

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

ELIEZER WILLIAMS,)
)
 Plaintiff(s),)
)
 vs.) No. 312236
)
STATE OF CALIFORNIA,)
et. al.,)
)
 Defendant(s),)
_____)

DEPOSITION OF KERRY MAZZONI
Sacramento, California
Thursday, September 18, 2003

Reported by:
LISA RICHARDSON
CSR License No. 5883
Job No. 38591

1 APPEARANCES
 2
 3 FOR THE PLAINTIFF(S):
 4 MORRISON & FOERSTER
 5 MICHAEL A. JACOBS, ESQ.
 6 LEECIA WELCH, ESQ.
 7 425 Market Street
 8 San Francisco, California 94105-2482
 9 415-268-7455
 10
 11 FOR THE DEFENDANT STATE OF CALIFORNIA:
 12 O'MELVENY & MYERS LLP
 13 FRAMROZE M. VIRJEE, ESQ.
 14 400 South Hope Street
 15 Los Angeles, California 90071-2899
 16 213-430-6000
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 APPEARANCES
 2
 3 FOR THE DEFENDANTS:
 4 DEPARTMENT OF JUSTICE
 5 STATE OF CALIFORNIA
 6 KARA READ-SPANGLER, ESQ.
 7 1300 I Street, Suite 1101
 8 Sacramento, California 95814
 9 916-327-0356
 10
 11 FOR THE INTERVENOR:
 12 CALIFORNIA SCHOOL BOARD ASSOCIATION
 13 ABE HAJELA, ESQ.
 14 3100 Beacon Boulevard
 15 West Sacramento, California 95691
 16 916-371-4691
 17
 18 FOR LOS ANGELES UNIFIED SCHOOL DISTRICT:
 19 PILLSBURY-WINTHROP
 20 JOHN S. POULOS, ESQ.
 21 400 Capitol Mall, Suite 1700
 22 Sacramento, California 95814
 23 916-329-4756
 24
 25

1 INDEX
 2
 3 EXAMINATION BY: PAGE
 4 MR. JACOBS 06
 5 MR. POULOS 195
 6 MR. JACOBS 207
 7
 8
 9
 10 EXHIBITS
 11 Deposition of Kerry Mazzonei
 12 September 18, 2003
 13
 14 EXHIBIT PAGE
 15 313 News & Events - "Secretary of
 16 Education Shares Her Vision" 10
 17 314 SF Chronicle, 2-8-2001 42
 18 315 "Q&A with Kerry Mazzonei" 80
 19 316 Contra Costa Times, 7-13-2003 87
 20 317 Associated Press, 8-29-2002 102
 21 318 Modesto Bee, 12-13-2002 106
 22 319 Alameda Times, 8-28-2002 121
 23 320 Testimony to the Little Hoover
 24 Commission, 2-21-2001 137
 25 321 Orange County Register, 8-11-2002 149

1 EXHIBITS
 2 Deposition of Kerry Mazzonei
 3 September 18, 2003
 4
 5 EXHIBIT PAGE
 6 322 Letter dated 8-22-02 to
 7 Vasconcellos from Mazzonei 155
 8 323 Contra Costa Times, 4-20-2001 163
 9 324 The Argus, 1-27-2003 166
 10 325 LA Times, 8-22-2002 174
 11 326 Contra Costa Times, 4-25-2001 177
 12 327 Modesto Bee, 9-29-2002 181
 13 328 "The California Master Plan
 14 For Education" 184
 15 329 Associated Press, 12-29-2000 192
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 BE IT REMEMBERED that, on Thursday, the 18th day
2 of September, 2003, commencing at the hour of 9:35 a.m.
3 thereof, at the Law Offices of Morrison & Foerster, 400
4 Capitol Mall, Suite 2700, Sacramento, California,
5 before me, LISA RICHARDSON, a Certified Shorthand
6 Reporter in and for the State of California, duly
7 authorized to administer oaths and affirmations, there
8 personally appeared,

9 KERRY MAZZONI,

10 a Witness in the within-entitled action called by the
11 Plaintiffs herein, who having been duly sworn by the
12 Certified Shorthand Reporter to tell the truth, the
13 whole truth, and nothing but the truth, was thereupon
14 examined and interrogated as hereinafter set forth.

15
16 EXAMINATION BY MR. JACOBS

17 Q Good morning, Secretary Mazzoni.

18 A Morning.

19 Q Your official title is?

20 A Secretary for Education.

21 Q And your job duties are defined where?

22 A By the Governor.

23 Q Is there, is there a memorandum that sets
24 forth your responsibilities?

25 A I don't think there's a memorandum. When I

1 took the position, I was kind of told what the
2 different areas were that I dealt with.

3 Q And what are those areas?

4 A I analyze -- my office analyzes all of the
5 education Legislation and makes recommendations to the
6 Governor as to whether to sign or veto the bills.

7 We also work with Legislative authors on
8 amendments and in the development of their Legislation.

9 We purge and vet appointments, education
10 appointments; not all of them, but a number of them for
11 the Governor's appointment office.

12 Q What was the first word?

13 A Purge.

14 Q What does that mean?

15 A Kind of go through and say, you know, this --
16 we do some background, we talk to them and we say, "No,
17 we don't think this person is qualified." Or they will
18 give us information, and then we will kind of
19 cross-check it.

20 Q Continue. Sorry.

21 A We, in the past, had a number of grant
22 programs that were operated out of the office. Those
23 are now being -- have either -- we've either completed
24 them or they are being transferred to the Department of
25 Education.

1 Let's see. What else do we do. I represent
2 the Governor nationally on boards and commissions, and
3 I represent him certainly around the state. I
4 represent him on boards of commissions in the state, or
5 my designee.

6 We do a lot of the press for the Governor. We
7 set up his events working with the governor's press
8 office.

9 We work in preparation of the budget.

10 We develop the Governor's Legislative
11 proposals.

12 Q How many are in your office?

13 A Right now I have 15, down from about 30.

14 Q When did it shrink?

15 A It's been shrinking over the last year with
16 the budget cuts.

17 Q What has been your responsibilities vis-a-vis
18 the Williams case?

19 MR. VIRJEE: Objection. To the extent that
20 calls for attorney-client privilege, I will instruct
21 you not to answer.

22 Also vague and ambiguous as to
23 "responsibilities," and assumes facts not in evidence.

24 MS. READ-SPANGLER: Just before we go on, can
25 we put our usual stipulation on the record that all

1 objections are deemed joined by all counsel except the
2 counsel asking the question?

3 MR. JACOBS: Sure.

4 MS. READ-SPANGLER: So we don't have to say
5 "join."

6 THE WITNESS: Do I go ahead and answer, or do
7 I not answer?

8 MR. VIRJEE: You are not to answer to the
9 extent it would invade the attorney-client privilege.

10 THE WITNESS: Okay. I've been briefed on
11 issues related to the case.

12 Q BY MR. JACOBS: And you've made public
13 statements about the case?

14 A I have.

15 Q And anything else that you have been involved
16 in you would say would convey privileged information to
17 or from counsel?

18 MR. VIRJEE: Objection, vague and ambiguous as
19 to "involved in."

20 THE WITNESS: Yes. Everything else was
21 involved with counsel.

22 MR. JACOBS: Let me ask you about an interview
23 you gave, starting us off.

24 We are going to start with 313. So this will
25 be depo Exhibit 313.

1 (Plaintiffs' Exhibit
2 No. 313 was marked for
3 identification.)

4 Q BY MR. JACOBS: My questions are going to
5 focus about the fourth paragraph of that. Feel free to
6 take a look at the whole thing. I will also ask you
7 about a couple paragraphs on the second page.

8 MR. VIRJEE: Just for form's sake, let's let
9 the witness look at the one that's going to be in the
10 record so that's not a question. It's the same thing,
11 but it's just the one that the court reporter has
12 marked.

13 Did you want her to read the whole thing?

14 MR. JACOBS: I wanted her to take a look at
15 it, yes.

16 THE WITNESS: (Witness reviewing document.)

17 Q BY MS. WELCH: Let me ask you first about the
18 fourth paragraph on the first page of Exhibit 313. It
19 quotes you as saying, "My vision for a system of shared
20 responsibility includes a system -- seamless system of
21 K through 12 through the university, but also includes
22 early childhood education and lifelong learning," close
23 quote. Quote, "It is a system that provides equal
24 access and equity to all with each segment accountable
25 to itself, its constituents and to the other segments."

1 content standards, there would be certainly a level of
2 quality.

3 Q BY MR. JACOBS: Are you saying that if
4 teachers teach to the content standards that implies
5 they are teaching those standards with quality?

6 MR. VIRJEE: Objection, vague and ambiguous as
7 to "quality."

8 Q BY MR. JACOBS: Or that by teaching the
9 standards they are teaching -- they are giving a
10 quality education?

11 A It's one measure. It's one aspect.

12 Q Did you have any other aspects in mind?

13 MR. VIRJEE: In her answer to the question or
14 in her comments?

15 Q BY MR. JACOBS: Is it clear to you what I
16 meant?

17 A No.

18 MR. VIRJEE: The question is vague and
19 ambiguous.

20 THE WITNESS: I don't understand what you
21 mean.

22 Q BY MR. JACOBS: When you refer to "access to a
23 rigorous curriculum to the content" and you said that
24 by "access" you meant teachers teaching the content
25 standards, did you have any other quality in mind?

