

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
OF AND FOR THE COUNTY OF SAN FRANCISCO

4 ELIEZER WILLIAMS, )  
 )  
 5 Plaintiff, )  
 )  
 6 vs. )NO. 312236  
 )  
 7 STATE OF CALIFORNIA, ET AL., )  
 )  
 8 Defendants. )  
 )  
 9 \_\_\_\_\_ )

15 DEPOSITION OF  
 16 HEINRICH MINTROP, Ph.D. Vol. 3  
 17 SAN FRANCISCO, CALIFORNIA  
 18 April 2, 2003

21 ATKINSON-BAKER, INC.  
 COURT REPORTERS  
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9 ) Vol. 3  
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12 Defendants. )  
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14 \_\_\_\_\_)

15 Deposition of HEINRICH MINTROP, Ph.D., Vol. 3  
16 taken on behalf of Defendants, at 275 Battery Street,  
17 San Francisco, California, commencing at 9:35 a.m.,  
18 Wednesday, April 2, 2003 before Sharen H. Dains, CSR  
19 No. 2040.  
20  
21  
22  
23  
24  
25

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1 I N D E X  
2 WITNESS: HEINRICH MINTROP, Ph.D  
3 EXAMINATION PAGE  
4 BY MS. READ-SPANGLER 365  
5 BY MR. HAJELA 370  
6 BY MR. POULOS 406  
7  
8  
9  
10  
11

12 EXHIBITS:  
13 NUMBER DESCRIPTION PAGE  
14 7 Summary of Discussions Re II/USP 457  
15  
16  
17  
18  
19

20 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:  
21 (None)  
22

23 INFORMATION TO BE SUPPLIED  
24 (None)  
25

1 HEINRICH MINTROP, Ph.D. Vol. 3  
2 having first been duly sworn, was  
3 examined and testified as follows:  
4

5 EXAMINATION  
6 BY MS. READ-SPANGLER:  
7 Q. Professor Mintrop, you understand you are  
8 still under oath?  
9 A. Yes.  
10 Q. Have you had any conversations with Miss  
11 Welch about your deposition since we adjourned  
12 yesterday afternoon?  
13 A. No.  
14 Q. Okay. Are you familiar with the state's  
15 contents standards?  
16 A. I have looked at them. I wouldn't say I'm  
17 familiar with them.  
18 Q. Do you have any opinion regarding the quality  
19 of the contents standards?  
20 MS. WELCH: Objection vague.  
21 THE WITNESS: No.  
22 BY MS. READ-SPANGLER:  
23 Q. Are you familiar with the state's curriculum  
24 framework?  
25 A. That's pretty large. I know some of the

1 frameworks.

2 Q. Do you have an opinion regarding the quality  
3 of the curriculum framework with which you are  
4 familiar?

5 A. One set I know better are social studies, and  
6 English language arts, and I like them. I think they  
7 are of good quality.

8 Q. Would you agree that it's too soon to judge  
9 the full impact of the public school's accountability  
10 act?

11 MS. WELCH: Objection, vague, incomplete  
12 hypothetical.

13 THE WITNESS: Okay. If you say the full  
14 impact, depending on how you define full impact.  
15 Yeah, you would have to define full impact to be able  
16 to answer this question.

17 BY MS. READ-SPANGLER:

18 Q. In terms, would you agree it's too soon to  
19 judge the impact of the public school's accountability  
20 act in terms of the effectiveness for improving  
21 achievement and low performance in schools?

22 MS. WELCH: Objection.

23 THE WITNESS: Yeah, I think that it's hard to  
24 judge because the system has been in flux, and we have  
25 not had a certain continuity, and therefore it is hard

1 intervening schools to twenty-four out of the four  
2 hundred thirty.

3 I think it is possible to infer from that  
4 that there are problems with the effectiveness of the  
5 accountability system.

6 BY MS. READ-SPANGLER:

7 Q. You mentioned yesterday that most  
8 accountability systems evolve over time, is that  
9 correct?

10 A. Yes.

11 Q. Do you think it's possible for the II/USP to  
12 evolve to be a more effective program in terms of  
13 improving achievement for low performance scores?

14 MS. WELCH: Objection, vague and calls for  
15 expert opinion.

16 THE WITNESS: There is. Very, very general  
17 way you asked the question, I would say I certainly  
18 hope so. I actually see in my report as advocating  
19 steps to make that program more effective.

20 BY MS. READ-SPANGLER:

21 Q. Would you agree that it's too soon to judge  
22 the impact of the high priority school grant program  
23 with respect to that program's effectiveness in terms  
24 of improving achievement in low performing schools?

25 MS. WELCH: Incomplete hypothetical.

1 to judge what the effect may be.

2 But we see certain patterns, but we don't  
3 know what's going to happen, which direction the  
4 accountability system is going to move. We have just  
5 moved from the Stanford 9 to another test, and that  
6 movement towards different test segments will  
7 continue.

8 BY MS. READ-SPANGLER:

9 Q. When you say we see certain patterns, what  
10 pattern are you referring to?

11 A. The pattern that I think I have seen so far  
12 is that within the II/USP program, the schools,  
13 majority of the schools I shall say, majority of the  
14 schools don't seem to make the kind of growth targets  
15 that the state originally had hoped for.

16 Q. Would you agree it's too soon to judge the  
17 impact of the II/USP? And I'm limiting it strictly to  
18 II/USP, that program's effectiveness in terms of  
19 improving achievement and low performance in schools?

20 MS. WELCH: Objection.

21 THE WITNESS: I think we can draw inferences  
22 from the, what is this called in terms -- the  
23 regulation, I'm not quite sure what it is. From the  
24 decision, let's put it this way, from the decision of  
25 the state board of education to limit the number of

1 THE WITNESS: If we define effectiveness as  
2 test score gains, and if we design it that way and  
3 limit it to this definition, I would say it is  
4 probably too soon. It's a very young program.

5 BY MS. READ-SPANGLER:

6 Q. Are you familiar with a document entitled,  
7 "API, A Six Year Plan For Development, 2001 to 2006"?

8 A. What's it called again?

9 Q. "API, A Six Year Plan for Development, 2001  
10 to 2006."

11 A. I've seen a document like that, I don't know  
12 if it's actually this particular document. Is this --  
13 I don't know. I'm familiar with a document that lays  
14 out the development of the API that I somehow -- I  
15 received it from the state department, I don't know if  
16 it's that one.

17 Q. Let me ask you this: Do you have an  
18 understanding there's a plan to add additional  
19 measures to the API over the next few years?

20 A. Yes.

21 Q. Do you think that the intended changes as you  
22 understand them to the API will improve? API as a  
23 major school performance?

24 A. Yes.

25 MS. WELCH: Objection, vague.

1 MS. READ-SPANGLER: I have no further  
2 questions.

3  
4 EXAMINATION

5 BY MR. HAJELA:

6 Q. Morning Dr. Mintrop.

7 A. Morning.

8 Q. I believe you are well aware of the ground  
9 rules, so I won't go over them, except to say that if  
10 I ask the question that you can't understand, please  
11 let me know, I'll try and clarify it.

12 A. Okay.

13 Q. Can I refer you to page -- off the record for  
14 a second.

15 (Off the record discussion.)

16 BY MR. HAJELA:

17 Q. I refer you to page eleven of your report.

18 A. Uh-huh.

19 Q. Could you just briefly review the first  
20 paragraph including the bullets under opinions and  
21 conclusions?

22 A. Uh-huh.

23 Q. I just want to be very clear about the core  
24 problems you address in this report.

25 Am I correct that you are reviewing the state

1 to stress that it is particularly important for states  
2 that have put in place accountability systems that  
3 holds schools accountable to the outcomes.

4 In other words, it was a different story in  
5 previous decades when the state itself was not as much  
6 involved in education, and did not hold schools  
7 accountable to particular performance. Once the state  
8 in my view steps into the picture and holds schools  
9 accountable to a certain standard, it also needs to  
10 make sure that the conditions are present in the  
11 schools to achieve those standards.

12 Q. Okay, thank you. Taking the first bullet  
13 standards for adequate school operations, you talk  
14 quite a lot about this. I will try and be as focused  
15 as I can.

16 Let me refer you over to page twenty-two of  
17 your report. In the first full paragraph, it might  
18 help to quickly review that paragraph, if you like.

19 A. Uh-huh.

20 Q. There is a sentence in the middle that  
21 starts, "With such standards," and I just want to take  
22 the first part of this first. "These standards should  
23 establish adequate levels of funding adequate  
24 funding."

25 I believe on the first day of testimony you

1 oversight system to determine whether it adequately  
2 detects and corrects unequal or substandard learning  
3 conditions in California schools?

4 A. That's part of it, yes.

5 Q. Could you just briefly tell me what the other  
6 major parts are?

7 A. It's the sufficient provision of support  
8 intervention, which is more than monitoring.

9 Q. Okay. And I want to ask you some questions  
10 on each of those things.

11 And then is it correct that it's your opinion  
12 that the current state oversight system lacks the  
13 three elements you set forth in these three bullets?

14 A. Yes.

15 Q. And is it your opinion that these three  
16 elements are necessary for any state oversight system  
17 to adequately detect and correct unequal or  
18 substandard learning conditions in schools?

19 A. Yes.

20 Q. Let me just go through each of these and  
21 hopefully won't take too long. The first one,  
22 standards for adequate school operations. Now you  
23 spoke --

24 A. Perhaps I should add to your question, when  
25 you said to any state, and I said yes to that. I want

1 stated it would be desirable to define the cost of  
2 adequate education, is that accurate?

3 A. Yes.

4 Q. Why would this be desirable?

5 A. I believe that once we have defined an  
6 adequate standard of performance, we need to also know  
7 what it takes to reach those standards. And funding  
8 is an important component of reaching these standards,  
9 and therefore it makes sense to have a sense of what  
10 kind of funding would be needed as well.

11 Q. I understand from your responses to questions  
12 from Kara that it wasn't in the scope of your  
13 responsibility to do such a costing out?

14 A. That's right.

15 Q. Are you aware of any efforts in California or  
16 throughout the nation to cost out adequate education?

17 A. Yes.

18 Q. Could you describe your knowledge?

19 A. As I understand it, there is an effort under  
20 way or has actually been progressing in Oregon, and  
21 I've also read some material on Ohio. These are the  
22 two that I'm more familiar with.

23 Q. Do you know in those two -- let's take Oregon  
24 first. Has the state set adequacy standards, if you  
25 know?

1 A. I actually don't know how far they are. I  
2 talked to the person who heads up this effort. At the  
3 time I was writing the report I don't I think I had  
4 that yet. It could have been, it could have happened  
5 by now, I don't know.

6 Q. How about for Ohio?

7 A. I think in Ohio it's a different story  
8 because it's part of a lawsuit, and so I think there  
9 have been steps taken. I cannot tell you exactly what  
10 steps have been taken, but it seems there is more of  
11 an implementation going on in Oregon. But at the time  
12 I was writing the report, I should say.

13 Q. I don't want you to guess if you don't know,  
14 but --

15 A. In the meantime I have not pursued this, what  
16 happened in Oregon and Ohio in the meantime since  
17 writing the report.

18 Q. So do you have any opinion about whether  
19 either effort or Ohio has been effective?

20 A. I don't know.

21 Q. Thanks. Let me ask a follow up to that. If  
22 the goal, if one of the goals of this lawsuit is to  
23 detect and correct unequal or substandard learning  
24 conditions in California schools, do you have an  
25 opinion regarding whether this can be done without

1 Q. Looking at the sentence again that starts,  
2 "With these standards," you list other quality  
3 indicators, and I want to understand what is meant by  
4 quality indicators. So let me ask you a question  
5 first.

6 By quality indicators, do you mean mandatory  
7 standards that school and districts must comply with?

8 A. I would say once these standards -- once we  
9 have in these areas, we have established standards  
10 that we consider to be standards of adequacy, I think  
11 those should be mandatory.

12 Q. Okay. Given that answer, does it make sense  
13 to make the standards mandatory without providing  
14 adequate funding for implementation of the standards?

15 MS. WELCH: Objection, vague, incomplete  
16 hypothetical.

17 THE WITNESS: Well, if we assume or you  
18 assume in this question that it is inadequate funding  
19 that is responsible for the violation of these  
20 standards, and that might very well be in some cases.

21 In other cases it might not be a funding  
22 problem, it might be something else. It might be  
23 faulty policy or might be, you know, a lack of good  
24 administration, and the like.

25 Q. I'm sorry, I didn't mean to assume that

1 adequate state funding of education?

