow a family or social
21 or kinship network. People move into the unknown more
22 readily if they know that someone has already been there.
23 That's one of the most fundamental facts about human
24 migration.

25 Q I'm sure, and I'm sure that the type of work

1 available, and California and Texas being somewhat similar
2 in climate, the type of work that these people normally
3 engage in, this would help to attract them to these two
4 states. Is that correct?

5 A Surely.

6 Q If we go directly to what you found in
7 interviewing four hundred plus people in the Houston area,
8 what did you find to be the composition of the illegal
9 aliens that were arrested at that time, male, single,
10 female, family units?

11 A Now, are you asking me about my population
12 of Mexican respondents, the four hundred eighty-one?

13 Q Yes.

14 A And you want to know about their family
15 characteristics?

16 Q No, I want to know what percentage of them
17 were single and what percentage of them had families here.

18 A O. K., more than half---

19 MR. ROOS: Your Honor, we went through all
20 of this on direct. Cross-examination, to my
21 understanding, is not to bring out the same
22 information that was brought out on direct.

23 THE COURT: Well, I'll entertain a limited
24 amount of repetition. What was your question
25 again?

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MR. HARDY: I would like a statistical breakdown of the illegal immigrant that she interviewed in Houston. I don't believe on direct that they came out with how many single or how many had families here or how many children were involved.

A My name's Houston. I don't believe that anybody---

THE COURT: She indicated that fifty percent of them, if I recall it, were not married, if I got her figures right.

A Less than fifty percent of our Mexican illegal aliens were married, O.K.? 11.1 of our Mexican legal respondents (sic) reported that they had spouses in the United States. That's slightly more than ten percent reported that they had spouses in the United States. Half of the Mexican legal aliens reporting that they had spouses in the United States, also reported that they were green card carriers. Excuse me. Green card carriers are permanent resident aliens or resident U.S. citizens. That means that apparently about five percent had illegal alien spouses.

Similarly with the case of children -- again, we're talking about Mexicans -- less than half reported children. Less than ten percent reported that they had

1 children living in the United States. More than ten per-
2 cent reported that they had U.S.-born children, and 2.7
3 percent, that is, thirteen Mexican respondents, reported
4 that they had one or more children in the U.S. schools.

5 THE COURT: Two point what?

6 THE WITNESS: 2.7 percent, sir.

7 THE COURT: Thank you.

8 Q The data that you base your research on,
9 did this separate the child that is born in this country
10 to illegal alien parents versus the child that was brought
11 into the country?

12 A Our data are only what our respondents
13 reported on children. We did not interview children.

14 Q What has been your experience with the
15 mobility of the illegal Mexican American?

16 A Would you explain a little more precisely
17 what you mean by mobility?

18 Q Have you found this group of people that
19 are coming into the country illegally have a tendency to
20 move about and not stay stationary for any length of time?

21 A Well, the illegals in our sample had been
22 in the United States for an average of 2.5 years.

23 Q They had been within the United States,
24 but do you have any idea how long they had been in a town,
25 a county, a state?

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(REPORTER'S NOTE: There was no audible response from the witness.)

Q Did you do any questioning along this line?

A Yes, we did do questioning. I'm trying to think whether we did any analysis on it. I don't think we did. I definitely can't speak very specifically. I can't offer you any empirical data on this. My hypothesis would be that the illegal aliens who settled in cities would be more likely -- the farther away an illegal alien is from his country of origin, the more likely he is to be permanently settled. I think that's a fairly reasonable hypothesis, but, again, I'm arguing on the basis of my knowledge of migration and migration trends, rather than on any particular data or a particular phenomenon at a particular period in time.

Q Regarding your answer to the social services (sic) and the illegal entrants not making use of the social services, that was the San Diego survey. Do you have anything that would address itself to the State of Texas?

A Specifically? Well, two hundred eight of our respondents were interviewed in the State of Texas, and two hundred twenty-three of our respondents had last been employed in the Southwest, mostly Texas, so the data

1 are highly pertinent to Texas.

2 Q Is that true also of the social services
3 that they made themselves available to (sic)?

4 A Yes.

5 Q When this group of people come into the
6 United States, do they normally only look to the job
7 opportunities that are available to them here, compared
8 to what they have in their home country?

9 A The outstanding motivation for illegal
10 immigration today is better work and higher salary. It's
11 a worker migration.

12 Q Based on your studies and your experience,
13 do you have an opinion whether or not education being
14 offered to these people would be an incentive to come to
15 this country?

16 A Education offered to whom, sir?

17 Q The children.

18 A Very few tend to bring children. It's a
19 migration of young male workers who support a high number
20 of people in their country of origin---.

21 Q Excuse me. I have asked you just to assume,
22 would this have an effect in your opinion on people? Would
23 more people bring their children to this country or the
24 State of Texas, specifically, if more opportunities were
25 available to their children?

1 A If the United States offered education to
2 illegal children, would illegal aliens bring their children
3 in order for the illegal alien children to get education?
4 Is that what you're asking?

5 Q Yes.

6 A I suppose so.

7 MR. HARDY: No further questions.

8

9 CROSS-EXAMINATION

10

11 BY MS. CARDWELL:

12

13 Q I believe you indicated that in your study
14 there were 5.4 dependents in Mexico from your illegal alien.

15 A Yeah, your Mexican illegal alien, right.
16 That was the average.

17 Q And I suppose that's due in part to the fact
18 that if the illegal alien here sends money home, his 5.4
19 dependents could live much better in Mexico than they could
20 here because of economic reasons.

21 A Yes.

22 Q Your survey, I believe, dealt with only two
23 hundred eight illegal aliens in Texas out of what you
24 estimate to be six hundred thousand. Is that correct?

25 A The six hundred thousand figure that I gave

1 you would be for now. Yeah, that's true.

2 Q And it did not deal with illegal aliens
3 along the Mexican border in detention centers. It was
4 only---

5 A Well, we interviewed very few illegal aliens
6 at the border, because most illegal aliens who are
7 apprehended or who are apprehended by the border patrol
8 are apprehended within seventy-two hours of entry, so the
9 bias in terms of I.N.S. apprehension methods is toward
10 apprehending your new illegal alien who tends not to be
11 successful on his first trip. We were interested in find-
12 ing out about the characteristics and labor market role
13 of those who had been in the nation some time, so we tended
14 to interview away from the border in order to avoid getting
15 first timers.

16 Q But would you say the sample is representa-
17 tive when it only deals with only two hundred eight illegal
18 aliens, and it's in one or two cities in Texas? San
19 Antonio, is that the only city in Texas?

20 A No, El Paso. We never offered it as a
21 representative sample. It's impossible to draw a represen-
22 tative sample of a population whose characteristics and
23 magnitude are not known.

24 Q I don't think I have any other questions,
25 other than three-fourths of your sample indicated they came

1 for employment reasons and that the illegal alien from
2 Mexico was even more motivated by employment.

3 A Correct.

4 THE COURT: Is there redirect examination?

5

6 REDIRECT EXAMINATION

7

8 BY MR. ROOS:

9

10 Q Just one question -- you mentioned in your
11 statistics that 2.7 percent, I believe, of the people you
12 interviewed had children in schools.

13 A Yes, that's correct.

14 Q That does not distinguish between citizen
15 children and non-citizen children, does it?

16 A No, and since the number of respondents who
17 reported U.S.-born children exceeded the number of respon-
18 dents who reported children illegally in the United States,
19 I would assume, although I do not know for certain, that
20 most if not all of them are U.S.-born children.

21 MR. ROOS: Thank you, no further questions.

22 THE COURT: Does the amicus desire to
23 question the witness?

24 MR. WISE: I just have one question, Your
25 Honor.

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MR. ZWIENER: Your Honor, we would impose an objection at this point on amicus participating as a party. We don't think that he has any right, and we make that objection for the record.

THE COURT: The objection is overruled. If you would, go to the lectern.

CROSS-EXAMINATION

BY MR. WISE:

Q Ms. Houston, in answering Ms. Cardwell's question about the number of dependents supported in Mexico by the workers here, would you define the use of dependent in that context?

A Let me think a minute, O.K.? It certainly didn't mean necessarily family members. We asked the respondents how many people they supported, so it's a support question, and the average number was 5.4 Mexicans.

Q Would that include the full range of the extended family relationship that Dr. Cardenas mentioned?

A Oh, yes, indeed.

Q My point is that it's not then that there are that many children of this individual worker.

A Oh, no. Only half our respondents were

1 married. It was primarily presumed that the parents -- in
 2 fact, the Mexican government survey in 1974 makes an
 3 interesting point in reference to their discussion of the
 4 youth of their respondents, that it is not unusual for a
 5 Mexican male who was forty or over to turn over the
 6 primary responsibility for maintaining the economic welfare
 7 to the younger generation. This was offered by the Mexican
 8 government as an explanation of the youth of their sample,
 9 so it's not at all their children but, rather, their
 10 parents and the extended family that they are supporting
 11 in their country of origin.

12 MR. WISE: Thank you.

13 THE COURT: I neglected to ask you whether
 14 or not you wanted to ask the preceding witness
 15 any questions.

16 MR. WISE: I only had one question, which
 17 I believe was clarified by subsequent testimony,
 18 but General Chapman was -- in which administra-
 19 tion was he?

20 THE WITNESS: The Ford administration --
 21 well, he was appointed by President Nixon and
 22 served through the Ford administration.

23 MR. WISE: And he no longer serves in that
 24 capacity?

25 THE WITNESS: He no longer serves in that

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capacity since Carter.

MR. WISE: Thank you.

THE COURT: You may stand down.

(WITNESS STANDS ASIDE)

THE COURT: Who will be your next witness?

MR. ROOS: Plaintiffs call Robert Firestine to the stand.

Your Honor, we have submitted the vita of Dr. Firestine to the court and to the parties and would move it into evidence as Plaintiffs' Exhibit 4.

THE COURT: It will be received in evidence.

(RESUME OF ROBERT FIRE-
STINE --
was duly marked as:
PLAINTIFFS' EXHIBIT NO. 4)

ROBERT FIRESTINE,

a witness called by the plaintiffs, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

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BY MR. ROOS:

Q Please state your full name for the record.

A Robert Edward Firestine.

Q And your present place of residence?

A Richardson, Texas.

Q Could you briefly state all degrees received from institutions of higher education and in what areas they were received?

A Yes, I have a Bachelor's Degree in economics from Rensselaer Polytechnic Institute in 1963. I have a Master's Degree in economics from Syracuse University in 1965 and then a Ph.D. Degree in economics from Syracuse University in 1971.

Q Could you briefly describe your major areas of specialization?

A Yes. My major professional interests are in the area of educational finance, public finance, urban economic problems, and I have done some specialized work in declining enrollments in education.

Q Could you briefly describe your employment experience as it reflects upon those specializations?

A Yes. Most specifically, I was employed for

1 three and a half years in the Syracuse University Research
2 Corporation in the Educational Finance and Governance
3 Center, where I was co-director. Most of that time
4 involved studies of educational finance with respect to
5 the federal government and state and local governments
6 in the United States.

7 Prior to that I had done some teaching and
8 some research at the University of Florida in economics,
9 which had some relevance to educational finance, and since
10 that time, that is, since September of 1975, I have been
11 Associate Professor of Economics and Political Economy at
12 the University of Texas Dallas, in which I have carried
13 out some studies in urban problems with specific reference
14 to educational finance and have done some professional
15 writing in the area of educational finance and declining
16 enrollments.

17 Q Recognizing your vita is in evidence, and
18 there's no need to go through all your publications, could
19 you highlight several of the major publications dealing
20 with school finance?

21 A Yes, I think there are probably two areas
22 that would be of interest. One, I have some extensive
23 publications which have been in professional journals, as
24 well as consultant reports that I wrote while I was
25 employed by the Syracuse University Research Corporation

1 under contract with the U.S. Department of Health, Education
2 & Welfare. Oh, I don't know, but probably a dozen of those
3 reports were submitted to H.E.W. in the area of educational
4 finance.

5 In addition to that, there were consultant
6 reports and other work that was done for the City of
7 Detroit and the County of Los Angeles School District,
8 the State of New York, the State of Ohio, and we had done
9 some work in Texas, although I have no publications in
10 that area.

11 In the area of declining enrollments,
12 specifically, I have written a recent article in the
13 Journal of Education Finance on the problem of declining
14 enrollments in the United States.

15 MR. ROOS: We move that this witness be
16 certified as an expert in school finance.

17 THE COURT: Very well. The motion is
18 granted.

19 Q Dr. Firestine, in the course of your studies
20 have you had an opportunity to evaluate whether the
21 reduction of students reduces the cost of a school district?

22 A Yes, I have.

23 Q Could you briefly describe the process of
24 the interrelationship between student reduction and cost
25 reduction?

1 A Yes, it's a surprising outcome that you
2 come to, because the first expectation that one would have
3 about the financial effect on the school district of enroll-
4 ment decline would be that you would anticipate that a
5 decline in enrollments would seem to decrease the cost of
6 school districts and, therefore, be a financial advantage
7 to the school district. However, if you look at the
8 situations facing almost any school district in the country,
9 you will see that that's really not the case. It is the
10 reverse of that, and that's the truth for two basic reasons.

11 One has to do with the structure of educa-
12 tional expenditures, the cost structure within individual
13 districts, what I would call internal concerns, and the
14 second has to do with some external concerns, specifically,
15 related to the state aid structure within a given state.

16 First, with respect to the internal concerns
17 -- oh, and I should add that in recognition of this problem
18 of the financial bind that declining enrollments has put on
19 local school districts, a number of states, not including
20 Texas, have enacted special provisions in their state aid
21 formulas to essentially ease the burden, the financial
22 burden upon school districts of enrollment decline, but,
23 as I say, Texas does not have so specific a provision as
24 that.

25 Now, let me talk briefly, if I may, about two

1 different kinds of concerns reflecting on this question.
 2 One is the internal problem, having to do with cost
 3 structure in a school district. Specifically, if you look
 4 at the major kinds of expenditures that school districts
 5 are required to support, I think it's safe to break those
 6 costs down into what I as an economist would prefer to call
 7 them relatively fixed and relatively variable costs,
 8 attempting to do that in a way that would be consistent
 9 with the way we look at the private sector.

10 Within the fixed costs that a school district
 11 would have, the primary fixed cost would constitute
 12 administrative costs, cost of carrying on the administration
 13 of a school district, which totaled about fourteen percent
 14 in 1975-'76 statewide in Texas, and maintenance operation
 15 costs, which constituted about eleven percent in the same
 16 period, so together those are the two major items of
 17 budgetary costs, totaling about twenty-five percent of
 18 current operating expenditures on the average, which would
 19 be considered relatively fixed.

20 Now, let me explain why I say that. Just
 21 because the enrollment in a school district would decline
 22 by a moderate amount, and most of my comments would relate
 23 to that specific sort of concern -- we cannot presume that
 24 specific expenditures for maintenance operation and for
 25 administration would commensurately decline, that is,

1 school buildings still have to be maintained in the usual
2 way. Administrative responsibilities usually do not change
3 whether or not there is a small decline in the enrollment
4 being served by those maintenance and operation and
5 administrative personnel. Certainly, purchase of supplies,
6 et cetera, would not be meaningfully affected by that
7 for those purposes, so even though enrollment declines
8 proceeded at a relatively moderate rate, we would find
9 that the cost of maintenance, operation and administration,
10 in fact, would be relatively fixed.

11 Secondly, of course, if we're talking about
12 expenditures for debt service or debt retirement, that
13 would reflect expenditures in the past which were maintained
14 and would be maintained over a continuing period of time,
15 and enrollment declines, as they may proceed at a moderate
16 level, would then also have no effect on reduction of debt
17 service, so there are those three major areas of maintenance
18 and operation, administration and debt service, which I
19 would prefer to call relatively fixed levels of expenditures
20 and unaffected then by declining enrollments.

21 The other area which I would treat more as
22 a variable cost would be instructional expenditures per se.
23 Specifically, we would anticipate at first glance that as
24 numbers of students being instructed decline, we would be
25 able to reduce the number of teaching personnel commensurately.

1 Now, there are a couple of problems with
2 that having to do with the cost of instructional salaries.
3 One is, of course, we can't simply expect a decline of a
4 few students to lead to the termination of employment of
5 a given teacher. That would only occur in situations where
6 sufficiently large numbers of students were essentially
7 not to be present to permit an entire class to be eliminated,
8 and in that case perhaps the teacher's duties would be
9 deemed unnecessary, but even in those conditions we have
10 limitations that face local school districts with regard
11 to tenure provisions and with regard to the desirability
12 of maintaining teachers on the faculty, such that over a
13 period of time, perhaps, attrition is generally the stronger
14 reason for getting rid of teachers under enrollment declines
15 than we would find the reduction of teachers by immediate
16 termination, and even if personnel are to be fired in the
17 face of an enrollment decline, the cheaper teachers, those
18 with less experience and which are generally not in a
19 tenured situation, would be released first, or, perhaps,
20 before that quite low-cost teacher aids would be released
21 before a regular teacher would be released, so even if you
22 look at it as approximately sixty-eight percent of current
23 public school expenditures which are attributable to what
24 I would call relatively variable costs of instruction, even
25 that sixty-eight percent is not easily susceptible to

1 reduction in the face of enrollment declines and, certainly,
2 the fixed costs that I maintained before are quite resistant
3 to reduction in the face of enrollment declines.

4 Q Speaking now to instructional salaries and
5 instructional services, that aspect, can one give any sort
6 of a rough guideline as to the number of students one would
7 have to exclude in a given school or in a given grade before
8 you could even begin the process of winnowing out teachers
9 and faculty members?

10 A Yes, as I said, generally, you wouldn't be
11 able to maintain any economies (sic) in the reduction,
12 unless you were to eliminate approximately an entire class
13 size, that is, twenty to thirty students at one given time
14 and in a specific grade. If enrollment declines, as they
15 generally do proceed, occur across a number of grades or
16 occur over a period of time, then you've got modest declines
17 throughout say an entire school plant or an entire school
18 building, but only until the impact of those declines
19 could be organized to be able to reduce an entire given
20 grade or given classroom, which would constitute a given
21 grade or a specific teacher's responsibility over those
22 students, then you would not be able to reduce the number
23 of teachers dealing with those students. You would simply
24 find dwindling class sizes throughout the school, even
25 though the number of classroom teachers and the number of

1 classrooms they supervise would probably be maintained at
2 the same level, so during one year it would probably have
3 to be a sizeable reduction of twenty or thirty at a given
4 grade level.

5 Q At a given school also?

6 A Yes, right.

7 Q Dr. Firestine, if the per-pupil expenditures
8 in a given district were hypothetically \$1,000.00, would
9 it be fair to say that the exclusion of the student would
10 save the district \$1,000.00?

11 A No, no, it would be much less than that.

12 Q In fact, if I understand your testimony,
13 the exclusion of certain students would have little, if
14 any, impact on your costs which are fixed. Is that right?

15 A That's correct.

16 Q Dr. Firestine, are you familiar with the way
17 the schools are financed in the State of Texas?

18 A Yes, I am.

19 Q Would you briefly describe the basic
20 sources of financial aid to a school district and their
21 relative percentages?

22 A Well, if you look at the three major sources,
23 they are, of course, the federal, state and local govern-
24 ments, and the proportions, I think, in the most current
25 year would be about fifty-four percent from the state or

1 through state aid, about thirty-eight percent from the
2 local districts -- this is an average figure, of course,
3 across the state -- and about eight percent from the
4 federal government, so the majority would come from the
5 state.

6 Q Could you briefly describe the formulas
7 that are utilized to distribute general state aid??

8 A Yes. Now, I think the two major aspects of
9 state aid that would be most relevant here really relate
10 to external situations that I referred to earlier, that
11 is, the Foundation Program, which provides the bulk of
12 that general aid, and equalization aid, which is also
13 distributed to school districts. The Foundation Program
14 is based on a fairly complicated formula, which is quite
15 difficult to go into briefly, but, essentially, it's a
16 small distribution per student, that is, per student in
17 average daily attendance. That's about \$100.00 per student.

18 In addition to that, the major aspect of
19 Foundation Program aid is based on a formula which accounts
20 for the number of students in groups of grade levels, and
21 the state's idea behind that is essentially to provide a
22 minimum level of support to each district for each
23 approximately twenty students that would require a teacher,
24 so there is essentially within a Foundation Program a heavy
25 involvement of the state to provide a basic salary level

1 for teachers in accordance with the scheme that the state
2 mandates, which the school districts must follow.

3 Now, as long as a given school district
4 levies the required tax rate to be participant in the
5 Foundation Program, they fall into the schedule. They
6 receive this allotment for personnel units which the state
7 provides, and they also receive this additional approxi-
8 mately \$100.00 per pupil amount, which together totaled
9 the Foundation Program support.

10 Now, the equalization program support, which
11 is a smaller level within the state, is based essentially
12 on property wealth per A.D.A. or per average daily attendant
13 student in school, and it is oriented primarily towards the
14 relatively low wealth or poorer school districts in the
15 state.

16 Q Taking these basic sources of money, is it
17 possible that the school district would lose state funds
18 if it excluded a student from school?

19 A Yes. In both cases, as I have explained,
20 with the Foundation Program, which is a complicated arrange-
21 ment, certainly, there would be some reduction by reducing
22 the number of average daily attendant pupils being counted.
23 In equalization aid this would also occur because as numbers
24 of students that were counted in attendance in a school
25 district were reduced, the school district would then appear

1 to be more wealthy in terms of its property wealth per
2 attending student. In that case the district, as it
3 appeared to become more wealthy, even though the actual
4 property value in the district had not changed, as the
5 district appeared to become more wealthy on paper, it's
6 actual equalization would thereby be reduced.

7 Q So a law that excluded certain children
8 from school would strike more strongly at a poorer school
9 district because of the equalization aid formula than at
10 a wealthier district?

11 A That's true, yes.

12 Q Given the funding formula based on students
13 in attendance and given the intransigence of costs, is it
14 possible that a state law that resulted in exclusion of
15 certain students from school could result in placing a
16 school district in a greater financial squeeze than it was
17 in before?

18 A Yes, I think in general that would be true
19 within the state and, certainly, it's true across the
20 country. As we were to look more carefully at the
21 situations of individual districts, we might want to ask
22 the extent to which this would occur, and it's hard to
23 generalize beyond the sorts of programs that we see in
24 existence, that is, if we're operating from a relatively
25 fixed scale of program, which we generally are under these

1 conditions, then what you are suggesting would certainly
2 occur, and the school district would be essentially worse
3 off.

4 MR. ROOS: Thank you. No further questions.

5 MR. HARDY: Might I have just a moment,
6 Your Honor?

7 THE COURT: Yes, sir.

8 (PAUSE)

9

10 CROSS-EXAMINATION

11

12 BY MR. HARDY:

13

14 Q Doctor, a great number of the questions that
15 have been asked and the answers you have given have dealt
16 with a decline in student population and what effect it
17 would have on the budget of the school system. Turning
18 now to an increase, if there were an increase of students
19 to a particular school system or the State of Texas, would
20 this have the tendency to increase the cost of the school
21 district in educating the number of students they have
22 available?

23 A Well, if we're talking about increasing the
24 number of students, again, essentially, fairly incremental
25 increases -- we're not talking about doubling the size of

1 the school body or anything like that, but fairly incre-
2 mental increases to the school district, I think the first
3 thing that I would want to ask would be the extent to which
4 state aid would be affected one way or another, that is,
5 the state aid that that individual school district would
6 receive would be affected.

7 Now, in accordance with what I said before
8 about the predominance of the state, that is, more than
9 the majority of the total education expenditures in the
10 state come from the state government, state aid then
11 would commensurately increase, and as more students
12 incrementally increased in the district, that particular
13 school district would enjoy an increase in state aid,
14 which would, on the average, be the majority of its
15 revenue, so if we're talking about relatively modest
16 increases in enrollments, generally, school districts
17 then would be better off in that case, and the converse
18 is as I just testified. Relative decreases in enrollment
19 would make the school districts worse off.

20 Q Are you aware that the state does not
21 supply funds for the education of illegal aliens?

22 A Yes, I am aware of the section of law.

23 MR. HARDY: No further questions.
24
25

CROSS-EXAMINATION

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BY MS. CARDWELL:

Q Let me pose a hypothetical to you, Doctor. Are you familiar with the Houston Independent School District?

A More or less.

Q It's a rather large school district.

A Yes.

Q If say you added five thousand children to that school district in one fell swoop, who required special education in some areas, are you saying that Houston I.S.D. would make money or not be out any additional money on the basis of your figuring here?

A Well, you know, this is one of the situations where we have to back off and say to answer this properly, we would have to look at some of the data that are involved, and I don't know (a) the structure of the state aid receipts that Houston I.S.D. receives, the number of students involved, although I know they are considerable, nor do I know the structure of the special educational needs that exist within the district in Houston relative to general educational expenditures. You referred to -- I'm not sure of your exact words, but the sense I got was the students

1 would have some sort of special needs which go beyond the
 2 kind of funding that I have outlined, and I have to know
 3 something about the extent of those needs and the extent
 4 to which those needs could not, in fact, be met by existing
 5 personnel or by existing programs that were already under-
 6 way. If you could give me an estimate of the percentage
 7 impact on the size of the student body of what that five
 8 thousand might be, that would even help me. Five thousand
 9 itself doesn't help me, unless I can relate that to the
 10 total size of the student A.D.A. in Houston.

11 Q Well, regardless of the special factors, it
 12 will cost more money for the state or Houston I.S.D. to
 13 educate five thousand additional students, would it not?

14 A Well, the additional students coming in
 15 would, assuming five thousand in the district the size of
 16 Houston is a relatively incremental size, the cost would
 17 go up, but we have to remember that the distribution of
 18 aid and also the economies at scale (sic) and also the
 19 operating of classrooms would probably not raise the cost
 20 terribly, terribly much.

21 For instance, it doesn't cost you that much
 22 more in terms of actual expenditures to educate twenty-
 23 seven students in a classroom, as opposed to twenty-six.
 24 On the other hand, if we needed additional classrooms for
 25 specific educational purposes, which you are suggesting but

1 aren't really outlining for me, then your cost might
2 increase, but we would have to know something about the
3 extent to which new kinds of classrooms might have to be
4 formed.

5 Q O. K., I take it that the figures you were
6 giving Mr. Roos in terms of whether there would be a
7 declining cost, or it would cost the school district no
8 less do not take into account any special expenses or the
9 building where it may be filled to capacity already, and
10 adding twenty students may require an additional room.
11 Nothing like that is taken into account in your general
12 figures.

13 A Well, to the extent that you would have to
14 have additional capital expenditures or expansion of plant,
15 if that were the case, if there was, indeed, a large city
16 school system like Houston, not very much available excess
17 capacity in terms of classroom space, then if you had to
18 go into a building program, there would be some additional
19 cost, but I'm not sure if that would be the case or not
20 without having more figures than I have.

21 Q What if all the five thousand students we
22 added to Houston I.S.D. needed bilingual education? Would
23 that change your---?

24 A I'm not sure, because I don't have figures
25 in front of me about the costs of the bilingual program.

1 I'm sorry.

2 Q Are you familiar with situations on the
3 border, and do you take them into account in your studies
4 where now school districts, say in Brownsville, for
5 instance, are growing at the rate of a thousand students
6 a year? Did you take that sort of thing into consideration?

7 THE COURT: They're doing what during a year?

8 MS. CARDWELL: They have an additional
9 thousand students a year, illegal alien students.

10 Q Do you take that sort of thing into account?

11 A I'm afraid I don't understand, because if
12 there are illegal alien students going to---

13 Q I meant to say legal.

14 A Legal aliens going to Brownsville?

15 Q Uh-huh.

16 A Again, I have to have a sense of the impact
17 of that thousand students. A thousand may be a large
18 number, but, proportionately, if it is a relatively small
19 number in the district, then it would not be terribly
20 significant. We're probably not talking about building
21 new school districts or building new school buildings
22 immediately for an influx of a thousand students.

23 Q What would you estimate the cost to be to
24 a school district to erect a portable building every
25 fifteen days to house its students from September until the

1 present time?

2 A I wouldn't make an estimate, because I don't
3 have any idea what the cost of portable buildings is. I'm
4 sorry.

5 Q But overall what you're saying when you're
6 saying there is no cost up or down in changing or adding
7 students, you're not taking into account the school
8 district that is already growing so fast it does not have
9 the physical plant to house the students, are you?

10 A Well, if, certainly, they are pressed to
11 the limit and they have to resort to additional capital
12 expenditures perhaps of the type that you're suggesting,
13 clearly there would be additional costs involved, although
14 the bulk of those costs, of course -- the current cost of
15 those expenditures would be picked up by the state.

16 Q Then it would cost the state, the State of
17 Texas, who is a party to this suit, the money---?

18 A No, the question is the extent to which costs
19 expand proportionate to numbers of students being intro-
20 duced, and if we were asking specific questions about
21 specific districts, we have to look at their cost structure
22 and the capacity of the physical plant that they have, and
23 it's pretty difficult for me to make off-the-cuff estimates
24 of what they would possibly be without having some of those
25 figures in hand.

1 Q Your figures also do not take into account
 2 the situation -- let me pose another hypothetical -- say
 3 Abilene, Texas, where there are currently five hundred
 4 teachers, and the addition of a populace of a hundred
 5 fifty illegal alien students who would require---

6 MR. ROOS: I'm going to object to the form
 7 of the question of referring to a particular
 8 school district. It assumes facts that are not
 9 in evidence. Hypotheticals are hypotheticals.

10 THE COURT: Well, I would assume there is
 11 some testimony that will connect this up.

12 MS. CARDWELL: Yes.

13 THE COURT: All right, the objection is
 14 overruled, subject to be stricken if it is not
 15 connected.

16 Q If you have a school district that currently
 17 has five hundred teachers who are not bilingual teachers,
 18 and you put in a hundred fifty students who require bilingual
 19 education, your figures do not take into account that sort
 20 of increase or decrease in expending funds either, do they?

21 A No, they don't. I'm not addressing myself
 22 to the specific cost of bilingual education. I don't feel
 23 that's an area that I have sufficient knowledge of the
 24 finances of the program in Texas to make comments on that.
 25 The statements in respect to the aid programs I mentioned

1 so far have been with respect to the general aid programs
2 that a district receives and not special categorical
3 programs for specific educational purposes, such as
4 bilingual education.

5 Q And they also deal with just the general
6 increase or decrease of student populations, do they not?
7 They don't take into account special problems.

8 A No, I'm not trying to account for special
9 student needs.

10 MS. CARDWELL: We have no further questions
11 at this time.

12 THE COURT: Is there redirect examination?

13 MR. ROOS: No redirect, Your Honor.

14 THE COURT: You may stand down.

15 (WITNESS STANDS ASIDE)

16 THE COURT: The court will be in recess
17 until 1:20.

18
19 (REPORTER'S NOTE: The court then,
20 at 12:05 o'clock, p.m., December
21 12, 1977, recessed until 1:20
22 o'clock, p.m., the same date, at
23 which time it was reconvened.)
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THE COURT: Please be seated. The witness will please resume the stand. I had thought that he had remained in attendance on the court, the last witness.

MR. ROOS: Dr. Firestine?

THE COURT: Yes, please come back. I had understood that the amicus wanted to ask one or two more questions.

MR. ROOS: Yes, Your Honor, I had talked to the amicus at lunch and, basically, he indicated that what he wanted to bring out was going to be brought out by Dr. Cardenas' testimony, so it was not necessary now.

THE COURT: Very well then. You're excused.

(WITNESS IS EXCUSED)

THE COURT: Please call your next witness.

MR. ROOS: I call Jose Cardenas.

Your Honor, I would move the introduction as Plaintiffs' Exhibit No. 5 the vita of Dr. Jose Cardenas into evidence.

