

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

- - -

ELIEZER WILLIAMS, a minor, by )  
SWEETIE WILLIAMS, his guardian )  
ad litem, et al., each )  
individually and on behalf of )  
all others similarly situated, )  
Plaintiffs, )

vs.

No. 312236

STATE OF CALIFORNIA, DELAINE )  
EASTIN, State Superintendent )  
of Public Instruction, STATE )  
DEPARTMENT OF EDUCATION, STATE )  
BOARD OF EDUCATION, )  
Defendants. )

DEPOSITION OF

HEINRICH MINTROP, VOLUME II

SAN FRANCISCO, CALIFORNIA

APRIL 1, 2003

ATKINSON-BAKER, INC.  
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11 EASTIN, State Superintendent )  
12 of Public Instruction, STATE )  
13 DEPARTMENT OF EDUCATION, STATE )  
14 BOARD OF EDUCATION, )

13 Defendants. )

14 \_\_\_\_\_ )  
15  
16 Deposition of HEINRICH MINTROP, taken on  
17 behalf of Defendants, at 275 Battery Street,  
18 San Francisco, California, commencing at 9:53 a.m.,  
19 Tuesday, April 1, 2002, before Pamela Dehnke, CSR No.  
20 6676.  
21  
22  
23  
24  
25

1 I N D E X

2 WITNESS: HEINRICH MINTROP

3  
4 EXAMINATION PAGE  
5 BY MS. READ-SPANGLER 215  
6

7 EXHIBITS:  
8 DEFENDANTS'  
9 NUMBER DESCRIPTION PAGE  
10 5- Five pages of handwritten notes, 263  
11 PLTF-XP-HM 184 - 208  
12 6- Multi-page document, PLTF-XP-HM 264  
13 187 - 204

14 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

15 PAGE LINE

16 (None)  
17 INFORMATION TO BE SUPPLIED:  
18 (None)  
19  
20  
21  
22  
23  
24  
25

1 A P P E A R A N C E S

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7 FOR DELAINE EASTIN, STATE DEPARTMENT OF EDUCATION,  
8 STATE BOARD OF EDUCATION:

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Sacramento, California 95814

1 HEINRICH MINTROP,  
2 having been previously duly sworn, was  
3 examined and testified as follows:  
4

5 EXAMINATION

6 BY MS. READ-SPANGLER:

7 Q. Professor Mintrop, you understand that you are  
8 still under oath?

9 A. Yes.

10 Q. Have you had any discussions with plaintiffs'  
11 counsel about your deposition since we left yesterday?

12 A. Yes.

13 Q. What did you discuss?

14 A. Ms. Welch informed me that what we were  
15 discussing would not be under any kind of client  
16 privilege and, therefore, would be best not to spend to  
17 much time discussing it. It would waste time the next  
18 day. So we made sure we did not discuss much, but, of  
19 course, I had to ask her, "How do you think it went?"  
20 And she said, "You're doing fine."

21 Q. Have you reviewed any documents in preparation  
22 for your deposition since yesterday?

23 A. No.

24 Q. I think we were looking at page 9 of your  
25 report, and we were discussing some of the premises.

1 And I want to direct you to the section under,  
2 "Conditions of Improving Low-Performing Schools Within  
3 High-Stakes Accountability Systems." And you said in  
4 the report, "An equity-oriented performance-based  
5 accountability and oversight system that aims at closing  
6 persistent achievement gaps relies on a dynamic of  
7 continuous school improvement."

8 Does California have such a system?

9 A. It has parts of that system.

10 Q. What parts of that system do you think  
11 California has?

12 A. It has a -- it has designed a demand placed on  
13 schools to improve continuously the goals the schools  
14 are confronted with. In meeting these goals, schools  
15 will improve continuously.

16 Q. Does it have any other parts?

17 A. I would say that the state supports the  
18 low-performing schools with a certain amount of money,  
19 which may help a little in the improvement of schools.

20 Q. Any other parts?

21 A. I think that's it.

22 Q. Do any other states or do any states have a  
23 system such as you have described in that first  
24 sentence?

25 A. There are elements of such a system in various

1 administration and leadership and fiscal matters. So  
2 such teams are dispatched in the schools for a whole  
3 year and they give rather intense support. Again, the  
4 selection of these teams seems to be rather rigorous as  
5 well.

6 So I would say that the oversight and support  
7 function in states such as Kentucky and North Carolina  
8 are further developed than the system here in  
9 California.

10 Q. Are there any countries that have a system,  
11 such as the one you described in the first sentence?

12 A. That's -- that is a hard question to answer.  
13 There are, as I understand it -- I mean, if I'm thinking  
14 about some countries I have looked at, there are no  
15 centralized systems that take care of all of the  
16 elements that I'm thinking about. There are certain  
17 functions delegated to, say, localities, for example,  
18 Sweden. The Swedish cities and local districts that  
19 would be the equivalent to the United States are  
20 responsible for monitoring the learning conditions,  
21 while the state monitors the student outcomes. You  
22 know, it does happen there, but it's distributed in  
23 different ways.

24 Q. Do you have an estimate of how much it would  
25 cost California to develop and implement such a system

1 states. For example, in New York as part of the SURR  
2 program, Schools Under Registration Review, there are  
3 actually standards for learning conditions that can be  
4 used to identify a school as low performing  
5 independently of the schools task force.

6 So when a -- when the conditions of the schools  
7 are deemed unhelpful, for example, the school can be low  
8 performing independently of the test schools. That's  
9 what New York has. New York has the beginning of a kind  
10 of input standards or opportunity-to-learn standards.

11 I would say that the two states of Kentucky and  
12 North Carolina have much more in place with regard to  
13 oversight than California. As part of the  
14 low-performing schools program, in Kentucky when a  
15 school is identified as what they call in need of  
16 assistance, a highly skilled educator is being  
17 dispatched to the school, who has been carefully  
18 selected and trained, has a long track record of success  
19 in improving schools or managing schools, and that  
20 person is sent to the school. The program -- from what  
21 I have seen and read, the program is fairly tightly  
22 managed by the Kentucky Department of Education. North  
23 Carolina sends to schools -- upon identification, sends  
24 an intervention team of up to five people who have  
25 specialized in various curricular areas and issues of

1 as you have described in the first sentence?

2 MS. WELCH: Objection. Incomplete  
3 hypothetical.

4 THE WITNESS: No, I don't have an estimate how  
5 much it would cost. I am thinking in terms of -- I am  
6 thinking in terms of gradual steps. The actual system,  
7 the actual oversight system would not be all that  
8 expensive because what it really needs is -- is a  
9 catalog of input standards, opportunity-to-learn  
10 standards, people who are trained to evaluate these  
11 opportunity-to-learn standards, and then teams that go  
12 to the various schools. That in and of itself probably  
13 would not be as expensive. The reason I hesitate is  
14 once such teams or once such reviews unearth or uncover  
15 the whole extent of differential learning conditions in  
16 different schools, we then talk about how to remedy  
17 these in equalities, that may cost more, and there I  
18 don't have any estimate.

19 Q. Do you have in your -- what in your expert  
20 opinion would the state's role be in such a system as  
21 you described in the first sentence? And let me be very  
22 clear. I'm going to ask you the same question  
23 differentiating between the state, the Department of  
24 Education, the state board and the superintendent of  
25 public instruction. So to the extent you are able to

1 differentiate between those entities, I want you to  
2 limit your answer right now to the state.

3 MS. WELCH: For all of them I will object to  
4 the extent it calls for a legal conclusion. And that  
5 will be a standard objection for these questions.

6 THE WITNESS: I cannot make a statement for the  
7 question because to me this distinction between the  
8 state, per se, and the State Department of Education,  
9 the State Board of Education, these are in my view as  
10 somebody who is concerned about the condition of schools  
11 and things in terms of the responsibilities of the state  
12 as a whole. These are all entities that should play  
13 some kind of role. I cannot specify what role that will  
14 be. It could be that if one looks at the state  
15 governing structure -- and I have not done here, and it  
16 would be beyond my expert report -- it could very well  
17 be that another expert would suggest that the governing  
18 structure might need overhaul in that, you know, the  
19 various entities responsible for state governance  
20 produce a rather incoherent educational policy and have  
21 had a fairly -- as I can tell, in somebody who has been  
22 in California education over the years, has had a fairly  
23 fragmented effect on policy making in the schools, but  
24 this is beyond that I'm willing to go.

25 Q. BY MS. READ-SPANGLER: Just for clarify for the

1 the state does monitor student performance. I believe  
2 that it is done in a way that is too limiting, but I  
3 don't think this would actually be necessarily something  
4 we want to cover here, since my expert report is not  
5 based on that assertion.

6 So I could see a more wholesome or holistic way  
7 of capturing the outcome or the performance of schools.  
8 And then in addition to that there should be a way to --  
9 for the state to monitor and evaluate the learning  
10 conditions at schools and districts.

11 Q. You just talked about using a holistic  
12 approach. That's not quite what you said, but in your  
13 report you talk about doing a holistic view. What do  
14 you mean when you use the word "holistic" in terms of  
15 doing a holistic review of schools?

16 A. In this context, as I just used it, this refers  
17 to a comment that I made towards the end of the report,  
18 I think, where I point out that I'm using for the sake  
19 of my arguments a current indicator of school  
20 performance, which at the time was the Stanford 9. Now  
21 it would be the Stanford 9 plus the California standards  
22 test, despite misgivings I have in this case, which is  
23 that school performance needs to be evaluated in a more  
24 holistic way. That is, schools do not -- schools are  
25 not just chartered to educate students to perform well

1 record, if I ask you for any -- basically for any of the  
2 things we discuss or might discuss, you couldn't  
3 necessarily differentiate and tell me differences on  
4 what you think the state versus the Department of  
5 Education, the Board of Education or the superintendent  
6 should do because you don't have a clear distinction in  
7 your mind?

8 A. That's correct. What I would say -- in line  
9 with what we discussed yesterday, what I would say is  
10 that I could see it being beneficial that any kind of  
11 agency that reviews school conditions and that also  
12 provides the support needed for the schools to turn  
13 around, would be a rather more independently chartered  
14 entity. Whether that is housed in the State Department  
15 of Education or is even a more independent agency, I  
16 don't know.

17 Q. So I want to know, could you tell me -- taking  
18 them as a group or taking just the state as a  
19 collective, could you tell me what you think the state's  
20 role should be in a system such as the one you described  
21 in the first sentence?

22 A. I think the state should -- as the state is  
23 currently doing, should find a way to monitor school  
24 quality with regard to student performance and with  
25 regard to learning conditions in the schools. Currently

1 on basic skills tests or tests that measure curricular  
2 standards. Schools are there to create citizens.  
3 Schools are there to create a humane environment, to  
4 develop personalities. And there are various dimensions  
5 within the whole universe of learning that could be  
6 captured with various tests. There are many, many more  
7 indicators than what we are currently using.

8 Q. Could you turn to page 22 of your report.

9 A. Yes.

10 Q. And I'll direct your attention to the middle  
11 part of the page dealing with the CCR, in about the  
12 middle part of the paragraph that says, "In this case, a  
13 more holistic review of a school that integrates  
14 learning conditions, practices and the needs of specific  
15 student populations is needed."

16 A. Yes.

17 Q. Are you using "holistic review" in a different  
18 context?

19 A. No. It's just a different -- in this case it's  
20 holistic used in a different dimension. I don't use  
21 "holistic" as a technical term, but as a generic  
22 adjective. When I used it the first time, I was only  
23 looking at performance indicators. What a more holistic  
24 view of what a school should be measured on would be  
25 indicators that go beyond the Stanford 9. So here when

1 I use "holistic," this actually here refers to the whole  
2 enterprise of school improvement, and that is -- that  
3 incorporates performance on the one hand and learning  
4 conditions on the other hand. So in this case  
5 "holistic" applies to the whole picture.

6 Q. And in this context how would that be done?

7 MS. WELCH: Objection. Vague. What did you  
8 mean by "this context"?

9 MS. READ-SPANGLER: In the context that he's  
10 using it in the discussion of the CCR.

11 THE WITNESS: That is when we are dealing with  
12 the implementation and the usage of standards of  
13 adequacy for learning standards. That's the context of  
14 it here. This I think will have to be done through some  
15 more sophisticated review and support structures.

16 Q. BY MS. READ-SPANGLER: When you say, "standards  
17 of adequacy for learning conditions," is that what we  
18 talked about yesterday in terms of adequacy standards?

19 A. Uh-huh.

20 Q. Are you proposing that a more holistic review  
21 would be done by a CCR staff?

22 A. No. I'm saying that it could not be done by  
23 the CCR staff. The CCR -- I'm not saying that there may  
24 not be qualified people on the staff who might move in  
25 to a different mode of audit and review. I'm talking

1 about the current, if you will, regime of the CCR, which  
2 is driven by a large number of items that a school needs  
3 to be in compliance with. Compliance can be proven by a  
4 written document of rather detailed -- rather detailed,  
5 you know, facets of the school operation. I don't think  
6 that's the kind of review and support that a school  
7 needs in order to improve. A school doesn't improve  
8 that way. A school improves when the spirit is  
9 heightened, when the programs are not only effective but  
10 are also believed to be effective by the staff.

11 So there's a lot of cultural work, motivation,  
12 you know, those kinds of things involved. And that  
13 requires a more -- that cannot be captured by CCR type  
14 compliance review.

15 Q. So is this -- would you need an independent  
16 agency such as you propose in your report to do this?

17 MS. WELCH: Objection. Vague. Incomplete  
18 hypothetical.

19 Q. BY MS. READ-SPANGLER: I'm trying to figure out  
20 who you think should be doing this.

21 A. I would think that the very first steps  
22 California has taken, for example, in the II/UPS program  
23 there is the external evaluator feature, for example.  
24 This is the very first step of where this might go. The  
25 problem with the external evaluator feature is that it

1 is rather still a very incoherent approach, not very  
2 well supervised, not clearly articulated with state  
3 policies, not clearly articulated with -- if we take the  
4 buzz words of the current, you know -- the current way  
5 of thinking about educational reform, does not clearly  
6 articulate with researched-base practices that have been  
7 found to be effective. It is too much of a stab in the  
8 dark. I could imagine that this effort could become  
9 more coherent and tightly managed and resources could  
10 flow into more quality assurance and more in the  
11 direction of where Kentucky and North Carolina have  
12 gone. So it would require for the state to build up  
13 capacity, which I don't think it has at this point. To  
14 build up capacity, to perhaps contract with third-party  
15 consultants, if that's the way California wants to go.  
16 But these third-party consultants should be trained in a  
17 particular way of evaluating and they should be trained  
18 in the specifics of how to turn around a school, a low  
19 performing school under California accountability  
20 conditions.

21 So if you're asking me, who should do it, the  
22 first step is taken. Now, it might very well be that  
23 California decides not to go the third-party consultant  
24 route where you stay more like Kentucky did with a  
25 system that is run by the department itself, where it

1 has more control over who is the support provider and  
2 how the quality of the services are being monitored.  
3 It's much more difficult if you contract out the work.  
4 But this is something that, you know, that can be  
5 decided on down the road as long as it is clear what  
6 direction California is going into, as long as it is  
7 clear that California is building up this  
8 infrastructure.

9 Q. Could you turn back to page 10.

10 A. Uh-huh.

11 Q. Towards the top of that page you talk about  
12 baseline stabilization?

13 A. Uh-huh.

14 Q. And you say, "This kind of baseline  
15 stabilization, largely beyond schools' control, needs to  
16 be provided by districts and states."

17 A. Uh-huh.

18 Q. What do you mean by "baseline stabilization"?

19 A. This goes back to the idea -- let me start with  
20 the research by O'Day and others in Chicago. Chicago  
21 is -- Chicago has had a pretty stringent accountability  
22 system in place for quite some time. A number of  
23 schools, hundreds of schools being put on probation. A  
24 number of schools being re-constituted. That is all the  
25 things that California is intending to go into.

1 What the research found in this large universe  
 2 of schools is that there are schools who benefit from  
 3 being identified as low performing, and there are  
 4 schools who can benefit from being put on probation, and  
 5 there are schools that cannot. It is a 50/50  
 6 proposition, which is not good, but that's what they  
 7 found. It is the organizational capacity that actually  
 8 decides whether a school productively picks up the  
 9 signal of low performance or not. In some schools where  
 10 initial organizational capacities is fairly high; that  
 11 is, there is a certain level of faculty stability,  
 12 concern level of trust among colleagues and stability of  
 13 leadership, there is trust in the capability of  
 14 leadership.

15 Those are some of the variables they measured.  
 16 Those schools become proactive and they are actually  
 17 able to make improvements. There are schools where that  
 18 is not the case. Those schools don't benefit.  
 19 Sometimes they deteriorate because the signal of low  
 20 performance is actually counterproductive. It acerbates  
 21 and there are crisis-ridden situations. It often moves  
 22 the last core of stable faculty out and things like  
 23 that.

24 So that's their research. In my research I  
 25 found that even in schools that improved as a result of

1 Q. In your expert opinion what should California  
 2 school districts be doing to provide baseline  
 3 stabilization?

4 MS. WELCH: Objection. Incomplete hypothetical  
 5 and vague.

6 THE WITNESS: Well, what -- you would have to  
 7 first set up a scenario and then you could answer that  
 8 question. Let's say, for example, one finds that in the  
 9 Los Angeles Unified School District there is a serious  
 10 problem of overcrowding, so serious that you find this  
 11 documented, for example, in the program improvement  
 12 schools, all over the place.

13 Overcrowding is a serious problem that makes it  
 14 very difficult for schools to operate properly. We find  
 15 regression analyses that overcrowding, particularly  
 16 Concept 6 tends to be associated with lower student  
 17 achievement. We have established a condition. We don't  
 18 have opportunity-to-learn standards yet. We don't have  
 19 adequacy of learning condition standards yet. Had we  
 20 had these standards, we would have known 15 years ago  
 21 that these schools never should have been allowed to  
 22 become as overcrowded. Something should have rung the  
 23 bell before these schools were allowed to go into  
 24 decline to alleviate the situation. That didn't happen.

25 You asked what districts could do in this case.

1 being identified as low performing, improvement gains  
 2 looked shaky. You see, for example, in California as  
 3 well, you see a lot of fluctuation in test scores. Not  
 4 only here, you see this in other jurisdictions as well.  
 5 That has to do with the general limitations of the  
 6 capacities that the schools have. For example, in some  
 7 of the schools that I studied --

8 Q. Can I interrupt. Are you defining "baseline  
 9 stabilization" for me?

10 A. That was your question?

11 Q. Yeah, I asked what baseline stabilization was.  
 12 Is that what you were giving me?

13 A. No. I thought your question was where does  
 14 this idea come from. So I'm giving the research  
 15 history.

16 What's the definition of baseline  
 17 stabilization. Okay. It means that there's a certain  
 18 level of school stability. There's a certain level of  
 19 leadership capacity, teaching capacity, a certain level  
 20 of space per child, a certain level of teacher/student  
 21 ratio that is required for a school to function properly  
 22 under current conditions in California. That I would  
 23 consider baseline stabilization. It goes back to the  
 24 idea of opportunity and input standards and the sense of  
 25 adequacy of input standards.

1 I'm not a specialist on school construction, but I know  
 2 in school construction both the state and the districts  
 3 have a role to play. From the point of view of the  
 4 interest of the child, it does not matter that because  
 5 the way the system was set up schools were not built for  
 6 20 years. From the perspective of the child and the  
 7 teacher working in these schools, the systems, both  
 8 district and state, without making a clear distinction  
 9 or who's responsible for what, failed to address this  
 10 very, very serious problem.

11 So what should a district do in this scenario.  
 12 There I think this would be a perfect example of an  
 13 independent review agency that rings the bell early  
 14 enough and says both districts and states you have to  
 15 get your act together because a catastrophe is in the  
 16 making.

17 Q. BY MS. READ-SPANGLER: You say, "This kind of  
 18 baseline stabilization, largely beyond schools' control,  
 19 needs to be provided by districts and states."