2 MS. WELCH: Objection, vague.

3 THE WITNESS: Now there are -- let's assume  
4 there are standards of adequate learning conditions in  
5 place, and we find there is a district X that has  
6 pervasive problem to maintain those kinds of  
7 standards, and we also find that perhaps through  
8 extensive or sophisticated review, I'll just leave it  
9 at that, that the district has not misappropriated  
10 funds, and there are no irregularities, and that the  
11 funds are not wasted at school sites, that there is  
12 indeed a shortage of funds for particular districts,  
13 given the needs these districts have, then a state, as  
14 I mentioned yesterday in our conversation, the state  
15 in my view would have the responsibility to step in.

16 State can do two things: It can redistribute  
17 funds, or it can increase funding for the district in  
18 need. So I guess I realize that's not really an  
19 answer to your question whether it has to be adequate.  
20 Well, yes.

21 Q. And do you know whether this lawsuit seeks to  
22 require adequate state funding for education?

23 A. No, I don't.

24 MS. WELCH: Objection, vague.

25 BY MR. HAJELA:

1 funding is the only problem. I was more referring  
2 to, and I'll just ask you, it will take me longer to  
3 flip through here.

4 There is a sentence here where you quote  
5 adequate funding is necessary or not an adequate  
6 condition. My question is aimed at, if it is not  
7 provided, then doesn't it make sense to make these  
8 standards mandatory?

9 MS. WELCH: Objection, vague.

10 THE WITNESS: Going back --

11 MS. WELCH: Calls for speculation, incomplete  
12 hypothetical.

13 THE WITNESS: Going back to filling the  
14 hypothetical, going back to my example, if we assume  
15 that it has been established that lack of funding is  
16 really at the heart of the problem that a particular  
17 district faces in order to achieve the standards, then  
18 adequate funding ought to be in place.

19 BY MR. HAJELA:

20 Q. Give me your experience in working in  
21 schools. Do you have an opinion whether there's a  
22 logical sequence of this? And what I have in mind  
23 here is you can create quality indicators, then you  
24 can create mandatory standards, and then you can  
25 enforce them.

1 At what point do you think, if I understood  
 2 your last answer correctly, at some point you  
 3 determine what's causing the deprivation?  
 4 A. Yes.  
 5 Q. Is there a logical sequence here? And if  
 6 there is, can you explain it?  
 7 MS. READ-SPANGLER: Objection, misstates his  
 8 testimony.  
 9 MR. HAJELA: I wasn't trying to state his  
 10 testimony.  
 11 THE WITNESS: That confused me now. This is  
 12 the first objection from --  
 13 MS. WELCH: She's allow to object as well.  
 14 THE WITNESS: I really lost my train of  
 15 thought because of this unusual interaction. Sorry.  
 16 MR. HAJELA: Tell you the truth, I made it up  
 17 on the spot, so I'll have to have it read back.  
 18 THE WITNESS: Who is on my side?  
 19 MR. HAJELA: Kara is just trying to get on  
 20 your good side.  
 21 MS. WELCH: The only person you can assume is  
 22 on your side is me.  
 23 MS. READ-SPANGLER: Actually I wouldn't trust  
 24 any attorney, so I wouldn't trust her.  
 25 THE WITNESS: In fact I don't actually need

1 anybody on my side because I'm an opinioned expert.  
 2 But I hope you get the sense that I am.  
 3 MR. HAJELA: Could you read back my question  
 4 because I have no idea what I asked.  
 5 THE WITNESS: The logical sequence, I  
 6 remember now, you don't have to read it back.  
 7 Going back to what I talked about yesterday  
 8 which you may have seen?  
 9 BY MR. HAJELA:  
 10 Q. I reviewed the transcript.  
 11 A. A suggestion that I'm making or that I think  
 12 is essential for this report is that there be a  
 13 somewhat independently chartered review agency in the  
 14 state that has the authority to inquire in cases where  
 15 learning conditions and performance seem to be  
 16 inadequate.  
 17 So rather than answering your question in the  
 18 hypothetical, I'm now imagining this review agency  
 19 would exist. I would think that one could imagine the  
 20 situation in which one starts talking about the  
 21 logical sequence in which one starts -- actually  
 22 there's two prong approach, let me just start with one  
 23 prong.  
 24 One starts with performance data, and  
 25 hopefully the state will continue adding performance

1 indicators that more adequately capture the whole of  
 2 education. And it seems that this was mentioned just  
 3 a little while ago, state seems to go in that  
 4 direction.  
 5 Anyway, let's assume these performance  
 6 indicators speak to a problem at a school site, there  
 7 are maybe, you know, say a small number of schools in  
 8 a district that seem to have problems that will  
 9 warrant some kind of review. If this problem -- and  
 10 say, for example, the review finds that there is a  
 11 problem with a supply of qualified teachers -- if this  
 12 problem is related to just one or two schools, I think  
 13 we would -- the review agency or the reviewers would  
 14 assume that it is perhaps more attributable to  
 15 something the school is doing than something that  
 16 might be more systemically caused.  
 17 If we find that problem of insufficient  
 18 supply of qualified teachers is actually more  
 19 widespread, then that would speak to a more systemic  
 20 problem at the district level.  
 21 One could, then, such review agency could  
 22 then go a step further, and ask the question: Well,  
 23 what is the cause of the limited supply of qualified  
 24 teachers in this district. Causes could be all kinds  
 25 -- there could be all kind of causes. The working

1 conditions are miserable because the district is in  
 2 disarray administratively. Because the policies are  
 3 not well crafted, making it difficult to such a  
 4 district to work.  
 5 It could also be that such review finds, and  
 6 these would be specialists that know how districts  
 7 operate, would find that it is indeed something else,  
 8 that it is indeed insufficient salaries that make it  
 9 therefore -- that make such a district the training  
 10 ground for the uncredentialed teachers, that then as  
 11 soon as they receive an adequate education go to high  
 12 paying districts that tend to hire credentialed  
 13 teachers. I think a process that happens not  
 14 infrequently.  
 15 So if that is the case, that then would speak  
 16 to a systemic problem that would have to be addressed  
 17 systemically.  
 18 One could look at the overall budget of a  
 19 district, again the policies, and could see if there  
 20 is something in the district's operation that make it  
 21 so that the district does not pay a salary  
 22 commensurate to, say, for example, the level of  
 23 neighboring districts that make it in terms of its  
 24 market position -- put it in a weak market position.  
 25 One could find perhaps that the district is

1 not spending inordinate amounts of money on either  
2 construction materials or lunches, or whatever else,  
3 compared to other districts, and one could conclude  
4 perhaps from such an analysis that the district is in  
5 fact strapped for cash and cannot pay these salaries.

6 In that case I think the logical sequence  
7 would be to, from the state's point of view, which  
8 again, going back to what I said earlier, does hold  
9 that district to the same standard of adequate  
10 performance as it holds districts that have more  
11 resources to pay better salaries, I would think it is  
12 the responsibilities of the state to step in and to  
13 make sure that the conditions are equalized across  
14 these districts.

15 Q. And I have a few more questions about the  
16 state's role, but I'll get to those sequentially.

17 I do just want to ask, though, based on that  
18 response, you mentioned looking at the district's  
19 budget to see how they are spending money, presumably  
20 to see how they are spending money appropriately.

21 And I guess the heart of my question was, I  
22 think, of enforcing standards as saying this is a  
23 requirement and you must do it. And what I was  
24 getting at with the sequence is, does it make sense to  
25 perform that analysis of here is a standard, district

1 need an agency that is sophisticated enough to  
2 actually look at a district and not go in with a kind  
3 of compliance review-type approach, but goes in with a  
4 more professional approach.

5 In other words, does this make sense  
6 considering a policy of a district or resource  
7 distribution of a district, does this make sense  
8 considering the professional judgment of the expert.  
9 And this professional judgment is based on knowledge  
10 of well operating districts, knowledge of, you know --  
11 I mean long experience in district administrations.

12 So I think there needs to be -- I see this as  
13 a two pronged approach. Some of those things that  
14 we're talking about, some of those standards, they are  
15 straight forward, they can be mandatory, they can be  
16 clear ideas as to what needs to be in place in every  
17 school, and others need to be left to more flexibility  
18 to professional judgment.

19 Q. Taking overcrowded, that was one of the  
20 examples you used, I understand what you say, that the  
21 standard could be readily created and you could  
22 discover quite readily whether the standard is being  
23 met or not, but I think that's a good example of the  
24 problem I'm trying to get at.

25 So you could have a clear standard on

1 is not meeting it, let's look at their budget and see  
2 what's going on, before you go to the enforcement  
3 stage? Does that make sense?

4 A. I think goes back to actually my answer was  
5 incomplete. I mentioned two pronged approach, and I  
6 only talked about that one prong. The other prong is  
7 there are certain standards. I guess when you say  
8 mandatory standard, I guess maybe you have that in  
9 mind.

10 There are certain standards that should be  
11 mandatory and can be evaluated in a very straight  
12 forward way, healthy conditions, over crowding,  
13 textbook in each classroom, those kinds of things.  
14 All of those where the absence and presence of a  
15 particular condition can be ascertained rather easily,  
16 those can be also evaluated in a pretty straight  
17 forward way.

18 As to -- I would not think it practical to  
19 have mandatory standards in that one says -- in  
20 regulating all aspects of a district's operation. It  
21 must have this amount of money for instruction, this  
22 amount of money for salary, this amount of money for  
23 this or that.

24 I think there needs to be some flexibility in  
25 district operations. So that's why I'm thinking we

1 crowding, but it makes little sense to attempt to  
2 enforce that standard until you have figured out why  
3 the schools were overcrowded.

4 Simply saying -- and this is what I'm saying  
5 by mandating, mandating that there shall be X number  
6 of student per acre on a campus will not get it done?

7 A. Uh-huh.

8 Q. So I guess I'm asking is the standard really  
9 mandatory, or is it a goal, then the state takes some  
10 action based on that goal?

11 MS. WELCH: Objection, vague, vague as to  
12 time, incomplete hypothetical.

13 THE WITNESS: I don't quite follow you. I  
14 don't know if we are to have a discussion, or if it's  
15 question and answer.

16 MS. WELCH: You either understand his  
17 question and can answer it, or if you don't understand  
18 it you need to ask him to ask a different question.

19 THE WITNESS: Okay, try to ask it different.

20 MR. HAJELA: Actually I am going to let that  
21 one go for a minute, because I had it later.

22 THE WITNESS: Might come out in different  
23 context and then it's clear.

24 BY MR. HAJELA:

25 Q. Getting back to page eleven, I think we moved

1 into other areas, but I was starting with the first  
2 bullet that started with standard for school  
3 operations. I want to look at the second bullet of  
4 that first paragraph.

5 A. Uh-huh.

6 Q. On the first day of testimony you, I believe,  
7 expressed approval for local school autonomy, and  
8 stated you would not want the state to install a  
9 system that would proliferate compliance reviews and  
10 bureaucratic oversight. Is that accurate?

11 A. Yes.

12 Q. I want to get a sense of what's meant by  
13 compliance reviews. Compliance reviews tend to focus  
14 on whether a school or district is complying with an  
15 enforceable statute or regulation, is that right? Is  
16 that how you are thinking of a compliance review?

17 A. That's the way they are normally used, I  
18 think, in the state of California. One could imagine  
19 that one could use a similar regime of compliance  
20 reviews for other things as well. It wouldn't  
21 necessarily have to be a law, but it would  
22 characteristically have a rather standardized  
23 approach, certain conditions are either met, or they  
24 are not met, and they are checked off, that's the way  
25 compliance reviews usually work, they are checked off.

1 in every classroom, or book in every home, student can  
2 take the book home, or certain space per student to  
3 avoid overcrowding. I think that makes sense to  
4 regulate that and to make it mandatory.

5 Q. I know you've spoken about this a bit, but  
6 I'm still not completely clear on the second bullet,  
7 this systematic mechanisms to detect performance  
8 barriers.

9 Can you briefly describe how the systematic  
10 mechanisms would differ from the system that you don't  
11 advocate?

12 Seems to me you're saying I don't advocate  
13 proliferation of compliance reviews and bureaucratic  
14 oversight, so I'm trying to compare and see what it is  
15 you do advocate?

16 A. For example, if we take the current II/USP  
17 operation, we have external evaluations, I could  
18 imagine that these external evaluations could be more  
19 systematic in that they clearly -- in that in the  
20 language guiding the evaluations, it is clearly stated  
21 what conditions need to be evaluated, and when we  
22 have -- if we ever get -- standards for learning  
23 conditions, it would be easier to conduct such an  
24 evaluation. So that's one thing. So that  
25 systematizes that.

