

The Philosophical Society of Texas

PROCEEDINGS

1988

The Philosophical Society of Texas

PROCEEDINGS OF THE ANNUAL MEETING

AT DALLAS

DECEMBER 2 and 3, 1988

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AUSTIN

THE PHILOSOPHICAL SOCIETY OF TEXAS

1989

THE PHILOSOPHICAL SOCIETY OF TEXAS FOR THE COLLECTION AND DIFFUSION OF KNOWLEDGE *was founded December 5, 1837, in the Capitol of the Republic of Texas at Houston, by MIRABEAU B. LAMAR, ASHBEL SMITH, THOMAS J. RUSK, WILLIAM H. WHARTON, JOSEPH ROWE, ANGUS MCNEILL, AUGUSTUS C. ALLEN, GEORGE W. BONNELL, JOSEPH BAKER, PATRICK C. JACK, W. FAIRFAX GRAY, JOHN A. WHARTON, DAVID S. KAUFMAN, JAMES COLLINS-WORTH, ANSON JONES, LITTLETON FOWLER, A. C. HORTON, I. W. BURTON, EDWARD T. BRANCH, HENRY SMITH, HUGH MCLEOD, THOMAS JEFFERSON CHAMBERS, SAM HOUSTON, R. A. IRION, DAVID G. BURNET, and JOHN BIRDSALL.*

The Society was incorporated as a nonprofit, educational institution on January 18, 1936, by George Waverley Briggs, James Quayle Dealey, Herbert Pickens Gambrell, Samuel Wood Geiser, Lucius Mirabeau Lamar III, Umphrey Lee, Charles Shirley Potts, William Alexander Rhea, Ira Kendrick Stephens, and William Embrey Wrather. December 5, 1936, formal reorganization was completed.

Office of the Society is located at 6425 Burnet Lane, Austin, Texas 78757.

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Proceedings edited by Dorman Hayward Winfrey.

The Philosophical Society of Texas

ON DECEMBER 2 AND 3, 1988, NEARLY TWO HUNDRED MEMBERS, spouses, and guests assembled in Dallas for the Society's 151st anniversary meeting. The historic Adolphus Hotel, built by Missouri beer baron Adolphus Busch and host to many presidents and celebrities since opening in 1912, provided a beautiful and elegant location for the meeting headquarters.

On Friday evening, members and guests attended a cocktail hour and dinner at the Tower Club which offered a splendid view of the Dallas skyline. Saturday's program, "Future of School Finance in Texas," would have pleased one of the Society's founding members, Mirabeau B. Lamar. Lamar, who served as president of Texas from 1838 to 1841, was responsible for laying the groundwork for the state's public education. Outstanding panelists led invigorating discussions in morning sessions at the Dallas Art Museum followed by afternoon sessions at the Adolphus Hotel.

At the Saturday evening banquet, held at the Adolphus Hotel, President Clifton Caldwell announced the election of the following new members:

Perry L. Adkisson — College Station
William H. Cunningham — Austin
John Conrad Dunagan — Monahans
William F. Guest — Houston
Dr. Thomas N. James — Galveston
Dr. John P. Howe III — San Antonio
Elmer Stephen Kelton — San Angelo
Ruth L. Kempner — Galveston
Dr. Charles Brown Mullins — Austin
Edmund Lloyd Pincoffs — Austin
Woodrow Bradley Seals — Houston
Max Ray Sherman — Austin
Harlan J. Smith — Austin

Louise Connally Strong — Houston
Ron C. Tyler — Austin
Dr. Richard E. Wainerdi — Houston
W. P. (Bill) Wright, Jr. — Abilene
Mark G. Yudof — Austin

Certificates for the previous year's new members were also distributed by Mrs. Elspeth Rostow, immediate past president.

Seven members died during the past year:

Paul Carrington
Price Daniel
Guy Bryan Harrison, Jr.
William Alexander Kirkland
A. M. Pate, Jr.
Rupert N. Richardson
Roger John Williams

During the business meeting the following officers were elected: J. Chrys Dougherty, president; Frank M. Wozencraft, first vice-president; William C. Levin, second vice-president; James Dick, treasurer; and Dorman H. Winfrey, secretary.

The success of the Dallas meeting was due in large part to the local arrangements committee headed by Dr. William D. Seybold. Members included: Robert Decherd, Jon Fleming, Mrs. Sally Lancaster, and Mrs. Margaret McDermott.

ATTENDANCE AT THE 1988 MEETING

Members registered included: Miss Hayes, Hartgraves; Mesdames Brinkerhoff, Knepper, Lancaster, McDermott, Randel, Rhodes, Rostow; Messrs. Anderson, Henry M. Bell, Jr., Paul Gervais Bell, Boyd, Bryan, Caldwell, Carmack, Edward Clark, Conger, Cook, Cooper, Crim, Decherd, Denius, Dick, Dougherty, Dunagan, A. Baker Duncan, Charles W. Duncan, Jr., Fehrenbach, Fisher, Durwood Fleming, Jon H. Fleming, Gordon, Greenhill, Guest, Hall, Hardesty, Harrison, Hay, Holtzman, Howe, James, Keeton, Dan E. Kilgore, William J. Kilgore, Kozmetsky, Krueger, Law, Lawrence, LeMaistre, Levin, Locke, Lord, McCall, McCorquodale, McGinnis, McKnight, Mullins, Pincoffs, Provence, Risher Randall, Rupp, Schachtel, Seals, Seybold, Shepperd, Sherman, Shilling, Sparkman, Spence, Sprague, Storey, Tate, Trotti, Tyler, Vandiver, Wainerdi, Ruel C. Walker, Weinberg, Wells, Winfrey, Wozencraft, Charles Alan Wright, W. P. Wright, Jr., Yarborough.

Guests included: Mrs. Thomas D. Anderson, Mr. and Mrs. Robert Barton, Mrs. Henry M. Bell, Jr., Mrs. Paul Gervais Bell, Mrs. Howard Boyd, Mr. and Mrs. Robert H. Boykin, Jr., Bob Brinkerhoff, Mrs. J. P. Bryan, Mrs. Clifton Caldwell, Mrs. George Carmack, Mrs. Roger N. Conger, Mrs. John H. Cooper, Dr. Donald Cowan, Dr. Louise Cowan, Mrs. William R. Crim, Mrs. Robert W. Decherd, Mrs. Franklin W. Denius, Mrs. J. Chrys Dougherty, Mrs. J. Conrad Dunagan, Mrs. A. Baker Duncan, Mrs. Charles W. Duncan, Jr., Mrs. T. R. Fehrenbach, Mrs. Joe J. Fisher, Mrs. Durwood Fleming, Mrs. William E. Gordon, Mrs. Joe R. Greenhill, Mrs. William F. Guest, Mrs. Robert L. Hardesty, Susan Hildebrand, Mrs. Wayne H. Holtzman, Mrs. Thomas N. James, Ambassador Saquib Kahn, Mrs. W. Page Keeton, Mrs. Dan E. Kilgore, Mrs. William J. Kilgore, Mrs. George Kozmetsky, Olin Lancaster, Mrs. Thomas H. Law, Mrs. F. Lee Lawrence, Mrs. Charles A. LeMaistre, Mrs. William C. Levin, Mrs. John P. Locke, Mrs. Grogan Lord, Mr. and Mrs. Earl Luna, Dr. Elizabeth MacNaughton, Mrs. Abner V. McCall, Mrs. Malcolm McCorquodale, Mrs. Robert McGinnis, Mrs. Joseph W. McKnight, Mimi McKnight, Anne Mallon, Mrs. Charles B. Mullins, Mrs. Edmund L. Pincoffs, Alec Rhodes, Mrs. Sue Ross, W. W. Rostow, Mrs. Hyman J. Schachtel, Mrs. Woodrow Seals, Mrs. William D. Seybold, Mrs. John Ben Shepperd, Mrs. Max Sherman, Mrs. Roy B. Shilling, Jr., Mr. and Mrs. Harry A. Shuford, Mr. and Mrs. J. Fred Skelton, Mrs. Robert S. Sparkman, Mrs. Ralph

Spence, Mrs. Charles C. Sprague, Mrs. Charles P. Storey, Mrs. Willis M. Tate, Mrs. Robert S. Trotti, Gary Vodicka, Mrs. Richard E. Wainerdi, Mr. and Mrs. James C. Wainerdi, Mrs. Ruel Walker, Mrs. Steven Weinberg, Mrs. Peter Wells, Mrs. Dorman H. Winfrey, Mrs. Frank M. Wozencraft, Mrs. Charles Alan Wright, Mrs. W. P. Wright, Jr., Mrs. Ralph W. Yarborough, Mrs. Mark Yudof.

Panel One:

**ORIGINS AND CONSEQUENCES OF UNEQUAL
EDUCATIONAL OPPORTUNITIES IN TEXAS**

FRANK VANDIVER, MODERATOR

GOOD MORNING. WE HAVE, AS YOU KNOW, A MOST TIMELY SUBJECT to discuss at this meeting. The whole question of educational funding in Texas is not a new crisis, nor is it likely to be over soon. Having been involved in some of the in-fighting in this area, I am particularly interested in this subject. And as you noticed, the first panel will discuss the origins and consequences of unequal educational opportunities in Texas.

I like the idea of origins and consequences of unequal educational opportunity, and I'm fascinated, too, by what constitutes unequal — whether it's financially unequal, whether it's educationally unequal, whether it's racially unequal. These are all bound together, I think. And one of the interesting sub-questions, one that may be difficult to ask, but one which is very important and I think you will find covered in what you hear this morning, is whether or not unequal is necessarily bad. It seems to be a word that has a negative connotation, but in the educational realm is this necessarily so?

Without any further ado, let me present the panel: Dr. William Kirby, Commissioner of the Texas Education Agency, we welcome you, sir, to the panel; Dr. Richard Kirkpatrick, the superintendent of Copperas Cove Independent School District, thank you for joining us, sir; and Jim George, an attorney from Graves, Dougherty, Hearon & Moody in Austin. We will go first to Dr. Kirby who will talk about the background of public school finance problems in Texas. That is a rather large subject, Dr. Kirby.

BACKGROUND OF PUBLIC SCHOOL FINANCE PROBLEMS IN TEXAS

DR. W. N. KIRBY

FIRST OF ALL LET ME SAY I AM NOT COMFORTABLE GIVING THE background of public school finance in ten minutes. When I received this task to provide this information in ten minutes, my attitude was, "Woe is me, I'm undone." Because of that, I sought wisdom.

Now you know the difference between wisdom and knowledge. Knowledge is basically information, but wisdom is putting it to use. Today we have a great deal of knowledge, but we don't have a whole lot of wisdom. We know a lot of things, but we don't often act on the knowledge that we actually have, so I went to the Scriptures to seek some advice. In the book of Ecclesiastes I found that it might not take ten minutes, because I found something to the effect about a fool being known by a multitude of speaking, so I'll try to keep my remarks very brief.

As I began to look in the Scripture to seek some advice about this presentation, I found a statement that said, "Vanity of vanities, all is vanity. The thing that hath been, it is that which shall be. And that which is done, is that which shall be done. There is no new thing under the sun." There's a lot of truth in that. There is not anything new, if you will, about school finance problems or about fighting about school finance or about mis-talking, if you will, about school finance in Texas, because we've done it for more than 150 years.

You're going to have a panelist talk to you a little later today, Dr. Billy Walker. Here's a little document that he developed, and I'm listed as a co-author with him. I worked on a chapter or so, briefly, but he did the work and needs the credit, and I suggest that all of you would do well to take a look at "The Basics of School Finance."

One of the things he provides in there is a historical perspective. He points out that in the Declaration of Independence one of the things listed as an allegation for our conflict with the Mexican government was, in fact, their failure to establish any public system of education, although they possessed almost boundless resources. So we've been fighting about school finance throughout the history of Texas, and there is absolutely nothing new. There's also nothing new about a lot of rhetoric not necessarily being accurate. And the reason I say that is because the Mexican Constitution of 1824 left the responsibility for general education to the states and, in fact, the state of Coahuila and Texas made ample provisions for education through land grants and

municipal funds in 1827 and again in 1833. So while the Texas Revolutionaries used at least one topic, it was not necessarily accurate in terms of their allegation. And there are a lot of allegations today that float around and there are a lot of statements that come about today, but they also are often misleading and inaccurate.

Now the simple truth of the problem with school finance in Texas is a problem of money — inadequate money. I was almost afraid to mention that to you today for fear of being stoned, because typically what we hear is "That's the bureaucrats answer to everything. Throw money at the problem." I don't know if it's the answer in Texas or not, but the reason we don't know is, we've never tried it. We've never tried it in this state, and we've never adequately funded education in Texas. You see, the real truth is we've never really valued education in Texas as it ought to be valued. We ought to see education as an investment not as an expenditure. And, you see, we ought to also understand that academic success is much more related to effort than it is to ability, and yet these two misunderstandings perhaps best contrast our system of education from that of the Japanese. They look at their system of education as an investment, and they even carry it on their budgets as an investment. When you ask a Japanese person about a child who might not be doing well in school what the problem is, the answer always comes back, "I have a lazy child." It's never related to the teacher, and it's never related to the inadequate education system. It's the lazy child who's not making enough effort.

Well, I hear a lot of talk today and a lot of rhetoric about the importance of education, but I hear very little talk about getting down to the business of taxing ourselves and providing the revenue to pay for education. And that's what it's going to come down to. Until we get concerned and convinced and committed, we're not going to see the kind of education system that we need. The best example is the case that you're going to be talking about all day today, and that's *Edgewood v. Kirby*. This case went on for weeks and weeks in Austin and played to a near-empty courtroom. Not many people were in the courtroom. There were a few school folks that were there, but most of the time there were not a lot of folks there. Thursday, I was in the same courtroom, and it was completely overfilled. We had to move two or three times to find a courtroom big enough to hold us, but it was *DISD/ Carter High School v. Kirby*, and it was about whether or not a football game was going to be played, and there was not enough room to hold the people in the courtroom.

You know, we don't have our priorities straight in this state. We don't have our values straight in this state. And until we get back to the point of understanding what's important and understanding the importance of paying for it, we're going to continue to suffer as a society.

Now to the particular situation that we're in — in 1984 the State Legislature made dramatic improvement in the educational system of Texas. They made improvement by dictating a whole series of changes and state requirements, but they also made financial changes to significantly improve the amount of money being put into education and especially the amount of money going to poor school districts. There was dramatic improvement in equity. The lawsuit *Edgewood v. Kirby* was filed prior to the enactment of that law; it was *Edgewood v. Bynum* at that time. It was subsequently changed to *Edgewood v. Kirby* when the Commissioners changed, so I just want you to know I didn't start this problem. What the court ultimately found in that case is that despite the improvements made by the state in HB72, the state had not made enough improvement and there were still vast disparities, so the state system was unconstitutional. Now that's on appeal, and we are arguing strongly that this current system is not unconstitutional. I want you to know that we are arguing on legal and technical grounds, because, while we do not believe it is unconstitutional on legal and technical grounds, I'm just as strongly saying it's not yet adequate.

We have done a study by the State Board of Education this past year. In fact, what we have found over the last two years is that despite the improvement that we have made under the current formulas, which provide a funding mechanism of what we call a basic allotment of \$1,350, that the real cost of a minimum basic program is \$500-600 higher than that. So really, if you want to get ratio and proportion between the \$1,350 and the \$600, what you'd say then is that we need half again as much money in the system to provide just the basic program — not a quality program — a basic program. We're now spending almost \$5 billion, so we're talking about a minimum of \$2.5 billion additional funding, and until we're prepared as a state to address that and go beyond into the area of providing quality education, we're not going to solve educational problems in Texas.

WHY 67 POOR SCHOOL DISTRICTS TOOK THE STATE TO COURT

DR. RICHARD KIRKPATRICK

I'M FILLING IN FOR CRAIG FOSTER WHO IS THE EXECUTIVE Director of the Equity Center, a coalition of poor school districts. He's a very important person in our state and particularly to those of us in poor school districts.

One of the things I want you to understand about education in our state — it is by constitution and statute a state responsibility. Local school districts are agents of the state to carry out that responsibility. Sixty-seven poor districts took the state to court basically for four reasons. The first three reasons are related to the present state foundation school program. Bill gave you some background about that foundation school program; I'll phrase it a little bit differently. That program provides about a \$2,700 average per student program, funded two-thirds by the state and one-third by local districts. It is equalized up to that level; that is, wealthy districts receive most of the \$2,700 from their local taxes while poor districts get most of the \$2,700 from state funds. As I've said, there are three major problems with that program. First problem is, it's inadequate; second is, it's inequitable; and third is, it's unfair.

Why is it inadequate? Simply put, the program is insufficient to provide the programs, the services, and the salaries mandated by statute, demanded by local patrons, and necessitated by the competitive marketplace. The educational reforms of HB72 and HB246 are good for kids. I supported them in the legislative process, and I support them now. But some of them are costly. The two mandates that are hitting low-wealth districts the hardest are the state minimum salary schedule coupled with the underfunded career ladder program and the twenty-two student per class size limit in grades pre-K through four. Many poor districts pay only the state minimum teacher's salary or a very small local supplement and must provide each year a \$1,140 step increase to each returning teacher until they reach the maximum of \$26,600. That's roughly \$45 per student per year increase. The twenty-two to one class size limit has caused hundreds of districts to build classrooms and add teachers. In my district alone we have added twenty-eight teachers and built or converted twenty-eight additional classrooms. Cost there for the additional teachers runs us roughly \$100 per student above what we were paying before. If you'll keep in mind that since 1984-85 the foundation school program allotments per student have increased by only

about \$27 per student. Keep in mind that facilities are paid for solely and exclusively by local taxpayers. The state does not participate at all in building schools. The foundation school program has not provided the funds for these escalating costs. It is inadequate.

The second major problem is that the finance system is inequitable. With a grossly underfunded foundation school program, the additional costs must be borne solely by local taxpayers. The data presented in the trial showed a range of taxable value in this state of 700 to one from the richest to the poorest districts. The 1 million children in the wealthiest districts have 2.5 times the tax base to support education than the 1 million children in the poorest districts.

Perhaps the quickest way to demonstrate the problem is to compare the tax rates required to raise just \$100 per student in selected districts. In the Edgewood district (*Edgewood v. Kirby*) to raise \$100 per student, they had to raise taxes by 24 cents. In our school district, which is twice as wealthy as Edgewood but still very poor, it cost us 12 cents on our tax rate to raise \$100. In the Azle Independent School District, it cost 6 cents to raise \$100. In Eagle-Mountain Saginaw, it cost 3 cents to raise \$100. In Highland Park it cost less than a penny to raise \$100 per student. One of the most salient facts that came out of the trial is that the 100 poorest districts in 1985-86 had an average tax rate of 74 cents and spent \$2,900 per child. The 100 richest districts had an average tax rate of 47 cents and spent \$7,200 per child. That's inequitable.

Third, the system is not fair. Hundreds of thousands of children are being provided a very high quality educational experience in wealthy districts, while hundreds of thousands of children are being provided a very minimum, usually inadequate, educational experience in poor districts. Consider this fact. If you take out our two largest districts in this state who happen to be wealthy and who happen to have high numbers of children below the poverty line, there are 978,000 students in our state, out of about 3 million, whose family income is below the poverty line. Well over 500,000 of those children, over 55 percent, are in the poorest one-third of the districts in our state. I can assure you that it costs more to meet the educational needs of children of poverty than it does to meet the educational needs of children who come from advantaged homes and educated parents. And that's not fair.

As Dr. Kirby said, we received a lot of money from HB72. Most of that money went to poor districts, so you can imagine how inequitable and unfair the system was prior to 1984.

Now the fourth reason we went to court is simply the reality of the legislative process. I don't have to tell you that our state coffers are not as full as they once were. Any approach to solving this problem will necessarily include some reduction in state funds to wealthier districts. Legislators representing wealthy districts, quixotic though they may be, have a very hard time voting for a bill that takes money from their districts.

I can assure you that many poor districts in our state right now are on the verge of bankruptcy. We felt that we had no choice but to take our case to court. What I hate the most about having to do that is that we had to sue people who have long fought for funding for poor districts. Governor Hobby, Speaker Lewis, Comptroller Bullock, and Treasurer Richards are named as defendants in this lawsuit, and they led the fight for increased funds for poor districts in 1984. Governor Hobby, in particular, has long been a champion of equity, and no one has a greater understanding of, or passion for, the plight of poor schools than our Commissioner Kirby. As advocates for children, those of us in poor school districts have no choice but to go to court.

TEXAS SCHOOL FINANCE LITIGATION FROM RODRIGUEZ TO EDGEWOOD — SUMMARY AND UPDATE

R. JAMES GEORGE

MY JOB, ASSIGNED TO ME BY MY SENIOR PARTNER CHRYS Dougherty, is to give a reasonably objective analysis of what it meant to go to court by the poor school districts and where that litigation process is and something about the basic theories of that case.