THE COURT: Very well. It is received in evidence. I have some familiarity with Dr. Cardenas. He testified in a case once before in this court.

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(RESUME OF JOSE CARDENAS --
was duly marked as:
PLAINTIFFS' EXHIBIT NO. 5)

MR. ROOS: Then I'll quickly go through his
credentials.

JOSE CARDENAS,

a witness called by the plaintiffs, having been first duly
cautioned and sworn to testify the truth, the whole truth
and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. ROOS:

Q Dr. Cardenas, could you please briefly state
your educational attainments in higher education?

A I have a Bachelor of Arts Degree from the
University of Texas at Austin, Master of Education Degree
from Our Lady of the Lake College in San Antonio, and a
Doctorate Degree from the University of Texas at Austin.

Q And what is your Doctorate and Master's in?

A Educational administration and supervision.

1 Q Could you briefly state your employment
2 background insofar as it relates to education?

3 A I have been a teacher in elementary, junior
4 high and senior high schools. I have been a vice-principal
5 of high schools, principal of an elementary school, super-
6 intendent of a metropolitan school district, and I have
7 been a professor in higher education, and I have been
8 departmental chairman of the Department of Education, and
9 I have worked several years at research and development
10 types of activities.

11 Q What is your present position, Doctor?

12 A I am Executive Director of Intercultural
13 Research Association, a non-profit organization devoted to
14 educational research and development in the area of equal
15 educational opportunities.

16 Q Could you briefly hit some of the highlights
17 of some of the publications that you have written in dealing
18 with the educational rights of minority children and school
19 finance?

20 A I have had articles published in professional
21 journals, including Texas Teacher Association Journal,
22 and the National Education Association Journal and many
23 publications by different governmental agencies, including
24 Office of Education, National Institute of Education, the
25 Department of Health, Education & Welfare and many other

1 articles in other publications, probably numbering in the
2 hundreds.

3 Q Could you briefly describe some of your
4 major consultancies to government agencies or other major
5 entities concerned with education?

6 A I have been a consultant to the Office of
7 Secretary at the Office of Health, Education & Welfare.
8 I have done consultant work for the Office of Civil Rights,
9 for the Office of Education, for the Department of Justice,
10 for the Department of Labor, for various foundations,
11 including the Ford Foundation, Carnegie, Rockefeller and
12 for many, many school systems throughout the country.

13 Q Could you briefly describe in a little bit
14 greater detail the operations of I.D.R.A. and different
15 facets of I.D.R.A.?

16 A Yes, sir. We have various programs. We
17 have a program that involves public school finance research
18 and development. We have a grant from the Ford and Carnegie
19 Foundations and have been carrying on four years of research
20 in the area of school financing, problems in the area of
21 school financing and the development of alternative
22 strategies for achieving equity in the schools. We also
23 have a program in property tax practices in the State of
24 Texas and some of the problems that are to be found in
25 property taxation and recommendations for reform activities.

1 We have a contract with the U.S. Office of
2 Education to provide technical assistance to school systems
3 in Texas, Arkansas and Louisiana that are implementing
4 bilingual education programs. We are currently working
5 with about a hundred school districts in the three-state
6 area. We have a grant from the National Institute of
7 Education to measure legislative impact on school finance
8 equity and are conducting studies in California, Florida,
9 Michigan, New Mexico, Colorado and Texas. We have a grant
10 from the Office of Education for conducting studies in the
11 cost of bilingual education. We are conducting such studies
12 in Texas, California, Utah and Colorado.

13 We have some other minor projects that we
14 are also involved in. The one major would be the develop-
15 ment of bilingual headstart materials for the administration
16 for children used for families, which used to be the Office
17 of Child Development in Washington.

18 MR. ROOS: I move to certify Dr. Cardenas
19 as an educational expert.

20 THE COURT: Very well. Your motion is
21 granted.

22 Q Dr. Cardenas, have you had the opportunity
23 to work in or with a school district of significant numbers
24 of undocumented children?

25 A Yes, sir, both as a professional employee of

1 the school district, as well as a consultant relationship
2 with school systems.

3 Q Could you sort of generally relate that
4 experience?

5 A Well, I was a teacher in the Laredo Public
6 Schools where there were a large number of alien children,
7 both documented and undocumented, and then I was a teacher
8 and administrator in the Edgewood School System in San
9 Antonio, Texas, in which, again, there were many children
10 that were alien. I have worked with superintendents and
11 other staff of other school districts concerning the
12 implementation of programs for alien children.

13 Q Have you had the opportunity to observe the
14 educational needs of these children?

15 A Yes, sir.

16 Q Does the undocumented alien frequently need
17 some form of bilingual instruction?

18 A Very frequently the undocumented alien from
19 Mexico and other non-English-speaking countries do require
20 some form of bilingual education program.

21 Q In having this need, does the undocumented
22 alien differ from recent migrants who are legal?

23 A They have many characteristics, such as
24 language and cultural heritage that are very similar,
25 requiring a similar school response.

1 Q In having the need for bilingual education
2 and culturally compatible programs and other things of
3 that sort, does this child differ from most other children
4 of Mexican ancestry growing up in Texas?

5 A The characteristics are very similar, and
6 the educational needs are also similar.

7 Q Do most school districts in Texas, in fact,
8 have a minimally adequate bilingual program?

9 A No, sir.

10 Q If they did have such programs, should there
11 be any additional problems caused by having to deal with
12 the illegal child or the undocumented child?

13 A No, sir, assuming the school district had
14 an adequate program in bilingual education and multi-
15 cultural education, there would be no additional problems
16 in dealing with the alien child. On the contrary, I think
17 there would be less problems in dealing with the alien
18 child.

19 Q Dr. Cardenas, at the present time in Texas
20 how much extra money is the state spending to educate
21 children bilingually?

22 A The state has an appropriation of approxi-
23 mately \$40.00 per child, and this money is a category
24 grant that is made available to the school systems enrolling
25 children in bilingual educational programs.

1 Q Is this money made available for all
2 children, irrespective of legal status?

3 A The legislation does not have any constraints
4 on the children that participate. It is only based on the
5 characteristic of limited English-speaking ability.

6 Q In your experience, are school districts
7 spending money from local funds generally above this sum?

8 A Yes and no. Some school districts are
9 expending money from local funds to augment money made
10 available from the state.

11 Q Is that a common practice or an uncommon
12 practice?

13 A This is a very common practice that the
14 system of school finance in the State of Texas allows for
15 what is referred to in Texas as enrichment funding, which
16 is additional money made available from the local level.
17 In other states it is referred to as local leeway funds,
18 and in any type of programmatic activity it is fairly
19 common to have local monies augmenting the state foundation
20 program.

21 Q But does one find this particularly in the
22 majority of school districts in Texas with respect to
23 bilingual education?

24 A No, sir, in bilingual education there would
25 be a limited number of school districts that are making such

1 local funding augment state money.

2 Q Are there federal programs available for
3 bilingual education?

4 A Yes, sir, there are many federal programs
5 that provide money to Texas schools providing bilingual
6 education, including Title VII of the Elementary-Secondary
7 Education Act, Title I of the same Act, the Right-to-Read
8 Program, Follow-Through Program, the E.S.A.A. legislation
9 and other governmental grants that are available and are
10 being utilized in Texas schools for bilingual education.

11 THE COURT: What is this E.S.A. (sic)?

12 THE WITNESS: E.S.A.A. is Emergency School
13 Assistance Act, the desegregation funds.

14 Q Apart from bilingual programming, do illegal
15 children have any other educational needs that need to be
16 addressed?

17 A Would you repeat the question, please?

18 Q Apart from bilingual programming, do illegal
19 children as a class alone, as contrasted with legal
20 children or citizen children, do illegal children have
21 any other unique educational needs?

22 A Depending on the grade level at which they
23 transfer to an American school, they may have minimal types
24 of educational needs. Most of it, I think, would be
25 language-cultural-oriented, and by your term, bilingual

1 education, if you refer to a bilingual multi-cultural
2 program, there would be very little, and those only for
3 children that transfer at a rather advanced stage and
4 have not had American Social Studies, Texas Government
5 and so forth.

6 Q Have you had any opportunity to observe the
7 level of educational preparation of children coming in from
8 Mexico at upper age limits?

9 A Yes, sir, I have had many interactions with
10 children from upper age limits.

11 Q Could you describe any common observations
12 that one could make about the educational preparation of
13 these children?

14 A It has been our experience that in the
15 education of alien children they tend to perform at levels
16 much higher than American-born minority children. In
17 general, they perform better than American-born and race
18 minority children.

19 Q Going back to some of the problems that
20 may be associated with poor children and children with
21 special educational needs, which in certain instances you
22 have testified may well be undocumented children, could
23 you briefly go through in a little greater detail some of
24 the federal programs that are available to address those
25 needs?

1 A In the Aid to Poor Children, the biggest
 2 program available, also the biggest program funded in
 3 Washington, is the Title I of the Elementary-Secondary
 4 Education Act, E.S.E.A. This program is a compensatory
 5 education type program and provides funds for school
 6 systems that enroll concentrations of children from low-
 7 income homes. School districts have rather wide prerogatives
 8 for the expending of this money in certain types of educa-
 9 tional activities, some of which may be in bilingual
 10 education. Others may be in other compensatory type
 11 experiences.

12 Title VII of the same Act provides money
 13 specifically for the implementation of pilot bilingual
 14 educational programs, and the school district may receive
 15 a grant and operate such a program with federal funds.
 16 The other funds I refer to are the desegregation money
 17 made available through the Emergency School Assistance Act,
 18 and this is money that is made available to offset the
 19 cost of desegregation. It has been generally accepted that
 20 desegregation or integration involves more than just the
 21 physical movement of children, but involves the making
 22 available of instructional programs which are compatible
 23 with the characteristics of the children. As such,
 24 bilingual education programs are funded under the E.S.A.A.
 25 legislation.

1 The other programs I have described are
 2 Follow-Through and Right-to-Read and a variety of others.
 3 These just give the school district the prerogatives of
 4 attacking some of the problems that we have experienced in
 5 Texas schools, and they usually develop a proposal of
 6 funding that will provide money for the implementation of
 7 a bilingual educational program, if that was the response
 8 that the school district chose for the language incompati-
 9 bility problem.

10 Q To your knowledge there are no strings
 11 attached to preclude undocumented children from participat-
 12 ing in these programs, are there?

13 A No, sir, there are no provisions or con-
 14 straints that would eliminate undocumented children in
 15 the participation of such programs.

16 Q Dr. Cardenas, have you had an opportunity
 17 to meet with persons from the Rio Grande Valley and observe
 18 problems caused by migration to that area?

19 A Yes, sir, on many occasions I have met with
 20 school administrators and school board members in the Rio
 21 Grande Valley, concerning the problem of alien children in
 22 the school district. Just recently I have met with most
 23 of the superintendents of schools from that area concerning
 24 the same question.

25 Q From your observations and discussions with

1 these people what are the primary problems caused by this
2 migration into the area?

3 A The migration of alien children, undocumented
4 alien children, creates a problem that in the State of
5 Texas, unlike most of the other states of the Union, there's
6 no provision for a capital outlay cost out of the state
7 funding for education. Therefore, all funding of education
8 has to be carried out -- and construction has to be carried
9 out at the local level. Many of the border area school
10 systems are relatively poor school districts, and without
11 the equalizing effect of a state program of per-capita
12 outlay, the whole cost creates an economic imposition on
13 the school district. In general, they have to provide at
14 local expense the capital outlay facilities for the
15 implementation of educational programs.

16 Q So construction costs are the biggest
17 problem caused by this migration of students into the
18 Valley. Is that correct?

19 A In the illegal, the new problem is the new
20 state law that prohibits counting average daily attendance
21 of illegal children, but for the legal children the major
22 problem is lack of facilities and the unavailability of
23 state construction funds.

24 Q The illegal problem that you are describing,
25 in some sense the new law compounds the economic problems

1 of these school districts.

2 A That's right, because the school districts
3 have to pick up the kids at local expense, some of which
4 are doing so, but there is no state funds for the main-
5 tenance and operation of the school program now for
6 illegal children.

7 Q The alternative is to exclude these children
8 from school, which I gather some school districts are doing.

9 A Most of the school districts are excluding --
10 where you have large numbers of children -- are excluding
11 the children from school. I did get some indication from
12 some of the superintendents that some small numbers are
13 still being taught in the schools.

14 Q Are you familiar with school financing in
15 the State of Texas?

16 A I have had experience with it, yes, sir.

17 Q You were here when Robert Firestine testified
18 concerning the lack of savings from excluding a child from
19 a school system, were you not?

20 A Yes, sir.

21 Q Do you share the conclusion with Dr. Fire-
22 stine that the savings realized are fairly limited, if
23 realized at all?

24 A Yes, sir, I share the same conclusions that
25 Dr. Firestine presented.

1 Q Have you had an opportunity to evaluate the
2 tax or other sources of state funds to public education?

3 A Yes, sir.

4 MR. ROOS: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes.

7 Q Dr. Cardenas, was that document prepared
8 under your direction and control?

9 A Yes, sir.

10 Q And were the figures therein derived from
11 the annual Comptroller's report of 1977 of the State of
12 Texas?

13 A Yes, sir, they were.

14 Q And quickly summarizing that document,
15 does that document conclude that the major bulk of state
16 money to education derives from consumer sources?

17 A Yes, sir. In fact, as high as seventy-five
18 percent of the money going toward education in the State of
19 Texas comes from taxes which are paid for by the consumer,
20 either directly or very closely indirectly.

21 THE COURT: Are you referring to sales taxes?

22 THE WITNESS: Yes, sir, production and
23 consumer taxes, the motor fuel tax and the utility
24 taxes.

25 MR. ROOS: I move this document into evidence

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as Plaintiffs' Exhibit No. 6.

THE COURT: Plaintiffs' Exhibit No. 6 will be received in evidence.

(CHART OF TAX REVENUE SOURCES --

was duly marked as:

PLAINTIFFS' EXHIBIT NO. 6)

MR. ROOS: Your Honor, I would also move into evidence the underlying documents, which I have furnished -- the originals are with my opposing counsel. I would move those documents into evidence, as well.

THE COURT: How are they marked?

MS. CARDWELL: Your Honor, there's only a small portion of those that are material in any way. I object to the rest of them. The part that's material I have no objection to. That's fine.

THE COURT: Let me see them. I don't have any idea of what you're speaking. Give them to the clerk.

(REPORTER'S NOTE: The court examines exhibit.)

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THE COURT: You are offering this biennial revenue estimate. Is that it?

MR. ROOS: That's correct.

THE COURT: Well, it's an official document, apparently, of the State of Texas. I overrule the objection. It will be received in evidence.

(1977 ANNUAL FINANCIAL REPORT AND BIENNIAL REVENUE ESTIMATE -- were duly marked as: PLAINTIFFS' EXHIBIT NO. 7)

Q Dr. Cardenas, for how many years approximately have you been involved with educating children?

A About twenty-seven and a half years, sir.

Q Have you made any conclusions about the consequences to a child of the denial of an education?

A Yes, sir.

Q Could you briefly describe what your conclusions are as an educator of the exclusion of a child in the United States today from an education?

A I think that the exclusion of a child from education locks the child into a life of poverty. Very frequently the unavailability of upward mobility leads to frustration. In some cases it leads even to socially

1 undesirable behavior. I think that a person that does not
2 have an education in the highly technological era in which
3 we live would be at a disadvantage in competing for employ-
4 ment and would tend to be unemployed or underemployed. I
5 think that they would have a hard time achieving upward
6 mobility. In general, it would be a very detrimental and
7 unsatisfactory life for an individual.

8 Q Are these consequences more or less for a
9 child of a Mexican background growing up in the State of
10 Texas?

11 A I would think that they would be much more
12 severe for a poor child of a Mexican-American background
13 in Texas.

14 Q Will you briefly describe why that is so?

15 A Well, I think that a child from an affluent
16 family may have the resources for providing employment
17 either with the financial resources available to the
18 family or else be able to move into some kind of position
19 that would be not available to a person that would come
20 from a poor background. Mexican American, because Mexican
21 Americans are more systematically excluded from the higher-
22 paying positions in most areas of Texas employment, and
23 Texas, because I think that Texas, as described earlier by
24 another witness, the ethnic or racial strife in Texas is,
25 perhaps, more acute than it has been in other states, so,

1 in general, a poor Mexican American in Texas would be very
2 severely hampered by the lack of an education.

3 Q In the course of administering school
4 districts and in the course of observing school districts
5 have you had an opportunity to observe whether there are
6 substantial numbers of children who were previously here
7 illegally who have legalized their status and become legal
8 resident aliens?

9 A As an administrator and teacher, yes, I
10 have had children in my care that were here illegally and
11 legalized their status and stayed in the country.

12 MR. ROOS: Nothing further, Your Honor.

13 THE COURT: You may cross-examine the
14 witness.

15 MR. HARDY: I have no questions of this
16 witness, Your Honor.

17
18 CROSS-EXAMINATION

19
20 BY MS. CARDWELL:

21
22 Q Dr. Cardenas, I assume that you are fairly
23 familiar with the schools in Mexico, are you not?

24 A Yes, ma'am.

25 Q School in Mexico is free, is it not?

1 A Yes, ma'am.

2 Q Also you mentioned that in the border
3 districts there were some school districts who excluded
4 the illegal aliens, but there was one school district that
5 did let in the illegal aliens, but you didn't name that
6 school. Could you give me the name of the school?

7 A No, ma'am. I don't remember which of the
8 superintendents mentioned that. I was in a group meeting,
9 and several of the superintendents expressed that they do
10 allow some students to come in.

11 Q But you can't give me the name of the
12 school district?

13 A I can give you the name of a school district
14 that has done this, the Edgewood School District in San
15 Antonio had a lot of illegal alien children in it.

16 Q They let illegal alien children in school?

17 A Yes, ma'am.

18 Q What's the name of it?

19 A Edgewood, E-d-g-e-w-o-o-d (spelling).

20 Q And they're doing that now?

21 A I don't know. I have no further contact
22 with the school district.

23 Q When was your contact?

24 A 1969 to 1972 -- '73.

25 Q Oh, that's not in 1975?

1 A No, ma'am.

2 Q Do you have a person in your employ whose
3 last name is Zuniga, spelled Z-u-n-i-g-a (spelling)?

4 A Yes, ma'am.

5 Q And did he contact the Attorney General's
6 office at your direction?

7 A For what purpose, ma'am?

8 Q To ask about this case.

9 A He may have.

10 MS. CARDWELL: We have no further questions.

11 MR. ROOS: Nothing further from the plain-
12 tiffs.

13
14 EXAMINATION

15
16 BY THE COURT:

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18 Q Sir, this Edgewood School District you have
19 referred to, is this the one from which the -- what was it,
20 the Rodriguez case emanated in the Supreme Court decision?

21 A Yes, sir, when I was superintendent of the
22 school district, sir.

23 Q Yes. You say that in the school districts
24 in Texas that there has not been an adequate bilingual
25 education program executed?

1 A That is correct, sir. This is both from my
2 own personal opinion, as well as from a regulating agency,
3 such as the Office of Civil Rights.

4 Q Are you able to determine whether there is
5 any pattern to this as to whether it is principally in one
6 area of the state, as opposed to other areas?

7 A I think that the implementation of bilingual
8 education programs has been most effective in the areas in
9 the southern part of the State of Texas where you have
10 Mexican American administrative and instructional personnel
11 in higher quantities and proportions. If there's any
12 pattern that I have observed, it's probably related to the
13 ethnicity of the administration and the school board and
14 instructional personnel, rather than geographic.

15 Q I see. Do you know whether there are any
16 such programs in the East Texas area?

17 A Houston, Texas, has a very extensive
18 bilingual educational program, and I can't remember other
19 school districts.

20 Q Do you have any personal knowledge as to
21 whether, for example, the Tyler Independent School District
22 has such a program?

23 A No, sir. The Tyler Independent School
24 District, according to the number of Hispanic children
25 would probably be expected to have a bilingual education

1 program. I don't know whether they have one or how
2 extensive the program that they have is, if they do have
3 one.

4 Q I see. You have examined the figures for
5 the Tyler Independent School District. Is that it?

6 A Yes, sir, they report over eleven hundred
7 Hispanic children, and if the percentage of Hispanic
8 children of limited English-speaking ability is at the
9 same ratio as we have found in other parts of the state,
10 then the Tyler School District would be expected to
11 implement a bilingual education program.

12 Q What are the standards for instituting --
13 I mean what are the cutoffs?

14 A The standard is ten students. The federal
15 standard is twenty students. In the school district the
16 state has ten students per grade level, so either under
17 the ten students of limited English-speaking ability by
18 grade level or the twenty per school district I would
19 imagine that Tyler would have to implement the bilingual
20 educational program and be either non-complying in order
21 to comply with state law or to comply with Lau versus
22 Nichols.

23 Q And also the United States against the
24 Texas Agency?

25 A U.S. vs. Texas, yes, sir, also.

1 Q If the school districts were to establish
 2 the programs who have not presently done so in your
 3 opinion, based on what you know about the -- well, I'm
 4 going to withdraw that question -- I have no further
 5 questions.

6 MR. HARDY: Your Honor, in light of one
 7 of the questions you asked, may I ask the witness
 8 a question?

9 THE COURT: Yes.

10

11 FURTHER CROSS-EXAMINATION

12

13 BY MR. HARDY:

14

15 Q I believe you stated to the court that the
 16 Tyler Independent School District had approximately eleven
 17 hundred Spanish students. Can you give us the information
 18 on which you based that figure?

19 A This is from the Texas Education Agency
 20 in their 1976-'77 ethnic breakdowns. The title of the
 21 Texas Education Agency report is Ethnic Enrollment of
 22 Fall Survey, 1976-1977.

23 Q The Tyler Independent School District?

24 A Yes, sir.

25 MR. HARDY: Thank you.

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THE COURT: Do you know where they get these figures? Apparently, there's some---

THE WITNESS: It's probably Form 101 and 102 of the Civil Rights Survey.

THE COURT: I notice that the superintendent of the schools is shaking his head, so he has some doubt about the validity of the figures.

THE WITNESS: They show at the Texas Education Agency for '76-'77 fourteen thousand five hundred ninety-two students in Tyler with seven percent Hispanic, a total of one thousand one hundred forty-one.

THE COURT: Thank you, sir.

Are there other questions of the witness?

MS. CARDWELL: I just have one more.

THE COURT: Very well.

MS. CARDWELL: About the Zuniga question that I asked earlier.

FURTHER CROSS-EXAMINATION

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BY MS. CARDWELL:

Q When did Mr. Roos contact you about
testifying in this case?

A I'm sorry?

Q When did Mr. Roos or Mr. Daves contact you
about testifying in this case?

MR. ROOS: We object to that, Your Honor.

I don't see any relevance to that whatsoever.

THE COURT: The objection is overruled.

A I really don't know. I have been working
with MALDEF for at least four or five years in cases.
This one came to my attention because of the requests of
superintendents in the South Texas area, and I had a
meeting with the superintendents and they wanted some
assistance in coping with the problem of construction of
facilities for alien children, and I asked Mr. Zuniga to
contact the Attorney General's office, as well as Texas
Education Agency, as well as the Department of Immigration,
and other entities, and I was at a loss and am still at a
loss as to when he would contact the Attorney General's
office, because I didn't specify the Attorney General's
office, but I asked him to get data on the number of alien

1 children in Texas schools.

2 Q Was that in preparation for your testimony
3 here?

4 A No, this was in preparation for providing
5 assistance, meeting with the superintendents in South
6 Texas and providing assistance to them in South Texas.

7 Q Do you testify for MALDEF, or have you
8 testified for them before?

9 A Yes, ma'am.

10 Q And you do that fairly often?

11 A Yes, ma'am.

12 MS. CARDWELL: Thank you.

13 THE COURT: You may stand down, sir.

14 (WITNESS STANDS ASIDE)

15 MR. ROOS: Plaintiffs have no further
16 witnesses, Your Honor. We rest our case.

17 THE COURT: Very well. You want to proceed?

18 MR. HARDY: May I have just a moment, Your
19 Honor?

20 THE COURT: Yes, sir.

21 MR. ROOS: Your Honor, could the witnesses
22 be excused?

23 THE COURT: Let's hold them a few minutes
24 here.

25 MR. HARDY: Your Honor, before we open our

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case, we would like to make a motion at this time.

 Come now the attorneys for the Tyler Independent School District and Board of Trustees and request the court to instruct a verdict on the attorneys' fees pled by the plaintiff in this case who have sought attorneys' fees, and at this point the plaintiffs have rested and have wholly failed to bring forth any evidence whatsoever of any attorneys' fees or any other information that would enlighten the court in regard to attorneys' fees.

 MR. ROOS: Court please, of course, we object to the motion. We're not entitled to attorneys' fees until a court order entered in our favor, and at that time we will be prepared to submit affidavits and testimony or whatever the court would wish.

 THE COURT: It has been the habit of this court -- I don't know how others might handle it -- not to go into attorneys' fees until the question of liability is decided. Now, if you want that to be done, I can permit the plaintiff to reopen his case and put it on, but that's been the habit and custom of this court.

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MR. HARDY: I'm not questioning the habit and custom of the court. I merely want---

THE COURT: Your motion then will be overruled.

MR. HARDY: Thank you.

THE COURT: And I will entertain testimony on the subject at some time in the future, if it becomes necessary.

MR. HARDY: Are we ready to proceed, Your Honor?

THE COURT: Yes.

MR. HARDY: We call Mr. Dick Lindsay, a defendant.

DEFENDANTS' CASE IN REPLY

DICK LINDSAY,

a witness called by the Tyler Independent School District Defendants, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

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BY MR. HARDY:

Q Mr. Lindsay, would you state your name for the record, please?

A I am Dick Lindsay.

Q Mr. Lindsay, how are you employed?

A I am the Business Manager for the Tyler Independent School District.

Q And will you briefly describe to the court what your duties are as Business Manager of the Tyler Independent School District?

A I am responsible for the financial program of the Tyler Independent School District maintenance, cafeteria and transportation.

Q Do you regard yourself primarily as the financial agent of the Tyler Independent School District?

A Yes, sir.

Q In your capacity as Business Manager, were you requested at an earlier date to prepare a cost of educating a student on a per-student basis within the Tyler Independent School District?

A Yes, sir.

Q What was the figure that you arrived at as

1 the cost of educating a student in the Tyler Independent
2 School District who was entitled to have any state support?

3 A On the elementary level I believe it's one
4 thousand seventy-nine dollars, and on the junior high a
5 thousand seventy-nine dollars and on the senior high it
6 was a thousand eighty-three dollars.

7 Q Without going into all the computations that
8 you arrived at this figure, would it be fair to say that
9 basically you took the operating budget for the Tyler
10 Independent School District and divided it by the average
11 daily attendance to arrive at those figures?

12 A Yes, sir.

13 Q Does the figure of a thousand seventy-nine
14 or a thousand eighty-three dollars, the cost per child,
15 represent the total cost of the Tyler Independent School
16 District for educating a child?

17 A It's the total cost of the general operating
18 budget.

19 Q Does this figure take into account any
20 state funds?

21 A Yes, sir.

22 Q The thousand seventy-nine or the thousand
23 eighty-three dollars, would this money -- is there any of
24 that money paid by the state?

25 A Yes, sir.

1 Q How much of that is paid by the state?

2 A Approximately sixty-two or somewhere in that
3 neighborhood.

4 Q Are you familiar with the guidelines wherein
5 students are eligible to attend tuition-free the Tyler
6 Independent School District?

7 A Yes, sir.

8 Q On the class of illegal aliens, are they
9 entitled to any state support for education funding in
10 the Tyler Independent School District?

11 A No, sir, I believe the state regards that
12 they have to be a legal resident of the district.

13 MR. HARDY: We pass the witness.

14

15 CROSS-EXAMINATION

16

17 BY MR. ROOS:

18

19 Q Mr. Lindsay, I would like to very quickly
20 again go through what you divided into what to arrive at
21 the figures that you arrived at, your nine hundred seventy-
22 nine (sic) and your one thousand and your one thousand and
23 eighty-three (sic).

24 A We take the budget and divide the average
25 daily attendance for the different grade levels there from

1 one to six and seven to nine and ten to twelve into the
2 amount of money that was spent for each one of those grade
3 levels during that budget year.

4 Q If you excluded say one child from the
5 Tyler Independent School District, would your costs go
6 down?

7 A That would be hard to determine, but
8 probably not.

9 Q It would take a fairly substantial number
10 of students to exclude before, in fact, your costs would
11 go down ordinarily. Isn't that the case?

12 A Yes, sir, I think it would determine in our
13 case what particular school this decrease happened to be in
14 where the decrease would take place in the district.

15 Q You would, in fact, need a fairly significant
16 number of students in a particular given grade or a given
17 school before you could produce any savings by excluding
18 children from school, would you not?

19 A Yes, sir.

20 Q Even if you were able to reduce -- get some
21 savings by doing that, you would still have certain fixed
22 costs, such as debt maintenance and other sorts of
23 maintenance costs that would remain, irrespective of how
24 many students you excluded from the school, would you not?

25 A Yes, sir. Debt maintenance, now, is not a

1 part of the general operating budget.

2 Q But maintenance costs and other sorts of
3 costs would remain steady, would they not?

4 A Yes.

5 MR. ROOS: Nothing further.

6 THE COURT: Does the State of Texas desire---

7 MS. CARDWELL: None.

8 THE COURT: Does the amicus desire to
9 interrogate the witness?

10 MR. WISE: No, Your Honor.

11 THE COURT: All right, you may stand down.

12 MR. HARDY: Your Honor, we would ask this
13 witness be excused to go back to his business.

14 THE COURT: Very well.

15 MR. HARDY: Thank you.

16 (WITNESS IS EXCUSED)

17 MR. HARDY: At this time we call Jim Plyler.

18

19 JAMES PLYLER,

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21 one of the defendants, testifying in his own behalf, having
22 been first duly cautioned and sworn to testify the truth
23 the whole truth and nothing but the truth, testified as
24 follows:
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BY MR. HARDY:

Q Would you state your name for the record, please, sir?

A Jim Plyler.

Q How are you employed, Mr. Plyler?

A Superintendent of the Tyler Independent School District.

Q And as Superintendent of the Tyler Independent School District is it your duty to oversee the full operational outlook of the Tyler schools in the operating on a day-to-day basis?

A Yes, sir, it is.

Q How long have you been employed as Superintendent?

A Since 1969.

Q In your job as Superintendent of the Tyler Independent School District have you become familiar with the Texas Education Code, Section 21.031?

A Yes, sir, I have.

Q You are familiar that this is the section of the Texas law that tells you as superintendent of the schools which children you can allow into the Tyler

1 Independent School District?

2 A That is correct. It defines our eligibility.

3 Q For admission?

4 A Yes, sir.

5 Q Are you familiar with the board policy that
6 was adopted in July of 1977 regarding the admission policy
7 of the Tyler Independent School District?

8 A Yes, sir.

9 Q Would you briefly go over with the court what
10 the Tyler Independent School District policy is?

11 A Well, it essentially outlines those students
12 who are eligible and those who are ineligible and those
13 illegal alien children who are not ineligible can be
14 enrolled, provided they are in the process of becoming
15 documented children.

16 THE COURT: Excuse me. Is there any
17 difficulty about the witnesses needing to be
18 excused?

19 MR. ROOS: I don't believe there's any
20 difficulty, as such, although I believe there
21 are several of them.

22 THE COURT: One of them is---

23 MR. ROOS: Well, I guess there is a problem,
24 Your Honor.

25 THE COURT: Sir, if you need to catch a

1 flight, why, you may leave, or any of the rest
2 of you.