1 And so the school or the district or whatever entity  
2 we're talking about get a list of things that need to  
3 be corrected, and these can be corrected in specific  
4 ways.

5 Don't think that is an approach that is going  
6 to be all that helpful in school improvement.

7 Q. And this is maybe moving back to where we are  
8 before that. So is it your concern with a system  
9 that's based on compliance reviews, indicate that you  
10 don't want to base your systematic mechanisms you  
11 describe in the second bullet on detailed mandatory  
12 regulations?

13 MS. WELCH: Objection, mischaracterizes his  
14 testimony, vague.

15 THE WITNESS: Again, I think that there are  
16 some standards that lend themselves to detailed  
17 mandatory regulation. Other standards don't perhaps  
18 lend themselves as much to it. For example -- or  
19 maybe we don't use the word standards. If we talk  
20 about the examples again that we mentioned before, I  
21 don't think it would make sense to mandate a  
22 particular mix of resource, resources or particular  
23 resource distribution for a particular district.

24 But I think it makes sense to clarify in a  
25 straight forward way things such as, you know, a book

1 Then the next step of systematizing is what  
2 happens to this information. At this point we have,  
3 again talking with help of an example, we have within  
4 the II/USP we had the action plan feature, which in  
5 somewhat unsystematic way asks external evaluators to  
6 look into what a school is doing.

7 Then those plans originally were sent to the  
8 state but were not, as I understand it from some of  
9 the depositions, were not reviewed substantively,  
10 therefore there was no information flow back from the  
11 schools to the state so that the state could gain a  
12 picture of what was amiss with regard to learning  
13 conditions.

14 I could imagine that there would be kind of  
15 more systematic feedback loop of information from  
16 schools or districts to the state. That would make  
17 that kind of mechanism more systematic as well.

18 Q. On your third bullet, sufficient provision of  
19 support and intervention, it's a pretty broad phrase,  
20 and I know you tried to narrow it down in your report  
21 and you've talked about it a bit.

22 To break it up a little, can I turn your  
23 attention to page nineteen, first full paragraph that  
24 starts, "If outcome-based," if you could just review  
25 that for a second.



1 A. Uh-huh.

2 Q. You've said a little bit about a more  
3 systematic review of schools, so I want to turn to the  
4 next phrase, "more targeted capacity-building"?

5 A. Uh-huh.

6 Q. Could you explain what you mean by that?

7 A. Well, once we have a more systematic review  
8 of what is actually -- of what the conditions are in  
9 some of the low performing schools, and we find in  
10 here -- I go by the analysis of the plans that I have  
11 conducted, and we may find that they are, that these  
12 schools are beset with problems that have to do with  
13 insufficient learning conditions.

14 We may find that the performance barriers  
15 that are being identified have to do as much with  
16 school internal conditions as they had to do with  
17 conditions that are more attributable -- attributable  
18 to external conditions or external factors. That  
19 would primarily be responsible for it.

20 Once we have that knowledge, it would be  
21 possible to identify those conditions, that whereas  
22 schools truly lack the capacity. And I think it would  
23 behoove an agency such as the state that holds schools  
24 to adequate performance to -- and that identifies  
25 schools as low performing, that is it not a benign

1 conditions or district conditions or state conditions.

2 So let's assume we have a problem that is  
3 caused by something that the school is doing. I would  
4 hope that with the right qualified personnel, that  
5 perhaps that personnel -- state would provide a kind  
6 of support through this kind of personnel to the  
7 school to remedy or to help change that condition.

8 If we find from looking out from the school,  
9 looking out to the district, that it is a district  
10 condition, I would envision such a review to help  
11 craft a strategy perhaps in collaboration with the  
12 district.

13 It could very well be that the data show we  
14 are having a district problem here. It could very  
15 well be that we find that we have a systemic problem  
16 across, say, all urban districts, or that we have a  
17 systemic problem across all poor rural districts that  
18 have large populations of Hispanic students, and the  
19 like.

20 And the two-way flow of information would  
21 make it possible for an agency to decile out of the  
22 many reports that come to its attention, to decile  
23 these kinds of systemic patterns.

24 MR. HAJELA: Let's go off the record here.  
25 (Short break.)

1 system in that sense, that the state has instituted.  
2 It is a system that puts pressure on local schools,  
3 and that has repercussions for the professional  
4 reputations of the teachers working in these schools.

5 So the state has used a rather forceful  
6 lever, from my point of view, and it behooves the  
7 state, once through a more systematic review, adverse  
8 learning conditions have been identified, to target  
9 these capacity deficits.

10 Q. I think I understood from your answer, I  
11 understand from your answer now that after systematic  
12 review of schools, there would be a decision perhaps  
13 to target capacity building?

14 A. Yes.

15 Q. I'm asking what are these capacity building  
16 activities? What do you have in mind here? What does  
17 the state do?

18 A. Well, it would be my hope that we could  
19 combine evaluation with the provision of support.  
20 That is that we would have people who know how to  
21 evaluate schools, but we also have people who know how  
22 to help a school along in improvement. So it might  
23 very well be that -- let's be more specific.

24 We have to be more specific, because we have  
25 to make sure you're talking about school internal

1 THE WITNESS: My answer was very long wind I  
2 had maybe I'll get to the point. Targeted, I think  
3 the kind of capacity building would be targeted to the  
4 particular level, let's start with that. And it would  
5 be different what you offer a school would be  
6 different from what you offer a district. It could  
7 very well be that it might be advice, it might be  
8 resources, it might be policies that help alleviate a  
9 condition that you have found to be insufficient.

10 BY MR. HAJELA:

11 Q. To the extent that you mentioned one  
12 possibility, which is that your systematic review  
13 would uncover a pattern of problems and I think you  
14 used the example of urban school districts, so I  
15 assume you mean targeted capacity building, targeted  
16 in that instance to urban school district as opposed  
17 to other school districts?

18 A. Targeted to the problem that has been  
19 identified. If we identify a problem that applies to,  
20 say, for example, urban districts specifically, and we  
21 see that problem is repeatedly mentioned by  
22 professionals in the field, and who reviews as an  
23 important performance barrier, then the policy should  
24 be targeted to alleviate that problem.

25 Q. What if you uncover -- because I do think you

1 covered this in your report -- that it's a state  
2 policy that's causing the problem?

3 A. That's why I believe that this agency that  
4 I'm talking about must be somewhat independently  
5 chartered, because in the vein of reciprocal  
6 accountability, the state needs to hold itself  
7 accountable as well. I think that that has been a  
8 problem.

9 Q. You talk in a few different places in your  
10 report about internal and external forces, when you  
11 are doing the school level analysis. And I think I  
12 understand the distinction between things that are in  
13 the power of will of the school and things that  
14 aren't.

15 Do you have an opinion as to those external  
16 forces? How does the state, or how would a state  
17 agency go about determining whether it was the  
18 district or the state that was causing the problem?

19 A. It's not easy to do. I think that's one of  
20 the characteristics in education, that cause and  
21 effect are sometimes not easy. These relationships  
22 are sometimes not easy to construct. And therefore in  
23 my view we rely on expert judgment, professional  
24 judgment to make that determination. So I would say  
25 that would be the vehicle.

1 Q. I think -- we don't have to go into this if  
2 you feel you've sufficiently covered it in prior  
3 testimony. I think you've stated that expert judgment  
4 or the capacity to have that sort of judgment at the  
5 state level needs to be built, it doesn't currently  
6 exist?

7 A. That's right.

8 Q. I just want to turn to page twenty-three.  
9 Let me follow up on that question, although you  
10 answered it properly, the follow up would be when you  
11 say expert judgment of someone, that then assumes  
12 someone with better knowledge or information or  
13 expertise than the person who is currently making  
14 those decisions at the school or the district, is that  
15 right?

16 MS. READ-SPANGLER: Objection,  
17 mischaracterizes his testimony. I think he said  
18 professional judgment.

19 MR. HAJELA: If you don't understand the  
20 question, I can try again.

21 THE WITNESS: Ask it again because there were  
22 two parties coming in at the same time.

23 BY MR. HAJELA:

24 Q. Sure. We are assuming there is a problem,  
25 and that somebody comes in and exercises their

1 professional judgment in trying to solve the problem,  
2 and I'm asking does that assume you have some sort of  
3 cadre of officials out there that have that sort of  
4 professional judgment, where it makes sense to  
5 substitute their judgment for the local official that  
6 was exercising the judgment?

7 MS. WELCH: Objection, incomplete  
8 hypothetical, vague.

9 MR. HAJELA: Previously.

10 THE WITNESS: If we assume that there is  
11 evidence, say performance data that speak to the fact  
12 we are dealing with a district in distress, as I  
13 mentioned here in the report, based on criteria such  
14 as thirty to fifty percent of the schools are in the  
15 low performance category, certain percentage of  
16 schools are in the low Deciles, other criteria that  
17 you can't imagine, and if a review of a district in  
18 distress finds that indeed it was poor judgment on the  
19 part of local officials that led a district in to this  
20 difficult situation that it is in, then there needs at  
21 some point, if the local does not show the capacity to  
22 turn itself around, there needs to be some kind of  
23 superseding judgment, yes.

24 Q. Okay. Now on page twenty-three, the  
25 paragraph that comes under the heading "Districts

1 Directly Accountable," I'm just trying to see if there  
2 is something to adhere, and you can tell me if there  
3 isn't.

4 The last sentence in that paragraph talks  
5 about when districts do not have the capacity to  
6 attract good teachers, they need help from the state  
7 in the form of resources and authoritative guidance?

8 A. Uh-huh.

9 Q. If you believe you've covered this fully in  
10 your answer to target capacity building, I don't need  
11 to go in to it. If you have something else in mind,  
12 you can describe what you have in mind by resources  
13 and authoritative guidance.

14 A. I think we've pretty much covered that.

15 Q. Turning to page twenty-four, you are  
16 discussing generally an approach to state oversight  
17 that would concentrate action on districts in  
18 distress?

19 A. Yes.

20 Q. Let me back up. I think I understand the  
21 analysis of districts with certain percentage of  
22 Decile 1 schools and certain percentages of II/USP  
23 eligible, and from these percentages you've created  
24 the list of sixty-seven school districts, and a  
25 smaller list of twenty-six school districts. And

1 you've already testified what could be done  
2 differently, so I don't have any complaints about how  
3 you have uncovered the list.

4 Did you specifically look at any of these  
5 districts, meaning the sixty-seven, to assess whether  
6 substandard learning conditions existed at schools in  
7 the districts?

8 A. Well, we looked at the databases available  
9 and found some of the demographics and some of -- used  
10 some of the indicators that are actually documented in  
11 the tables. Beyond that, for the purpose of this  
12 report, I have not done that. I have research  
13 independently of this endeavor going on that is, like  
14 I said, started before this and will continue long  
15 after this case comes to a conclusion. And as part of  
16 that, the district, of course are exploring those  
17 districts as an important component.

18 Q. Okay. And I can see from the tables, that  
19 you list certain demographic features, but you  
20 selected the district purely on the basis of  
21 performance outcomes, is that fair to say?

22 A. Yes. Like I said, this could be done  
23 differently. Once other standards are in place, which  
24 we don't have right now, one could come up with a very  
25 different kind of mix.

1 Once there is consensus that there is certain  
2 adequacy that ought to be maintained, one could  
3 imagine identifying other districts that don't have  
4 those conditions.

5 Q. So just to follow up on that, though, so  
6 although you identify the schools based on outcome  
7 performances, and then you list characteristics, you  
8 haven't done in this report anyway, any analysis of  
9 the correlation between the two?

10 A. Like the inner workings of the district?

11 Q. No, the correlation between the  
12 characteristics that you list, like percentage of  
13 credentialed teachers, types of students, et cetera,  
14 and the low performance?

15 A. Well, in this report, the way I make this,  
16 actually goes back to something we discussed  
17 yesterday. What we have as evidence is strong  
18 correlations in the statistical sense, then we have a  
19 firm attempt at professional judgment with the  
20 external evaluators writing, helping the schools to  
21 write action plans.

22 And we see in the action plans that the  
23 schools themselves, and the independent external  
24 evaluators name some of the very things that are  
25 statistically correlated with low performance, name

1 those as specific performance and barriers.

2 When a school or external evaluator names a  
3 particular performance barrier -- I mean names a  
4 particular condition as a performance barrier, there  
5 is causality applied. This is the condition that  
6 makes it impossible or makes it difficult for us to  
7 achieve. So the two together give me a sense of  
8 causality.