We start with what the previous speakers have outlined generally, the facts of the case. The facts are that there has been a historical pattern of and today exists wide disparity among the school districts of Texas and their access to wealth. The poorest districts have the highest tax rates and the lowest amount of money to spend on education of the children in those districts. That disparity is great. There are findings by the district court in this case, the *Edgewood v. Kirby* case, that the highest district has something like \$14 million of assessable tax value per student, and the lowest district has \$20,000 of assessable value per child in that district. The disparity ranges widely in the state of the school districts and their ability to raise money from local resources. There were findings by the trial court that those districts, as a general matter, try harder by having higher tax rates to raise money than the wealthy districts, but obviously because they have small resources, do not raise that money. The trial court found in approximately fifty pages of findings of fact, a whole series of facts that I don't have time to go into but can be boiled down that there is an inequitable disparity in access to wealth that leads to inequitable expenditures of wealth upon students throughout the state depending on the amount of money in the districts in which the students live.

This is not, however, the first lawsuit that has been generated out of those basic facts. The first one was a case brought in federal court in the late '60s and early '70s tried to a three-judge (in that year, a three-judge panel) district court in the western district of Texas and appealed directly to the Supreme Court of the United States, *Rodriguez vs. the San Antonio School District*. It is important in analyzing what going to court by the poor school districts in this case means — the *Rodriguez* case established a principle that this system, the basic system that existed prior to the reforms of HB72 and the 1984 era, was not unconstitutional under the Constitution of the United States. It did not violate the Fourteenth Amendment's equal protection clause. The analysis that one goes through to reach that conclusion was to look and determine whether or not there was some fundamental interest at stake. The

Supreme Court of the United States declared that there was not, because the right to an education is not an interest either explicitly or implicitly protected by the Constitution of the United States. There is no education clause in that Constitution. The Supreme Court also said that once you reach some minimal level, wealth is not a suspect classification. Therefore, you can, in this case, everybody, could go to a public school in Texas. There was vast disparity, but everybody could go to one, unlike other cases in which poor people could not buy transcripts to appeal or other things. So they said it was not a fundamental right and not a suspect classification, and therefore they analyzed the disparate treatment among districts and school children to determine whether or not there was some rationality to this system. The court said it is not irrational and the rationale for that determination was essentially that the local people and all local governmental interest have an interest in funding their local government at the level they want to. The court said every city that is rich has a better city government than the ones that are in a city that is poor. Every city that has a fire department has a better fire department in the wealthy city than in the poor city and a better police department. When we have a system of local government, inequitable funding is inherent when you have unequal distribution of wealth throughout a jurisdiction. Therefore, it is not irrational to have disparate access to wealth in connection with education. That was March of 1973 and the Supreme Court in a hotly disputed decision, I believe it was 5 to 4, said the federal Constitution does not make this system illegal.

We now turn to this case. This case is under the Constitution of the State of Texas and the State of Texas does have an education clause. There is an Article 7 to the Constitution of the State of Texas that deals explicitly with education. Article 7, Section I mandates that there shall be a system of free public schools, and it shall be efficient.

From that premise then, we turn to the analysis that the district court went through to reach the conclusion that the current system is unconstitutional. The District Court Judge Clark concluded that since Texas has an education clause, there is a right to a public education in Texas, and therefore it is a fundamental right. Therefore, the rationale goes, to discriminate in such a fundamental right there has to be some sort of compelling reason to have that discrimination, and there was no such compelling reason. That is, it doesn't have to simply be rational, they had to be necessary in order to have this sort of discrimination. He concluded that it was also irrational, and enjoined its continuation. He declared it unconstitutional and fundamentally held that the Constitution of the State of Texas requires an equal access to wealth. I won't read

the entire judgment, it's quite long, or the declaration of unconstitutionality, but in essence that's the sum of it. There has to be equal access to wealth by all districts and all children who are educated in the free public schools in the State of Texas.

Now the state takes the position that the judge fell into error, and that is not indeed what the Constitution requires. They contend that much like the argument of the majority in the Supreme Court opinion in *Rodriguez* that indeed there is no fundamental right; that although we have an education clause, it does not grant a right to an education; it simply mandates an efficient system. They also claim that it is a rational system, and they finally claim that there is no close or direct correlation between access to wealth and educational performance by all students. They have evidence in the trial court record that on the TEAMS test (which stands for Texas Education Minimum Skills Test, as I understand it) there are not high correlations between the wealth of the districts and how well the students in those districts do on that test; therefore, being in a poor district doesn't necessarily harm the student. That's the argument on the other side. The procedure or posture of this case is that it was tried for ten weeks in the winter and spring of 1987. A judgment was entered in the spring of 1987, findings of fact were completed in the summer of 1987, the case was briefed, and went to the Court of Appeals in Austin to be argued. It was argued I believe on April 20, 1988. At that time, or shortly thereafter, the Court of Appeals mandated the district court to make additional conclusions of law about an Article 7, Section 3 of the Constitution of Texas which authorizes the creation and gives certain taxing powers to local districts, which the district court did on June 6, 1988.

Although I spoke to the judges of that court this very Wednesday and asked them to please decide so I'd have something to tell these people about what they did, they have yet to decide that case. The Austin Court of Appeals has the *Edgewood* case under advisement, and there have been no legal developments in this case since the issuance of Judge Clark's supplemental findings of fact, conclusions of law, in June 1988. At this point, we have a judgment, an order by the district court that the current system of financing education in Texas is unconstitutional. It violates the Constitution of Texas in that it violates the education code because it is not efficient under the terms of Article 7, Section 1. And because he found that there was a fundamental interest at stake under the Texas Constitution, it violates the equal protection provisions, which are the Texas Constitution Bill of Rights, Article I, Sections 3 and 3A. And he has declared it unconstitutional and ordered that it be changed. There are certain things that need to be done by September 1,

1989. And if those don't get done, the order provides for other relief as of September 1, 1990.

So that is where we are in a nutshell, in that little more than ten minutes — the essence of the legal arguments and the legal analysis presented in this case. Thank you very much.

Questions and Answers

Dr. Vandiver: The plan is for the next six or seven minutes the panelists will talk to each other about the whole problem revealed in the past discussions and after that, we will turn the floor over to questions from all of you with the intent of being through at 10 o'clock.

Gentlemen, do you want to kick off, or let me start with a question of the Commissioner. Since you are under the gun, as it were, Mr. Commissioner, and you mentioned poignantly of the fact that money has never actually been thrown at this case, let me ask you if you feel that there are other sources that we could tap to support education that have not yet been tried? Taxation is obviously one, and in the school districts it's gone too far. What else can we do?

Dr. Kirby: The only two sources I know of that the State has to get money, and it's really one source, and it's the people. And the only way to get money from the people is for the people voluntarily to donate money to the state or for the state to use its authority to take it away from the people by taxing them, so I know of no other way to get it.

I'm not sure that there's a great swell of desire on the part of the people of this state to make donations to the tune of billions of dollars, so I would assume that the only vehicle to get the money would be taxation. Now, if I might, I would like to raise an issue with one of the last things my colleague said about the state being ordered to change the system. I don't read in this declaratory judgment that we were ordered to change the system. I simply read in here that the system was found to be unconstitutional and that we were ordered to send no more money out under an unconstitutional system after September 1. The courts didn't order the Legislature to do anything. It's up to the Legislature now to decide whether it wants to do something or whether or not we're not going to have money flowing out there.

Mr. George: That's correct. The injunction is that the current system is enjoined after that time from operating which I don't know whether that is a distinction without a difference, but, obviously, if you don't operate the existing system, there would probably be the need to implement

some other system. This would probably have the creation of a problem under the federal Constitution at that point in any event. Technically, the only thing a court could do under these circumstances, at least initially, is to enjoin the existing system.

Dr. Kirby: I would argue that under the federal Constitution, education is not even a right; that's a state's matter, so the federal government wouldn't have anything to say. And if, in fact, the state quit spending state money, we would save \$5 billion of state money and not even have to have that particular situation. I'm not advocating that, certainly, I'm just saying under the court case as I read it, the Legislature has great latitude. Now the reality of it is that as a society, as a people, we've got to have academic excellence in this country. Long ago we could rely on oil and gas and agriculture, not just to provide money but to provide large numbers of jobs for the undereducated. And fifth grade drop-outs could always get a job in the oil patch or the cotton patch, so education was not so important. Today, engineers are unemployed in the oil patch, and unless our children get a high quality education they are not going to be employable, and they are going to be in the criminal justice system or on the welfare system. It is inherent that the people of Texas sue the Legislature, in fact, devise a system, so we can have high quality education.

Mr. George: I think it's fundamental to, in dealing with the legalization of this problem, to realize that the courts generally only deal with the distribution of the money in the system. There has been no determination about a legalization of requiring more money to be put in. All that Judge Clark has ruled is that what is in the system needs to be distributed differently, and that it's unconstitutional to distribute the existing system. I hear Commissioner Kirby saying that we have a fundamental problem — the distribution of what we've got in the pot and the pot's not big enough to deal with the problem generally. And if we had a system that provided the rationale I think the court's decision leads you to, which is that we somehow take all the wealth that is now currently available, put it in one pot, and distribute it equally throughout the state on some sort of need or per capita basis, that still wouldn't solve the problem as I understand it. Is that what you're saying, Commissioner Kirby?

Dr. Kirby: That's right. In the first place we believe the current system is constitutional and that's the prerogative of the Legislature to deal with it, but the problem we have is that in this particular order the judge simply has said that the most money available anywhere has to be available

everywhere else at no greater tax effort. Now, the dilemma you have is devising a system, given current constitutional constraints, that accomplishes that. And that's when you hear discussion about the order forcing six mega-districts or something like that. That's not in the order per se, but that's simply one example of what you might have to do to equalize the tax base. You would probably have to get to some sort of a system where you have 100 percent state money. Not allowing local money in the system would be another way to do it. Another kind of thing you could do is simply, as you're indicating, take all the money and what you have to understand is that there is more local money in the pot now than there is state money. That's part of the problem, Richard, is that the state is only now slightly over 40 percent paying for it and the local districts are well beyond that. And so, taking money from local districts in one place and giving it to other local districts creates problems. For example, that money comes from property taxation, and there's a constitutional prohibition, an amendment, that we passed for no statewide property tax. So you have a lot of dilemmas to solve what the judge is advocating.

Mr. George: One of the things I wondered, somebody may know the answer to that question from reading the material in this case, is what would happen if you had a system that took the average tax rate throughout the state and applied it equally across the state. What would that do to the pot of money?

Dr. Kirkpatrick: Well, in our wealthiest districts it would raise obscene amounts of dollars. No way they could even begin to spend those kinds of dollars. As the commissioner said, we don't have recapture; it's prohibited by our Constitution. Comptroller Bob Bullock is going to be here this afternoon and he's going to be laying out for you a proposed solution to the problem that many of us in the educational community have been working on. It's very similar to the plan Dean Mark Yudof, who will also speak to you later today, has advocated on the Governor's Select Committee. It's a program that would equalize up to the ninety-fifth percentile of wealth. Let me explain that. If you were to chart a line graph chart of the taxable property value per student in the state, it starts off very low at about \$20,000 and goes pretty much on a straight line up to about \$450,000 of wealth. That last 5 percent of districts just shoots straight up because of the tremendously wealthy oil communities and such. We feel there is no way and no compelling reason for the state to try to equalize up to that high level. We do think it's within the realm of possibility to equalize up to the ninety-fifth percentile and phase it in over a five- or six-year period. And Mr. Bullock will be speaking to you

about that this afternoon. We believe that if the Legislature were to adopt such a program and, while it does exclude about 5 percent of the wealthiest districts from the program, that it would be acceptable to Judge Clark or to the Supreme Court or whoever has the jurisdiction at that time.

Dr. Kirby: Richard, I think that perhaps is an important distinction to raise to this group, and that is the state never argued that there were not great disparities. What the state argued is that those disparities tended to be at the extremes. And that you really had the majority of districts, or if you looked at the 75 percent mid-range, there were only a few hundred dollars differentiation between what was available, but it tended to be at the extremes. The judge didn't accept that argument, but nevertheless that is what the state was arguing. But clearly, regardless of what alternately comes out as we appeal this through the appeals court and ultimately to the Supreme Court, something has to be done about those school districts at the low end. Absolutely, they have to have additional money. But my argument is that we simply can't look at the districts at the low end; that's why I say we've got to look at the entire problem. If you look at the cost of education today; what it costs to run a basic program, not a quality program, but a basic program, our system is several billion dollars below that. And so it's going to take dramatic amounts of money to really get the system up there where we're providing high quality education for all our children. It's going to take the people of this state to have the commitment to do that. Now it will probably take several years to do that, Richard, and I think the poor school districts are being very reasonable in saying we're willing to look at a multi-year plan, and I think the poor school districts are also being reasonable in saying we don't think you have to go as far as the literal interpretation of Judge Clark's version.

Question: What is required by a basic educational program?

Dr. Kirby: What we are talking about is for school districts to have adequate funds; to hire teachers who are of sufficient quality; to have those teachers in sufficient proportion to children; that there's a reasonable pupil/ teacher ratio so they can deliver education to children, so the children can not only have the ability to learn to read, to write, and to do arithmetic but to think and be responsible citizens. One of the greatest problems we have today is that there is not adequate self-responsibility. People are not being responsible for the consequences. If we are going to continue as a society and if we are going to improve as a society, our people are going to have to be responsible for their behavior. All of that

goes into what we are talking about in providing a basic education program. Now in the Judge's order, the Judge, in fact, picks a numerical figure that he cites as a target that certainly ought to be considered, and that target is \$3,500 per student that we ought to be able to deliver in this state. We're not far off from that at this point in time, Richard, if you talk about looking at the entire pot of money. But the difference is in lots of places they have more than \$3,500 and in a lot of other places they have significantly less than that. And the argument becomes do you take those school districts that have more than that and that have lots of extra high quality kinds of things, and do you take that away from them to give to poor school districts. Do you, if you will, take this situation and level down to where everybody is at some median range or should you really put additional funds into the system more adequately? That's where it's going to cost a lot more money.

Dr. Vandiver: When you speak about teachers you are also talking about the general programs and facilities: buildings, lab equipment, libraries, that kind of thing. It must be really bad in some of the poorer school districts.

Dr. Kirkpatrick: There are some awfully inadequate facilities that exist out there among the poor school districts.

Question: Are the financial inequities between the various school districts in our state correlated with the levels of illiteracy that are so alarming, not only in our state but throughout the nation?

Dr. Kirkpatrick: Let me reiterate one of the points I made, sir. When you exclude Houston and Dallas from the picture, you look at the number of children who come from homes that are below the poverty level in terms of income. There are a total of 978,000 such youngsters in our state. Well over 500,000 of those are in the 300 or so poorest districts in the state, about one-third. So there is a disproportionate number of poor children in poor school districts. It's a given that their educational needs are such that it costs more to get them through high school and to get them prepared for higher educational opportunities or for the job market.

We know that approximately 35 percent of our students are not finishing high school. As Commissioner Kirby said, the opportunities for jobs for those children are very limited. Our Legislature has set a target of reducing that dropout rate to no more than 5 percent a year by 1995 or so. Those of us who are in the school districts are developing plans and searching for alternatives to keep those children in school.

We're finding that there are some things we can do without money — we can do our jobs better in some ways. But some of the things it will take to intervene in those children's lives at an early age — we can pretty well predict the child's going to drop out at third grade — will mean getting in there and doing some intervening, some enrichment, and some remediation, working with parents, and counseling. Those kinds of things cost money. The other area where poor schools are significantly behind is technology. Now there are some marvelous computer programs available that will help us teach children better and challenge children from the slowest learners to the fastest learners. But it's expensive — it's very expensive. And we don't have the resources in the poor school districts to put those in our schools.

Wealthier districts are doing that. We feel that those kinds of things are essential if we are going to reduce our dropout rate. You all have heard the statistic that about 85 percent of our burgeoning prison population are high school dropouts. Most have about a sixth grade education.

Dr. Kirby: Richard, they either make a living or take a living, and you can't make a living if you don't have an adequate education.

Question: Yesterday in Austin there was a meeting of new legislators and returning ones and the four major chairs in the House and Senate who will be dealing with this. They all agreed that forced consolidation would not get anywhere; but at the end, the chair of the Senate Education Committee said that the Texas Commission on Education should have the authority to say that there are some districts that do not have enough wealth and therefore should probably be attached to a more wealthy district adjacent to it. I know it's a very controversial issue, but it would be interesting to hear comments on it.

Dr. Kirkpatrick: Well, we know there are lots of poor districts whose neighbors are very poor, too, so if you consolidated them, you would just have a larger poor district, and it really wouldn't solve any problems.

Mr. George: I think from a legal standpoint, the Legislature's power to deal with the configuration of districts is very great under the Constitution. If the Legislature wants to, for example, we have in Dallas County a relatively poor district, I believe it's a Wilmer-Hutchins district, and some very wealthy districts. We have in Harris County a very poor district, I believe it's called the North Forest School District, and we have some very wealthy districts. I think the Legislature could, if it so

chose, abolish one of those districts, consolidate them, and put them together from a constitutional problem. It has in El Paso, the Socorro district, probably *the* poorest district in the state, and it could consolidate it with El Paso or others. And I think that would ameliorate the problem around the edges; however, honestly, there are vast regions of the state that are poor, and you can keep consolidating for days without getting to one with much money.

Kirby: Your example of Socorro with El Paso is back to Richard's point because both El Paso and Ysleta and that entire area out there are basically all poor districts, so that would not solve the Socorro problem if you did that. There's not any more sensitive issue for the Legislature to deal with than school consolidation. And, in fact, we've got over 1,000 school districts in this state, and the vast majority of them are rural school districts. A school district out in a rural area is far more than a school. It's the center of community life; it's often the largest industry in the community; and I guarantee you, if you really want to see revolution, start trying to deal with small schools and taking away their football team and taking away some of those kinds of things. I was not sure I was going to get back to Austin alive a few nights ago when I was out in Collin County in a Westminster School District, which is a district that we have dropped from the accreditation standards and by doing so we now will have cut off all money by the end of this year and they will be forced to join with someone else as a result of that. I guarantee you if you want to see people very, very upset and ready to kill, talk about consolidating their district. So while the Legislature has the ability to deal with this, I'm not sure that the will is there to deal with it, because it is such a sensitive issue.

Vandiver: Thank you all very much. I think it's been a stimulating hour. Join me in thanking the panel.

Panel Two:

SHOULD THERE BE EQUAL EDUCATIONAL
OPPORTUNITY?

FRANK WOZENCRAFT, MODERATOR

WE HAVE THREE VERY DIVERSE BACKGROUNDS AND EXPERTS HERE to bring us up-to-date on varying views of what, as Chrys said, he wishes to be the philosophical question of whether we should have an equal education and what we mean by equal. Well, for a philosophical society that is certainly appropriate because ever since the days of Socrates a main function of philosophers has been to challenge accepted truths. There are some truths that are always so universally believed and for so long a period that nobody discusses them at all. They take them for granted. And here we have a nationally accepted truth that there should be equal opportunity for education and, indeed, equal education. We also have another nationally accepted truth, that there should be excellence in education, and we should do whatever possible to foster excellence so our youngsters can improve the America we are handing over to them.

Here we have these two nationally accepted truths in direct conflict in many cases when, as Dr. Kirby mentions, we have a relatively finite pie. And those funds can be expanded, but until they are, they must be divided. It's not possible to do all you wish, either toward excellence or toward equality. Now that indeed is a problem for philosophers. Perhaps the philosophical level is the only one at which it can ever be solved. I doubt if it can be solved practically at the rate we've been going so far. It is true, of course, that we are as Adam said to Eve when they were leaving the Garden of Eden, "entering a period of transition." I guess we have been in transition here for quite awhile, and we are going to be in transition for quite awhile more from the looks of things as the *Edge-wood* case ferments. As that happens, it is picking up on the very firm backlog, as Jim George mentioned earlier, of the 1973 *Rodriguez* case. We are privileged to have philosophers on both sides of that case — Charles Alan Wright was special counsel for the state in winning the *Rodriguez* case in the Supreme Court. Mark Yudof, our first speaker today and the dean of The University of Texas Law School, was one of the co-counsels for the plaintiffs in that case, and while he didn't win that case, he's been doing pretty well with it ever since. As we can see, the case is very much alive and with us today.