20 What in your expert opinion -- I think you sort  
 21 of answered it with regard to districts, what should the  
 22 state be doing?

23 MS. WELCH: Same objections. Incomplete  
 24 hypothetical.

25 I think your answer made clear you couldn't

1 answer the question as phrased.

2 MS. READ-SPANGLER: That's why I asked.

3 THE WITNESS: We would have to discuss cases  
4 and scenarios. Then I could say this is what an  
5 independent review agency might end up doing. We could  
6 talk about this for various issues.

7 Q. BY MS. READ-SPANGLER: So it's going to vary  
8 with given -- with different situations?

9 A. Yes, it varies because in education we have  
10 such a vague -- or rather than vague let's -- a  
11 difficult -- it is so difficult to discern who  
12 contributes what towards the outcome, meaning towards  
13 education. We always need to look at the contribution  
14 of policies on the state level, policies on the district  
15 level and resources, but also the effort of the school.  
16 They all have to come into the picture to get the job  
17 done.

18 Q. Can you tell me what states don't have a  
19 largely outcome-based accountability system, if any?

20 A. In the United States?

21 Q. Yes.

22 A. Well, Wyoming is probably an example of a state  
23 that does not emphasize tests all that much. Iowa.  
24 There are not too many left.

25 Q. Would you turn to page 11 of your expert

1 conditions you're talking about in this sentence exist?

2 A. The state does not have a monitoring system  
3 that would allow it to know where those substandard  
4 conditions exist. That's what I'm saying.

5 Q. But you're assuming that there are such  
6 substandard learning conditions?

7 A. Yes.

8 Q. What's the basis for that assumption?

9 A. The basis for that assumption is what I quoted  
10 earlier. If you take the Harris pole you see that --  
11 you know, I only looked at the raw data that there are,  
12 in fact, differences among schools and districts in the  
13 State of California. In my own research I have found  
14 that using the -- that the indicators that we have at  
15 our disposal, that some of districts which we call  
16 districts in distress are impacted by -- are negatively  
17 impacted by differential learning conditions. And I  
18 would assume if the more sophisticated system was in  
19 place we would find a lot more. We rely on the data  
20 that we can get at this point because there is no such  
21 system in place. We are also relying on testimony of  
22 professionals in those schools and the like.

23 Q. Are you saying or implying in this sentence  
24 that the substandard learning conditions are causing  
25 unequal conditions?

1 report, which is marked as Exhibit 4.

2 A. Uh-huh.

3 Q. Under "Opinions and Conclusions" in the first  
4 sentence it says, "The current system of state oversight  
5 over California schools has large gaps. These gaps make  
6 it difficult for the state to even know where  
7 substandard learning conditions in California exist and  
8 how these unequal conditions specifically affect  
9 schools' and districts' performance lags."

10 A. Uh-huh.

11 Q. What are the large gaps that you're referring  
12 to in California's current system of state oversight?

13 A. Essentially here the gaps that I refer to are  
14 that California has set up a system of accountability  
15 that holds schools accountable for performance standards  
16 without adding to it the component that makes it  
17 possible to know whether the conditions of learning are  
18 sufficient in those schools to achieve those standards.

19 Q. What do you mean by schools and districts  
20 performance lags?

21 A. If we use the criteria that the state uses,  
22 which is the API, we find enormous lags between the  
23 districts and schools and the lower performing schools  
24 on the other hand.

25 Q. How do you know that the substandard learning

1 MS. WELCH: Objection. Vague.

2 THE WITNESS: Yeah, I don't understand the  
3 question.

4 Q. BY MS. READ-SPANGLER: You seem to be drawing a  
5 connection between substandard conditions being unequal  
6 conditions. Is that right?

7 A. Yes. Substandard compares a condition to a  
8 particular standard. Unequal compares it to other  
9 conditions in other places.

10 Q. Why do you assume or conclude that there is  
11 some sort of causal connection between the substandard  
12 or unequal conditions and the schools' and districts'  
13 performance lags?

14 A. We have very strong correlations over and over  
15 again that show us that for California. And those  
16 correlations can also be made for other states and  
17 districts.

18 Q. When you say "we have," who are you referring  
19 to?

20 A. In the research literature you find studies of  
21 that nature. I'm not an economist of education, so I  
22 can't rattle you off 25 right now, but that research is  
23 out there and I'm sure it's part of a lawsuit.

24 Q. Can you give me any references or citations?

25 MS. WELCH: You mean outside of what's in the

1 report?

2 MS. READ-SPANGLER: I'm not sure there is any  
3 in the report.

4 MS. WELCH: I'll disagree with that.

5 THE WITNESS: If you go to the challenge of --  
6 oh, I see, I realize now. You are not asking about  
7 whether there is a correlation. You are asking about  
8 causality. So this goes back to the discussion we had  
9 yesterday. If you look at studies that use production  
10 function instruments that, you know -- essentially  
11 regression analyses and those kinds of things that often  
12 kinds of education conduct, it is hard to establish  
13 without a reasonable doubt what the effect of one  
14 learning condition is on student outcome. However,  
15 short of that, if we, even though we cannot conclusively  
16 establish a causal relationship between particular  
17 inputs and outcomes, I think there are, there are data  
18 that tell us that there is a connection. This data is  
19 not as causal as one would wish, but we have strong  
20 correlations that speak for that. And public policy  
21 over the world is made based on those correlations, not  
22 based on causal regression analyses. It's based on  
23 these correlations. The whole UN effort to increase  
24 learning in third-world countries is based on the  
25 assumption that by increasing educational expenditures

1 wasn't clear what performance barriers they were  
2 supposed to identify. Were they also supposed to  
3 identify conditions that might have been affected by  
4 state policy. That was not part of the guidance that  
5 was given to schools. But if you look at the school  
6 improvement plans, the schools and the external  
7 evaluators describe some of the performance barriers.  
8 All the state would have to do is -- for example, expand  
9 that feature and carefully sift through these action  
10 plans, for example, and get an idea of what these  
11 schools are all about. It's not that difficult to do.  
12 And they would find that, for example, there is a -- I  
13 would suspect from the ones that I've seen -- that there  
14 is a severe problem of teachers not qualified, not  
15 judged to be qualified by the practitioners writing the  
16 plans. There is a severe problem with leadership  
17 stability and capability of leadership, and things like  
18 that, and a number of other things that they perceive  
19 popping up in the plans. That would be a first easy  
20 step. One could perfect this a little better. One  
21 could think of a way how the schools or external  
22 evaluators or agency more sophisticated than the  
23 external evaluators could actually zero in on specific  
24 conditions that are of particular interest either for  
25 policy making or conditions that have been found to be

1 and paying attention to educational quality, educational  
2 outcomes will improve in third-world countries. And as  
3 a result, large amounts of money have flown into  
4 third-world countries.

5 And, in fact, you can see when you look at  
6 Asia, lots of studies out there. Look at the Asian  
7 miracle. One reason for that miracle is that those  
8 countries were able to increase their percentage of  
9 educational expenditures and thereby improving the  
10 quality of their schools and improving access for  
11 students to curriculum and so on and so forth.

12 What I'm trying to say is, even though -- this  
13 goes back to an earlier part in my report where I laid  
14 out the premises -- even though in the debate among  
15 educational economists, we might conclude that these  
16 straightforward progression analyses do not, I think we  
17 have enough evidence to base public policy on.

18 Q. BY MS. READ-SPANGLER: Assuming the substandard  
19 conditions that you reference exist, what should the  
20 state do to find out where they exist?

21 A. The state has done something, I mean, have  
22 taken a step through II/USP, for example, in asking  
23 schools to write school action plans in which they were  
24 to state performance barriers. The way the state asked  
25 schools and evaluators to do that was rather murky. It

1 key at the present moment to impact whether a school is  
2 going to improve or not. One could think of all kinds  
3 of ways, and data could be collected and that data could  
4 be policy relevant. These are not difficult steps.

5 Q. Looking at the end of the first paragraph,  
6 going into the bullets you say, "The state presently  
7 lacks standards for adequate school operations."

8 Is that one of the adequacy standards you  
9 talked about yesterday?

10 A. Yeah.

11 Q. And in your opinion California should have  
12 standard for adequate school operations?

13 MS. WELCH: You need to let her finish her  
14 questions.

15 Q. BY MS. READ-SPANGLER: I was going to say why  
16 is that?

17 A. The state has said we cannot improve schools  
18 without standards because if we don't have clear  
19 standards as to what we want to accomplish, we don't  
20 know where we are going. Follow that logic and say the  
21 state has -- state schools have unequal learning  
22 conditions, differential learning conditions across  
23 schools. The research literature will attest to the  
24 problems that that possess for school improvement. If  
25 we don't have standards of adequacy for these learning



1 conditions, we don't know where to go or what to  
2 improve. The same logic that the state uses for  
3 performance ought to be used for inputs and conditions.

4 Q. Can you give me any specifics on what the  
5 standards for adequate school operations should be in  
6 California, in your expert opinion?

7 A. We would need more data collection or more  
8 research or more -- yeah, data collection of evidence  
9 from practitioners and schools. I would suspect that  
10 there is a certain level of faculty stability that is  
11 needed for a school to be functioning well. What that  
12 number is, I don't know at this point. There is  
13 probably a percentage that could be discerned, a  
14 percentage of qualified teachers that must be at a  
15 school. There is probably a percentage -- probably do  
16 this quantitatively -- a percentage at which -- a  
17 percentage of long-term and day-to-day substitutes  
18 covering classrooms on a regular basis that makes it  
19 possibly -- let me put it this way, that is associated  
20 with a school improving test scores. All of these  
21 analyses could be conducted and that could be standards  
22 of adequacy.

23 We could do the same thing for overcrowding.  
24 We do know from regression analyses that Concept 6 does  
25 lead -- just by the mere fact of a school being

1 in a classroom.

2 Q. With a cattle prod?

3 A. Yes.

4 Q. Any others? I'm going to keep asking you till  
5 you run out.

6 MS. WELCH: She'll hold you to this list.

7 THE WITNESS: You mean I can't ever add  
8 anything to it?

9 Q. BY MS. READ-SPANGLER: I'm just asking for your  
10 best thoughts as you sit here today. I understand these  
11 are examples. I'm just asking for you to be as specific  
12 as you can right now.

13 A. An obvious one that also happens to be part of  
14 the lawsuit, as I understand, is a textbook in every  
15 kid's hand. Material to be taken home for homework  
16 would be an obvious one. Healthy conditions, building  
17 code. Let's end it right here. There are probably  
18 others. I can't think of them right now.

19 Q. Who do you think should develop these  
20 standards?

21 A. I think a group of experts. I see a mixture of  
22 state officials, experts meaning educational researchers  
23 who have worked in this field and practitioners,  
24 district administrators, a group of people who are  
25 knowledgeable on the practical level and research level

1 Concept 6, does lead to differentials which negatively  
2 impacts student achievement. We don't know that through  
3 state analysis. We know that because researchers have  
4 run these regression analyses.

5 Q. Can you think of any other standards for  
6 adequate school operations?

7 MS. WELCH: You talked about teachers and  
8 overcrowding. She's asking you now for any others you  
9 have.

10 THE WITNESS: One could think of stability of  
11 principal leadership, for example. One could establish  
12 that probably a school that changes its principal every  
13 year is going to have a hard time turning itself around.  
14 Where one would set the actual rate, I don't know. That  
15 depends. I would say an internal rate of three years  
16 seems to be okay or every three years or four years,  
17 something like that would have to be established.

18 Q. BY MS. READ-SPANGLER: Any others?

19 A. One could have a -- one could have a measure of  
20 maximum class size at which a classroom is not  
21 manageable, under average conditions, that is. There  
22 are always excellent teachers that can handle 50 kids,  
23 but those are few. With a rod you can handle 60.  
24 You're not allowed to use those anymore, but in  
25 developing countries that's how they manage 60 students

1 and may have some experience monitoring people active in  
2 FCMAT. I could see that being a good group of experts.

3 Q. How long do you think it would take to develop  
4 such a set of standard?

5 A. Not long, not long.

6 Q. How long is not long?

7 A. It could probably be done in six months.

8 Q. The third bullet says, "The state presently  
9 lacks sufficient provision of support and intervention."

10 A. Uh-huh.

11 Q. What do you mean by "sufficient provision of  
12 support and intervention"?

13 A. This refers to the discrepancy between the  
14 identified problem and the solutions that are being  
15 offered for the problem. The identified problem being a  
16 fairly large number of low-performing schools enrolled  
17 in the program, the programs and outside of the  
18 programs, and the rather weak system of support and  
19 intervention that has been put in place to deal with  
20 possibly intervention burden.

21 Q. And it's your opinion that California should  
22 provide such support and intervention?

23 MS. WELCH: Vague.

24 THE WITNESS: I think that California has set  
25 out to -- California has set out to demand a particular

1 performance level from the schools. Schools do not have  
2 control over the policies that establish learning,  
3 conditions to a large degree, that establish learning  
4 conditions in their walls, you know, under their walls.  
5 If the state demands of schools to perform to a certain  
6 level, the state ought to demand of itself and districts  
7 policies that guarantee at least adequate conditions  
8 that make it possible for the schools to achieve the  
9 demanded performance goals.

10 Q. BY MS. READ-SPANGLER: The next to last  
11 sentence refers to the II/UPS and HPSG, "These  
12 low-performing schools programs have become indicative  
13 of the pervasive performance lags that large numbers of  
14 California's children encounter."

15 What do you mean by this?

16 A. Well, it's very simple. We have the  
17 accountability system and following this the criteria  
18 that decide on whether a school is low performing or  
19 not. The state has identified a rather large number of  
20 low performing schools. That is a big problem. Would  
21 we now have -- if we take the 400 schools, then we would  
22 have over a thousand schools that have been identified  
23 as low performing. That is an immense problem. That's  
24 a lot of schools.

25 Q. So you're saying just the number of schools

1 being addressed by these programs, that's what you mean  
2 by it's indicative of the pervasive performance lags?

3 A. Yeah. We didn't know that before. Before we  
4 had II/USP we knew there were a lot of schools failing.  
5 When you look at earlier literature, you think of the  
6 studies that Jeanie Homestead did on tracking and things  
7 like that. There are studies out there that made us  
8 suspect that the problem is large. That's why we have  
9 accountability systems, because the policy makers looked  
10 at the scores and performance and said this is not good.  
11 What happens in the inner cities. We're seeing  
12 inadequate education here. Now we have authoritatively  
13 a system in place that tells us we have over a thousand  
14 schools, maybe 1,500 schools that are in the programs,  
15 and we have an additional many more hundreds of schools  
16 that didn't make it into the, programs and we have  
17 additional hundreds of schools that didn't even apply  
18 for the programs. So we have identified an enormous  
19 under performance problem in California with the system.  
20 The state set up these criteria. I'm only following the  
21 state's criteria.

22 MS. READ-SPANGLER: We've been going for about  
23 an hour. Do you want to take a short break.

24 THE WITNESS: That would be nice.

25 (Recess)

1 Q. BY MS. READ-SPANGLER: I wanted to the discuss  
2 the II/USP with you and I wanted to know if you know if  
3 there have been any changes to the II/USP since you  
4 finalized your report?

5 MS. WELCH: Objection. Vague.

6 THE WITNESS: As I understand it, the prospects  
7 of funding the program were not always clear. So it was  
8 not clear whether there would be another cohort, or how  
9 much longer the state would be able to fund it, or  
10 whether it would be funded with \$200 per student and  
11 things of that nature.

12 Q. BY MS. READ-SPANGLER: When you say funded with  
13 \$200 per student, you're only referring to the state's  
14 half of the funding money, right, because it's really  
15 funded \$400 per student?

16 A. I'm talking about the state funding.

17 Q. On pages 11 to 12 you say, "Failure to make  
18 sufficient progress, a category that is currently being  
19 defined at the state level, will bring forth sanctions,  
20 the exact nature of which has yet to be determined, (as  
21 of January 2002.)"

22 Do you know if sufficient progress has been  
23 determined yet?

24 A. Yes, it seems like that a definition is in  
25 place that has led to the identification of 24 schools

1 for cohort, c-o-h-o-r-t, ones that are now being  
2 targeted for SAIT intervention.

3 Q. Do you know how sufficient progress, in quotes,  
4 was defined?

5 A. As I understand it, the State Board of  
6 Education opted to only identify schools for further  
7 sanctions that did not make any growth in the two years  
8 that they were in II/USP.

9 Q. Then on page 12 in the middle of the first full  
10 paragraph it says, "At present, the state is faced with  
11 a large number of schools that qualify as  
12 underperforming according to the state's definition, but  
13 at the time of this writing no systems are in place that  
14 could provide intervention in larger number of schools  
15 that may fail the probationary II/USP period."

16 To your knowledge are there any systems in  
17 place or that are planned now?

18 MS. WELCH: Objection. Vague as to "systems."  
19 Q. BY MS. READ-SPANGLER: I'm using the term  
20 "systems" as you used it in that sentence.

21 A. I'm actually still looking for the sentence.  
22 Sorry. Oh, here. Okay. I was further down. Thank  
23 you. Okay. Yes. At the time the state did not have  
24 the SAIT. Now the state it seems has moved forward with  
25 the SAIT. So now there is a system in place for a small

1 number of schools.

2 Q. In the last sentence of that paragraph you end  
3 it with -- by saying, "in light of the state's own  
4 educational goals."

5 What's your understanding of the state's own  
6 educational goals?

7 MS. WELCH: Objection. Vague. Over broad.

8 THE WITNESS: The way I define it here is in  
9 the context of the school accountability system. And  
10 there the state has communicated to the schools  
11 particular growth targets that the schools need to meet  
12 on various tests. And this is what I mean by that in  
13 this context.

14 Q. BY MS. READ-SPANGLER: As I read your report,  
15 and please correct me if I'm wrong, one of the problems  
16 you think there is with the II/USP is that it doesn't  
17 address all low-performing schools or schools that are  
18 failing. And I'm wondering, you really think -- first  
19 of all, am I correct in that reading?

20 MS. WELCH: The report speaks for itself.

21 THE WITNESS: I'm not quite sure what --  
22 perhaps you can rephrase the question.

23 Q. BY MS. READ-SPANGLER: Sure. Is it your  
24 opinion that one of the problems with II/USP is that it  
25 fails to assist all failing or low-performing schools?

1 MS. WELCH: Vague. Incomplete hypothetical.

2 THE WITNESS: I guess the way I would answer  
3 this question is the problem is not of anybody's making  
4 but the states meaning, that if the state designed --  
5 the state cannot on one hand identify a system that  
6 identifies large numbers of schools as inadequate  
7 without doing something about remedying the problem.

8 Q. BY MS. READ-SPANGLER: Can you identify for me  
9 any other state that identified schools that were in  
10 need of support and scrutiny and addressed the needs of  
11 all those schools all at once?

12 A. Many states have far fewer schools identified  
13 than California.

14 Q. Most states have far fewer schools than  
15 California?

16 A. I mean, as a percentage of their total number  
17 of schools as well. So we're talking -- look at  
18 low-performance school programs. You have to say  
19 roughly. This is a very rough number, roughly  
20 20 percent of all California schools that are in some  
21 ways affected by the low-performing schools designation  
22 or, you know, in and around that designation that are  
23 eligible for that designation. When you look at Texas,  
24 for example, the percentage is 2 percent, 3 percent.  
25 When you look at North Carolina, it's between

1 A. What I have done in the report is I have taken  
2 the goals of the state. I have taken the design of the  
3 low-performing schools' program in California. And I  
4 have used the state's definitions of what is a  
5 low-performing school and what is not. The state's  
6 definition of a low-performing school has led to a  
7 substantial number of schools being identified as low  
8 performing. Those in my view, as I'm stating here,  
9 following the state's criteria, are therefore  
10 low-performing schools. This is the problem that the  
11 state has identified. It is also the goal that the  
12 state has set out for itself to achieve. I did not set  
13 that goal. It's the state that set that goal for  
14 itself. It has said, "Here are our standards. Here are  
15 our growth targets. And if schools do not follow those  
16 growth targets, they are not performing adequately."