3 MR. ROOS: Thank you very much.

4 THE COURT: Go ahead. Proceed.

5 MR. HARDY: Thank you.

6 Q Are you aware that the Texas Education Code,
7 Section 21.031 went into effect September 1st, 1975?

8 A Yes, sir, I am.

9 Q Did you implement that policy within the
10 Tyler Independent School District at the time that it was
11 made into state law?

12 A You're not talking about the local policy.
13 You're talking about the state policy?

14 Q The state policy.

15 A Of course, we let these youngsters continue
16 in school, but, of course, counted them as ineligible
17 students. There were very few illegal aliens residing in
18 the Tyler Independent School District at that time, and
19 for humanitarian reasons I felt that we should let them
20 continue in school and pick that up locally.

21 Q In other words, were these funds -- the
22 education of the children paid for fully out of the pocket
23 of local funds with no state funds?

24 A That is correct.

25 Q Do you recall the figures of the illegal

1 alien students that were not entitled to attend the Tyler
2 Independent School District that were, in fact, attending
3 in 1975?

4 A Yes, sir, there were seventeen.

5 Q Do you recall the figure for '76-'77?

6 A Yes, twenty-four.

7 Q Do you have a figure in mind on the number
8 that we have in the Tyler Independent School District today?

9 A We, of course, have not been able to pursue
10 documentation since September the 9th, but those who have
11 enrolled after that time, there are thirty-eight.

12 Q Would it be fair to say that there has been
13 an increase in each year of the number of students who have
14 attended the Tyler Independent School District that you
15 would classify as not meeting the admission requirements of
16 the State of Texas?

17 A That's correct.

18 Q At the time a student is first admitted to
19 the Tyler Independent School District do you have certain
20 documents that are required for presentment to the principal
21 or to some administrator?

22 A Yes, all the students who enroll in the
23 Tyler Independent School District for the first time must
24 present a birth certificate, must present an immunization
25 record, must present an address in the Tyler Independent

1 School District, and if they are students who have been in
2 schools in other cities and states, we ask for a transcript
3 or report cards for personal purposes.

4 Q Do you require this for each and every
5 student?

6 A Yes, that is correct.

7 Q Has it been your policy to only require this
8 information from any one particular set of students and,
9 in particular, students of Spanish surnames?

10 A No.

11 Q A minute ago Mr. Cardenas mentioned a figure
12 of what he thought was a number of Spanish surnamed students
13 in the Tyler Independent School District, and I believe the
14 figure answered was eleven hundred. Do you differ with
15 that number?

16 A Yes, our records show the report that we
17 submitted to the Texas Education Agency on October the
18 15th was three hundred seventy-nine during this school
19 year, 1977-'78, so where the eleven hundred plus came
20 from I have no idea.

21 Q But you are convinced that your figures
22 are correct?

23 A Yes.

24 Q At the start of this school year based on
25 the number of students that had a speaking disadvantage or

1 Spanish-speaking or entitled to bilingual education, was
2 there a necessity for the institution of a bilingual
3 program in the Tyler Independent School District?

4 A Under the statute of the state a school
5 district must identify in October the number of youngsters
6 who cannot speak or understand the English language, which,
7 therefore, qualifies them for bilingual education. The
8 statute is that anytime a district has as many as twenty
9 of these youngsters at any one grade level, they must
10 implement the bilingual education program the following
11 year.

12 Now, in fact, we have not reached that
13 point up until this year, and as a result of that, we have
14 not implemented the bilingual education program. Now, we
15 have employed three bilingual education teachers in order
16 to work with these youngsters in those schools who need
17 special instruction. This we have done, and we are meeting
18 the state requirement.

19 Q Is it your testimony that next year because
20 of the admission of the illegal alien children and the
21 numbers to the Tyler Independent School District that you
22 will be required to implement a full bilingual program?

23 A Yes, we have identified twenty-two youngsters
24 at the kindergarten level who need help, five of whom
25 appear to be ineligible, and in the first grade we have

1 identified twenty youngsters, nine of whom appear to be
2 ineligible under the guidelines.

3 Q So without the admission of the students
4 that we are classifying as illegal aliens, would Tyler be
5 required to implement a bilingual program?

6 A With this number, yes, we must implement
7 the program next year.

8 Q In your opinion is that because of the
9 illegal aliens admitted to the school?

10 A Well, it's our assumption that these
11 youngsters do not meet the eligibility requirements at
12 this time.

13 MR. HARDY: Pass the witness.

14 THE COURT: Is there cross-examination?

15 MR. ROOS: Just one second, Your Honor.

16 (PAUSE)

17 MR. ROOS: No cross-examination, Your Honor.

18

19

EXAMINATION

20

21 BY THE COURT:

22

23 Q Will you continue to employ these teachers
24 you presently have assisting with the children?

25 A Yes, sir.

1 Q Teaching the bilingual materials?

2 A Yes, sir, Your Honor, we will.

3 Q Will they be your bilingual teachers, or
4 will there be others required?

5 A We would need others, Your Honor, and this
6 would require certification by teachers having as many as
7 one hundred hours of instruction in bilingual education
8 and thirty hours in cultural education, and we will work
9 toward that.

10 Q How many teachers do you anticipate will
11 be necessary with the number of students you have?

12 A Your Honor, it will be difficult now to
13 determine. This program is required from Grades Kinder-
14 garten through third grade, and that these youngsters
15 must be taught in the schools in the attendance area in
16 which they reside. In other words, they can't be trans-
17 ported to a center, and they have to be intermingled with
18 the regular youngsters, so unless we can determine how
19 many are in various classes and in the schools, it would
20 be difficult to determine that number at this time.

21 Q Are you able to make an approximation?

22 A It would be strictly an off-the-head
23 estimate. I would guess that we would be looking for
24 between eight and ten.

25 Q That many teachers?

1 A Yes, sir, for next year.

2 THE COURT: Thank you, sir.

3

4 REDIRECT EXAMINATION

5

6 BY MR. ROOS:

7

8 Q Mr. Plyler, it's not your position that
9 bilingual education is a bad thing, is it?

10 A Oh, no; oh, no.

11 Q It's a desirable thing---?

12 A That's why we have three teachers when
13 we're really not required to have three, trying to meet
14 the needs of the youngsters.

15 Q So that in fact, while you might have to
16 buttress up your program with new undocumented children
17 who have these needs, it's not fair to characterize that
18 having these children will trigger your obligation to
19 comply with the law, is it?

20 A Mr. Roos, I mention this, because as we go
21 under the state law, then there are so many guidelines,
22 reports and voluminous reports, testing and evaluation
23 and so on that take so much time, we are providing the
24 program as outlined by the state, yet, without the necessity
25 of having to go through all of their reporting procedures.

1 Q So what you would like to be able to do is
2 to provide bilingual programming to everyone who needs it
3 without the paper work?

4 A That's correct; that's correct.

5 Q If you were to hire new teachers, you would
6 get a certain amount of money from the state, would you
7 not, per---?

8 A The state assigns personnel based on A.D.A.,
9 not based on ethnicity of the district, of course.

10 Q But if you have additional A.D.A., which
11 means students additionally, then you would get additional
12 funds, would you not?

13 A Additional teachers assigned, plus M. & O.
14 money. That's correct.

15 THE COURT: M. & O.?

16 THE WITNESS: Maintenance and operation,
17 Your Honor.

18 Q Isn't there a way the state funding, and I
19 realize it's very complicated, and I don't pretend to
20 understand it thoroughly myself, but if, indeed, you
21 increase by something like twenty students, you get money
22 for one teacher or something similar in the formula?

23 A It's based on a grading scale, depending on
24 grade levels, yes, sir.

25 MR. ROOS: Thank you.

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MS. CARDWELL: Just a couple of questions,
Your Honor.

CROSS-EXAMINATION

BY MS. CARDWELL:

Q These eight or so teachers you estimate that
you are going to have to have next year, are they going to
be easy to find?

A No, we find it very difficult to find
teachers with bilingual certification.

Q There's a shortage then, I gather?

A Yes, a terrific shortage in that area.

MS. CARDWELL: Thank you.

(REPORTER'S NOTE: Mr. Wise
approaches the lectern.)

MR. ZWIENER: Your Honor, we object to
counsel for the Attorney General of the United
States asking questions as an amicus with rights
of a party.

THE COURT: All right, you have made that
objection known, and from here on out it will be

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considered that you will make the same objection
in each instance, and I overrule the objection,
so let's go forward.

CROSS-EXAMINATION

BY MR. WISE:

Q Dr. Plyler, has the school district ever
sued the state over some aspect of school funds?

A No, sir.

Q You have never challenged a policy that you
disagreed with locally?

A Not in court. We have challenged individuals
over some rulings and guidelines, but not in court.

Q You indicated that you had continued
undocumented aliens as students past '75 for humanitarian
purposes. Did you make any effort to change the state
policy?

A It was not a state policy. It was a state
law.

Q Did you make any effort to change the state
law?

A No, sir, I did not.

Q Was that ever considered?

1 A No, sir, it was not considered.

2 Q I wasn't quite sure how you deal with
3 students who are in need of bilingual education now, in
4 other words, how is that function handled in the school
5 system?

6 A They are provided special instruction
7 through our Title I program, which does not eliminate
8 those youngsters from that program. We have worked with
9 these youngsters for several years through these programs
10 by having small groups coming in with a bilingual teacher.
11 As you know, they're taught in Spanish, their home
12 language, first, and then as soon as we can get them in
13 the English language, then we, of course, begin to instruct
14 them in English, because we feel that it is to the
15 youngster's advantage to master English as soon as possible.
16 We find that it is much easier to master a language at a
17 younger age than it is after they get in the upper
18 elementary school, so these teachers work with these
19 youngsters in small groups, instructing them in English
20 and trying to bring them -- or in the Spanish in trying
21 to bring them into English as soon as possible with flash
22 cards and various other types of equipment, instructional
23 supplies that we have.

24 Q Are these Title I teachers?

25 A Title I teachers and regular teachers. We

1 have one Title I teacher who is bilingual and two regular
2 teachers.

3 Q Do you now receive any other federal monies
4 that go toward bilingual education?

5 A No, Title I is the only program we have
6 that supplies money for bilingual education.

7 Q Would you be eligible to seek such funding?

8 A It's a very complicated approach to this
9 in that all proposals are graded on a point system, depending
10 upon when integration occurred and problems that you have
11 in integration. The more recent the integration, the higher
12 point total you have, so it's quite a complicated procedure
13 to get involved in the Emergency School Aid Act.

14 Q How about under Title VII---?

15 A I don't know whether we would qualify under
16 Title VII or not. I'm not as familiar with that, and I
17 would not want to discuss it at this point, because I'm
18 not familiar with Title VII.

19 Q Do the teachers that you now have who are
20 teaching bilingual education, do they meet the standards
21 for certification?

22 A Yes, they do. Well, let me go back---

23 Q The standards the state would apply, if you
24 come under the state bilingual requirement?

25 A Excuse me. Let me go back. Two of them

1 have been certified. One of them is a Mexican National
2 who is a certified teacher, and she's working with these
3 youngsters. She is not certified as far as Texas law is
4 concerned. She has not had the hundred hours of instruction,
5 even though she is a Mexican National, and she has not had
6 the thirty hours of cultural education, both of which are
7 required in order to be certified.

8 Q Is she legally admitted to the United States?

9 A Yes, she is.

10 Q What is the goal of the bilingual education
11 program?

12 A It's an attempt to provide a setting for
13 Spanish-speaking youngsters in order to provide them with
14 a background that they can make progress in the schools of
15 the United States, since most of our materials are printed
16 in English.

17 Q Does it have any goals related to Anglo --
18 English-speaking students?

19 A Yes, I think there are advantages there for
20 those Anglo youngsters who are involved in those classes
21 with alien youngsters. As the teachers work with those,
22 I think the Anglos receive benefits from the culture dis-
23 cussed and the language which is spoken.

24 Q Are Anglo students instructed in Spanish in
25 those programs?

1 A No, they are not. The purpose of bilingual
2 education is to get non-English-speaking youngsters into
3 English as soon as possible. That's the purpose of
4 bilingual education primarily.

5 MR. WISE: I have no further questions.

6

7

FURTHER EXAMINATION

8

9

BY THE COURT:

10

11

Q Who set this particular standard, Dr. Plyler?

12

A Sir?

13

14

Q The concept you just voiced that the purpose
of bilingual education is to get the Spanish-speaking child
into speaking English as quickly as possible.

15

16

A Your Honor, it comes from the state, and I
assume it is handed down from H.E.W., from there to the
state guidelines.

17

18

Q The state has not said anything about mutual
acculturation?

19

20

A No, sir, I'm not aware of it. I'm talking
like an expert, Your Honor, and I really don't -- since we
haven't been in the program, I don't know all the guidelines
of the program. We're trying to become familiar with it,
because we feel we need to implement it next year.

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Q I had some familiarity with the programs arising from some litigation in this court arising from the San Felipe-Del Rio Independent School District, and that was not the concept that was voiced in that case, and that was the reason I was inquiring. Thank you, sir. You may stand down.

(WITNESS STANDS ASIDE)

MR. HARDY: We have nothing further to offer at this time, Your Honor.

THE COURT: Very well.

MS. CARDWELL: Your Honor, as I mentioned earlier, we don't have our witnesses here. We had not anticipated that we would go as fast as we have.

THE COURT: Very well. Will you, at least, go to this extent today so that we can proceed -- give us your opening statement so that I might be aware of the general statement of what you intend to offer?

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STATE DEFENDANTS' OPENING STATEMENT

MS. CARDWELL: Basically, what we will attempt to show or what we will show is the impact on the educational system that it impacts to the detriment of the citizen, the legally admitted child, particularly in the border areas, and the areas in which you find large Mexican-American enclaves, which Tyler is not one of those areas. That's why you don't see the impact from Tyler like you see in the Houston I.S.D., Brownsville, San Antonio, Eagle Pass, Abilene -- different places around the state where there are Mexican-American enclaves, mostly the border areas and up I-35 as that is the pattern of migration that the illegal alien follows.

I think our testimony will be somewhat shortened, because we were not presented with testimony on preemption, which we had planned originally (words unintelligible to reporter), not as regards to status by plaintiffs' case already, so what we will attempt to show is that there is detrimental impact on the other students due to cost factors. There are cost factors

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which fall outside the average daily attendance costs in terms of lost textbooks, removed textbooks, problems you would not have with the average student.

We will have to testify basically educational experts. There will be three or four of them. We should be able to put on our whole case---

THE COURT: Who are your witnesses?

MS. CARDWELL: Let me get my pre-trial order.

THE COURT: Do you have them listed?

MS. CARDWELL: Yes, sir. Dr. Don Killough, Dr. Jim Hensley, Shane Davies, Raul Basterio. I don't think we will call Alfredo Gomez.

THE COURT: Oh, I see. There's a supplemental pre-trial order. I had not realized that.

MS. CARDWELL: There's also Rolland Heston from Houston.

THE COURT: I see. Thank you.

Do you think it's realistic to suppose that you would be able to finish on Friday?

MS. CARDWELL: I think it will be, yes.

THE COURT: Based on what you know about the defendants' case here, do you anticipate that

1 you will have much rebuttal evidence, Mr. Roos?

2 MR. ROOS: No, we don't, Your Honor.

3 THE COURT: Will the United States have
4 any witnesses to offer?

5 MR. WISE: No, Your Honor. We have no
6 intention to have any and don't anticipate that
7 we would.

8 THE COURT: I was just trying to arrange
9 my schedule. If we're likely that we don't go
10 past Friday, I might very well call in a jury
11 for the following Monday, instead of the time
12 I previously indicated. That's the reason I
13 am submitting these inquiries.

14 Is there anything to be brought to
15 the attention of the court relating to this
16 case before adjournment?

17 MR. ROOS: We're in the process, Your Honor,
18 of scratching out things on the transcript, and
19 we'll provide those in a few moments.

20 THE COURT: You might better submit this
21 to your opposing counsel here so that they may
22 approve any things that you have done.

23 MR. ROOS: All right.

24 THE COURT: If there's nothing further,
25 the court is adjourned.

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(REPORTER'S NOTE: The court then,
at 2:30 o'clock, p.m., December
12, 1977, adjourned, to be reconvened
at 9:00 o'clock, a.m., December
16, 1977.)

1 TYLER, TEXAS Preliminary injunction is being considered by

2 DECEMBER 16, 1977.

3 SECOND DAY OF TRIAL ROOS: Thank you very much, Your Honor.

4 THE COURT: All right, you may call your

5 next witness. THE COURT: Civil Action No. TY-77-261-CA,

6 J. and R. Doe and others as plaintiffs against

7 James Plyler and others as defendants. sent again?

8 THE COURT: Are the plaintiffs ready to proceed?

9 MR. ROOS: Plaintiffs are ready, Your Honor.

10 THE COURT: Are the defendants ready?

11 MR. HARDY: Defendants are ready, Your Honor.

12 MS. CARDWELL: We're ready.

13 THE COURT: You may call your next witness.

14 MR. ROOS: Your Honor, before the defendants

15 put on their case, we do have a corrected copy

16 of the transcript, which has already been moved

17 into evidence, on which the names have been

18 excised. May we approach the clerk?

19 THE COURT: Yes. ... been first duly

20 MR. ROOS: Also we overlooked the fact that

21 and nothing there were also exhibits introduced at the

22 preliminary injunction hearing, and we would

23 move that they also be introduced into evidence.

24 THE COURT: Well, all evidence that was

25 received by the court at the hearing on the

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preliminary injunction is being considered by
the court.

MR. ROOS: Thank you very much, Your Honor.

THE COURT: All right, you may call your
next witness.

MR. WISE: Your Honor, could the record
also indicate the United States is present again?

THE COURT: Oh, excuse me, sir. If I ignore
you inadvertently, why, I hope you'll always stand
and make your presence known. I value your
presence here. I just forget about it.

Proceed.

MS. CARDWELL: We call Dr. Tom Anderson.

STATE DEFENDANTS' CASE IN REPLY

THOMAS ANDERSON,

a witness called by the defendants, having been first duly
cautioned and sworn to testify the truth, the whole truth
and nothing but the truth, testified as follows:

DIRECT EXAMINATION

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BY MS. CARDWELL:

Q Dr. Anderson, would you state your name and your address for the record, please?

A I'm Thomas Emerson Anderson, Jr., and I reside in Austin, Texas, at 3009 Pinecrest Drive.

Q Where are you employed?

A I am employed with the Texas Education Agency.

Q Could you give the court just a brief description of your educational background, please?

A I have had experience in teaching in the public schools in Austin, Texas. From there I went to the Texas Education Agency and have served in the capacity as consultant for the U.S.C.A. Title I programs, the migrant and preschool programs. I am currently the assistant to the Deputy Commissioner for Programs and Personnel Development and Director of Professional Practices and Professional Support.

Q What educational training have you had to qualify you for this position?

A I have a Doctor of Philosophy Degree from the University of Texas in educational administration and---

1 Q As a part of your work at T.E.A. have you
2 compiled statistics concerning the number of Mexican alien
3 students in Texas schools?

4 A We have.

5 Q Have you compiled those statistics for '75-
6 '76 and for '76-'77?

7 A We have.

8 Q Could you tell the court, please, what the
9 total enrollment is during the current year in school?

10 A In school enrollment for the '76-'77 school
11 year was 2,239,000.

12 Q And what portion of that was Mexican alien
13 immigrants?

14 A 51,239 or approximately that number.

15 Q Do you recall the statistics for the current
16 year?

17 A The statistics I gave you were the
18 statistics for the past year. The statistics for the
19 previous year, for the '75-'76 school year, were the two
20 years that we compiled. We do not have the statistics
21 for this current year that we are in now.

22 Q That's the '77---?

23 A For '77-'78, yes, ma'am.

24 Q I show you what has been marked as Plain-
25 tiffs' Exhibit 1 (sic). Could you identify that, please?

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A This is a map that was developed from the statewide survey that the Texas Education Agency compiled for the 1975-'76 school year to demonstrate the locations and percentages of total enrollments of alien immigrant students who were born in Mexico who were in the public schools that year.

Q That shows their geographical locations. Is that correct?

A Yes, it does.

(MAP OF IMMIGRANT/ALIEN STUDENTS --
was duly marked as:
DEFENDANTS' EXHIBIT NO. 1)

Q Where are they concentrated?

A They are concentrated in the thirteen counties or the sixty-one school districts and the thirteen counties that border Mexico for the '75-'76 school year, and that concentration for the '76-'77 school year remained with an increased concentration in the metropolitan areas, such as Houston, Dallas and so forth. The comparative figures between those school years statewide indicated that between '75-'76 and '76-'77 there was an increase of over 6,500 Mexican alien children born in Mexico in the schools.

Q I have handed you Plaintiffs' Exhibits 2 and

1 3 (sic). Could you identify those, please?

2 A The survey of alien immigrant students born
3 in Mexico enrolled in Texas schools as of January 1976---

4 THE COURT: Just one moment, if you please.

5 MR. ROOS: Just for clarification, Your
6 Honor, those are not Plaintiffs' Exhibits. They
7 are Defendants' Exhibits, just for the record.

8 THE COURT: Yes, I decided that counsel
9 probably misspoke herself.

10 MS. CARDWELL: Yes, thank you, Your Honor.

11 A This is a report compiled from a statewide
12 survey conducted by Texas Education Agency of all school
13 districts in the state, where the districts were requested
14 to submit enrollments as of January 1976 of alien immigrant
15 students born in Mexico who were enrolled in the schools.
16 They were also requested to submit the number of those
17 students who were enrolled in the district for the first
18 year and some other data.

19 Q What did you say those surveys showed in
20 terms of growth or increased enrollment of Mexican alien
21 immigration in the schools?

22 A This survey that I just spoke of indicated
23 that in the State of Texas for the '75-'76 school year
24 there were 2,218,000 total enrolled. Of that 44,799 of
25 that total enrollment were immigrant alien students born

1 in Mexico, which is 1.59 percent of the total statewide
 2 enrollment. The following year, or 1976-'77, as of
 3 January the same survey was taken in all school districts
 4 which you handed me, the second survey. This showed that
 5 there were 2,239,000 students enrolled in Texas schools.
 6 51,348 of those were alien immigrant children born in
 7 Mexico, which is 1.8 percent of the total enrollment,
 8 showing a growth from 1.59 to 1.8 percent total enrollment,
 9 showing a growth of over 6,500 students from Mexico in
 10 the schools from the '75-'76 to the '76-'77 school year.

11 Q 6,500?

12 A Yes, ma'am, in excess of 6,500.

13
 14 (SURVEY OF ALIEN/IMMIGRANT
STUDENTS BORN IN MEXICO --
 15 was duly marked as:
 16 DEFENDANTS' EXHIBIT NO. 2)

17
 18 (TEXAS EDUCATION AGENCY
SURVEY - 1977 --
 19 was duly marked as:
 20 DEFENDANTS' EXHIBIT NO. 3)

21
 22 MS. CARDWELL: We will offer Defendants'
 23 Exhibits 1, 2 and 3 into evidence.

24 THE COURT: They will be received in
 25 evidence.

1 Q You stated, Dr. Anderson, you also worked
2 with federal educational reports. Is that correct?

3 A Yes, ma'am. In my capacity as Assistant
4 to the Deputy Commissioner we do work periodically with
5 various federal funds, programmatically, as well as
6 financially, and do that.

7 Q Could you briefly describe what Title I
8 funds are, what they are used for, how you get them?

9 A The Elementary and Secondary Education Act
10 Title I are, of course, federal funds, congressional
11 appropriations. Each school district in the state based
12 upon the 1970 census has an allotted number of what are
13 called low income children. The '70 census is the data
14 used. In '73-'74 the Orshansky Formula was imposed or
15 used with the '70 census data to determine this allotment
16 per school district, so each district in the state has
17 an allotted number of low income children based on that
18 data.

19 Q Excuse me. Does that formula stay the
20 same, or does it take into account students that might be
21 added?

22 A No, it does not take into account added
23 students. The only time that that formula changed would
24 be at congressional direction, and, as I said, the '70
25 census is the basis for the formula this year, so that

1 will probably -- well, I wouldn't predict what Congress
 2 would do. Historically, the census data has been used as
 3 a basis for the Orshansky Formula, which is a formula of
 4 poverty. It has been imposed upon that to allot a certain
 5 number of students to a school district. Therefore, if it
 6 is based on '73-'74 data, if a school district had, for
 7 example, a hundred students allotted to them, then they
 8 would be eligible to receive a certain amount of funds
 9 per student based on the total amount allotted by Congress.

10 Therefore, the school district then based
 11 upon that would have to make application to use that, but
 12 that amount or those number of students would not fluctuate
 13 until Congress mandates some kind of a fluctuation.

14 Q If you had a hundred-student allotment, but
 15 you have three hundred poor students, could you serve all
 16 three hundred students?

17 A No, ma'am, you could not. The Title I
 18 guidelines and regulations delineate that dollars must be
 19 concentrated only on the number of students that you have,
 20 so if you were allotted a hundred students, you could serve
 21 no more than a hundred students. A district would have to
 22 first identify where the low income children are, and then
 23 they will have to identify the campuses with the highest
 24 concentrations of low income and then move to those campuses,
 25 excluding other campuses, so if new children came into a

1 campus that was not identified for Title I, they would be
2 ineligible for Title I services.

3 Then on these campuses that are eligible
4 for Title I services, they would identify the educationally
5 deprived children, but, here again, if on those campuses
6 they had an allotted number of one hundred, then they could
7 only serve one hundred children.

8 Q Which one hundred are served, if they are?

9 A They are to identify and serve those most
10 in need. I would say too that the services derived from
11 Title I are supplementary. The dollars may not be used
12 for basic educational type services. First, they are
13 required to have a supplementary instruction program. Any
14 child who receives services under Title I must be in a
15 supplementary instruction program, which may be, you know,
16 reading, math type activities and so forth.

17 Then students who were in those kind of
18 activities may have supplementary, oh, support services,
19 guidance, such as this, and some of what you would call
20 social services, clothing, food and so forth like that.
21 It should be indicated too that Title I monies, if there's
22 an increase, say, in the children needing services, Title I
23 monies may not be used for general classroom construction.
24 There is a way where some Title I monies can be used for
25 construction, a limited amount. It's solely based on the

1 Title I program justification. Therefore, general class-
2 room construction with Title I dollars is just something
3 that can't be done.

4 Q What about Title VII money? Can you
5 basically describe that and what it may be used for?

6 A Title VII monies---.

7 THE COURT: Before we go to Title VII,
8 what are the criteria for poverty in the Act?

9 THE WITNESS: In the Act the Orshansky
10 formula is a graduated formula based on income
11 and number of family members, so, whereas, a
12 dollar amount of income would be -- may not be
13 a poverty level for say one child, the same
14 amount for a family of ten children may be
15 classified as a poverty level. At the school
16 district the school district has to go, therefore,
17 in and identify based on their local community
18 the low income families in their districts to
19 qualify campuses. Therefore, it becomes the
20 school district's responsibility to identify
21 campuses.

22 THE COURT: What is the citation of that
23 statute? Do you know offhand?

24 THE WITNESS: Public Law---.

25 THE COURT: I mean do you know the United

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States Code---?

THE WITNESS: No, sir, I don't know the Code statute.

MR. ROOS: Your Honor, it's 20 U.S.C. 241, in and about there.

THE COURT: Thank you.

MS. CARDWELL: The Orshansky formula is also in the Federal Register, and I don't have that on the top of my head, but I will provide it to the court.

THE COURT: Thank you. Proceed.

Q Would you basically describe the Title VII funds and what they are used for?

A Title VII funds are to provide bilingual programs. These are on applications. School districts who identify a need for bilingual education programs for children would make application to the United States Office of Education. The Texas Education Agency does have some review and advice responsibilities in that, but final approval is with the United States Office of Education.

Q And may those funds be used for general construction?

A No, ma'am.

Q Do those funds take into account influx of additional students who are limited English-speaking

1 students this year? If there was a sudden influx, would
2 those funds immediately increase to take care of the
3 problem?

4 A No, the district must develop annually a
5 program based upon what it believes it needs to do services
6 to limited English-speaking students in the district and
7 submit that program. Usually, funds are limited based
8 upon the project as submitted.

9 Q What about the E.S.A.A. funds?

10 A E.S.A.A. funds are, again---

11 THE COURT: Now, for the record, E.S.A.A.,
12 what does that mean?

13 MS. CARDWELL: I'll have to ask the witness.

14 I have only heard them called E.S.A.A.

15 A Emergency School Assistance Act.

16 THE COURT: Thank you.

17 A These are funds primarily for the purpose
18 of aiding schools with desegregation. There is a component
19 of them that are for bilingual programs, but the primary
20 premise or the basis of the E.S.A.A. Act was to aid schools
21 in desegregating. Therefore, again, these are funds that
22 are approved by the Office of Education. The Texas Education
23 Agency -- it's on application -- the Texas Education Agency
24 does have a review input into that, but there is a system
25 where projects are reviewed. There's a point system for

1 evaluating the quality of projects, and all applications
2 submitted for E.S.A.A. funds are not funded.

3 Q May these desegregation funds be used for
4 any other purpose than desegregation?

5 A Well, the bilingual components, of course,
6 for bilingual---

7 Q But that is within desegregating schools.
8 Does every school that applies for Title I funds and Title
9 VII funds and E.S.A.A. funds, do they get them?

10 A Title I funds are an allotment or an entitle-
11 ment to a district. Therefore, any district who really
12 applies is eligible to receive. Texas Education Agency
13 approves the application, so to speak, for the supplementary
14 services. For Title VII and E.S.A.A. funds, here again,
15 these are on application. All districts do not receive
16 funds that may apply.

17 Q On Title I funds, although each school
18 district is given its allotment, does that allotment
19 necessarily pay the needs of the educationally deprived
20 children?

21
22 (REPORTER'S NOTE: There was
23 no audible response from the
24 witness.)
25

1 Q Is my question made clear?

2 A Yeah. Well, in other words, this year
3 there's approximately \$119,000,000.00 Title I in the
4 State of Texas. There are some conditions, but on the
5 average a school district would receive per allotted child
6 approximately \$186.00 per child. Now, this is not exact
7 for every school district, because there are some considera-
8 tions that make this vary slightly, but on the statewide
9 average when you identify children with most in need, and
10 you begin to put \$186.00 on top of that, school districts
11 do not feel that they adequately can provide for children
12 or the children that they are serving. They further feel
13 that since they are limited, there are other children in
14 the district that need some kind of services, but they
15 cannot provide them with Title I funds, because these are
16 on another campus, or they are limited in the number that
17 they can serve.

18 Q These are citizens and legally admitted
19 children in school at the present time?

20 THE COURT: Would you speak a little louder,
21 please?

22 Q And these are citizens and legally admitted
23 children in school at the present time?

24 A Yes, these are children in school.

25 MS. CARDWELL: We have no other questions

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at this time. Excuse me just one moment.

(REPORTER'S NOTE: Defense
counsel here confer out of
the hearing of the court
reporter.)

BY MS. CARDWELL:

Q Of these funds once the enrollment is set
for the year and the funds are set for the year, if there
is an increased enrollment, they can't get additional funds
for that year?

A No, ma'am.

MS. CARDWELL: We have no other questions
at this time.

THE COURT: One moment. Does counsel for
the Tyler Independent School District desire
to question the witness?

MR. HARDY: We do not, Your Honor.

THE COURT: All right, proceed.

CROSS-EXAMINATION

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BY MR. ROOS:

Q Mr. Anderson, I would first like to draw your attention to the surveys and testimony you gave concerning the number of immigrant alien children in various places throughout the State of Texas.

Those surveys, the first one was conducted in the '75-'76 school year. Is that correct?

A That is correct, sir.

Q And the second one was in the '76-'77 school year?

A That is correct, sir.

Q And these surveys were conducted after the legislation effectively excluding undocumented aliens from school, was it not? The legislation that is here in question was passed in the summer of '75.

A That is correct.