Mark will be our first speaker. He has been associated with The University of Texas Law School since 1971 with some time off for good behavior now and then as a visiting professor at other places. He's an author of the book *Educational Policy and the Law*. This has been a specialty of his among his many specialties. As dean of our Texas Law School he's been very actively involved in this whole maelstrom of what we're going to do about the *Edgewood* situation. Our next speaker will be Dr. Billy D. Walker who brings to us hands-on experience of a lifetime in dealing with the Texas school system. After being a much decorated veteran in Vietnam, he received a doctorate in education at Texas Tech. He has been working in just about every capacity you can think of in the schools. He's now the deputy superintendent for business affairs of the Ector County Independent School District. He's also research advisor for the Texas Center for Educational Research, and he's right in the middle of everything that's happening in the state in education today. Among other things he's been a witness in the famous *Edgewood* case that we've been discussing. He's the author of a book on the basics of Texas school finance which sounds like a very useful title for all of us here today. The last speaker is Dr. Ron Ferguson who is Professor of Public Policy at Harvard. He was graduated from Cornell and took his doctorate from MIT in economics. He also commutes to MIT as a visiting professor of urban affairs. Dr. Ferguson has had a great opportunity here to review the treasure trove of information and statistics that have emerged from the Texas Examination of Current Administrators and Teachers, sometimes fondly known as TECAT. Dr. Ferguson has reviewed already the outcome of this test on the 116 school districts that have been involved in the *Edgewood* case. He's going to give us a preview of his preliminary findings and what the future holds.

PHILOSOPHICAL AND LEGAL BASIS FOR EQUAL EDUCATIONAL OPPORTUNITY

MARK YUDOF

WHEN CHRYS TOLD ME I HAD TEN MINUTES I WAS TEMPTED TO come out against equal educational opportunity, figuring that was the only way that I could stay within the ten minutes. I will try to talk somewhat about equal educational opportunity at a philosophical level and perhaps give you some ideas about how you may judge today's discussions.

The problem I think is that virtually everyone agrees that equal educational opportunity is a fine idea and, since the Brown decision in 1954 and even earlier, it had become a permanent fixture in terms of our cultural values. The problem is that once you begin to talk about it in detail, you find the consensus quickly evaporates and the phrase "equal educational opportunity" is something of a Rorschach test where people look at the phrase and sort of superimpose their types of values to interpret equal educational opportunity.

Part of my purpose today, then, is to talk about some of these problems that mask our disagreement. I also think that my job is, in part, to sow a little confusion which I'm fairly adept at doing. I want to quote the only philosopher that I will quote today, and that's the well-known philosopher Yogi Berra. Yogi said, "If you don't know where you're going, you might not get there," and I think that's true. Within our current resources there are all sorts of choices, and I think people ought to be thinking about those choices and not just the dollar figures.

The concept of equal educational opportunity really comes out of the nineteenth century. It's original meaning is quite clear. It had to do with common schools. It had to do with compulsory education. The idea was that if you exposed children to a common curriculum, to a common set of ideas, that you would have a more coherent nation and with that common experience in public schools, if you take into account intelligence, motivation, perseverance, and the like, good people would make good use of that educational experience. One aspect of that which went well into the twentieth century and indeed into today's Texas is the idea that public education is in a way somewhat like a safety net. The state provides the minimum foundation for education, hence minimum foundation programs since the 1920s, and it is up to the school districts or families to do something beyond that. The state provides the minimum, whatever that minimum might be; individuals, families, and school districts can do better.

Now the concept, however, of equal educational opportunity has undergone a number of changes, and it does get complicated. Let me just go through some of the variations and permutations.

Since 1954, I think the most common definitions have been negative definitions. It is not that *X* has to be treated equally to *Y*; it is that there are certain variables or factors that may not permissibly be taken into account. Therefore it may be that you may not discriminate in the allocation of resources by race or gender. That does not say the allocations are equal; it just says among the factors you may not take into account are race or gender or handicapped or other sorts of criteria. In many ways the *Edgewood* decision embodies a simple though difficult to fulfill negative definition of equal educational opportunity. That is, the state does not need to distribute its funds equally, but it may not discriminate in the allocation of funds by the wealth of school districts or by the wealth of individuals. That is the principle of fiscal neutrality. That is just like you may not take race into account. You may not take into account the fact that Laredo is a poorer school district than Highland Park. Beyond that, you can take into account all sorts of characteristics — child characteristics — and that would be perfectly permissible. And the problem the court is getting at is one which is very difficult in a democracy. You might think about it in the election context, that is, the relationship between private wealth and certain rights and characteristics of the public sector. It is like how we worry a good deal about election financing, the influence of money — private money — on public outcomes in elections. The problem is somewhat similar here. The question is one of private wealth and how it has an impact, if any, on the public distribution of education funds.

Another aspect of this is that the non-discrimination standard does not, in the eyes of some at least, always solve the problems. You might think about how difficult it becomes to speak of equal opportunity in terms of these negative aspects. For example, you have a set of stairs into a school. You have a handicapped child, and you have normal children. In a way they have equal access to the steps. We all know that the handicapped child in a wheelchair can't get up the steps. What does it mean, then, to have equal educational opportunity in that context? What if the children have radically different characteristics? What if there are great disparities and outcomes even though you have equalized the opportunity? Is the process flawed, or is that what you expect of a system that looks to inputs for opportunities and not to outputs?

Now one of the things that makes this so pressing and what you do need to focus on is the unfortunate fact of life that if you show me a baby

in a crib, one-month-old, and give me the socioeconomic status of the parents, the schooling of the parents, perhaps the number of square feet of carpeting in the house, and the ethnicity of the child, you can do more to predict that child's performance in public schooling than you can by any in-school factors — more than class size, the location of the school, the teachers' characteristics, and the like. There are substantial gaps in our socioeconomic and racial groups from the first grade on, and they widen significantly after the first grade. That is not to say there is no progress, but that is essentially the problem of the schools ameliorating those differences.

That led in turn to other definitions of equal educational opportunity, and these are really in a sense flying under false colors. These definitions have very little to do with the word *opportunity* and a lot to do with the results of the process — less to do with the inputs, the dollars, the resources into the process than what comes out at the other end. Many people have a tendency to try to apply business or corporate models of efficiency to determine whether the education system is doing its job, and there are a number of candidates for that.

One, which nearly everyone rejects, is equal treatment. You take the pie, you divide it up by the number of students and whatever that comes out to, \$1,500 a student, everyone gets treated the same. A second would be to give to each according to ability or need or perhaps according to his or her maximum personal achievement. That, of course, would be a standard of sorts and one which would presumably require dramatically unequal resources. If you wanted everyone to get to this outer level of achievement, you might have to pour ten times as much in one person as in another. A third type of definition which many have advocated really gets to this problem of ethnicity, socioeconomic status and race. It says that the outcome should be that success and failure should not correlate with certain types of group characteristics. Failure would not be eliminated from the system, but it would not be correlated more with low income children than others. And success, obviously, would be in the system but would not be correlated more with high income children.

Now what are the problems with this? One, of course, is expense. When you start talking about needs and optimizing achievements, you're talking about tremendous outlays of money and the fact is, we don't do that in any area. We don't have optimal highways, and we don't have optimal police protection, and we don't have optimal fire protection. We're talking about a tremendous amount of money. Second, we're talking about a great deal of ignorance in the social science community. We don't know a lot about this education production

function. We don't have good evidence of what sorts of resources work very well or at least have a substantial impact on these achievement gaps. I'd venture to say that with HB 72, there is no significant scientific evidence to show that a reduction in class size from twenty-five to twenty-two has any significant impact on achievement. And that's true of many of those reforms.

Another problem, of course, is that we have some very good teachers, but we also have many poor teachers in the system. The lowest group by SAT's in the college population consists of teachers. If you want a lower group you have to go to gym teachers — a lower group than regular teachers. That is a function of the types of people being attracted by these salaries and so forth.

Now in terms of the alternative visions in this area, there are a number of them, and I'll just mention two. One, as we talked about, is power equalization. That is, at the same rate of taxation in poor districts and rich districts, the yield would be the same in terms of dollars. The other, of course, is a beefed-up minimum foundation program; the type that I think Will Davis will talk about.

I think, though, that you have to focus on a couple of very important aspects of these programs. The notion of fiscal neutrality, which is what the *Edgewood* suit is all about, has very little to do with education. Fiscal neutrality means that at the same rate of taxation, you will get the same yield of dollars. It does not guarantee anything to those children in those districts. It simply says that taxpayers will be similarly situated. So fiscal neutrality in some ways is not a definition at all of equal educational opportunity.

Second, you have to decide who is going to make these decisions. In my judgment, it's very important that they be made at the local level. Many of the alternatives to power equalization would centralize the power at the state level. I think that is problematic. In other words, one of the ways that you can define the minimum is not with respect to some standard of minimum education but to ask the question who should decide — the parents, the school district, the state of Texas, and the like.

My own view of the studies done by TEA and other agencies to define minimum education, which I think was a question that was asked earlier, is that basically those studies cannot be defended. They are not scientifically rational. They include many value judgments.

The last thing I would like you to think about is quality and equality for whom. This is as much a problem in education as it is in medicine. In medicine, you have to decide whether you want \$100,000 for a liver transplant or you want to spend that money for 2,500 mothers who may

need pre-natal care. Where is it more effectively spent? The same thing is true here. It may cost \$50,000 to teach a handicapped child to cook meals, get dressed in the mornings, tie his shoelaces, and do some rudimentary things. For that \$50,000 you may be able to provide a supplement to twenty gifted children. There is no simple way to solve that problem, no matter how sympathetic you are to the handicapped child, that does not tell you how to solve that very, very difficult resource allocation question. Thank you.

THE BENEFITS AND COSTS OF EXCELLENCE IN EDUCATION AND ITS ALTERNATIVES

DR. BILLY D. WALKER

OUR METHOD OF SPEAKING TODAY MIGHT OFFER US A LESSON IN equity. I see that we are allotted ten minutes apiece. That's called horizontal equity. Some of us are very slow speakers. If I could be allowed twenty minutes to speak, then we would have vertical equity. I didn't know Frank was going to mention my war record. It doesn't have anything to do with my speech. I always tell people I was an infantryman in Vietnam, and I've been a junior high school principal. I'm very thankful for the experiences, I'm thankful I survived, and there's no way in hell you will get me to do either one of them again.

I am happy to be here because as I've made many talks to many groups around the state and around the nation, I always find myself to be put in the position of a practitioner.

Excellence is what our topic is today. Like Dean Yudof, I'm going to quote one philosopher. I was going to quote two, Pogo was one, but I'll go over that one to Plato.

Plato said, "The direction in which education starts a man will determine his future life." That's a very cogent statement. It is probably worth mentioning that Plato does not elaborate upon the most appropriate direction, nor does he delineate the type of education to which he refers. It would have been more convenient for the thesis we address today if Plato had stated: "The economic productivity toward which an excellent education starts a man will determine his future earning potential and the future strength of the economic system"; or, "The humane growth toward which an excellent education starts a man will determine his future level of social consciousness and the future reduction of intergenerational transfers of ignorance, prejudice, and poverty"; or, "The human capitalization return on investment toward which an excellent education starts a man will determine his future productivity and the future societal aversions of costs for the public health, welfare, and penal systems." But Plato was not so kind. It is left to us to define the direction in which education points a man, and history tells us that the task has not been untroubled.

For the past century and one-half, as Dr. Kirby referred to, the public education system has been a major institution in Texas society for the development and maintenance of public virtue, republican democracy, economic growth, and social consciousness. As such, the public school system frequently has been the center of philosophical struggles arising

from political, social, and economic values and beliefs. One of the common areas of concern has been equal opportunity, or equity, and equity issues in public education often represent a microcosm in which we can view the larger principles of Texas society and culture at work.

Equity issues can be divided into three "generations." "First generation," as Dean Yudof referred to, was the equitable availability of schooling. The common school movement of the nineteenth century, which reached Texas after the Civil War, was a response to the availability issue. However, it was not until well into the twentieth century that availability of free public education was universal. Throughout most of the "first generation," concepts such as equity, quality, and excellence were alien to the thinking of Texans and most Americans.

Only after the "first generation" equity issue of availability was solved substantially did attention turn to the "second generation" issue of equality of resource inputs. This is what *Edgewood v. Kirby* and *Rodriguez v. San Antonio ISD* is all about. School desegregation, civil rights emphases, and voter rights emphases in recent decades provided the impetus for concern about equality of educational opportunity in terms of equitable funding of the public schools. Throughout most of this "second generation," concepts such as quality and excellence continued to be foreign to the thinking of Texans.

The contemporary emergency of "third generation" equity issues focuses on educational processes rather than inputs. Emphasis is seen to shift from quantity, availability, and equitable inputs, to quality. Concerns center on such matters as use of school time, quality of teaching, course content, teaching methodologies, and so on. There is a view that adequate resources are necessary, but not sufficient, to ensure increased pupil achievement. More money does not equal more output; output depends upon how the monies are used. How resources are used is a central concept worth repeating. The current buzzword in "third generation" equity is effective schools.

As one country philosopher I once knew was fond of saying in order to provide transition: "Now, I said all that in order to say this." Excellence is the new Grail in public education, the epitome of "third generation" equity, the New Jerusalem in which a reformed and redeemed public education system is expected to dwell. The immediate questions then arise from the lips of pragmatic Texans: What are the benefits of excellence? What are the costs? What are the alternatives?

The anticipated benefits of excellence in public education do not differ from the classical lists well-recognized by educators and economists alike. Public education is an investment in human capital. It

increases the productivity of the individual and collective labor force, thereby strengthening the economic system. It reduces the future need for other costly public services such as health and medical care, welfare payments, and the state and local penal systems. It increases the social consciousness of our citizens so that generation by generation we adopt more enlightened views on racial equality, women's rights, the ecology of the planet, work environments, and so on. It is essential to the preservation of individual freedoms and effective individual participation in our democratic processes. The contingent benefits of excellence are even more economic productivity, and so on. To mix book titles, the expectation is to "win the brain race" in the "global village" in which we now live.

Next we turn to the costs of excellence, where we encounter a conundrum of great complexity. What I am about to say on the subject of the cost/quality relationship will probably not endear me to many of my colleagues in the education profession, at least not initially. That is, within the range of current spending levels in public schools, there is no meaningful relationship between the amount spent and student learning. In that case, one might state, there are a few questions I would like to pose.

First, if there is no meaningful relationship between the amount spent and student learning, why do some school districts spend more than others? Because a cost/quality relationship is thought to exist. Lower class sizes, higher teacher salaries, more aides, more support and maintenance personnel, greater amounts of supplies and equipment — all these are thought to be hallmarks of a "better education." This belief is the basis for much school finance reform and equity litigation. However, the presumption has been challenged in recent years as it is found that what we do and how well we do it are equally as important as how we fund it.

Second, if spending is irrelevant to achievement, why worry about the costs of excellence? Again, dollars are necessary, but not sufficient, to bring about excellence. This does not mean that funding considerations are irrelevant; they are merely secondary in the matter of excellence. If we used input measures of excellence alone, we would likely find that the public education system needs 50 percent more dollars to be "excellent" in terms of class sizes, more support and administrative personnel, and better pay for teachers, administrators, and support staff. However, when we apply output measures of excellence, the results are ambiguous relative to spending. We need to be concerned about costs, but principally within the contexts of productivity and efficiency received for the

investment made. While it is true that "good schools" will cost more money, "good schools" will likewise produce results commensurate with the investment. But "good schools" take more than money to become "good schools."

Third, if there is no clear nexus linking spending and learning, why be concerned about fiscal equity? Stated simply, equity is a concept of justice, not excellence. Equity is also a concept of efficiency, which may or may not bring about excellence, depending upon the sufficiency of resource inputs. In public school finance, we recognize two types of equity — commutative and distributive.

Commutative equity was a dominant concept until the current century. The idea is based on the belief that the pattern of rewards in a free society is neither just nor unjust; they are not the result of any design on the part of anyone. In school finance, commutative equity means that the exchange of resources is indifferent to considerations of educational needs, taxpayer equity, and so on. No redistribution of dollars occurs. Laissez-faire self-interest exists, usually in the form of significant local leeway, local choice, and local funding.

Distributive equity embodies three subconcepts — equal distribution, restitution, and positivism. The first two provide vertical taxpayer equity, and the last provides vertical public equity. The concept of equal distribution generally refers to fiscal neutrality alone, while the principle of restitution embodies such school finance provisions as fiscal neutrality, uniformity of effort, cost variations for delivering comparable educational services, diseconomies of scale, and municipal overburden. Positivism, as a principle of distributive equity, subsumes all the foregoing concepts plus pupil need adjustments for corrective programs (for the handicapped) and compensatory programs (for the educationally or economically disadvantaged). Therefore, it is seen that equity is a concept much broader than simple fiscal equalization. In addition, the primary purpose of fiscal equity is justice, not excellence.

Finally, we turn to the question of alternatives. If we cannot afford a 50 percent increase in funding to give an *ex ante* impression of excellence on input measures, even for a 50 percent increase in productivity, what options are available to us in the pursuit of excellence? The logical alternative is improvement in efficiency as a source of financing, especially in this era of tight budgets. At the same time, equity must be served. A key question is whether, on grounds of pure efficiency, the last dollar spent in a high-expenditure district results in as much student achievement as it would if it were spent in a low-expenditure district. If the laws of diminishing returns and marginal utility are at work, it may

prove that greater equity will also increase the efficiency of each additional dollar spent.

In summary, it can be concluded that excellence in public education will produce benefits greater than costs, especially if efficiency is improved, and equity is a key factor in efficiency. However, as Newton's third law states, for every action there is an equal and opposite reaction. As the values of adequacy, equity, and efficiency are pursued, we must be cautious to protect two other normative values characteristic of Texans. One is legitimacy, or the perceived congruence of the goals of public education and the basic values of society. People will support institutions that they perceive to be valid and credible in the manner they operate, but Texans generally will not support any institution that requires infinite resources. The other value is liberty, or choice, meaning local control of the public schools. The degree of excellence that will be supported by Texans in the future will be a result of the dynamic tension between and among these competing values.

DOES MONEY MATTER: SOME PRELIMINARY EVIDENCE FROM TEXAS

DR. RON FERGUSON

IT'S A PLEASURE AND AN HONOR TO PARTICIPATE IN THIS discussion. I didn't realize when I was initially invited that the work I was doing would be so central to the discussion of the day. I thought this would be one panel among several and other panels would cover other topics.

Let me begin by emphasizing that the results I'm going to talk about are preliminary and should be looked upon as tentative. The reason that they are preliminary and tentative is that the analysis is based upon only 116 school districts that represent both high income and low income districts but are not a random sample of districts from around the state. As I proceed with this analysis for the whole state the results may change some, but they are suggestive enough to at least have some preliminary discussion. To tell you the truth, I'm not expecting the results to change by a lot, but neither do I want a lot of publicity for the current version. That's one reason why the tables that come around simply have pluses, minuses, and zeroes rather than numbers in those slots when we talk about the effects of various things on student performance.

My field is state and local economic development policy, and it's starting to spill over a little bit more in education than it has in the past. Part of the reason is that education is more and more becoming the focus of state and local economic development debates. If you look at the changes in real income, for example, among people with high school educations and less since 1973, there have been substantial declines. It's no longer true that you can be assured of making a livable wage if you have less than a high school education. Typically you need more than a high school education, so if we think about assuring the standard of living in our future much more than in the past, we've got to assure people an education that's at least sufficient to allow them to participate in jobs of the future.

I came to this work through a project that a student of mine was doing for Craig Foster. Once the student was finished with it, I augmented the data set and have done some further analysis on it. It's an important and unique data set to the extent that it's the only one I know of that has this good a match between the demographic variables — the family background and community background variables — and the school resource variables. Also, only Texas and Arkansas have ever tested all of their teachers at one time with a serious examination, so this is the only

time we've got a serious measure of teacher verbal performance to use to see whether there's any predictive power for explaining student verbal and other aspects of academic performance. There are a number of people who are interested in this, not only in Texas, but other places.

Dean Yudof mentioned that the academic literature has not produced much evidence that school and teacher characteristics affect educational outcomes, and that's true. Even the evidence that I'll present to you should be taken in the context of a broad field of other studies that have found results that are much less clear and that come out on both sides, so again, don't be too convinced by these results, they are preliminary and tentative. In any case, the handout that is coming around has in it three tables.

Let me begin by talking about the first table. What I've done here is use a statistical technique called regression analysis. It allows you to hold constant the influences of a number of variables in order to focus on the influence of one at a time. So the question, for example, is if I hold constant a number of things that affect student performance and then ask the question "what effect upon student performance will it have if I change the passing rate of the TECAT?" I can ask that question and isolate the effect of the TECAT, holding constant other school characteristics and other socioeconomic background characteristics. So let's go down through this table. I have average reading score results for third-, seventh-, and eleventh-graders. These are measured in percentiles scaled to be comparable to a national scale and again I'm going to focus on the signs of the results and not emphasize the magnitudes a great deal. You'll note the far left column is labelled independent variables, then under that we've got the list of things that I'm holding constant — "TECAT percentage of teachers passing" was the passing rate for teachers by school district, "property tax base per student," "percentage of adults with some college," "percent of adults who have high school degrees but no college," "per capita income," "students percent low income," "students per square mile," "students percent Hispanic," and "students percent Black."