9 Q. With these, the list of districts, let's take  
10 the twenty-six districts that make up the smaller  
11 list, was there any effort on your part to determine  
12 whether the low performance indicators, or the low  
13 outcomes, I'm not sure what the right term for that  
14 is, let's just say the API scores, any effort to  
15 determine whether the low API scores were attributable  
16 to district policies as opposed to state policies?

17 A. No.

18 Q. In that first full paragraph that begins "For  
19 starters," you talk about interventions in low  
20 performing districts.

21 MS. READ-SPANGLER: What page are you on?

22 MR. HAJELA: Twenty-four. We've talked about  
23 this a little bit already, so I don't want you to  
24 repeat everything you've already said.

25 Q. But when you talk about a system that

1 intervenes at the district level versus the school  
2 level, can you describe what a system of district  
3 intervention looks like, a system that can intervene  
4 in districts as opposed to schools?

5 A. I can't describe it in detail, but I can say  
6 that a district that is, a system that intervenes in  
7 districts does not -- focuses on other things than a  
8 system that intervenes in schools. It focuses on  
9 resources administration, programs, all those things  
10 that districts put together to structure what schools  
11 do.

12 A system that primarily focuses on schools,  
13 ought to have instruction as its focus. That's quite  
14 different kind of endeavor than administration  
15 policies and resources.

16 Construction is the one very non bureaucratic  
17 intangible that is the core of what we are actually  
18 all about in the educational system. But it requires  
19 a level of non standardization autonomy and so on and  
20 so forth, that we may not need to the same degree in a  
21 bureaucratic organization that supposedly at least  
22 functions according to lines of authority and clear  
23 formal structures. So that would be the difference.

24 Q. If we assume one of the things that school  
25 districts are supposed to be sensitive to is -- well,

1 let's say assuming school districts are held  
2 accountable by the local community that elects the  
3 school board, do you have a sense regarding how you  
4 hold the state system accountable?

5 So you have the state people coming in and  
6 intervention at the district level, and exercising  
7 some judgment hopefully good judgment, but they don't  
8 exercise good judgment, how do you hold them  
9 accountable?

10 MS. WELCH: Objection, incomplete  
11 hypothetical.

12 THE WITNESS: Well, let me back up a little  
13 bit since you are talking about local accountability  
14 through the school board.

15 I think the problem that we have is, that  
16 brings all of this to the fore, is that local  
17 accountability doesn't always work well. That's why  
18 we have the districts, some of the district in the  
19 state they're in partly -- there's more to it, of  
20 course, I'm spending a lot of time on learning  
21 conditions and support and capacity, all of that  
22 that's the other part of the picture.

23 But the local accountability is of course, is  
24 -- is sometimes -- seems to not have prevented some --  
25 does not have a track record that one could say it has

1 independent reviewing into the picture to make the  
2 current system more effective, that that be a more  
3 independent agency that is able to not only hold the  
4 subordinate levels of the system accountable as the  
5 current accountability system does, but also holds all  
6 levels of the system to the top as well accountable.

7 Now review agency cannot hold the estate  
8 accountable in a sense. That would mean that -- that  
9 could not be constructed. But a review agency of the  
10 sort that I'm proposing, can facilitate democratic  
11 accountability within the established structures that  
12 we have present right now, can facilitate that. But  
13 it cannot supplant it.

14 BY MR. HAJELA:

15 Q. I understood the answer on local  
16 accountability, I agree that local accountability by  
17 itself will not always result in solving problems.  
18 Seems to me the same vagaries that apply to elected  
19 local officials apply to state level.

20 So I think you may have answered it on the  
21 end, but I just want to ask on this independent review  
22 agency, isn't it true that whatever political vagaries  
23 that apply at the local level would apply at the state  
24 level as well?

25 MS. WELCH: Incomplete hypothetical, calls

1 presented the kind of conditions that we are talking  
2 about. So that in and of itself is not enough.  
3 That's to begin with.

4 So that's why I'm thinking of a more  
5 independently chartered agency that adds to those, I  
6 guess, more established, currently more established,  
7 or traditional ways of accountability in a democratic  
8 state such as where we have school boards, and we have  
9 elected officials.

10 When we have this kind of democratic  
11 accountability, we see that does not seem to do the  
12 job. Then we have to think of other avenues that add,  
13 not supplant, but that add to this democratic state  
14 structure in a sense of state of California, state, in  
15 the general sense.

16 So that's where I'm heading now. You asked  
17 the question what would happen if the judgment in the  
18 review agency part, well, I think in the U.S. the  
19 system is based on checks and balances. One cannot  
20 imagine one agency being the vessel of wisdom, and the  
21 other -- and other agencies or bodies of democratic  
22 articulation of interests having no role to play in  
23 this checks and balances system.

24 What is important to me, is that if we are  
25 thinking in terms of entering a feature of more

1 for speculation.

2 THE WITNESS: One would hope that the  
3 independence of such an agency would help it to make  
4 judgments that are perhaps less politically charged  
5 than the bodies of democratic decision making that are  
6 directly beholden to voters, to interest groups, one  
7 would hope that judgment is more independent.

8 BY MR. HAJELA:

9 Q. You may have talked about this, and forgive  
10 me because I did review the transcripts. I didn't  
11 read every single word. This independent review body,  
12 do you have a model in mind?

13 What I'm trying to get at here, I think you  
14 just answered that these aren't elected folks. Are  
15 they appointed, and who would they be appointed by?  
16 How do you create the independence that you discussed?

17 A. I don't want to go in this direction because  
18 I am not a legal expert, and I'm not an expert on the  
19 structure of the state of California, meaning the way  
20 the state is set up. I mean I'm aware of the major  
21 bodies that are involved in educational decision  
22 making, and I read all the analyses that talk about  
23 the fragmentation of policy.

24 I've certainly seen the results of that being  
25 an educator in California for years and years and

1 years, but I can't be that specific.  
 2 Q. Is it fair to say that -- let me just see if  
 3 I can exclude something. Is it fair to say that a  
 4 department that was run by an elected official,  
 5 elected state wide, would not meet your criteria of an  
 6 independent review agency?  
 7 A. I'm not so sure. I'm not so sure. It could.  
 8 MR. HAJELA: I think I'm done.  
 9 (Short break.)  
 10 EXAMINATION  
 11 BY MR. POULOS:  
 12 Q. Good morning, Dr. Mintrop.  
 13 A. Morning.  
 14 Q. My name is John Poulos, and I'm one of the  
 15 lawyers that represents the Los Angeles Unified School  
 16 District in this case.  
 17 How are you?  
 18 A. Okay.  
 19 Q. Appreciate you being here and the opportunity  
 20 to ask you a few questions.  
 21 I believe that prior to today you and I have  
 22 not had occasion to meet, is that also your  
 23 understanding?  
 24 A. Yes.  
 25 Q. Have you talked to anybody from the Los

1 Angeles Unified School District regarding your  
 2 opinions that you intend to offer in this case?  
 3 A. No.  
 4 Q. One of the matters that was discussed, I  
 5 believe on Monday of your deposition, was that you  
 6 clarified that your opinions are not based on any  
 7 interviews or observations regarding any California  
 8 school district, correct?  
 9 A. Yes.  
 10 Q. So may I rely on the fact that should you  
 11 testify at trial you will not be testifying about any  
 12 interviews with LAUSD personnel?  
 13 A. Yes.  
 14 MS. WELCH: Objection, calls for speculation.  
 15 BY MR. POULOS:  
 16 Q. May I also rely on the fact that none of your  
 17 trial testimony will be based on observations  
 18 regarding the Los Angeles Unified School District?  
 19 MS. WELCH: Same objection.  
 20 THE WITNESS: Observations that involve  
 21 people that can be identified -- well, people can be  
 22 identified by name, but observations that involve  
 23 identifiable people, yes.  
 24 BY MR. POULOS:  
 25 Q. In other words, you are not going to be about

1 with specific conversations with individuals from  
 2 LAUSD, correct?  
 3 A. Yes.  
 4 MS. WELCH: Same objection.  
 5 BY MR. POULOS:  
 6 Q. I gather from being here on Monday, and then  
 7 reviewing the transcript, that it's your opinion that  
 8 any accountability system that purports to make  
 9 districts accountable for results that they can't  
 10 control, would be an unfair system, is that correct?  
 11 MS. WELCH: Objection, vague. I think his  
 12 past testimony will speak for itself.  
 13 THE WITNESS: Yeah, I think I've seen it  
 14 before, but I would agree, generally, that if a state  
 15 holds local districts and local schools accountable  
 16 for adequate performance level, resources and  
 17 conditions need to be in place to reach those adequate  
 18 performance levels.  
 19 BY MR. POULOS:  
 20 Q. You testified at some length regarding your  
 21 belief that accountability systems that impose  
 22 conditions on teachers for which teachers do not feel  
 23 they have the ability to control, leads to  
 24 motivational problems, is that correct?  
 25 A. Yes.

1 Q. What I'm trying to get at is, do you have  
 2 that same concern regarding districts?  
 3 A. Not in the same way.  
 4 Q. Can you explain that?  
 5 A. District officials are, I would think -- this  
 6 is not based on my research, this is an opinion --  
 7 district officials seem to be people that are  
 8 motivated by other things than teachers. District  
 9 officials are probably used to be in the cross fire  
 10 and therefore they may not be as impacted by -- they  
 11 may not be as impacted by conditions that may diminish  
 12 the motivation of teachers. They may not be as  
 13 impacted by those.  
 14 Q. Is it fair to say that you have not  
 15 researched these issues with respect to district  
 16 officials?  
 17 A. Yes, I have.  
 18 MS. WELCH: Objection, vague.  
 19 THE WITNESS: I have not researched the  
 20 motivation of district officials.  
 21 BY MR. POULOS:  
 22 Q. Are you aware of any debate as to whether  
 23 educational output should be measured or quantified at  
 24 all?  
 25 A. Yes.

1 Q. Can you just give me a thumbnail sketch of  
2 that debate as you understand it?

3 A. There is a great doubt, there are proponents  
4 and opponents of measuring educational outcomes.  
5 First of all, there is a great debate about -- this is  
6 going to be long --

7 Q. Remember I said the words thumbnail?

8 A. Maybe you could specify the question a little  
9 bit.

10 Q. I just want to know for my own edification  
11 what you understand the debate is regarding measuring  
12 outcomes?

13 A. I guess roughly it boils down to proponents  
14 suggesting that if performance is standardized, goals  
15 are common, and can be monitored and therefore  
16 enforced. Opponents saying if goals are standardized,  
17 that they cannot be unduly standardized, they cannot  
18 be tailored to the needs of the children. That's as  
19 short as I can make it.

20 Q. Can you tell me where you stand in that  
21 debate?

22 A. Right in the middle.

23 Q. So I gather you believe that some measurement  
24 of outcomes is beneficial?

25 A. Yes.

1 Q. Do you agree that the API, is what I would  
2 refer to as a snapshot in time?

3 A. Yes.

4 Q. I believe you've testified that in an ideal  
5 world, educational output should be measured by  
6 multiple measures, is that correct?

7 A. I wouldn't call it in an idea world. I would  
8 say in a world in which we employ educationally  
9 meaningful, more educationally meaningful --  
10 indicators that are more educationally meaningful. I  
11 actually think that ideal world seems so far and so  
12 distant, I actually don't think it's so far and that  
13 distant.

14 Q. What other measures would you propose being  
15 included in any accountability system?

16 MS. WELCH: Objection, vague.

17 THE WITNESS: I assume you are now talking  
18 about measures for outcomes?

19 BY MR. POULOS:

20 Q. Correct.

21 A. I personally think that there should, in  
22 terms of learning, there should at least be two  
23 dimensions: One is the dimension of basic skills,  
24 literacy, numerals, which the accountability systems  
25 are rather strong, many of the U.S. accountability

1 systems are strong, there is the higher order thinking  
2 that is more stress and constructivist ways of  
3 learning. Those dimensions should be captured in a  
4 testing system.

5 I believe that it is a mission of schools to  
6 develop citizenship, and therefore there should always  
7 be a component of measuring attitudes that students  
8 have.

9 I also believe that education is about the  
10 humane development of individuals, and we need to find  
11 measures that capture that in some ways.

12 I'm also aware that some of those measures  
13 that I'm now mentioning, the last measures that I'm  
14 mentioning, are sometimes difficult to measure, and  
15 that perhaps some of the instruments would not live up  
16 to the same statistical properties that basic school  
17 just might live up to.