Q Now, what those surveys measure is not the number of illegal aliens in the school, is it?

A No, sir, the survey instrument requested that districts identify children born in Mexico. It was not discriminating between illegal undocumented or legal aliens. It was simply children born in Mexico to show

1 immigration patterns.

2 Q So, indeed, if it was after the date of the
3 legislation, one could assume it is primarily measuring
4 the number of legal resident aliens who are in school.

5 Is that correct?

6 A I think that would be the primary assumption,
7 but not total. There could be undocumented aliens included
8 in here, but we would have no way of knowing how many.

9 Q Thank you, sir. Now, with respect to Title
10 I funds, I'm going to give you some figures in terms of
11 dollar amounts received by the State of Texas over the
12 course of the years, and I would like for you to tell me
13 if these conform to what you believe the dollar amounts
14 received in the State of Texas are.

15 For fiscal year 1970 the state received
16 \$75,601,664.00. Does that sound like the approximate
17 amount?

18 A I would be unable to give you an exact
19 dollar figure, but that's approximate.

20 Q And in 1975 the State of Texas -- and this
21 is the total State of Texas -- received \$123,562,744.00.
22 Does that sound right?

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(REPORTER'S NOTE: There was no audible response from the witness.)

THE COURT: Answer for the record.

A Yes, sir.

Q And for the year 1977 -- I guess this would be a projection or whatnot or request, or maybe it's received. I don't know -- \$147,992,810.00. Does that sound like the correct amount that the State of Texas either has applied for or has received?

A When you talk about Title I -- may I ask a question here? Are you talking about the inclusion of the Title I migrant and the Title I regular?

Q I believe that's included.

A Yes, sir, it sounds---

Q So, in fact, it has increased almost double in the last seven years, the total allotment to the State of Texas. Is that correct?

A Yes, sir, it has increased.

THE COURT: Has it increased in approximately the proportion that counsel has mentioned?

THE WITNESS: Yes, sir.

Q Now, you mentioned that school districts or the state were limited to the 1970 census in terms of

1 determining how many poor children that were in the State
2 of Texas. Is that your testimony?

3 A The '70 census is the basis for determining
4 the number of children, yes, sir.

5 Q Are you familiar with 45 C.F.R. 116(a)(5),
6 which indicates -- let me show you this document, if I may.

7 A O. K.

8
9 (REPORTER'S NOTE: Defense
10 counsel examine document.)

11
12 MR. ROOS: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes.

15
16 (REPORTER'S NOTE: The
17 witness examines document.)

18
19 Q You have read the section of 45 C.F.R. that
20 I have handed you?

21 A Yes.

22 Q Does that comport with what your knowledge
23 of what the regulations are for Title I?

24 A Yes, sir.

25 Q That provision indicates that there are ways

1 of updating the 1970 census, does it not, with other
2 material?

3 A Yes, sir, it says other types of data may
4 be used upon approval by the Commissioner.

5 MR. ROOS: Thank you.

6 THE COURT: What substantially are these
7 methods of updating the population figures?

8 THE WITNESS: Are you asking me, sir?

9 THE COURT: Yes.

10 THE WITNESS: We have found no viable data
11 method to use. The '70 census is the most viable
12 data that we have, the most accurate data.

13 THE COURT: You're saying that you know of
14 no feasible method for estimating population
15 changes in a particular area?

16 THE WITNESS: What I am saying, sir, is that
17 we don't have or we do not find any solid data
18 that can be depended upon that is more solid or
19 acceptable than the 1970 census data.

20 Q But there is a provision in the law that
21 allows the state to develop mechanisms for evaluating
22 changes in poverty counts, is there not?

23 A Yes, sir.

24 Q Turning now briefly to Title VII for
25 clarification purposes, the amount that a school district

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preliminary injunction is being considered by
the court.

MR. ROOS: Thank you very much, Your Honor.

THE COURT: All right, you may call your
next witness.

MR. WISE: Your Honor, could the record
also indicate the United States is present again?

THE COURT: Oh, excuse me, sir. If I ignore
you inadvertently, why, I hope you'll always stand
and make your presence known. I value your
presence here. I just forget about it.

Proceed.

MS. CARDWELL: We call Dr. Tom Anderson.

STATE DEFENDANTS' CASE IN REPLY

THOMAS ANDERSON,

a witness called by the defendants, having been first duly
cautioned and sworn to testify the truth, the whole truth
and nothing but the truth, testified as follows:

DIRECT EXAMINATION

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BY MS. CARDWELL:

Q Dr. Anderson, would you state your name and your address for the record, please?

A I'm Thomas Emerson Anderson, Jr., and I reside in Austin, Texas, at 3009 Pinecrest Drive.

Q Where are you employed?

A I am employed with the Texas Education Agency.

Q Could you give the court just a brief description of your educational background, please?

A I have had experience in teaching in the public schools in Austin, Texas. From there I went to the Texas Education Agency and have served in the capacity as consultant for the U.S.C.A. Title I programs, the migrant and preschool programs. I am currently the assistant to the Deputy Commissioner for Programs and Personnel Development and Director of Professional Practices and Professional Support.

Q What educational training have you had to qualify you for this position?

A I have a Doctor of Philosophy Degree from the University of Texas in educational administration and---

1 Q As a part of your work at T.E.A. have you
2 compiled statistics concerning the number of Mexican alien
3 students in Texas schools?

4 A We have.

5 Q Have you compiled those statistics for '75-
6 '76 and for '76-'77?

7 A We have.

8 Q Could you tell the court, please, what the
9 total enrollment is during the current year in school?

10 A In school enrollment for the '76-'77 school
11 year was 2,239,000.

12 Q And what portion of that was Mexican alien
13 immigrants?

14 A 51,239 or approximately that number.

15 Q Do you recall the statistics for the current
16 year?

17 A The statistics I gave you were the
18 statistics for the past year. The statistics for the
19 previous year, for the '75-'76 school year, were the two
20 years that we compiled. We do not have the statistics
21 for this current year that we are in now.

22 Q That's the '77---?

23 A For '77-'78, yes, ma'am.

24 Q I show you what has been marked as Plain-
25 tiffs' Exhibit 1 (sic). Could you identify that, please?

1 receives, I think you answered a question that a sudden
2 influx might be difficult to adjust to in any given year,
3 but, in fact, the amount of money that the school district
4 receives is in some sense related to the number of students
5 in need, is it not?

6 A In some sense, in relationship to the number
7 that they apply for in a given year.

8 Q The dollars they receive relate to the
9 number of students who are in need?

10 A Yes, sir.

11 Q With respect to the Emergency---

12 A Excuse me, sir. The application may relate
13 to the number in need. Final approval may not or final
14 approval may not be forthcoming either.

15 Q This is an application process, I realize
16 that.

17 A Yes, sir, it is.

18 Q Finally, with respect to the Emergency
19 School Assistance Act, these funds, to clarify, can be
20 used for bilingual sorts of programs, can they not?

21 A Yes, sir.

22 MR. ROOS: Nothing further.

23 THE COURT: One moment. Does the amicus
24 desire to question the witness?

25 MR. WISE: Just two questions, Your Honor.

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MR. WISE: Was the court able to hear the last question?

THE COURT: No, what was your last question?

MR. WISE: I had asked Dr. Anderson if a district expected an influx of population, could it take that into account in its applications under Title VII for bilingual funds for a coming year.

THE WITNESS: My response was that since it is an application program, the district is responsible for identifying its needs, and may request a level of funding. In actuality, based upon the total amount of dollars the Office of Education anticipates will be available, even though a district may apply for X amount of dollars above, there is a general understanding -- well, you would need to stay within this dollar range in your application, because that's all there is, so even though a district may apply for an anticipated need annually that may increase, there is a limiting factor on the amount of dollars that are available to a state or to be designated or allotted to a state.

Q But that factor limits applicants without regard to whether or not they are expecting an increase or

1 not an increase, doesn't it?

2 A Yes, sir.

3 Q In your understanding of the federal programs
4 in this area are there any limitations on whether those
5 funds can go only to citizens or legally admitted aliens?

6 A My understanding is it is for children who
7 are enrolled in schools. Therefore, I know of no
8 distinction in the federal materials.

9 MR. WISE: No further questions.

10 THE COURT: Is there redirect examination?

11 MS. CARDWELL: We would like to ask one more
12 question.

13

14 REDIRECT EXAMINATION

15

16 BY MS. CARDWELL:

17

18 Q With regard to your understanding of the
19 Title I and Title VII and E.S.A.A. funds, would those funds
20 take care of a large influx of illegal alien students for
21 this year?

22 A The funds are static for a year. A large
23 influx in any year could not be, you know -- a district
24 could not request and receive additional funds during the
25 year, because of an increase of any kind of child, illegal,

1 legal or whatever.

2 MS. CARDWELL: We have no further questions.

3 MR. ROOS: Nothing further, Your Honor.

4 THE COURT: Anything else from the amicus?

5 MR. WISE: No, Your Honor.

6 THE COURT: I neglected to ask the Tyler
7 Independent School District.

8 MR. HARDY: Nothing, Your Honor.

9 THE COURT: You may stand down, sir.

10 MS. CARDWELL: Your Honor, may Dr. Anderson
11 be excused? He has a 2:00 o'clock engagement in
12 Austin, Texas.

13 THE COURT: Is there objection?

14 MR. ROOS: No objection.

15 THE COURT: You are finally excused, sir.

16 (WITNESS IS EXCUSED)

17 THE COURT: Call your next witness, please.

18 MS. CARDWELL: We call Mr. Rolland Heston.

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ROLLAND HESTON,

a witness called by the defendants, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. CARDWELL:

Q. Would you state your name and place of residence for the court, please?

A My name is Rolland W. Heston. I live at 3001 Teague, Houston, Texas.

Q Are you appearing here today pursuant to a subpoena, Mr. Heston?

A Excuse me. My hearing isn't as good as it used to be, and I didn't hear her.

THE COURT: She's asking if you are here pursuant to a subpoena.

THE WITNESS: Yes.

Q What is your present employment, Mr. Heston?

A I am the District Director of the Houston District of the Immigration and Naturalization Service.

Q How long have you been with the Immigration

1 and Naturalization Service?

2 A Thirty-six years.

3 Q Before coming to the Houston district as
4 Director, what was your position with Immigration and
5 Naturalization?

6 A I came to Houston as District Director in
7 October of 1973, and for three years prior to that I was
8 the Deputy District Director in San Juan, Puerto Rico.

9 Q Prior to I.N.S. have you had experience
10 with immigration problems with respect to illegal aliens?

11 A No. My adult life has pretty much been
12 with the Immigration Service since 1941.

13 Q Where were you employed prior to Puerto Rico?

14 A I was in the Chicago district office as a
15 supervisory investigator for fourteen years.

16 Q And did you have experience with illegal
17 alien immigration problems during that time?

18 A Yes, I supervised a group of investigators
19 and clerical staff, between sixteen and almost thirty
20 people. We handled all types of cases. The Chicago office
21 being a large district office, it has a cross section of
22 all various cases which may be encountered in our service.

23 Q What are your duties in the Houston office
24 now?

25 A Did you say my duties?

1 Q Yes, sir.

2 A I am responsible for all the operational
3 technical administrative functions and direction and program
4 planning of the Houston district, and, as such, we have --
5 I'll start with the record room which is at the top of the
6 organization. We have the naturalization section, the
7 inspectional area which inspects people arriving by plane
8 or by vessel, the examination section which adjudicates
9 all applications, the investigation branch which conducts
10 outside inquiries for all other operational sections,
11 including what we call an area control operation to locate
12 and apprehend undocumented aliens within our district.

13 We have a deportation and hearing section
14 which handles the detention or supervision and the
15 deportation hearings and ultimate removal of the deportable
16 alien from the United States.

17 Q What geographical area does the Houston
18 district encompass?

19 A Have jurisdiction over thirty counties in
20 Southeast Texas from the Louisiana border on the east and
21 north, Nacogdoches, and then the line follows the county
22 lines southwest through College Station and down to Port
23 Lavaca.

24 Q Your geographical area has changed recently,
25 has it not, of the Houston district?

1 A Yes, from October '73 until April of this
2 year the Houston district encompassed all of East Texas,
3 all of North Texas and the State of Oklahoma. We had a
4 hundred fifty-four counties in Texas and the State of
5 Oklahoma. In April the geographical limits were changed,
6 and Dallas was made a district, which reduced the area of
7 my jurisdiction materially. However, we have a great
8 concentrated population in those thirty counties.

9 Q The Houston Independent School District was
10 within your district at that time and is now, is it not?

11 A . Yes.

12 Q Are you familiar with the school, the
13 admission of illegal aliens and the problems and court
14 cases that have arisen from that in Houston and here in
15 Tyler?

16 A Yes, we have had many discussions with
17 various officials within the Houston Independent School
18 District, and I also testified before the State Board of
19 Education audit in Austin last year.

20 Q In your Houston office do you have people
21 that prepare statistics on the number of illegal aliens
22 within your jurisdiction?

23 A Yes, we do. We keep this on a monthly basis,
24 and frequently we make a recap over a certain period of time.

25 Q Are you currently making public estimates on

1 the number of illegal aliens within the state and within
2 certain geographical areas?

3 A At this time we are only keeping them for
4 our district, which is the thirty-county area.

5 Q Could you give the court the approximate
6 number of illegal aliens in the State of Texas based on
7 your estimates and experience?

8 A The Service used to make estimates. There
9 has been a change of administration, and we are not doing
10 that any longer. We are talking from the facts that are
11 before us. However, I have previously stated for the
12 record in various places that within the Houston district
13 prior to about March '76 that we estimated there were
14 between 450,000 and 500,000 undocumented aliens in the
15 Houston district. Remember at that time the entire East,
16 North and West Texas and Oklahoma was the Houston district,

17 Q And that's from 450,000 to how many?

18 A To 500,000.

19 Q Based upon your experience, would you say
20 that those numbers have increased or decreased in recent
21 times?

22 A I'm not in a position to talk for the Dallas
23 district at this time. However, within the Houston district,
24 the thirty-county area, I do not know how to break that
25 estimate down, but I don't think our undocumented alien

1 population has decreased at all. In fact, I believe it
2 has increased because of the increase in construction and
3 the job availability in that area.

4 Q Has Carter's announced policy or proposed
5 policy on amnesty had any effect on immigration that you
6 can see?

7 THE COURT: You're speaking about President
8 Carter?

9 MS. CARDWELL: Yes.

10 THE COURT: I believe it would be deserving
11 of that title. I had to stop and think who you
12 were speaking of.

13 A Well, President Carter's proposal was just
14 that, a proposal. It has now been introduced into Congress.
15 To my knowledge no action has been taken. No hearings
16 have been held as yet. However, in the Houston office we
17 have had people appear within the last few months at our
18 information counter and want their status adjusted or
19 regularized because of the proposal that was made by the
20 President. They are very unhappy when we put them under
21 what we call docket control and tell them to leave the
22 United States. I must say within the last three to four
23 weeks we haven't had anyone come in. I believe the word
24 got out in a hurry.

25 (LAUGHTER)

1 Q Were a portion of these people that you
2 had come in requesting amnesty recent entrants?

3 A Yes, there was one man came in, and he had
4 just crossed the river the day before.

5 Q Did the Service, when it was making
6 estimates in '76, have estimates on statewide numbers of
7 aliens in Texas and on nationwide estimates of the numbers
8 of illegal aliens in the country?

9 A You mean undocumented aliens in general,
10 total?

11 Q Yes, sir.

12 A Well, yes. There were estimates that there
13 were from six to eight million, and I saw some estimates
14 that were twelve million. I don't believe that came from
15 our Service. I think this was exaggerated materially.

16 Q And were there estimates by I.N.S. on the
17 numbers of illegal aliens in Texas?

18 A The estimate at that time was close to a
19 million undocumented aliens.

20 Q And have you seen any signs that those
21 numbers are decreasing?

22 A Not to my knowledge, no.

23 Q Now, from the past computations that your
24 office made did you make estimates on the number of illegal
25 aliens within the geographical district of Houston

1 Independent School District?

2 A Yes, we did in March 1976. We used two
3 different methods, and we came up with two different
4 figures, which were about fifteen hundred alien children
5 of school age. The difference was fifteen hundred. By
6 one method we arrived at a figure of 5,626 undocumented
7 children within the Houston Independent School District,
8 and by the other method we arrived at a figure of 4,120
9 undocumented children within the school district.

10 Q Could you briefly explain the methods of
11 calculation that you used in arriving at those figures?

12 A Yes. First, I would like to define what
13 we call leads. This is information we receive from the
14 general public in the form of telephone calls, letters,
15 personal appearances, telling us of undocumented aliens
16 in the area within our district. In March of '76 we had
17 twenty-one hundred leads on hand relating to twenty-five
18 thousand undocumented aliens in the Houston metropolitan
19 area. Today -- and I want to say this to clarify it,
20 because I have made statements since March -- today we
21 still have twenty-one hundred leads on hand, but they
22 relate to forty thousand illegal aliens, or the information
23 we're receiving relates more to industry where there's
24 from a hundred to two hundred people, but I'll go back to
25 '76 when we had twenty-one hundred leads relating to

1 twenty-five thousand people. We sorted these leads accord-
2 ing to the boundaries of the Houston Independent School
3 District and found that seventy-five percent of the infor-
4 mation or information relating to 18,750 undocumented aliens
5 were within the Houston Independent School District
6 boundaries.

7 Over the past years, I would say fifteen or
8 twenty years, the Immigration Service has estimated that
9 they locate or apprehend one out of four or five aliens.
10 That was standard. Over the last two or three years it
11 has become quite apparent that the undocumented alien is
12 not in the rural areas in the numbers that they used to
13 be. They are in the cities, the metropolitan areas, and
14 we estimate that we only apprehend or locate one out of
15 every ten undocumented aliens, so we multiplied 18,750
16 reported undocumented aliens by ten, and we come up with
17 187,750 undocumented aliens residing within the Houston
18 Independent School District boundaries.

19 With our limited force we only locate very
20 few children and women, because we are working in the
21 employment area, and during this period we were averaging
22 apprehensions of 448 undocumented aliens a month, and
23 there were 25 women or children of that 448. It was found
24 that sixty percent or 15 of the women and children were
25 children of school age. This amounts to three percent of

1 the 448, so we took the three percent of the estimated total
2 undocumented aliens reported, and that gave us a figure of
3 5,625 undocumented children within the Houston Independent
4 School District.

5 Our second method---.

6 THE COURT: How many of those would be of
7 school age?

8 THE WITNESS: We estimated that they were
9 all of school age.

10 A Our second method, we resorted the pieces
11 of information relating to undocumented aliens and found
12 147 leads relating to families residing within the Houston
13 Independent School District, and there were 412 children
14 reported. Again using the one-to-ten ratio we arrived at
15 4,210 undocumented children of school age within the
16 Houston Independent School District.

17 Q When you are talking about children of
18 school age in your figures, aren't you talking about
19 children up to sixteen years of age?

20 A Yes, we consider a child -- or when we
21 record women and children, we include all women and the
22 children up to sixteen years of age who are unemployed.
23 We do find some fourteen, fifteen or sixteen-year-old
24 youngsters working, and we do not class them as children.

25 Q Would you consider the three percent estimate

1 of children to be a viable figure statewide?

2 A It's difficult for me to say. Houston,
3 I have found -- I'm not a native of Texas or a Houstonian,
4 but I have found that Houston is different than Dallas,
5 Fort Worth or San Antonio. The job opportunity is so
6 great and a great influx of people coming to the area.
7 I really couldn't say if it is the same as Houston. They
8 must have somewhat the same numbers, according to the job
9 availability throughout the state.

10 Q You have recently been processing Silva
11 letter people, have you not?

12 A Yes, since March the Silva versus Levi
13 decision in the District Court in Chicago -- since that
14 time we have been processing persons who were qualified,
15 that is, they had a priority date with the Consulate
16 prior to December 31st, 1976, and were in the United
17 States on March 11th. To date we have processed twelve
18 hundred persons under that court order, and we have
19 appointments for processing -- as of right now, we have
20 appointments to process people through March 10th, 1978.
21 We do not have the personnel to handle them all at one
22 time. We have two investigators processing these people
23 every day, and we projected that our advance appointments
24 relate to about 216 families.

25 Q What in the 216 families, about what

1 percentage are you finding are children?

2 A We estimate that thirty percent of the
3 persons under the Silva decision are children of school
4 age. In our office there has been that percentage.

5 Q Back to the figures that you proposed for
6 Houston I.S.D. between the four and five thousand figure,
7 would you say that those figures are conservative or
8 exaggerated?

9 A When this estimate was made, and I still
10 stand by that, it was a factual and conservative estimate.

11 Q Why would you say it is conservative?

12 A Well, I believe by nature, and I believe
13 anyone will testify to that, I have been conservative all
14 my life. I have found if you are realistic in your
15 estimates, no matter what it is for, if it's justification
16 for funds, manpower or anything, you have a better chance
17 of sustaining and receiving good results.

18 Q In the numbers of pickups, do you pick up
19 a higher number of singles, as opposed to families, because
20 a family is more integrated into the Mexican-American enclave?

21 THE COURT: When you say pickups, are you
22 speaking about apprehensions?

23 MS. CARDWELL: Yes, sir.

24 A Yes. With our limited force we have not,
25 you might say, worked the street as much as we would like to

1 or as should be done. A great number of undocumented
2 aliens are referred to us by other law enforcement agencies,
3 city, county and state and federal. When we do go out on
4 the street or on area control operation, based on the leads
5 that I previously mentioned, we try to go to the places of
6 employment where they are paying the highest salary to
7 make a job available for a citizen or a resident.

8 Now, most of the undocumented aliens are
9 men. They may not be single. They may have families in
10 other countries, and very few of them that we have had as
11 a result of referral from law enforcement agencies are
12 married in the United States, or if they do have a wife
13 or children here, they do not tell us about it. They want
14 to go back home, especially the Mexican National, directly
15 from our office. They do not want to go to where they
16 reside, and, generally, this is because there are others
17 there that they don't want us to know about.

18 Q So you are just generally less likely to
19 find a family than the single individual?

20 A Yes. Through checking employment we are
21 less likely to find the family or the family man.

22 Q Why is it that when you're making announced
23 estimates that you are not able to give more specific
24 estimations, and why are you not able to give more specific
25 estimations on numbers of children and undocumented aliens

1 in Texas?

2 A Well, we can only maintain certain statistics.
3 Our statistics have been all kept by hand, and you can only
4 do so much. We, fortunately, just have a new computer,
5 but we haven't got it working yet, and we're keeping
6 statistics now, just basic statistics, for our federal
7 budget, and some of our own local work that is not too
8 difficult. We just don't have the manpower to keep
9 statistics by certain counties, cities, and so forth.

10 Q Does the nature of the illegal alien lend
11 itself to an accurate accounting of its presence?

12 A I'm sorry?

13 Q Does the nature of the illegal alien lend
14 itself to an accurate accounting of its presence?

15 A I'm sorry. I still didn't follow you.

16 THE COURT: I'm not sure I understood the
17 question either.

18 Q Does the nature of the illegal alien lend
19 itself to an accurate accounting of numbers and presence
20 within the state?

21 A Well, no, of course, an undocumented alien
22 doesn't want to be apprehended. From my experience and
23 Service experience, generally, they are excellent workers,
24 work long hours; they go home and come back early the next
25 morning. After they have been here a while, they may get

1 out on the street on weekends and unfortunately be appre-
2 hended or arrested for some local violation, but generally
3 they stay away from the Immigration Service, and,
4 especially, those that have families here are not out to
5 where their status may become known, unless some friend
6 or someone else reports them. If they have a family,
7 they're usually with their family, and they don't come to
8 our attention as much until they need something, and then
9 they may come to our attention.

10 Q What percentage of the illegal aliens we
11 have been talking about are Mexican Nationals?

12 A At least ninety percent of the undocumented
13 aliens located or apprehended by our office are Mexican
14 Nationals.

15 Q In dealing with the illegal alien have you
16 had occasion to learn whether or not he pays taxes?

17 A From my observation of the checkstubs --
18 once in a while I go into the investigations. I may
19 decide that this week I'm going into look at the appre-
20 hension forms to see what is happening. Where are they
21 getting these people? How much are they making and so
22 forth? I haven't done this recently. I did this about
23 three months ago when we were apprehending -- at that
24 particular time we had about two hundred apprehensions a
25 week, and there were not checkstubs on every one, because

1 some people don't receive those, but of all those there,
2 and I would say that sixty percent had them, there was not
3 one dollar of federal income tax deducted on those checks
4 that were paid.

5 Q Why was that?

6 A Well, all I can surmise is that their
7 exemptions that were claimed were so great that there was
8 no federal income tax due.

9 Q Do you find instances of exemption falsifi-
10 cation?

11 A Yes, we have. This has gone on for years
12 and years. It was two years ago in the Dallas office,
13 which was then under my jurisdiction, and for ten days
14 they made a survey of the number of exemptions being
15 claimed. They only located eighty-seven aliens in that
16 ten days, which was light for the Dallas office, but of
17 those eighty-seven there were 462 exemptions claimed.
18 One sixteen-year-old lad was claiming sixteen dependents
19 or exemptions, and we find this all the time.

20 We have reported it, but the other federal
21 agencies are as short-handed as we are. If we apprehend
22 an undocumented alien with more than \$1,000.00 in his
23 possession, we call the Internal Revenue Service, and they
24 come and figure his tax, whether he owes any or not. If
25 it's less than \$1,000.00, it's more time consuming than it

1 is worth.

2 Q Finally, based on your years of experience
3 with the I.N.S. -- we have talked about the percentages of
4 children, from twenty to thirty percent, would you say
5 that an estimate of three percent children is unfair for
6 the state or would be a fair estimate?

7 A Well, I can't speak -- again, I say I can't
8 speak for the entire state, but that three percent figure
9 that we used, I believe it is valid. I would say it is
10 very conservative, but I would stick with it. Under the
11 Silva decision we say we are locating thirty percent who
12 are children of school age, but this is more or less a
13 concentrated processing of people that were within that
14 three percent. This processing of the Silva cases will
15 not continue indefinitely. This is something we're
16 supposed to do as soon as possible.

17 MS. CARDWELL: We have no further questions
18 at this time.

19 THE COURT: Yes, sir.
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CROSS-EXAMINATION

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BY MR. HARDY:

Q Mr. Heston, I have a couple of questions. Based upon your experience with the Immigration and Naturalization Service, have you found that the typical illegal alien that is apprehended by your office is a very mobile individual?

A The majority of them are, yes.

Q And they may move from job to job, depending on the season or where the job may play out with the type job they are holding?

A Yes.

Q What has been your experience with the size of the families that the illegal aliens have in this country? Could you place a number of an average size, maybe four to twelve? Do you have a figure in mind?

A Well, I would like -- it's by nationality groups. Your undocumented alien of Spanish descent, the families are larger. We are finding that it's a four plus number in the family. Under the Silva decision we have had families from three to eleven.

Q Has it been your experience that you normally find the group that I will classify as illegal

1 aliens from Mexico normally congregate in groups in certain
2 areas of town?

3 A Yes, they do until they have been here a
4 long time. We are finding in Houston that after the person
5 has been here a while, or if he has the skill to earn a
6 higher salary, he will gravitate out of the barrios, as
7 they speak.

8 Q I believe when Ms. Cardwell asked you about
9 your apprehensions, I believe you stated there were 448
10 apprehensions a month and that about eighty-five percent
11 constituted male apprehensions. You did not mean to imply
12 that these males do not have families here in this country,
13 did you?

14 A No. As I stated, many of the undocumented
15 aliens, especially from Mexico, don't want to go to where
16 they live or tell us anything. They say their family is
17 in Mexico or say they are single, and we do not follow it
18 up or even go to their address, because we do not have
19 the personnel to do that at that time.

20 Q Is the program that Immigration and
21 Naturalization Service is implementing at this time
22 primarily set up to apprehend an individual that is
23 holding gainful employment in this country?

24 A Yes, that is our primary operation, yes.

25 MR. HARDY: Thank you.

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THE COURT: Before we have cross-examination we'll have a recess.

The court is in recess for fifteen minutes.

(REPORTER'S NOTE: The court then, at 10:27 o'clock, a.m., December 16, 1977, recessed until 10:50 o'clock, a.m., the same date, at which time it was reconvened.)

THE COURT: You may cross-examine the witness.

CROSS-EXAMINATION

BY MS. HANTEN:

Q Mr. Heston, I believe it was your testimony that the Service is no longer making estimates as to the number of undocumented aliens within a particular area.

A Yes, the policy has been not to make estimates, but to give the figures of actual apprehensions or actual activity.

Q When was this policy initiated?

1 A About May of this year.

2 Q You testified in your last estimate for the
3 number of undocumented aliens within the Houston area that
4 it was 450,000 to 500,000. Is that correct?

5 A Yes, in the Houston district, yes.

6 Q Was your method of making that estimate the
7 same as that which you described in estimating the number
8 of undocumented aliens within the Houston Independent
9 School District?

10 A Generally, yes. However, when we made this
11 estimate for the entire district, we had to include the
12 entire district, the rural and other cities within the
13 district.

14 Q But the formula was number identified through
15 leads times ten?

16 A Not entirely, no. It was based on the
17 knowledge of the officers who have been throughout the
18 district as to their best estimates of the number in all
19 areas of the district.

20 Q So in each area the officer in that area
21 would make an estimate, and those estimates were added up
22 to formulate the final estimate as to the districtwide
23 number?

24 A Well, yes. It wasn't each officer. However,
25 we have officers who travel throughout the district. Out of

1 Houston they travel north so many counties. Out of Dallas
2 they travel the rest of the district, and we consulted
3 every one as to their estimates within the various areas
4 of the district and added them up and came up with what
5 we thought was a valid estimate.

6 Q Were there a number of formulas being used
7 in order to make the estimates of each region within the
8 district?

9 A No, we just took the information given to
10 us by the various officers that have traveled around with
11 their knowledge and their experience and came to this
12 estimate.

13 Q As to each one of the sub-estimates, did
14 you inquire as to how that figure was arrived at?

15 A Well, yes. We talked to everyone about
16 what they thought were the number and why, and it was
17 based on their locations, apprehensions and views and
18 conversations with other law enforcement agencies or even
19 the general public in those areas.

20 Q For the metropolitan area of Houston itself
21 to estimate the number of undocumented aliens within the
22 metropolitan area did you use the methodology you described
23 in estimating the number of undocumented aliens within the
24 school district, that is, the number identified through
25 leads times ten?

1 A We used our leads and other information
2 which was known to the officers working the area.

3 Q What other types of information would that
4 be?

5 A That would be actual experience in the field
6 through his own apprehensions and views and talking with
7 the public and private sector people in the area.

8 Q So there was no uniformly used formula to
9 estimate the number of undocumented aliens within your
10 district but, rather, a compilation of various people's
11 estimates based on their experiences?

12 A Yes, that's what an estimate is generally.

13 Q However, in estimating the number of
14 undocumented aliens you believe to be present within the
15 area of the Houston Independent School District you used
16 the set formula of the number identified through leads
17 times ten?

18 A Yes, we did.

19 Q How did you arrive at that formula as a
20 proper formula for estimating the number of undocumented
21 aliens within the school district?

22 A Well, as I stated, those with the addresses
23 within the district boundaries, we used the ratio of one
24 to ten, which we on our experience believe is true today
25 in the metropolitan areas. We only learn of or apprehend

1 one out of ten undocumented aliens.

2 Q On what factors do you base your statement
3 that you apprehend approximately one in ten undocumented
4 aliens in a metropolitan area?

5 A From our experience I can specifically talk
6 about the Houston metropolitan area. We have leads on
7 forty thousand aliens, and we are locating only about
8 four to five hundred a month, and I don't think we're doing
9 that good in the Houston area. It may be one to twenty
10 in that particular area without resources and manpower.