The most consistent result and actually the most statistically significant result in this table was that the TECAT passing rate does have some predictive power. The passing rate for teachers on this examination does have a marginal effect on their students' performance on the TEAMS exam. The strongest effect was for seventh grade. The magnitude of that effect was that if you changed the passing rate for teachers by 1 percent, you changed the average percentile score for the school district by 1 percent. By implication, if you changed the TECAT Passing rate by 5

TABLE I

NOTE: THESE RESULTS ARE PRELIMINARY AND TENTATIVE
SIGNS OF EFFECTS THAT ARE DIFFERENT FROM ZERO
WITH 95 PERCENT (OR ABOVE) CONFIDENCE

DEPENDENT VARIABLES:	DISTRICT AVERAGE READING SCORE				
	THIRD GRADE	SEVENTH GRADE	ELEVENTH GRADE	DROPOUT PERCENT	PLANNING COLLEGE
INDEPENDENT VARIABLES:					
TECAT: PERCENT OF TEACHERS PASSING	+	+	+	0	0
LOG (TEACHERS PER STUDENT)	+	+	0	0	0
PROPERTY TAX BASE PER STUDENT	0	0	0	0	0
PERCENT OF ADULTS WITH SOME COLLEGE	0	+	+	-	+
PERCENT OF ADULTS HS GRADS WITH NO COLLEGE	0	0	0	0	0
PER CAPITA INCOME	0	0	0	+	0
STUDENTS PER- CENT LOW INCOME	0	-	-	0	0
STUDENTS PER SQUARE MILE	+	0	0	0	0
STUDENTS PERCENT HISPANIC	-	0	0	0	0
STUDENTS PER- CENT BLACK	0	0	0	0	0
SAMPLE SIZE	115	114	111	115	100

TABLE 2

NOTE: THESE RESULTS ARE PRELIMINARY AND TENTATIVE
 SIGNS OF EFFECTS THAT ARE DIFFERENT FROM ZERO
 WITH 95 PERCENT (OR ABOVE) CONFIDENCE

DEPENDENT VARIABLES:	REDUCED FORMS		
	TECAT PERCENT TEACHERS PASSING	LOG (TEACHERS PER STUDENT)	LOG (STARTING SALARY)
	1	2	3
EXOGENOUS VARIABLES:			
LOG (STARTING SALARY COMPETING DISTRICTS)	-	0	+
PROPERTY TAX BASE PER STUDENT	0	+	+
PER CAPITA INCOME	+	0	+
STUDENTS PERCENT LOW INCOME	0	0	+
PERCENT OF ADULTS WITH SOME COLLEGE	0	-	+
PERCENT OF ADULTS HS GRADS WITH NO COLLEGE	+	-	+
STUDENTS PER SQUARE MILE	-	-	+
STUDENTS PERCENT HISPANIC	0	0	0
STUDENTS PERCENT BLACK	-	0	0
TWO-YEAR PERCENT ENROLLMENT GROWTH	0	0	+
SAMPLE SIZE	115	115	115

TABLE 3

NOTE: THESE RESULTS ARE PRELIMINARY AND TENTATIVE
 SIGNS OF EFFECTS THAT ARE DIFFERENT FROM ZERO
 WITH 95 PERCENT (OR ABOVE) CONFIDENCE

DEPENDENT VARIABLE:	DISTRICT AVERAGE READING SCORE FOR SEVENTH GRADERS				
COLUMN:	1	2	3	4	5
INDEPENDENT VARIABLES:					
TECAT: PERCENT OF TEACHERS PASSING		+		+	+
TEACHERS PER STUDENT			+	+	+
PROPERTY TAX BASE PER STUDENT			0	0	0
PERCENT OF ADULTS WITH SOME COLLEGE			+	+	+
PERCENT OF ADULTS HS GRADS WITH NO COLLEGE			0	0	0
PER CAPITA INCOME			0	0	0
STUDENTS PERCENT LOW INCOME			0	-	-
STUDENTS PER SQUARE MILE			0	0	0
STUDENTS PERCENT HISPANIC	-	-	0	0	0
TEACHERS PERCENT HISPANIC			-	0	
STUDENTS PERCENT BLACK	-	0	0	0	0
TEACHERS PERCENT BLACK			-	0	
SAMPLE SIZE	114				

percent you change the average score for students by 5 percent. That can be a pretty significant difference between students whose teachers' performances differ significantly. The work that I'm planning to do will be based not just on the TECAT passing rate but on other characteristics of the TECAT distribution. I'm planning to expand and do that work for all over rather than just this 116, so those results should be even clearer in terms of interpreting what this means.

Class size also mattered in a statistically significant way for third- and seventh-graders but not for eleventh-graders. The property tax base per se never shows up statistically significantly. I should say what I mean by statistically significantly. Since we are dealing with probability when we do these estimations we want to ask whether we can be at least, for example, 95 percent sure that there really is an effect there — that the effect is different from zero. The results that I have reported in these tables, for example, where you see positive signs or negative signs, means that the result for that variable on that equation was one that was at least 95 percent sure of being different from zero. The number places where you'll see zeroes in these tables, we may be only 80 percent sure that it's really different from zero or some other level that's less than 95 percent sure. The zeroes in the table do not mean "no effect," they just mean the effect doesn't come through clearly enough that we can have a terribly high level of confidence that it's really there. As I elaborate the study, it will be fine-tuned. Larger sample sizes will allow us to be more certain about the facts that we're measuring. In any case, after you've taken into account the teacher competency scores and the class size, property tax base doesn't have any additional explanatory power and actually the coefficients and the levels of significance turn out to be pretty low for the property tax base. So it looks like money probably matters, but it matters mostly through teachers. The spending of money through teachers and paying high enough salaries to attract better teachers in terms of what these results say may be the most effective ways to improve student test score performance. Then again, that's only one dimension of academic quality. The ambience and the quality of the environment in the school should be something we care about, too, but that may not affect student test scores as much as teacher quality does.

So if you think about money for facilities that would be paid for through this property tax base it's not that they aren't important, it's that this evidence doesn't say that those expenditures affect reading scores. If we think about what it is about socioeconomic background that seems to matter, it seems that distinguishing districts that have a high number of high school graduates from those that don't, doesn't

seem to buy you a lot unless the districts have a high number of high school graduates who have a lot of college graduates or people who have had a lot of access to college. Here the percent of adults with some college is the measure of socioeconomic background that matters rather than the percent with high school. In both cases we're implicitly comparing this with the percent that have less than high school. It's as if you've got three pots and you're taking folks out of the "less than high school" pot and putting them either into the "high school" pot or into the "more than high school" pot. And "less than high school" to exactly "high school" doesn't seem to matter a lot, but from "less than high school" to "some college" turns out to be pretty important here. Also, at the other end, student percent low-income does have negative effect, but per capita income averaging after you've controlled for these other measures doesn't seem to have much effect here. After you've taken all of these things into account there's not much effect left for race. Race doesn't have much predictive power except for Hispanics in the third grade. It may be that the negative effect for Hispanics in third-graders goes away partly because of the drop-out problem, but it could be that there are a number of ways to explain that, too.

The summary in this table is that it seems that it is the tale of the socioeconomic distribution — low income, some college — that seem to have some predictive power here, and it's both the number of teachers and the quality of teachers that matter. You'll note in terms of statistical significance it's mainly again this "adults with some college" that seems to be the strongest variable driving both the dropout rate and the percentage planning to attend college.

Table 2 gives some evidence that money matters in attracting both numbers of teachers and quality of teachers. The bottom line of the table on the back is that there are differences in the TECAT passing rates for teachers by race, and teachers by race tend to be pretty well matched with students by race. Before you take into account the TECAT passing rate, race is a predictor of student performance. After you take into account the TECAT passing rate for the district, race is no longer a predictor of student performance, suggesting that one of the most important dimensions of differential access to educational opportunity for minority and non-minority children is the quality of their teachers. Some of the teachers who don't quite measure up in quality are of the same race of the children who are their students. One of the challenges will be to educate minority communities well enough that they understand the trade-off between better integrated teaching forces and better educated children. The impetus for having stricter standards for who

gets to be teachers in which districts, I think, will have to come from the communities, and that is an important source of difference that we can't ignore here.

Questions and Answers

Mr. Wozencraft: Thank you very much, Professor. I know we can all look forward to an expanded study that is likely to have a lot of really fascinating information in it. Right now, I'd like to ask Dean Yudof to comment quickly on what we should do about this legal conflict between these imperatives of equality and these imperatives of excellence. How do you avoid levelling down as a matter of law?

Dean Yudof: It is a very difficult problem. There is not much of a legal imperative toward equality. The legal imperative is toward equity and fiscal neutrality. I think, frankly, that sometimes the *Edgewood* case is used as a vehicle by people of vastly different agendas from what the court is talking about to promote their own vision of quality rather than equality. A second thing is it depends on your political reality. You could actually bring us to the 95th percentile of equalization this year for under \$200 million, and it is fairly easy to do. That is, you make Dallas a budget balanced district which means it gets no funds from the state. Dallas is at the 95th percentile and if you do that for almost no money at all, I say no money basically by redistributing state funds, you achieve that degree of equity. But that has a tremendous impact on the politics of it, because with Austin and Houston and Dallas right at that cutting line, it probably would be impossible, perhaps undesirable, to pass such legislation. As a practical matter, I think what you're saying Frank is right. You're going to have to equalize upward. People are not willing to cut back the major school districts in the state. The pie has to grow. It's a bad time for the pie to grow, but that's going to be the way it's going to be done. There is a conflict there, but I think what will happen is that quality will win out when budgets are short, and there will be inequalities and a gradual process of raising up the lowest districts.

Mr. Wozencraft: Dr. Walker, you were talking about our role in the global village. I have gathered that our nation's accepted truth of equal education is not necessarily shared around the rest of the world where they level people out a good deal earlier. In Holland in World War II, I was boasting to some friends about how America sought to get a high school education for everybody and their shocked reply was "who

sweeps your streets?" Their conviction was if you gave too much education beyond the eighth grade to people who would not have an opportunity to implement it later on, it would simply result in dissatisfaction. They didn't say revolution, but maybe they were worried about that. Now are these other countries changing with us now, are they also broadening the educational base, or are they concentrating more on the excellence of the few they can carry all the way through?

Dr. Walker: I'm reminded of the book we read years ago by Lawrence Cremin, the famous historian at Columbia University. One of his books was *The Genius of American Education*. That genius was an education for everyone. It may not have been the best of educations, it may not have been excellent, but it was a pretty good one for everybody. That was unique in the world, and it probably is still unique in the world. There are so many Third World countries, even with resources, who have not been able to use them to bring about an education system even for the best students much less for everyone. This is one of the geniuses of American life, the public education system developed during the nineteenth and twentieth centuries. In the other countries, I think there's a broadening of educational opportunities for all students in those countries, but still there's an emphasis on select groups who the resources will be spent on. We find today in our society a call to create the same level of excellence while at the same time keeping the same common denominator for everyone. That obviously takes a lot more money to have a good education for everybody and an excellent education for those it's appropriate for in terms of their own abilities. It takes a lot of money to do that. We've invested heavily in education in America, and we may be asked to do it again.

Mr. Wozencraft: I guess it's clear that how we work all these things out accommodating these various needs is a matter of good judgment. We all know that good judgment comes from experience, and experience comes from bad judgment. I gather from Dr. Kirby that we're getting better judgment all the time. Let me open the floor to questions.

Question: Dean Yudof, did you say that there are no studies that prove student/teacher ratios make a difference?

Dean Yudof: No, I said there were no studies that showed that a difference between twenty-five and twenty-two made a difference. That is, that a difference between thirty and ten might make a great difference. One of the problems we have is that in the Legislature there is a spirit of compromise on limited funds. What people think are the second

or third best solutions is no solution at all because it's no longer supported by the evidence. That's why in the Select Committee, I think this passed, I strongly advocated that instead of saying a maximum of twenty-two to one class size that we say a maximum of twenty-two to one student/faculty ratio so you can create some classes of, perhaps, forty and create other classes of ten, and the local people could decide where to put those resources. It seems to be a much better chance if you give them that sort of discretion.

Dr. Ferguson: The quantitative effect that I measure for class size, for example for seventh grade, is if you change class size by 2.5 students per class that changes the average reading score in the district by 3.7 percentiles. You can decide if 3.7 is a big or small number.

Question: Professor Ferguson, am I correct in interpreting the table to say that really the only statistically significant factor in the quality of education is the quality of teaching?

Dr. Ferguson: Not quite. First of all, there's evidence here that both quality of teachers and class size make some difference. Again, the magnitude of class size, one can argue about. There's evidence that these two variables matter. That's not, on the other hand, proof that nothing else matters. I have the property tax base per student in the equation here. Apparently, other things don't matter enough that they force this property tax base variable to be statistically significant in this equation, but they could still matter and it could be that if I expand my samples size and get better measures the other things will appear to matter, too. I had this discussion with people who deal with high school dropouts in the city of Boston and they asked kids why they drop out of school. A number of the reasons they drop out have to do with things other than money.

Question: I would like to ask if, in any of your opinions, the decision that came from the court assumes that an equal amount of dollars spent in Rio Grande City and an equal amount of dollars spent in Dallas will produce the same results?

Dr. Walker: As the plaintiffs filed their case the thinking is that if in Edgewood or Copperas Cove or some other place, they had equal amounts of money available, they would be able to get equal results. However, the decision, as was pointed out earlier by Dr. Kirby and Dean Yudof, says fiscal neutrality is the standard, not expenditure equality. So what fiscal neutrality means is that each unit of tax effort

generates the same amount of money, so that poor districts can generate as much money as another district. It doesn't necessarily result in equal expenditures, and it's not a factor in the case. The assumption is if the expenditures are equal in two districts that the results would be equal and that would ignore the other mixes of these kinds of things we're talking about. There are many factors determining student achievement, money is one of them. It is necessary but not sufficient to bring about the quality of outputs.

Dean Yudof: I think that's essentially right. This is a hard thing to get a handle on, but it's not equal dollars and it's not an assumption if there were equal dollars there would be equal results. It's more of a taxpayer's equity — that for each penny of tax effort, there would be the same number of dollars in that district. But there is an important point here and that is the voters and taxpayers of each district may know a great deal about the needs of the children in that district and can adjust that tax rate to a level that makes sense for that district. For example, some of the predictions are that some of the very poor districts may actually lower their tax rates under some of the plans because they are so astronomically high at the moment. But each district would make the determination.

Dr. Ferguson: I wanted to point out one other thing here on this question of whether money matters. If all districts got more money and each increases their teachers' salaries by the same percentage it might not make much difference to any of this because part of what's going on here is competition for teachers across districts. There's evidence in this data that the better teachers are drawn to the districts who pay higher salaries, so some of this has to do with the relationships among salary levels as between districts so you may need to increase salaries and equalize and maybe even more than equalize salaries across districts.

Mr. Wozencraft: This has been very interesting. I think it further documents a philosophical truth not so recently announced by Pogo when he said "from here on down, it's uphill all the way." This afternoon we can start climbing that hill, and we're looking forward to learning the answers to the problems we're posing rather than solving. Thank you all for being with us.

Panel Three:

**MECHANICS OF FISCAL NEUTRALITY AND
EQUALIZATION—SOLUTIONS PROPOSED**

ROBERT KRUEGER, MODERATOR

WE HAVE THREE DISTINGUISHED PANELISTS TODAY. BOB BULLOCK, who will speak first, is well known to all Texans. He has served as secretary of state and a state legislator. He served as an assistant attorney general and as an assistant in the Governor's office, so he has been a legislator and in the executive branch of our government for some time. As the principal tax collector of the state he makes it evident that if he doesn't do his job everything else is "academic." When we say "academic," that usually means "irrelevant." It means we can't function if he doesn't do his job, that none of our discussions here will have any meaning if we don't have the taxes from the state which he provides us. He is not only a principal tax collector, but he is one who has his own views on what we should be doing in terms of our state's educational policy. Will Davis, who will speak next, is an attorney who has a longstanding interest in education. Will served as president of the student body at Baylor University and did his job so well they made him a trustee of that university. Following that he has also served as the national president of the National Association of School Board Presidents. He has many distinctive acts of service in terms of higher education and has served as a member of the State Board of Education and most recently was on the Governor's Select Committee. He will be speaking with particular experience in that area. Finally, we have David Long who comes to us from Mill Valley, California. He has a long track record of having been connected with legal challenges and legal development in the whole field of public school finance and education. He has particularly shown his concern for the problems of the handicapped and their access to education. On his distinguished biography one of the things that particularly interested me is that in spite of the recent months he still lists that he was once staff counsel on the ACLU. That shows the courage of the man, I think, above all else. We have a very distinguished panel for us, and I will just conclude with a quotation that happened to be on my yellow pad. I find in a letter of Ludwig van Beethoven's to Prince Karl Lichnowsky: "What you are, you are through accident of birth. What I am, I am through my own efforts. There are princes, and there will be thousands of princes more, but there is only one Beethoven." With that in mind and the importance of education, I turn to Bob Bullock.

EQUAL OPPORTUNITY FOR EQUAL TAX EFFORT— A REALISTIC APPROACH

BOB BULLOCK

THANK YOU VERY MUCH, MR. CONGRESSMAN, AND MY FELLOW panelists and to the members of the Philosophical Society of Texas. I am delighted to be here. I know not the reason for the invitation that Chrys extended to me, but I'm honored that you would let me come. I certainly don't question why you invited me. I never question the voters of Texas. Since I've been elected, I thought they did a very intelligent job.

Today, the topic is education, and there's not a better topic for any Texan to discuss. All of us through the years have heard the old term "horse and buggy days." Well, I'm afraid Texas today may be riding a horse and buggy into the twenty-first century unless some changes are made.

Before we look into the graduating class of the year 2000, I'd like to go back a day or two. I was a student in the Hillsboro Public School System fifty years ago. In those days the overriding issues were chewing gum in class, talking, and running in the corridor. Well, I suppose we've licked those problems, because today we have drug and alcohol abuse in the schools, dropouts, crime, student gangs, robbery, rape, and assault within the public school systems of Texas. Fifty years ago our problems were school-related, but today that's not so. Today it's family problems in the school system and problems of the communities infiltrating into the school systems of Texas. Does this mean that there is not really any parallel between yesterday and today? Well, of course, there is. But they go back further than my day, for example. Go back and look at the *Encyclopedia Britannica* of 1890 and look at its discussion of public education in Texas. It states: "Texas has the richest school fund and the poorest school system in the United States." That could well be the headlines in the newspaper this morning. We've gotten away with it this long, because we had an economy which was more interested in brawn than brain. The historical parallel is money. Where it is. The lack of it. Who needs it. How it's spent.

Back during the Watergate days there was a person named Deep Throat, if you recall. And as the reporters for the *Washington Post* became stymied in their leads, they would go back, and Deep Throat would say, "Follow the money." Well, so it is in education today.

Last year, Texas spent just about \$10.3 billion for our school system. And I might say that covered a little over 3 million students. Federal government threw in another \$950 million and for that we've got a

dropout rate that is one of the highest in the country. We have not made a dent in the cycle of poverty, welfare, crime — all of them are tied to school dropouts and adult illiteracy. And finally, we did little with that money to prepare the youth of today for an economy in the twenty-first century.

They're not even prepared for today's economy. Of that \$10.3 billion, the state provided \$5 billion or about 44 percent. By comparison with our 44 percent, most states contribute 50 percent of the cost of educating their children. And talking about the state's share, I must point out that our permanent school fund, for all of its vastness and hugeness, only contributes about \$175 a year per student. Of significance is the fact that our state's share of educational funds of the last few years is dropping and dropping and dropping.

Local school districts chipped in another \$5.3 billion. Only 2 billion of that went to pay for what the state mandates as the minimum school fund. The rest of it went to pay for other things — things such as teacher pay raises that the state mandated school districts to do; smaller class sizes, again the state mandated they do it; discipline programs; dropout programs; enrichment programs; again, many mandated. Add it all up, we spent \$11 billion counting the federal money. Question is, is that enough? The question really is, where does our system have equality? Does every child have equal access to money — not in true dollars, but access to that money? That was the heart of the *Edgewood* case, by the way. Who has access to it and who doesn't.