1 Do you see that?

2 A Hmm-hmm.

3 Q Is that an accurate recitation of what you
4 said in the interview?

5 A I can't recall exactly what I said, but I
6 would say that that's fairly accurate.

7 Q When you referred to "equal access and equity
8 to all," what did you mean?

9 A I mean that all children have access to a
10 rigorous curriculum to the content.

11 Q By "content" you mean what?

12 A Content of the standards.

13 Q And by "rigorous curriculum," you had in mind
14 the standards; is that correct?

15 A Right.

16 Q And by "access," what do you mean?

17 A That they are in schools where teachers are
18 delivering that.

19 Q And by "delivering that," what do you mean?

20 A They are teaching the content standards.

21 Q Was there a notion of the quality of that
22 teaching inherent in your comment?

23 MR. VIRJEE: Objection, vague and ambiguous as
24 to "quality."

25 THE WITNESS: If teachers are teaching the

1 MR. VIRJEE: Objection, vague and ambiguous as
2 to "quality."

3 THE WITNESS: The content standards are one
4 aspect, an extremely important aspect of delivery of
5 the curriculum. Certainly we want teachers that enjoy
6 teaching, that care about students, that are good
7 communicators. But we must start with the content
8 standards. That's the first measure.

9 Q And teachers that are trained in pedagogy?

10 MR. VIRJEE: Objection, vague and ambiguous as
11 to "trained in pedagogy."

12 THE WITNESS: Part of teacher training to
13 become a teacher in California includes instruction in
14 pedagogy.

15 Q BY MR. JACOBS: So when you are referring to
16 "equal access and equity," were you referring to access
17 to a rigorous curriculum to the content through trained
18 teachers?

19 MR. VIRJEE: Objection, vague and ambiguous as
20 to "trained teachers." Asked and answered.

21 THE WITNESS: A quality teacher can come from
22 a variety of places and a variety of experiences.
23 Again, what's most important is that they understand
24 the content standards and deliver those to the
25 students.

1 Q BY MR. JACOBS: You've spent a great deal of
2 time in your career with the teacher credentialing
3 system in California, correct?

4 A That's correct.

5 Q To what degree does -- in your judgment when
6 you were making this comment about "equal access and
7 equity to all," to what degree were you referring to
8 equal access and equity with respect to accessibility
9 of credentialed teachers?

10 MR. VIRJEE: Objection, asked and answered.

11 MS. READ-SPANGLER: Lacks foundation.

12 MR. VIRJEE: As if she was -- it's -- it also
13 calls for speculation that she was thinking of that at
14 all.

15 THE WITNESS: I don't necessarily believe that
16 a credential is the only indicator of a quality
17 teacher.

18 Q BY MR. JACOBS: Do you believe that a
19 credential is an indicator of a quality teacher?

20 A A credential can be an indicator of a quality
21 teacher.

22 Q How strong is that correlation?

23 MR. VIRJEE: Objection, calls for speculation,
24 lacks foundation, incomplete hypothetical, calls for an
25 expert opinion.

1 MR. VIRJEE: Objection, vague and ambiguous as
2 to "intent," and calls for speculation as to intent.
3 Lacks foundation.

4 THE WITNESS: I don't sit on the CTC, so I
5 can't tell you what their intent is as they make their
6 actions.

7 Q BY MR. JACOBS: Is that the only way you would
8 have an understanding of the intent of the teacher
9 credentialing system to sit on the CTC?

10 MR. VIRJEE: Objection, vague and ambiguous,
11 calls for speculation.

12 THE WITNESS: The manner in which I have had
13 an influence on the credentialing, teaching
14 credentialing commission is through Legislation that
15 I've authored or co-authored.

16 Q BY MR. JACOBS: And what was the -- what was
17 the last piece of such Legislation?

18 A I think the last piece was SB 2042 that was
19 authored by DeDe Alpert and myself.

20 Q What was the substance?

21 A It was a redesign of the teacher
22 credentialing system.

23 Q What was the -- was there a statement of
24 Legislative intent in conjunction with that redesign?

25 A I don't recall. Sometimes there is an intent

1 THE WITNESS: And I don't know.

2 Q BY MR. JACOBS: Do you think that the teacher
3 credentialing system in California is intended to be
4 correlated with quality?

5 MR. VIRJEE: Objection, vague and ambiguous as
6 to "quality." Incomplete hypothetical.

7 THE WITNESS: The Commission on Teacher
8 Credentialing is one of the ways that can be used by a
9 state to create a quality standard.

10 MR. JACOBS: Could you read back my question,
11 please.

12 THE REPORTER: Do you think that the teacher
13 credentialing system in California is intended to be
14 correlated with quality?

15 Q BY MR. JACOBS: Could you answer the question
16 as to your understanding of the intent of the teacher
17 credentialing system?

18 MR. VIRJEE: Objection, asked and answered.
19 She answered your question.

20 MS. READ-SPANGLER: Calls for speculation.

21 THE WITNESS: I think I've answered the
22 question.

23 Q BY MR. JACOBS: I don't think I have an answer
24 as to your understanding of the intent in California of
25 the teacher credentialing system.

1 section in the bill and sometimes there's not. And I
2 don't have a bill --

3 MR. VIRJEE: You've answered the question.

4 Q BY MR. JACOBS: Did you at the time articulate
5 what you understood -- when you were advocating for the
6 bill what you understood its intent to be?

7 A I don't recall.

8 Q Do you have an understanding as you sit here
9 today of what the intent of that Legislation was?

10 MR. VIRJEE: Objection, vague and ambiguous as
11 to "intent of Legislation." If you are asking for the
12 Legislative intent, it's in the bill. The document
13 speaks for itself.

14 THE WITNESS: I would say that. I don't have
15 the bill before me, and I don't recall if there was an
16 intent section.

17 Q BY MR. JACOBS: You don't recall what you
18 as -- were you a co-sponsor?

19 A Co-author.

20 Q Co-author.

21 As an author, what was your understanding of
22 the intent of the Legislation?

23 A To revise the teacher credentialing system
24 so that it was a system that was a better system and
25 was -- provided better training for teachers.

1 Q By "better," you meant better in what sense?

2 A That we would improve the quality of the
3 program.

4 Q And by "improving the quality of the program,"
5 you had in mind an output of the program?

6 MR. VIRJEE: Objection, vague and ambiguous as
7 to "output of the program."

8 THE WITNESS: The purpose was to create a
9 quality teacher training program.

10 Q BY MR. JACOBS: That would result in quality
11 teachers?

12 MR. VIRJEE: Objection, vague and ambiguous as
13 to "quality," incomplete hypothetical.

14 THE WITNESS: That would support, as best it
15 could, quality. There are no guarantees.

16 Q BY MR. JACOBS: No guarantees in life of
17 anything, right?

18 MR. VIRJEE: So stipulated.

19 Q BY MR. JACOBS: But you seem to be running
20 away from the obvious answer here, which is that the
21 design -- you intended the system to --

22 A To improve --

23 Q -- to improve the quality of teaching in
24 California, correct?

25 MR. VIRJEE: That's argumentative. I'm going

1 did you have in mind a lower level of detail what it
2 meant for -- to have a school where the teachers are
3 delivering the content and the teachers are teaching
4 the content standards?

5 A I don't understand the question.

6 Q Let's -- it wasn't a very good one.

7 Had you given any thought at that time as to
8 what such a school actually looks like in terms of its
9 teaching force, first of all?

10 MR. VIRJEE: Michael, before we do that, can
11 we set a time frame? Because I don't see a date on
12 this document. I might be missing it, but I don't see
13 a date here as to what time.

14 MR. JACOBS: It looks to me like you gave --

15 MR. VIRJEE: June 22nd; is that correct?

16 MR. JACOBS: Looks to me like you gave this
17 interview in 2001.

18 MR. VIRJEE: It doesn't look like an
19 interview, it looks like a reflection of statements she
20 made at a conference --

21 THE WITNESS: It is.

22 MR. VIRJEE: -- not an interview. So that's
23 why I'm confused.

24 Q BY MR. JACOBS: What was it, a statement at a
25 conference?

1 to object on the grounds that's argumentative.

2 You can answer the question to the extent you
3 understand. But running away from something -- looks
4 like you are sitting in the chair to me.

5 THE WITNESS: The purpose of the bill was to
6 improve teacher training in California.

7 Q BY MR. JACOBS: With the goal of improving the
8 quality of teaching in California?

9 MR. VIRJEE: Objection, vague and ambiguous as
10 to "quality," incomplete hypothetical, asked and
11 answered.

12 THE WITNESS: It was to improve teacher
13 training.

14 Q BY MR. JACOBS: As an end in itself?

15 MR. VIRJEE: Objection, asked and answered.

16 THE WITNESS: If one believes the teacher
17 training is one important element in quality teaching.

18 Q BY MR. JACOBS: Do you so believe?

19 A I believe that it is one element. There can
20 be many other elements that produce a quality teacher.

21 MS. READ-SPANGLER: Make sure you give him the
22 time to finish his question before you start talking,
23 and also it gives us time to object.