11 Q From what sources do you get these leads?

12 A From everyone. People call on the telephone.
13 People appear in the office. People write us letters, not
14 only from individuals. It could be -- it's both from the
15 private and public sectors. We receive information in all
16 manners. On phone calls and personal appearances we reduce
17 it to writing, the information they have.

18 Q Do you and/or people on your staff follow
19 up each lead?

20 A We do to the best of our ability. No, we
21 are unable to follow them all. With our manpower we cull
22 those that we believe need the most attention, aggravated
23 cases, and, as I stated before, those where they are work-
24 ing, where they are making the highest salary to open the
25 job for a citizen or permanent resident.

1 Q Of those leads which you do follow up have
2 you ever found that the lead does not lead to an undocumented
3 alien?

4 A Oh, yes, I would say that we do find some
5 people that do have valid documents, such as the alien
6 registration card, or some could be citizens. However,
7 I would say that if we go to a factory or a plant, and they
8 say there are ten or twelve undocumented aliens, generally
9 we locate more than that. We will many times find documented
10 aliens and citizens there, but we usually find as many or
11 more.

12 Q You testified that of those people in the
13 Silva class whose documents you are in the process of
14 adjusting, approximately thirty percent of the families
15 are children. Could you briefly describe those people who
16 comprise the Silva class?

17 A Well, those people come under a court
18 decision in the Federal Court in Chicago called Silva
19 versus Levi decision, which was compiled in behalf of the
20 Western Hemisphere natives who claimed that they were
21 discriminated against in that visas were made available
22 to the Cuban refugees and not to the natives of the Western
23 Hemisphere. The court ruled in their favor. The State
24 Department and Immigration Service advised that there were
25 approximately 145,000 visas issued to Cuban refugees, which

1 should have been made available to the entire Western
2 Hemisphere, so as of March 11th our instructions are that
3 we will process these people to locate them, identify them,
4 give them a copy of the court decision and advise them of
5 any benefits they may be eligible for.

6 I got ahead of myself. These persons must
7 have had a priority date with the Consulate; that is, they
8 must have been in contact with the Consul and registered
9 for the issuance of an immigrant visa prior to December
10 31st, 1976, and must have been in the United States on
11 March 11th.

12 Q Are a number of these people parents of
13 citizen children who have petitioned for the admission
14 of their parents prior to the change of the law in January
15 of 1977?

16 A Yes, many of them are. They have one United
17 States citizen child born here while they were on an
18 undocumented status.

19 Q At least one child?

20 A Yes.

21 Q So at least a certain number of these
22 thirty percent children in the Silva class are citizen
23 children?

24 A No, no, we did not include the citizen
25 children.

1 Q But these involve families with citizen
2 children?

3 A Yes, there are some that did not have the
4 children. Someone else had filed in their behalf or they
5 were qualified in some other way, but the majority of them
6 have one United States citizen child.

7 Q In your experience with legal immigration
8 have you noted that some people now being legally admitted
9 to the United States have been here in an undocumented
10 status previously?

11 A Oh, yes, that's true.

12 Q In your work in the immigration field have
13 you come across people who have lived for substantial
14 periods of time in the United States as undocumented aliens,
15 greater than seven years?

16 A Well, yes, I have become aware of quite a
17 number through the years who have been here more than seven
18 years, yes.

19 Q Do these people include people who have
20 come to the United States as infants or young children and
21 have lived to their early adult years without being
22 documented?

23 A Oh, yes, there are some, yes, that have
24 been here twenty years and married and had children.

25 Q Do these people often marry citizens?

1 A Generally citizens or permanent residents,
2 yes.

3 Q And thus have an opportunity to adjust
4 their status in that manner?

5 A Yes, those that come to our attention, we
6 advise them of all the administrative relief available and
7 encourage them to file the proper documents.

8 MS. HANTEN: Excuse me.

9
10 (REPORTER'S NOTE: Plaintiffs'
11 counsel here confer out of
12 the hearing of the court
13 reporter.)

14
15 MS. HANTEN: I have no further questions.

16 THE COURT: Does the amicus have any
17 questions?

18 MR. WISE: Just a few, Your Honor.

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CROSS-EXAMINATION

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BY MR. WISE:

Q Mr. Heston, you mentioned President Carter's proposals for resolution or an attempt to resolve the illegal alien problem in your prior testimony. Could you outline briefly what those proposals are?

A One part of the proposals is to grant amnesty for anyone, any undocumented alien who has been in the United States for seven years. This is a general statement. The next part was to allow the undocumented alien who had been here -- and I can't remember the date, whether it was last -- starting January 1st or not. He could remain in a non-deportable status in the United States for five years.

THE COURT: I didn't quite understand what you were saying there. Would you review that situation again?

THE WITNESS: Sir, the last part or---?

THE COURT: The second category.

A The second part of the proposal relating to undocumented aliens was an undocumented alien who had been here only a short period of time. Now, I do not recall the exact date. I think it was January 1st, 1977.

1 If he had been here a very short time, he could be in a
2 non-deportable status, in a status quo, to stay here and
3 work and go about his business for five years. Unfortunately,
4 it didn't say what was going to happen after the end of
5 five years, but there was also a part of that that he could
6 not bring his family to the United States, and then there
7 was another portion that provided for penalties for employers
8 who willfully and knowingly hire illegal aliens or undocu-
9 mented aliens, I should say.

10 Q Could I clarify that second point again?
11 Weren't there three different categories of people, the
12 first that you described before 1970, who would be allowed
13 to petition to become permanent resident aliens?

14 A Yes.

15 Q Wasn't this other class that you were just
16 describing those who had been resident in the United
17 States from 1970 until January 1st, 1977, that they would
18 be able to become this new hybrid status of remaining for
19 five years and having that resolved at a later date, and
20 wasn't anyone after January 1st, 1977, to be not under
21 this program and to be deported, if apprehended?

22 A It could be. To be honest about it, proposals
23 or new bills introduced in Congress on immigration matters
24 I read them once and put them aside until such time as they
25 have passed either the House or Senate to where you know

1 that there is going possibly to be new legislation, and
2 you must give it some thought and programming, and I read
3 this in a hurry, and what I stated was what I recall. It
4 is not law at this time. It hasn't been acted upon by
5 Congress at all.

6 Q All right, I won't pursue this line of
7 questioning, but perhaps in briefing will clarify this
8 issue, because I think the implication was brought up
9 that these proposals were contributing to an influx of
10 illegal aliens, and I think the proposal quite clearly
11 states that the date of January 1st, 1977, which was prior
12 to the announcement of the proposals, that no one's status
13 would be regularized who entered after that date.

14 Mr. Heston, you indicated that undocumented
15 aliens are sometimes referred to you by other public
16 agencies. Is that correct?

17 A Yes.

18 Q Are undocumented aliens ever referred to you
19 by school boards or school authorities?

20 A No, we indirectly hear about some but none
21 direct from the school boards.

22 Q So to your knowledge there is no school
23 system in the State of Texas who have a policy of trying
24 to turn in an undocumented alien?

25 A There are none within my immigration district.

1 Q You stated that the I.N.S. policy is to give
2 priority to reports of illegal aliens working at those
3 places which pay the highest wages. Is that correct?

4 A Yes.

5 Q Doesn't this have the effect of creating an
6 underclass of jobs in which there is less or no enforcement
7 if the jobs are the least desirable, least economically
8 rewarding?

9 A I do not know. It was a practice of the
10 Service to create or locate aliens who were making the
11 most money and the highest salaries so that a local
12 citizen and permanent resident could take over that job
13 and support himself and his family.

14 Q Are the tips that you receive concerning
15 illegal aliens who are employed, are they largely from
16 people complaining about those aliens who are employed
17 in the higher paying jobs?

18 A No, they cover the entire salary range.
19 About sixty percent of our leads by phone are received
20 from Mexican American Nationals or citizens in the Houston
21 area where they live.

22 Q Is there an increase in such tips when there
23 are times of economic decline?

24 A Oh, yes. This has been over the years that
25 the waves have followed the economic pattern of the United

1 States.

2 Q To go back a second to the Carter proposals,
3 they did propose, did they not, to establish penalties for
4 the first time on employers who employed illegal aliens?

5 A Yes, that was part of the proposal.

6 Q And did these proposals also contain pro-
7 visions to increase the ability of the I.N.S. to patrol
8 the border area and increase its enforcement activities in
9 that area?

10 A Yes, that was part of the proposal.

11 MR. WISE: No further questions.

12 THE COURT: Is there redirect examination?

13 MS. CARDWELL: We have nothing further.

14 MR. HARDY: No, Your Honor.

15 THE COURT: Anything from the plaintiffs?

16 MR. ROOS: Nothing from the plaintiffs,

17 Your Honor.

18

19

EXAMINATION

20

21 BY THE COURT:

22

23 Q Sir, in your judgment if President Carter's
24 proposals were implemented in the form of legislation,
25 particularly, with reference to adding personnel to the

1 Immigration and Naturalization Service, would you be able
2 to control the problem better?

3 A Of course, more resources of any kind would
4 help. In my own personal opinion they do need more man-
5 power along the border. However, I have been in the
6 district offices so long, and we have been so understaffed
7 that we cannot do our work in the interior as we would like
8 to do, and we need that across the board.

9 Q How much of an increase in personnel percentage-
10 wise would you need?

11 A Well now, I can only speak for my district.

12 Q Yes, for your district.

13 A I must say that when I went to Houston as
14 District Director four years ago, our first budget proposal,
15 which was put in in December '73, we asked for twenty-eight
16 investigators in the Houston district. We had six at that
17 time. As of today we have ten, and we still need twenty-
18 eight to thirty investigators to adequately do our job.

19 Q And I guess supporting personnel in addition
20 to that?

21 A Well, naturally, yes, clerks. Your file
22 room, a lot of people don't think it is important, but
23 it's most important.

24 Q I can believe it. What do you think---?
25 Well, let me put it this way. In your opinion if the

1 knowing and willful employment of illegal aliens were made
2 a felony, what effect would that have upon the employment
3 of these persons by private individuals or partnerships or
4 corporations or other concerns?

5 A Well, any restriction against the hiring of
6 a -- willfully and knowingly hiring an undocumented alien,
7 I believe, would be of great value. I think it would be
8 deterrent to a degree. Personally, I do not believe it
9 should be a felony, especially the first time or two. In
10 my opinion I think we can do it either administrative the
11 first time or maybe even -- well, administrative through
12 letters or civil penalty maybe the second time and so
13 forth, but I think it would be a deterrent if one employer
14 in a large area was found in violation of the law, then
15 the others would pay attention.

16 Q Well, by the failure of the Congress to
17 give you sufficient personnel and by the failure of the
18 Congress to enact legislation which would penalize employers
19 for knowingly hiring these illegal aliens, isn't that, in
20 effect, a tacit permission by the Congress to allow this
21 illegal immigration so that they can constitute a kind of,
22 as counsel put it, an understructure of persons who will
23 take these menial jobs at low rates of pay?

24 A Well, I'm sorry. I really can't answer that,
25 sir. If, however, from my own basis---

1 Q I'm only asking for your perception now.

2 A If I know that it's against the law to do
3 something, I usually don't do it. If I do it, I expect
4 I'm going to be punished for it if I am caught.

5 Q Certainly.

6 A That's my idea throughout my life.

7 Q Certainly. I would think all law-abiding
8 citizens would have that idea. The question I was asking
9 you -- let's put it this way then. Isn't the effect of
10 Congress' failure to enact legislation which would penalize
11 employers for hiring these illegal aliens -- isn't that
12 giving a kind of tacit permission for the employers to
13 hire them? I'm asking for your own perception.

14 A I'm sorry. I still don't follow.

15 Q What I'm trying to say is, Congress hasn't
16 passed any laws which makes it illegal for employers to
17 hire these people, these illegal aliens. Isn't that, in
18 effect, a kind of permission for the employers to hire them?

19 A Well, it might be. It's true that now that
20 the publicity of what would have been the Rodino bill has
21 been publicized so much became known, a lot of employers
22 that previously would not are not doing it today. Although
23 in the Houston area we know there are more employers
24 complying with what would have been the Rodino bill than
25 there were a year ago. A lot of people who are eligible to

1 adjust their status to permanent residence and be allowed
2 to stay until it is accomplished, they cannot get a job
3 until they come up with that alien registration card, and
4 a lot of them who have lost their cards are coming in for
5 new ones. They lost it two years ago, and we say -- they
6 want it today, and we're busy. We say, "Well, why didn't
7 you ask for it two years ago?"

8 "Well, I didn't need it. My employer wants
9 to see it."

10 So there is a little voluntary compliance
11 in certain areas today.

12 Q You made some reference to the mobility of
13 these aliens. Is it your experience that the ones with
14 families are more or less mobile than the single persons?

15 A No, the family groups would be less mobile.
16 They would be more likely to stay in one general area.

17 THE COURT: Thank you, sir. Are there any
18 other questions?

19 MS. HANTEN: No, Your Honor.

20 THE COURT: Thank you, sir.

21 (WITNESS STANDS ASIDE)

22 MS. CARDWELL: We call Dr. Shane Davies.
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SHANE DAVIES,

a witness called by the defendants, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. CARDWELL:

Q Dr. Davies, would you state your name and address for the record, please?

A My name is Christopher S. Davies, D-a-v-i-e-s (spelling), and I reside at 3317 Perry Lane, P-e-r-r-y (spelling), Austin, Texas.

Q Where are you currently employed, Dr. Davies?

A I am Associate Professor of Geography and Community and Neighborhood Planning of the University of Texas Austin.

Q Could you briefly describe to the court your educational background?

A I have had a B.A. Degree from the University of Leicester, England, an M.A. Degree from Indiana University, Bloomington, Indiana, and a Ph.D. Degree from that same institution, primarily in geography and statistics and

1 economics.

2 Q Could you give us a brief description of
3 your employment history, please?

4 A I worked at Indiana University, and I have
5 been employed by the University of Texas since 1969. From
6 '69 to '73 I have been there as an Assistant Professor,
7 and from '73 to this date as Associate Professor in that
8 institution. I primarily work with graduate students and
9 have one large senior course in that institution, and I
10 have been the recipient of grants from the National Science
11 Foundation, Department of Transportation, Housing and Urban
12 Development and University Research Grants, primarily in
13 the area of transportation and migration.

14 Q Could you give a brief description of your
15 academic and professional work in your areas of study?

16 A Could you repeat that, ma'am?

17 Q Could you give a brief description of your
18 academic and professional work in your areas of study?

19 A O. K., I generally publish and train graduate
20 students in the area whereby they can obtain jobs both in
21 the academic circles and in planning departments of state
22 and federal agencies, primarily in transportation and in
23 part in labor oriented studies, such as migration.

24 My research work primarily is concerned or
25 has been concerned on the issue of migration with work for

1 Lugar, who at that time was Mayor of Indianapolis, who is
 2 now, I believe, the senator from that state on migration
 3 flows in the United States, blue collar workers in the
 4 South to cities in the North and from the Appalachian
 5 region into Indianapolis, and, secondly, I have published
 6 and done work within Mexico on the residential (words
 7 unintelligible to reporter) of Mexicans within the country
 8 of Mexico.

9 THE COURT: I'm sorry. Residential what?

10 THE WITNESS: Cycle action, sir, in other
 11 words, how they move within the metropolitan
 12 area within the City of Guadalajara, and on
 13 the specific question of the undocumented worker
 14 I have ongoing research on that issue now. This
 15 came out simply because I had contact with
 16 Congressman Gonzalez in Washington, who assisted
 17 myself and my research assistants to gain access
 18 to I.N.S. files within the San Antonio area, and
 19 also the University of Texas has what they call
 20 a border project, which has been supported by
 21 the Board of Regents, and there is a general
 22 interest within the University for research, not
 23 specifically on this particular topic, but a
 24 variety of topics in this area. We have two or
 25 three graduate students working in this area.

1 Q What is the basis or what has the study of
2 the undocumented alien consisted of that you have done and
3 worked with?

4 A Specifically---

5 MR. ROOS: Your Honor, I object. There has
6 been no introduction of the study itself, which,
7 of course, speaks for itself and is the best
8 evidence of the contents of the study.

9 MS. CARDWELL: Your Honor, I'm asking for
10 the basis in terms of what has he actually done
11 to establish the areas of his expertise.

12 THE COURT: Overrule the objection. You
13 may proceed.

14 A This specific study was the investigation
15 of something around 3,500 pieces of information from the
16 San Antonio branch, of which a random sample of 546 pieces
17 of information on the undocumented worker was collected,
18 and from that material inferences were developed on their
19 characteristics, their mobility patterns in the United
20 States, et cetera.

21 MS. CARDWELL: At this time, Your Honor, I
22 would seek to have Dr. Davies certified as an
23 expert in the field of migration.

24 THE COURT: Very well. Your Motion is
25 granted.

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Q Dr. Davies, could you please describe the general pattern of migration into the U.S. of the undocumented alien?

A Well, the information we gathered permitted us to ascertain the residential location and sometimes the birthplace location of the undocumented worker within Mexico, and in part from the documents his step-wise migration patterns in part through Mexico to the border towns and then the springboard into the United States.

Specifically, the geographic pattern that we ascertained primarily channeled itself along the major transportation routes, such as IH-35 through the major metropolitan areas of San Antonio, Austin and Dallas. The other stream was, of course, around the south coast toward the Houston area, moving into Florida, and the other one up through the Midwest.

Q Where do you find concentrations of the illegal Mexican alien?

A Well, there were two findings on the geographic pattern. In fact, those undocumented workers who had residences within the United States were found deeper into the State of Texas. In other words, they were found in communities such as San Antonio, Austin, Dallas and surrounding communities. Normally, we tended to find or associate the undocumented worker with Mexican enclaves

1 within metropolitan areas, since they obtained nurture --
2 in a sense they obtained some sence of protection and
3 assistance possibly in searching for jobs, and in a sense
4 they are, shall we say, less conspicuous.

5 Q Could you give a general description of the
6 social character of the illegal Mexican alien?

7 A Of the 546 pieces of information we obtained
8 only 20 of them concerned women, and one interesting point
9 they tend to sustain their length of stay within the United
10 States longer than the male simply because we ascertained,
11 although the sample was small -- in this case 20 -- that
12 they were usually employed in domestic work and, therefore,
13 receive greater protection within the home or are less
14 likely to be exposed to apprehension.

15 Of the male sample the demographic character-
16 istics were similar to the findings of many other studies.
17 Basically, they were young males between the ages of fifteen
18 and thirty, thirty-thirty-five. Their literacy levels, as
19 far as we were able to ascertain, were very low, and they
20 were entering the United States from our research in the
21 search of employment and income gains.

22 Q That was their primary motivation?

23 A From our findings that appeared to be the
24 case, yes.

25 Q What was their economic status?

1 A Their economic status?

2 Q Yes, sir.

3 A You mean in the wages they were earning,
4 et cetera?

5 Q Yes.

6 THE COURT: I think she's asking you
7 whether they were rich or poor.

8 Q Rich or poor?

9 A Oh, excuse me, sir. I would suggest that
10 they were poor.

11 Q Is there a general pattern which you
12 observed with regard to relations or kin that the illegal
13 Mexican alien fits in?

14 A Well, traditionally in migration research
15 it takes the form of step-wise migration basically, that
16 people moving from rural communities into urban communities
17 oftentimes have very little knowledge of the urban milieu,
18 the ability to get around, the ability to obtain jobs and
19 their chances to survive in these areas. Therefore, the
20 assistanceship of kin or the assistanceship of friends
21 is of utmost importance to the incoming migrant, and if
22 kin is not available, oftentimes they associate themselves --
23 this is not specifically necessarily only to the undocumented
24 workers, but in other migration fields to friends or people
25 from their home districts, and as a consequence they tend

1 to seek out areas, of course, where they can obtain the
2 greatest protection and assistance, which usually occurs
3 in this case within Mexican enclaves.

4 Q Are you familiar with the Texas policy of
5 excluding the illegal alien child from free public education?

6 A I am, ma'am.

7 Q In your opinion does that affect immigration
8 into the country from Mexico?

9 A As an attractive index, no.

10 Q How would you say that the illegal Mexican
11 alien who comes into the country compares with the legal
12 aliens that come into the country?

13 A On what points?

14 Q In terms of Spanish-speaking ability, whether
15 he's rich or poor, whether they live in the same places.

16 A The general overall view or the portrait
17 that I can ascertain is that they tend to be predominately
18 Spanish-speaking and illiterate relative to -- well,
19 illiterate, and I think below the educational capabilities
20 of immigrants in the State of Texas.

21 THE COURT: Excuse me. I had understood
22 counsel's question to be -- and correct me if I
23 am wrong -- she wanted a comparison, a relative
24 comparison, of the educational ability and
25 economic status and other characteristics as

1 between the legal entrant and the illegal entrant.
2 Is that what you have given us?

3 THE WITNESS: Yes. Excuse me, sir. I was
4 trying to. From our findings they tend to be
5 below the legal alien within the United States
6 on educational capabilities, skill levels and
7 from the viewpoint of earning power.

8 THE COURT: Are you able to account for
9 that?

10
11 (REPORTER'S NOTE: There was
12 no audible response from the
13 witness.)

14
15 THE COURT: I mean the reasons for it.

16 THE WITNESS: It seems to me---. Well,
17 first of all, sir, in order to become a legal
18 alien, you have to conform to specific entry
19 standards, and in that case usually that there
20 is a job available to you in the United States,
21 and in the sense that the U.S. policy has been,
22 I believe, one of attracting or only allowing in,
23 shall we say, the more educated legal aliens,
24 as a consequence, individuals who originate from
25 these rural areas of Mexico cannot conform to

1 those standards.

2 THE COURT: Thank you.

3 Q Have you had occasion in your study of the
4 illegal alien problem to examine the numbers and estimates
5 of illegal aliens and make estimates of the numbers of
6 illegal aliens in the country and in Texas?

7 A Well, I'm sure as people are aware in this
8 courtroom, the dilemma one is faced with here is the
9 question that they wish to remain inconspicuous and furtive
10 by nature and, therefore, estimates or statistically valid
11 estimates are difficult to come by, but based upon research
12 and literacy findings and the estimates of the I.N.S., I
13 believe the common term is that for every one person
14 supposedly apprehended two or three are at large in the
15 United States as a whole, making supposedly a floating
16 mass of illegal aliens of ten percent of the overall
17 Mexican population, which is sixty million today, so
18 there's about six million illegal aliens in the United
19 States.

20 Q You have heard the estimates of Ms. Houston
21 at six hundred thousand in the State of Texas and also the
22 estimates of Mr. Heston, which would range from 450,000
23 to a million in the State of Texas. Would you consider
24 those estimates conservative in your professional opinion
25 or exaggerated?

1 A Well, since the major receiving states, if
 2 you assume there are six million people in the United
 3 States, and the major receiving states are those of the
 4 greatest geographic proximity to the Mexican border, and
 5 the major receiving states in the United States being
 6 California, Texas, New York and New Jersey, et cetera, I
 7 would assume that if you were to proportion the six million
 8 people, you would find those figures to be possibly in my
 9 estimation conservative for the State of Texas.

10 Q Based also on the numbers of legal Mexican
 11 aliens in the state, would you say that those numbers
 12 would be conservative or exaggerated?

13 A Well, if one makes the analogy from
 14 cultural reasons and from the viewpoint of assistance
 15 that there is a strong correlation between the residence
 16 location of illegal aliens and the distribution of the
 17 Mexican American population in the United States, I would
 18 say that, again, you can expect a large proportion within
 19 the State of Texas.

20 Q You have also heard the estimates on
 21 children within the Houston district of being three per-
 22 cent, and then we heard something about it being as high
 23 as thirty percent, but if you would take the three percent
 24 on a statewide basis, would you say that that is a fair
 25 percentage of children?

1 A Well, again, if you want to speculate on
2 the nature of this data, I would say that three percent
3 seems to be a good estimate conservatively.

4 Q Have you had occasion to study the social
5 and economic effect of the illegal alien on Texas?

6 A Not specifically, only in research from
7 information we picked up in the ongoing research we have,
8 and it is a very difficult problem, because it is trying
9 to estimate an intangible cost, in other words, how does
10 the depressing local wages, supposedly, the effect upon
11 strikes, the impact upon crime or health -- if you make
12 an analogy of supposedly the number of people who could
13 in the United States now unemployed take jobs held by
14 illegal aliens, who are on welfare rolls, and the cost
15 datas begin to snowball, but the actual figures and the
16 literature I can't find.

17 Q Have you had occasion to learn whether or
18 not the Mexican illegal alien utilizes social services?

19 A No, ma'am.

20 Q Is it a fair assumption to say that because
21 of the moves to the enclaves, that where you find the
22 legal Mexican alien, that's where you will find the
23 illegal Mexican alien impacting?

24 A Well, I would assume that that is the case,
25 not only in the State of Texas but in cities of the Midwest

1 and northeast coast, that primarily they move for cultural
2 reasons to areas that harbor and nurture their own ideals
3 and where they can receive protection, if that's the term
4 or some form of assistance from kin, so I would assume
5 that that's correct.

6 MS. CARDWELL: We have no further questions
7 at this time.

8 MR. ROOS: One moment, please, Your Honor.

9 THE COURT: Yes, sir.

10 (PAUSE)

11

12 CROSS-EXAMINATION

13

14 BY MS. HANTEN:

15

16 Q Dr. Davies, before you made your comparison
17 of the characteristics of legal and illegal immigrants,
18 did you do a study of legal immigrants?

19 A In the United States?

20 Q Yes, legal Mexican immigrants.

21 A Not in the sense that we had done a specific
22 study gathering unique data sets, like we did in this case,
23 but we had the I.N.S. information on legal aliens that were
24 on educational capabilities and skill levels coming in.

25 Q Are you aware that the great majority of

1 Mexican legal immigrants come in because of their family
2 relationships to citizens and/or permanent residents, rather
3 than their occupational ability?

4 A I believe that -- well, I can't quite
5 remember whether there is more coming in on the first point
6 or the second point. I personally know they are both
7 important, that, I assume, for example, if you become a
8 naturalized American citizen, and you have kin in Mexico,
9 it's only a natural desire to join them, but whether one
10 is more important than the other, I don't know. I can't
11 recollect.

12 Q Are you aware that persons immigrating
13 because of family relationships do not need a labor
14 certification?

15 A No, I am not.

16 THE COURT: I didn't hear you.

17 THE WITNESS: Excuse me. I can't quite
18 recall that, sir.

19 Q Dr. Davies, as to your study or your
20 observations concerning the differences between legal
21 and illegal immigrants of Mexican origin, have you been
22 able to make any comparisons concerning the children of
23 undocumented aliens, as opposed to the children of legal
24 immigrants?

25 A No, ma'am, within the study itself, in fact,

1 a very small amount, which is negligible, in a sense, not
2 permitting us to do such a thing.

3 MS. HANTEN: Thank you. I have no further
4 questions.

5 THE COURT: Does the amicus desire to
6 interrogate the witness?

7 MR. WISE: No. Thank you, Your Honor.

8 MS. CARDWELL: We have nothing further.

9

10 EXAMINATION

11

12 BY THE COURT:

13

14 Q Sir, in your opinion from your studies, if
15 the Immigration and Naturalization Service were given
16 sufficient funds to hire or employ additional personnel,
17 would they be capable of turning back some of the floodtide
18 of illegal immigration?

19 A In my opinion, sir, no.

20 Q You don't think so?

21 A Well, naturally, I would assume that if you
22 increased your work force and continued to increase the
23 work force, it would have an impact, but when you think
24 geographically you are covering two thousand miles of
25 border, which is desert, canyon and slope, that to monitor

1 that area would, I assume, take an enormous task force,
 2 and even with, if we speculate what enormous means, even
 3 with a very large task force, I think it would still be
 4 very difficult to prevent, as you point out, this floodtide
 5 from occurring, although, naturally, restrictions would be
 6 made, and it would be reduced.

7 Q What is your opinion as to whether or not
 8 the problem would be alleviated in some measure by the
 9 enactment by Congress of laws which would penalize employers
 10 who hire these persons knowingly, these illegal immigrants
 11 knowingly?

12 A I think that of the proposals that I have
 13 perused, I think that possibly could be the most potent
 14 one, but it seems to me also that one could have a mixture,
 15 that is, of proposals, in other words, increasing the size
 16 of the monitoring of the border, as well as penalizing
 17 employers.

18 Q What in your opinion would be the effect
 19 on the children of these illegal immigrants, if they are
 20 not permitted an education? What type of a labor force --
 21 or how will they affect the labor force in this country?

22 A Well, it would be very sad, indeed, if a
 23 child, who is not, obviously, in any society provided with
 24 a means of obtaining an education, particularly, in a
 25 mechanized and specialized world. It seems to me today in

1 our society that we are demanding a type of labor that not
2 only citizens within the United States, but if we want to
3 make parallels, people in the United Kingdom, people in
4 France, people in Germany, people from Turkey, the West
5 Indians and the Pakastani workers, there is a type of
6 laborer for work that so many of us are receiving to
7 participate in, in other words, the lowest sort of society,
8 the very low blue-collar workers, and I assume that without
9 the means of improving one's intellectual capabilities,
10 you would set yourself in that strata, which is low-skilled
11 or low-income jobs.

12 Q If you have a person with low skills and
13 low economic status, who is, moreover, threatened with
14 the specter of the law, how do you place them as a
15 sociologist? I believe you have some training in that.
16 Is he in a state of virtual serfdom there?

17 A I would say that he is in a sense in an
18 unfortunate plight, an unfortunate position, simply because
19 in some of the research findings we find that these
20 individuals can be exploited in a sense through threat of
21 being told that they would be apprehended, so I would say
22 if you're looking back historically, if you're thinking
23 of it in terms of the serf class, yes.

24 THE COURT: Thank you, sir. I have no
25 further questions.

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MS. CARDWELL: We have none.

(WITNESS STANDS ASIDE)

MS. CARDWELL: We call as our next witness
Mr. John Eaton.

JOHN EATON,

a witness called by the defendants, having been first duly
cautioned and sworn to testify the truth, the whole truth
and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. CARDWELL:

Q Mr. Eaton, would you please state your
name and address for the record?

A John R. Eaton, E-a-t-o-n (spelling), 3107
Gannett, Houston, Texas.

Q How are you employed, sir?

A Employed by the Houston Independent School
District.

Q In what capacity?

A I am an Associate Superintendent for Pupil
Administrative Services.

1 Q And what exactly does that encompass in
2 terms of job description, I suppose, or what do you do?

3 A I have several departments, the Attendance
4 Department, fifty attendance teachers enforcing compulsory
5 attendance, visiting neighborhoods, following this routine.
6 I have the Pupil Transfer Department which was instituted
7 in 1970 to implement our present federal court decree with
8 an office staff of five interviewers that check on our
9 transfers, our patrons, with enrollment procedures through-
10 out the year. I have the Pupil Assistance Department that
11 is responsible for the Title I free clothing program, the
12 free lunch program. I have the Pupil Accounting, which
13 has the responsibility of accounting for the average daily
14 attendance in each of our schools, the computerized pupil
15 scheduling and grade reporting. I also have the Printing
16 and Publication that publishes and prints about ninety-five
17 percent of all of our printed material throughout the
18 district.

19 Q Included in that is your work with the
20 illegal alien student who applies, once his initial
21 contact has been made with the school district, do you
22 not?

23 A I have had experience with these children
24 that reside within our district.

25 Q What other positions have you held with

1 Houston Independent School District, besides the one that
2 you now have?

3 A I started as a teacher in 1950, a counselor
4 in '53-'54, five years as an assistant principal at the
5 Marshall Junior High School. Since 1960 I have been
6 administrative assistant, director, and my present position
7 I have had since 1968.