Of the more than 1,000 school districts I mentioned, the wealthiest district has taxable property value of \$9.4 million per student. The poorest taxable district has only \$22,900 in taxable value per student. If you look at the statewide average on property taxes, you'll find that there are about 704 districts, or 67 percent of all school districts in Texas, that are classified as poor school districts. And those 704 poor school districts, by the way, comprise about 61 percent of the total enrollment in Texas today in public education. They are also in 205 of the 254 counties in Texas. For your information, there are more poor districts in the metroplex where we are meeting today than there are up and down the Texas border. That's the heart of the *Edgewood* case. But Judge Clark had the courage, in my opinion, to go further. He had the courage to say, the situation in Texas was unconstitutional.

Our office worked on this problem in 1983 and 1984 when I was on the Perot Committee serving with Will Davis. I was in charge of the finance section. We devised a new plan in those days, a new set of formulas.

They were adopted by the committee, adopted by the Legislature, but failed to be put into place because in late 1984 there was a shortage of money. In fact, some of the poor school districts that are plaintiffs in this lawsuit said the suit would not have been brought if the formulas had been funded. Well, we came up with a new plan in hopes that by starting on it early and using the expertise of the people in my office that possibly we could offer some suggestions or plans for the Legislature which meets next month. We think we have come up with something. The cornerstone of our plan is to set a target figure, a per pupil dollar figure, an amount of money that is required to ensure that each child receives a quality education in Texas. Our number is \$4,300 per year. And when you think of \$4,300 per year, remember that the permanent school fund only adds \$175 per student per year. Today, our average spending, state and local, is \$3,352. But, remember, district to district, rich to poor, it varies from \$20,540 per child per year to as little as \$2,199 per student per year.

The rest of our plan attempts to establish a level of effort the state can rightfully expect from local school districts. The state will make up the difference between what a district can rightfully raise and the cost of the education of the child, \$4,300. Our plan goes a little further. And under our plan we have proposed that state bonds be used or even a portion of the permanent school fund. It's not foreign because they used to do this. I can't think of any better use of the permanent school fund. It was created for the school children of Texas. The facility that a child goes to is as much a part of that child's education as the textbook.

We submitted that plan to the Legislature. It's rather complicated, but we have yet to devise one that isn't. I encourage them to refine or change any particular part they like. We're continually doing that today. The solution will cost money, but as one very noted person said, "The cost of education is not very much if you look at the cost of ignorance." There's no question about it, what we give today to the Texas school children in the form of an education, unquestionably will determine the type of education that they give us in the future. And the future is here today. I don't think there is anything wrong with appealing to basic dignity, to basic decency, and that's what this lawsuit is all about. And it's a shame it ever had to be brought. There's certainly nothing wrong with enlightened economic self-interest. That's Texas today. Let's hope for a better future. Thank you very much.

FROM THE PERSPECTIVE OF THE GOVERNOR'S SELECT COMMITTEE ON EDUCATION

WILL DAVIS

THANK YOU VERY MUCH, BOB. YOU KNOW, WITH BULLOCK AND JOHN Ben Shepperd here, you have one of the two very best secretaries of state in the entire history of Texas. They are always arguing over which one that is.

There are some real heroes of mine in this very distinguished audience of Texans, and I'm very honored to be here. People like Senator Ralph Yarborough, John Ben Shepperd, Dean Page Keeton, Judge Ruel Walker, and Judge Joe Greenhill, Tex Cook, my classmate at Baylor Max Sherman, my other classmate Bob Bullock. You know, us Baylorites have to let you guys know when we're in strong numbers — three of us among all of you.

Solutions. I've had the privilege of serving on two very distinguished committees on education. In 1983-84, Ross Perot headed a committee called the Select Committee on Education, and we spent a whole year going all over this state and dealt with lots of things, including finance. Ross turned over every rock in Texas and dug up every skunk and every chicken in Texas, and we chased that chicken all over this state. We looked at everything, including finance. Bob mentioned to you that perhaps a mistake was made in 1984 when the Legislature did not adopt the formulas recommended by Mr. Bullock and the select committee at that time. In the last of this year, we have spent about seven months on the Governor's Select Committee on Education. Governor Clements, Governor Hobby, and Speaker Lewis named fifteen of us to look at the *Edgewood* case and try to present to the Legislature and to the executive leadership recommendations on how to deal with *Edgewood*. In addition to that, the Governor charged us to not only look at so-called equity issues but to look at adequacy issues. Is this system both equitable and adequate, and how do we deal with both? And those are two very big problems and difficult to achieve.

The basic problem with adequacy is that the formulas essentially have been the same since the summer of 1984 and HB 72, the product of the Select Committee on Public Education. The basic allotment under that law then was \$1,350 and that was 80 percent of the recommendation made by the Select Committee. It's still \$1,350. It was inadequate then and it's four years inadequate more today. That is primarily the problem with adequacy.

You had a lot of people tell you about *Edgewood*, so I'm not going to bore you with those details. I'll simply say to you for purposes of my remarks, remember that *Edgewood* and Judge Clark's decision, and I agree with Bob, is fundamentally correct because, folks, there is a lot of discrimination and inequity existing in the public school system finance mechanism we have today. The basic problem with Clark's decision is, for us to resolve it, it must have essentially 100 percent fiscal neutrality. Every child, all 3.5 million of them, has to have equal access, or the same access to the same dollars that any other child in the state of Texas has, regardless of source. That is a very difficult thing to do. You lawyers in the room know in such things as redistricting cases, equal rights cases, or desegregation cases, normally some judicial tolerance is allowed from 100 percent norms. Perhaps that is what the Third Court of Appeals is doing now or the Supreme Court of Texas will have an opportunity to do.

The Select Committee decided not to do some things, and this is very important. Mr. Morales is here and he was quoted this week in the paper in Austin and all over the state about a constitutional amendment which might devalidate the current system. Part of the things we decided not to do was to recommend any constitutional amendment at this time. Let's wait and see what happens with the upper courts.

The second thing we decided not to do is recommend mandatory consolidation of these more than 1,000 school districts Bob talked about. Just consolidate them all into one, five, six, ten, twenty, thirty. You pick a number and take away local initiative, local control, local authority, and local choice at all these districts, so we said no mandatory consolidation. We decided not to restructure into regional districts, senatorial districts, county districts, or congressional districts. What difference does it make? Disparity exists between all of the districts, and disparity would equally exist between 256 county districts or however many congressional districts or however many state board of education districts you might want to draw. There would always be some differential.

We decided also not to come up with separate tax districts to go along with the more than 1,000 school districts. In other words, you might have 256 county tax districts funding nearly 1,100 school districts. It doesn't make any sense to divide the tax authority from the regulatory authority or the governmental authority. He who has the power to tax, has the power to run or ruin, so we decided not to do that.

We decided not to have 100 percent state funding of public schools with no local initiative, no local supplemental funds. Hawaii is the only

state in the Union with 100 percent state funding. They came in to the Union a little late, have a different geographic setting, no big cities, and no independent school districts. They are the only one we know of, so we decided not to do that.

We decided not to do what we call recapture. Recapture is a cute little word that really means the Robin Hood theory or take from Peter to give to Paul or from El Paso and send to Texarkana or from Dallas to Edgewood. We felt if we did that, it would get lost in the shuffle, and people would not like that, taking the local monies and redistributing them.

We also decided not to stifle local enrichment as long as we could raise the poorer districts up by putting caps or ceilings on local enrichments.

Well, what did we do? We recommended that we had to comply with the court order, so we are presenting to the Legislature three, what we call, strict compliance options. We say if Judge Clark is right, and the Supreme Court says he is, we have to have some sort of solution, so we came forward with three strict compliance options. Now we don't recommend these at all. We think they are really bad. And we say to the Legislature, they are really bad, and do not adopt these three. Under the worst of circumstances, if the gun is at your head, and Clark's opinion is upheld and we have to have 100 percent fiscal neutrality, here are three choices.

One would be to retain the principle of what we call the two-level foundation school program. The basic formation program with enrichment supplementation on top of it, is a two-level program. We said you would have to raise the funding level for the basic allotments substantially and you would increase the state share in enrichment with this major equalization supplement. Then you would put minimum and maximum tax rate efforts on the local school districts. You would put both a floor and a cap. You'd say you have to have a certain rate of so much but you cannot exceed so much. We would also have recapture. We'd take from Peter and give it to Paul. That was the least of the obnoxious ones we could think of. That one would of course cause for equal yield for equal effort, but there would be no local choice and no local control as to expenditures. It would pretty well be taken out of their hands.

The second type of strict compliance option is a local tax-driven effort power equalization formula. That simply means that for the local effort that you put in, you get back certain state guaranteed dollars. This one is without a minimum or maximum tax rate, and you don't have to have minimum or maximum expenditures per child. In other words they have

equal access to the money, but there's no compulsion and no limit on how much money they get or spend by rate or effort. So it complies with the Clark decision. Well, you can see some problems and benefits with that. Funding would be wealth neutral. It would have no state control, no mandates either, and no local choice, but you would have total local choice and total local control on the program which means they could spend essentially zero on the children. You would maybe have some pupil discrimination, but there wouldn't be any wealth discrimination. Or you could spend a ton of money on them by your own local effort. Well, it would take a large amount of state money to do this, with perhaps wide disparities in pupil expenditures due to the absence of these floors and caps, and an inadequate state program probably in many school districts.

The third was the Hawaii plan which is full state funding with no local opportunity to supplement the program. All the program would be dictated by the Legislature and the State Board of Education, and all the money would be provided by the state and local funds going into that state program. That's the worst of the three choices we gave them in the strict compliance.

Now we then go to what we think are the common sense options, what we call the progress options. This is not 100 percent fiscal neutrality, but they make progress toward some tolerance allowance that we think the upper court, perhaps, will give us. They do provide a highly equalized program for all the districts. None of these options include recapture. None of them include a maximum tax rate, except the statutory limit of a \$1.50, which is in the law today. But, there are some minimum effort requirements to protect the children in these districts, to make sure the floor comes up to a common denominator level that is adequate according to the standards established by the State Board of Education. In other words we raise the floor up to a common denominator that is equal, instead of pushing it down to a common denominator that is not equal and fair. It's a leveling up process instead of a leveling down process. We start with certain dollars in one plan for year one and phase in additional state dollars over six years to an ultimate end at the end of that six years. In each case, the final phase-in is different in amounts of money. Additionally, the difference is based on how much adequacy do we add to the existing program while at the same time achieving equity in that program. We try to deal with that \$1,350 and get it up to what the State Board says adequacy ought to be, but we put in different amounts of money in each of the plans to satisfy the budget constraints of the Texas Legislature. That's the basic difference. The maximum level of the

district power equalization supplement at the second level is an entirely equalized plan based on district power equalizer and the only difference is how much money comes in at each of the three years. The entire thrust is power equalization. Local tax rate determines how much money they get from the state, but there's a minimum as to how much they have to levy in order to get that money. That protects the child. They get the funds but the funding is determined entirely upon how much that local effort brings them. If it doesn't bring them enough, they get additional money from the state. If it brings them too much, they are what we call budget-balanced, and they don't get any money from the state. They have too much to start with at the local level, so they are budget-balanced districts.

How much does this cost? The progress options range during an entire six-year period of new state funds added to the approximately \$10.5-\$11 billion we spend now from state monies, \$2.5 billion to \$5.5 billion. The strict compliance options ranges would be, over the six-year period, from \$6.8 billion to \$9.8 billion, so the strict compliance options are by far the most expensive. Progress options are less expensive. Depending on what the Legislature thinks its budget constraints are and the availability of revenue, the Legislature can choose between three very good progress options to satisfy the needs of those twenty-first century children.

Some of you in here are as old as I. We were introduced to the twenty-first century by a guy named Buck Rogers. Remember? Buck Rogers was going to take us to the twenty-first century in a spaceship. We thought it was off on the moon somewhere, and Buck took us there. It's not on the moon. It's this year's first grade class in your elementary schools. We have to think for them in terms of twenty-first education knowledge and their place in society in Texas. Thank you very much.

SCHOOL FINANCE REFORM IN OTHER STATES: WHAT HAVE WE LEARNED?

DAVID LONG

MY REMARKS ARE TITLED "WHAT CAN WE LEARN FROM SCHOOL finance litigation?" I think Dean Yudof may have the best summary of what I'm about to say, except I'd like to add an emphasis to it. As I recall the quote that he started out his remarks with this morning was "if you don't know where you're going, you might not get there." I would suggest that the summary of my remarks would be "if you don't know where you're going, you definitely will not get there." I think that's the key of what we've learned in the many years of school finance litigation around the country. I'd also like to clarify an ambiguity in the program which makes it seem like I've done all my school finance litigating in California. Actually, I've never litigated any case in California. The cases that I'm drawing upon come from cases I worked on in Arkansas, West Virginia, Georgia, New Jersey, Colorado, and a number of others.

One thing we've also learned about school finance reform is that it's not for those who require quick gratification. I first began work on school finance sixteen years ago. About the first case I worked on was the original *Rodriguez* suit as it was winding its way up to the Supreme Court. The second case I worked on was a case that was called *Robinson v. Cahill* in the state of New Jersey. Unlike in Texas, the plaintiffs in that case won in the New Jersey Supreme Court in 1973. They held the system unconstitutional and much of what I'm going to say draws upon New Jersey as well as other states, but it's a good archetype for what can happen if you don't know where you're going and attend to the details of how you're going to get there from the start.

I think it's also related because New Jersey adopted in the wake of that reform what's called a guaranteed yield kind of plan which is one of the major kinds of plans you are talking about today. I would add parenthetically it wouldn't have made any difference whether New Jersey had adopted a foundation because the problems that were endemic to that kind of implementation run across whatever concept you use. They just didn't do it right. There's nothing unique about New Jersey; it's happened in other states. New Jersey adopted a plan in 1975 which was heralded as being the answer. We filed an amicus brief which predicted that the plan would fail for reasons that I will describe to you. The court held it prima facie constitutional, and they said come back later and tell us what the facts are when you get them.

By the early '80s, it was very clear that the system was as wealth disqualizing and as unequal in expenditures as it had been in 1975, except the cost had gone up for doing anything about it. The system had plainly failed. Last year, I participated in a lengthy trial in Newark which resulted in a declaration that the system was probably unconstitutional. I say probably because we were in an administrative forum and that has to be confirmed by the courts, which, I think, based upon the judge's 500-page opinion, it will probably be so confirmed. I would also draw an analogy to your state which has not stood still since *Rodriguez*. I haven't followed what's happened here as much as I have in states like New Jersey where I've litigated, but I do know that you have made efforts, in some cases rather substantial efforts, since 1973 to do something about the problem. So I think there are some, if you look back in your own recent history, fairly direct analogies to some of the things that have happened in other states. I think it's important to reflect on those as you reflect upon the adequacy of the proposals that are before you now or will be before you in the future because in this area the future keeps repeating itself and past problems don't get solved. We keep coming around and finding that the issue is the same that was reported ten years ago and twenty years ago and thirty years ago. Go back to the late nineteenth century and find the same kinds of reports being written. It's very clear that the issue hasn't gone away, and it's not going to go away unless we do something about it right now. Also, I would like to add parenthetically for those of you who may think that school finance is simply a spin-off of civil rights, it is not. One thing that is very clear is that these issues have a life of their own. They're largely dependent on the importance that is placed on educational opportunities in this society. I predict that these concerns about educational opportunities will be far bigger in the 1990s than they are today. The reason is very simple. It flows from the fears about our competitive position in the world and the health of our social structure and the need to be dependent upon minorities and those children of low income populations who will be the workforce and will be supporting our children in their social security.

So the key point I would say is that school finance issues don't go away when incremental reforms are made. This is true with or without litigation. But I would also say the second round of litigation, such as we saw in New Jersey, is avoidable.

Major point. Establish a plan for solving the whole problem of wealth discrimination in school funding, including a plan to phase in a system that eliminates district wealth as a factor in funding. What do I mean?

It's very easy to come up with a halfway plan and say that five years from now we're going to take a look at it and see what more is needed. In every case where that has happened, the systems have deteriorated back to their former inequity. The reason is quite simple and has to do with political realities. If you don't create that plan with which you can hold people's feet to the fire right now, the political will to deal with it will be diminished and five years from now, when you were supposed to deal with it, the political will won't be there. What happens is the system will continue to deteriorate until you have the kinds of problems that the courts will respond to, and you'll have another wave of litigation. I predict that would happen into the 1990s. Ten years from now is a fair estimate for how long it takes for those things to happen. The backsliding is predictable. Why is it predictable? One thing is you have very inflation-sensitive systems. If you only keep constant, if you don't continue to index your factors up, you'll fall behind. The same way if your personal income stays the same, you're going to get poorer. Inflation marches on. Neglect and tinkering each year tend to reduce the integrity of the system, and they almost always get worse unless you're making a major effort to make them better and you have created a system which is self-regulating to stay that way. That's history in every state I can think of.

The concepts of school finance are very important, and some of the other speakers have talked about some of those concepts, so I won't repeat the ground they have covered. I would just like to emphasize that beyond the concepts, the details of how you implement them is equally important. In many other states where school finance systems have been held unconstitutional the concepts look very nice on paper, but they were implemented in such a way that the concept was prevented from operation so it could never accomplish its objectives, whether it was underfunded or it wasn't carried out in a way that made sense. Lack of attention to details can destroy it. The New Jersey example is particularly important because it illustrates a garden variety of the kinds of problems to avoid. As I said, New Jersey was a guaranteed yield system. In theory there should be no relationship between wealth and spending, and there should have been a relationship between tax rate and spending, because it looked like on paper, the more you tax, the more you should get.

What do the facts show? Absolutely no relationship between tax rate and spending. If you worked the numbers around so you had every district making the same tax rate there was almost a perfect relationship between property wealth and spending. How could that be in a system

that on paper looked like a very fine guaranteed yield system? It was in the details of implementation.

First, the level of the guarantee. New Jersey had set it at 34 percent above the state average. What this did was leave out 30 percent of the children in the state and more than 30 percent of the districts who were free to spend any amount they want and they weren't part of the guarantee. The other districts that were within the guarantee had no possibility of competing with them in terms of expenditures. The same kind of pattern you have of the poor districts who have very high tax rates and getting very little in the way of expenditures. It was true in New Jersey and every other state that has a wealth discriminatory system.

Cost controls. Everybody will say you have to control costs. The poor districts can't use all that money in one year and that's right. These systems have to be phased in, but you can set up your cost controls like New Jersey to create disincentives for increasing expenditures and preserving existing disparities. That's a very common thing that states have done. There were some windfalls which mathematically operated in a funny way with declining enrollment to give rich districts greater expenditures than poor and prevented the poor districts from ever catching up. So be very careful of these kinds of incentives because you have to worry about not only what the concept looks like but the kind of incentives you're giving to poor districts to increase their expenditures because you've got twenty, thirty, or fifty years of wealth discrimination. That's not going to be overcome in a year. You have to create incentives to allow them to fairly catch up without having it totally on their local tax base to make the increased effort. That had to do with current year funding. I'm told that you have a current year funding system in place and that's good. It's important that that stay in place or you're going to have wealth discrimination in that system for reasons that I don't have time to tell you about unless we get into questions.

So these are some of the details. I'll just add a couple of points. Categoricals must be included. If you don't you're going to create incentives for categoricals to be created outside the formula for all manner of things, like teacher increases and creating effective schools or textbooks. So what happens is gradually your foundation or your guaranteed yield program starts to migrate into categorical programs which are nothing but tax subsidies for the wealthy districts. It's just like if you put \$100,000 down on a house you may not be able to buy that car you want next year. So we operate with limited funds and if we put them into categoricals where we're subsidizing wealthy districts while we're engaging in reform those funds are not available for equalization. You'll

hear arguments that categoricals should be totally excluded. If you did, you're asking for serious trouble. It doesn't mean you shouldn't have categoricals, but you should be very careful if you want to have an equitable system that they don't become the tail that's wagging the dog.

If I had more time I'd go into the problems of not having a self-maintaining system. Those states like Florida and others that have created systems that they can maintain use indexing of every factor in the formula so that it automatically keeps current based upon percentiles or tax rate. If you have uncontrolled factors in that formula, those are wild cards. Those wild cards will quickly take over the system in the long run. Thank you.

Questions and Answers

Question: Approximately a year ago I was privileged to be in a discussion like this held in New York in which the governor of New York and the governor of New Jersey participated. The discussion centered upon educational crisis in the northeastern states. It sounded almost exactly like what we've been discussing. Financing did not seem to be the biggest problem discussed then. The sense I got from the political officers was that no matter how much money they poured into this, it wasn't going to work. Both governors expressed that those states cannot stay competitive with Japan, West Germany, and so forth, because they are still turning out of the state school systems people who can't read or write. Do you feel this is really a national problem? I'm not arguing that the money is a problem, but is that going to solve anything when we add another \$9 billion to the system?