18 And as a result I believe it is better to  
19 have a broader view of what happens in schools and  
20 place less -- place fewer stakes on those, than narrow  
21 the scope too much for the purpose of being able to  
22 fairly -- this is now in quotation marks -- fairly  
23 attach high stakes to those.

24 Q. Do you know whether any of these other  
25 multiple measures that you've described, were debated

1 prior to California's adoption of the PSAA?

2 A. Debated where?

3 Q. Anywhere in the legislature, among  
4 professionals?

5 A. Yes.

6 MS. WELCH: Objection, calls for speculation.

7 THE WITNESS: It has been in the debate. In  
8 the Legislature I don't know, but among researchers it  
9 has been in the debate. In effective schools  
10 research, not the original one, but I mean the more  
11 recent effective schools research seems to always  
12 include several measures, because keeping in mind that  
13 schools are not about just training students towards a  
14 particular test. Also keeping in mind that the  
15 results, that the classification of a school as  
16 effective or non effective. This is non effective  
17 schools literature, depends upon what test point he  
18 uses.

19 Q. Do you have an understanding of how the  
20 current PSAA became -- came into being? In other  
21 words, are you familiar with the process that  
22 California went through prior to adopting the current  
23 PSAA?

24 A. No. Well, you ask familiar with?

25 Q. Yes, I want to know whether you have an

1 understanding of how this particular system was  
2 arrived at in California?

3 A. I see. Well, I have some information but I  
4 would not say that I could tell you the whole story  
5 like a scientist could look at the story, and all the  
6 players involved, I don't think I could give you a  
7 rendition of that.

8 And I should add, for the sake of my expert  
9 opinion as it is circumscribed here in the report, I  
10 couldn't do it. It's not part of what I was supposed  
11 to do.

12 Q. You are just evaluating the current system?

13 A. (Witness nodding head up and down.)

14 Q. You didn't look at how that system came into  
15 being, correct?

16 A. That's right.

17 Q. What I was really getting at is whether you  
18 know whether the current system was a result of  
19 political compromise, whether it was some group's  
20 professional judgments that this was the best system,  
21 or what. And I was just trying to understand whether  
22 you had any understanding of that process?

23 A. I see. I think I want to refrain from  
24 getting into that because it would be an analysis that  
25 gets into terrain that I don't think, since I'm an

1 in the Los Angeles School District?

2 A. I did not look at all thirteen, probably  
3 looked at ten, and if I remember correctly, of the  
4 ones I looked at, almost all were Los Angeles schools.

5 Q. Are you aware of any state interventions in  
6 Los Angeles schools in 2002?

7 MS. WELCH: Objection, vague.

8 THE WITNESS: Yeah, that's very hard to  
9 answer.

10 MS. WELCH: Do you mean relating to the  
11 audits or do you mean any?

12 MR. POULOS: Correct. I'll referring to the  
13 context of these thirteen state interventions that you  
14 testified to on Monday.

15 THE WITNESS: I see.

16 BY MR. POULOS:

17 Q. Those are the Title 1 audits, correct?

18 A. Yes.

19 Q. And my question is: Whether you're aware of  
20 whether there were any Title 1 interventions in Los  
21 Angeles in 2002?

22 A. No, I'm not aware of it.

23 Q. This next question is really a general  
24 question. Why adopt a state accountability standard  
25 or system -- excuse me. I'm struggling a little bit

1 expert witness on this, it's a terrain I don't want to  
2 get into.

3 Q. Would your answer be the same for the HPSG?

4 MS. READ-SPANGLER: Are you asking him  
5 whether he's read the legislative history, or what?

6 MR. POULOS: I want to know whether he has an  
7 understanding of how the legislation came to be.

8 THE WITNESS: Well again, to the degree that  
9 one is around people who talk about it in any formal  
10 kind of way, and to the degree that one reads the  
11 newspaper and that one hears about this, that, and the  
12 other, you piece a picture together.

13 But I cannot say that I've looked into it  
14 detailed enough to give you a rendition of a complete  
15 picture.

16 BY MR. POULOS:

17 Q. Okay. I think on the first day of your  
18 testimony you talked about you reviewed information  
19 regarding thirteen state interventions, is that  
20 correct?

21 A. Yes. I mentioned this also on the first day:  
22 I did not conduct a systematic analysis of the joint  
23 agreements and the audits, but I did look at them.

24 Q. Do you recall roughly approximately how many  
25 of those schools that you looked at involved schools

1 as to why you believe it's a good idea, when I  
2 understood you to say that the research was  
3 inconclusive as to what works and what doesn't work.  
4 Is that a fair summary?

5 A. Uh-huh. Why it's a good idea? I can give  
6 you my personal opinion, if that's what you're asking  
7 for.

8 Q. Sure.

9 MS. WELCH: By personal opinion you mean as  
10 versus what you've been asked to opine on, and what's  
11 in your expert report?

12 THE WITNESS: Yeah, I was not asked to  
13 ascertain whether it was a good idea or not. I mean  
14 what I do in the expert report is I argue within the  
15 design or the structure of this accountability system.

16 MR. POULOS: I understand.

17 THE WITNESS: And so that's where my expert  
18 opinion is going, and those are the parameters of my  
19 expert opinion.

20 But outside of that I do have an opinion  
21 about the accountability system.

22 MR. POULOS: Okay.

23 THE WITNESS: So if you're asking me for  
24 that, I can tell you that.

25 BY MR. POULOS:

1 Q. I was just, based on some of the answers that  
2 you gave, it seemed like again that your testimony was  
3 that the research is inconclusive as to what motivates  
4 and what does not, is that correct?

5 MS. WELCH: I'm just going to say the  
6 testimony is going to speak for itself. We've been  
7 covering this for a couple days now, so I think it's  
8 probably pretty difficult to put it in a nutshell.

9 MS. WELCH: But you can answer his question  
10 if you have an answer to it.

11 THE WITNESS: Okay. From my point of view,  
12 the systems were designed with the idea -- the  
13 original, I think the original ideas that went into  
14 the design of accountability systems, high stakes  
15 accountability systems, not just in California from my  
16 point of view, are that one, the problem of the  
17 previous system or the system without an  
18 accountability system was that there weren't clear  
19 goals, and that by establishing clear goals,  
20 motivation could be elicited, that then in turn would  
21 increase educator's effort in a more focused way, and  
22 that would lead to student improvement, hopefully  
23 without the expenditure of additional resources. I  
24 think that was the original idea of these  
25 accountability systems.

1 There was also another idea that went into  
2 the construction of those systems, and that is that in  
3 the wake of the literature on lean management, it was  
4 the idea that perhaps the districts could be -- I  
5 don't want to say frozen out, but that the role of the  
6 districts could be diminished, and that a direct  
7 relationship between the schools as the primary  
8 providers of the key services in the educational  
9 systems and more central agency that monitoring  
10 outcomes of those primary providers of those services,  
11 could be more effective and we would cutout a middle  
12 level management system. I think that was the  
13 original idea of why accountability systems came into  
14 being the way they are constructed right now.

15 I think that theory has, if that is indeed  
16 what -- I'm not saying to be very certain this is what  
17 you read in the literature as a rationale for these  
18 accountability systems. I'm not saying the political  
19 actors that actually put it in place were motivated by  
20 these kinds of thoughts. I'm a researcher who reads  
21 the research literature, and this is what I see  
22 discussed in research literature. That's what I'm  
23 only referring to, not the political actors.

24 But since you are asking me about my personal  
25 opinion, I read the research and I'm thinking along

1 the lines of what the researchers put out or what the  
2 scholars put out.

3 BY MR. POULOS:

4 Q. And I guess that was a little different than  
5 -- do you understand the purpose of accountability  
6 systems is to improve schools performances? Is that  
7 the idea behind it, is to motivate schools and/or  
8 districts to improve?

9 A. Yes.

10 Q. Can I ask you how did you choose to study  
11 Maryland and Kentucky?

12 MS. WELCH: Assumes facts. You can answer.

13 THE WITNESS: We actually studied Maryland  
14 Kentucky and California, but we did not continue  
15 California after awhile. So I mean we did not choose  
16 just those two, we chose California as well.

17 BY MR. POULOS:

18 Q. I understand. I was just wondering how did  
19 you come up with the states of Maryland and Kentucky?

20 A. Those two states had a -- first of all, the  
21 accountability systems had been in place in those  
22 states by the time we got into it, for some time, so  
23 there was some kind of track record.

24 And two, those were interesting states  
25 because they had a rather complex assessment in place

1 that in my view made it less likely that a kind of  
2 narrowing of the curriculum towards a drill and kill  
3 -- I mean in the direction of a drill and kill towards  
4 basic skills would be likely.

5 And as an educator who is concerned about  
6 that kind of narrowing, I wanted to see how such  
7 systems would operate.

8 Q. You were at the University of Maryland at the  
9 time, right?

10 A. Yes.

11 Q. Did Maryland adopt similar reforms as did  
12 Kentucky in the early '90's?

13 A. Yes.

14 Q. You were comparing it to Maryland because you  
15 were in Maryland comparing Kentucky to Maryland, but I  
16 gather that's where there were similar reforms?

17 A. Well, they were similar in some aspects and  
18 different in others. There were similar in that the  
19 assessments were fairly complex, but they were  
20 different in the way they provided capacity building,  
21 for example. So that was an interesting contrast for  
22 us.

23 Q. Do you know whether the reforms that were  
24 adopted by Kentucky have been implemented?

25 MS. WELCH: Objection, vague as to time.



1 THE WITNESS: Very hard to answer that  
2 question because, I mean, what reform has been  
3 adopted. We know how much accountability systems are  
4 in flex, so it's hard to --

5 BY MR. POULOS:

6 Q. Are you aware of a court decision in  
7 Kentucky?

8 A. Uh-huh, yes.

9 Q. Are you aware of a court decision in Kentucky  
10 that prompted a series of legislative reforms in the  
11 state of Kentucky?

12 A. Yes.

13 Q. My question is: Of those reforms, are you  
14 aware that any of those reforms had been adopted or  
15 implemented, excuse me?

16 MS. WELCH: Objection, vague as to time.

17 THE WITNESS: That's very hard to answer.  
18 (Whereupon a short recess was taken.)

19 THE WITNESS: I think the only way I can  
20 answer this is from the reading that I have done, and  
21 from the research that I have done in the state.  
22 State actors assume that accountability system was an  
23 answer to that lawsuit, if that's what you are  
24 referring to.

25 BY MR. POULOS:

1 A. Size? I'm not so sure size is the important  
2 consideration here.

3 Q. What about geography, size of the state?

4 A. No.

5 Q. Switch a little bit from the ethereal to just  
6 some follow up questions on your report.

7 A. Let me just back up. You asked if it makes  
8 it unique, but you're not saying unique with regard to  
9 education policy making, you are just saying generally  
10 unique?

11 Q. No, I was referring more to policy making,  
12 whether there were any circumstances that are present  
13 in California that make it difficult to compare other  
14 state systems to California?

15 A. I see. Yeah, I understand. Then I would say  
16 yes. I mean the population is definitely something  
17 that is a condition that you keep in mind.

18 But size, I think, when you look across the  
19 United States in terms of size, you see really  
20 gradual, I mean gradation, you have small states and  
21 states that are medium size, and larger states, then  
22 you have California which is population-wise the  
23 largest state. But it's gradation.

24 Q. Can you turn to page three, because I think  
25 that can be helpful, if you have your reports, then

1 Q. I guess what I was wondering is whether you  
2 know whether any of the reforms that were adopted have  
3 actually been implemented in the state of Kentucky?

4 MS. WELCH: Same objections.

5 THE WITNESS: I can't answer the question the  
6 way you ask it.

7 BY MR. POULOS:

8 Q. Okay. I believe -- strike that.

9 Are there any, what I'm going to refer to as  
10 uniquely Californian traits that make California  
11 difficult to compare to other states? And I'm talking  
12 about in the accountability arena?

13 MS. WELCH: Objection, vague.

14 THE WITNESS: Well, there are certain  
15 characteristics in California that apply to other  
16 states as well, but that certainly make California  
17 unique compared to quite a number of states.

18 I would say that the number of immigrants and  
19 non native speakers is a characteristic that makes  
20 California not unique, because there are other states  
21 that have something like that as well, but that makes  
22 it different from a number of other states that don't  
23 encounter the same kind of impact of immigration.

24 BY MR. POULOS:

25 Q. Is sheer population also a different factor?

1 this will go a lot faster.