24 THE WITNESS: Okay.

25 Q BY MR. JACOBS: When you made this statement,

1 A This is an article, as I recall, that
2 summarized my speech at a conference.

3 Q Was that a June 22nd, 2001?

4 A I think it was sometime around -- it was
5 sometime in 2001. It was early in my tenure as
6 secretary.

7 MR. VIRJEE: Thank you. I appreciate that.

8 Q BY MR. JACOBS: So my question is, had you
9 given any thought to what the composition of such a
10 teaching force might actually be?

11 MR. VIRJEE: Objection, vague and ambiguous.

12 THE WITNESS: No.

13 Q BY MR. JACOBS: Had you given any thought to
14 what would -- what it meant to have teachers who were
15 trained to deliver -- to deliver the content?

16 MR. VIRJEE: Had she ever given any thought to
17 that before this conference?

18 MR. JACOBS: No. That wasn't my question.

19 MR. VIRJEE: Your question is vague and
20 ambiguous.

21 THE WITNESS: I don't understand.

22 MR. JACOBS: Could you read back my question,
23 please?

24 THE REPORTER: Had you given any thought to
25 what it meant to have teachers who were trained to

1 deliver the content?
 2 Q BY MR. JACOBS: When you gave this address,
 3 did you -- did you have an idea in mind about what it
 4 meant to have teachers trained to deliver the content?
 5 A Teachers that know the content, that are well
 6 versed in the content.
 7 Q And did you have in mind how that was to be
 8 accomplished?
 9 MR. VIRJEE: Objection, calls for speculation,
 10 lacks foundation, vague and ambiguous as to
 11 "accomplished."
 12 THE WITNESS: There are numerous ways in which
 13 a teacher can be trained and supported to deliver the
 14 content.
 15 Q BY MR. JACOBS: When you gave this address,
 16 did you detail at the conference itself how teachers
 17 would be trained to deliver the content?
 18 A I don't recall.
 19 Q You went on to say that you -- your vision
 20 included a notion of accountability. You said, quote,
 21 "with each segment accountable to itself, its
 22 constituents and to the other segments," close quote.
 23 You see that?
 24 A Yes.
 25 Q What did you mean by the word "accountable"

1 there when you gave that speech?
 2 MR. VIRJEE: Objection, calls for speculation.
 3 If you recall.
 4 THE WITNESS: What I mean is --
 5 MR. VIRJEE: Just make sure you understand his
 6 question. Okay?
 7 THE WITNESS: You want to repeat it?
 8 MR. VIRJEE: He asked what you meant when you
 9 said that, not what you mean today.
 10 THE WITNESS: Okay. Could you repeat the
 11 question?
 12 MR. JACOBS: Can you read it back, please?
 13 THE REPORTER: What did you mean by the word
 14 "accountable" there when you gave that speech?
 15 THE WITNESS: I can't say exactly what I meant
 16 by "accountable" there, since this is a kind of
 17 synopsis of my whole presentation.
 18 Q BY MR. JACOBS: Would you say the same thing
 19 today if you were asked what your vision for the system
 20 of shared responsibility would look like?
 21 A I probably would say something similar.
 22 Q And would you use the word "accountable"?
 23 A Probably.
 24 Q And what would you mean by that word?
 25 A That there is a structure in place that holds

1 all people accountable for the performance of the
 2 system.
 3 Q All people. By "all people" you mean people
 4 involved in delivering the content of the curriculum?
 5 A I mean all people.
 6 Q All people in the school system?
 7 MR. VIRJEE: Objection, asked and answered.
 8 THE WITNESS: I mean teachers, administrators,
 9 business, parents, voters, students.
 10 Q BY MR. JACOBS: The Legislature?
 11 A The Legislature.
 12 Q Governor's office?
 13 A Governor.
 14 Q Secretary -- the Superintendent of Public
 15 Instruction?
 16 A All people involved.
 17 Q Okay. And by -- well, first of all, have you
 18 ever explained in some public context what you mean by
 19 that, by what you just said?
 20 A I can't recall.
 21 Q So when you have -- when you have thought
 22 those thoughts that you just recited, what have you
 23 meant about an operational system that would accomplish
 24 that?
 25 MR. VIRJEE: Objection, assumes facts not in

1 evidence. Assumes she's thought those thoughts, and
 2 assumes she's thought anything about operations.
 3 THE WITNESS: The system in which a local
 4 school board is elected by the voters often supported
 5 by parents, business community, other teachers or
 6 people in the community. And that school board
 7 responds to the needs of that community in terms of the
 8 development of policy. That policy is implemented, the
 9 policy is about student achievement.
 10 Q BY MR. JACOBS: That's the mechanism at the
 11 local level.
 12 A And that is the most important -- that is the
 13 most important place in terms of delivery of rigorous
 14 content.
 15 Q So what's the mechanism up the chain? You
 16 said "all people."
 17 A The Legislature provides guidance through
 18 Legislation that is passed and implemented in the
 19 field. And that certainly -- any Legislation that
 20 would be implemented would be signed by the Governor,
 21 whoever is the sitting Governor.
 22 Q And how is it held accountable?
 23 MR. VIRJEE: How is the Legislation held
 24 accountable?
 25 Q BY MR. JACOBS: How is the Legislature and/or

1 the Governor, in the case that you just set forth, how
2 does accountability work as to them in this system as
3 to which all people are accountable?

4 A If the voters don't like the program in place,
5 they throw out their elected school board, or throw out
6 their elected Legislature, or they throw out their
7 Governor.

8 Q Was the vision then you were articulating
9 different from the system in place?

10 MR. VIRJEE: Objection, vague and ambiguous,
11 calls for speculation.

12 THE WITNESS: I don't think it is necessarily
13 different. It has to do with application in the field.

14 Q BY MR. JACOBS: By "application in the field,"
15 what do you mean?

16 A How the program is implemented.

17 Q By whom?

18 A By the local school board and their direction;
19 their superintendent, the direction of -- the
20 superintendent gives to the administrators, the
21 direction the administrators give to the teachers, the
22 manner in which the teachers deliver the rigor in the
23 classroom.

24 Q So in 2001 when you made this system about --
25 your vision for a system of shared responsibility, et.

1 MR. VIRJEE: Objection, calls for speculation,
2 lacks foundation, assumes facts not in evidence.
3 Incomplete hypothetical.

4 THE WITNESS: Full implementation of that
5 would provide the supports probably necessary.

6 Q BY MR. JACOBS: And how would you, how would
7 you measure whether what you just said was true?

8 MR. VIRJEE: Objection, calls for speculation,
9 lacks foundation, vague and ambiguous as to "measure,"
10 calls for an expert opinion, incomplete hypothetical.

11 THE WITNESS: I'm not sure what you mean by
12 "measure."

13 Q BY MR. JACOBS: How would you -- in your
14 vision, the Legislature and the Governor are held
15 accountable by the voters for whether that -- the
16 elements of the system do, in fact, provide those
17 supports, correct?

18 A Yes.

19 Q And how would you -- what was your -- what is
20 your view about how that would be measured whether
21 those supports were, in fact, effective and sufficient?

22 A By student achievement, evidenced through our
23 statewide test.

24 Q Any other measures?

25 MR. VIRJEE: Objection, calls for speculation,

1 cetera, you thought -- at that time did you think the
2 elements of that system were in place?

3 MR. VIRJEE: Elements of everything she's
4 described?

5 Objection, vague and ambiguous.

6 THE WITNESS: I would say the potential was
7 there.

8 Q BY MR. JACOBS: What do you mean?

9 A At that time we had the statewide test in
10 place, an accountability system in place, a program of
11 professional development in place, a program of
12 attracting and retaining teachers in place, a new
13 program for teacher training in place, class size
14 reduction in place, rigorous content standards in
15 place, statewide school bond in place, and probably
16 more.

17 Q And those elements were the elements that were
18 in place at the state level at least, correct?

19 MR. VIRJEE: Objection, vague and ambiguous as
20 to "state level."

21 THE WITNESS: Those were things that --
22 measures that had been passed by the Legislature,
23 signed into law by whoever was the sitting Governor.

24 Q BY MR. JACOBS: And you believed that were
25 that system implemented it would meet your vision?

1 vague and ambiguous, incomplete hypothetical, and vague
2 and ambiguous as to "measures."

3 THE WITNESS: For me the measure is student
4 achievement.

5 Q BY MR. JACOBS: As measured in the way that
6 you described?

7 A Through our statewide test.

8 Q So now let's turn to -- I'm sorry, strike
9 that.

10 When you say, "It's a system that provides
11 equal access and equity," how would you measure whether
12 the system achieved that objective?