17 Q. But it's your expert opinion that it's a  
18 problem with the II/USP that the, quote, program  
19 bypasses schools that the system identified as in need  
20 of support and scrutiny?

21 A. Yes.

22 Q. In your expert opinion is it feasible to try to  
23 address all schools that the system as identified in as  
24 in need of support and scrutiny at one time from a  
25 capacity standpoint?

1 1.5 percent and 2 percent. When you look at Kentucky,  
2 it was 20 percent when the program started and it's now  
3 down to, I think, about 10 percent of the schools.

4 So, you know, it depends. The low-performing  
5 schools programs that were in those other states are  
6 designed differently. So they do not have this  
7 enormous -- these enormous numbers of schools.

8 Q. How long has Texas had an accountability  
9 system?

10 A. I think the beginnings of TAAS started in the  
11 late '80s, but the current accountability system, the  
12 way it's operating now, I think started in the early  
13 '90s.

14 Q. How long has Kentucky had an accountability  
15 system?

16 A. Since the early '90s.

17 Q. How long has North Carolina had an  
18 accountability system?

19 A. About the same time, maybe a little later.

20 Q. Do you know how many school districts there are  
21 in California, roughly?

22 A. Something like 1,500.

23 Q. Do you know how many public schools there are  
24 in California?

25 A. Probably between 6- and 8,000 depending on --

1 yeah.

2 Q. Let's look at Table II.

3 A. Table II?

4 Q. Yes, which is on page 36 of Exhibit 4.

5 A. Uh-huh.

6 Q. Where did you get these data for this table?

7 A. These are various sources. All of this is

8 public record, essentially these are all, you know --

9 you can get them through Data Quest, the CBEDS, API data

10 base. It's all available.

11 Q. When you say "we," who do you mean?

12 A. My research assistant and I.

13 Q. Which research assistant?

14 A. Rosie Papezian.

15 Q. This is the 2000, 2001 data as indicated at the

16 bottom of the figure?

17 A. Yeah. Uh-huh.

18 Q. Can you just sort of briefly explain the table

19 to me, especially the last column.

20 A. Okay. What we did is we looked at districts

21 that had II/USP schools -- no, that had schools that

22 were eligible for II/USP. And we saw that these

23 districts had not volunteered any schools for II/USP.

24 So these are what we call opted out districts. And we

25 looked at these districts over two years and/or three.

1 Then we had two the districts, the opted out districts,

2 the demographics that we could find. The last column

3 was added later when the HPSG came around and we needed

4 to know to what degree those so-called opted-out

5 districts had been affected by HPSG.

6 Q. So looking at Paramount Unified and

7 specifically the last column, seven schools, which is

8 100 percent of decile 1; is that correct?

9 A. Uh-huh.

10 Q. Were funded by II/USP?

11 A. Uh-huh.

12 Q. Where not eligible --

13 A. None of that were qualified for HPSG.

14 Q. Explain the -- I think it's Fullerton

15 Elementary. It says one at zero percent?

16 A. No. I'm looking at this as well. I don't

17 know. This must be a typo.

18 Q. Under Cohort 3 section, what's point five?

19 Does that mean difference?

20 A. Yeah. It's a crude measure, but we wanted to

21 see in the difference between Cohort 2 and 3 if perhaps

22 the opted-out district had improved independently of

23 II/USP or had deteriorated. What we found is that most

24 of them had deteriorated except for the ones you see

25 under decreasing II/USP eligibility. Those districts

1 actually improved without participating in II/USP. What

2 we are arguing is that those opted-out districts that

3 did not participate in II/USP and increased II/USP

4 eligibility from one cohort to the next probably

5 benefited from participating.

6 Q. Let's turn to page 37, Table III, which

7 actually is on pages 37 and 38, and it's titled,

8 "Characteristics of High Distress Districts."

9 Again, where did you get this data?

10 A. Same combination of Data Quest, CBEDS, the API

11 data base. It's all publicly available.

12 Q. Do you know whether or for what years this data

13 is for? It says 2001, but is that 2000, 2001?

14 A. This is -- let's see, the district

15 demographics, again, I think is 2000, 2001. Didn't we

16 say that here? I guess we did not. And then the

17 other -- I mean, this is self-evident. We're seeing the

18 decile 1 and 2. That's 2000 data. And Cohort 2 and 3,

19 that's depending on the year, of course.

20 Q. Again you said "we." Does that mean that Rosie

21 Papezian helped you with this?

22 A. Yes.

23 Q. Who did the actual data analyses, you or Rosie?

24 A. She did a large part of this.

25 Q. Is that similarly true for the data in

1 Table II?

2 A. Yes.

3 Q. Then you earlier explained to me that in the

4 last column, or last two columns the reason that it's

5 43 percent, 44 percent is because California -- well,

6 why don't you explain.

7 A. This is a nationally referenced test -- SAT 9

8 is a more nationwide.

9 Q. Then let's look at Table IIIA, which is on

10 pages 39, 40, 41, and 42, and it's entitled, "High

11 Distress Districts."

12 Where did you get this data?

13 A. This is actually the longer version of the

14 table we looked at before. These 26 districts are just

15 selected out from this longer table, just to illustrate

16 a particular point. So the same applies.

17 Q. Okay. Which leads me to my next question.

18 What's the difference between the two tables?

19 A. The difference is we did not want to inundate

20 the quick reader with 67 districts, or how many are in

21 this table, some of which don't exhibit, you know, all

22 of the indicators that we thought were pertinent. Then

23 out of that we selected the 26 districts, which I think

24 we can make a pretty good case by looking at the data

25 that they are truly in distress.

1 Q. So which one has the 26?

2 A. That's the Table III, "Characteristics of High  
3 Distress Districts." That only lists 26, I think.

4 Q. And what's the distinction between the two  
5 tables?

6 A. Table IIIA, that's why we call it IIIA. It is,  
7 like Table III, lists many more that had -- that  
8 qualified to be listed because of our criteria. That  
9 is, they had either 20 percent or above in decile 1 and  
10 2. They had 50 or 30 percent II/USP eligibility. Some  
11 of the districts only are on the list because one or two  
12 indicators are -- because they have -- what am I trying  
13 to say. Because they -- they are only one or two  
14 indicators apply to those districts. They show up.  
15 They show up on only one or two indicators; whereas, the  
16 26 districts we selected out actually show up on many,  
17 many more indicators.

18 Q. You said that really fast. What are the  
19 criteria indicators that you use?

20 A. The ones here, 20 percent in decile 1 and 2,  
21 50 percent II/USP or 30 to 50 percent II/USP.

22 Q. And the high distress districts, to qualify as  
23 what you call the high distress, they had to be two of  
24 those?

25 A. They have actually -- yeah, they had at least

1 only meant as an illustration of the larger table,  
2 Table IIIA, for those people who don't want to go  
3 through the whole list of these large numbers of  
4 districts. So we selected out some of the ones that we  
5 thought might make the point as stark examples. So it  
6 encompasses six of indicators just to give a sense of  
7 what's going on.

8 Q. Do you know how many -- without making a count,  
9 do you remember how many districts are listed in  
10 Table IIIA?

11 A. Yeah, I think it was 67. When you go through  
12 the list you can't -- again, this is all about visuals.  
13 You can't visually see it. When you look at Table III  
14 without reading through the districts, you can see  
15 visually that there was a problem here. This was the  
16 attempt.

17 Q. In your report you say that the II/USP program  
18 ignores districts as contributors to performance  
19 problems.

20 A. Which page are you on?

21 Q. Well, it's the heading on 13 in your expert  
22 opinion. What's the solution to that?

23 MS. WELCH: Objection. Incomplete  
24 hypothetical.

25 THE WITNESS: To begin with, there ought to be

1 two of those. I'm not quite certain, because they may  
2 actually have had three. It's not that for what exact  
3 criteria they met. It was -- we wanted to show -- our  
4 goal with this table was to show there are indeed some  
5 districts in the State of California that are majorly  
6 impacted by these indicators as you go down the list,  
7 you know.

8 Q. Look at -- on Table III look at Madera Unified,  
9 if you would.

10 A. Okay.

11 Q. It looks like it only hits one of the criteria.

12 A. Yes. Again, this was a judgment call just for  
13 us to show. It is in here because it had 50 percent of  
14 its schools in II/USP. All of the districts that had  
15 50 percent in II/USP we actually listed here because  
16 it's such a stark number. 50 percent of the district  
17 qualified for II/USP.

18 Q. So if I wanted to define a high distress  
19 district, it would be one that meets at least two of  
20 your criteria or had at least 50 percent eligible for  
21 II/USP? Does that sound correct?

22 A. I have to look back in the report exactly how  
23 we defined it. I didn't really spend -- the actual  
24 analysis is Table IIIA. These lists all the districts  
25 for which these criteria apply. Table III is really

1 a better system of oversight. There ought to be a  
2 better system of monitoring. That would be the first  
3 step. You can't monitor schools or districts you don't  
4 have clear standards as to what you want to monitor on.  
5 It would be assumed the state has standards for learning  
6 conditions or opportunity-to-learn standards. Then you  
7 add to those standards agencies that monitor those  
8 districts from these particular areas. That would be a  
9 first step.

10 Then when shortcomings are being identified, as  
11 we have done with our analysis, the state would do a  
12 similar analysis. You could use all sorts of criteria  
13 and still come up with a certain number of districts in  
14 distress.

15 We were really lenient, meaning we could have  
16 identified a lot more districts in distress had we  
17 relaxed our standards. In other words, you could have  
18 come up with standards that are stricter and it would  
19 have resulted in a larger number of districts being  
20 identified. That is what I'm saying, is the state or  
21 agency, a review agency, monitoring agency, would  
22 perhaps identify our 26 districts, or 67, or a bunch of  
23 others depending on its own criteria. That would be the  
24 first step.

25 And the next step would be to have an operation

1 in place that checks up on these districts, checks up on  
2 district operations, sees what's going on with regard to  
3 performance.

4 MS. READ-SPANGLER: Could we go off the record  
5 for a second.

6 (Recess)

7 MS. READ-SPANGLER: We're back on the record.

8 Q. Turning to page 14 of the report under the  
9 heading, "The Program Ignores the Systemic Character of  
10 Performance Barriers and Promotes Remedies  
11 Incommensurate to the Task." If you look to the bottom  
12 of the page, the last paragraph, it says, "Our analysis  
13 of school action plans shows that there is indeed a  
14 mismatch between identified barriers and the frame for  
15 suggested remedies."

16 Could you describe the analysis of school  
17 action plans that you did?

18 A. Okay. The various steps?

19 Q. Actually, I specifically want to know the  
20 methodology that you used.

21 A. I started reading a number of action plans. I  
22 should say that I have done this kind of analysis for  
23 hundreds of plans before in other states. So this was  
24 not the first time that I had done it. And I have  
25 actually an article published that contemplates analysis

1 of this report or for demonstration of a particular  
2 phenomena, you can't use 25 criteria to do so.

3 We then grouped these 25 categories, I should  
4 say, not criteria, categories into eight larger  
5 categories, which are facilities, resources, district  
6 and these other ones. I'm not going to read them all  
7 off because they are in Table 4. So we felt that was  
8 legitimate to group them into these larger categories  
9 because of the goal of what we wanted to show. The goal  
10 being, again, are there performance barriers enumerated  
11 in the plans that in all likelihood are primarily  
12 attributable to sources external to the school. That  
13 was the goal.

14 Q. And have you now produced all your notes and  
15 data regarding this analysis?

16 A. Yes. All the ones that were available.

17 Q. What do you mean by that? Does that mean some  
18 was destroyed?

19 A. I would not say destroyed.

20 Q. Disposed of?

21 A. I would not say disposed of. I would say that  
22 there may have been other little scraps of paper which  
23 we just either could not find anymore or misplaced.

24 MS. READ-SPANGLER: I'm going to have you mark  
25 this as Exhibit 5.

1 of school plans. That might be of interest.

2 So what we did -- this was actually an  
3 abbreviated analysis. We did not analyze these action  
4 plans as extensively as we analyzed the plans from other  
5 jurisdictions because of time constraints. I began  
6 reading a number of plans and I identified some of the  
7 categories that might be usable for our purpose. Our  
8 purpose was to show to what degree schools enumerate in  
9 the action plans performance barriers that are  
10 primarily -- whose focus of control was primarily  
11 external versus internal. That was our primary goal.  
12 And so we -- as I read through the plans, I identified  
13 various components of the plan, recurring categories  
14 that were being addressed. Then Rosie did the same  
15 thing and we compared our list. We came up with  
16 probably 28 maybe all in all categories. I don't know  
17 the exact number. You have it there actually. And we  
18 then felt that some of them were duplications and tried  
19 to reduce that number because it's very complicated if  
20 you have too many categories to sift through plans. So  
21 we whittled it down. And in the end actually once the  
22 analysis was done we contemplated a couple of categories  
23 as well so that we came up with 25. We ended up with 25  
24 categories. Then in order to make this -- to reduce the  
25 data further, because you can't really -- for the sake

1 (Exhibit 5 was marked.)

2 Q. BY MS. READ-SPANGLER: Can you read -- is this  
3 your handwriting?

4 A. Yes.

5 Q. On what's Bates numbered PLTF-XP-HM 184?

6 A. Yes.

7 Q. Can you read the note on that first page.

8 A. "Leecia, I am sending you the long form for  
9 Table IV and additional materials."

10 Q. There are four other pages attached, which are  
11 Bates numbered FLTF-XP-HM 205 through 208, and it looks  
12 to be two different lists of criteria. What's this  
13 first list, which is pages HM 205 to 206?

14 First of all, is this your list? Did you write  
15 this?

16 A. No, this is Rosie's handwriting.

17 Q. Would I be correct that HM 207 through 208 is  
18 also Rosie's handwriting?

19 A. Yes.

20 Q. What's the difference between the lists?

21 A. The difference is that the first list was a  
22 list of 33 categories. And it shows how we went from --  
23 essentially shows how we went from 33 to 25. It shows  
24 you some of the categories that we grouped together or  
25 that we may have cut. So it's an intermediate step in

1 the analysis.

2 Q. When you and Rosie each went through the action  
3 plans, did you come up with the same list of criteria?

4 A. Yes, very close. It's very close.

5 Q. So this second list, which says, "Table IV  
6 Criteria (Revised)" HM 207 to 8, that's the 25  
7 categories that you ended up using?

8 A. Yes.

9 MS. READ-SPANGLER: I'm going to mark as  
10 Exhibit 6 what's Bates numbered PLTF-XP-HM 187 through  
11 204 inclusive.

12 (Exhibit 6 was marked.)

13 Q. BY MS. READ-SPANGLER: Do you recognize -- feel  
14 free to look through it as much as you need to. Do you  
15 recognize these pages?

16 A. Yes.

17 Q. Is that what you produced to Ms. Welch as sort  
18 of a longer form print out of Table IV?

19 A. Yes.

20 Q. Earlier I showed you -- and I don't think I'm  
21 going to mark it. I'm not quite sure what to do with  
22 it -- the compiled version of it, which we have spread  
23 out here on the table. And I just wanted to sort of  
24 walk through Table IV, and if this can assist us, that's  
25 great. So referring also to page 43, which is Table IV,

1 data analysis capacity, but we put an "X" to it.

2 Perhaps the plan related to districts as opposed to a  
3 school data analysis capacity or things of that nature.

4 I'm sorry that I don't know exactly what these  
5 asterisks stand for at this point. A year ago I knew  
6 that very well and I'm -- you know, we should have, of  
7 course, explained that at the bottom of the table in the  
8 legion, but we didn't.

9 Q. If you could just kind of walk me through the  
10 table, and I don't know which is better to use the big  
11 one or the little one. Before you were saying it was a  
12 visual representation?

13 A. Yes.

14 Q. You know, I have a couple of specific  
15 questions, and I'll just tell you what they are. So  
16 while you are walking me through, it may be you could  
17 address them. I would like to know of these categories  
18 if you could identify which are district barriers and  
19 which are state barriers.

20 A. To begin with, you can't -- we didn't do the  
21 analysis based on district or state. We did the  
22 analysis based on external versus internal, meaning  
23 school internal, school external. In all likelihood,  
24 the action plans would not show much evidence of state  
25 action because of the template that was used to write

1 in the actual report, and we can look at this if it  
2 helps us. I wanted you to explain it, but I also had a  
3 couple of specific questions about this. You already  
4 said the eight things mentioned across the top were the  
5 eight groups you used for the 25 categories?

6 A. Yes.

7 Q. If you look at Table IV on page 43, there are  
8 some asterisks next to some of the "Xs." Let me show  
9 you my copy.

10 A. Uh-huh.

11 Q. What do the asterisks mean?

12 A. They all had a meaning. This is not on the  
13 table, I suppose. No. Maybe the long version. I know  
14 that we had --

15 Q. Some of these say, "District."

16 A. Yeah. That's --

17 Q. If you're not sure, I don't want you to guess.

18 A. I remember what it is. It's within -- we  
19 marked within the category of -- this is now -- can you  
20 see this number. Maybe you have better eyes than I or  
21 better print.

22 Q. It's under 14.

23 A. That's "Limited Data Analysis Capacity."  
24 Sometimes this -- it might be that this limited data  
25 analysis capacity is -- I mean, these are all limited

1 these plans. That was not supposed to be addressed.  
2 The word "state" doesn't appear in the template, but the  
3 word "district" does appear. You would not expect  
4 external evaluators using the language of the state to  
5 zero in on the state policies, for example. You can't  
6 expect more from the action plans than the templates ask  
7 the school to put in. But what we can see is whether  
8 schools put in barriers that are primarily internally or  
9 externally attributable. That you can see. And I'm  
10 stressing "primarily" because it is sometimes not easy  
11 to do that. I can give you examples, if you wish, later  
12 on.

13 What you can see on the left-hand side of the  
14 table in the categories of facilities, resources,  
15 district, if we just take those three, those we said are  
16 in all likelihood primarily barriers that the school has  
17 no control over. The school does not control its own  
18 resources. The school does not control district  
19 policies, and the school does not control facilities for  
20 the most part. So we just took those three. And so --  
21 or you can add personnel to that as well.