8 Q How many years were you actually out working
9 in the schools?

10 A Ten years.

11 Q Did you have contact with the illegal
12 Mexican alien and the illegal alien student then?

13 A Yes, I might even go back to '48-'49. At
14 that time I was with the Harris County Probation Department
15 in the Delinquency and Dependency Section and left there
16 as supervisor of that. I did have some contact with
17 children who had been involved in certain difficulties,
18 so I was aware that we did have this type of child that
19 we term as a juvenile in our community. Perhaps the next
20 more direct contact was in 1955 and 1960, which was
21 predominantly -- at that time we referred to them as Latin
22 American. We call these children Hispanic now, but this
23 was about sixty percent with a school enrollment of from
24 two thousand to twenty-two hundred, a three-grade junior
25 high, seven, eight and ninth grades.

1 When you say illegal aliens at that time I
2 don't think we used the term. Most of those children were
3 migrants. They were passing through our community. They
4 had perhaps worked in the Valley, had moved on up. They
5 had relatives in Houston. They would appear at our school,
6 and we had no regulation or anything that prevented these
7 children from coming into our school at that time, so we
8 would enroll these children. The length of stay depended
9 on their parents, where they would be moving, to what
10 location they went in the future.

11 Q Could you give a brief history, I suppose,
12 how the illegal alien question has presented itself within
13 the department that you work now and to the Houston I.S.D.?

14 A Two years ago a legal foundation in Houston
15 came to my office one day and stated that there were certain
16 children who had been enrolled in one of our elementary
17 schools which was predominantly Hispanic and said the
18 principal had told the children they were no longer eligible,
19 so he demanded they be reinstated in their process of
20 education. This continued over two years, and was finally
21 styled the Hernandez case, and it went through me, and at
22 that time, if I am not mistaken, there were twenty-six
23 children identified and which he called illegal aliens.
24 He clearly stated that they were not here through any
25 formal naturalization process, but they were entitled to

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a permit, and they should be enrolled.

We were advised by our attorney to check and see if they actually lived in our district. We did this. Some we were able to find, and others we were not able. Some of these children at the time were identified only by initial. They did not want to, I assume, jeopardize or let Immigration know who they were in our community. Eventually, they were identified, and we did have the Attorney General's opinion that did allow these children, until the law was changed or enrollment procedures were changed, we did enroll one or two families back in school, at which time the House Bill 1126 changed this, and under 21.031, which said that every child had to be a citizen of the United States or come through the formal immigration channels.

Q Prior to the Hill opinion in the years that you have been in the office---

THE COURT: I'm sorry. I'm not hearing you, counsel.

Q Prior to the Hill opinion in the question that arose with the Hernandez children, what contact did you have with the alien child within your department?

A Well, every year, at least, since 1970 when we implemented what we called a Pupil Transfer Department -- as part of our court decree, it had to go back, but our

1 court decree clearly states that all schools have a defined
2 attendance zone, and a child or people must be domiciled in
3 this zone in order to attend that respective school. These
4 children that you term illegal aliens would appear, and the
5 principal would ask for a birth certificate to ascertain
6 age, because the child had to be six years of age as of
7 September 1 to be eligible for free education, immunization
8 records and this type of thing, and they would not have any.
9 Quite often there was a language barrier, and we do have
10 people in our office, bilingual people, three in my office,
11 and they would be sent down.

12 In other words, our policy was if you have
13 enrollment problems, send them down to our office, and we
14 will attempt to alleviate or correct whatever deficiency
15 they may have.

16 Q Since the passage of 21.031, has Houston
17 I.S.D. passed a policy pursuant to 21.031 for the admission
18 of students?

19 A Yes, we do have this in our official Board
20 policy and procedure book.

21 Q Can you basically tell the court what that
22 is?

23 A Well, basically, it is that they have to be
24 a citizen of the United States, an alien or a person from
25 a foreign country having cleared through the Immigration

1 Service as a permanent resident or resident for a certain
2 length of time that they will be in our district, the parent
3 who is the natural guardian or the legal guardian or the
4 person who has assumed this role and can document it and
5 who will be responsible for the child, they have to meet
6 the state criteria of immunization, the various shots,
7 which record has to be in order, and we have to have some
8 sort of baptismal record, an old insurance policy, a census
9 or something or another to ascertain exactly what age they
10 were so they can have this free education.

11 Q Do you require birth certificate proof of
12 age of all children, of course, not just Mexican Nationals?
13 Is that right?

14 A We have to have something. That's the state
15 Texas Education Code. We will allow an affidavit pending
16 some formal type of verification that will make this child
17 a certain age at a certain date.

18 Q What do you require for a child to qualify
19 as a legally admitted alien under 21.031?

20 A Well, Houston is really a cosmopolitan city
21 with many, many people coming in to Houston. We have a
22 large medical facility, so we have doctors that bring their
23 family and who will come in on -- I don't know whether you
24 call it a permanent -- there are several different types
25 of cards these people have, a permanent type of certificate,

1 or some of them even have a date, as I remember it, two
2 years, three years or something of this type. In other
3 words, if it's something other than a weekend pass or just
4 a visit, and it shows that they have cleared through
5 Immigration -- another thing is the Immigration I-20 form.
6 We have some better than three hundred students come in on
7 this type of form, but these are those who come in
8 specifically for an education purpose. They have cleared
9 through Immigration, so there's some type of authority
10 formally validating this child is here, the parents are
11 here, something that we can get hold of that says the
12 child is a legal resident and will meet the state audits
13 as far as our accounting procedures, the state T.E.A.
14 accounting procedures.

15 Q You're talking, in other words, about some
16 documentation from I.N.S.?

17 A Well, this will be, as I say, either formal
18 immigration, ~~or as was~~ stated from this witness chair,
19 the Levi documentation. As of this year when I left
20 yesterday, I checked, and we have sixty-nine children that
21 fall under the Levi situation. In other words, they are
22 known to Immigration. We have a letter from Immigration
23 saying that there is a formality or formal procedure that
24 is in process to establish the eligibility, so we don't
25 question those at all if they bring this letter.

1 Q Has the enrollment of Mexican aliens or the
2 brown enrollment in your school increased over the years?

3 A It is increasing at the fast -- we have a
4 smaller base that they are starting from, but as far as
5 the increase, it's greater than any. We have what we call
6 a tri-ethnic policy, the Hispanic, the black and the others
7 or the Caucasian, so the brown has greatly accelerated.
8 We have approximately nine percent -- we had a survey in
9 1956, the first year I was at Marshall or the second year,
10 and this year they're up to 22.8 percent of our student
11 population.

12 THE COURT: How does that compare with the
13 black?

14 THE WITNESS: Forty-four percent this year,
15 sir, black. From 1970 it has gone from thirty-
16 three percent black to our present forty-four
17 percent.

18 THE COURT: So the Caucasians in the district,
19 or so-called Anglos, are now in the minority?

20 THE WITNESS: They are in the minority, sir.
21 It's hard to get enough to facilitate our transfer
22 policy.

23 Q I show you what has been marked as Defendants'
24 Exhibit 4. Could you identify that for the court, please?

25 A Yes, this is a chart I prepared to enter in

1 another federal case last week. It reflects the membership
2 by ethnic groups from 1957 up to our current 1977-'78
3 school year.

4

5

(CHART OF ETHNIC GROUPS --
was duly marked as:

6

DEFENDANTS' EXHIBIT NO. 4)

7

8

9

Q Does that reflect the increases in blacks,
10 browns and whites?

11

A It does reflect the increase and decrease
12 of the three ethnic groups.

13

14

MS. CARDWELL: We would offer Defendants'
Exhibit 4 into evidence.

15

MR. ROOS: No objection, Your Honor.

16

THE COURT: It is received in evidence.

17

Q How many school plants do you have in the
18 Houston Independent School District?

19

A How many schools do we have?

20

Q Yes, sir.

21

A We have what I would call regular education
22 in two hundred thirty-four plants, and then we have probably
23 at least another thirty special type of education, contem-
24 porary education, education where we have teachers at
25 retarded centers, the ongoing education for girls expecting,

1 and we have the original deaf school in Houston for Harris
2 County.

3 Q How many students do you have overall in
4 Houston I.S.D.?

5 A As of our fall survey to the T.E.A., which
6 goes on to H.E.W., we had 206,998 pupils.

7 Q What is the average cost of education for
8 one of those pupils?

9 A We charge now \$135.00 a month. It would
10 approximate \$1,200.00 plus. I do not have those figures.

11 Q That's tuition?

12 A No, this is per year what it cost. If we
13 would divide the number of pupils into our total budget,
14 it would run about \$1,250.00 or plus per year.

15 Q Has this been increasing each year?

16 A Yes, it has.

17 Q If you add to that basic cost Title I free
18 lunch, what are you talking about in terms of dollars?

19 A Well, material in front of me was something
20 I prepared last year for the school year of '76-'77, and
21 our free lunch was running eighty-four and a half cents
22 per day, so if you have a child with a full one hundred
23 eighty days attendance, it would be \$152.10 per one child
24 per year for a free lunch.

25 Q What about if he qualifies then for free

1 breakfast and Title I clothes?

2 A Well, breakfast is forty and a half cents.
3 That would be \$72.90 with a full one hundred eighty days
4 attendance, and those pupils who are enrolled in the Title I
5 program, if they meet the criteria, we have \$25.00 per
6 pupil if a child has been determined as needy, that would
7 be another \$25.00 for clothing.

8 Q Also, do you have a breakdown on the cost
9 of bilingual education, if that is added?

10 A Yes, the last year figure is represented by
11 \$202.41. That makes a cumulative total of Title I clothing,
12 breakfast, lunch, bilingual program of about \$1,740.41 per
13 pupil or approximately \$400.00 to \$500.00 more than the
14 average pupil that does not receive these types of services.

15 Q Do you have the total for the past year and
16 also a projected total for the coming year or for this year
17 of the amount of money that Houston I.S.D. is spending on
18 these programs currently?

19 A On bilingual or---?

20 Q Yes.

21 A Yes, if I may refer to something out of our
22 budget, this year general and local funds we are spending
23 \$2,372,809.00. We are receiving federal funds in the
24 amount of \$839,408.00. That would add up to about 3.1 or
25 .2 millions of dollars.

1 Q You are familiar, of course, with the four
2 to five thousand estimate of illegal aliens within the
3 Houston I.S.D.?

4 A I have heard that quoted, yes.

5 Q If those four to five thousand illegal
6 aliens were added to your district, would that have an
7 impact on your costs and on your programs?

8 A Well, definitely, it would be a cost factor,
9 and the thing I guess -- if I might digress just a minute,
10 if the court will allow me -- the thing that really concerns
11 me is that only four percent of our professional staff at
12 present is Hispanic or could really be termed bilingual.
13 For the past three years we have attempted to recruit all
14 over the United States to accommodate those children who
15 are legally eligible within our district, to define their
16 needs, screen test and bring them up to achievement that
17 would meet the federal guidelines in the federal case and
18 our own Senate Bill 121 in Texas, so it costs, just
19 projecting what I gave a moment ago, a thousand students
20 would be another \$1,740,000.00, if they avail themselves
21 of each of these services, if they were in a school where
22 they could get a Title I program and get \$25.00 per child
23 for clothing, so it would impact, if we had more Hispanic
24 children coming in -- right now we're attempting to take
25 care of some nine thousand that have been identified in

1 Grades K through 3, and if you were to extend it on to
2 pupils who have been identified through the twelfth grade,
3 you're looking at fifteen thousand, perhaps, who would
4 need some type of special types of programs to bring their
5 efficiency up to what we would expect of the average class,
6 so, definitely, any one or more impacts would add to the
7 cost.

8 Q Has it been your experience in your contact
9 with the illegal alien students that he would need this
10 assistance in terms of bilingual assistance and other
11 specially funded educational programs?

12 A Well, let me draw on an experience that I
13 have actual knowledge of. When I was at the junior high
14 school with the migrant child, who I assumed was here
15 through legal channels to be a migrant farm worker, these
16 children would come over with very little formal education.
17 Because of the age that I would receive them, these children
18 would be fourteen, fifteen or some sixteen years of age.
19 They were not even performing on even a second or third
20 grade level in formal education. How many years they had
21 been migrating throughout the United States I could not say,
22 but we would attempt -- I had at that time some Latin
23 American -- that's the terminology we used -- I would place
24 these children in these classes where we could have a two-
25 way dialogue and give the children books, and most of them

1 were eager to learn. This, I think, would carry over to
2 the legal alien, the twenty-six identified that we know
3 about in the Hernandez suit -- the Ledezma suit has been
4 resolved, and these children are in school and are making
5 progress. I hope I haven't expounded too much here.

6 Q That's fine. Would there be an impact on
7 other students in the classroom, if these illegal alien
8 students were added to the Houston I.S.D.?

9 A Any time you add, let me say, ten children
10 to a class that already has twenty-five or thirty, you are
11 compounding or you are expecting more out of this teacher.
12 Our bilingual -- we have a hundred twenty-three bilingual
13 teachers as of this week. Most of them have a bilingual
14 aid, and these people in the classes that I have visited --
15 I have not visited all -- but the ones that I have visited,
16 I see the children in there -- now, these are the legal
17 children in classes that we are teaching today -- at a
18 much lower grade level for the most part, because we do
19 have a migratory factor from twenty to fifty percent in
20 some of the elementary schools. Some of these kiddos have
21 just moved in from all over the United States, and,
22 definitely, you are imposing on this teacher one more
23 child.

24 Our duty is to educate. We have no problem
25 or difficulty with this, but we do have only so many people

1 that can get around and assist only thirty or thirty-five
2 in a class and assist and help give them the security that
3 they might need.

4 Q Does the illegal alien bring with him into
5 the classroom unique or special educational problems?

6 A Yes, for personal experience, as I stated,
7 the child is usually overaged and oversized, has social
8 problems. He compensates for not participating quite
9 often. In other words, he doesn't want to show that he
10 doesn't know this before the smaller children. I had
11 considerable difficulty with some, as far as the older
12 child, let's say, creating a disturbance with a smaller
13 child, taking his lunch money or trying to be a hero or
14 developing a gang around him for acceptance, whatever.
15 In other words, he just has not grown per grade per year
16 and really gone along, and his social development has been
17 actually disturbed, hindered.

18 MS. CARDWELL: We don't have any other
19 questions at this time, Your Honor.

20 THE COURT: Does the attorney for the
21 Tyler Independent School District desire to
22 question this witness?

23 MR. HARDY: I don't believe so at this
24 time, Your Honor.

25 THE COURT: Well, I believe I'll defer

1 cross-examination until after lunch. May I
2 ask how many more witnesses the defendants
3 anticipate they will present to the court?

4 MS. CARDWELL: We have one more.

5 THE COURT: It's reasonable to expect then
6 that we would conclude this afternoon. Do you
7 anticipate you will have rebuttal evidence?

8 MR. ROOS: No, we don't, Your Honor.

9 THE COURT: Does the amicus intend to
10 present any witnesses?

11 MR. WISE: No, Your Honor.

12 THE COURT: All right.

13

14 EXAMINATION

15

16 BY THE COURT:

17

18 Q The one thing I wanted to clear up before
19 cross-examination, you made some reference to a suit you
20 had down in the Houston -- what was the name of it?

21 A This is our Delores Ross versus H.I.S.D., (sic)
22 our integration suit, sir?

23 Q No, I'm speaking about the---.

24 A Oh, the Hernandez suit?

25 Q The Hernandez.

1 A The Hernandez, yes, sir.

2 Q The one that's gone to the Texas Court of
3 Civil Appeals?

4 A Yes, sir, that is correct.

5 Q And is currently before the Texas Supreme
6 Court?

7 A Yes, sir.

8 Q You made also reference to an Attorney
9 General's opinion, I believe.

10 A Yes, sir, in 1975 he said any child residing
11 in the district should be allowed to attend school.

12 Q Yes, I wondered if that was the one that
13 counsel for the state had supplied to the court in pursuance
14 to a request.

15 A I'm not certain, sir.

16 THE COURT: Well, it seems to be. I'm
17 going to make this a part of the record for
18 what tangential relevancy it might have. I
19 quote this language, "Whether the Legislature
20 itself may establish an exception for illegal
21 aliens has not been decided by the higher courts.
22 While we recognize that the United States
23 Supreme Court could sustain such an exercise
24 of legislative power, the existing case law
25 indicates that the rights of illegal aliens are

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protected by 42 U.S.C.A., Section 1981 and the
Fourteenth Amendment to the United States
Constitution, citing Bolanos, B-o-l-a-n-o-s
(spelling) versus Kiley, K-i-l-e-y (spelling),
509 F.2d 1023 (2nd Cir. 1975); Williams against
Williams, 328 F.Supp. 1380 (D.V.I. 1971);
Martinez, M-a-r-t-i-n-e-z (spelling) versus
Fox Falley Bus Lines, 17 F.Supp. 576 (N.D.
Ill. 1936); Commercial Standard Fire and Marine
Co. versus Galindo, G-a-l-i-n-d-o (spelling),
484 S.W. 2d 635 (Tex.Civl.App. -- El Paso 1972,
writ ref'd., n.r.e.)."

Has the court had any prior exhibits?

CLERK OF THE COURT: No, Your Honor.

THE COURT: Well, this will be Court's
Exhibit 1.

(OPINION NO. H-586 --
was duly marked as:

COURT'S EXHIBIT NO. 1)

THE COURT: The court will be in recess
until 1:30.

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(REPORTER'S NOTE: The court then,
at 12:15 o'clock, p.m., December
16, 1977, recessed until 1:30
o'clock, p.m., the same date, at
which time it was reconvened.)

THE COURT: Please be seated. You may
cross-examine the witness.

CROSS-EXAMINATION

BY MR. ROOS:

Q Mr. Eaton, I would like to initially put a
few things sort of in perspective. Your testimony, if I
recollect it, was that there were 230 plus school plants
in the Houston I.S.D. Is that not correct?

A Yes, sir, plus special types of classes.

Q And there's about thirty additional of the
special types of school facilities. Is that correct?

A These are facilities throughout the district
that handle certain situations that have one or more
teachers.

Q Are the magnet schools in addition to these
facilities that you mentioned or---?

1 A I am including the magnet in these 230-odd
2 classes, sir.

3 Q And the current enrollment in the Houston
4 School District is 206,998?

5 A That is what we turned in as our fall survey
6 that we use as a constant figure throughout all our court
7 testimony, the October fall survey.

8 Q It's good to be consistent.

9 A Well, we try to, sir.

10 Q What is the annual budget this year of the
11 Houston Independent School District?

12 A Two hundred forty-five thousand dollars --
13 let me give you the exact figure, sir, if I may -- two
14 hundred forty-five million -- I said thousand. It was
15 amended this last board meeting to two hundred forty-five
16 thousand (sic) eight hundred seventy-six nine hundred
17 nineteen dollars, sir. That is everything---.

18 THE COURT: You again said two hundred
19 forty-five thousand.

20 THE WITNESS: I'm sorry, Your Honor.
21 \$245,876,919.00. Maybe I should get my glasses
22 here.

23 Q How many employees does the Houston Indepen-
24 dent School District have?

25 A All types, sir, all categories, let's see --

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I don't---

(REPORTER'S NOTE: Witness
refers to record.)

A If I may break this down, I don't have a complete total, but it would be around fifteen thousand, but we have 10,763 teachers, 684 administrators, 2,518 paraprofessionals -- these are office force, and 448 maintenance. I have not added that, sir, but that is a breakdown from our total as of December 8, 1977.

Q Fine, thank you. What is the geographical dimensions of the Houston Independent School District?

A Three hundred twelve square miles, sir, twenty-five miles wide and about twenty miles north to south.

Q Now, the state law providing for the exclusion of undocumented children from school went into effect for the 1975-'76 school year, did it not?

A That is correct, sir.

Q Did the H.I.S.D. enforce it as of that year?

A We amended our policy -- our Board of Education amended our policies to reflect the state Legislature mandate.

Q So you have enforced it since its inception?

1 You have complied with it?

2 A Yes, sir, with the exception of the Levi
3 and this type thing. We have been advised to admit this
4 type child.

5 Q Now, between 1974-'75 and '75-'76 did the
6 H.I.S.D. have occasion to reduce its administrative staff?

7 A I don't recall that, sir.

8 Q It would be your belief that they did not
9 reduce it?

10 A I don't recall other than retirees, but I
11 don't believe we have reduced them. If we did, I'm not
12 familiar with it.

13 Q Between 1974-'75 and the following school
14 year did the H.I.S.D. reduce its teaching staff?

15 A Our teaching staff has continued to grow
16 because of the special type programs. Each year it has
17 increased. I do not have that information with me, but
18 it has gained a few, fifty or a hundred each year, sir.

19 Q Now, H.I.S.D. has a fairly extensive
20 bilingual program, doesn't it?

21 A We have got a very active bilingual depart-
22 ment. It's limited because of number of staff, perhaps,
23 but we are expanding. We have proposals. We are thinking
24 in the future, making projections of our needs.

25 Q In fact, the number of students who are

1 participating in the bilingual program has increased yearly
2 over the last four or five years, has it not?

3 A Well, for the three years that I have records
4 here -- we would actually go back prior to that -- we would
5 assimilate these children to a situation where it would be
6 most conducive to their education, where they would have a
7 bilingual situation, so it has increased, yes, sir.

8 Q Mr. Eaton, there has been previous testimony
9 by two school finance experts that there are primarily two
10 major groupings of costs that go into a school budget.
11 The first major grouping would be essentially fixed costs,
12 maintenance and debt service and various things of that
13 sort, and the second would be instructional costs. For a
14 rough breakdown is that fair?

15 A That's a fair statement.

16 Q The two experts which I referred to have
17 also testified that the exclusion of students from a
18 district has little, if any, impact upon fixed costs, i.e.,
19 the costs that remain fairly constant. Do you essentially
20 agree with that?

21 A Sixty-nine children we have now that we
22 know are legal would have little adverse (sic) in our
23 total budget. I'm talking about only sixty-nine, because
24 we have a mobile population, we have a gain and loss every
25 six weeks. At the end of each quarter we graduate seniors.

1 That reduces our enrollment, and our enrollment will
2 probably end up around two hundred thousand at the end of
3 this year, so at the rate of last year of \$3.54 (sic), it
4 will go down a little below -- October is our peak. It
5 has been consistent, and then it gradually declines.

6 Q Let me sort of pinpoint -- your testimony
7 concerning cost per pupil, you divided the number of students
8 into your total school budget, did you not?

9 A That is the way I arrived at this Exhibit
10 No. 5, sir, the court exhibit (sic).

11 Q Now, for example, the exclusion of say a
12 given student would not necessarily save the school district
13 that amount of money, would it?

14 A This budget is constant. We have to live
15 with it. It's put into T.E.A.'s office before the 1st of
16 August by state law, so we have to live within that budget
17 unless it is amended, which is also a state-controlled
18 routine.

19 Q You get certain sums for every so many
20 students, do you not, from the state? Isn't there a
21 formula?

22 A Yes, sir.

23 Q The formula roughly is you get the
24 equivalent of one teacher for every twenty students?

25 A Not exactly, sir. This last Legislature, if

1 I may read from the Texas Register, I believe of October
2 11, 1977, which is your official record for the State of
3 Texas, there's a divisor of 19 for Grades K through three;
4 21 pupils four to six; 20 pupils seven to Grade Nine; 18
5 pupils ten to Grade Twelve. That is what is ideal, sir.

6 Q And it is those figures that trigger state
7 participation of state money?

8 A They determine our foundation funding, yes,
9 sir.

10 Q Your foundation funding is dependent upon
11 your average daily attendance, in other words, numbers of
12 students in attendance. Is that right?

13 A Let me go back to the budget for a minute
14 and answer this a little more concisely. Revenues from
15 local and intermediate levels is a hundred twenty-three
16 million, and it reflected a two hundred forty-five million
17 total, so about fifty percent would come from the state
18 and another fifty percent from local taxation.

19 Q Local taxation is primarily derived from
20 property taxes?

21 A Ad valorem taxes and this type of thing,
22 yes, sir.

23 Q The Magnolia area of Houston is the general --
24 sort of known as the barrio area of Houston, is it not?

25 A I know the Magnolia and Manchester area well.

1 There are a number of Hispanic children there, but it's
2 rapidly turning commercial, sir.

3 Q If I wanted to identify a major barrio,
4 would that be one of them?

5 A That would be one. It's isolated, being
6 by the ship channel, but you come on down south and east,
7 and we have a number of concentrations of the Hispanic
8 family, sir.

9 Q Well, for a moment drawing your attention
10 to Magnolia just for example purposes, was there any
11 reduction in the teaching staffs of the schools in the
12 Magnolia district between '74-'75 and '75-'76?

13 A Mr. Roos, I no longer have the personnel --
14 I can't really -- we constructed a new school at the
15 J. R. Harris site, and I don't recall losing any students.
16 We redirected one school which had been predominantly
17 black, the Doris Miller -- not Doris Miller, the K school,
18 but it now has an ongoing program. I don't know that
19 J. R. Harris has lost pupils, which would necessitate the
20 releasing of teachers. It could have. I do not have that
21 information, sir.

22 Q Turning for a moment to Title I, I'm going
23 to read some figures to you and ask you if these seemingly
24 correspond with your knowledge of what the district income
25 for Title I has been during the course of the years.

1 In 1970 the Title I income to the H.I.S.D.
2 was \$3,164,509.00. Does that correspond generally with
3 your experience or particularly?

4 A I really can't go back and relate. That is
5 under a separate department, and I only touch it with the
6 Title I clothing program, which I have implemented for
7 what we call external funding, the federal funding, sir.

8 Q Well, would you be surprised if I told you
9 that the amount of money had increased in 1977 to the sum
10 of \$8,331,239.00? Would that surprise you?

11 A I wouldn't be surprised at all. My figures
12 reflect for this current year it is \$9,343,072.00, so it
13 has increased, sir.

14 THE COURT: Now, what is this that has
15 increased? I didn't get that.

16 THE WITNESS: This is the Title I, the
17 1965 Act, the Elementary and Secondary Education
18 Act, sir.

19 Q Are you familiar with the way the Title I
20 funds are distributed, sir?

21 A To a degree, yes, sir. I was given the job
22 in 1965 of calling all the schools together in Harris
23 County, and we had an allocation, if I remember, of twenty-
24 six thousand some odd children that had been allocated.
25 We had to apportion those or divide them among all the

1 districts by the U.S. census tracts, delineating down to
 2 what they wanted was a \$2,000.00 income, but we had too
 3 many children, so we had to raise it to \$3,000.00, so I
 4 know how it started. In other words, it was deprived,
 5 low-income families, children that were behind in education
 6 also.

7 Q Title I is a federal program -- all the
 8 funds are from the federal government, are they not?

9 A It's appropriated and comes on down through
 10 the state rule, through the active agencies who allocate
 11 the funding, sir.

12 Q But all of the dollars come from the federal
 13 government for Title I?

14 A As far as I know, yes, sir.

15 Q Now, with respect to the free breakfast
 16 and free lunch programs, these are funded by the federal
 17 government also, are they not?

18 A U.S.D.A., Agriculture Department.

19 Q Do you have any particular knowledge as to
 20 whether there has been between 1974-'75 and '75-'76 a
 21 reduction in the number of free lunches or free breakfasts
 22 distributed by the H.I.S.D.?

23 A No, sir, they have continued here. We have
 24 something like fifty-five -- I'm going to give maybe a
 25 thousand one way or another -- fully funded, and then we

1 have another sixteen or seventeen thousand reduced. We'll
2 end up this year if we go throughout the year with approxi-
3 mately eighty thousand free and reduced that are participat-
4 ing in the free lunch program.

5 Q Now, from your experience is it fair to
6 assume that most new migrants from Mexico, whether they
7 are legal or illegal, can benefit from bilingual education?

8 A Absolutely, sir. I would think that ninety-
9 nine -- that may be high -- would need this training to
10 structure their education to the regular classroom situation.

11 Q This is irrespective of whether they are
12 legal or illegal. It's the newness to the country, I
13 would assume that triggers it.

14 A I think that would be a fair statement, sir.

15 Q Indeed, many children grow up in Houston
16 and are born here who are in need of bilingual programming.
17 Isn't that correct?

18 A That reflects the culture within their
19 respective families, that's true.

20 Q I would like to quickly turn back to some
21 testimony that you gave earlier concerning migrant children,
22 and you talked about the needs and problems of dealing with
23 migrant children, did you not?

24 A Yes, sir.

25 Q Now, at that time -- this is before 1974-'75,

1 I gathered.

2 A From 1955 to 1960 when I was associated in
3 the school with the migrant children.

4 Q Now, you are not equating migrant children
5 with illegal children, are you?

6 A No, sir, I know there is a difference.

7 Q Thank you. Now, you talked briefly about
8 the costs of operating a bilingual program, did you not?

9 A I had the comparative figures here for
10 three years, and I have some projections that we have
11 made this year, what it would run us with the nine thousand
12 kiddos that we are now involved with.

13 Q Not to denigrate local contributions, the
14 major single source of money for the bilingual program in
15 H.I.S.D. at the present time are federal funds, is it not?

16 A No, sir. This year \$2,372,809.00 is coming
17 out of local taxation. \$839,408.00 is federal funds.

18 MR. ROOS: May I approach the witness,
19 Your Honor?

20 THE COURT: Yes.

21 Q I show you a document entitled "Proposal for
22 Improving Bilingual Education August 1977." Are you
23 familiar with this document (indicating)?

24 A I have seen it. I had nothing to do with
25 the preparation, sir.

1 Q This is the proposal of the Houston Independent
2 School District, is it not?

3 A That's what it says.

4 Q I draw your attention to Page 12 of that
5 document, which indicates the sources of money for the
6 ongoing bilingual programs in Houston I.S.D. Could you
7 read those figures, please?

8 A Federal says \$902,714.00; state \$206,365.00;
9 local \$860,707.00 for a total of \$1,969,786.00.

10 Q Now, that document would indicate that at
11 least for a single source federal funds are the largest
12 single source for the bilingual education program, would
13 it not?

14 A No, sir, because it's only \$902,000.00,
15 and you have the local and state with a million dollars.

16 Q I'm talking about a single source.

17 A Single source, that is correct, sir,
18 according to that document.

19 Q Thank you. Many of the children who are
20 in bilingual education programs are in a full-time program,
21 are they not?

22 A Yes, sir, I would say all of them with maybe
23 handicapped or some special exception, they would be in
24 the regular course curriculum, T.E.A.-approved curriculum.

25 Q And after they reach the level of English

1 language proficiency that the Houston School District
2 determines enables them to compete in the regular classroom,
3 they are then allowed to place them in the regular
4 curriculum. Is that not correct?

5 A They should be merged into the regular
6 curriculum, correct.

7 Q In both the bilingual curriculum and the
8 regular curriculum they need a teacher and materials and
9 textbooks, do they not?

10 A That is correct, sir.

11 Q You testified briefly earlier concerning
12 overageness and the problems caused by having overaged
13 children in a classroom, did you not?

14 A That is correct.

15 Q And you were talking particularly about
16 migrant children at that time, were you not?

17 A I was talking about migrant or children of
18 Hispanic background coming from an elementary or feeder
19 school which was predominantly at that time Latin American,
20 Hispanic now, moving into a junior high situation, and I
21 base this, sir -- our seventh grade counselor, I had
22 instructed her to put these children into a category to
23 see what they need, and we found that many of these
24 children were two and three years behind. They were two
25 or three years over normal grade placement, so we attempted

1 to construct remedial classes to accommodate the needs of
2 these children. Now, this is what I am talking about over-
3 aged that I have had experience with.