13 MR. VIRJEE: Objection, vague and ambiguous,
14 incomplete hypothetical, calls for speculation, calls
15 for an expert opinion.

16 THE WITNESS: By looking at the data, our
17 statewide test scores, other measures, SAT. But
18 basically the data that we have that is evidenced
19 through different assessment in terms of a test,
20 movement of sub groups in terms of improved student
21 achievement, closure of the achievement gap.

22 Q BY MR. JACOBS: At the bottom of -- the
23 account on the bottom of page 2 of 3, you said -- you
24 were reported as having said that you, "spoke of the
25 need for equal access and equity in the state's

1 education system, two qualities she believes are
2 currently lacking."

3 Do you see that?

4 A Where is that?

5 Q At the very bottom.

6 A Yes.

7 Q Is that an accurate account of what you said?

8 MR. VIRJEE: Objection, calls for speculation.

9 THE WITNESS: I don't recall if that's exactly
10 what I said, but that's probably close to something
11 that I said.

12 Q BY MR. JACOBS: And believed?

13 A Yes.

14 Q And believe today?

15 MR. VIRJEE: Which?

16 Objection, compound. There's two different
17 statements there.

18 THE WITNESS: I would not concur exactly with
19 that statement today.

20 Q BY MR. JACOBS: So when you made a statement
21 akin to that in 2001, what did you have in mind?

22 A For too long in California we had a system in
23 which there were, in my opinion, two standards; one
24 standard for largely suburban children, one standard
25 for low income and English learners, a standard in

1 Q And another element that's in place is the
2 measurement of student achievement against those
3 standards, correct?

4 A That's correct.

5 Q And the statewide testing system has moved
6 incrementally year-by-year toward greater alignment
7 with standards, correct?

8 A That's correct.

9 Q And another thing that's changed in your
10 judgment is that teacher training is more aligned with
11 the content standards?

12 A That's correct.

13 Q And what else would you point to in the period
14 2001 to 2003 that's changed in terms of this two
15 standards issue?

16 A Are you -- I'm not quite sure --

17 Q You said you wouldn't make the equity -- equal
18 access and equity statement today.

19 A We've had large numbers of teachers
20 participate in the state-sponsored professional
21 development that's aligned to standards. At that time
22 in 2001 we had just been beginning training of
23 teachers. We have since expanded that program to
24 include almost every teacher in California as well.
25 And incrementally we are making progress towards that

1 which low income and English learners did not have
2 access to a rigorous curriculum that many suburban
3 parents would insist upon. And that created a
4 two-tiered system which resulted in achievement gap.

5 Q And when you say "A standard about access
6 to" --

7 MR. JACOBS: I'm sorry, let me hear back your
8 answer so I don't confuse you by restating your words
9 differently.

10 THE REPORTER: For too long in California we
11 had a system in which there were, in my opinion, two
12 standards; one standard for largely suburban children,
13 one standard for low income and English learners, a
14 standard in which low income and English learners did
15 not have access to a rigorous curriculum that many
16 suburban parents would insist upon. And that created a
17 two-tiered system which resulted in achievement gap.

18 Q BY MR. JACOBS: And so the standard you are
19 referring to was the standard of access to the rigorous
20 curriculum?

21 A Yes.

22 Q And one element that's in place that mitigates
23 the two-standard problem is a common set of statewide
24 standards; is that correct?

25 A That's correct.

1 goal of having every teacher participate in training
2 that is aligned to the statewide standards.

3 Q Do you have any direct measures of whether on
4 the ground in the schools there has been progress in
5 closing the gap in terms of access to the rigorous
6 curriculum?

7 A Yes.

8 MR. VIRJEE: Objection. Objection, vague and
9 ambiguous as to "measure."

10 Q BY MR. JACOBS: What are those?

11 A Our statewide test score results. The SAT
12 results as well showing larger numbers of low income
13 children, English learners, minority children
14 participating in AP courses, and the data in those
15 school districts that are making the latest gains also
16 are school districts that have embraced the programs
17 that the state has put in place.

18 Q And there are some districts that haven't
19 embraced those programs?

20 A The programs -- yes, there are.

21 Q Some districts have -- and when you say
22 "embraced the programs," what does that mean
23 concretely?

24 A Some school districts very proactively
25 participated and embraced the statewide standards

1 before the test was totally aligned. They were very
2 proactive in that and got their teachers into the
3 training early. And some school districts lagged
4 behind.

5 But there is the intent by the state, as shown
6 in Legislation that we have passed, to provide that
7 training to every teacher in California, essentially.

8 Q Are there any achievement test results that
9 are contra indicators?

10 MR. VIRJEE: Objection, calls for speculation,
11 lacks foundation, vague and ambiguous as to "contra
12 indicators."

13 THE WITNESS: I'm not an expert in data
14 analysis, nor am I a psychometrician.

15 The data that I have looked at and have been
16 briefed on indicates that we are seeing, in fact, quite
17 phenomenal growth. And the beginning indicators are
18 closure of the achievement gap.

19 Q BY MR. JACOBS: One of the other elements of
20 the program of moving toward access to the rigorous
21 curriculum is the adoption of textbooks that are
22 aligned with the standards, correct?

23 MR. VIRJEE: Objection, vague and ambiguous as
24 to "textbooks."

25 THE WITNESS: Standards aligned instructional

1 THE WITNESS: I can't speak for the Board.

2 Q BY MR. JACOBS: What's your understanding?
3 It's been a considerable effort, has it not?

4 A As part of the entire program, the standards
5 aligned instructional materials have been extremely
6 important.

7 Q And the Legislature has passed, and the
8 Governor has signed, bills allocating hundreds of
9 millions of dollars to the purchase of standards
10 aligned instructional material; is that correct?

11 A That's correct.

12 Q And just as a segue for a minute, the current
13 snapshot of that appropriation is what? What's the
14 current -- for this school year, how much money is
15 available in the -- specifically for the purchase of
16 standards aligned instructional materials as a
17 categorical, do you know?

18 A I can't really tell you. I have a lot of
19 numbers go across my desk. But it's substantial.

20 Q BY MR. JACOBS: Do you have any direct
21 measures of whether -- of the degree to which there is
22 equal access to standards aligned instructional
23 materials in California public schools?

24 MR. VIRJEE: Objection, vague and ambiguous as
25 to "equal access," incomplete hypothetical, calls for

1 materials are important in my opinion for the success
2 and for the success of students and access to the
3 rigorous curriculum.

4 Q BY MR. JACOBS: By "important," what do you
5 mean?

6 A That instructional materials that are aligned
7 to the standards provide the additional support to
8 students in terms of access to the rigor.

9 Q The state has invested in the adoption process
10 itself by dedicating substantial amount of staff and
11 appointed official time to the actual examination of
12 the textbooks and the determination of whether they
13 meet the standard, correct?

14 MR. VIRJEE: Objection, calls for speculation,
15 lacks foundation, vague and ambiguous as to "appointed
16 official time."

17 THE WITNESS: As I understand it, the state
18 Board has provided oversight to the adoption and the
19 alignment of those instructional materials to the
20 standards.

21 Q BY MR. JACOBS: And that's been a priority in
22 terms of the allocation of Board time and staff time,
23 correct?

24 MR. VIRJEE: Objection, vague and ambiguous,
25 lacks foundation.

1 speculation.

2 THE WITNESS: I do not have any direct
3 measure. I do know that each locally elected school
4 board must certify that they have purchased standards
5 aligned instructional materials.

6 Q BY MR. JACOBS: And do you have any
7 understanding of the -- of the accuracy of those
8 certifications?

9 MR. VIRJEE: Objection, vague and ambiguous as
10 to which certification, calls for speculation, lacks
11 foundation.

12 THE WITNESS: No.

13 Q BY MR. JACOBS: When you were commenting on
14 the various elements that have -- that were put in
15 place, you mentioned the first -- I think you were
16 referring to the first facilities bond that was passed,
17 do you recall that, under this Governor?

18 MR. VIRJEE: I think that misstates her
19 testimony. I don't think she referred to any
20 particular bond.

21 THE WITNESS: I was referring to actually the
22 bonds beginning in -- it may have been '96. I don't
23 remember the number of that bond. And I think it was
24 something -- it was for something like 2.4 billion at
25 that point, and the subsequent bond for 9.2 billion, I

1 think. And then the bonds that have been passed -- the
2 one that was passed last November as well. So this is
3 something that has been long-term.

4 Q BY MR. JACOBS: How did those bonds relate to
5 your view of a system that provides equal access and
6 equity to all?

7 A The bonds are important in terms of providing
8 facilities in a state that was growing in terms of
9 student enrollment and had many old facilities that
10 needed to be refurbished.

11 Q And needed to be refurbished for what
12 educational purpose?

13 A Many of them, of the schools were outdated in
14 terms of their ability to provide Internet access,
15 whatever -- that certainly was -- is one area.

16 Some schools were experiencing growth and
17 needed to build new facilities.

18 Some schools were very old and needed to be
19 remodeled.

20 Q And is there a relationship in your mind
21 between your vision of access to the rigorous
22 curriculum to the content and the facilities in which
23 that access is provided?