Mr. Long: It's clearly a national problem. I was before a congressional subcommittee yesterday that was dealing with this very issue. The money is needed, but it's also important how the money is spent. This goes far beyond my school finance issues. Again, there are people presenting new strategies which are putting the school in almost a parental role which creates serious problems of ideology and role — getting into things like early childhood education and parental involvement in the schools. This goes far beyond school finance and even beyond education, because it gets into policies on child care and employment policy. The dropout problem is a very broad issue. It's certainly one that needs to be addressed here but not confined to education.

Mr. Davis: I agree totally. It's a very complex problem that we face. Remember this, America is the only country in the world that has attempted to do what we're trying to do in public education, that is, to educate a very, very large and complex multi-faceted society of young children with many different ethnic minority circumstances, poverty/wealth circumstances, and regional geographic circumstances. A large number of children in the public school setting, about 90 percent, have these circumstances. But let me say something good to you. It is working in this state. We've had HB 72 and HB 246, which is a curriculum reform bill, in place for about three years. Most of these kids haven't even gone to school under this reform system. If they did, they went maybe early under the unreformed system. Only those children who are kindergartners, first-graders, second-graders, or third-graders have been in that program the entire period of time. All of their indicators, weak as they may be, the testing program, are all indicating dramatic change from their peers who preceded them in similar grades. And the minority children are showing the greatest improvement of all those tested. Now if you'll be patient, and the Legislature will be patient, and if we'll be persistent and tenacious and stay with the program and not back away from it because it costs a few bucks, and let these kids go through that pipeline for twelve years and the next generation come and go for twelve years, then we'll be able to judge whether or not we can do it and whether or not the American system can provide this sort of massive education of this society. I believe we can.

Mr. Bullock: Of course it's a nationwide problem. No question about it. But ladies and gentlemen, there are 39,000 people in the penitentiary system in Texas today and about 8,000 more in county jails waiting to get in. You have 450,000 people out here on probation, 93 percent of them are school dropouts. Look at the people on welfare — 63 percent. You have a half million people living in Houston alone who are illiterate. An estimated 40 percent of the people in south Texas are functionally illiterate. Now, we spend \$37,000 to keep a person in the penitentiary and we're reluctant to spend \$4,300 on a child's education. Talk to me about money. Talk to me again about human dignity. Now we're getting down to it.

Mr. Krueger: I want to add to that. I think it was de Tocqueville when he was writing about democracy in 1835 who said, "America is a country in which the child will be king because it is a country that always looks to the future." I agree with the rest of the panel that we are a nation unusual in our commitment to broad education for all individuals. I think that

has been one of the great strengths of our society that we have not had a purely elitist system of education in this country.

Obviously, today we are feeling the pressures of competition with lots of other nations that seem to have done better. My own view is we have to look beyond just expecting the schools to resolve our problems for us and to look to the much larger society and the relationship of home society and what is expected in terms of individual discipline at home, what is expected in the schools today, and we have to put it in that context if we really expect to be competitive with the Japanese, for example. Clearly, to the Japanese with their special schools where 50 percent of the people choose to go to school on Saturday and it's paid for privately, education is a value. It has not been in our society. Until our society elevates that value again, I doubt that we can expect schools to do it for us. Thank you very much.

Panel Four:

**LEGISLATIVE REALITIES IN
IMPLEMENTING SOLUTIONS**

ROBERT I. HARDESTY, MODERATOR

SEVERAL YEARS AGO LARRY TEMPLE, THEN CHAIRMAN OF THE Coordinating Board, asked me to chair a committee that would investigate the advisability of administering some kind of achievement or progress test to undergraduate university students to make sure they are learning the basic skills of an educated person. After nearly a year of investigation we concluded that our colleges and universities are not only admitting but also graduating young men and women who can't write a simple declarative sentence or solve the most basic mathematical problems. We estimated, based on studies in other states, that fully a third of all entering freshmen cannot read or write at levels needed to perform effectively in higher education, and as many as 60 percent of those students are similarly deficient in math. Those students do not lack the ability. In many cases they have passed rigorous entrance requirements. They simply lack the skills. They represent, as our final report concluded, a generation of failure in our educational system.

Based on these findings we recommended that the Legislature mandate a basic skills test for all entering freshmen at Texas colleges and universities across the state. No student otherwise qualified would be barred entry to college because of his or her scores on the test, but they would have to pass the test by the end of their sophomore year before they could go on to take upper division courses. All institutions would be required to provide strong remedial programs for those who failed. As most of you know the Legislature enacted a bill containing most of those recommendations during this last regular session in 1987. The Coordinating Board is now in the process of developing a basic skills test which will be required of every entering freshman beginning next fall.

Now here's the point. Our committee made up of regents, junior college and university presidents, faculty, testing experts, and one public school superintendent from Edgewood saw this basic skills test as more than just an instrument of assessment and a cause for remediation. We also saw it as an instrument of reform, not just in higher education. We knew it would drive reform in secondary education as well. We knew from experience that the failure rate would be disproportionately higher among the students from the poorer school districts and that once the test scores were published statewide by school districts and by schools,

the taxpayers and the Legislature would be hard put to deny that educational quality is a product of educational funding. That is a few years off before those test scores will be ready and we are faced with the problems of the here and now. We're also faced with court decisions we all know and the Legislature's about to convene. So the question is what is the likelihood of the Legislature taking action in the area of public school reform? Will such action be comprehensive or piecemeal? Will it satisfy the court? Will it produce lasting and meaningful equity? We have three individuals with us this afternoon who will attempt to answer these questions. Each brings to this subject not only a distinguished background but also a unique perspective.

Our first panelist is the Honorable Dan Morales, an attorney, a member of the Texas House of Representatives, and, by just about everybody's standards, on the list as one of the outstanding young members of the Legislature. He is vice-chair of the Ways and Means Committee and a member of the Select Committee on Tax Equity. He is a graduate of Trinity University and Harvard University Law School. Representative Morales will discuss "Prospects for Legislative Resolution."

Next, Ms. Camilla Bordie, who will review "The Legislature's Struggle with Equal Educational Opportunity" from her perspective as an attorney and an advisor to the Governor's Select Committee on Education. She is an expert on legislative rules and procedures which I think is important for our consideration because many of us who have been around the Legislature know when it comes to passing legislation it's not enough to have God on your side. It's good to have the parliamentarian on your side as well.

Finally, we will hear from Robby Collins, Executive Director of Employee and Governmental Relations of the Dallas Independent School District. Mr. Collins will discuss "Lessons from House Bill 72." He has been involved with these issues for many, many years and he will have a great deal to add to our deliberation. I will ask our panelists to try to limit their opening remarks to ten minutes if possible, so we can have as much time for questions from the audience as we can.

PROSPECTS FOR LEGISLATIVE RESOLUTION

HONORABLE DAN MORALES

BOB, THANK YOU VERY MUCH. A CLASSMATE OF MINE AT TRINITY University tells of the time when his sister was away at one of these all women's universities in the Northeast. She wrote home one day during her freshman year, "Dear Mom and Dad. Please don't worry. The fire did not completely destroy Daddy's townhome. The car was insured, so that was not a total loss either. The doctors tell me that I will regain part of my sight, and I am already learning how to walk on these crutches. You know, some good has come of this episode. I met the most wonderful guy, and we have decided to live together. You know how you and Dad have always wanted to be grandparents. You and Dad are going to be grandparents next month. The best news of all is we decided to name the baby after the drummer in my boyfriend's rock band." They flip the page and at the top it says, "Dear Mom and Dad. Please excuse the exercise in creative writing on the front page of this letter. None of those things are true. I'm fine. I'm not living with anyone and I'm not pregnant, but I did get a D in math and an F in literature. I wanted to make absolutely certain that you received this news in the proper perspective."

I am pleased to have the opportunity to be with you this afternoon and gratified by your recognition of the importance of this issue. Allow me to share with you my particular and personal perspective relative to this concern and, with your indulgence, I'd like to do that by way of my experience and involvement in public policymaking.

I can recall the day and the hour and the minute when I made the determination I wanted to be involved in policymaking generally and run to hold office in the Texas Legislature specifically. It was when I was serving as a felony prosecutor in Bexar County. I was in the middle of prosecuting a run-of-the-mill felony burglary case. Some of you may know the operation and administration of a major metropolitan district attorney's office as such that every felony prosecutor on every Monday morning finds a new stack of thirty or thirty-five felony cases on his desk. You've got to stop whatever you're doing and review that new stack of cases to determine whether any sort of immediate or emergency action might be required. I was doing that on this Monday, and I came across a rape case that struck a bell. I put it aside and went through the others, came back to it later, and read it a little more thoroughly. The manner in which the individual got into the victim's apartment, the manner in which the offense was perpetrated, the things he said to the victim during the offense, the way in which he got out of the apartment

— all of that sounded familiar. I got to the last page of the report and saw the defendant's name. I remembered prosecuting this individual for another rape case about eight months earlier. I remembered the individual was convicted, sentenced to ten years, and sent to Huntsville. I was convinced that we had an escaped convict on our hands. As you all know by now, he was not an escaped convict. He had been released under the standard operating procedure of our Texas Board of Pardons and Paroles. Not because we've got a bunch of crazy liberal representatives and senators in Austin, but simply because we have allowed a fixed artificial prison capacity to drive our sentencing and corrections policy.

My involvement in criminal justice matters got me involved in revenue matters and the Speaker of the House has asked that I serve as vice-chairman of the Ways and Means Committee. I had the opportunity and pleasure of putting my name last session on the biggest tax increase, at least some of my friends in the media like to characterize it as the largest tax increase in the history of the free world. Admittedly, \$5.5 billion is a lot of money. I recognize that. That experience, the opportunity to see policy from a legislator's perspective, has led me to take a somewhat more comprehensive approach to many of these issues including our public education crisis. I would like to direct your attention, briefly, to state government generally.

We only do four things — education, corrections, transportation, human services. You add up those four areas of the budget and you will get well over four-fifths of the entire \$38-\$39 billion Texas appropriations bill. If you look at how we are doing in terms of operation and administration of those programs and services, I think there's some cause for concern.

First of all, corrections. You all know we are in federal court and have been since 1973. There is a federal judge in Tyler named William Wayne Justice who has told us the manner in which we are operating our institutions at TDC is unconstitutional based primarily upon funding concerns as they relate to the overcrowding crisis.

A significant portion of our human services budget goes to fund our institutions of mental health and mental retardation. We're in federal court. This time it's a Dallas judge named Barefoot Sanders who, by virtue of a 1981 trial, has told us the manner in which we are operating those institutions is unconstitutional, again, based primarily on funding concerns.

Now about eighteen months ago, a state district judge in Austin has told us the manner in which we are operating our public schools is unconstitutional, because it's based on local property district wealth as opposed to some more equitable form or standard.

Transportation, I think we are doing okay. We have yet to be sued, at least on constitutional grounds. Highways are up and operating in a relatively responsible fashion. The good roads amendment passed, and that funding will be protected.

In three of the four primary areas of state obligation and responsibility, we are operating to a greater or lesser extent in a crisis fashion. I think that raises a very legitimate and justifiable question for us as citizens. Ought it to be the case that the only time state government takes any meaningful or significant action is when we have a state district judge or a federal district judge banging us over the head with his or her gavel or where we are responding to some other emergency or crisis like the TDC situation? What's wrong with a little bit of planning, a little bit of foresight? And why not take a ten- or fifteen- or twenty-year look and perspective relative to dealing with some of these concerns rather than continuing to address them on a session-to-session basis.

In their wisdom, the governor, the lieutenant governor, and the speaker of the house have put together this body called the Select Committee on Tax Equity made up of thirteen individuals — seven from the private sector, six from the government; and it is chaired by a Dallasite, Dan Cook. We are in the process of finalizing our recommendations; in fact, we are set on Thursday of next week to vote up or down on many of the recommendations we have been debating over the past eighteen months. I hesitate to tread too far upon the province of the other members of that committee. I think, however, I can leave you with a couple of ideas relative to where some consensus lies.

I think there will be a determination made ultimately that there indeed is a cause for the crises that we have seen state government experience over the past couple of sessions. A cause which can be identified and understood and addressed and ultimately remedied. We have a tax structure in Texas that is simply incapable of driving our state into the 1990s and ultimately into the next century. Our tax structure lacks the capacity to generate a sufficient amount of revenue to drive us where our state wants to be into the twenty-first century. There has not been one whit of effort made toward structural modification of our tax base since 1961. The tax structure we have today is essentially a 1961 structure — oil and gas-based, agriculture, cotton, cattle, resource-based generally. Much has happened in the last twenty-six years in our economy. We are now fully into that transition toward a service industry orientation, toward a high technology orientation. The problem is our tax structure has not been modified in order to reflect the reality of those changes. I am hopeful that the select committee will, indeed, find some way to recommend not only to the 1989 session of the Legislature but future

Legislatures precise mechanisms by which that objective and that goal can ultimately be accomplished.

Allow me to close with another personal experience. The governor called me about a year ago and asked me to participate in an endeavor that he was going to call the Texas Criminal Justice Summit to take place at The Woodlands outside of Houston. Among the things we were doing during our deliberation was making ten-, fifteen-, and twenty-year prison population projections. I came away struck with the notion that when we make a ten-year prison population projection, what we are doing in a very real sense is looking at the five- and six-year-olds of today squarely in the eye and telling them, "I'm sorry. We don't have enough money to take care of you today by virtue of funding your educational structure, your child abuse treatment and prevention programs, and your substance abuse treatment and prevention programs for your family. We don't have enough money to deal with you today, but we are reserving you a room in ten years. For that room we're willing to shell out \$70,000 to construct it in today's dollars and an additional \$15,000 to \$20,000 for operational and administrative costs to keep you there." I question whether that reflects the sort of far-sighted, prudent, efficient, public policymaking that we as Texans have a right to expect from our elected officials in Austin.

There are a couple of political situations that will be present in the 1989 session of the Legislature that cause me to be somewhat less than optimistic about our prospects for dealing with some of these issues in a comprehensive fashion. Chief among those will be the prospect that as indications are of today, every single statewide elective office is going to be available in 1990. I don't think that has ever happened before in the political history of our state. That will create the temptation on the part of some of my colleagues in the Legislature to consider personal and political ramifications and consequences rather than simply the merits, the public policy considerations, and consequences of the proposals that will be before us. The temptation to politic, the temptation to demagogue, the temptation to remove our eye from the ball, will be immense.

In addition to that, the 1990 round of elections will determine the composition of the 1991 redistricting Legislature. That only happens once a decade. And the political and partisan stakes there are enormous, as if we were not going to keep you all entertained simply by virtue of the substantive issues before us, the public education crisis, the corrections crisis, and everything else that the Legislature will have before it then. Add to that these political considerations and you have the makings of an extremely entertaining session.

With regards specifically to the lawsuit and to some of the proposals that you heard earlier in the day and this afternoon, allow me at this point to simply say that I am persuaded that whatever ultimate option or alternative the Legislature decides to pursue, it will protect and preserve the notion and principle of local control of public schools. There will not be mass consolidation. The Legislature, not the courts, will be the entity making the final decision relative to the manner in which that crisis is going to be resolved.

In my judgment the problem is not the lawsuit. The problem is not a state district court or the Texas Constitution. What I would like to do is urge policymakers and other individuals in a position to influence policymakers including every one of you to join me in encouraging them to shift our focus, redirect our focus from finding ways in which to circumvent the lawsuit to a forthright confrontation of the underlying issues.

I'm reminded in many ways of an analogy of a fire. We've got a fire, the fire alarm goes off, and where is our attention directed? Toward the fire alarm. Finding ways to tinker with this or that, unscrew this or that, or think this alarm can't be real. All the while, the fire is about to consume us. I question again whether that represents the sort of prudent policymaking that all of us should expect from elected officials, notwithstanding the fact the immense challenges that will be before us in the next Legislature.

I am of the firm belief that with immense challenge comes immense opportunity, and I'm convinced that ultimately my colleagues will end up doing the right thing. I am pleased to be with you this afternoon, and I look forward to engaging you in some degree of dialogue a little later. Thank you.

THE LEGISLATURE'S STRUGGLE WITH EQUAL EDUCATIONAL OPPORTUNITY

CAMILLA BORDIE

GOOD AFTERNOON. IT'S GOOD TO SEE SO MANY OF THE PEOPLE I have managed to run into in one form or another in the legislative context over the years. Most of you I have met have been in the halls of the Legislature dealing either with public education or higher education. I think higher education probably outnumbers public education in this particular group at this particular time.

In trying to predict what the Legislature will do or the kind of milieu in which we will operate, I think it's probably true that the Legislators individually when they address any particular issue will vote "aye." They are all for good public schools. They are all for higher education. They're also for good prisons and good MHMR and more money for AIDS. We're going to have to do something about the infrastructure which is crumbling in this state, because people are probably not as aware of this as they ought to be.

The problem that the Legislature faces when you take those items collectively is how do you balance the particular needs one against another? It is very easy to say we need tons more money for public education. I've spent the last twenty years of my life primarily working on that issue and I couldn't agree more. I don't think there is anything that is more important than getting kids a good start. What they do with it, if they've got a good start, you don't really have to worry about, because they will be able to take care of themselves and be contributing members of society. The problem is money. As my former boss Gov. Hobby always said, "There are three issues before the Legislature — money, money, and money." While the tax base is performing a little bit better than had been anticipated, the needs have far outdistanced what we've got available with which to work.

On public school finance, the Legislature has dealt with this issue almost continually since I came to the Legislature in 1969. There has been a massive study on public education about every two years. There have been two particularly important reform bills — 1126 in 1975 and, of course, HB 72 in 1984 — where we addressed the problems which the court is specifically speaking of, the equal educational opportunities.

In one instance we were at a time when the economy was really bringing in more money than we had any right to expect. The second time we had to pass a tax bill; but, historically, reform has taken place in the context of a lot more money. A rising tide will float all boats.

Everyone gets a little bit. The poor school districts have received a great deal more than the wealthier school districts, but no one has come out particularly the poorer. Whether or not we have got that kind of revenue picture to address equality this time, I don't know. I suspect not, because we have got tremendous needs in areas of prisons, MHMR, and welfare costs. The federal formulas are going to require more money than we had anticipated. Enrollment in higher education is higher than we expected. There is a lot of need out there, not to mention state employees who have forgotten what a pay raise looks like.

The state has always taken some pride in saying they were a low tax state and to some extent that's true, until you get around combining local property taxes with state property taxes and then you've got a healthy tax bite. That has been particularly true of local taxes in recent times. First with the federal changes under the guise of new federalism which stopped funding a bunch of local programs and left them to the local community and with the state cutting back in many areas over the past few years, there have been more and more burdens for the local property tax particularly to absorb. Even in our big school finance reforms we have put in a lot more state money, but they have required a great deal more property tax money, \$5 billion in property taxing.

For the Legislature to cope with this problem and to accommodate equal access to the buck for local school districts and try and equalize districts, it is almost impossible. It is financially beyond us. I'm not even sure it's wise. That is literally what the court suit is saying you must do. If you follow that tact, it will mean dramatic increases, I believe, in property taxes, and we will be back on another binge of property tax relief. That can have very disturbing effects. That is sort of what happened in California when they decided to equalize their system and got crunched by Proposition 13 and ended up with a fairly equalized school system but with caps on it so that you're not supposed to have very much variation in expenditures among kids.

That is something that the people of Texas have not ever wanted to consider. But how do you get from here to there? How do you plan and appropriate money if you're going to do it on the basis of every school district can have equal access to this amount of money for this particular effort and you don't know how much effort they are going to expend. How can you write an appropriations bill when you don't know what you're coping with? I suppose you can work around it and estimate it but you're never going to be comfortable and with our pay-as-you-go budget, it makes state budgeting extremely difficult along those lines. I do believe that decisions to be meaningful must be made at the local

level. You get the local communities behind the kind of school they want, and that's when real changes can occur. Mandating from the top is not really a good idea, and I am all for local control, but you can't have unlimited local control unless you're willing to have unlimited state response to whatever districts choose to do. It's a very, very difficult question.

People don't like to talk about it, but Harley Clark does say in his findings that the way we have structured districts is totally irrational. If you have ever had the pleasure of looking at the map of the state of Texas which depicts school districts you have to sort of agree. You've got some counties with fourteen school districts. You've got school districts that you need a magnifying glass to find on the map. You've got some districts where to get to school you actually drive through some other district to get to yours. You've got lots of school districts with less than 100 kids. You've got maybe sixty school districts that teach only elementary grades but don't share the tax base. They pay tuition and then kids go off to another school district. That's sort of disturbing if you're trying to maximize what you're getting for the educational dollars you're spending. This becomes even more crucial since Harley Clark has made it very, very clear that facilities, which the state has not participated in funding, must be included in the funding system and everyone have equal access to the money necessary to build facilities. The lack of state funding in this particular area is what hurts poor school districts the most, I think, because it's been totally on their own. Some school districts spend more on their facility bill than on the maintenance and operation. They simply have to. You've got many school districts with no debt whatsoever. How do you send money down for facilities on a formula that makes sense, so you're sure that you're getting money where it really needs to go?