2 A. Page three?

3 Q. Yes. Just on the first sentence we talked  
4 about what you were asked to do. You see how you say  
5 there at the end of the second to last sentence under  
6 Roman II, enable the state to ensure an education.

7 You see that says to all California students  
8 on equal terms?

9 A. Uh-huh.

10 Q. Can you just tell me what you meant by equal  
11 terms in that sentence?

12 A. This is -- I guess this formulation is a way  
13 of wrapping my head around the substance of the  
14 lawsuit without being a legal expert.

15 So what I mean by on equal terms is that --  
16 what I mean by that is, that all California's students  
17 should have an equal opportunity to be successful.

18 Q. That's what you are referring to there?

19 A. (Witness nodding head up and down.)

20 Q. And the reason I bring that up is it seems  
21 sometimes in your report the words and concepts of  
22 equality and adequacy get commingled, and I was just  
23 trying to understand what you mean.

24 A. I see.

25 Q. So thank you. Page four, the first full

1 paragraph where it says system of local control, can  
2 you briefly tell me, you see you have two points,  
3 parenthetical one and a parenthetical two. I believe  
4 I understand fully parenthetical number one, but can  
5 you explain to me what you meant in parenthetical  
6 number two? Is that supposed to say equality instead  
7 of quality?

8 A. No. We actually discussed this, I think, on  
9 the first day, conceptions quality. Before this shift  
10 to outcomes, educational systems were often judged by  
11 the quality of the inputs, that is actually the first  
12 day I may reiterate that example. You were actually  
13 here.

14 Q. And I remember where you were talking about  
15 the debate between whether there was a debate as to  
16 whether additional inputs necessarily means greater  
17 outputs, correct, there is that debate?

18 A. What this statement refers to is prior to the  
19 shift to outcomes, the quality of an educational  
20 system was often seen based on the quality of the  
21 inputs, like a system would boast about a good library  
22 or good facility, would show that their teachers, so  
23 many of their teachers have Ph.D.s, or things of that  
24 nature, that's what I mean by that. That has changed  
25 for public education.

1 of other organizations, of course. And you have the  
2 representatives of local districts and things like  
3 that. So you know you have a pretty, I would say,  
4 explosive mix of political interests impinging on the  
5 issue of accountability.

6 And it seems to me -- I'm quoting -- Cibulka  
7 & Lindle who makes the analysis, that it depends on  
8 holding certain coalition of forces together for an  
9 accountability system to maintain a particular  
10 stability over time.

11 Q. And that's what I was getting at. Is it your  
12 view that it's important to have a stable process over  
13 some period of time for accountability system to truly  
14 do what it's intended to do?

15 A. Yes.

16 Q. Do you generally agree with the statements  
17 that you attribute to Cibulka & Lindle?

18 A. Yes.

19 Q. On page five, can you just elaborate for me  
20 on the second paragraph, looks to me like the third  
21 sentence, it says: With PSAA, the state has come to  
22 control more tightly the outcome of education?

23 A. Uh-huh.

24 Q. While specific ways to achieve these outcomes  
25 remain largely under local control. What do you mean

1 Q. I'm going to move down to the last paragraph  
2 on page four.

3 A. Uh-huh.

4 Q. There's a quote -- well it's not a quote, but  
5 you see there where you say, you are talking about  
6 their most common design elements? The last  
7 paragraph?

8 MS. WELCH: Second sentence.

9 MR. POULOS: Of the last paragraph.

10 THE WITNESS: Yes.

11 BY MR. POULOS:

12 Q. And you say: And a change when political  
13 coalitions shift. Can you explain a little bit to me  
14 about what you were getting at by that sentence?

15 A. Accountability systems are, of course --  
16 touch upon vital interests of many interest groups,  
17 and there are therefore contestatory. You have, of  
18 course, the state itself, the executive, you have the  
19 teacher unions, you have parent organizations, parent  
20 organizations in, say, high SES district, you have  
21 parent objections in articulated group, sometimes  
22 advocacy groups in more disenfranchised districts, or  
23 communities, let's put it this way.

24 So there's -- and you, of course, have  
25 business elites in the various states. And a number

1 by the outcome of education?

2 A. Well, the formulation may not be all that  
3 great actually. Educational outcomes, I should have  
4 probably written.

5 Q. Okay. The next paragraph down you say  
6 that -- the last full sentence you say districts are  
7 not targeted by the PSAA. And I guess my question is:  
8 Do you believe that district should be targeted in the  
9 PSAA?

10 A. Yes.

11 Q. Are you aware of any school districts in  
12 California that resist the idea of being accountable  
13 for student performance in their districts?

14 A. This is beyond the scope of what I can answer  
15 really. There are thousands of school districts, and  
16 it's very hard for me to make that assertion.

17 Q. But you're not aware of any, correct?

18 A. Am I aware of an explicit statement by a  
19 district superintendent? No. We don't want to be  
20 held accountable, no, I'm not aware of that.

21 Holding districts accountable, if I may add,  
22 that as I advocate in this report, doesn't mean that  
23 the districts are the bogeyman, you know what I mean?  
24 It's a matter of putting an effective system together.

25 My report argues that the responsibilities

1 need to be divided among the actors to the degree that  
2 they cause, or that they are responsible for  
3 particular conditions.

4 Q. I gather from your report you believe that  
5 districts should be accountable for those things which  
6 they control?

7 A. Yes.

8 Q. And should not be accountable for things  
9 which they do not control?

10 A. Yes.

11 Q. As far as schools are concerned, do you  
12 consider the API to be an external pressure?

13 MS. WELCH: Objection, vague.

14 THE WITNESS: That's a very difficult  
15 question to answer.

16 BY MR. POULOS:

17 Q. Difficult because it's a bad question, or --

18 A. No, difficult because it's so general. It  
19 really is very, very general. Let me just try to  
20 narrow it.

21 MS. WELCH: If you can't answer his question,  
22 you should let him narrow it.

23 MR. POULOS: Then it's a bad question if it's  
24 so out there you can't do it, then it's a bad  
25 question, which I'm perfectly capable of doing.

1 THE WITNESS: It's hard for me to answer  
2 questions where I kind of have to fish in a large,  
3 large universe of data that I may have access to, may  
4 not have access to. It's very hard for me to answer  
5 those kinds of questions, because I would have to rely  
6 on, I don't know, gut feelings, hearsay, and I don't  
7 want to do that. I'm trying to not answer these  
8 questions if I can help it.

9 BY MR. POULOS:

10 Q. Let me ask you a different question.

11 In your research you concluded that teachers  
12 fairly commonly expressed concern over being held  
13 accountable for external factors which they did not  
14 control, correct?

15 A. Yes.

16 Q. During your research which are the external  
17 factors that teachers most frequently complained of?

18 A. This actually differed by schools. The most  
19 common concerns were over crowding and inadequate  
20 facilities, the inability of schools to fill  
21 vacancies, the inability of schools to track qualified  
22 teachers, particularly in math, the inability of  
23 schools to attract teachers who could handle a  
24 difficult student population, meaning students that  
25 come from minority backgrounds, that come from low

1 socioeconomic communities, low SCS communities.

2 In some schools the constant turn over of  
3 principals, constant shift of resources one year a  
4 lot, next year nothing that made it impossible to  
5 plan. Then in some schools the zoning of the  
6 attendance zones that made it impossible for schools  
7 to draw a balanced student population.

8 Q. What did you mean when you testified that the  
9 nature of the student, and I think you were referring  
10 to socioeconomic status cannot be considered a  
11 performance barrier, is that correct?

12 A. Yes.

13 Q. And then you just listed that as external  
14 factor.

15 MS. WELCH: I think that mischaracterized his  
16 testimony. You asked him which factors teachers were  
17 complaining about.

18 MR. POULOS: I did. So I think if you let me  
19 finish my question, it will become more clear to you.

20 MS. WELCH: Okay.

21 BY MR. POULOS:

22 Q. I asked you which external factors that  
23 teachers most commonly complain about, and what I'm  
24 now trying to understand is the relationship between  
25 external factors and performance barriers?

1 A. Okay, I see where you're going. In fact I  
2 should have added to the list of external conditions  
3 that teachers pointed to the socioeconomic status of  
4 their students and the culture in those communities.  
5 I mean this was, of course, something teachers pointed  
6 to that is their challenge, if you talk about an  
7 external condition.

8 But when we were talking about performance  
9 barrier the way we define performance, the way  
10 performance barrier is usually defined, then we're  
11 talking about conditions that stand in the way of an  
12 educator's ability to teach students of any  
13 socioeconomic status to teach students where they are.

14 So when we talk about performance barrier,  
15 that's what we are actually looking at. We are  
16 looking at things that are systemic, that are in a way  
17 system internal. Society being outside of the  
18 educational system, society providing a service to the  
19 educational system, providing a service to society.

20 But the society is really the environment of  
21 the educational system, and therefore the performance  
22 barriers that really relate to the system, therefore  
23 performance barriers cannot be related to the  
24 environment. It was very theoretical, but you know  
25 what I'm trying to get at.

1 Q. I think so. Do you agree that an effective  
2 accountability system should move all schools to  
3 improve?  
4 A. Yes.  
5 Q. Have you done any research to know whether  
6 California teachers finds the PSAA pedagogic  
7 meaningful?  
8 MS. WELCH: Objection, vague.  
9 BY MR. POULOS:  
10 Q. Do you know what I mean by that? In your  
11 report on Maryland and Kentucky, that was one of the  
12 criticisms.  
13 A. Yes.  
14 Q. I was just wondering if --  
15 A. For the sake of this report, I have not.  
16 Q. On page ten, the last paragraph down there  
17 under the challenges of California, I guess that's all  
18 one sentence, but towards the end of that first  
19 sentence it says: California schools are apparently  
20 associated with large unequal distributions of  
21 resources?  
22 A. Uh-huh.  
23 Q. Do you mean something other than money for  
24 resources?  
25 A. Yeah, I guess I used the term resources and

1 inputs to relate to a whole bunch of things.  
2 Q. That was kind of my question as to whether  
3 resources and inputs are the same thing, or whether  
4 they are something different?  
5 MS. WELCH: Asked and answered.  
6 THE WITNESS: No, actually I guess I try to  
7 be specific and general. One could just say an equal  
8 distribution of inputs and leave it up to the reader  
9 to mean what those inputs might be. But when I put in  
10 resources, I mean kind of points to that specifically  
11 as well.  
12 BY MR. POULOS:  
13 Q. If you turn to page twelve, and the first  
14 full paragraph begins: The program's primary purpose.  
15 A. Yes.  
16 Q. By my count you go on to list four  
17 deficiencies with the II/USP, is that correct?  
18 A. The whole paragraph?  
19 Q. There is a sentence that starts: I will show  
20 II/USP is seriously deficient because -- and you have,  
21 "the program ignores many schools in needs, bypasses  
22 whole districts in need, ignores districts as  
23 contributors to performance problems, and does not  
24 capture the systemic character of performance  
25 barriers"?

1 A. Yes.  
2 MS. WELCH: "And remedies."  
3 MR. POULOS: "And remedies."  
4 Q. Regarding the first one, ignores many schools  
5 in need, can I have a thumbnail as to what you mean by  
6 that?  
7 A. That these are just the headlines of what I  
8 then later on in the report lay out. So in other  
9 words, that sentence here says: The program ignores  
10 many schools in need. In other words, that part of  
11 the sentence is -- I'm just wondering, do you want  
12 something that is in addition to what is here already?  
13 Q. No. So there's nothing in -- all of the  
14 concerns for each of these four that you demonstrate  
15 are set forth in the report, is that correct?  
16 A. Yes.  
17 Q. And I just want to ask you about --  
18 MS. WELCH: I would just say for completion  
19 of the record, that the sentence following the  
20 sentence that you quoted that starts, "Because", I  
21 think is also one of the areas of deficiency that he  
22 identifies in the reports.  
23 THE WITNESS: This is actually a follow up of  
24 the fourth.  
25 MS. WELCH: Okay.

1 MR. POULOS: Subset of the fourth as I  
2 understand it.  
3 THE WITNESS: That's the way I understood it.  
4 BY MR. POULOS:  
5 Q. Let me just -- the critique number two,  
6 bypasses whole districts in need. As I understand it  
7 your basic complaint is that there is a loophole, if  
8 you will -- well, maybe I have them. I guess maybe  
9 there's two points in there. The first is the ability  
10 to have districts to opt out, is that correct?  
11 A. As my complaint.  
12 Q. Your criticism of the II/USP, one of them, is  
13 that it bypasses a number of districts in need,  
14 correct?  
15 A. Yes.  
16 Q. I think you pretty clearly refer to the fact  
17 that districts can opt out of the II/USP, is that  
18 correct?  
19 A. That's my understanding.  
20 Q. Is there any other criticism that would fall  
21 under this category, that's my question?  
22 MS. WELCH: Objection, vague.  
23 THE WITNESS: I'm not quite sure how to  
24 answer this question, but I can say this, that under  
25 the heading the program bypasses a number of districts

1 in need, and this is the evidence that I have here in  
2 the report. And this is the extent to which I -- how  
3 would I say this -- this is the extent -- this is what  
4 constitutes my argument.