24 MR. VIRJEE: Objection, vague and ambiguous as
25 to "relationship." Calls for speculation, lacks

1 Q So why -- has this been a misallocation of
2 resources in your judgment with your focus --

3 A No.

4 Q -- on what your vision was of a system of
5 equal access and equity?

6 A No.

7 Q Why not?

8 A We have a system in California that provides
9 public school, free public education. And part of that
10 is providing facilities for those -- for that process
11 to take place. Facilities in and of themselves do not
12 guarantee that a student is going to have access to a
13 rigorous curriculum.

14 Q Does that answer the question in your mind
15 whether we should invest in facilities?

16 MR. VIRJEE: Objection, incomplete
17 hypothetical, calls for speculation, lacks foundation.

18 THE WITNESS: We should invest in facilities.

19 Q BY MR. JACOBS: And why? Why from the
20 standpoint of your vision for a system of equal access
21 to a rigorous curriculum to the content?

22 MR. VIRJEE: Objection, asked and answered.

23 THE WITNESS: I feel I've answered it.

24 We have public schools, children show up at
25 public schools, we provide facilities for them. It is

1 foundation.

2 THE WITNESS: I don't necessarily think that a
3 student needs to be sitting in a classroom to have
4 access to rigor.

5 Q BY MR. JACOBS: So not necessarily is one
6 answer, but is there a relationship?

7 MR. VIRJEE: Objection, calls for speculation,
8 incomplete hypothetical, vague and ambiguous as to
9 "relationship."

10 THE WITNESS: Those children that are
11 attending public schools in traditional public school
12 facilities should be in facilities that are conducive
13 to learning.

14 Q BY MR. JACOBS: And that's a part of access to
15 the rigorous curriculum if you are in that kind of
16 school?

17 MR. VIRJEE: Objection, calls for speculation,
18 lacks foundation, calls for an expert opinion.

19 THE WITNESS: I'm not necessarily sure that
20 there is a nexus that can be substantiated in research
21 that being in a new and modern facility alone, or even
22 in a primary way has an impact on student achievement.

23 Q BY MR. JACOBS: So?

24 A A quality teacher on the playground could have
25 much greater impact.

1 a component of our program. But again, in and of
2 itself a facility does not guarantee access to a
3 rigorous curriculum.

4 Q BY MR. JACOBS: Do you understand anybody to
5 be arguing in the world of education, including the
6 experts in this case, that a facility in and of itself
7 guarantees access to rigorous curriculum?

8 MR. VIRJEE: Objection, calls for speculation.

9 THE WITNESS: No.

10 MR. VIRJEE: Lacks foundation as to whether
11 she knows what any experts are saying in this case.

12 THE WITNESS: I have not seen any research
13 that says that a facility is a key component of student
14 achievement.

15 Q BY MR. JACOBS: And so I'm not sure I do have
16 your bottom line on this question.

17 You have a vision of education, you've
18 articulated that. You explained the various components
19 that have moved us toward that vision, one element of
20 that is the facilities bonds that have been passed.

21 What's the relationship between those bonds
22 and your vision?

23 MR. VIRJEE: Objection, asked and answered.

24 THE WITNESS: The bonds provide for one of
25 those components of the program.

1 Q BY MR. JACOBS: And then by "the program,"
2 that's a word that you are using a little -- newly
3 here. So what do you mean by "the program"?

4 MR. VIRJEE: Objection, vague and ambiguous as
5 to "newly."

6 THE WITNESS: An education program established
7 in this state for the benefit of all children that is
8 designed to maximize the student achievement for all
9 students.

10 MR. JACOBS: Let's mark as Exhibit 314 an
11 article from the San Francisco Chronicle.

12 (Plaintiffs' Exhibit
13 No. 314 was marked for
14 identification.)

15 MR. JACOBS: This is an article -- I will give
16 you a chance to look at it -- dated February 8, 2001
17 from the San Francisco Chronicle. "Headline: Court
18 Takes on Trouble Schools Lawsuit; ACLU Tries to Make
19 State Accountable." And it's actually the Lexis
20 printout of that article that purportedly appeared on
21 page A 21. At the bottom there are some quotes from
22 you, as well as on the next page.

23 So please take a look at this article and get
24 the contents for those.

25 THE WITNESS: (Witness reviewing document.)

1 Davis, said it appears the ACLU wanted to establish a
2 huge state bureaucracy, dash dash, internal quote, a
3 statewide school district, close internal quote, to
4 accomplish the job of each local school district,"
5 close quote.

6 Do you see that?

7 A Yes.

8 Q Did that capture the substance of one of your
9 comments about the lawsuit?

10 A Yes.

11 Q And the comment about establishing a huge
12 state bureaucracy, where does that -- what did you have
13 in mind when you said that?

14 A As I understood what you were asking for, in
15 my opinion would have meant inspections, setting up an
16 organizational structure that would provide for
17 inspections of school sites and audits of various
18 perhaps data that were needed that would divert badly
19 needed resources away from the classroom into an
20 additional bureaucratic structure.

21 Q Did you have in mind any particular instances
22 where you felt that had occurred already and you were
23 thinking, "Oh, this is just like that instance"?

24 MR. VIRJEE: Objection, vague and ambiguous,
25 calls for speculation.

1 Q BY MR. JACOBS: First of all, the context you
2 will recall is that the plaintiffs sued the state and
3 state, what we call the state agency defendants, and
4 there was then a counter suit filed against 18 school
5 districts.

6 Do you recall that?

7 A Hmm-hmm. I do.

8 Q I just want a yes or no answer to this
9 question, because I don't want to get into a privilege
10 fight with your counsel.

11 Did you participate in the decision to file
12 the counter suit?

13 A No.

14 MR. VIRJEE: Especially when he says, "I don't
15 want to get into a fight with the counsel," make sure I
16 get in my objection so I can make the objection as to
17 attorney-client privilege and instruct you not to
18 answer.

19 THE WITNESS: Okay.

20 MR. VIRJEE: Okay. Thanks. Sneaky.

21 MR. JACOBS: No.

22 Q Now, there are a couple of quotes from you in
23 here, let's just take them in order, or paraphrases.

24 The first one is in the article, quote, "But
25 Kerry Mazzoni, Education Secretary to Governor Gray

1 THE WITNESS: No.

2 Q BY MR. JACOBS: Did you have in mind any
3 particular facts about the school system or school
4 systems in other states or other countries that had
5 formed that opinion?

6 A No.

7 Q Did you have in mind any vehicles by which
8 what you understood the objectives of the plaintiffs
9 were that those objectives could be accomplished
10 without the kind of additional bureaucratic layer that
11 you had in mind?

12 MR. VIRJEE: Objection, vague and ambiguous,
13 calls for speculation, lacks foundation. Incomplete
14 hypothetical.

15 THE WITNESS: My position was that local
16 school boards needed to be held accountable for the
17 condition of their schools, and local school boards
18 needed to be held accountable for the contracts in
19 which they entered into with teachers.

20 Q BY MR. JACOBS: And held accountable by whom?

21 A By their local voters.

22 Q And that was a judgment that you had in mind
23 about how the -- the way the system could best operate?

24 A That's correct.

25 Q And did you have a -- in mind any failsafe

1 mechanism if the system didn't operate that way?

2 MR. VIRJEE: Objection, vague and ambiguous as
3 to "failsafe," incomplete hypothetical, calls for
4 speculation.

5 THE WITNESS: I would need you to repeat that
6 question.

7 MR. JACOBS: Read it back.

8 THE REPORTER: And did you have in mind any
9 failsafe mechanism if the system didn't operate that
10 way?

11 THE WITNESS: I believe that we have -- we had
12 adequate structure already to ensure that the things
13 that I had been made aware of that were brought into
14 the suit could be addressed.

15 Q BY MR. JACOBS: By "structure," what do you
16 mean?

17 A Locally elected school boards, administrators,
18 superintendents, teachers unions, county Offices of
19 Education, state Department of Education, state
20 Board --

21 Q So --

22 A -- Legislature, all of the things that I had
23 said earlier in terms of that.

24 Q So let's go through some of your other
25 comments, and we will look at the issues at a lower

1 ambiguous as to "enough" or "adequate."

2 THE WITNESS: All I know is that the state has
3 provided substantial resources for the purchase of
4 instructional materials.

5 Q BY MR. JACOBS: You said here, "Some districts
6 have" -- and we will leave out facilities for a
7 minute -- "some districts have enough textbooks."

8 You said that in this interview, correct?

9 A Yes.

10 Q And you've been -- you have some direct
11 knowledge of districts, correct?

12 A That's correct.

13 Q And you know in a way from the absence of
14 complaints about this issue that in many school
15 districts textbooks are not -- textbook sufficiency is
16 not an issue, correct?

17 MR. VIRJEE: Objection, lacks foundation,
18 assumes facts not in evidence. Assumes she receives
19 complaints. Vague and ambiguous as to "enough."