22 Let's go with the three on the left-hand side.

23 Then we looked at categories that may or may not be  
24 internally attributable, meaning performance barriers  
25 that may or may not be internally attributable. Those

1 have to do with curriculum instruction. That is not to  
 2 say they are not issues within curriculum instruction  
 3 that are not largely controlled by districts or perhaps  
 4 the state, but we said perhaps one could make the  
 5 argument from the point of view of say the design  
 6 accountability system that curriculum and instruction  
 7 issues are areas where schools characteristically have  
 8 more autonomy than the other areas. All they want to  
 9 know in the content analysis is what barriers the school  
 10 mentions, that's all, mentions in the action plan. When  
 11 a barrier was mentioned, it got a check. All you want  
 12 to show on Table IV -- we don't need the long form --  
 13 all we want to see in Table IV is are there performance  
 14 barriers showing up on the left side of the table to the  
 15 same or similar degree as to the right side of the  
 16 table. What we see is there are more performance  
 17 barriers showing up on the right-hand side, which you  
 18 would expect; but on the left-hand side, which are the  
 19 externally controlled performance barriers, a large  
 20 number of those show up as well. So while we cannot say  
 21 that the schools -- that the schools document in their  
 22 action plans that the external conditions are as  
 23 prevalent as the internal conditions, they stress more  
 24 the internal conditions, but not much more. We can say  
 25 that the external conditions make a big difference as

1 performance barriers. That's all we wanted to find out.  
 2 Then we looked at -- well, I'll stop there.  
 3 Q. What did you look at next?  
 4 A. Then we looked at the remedies that II/USP  
 5 suggests schools to seek out. And we find that these  
 6 remedies have to be within the \$200 financial frame, and  
 7 they are primarily -- according to the template, they  
 8 are primarily school internal affairs. And we said  
 9 there is a mismatch. That's all Table IV does.  
 10 Q. Looking at 16, this is under the group,  
 11 "Curriculum and Instruction," 16 is "Lack of Alignment."  
 12 What does that mean?  
 13 A. That's a buzz word. It's widespread all over  
 14 the United States. As you have increasingly standards  
 15 and state curriculum and assessments, schools, of  
 16 course, have to align their own curriculum to the state  
 17 curriculum. In some of the plans they state that their  
 18 instructional program is not aligned with the state  
 19 standards or, you know -- yeah, state standards or  
 20 assessments. That is something that -- that's the kind  
 21 of work that schools have to do characteristically.  
 22 Q. What's the title of the article you mentioned  
 23 earlier on the content analysis that you did before?  
 24 A. It's called school improvement plans -- it's on  
 25 my CV. Let me look. It's the -- it's the first one

1 here. It's called Mintrob & MacLellan. Actually, you  
 2 know what -- this is an older version of my CV. When it  
 3 finally went to print, they changed the title. It is in  
 4 Volume 102, No. 4 in the Elementary School Journal.  
 5 Q. Okay. That's fine. You started to touch on  
 6 it, and I'm going to go back to page 14 of the report  
 7 and the sentence I referred to earlier about the  
 8 mismatch between identified barriers and the suggestion  
 9 for remedies. What do you mean by "frame for suggested  
 10 remedies"?  
 11 A. When you think of II/USP, the schools are given  
 12 \$200, and some schools have more than that. Some of the  
 13 data --  
 14 Q. I want to remind you that --  
 15 A. Yeah. According to the deposition, I think  
 16 Wendy Harris' deposition, that what a school needs to do  
 17 is show in the action plan that the remedies listed  
 18 there are within the financial frame of what the state  
 19 is funding. And so when you have problems that are not  
 20 internally caused, then that money -- like, for example,  
 21 let's take an overcrowded school. In order to alleviate  
 22 the overcrowding, it would take the district to move  
 23 children elsewhere if buildings are available or new  
 24 buildings need to be constructed. No II/USP money could  
 25 be used for that remedy.

1 So there is a mismatch I'm saying. Or if you  
 2 have faulty insufficient or unsupportive, whatever,  
 3 district policies that are mentioned as performance  
 4 barriers, then \$200 given to an individual school site  
 5 won't change those because they emanate from a local  
 6 school board and you can't do anything about that.  
 7 There is a mismatch between the barriers the schools are  
 8 mentioning and the frame of the solutions through  
 9 II/USP.  
 10 What we have to keep in the back of our minds  
 11 when we are talking about this is that analysis based on  
 12 the data that the schools are providing, the action  
 13 plans. Had we had, for example, a review that was more  
 14 thorough and sophisticated, he would have come up with  
 15 even more performance barriers externally attributed,  
 16 but the action plans, the guidance that schools were  
 17 given to writing the action plans suggest that schools  
 18 ought to focus on internal performance barriers to a  
 19 large degree.  
 20 Q. You conclude that paragraph, which is on  
 21 conclusions page 15, saying, "We excluded those  
 22 instances when schools conflate barriers with students'  
 23 low socioeconomic status or low achievement."  
 24 What do you mean by that?  
 25 A. What you see in the table is we -- there is



1 no -- if I remember there, is no SES in the table. And  
 2 that is because SES cannot in a strict sense be  
 3 considered a performance barrier. Socioeconomic status  
 4 is something that's a fundamental condition that the  
 5 school is facing. The students are the way they are.  
 6 They are supposed to be working with those students the  
 7 way they are. So the nature of the student cannot be a  
 8 performance barrier, per se, because it can't be changed  
 9 with any kind of system. If you are talking about  
 10 school improvement plans, the reason you identified a  
 11 performance barrier is you get a sense of there is  
 12 something in the school operation that can be changed to  
 13 improve the operation of the school. SES cannot be  
 14 changed. In some plans, as that analysis has shown,  
 15 schools put SES in when it in a strict sense it cannot  
 16 be considered a performance barrier.

17 Q. But socioeconomic status does correlate with  
 18 student achievement?

19 A. Yes, definitely.

20 Q. In the next paragraph you say that in some  
 21 districts like San Francisco, schools suggest remedies  
 22 for district barriers. And I was wondering if you could  
 23 remember any examples of some of the remedies they  
 24 suggested for a district barrier?

25 A. This is actually something that is my own

1 A. Yes.

2 Q. And that the non-competitive salaries  
 3 district-wide were mentioned as barriers. In your  
 4 expert opinion who should solve the issue of  
 5 non-competitive salaries district-wide?

6 MS. WELCH: Objection. Incomplete hypothetical  
 7 and vague as to time.

8 THE WITNESS: I think that it depends. It is  
 9 quite possible that -- I mean, when you look at a  
 10 district, it has various budgetary items, and districts,  
 11 because of local discretion, decide to spend money,  
 12 various amounts of money on these various budgetary  
 13 items. It might be in districts where salaries are  
 14 uncompetitive that a re-distribution of funds may be  
 15 possible to make salaries competitive, may be quite  
 16 possible. But there may be districts -- and this is  
 17 quite hypothetical, but there may be districts that are  
 18 stretched to the limit in their own budgets in  
 19 supporting the schools. That may not be able to raise  
 20 salaries to make them competitive places. This is  
 21 something I think a state cannot tolerate. And it would  
 22 have -- and the state would have to find a solution for  
 23 this problem.

24 Now, it cannot be that every time there is a  
 25 district that has uncompetitive salaries that the state

1 analysis. I went through all the San Francisco plans  
 2 myself. This doesn't even appear in this lineup just  
 3 because I was a teacher in San Francisco, and I wanted  
 4 to see what these schools are doing. I know those  
 5 schools from having worked in some of them and visiting.  
 6 I'm familiar with San Francisco schools having done  
 7 research. I found that striking. I know your question  
 8 is different, but I found it striking there was the same  
 9 formula used in all the plans I read and I think -- I  
 10 can't remember any of them right now I have to say, for  
 11 certain, it would be something like, but I'm not for  
 12 certain -- it would be something like the district will  
 13 seek ways to supply the schools with qualified  
 14 personnel. Something like that would be in there, but  
 15 I'm not sure that's what it is, but it was something  
 16 like that. It was kind of a global statement of  
 17 commitment on the part of the district, but it was  
 18 not -- it was not something the district would implement  
 19 such and such policy by such and such a date, it will  
 20 help schools in such and such a way. It was more a  
 21 global statement.

22 Q. In that same paragraph you talk about problems  
 23 of non-competitive salaries district-wide.

24 A. Which paragraph?

25 Q. The first full paragraph of page 15.

1 steps in and brings those salaries up. That is  
 2 obviously not a possibility. But what I can see is  
 3 there needs to be more -- there comes the review agency  
 4 of sorts that would be able to monitor the districts  
 5 more closely, and I'm not talking about every district  
 6 in the state. I'm talking about the ones in distress,  
 7 monitor these districts and see if, for example, salary  
 8 is really a decisive factor in explaining why the  
 9 district cannot hire qualified personnel and keep them.  
 10 And if such agency was to authoritatively state that  
 11 that is indeed the case, that it is beyond the  
 12 district's capacity to provide such salaries and that  
 13 there is no hope that district internal means will  
 14 alleviate this problem, then I think the state needs to  
 15 step in.

16 Q. You just mentioned just those districts in  
 17 distress. Are you using that phrase "districts in  
 18 distress" the way you used it in Table III?

19 A. Actually, no. In this case it was more  
 20 generic. What Table III is supposed to do is not a --  
 21 Table III is an illustration of a problem. And it is a  
 22 very, you know, approximate approach just to illustrate  
 23 a problem. A review agency would perhaps come up with  
 24 different kind of criteria and identify different  
 25 districts, I would assume, that are among those. So

1 when I say "district in distress," I'm referring to a  
2 problem that we have illustrated that I believe is in  
3 existence in the state.

4 Q. In the next paragraph you say, "In summary, the  
5 action plans written by the schools demonstrate the  
6 crucial importance of district (and state) policies in  
7 causing underperformance."

8 How do district policies cause  
9 underperformance?

10 A. Well, if you ask practitioners what are their  
11 performance barriers and these schools say, "We cannot  
12 succeed because our district is not supportive." Let's  
13 call it unsupportive district policies. Then I argue in  
14 this report then the school has spoken that this is one  
15 of the causes of their problem.

16 Q. Can you identify specific district policies  
17 that cause underperformance?

18 A. For example, those could be all kinds of  
19 things. It could be that, for example, the district  
20 has -- think about an example that I encountered. The  
21 district started a magnet school program and that  
22 creamed off the good students from some of the schools  
23 that were designated neighborhood schools, and overnight  
24 these more balanced neighborhood schools became troubled  
25 places. That was a district policy intended to help

1 conditions, to put a warm body in every classroom, but  
2 not acceptable when the standard is to have a qualified  
3 teacher in every classroom. So those are state  
4 responsibilities.

5 Q. What other state policies cause  
6 underperformance?

7 A. Well, now days the state has the responsibility  
8 for school funding that is very high. Something like  
9 80 percent of the funding comes from the state. Well,  
10 it seems to me that with that large proportion of  
11 funding comes an enormous responsibility. And so I  
12 would say whoever holds the purse strings has a lot of  
13 responsibility. If the agency that holds the purse  
14 strings to such a large extent, that agency needs to be  
15 involved and, you know, is involved, I should say.

16 Q. Can you point to other specific states's  
17 policies that caused underperformance?

18 A. Well, to the extent of this report, I mean, I'm  
19 concerned with only one aspect and that is that  
20 inadequate learning conditions are allowed to be a  
21 reality in many California schools and classrooms. I  
22 think it is a responsibility of the state to make sure  
23 that those kinds of conditions do not exist. I'm taking  
24 the example of the 26 high distress districts, as I said  
25 before, could be 27, 28, 39. I'm taking as an

1 perhaps attract certain groups of students into their  
2 schools, but it produced -- to some degree, it produced  
3 the trouble in the neighborhood school. That would be  
4 one.

5 Another one would be the district transfers  
6 large numbers of language minority children into a  
7 school without supplying by lingual teachers. That  
8 would be another example.

9 Q. How do state policies cause underperformance?

10 A. If we assume again with examples -- I think we  
11 need to look at examples. If we assume that  
12 overcrowding, Concept 6 again, has the effect or is  
13 strongly associated with diminished student performance  
14 and if we assume that the setup of -- or that the  
15 current system of school construction -- again I'm not  
16 an expert -- is a joint responsibility of state and  
17 district, then allowing a situation such as overcrowding  
18 to become rampant in some districts as we have seen is  
19 as much a district responsibility as state  
20 responsibility. If we have the problem of attracting  
21 highly qualified teachers to the schools, that is very  
22 much related to fund issues. And to issues of, you  
23 know, teacher education programs credentially and the  
24 like. So you know, the issuance of emergency  
25 credentials, understandable under the current

1 illustration 26. The fact that there are 26 districts  
2 in which 30 to 50 percent of the schools qualify for  
3 II/USP, where perhaps at least a fifth of the schools  
4 are in decile 1 or 2, where reading is more than  
5 20 percent below state average, where the percentage of  
6 English language learners and all the above indicators  
7 are high, where the likelihood of having a qualified  
8 teacher in the classroom is lower, those are conditions  
9 that the state has responsibility for. So those  
10 conditions are not -- ought not to be allowed to prevail  
11 in the state. It is the state that ought to step in.

12 Q. In the paragraph in the middle of the page that  
13 starts, "Apart from the action plans," you talk about a  
14 statistical analyses based on CBEDS.

15 A. Yeah.

16 Q. What are you referring to?

17 A. This is -- apart from the action plans?

18 Q. Uh-huh.

19 A. This refers to the Table V. This refers to  
20 Table V where we looked at that -- we looked at II/USP  
21 school characteristics.

22 Q. Are you drawing causal relationships between  
23 the factors listed in Table V and poor performance?

24 A. No, not causal. Its correlational. We see a  
25 correlation between the existence of a particular

1 condition. Then we look at the action plans where  
 2 practitioners tell us -- no, not practitioners, external  
 3 evaluators. They don't have any interest to conceal the  
 4 situation or make a situation other than what it is.  
 5 Statistically we have a correlation. They tell us in  
 6 the action plans that this correlation is, in fact,  
 7 rather causal. It's not just a correlation. It's not  
 8 coincidence. They call these conditions performance  
 9 barriers. So there is some causality there.

10 So you have to -- I would say you have to read  
 11 these data in conjunction -- and, again, I have to state  
 12 that we -- I wish I could rely on much more complete  
 13 data bases. We have now only the actions plans which  
 14 have a very skewed view of reality. Had we had an  
 15 instrument that would have encouraged schools and  
 16 external evaluators to look at broader conditions, we  
 17 would have seen an even more glaring picture of external  
 18 conditions in schools.

19 Q. Let's look at the next paragraph and talk about  
 20 your assumption.

21 A. "If we assume"?

22 Q. Yeah. You say, "I we assume that overcrowding  
 23 is a large measure caused by a district's inaction or  
 24 inability to raise matching funds for school  
 25 construction to relieve overcrowding."

1 What in your background qualifies you to give  
 2 an expert opinion on overcrowding issues?

3 A. I'm not an expert on overcrowding. This is  
 4 meant to be a -- that's why I call it an assumption.

5 Q. What's the basis, if any, for these  
 6 assumptions?

7 A. The basis is that I do know enough about the  
 8 issue of school construction that I know it is a state  
 9 program and it requires district matching funds just as  
 10 I state. The assumption is based not on my expertise as  
 11 a researcher, or scholar, or university professor, but  
 12 my assumption is based on having lived in California for  
 13 22 years, and having been a teacher in the system, and  
 14 having experienced, and read the paper, and having  
 15 experienced these kinds of issues. So if you will read  
 16 it as that.

17 Q. After you make that assumption there is  
 18 another, which I won't read, but you sort of conclude  
 19 that that barrier would require major policy action  
 20 regarding school construction. What should that major  
 21 policy action regarding school construction be?

22 A. Since I'm not an expert --

23 MS. WELCH: Objection. Incomplete  
 24 hypothetical.

25 THE WITNESS: Since I'm not an expert in this,

1 I cannot answer that question. This is not really of  
 2 substance for this report, since I'm not trying to  
 3 suggest remedies for all these conditions. I am simply  
 4 trying to make a point that some of the conditions may  
 5 be caused by -- you know, may be caused externally and  
 6 cannot be addressed through the scheme of the II/USP  
 7 program. That's all I'm trying to say here. That is  
 8 true for all the other ones listed here. That's all I'm  
 9 trying to say here.

10 MS. READ-SPANGLER: Let's go off the record.

11 (Recess)

12 Q. BY MS. READ-SPANGLER: We're back on the  
 13 record. On page 16 of your expert report, which is  
 14 marked as Exhibit 4, under the heading, "The State Has  
 15 No Systematic Information System in Place (Beyond API  
 16 Scores)". In this section you discuss external  
 17 evaluators. Do you know of any requirements someone or  
 18 some entity must meet to be qualified to become an  
 19 external evaluator?

20 MS. WELCH: Objection. Vague as to time.

21 Q. BY MS. READ-SPANGLER: At the present time.

22 A. I think at the present time the external  
 23 evaluator -- we're talking about the II/USP theme?

24 Q. Correct.

25 A. The external evaluator needs to have experience

1 in the business of school improvement and needs to show  
 2 evidence of success in improving schools.

3 Q. Do you know what sort of evidence in success of  
 4 improving schools an external evaluator would have to  
 5 have?

6 A. I would at this point consider that the program  
 7 has been in place for some time, that the external  
 8 evaluators could show that they had improved test scores  
 9 from one year to the next in previous locales where they  
 10 are active.

11 Q. Do you know currently if there are any  
 12 limitations in hiring or selecting an external evaluator  
 13 placed on the schools?

14 MS. WELCH: Objection. Vague.

15 THE WITNESS: Yeah, I don't understand.

16 Q. BY MS. READ-SPANGLER: When an II/USP school  
 17 goes about trying to select an external evaluator, do  
 18 you know if there are any limitations on who they can  
 19 select?

20 A. They can select from the state list.

21 Q. Any other limitations that you know of?

22 A. No.

23 Q. Do you know if the criteria for being qualified  
 24 to be an external evaluator has changed over time?

25 A. I think it has.

1 Q. Do you know how the criteria have changed over  
2 time?

3 A. I think the element of -- here I am a little  
4 uncertain because there may have been something that has  
5 happened recently that I'm not aware of -- but if I  
6 remember correctly, as of maybe half a year ago, maybe  
7 nine months ago when I looked at the web site that the  
8 element of established record of past success was more  
9 stressed, if I'm not mistaken. I don't know if I'm  
10 making myself clear. In other words, the past record of  
11 the external evaluator was something that was more  
12 stressed in the criteria.

13 Q. Previously than it is now?

14 A. No, now than it was previously.

15 Q. Are there any other changes that you know of in  
16 the criteria?

17 A. Not at this point.

18 Q. When you were preparing your expert report, how  
19 did you obtain information about external evaluators?

20 A. I looked at all the information available on  
21 the web and I studied the depositions.

22 Q. When you say you looked at information  
23 available on the web, can you be more specific?

24 A. I think there were criteria as to what  
25 qualifies an external evaluator.

1 this analysis, but I, I think I had documents in front  
2 of me that stated that -- and these documents must have  
3 come from the CED web site -- that listed the criteria  
4 for becoming an external evaluator. And that in  
5 conjunction with the depositions, I think it was  
6 sufficient enough information to state what I'm stating.

7 Q. When you prepared your expert report, did you  
8 feel like you had a sufficient understanding of the role  
9 that external evaluators play in the II/USP process?

10 A. Yes.

11 Q. Can you turn to page 17?

12 A. Uh-huh.

13 Q. The last sentence in the section right before  
14 the section that starts the "State's Capacity," says,  
15 "It is doubtful that a program as loosely crafted as  
16 II/USP will actually accomplish the state's ambitious  
17 performance goals."

18 Do you see that?

19 A. Yeah.

20 Q. What do you mean by "loosely crafted"?

21 A. "Loosely crafted" means when we look at the  
22 various elements of the program, we look at the action  
23 plans, and the guiding language for the action plans was  
24 rather vague, so that action plans of various forms and  
25 shapes evolved. Now this requirement has been reduced

1 Q. Let me clarify my question. When you say you  
2 looked at information on the web, are you referring to  
3 the CED web site?

4 A. Yes.

5 Q. Did you ever contact anyone at CED to get more  
6 information on external evaluators?

7 A. As I stated before, there is an ongoing  
8 research project and I have some information that I am  
9 not using for this expert report.

10 Q. I'm not sure if that answered my question.

11 A. Okay. Then maybe you could ask the question  
12 again.

13 Q. When you were trying to get information on  
14 external evaluators, did you talk to anyone at CED about  
15 external evaluators?

16 A. Not for this report.

17 Q. Have you ever talked to anyone at CED about  
18 external evaluators?

19 A. Yes, but not for this report.

20 Q. For purposes of preparing your expert report,  
21 did you feel you had adequate information for the  
22 criteria for selecting external evaluators for the role  
23 external evaluators play in the process?

24 MS. WELCH: Objection. Vague.

25 THE WITNESS: It's been a while that I've done

1 to a five-page abstract of the action plans to be  
2 submitted to the state, which makes it even more loosely  
3 crafted in my mind. When we look at the external  
4 evaluator feature and the way the external evaluators  
5 were selected, my impression is that this state cast a  
6 rather wide net. When we look at the provision of money  
7 to schools with very little strings attached -- very  
8 few, I should say, with very few strings attached, and  
9 when we look at the absence of quality assurance  
10 features in the program -- I should say, of the large  
11 absence of quality assurance features, then I think that  
12 qualifies for what I would call loosely crafted.

13 Q. And you just testified that it was your  
14 impression regarding external evaluators that the state  
15 casts a wide net. What gave you that impression?