4 Q But you weren't talking particularly and
5 narrowly about undocumented alien children, were you?

6 A I wasn't talking about anything except at
7 that point in time the migrant that was over here legally,
8 as far as I knew, a farm worker, and the Spanish child was
9 a legal resident. We did not go into the identification
10 as we go in now. In other words, the children came in,
11 and they had the baptismal record, and the mother and
12 father signed what was called eighth grade residence
13 certificate that they lived within H.I.S.D. and were
14 legal residents, and we assumed they were.

15 Q Sort of changing the subject, as a person
16 involved -- you have spent most of your life, I gather,
17 your professional life, involved with education and
18 educating children, haven't you?

19 A Not really, sir.

20 Q No?

21 A Well, I would say the majority of it has
22 been, but I have been an accountant with what is now
23 called Exxon. I was a senior accountant at one time, and
24 I have been a claim agent, personal injury claim agent
25 with the Southern Pacific Lines, four years in Service.

1 Q You have been involved in education a long
2 time?

3 A Education has been my major endeavor, yes,
4 sir.

5 Q Education is a pretty important thing, isn't
6 it?

7 A I think it is one of the most important
8 things we have in America.

9 Q What is the effect of not receiving an
10 education, being excluded from receiving an education today
11 in the State of Texas?

12 A Well, I think this is reflected by whatever
13 our percentage of employment might be across the nation.
14 Here's a person that has not gained a skill or does not
15 have the ability to perform at some level of competency
16 at some type of job, plus depriving this person of many
17 of the basic privileges that we have in America, not
18 knowing exactly how to exercise various rights, privileges
19 and this type of thing, so education has a lot to do with
20 what we do in America, sir.

21 Q Would it be fair to say that you would
22 cripple a person socially and economically, would you not,
23 if you deny them an education?

24 A I would say they are disadvantaged.

25 Q Tell me the number of undocumented children

1 who have paid tuition to the H.I.S.D.

2 A To my knowledge we have none at this time,
3 sir. If we have some, I'm not aware of it.

4 Q You had a pretty good education---

5 THE COURT: Let me interject -- are there,
6 in fact, any undocumented alien children going
7 to any part of the Houston Independent School
8 District at this time, any of the facilities?

9 THE WITNESS: Judge, I am satisfied as I
10 sit in this chair under oath that we probably
11 have some children that are in school, unbeknown
12 to me. We have had evidence this year of false
13 documents. I have had Hispanic parents that I
14 have known advise me of this. I have seen some
15 of these---

16 THE COURT: Well, what I meant was, had the
17 administration willingly or knowingly accepted
18 any undocumented alien who has failed to pay
19 tuition?

20 THE WITNESS: We have not willingly allowed
21 any to come in if we were aware of it, sir.

22 THE COURT: You say no one has paid any
23 tuition?

24 THE WITNESS: As far as I know, none of
25 these illegal aliens, undocumented.

1 THE COURT: What is the charge that you
2 make?

3 THE WITNESS: This is set at \$135.00 per
4 month by our Board of Education.

5 THE COURT: Thank you. Go ahead. Excuse me.

6 Q You have a pretty good educational program
7 at the present time in the H.I.S.D., don't you?

8 A Would you repeat that?

9 Q Your program, are you generally pleased
10 with it, with the quality of education that is presently
11 received by a student in the H.I.S.D.?

12 A We feel that we have turned around the
13 declining test scores; we have brought the children
14 district-wide one to two points up; we feel that we are
15 making progress, sir, and are on an upward trend.

16 Q While on an upward trend, there's never any
17 time in your best memory when you weren't offering a fairly
18 good mentally-sufficient education in the H.I.S.D., is
19 there?

20 A We have followed generally what is mandated,
21 I would say, by the Texas Education Agency, so many minutes
22 in English, arithmetic, this type of thing, in elementary,
23 and the required courses in the secondary. We have com-
24 plied with that, so we have been offering education for
25 all children.

1 Q It's been a pretty good education over the
2 years, hasn't it?

3 A In my experience for a large city, generally,
4 it's as good as any in the nation, sir.

5 MR. ROOS: Thank you. No further questions.

6 THE COURT: Let's see. I believe the way
7 we've been doing this, it now becomes the amicus'
8 opportunity.

9 MR. WISE: I don't have any questions.

10 THE COURT: All right, Ms. Cardwell, please
11 proceed.

12

13 REDIRECT EXAMINATION

14

15 BY MS. CARDWELL:

16

17 Q Mr. Eaton, do you agree with the four to
18 five thousand figure that Mr. Heston stated as school age
19 present in Houston I.S.D.?

20 A I will have to take this as testimony of
21 an expert. I know that there are children. The exact
22 number I have never counted, so I will have to take this
23 as the number that is suggested.

24 Q Have you had children apply this year that
25 you have turned down, illegal aliens?

1 A Yes, we have had -- I tried to get from
2 five interviews an approximate number, and I would say
3 between four and five hundred for some part of our public
4 schools made themselves present at our main office,
5 requesting how they could be admitted.

6 Q Where are these four to five thousand
7 students congregated? Where are they in the city?

8 A As I said earlier, perhaps the Hispanics
9 are better spread out throughout the district than any
10 other ethnic group. When you say congregated, we have
11 neighborhoods where there will be say ninety percent of
12 the Hispanic race, but we have schools that have ten,
13 fifteen or twenty percent, so some of them have moved out,
14 but the Manchester-Magnolia area is still predominantly
15 brown, the east end of Houston, and the Denver Harbor area
16 is predominantly brown, and the Cashmere area. This is
17 in our east and southeast sections. We have the Heights
18 area that is moving to the north. Woodland Heights is
19 probably sixty percent brown or Hispanic now. Some of
20 our southwest schools reflect ten or fifteen percent
21 Hispanic enrollment.

22 Q From that I gather they are still concentrated
23 say from seven to fifteen percent in the Mexican-American
24 enclave areas?

25 A Yes, that would probably be true.

1 Q And these areas, of course, are where you
2 have bilingual programs, are they not?

3 A Whenever we can find a bilingual teacher,
4 these would be locations where the bilingual program would
5 be in most demand, yes.

6 Q Do you have enough bilingual teachers?

7 A No, we do not.

8 Q Can you find enough bilingual teachers?

9 Have you been able to find enough bilingual teachers?

10 A At this point in time we have not. We
11 have sent people personally out in an attempt to recruit.
12 We have sent them as far as Arizona, colleges in Texas.
13 We do not have an adequate supply of bilingual teachers.

14 Q If these four or five thousand alien
15 children were added to Houston I.S.D., would it have an
16 adverse impact on the school district?

17 A Any time that you add a child where we do
18 not have adequate instruction, it would overload a class.
19 This is another good point. In the East End we have a
20 school called Burnett, an elementary school, Franklin,
21 that are running fourteen or fifteen hundred children
22 where there should be only seven or eight hundred. We're
23 in the process of giving them relief by building a new
24 school, an elementary school. It's the Tiorino (phonetic)
25 school, but I know there are children here that are not

1 legally in the United States, because we have investigated
2 addresses in the Hernandez case where we found families.
3 If we put two hundred more peoples -- we're at capacity
4 now, and our present court decree says if you have a
5 known capacity, and the only way we can increase this
6 capacity is to get permission from our court-appointed
7 tri-ethnic committee to pull in more what we call our
8 portable buildings and adjust the boundaries. Now, these
9 were done scientifically to meet the demands of the court
10 order approved by the Fifth Circuit, and we would have to
11 adjust these in a parallel fashion to the next school that
12 would have the capacity. In this area these schools are
13 all filled already to capacity, so we have gone all the
14 way for five or six years, and even then we couldn't do it,
15 so we have, in effect, utilized all the capacity within
16 the Houston I.S.D. with special programs, precision learning,
17 labs and this type of thing.

18 We are using ninety-four percent of our
19 school facilities. I just picked that figure out of the
20 air, but it would certainly be accurate at ninety or more
21 percent.

22 Q So what you're saying is if you add four
23 or five thousand students, especially if they are impacting
24 in the Mexican-American enclaves, you're talking about
25 having to build more buildings?

1 A What I'm saying is that we do not now have
2 the accommodation or facilities or teaching staff to give
3 these children an adequate education. If we were mandated,
4 we would have to do something, and it would impact the
5 schools where these children live, wherever they appeared
6 for enrollment.

7 Q Then you're talking about not being able
8 to give the four to five thousand adequate education. Are
9 you also talking about not being able to give citizens
10 and legally admitted children an adequate education?

11 A I'm saying that we are short on bilingual
12 teachers now, like every place in the United States. Four
13 percent of our teachers and twenty-two percent of our
14 students are Hispanic.

15 Q But would the four thousand to five
16 thousand illegal alien students, if added to Houston
17 I.S.D., adversely affect the education of legally admitted
18 and citizen children?

19 A Absolutely, but it would penalize these
20 children that are attempting to get an education by taking
21 needed time from this teacher in this bilingual class or
22 in this classroom, who would have to spread herself much
23 thinner in order to pick this child up. This child comes
24 in with little formal education, no concepts, and to develop
25 this child up to a performance level of proficiency, well,

1 it's going to take someone in the classroom, and I don't
2 think we have enough teachers. I don't think we have
3 enough bilingual aids to accommodate this situation. It
4 would adversely -- yes, the answer to your question would
5 be affirmative.

6 Q While it would have an adverse impact on
7 Houston I.S.D. generally, would it have an even more
8 adverse impact on the Mexican students in your schools?

9 A Would you repeat that? Let me try to
10 delineate here.

11 Q Would the adverse impact be even greater
12 on the Mexican legal student in your schools?

13 A Mexican legal?

14 Q Yes, students already there.

15 A Yes, right. Maybe I didn't answer this a
16 moment ago. It would take the time from this child who
17 is a legal resident. This child would demand more
18 attention. This child would be -- where we would have
19 maybe twenty-five, we would put maybe thirty-five or
20 forty in a class. It would dilute or diminish the amount
21 of learning to be performed in that class, so it would
22 penalize this child, because I have been in classes where
23 you have forty, and you can't do as well if you have four
24 or five grade levels in there.

25 Q It's the Spanish-speaking student, the

1 Mexican American student who is in bilingual education who
2 would suffer if additional limited speaking English students
3 were impacted into the school district, isn't it?

4 A He would suffer, because we could not give
5 him as much education per hour per day.

6 Q And you can't find teachers.

7 A And we do not have adequate teachers.

8 Q Thank you.

9 A May I inject just one more thing? This
10 year our planning research department estimated the cost
11 of screening and testing projection -- now, this is K
12 through six, Kindergarten through six in H.I.S.D. -- this
13 may already be in testimony from what was said a moment
14 ago by Mr. Roos, but we looked at \$61,310.00 as to what
15 it would cost to screen these kiddos that need this English
16 as the second language, \$250.00 to identify the student's
17 achievement level, \$160,700.00 identifying the student with
18 an English language proficiency data, \$15,700.00 for
19 assessment of language proficiency of dominance, \$700.00
20 enrollment in bilingual education program, and this thing
21 goes on and on, but it adds up to a total of \$333,646.00.
22 This is what it is costing the district to perform the
23 things that are requested and required by Senate Bill 124,
24 testing these children, screening them, finding them and
25 placing them, and as they move along, testing at different

1 levels to see what they have achieved or what they have not
2 learned so that we can go back and give the kiddo to pick
3 him up to this level, so it's not just bringing this child
4 in, and I certainly don't want any child penalized, but
5 it's a question that the federal government legislatively
6 has not found the way to accommodate this situation. It's
7 almost like the state coming down with Senate Bill 121.
8 We've set up the department, and the kids are here. We
9 need to do this, but there's a lot of cost, there's a lot
10 in between before you have this child educated to make a
11 finished product where he can say he is an acceptable
12 citizen that can perform the way he should as a citizen.

13 Q Also, Mr. Eaton, while you were testifying
14 and saying that Houston I.S.D. education is wholly adequate,
15 isn't there presently a lawsuit against the district
16 claiming that they are not adequately educating the
17 Mexican American students who are already in the schools?

18 A We have the -- I don't know exactly the
19 status of it, but the Mexican American Legal Fund, we
20 have prepared interrogatories explaining everything we
21 have done for the Mexican American child, the Hispanic
22 child, how he fits into every segment of our education from
23 bilingual to cost, what special programs, has he been
24 suspended, disciplined, and it would cover everything in
25 the way of discovery, I guess, to say just exactly what we

1 are doing. I assume it is a pending lawsuit, because we
2 have interrogatories. They're still in my office, the
3 ones that I had something to do with.

4 Q Additionally, in '74-'75, that was the time
5 that the Attorney General's opinion came out, I believe --
6 the Houston I.S.D. that year was not admitting all the
7 illegal aliens in the district, were they?

8 A We did not admit the illegal aliens until
9 the time we got the Attorney General's opinion with the
10 exception of -- I'm a little confused exactly in point of
11 time with reference to Hernandez. We had several children.
12 We were told to leave these children in school, and I think
13 it was in that period of time that the Texas Attorney
14 General's opinion came and said that the present state law
15 at that time did not say they had to be legal citizens or
16 legally admitted aliens. It just said residents, and that's
17 when we assumed that they lived there and had cleared
18 through Immigration. We did not, as far as my experience,
19 ask for immigration cards. They said they lived there and
20 signed enrollment cards; their mothers and fathers said
21 they were residents, and that satisfied the state law.

22 Q And then the Hill opinion was shortly
23 reversed by the Legislature?

24 A That is correct.

25 MS. CARDWELL: Thank you. We have no

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further questions at this time.

THE COURT: Are there other questions of this witness from other counsel?

MR. ROOS: Yes, I have a few questions, Your Honor.

RECROSS-EXAMINATION

BY MR. ROOS:

Q You don't know exactly where the undocumented children are, do you, in the school district?

A Only specific cases that I have had -- actually, no, where -- well, let me do it this way, Mr. Roos. My attendance teachers go out, and they'll call me and say, "There's a family out here in need." Our attendance teachers really are, you might say, social workers almost, and they will explain to these people where they can perhaps get some type of aid through a community facility, so I know of those cases. How many I do not know, sir.

Q You don't know at this moment of your own knowledge exactly what schools would be impacted and what the effects were, do you?

A I have only a general knowledge of schools

1 in the east area, particularly, that would perhaps have
2 more of this type of family, sir.

3 Q Does the Houston School District require a
4 school teacher to be a citizen or to declare their intention
5 to become a citizen before they can be employed as a teacher?

6 A I cannot answer that, sir. I'm not sure.
7 At one time we did require that, but I think that has been
8 relaxed. In fact, I can state without reservation that I
9 have some attendance teachers now that we have hired under
10 the C.E.T.A. program that are here -- what their status is
11 I don't know. They have to clear through Personnel, but
12 they are not citizens per se of the United States.

13 Q There is a state law that requires that.
14 You're not familiar with that, though?

15 A I am not, sir. I don't have anything to do
16 with that.

17 MR. ROOS: Nothing further.

18 MS. CARDWELL: We have nothing.

19 THE COURT: You may stand down, sir.

20 THE WITNESS: Thank you, sir.

21 (WITNESS STANDS ASIDE)

22 THE COURT: Call your next witness, please.

23 MS. CARDWELL: Dr. Hensley, please.
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JIM BOB HENSLEY,

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a witness called by the defendants, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. CARDWELL:

Q Dr. Hensley, would you please state your name and address for the record, please?

A I am Jim Bob Hensley, and my address is 1301 East First Street, Mount Pleasant, Texas.

Q Where are you employed, Dr. Hensley?

A Region VIII Education Service Center in Mount Pleasant.

Q Could you give the court a brief description of your educational background, please?

A I have a Bachelor's Degree from the University of Oklahoma, Master's Degree from the University of Northern Colorado, and a Doctor of Philosophy Degree from Texas A & M University.

Q Could you give the court also a brief description of your employment history, please?

1 A Yes, I have been an elementary teacher,
2 an elementary principal, and I was a program director for
3 elementary education at the Texas Education Agency. I
4 have been director of administration for Region I Education
5 Service Center in Edinburg. I've been a part-time graduate
6 professor at Pan American University, and now I'm Deputy
7 Director at Region VIII Education Service Center.

8 Q Could you tell the court, please, what areas
9 of work you have been involved in in education and in your
10 employment?

11
12 (REPORTER'S NOTE: There was
13 no audible response from the
14 witness.)

15
16 Q What areas of research or field of concentra-
17 tion in your education?

18 A By being in the Valley education administra-
19 tion, primarily, and elementary education, and then in the
20 Valley I did a fifteen-month research project on the impact
21 of immigrant alien students from Mexico upon border school
22 districts.

23 Q Have you become familiar with other areas
24 of Mexican alien impact and illegal alien impact, other
25 than just your study?

1 A Yes, through related research and reading,
2 that sort of thing, and conversations with school personnel.

3 Q What areas of inquiry were involved in this
4 study that you conducted?

5 A The impact on personnel, funding, as far as
6 construction of buildings, programmatic areas and this
7 sort of thing.

8 Q What areas in terms of school districts did
9 your study actually cover?

10 A The thirteen counties adjacent to the Mexican
11 border in Texas.

12 Q And what did you find in terms of Mexican
13 alien population in those counties?

14 A In the sixty-one school districts located
15 in those counties there were ten percent of the children
16 had Mexican birth certificates.

17 Q Is that high or low as compared to the rest
18 of the state?

19 A As Mr. Anderson testified earlier this
20 morning, statewide it is 1.8 percent, and on the border
21 in '75-'76 when I did my study, it was 9.6, right at ten
22 percent.

23 Q Did you find associated with that ten percent
24 group educational problems?

25 A Severe problems on children who were

1 especially overaged.

2 Q Could you explain those problems to the
3 court, please?

4 A Yes, the state-mandated bilingual education
5 program generally was adequate for children in kindergarten
6 through third grade, but after that students who were
7 beyond that age, colleges and universities and school
8 districts just do not train secondary personnel to deal
9 with limited English-speaking students.

10 Q In the upper grade levels, you mean?

11 A Right, and in high school.

12 Q Does that mean that the teachers are not
13 available for that age level?

14 A Not available or not trained.

15 Q What was the result of your inquiry into
16 the space needs or the adequacies of physical facilities
17 in those school districts to house those students?

18 A I personally went into all sixty-one school
19 districts, and most of them were small, so in a lot of
20 cases I got to look, you know, at each facility, and,
21 comparatively speaking, as you get away from the border,
22 I would say the facilities were atrocious.

23 Q In terms of overcrowding?

24 A Overcrowded and just the buildings themselves.
25 For instance, the Brownsville Independent School District,

1 which is even bigger than Tyler, I have heard Mr. Bastedos,
2 the superintendent, say that half their---

3 MR. ROOS: Your Honor, excuse me. I'll
4 object to any hearsay testimony as to other
5 superintendents or other people with whom he
6 spoke.

7 THE COURT: Is there any exception to the
8 hearsay rule that occurs to you, counsel?

9 MS. CARDWELL: Well, the one exception
10 that would occur to me is that this was in a
11 conduct of a survey or study, and interviews
12 are ordinarily accepted in that context and
13 were repeatedly referred to by all witnesses
14 of the plaintiffs, not only in terms of what
15 they have heard in interviews, but what they
16 have read, as well.

17 THE COURT: I believe the question is, is
18 this the kind of information upon which you
19 would normally rely in the forming of opinion
20 that experts normally rely upon---

21 MS. CARDWELL: Yes, sir.

22 THE COURT: ---in forming opinions in the
23 field.

24 THE WITNESS: Yes, sir.

25 THE COURT: Very well. The objection is

1 overruled.

2 A Mr. Bastedos reported to me that over half
3 his school district, the classrooms were in portable
4 buildings.

5 Q Have you visited the Brownsville School
6 District?

7 A Yes, ma'am.

8 Q Have you seen this yourself?

9 A I haven't counted, but I have observed a
10 large number.

11 Q What are you talking about in terms of
12 growth among the alien population along the border?

13 A In the first -- I don't know about growth.
14 All I know is during the survey that I took in that one
15 particular year where there were twenty-seven thousand
16 students approximately with Mexican birth certificates,
17 about twenty-two percent of those were there for the first
18 year, for the first year in school, around six thousand
19 or so, so from that we assumed that this was a growing
20 problem, if they were first-year students.

21 Q Is this a continuing phenomena, the large
22 influx of alien students into those districts?

23 A Yes. I'll have to go back a little bit in
24 history. The superintendents expressed a concern to our
25 organization in '75 that they were beginning to have

1 problems with space. They were getting kids coming from
2 somewhere, and, as best they could figure out, they were
3 coming from Mexico legally, to the best of their knowledge,
4 so the State Board then commissioned us to do a study of
5 this problem, and we found out that in that one year that
6 I studied we found these numbers, and then subsequently the
7 Texas Education Agency has followed up on a year-by-year
8 survey, and, as you heard Dr. Anderson say this morning,
9 they had grown in one year by six thousand, and that's
10 statewide.

11 I am not familiar with what the growth was
12 in those sixty-one schools that I studied.

13 Q But you are familiar with the growth being
14 more intensified in those districts than statewide?

15 A Yes, I would think so.

16 Q Are the educational needs of Mexican alien
17 students affecting building space utilization that will be
18 required from the district? Could you explain that more
19 fully? We have talked about it some but---

20 A Well, in the high school -- well, a lot of
21 times for this type of intensive instruction a lot of time
22 you have to have small groups of students, so, thereby,
23 you know, you have more classrooms, more teachers, but our
24 problem -- and I say our problem -- I don't live there any
25 longer, but the problem the schools were having is that the

1 construction, the cost of school buildings are financed
2 totally by the local taxpayer, and here we have students
3 coming from another country, a foreign country, into the
4 state, impacting on what we thought to be and proved to be
5 with this study an isolated area of the state. They were
6 impacting on the border, and we were saying that this was
7 unfair to the border taxpayers.

8 A national policy had permitted a flow of
9 immigrants into the country, and a local school district
10 was being penalized for that.

11 Q Did you find a like increase in available
12 tax monies in correlation with the increase of the alien
13 student in the schools?

14 A No, because according to my study, eighty-
15 two percent of these students were on the free lunch
16 program, meaning eighty-two percent of them were poor
17 children, and poor people moving into the area do not
18 build houses and these sort of things, which increases
19 the property values of the district, which will support
20 building space that they require in the schools.

21 Q Did you find that the Mexican immigrant
22 alien students affected the educational program of the
23 district?

24 A Sure, when you have large numbers, as we
25 saw coming in to the regular program, you overcrowd

1 classrooms. You dilute the tax dollars that would normally
2 be in the educational program, and they've got to go to
3 these students too, so the less resources available per
4 child, you're going to get less quality education.

5 Q For all the children?

6 A For all the children, absolutely.

7 Q What about effect on staffing needs of the
8 district?

9 A In the Rio Grande Valley, the surveys we
10 have run down there, they have a chronic teacher shortage,
11 just any kind of teachers. However, the shortage of
12 bilingual teachers, even though you are in the area where
13 there are seventy-five to eighty percent Mexican Americans,
14 there is a shortage of bilingual teachers in that area
15 qualified by the state, and then your situations like --
16 well, by my wife, who is a graduate of the University of
17 Texas with a degree in elementary education, they were
18 reluctant to hire her, because she didn't have bilingual
19 certification, even though they had a teacher shortage.

20 Q So what you're saying is what they need
21 are additional bilingual teachers because of that impact?

22 A Yes, certified in bilingual education.

23 Q Are you familiar with the illegal alien
24 students within those districts, the presence of them in
25 the districts?

1 A What has been reported to me through the
2 interviews in my studies by the school districts, and they
3 admit that there are probably a number there.

4 Q If 21.031 were repealed, would there be an
5 impact on the school districts in terms of illegal alien
6 students seeking an education?

7 A I think there would in the border districts.
8 I don't know about this far up in the state as far as
9 Tyler and that sort of thing, but along the border, yes.
10 Education is an attraction, and I think the repeal of that
11 law would attract more to the border school districts.

12 Q What would be the impact on the citizen
13 or legally admitted children who are in those border
14 districts?

15 A Of course, more of these students, it would
16 dilute their education. You know, here again, you've got
17 in that particular group of schools, you have the poorest
18 in the state. By poorest I mean they have the lowest
19 taxable property, amounts of property to support a child
20 than anywhere in the state, and you make it attractive
21 for more students to come into the districts without
22 substantially raising the tax base to support them, then
23 it will affect them severely.

24 Q Did you also find that those border districts
25 have the problem of U.S. citizen children who live on the

1 other side of the border with Mexican National parents,
2 that the schools of Mexico will not educate?

3 A Yes. Superintendents and school officials
4 have a real problem whereby a mother will come up there
5 with two children, and one is a U.S. citizen, and one is
6 not, and she would like those two to be admitted into
7 school, and she can't understand why one could be admitted
8 and one can't.

9 Q I think you misunderstood my question. What
10 I was asking is are there U.S. citizen children presently
11 living in Mexico on the other side of the border that must
12 come to the United States for an education because, although
13 they are legally in Mexico, the Mexican schools when they
14 reach the age of six, would not put them in school, would
15 not allow them to attend school?

16 A Oh, yes. I don't think the Mexican govern-
17 ment, as far as what I've heard school officials say, will
18 admit, you know, children that are U.S. citizens.

19 THE COURT: Will or will not?

20 THE WITNESS: I don't think they will if
21 they are U.S. citizens. Now, here again, this
22 is what I understand from what I pick up from
23 the school officials.

24 Q In terms of the number in Brownsville, for
25 instance, what is the estimated impact that illegals will

1 make on the school system should 21.031 be repealed?

2 A I wouldn't know. All I know is what was
3 reported to me by Mr. Bastedos. They are full, you know,
4 just to capacity or really overflowing. Now, if there is
5 a substantial increase, which he believes that there would
6 be if illegal students are admitted, then this would be
7 impossible to live with.

8 Q In your opinion would there be a substantial
9 increase all along the border?

10 A All along the border. Now, I don't know
11 that there would be a substantial increase in migration,
12 you know. It's hard to explain. The border is a permeable
13 membrane. Of course, people go back and forth across the
14 border because of family ties, cultural ties, and a lot
15 of times they do not recognize the body of water there as
16 being a political boundary.

17 Q Within that short space education would be
18 an attraction, particularly right there on the border?

19 A Yeah, a lot of the parents say they want
20 to immigrate to the United States, of course, legally, and
21 one of the prime motivations, of course, is education.

22 Q On the border is what you're talking about?

23 A Yes.

24 Q But just to summarize, is what the findings
25 of your report were that education now in the border

1 districts is at a minimal level, and then the addition of
2 the illegal alien students would in many instances make it
3 almost nil?

4 A I don't know if I want to say nil, but the
5 quality of education along the border is lower because of
6 No. 1, the lack of facilities, and No. 2, lack of qualified
7 personnel and money to do things. Yeah, and if you have
8 an influx of some additional students, no matter whatever,
9 sure, it's going to lower the quality of education.

10 Q For those citizen children and legally
11 admitted who are now in the schools?

12 A Right.

13 MS. CARDWELL: We have no other questions
14 at this time.

15
16 CROSS-EXAMINATION

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18 BY MR. ROOS:

19
20 Q Mr. Hensley, the basic source of your
21 knowledge about the border problems and the migration
22 problems in the border areas derives from the study you
23 conducted in '75-'76, does it not?

24 A Yes, sir.

25 Q And that study expressly only purported to

1 measure the impact of legal resident alien migrants on the
2 school districts, did it not?

3 A That's correct.

4 Q Have you ever formally taken a survey of the
5 number of illegal aliens who would be admitted to school
6 in the event that they would be permitted to attend schools
7 in those areas?

8 A No.

9 Q Have you ever taken a formal survey indicat-
10 ing whether education is or is not a primary motivating
11 factor for people coming across the border?

12 A Not a formal survey, no, sir.

13 Q Have you ever known a school district that
14 didn't feel it needed more resources?

15 A There are some isolated cases of budget-
16 balanced school districts that have oil wells and minerals
17 and that sort of thing, but, generally, no.

18 Q I don't mean to denigrate the problems in
19 the Valley---

20 A I know.

21 Q ---but everyone feels that they could use
22 some more resources, don't they?

23 A Yes, sir, but let me hasten to say that the
24 Valley schools are pretty well documented that they need
25 more, compared to the rest of the state.

1 Q Isn't it true that one of the motivating
2 factors in the survey that you conducted was to try to
3 justify activities to bring more attention and more
4 financial resources to the border school districts?

5 A Yes, sir.

6 Q So that was something that was thought out
7 in advance to draw attention to these issues, was it not?

8 A We felt that the border school districts
9 were being discriminated against by the state and federal
10 governments.

11 Q In fact, the superintendents and various
12 people down there made efforts to have federal legislation
13 introduced along the line of impact aid legislation, because
14 they believe that its federal immigration policy has caused
15 this.

16 A It has already been introduced by Senator
17 Tower.

18 Q The problem down there really is one of
19 migration, isn't it? Being close to the border, it's a
20 migration problem, isn't it?

21 A I don't know what you mean.

22 Q New people coming across the border and
23 settling in these districts, migrating to this country and
24 settling in these districts.

25 A Yes.

1 Q People tend to settle close to the area
2 where they have come from---

3 A The border, right.

4 Q ---the area with which they are familiar.

5 A I would say so.

6 Q Now, I have read through your report, and
7 it seems to me the primary two educational problems that
8 you have documented down there are the construction
9 problem, which you mentioned, and the problem of dealing
10 with the newcomer of a higher age. Is that correct? The
11 new migrant who is not in the early ages but who would
12 be in the higher grades.

13 A Yes, the sheer numbers which need additional
14 building space and then the unique or different problem
15 as far as the Valley is concerned of the overaged limited
16 English speaker.

17 Q You never actually documented the number of
18 those older children, did you?

19 A Yes, sir.

20 Q Could you tell me what your figures were in
21 terms of that?

22 A What age?

23 Q Well, let me go back a second, sir. Those
24 children who are most in need of bilingual programs, I
25 would assume, would be those children who have just recently

1 immigrated. Would that be a correct statement from your
2 comment and your experience?

3 A My study showed of those 26,940 some odd
4 that were in the United States, they had been here on an
5 average of only four years, so as far as we're concerned,
6 most of them on the average are recent, if four years is
7 recent.

8 Q Those children most in need of a bilingual
9 program. Then it is possible that there were children who
10 came in in the first grade who are now in the twelfth
11 grade, would it not? There are children of that sort?

12 A You want to define bilingual education?

13 Q Let me ask the question first of all. It's
14 certainly possible that there are children who came here
15 in the first grade and who remain around and are presently
16 in the twelfth grade.

17 A In some instances, yes, that's true.

18 Q Now, while recognizing that a bilingual
19 education certainly may well be a proper sort of
20 programming for all children of all ages, a bilingual,
21 bicultural education, and the common construction of
22 bilingual education in the State of Texas is a language
23 program, is it not, to deal with English language deficiencies?

24 A There are different points of view on that.
25 Some people say that bilingual education is one whereby you

1 teach them to read and write Spanish along with teaching
2 them to read and write English. In other words, it's a
3 parallel-type program. To the other extreme whereby they
4 are Spanish speakers, and you go through a transition
5 program as quickly as possible to get them in English,
6 and you do not maintain the Spanish. Like I say, on the
7 other end of the scale, there are people maintaining that
8 a bilingual education is maintaining the Spanish along
9 with their English.

10 Q Forgetting for the moment about legal
11 requirements as to maintenance or transitionality or
12 educational philosophy arguments, the typical bilingual
13 program in the State of Texas is essentially a transitional
14 program, is it not?

15 A That's what I would subscribe to, but, yeah,
16 I'll say that's probably it. It's transitional more than
17 the other.

18 Q Now, the child who most school systems
19 would not provide bilingual programming for a child that
20 they maintained did not have an English language deficiency
21 or language problems, would they, in the State of Texas in
22 1977?