20 MR. JACOBS: Actually let me just ask you.

21 Q How did you know that some districts have
22 enough textbooks?

23 A I'm a voter in a local school district, and
24 it's never been an issue from my common experience. I
25 had children that went through school. It was not an

1 level of detail.

2 The next paragraph says, quote, "Mazzoni
3 suggested that districts with too few books had
4 mismanaged their text allowances from the state, and
5 that those with filthy buildings did not need the state
6 to force them to clean them up."

7 Next paragraph. Quote, "We believe we
8 provided them with adequate resources, close quote,
9 Mazzoni said. Quote, Some districts have adequate
10 clean bathrooms and enough textbooks. If not, then
11 parents should be asking really serious questions of
12 their local school district," close quote.

13 Do you see that?

14 A Hmm-hmm.

15 Q So let's take books first.

16 A Okay.

17 Q You said in substance we've provided -- the
18 state has provided enough money for school districts to
19 purchase sufficient textbooks, correct?

20 A That's correct.

21 Q And part of your evidence for that was that
22 many, perhaps most, school districts have sufficient
23 textbooks, correct?

24 MR. VIRJEE: Objection, calls for speculation,
25 lacks foundation, incomplete hypothetical, vague and

1 issue.

2 Q And so part of your evidence for the adequacy
3 of the resource the state had provided was your
4 judgment that some districts have enough textbooks,
5 correct?

6 A No.

7 Q What was your -- what was the basis for that
8 then?

9 A I've participated as a Legislator in
10 Legislation and budget negotiations, budget votes that
11 have provided resources to the school districts around
12 this state for instructional materials.

13 Q And what was the -- on what did you base the
14 judgment that those resources were sufficient?

15 MR. VIRJEE: Objection, vague and ambiguous as
16 to "sufficient."

17 MR. JACOBS: Actually that's a great
18 objection.

19 Q What did you mean by "enough"?

20 A That we had --

21 Q I'm sorry, "enough textbooks" in the quote.

22 A In the analysis of the budget and of various
23 pieces of Legislation, Schiff-Bustamante, that there
24 would be sufficient funds to provide adequate
25 instructional materials for every student in the state.

1 Q And what do you mean by "adequate
2 instructional materials for every student in the
3 state"?

4 A Access to instructional materials that support
5 the rigorous content, content standards, and support
6 the delivery of those supporting the teaching --
7 supporting the teacher.

8 Q How was the need, the requirement in terms of
9 dollars ever assessed in those deliberations?

10 MR. VIRJEE: Objection, calls for speculation,
11 lacks foundation, also vague and ambiguous.

12 THE WITNESS: Those are determinations that
13 are made by the Department of Finance and the state
14 Board.

15 Q BY MR. JACOBS: Are you -- when you made this
16 statement, "Some districts have enough textbooks," you
17 meant that some districts have enough textbooks to
18 provide access to a rigorous curriculum to the content?

19 MR. VIRJEE: Objection, vague and ambiguous as
20 to "textbooks" and "access."

21 THE WITNESS: I meant that the state had
22 provided adequate, what I believed to be adequate
23 resources to school districts to provide for the
24 standards aligned instructional materials.

25 Q BY MR. JACOBS: And to provide on what basis,

1 this involves the deliberative process privilege.

2 You can answer otherwise.

3 THE WITNESS: I do not have knowledge of that.
4 I don't know how to answer that.

5 Q BY MR. JACOBS: Let me ask you. Do you think
6 that -- in your vision of accountability, does the
7 vision include a rigorous examination of whether the
8 state has provided adequate resources for the purchase
9 of standards aligned instructional materials?

10 MR. VIRJEE: Objection, vague and ambiguous as
11 to "vision of accountability" and "adequate" and
12 "access."

13 THE WITNESS: Part of our program is to make
14 sure that there are resources for standards aligned
15 instructional materials. That's part of the program.

16 Q BY MR. JACOBS: And how do we -- so I'm a
17 voter. What's your -- what mechanism do you propose to
18 me by which I measure your -- by "your" I mean the
19 state -- the state's performance against the metric
20 we've provided them with adequate resources?

21 MR. VIRJEE: Objection, calls for speculation,
22 lacks foundation, incomplete hypothetical.

23 THE WITNESS: I really can't assess that. I
24 can suggest what you can do with -- it's really about
25 the local level.

1 one copy per classroom? A classroom set? One copy for
2 each kid? Did you have any notion in mind on that?

3 MR. VIRJEE: Objection, incomplete
4 hypothetical, calls for speculation, lacks foundation.

5 THE WITNESS: It's not necessarily textbooks,
6 it's original sources. It's the Internet. It's
7 outside speakers. There are myriad ways to provide
8 instructional materials to a student, and one of them
9 is textbooks. But the emphasis is on standards aligned
10 instructional materials.

11 Q BY MR. JACOBS: How is that?

12 A Textbooks are a piece of that.

13 Q How is that costed out in your mind?

14 A I don't know.

15 Q What did you have in mind in terms of enough
16 then? What was your measure of sufficiency?

17 A Advice from the Department of Finance and
18 state Board of Education that that was -- that there
19 was -- there were adequate resources for that.

20 Q And the specific advice that they gave was,
21 "This is enough to provide a copy of standards aligned
22 instructional materials adopted by the state Board of
23 Education for each student in the State of California
24 for which those materials have been adopted"?

25 MR. VIRJEE: I'm going to object to the extent

1 Q BY MR. JACOBS: Okay. So that's -- your next
2 move is to say that, "Districts with too few books had
3 mismanaged their text allowances from the state."

4 Do you see that?

5 MR. VIRJEE: Objection, vague and ambiguous as
6 to "next move."

7 Michael, whenever you get a chance, I'd like
8 to take a break. We've been going about an
9 hour-and-a-half.

10 MR. JACOBS: Sure.

11 THE WITNESS: Where is that?

12 Q BY MR. JACOBS: It's right above the paragraph
13 I was asking you about.

14 A I can't say that I absolutely said that they
15 had mismanaged their text allowances.

16 I can tell you that as a voter and as a
17 parent, I would be very concerned with my local school
18 board if, in fact, the students did not have adequate
19 materials.

20 Q And if the local school board reports back to
21 an inquiring parent, "The state has not provided us
22 with adequate resources in order to make these
23 purchases," how would the parent judge the merit of
24 that contention?

25 MR. VIRJEE: Objection, calls for speculation,

1 lacks foundation.
 2 THE WITNESS: I don't know how another parent
 3 would do it.
 4 Q BY MR. JACOBS: You are a sophisticated
 5 parent. How would you do it?
 6 A I would ask my Legislator.
 7 Q And the Legislator -- go ahead.
 8 A I would check to see how the Legislator voted
 9 on the budget.
 10 Q And the Legislator reports back, "We believe
 11 we've provided them with adequate resources," as you
 12 did in this interview.
 13 MR. VIRJEE: Well, she wasn't a Legislator at
 14 this time, I don't believe.
 15 MR. JACOBS: No, she wasn't.
 16 THE WITNESS: And then I would go back to my
 17 local school board and I would ask them what they were
 18 spending their money on.
 19 MR. JACOBS: Okay. We can take a break.
 20 MR. VIRJEE: Thank you.
 21 (A break was taken.)
 22 Q BY MR. JACOBS: Back to this Chronicle
 23 article --
 24 A Okay.
 25 Q -- on the mismanagement of text allowances

1 question.
 2 Are you aware of any cases where there have
 3 been not adequate textbooks at the classroom level
 4 because contracts had mismanaged their text allowances?
 5 MR. VIRJEE: Objection, vague and ambiguous as
 6 to "adequate" and "mismanagement," calls for
 7 speculation, incomplete hypothetical.
 8 THE WITNESS: I have heard reports, but
 9 nothing that has substantiated that.
 10 Q BY MR. JACOBS: Are you aware of any
 11 examination by the state -- meaning your -- let's see.
 12 What do we mean by the state in this question.
 13 Are you aware of any examination by any entity
 14 in Sacramento or any entity under contract with
 15 Sacramento -- and by "Sacramento" I mean the state
 16 agencies and offices headquartered here -- to examine
 17 the reasons why there may be districts with too few
 18 books?
 19 MR. VIRJEE: Objection, incomplete
 20 hypothetical, calls for speculation, and vague and
 21 ambiguous as to "reasons why there may be too few
 22 books."
 23 THE WITNESS: Could you repeat that question?
 24 MR. JACOBS: Let me ask it again rather than
 25 read it back.