16 A. Well, first of all, we have the -- a report  
17 that the state put out on its own web site about the  
18 first II/UPS cohort that says that the quality of  
19 external evaluators varied widely across the schools  
20 that the CED people investigated. That raises a flag.  
21 Then something similar was reiterated in Laura Goe's  
22 paper. Then there was a discussion at the PSAA advisory  
23 committee meeting on the very issue; in other words,  
24 ought there be a loose system that allows a great  
25 variety of consultants -- I'm calling them consultants

1 right now -- to come in or ought there be a restricted  
 2 approach that would pay closer attention to quality.  
 3 And it was my impression from listening to the debates  
 4 that there was a concern about the quality of the  
 5 external evaluators and about the openness of the  
 6 selection process for external evaluators.  
 7 Q. So you're not aware that after the first  
 8 cohort, the criteria for selection of external  
 9 evaluators was changed?  
 10 A. As I said before, yes, I am aware that the  
 11 criteria were changed. And I saw that a record in  
 12 previous school improvement was, must be more strongly  
 13 stressed at that time after the first cohort.  
 14 Q. Looking at the next section. You talk about  
 15 the state's capacity to intervene in schools failing to  
 16 make sufficient progress.  
 17 A. Where is this?  
 18 Q. 17. I'm looking at the heading, "The State's  
 19 Capacity to Intervene in Schools Failing to Make  
 20 Sufficient Progress Is Doubtful."  
 21 A. Uh-huh.  
 22 Q. In the second paragraph in that section, about  
 23 the middle of that paragraph, starting in the middle of  
 24 the sentence, you say, "... doubts about the state's  
 25 capacity to provide and implement effective

1 interventions" -- let me read the whole sentence, "When  
 2 the PSAA Advisory Committee discussed this issue at  
 3 their January 17, 2002 meeting, primary concern of many  
 4 committee members in adopting the traffic light system  
 5 were ..." and I don't care about the first one. I'm  
 6 directing you to the second one, "doubts about the  
 7 state's capacity to provide and implement effective  
 8 interventions for large numbers of schools."  
 9 Do you have an understanding of what that  
 10 means?  
 11 MS. WELCH: Object. It calls for speculation.  
 12 Q. BY MS. READ-SPANGLER: When you talk about the  
 13 state's capacity and you use that phrase in the heading,  
 14 what do you mean by that?  
 15 A. What I mean by that is the personnel  
 16 qualifications and the resources that the state has and  
 17 the structures that the state has at its disposal to  
 18 monitor schools and intervene in schools where needed,  
 19 that requires a particular capacity.  
 20 Q. And it's your opinion that the state may not  
 21 have the capacity to intervene in schools failing to  
 22 make sufficient progress?  
 23 A. In the large numbers of schools that II/USP has  
 24 identified as possibly in need of intervention.  
 25 Q. If the state lacks the capacity to do that, how

1 could the state possibly implement an untried  
 2 inspectorate system such as the one you are suggesting  
 3 in your report?  
 4 MS. WELCH: Objection. Incomplete  
 5 hypothetical.  
 6 THE WITNESS: I think the state lacks the  
 7 capacity because there is no will to create that  
 8 capacity. If the state had the will to create that  
 9 capacity, that capacity could be created.  
 10 Q. BY MS. READ-SPANGLER: How?  
 11 A. If there were resources to perhaps be from some  
 12 of the departments within divisions, I should say,  
 13 within the Department of Education; if there were  
 14 sources to attract proven practitioners perhaps from the  
 15 ranks of the external evaluators that have gained  
 16 insight into II/USP; if there was a willingness to put  
 17 in structures that would allow these experts -- widely  
 18 defined -- to come together to, you know, put a -- put  
 19 an effective monitoring and support system together, I  
 20 think this kind of capacity could be filled, but it has  
 21 to have a political will.  
 22 MS. WELCH: I want to object to the extent that  
 23 the question's unclear in terms of the use of the word  
 24 "capacity." He defined capacity with a specific set of  
 25 words, so I want to make sure that you are not kind of

1 using capacity in a different way than he means it.  
 2 MS. READ-SPANGLER: I'm using "capacity" in the  
 3 sense he used it in his report.  
 4 Q. You said if there were resources to do certain  
 5 things. What do you mean by "resources" in the sense  
 6 that you just used it? Are you talking about money or  
 7 what?  
 8 A. Money, yes. You may have to hire some people.  
 9 That would require money. It needs buildings, and  
 10 meeting spaces, and communication, and telephone, and,  
 11 you know, computers, and all of those kinds of things  
 12 that are necessary for people to communicate and put  
 13 something like this together.  
 14 Q. And then when you say you need political will,  
 15 I'm not clear what you mean by that.  
 16 A. What I mean by that is the political will  
 17 perhaps from the governor, perhaps -- I don't know. You  
 18 can speculate on who is really -- who within the state  
 19 is really the responsible party in question, or the  
 20 agency in question. What I mean by that is that there  
 21 needs to be among the political actors a determination,  
 22 the same determination that went into putting PSAA into  
 23 practice. That is an outcome basis for the  
 24 accountability system, which was essentially created  
 25 with a determination. If that same determination would

1 go into evaluating learning conditions and would go into  
2 providing a more coherent provision of support, much  
3 could be accomplished.

4 Q. Turning to page 18 of your expert report,  
5 Exhibit 4, under the next heading in the first sentence  
6 you refer to the punitive lack of state capacity at  
7 present.

8 A. Where is this now? Sorry.

9 Q. Very first sentence under the heading in the  
10 middle of the page.

11 A. Uh-huh.

12 Q. What do you mean when you now say, "punitive  
13 lack of state capacity"?

14 A. This refers to the PSAA advisory committee  
15 making those statements. This refers to this particular  
16 discussion that I -- that I make reference to. Punitive  
17 means simply that these are the statements that were  
18 made at the PSAA advisory committee.

19 Q. So to ask a different question, do you think  
20 that there is a lack of state capacity at present?

21 MS. WELCH: Objection. Vague.

22 THE WITNESS: Given the state identified  
23 dimension of the problem of underperformance in the  
24 state through II/USP, I think that -- that the capacity  
25 of the state to intervene and to provide effective

1 entrance rules into II/USP that stated that --  
2 originally, that the -- it was expected that the schools  
3 would meet their API growth target each year they were  
4 in the II/USP program, which for the sake of closing the  
5 achievement gap between low and high performance schools  
6 would actually have to be done because the APIs are  
7 constructed in a way that the gap was close over a  
8 decade or so. And when those growth rates are not hit  
9 by the low performance schools to that same degree, then  
10 the achievement gap will not diminish even if we see  
11 incremental improvements, but we don't see a  
12 diminishment of the accountability gap. If we see that  
13 large numbers of schools are not able to work up to the  
14 expectation of achieving -- of closing the achievement  
15 gap, then it is important that solutions are forged that  
16 can achieve that goal.

17 So what I'm here in this context advocating is  
18 that the state should not refrain from its ambitious  
19 equity goals, as I think has happened when out of 430  
20 schools only 24 schools are identified, that those are  
21 the goals that really did not make any progress at all,  
22 but this is not what the original construct of the  
23 accountability system had in mind. I advocate that the  
24 state keep its resolve and step up to the plate by  
25 offering solutions that might help these schools to

1 support is in doubt.

2 Q. BY MS. READ-SPANGLER: Would you turn to page  
3 19 of the expert report.

4 A. Uh-huh.

5 Q. Right at the top of the page there's a sentence  
6 that starts, "'Resolve', in my view, can only mean  
7 retaining ambitious goals, addressing the roots of the  
8 problems that underperforming schools and districts have  
9 traditionally faced, and forging solutions on all levels  
10 of the educational system commensurate to the dimensions  
11 of the problems."

12 What do you mean by this?

13 A. Let me start with "resolve." This, of course,  
14 was a quote from then State Superintendent Eastin. And  
15 she says pointing to an important aspect of  
16 accountability systems and of education policy in much  
17 more general terms. The accountability system,  
18 outcome-based accountability system in my view has  
19 identified a large problem and it has communicated --  
20 and though the system state policy makers have  
21 communicated to schools that they want this problem  
22 solved by placing performance demands on schools and  
23 expecting them to follow through with -- I mean, to meet  
24 those goals. So that to me is resolve.

25 There were also certain rules, exit and

1 achieve these ambitious goals. I believe it is often  
2 external circumstances that are not internally  
3 controlled that are responsible for the lack of  
4 achievement of these schools, systemically speaking. I  
5 think those need to be addressed.

6 Q. We were just talking about the state's  
7 capacity. Do you recall that?

8 A. Uh-huh.

9 Q. Given the current capacity of the state, what  
10 are the solutions on all levels of the educational  
11 system that are commensurate to the dimensions of the  
12 problem?

13 A. Given the current capacity of the state, my  
14 expert report is saying that the capacity needs to be  
15 large before we can solve these problems. So I'm not  
16 thinking in terms of what can the state do considering  
17 what is in place right now. I'm advocating that new  
18 structures are being built up and new qualifications are  
19 being done and so forth.

20 Q. What are the root problems that schools have  
21 traditionally faced that you are referring to in this  
22 sentence?

23 A. This is an allusion or a reference to earlier  
24 examples that I gave. Let's take a school that is  
25 losing its teachers on a regular basis. That's

1 mentioned as a problem in some of the action plans.  
 2 What you find as remedies -- again, this is an example.  
 3 What you find as remedies in the plans is a mentoring  
 4 program for first and second year teachers. This may  
 5 very well be a remedy, but if we have a teacher turnover  
 6 problem or attrition rate for first and second year  
 7 teachers that is systemic, widespread in a district or  
 8 in districts of a certain type, then the root cause --  
 9 that's why I'm using the term "root cause --" the root  
 10 cause may not be something happening at that particular  
 11 school site that could be remedied with a mentoring  
 12 program. It may be that the system does not attract  
 13 sufficient enough qualified teachers that would be  
 14 willing to go and work in the least desirable schools.  
 15 That would be you, though, identifying the root cause  
 16 and trying to formulate policies that will help maybe  
 17 with this problem.

18 Q. In the next paragraph you state, "... it  
 19 behooves the state to explore ways to complement  
 20 outcome-based accountability with other measures, such  
 21 as ..." and you list three things. And I want you to  
 22 elaborate on each of these measures to the extent we  
 23 haven't already discussed them fully. And the first one  
 24 is a more systematic review of schools. We touched on  
 25 that to some extent, and I'm wondering if you need to

1 elaborate on what you mean.

2 A. I think we have pretty much -- I've pretty much  
 3 stated it already.

4 Q. Okay. How about more targeted  
 5 capacity-building as a measure to implement  
 6 outcome-based accountability. Have we pretty much  
 7 covered that one?

8 A. I think so. When I described the systems of  
 9 Kentucky and North Carolina.

10 Q. And the last one is a reevaluation of districts'  
 11 and states' own role in causing performance barriers as  
 12 a measure to implement outcome-based accountability. Is  
 13 there anything we need to add to our discussion?

14 MS. WELCH: I want to say, in addition to  
 15 what's in the report?

16 MS. READ-SPANGLER: Of course.

17 THE WITNESS: No, I think we've discussed it.

18 Q. BY MS. READ-SPANGLER: Then you conclude that  
 19 section or that paragraph with a sentence that says, "If  
 20 capacity at the state level is currently too low to  
 21 accomplish these tasks, then a clear time line as to the  
 22 expansion of necessary functions needs to be established  
 23 as opposed to retreating from the problems."

24 Is it your expert opinion that the capacity at  
 25 the state level is currently too low to accomplish these

1 tasks?

2 MS. WELCH: Objection. Vague as to "capacity."

3 Q. BY MS. READ-SPANGLER: In the sense you are  
 4 using it here.

5 A. If we see capacity as people -- as qualified  
 6 people and as the availability of qualified people,  
 7 resources and structures that are needed to evaluate  
 8 learning condition standards or opportunity-to-learn  
 9 standards and that are to supply sophisticated  
 10 evaluation and support to look for schools, capacity is  
 11 too low.

12 Q. So what would be clear time line as to the  
 13 expansion of necessary functions that needs to be  
 14 established? What do you see that as being in your  
 15 expert opinion?

16 MS. WELCH: Objection. In terms of incomplete  
 17 hypothetical.

18 THE WITNESS: Are you asking me what time line  
 19 I see? What time frame I have in mind? Or are you  
 20 asking me what I mean by time line, or what I mean by  
 21 the suggestion?

22 Q. BY MS. READ-SPANGLER: This is an if then  
 23 sentence. We established that the if part of it is true  
 24 in your opinion, you say then a thorough time line needs  
 25 to be established. And I'm wondering if you have an

1 opinion as to what that time line should be.

2 MS. WELCH: Same objection.

3 THE WITNESS: Not a clear suggestion as to  
 4 right now. Yesterday we mentioned -- I think we  
 5 discussed time, but I'm not certain exactly what time  
 6 line. This is actually not important. The actual time  
 7 is not important as is the commitment or the willingness  
 8 of the state. This is in some sense similar to schools  
 9 that are seen as deficient. They are asked to evaluate  
 10 the conditions that they are in and then to come up with  
 11 a time line of how to remedy the situation.

12 Q. BY MS. READ-SPANGLER: Given the current budget  
 13 situation in the state, how would the state do this, in  
 14 your opinion?

15 MS. WELCH: Objection. Vague.

16 THE WITNESS: This report is not written for  
 17 this year's budget situation. Next year's budget  
 18 situation might be quite different. The state has a  
 19 budget that can be -- strike that. It's -- no, I mean,  
 20 this report is not written for the current budget  
 21 situation. It is written for -- for a -- it is pointing  
 22 out to the state where it needs to become proactive if  
 23 it wants to achieve the goals it set for itself.

24 Q. BY MS. READ-SPANGLER: Let's talk about the  
 25 high priority school program. Have you reviewed or

1 learned of any updated information on the HPSG since  
2 writing your report?

3 A. Only that it was funded for sure.

4 Q. Could you turn to page 20 of your expert  
5 report, please.

6 A. Uh-huh.

7 Q. And first full sentence, top of the page,  
8 reads, "Apart from sanctions, such as takeover, widened  
9 parental choice, charter school conversion, and  
10 principal replacement, the state superintendent can  
11 direct the district to contract with a school assistance  
12 and intervention team and to adopt specific  
13 interventions."

14 Is it your understanding that these options are  
15 not available for II/USP schools?

16 A. Some of these options are available for II/USP,  
17 as I understand it. In the original statute I don't  
18 think that the -- that the school assistant intervention  
19 team that authoritatively can demand specific  
20 interventions, that was not a part of the II/USP.

21 Q. I'm sorry. Would you say that last part again.

22 Let me just ask you this. Which of these  
23 options are available for II/USP schools that you know  
24 of?

25 A. Yeah. Right now I'm a little -- I'm not

1 approach that is illustrative of the inadequacy of the  
2 school-internal lens."

3 Why is this illustrative of the inadequacy of  
4 the school-internal lens?

5 A. If you assume if you have -- if you have a  
6 school with a large -- with large numbers of  
7 uncredentialed and experienced teachers, according to  
8 HPSG, the guidelines -- in II/USP the guidelines are  
9 largely silent on circumstances beyond the control of  
10 the school -- I mention districts, but it's not really a  
11 feature. In HPSG there seems to be an awareness that  
12 that is really an important component. At least when  
13 you read through the material, you get the sense that  
14 this is definitely something that the designers have  
15 thought about. But the approach that they are  
16 suggesting to take care of or to take into account the  
17 external conditions is curious. When you have a school  
18 that has large numbers of inexperienced teachers, then  
19 if you apply the school-internal lens in a fair way,  
20 then you cannot expect the school to do better than the  
21 district average. This is what -- it's not my writing.  
22 This is what I found in the guidelines. So the  
23 guidelines say, we expect the school to reduce the  
24 turnover of first- and second-year teachers or  
25 inexperienced teachers at least to the level of district

1 entirely sure --

2 Q. Okay.

3 A. -- which ones are and which ones aren't. But I  
4 would -- it's been a while that I looked at the catalog.  
5 I would say that, you know, that parental choice, the  
6 principal replacement was definitely part of the  
7 original II/USP, but I think the direct intervention as  
8 to the district was a novelty for HPSG.

9 Q. What's the basis of your understanding? Have  
10 you read the statutes?

11 A. Yeah.

12 Q. At the third bullet point you say, "External  
13 evaluation has been expanded ..." And now I'm just  
14 talking about HPSG. How has it been expanded?

15 A. It seems that the external evaluation is more  
16 thought of as technical assistance provision rather than  
17 the way the language of II/USP suggested. In that sense  
18 it expanded to me, but at the same time agencies or the  
19 parties that can provide this kind of technical  
20 assistance can be the school's own district as well. If  
21 I understand this correctly.

22 Q. Looking at the fifth bullet, which is the last  
23 bullet, which involves or deals with teacher quality.

24 A. Uh-huh.

25 Q. You say, "... the guidelines suggest a curious

1 average. Recognizing perhaps -- this is illustrative,  
2 as I say, you know, in my opinion, perhaps recognizing  
3 that it cannot be expected for the school to reduce the  
4 turnover of uncredentialed and experienced teachers way  
5 below the district average and we don't have the control  
6 over that. If we assume that there are districts that  
7 may have a grave problem of losing teachers,  
8 district-wide, then reduction to district average will  
9 not help the problem. It will reduce the problem  
10 somewhat. If the turnover was way below district  
11 average, but if the district turnover is way above  
12 average state-wide, then we will not solve that problem.

13 So that's why I say it's a curious approach to  
14 it.

15 Q. Is it your opinion that schools have no  
16 responsibility to try to attract and retain credentialed  
17 teachers?

18 A. I think I've said many times during our  
19 interaction that I believe that the performance of a  
20 school is a distributed responsibility of state,  
21 district and schools. And that, therefore, schools have  
22 a responsibility as well as districts and the state.

23 Q. Let's talk about CCR on page 21.

24 A. Uh-huh.

25 Q. You start out this section saying, "This



1 program's potential to detect problems in a school's or  
2 district's learning environment and promote appropriate  
3 solutions is limited ..." Then you give three reasons.

4 A. Uh-huh.

5 Q. Are you assuming that CCR's purpose is to  
6 detect problems and/or to promote appropriate solutions?

7 A. No.

8 Q. Do you know what the purpose of CCR is?

9 A. In my understanding, CCR monitors compliance  
10 with the stipulations of category programs.

11 Q. You conclude this section by saying, "States,  
12 in my view, need to adjust their oversight systems by  
13 moving away from compliance reviews to the  
14 institutionalization of professional review and advice."

15 What states have a system like that?

16 A. Well, I think that, as I mentioned before, I  
17 mean, examples to that -- prime examples to me would be  
18 Kentucky and North Carolina that have intervention teams  
19 or in the case of Kentucky it's one person. Actually,  
20 there is a second person now that may go into the  
21 schools. That provide more of a professional review and  
22 advice than a CCR could ever do. That's not the purpose  
23 of CCR to provide that kind of advice.

24 Q. When you advocate an institutionalization of  
25 professional review and advice, what do you mean by

1 the theme for the whole conference. So there is a  
2 realization among the research world that something  
3 ought to happen in these accountability systems.

4 I'm not demanding or calling for anything, but  
5 that so it's nothing outlandish that I'm proposing here.  
6 It was, in fact, proposed by Marsha Smith and Jennifer  
7 O'Day. Marsha Smith was the assistant secretary, US  
8 Assistant Secretary of Education to the Clinton  
9 administration. And it was called for in his seminal  
10 articles in 1991 and '93 that are the rationale for the  
11 current accountability systems. I'm citing one of  
12 those.

13 Q. I don't think I asked you this yesterday, but  
14 if I did, then maybe you could just tell me I did, but  
15 what states, if any, have a reciprocal or two-way  
16 accountability system?