23 A Here again, the school district gets to
24 construct the test that says the child is deficient or
25 not deficient. Now, if they have quite a few limited

1 English speakers or kids that they think might be, and they
2 make the test difficult enough, all students would fail,
3 and all students would qualify for bilingual education.
4 They would get additional state aid, so now -- and that
5 varies from school to school on whether or not they put
6 most of the kids through bilingual education or whether
7 they do not, and, here again, that goes back to your
8 philosophical point, you know. If it's a school that
9 wants a bilingual program really badly enough, they will
10 qualify just about all their students. If they're not too
11 turned on about bilingual education, they'll say most of
12 their students are not limited English speakers.

13 Q Dr. Hensley, to wrap this up, essentially,
14 your study does not show the number of older children in
15 the border districts who have bilingual needs, does it?
16 There's no particular category for that under that subject.

17 A No, I have just identified by age how many
18 of them have Mexican birth certificates, and then I relied
19 on information of superintendents to tell me that there
20 was a need for a program for older age students, and I
21 might hasten to add that the state only allocates state
22 funds up to the fifth grade, so when a kid gets in junior
23 high, if he comes in not speaking English, he does not
24 qualify -- the school does not qualify for aid for a
25 bilingual child.

1 Q The two things you primarily identified
2 caused by this migration were the housing problem and
3 dealing with the child who was in the upper grade level.
4 In fact, did you not conclude insofar as younger children,
5 forgetting for a moment about the housing problem, that
6 the needs of the recent migrant -- we're talking about the
7 permanent resident alien now as defined by your test --
8 differed only minimally from those other children in the
9 school district?

10 A Along the border where eighty percent of
11 the population is Mexican American, seventy-five to eighty
12 percent, then the educational program is pretty much the
13 same.

14 Q The needs are essentially the same?

15 A I would say so, yes, sir, educational needs.

16 MR. ROOS: Nothing further, Your Honor.

17 THE COURT: Let's see. I believe the amicus
18 is next.

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CROSS-EXAMINATION

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BY MR. WISE:

Q Dr. Hensley, who were you employed by when you prepared this report?

A Region I Education Service Center in Edinburg, Texas.

Q Is that Region I of the state agency or---?

A It's a quasi-state agency. We have our own Board of Directors.

Q O. K., but it's not a federal agency?

A No.

Q What is the title of the study? I don't believe that was indicated.

A Impact of Students from Mexico on Selected School Districts in Texas Counties Adjacent to the Mexican Border -- be glad to furnish you a copy.

MR. WISE: That was an approaching question. I would like to get a copy.

Nothing else.

THE COURT: Ms. Cardwell?

REDIRECT EXAMINATION

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BY MS. CARDWELL:

Q Now, I believe you said that the alien impact of students presently there will be similar to the illegal alien impact that you are talking about multiplying the problems.

A Uh-huh.

Q Do you have a copy of your report with you?

A Yes.

Q And your report is the large volume and also, I believe, the smaller volume which shows statistics?

A Those are just some excerpts from the larger one, yes.

Q Excerpts on the numbers of immigrants to the U.S. in the district, the average years they have been in the district, the age enrolled, the grades where they are.

A Right.

Q And free lunch participation.

A Yes, ma'am.

MS. CARDWELL: At this time, Your Honor, I would like to have Dr. Hensley's report marked as Defendants' Exhibit 6, and we would offer it

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into evidence.

MR. ROOS: No objection, Your Honor.

THE COURT: Very well. It is received in evidence as Defendant's Exhibit 6.

(REPORT OF DR. HENSLEY -
2 BOOKS --
was duly marked as:
DEFENDANTS' EXHIBIT NO. 6)

MS. CARDWELL: We have no further questions.

THE COURT: Any questions from counsel?

EXAMINATION

BY THE COURT:

Q Doctor, you made a reference to some sort of a national policy that you had received. What policy is this?

A The policy of the Immigration Service on their admission of immigrants to the United States.

Q Did you include within that national policy any recognition of the fact that there is a great deal of illegal immigration, in any wise conceive this as being a policy?

1 A No.

2 Q Even if it is negative in its nature?

3 A No, sir. The school superintendents, when
4 we talked about this study, the problem to us was simply
5 they were born on the Mexican side of the river, and now
6 they're over here, you know, and they're in our school
7 systems now, and we really weren't looking at legal-illegal.
8 However, the schools told me, "We do our best to screen out
9 the ones who are not here legally." However, they get into
10 some humane situations whereby a child's parents in Mexico
11 are killed. They have a relative in the United States,
12 and the child some way gets up there with these relatives,
13 and they want to put him in school, and they come to the
14 superintendent, so what does he do, and, privately, they
15 have told me that they take him, and they don't -- these
16 are isolated cases, but it is the humane thing to do, but
17 on someone who intentionally moves here and this sort of
18 thing, they follow the letter of the law that's put down
19 in the state law, you know, to not admit aliens.

20 THE COURT: Thank you, sir. You may stand
21 down.

22 (WITNESS STANDS ASIDE)

23 MS. CARDWELL: Your Honor, we rest our case.

24 THE COURT: Will there be rebuttal evidence?

25 MR. ROOS: There will be no rebuttal evidence,

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Your Honor.

THE COURT: Anything from the school district, Tyler Independent School District?

MR. HARDY: Nothing, Your Honor.

THE COURT: Will the United States amicus have anything to present, either by way of argument or otherwise?

MR. WISE: Well, Your Honor, I don't know if we are going to have argument in general. I want to raise one other question, which would be -- there may be some documents which I may want to submit.

THE COURT: All right, I'll give you a chance to consider this. The court will be in recess for fifteen minutes.

(REPORTER'S NOTE: The court then, at 2:50 o'clock, p.m., December 16, 1977, recessed until 3:05 o'clock, p.m., the same date, at which time it was reconvened.)

THE COURT: Yes, sir?

MR. WISE: Your Honor, the United States does not have any witnesses to present, and what

1 I rather inarticulately tried to indicate before
2 the recess was that since there may be other
3 protocols, international conventions, that might
4 be relevant, plus there are, I think, at least
5 one other document or perhaps two that might be
6 of some interest to the parties and the court,
7 they might include the outline or summary of the
8 President's proposals which have been discussed
9 somewhat here, plus the 1976 report of the
10 Domestic Council on Illegal Aliens, which contains
11 a lot of factual data, but I think they would be
12 in the nature of public documents.

13 THE COURT: Well, can you give me a reference
14 to the last document you're referring to?

15 MR. WISE: Yes, I have a copy with me. It's
16 a report done by the Domestic Council, and it
17 was mentioned in Ms. Houston's testimony, I know,
18 which tried to correlate the existing evidence
19 on illegal aliens and was issued in December 1976.

20 THE COURT: I don't guess I know what the
21 Domestic Council is. Can you explicate?

22 MR. WISE: I'm not sure if I know precisely
23 myself, but it---.

24 THE COURT: Is it a part of the Executive
25 Branch?

1 MR. WISE: Yes, it is. What it is, I
 2 believe, it's an informally -- or, perhaps, it's
 3 statutorily authorized. I'm not sure, by the
 4 President and consists largely of the appointees
 5 from various agencies that have programmatic
 6 responsibility in the domestic sphere, H.E.W.,
 7 the Labor Department, Justice Department, that
 8 sit together to study problems like this that
 9 they do feel have an impact---

10 THE COURT: And this is a government
 11 publication. Is that right?

12 MR. WISE: Yes, it is. I don't think there's
 13 any problem with that.

14 THE COURT: Would you look on the title page
 15 and give us the precise title and Library of
 16 Congress number or whatever, whatever designation
 17 might be appropriate?

18 MR. WISE: Well, I'm not sure that it has
 19 a Library of Congress number or anything like
 20 that, but its title is Preliminary Report --
 21 Domestic Council Committee on Illegal Aliens
 22 December 1976.

23 THE COURT: Published by---?

24 MR. WISE: Well, it's a government document,
 25 but I think it was just printed up at the Justice

1 Department. There was a special committee, which
2 consisted of the Secretary of Agriculture,
3 Secretary of Commerce, Secretary of Health,
4 Education & Welfare, Secretary of Labor,
5 Secretary of State, Secretary of the Treasury,
6 the Director of the Office of Management and
7 Budget, Director of the Domestic Council and
8 the Special Assistant to the President for
9 Public Liaison. The chairman was Edward H.
10 Levi, the Attorney General at that time.

11 THE COURT: I believe it has the proper
12 imprimatur, and the court will take judicial
13 knowledge of it.

14 MR. ZWIENER: Your Honor, this does point
15 up our objection to the Attorney General's
16 Office of the United States participating with
17 the full rights of a party, especially one who
18 cannot define his position at the beginning of
19 a trial and wishes to introduce documents at
20 the conclusion of the hearing, a document which
21 perhaps we could rebut or refute, but we will
22 not have an opportunity, and we would object to
23 his introducing anything at the conclusion of
24 this hearing.

25 THE COURT: I would not by any means want to

1 keep you from giving the court any information
2 that you have that is relevant to the subject,
3 and if you want to reconvene this hearing to
4 submit anything in opposition to this, the court
5 will be glad to do it.

6 MR. ZWIENER: Thank you, Your Honor.

7 THE COURT: Now, I would not want to make
8 that open-ended. I think you should let me know
9 within a week whether or not further hearings
10 will be required.

11 MR. ZWIENER: Yes, Your Honor.

12 MR. WISE: Your Honor, I will serve copies
13 on all parties, although I do not have a
14 sufficient number with me at the present time.

15 THE COURT: I will state, however, to the
16 parties that the court intends to take judicial
17 notice of this publication.

18 MR. WISE: Thank you, Your Honor.

19 MR. ZWIENER: Note our exception to the
20 court's ruling in this matter.

21 THE COURT: You mean the court taking
22 judicial knowledge of it?

23 MR. ZWIENER: Yes, Your Honor. We don't
24 think it is the proper subject for judicial
25 knowledge.

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THE COURT: The court takes notice of your objection, which is overruled. Now, these conventions that you're referring to, what are their specific titles?

MR. WISE: I'm not sure that -- perhaps, I don't even need to make this reference to them at this point, because they are all documents which are the law of the land, having been accepted or ratified---

THE COURT: Yes, I know, but I would like to get some reference to them.

MR. WISE: Certainly. Perhaps the easiest way to do that would be for me to submit to the court and the parties a copy of the letter of response from our inquiry -- well, let me frankly explain my problem at this point.

The status of this within the government is the response received at 6:30 last Friday from the Department of State in response to our inquiry, which the Justice Department has not had the opportunity to formally take its own position upon and act upon, and, as you know, by statute we are the representative of the government in all legal proceedings, so I am somewhat hesitant to present the State Department's

1 position and statement on these cases without
2 having it been formally ratified by the Department
3 of Justice, but for the information of the
4 parties I would be happy to submit the letter
5 to the court and to the parties with the under-
6 standing that this is not necessarily the final
7 position of the United States, but it has citation
8 to the relevant matters---.

9 THE COURT: Do you have any inkling as to
10 when the United States might formulate its
11 position?

12 MR. WISE: Well, I would hope that it would
13 do that expeditiously and that we will be able
14 to formulate some sort of briefing schedule with
15 the consent of all the parties.

16 THE COURT: Well, the state has very justly
17 pointed out that this comes very late in the
18 game for them, and it gives them no opportunity
19 to formulate the response, and, insofar as that
20 is concerned, the government's position might
21 be contrary to that of the plaintiffs, and it
22 might be that they would want to submit additional
23 evidence.

24 MR. WISE: Yes, Your Honor.

25 THE COURT: Do you think that you might be

1 able to do this within the next ten days, get a
2 firm position from the government?

3 MR. WISE: Normally, I would answer yes,
4 Your Honor, but with Christmas intervening, I'm
5 not sure how to respond.

6 THE COURT: Yes, I can recognize your
7 difficulty there. Do you think that you would
8 be able to do so by Friday, January 7th?

9 MR. WISE: Yes, I would think so, Your
10 Honor.

11 THE COURT: All right. I would ask then
12 that the government file some written presenta-
13 tion of its position in relation to these matters
14 that are in issue here by that time. I will state
15 to the parties, after you have received the
16 government's presentation, I would require that
17 you within seven days after receipt of it notify
18 the court whether or not you think there should
19 be a reconvening of this hearing for the purpose
20 of taking any additional evidence.

21 MR. HARDY: May I inquire of the court,
22 is it going to be the government's position that
23 they will furnish copies of these documents, the
24 treaties or whatever, by January 7th?

25 THE COURT: Well, I'm sure they would make

1 reference to them, and they would be available
2 to you at any good law library, as, for example,
3 the S.M.U. library a hundred miles from here.
4 That's about as close as the court could get to
5 one too, but, as far as that's concerned, the
6 public library might have all the treaties. I
7 don't know for certain.

8 Sir?

9 MR. WISE: Depending on the scope of the
10 paper and such things involved, we will certainly,
11 if possible, make copies available to them.

12 THE COURT: I understand. Will that be the
13 extent of your presentation at this time?

14 MR. WISE: I would like to make a brief
15 oral argument at some point, if that's going to
16 take place.

17 THE COURT: All right, you may be seated
18 then.

19 Does the plaintiff desire to make oral
20 argument in this matter?

21 MR. ROOS: No, we don't Your Honor. We
22 have submitted a brief on the issues, and I don't
23 think at this time we can add much to that in
24 view of the testimony we have submitted.

25 THE COURT: All right, does the Tyler

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Independent School District desire to make oral argument?

MR. HARDY: We do, Your Honor.

THE COURT: Proceed.

DEFENDANT TYLER INDEPENDENT SCHOOL DISTRICT'S ARGUMENT

MR. HARDY: May it please the court, the case presently before this court is a case of first impression. While the plaintiffs have attempted to prevail upon the sympathies of this court, as well as the public, upon the plight of the illegal alien children who are plaintiffs herein, the questions presented to this court are not questions that will be answered upon this basis of sympathy.

While education is one of the most important services performed by the state, it is not among the rights afforded explicit or implicit protection under the Federal Constitution. The United States Supreme Court in San Antonio Independent School District versus Rodriguez specifically held that education is not among the rights afforded explicit protection under the Federal Constitution. Education is

1 simply not a fundamental right. The undisputed
2 importance of education should not alone cause
3 the court to depart from the usual standards
4 for reviewing a state's social and economic
5 legislation. The social importance is not the
6 critical determinant for subjecting state
7 legislation to strict scrutiny.

8 As the United States Supreme Court has
9 stated, the only time to use strict judicial
10 scrutiny is either when state laws which operate
11 to the disadvantage of a suspect class or state
12 laws which interfere with exercise of fundamental
13 rights and liberties explicitly or implicitly
14 protected by the Constitution are in question
15 should this test be applied.

16 The plaintiffs have talked about the
17 class of which they are a part as a suspect
18 class. The plaintiffs have stressed the fact
19 that the plaintiffs are children and should even
20 cause the court to take a closer look. The
21 Supreme Court has held in the De Canas versus
22 Bica that it is within state police power to
23 regulate the employment of illegal aliens so as
24 to protect workers who are within the state
25 legally, and, surely, the court here will recognize

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and will analogize the situation and can see that it is within the state's power to regulate the education of illegal aliens so as to protect the children of citizens and those who are here legally, together with the taxpayer, who is making the entire education possible.

Allowing illegal aliens schooling on a tuition-free basis in times when the costs of education are skyrocketing, coupled with the needs for special teachers, in this case bilingual, which are not readily available, will cause conditions which seriously handicap the conditions under which children of citizens and legally-admitted aliens learn and try to improve their skills. Allowing these children into schools can only diminish the effectiveness of the instruction the present students are receiving. This problem is particularly acute in Texas in light of our significant influx of illegal aliens into the state from neighboring Mexico.

The Texas Legislature through Section 21.031 of the Texas Education Code and the Tyler Independent School District through its policy on admissions under the state statute have merely attempted to protect Texas and Tyler's physical

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interest and lawful student population from the deleterious effects on its educational programs, resulting from the registration of illegal alien children in our school district.

Section 21.031 has focused directly upon these essentially state and local problems and is strictly tailored to combat effectively the perceived evils.

It is within the power of the state, as guardian and trustee for its people, and having full control of its affairs, to prescribe the conditions upon which it will distribute the benefits of the state.

Even in light of the Fourteenth Amendment covering this group, when the "discrimination" defined by the statute in question pertains to the regulation of distribution of the public domain or the common property or resources of the people of this state, the enjoyment may be limited to its citizens as against both aliens and the citizens of other states. In *Mathew v. Diaz*, the court aptly addressed itself to state priorities and the equal protection arguments where the court stated, and I quote:

"Neither the overnight visitor, the

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unfriendly agent of a hostile foreign power, the resident diplomat nor the illegal entrant can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and some of its guests."

Texas has not attempted to do anything other than what the court has already addressed itself to in allowing the state to make available to some of its citizens and some of its guests and certain people who are within the state certain state benefits.

The Fourteenth Amendment and laws adopted under its authority embody a general policy that all persons lawfully in the United States shall abide in any state on an equality of legal privilege with all citizens under non-discriminatory laws.

The United States Supreme Court sustained a state law barring aliens from hunting wild game in the interest of conserving the wild game for the citizens of the state against due process and equal protection challenges. Surely, if the Supreme Court of the United States will keep wild animals for the benefit of its citizens, it will

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keep education for the benefit of the citizens of a state and of the United States.

Federal law gives each state great latitude in dispensing its available funds. Given Texas' finite resources, its choice is either to support and educate some children adequately and others less adequately, or not to give a sufficient education to any child. We must keep in mind that the court is here dealing with a state regulation in a social and economic field not affecting freedoms guaranteed by the Bill of Rights.

In the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by a state's laws are imperfect. We are not suggesting to the court that the law of Texas is perfect or that the policy in effect within the Tyler Independent School District is perfect, but we are representing to this court that the classification under the statute and this policy has some reasonable basis, and it does not offend the Constitution simply because a classification is not made with mathematical nicety or because in practice it results in some

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equality.

Even if this court should find a statutory discrimination has taken place, it should not set aside this statute or policy as unconstitutional, as the defendants herein have been able to show facts which reasonably can be conceived to justify the statute and the policy in question.

The defendants would respectfully argue to this court that the Fourteenth Amendment does not give the federal courts any power to impose upon the states their views of what constitutes wise economic or social policy. The policy set forth in the evidence before this court shows that the State of Texas and Tyler Independent School District is based on the social and legitimate foundation that Tyler Independent School District and the State of Texas have a legitimate interest in encouraging the best education it can give to citizens and legal aliens with the resources it does have to draw from. The state and district's actions are rationally based and free from discrimination.

A good analogy to this situation is the difference in tuition charged in-state

1 citizens and out-of-state citizens. Such
2 differentiation has been upheld as constitutional.
3 Uniform treatment does not mean that a state can
4 never distinguish persons for different treatment,
5 and mere classification does not in and of itself
6 deprive a group of equal protection.

7 As in-resident - non-resident classifi-
8 cations, the classification before this court
9 need only pass the test of Dandridge v. Williams,
10 that the distinction be reasonable and rationally
11 related to a legitimate state objective.

12 State regulations classifying students
13 for tuition purposes are not arbitrary or un-
14 reasonable. Such regulations bear a rational
15 relationship to the state's objective and purpose
16 of financing, operating and maintaining its many
17 publicly financed educational institutions.

18 For the plaintiffs to succeed in
19 challenging the constitutionality of Section
20 21.031, they must have carried the burden of
21 showing it does not rest upon any reasonable
22 basis, but is essentially arbitrary. Since this
23 case does not involve a suspect classification
24 or infringe upon a fundamental interest, the
25 traditional test is the one to be applied.

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The Fifth Circuit stated the test to be, "The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons singularly circumstanced shall be treated alike."

The defendants would respectfully point out to this court that the plaintiffs have not met their burden herein. Certainly, the State of Texas is not responsible for shouldering the burden of extending free educational benefits to those who should not be in the state and who are present only due to their violation of the laws of the United States.

It has been shown in evidence brought before this court that to provide a free education to illegal alien children would encourage illegal immigration in this state. Certainly, avoiding this is a valid state objective. The plaintiffs' own expert witnesses, and, in particular, Ms. Houston, stated that in her opinion, there was no research that could be relied upon that would show the characteristics and magnitude of this group of people, and she further went on to state

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that it would be difficult, if not impossible, to plan for the educational needs of this group on any realistic basis. In other testimony brought out by the plaintiffs and in their brief, the plaintiffs have shown that their native language is Spanish, and that it would be an extreme hardship and burden for them to be taught in English. The defendants through their testimony have shown that but for the presence of these illegal aliens in the Tyler School District, that the Tyler Independent School District would not have to implement the bilingual education program which they will be required to begin in September of 1978, if these children are allowed to continue to attend schools within the Tyler Independent School District.

Testimony solicited from defendants' witnesses has further stated that special education will be required of teachers for the bilingual program, and that at the present time there is very little likelihood that any qualified teachers can be found. The additional cost that this will place upon the Tyler School District is both unreasonable and unjustified.

The plaintiffs have continuously talked

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about public interest. I submit that they are talking about the interest of a very small class, because the interest of the public, those who are citizens of the United States, and those residing here legally, is to see that citizens and legally admitted aliens are given the best education possible. Children who are here illegally should not have the expectation to the same rights or benefits and services the State of Texas affords to those who are rightfully here.

The current Constitution of the State of Texas calls for an efficient system of public free schools. At the present time Texas does have free public schools, but they cannot continue to be efficient if we try to educate the world. We only have finite resources. We have a limited revenue with which to work. The teachers who work in our system are not an inexhaustible supply. To allow a group the size that the plaintiffs represent herein, not only within the Tyler Independent School District and the relatively small cost that it will cost at the present time to absorb these children into the school district, but to bring in all of the students across the state who are in this category

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would be a financial disaster for the free public school system within the State of Texas.

Section 21.031 carries out the valid state interests and objective of providing financing, operating and maintaining a public school system which serves the best interests of a planned, quality education. It extends the benefit of state education in an effective and planned program, which will educate those illegally within the country, if they will only help defray the cost of their education and, thus, avoid the serious impact their presence in the school system would otherwise have on those who are legally within the country by virtue of citizenship or alien admittance. These are the students unquestionably entitled to free education and unquestionably entitled to the state's protection from a force which could destroy the educational benefits they are now receiving.

The Texas Education Code, Section 21.031, meets the rational basis test as to constitutionality. Defendants submit that the statute even meets the rigors of the strict scrutiny test, though inapplicable in this case. Plaintiffs have not approached rebutting the strong presumption

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in favor of constitutionality of an enacted statute, nor have they rebutted the factual rational basis that appears from the record herein.

The very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one constitutionally permissible method of solving them and that within the limits of rationality, the Legislature's efforts to tackle the problem should be entitled to respect. The judiciary is well advised to refrain from interposing on the state's inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions.

To give these people rights due to their unlawful presence, greater than those they would have had if they had not come to this country, would be the worst sort of bootstrapping and would encourage aliens to enter this country surreptitiously.

Thank you.

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THE COURT: Thank you for your very able argument.

Ms. Cardwell?

DEFENDANT'S STATE OF TEXAS FINAL ARGUMENT

MS. CARDWELL: In addition to the argument of Tyler I.S.D., I would remind this court that this is not entirely a case of first impression and that Hernandez versus Houston I.S.D. quite ably decided the issues of equal protection and due process which are in this case. That case does not, however, say that equal protection does apply to the illegal alien, and the state would argue that as to any testimony before this court whatsoever, this case could be wholly disposed of in the favor of the State of Texas and Tyler I.S.D. on the basis of the legal positions alone.

The Supreme Court of the United States has never said that equal protection applies to the illegal alien, and in the cases that so infer that it does, I would remind this court that we are dealing with due process cases. The most particular that comes to my mind is Balones versus

1 Kiley and there the court recognizes that it is
2 relying upon Chad Massey, which, in fact, did
3 not extend equal protection to the illegal alien
4 but only dealt with due process. It again went
5 back to the Wong Wing and Yic Wo cases from
6 which another basic problem with extending equal
7 protection to the illegal alien comes. The first
8 of those cases dealt with the legal alien. It
9 did not deal with the illegal alien.

10 The second case relying upon Wong Wing
11 was Yic Wo. Yic Wo is a due process case. It
12 is not an equal protection case, so the language
13 is dicta, but in that dicta they substantially
14 state that the first case extended equal
15 protection to the illegal alien. That is the
16 instance in all the cases.

17 The cases that are state cases which
18 deal in the area of workmen's compensation and
19 personal injury rights to bring cases in the
20 State of Texas court are, actually, standing
21 issues. Those standing issues are, again,
22 presenting due process questions.

23 If, however, equal protection did apply,
24 we would strongly affirm the arguments of Tyler
25 I.S.D. that equal protection is not a fundamental

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right, and that the illegal-legal classification is not a suspect classification. Therefore, we're applying the rational basis test.

What we get down to is that there are extreme problems in educating the Mexican-American class and extreme educational problems are already present in the State of Texas. By adding the illegal alien to that educational system, we are multiplying and increasing those problems.

Finally, on the question of preemption, I would remind this court that it was the testimony of all expert witnesses from both sides that the primary motivating factor upon entrance into this country was work, that it was monetary and was not education, and while it would be, perhaps, encouraging incidental impact along the border and encouraging the effect, it is not such an effect that there should be any inference whatsoever that the State of Texas is preempted in this area.

THE COURT: Thank you, counsel.

AMICUS CURIAE'S FINAL ARGUMENT

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MR. WISE: May it please the court, since the United States has not formally adopted a position in this case, it is improper for me to give an extensive legal argument, I think. However, I think that it is a case of great importance, and it is a case of first impression or nearly first impression, and one in which some general comments might be helpful to this court.

THE COURT: I would be very pleased to receive your help.

MR. WISE: Thank you.

I don't think that a case of this nature can be adequately resolved by legal formalisms or a legalistic approach that would say that the answer is determined by saying something is subject to strict scrutiny or not subject to strict scrutiny or that something is a fundamental right or not a fundamental right under our Constitution, because those really are only announcing a conclusion on which side the court would have come down.

I think there are some obviously larger and fundamental questions involved in this case.

1 They involve the whole aspect of human rights
2 in our commitment to those principles, because
3 a formalistic approach might apply if we're
4 dealing with wild animals, a question like that,
5 and the preservation of them for state citizens,
6 but here we're dealing with children, with human
7 children, and I think we all realize that the
8 denial of education of them, as the evidence has
9 indicated, is a very serious, a most serious
10 thing.

11 I think if we looked back at Chief
12 Justice Warren and his frequent habit of asking
13 those who were arguing before him, "Is it fair?"
14 that might give us some guidance, but the thing
15 that comes to play on the other side, however,
16 is I think we can make no argument for the power
17 of the court or the aggrieved people to overturn
18 the immigration laws, as such, and it seems clear
19 that, admittedly, these people are illegally in
20 the United States, and that that is not being
21 challenged.

22 The question of the United States' power
23 and duty, I suppose, to deport them is not at
24 issue here. When it comes to that question --
25 however, it is relevant, I think, to put that into

1 a larger context. We've heard about the history
2 of discrimination against Mexican Americans,
3 against Mexican Americans in the State of Texas.
4 We've heard of the nature and role of the
5 immigration laws and their interrelationship with
6 the practices of private employers and persons
7 within not only the State of Texas but elsewhere
8 in the United States, and we, certainly, have to
9 realize that those employers, the people that have
10 benefited from what we have heard one witness
11 describe as a system almost of serfdom, or the
12 powerful and the rich, all of which lead toward
13 these people being very much the type of people
14 in a situation that the equal protection clause
15 has traditionally been particularly solicitous
16 toward.

17 I think we also know the history of
18 great racial aspects to our immigration laws
19 themselves, and somehow this all seems relevant
20 to me in evaluating this case, particularly, when
21 we had testimony comparing the treatment of
22 Mexican Americans, a labor source and labor pool
23 that, because of its location and because of its
24 ability to be physically identified, both by
25 difference of speech and by its physical

1 appearance, other characteristics, which I think
2 are traditional aspects of the Fourteenth Amend-
3 ment concerns, that we come into a situation
4 where I think we have to evaluate the Fourteenth
5 Amendment questions from scratch on those, rather
6 than in that formalistic approach that I think
7 we have heard here on some occasions.

8 I think that's probably the extent of
9 my authority to say anything at this point.

10 THE COURT: You made some reference at the
11 beginning of the trial to whether or not the
12 question as to whether education is a fundamental
13 right should be reexamined.

14 MR. WISE: Yes, Your Honor.

15 THE COURT: In the light of some of the
16 treaties that have been enacted or adopted by
17 the United States or entered into by the United
18 States.

19 MR. WISE: Yes, sir. That's an area where
20 I think we do have to do much more research and
21 present that to the court. The suggestion was,
22 though, that might be relevant in two ways.
23 Certainly, it was something that was not con-
24 sidered in Rodriguez in terms of the analysis
25 of whether or not an education was a fundamental

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right. The question of the application through the Constitution of international legal documents which might go toward establishing education as a fundamental human right was not considered.

Additionally, if the opinion of the preliminary injunction status of this case indicated that Rodriguez did not deal with the denial of education, something that the court clearly indicated would come up at a later point, and as that opinion also clearly indicated -- your opinion -- here we have the question if someone can pay for it, they can have it, even though they are still just as illegally in this country. That adds another dimension to the Fourteenth Amendment question, but, aside from that, I think these human rights documents might be, if they are, in fact, international conventions, they have become through their adoption the supreme law of this land -- I think they would take precedence over the Texas statute in this instance, in this case, and might of their own force, aside from the Fourteenth Amendment, justify saying that this law is contrary to a superseding federal law or superseding international law, as adopted in domestically, but I

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think those are obviously far-reaching and in some ways novel suggestions, and ones which need to be formulated and presented to the parties and the court.

THE COURT: Thank you, sir.

Do you have anything to say by way of rebuttal?

MR. ROOS: Nothing, Your Honor.

THE COURT: The court then will take this case under advisement.

Recapitulating, the United States should submit its position, its written position, with regard to the issues in the case by Friday, January 7th. If you should need additional time, please make a formal motion to that effect.

Within seven days after receipt of a copy of the government's written position, the various parties to the case, plaintiffs and defendants, should inform the court as to whether or not in their opinion additional evidence should be presented.

In the event that the court should see fit to receive additional evidence, I will just have to set a hearing at some future time. I am hopeful that it won't be necessary. I am hopeful

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that whatever position the government takes can be addressed by written memoranda or briefs, instead of additional evidence, but I am not stating that that will be the firm position of the court. If the parties feel it should be a necessity, I would encourage your letting me know as early as you can.

At some future time I will probably request the parties to present proposed Findings of Fact and Conclusions of Law, so with that in mind, you should probably start this process as of now.

Is there anything else to be brought to the attention of the court?

MR. ROOS: No, Your Honor.

THE COURT: If not, the court is adjourned.

(REPORTER'S NOTE: The court then, at 3:40 o'clock, p.m., December 16, 1977, adjourned.)

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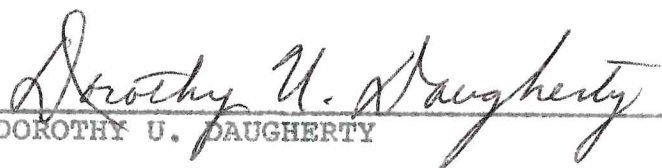
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UNITED STATES DISTRICT COURT X
X
EASTERN DISTRICT OF TEXAS X

OFFICIAL REPORTER'S
CERTIFICATE

I, DOROTHY U. DAUGHERTY, Official Court Reporter for the United States District Court for the Eastern District of Texas, do hereby certify that the above and foregoing 350 pages of typewriting contain a true, correct and complete transcript of the proceedings had in the above-styled and numbered civil cause.

WITNESS my official signature in the City of Tyler, Texas, on this the 29th day of December, 1977.


DOROTHY U. DAUGHERTY