5 BY MR. POULOS:

6 Q. Okay. I think earlier we talked about the  
7 next section which was: Ignores districts as  
8 contributors, is that correct?

9 A. Say it again.

10 Q. Ignoring districts as contributors, and this  
11 was the discussion we just had about holding districts  
12 accountable for those things that they should be  
13 accountable for?

14 A. Okay. I don't know exactly now what you are  
15 referring to, but I'm a little confused.

16 Q. Okay, don't want to do that.

17 A. Okay.

18 MS. WELCH: He may be confused because I  
19 think before we were talking about it kind of  
20 generally, not focused specifically on II/USP, I can  
21 only guess.

22 MR. POULOS: Okay, I was just trying to save  
23 time. I was probably going too fast.

24 Q. Let me do this: Of the four items that we  
25 talked about just a few minutes ago, two of them seem

1 MS. WELCH: I just don't think asking him for  
2 a thumbnail sketch of something set out in his report  
3 with tabs attached is a fair question. I mean if he  
4 can answer it, fine, I'm not instructing him not to.  
5 I just don't think it's a fair question.

6 BY MR. POULOS:

7 Q. How does the II/USP ignore districts as  
8 contributors to performance problems?

9 A. The II/USP program is primarily a  
10 relationship between the state on one hand and the  
11 school on the other hand. It identifies a school as a  
12 low performing entity. It does not identify a  
13 district as a low performing entity.

14 It provides supports to individual schools  
15 and it guides schools to formulate solutions for their  
16 performance problems that can be addressed within the  
17 financial frame or the financial parameters of what  
18 the program provides. Then -- this the first step,  
19 this is the structural setup of the program.

20 Then in my analysis I'm trying to find --  
21 point out that in fact low performance may not  
22 actually be just a school internal affair, but in fact  
23 may be a district affair. And I'm using certain  
24 criteria such as percentage of schools in II/USP,  
25 percentage of schools in Decile 1 and 2, percentage of

1 to focus on districts?

2 A. Uh-huh.

3 Q. I'm now looking at the second one. See this  
4 title program ignores districts as contributors to  
5 performance problems?

6 A. Yes.

7 Q. Can you explain to me what you mean by this  
8 section? I guess I have to say I don't understand  
9 this very well.

10 A. Okay.

11 Q. For example, let me ask you this specific  
12 question: We identified sixty-seven districts with  
13 more than ten schools, it had at least twenty percent  
14 of their schools in Decile 1 or 2 in 2001.

15 MS. WELCH: Let him finish.

16 MR. POULOS: I am just having some conceptual  
17 problems.

18 Q. Can you just give me a thumbnail as to what  
19 you mean by ignoring districts as contributors?

20 MS. WELCH: I think he sets it out in his  
21 report, so if you want to ask him if he has anything  
22 to add --

23 MR. POULOS: He's going to be testifying --  
24 the report is what it is, but your testimony is what  
25 I'm interested in.

1 schools -- let's just leave it at that.

2 And out of those criteria, identify  
3 twenty-six districts. And again we're sixty-seven,  
4 but let's just stick with the twenty-six. And  
5 identify twenty-six districts for illustrative  
6 purposes, to show that in those districts there are  
7 large numbers of schools that seem to be low  
8 performing.

9 And that to me suggests that we're dealing  
10 with a problem that is perhaps more far reaching than  
11 a problem of an individual school. Suggests to me  
12 that we're dealing with a problem at the district  
13 level.

14 Q. Is it fair to say -- is that an assumption?

15 MS. WELCH: Objection, vague.

16 THE WITNESS: Would you call it an  
17 assumption? I would say it is a conclusion. I see  
18 what you're saying. Okay. Let's say the data  
19 strongly suggests.

20 BY MR. POULOS:

21 Q. Because this is where I was getting at: It  
22 seemed to me that you assumed the districts were  
23 contributors to performance problems, but I didn't see  
24 any analysis of what led you to that conclusion?

25 A. Okay. Well, it may very well be that one

1 finds, what I'm trying to get at here is that the  
2 district level needs to be seen as a level of the  
3 system that contributes to low performance. It could  
4 very well be if you think back to the logic that I  
5 talked about a little earlier when your colleague  
6 asked me, that one finds that what looks like a  
7 problem at the district level from the point of view  
8 of performance information, may turn out to be a  
9 problem that is actually caused by perhaps state  
10 policies.

11 I'm not saying that --

12 Q. Okay, I think that's the nail on the head.  
13 And that is that is it more accurate to say the  
14 program ignores districts as possible contributors to  
15 performance problems?

16 A. Yes, okay, I can go with that.

17 MR. POULOS: Can we go off the record a  
18 second?

19 MS. WELCH: Sure.

20 ((Whereupon a short recess was taken.))

21 BY MR. POULOS:

22 Q. Dr. Mintrop, can you just briefly explain to  
23 me the importance of local school administrators in  
24 capacity building?

25 A. Am I assuming when you say local school

1 report, I would -- it would seem -- let's construct  
2 cases. There are cases in which districts might be  
3 good entities to provide this kind of advice or  
4 guidance to schools. And there might be cases in  
5 which that is not such a good idea. Certainly in the  
6 cases in which large numbers of schools in a given  
7 district have been identified as not performing up to  
8 adequate levels, I would caution on treating the  
9 district as part of the solution. Or to operate on  
10 the assumption that the district is part of the  
11 solution without further reviews.

12 The district, of course, in my view, the idea  
13 that one could bypass the district, I'm not so sure,  
14 in designing school accountability systems, I'm not so  
15 sure that was a good idea. As we discover to the  
16 degree that motivation incentives are the primary  
17 movers of school improvement as the original design of  
18 school accountability was like, one could imagine that  
19 middle management district or so was not needed.

20 To the degree that we realize that perhaps  
21 incentives and sanctions are not really sufficient  
22 enough to drive schools, capacity building comes in  
23 the picture.

24 Capacity building brings district into the  
25 picture to a much larger degree than originally

1 administrators, principals?

2 Q. Sure, principals would be great?

3 A. The literature has found over and over again  
4 that the role of the principal is absolutely key.  
5 That without a proactive response of a principal to --  
6 and this is again within II/USP, or within local  
7 school programs, but even beyond that -- I think  
8 literature has found over and over again that school  
9 improvement needs proactive and skillful principals.

10 Q. On page twenty, the last paragraph, you talk  
11 about the need for additional funding for low  
12 performing schools, but that money alone, additional  
13 money alone may not be a cure for the problem, is that  
14 correct?

15 A. Yes. You may not cure the problem, right,  
16 because I just said yes.

17 Q. Right. It says without clear ideas of what  
18 needs to be done differently in them and outside them  
19 to change patterns of performance.

20 Do you believe those suggestions should  
21 come -- or that direction should come from the  
22 districts or elsewhere?

23 MS. WELCH: Objection, incomplete  
24 hypothetical, vague.

25 THE WITNESS: Well, in the logic of my

1 probably envisioned by the designers of these  
2 accountability systems.

3 So specifically I would say in those  
4 districts that have been identified in distress or  
5 that have shown to have a larger problem, I would  
6 stress a stronger role of an external agency. In  
7 districts where we do not have those kinds -- that  
8 kind of evidence, the district plays an important  
9 role.

10 BY MR. POULOS:

11 Q. You talked a little bit about it, I think a  
12 little bit towards the end of the day on Monday, but  
13 there was some discussion on page twenty-four where  
14 you say in the last sentence of the first full  
15 paragraph, where it says districts interventions are  
16 more difficult because districts have the power to  
17 resist and marshal political forces.

18 A. Uh-huh.

19 Q. You touched on it a little bit, but I'm not  
20 sure that I understood your explanation when you were  
21 talking about it.

22 Can you just briefly tell me what you are  
23 getting at?

24 A. Which sentence now?

25 Q. The last sentence of paragraph two where

1 you say district interventions are more difficult  
 2 because --  
 3 A. Yeah, I know I say it somewhere, but I don't  
 4 have it yet. Oh, here. Okay. Yeah. What I mean by  
 5 that?  
 6 Q. Yes?  
 7 A. Well, it seems to me that the way  
 8 accountability systems are constructed, in the way  
 9 they hold schools accountable, directly, and school  
 10 sites accountable directly, that that excludes from  
 11 the picture some of the important political issues  
 12 that are part school improvement as well. Schools  
 13 don't have the ability to truly do things other than  
 14 comply, or very subtly subvert, which happens as well  
 15 in schools.  
 16 But beyond that, schools do not have the  
 17 power, I mean the principals and teachers do not have  
 18 the power to do anything else. Local districts on the  
 19 other hand are not necessarily the smallest ones, but  
 20 local districts have political power. And therefore  
 21 they are political interests and political interests  
 22 are tied with accountability and are tied with  
 23 judgment of performance, and that complicates the  
 24 picture. That's all this statement is making, I'm  
 25 trying to make with the statement.

1 Complicates the picture, and it could very  
 2 well be that -- and this is speculation, that state  
 3 policy makers, it's kind of an appeal to states policy  
 4 makers, that state policy makers may shy away from  
 5 wading in to the political fray with local  
 6 constituencies, something they did not encounter when  
 7 they place the accountability on schools alone. And  
 8 this is kind of an appeal to say state policy makers  
 9 ought not shy away from this because the  
 10 accountability system will be more effective if we  
 11 have sorted out some of those political problems.  
 12 That's what I'm trying to get at.  
 13 Q. Do you know whether Los Angeles' elementary  
 14 API scores are going up or going down?  
 15 A. They have been going up.  
 16 Q. Do you know whether they have been going up  
 17 at about the same rate as the state in general?  
 18 MS. WELCH: Objection, vague.  
 19 THE WITNESS: I actually don't know exactly.  
 20 I think actually they went up a little better than the  
 21 rest of the state, yes. I seem to remember that  
 22 coming over my desk.  
 23 BY MR. POULOS:  
 24 Q. Can we turn to exhibit two real quick? And  
 25 that's the e-mails.

1 MR. HAJELA: Can I just ask a follow up  
 2 question now, or --  
 3 MR. POULOS: Why don't do you it now.  
 4 MS. WELCH: I don't have a preference.  
 5 MR. HAJELA: Okay.  
 6 MS. WELCH: While I have it in my mind, it  
 7 might save time.  
 8 MR. HAJELA: Your answer when you described  
 9 what you meant by that sentence, district  
 10 intervention's more difficult, I understood you to say  
 11 the state should shy away from holding districts  
 12 accountable because of the political implications of  
 13 doing so, is that accurate?  
 14 THE WITNESS: I'm sorry, say it again? I  
 15 actually didn't listen.  
 16 MR. HAJELA: That's fair enough. I was  
 17 asking, I'm trying to characterize what you said  
 18 because I don't remember exactly. Is it fair to say  
 19 it was your opinion that you are appealing to the  
 20 state not to shy away from intervening at the district  
 21 level, despite some of the political implications?  
 22 THE WITNESS: Yes.  
 23 MR. HAJELA: I had asked before about this  
 24 issue: What happens when a state makes bad decisions?  
 25 I just want to try an example here.

1 What brought this to mind is this issue of  
 2 political decisions. The state decided that all kids  
 3 should be tested by the SAT 9 in English. In San  
 4 Francisco, the unified school district said well,  
 5 that's dumb, why should we test kids that don't  
 6 understand English in English. So the district  
 7 resisted it. Ultimately they complied, but they  
 8 resisted it.  
 9 So I want to ask again: When you set up this  
 10 structure where the state tells the district what to  
 11 do, what happens when the state is wrong and the  
 12 district is right?  
 13 MS. WELCH: I am going to object to the  
 14 extent this is incomplete hypothetical and vague. You  
 15 can answer.  
 16 MR. HAJELA: You're right.  
 17 THE WITNESS: I don't see where the state  
 18 tells the district what to do. I'm talking about  
 19 situations in which there's evidence that districts  
 20 have not performed up to expectations. I'm only  
 21 talking about those kinds of situations.  
 22 So depending on -- so in those kind of  
 23 situations, I'm talking about somewhat independently  
 24 chartered review agency to go in, that to me is -- so  
 25 that to me sounds very different from the way you

1 phrase it.