17 MS. WELCH: You did ask that.

18 Q. BY MS. READ-SPANGLER: Did you tell me if any  
19 did?

20 A. No. I think I did say that there are --  
21 New York has a way of looking at school conditions as  
22 well as school performance, but in a way that actually  
23 state governments hold themselves accountable. I think  
24 that that is the next task in the accountability zone in  
25 the United States.

1 that?

2 A. This is another allusion to my suggestion that  
3 we should think about an organization or an agency for  
4 review and the provision of high quality support for low  
5 performing schools. It's just another way of phrasing  
6 it.

7 Q. In Kentucky is it an independent agency?

8 A. No.

9 Q. In North Carolina do they have an independent  
10 agency doing this?

11 A. No. Independent agency is -- the independence  
12 of the agency is needed particularly if one wants to  
13 design a system that is reciprocal, that goes two ways.  
14 In other words, if it is a system that not only holds  
15 schools accountable for their part, but also holds  
16 districts and states accountable for their part, I don't  
17 think in the current -- that in the current way of  
18 constructing accountability systems that this two-way  
19 reciprocal element has been recognized enough. However,  
20 there is now wide agreement among educational scholars  
21 that such systems need to be augmented. This year's  
22 slogan for the Education Research Association, which is  
23 a conference attended by 15,000 researchers and  
24 educators in the United States, school accountability  
25 shared responsible quality, something like that. That's

1 Q. Let's move on to FCMAT. We're moving right  
2 along.

3 A. Uh-huh.

4 Q. And you say that the fiscal crisis and  
5 management assistance team has accumulated comprehensive  
6 tools for evaluating district operations.

7 To what comprehensive tools are you referring?

8 A. It looked like I was -- this may actually have  
9 been part of the material that I got through  
10 Morrison & Foerster. This was the evaluation tools that  
11 FCMAT uses for the districts that it goes into. It has  
12 various components; fiscal, administrative. It included  
13 curriculum instruction. It's been a while that I looked  
14 at the document. So I apologize if I don't know the  
15 exact details and names of them, but it seemed it was a  
16 rather -- you know, that there was some expertise there  
17 that had accumulated.

18 Considering that -- I'm not an expert on FCMAT  
19 and I have not looked into the detailed workings of that  
20 agency. I don't understand exactly the construction of  
21 FCMAT. What I do find interesting is that FCMAT is --  
22 its status seems to be rather ill-defined from looking  
23 at it from an outsider's view; that is, it is with a  
24 local district, it is housed within the local district,  
25 it seems. So all this -- what I'm saying is when I look

1 at FCMAT, I say see what FCMAT was designed, it may have  
2 been an accident, but somebody thought about some kind  
3 of independent agency. Somebody thought about, you  
4 know, of chartering an agency that is not the State  
5 Department of Education, that goes in and does that work  
6 in California. I thought that was interesting.

7 Q. When you say it was part of the material you  
8 got from Morrison & Foerster, what do you mean by that?

9 A. Well, I received depositions and I received the  
10 depositions of the people involved in FCMAT. And in  
11 order to understand what was going on in the  
12 depositions, I was given a large file of materials, and  
13 I went through.

14 Q. Okay. The very bottom of 21, going onto 22,  
15 you say, "A FCMAT-type approach may be particularly  
16 powerful in helping districts to maintain baseline  
17 stability in their low-performing schools."

18 A. Uh-huh.

19 Q. How?

20 A. I looked at what FCMAT does. Here, again, I'm  
21 trying not to propose things that are outlandish. And  
22 here's an agency that probably -- the way it is set up  
23 right now it probably couldn't do that kind of work, but  
24 it has -- there is some potential there. And what I was  
25 thinking is, okay, if we think of baseline -- you know,

1 primarily for cases of fiscal irregularity has put an  
2 agency in place. And what I'm advocating is I'm just  
3 using FCMAT as an example to perhaps state actors to  
4 think in terms of academic irregularities in learning  
5 conditions in the same way as we're thinking about money  
6 and test scores. And so, you know, that's where I'm  
7 trying to get at.

8 And I think I get the impression that I've  
9 mentioned repeatedly the idea that some kind of perhaps  
10 third-party review and provision of support agency would  
11 be of great help. I don't want to repeat that.

12 Q. BY MS. READ-SPANGLER: Right. Except that I'm  
13 still trying to figure out is if you think it would be a  
14 similar third-party.

15 A. FCMAT tells us that might be a way to go. What  
16 I'm trying to do in the report is I'm trying to point to  
17 things that the state already has in a very inchoate  
18 form, has experience with, has put in place already.  
19 And some of those things could be drawn together and  
20 something more powerful could be created out of the it.  
21 That's where I'm going with this report.

22 Q. In your expert opinion how much would it cost  
23 to develop and implement such a third-party with taking  
24 this FCMAT-type of approach?

25 MS. WELCH: Incomplete hypothetical, vague.

1 certain baseline operations in schools and we go back  
2 to -- and I go back to what I said before, such as, you  
3 know, a certain stability in the faculty, a certain  
4 provision of credentialed or qualified teachers, a  
5 number of other things that I mentioned earlier. This  
6 is actually something that an agency like FCMAT probably  
7 could evaluate and monitor with perhaps the kind of  
8 evaluation expertise that they have and with the kind of  
9 standardized instruments that they use. It is probably  
10 less useful -- that kind of approach is probably less  
11 useful in helping schools improve in the totality of  
12 their operations because there in that instruction is an  
13 important aspect. Instruction is very hard to pinpoint  
14 with that kind of standardized format. I don't think  
15 you go far when you look at the classroom, go far with  
16 these standardized ways of looking -- of evaluating and,  
17 you know, suggesting remedies. That's why, for example,  
18 the compliance are somewhat limited. When it comes to  
19 instruction, we need more sophisticated ways.

20 Q. Who or what entity would do this FCMAT-type of  
21 approach?

22 MS. WELCH: Incomplete hypothetical, vague.

23 THE WITNESS: I don't want to really speculate  
24 too much, but what I'm trying to do by looking at FCMAT  
25 is I want to point out that the state has actually --

1 THE WITNESS: You actually asked this question  
2 yesterday and I answered then I really don't know what  
3 it would cost. I don't think it would be enormously  
4 costly. As it is now the state spends some monies in  
5 the II/USP HPSG and on external evaluators. And I think  
6 there could be some -- perhaps even some shifting of  
7 monies. Who knows. I really don't know. It's beyond  
8 the scope of my report really.

9 Q. BY MS. READ-SPANGLER: Would any cost questions  
10 be beyond the scope of your expert report?

11 A. Yeah. I was not asked to calculate the cost of  
12 particular suggestions.

13 Q. I do think that later you do talk about  
14 shifting monies; and when we get to that, we're going to  
15 go into that further.

16 Let's go off the record.

17 (Recess)

18 Q. BY MS. READ-SPANGLER: We were talking about  
19 remedies. We touched on them briefly.

20 MS. WELCH: I want to note for the record that  
21 the section of the report is suggestions.

22 MS. READ-SPANGLER: I don't mean to  
23 mischaracterize anything by saying remedies.

24 MS. WELCH: It is a legal term of art that he  
25 may use differently from the lawyers.

1 Q. BY MS. READ-SPANGLER: In about the middle of  
2 the first paragraph you talk about other quality  
3 indicators, such as availability of instructional  
4 material, decent facilities, teacher qualifications,  
5 stability of faculty, et cetera. I think we talked  
6 about that yesterday.

7 A. Yes.

8 Q. Okay.

9 A. Verbatim from previous pages. Most of this is  
10 actually a verbatim listing of sentences, putting in a  
11 slightly different context of suggestions.

12 Q. So let me move on. In the last sentence you  
13 talk about the current unsatisfactory situation in  
14 California. Do you see that phrase?

15 A. No. Oh, here. Uh-huh.

16 Q. What do you mean by the current unsatisfactory  
17 situation in California?

18 A. I mean -- I shouldn't probably have confused  
19 the reader here. What this refers to is we had a  
20 discussion yesterday on performance indicators and  
21 indicators of opportunity to learn or learning condition  
22 standards. And current unsatisfactory situation is that  
23 the only standard we really have at this point is a  
24 test. In this case -- at the time I was writing this  
25 report it was the Stanford 9. Now we're moving

1 Q. If you could just review that in the sense of  
2 reading it to yourself.

3 A. Uh-huh.

4 Q. That paragraph, I'm going to ask you a question  
5 about it.

6 A. This whole paragraph?

7 Q. Yeah. Just quickly read it to yourself.

8 A. Okay. Uh-huh.

9 Q. What's the basis for your statement in the  
10 middle of this paragraph that these areas could easily  
11 be included in CCR?

12 A. Well, when you look at the kind of the  
13 structure of a CCR, you have a number of them that can  
14 be checked off and that can be -- the presence or  
15 absence of it can easily be ascertained. There are  
16 certain things that I'm suggesting here. Presence and  
17 absence can easily be ascertained. For example, clean  
18 bathrooms, I think it's fairly easy to once you have  
19 stated what clean bathroom means, you have no graffiti,  
20 no strong odors, you know, the sinks are there, and all  
21 those kinds of things, that you have a list of that and  
22 someone can go in and say, is it clean or not, check.  
23 It's fairly straightforward. It could be an item of  
24 some type of CCR-type compliance review. You can't do  
25 that with instruction. You can't do it mentioned in the

1 gradually to other tests. But that's really the only  
2 indicator we have, and I think that's not satisfactory.

3 Q. At the end of that sentence when you say  
4 "schools are evaluated on fairly narrow indicators," are  
5 you referring back to the fact that they are evaluated  
6 on the tests?

7 A. They are essentially evaluated only on the  
8 testing -- let me put it this way. They are only  
9 evaluated on outcome and with regard to outcome only  
10 evaluated on a test.

11 Q. Do you have an understanding of the purpose of  
12 California's current accountability system?

13 MS. WELCH: Objection. Asked and answered.

14 THE WITNESS: That's very hard. Yes.

15 Q. BY MS. READ-SPANGLER: What's your  
16 understanding?

17 A. Of the purpose --

18 Q. Of California's current accountability system.

19 A. My understanding is that the purpose of it is  
20 to monitor school performance, to facilitate school  
21 improvement, and to close the achievement gap between  
22 low-performing and high-performing schools.

23 Q. We talked earlier about CCR and you talk about  
24 it again in this section.

25 A. Uh-huh.

1 audit, such as, do teachers assume responsibility for  
2 the performance of their students. It's hard to do with  
3 a straightforward CCR.

4 Q. And did you come up with including these items  
5 in the CCR yourself or did someone suggest to you that  
6 these areas could easily be included in the current CCR?

7 A. No. That's what I came up with myself. Again,  
8 my task, not my task, my goal was to try to provide a  
9 report that wouldn't read from something like from  
10 another star and was looking for ways -- looking for  
11 elements in the current state operation that could be  
12 expanded and put to better use, more effective use for  
13 this purpose.

14 Q. Looking at the next section on external  
15 evaluators, you talk about enhancing the quality of  
16 external evaluators' work. And you state that external  
17 evaluators need to be carefully selected and trained in  
18 the application of newly formulated standards and in a  
19 more standardized format of school reviews to be  
20 developed.

21 A. Uh-huh.

22 Q. What are these newly formulated standards that  
23 you are referring to?

24 A. These would be the standards for learning  
25 conditions that are not in place right now.

1 Q. The adequacy standards?

2 A. Yeah.

3 Q. And then what do you mean by a more  
4 standardized format of school reviews? I thought you  
5 said before that you couldn't have a standardized  
6 format, that you needed a more complex, sophisticated  
7 approach.

8 A. Yeah.

9 MS. WELCH: I think that what he was talking  
10 about was in a different context. So to the extent it  
11 was in a different context, I think it mischaracterizes  
12 his testimony.

13 Q. BY MS. READ-SPANGLER: It's not my intent to  
14 mischaracterize your testimony. That's why I'm  
15 confused. If you can explain to me why I'm confused.

16 A. It's relative. In other words, what this  
17 refers to is some of the external -- it's -- it's the  
18 rather -- from my point of view, rather loose guidance  
19 in the external evaluation. In other words, if you look  
20 back at the reports of the analyses that was given by  
21 the study that I'm citing here, they found that the  
22 school plans turn out to be different. Some evaluators  
23 paid attention to this and others that. And other  
24 evaluators, you know, tend to stress the things that  
25 they have been doing all along as providers of

1 addition to meaningful standards of adequate  
2 performance, standards of learning conditions should be  
3 a key feature in the work of the external evaluators."

4 Is it your understanding or your opinion that  
5 neither II/UPS or HPSG include standards of learning  
6 conditions as you are using the term here?

7 MS. WELCH: Objection. Vague as to time.

8 Q. BY MS. READ-SPANGLER: As they currently exist.

9 MS. WELCH: Calls for a legal conclusion.

10 THE WITNESS: Not in the way I have defined  
11 standards of learning conditions, they do not exist in  
12 the State of California as of yet.

13 Q. BY MS. READ-SPANGLER: When we're talking about  
14 standards of learning conditions, these are the adequacy  
15 standards we're talking about?

16 A. Yeah.

17 Q. It's your expert opinion that California does  
18 not have any standards of learning conditions?

19 MS. WELCH: Objection. Vague.

20 THE WITNESS: I don't know how to answer that.

21 Q. BY MS. READ-SPANGLER: Does California have any  
22 adequacy standards, in your opinion?

23 MS. WELCH: Same objection. Very over broad.

24 THE WITNESS: It probably has some standards of  
25 adequacy. Look at school construction, for example,

1 educational interventions. So when I read something  
2 like that, I think it would probably be useful to  
3 standardize, not the degree that you come up with  
4 standardized prescriptions for the schools, but that you  
5 standardize a little more what an external evaluator  
6 does and what evidence needs to go collected so that  
7 it's more helpful for schools and also gives the  
8 external evaluator some guidance as to what they are  
9 supposed to do.

10 Q. And in your expert opinion who should develop  
11 this more standardized format for the schools to use?

12 A. I think there are some evaluation experts. We  
13 have a very good one at UCLA, knows extremely a lot, and  
14 practitioners, school people, people who have already  
15 been involved in evaluations in the state. You know, a  
16 group like that could put something like that together.  
17 It would probably first come from a researcher who has  
18 perhaps looked at some of that because they have been  
19 doing it for 100 years.

20 Q. Who are you referring to at UCLA?

21 A. The person?

22 Q. Uh-huh.

23 A. Marv Alkin, A-l-k-i-n. If he can't do it,  
24 there is certainly somebody who can do it.

25 Q. In the middle of this paragraph you say, "In

1 there are building codes. Hallways have to be  
2 particular width. The bathrooms have to be so many  
3 bathrooms per student. So, I mean, those -- if we just  
4 take school buildings, those exist. There is a  
5 stipulation that there needs to be, at least as far as I  
6 know, that there needs to be sufficient instructional  
7 material. So, yes, there are some standards.

8 MS. WELCH: Also, I'll object to the extent it  
9 calls for a legal conclusion and for an analysis of the  
10 entire code.

11 THE WITNESS: It's speculation. It's hard to  
12 answer. I looked at learning condition standards as  
13 applied to low-performing schools. That's what this is  
14 based on.

15 Q. BY MS. READ-SPANGLER: In your expert opinion  
16 does California have any adequacy standards as applied  
17 to low-performing schools?

18 A. Well, in that case --

19 MS. WELCH: Same objections.

20 THE WITNESS: It's very similar. As to you  
21 know, the answer is very similar. Yes. If there is,  
22 for example -- there are stipulations for school  
23 construction, for example. Those would apply to  
24 low-performing or high-performing schools. But as to  
25 the conditions that I'm talking about here, they are not

1 there.

2 Q. BY MS. READ-SPANGLER: In your opinion does  
3 California have an effective accountability system?

4 MS. WELCH: Objection. Vague. Over broad.

5 THE WITNESS: It depends on how you define  
6 "effective." If you define "effective" as a system that  
7 is able to raise the performance of schools across the  
8 board and able to close the achievement gap between  
9 low-performing schools and high-performing schools, I  
10 think it leaves something to be desired.

11 Q. BY MS. READ-SPANGLER: In your expert opinion  
12 using "effective" in the sense that you just defined it  
13 for me, would major changes be needed to make  
14 California's accountability system effective?

15 MS. WELCH: Objection. Incomplete  
16 hypothetical. Still vague.

17 THE WITNESS: It's hard to tell, you know, what  
18 you call major. I would stick to my report and say I  
19 believe that the suggestions that I'm making here could  
20 go a long way.

21 Q. BY MS. READ-SPANGLER: Do you consider your  
22 suggestions to be major changes in your current contacts  
23 with California's educational system?

24 A. How do we define "major"? If you define  
25 "major" as setting up a new agency that would be

1 yesterday, but what do you mean by "provide support in  
2 an unbureaucratic way"?

3 A. We mentioned the CCR. That is a bureaucratic  
4 way of monitoring compliance. This is a bureaucracy  
5 monitors compliance. It has 365 items that it wants the  
6 subordinate level to pay attention to, and then the  
7 supervisors come in and see if there is compliance on a  
8 number of items. That would be a bureaucratic approach.

9 A less bureaucratic approach would be, for  
10 example, you have an audit team coming into the school  
11 that looks at the school as a whole, but even that audit  
12 team may end up drawing up a list of things that are out  
13 off kilter that ought to be fixed within a number of  
14 weeks or months or years.

15 The third level would be that there is a person  
16 or a team in conjunction with the leadership of the  
17 school that could include teachers and principals that  
18 understand the comprehensiveness of all of this. It  
19 doesn't perceive school improvement as a form of  
20 checking off, that sees how the school as a whole would  
21 be transformed as a result of taking service steps that  
22 would be unbureaucratic. I believe it is the kind of  
23 advice and support that is under that that would  
24 probably reach the hearts and minds of teachers to begin  
25 with and also is more suited to the less standardized,

1 institutionalized, then you might call that major, but  
2 if you actually look at it from a different perspective  
3 and you have various elements, various elements in  
4 place, you might actually achieve something like that  
5 without what you may define as major. Again, I haven't  
6 define major. I personally don't think it is major.

7 Q. What if I use the word "significant"?

8 A. We are now know -- it's --

9 MS. WELCH: Same objections.

10 THE WITNESS: It's the same problem. How do  
11 you define that. It's very hard to say what is major.  
12 For some people just the idea that there would be  
13 standard of opportunity to learn is major. To me that  
14 is not major at all.

15 Q. BY MS. READ-SPANGLER: For the record, when you  
16 say standards of opportunity?

17 A. That refers to --

18 Q. The adequacy standards?

19 A. Uh-huh.

20 Q. You conclude the section with the heading,  
21 "Expand and Improve the Work of External Evaluators in  
22 Underperforming Schools," by stating that professionally  
23 train personnel are needed that can augment evaluation  
24 with professional advice and can provide support in an  
25 unbureaucratic way. We touched on this a little

1 rather ideosyncratic situation of classrooms and  
2 instruction.

3 Q. Why?

4 A. Because in the interaction between the teacher  
5 and the student you have what is required of an  
6 effective teacher is to respond to an individual student  
7 as an individual and not to the individual student as  
8 recipient of a particular curriculum. So that's why we  
9 have teachers as professionals. They are able to adjust  
10 to the moment. They are able to adjust to the  
11 particular needs of a child that can keep in mind the  
12 demands of a society to perform at a particular level  
13 but are able to see the human potential of a child that  
14 the teacher is confronted with and need to reach out to  
15 with empathy that is antithetical to standardization,  
16 from my point of view. That's why -- I'll just leave it  
17 there.

18 Q. That's why what?

19 A. That's why bureaucratic approaches to school  
20 reform find a hard time finding acceptance among  
21 teachers.

22 Q. In the next section, "Make the Underperforming  
23 Schools Programs Mandatory," the next to last sentence  
24 says, "Thus I propose to make II/USP mandatory and  
25 concentrate limited resources on schools in the most

1 needy API deciles."