1 I will withdraw the previous one, because I
 2 think it had too many complexities. So start over.
 3 Q Are you aware of any studies examining the
 4 reasons why schools in the State of California may have
 5 too few books, as you use that expression in your
 6 discussion with Nanette Asimov?
 7 MR. VIRJEE: Objection, vague and ambiguous as
 8 to "too few books" and calls for speculation as to
 9 whether she used that phrase.
 10 THE WITNESS: No.
 11 Q BY MS. WELCH: Filthy buildings. Did you
 12 refer to filthy buildings in the interview?
 13 A I don't recall.
 14 Q In substance did you refer to buildings that
 15 were poorly maintained?
 16 A I don't recall.
 17 Q Do you recall any of the discussion about
 18 building conditions issues in your discussion with
 19 Nanette Asimov?
 20 A I know Nanette asked about it. At that time I
 21 had no evidence of it.
 22 Q Of the existence of such conditions?
 23 A That's correct.
 24 Q And as of today do you have knowledge of that?
 25 MR. VIRJEE: Of -- I'm sorry, the question is

1 vague and ambiguous as to does she have knowledge today
 2 of it occurring back in 2001 or today. The question is
 3 vague as to time.
 4 THE WITNESS: From 2001 to today, I have had
 5 no experience in dirty classrooms.
 6 Q BY MR. JACOBS: What about other maintenance
 7 issues that fall below your judgment as to what is
 8 appropriate in school?
 9 MR. VIRJEE: Objection, vague and ambiguous as
 10 to "appropriate in school," calls for speculation,
 11 lacks foundation.
 12 THE WITNESS: I have no firsthand evidence of
 13 what you are asking.
 14 Q BY MR. JACOBS: How about secondhand?
 15 MR. VIRJEE: Objection, calls for speculation,
 16 lacks foundation.
 17 THE WITNESS: I have no secondhand other than
 18 what I've read.
 19 Q BY MR. JACOBS: What you've read, for example,
 20 about this case? Is that one source?
 21 A And the -- yes, you know, what you are
 22 presenting to us in this case.
 23 Q And the -- and occasional press accounts of
 24 terrible building conditions?
 25 MR. VIRJEE: You are asking if she's seen

1 those?

2 MR. JACOBS: Yes.

3 THE WITNESS: I have seen press accounts of
4 them.

5 Q BY MR. JACOBS: You are aware of bathroom
6 issues, because that is the filthy bathrooms from the
7 whole current Legislative debate about how to address
8 the bathrooms issue, right?

9 MR. VIRJEE: Objection, vague and ambiguous as
10 to "filthy bathrooms."

11 THE WITNESS: I know the Legislature has
12 passed a bill that would -- actually passed two bills
13 that would address issues of bathroom maintenance and
14 cleanliness.

15 Q BY MR. JACOBS: Whether or not you agree with
16 the Legislative direction in terms of addressing that
17 issue, do you have an understanding that it is a
18 significant issue in the state?

19 MR. VIRJEE: Objection, vague and ambiguous as
20 to "significant," and calls for speculation.

21 THE WITNESS: I don't know if it's
22 significant.

23 Q BY MR. JACOBS: In the -- on the next page
24 there's a reference to "the state aggressively
25 addressing the problem of poorly prepared teachers."

1 Q And it is known as?

2 A AB 466.

3 MR. VIRJEE: Besides AB 466.

4 THE WITNESS: AB 466 training.

5 Q BY MR. JACOBS: And the -- and that program is
6 implemented in -- or administered out of which office?

7 MR. VIRJEE: Objection, vague and ambiguous
8 and calls for speculation.

9 MS. READ-SPANGLER: Assumes facts not in
10 evidence.

11 THE WITNESS: It is administered in a variety
12 of ways.

13 Q BY MR. JACOBS: What are those ways?

14 A There are providers of the professional
15 development that are approved by the state Board of
16 Education.

17 Q And the state Board of Education makes
18 categorical funds available for districts to send
19 teachers to that training program?

20 MR. VIRJEE: Objection, vague and ambiguous as
21 to the state Board providing funds.

22 THE WITNESS: There are resources provided in
23 the budget to support the AB 466 trainings.

24 Q BY MR. JACOBS: And what -- are those
25 resources categorical resources?

1 Do you see that?

2 A Hmm-hmm.

3 Q At that time was the program you referred to
4 earlier which you said that you've made available --
5 the state has made available to every teacher in the
6 state training in content standards and teaching to the
7 content standards, was that one of the programs you had
8 in mind then?

9 A At that time there -- we had the first stages
10 of our standards aligned professional development in
11 reading. And it was for the primary grades.

12 Q Today that program encompasses what?

13 A It encompasses standards aligned professional
14 development and English language arts -- previously I
15 meant English language arts, not just reading --
16 English language arts and mathematics for all teachers
17 K-12, including any teacher that remotely addresses
18 English language arts or mathematics, which would
19 include history, social science, science. So
20 essentially almost every teacher in the state will have
21 access to standards aligned professional development
22 sponsored by the state.

23 Q Is there a single program that you are
24 referring to or several different programs?

25 A This is a program establish through AB 466.

1 A Technically, yes.

2 Q Why do you say "technically"?

3 A I'm not sure whether they fall within the --
4 well, excuse -- they are. I'm not an expert on block
5 grant and some of the budgetary components.

6 Q But this --

7 A It is money specific for that. So in that
8 respect it is a categorical program.

9 Q And maybe the reason you mentioned that is
10 there was some recent effort to try and consolidate
11 some of the categoricals into a block grant; is that
12 correct?

13 A That's correct.

14 Q As far as you know this one maintained its
15 categorical status?

16 A This one maintained, yes.

17 Q And the level of the amount that is available
18 to districts, is that on a per student basis?

19 MR. VIRJEE: Objection, calls for speculation,
20 lacks foundation.

21 THE WITNESS: As I understand it it's on a per
22 pupil -- I mean per teacher basis.

23 Q BY MR. JACOBS: Has there been any evaluation
24 of the effectiveness of AB 466 training that you are
25 aware of?

1 MR. VIRJEE: Objection, vague and ambiguous as
2 to "effectiveness," also assumes facts not in evidence.

3 THE WITNESS: I don't know if there's been an
4 analysis to date.

5 Q BY MR. JACOBS: Do you know if there's one
6 contemplated, if there's one in the cube?

7 A I can't recall. It would be in the bill.

8 Q In the -- in the Chronicle piece it says,
9 quote, but not directly quoting you, "Mazzoni blamed
10 labor contracts for the disproportionate hit on needy
11 kids, saying the most senior experienced teachers
12 generally chose to work in the best schools."

13 Do you see that?

14 A Yes.

15 Q Did that capture the substance of one of your
16 comments?

17 A I did not specifically blame. I suggested
18 that contractual relationships certainly played a role
19 in the outcome of class size reduction that resulted in
20 higher numbers of not fully credentialed teachers in
21 inner city schools.

22 Q And the article goes on to quote, to purport
23 to quote you, "That's an issue, close quote, Mazzoni
24 said, quote, public pressure in the State Legislature,
25 close quote, should be mobilized to address the labor

1 conditional --

2 A That my understanding of labor contracts
3 provide most senior teachers with the first option to
4 transfer. And there had been some indication in the
5 early reports as to the results of class size reduction
6 that there had been flight of credentialed teachers
7 from the inner city to more affluent schools or the
8 suburbs.

9 Q As you sit here today, do you have any
10 information that reinforces that indication or that
11 takes away from that indication?

12 MR. VIRJEE: Objection, compound.

13 THE WITNESS: Basing my assumption on the
14 reports from class size reduction, class size reduction
15 evaluation, that that is no longer a big problem.

16 Q BY MR. JACOBS: And which piece of it is no
17 longer a big problem?

18 A The flight.

19 Q And what are you referring to in terms of the
20 evaluation of class size reduction leading to that
21 conclusion?

22 A I'm not sure what you mean.

23 Q What are you basing that on --

24 A I'm still not --

25 Q -- that that's no longer a problem? You

1 problem, not the Court, she said."

2 Do you see that?

3 A I see that.

4 Q Does that accurately capture your words and
5 your substance?

6 MR. VIRJEE: Objection, vague and ambiguous as
7 to "your words."

8 Are you asking about the quoted portions --

9 MR. JACOBS: Yes.

10 MR. VIRJEE: -- or the nonquoted portion --

11 MR. JACOBS: I'm asking --

12 MR. VIRJEE: Or both?

13 MR. JACOBS: As to the words I'm asking about
14 the quoted portions. And as to the paraphrasing I'm
15 asking about substance.

16 THE WITNESS: I can't say that that is a
17 direct response to the previous suggestion that
18 contractual relationships played a role.

19 Q BY MR. JACOBS: What -- did you, in substance,
20 convey to the reporter that there is a problem with
21 labor contracts and that it should be addressed through
22 the political process?

23 A I did not suggest that there was a problem. I
24 suggested that there could be a problem with that.

25 Q What was the -- what led you to say it in a

1 referred to some evaluation of class size reduction.
2 More specifically what did you mean?

3 A There's been several interim -- at least two
4 interim evaluations of class size reduction, as well as
5 a final evaluation of class size reduction.

6 In the final evaluation of class size
7 reduction, as I recall, the issue of credentialed
8 teachers fleeing inner city schools or those schools
9 with the children with the greatest need has
10 diminished.

11 Q And is that because the flight occurred and
12 then the slots were filled, or are you referring to
13 something more -- something else?

14 MR. VIRJEE: Objection, compound, also calls
15 for speculation, and lacks foundation, calls for an
16 expert opinion.

17 THE WITNESS: The evaluators, as I recall,
18 indicated that that issue was less frequent in the
19 evaluation. And I have no, no information as to
20 exactly why.