These are extremely difficult problems with which the Legislature must cope. The Texas Constitution is never terribly helpful when you're trying to do something good because there are as many things that say you can't do it as say you must do it. We've got one constitutional provision that calls for the permanent school fund earnings to be distributed on a per capita basis. That means the school district that is making a 4¢ tax effort is still going to get the \$150 a kid. That amount used to be a great deal more, about \$500, but HB 72 did manage to get out all the statutory taxes out of that fund and leave only what we absolutely have to, to distribute on a per capita basis. That sort of thing needs to be looked at.

Some of the plans that were discussed earlier to create an equalization

would have called for recapture of money — taking money that is raised in one district and using it in another or putting it back in a state pot. That will take a constitutional amendment. It would make a lot of sense to levy a statewide property tax just to fund the basic program or a portion of the basic program since we use the property tax to do that now. That way you would get access to the entire state property tax wealth and be able to distribute it equally. The Constitution says we can't have a state property tax. We can't even have a statewide appraisal. The Constitution also says you've got to have a pay-as-you-go budget and there's another constitutional provision that says that appropriations can't exceed the growth and the economy. That can be overridden by a legislative vote fortunately. It is going to be an extremely difficult problem with which the Legislature must cope.

I think there is some feeling of resentment among Legislators that it's the courts that say you've got to do this. They're very tired of the federal courts saying you've got to do prisons this way and you've got to do MHMR this way. This particular court suit in the state court is probably what has given rise to much of our talk about a constitutional amendment. Perhaps we will need one, at least to find what it is that we are supposed to be responsible for — a basic education or a dream education. Those are battles that will be fought way far down the line. There's no question that we can't afford not to fund public education. We cannot afford the mediocrity that results from continuing the way we've been doing.

LESSONS FROM HOUSE BILL 72

ROBBY COLLINS

I'M DELIGHTED TO BE HERE. I THINK AS I BEGIN MY COMMENTS I'D like to say that it's not often you get the personal privilege of appearing on the panel with a gentleman who had the fortitude to co-author a revenue bill that permitted 3 million kids to start school on September 1, 1987. Rep. Morales, I do consider it a privilege to be here with you. I also see a couple of other folks here, Will Davis, one of my old colleagues and friends in this process. Also, Jess Hay. All of us were active back in those interesting days in the spring and summer of 1987 trying to determine whether or not we were going to have school. That was a very real question.

As I was thinking about my comments and looking over this group, I was reminded of my age. It just suddenly dawned on me that when I started this job Preston Smith was the governor, and we were talking about the *Rodriguez* case going before the United States Supreme Court. Lots of water has passed under the bridge since 1971. You're talking about HB 1126 and SB 1 — lots and lots of events.

I guess it's appropriate to speak before the Philosophical Society, because I guess I spent the first eighteen years working myself up to a heart attack last summer, so I spent three months in cardiac rehabilitation. I assure you I am one heckuva philosophic today than I was at that point in time. I really am, Rep. Morales, putting it in perspective for the first time.

My job over the last eighteen years I guess I have been involved directly or indirectly in one way or another in almost every act that the Legislature has taken on school finance or school legislation. I was asked to talk to you a little bit about the lessons from HB 72, but I fear that I'll be talking about the lessons from an eighteen-year history of watching this state emerge and go through a terrific value struggle in the area of public education.

One of the things I think we must remember as we examine what's happened the last ten to fifteen years is that education has been a corollary function that has gone along with some other tremendous phenomenal thing this country has experienced that no other nation has ever really experienced. That experience was that we decided one day the Declaration of Human Rights in our Declaration of Independence in the United States Constitution ought to be taken from the realm of the abstract into the realm of everyday reality. Much of what we have experienced the last twenty years has gone in tandem with an explosion

of human rights. Education often by itself is an ingredient of successful participation in human rights, so let's don't isolate education from the greater context of an emergence of this society. I believe education has been a key, a foundation, and a pillar that has permitted this human rights revolution to occur in the halls of Congress, the halls of the state Legislatures, and in the halls of the judicial system and not at the end of a machine gun barrel. Don't get me wrong. This is permitted to happen.

If we look at education in that context, we look at a gigantic struggle. The lessons of HB 72 and 246 and SB 1 and 1126 are that we are still emerging in our value system about education. At one point in time, we liked education because it did a super job for the affluent, the middle class, the educated, and the motivated. Historically, education has never done a good job for the disenfranchised, the poor, and the minority. In terms of our political value system that really didn't make that much difference. Now it does. So we're going through this process of saying what does it really mean now to offer equal access to opportunity for all children of all people? I mean to see the reality of the noble human experiment called American public education.

I was talking to a group of new teachers yesterday. We were talking about the American system of education. What's interesting about it is that people come into this country absolutely astonished when they look at the high school's civics curriculum in Dallas, Texas, and they see that it's the same as Tacoma, Washington, and Los Angeles, California. What really blows their mind is that without any federal guidelines or any federal court orders or any congressional mandates, you can go from Washington, D.C. to Los Angeles, California, and every single school bus is yellow with black paint on it. Isn't that astonishing? Talk about education's impact. It has taken and homogenized the greatest diversity of human beings ever assembled in a single geographic area and brought us out with a common set of political, social, and economic values. That's what we are struggling with.

How does education do this? I do empathize with the Legislature when it talks about accountability. One lesson we talked about is accountability. Part of our problem in talking about accountability in education is that we still haven't defined our full value system of education. We can be accountable once we decide what society's values really are. I thought one of our most remarkable things that we ever did was to put a section in HB 72 that by "legislative edict, social promotion is hereby abolished." Think about that.

What we are really talking about is how do we translate our society's values on human rights and human opportunities into a delivery system

called public education. That's the real question. If we get that out of focus then we start to zero in on this piece, this piece, and that piece, and the lawsuit is not the most important thing in this issue.

As the representative of a large, wealthy urban district, I can tell you that I see progress coming because of that lawsuit. Just like Sputnik brought about progress and just like the human rights in the '60s brought about progress and just like the technology revolution of the '70s brought about progress. We must continue to focus on the real role of education in society. Do we really care that 70 is a passing grade, or do we care that a child comes out knowing how to learn and be able to change locations four times in the next forty years of his work career and successfully do it? Which is the most important?

What I hope is that we have learned several things. One is, we need you. The first lesson I learned, my friends, is that the institution of education cannot reform itself. We're not alone. I do not think the institution of law, or the institution of medicine can reform itself. Periodically the value system after examination must remove control of education from educators. Reform it and return it to us to execute those goals of society. I think secondly we discovered no matter how beautiful you write the formulas, HB 72 I have to tell you has some of the most magnificent funds distribution formulas conceived in the Western hemisphere, that none of it matters when on the way to the store the price of oil dropped \$8.75. And when the price of oil dropped, the mandates of reform in HB 72 did not alter, therefore every local property tax base of the 1,063 school districts had to add \$300, \$400, or \$500 per pupil in the last three years from a disequalized tax base. If you really want to know why we got this whole thing skewed it was that we simply ran out of money. It's not the bill. It's not the formulas. I can guarantee you if we could dust off SB 4 to pass the Texas Senate in June 1984, we wouldn't be in this court case. We would have never gone to court in this respect.

The third lesson we learned is that of what I call the controlled schizophrenia. You've heard it alluded to today in about sixteen different ways. Local control, state control, accountability, all of these words get all meshed into a pot, and we really don't know what we're saying yet. We are going to have to resolve the question of the role of the local school board, because we made the decision in 1984-85 when we stopped funding improving funding of education and we relied on the \$700 billion local property tax base and the Peveto bill as it increased the property tax base. The local property tax base in 1979 was something like \$200 billion to today's certified tax roll which is almost \$700 billion. What we saw the Legislature do was to make a decision. It wasn't in

writing. It didn't come out in the form of a constitutional amendment. It wasn't a House resolution or a Senate bill, but they made a deliberate public policy that we're going to rely more and more on the \$700 billion local property tax base out there for the delivery of educational services. That decision, ladies and gentlemen, was made.

The question is in 1989 what are we going to do? My crystal ball says it's very simple. We're going to devise a plan. We're going to negotiate. We're going to get rich and poor districts, large and small, and negotiate a deal, Rep. Morales, and we're going to say, "If the Legislature will pass this bill and the governor will sign it, rich, poor, big, small, black, white, and Hispanic districts will march hand in hand over to Judge Clark and tell him we brought him a problem in 1985 and 1986. Now we're bringing him some solutions. All together we think this carries constitutional burden."

I don't gamble much; of course, I gambled every January of odd-numbered years for my job, but I'm willing to gamble that the judge will look at that and say, "This is what we've been needing," and sign it and that will carry the burden. That's what I'm betting on in 1989-90. Thank you.

Questions and Answers

Question: In as much as this solution rests with the Legislature and many of them have been elected on the basis of no new taxes, I'd like to ask Rep. Morales what do you think is the procedure of how we will meet this need for improved education?

Rep. Morales: I'm never going to raise taxes, and I think the manner in which we will do it ultimately will be to expand the base of the general sales tax. That will occur either in 1989 or 1991 or in a special session in 1990. I think there will be some significant reformation of the structure of our corporate franchise tax which is the primary business mechanism by which we raise state dollars. Beyond that, if you pressed me to identify a particular session, I would say the late 1990s and certainly in the next century we are going to have direct income taxation in Texas. We will not, in my judgment, see the twenty-first century without seeing some form of direct income taxation as a significant component of our state's tax structure. Over the course of the last eighteen months if there is anything that has become clear before the Select Committee on Tax Equities' endeavors, it is that the vast majority of states have primarily three legs upon which to stand. They derive revenue from three primary

sources — property taxes, sales taxes, and income taxes. We do not have that third leg. That is the reason our sales tax burden and property tax burden have had to pick up that slack.

We have the third highest sales tax rate in the nation. We have the highest corporate franchise tax rate in the nation. We have arguably among the highest local property tax burdens in the nation. My response to some of Robby's comments is I think they were right on. We are not going to pile additional burdens upon local property taxpayers. They are going to be state dollars and I think that we will pretty much, in terms of chronology, pursue the course that I have outlined. The reason for that is very clear. Even with the operation of this most recent state tax increase, a \$5.7 billion increase that Jess Hay and others implored us to pass, is that it moved us in terms of overall state per capita tax burden from 47th up to 43rd in the nation. Do you know what states we passed? Mississippi, Alabama, Louisiana, Arkansas. That's the league we're playing in; that's our competition. We talk about competing with California and North Carolina and Massachusetts. If you look at whether our rhetoric matches our policy action, the answer is a clear "no."

I'll say one more thing, Robby and Camilla alluded to this as well, ultimately the problem is not the lawsuit, and it's really not the Constitution. The problem is we've got tens of thousands of little live warm bodies out there. They are not numbers or projections; they are people. As Mr. Bullock alluded to earlier, by the early part of the next century, they are going to comprise the guts of our workforce. We've got a very clear option — either educate them adequately and responsibly and provide them the opportunity to become productive, contributing members of society or ignore that obligation and allow them to become a drain on society. They will be an asset or a liability.

Collins: My observation of the other states that have struggled with this is that taxes are like sin. You first are repulsed by it. Then you examine it. Then you embrace it.

Question: On the subject of taxation, you guys have struggled long and hard, and the political leaders of our state shy away from the state income tax. I understand that with a state income tax we could come more in line with the federal taxation system and that we'd be able to take advantage of the payroll tax law. We would lower our state sales tax, perhaps lower some property taxes, and would join the twentieth century. Why don't we do this?

Rep. Morales: I have given over 200 speeches since the last session in virtually every part of the state. I had an opportunity to talk to a wide

disparity of audiences and a wide disparity of individuals and suffice it to say that simply the mention of the term "income tax" in many parts of the state conjures up notions of a cross between communism and homosexuality or close to it. This tells you that you never get close to the examination of the issues and to the point where you're talking about the merits or the numbers. They just don't want to hear it. Many of my colleagues, unfortunately, just want to know one thing — can this option be fairly characterized as an income tax by a potential political opponent? If the answer to the question is "yes," they are against it. It's just that simple. It will be some time, in my judgment, before the Legislature and before society, generally, come to understand that reality. I suppose the short-term consideration for us becomes limiting the damage between now and then. We are going to have that sort of a tax structure, that sort of a public education infrastructure, and that sort of a society. It can be delayed, but it cannot be stopped.

Mr. Collins: Another lesson from 1984. You had a House and Senate of whom the majority of members had been elected on no new taxes. You had a governor who had been elected on no new taxes, and you had the uprising of citizen perception that passed what was the largest total dollar revenue bill enacted in the history of this state in June of 1984. To the best of my knowledge, except for a few who lost on some presidential coattails in 1984, I know of no House or Senate member who lost a seat on the basis of that vote. That's something to really think about from HB 72.

Question: Down by Waco, Midway District spent \$2,600 on every student while Edgewood spent \$3,600. Plano spent \$3,461. Yet, each of those schools had more than twice as much measured education as Edgewood. One problem we may get into, if we give Midway another \$1,000 to spend per student, we might take their minds off education and divert it long enough to lower their test scores down to about where Edgewood's is. I wonder if we should look for alternatives in the Constitution where it talks about an effective system and get the Texas Education Agency to look at these systems and determine what they are doing that is effective and make them spend the money effectively before they start talking about more money?

Rep. Morales: That's a good point, and I'm glad it was raised. The disparity in terms of per pupil educational expenditure as shown in the papers involved in the lawsuit was between \$2,100 on a per pupil basis and \$19,000. One of the earlier speakers indicated that the disparity in terms of taxable property wealth per child is much more diverse, about

900 percent in terms of expenditures. In my judgment, the court is not going to require and the Legislature is not going to seriously contemplate attempting to implement any sort of plan that would provide absolute dollar for dollar equity. We can certainly close that gap somewhat. I think we will do it by generating additional state dollars in order to provide the low end school districts an opportunity to get up to speed. When you recognize that what we're talking about is the quality of your labor force and my labor force, it becomes very clear that we are all in this together. It is not an "us" versus "them" issue. It is a Texas issue.

NECROLOGY

GUY BRYAN HARRISON, JR.
1899-1988

GUY BRYAN HARRISON, JR., BORN IN WACO, TEXAS, ON JUNE 25, 1899, was a great-grandson of Confederate Brigadier General James Edward Harrison also of Waco. After receiving his B.A. from Baylor University in 1924 and teaching for two years, "Guy B." (as his colleagues and other friends called him) received a William Marston fellowship at Brown University where he took his M.A. in 1928.

Harrison returned immediately to Baylor University where he served as director of the Texas Collection and taught Texas history. Other areas of his teaching included the history of the United States, Europe, and Russia. He was firm in his expectation of thorough preparation by his students. In his classes he dramatized historical situations and frequently told relevant anecdotes in making the context of past events become alive in the imaginations of his students. As a teacher for more than forty years, he was proud of his influence upon the lives of thousands of students, many of whom continued to visit and correspond with him until his death.

In his activities as a historian, he served as chair of the Texas Library and Historical Commission, which lobbied for and advised in the planning of the Texas State Archives and Library Building in Austin. He also served his local community in various activities including his accepting the responsibility of an elected alderman of Waco in the 1940s.

During his period as director of Baylor's Texas Collection, Professor Harrison saw that repository grow from an infant library and archives into one of the major Texas resource centers of the Southwest. After acknowledging the pleasure which he had derived from teaching and from his interaction with students, he noted in a 1974 interview that "the most important work I've done at Baylor is The Texas Collection."

Harrison died in Waco on June 27, 1988. He is survived by his wife, Hattie Mae Eichelberger Harrison, one daughter, Nancy Mary (Mrs. Dudley B.) Guy, both of Waco, and a sister, Elizabeth Harrison (Mrs. G. Russell) Tatum of Bethesda, Maryland.

A.V.M. and W.J.K.

J. CARL HERTZOG
1902-1984

JEAN CARL HERTZOG WAS PERHAPS THE BEST KNOWN PRINTER AND designer to work in Texas. He was born in Lyons, France, on February 8, 1902, to American parents. He died in El Paso on July 24, 1984. Carl spent his youth in Pittsburgh, Pennsylvania, where he received a printing press as a gift at the age of ten. He worked for printers and studied under artist-printer Porter Garnett at Carnegie Tech, where he learned the value and strength of character in traditional hand printing and in carefully choosing the right type, paper, and design.

Carl arrived in El Paso in 1923 to work as a printer, salesman, and foreman in the advertising business. He owned a printing shop by 1934, and by 1937 he had begun his lifelong collaboration with Tom Lea, the Texas artist and author. In 1948 Carl began to teach what he called "Bookology" at the Texas College of Mines and Metallurgy in El Paso. The college became Texas Western College in 1949, and a few years later Carl established the Texas Western Press, of which he was the director, editor, designer, and prime mover. Carl's series on Southwestern life and history did much to emphasize the importance of studying this region, and the series is still being published, a testament to the niche that it fills. Texas Western Press attracted a great deal of attention over the years, and his work with artists Lea, José Cisneros, and Buck Schiwetz brought them a much wider audience.

Carl Hertzog was the consummate artist, whether designing and printing a few hundred copies of a pamphlet or working his genius on a trade book that would reach thousands. He did everything with perfection: the design, the type, the paper, the binding, the illustrations. All had to work together to enhance the book. He compared himself to an architect who had to oversee every detail of the design and construction of a building. He labored over every facet of a book from the moment it left the author's hands until it reached the buyer. H. Bailey Carroll, former Texas State Historical Association director, was an early admirer of Hertzog's who thoroughly approved of his Southwestern emphasis and employed him to do several Association publications, including *Santa Rita* by Martin W. Schwettmann and *Charles Schreiner: General Merchandise*.

The care and ingenuity that Hertzog brought to each project caught the attention of book lovers the world over. *Peleliu Landing*, Tom Lea's book about the marines during World War II, for example, was covered in marine uniform fatigue cloth. When Hertzog wanted to create a brick

motif on the cover of *The Spanish Heritage of the Southwest*, he used an actual adobe brick to print the pattern. The brick broke open during the printing process. Inside, Hertzog found straw and mud — and what was obviously a hunk of horse manure. His comment: "It must be the first time that this particular substance has been found on the *outside* of a book."

Hertzog was widely recognized as an accomplished designer. The American Institute of Graphic Arts cited him for designing and producing one of the "Fifty Books of the Year" in 1949. He received honorary doctorates from several universities, was a member of the Philosophical Society of Texas and printed the *Proceedings* for twenty years, and was the subject of a major exhibition at the Institute of Texan Cultures. Despite these honors, Carl always insisted that he was only doing honest work, using "an applied science to create an atmosphere for the reader." Of course he was doing much more. His craftsmanship elevated the literature and history of the Southwest to new levels, and the printer of the Pass will be missed.

R.T.

WILLIAM ALEXANDER KIRKLAND
1898-1988

WILLIAM ALEXANDER KIRKLAND WAS AN HONORARY LIFE Member of this Society and served as President in 1967. One of his major contributions was the establishment of an endowment fund (in two accounts, now approximately \$100,000) to ensure the perpetuation of the Philosophical Society; he personally raised most of this money. He also encouraged the attendance of the Houston members, arranging chartered buses to out-of-town meetings, to make sure that his city was well represented. He participated in many programs, as speaker and moderator, and proposed many candidates who have added luster to this group as members.

Bill, as he was known to all, was born in Houston on March 22, 1898, and died there on July 4, 1988. With the exception of schooling in the East and military service, he was a lifelong Houstonian. He was educated at the Houston Academy, Phillips Academy in Andover, Massachusetts, and Princeton University. He later served Andover, Princeton,

and Rice University as Trustee and was a Regent of the University of the South at Sewanee, Tennessee, which awarded him an honorary Doctorate of Law.

He once said, "I'm just a hometown boy that stayed and went into the family business." It was his typically modest way of saying that he joined the bank his grandfather started, at twenty-two, as a teller; became President at fifty-seven; and retired at sixty-five as Chairman of First City National Bank, one of the largest banks in Texas. In 1947 he was elected President of the Texas Bankers Association.

Along the way, in addition to minding the family business, he served on the Houston School Board, was a City Councilman, Vice-president of the Houston Charter Commission, and Treasurer of the Texas Medical Center. He was a Vestryman of Christ Church Cathedral, Trustee of the Houston and Ripley Foundations, Chairman of the Harris County Tax Research Association, and President of the Houston Amateur Baseball Federation. In 1962 he was awarded the Knight's Cross, Order of the Crown, by the King of Belgium. He was a member of many civic, social, and sporting clubs; and he was a director of many business associations and corporations.