2 Can you elaborate on what you mean by this?

3 A. Well, this is, like many of these suggestions,  
4 stopgap measures. As earlier I said, some of the  
5 standards could be done by a CCR included in that with  
6 facility. Something like that I'm doing here as well.  
7 I'm looking at the system and trying to think what can  
8 be done to, you know, take first steps. And one of the  
9 things that I think is the problem with the voluntary  
10 feature is that there are schools I think the HPSG kind  
11 of filled that gap for, the decile schools. There are  
12 schools at lower performing deciles that don't receive  
13 the scrutiny that perhaps they should receive. And they  
14 are school in the upper deciles where the districts or  
15 schools were more proactive and they happen to be in the  
16 HPSG program. If they are limited resources, one could  
17 imagine correcting that with facility.

18 Q. I guess when I read this it sounds to me like  
19 you are just trying to make it more like HPSG. And I  
20 guess the reason I think that is you're focusing on the  
21 most needy API decile. What were the differences  
22 between the way you are proposing II/USP and HPSG?

23 MS. WELCH: Objection. I think the report  
24 speaks for itself.

25 MS. READ-SPANGLER: Well, I'm asking him to

1 needy API deciles," are you limiting that to less than 1  
2 through 5?

3 A. What I'm saying is, as it is right now, schools  
4 in all five deciles can be supported by II/USP. And I'm  
5 saying if we are assuming that there are limited  
6 resources, one could think about concentration on  
7 resources in the lower deciles and perhaps exclude the  
8 upper deciles. One could say we exclude 4 and 5 and  
9 only do 1, 2 and 3, depending on what seems to be  
10 feasible, would be a first step. If we wanted to  
11 identify the most needy schools, just as I would say,  
12 you know, one should perhaps when one looks at  
13 districts, one should jump in with districts in highest  
14 distress and start with those and work yourself from  
15 that work outward.

16 Q. I think I know what your answer is going to be,  
17 but it's my job to ask you anyway.

18 A. Yes. Uh-huh.

19 Q. Can you estimate how much it would cost to  
20 serve all your performing schools as you propose here by  
21 an II/USP program?

22 MS. WELCH: Incomplete hypothetical. Over  
23 broad.

24 THE WITNESS: It's very, very difficult to  
25 estimate. I was not asked to estimate it. I'm not an

1 explain it.

2 MS. WELCH: It says, "Make II/USP mandatory."  
3 That's part of the sentence. That's the basis for my  
4 objection.

5 Q. BY MS. READ-SPANGLER: You can go ahead and  
6 explain.

7 A. I'm not referring here to HPSG. Now I will  
8 probably repeat myself, so maybe I don't understand your  
9 question.

10 Q. Let me clarify my question. As the way you are  
11 proposing II/USP here, how would it differ from HPSG?  
12 It sounds like you are losing the breath of coverage  
13 that II/USP has. So how would it differ?

14 MS. WELCH: Same objection.

15 THE WITNESS: Yeah, I mean, I think you are  
16 right. It would differ. It would be larger because  
17 II/USP has more resources than HPSG. It would probably  
18 differ in that more schools in lower deciles would be  
19 included.

20 Q. BY MS. READ-SPANGLER: So when you say,  
21 "concentrate limited resources on schools in the most  
22 needy API deciles," as it currently exists, II/USP  
23 schools can come from deciles 1 through 5, right?

24 A. Yeah.

25 Q. So are you suggesting -- when you say "most

1 economist of education. I would have sat down and may  
2 have, you know, looked at what it might cost, but it's  
3 also not my expertise. But I was not asked to do that.  
4 Q. BY MS. READ-SPANGLER: Is it also true that you  
5 weren't asked to do that with respect to HPSG?

6 A. No. What I'm saying is I was not asked  
7 specifically not to do certain things. The general  
8 scope of my work suggested to me that I was not to  
9 calculate out certain costs for certain proposals.  
10 That's why I call these suggestions. And I saw them  
11 more as general ways of which direction we might go  
12 into. And I offer a mix of more far-reaching ones and  
13 more immediate ones that could be taken right away.

14 Q. The last sentence of this section says, "When  
15 evaluation becomes more meaningful and more supportive  
16 (see below), it will in all likelihood find acceptance,  
17 especially among the highly performing teaching cadre in  
18 the low-performing schools."

19 What are you talking about here?

20 A. This goes back to the original research on  
21 low-performing schools. In all low-performing schools  
22 you have teachers that are high performing and you have  
23 teachers that are highly engaged and teachers that are  
24 willing to exert tremendous effort to turn a school  
25 around. It is a problem when you apply a purely

1 school-internal lens with an unsophisticated evaluation  
 2 to such a school. The school is often wholesale -- let  
 3 me say it flippantly, condemned or wholesale, you know,  
 4 seen in negative terms. That is a danger for those  
 5 people that are still active in these schools. It's a  
 6 design flaw in the entire accountability system. The  
 7 accountability system holds schools as accountable, does  
 8 not distinguish within the level in the school and  
 9 throws into the same basket the teachers doing good or  
 10 bad. They are all tainted with the same negative label.  
 11 It's a big problem. If we add to that unsophisticated  
 12 evaluation that tells the school wholesale that it is  
 13 not doing well, that's not good for morale. If we  
 14 assume, as I do from inferring from the research, that  
 15 morale is a key component in these schools, what we do  
 16 to diminish the morale is really a problem. So I'm  
 17 saying we have to have things in place. We have to have  
 18 structures in place, such as these that I mention in the  
 19 report that might attenuate that problem.

20 Q. What are the bases for the opinion in that  
 21 sentence?

22 A. This -- which one now?

23 Q. "When evaluation becomes more meaningful and  
 24 more supportive it will in all likelihood find  
 25 acceptance, especially among the highly performing

1 the context in mind when I ask my question.

2 Are you saying these two strategies are the  
 3 only two things that the state does?

4 A. No, that's not what the sentence implies.

5 Q. Is it your opinion that II/USP is not generally  
 6 effective at improving the performance of a  
 7 participating school?

8 MS. WELCH: Objection. Vague.

9 Q. BY MS. READ-SPANGLER: If you have an opinion  
 10 one way or the other.

11 A. It appears not being effective enough, given  
 12 the ambitious goals of the state.

13 Q. What do you mean by not effective enough? I  
 14 know you qualified it.

15 A. If we, again, despite my misgivings about the  
 16 narrow scope of performance indicators, but if we talk  
 17 within the current accountability design, the API growth  
 18 targets are set in a way that down the road or through a  
 19 process of several years, achievement gaps will close.  
 20 If low-performance schools are not able to accelerate  
 21 their growth rate to the degree that this closing of the  
 22 gap is actually happening, then the system may not be  
 23 deemed effective under the criteria that the state sets  
 24 out. You've been looking at the performance of II/USP  
 25 schools. It doesn't seem that the great majority of

1 teaching cadre in the low-performing schools."

2 MS. WELCH: Do you want specific studies?

3 MS. READ-SPANGLER: Yes.

4 THE WITNESS: There is research to support  
 5 that. My own research supports that.

6 Q. BY MS. READ-SPANGLER: What else?

7 A. There's research, not necessarily on  
 8 low-performing schools, but research on evaluation  
 9 utility that spells out what an evaluation needs to look  
 10 like to be useful that I would throw into this as well,  
 11 as evidence.

12 Q. Whose research is that?

13 A. As I mentioned, Alkin, for example, has  
 14 developed a theory on that.

15 Q. At the top of page 24 you talk about two  
 16 strategies. Do you see that sentence?

17 A. Uh-huh.

18 Q. Are you saying that these are the only two  
 19 things that the state does?

20 A. Let's see.

21 Q. You say, "Two strategies can potentially reduce  
 22 this burden ..." and then it lists the two strategies.

23 A. And your question again? Sorry. I had to read  
 24 it again.

25 Q. That's fine. I want you to read it and have

1 II/USP schools seem to be able to meet their API growth  
 2 target, you know, as expected. So, you know,  
 3 considering that the API growth targets were calculated  
 4 with a particular purpose in mind, it's a problem if the  
 5 schools don't do that.

6 Q. Have you looked at any research on or done any  
 7 research on or comparison of the growth of II/USP  
 8 schools compared to non-II/USP schools that are the same  
 9 level?

10 MS. WELCH: Objection. Vague.

11 THE WITNESS: I have not done that kind of  
 12 research. I'm actually preparing a study like that  
 13 right now. And hopefully that will be further ahead if  
 14 this case should go forward. And I haven't really seen  
 15 anything conclusive at this point that would state that.  
 16 My statement is not based on that kind of comparison.  
 17 It is based on the comparison between what the state has  
 18 set out as its goal and what the schools have actually  
 19 shown to be able to accomplish.

20 Q. BY MS. READ-SPANGLER: Do you have any  
 21 knowledge about how II/USP schools perform compared to  
 22 other schools in the lowest five deciles?

23 MS. WELCH: Objection. Vague.

24 Q. BY MS. READ-SPANGLER: Let me ask you this. Do  
 25 you recall Laura Goe mentioning a comparison of the

1 growth rate of the first cohort of II/USP schools  
2 compared to other schools in the lowest 56 percent of  
3 API schools in her paper?

4 A. No, I don't recall that, her mentioning it, but  
5 I would doubt that at the time she was writing her paper  
6 that she could actually make -- that you could actually  
7 make any statements, because the time line would be so  
8 short that it would be hard to actually ascertain that  
9 kind of comparative analysis.

10 Q. So you don't recall her saying the first cohort  
11 of II/USP schools made greater gains on API scores than  
12 other schools in the lowest half of the API?

13 A. I don't recall that, but it could very well be  
14 that she said that. But that would not -- that  
15 statement would not qualify as showing that, you know,  
16 there is a trend line over time that actually, you know,  
17 that -- that, you know, that that would -- that would  
18 hold over time. I'm not so sure that you could base  
19 that on one year. Even if we find -- and it may very  
20 well be out there -- that II/USP schools make greater  
21 gains than non-II/USP schools, then that would speak to  
22 some defect of the program, but it would still be  
23 insufficient considering the state's goals, which is  
24 closing the achievement gap. Closing the achievement  
25 gap does not just require schools to perform marginally

1 Education. They could say, hey, you know, we have -- we  
2 see that there are some academic failures consistently  
3 over whatever we define. They see those patterns.  
4 That's not difficult to do. And then that would be the  
5 first step. And then, of course, then the big if is  
6 what happens afterwards once we know there is a district  
7 in distress. We can take this report and say let's say  
8 for the sake of argument we accept these criteria that I  
9 used in trying to identify a district in distress, then  
10 we already have the 26 or 67 or, so now what do we do  
11 with them. That's the critical part.

12 Q. And that's my next question. You say,  
13 "Compared to school interventions, district  
14 interventions are easier and more difficult at the same  
15 time."

16 When you talk about district intervention, what  
17 do you mean? What sort of district intervention are you  
18 talking about?

19 A. I can't be too specific. I have not studied in  
20 detail Compton, or Oakland, or these cases, so that  
21 level of specificity I can't offer. What I mean here  
22 more difficult and more easy is that it seems to me  
23 there is a certain plausibility to the argument that it  
24 would be easier for the State Department of Education to  
25 reach out to a local districts than just to a local

1 better than schools under similar circumstances that are  
2 not in the program. It would require the schools to  
3 perform substantially better, as the API is calculated  
4 for them to do.

5 Q. On page 24 in the second paragraph you're  
6 talking about an alternative approach that concentrates  
7 state action on districts in distress. You say that  
8 this system ought to be extended to cases of academic  
9 failure. How would you define or for purposes of this  
10 determine academic failure?

11 A. Maybe along the lines of the way we did it by  
12 saying, okay, if a district has 50 percent of its  
13 schools in the low-performing schools program or  
14 30 percent of its schools in the low-performing schools  
15 program and does consistently over two years, then one  
16 could add to that perhaps, you know, the performance --  
17 overall performance on the performance level of state  
18 tests, one could say this district is in distress or  
19 there are academic irregularities, or choose other  
20 criteria. It's not that difficult now that we have an  
21 accountability system in place.

22 Q. Who would be responsible or what entity would  
23 be responsible for determining academic failure?

24 A. Once the criteria are in place, this could be  
25 done by the data crunchers at the State Department of

1 schools. The local district does not include  
2 instruction as one of its major operations. A local  
3 district is basically a bureaucracy that is overseen by  
4 a local governing board that is akin to what a State  
5 Department of Education is like. So there is some kind  
6 of affinity there. Whereas, a school is not just a  
7 bureaucratic operation. A school is more than that. In  
8 the school you have -- as I mentioned earlier, you have  
9 the interaction between students and teachers, you know,  
10 as a human core. That sometimes doesn't lend itself to  
11 bureaucratizaion. So it's much more difficult for the  
12 state to actually understanding what is needed for a  
13 local school to turn around. That might be this is the  
14 easier part that might be perhaps to know what it takes  
15 to turn a district around. This is somewhat  
16 speculative.

17 Q. You mentioned Compton. Does that mean that you  
18 are envisioning takeover of the entire district as a  
19 possibility?

20 A. As a possibility, yes. I would think so.

21 Q. Who would do that or what entity would do that?

22 A. Like I said, this goes back to calculation of  
23 funds. I know that the track record for district  
24 takeover is not very good at this point, so I'm  
25 certainly not advocating repeating things that did not



1 work in the past, but it is not at all surprising that  
2 perhaps these takeovers were not very successful because  
3 we may not have had the needed structures in place to  
4 make such, let's just call it not takeovers but  
5 interventions a success.

6 Q. And why did you mention Oakland?

7 A. It was in the paper recently.

8 Q. As a possibility that there might be a takeover?

9 A. Yeah. You know, the whole debate on  
10 administrator versus trustee and all that stuff.

11 Q. Do any states that you know of have a system of  
12 determining academic failure in a district and having  
13 district intervention such as you envision here?

14 A. Texas, for example, has -- right from the  
15 inception of the low-performing schools program has had  
16 district accountability. That is just as a school is  
17 looked at and the performance of its students is  
18 measured, and it gets a performance status based on  
19 that. The same happens with districts. So districts  
20 have performance status such as that as well. Then  
21 there are sanctions lined up for the districts as much  
22 as they are for the schools.

23 So Texas has had that all along. From the  
24 research I have seen on Texas, that's an important  
25 feature in that. It's pointed out that it's important

1 it anymore -- was a minimum basic skills test for the  
2 below average performers. That doesn't require as much  
3 capacity in building a system like that. It depends on  
4 the complexity of the demands. California is much more  
5 ambitious.

6 Q. So would it be fair to say that you would not  
7 consider Texas -- that aspect of Texas, the district  
8 intervention aspect, to be a model that California could  
9 look to?

10 A. I wouldn't say that is a model.

11 MS. WELCH: Objection. Vague.

12 THE WITNESS: I wouldn't say that is a model,  
13 but I would say one can learn from such an element in  
14 the Texas case, can look and see, okay, now what happens  
15 when districts are included into the stream of  
16 accountability. One can probably learn from the Texas  
17 case and then design something that is more California  
18 appropriate and better than what they have.

19 Q. BY MS. READ-SPANGLER: Do any other states have  
20 a system of determining academic failure and having  
21 academic intervention besides Texas?

22 A. I don't know. I have to think now. I'm not so  
23 sure. I think in Texas it's the strongest feature that  
24 they are -- I'd have to look at my -- have to look at my  
25 stuff again. I could say North Carolina, but I'm not

1 to have the district administration be in line with the  
2 schools in trying to achieve school improvement. I  
3 hear, by the way, but this is really informal antidotal,  
4 I hear this from II/USP service providers as well. And  
5 the complaint is, from the ones that I have talked to,  
6 you know, they -- you know, these are, you know -- you  
7 hear the complaint that the districts are just not  
8 pulling their weight. But I probably shouldn't have  
9 mentioned it.

10 Q. When you mentioned Texas as an example, is  
11 there district intervention at all in these sanctions  
12 that you have mentioned or do they have some other means  
13 of district intervention?

14 A. They don't have -- Texas is not big on  
15 interventions. It's not a system that is big on  
16 interventions. But, you know, it's very hard to compare  
17 states, if you don't look at the system as a whole.  
18 Texas does not place the same demands on students. The  
19 Texas system does not place the same demands on students  
20 and schools as the California system does. As I  
21 understand it, the Texas system actually is being  
22 revamped as we speak, but the Texas system used to be  
23 traditionally a test -- based on a test that was basic  
24 skills and was a test that large numbers of schools that  
25 range above the average -- they were not challenged by

1 entirely certain.

2 Q. On a totally different subject, just popped  
3 into my head, did you happen to remember to bring me an  
4 updated copy of your CV?

5 A. No. I didn't know I was supposed to do that  
6 today. Oh, that's right, I was going to look. I  
7 forgot.

8 Q. That's okay. It took me until just now to  
9 remember. If by chance you remember tonight, we'll  
10 attach it as an exhibit.

11 A. Okay.

12 MS. WELCH: If you have it here in  
13 San Francisco.

14 THE WITNESS: Exactly.

15 MS. READ-SPANGLER: Right.

16 MS. WELCH: If you don't have it here, we can  
17 provide it to you.

18 MS. READ-SPANGLER: I'm not thinking that I'm  
19 going to ask you questions about it necessarily. It  
20 would just be nice to have an updated copy.

21 Q. In the last paragraph of this section about the  
22 middle.

23 A. Where is this now?

24 Q. Second full paragraph on the page that starts,  
25 "But despite these difficulties."

1 A. Uh-huh.  
 2 Q. In about the middle of the paragraph you say,  
 3 "... but taking experiences with FCMAT as a point of  
 4 departure, the state should be encouraged to develop a  
 5 time line for building up its own regulatory and  
 6 intervention capacity."  
 7 Do you see that?  
 8 A. Uh-huh.  
 9 Q. What experiences with FCMAT are you talking  
 10 about?  
 11 A. This refers back to the conversation we had a  
 12 little earlier. I was looking across the board at what,  
 13 you know, what is in place, where does perhaps  
 14 California have to take steps, gain experiences. And it  
 15 seems to me that when it comes to district  
 16 accountability that it is FCMAT that has gone in  
 17 whenever there were, first, fiscal irregularities but  
 18 other irregularities as well. So one should take  
 19 advantage of those kinds of experiences and see, you  
 20 know, what has worked, what needs to be changed, what  
 21 needs to be expanded and so on and so forth. That's  
 22 what I mean by that.  
 23 Q. What do you mean by regulatory and intervention  
 24 capacity?  
 25 A. Well, that might be a little too, you know --

1 essentially, you know, the regulations and capacities  
 2 that need to be in place could have been said in a less  
 3 lambastic way.  
 4 MS. READ-SPANGLER: Should we take a short  
 5 break.  
 6 (Recess)  
 7 Q. BY MS. READ-SPANGLER: We're at the last  
 8 section, "Create an Independent School Review and  
 9 District Auditing Agency." You say, "Ultimately, an  
 10 agency is needed that develops, systematizes and  
 11 oversees external evaluations, interventions, and  
 12 support for schools and districts."  
 13 What do you mean, "develops, systematizes and  
 14 oversees," and particularly I'm wondering what you mean  
 15 by "systematizes" in this context.  
 16 A. Systematizes refers to the description of  
 17 the -- what I earlier termed the loosely crafted nature  
 18 of some of the programs. So if such an agency could  
 19 systematize some of the loose pieces and make sure that  
 20 they kind of fit better together and are tied to the  
 21 central team goals that the state has.  
 22 Q. Then you say, "Such an agency would identify  
 23 absence or presence of essential inputs with objective  
 24 indicators."  
 25 When you say "essential inputs," does this go

1 back to the adequacy standards you were talking about  
 2 before?  
 3 A. Yeah.  
 4 Q. How would such a -- well let me back up. I'm  
 5 assuming that this is a centralized agency. Is that an  
 6 accurate assumption?  
 7 MS. WELCH: Objection. Vague.  
 8 THE WITNESS: An agency on the state level?  
 9 Q. BY MS. READ-SPANGLER: Yes. How would such a  
 10 state level agency deal with issues of local capacity  
 11 and scale, if at all?  
 12 MS. WELCH: Incomplete hypothetical. Vague.  
 13 THE WITNESS: That's a hard question to answer,  
 14 how to do with local capacity. In what sense "deal  
 15 with"? If you would just maybe make it a little --  
 16 Q. BY MS. READ-SPANGLER: We talked about state  
 17 capacity. We talked about district capacity.  
 18 Presumably there's a concept of school level capacity.  
 19 A. Yeah.  
 20 Q. So sort of conflating the concept of district  
 21 and school capacity and local non-state capacity, how  
 22 would a state level agency such as the one you are  
 23 proposing be able to adjust or modify itself to deal  
 24 with variations in different local capacities?  
 25 MS. WELCH: Same objections.