2 MR. HAJELA: That's okay. Sorry for  
3 interrupting.

4 BY MR. POULOS:

5 Q. Can you look at exhibit two, page Bates  
6 numbers 441 and 442. I think it's easier  
7 chronologically to look at page 442 first.

8 A. Okay.

9 Q. Do you see the e-mail at the bottom of the  
10 page?

11 A. Yes.

12 Q. Do you have any basis to conclude that there  
13 is a pattern at LAUSD, that the worse schools are  
14 shielded from II/USP?

15 A. You're not implying, I'm saying that here,  
16 right, you are just asking me?

17 Q. You're writing that, right?

18 A. Yeah.

19 Q. So yeah, I'm asking you whether you have a  
20 basis to make that statement? You see there, you use  
21 "might be a pattern"?

22 A. This refers to the earlier e-mail that I  
23 received from Gary Blasi who suggested there might be  
24 a pattern. I'm saying there might be a pattern, but  
25 in the districts that I have looked at, or the data

1 Q. Just so we're clear, you have no basis to  
2 believe that's, in fact, what LAUSD did, correct?

3 A. I have no basis.

4 Q. Yesterday there was some discussion about CCR  
5 and what it could be expanded to monitor. One of the  
6 things you talked about was bathrooms. Do you recall  
7 that testimony?

8 A. Yeah.

9 Q. My question is: Are you aware of any  
10 districts that are actually monitoring facilities such  
11 as bathrooms?

12 A. Yes.

13 Q. Which district are you aware that monitor  
14 that, if you know?

15 A. Yes, I do. Los Angeles Unified School  
16 District monitors that.

17 Q. You don't say?

18 MS. WELCH: As well as the local news.

19 BY MR. POULOS:

20 Q. I wanted to just follow up on a couple things  
21 you did talk about. Yesterday you spoke about kind of  
22 the importance of mobilizing advocacy in community  
23 groups, and what I wanted to explore was this kind of  
24 the notion of creating a state oversight agency, and  
25 whether you have explored or considered the impact of

1 that I have looked at, I have not seen that pattern.

2 Q. I guess we don't have the earlier one from  
3 Gary, is that correct?

4 A. Really.

5 Q. I couldn't really link that response because  
6 then I think page one is a further follow-on, and you  
7 can tell that because of the dates. But that's fine.  
8 You've answered my question with respect to that.

9 A. I forgot how we -- yeah, there must have been  
10 -- I don't know. So in other words you don't have an  
11 e-mail that is before July 23rd?

12 Q. Correct.

13 MS. READ-SPANGLER: Look at page 0443.

14 MR. POULOS: Yeah, but that's not --

15 MR. HAJELA: Doesn't cover that issue.

16 MR. POULOS: That's totally different.

17 THE WITNESS: I guess it could have also been  
18 a conversation because we were on the phone with all  
19 these grants and stuff, but I'm not sure really.

20 But I think what the interaction was that --  
21 or this e-mail refers to, I think Gary Blasi  
22 suspecting there might be such a pattern. And I  
23 looked into -- I didn't look specifically into Los  
24 Angeles at all. We didn't do that data analysis. But  
25 we didn't find that pattern in the other districts.

1 another state agency on the ability of local  
2 communities to organize and participate in local  
3 education. Have you considered that?

4 A. What I'm thinking is what this independently  
5 chartered agency would do is write authoritative  
6 reports, and maybe where needed maybe as critical of  
7 local schools or local districts as it would be  
8 critical of state policies. And I believe that there  
9 are state policies just as there are district policies  
10 and action at the local school that may be responsible  
11 for the problem of low performance.

12 And I would hope that advocacy groups and  
13 parents and community members could rely on these  
14 authoritative reports to lobby for good policies on  
15 all three levels. So I would actually see this as a  
16 beneficial effect. It would certainly facilitate  
17 lobbying or becoming active on a state level, the way  
18 I see it.

19 Q. I'm going to hand you a document that is  
20 Bates labeled 0225. I don't think we need to mark it,  
21 but that's the document there.

22 My question is whether -- do you recall  
23 seeing that document?

24 A. No, I don't think so. I may have but I don't  
25 recall it right now.



1 Q. I am going to show you another couple -- you  
2 recognize one of the many items that you relied upon  
3 in your expert report were previous work that you had  
4 performed, is that correct?

5 A. Uh-huh.

6 Q. And you previously had authored or  
7 co-authored a report called: "Schools on Probation,  
8 Pressure and Meaning Capacities and Improvement of  
9 Schools," is that correct?

10 A. Yeah, I think it was a conference paper.

11 Q. This is a conference paper?

12 A. Yeah, I think so. Yeah, probably that was  
13 the conference paper.

14 Q. Do you recall approximately how much time it  
15 took you to develop this conference paper?

16 A. To develop it?

17 Q. Yeah.

18 A. That's very hard to answer, because I mean if  
19 you mean writing it, data analysis, preparing the  
20 research proposal, all of it?

21 Q. All of the above, cradle to grave?

22 A. All of the above. Probably took me from 1997  
23 to I think -- two years maybe.

24 Q. What about this one entitled: "The Limits of  
25 Sanctions in Low Performing Schools"?

1 Q. I'm just asking you to compare the time spent  
2 on each of these, if possible, to the time you spent  
3 developing the expert report in this case?

4 MS. WELCH: Objection, vague.

5 THE WITNESS: That's very hard to calculate  
6 because the expert report realizes some of the work  
7 I've done for this.

8 BY MR. POULOS:

9 Q. Sure. Let me see if I can get at it a  
10 different way. How long would you estimate it took  
11 you to develop and prepare the expert report?

12 MS. WELCH: Same objection.

13 THE WITNESS: Not all the data that's in it,  
14 but the writing of the report, the collecting of the  
15 data for it and the writing of the report?

16 MR. POULOS: Correct.

17 THE WITNESS: That goes back to the very  
18 first date, I was trying to make a distinction between  
19 2001 and 2002, and I couldn't.

20 BY MR. POULOS:

21 Q. If you have a rough estimate?

22 A. All in all it probably took a year to put  
23 this together.

24 MR. POULOS: I am going to mark this next.

25 THE WITNESS: You are looking at the ceiling,

1 A. This is -- well, this of course comes out of  
2 the same project. And so this I think I wrote first.

3 Q. The conference paper?

4 A. Yeah. This one I wrote afterwards  
5 (Indicating). So this is now published, by the way.  
6 And this is also being published.

7 Q. This is the one of the teacher's conference,  
8 the paper entitled: "Schools on Probation Pressure,  
9 Meaning Capacities of Schools"?

10 A. This document has been worked into a book  
11 that is coming out at Conley, in press.

12 MS. READ-SPANGLER: Just for the record,  
13 would you mind giving the Bates numbers?

14 MR. POULOS: Sure. The "Schools on Probation  
15 Pressure Meaning Capacity of Schools" is 0087 through  
16 0139.

17 MS. READ-SPANGLER: That XPHM?

18 MS. WELCH: Yeah.

19 MR. POULOS: This one is XPHM, it's entitled:  
20 "The Limits of Sanctions in Low Performing Schools,  
21 Study of Maryland and Kentucky Schools On Probation",  
22 Bates number 0140 through 0183.

23 MR. HAJELA: He wants to know if you really  
24 meant what you said in those.

25 BY MR. POULOS:

1 am I totally off?

2 MS. WELCH: I guess it depends when you  
3 started. We talked about when the first meeting was  
4 and you talked about having started before the first  
5 meeting.

6 THE WITNESS: Yes. So when did I submit it?  
7 Let me just look again. April 2002, that's why I even  
8 did the HGSG, so it's actually longer than that.

9 MS. READ-SPANGLER: I thought you actually  
10 told me you finalized it in the summer.

11 MR. POULOS: What I'm getting at was total  
12 time not calendar months, and I think that may be some  
13 of the confusion. Total time that it took you to put  
14 it together and I think there may be some confusion as  
15 to the duration of the total period you were working  
16 on it.

17 Q. I assume that once you started working on the  
18 report, you were also working on other things at the  
19 same time, correct?

20 A. Yeah, but that's the case for everything I  
21 do.

22 MR. POULOS: Let's mark this as an exhibit.  
23 (Exhibit 7 was marked for identification.)

24 BY MR. POULOS:

25 Q. I guess my question, Dr. Mintrop is: Do you

1 recall seeing this document before?  
 2 A. Yeah. Let me put it this way: I did see a  
 3 document that summarized some meetings, whether it was  
 4 exactly this one, I really can't say with certainty.  
 5 Q. Do you know whether you relied upon this  
 6 document in arriving at any of your opinions in this  
 7 case?  
 8 A. Whether I relied on this document or not, I  
 9 don't know. I used a summary of the meetings to  
 10 interject some quotes in the report.  
 11 Q. Do you know who prepared this summary?  
 12 A. No.  
 13 Q. At any time during the preparation of your  
 14 expert report did you ever ask for any additional  
 15 information from the Morrison & Foerster firm, that  
 16 you thought was necessary to arrive at your opinions?  
 17 MS. WELCH: Objection, vague.  
 18 THE WITNESS: You mean if I asked him for  
 19 additional information?  
 20 MR. POULOS: Correct.  
 21 THE WITNESS: I'm trying to figure out what I  
 22 collected from where.  
 23 MS. WELCH: Additional to what he had  
 24 originally been provided? Additional is really vague.  
 25 MR. POULOS: It is.

1 Q. Did you ever feel like at any point in time  
 2 you wanted more information than you currently had  
 3 to --  
 4 A. The reason I'm not so clear, when you read  
 5 the expert report, you can see that I relied on  
 6 depositions quite a bit. And I looked at some of the  
 7 materials that I received from Morrison & Foerster  
 8 about CCR and Figmat and various other. So that's why  
 9 I'm not quite sure what you are referring to.  
 10 A document like this was given to me as well,  
 11 summary of these things.  
 12 Q. Let me get at it a different way. If you  
 13 look at page eleven on the report?  
 14 A. Uh-huh.  
 15 Q. You see opinions and conclusions? You say  
 16 based on the evidence available to me?  
 17 A. Yes.  
 18 Q. So what I'm trying to understand is what is  
 19 that qualifying?  
 20 A. That means all the data I looked at,  
 21 available. For example, the various data basis  
 22 accessible materials on the web, all of the materials  
 23 that I myself collected from various people, they are  
 24 cited and quoted. The materials that I was given by  
 25 Morrison & Foerster, all of those together, that was

1 the evidence that was available to me.  
 2 Q. So you weren't limited in any way by either  
 3 the lawyers at Morrison & Foerster --  
 4 A. No.  
 5 Q. -- or any other expert in this case, correct?  
 6 A. No, not at all. I would say I did -- a large  
 7 chunk of what I relied on I actually collected myself.  
 8 And I actually attended some of the meetings as well  
 9 that are summarized in the Morrison & Foerster  
 10 document.  
 11 Q. I think that answers my question. So would  
 12 it be fair to say -- well, you know what, I'm done.  
 13 MS. READ-SPANGLER: With everything?  
 14 MR. POULOS: Yeah.  
 15 THE REPORTER: Miss Welch, do you want a  
 16 copy?  
 17 MS. WELCH: Yes.  
 18 MS. READ-SPANGLER: I want a copy and a  
 19 rough.  
 20 MR. POULOS: I want a condensed and an ASCII.  
 21 MR. HAJELA: Yes, I want a copy and a  
 22 condensed, but I don't need a rough.  
 23 MS. READ-SPANGLER: I don't want a rough.  
 24 (Whereupon the deposition was concluded at  
 25 (12:30 p.m.)

1 STATE OF CALIFORNIA )  
 ) ss.  
 2 COUNTY OF SANTA CLARA)  
 3  
 4  
 5  
 6  
 7 I, the undersigned, declare under penalty of  
 8 perjury that I have read the forgoing transcript, and  
 9 I have made any corrections, additions, or deletions  
 10 that I was desirous of making; that the foregoing is  
 11 a true and correct transcript of my testimony  
 12 contained therein.  
 13 EXECUTED this \_\_\_\_ day of \_\_\_\_\_,  
 14 2003, at \_\_\_\_\_,  
 15 (City) (State)  
 16  
 17  
 18  
 19  
 20  
 21  
 22 HEINRICH MINTROP, Ph.D  
 23  
 24  
 25