His contributions to his country and his city were numerous; two deserve special mention. He joined the Navy as a seaman in World War I and was an aviation cadet when it ended. When Pearl Harbor was attacked in 1941, he attempted to re-enlist as a seaman, but was commissioned a Lieutenant Commander and assigned to a desk job. When the second cruiser *Houston* was commissioned for service in the South Pacific, he applied for sea duty and was assigned as Aide to the Executive Officer. His ship was torpedoed off Formosa and he was wounded, but he returned to the Brooklyn Navy Yard with his ship, and after repairs were completed, again went to sea. When the war ended, he was a Commander aboard the *Houston* in the Admiralty Islands, preparing for the final assault against Japan.

At Princeton, he pitched on the varsity baseball team, and years later he pitched to neighborhood youngsters to get them off to a proper start in the national sport. He declined a chance to play in the major leagues but never lost his love of the game. In the late '50s he saw an opportunity to bring major league baseball to Houston. He realized that there would be no franchise without a stadium, and no stadium without a franchise, but he "knew all the players" and as Chairman of the Harris County Board of Park Commissioners, he was in a position to lead the negotiations. It was a team effort, and he pulled the team together. In 1961 he signed the contract for the Harris County Domed Stadium, the first

domed stadium in the world. It was a major achievement, and it did bring Houston into the major leagues, in more ways than one.

In 1921 he married Lois Cleveland, daughter of another prominent Houston family whom he had known for many years, and they enjoyed sixty-five happy years together. They are survived by their two daughters, Barbara (Mrs. Clay) Chiles and Virginia Innis, four grandchildren, and three great-grandchildren. He and his family had donated a block in downtown Houston, the site of his mother's home, to the city in 1921, and in 1987 he participated in its re-dedication as Root Square Park. It was one of his last public acts, and his last contribution to the city he served so long and so well.

Bill Kirkland was a man of many parts, a truly distinguished gentleman in every sense of the word, admired, respected, and liked by all who knew him. We are fortunate to have had the privilege of his companionship in our Society, and he made us feel that he enjoyed it, too.

F.C.S. Jr.

ADLAI McMILLAN PATE, JR.
1921-1988

I HAD NOT KNOWN "AGGIE" PATE FOR MORE THAN THREE MONTHS when he insisted on giving me \$25,000. Of course, I had heard of this almost mythic man from Fort Worth as I had assumed the presidency of Texas Wesleyan College in the summer of 1978, but I had yet to meet him. Ann and I had not been in town a week before Joyce called and set up a dinner party to introduce us to some of their friends. From the outset our relationship was dominated by "Aggie's" generosity and enthusiasm. His concern for people and institutions was unlimited and unqualified. We soon became fast friends and by September he had gifted Wesleyan with the \$25,000 mentioned earlier.

Never once did I ask the Pates for anything that they did not generously exceed the request. As I think about "Aggie" now almost a year after his death, his generosity of resources and spirit continues to amaze and inspire. He was a man who lived his life for other people. His was a complex life made simple by his overarching concern for the welfare of others.

He was born in Dallas on January 25, 1921. Soon after his birth, his family moved to Fort Worth and settled in the Polytechnic section of the city. "Aggie" attended elementary school, then Peacock Military Academy, Polytechnic High School, and Texas Christian University, where years later he would serve with distinction as a Trustee of that great institution. When World War II broke out "Aggie" volunteered and was accepted for service in the United States Army from which he was honorably discharged with the rank of sergeant.

He rose from mail clerk in the Panther Oil and Grease Manufacturing Company (now Texas Refinery Corporation) to the Chairmanship and Chief Executive Officer. Both of the latter came to him in November of 1966. The stability of that company of international scope is magnificent testimony to his business skill and acumen. It is easy to be a good CEO when times are good, but "Aggie's" abilities went beyond the good and he demonstrated his true grit when oil and petroleum by-products went sour in the mid-80s. Texas Refinery not only survived the bust but managed to thrive due mainly to his imaginative administration and the skilled and able people with whom he had surrounded himself through the years.

"Aggie" was a joiner, and when he joined he joined in earnest. Clubs and civic organizations, literally too many to mention, counted his *active* membership as part of their strength. There was not an organization of merit in Fort Worth that the Pates did not touch. This spread to Texas and the nation as well. I suppose one could read the beatitudes from the Sermon on the Mount and find "Aggie" taking the side of those singled out in timeless memory by the man from Nazareth. On twenty-seven different occasions he served as Chairman, President, and Board member of institutions concerned with education, children, youth, needy adults, senior citizens, our country, his church, animals, banking, history, philosophy, and even the Miss Texas Scholarship Pageant. At the time of his death he was a member of the Executive Board of Directors of the Texas Girls Choir, Senior Trustee of Austin College, member of the Board of Directors of the TCU Harris College of Nursing, Trustee of Texas Christian University, and President of the Pate Foundation.

Seventeen different times he was honored with major accolades including four honorary degrees granted among Austin College, TCU and Wesleyan, the Brotherhood Citation of the National Conference of Christians and Jews, the Golden Deeds Award from the Fort Worth Exchange Club, the Order of Merit from the Nation of Luxembourg, and listing of his biography in *Who's Who in America*.

Although the causes he espoused were many, three "loves" bear special mention. In 1971 "Aggie" was appointed Honorary Counsel of Luxembourg for Texas and New Mexico. This appointment grew from his business interests in that grand nation and thrived because of his and Joyce's genuine love for the Lux people. He represented the Lux interests with alacrity and effectiveness. On more than one occasion, the Pates were visited by the Prime Minister, members of his cabinet, and the Ambassador from Luxembourg to the United States. These visits were reciprocated by Dr. and Mrs. Pate and a genuine bond of effective friendship was enhanced between our two peace loving countries because of their substantial efforts.

"Aggie" loved things that moved whether by land, sea, or air. Anything that was propelled by a steam, jet, or internal combustion engine gained and held his fascination. In fact, his fascination was so high and his imagination so quickened by them that he founded a museum to house his several collections. When most folks collect things they usually can be carried in the trunk of an automobile or at the very least in the bed of a pick-up. Not "Aggie." He brought in a United States Navy, full grown mine sweeper and blocked it up in Cresson, Texas. Other intimate little objects included a couple of jet fighters, a DC-3 (which was flown in under its own power), a railroad business car — read parlor-observation — from the T&P "Sunshine Special," and a few odds and ends from our early space shots. All that is outside. Inside are kept the automobiles . . . enough to make Jimmy Cagney, Humphrey Bogart, and George Raft look like pikers. Most of them run, all are beautifully restored, and yes, many have been used in movies. The Pate Museum of Transportation is one of the country's genuinely great collections of its genre. The manner in which Joyce and "Aggie" shared its magic with us can never be forgotten. One night I'll never forget. After Lionel Hampton's band closed down a memorable evening at the museum, it was my singular privilege to sit at the piano and "jam" with Lionel Hampton on the vibes. "Aggie" played the drums. The moral of this part of the story is that Adlai McMillan Pate, Jr., knew how to enjoy life and share that enjoyment with those for whom he cared.

"Aggie" loved the Philosophical Society of Texas. He considered it to be the preeminent organization. His attendance upon its affairs was almost perfect. The only time he missed the Annual Meeting was when he was in the hospital. Very early in our relationship, I think in our first conversation, he started telling me about the Society and the wonderful people who created and sustained it and what it meant to Joyce and him and how grand were its occasions and how much I was missing by not

being a member . . . in fact, after hearing his telling of it, I became convinced that my life would be found missing should I not someday be invited into its membership. The first time Ann and I visited an Annual Meeting we were the guests of the Pates and my parents. One of his disappointments was that the Society did not meet more often. He took scholarship and a love of learning seriously. Two of his and Joyce's collections that *can* be carried in the trunk of an automobile, at least piece by piece, deal with the institution of the American Presidency and a singular collection of Mr. Lincoln of some distinction. That we should all be so proud of our Society and support it with the same love and devotion as did Dr. Pate.

"Aggie's" great strength and sustainer in all this was his devoted and equally committed wife, Joyce Peugh Pate. The tired old phrase ". . . behind every great man . . ." is entirely inappropriate in Joyce's and "Aggie's" case for she stood ever beside him. In fact, she often led him to decisions and relationships which served us all so well. Joyce's devotion to Dr. Pate was consummate and her love for him unbounded and like "Aggie's" for her, unqualified. Their children include Adlai McMillan Pate III, Sheila Lynn Pate Wolfe, Charles Patrick Pate, and Sharon Lansden Pate. He and Joyce have five grandchildren.

At "Aggie's" funeral myriad emotions ebbed and flowed like gentle waves of memory across us. The parties, the great causes, the museums, the little children, the moments of high emprise, the calls of encouragement, the moments of victory, the moments of defeat, the perseverance to the very end of a life lived gracefully and fully and completely; all these and more were there. Then came readings and praise from the clergy, then into our grief came striding "Aggie's" own words which were the preamble to his last will and testament. After several very personal paragraphs of introduction he said, "I take leave of this terrestrial life with no regrets other than that of the brief interruption my leave-taking will cause in the fellowships of those I love. I know when I reach my Father's home, I will be greeted by old friends — a great reunion. Happily, I wait to greet my Lord. Do not grieve. Join me in this happiness." And, so we did. And yet . . .

All of us are capable of great vision if we will just focus on the future. "Aggie" did that. He always was wondering "why not?" rather than "why?" or "how?" He spent his time on earth wisely and in service to others. He was a living example of the Golden Rule. He truly left this world a better place for his having been here.

My paternal grandfather was a preacher. He kept a little plaque in his office collected in some curio shop from long ago which read: "Live so that when you die even the undertaker will be sorry."

"Aggie" lived that way. When we left the Presbyterian Church on that brilliant October afternoon his undertaker was standing outside in the sunshine with tears on his face. So were we all.

J. H. F.

AGESILAUS WILSON WALKER, JR.
1901-1987

AGESILAUS WILSON WALKER, JR., WHO WAS USUALLY CALLED Jess, was born in Denison on June 10, 1901. He was graduated from the University of Texas with a Bachelor of Arts degree in 1921 and was elected to Phi Beta Kappa. He began the study of law at Columbia University in 1921 but returned to the Law School of the University of Texas in the spring of 1922 and became the editor-in-chief of the *Texas Law Review* in the fall of that year. After being graduated with the Bachelor of Laws degree and election to the Order of the Coif, Walker began the practice of law in Dallas as a sole practitioner. After two years of practice, he became a member of the law faculty at the University of Texas and held that position until 1948. During those years Jess Walker was recognized as the foremost Texas authority on oil and gas law, a burgeoning new field of great importance in the state. He was President of the Texas Petroleum Council (1933) and took a leave of absence to serve as Senior Attorney of the Petroleum Administration Board of the United States Department of the Interior during 1933-34. During World War II he served as Assistant Naval Attaché at the United States Embassy in Buenos Aires (1943-45). In 1948 he resigned his Professorship of Law to reenter the practice of law in Dallas. He formed a law firm with his friend John Paul Jackson and continued to practice law with that firm until his death on April 17, 1987.

During his years as a professor and a practitioner of law, the Texas law of fugacious minerals took on its present shape, and Jess Walker was one of the principal participants in developing that field of law, as counsel in many cases and as the author of essays and teaching materials that defined and organized the subject. When the Mineral Law Section of the State Bar was organized in 1938, Walker was invited to give a paper on spacing regulations — a presentation of forty minutes that produced a debate among the participants that lasted for more than three hours. It was not, however, until 1965 that the Texas Legislature finally passed an act to regulate spacing of oil wells along the lines of Walker's suggestions of 1938.

Jess Walker was a man of gentle spirit and prodigious energy. He had much concern for the needs of those around him; his dry wit was cheerful and he was generous with his thought and time. In all ways he was a gentleman of the law.

J.W.M.

SAM PAUL WORDEN
1910-1987

SAM PAUL WORDEN, A MEMBER OF THE TEXAS PHILOSOPHICAL SOCIETY since 1976, was born July 4, 1910, on a farm in Sumner County, Kansas, and died in Houston on April 3, 1987. He was an inventor of geophysical and geodetic instruments. A graduate and distinguished alumnus of Rice University, he was a recipient of the Medal Award of the Society of Exploration Geophysicists, now known as the Fessenden Award. He was also awarded honorary and life memberships by the Geophysical Society of Houston. Models of the Worden Gravity Meter are displayed at the Smithsonian Institution and the Houston Museum of Natural Science. He was a member of many other organizations including the International Union of Geodesy and Geophysics, the Society of Oceanography, the American Geophysical Union, the European Association of Exploration Geophysics, the American Association of Arts and Sciences, the Houston Philosophical Society, the Rice University Associates, and a community associate of Will Rice College and recipient of its Meritorious Service Award.

The Sam Worden Award in Geophysics at Rice University is presented annually to a student in the Department of Geology and Geophysics based on the student's creative, innovative contributions to the enhancement of geophysics, either in theory or instrumentation.

Sam P. Worden was a man who well deserves recognition for his outstanding contributions to geophysics. That this recognition should come from his colleagues in the Society of Exploration Geophysicists is both fitting and proper. He, however, has also received the less tangible unofficial recognition of much of the world's scientific community and especially those whose work depends on a knowledge of how gravity varies on planet Earth. Like many another distinguished scientist, Sam attributes the start of his career to an intimate association with one of his professors while a college undergraduate. In Sam's case it was Professor Mott-Smith at Rice University. For the sum of 25 cents an hour Sam did most of the back work on the development of the Mott-Smith gravimeter which was temperature stabilized with ice and weighed 180 pounds. When Prof. Mott-Smith left Rice to set up the Mott-Corporation, it was Sam, who had just received his B.S. in electrical engineering, whom he hired to help build the Mott-Smith gravimeters. This association lasted for ten years at which point Sam left the Mott-Smith Corporation to set up a less back-breaking business manufacturing miniaturized galvanometer mirrors and lenses weighing about one milligram each.

A serious illness interrupted Sam's work for a full year. Although he recovered, his health remained a problem to him for the rest of his life. However, as soon as his health permitted, he began to manufacture and sell tiny focused quartz mirrors and lenses for galvanometers which were required for optical seismic recorders and many other scientific purposes.

George P. Wollard writing about Sam says, "at that time Sam's manufacturing plant was the garage behind his home in Houston. Sam was president, foreman, and floor sweeper. His wife, Helen, was vice-president, secretary, treasurer, and office force. When I approached Sam as to whether he could make a gravimeter that could be read anywhere in the world with a reliability of 1 mgal (about one millionth of the force of gravity at the Earth's surface) or better, he was at first dubious, but the next day he felt it might be feasible. When the subject of costs came up and it turned out that it looked like I would, perhaps, be the only customer and that I had no backing or grant to foot the bill, I expected him to suggest that I was off my rocker. Although willing to invest a year's pay before taxes, this was less than half the price of a regular exploration gravimeter. Instead, Sam wanted to know more

about why I felt such an instrument was needed and what I hoped to demonstrate. The upshot was that he told me to go into the house and get together with Helen in drafting a contract specifying the performance characteristics I wanted and naming the price that I could pay. A performance clause which he (not I) insisted on, was to the effect that if the instrument did not perform in what I regarded as a satisfactory manner, I owed him nothing.

"If ever there were a measure of a man's greatness of spirit rising above all other considerations, that document, which I still cherish, is solid, legal evidence that Sam Worden is no ordinary mortal. It, therefore, is only fitting that Worden Meter No. 10, which resulted from this contract, should now be enshrined in the Smithsonian Institution along with Lindberg's Spirit of St. Louis and a model of the first United States satellite. That the scientific impact of this development was significant is evidenced by the fact that it touched off a new era in gravity standardization which has culminated in the recently adopted international standard and the new theoretical gravity formula. That I turned out to be wrong in assessing the potential market demand for high range gravimeters, and Sam was soon swamped with more orders than he could fill, has been a fitting though unplanned bonus. It made it possible for Sam to go back to the farm, have a decent sized spread and indulge in his real love — raising cattle, hay, and pecans."

A distinguished theoretical physicist writing of Sam says, "Legends of old tell of the angel who appears silently, unannounced, with smiling face, to help the toiling traveler on his way. Such an angel Sam Worden was, with his wife Helen. On one occasion he presented me with a beautiful half-scale model of the well-known Worden gravimeter, with its fantastic sensitivity. It is one of my greatest treasures. Treasure? The greatest treasure is the friendship he showed me over the years."

His advice on geophysics, geology, and in fact all of the natural sciences at Rice was regularly welcomed by the Rice faculty and administration. Sam was a most pleasant but quiet man, always ready and willing to help. We were fortunate to have him as a member of the Society and especially as a friend.

Sam and his wife Helen always worked together effectively as a team. They both were very effective supporters of a large variety of educational and cultural projects.

In preparing this I have used materials from Sigmund Hammer, George P. Wollard, John Archibald Wheeler, Margaret Alsobrook, and especially from Helen Saba Worden.

W.E.G.

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PAST PRESIDENTS

*Mirabeau Buonaparte Lamar	1837-59
*Ira Kendrick Stephens	1936
*Charles Shirley Potts	1937
*Edgar Odell Lovett	1938
*George Bannerman Dealey	1939
*George Waverley Briggs	1940
*William James Battle	1941
*George Alfred Hill, Jr.	1942
*Edward Henry Cary	1943
*Edward Randall	1944
*Umphrey Lee	1944
*Eugene Perry Locke	1945
*Louis Herman Hubbard	1946
*Pat Ireland Nixon	1947
*Ima Hogg	1948
*Albert Perley Brogan	1949
*William Lockhart Clayton	1950
*A. Frank Smith	1951
*Ernest Lynn Kurth	1952
*Dudley Kezer Woodward, Jr.	1953
*Burke Baker	1954
*Jesse Andrews	1955
*James Pinckney Hart	1956
*Robert Gerald Storey	1957
*Lewis Randolph Bryan, Jr.	1958
*W. St. John Garwood	1959
George Crews McGhee	1960
*Harry Hunt Ransom	1961
*Eugene Benjamin Germany	1962
*Rupert Norval Richardson	1963
*Mrs. George Alfred Hill, Jr.	1964
*Edward Randall, Jr.	1965
*McGruder Ellis Sadler	1966
*William Alexander Kirkland	1967
*Richard Tudor Fleming	1968
*Herbert Pickens Gambrell	1969
*Harris Leon Kempner	1970
*Carey Croneis	1971
*Willis McDonald Tate	1972
*Dillon Anderson	1973
Logan Wilson	1974
Edward Clark	1975
Thomas Hart Law	1976
*Truman G. Blocker, Jr.	1977
Frank E. Vandiver	1978
*Price Daniel	1979
Durwood Fleming	1980
Charles A. LeMaistre	1981
Abner V. McCall	1982
*Leon Jaworski	1983
Wayne H. Holtzman	1983
Jenkins Garrett	1984
Joe R. Greenhill	1985
William Pettus Hobby	1986
Elsbeth Rostow	1987
John Clifton Caldwell	1988

*Deceased

MEETINGS OF THE PHILOSOPHICAL SOCIETY OF TEXAS

December 5, 1837 — Founded at Houston	1963 — Nacogdoches
January 29, 1839 — Austin	1964 — Austin
January 18, 1936 — Chartered	1965 — Salado
December 5, 1936 — Reorganizational meeting — Dallas	1966 — Salado
January 29, 1937 — Meeting and inaugural banquet — Dallas	1967 — Arlington
December 4, 1937 — Liendo and Houston	1968 — San Antonio
1938 — Dallas	1969 — Salado
1939 — Dallas	1970 — Salado
1940 — San Antonio	1971 — Nacogdoches
1941 — Austin	1972 — Dallas
1942 — Dallas	1973 — Austin (Lakeway Inn)
1943 — Dallas	1974 — Austin
1944 — Dallas	1975 — Fort Worth
1945 — Dallas	1976 — San Antonio
1946 — Dallas	1977 — Galveston
1947 — San Antonio	1978 — Houston
1948 — Houston	1979 — Austin
1949 — Austin	1980 — San Antonio
1950 — Houston	1981 — Dallas
1951 — Lufkin	1982 — Galveston
1952 — College Station	1983 — Fort Worth
1953 — Dallas	1984 — Houston
1954 — Austin	1985 — College Station
1955 — Nacogdoches	1986 — Austin
1956 — Austin	1987 — Kerrville
1957 — Dallas	1988 — Dallas
1958 — Austin	1989 — San Antonio
1959 — San Antonio	
1960 — Fort Clark	
1961 — Salado	
1962 — Salado	

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