1 THE WITNESS: Let me try to answer this with  
 2 examples perhaps and it would be easier. Let's assume  
 3 that this particular agency has performance data that  
 4 suggests that district "X" has 50 percent of its schools  
 5 II/USP and has those schools in II/USP over the last two  
 6 years. All hypothetical. Let's assume such an agency  
 7 gets that kind of information. And let's assume that  
 8 these are the criteria that would suggest to this agency  
 9 that this warrants a review of a district -- let's just  
 10 deal with district for the moment -- of a district  
 11 because it seems to be a system-wide problem. I'm now  
 12 meaning district-wide problem. So it would have to then  
 13 trigger those parts of its operation that is specialized  
 14 on the district operations. Those apparently would not  
 15 be the same people that are specialized math instruction  
 16 and literacy instruction. Those people would be  
 17 knowledgeable about district operations. And they would  
 18 be knowledgeable about some of the -- some of the, you  
 19 know, proper ways of running a district. And reviews  
 20 can be conducted. And then it would be up to this  
 21 agency to determine what is amiss in this district. Is  
 22 it something of the district's own doing. Has the  
 23 district completely, you know, to a certain degree under  
 24 resourced. What is the problem here. This is what the  
 25 agency will do.

1 Q. BY MS. READ-SPANGLER: In the last sentence on  
2 page 24 you state, "Rather it would attract a cadre of  
3 first-rate educators that can inspire other educators to  
4 search for pedagogically sensible solutions." How?

5 A. Oh, in this case I have in mind the old -- not  
6 the old. I have in mind the English system where the  
7 inspectors used to be really experts in the field,  
8 respected people in the field, that have had long  
9 experience in the schools, knew what they were talking  
10 about. I can imagine that a similar caliber of people  
11 could be attracted into this kind of agency as well. If  
12 you look at now the school level. If you look at the  
13 Kentucky High School Educator Program, particularly when  
14 it started, it attracted very, very highly qualify  
15 people, had been principals for many years who had been  
16 involved in turning around schools and had had this kind  
17 of expertise. Those kind of people exist in California.  
18 They need to be found and recruited and concentrated  
19 and --

20 Q. So you're proposing siphoning off some of the  
21 best people from the districts and schools?

22 A. Yeah. That's always a problem. That's the  
23 problem that the Kentucky system ran into as well. The  
24 districts were very anxious about losing these very good  
25 people. And that is a problem. I think that it is a

1 cost that may have to be paid in the short run, because  
2 what I would suspect is that if we had such an agency,  
3 that agency would authoritatively -- and I hope this  
4 would be an institution statute -- would authoritatively  
5 find rather big capacity gaps, meaning that the overall,  
6 in all likelihood, do not produce sufficient number of  
7 qualified personnel for the educational school overall.  
8 That's why the low performance schools in the poor  
9 districts run into constant shortages of good people,  
10 because we overall do not supply enough of those people.  
11 That needs to be state authoritative. It needs to be  
12 documented so that policy making can change and the will  
13 can be formed that is not there right now.

14 That is in some sense what this lawsuit is  
15 about. In your own line of questioning, is this really  
16 happening in the school. From my point of view, we need  
17 an agency that puts all doubt, you know, washes those  
18 doubts away and says, Here are the conditions the way  
19 they are, the way practitioners have been describing  
20 them for generations actually, and research has found  
21 them to be in place from time to time or intermittently.  
22 So we need something like that.

23 Q. And since you would need to attract these  
24 first-rate educators, you would need to pay them an  
25 extremely competitive wage, right?

1 MS. WELCH: Objection. Mischaracterizes his  
2 testimony.

3 Q. BY MS. READ-SPANGLER: You don't talk about it,  
4 but really strictly how are you going to attract  
5 first-rate educators if you are not anticipating paying  
6 them a competitive rate?

7 MS. WELCH: Calls for speculation. Incomplete  
8 hypothetical.

9 THE WITNESS: You're asking me to make a  
10 statement about the salary of those people?

11 Q. BY MS. READ-SPANGLER: Well, do you think that  
12 you would have to pay them as much or more than they  
13 would make working in the districts, or school, or the  
14 Department of Education to attract them from those jobs?

15 MS. WELCH: Same objections.

16 THE WITNESS: You would probably -- if you  
17 attract principals, you would probably have to attract  
18 the principal salary. If you attract -- depending on  
19 the level on which you attract them, you have to pay  
20 them a salary accordingly. Yeah, that's true. I'm not  
21 sure you would have to put a premium on it either. You  
22 could imagine that the work that can be done in this  
23 kind of environment could be challenging and interesting  
24 to quite a number of people. And, as you know, as I  
25 know from my own experience, interest sometimes

1 compensates for poor salaries.

2 Q. Sometimes?

3 A. Yes. In my case it does. Academia shows that.  
4 Educational professors clearly show that you can  
5 attract. I'm not saying we're all highly qualified, but  
6 that you can attract highly qualified people interested  
7 a field and pay them next to nothing because they have  
8 an interest in doing what they are doing.

9 Q. Well, that sort of undercuts your argument  
10 about why we're having difficulty attracting qualified  
11 teachers.

12 A. I know, but this was flip, too. I didn't want  
13 to make too much of it.

14 Q. Then at the top of page 25 you conclude the  
15 paragraph by saying, "Thus, such an agency should  
16 mediate between principles of public administration  
17 (e.g., standardization, formalization) and education  
18 (e.g., personalization.)"

19 What do you mean by that?

20 A. This goes back to what I mentioned before that  
21 somehow when you look at schools, schools are hybrid  
22 organizations. They are bureaucracy, but also  
23 non-bureaucratic fields of operation, classroom  
24 instruction. So if we, you know, look at what public  
25 administrations often do, they standardize and

1 formalize. When you look at the California  
 2 accountability system, that tries to, you know, tries to  
 3 improve schools through exactly those means of  
 4 standardization and formalization. That is, we  
 5 formalize what constitutes performance and we  
 6 standardize what indicators we are using, and what  
 7 knowledge counts as high performance, and what knowledge  
 8 doesn't, what knowledge levels count as low performance  
 9 and so on and so forth. From my point of view, those  
 10 are bureaucratic approaches. They are not necessarily  
 11 bad. They are used by public organizations to further  
 12 advance their aims, but then they run counter to the  
 13 situation in schools quite often. If you just think  
 14 about the extensive debate on what to do with non-native  
 15 speakers within the California accountability system,  
 16 there's a lot of doubts out there and a lot of questions  
 17 out there about what to do with them, not just in the  
 18 United States. I mean, this is a problem that is in  
 19 existence everywhere. That is to show that in order for  
 20 a teacher to reach a student, personalization is needed.  
 21 You reach the child as an individual, not as a  
 22 performing entity.

23 Q. How would this agency mediate between those two  
 24 things?

25 A. Well, it probably is, again, that came out a

1 little bit too, you know -- it could have been said much  
 2 more simply by saying that if you have a particular --  
 3 if you have a -- somebody who provides support at the  
 4 school level, that that person or that team needs to  
 5 incorporate both skills and helping a classroom teacher  
 6 along to reach their kids effectively as that team needs  
 7 to be able to help the school to be run smoothly or  
 8 improve on management and administration. So we're  
 9 seeing these things with clear goals. It's one thing to  
 10 say we have a clear goal of reaching a certain number on  
 11 the API. It's another to say, what does that mean to  
 12 you facing 25 kids not on grade level, which is the case  
 13 in many low-performance schools. What do you do in this  
 14 situation where you have curriculum running and  
 15 materials being given to you in a third grade class when  
 16 it is on a first grade level. You have to deal with it  
 17 as a teacher. And bureaucratic solutions are often not  
 18 the right solutions for them.

19 Q. In the next to last paragraph you talk about  
 20 financing this agency from II/USP and other state  
 21 programs and money that other school districts would get  
 22 from research and evaluation. I'm wondering how would  
 23 you pay for these programs, or are you thinking that we  
 24 would just stop these other programs?

25 A. As I point out earlier, particularly with the

1 II/USP program, I'm not a great fan of disbursing grants  
 2 to low-performing schools without clear ideas of what to  
 3 do with the money. I think we have seen in the past  
 4 that that is not a good approach. Grant making -- it  
 5 seems that just, I guess, the argument has been made by  
 6 many people that just increasing funds without changing  
 7 the usage, without knowing what to do with the funds, is  
 8 probably not going to be very effective. So I doubt the  
 9 wisdom. For example, if I look at those schools that  
 10 double up on II/USP and HPSG, there aren't that many,  
 11 but there are some, as I understand it. Those are not  
 12 huge sums, but there are sums. And I'm afraid -- we  
 13 talked about this yesterday, actually. I'm afraid that  
 14 given the track record of schools, of what they do with  
 15 a large influx of resources, I'm just not sure that  
 16 given that track record that money is wise to spend on  
 17 something. Maybe it would be possible to rethink this  
 18 and rather than giving individual schools the full  
 19 amount, perhaps one would think of taking money away  
 20 from II/USP instead of giving it to individual schools,  
 21 work on the capacity giving advise to schools. In that  
 22 case the schools may not need as much money if the  
 23 advise they are given is better. That's the kind of  
 24 idea.

25 Q. You said initial financing would come from that

1 after the initial financing came from these programs.  
 2 How would you finance it?

3 MS. WELCH: For clarity sake, he says "perhaps  
 4 come."

5 THE WITNESS: I have to stress this again.  
 6 These are really suggestions that I put in the report.  
 7 It is not the essential part of the report.

8 Q. BY MS. READ-SPANGLER: I'm just trying to flush  
 9 out your ideas.

10 A. Of course.

11 Q. Do you have any ideas or opinions on how it  
 12 would be financed after this initial financing?

13 A. No.

14 Q. Do you have any idea on the total annual budget  
 15 for such an agency?

16 A. No.

17 Q. Do you have any opinion as to the number of  
 18 personnel such an agency would need?

19 A. No.

20 Q. In the last paragraph you say, "With PSAA, the  
 21 state created an accountability system that rearranged  
 22 the business of public education, but the job is  
 23 incomplete. Outcome-based accountability, as restricted  
 24 as it currently is, needs to be complemented with  
 25 reviews of schools, districts, and state policies.

1 Intervention needs to be more systematic, coherent and  
2 of high quality."

3 In your opinion is the PSAA a good first step  
4 towards creating an accountability system?

5 MS. WELCH: Objection. Vague as to time.

6 THE WITNESS: I think in that the state  
7 established a school accountability system that allows  
8 measuring performance outcomes in this abstract kind of  
9 figure, I would say, yes, that is something that is, I  
10 think, is a good step in my opinion. I don't think that  
11 we are -- as I said, the job is incomplete. I don't  
12 think we are there with regard to the actual performance  
13 indicators. I think that needs to be much more  
14 sophisticated than we are doing it right now. You know,  
15 it needs to be a broader mix. The actual task of  
16 schools needs to be better captured. I'm not a great  
17 fan of narrowing the operation of schools to particular  
18 tests. We need multiple indicators for the performance.  
19 And as I have stated many times, you know, it is  
20 incomplete with regard to conditions.

21 Q. Are you generally in favor of outcome-based  
22 accountability systems?

23 MS. WELCH: Objection. Vague.

24 THE WITNESS: This depends on how you define  
25 "outcome base." If you define it as it is sometimes

1 speculate on other things at this point.

2 Q. BY MS. READ-SPANGLER: Is there anything in  
3 your report that you feel we haven't touched on?

4 A. Oh, I see. Okay.

5 MS. WELCH: I'm going to object that the report  
6 speaks for itself.

7 Q. BY MS. READ-SPANGLER: I guess we've probably  
8 touched on everything?

9 A. I think so, too.

10 Q. You talk about in the last sentence mobilizing  
11 advocacy and community groups. Why do we need to do  
12 that?

13 A. We actually discussed this yesterday as well.

14 Q. Oh.

15 A. You know, I can easily reiterate it. It  
16 doesn't matter. If we assume I mean that --

17 Q. Give me the Cliff Notes version.

18 A. Exactly. Okay. The best advocates for  
19 children are their parents. And in a democratic state,  
20 the state should have an interest in mobilizing that  
21 advocacy. In disadvantaged communities parents are  
22 often not mobilized and franchised part of the political  
23 process. We need to find ways to change that. My idea  
24 is that if the information could filter down to these  
25 communities as to how their schools stack up against

1 seen, as an accountability system that essentially is  
2 run through stating goals based on outcomes and  
3 attaching rewards and sanctions to them, I would say if  
4 the preponderance of such accountability is based on  
5 outcome the way I defined it, I would think no, I'm not  
6 in favor of that. I am -- I do believe that schools  
7 need to be held accountable to outcomes, but I also  
8 believe that can only be done -- it ought only to be  
9 done if such an outcome-based accountability system is  
10 implemented by one that looks at the inputs as well.

11 Q. BY MS. READ-SPANGLER: In your opinion, would  
12 an ideal accountability system include measures above  
13 inputs and outputs?

14 A. Yes.

15 Q. So outputs would be a necessary part of the  
16 accountability system?

17 A. Yes.

18 Q. Other than what we've talked about in the past  
19 two days, is there anything else that you think  
20 California should do to improve its accountability  
21 system?

22 MS. WELCH: Objection. Vague. Over broad.

23 THE WITNESS: Yeah. That's very hard to  
24 answer. I think I want to stick to the ones -- the  
25 things that we've discussed, and I don't want to

1 other schools, not only in performance, but also with  
2 regard to the conditions that the schools are in, that  
3 that would help that.

4 Q. I do believe we talked about this yesterday.

5 A. Uh-huh.

6 Q. Do you consider California's implementation of  
7 the PSAA, as you understand it, to be an improvement  
8 over past practices?

9 MS. WELCH: Objection. Vague as to time.

10 THE WITNESS: I wouldn't -- I wouldn't phrase  
11 it that way. I would not say an improvement over past  
12 practices. I would say that I'm in favor of an  
13 accountability system and California instituted an  
14 unfortunately purely -- fairly purely outcome-based  
15 accountability system that lacks many components and has  
16 relied on just too few performance indicators. So  
17 whether I find it -- how did you phrase it?

18 Q. An improvement.

19 A. -- an improvement or not, I'm not so sure. I  
20 am, as I said before, in favor of performance  
21 evaluation. I'm in favor of accountability. I think  
22 identifying a problem of low-performing schools has  
23 helped us. That is definitely something that the system  
24 has done. So I think maybe in that sense there are some  
25 elements that are good, but as to the system as a whole,

1 I'm not so sure.  
 2 Q. You use the phrase "fairly purely" -- I think  
 3 you said "outcome"?  
 4 A. Yeah. Uh-huh.  
 5 Q. What do you mean?  
 6 A. I know. Well, essentially it is essentially  
 7 outcome-based, but one should not forget there is -- in  
 8 the low-performing schools program it is completely  
 9 devoid of any kind of support or any kind of  
 10 intervention -- there is the external evaluator feature.  
 11 There is the support of the schools with a certain  
 12 amount of money. And there is the first, you know,  
 13 inchoate steps for the 24 schools on the horizon. It  
 14 would not be fair to say that there is nothing. It is  
 15 not -- as I am trying to say, it is not commensurate to  
 16 the system identified.  
 17 Q. Do you think that NCLB is purely outcome based?  
 18 A. I'd rather not say too much about NCLB because  
 19 I don't know how it will play out in the states. The  
 20 best policy is they should not be judged by the letter  
 21 of the law, but by the way they are implemented. It's  
 22 great the states have a qualified teacher in every  
 23 classroom. I can only support that. How is that being  
 24 implemented is the thing. And NCLB has to be judged by  
 25 the deeds it triggers and not so much by the letter of

1 Q. Just get paid a lot of money next time.  
 2 A. That's what I said. I said now I understand  
 3 why people -- because I've heard that in university  
 4 schools why people make can living out of this, because  
 5 it takes a lot of time. And, of course, it takes --  
 6 this is not what we said -- so I said, "Now I understand  
 7 why people make can living out of that." And then I  
 8 said, you know, "I assume that people who make a living  
 9 out of it behave somewhat differently at deposition than  
 10 I do." And I think Leecia said probably so or something  
 11 like that, or maybe or something. And I said, "Well,  
 12 they are probably more tight-lipped or a little bit  
 13 perhaps more to the point" or something like that. So  
 14 then the conversation went off to something else.  
 15 Q. I use the word "counsel" because it wasn't just  
 16 limiting to Leecia, in case you had telephone  
 17 conversations?  
 18 A. No, this was just Leecia.  
 19 Q. Did you review any documents during the breaks?  
 20 A. No.  
 21 BY MS. READ-SPANGLER: We can go off the record  
 22 again.  
 23 (Whereupon, the deposition of  
 24 HEINRICH ANTONIUS MINTROB was adjourned at  
 25 4:10 p.m.)

1 the law. It's a little too early.  
 2 MS. READ-SPANGLER: Let's go off the record.  
 3 (Discussion off the record.)  
 4 MS. READ-SPANGLER: Let's go back on the  
 5 record.  
 6 So did you have any discussions with Counsel  
 7 about your deposition during any of the breaks that we  
 8 have taken today?  
 9 A. Yes.  
 10 Q. What did you talk about?  
 11 A. I asked the -- I asked Counsel -- I'm becoming  
 12 more and more confused as to the purpose of the  
 13 deposition. To which she answered, the deposition has  
 14 two roles. It gives the person who deposes, the lawyers  
 15 of the opposing side, it gives them -- I'm not sure she  
 16 used those very words "opposing side," but anyway it  
 17 gives the lawyers opportunity to ask questions of  
 18 clarification and it gives them the opportunity to find  
 19 things that allow you -- allow them to, I guess, impeach  
 20 or something like that, impeach you at trial. And I  
 21 think at that time I said, "Well, we better not talk  
 22 more about it," because I didn't understand the word  
 23 "impeach." Then we started talking about, "Would you  
 24 ever do this again?" And I said, "Well, not if I can  
 25 help it."

1 STATE OF \_\_\_\_\_ )  
 ) ss.  
 2 COUNTY OF \_\_\_\_\_ )  
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 7 I, the undersigned, declare under penalty of  
 8 perjury that I have read the forgoing transcript, and I  
 9 have made any corrections, additions, or deletions that  
 10 I was desirous of making; that the forgoing is a true  
 11 and correct transcript of my testimony contained  
 12 therein.  
 13 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
 14 2003, at \_\_\_\_\_, \_\_\_\_\_.  
 (City) (State)  
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REPORTER'S CERTIFICATE

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I, PAMELA DEHNKE, CSR No. 6676, Certified Shorthand Reporter, certify;

That the forgoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the forgoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney or of any of the parties, nor financially interested in the action.

I declare under penalty of perjury under laws of the State of California that the forgoing is true and correct.

Dated this 24th day of April, 2003.

\_\_\_\_\_  
PAMELA DEHNKE, C.S.R. No. 6676

REPORTER'S CERTIFICATION OF CERTIFIED COPY

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I, Pamela Dehnke, an employee of Atkinson-Baker, Inc., Certified Shorthand Reporters, certify that the forgoing pages 211 through 360 constitute a true and correct copy of the original deposition of Heinrich Antonius Mintrob, taken on April 1, 2003.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Dated this 23rd day of April, 2003.

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