21 Q BY MR. JACOBS: And just to make sure we are
22 connecting on this. Is the issue that's less frequent
23 the actual phenomenon of flight or the resulting fact
24 that there would be less experienced teachers in the
25 inner city schools?

1 MR. VIRJEE: Objection, compound. Also to the
2 extent you are asking what the written evaluation says,
3 the document speaks for itself.

4 THE WITNESS: I'm speaking just of the flight
5 issue.

6 Q BY MR. JACOBS: So if I were asking you today,
7 what's your understanding of the impact of class size
8 reduction on disparate accessibility to experienced
9 teachers?

10 MR. VIRJEE: Objection, vague and ambiguous as
11 to "accessibility" and "experienced teachers."

12 THE WITNESS: You are asking today?

13 Q BY MR. JACOBS: Yes.

14 A The data that I have seen relative to the
15 numbers of not fully credentialed teachers shows that
16 we are improving, that we are seeing a decline in the
17 numbers of not fully credentialed teachers.

18 Q How about in the concentration of not fully
19 credentialed teachers in inner city schools, is that
20 changing?

21 MR. VIRJEE: Same objection, calls for
22 speculation, incomplete hypothetical.

23 THE WITNESS: I can't say.

24 Q BY MR. JACOBS: In terms of the significance
25 of the labor contract contribution to this issue, has

1 remember if it was before -- I think it was -- may have
2 been right around the same time.

3 That bill never -- I don't think that bill
4 ever made it to the Governor's desk.

5 Q Did the Executive Branch of the state
6 government take -- voice a position on that
7 Legislation?

8 MR. VIRJEE: Objection, calls for speculation,
9 lacks foundation.

10 THE WITNESS: That would also be privileged,
11 wouldn't it?

12 MR. VIRJEE: It would be -- thank you. It
13 would be.

14 You are asking about the deliberative process
15 privilege. If there was a formal position taken
16 externally by the Governor's office, then he's entitled
17 to know that.

18 THE WITNESS: No, there was not a position
19 taken.

20 MR. VIRJEE: Thank you.

21 MR. JACOBS: Switch places.

22 Off the record.

23 (Off the record.)

24 MR. JACOBS: Now my favorite quote in the
25 whole case.

1 anything changed since you gave this interview as to,
2 as to how the state Legislature addresses the labor
3 contract question?

4 MR. VIRJEE: Objection, calls for speculation,
5 lacks foundation.

6 THE WITNESS: Since this interview.

7 Q BY MR. JACOBS: I'm just -- I didn't mean to
8 guide you away from why I was asking you.

9 You are reported as having said, "Public
10 pressure in the state Legislature should be mobilized
11 to address the labor contract problem."

12 So the reason for my question is, did anything
13 happen in the state Legislature since you gave this
14 interview that's relevant to that?

15 MR. VIRJEE: I'm going to object. She's
16 already told you she's not sure that that quote even
17 referenced the labor contract issue.

18 THE WITNESS: I would repeat that. I'm not
19 sure that was in direct reference to labor contract.

20 I believe Senator Alarcon carried a bill that
21 was designed to look at the assignment of teachers
22 across a school district.

23 Q BY MR. JACOBS: What's your understanding of
24 the status of that bill?

25 A That was several years ago, and I can't

1 MS. READ-SPANGLER: The whole case.

2 MR. JACOBS: This has been bouncing around in
3 my brain ever since I read this article.

4 Q According to Nanette Asimov you said, quote,
5 "We have some serious adult accountability issues in
6 the state," close quote, in reference to too few books
7 and filthy buildings.

8 A Where is that?

9 Q Next paragraph.

10 A Okay.

11 And your question?

12 Q Did you say that?

13 A I don't recall if that's exactly what I said.

14 MR. VIRJEE: You are asking -- by "did you say
15 that," did she say the language in the quotes?

16 MR. JACOBS: Let's start with that.

17 THE WITNESS: I don't recall if that's exactly
18 what I said.

19 Q BY MR. JACOBS: You don't recall not saying
20 it?

21 A I don't recall not saying it.

22 Q You don't take issue with the quote?

23 A No.

24 Q And do you recall making a comment along those
25 lines with reference to the issues of too few books and

1 filthy buildings?

2 MR. VIRJEE: Objection, vague and ambiguous as
3 to "too few books and filthy buildings." Also calls
4 for speculation.

5 THE WITNESS: I cannot say that that quote or
6 the substance of that quote was in direct reference to
7 filthy buildings and textbooks.

8 Q BY MR. JACOBS: You don't deny it either?

9 MR. VIRJEE: Objection, calls for speculation,
10 lacks foundation.

11 THE WITNESS: I actually would say that it was
12 more comprehensive than that. It was not specific.

13 Q BY MR. JACOBS: When you were giving the
14 interview and you made a comment that you think was
15 more comprehensive than that, what did you have in mind
16 in terms of -- what were you trying to convey in your
17 own mind?

18 MR. VIRJEE: Objection, vague and ambiguous as
19 to what she was trying to convey in her own mind.

20 MS. READ-SPANGLER: Calls for speculation
21 since she's already said she doesn't remember saying
22 this.

23 THE WITNESS: The issue really is about low
24 expectations in terms of student achievement for some
25 groups of children and why adults would participate in

1 are children who are in the greatest need.

2 Q BY MR. JACOBS: And, therefore --

3 A Quality administration is an issue.

4 Q And disparate standards?

5 Your point -- wasn't the point you were making
6 here when you said that parents should be asking really
7 serious questions of their local school district on the
8 bottom of page 1 that you want parents to have high
9 expectations and demand performance from their school
10 districts on issues like bathrooms, textbooks,
11 facilities?

12 A What I want is I want parents to demand
13 quality rigorous educational opportunities for all
14 students.

15 Q Including those as components?

16 MR. VIRJEE: Including what as components?

17 MR. JACOBS: What I referenced.

18 MR. VIRJEE: Objection, vague and ambiguous as
19 to what you referenced.

20 THE WITNESS: Which would be? You would need
21 to tell me that.

22 Q BY MR. JACOBS: Adequate clean bathrooms and
23 enough textbooks.

24 MR. VIRJEE: Objection, vague and ambiguous as
25 to "adequate" and "enough."

1 that.

2 Q BY MR. JACOBS: What do you mean by -- what do
3 you mean by that being the issue?

4 A I refer back to my earlier comments that I
5 made of a two-tiered system in which there have been
6 low expectations for large groups of children. Low
7 academic expectations.

8 Q Isn't it also the case that you have in mind
9 low expectations as to the quality of school
10 administration in inner city school districts?

11 MR. VIRJEE: Objection, vague and ambiguous as
12 to "quality" and "expectations."

13 THE WITNESS: Certainly administration and
14 leadership is key to student achievement.

15 Q BY MR. JACOBS: And is it not -- isn't it your
16 view that part of this having two standards for student
17 achievement also has -- which you characterize adults
18 as having tolerated also has adults tolerating two
19 standards of the quality of school administration?

20 MR. VIRJEE: Objection, vague and ambiguous as
21 to "quality of school administration," incomplete
22 hypothetical.

23 MS. READ-SPANGLER: Misstates her testimony.

24 THE WITNESS: Quality administration or the
25 lack of it is not limited to the schools where there

1 THE WITNESS: It all depends. Enough
2 textbooks is extremely limiting for -- if you are
3 thinking about access to rigor.

4 Q BY MR. JACOBS: Let me direct your attention
5 to the bottom paragraph of page 1.

6 You -- did you not say, "if not, then parents
7 should be asking really serious questions of their
8 local school districts"?

9 MR. VIRJEE: Objection, asked and answered.

10 THE WITNESS: If there are not, parents should
11 ask the questions.

12 Q BY MR. JACOBS: If -- and to generalize
13 slightly from the words here, you meant if the
14 districts are not providing decent facilities as
15 measured by high parental expectations and high quality
16 instructional materials, again as measured by high
17 parental expectations, you want the parents to be
18 knocking at the door of the school district and saying
19 "provide these," correct?

20 MR. VIRJEE: Objection, misstates her
21 testimony, and also asked and answered. She hasn't
22 said anything that's related to facilities and
23 instructional materials.

24 THE WITNESS: I'm confused by your question.

25 Q BY MR. JACOBS: You could have said, "Some

1 districts have adequate clean bathrooms and enough
2 textbooks. If your district doesn't, life is tough,
3 get over it." But you didn't, right? You said, "Some
4 districts have adequate clean bathrooms and enough
5 textbooks. If not, then parents should be asking
6 really serious questions of their local school
7 districts."

8 MR. VIRJEE: Objection, assumes facts not in
9 evidence as to what she could have said.
10 Argumentative.

11 MR. JACOBS: I haven't asked my question yet.

12 Q Do you see that?

13 MR. VIRJEE: You asked her could she have said
14 that. That's what you asked her.

15 He's not asking you a question, so you don't
16 have anything to answer.

17 Q BY MR. JACOBS: I asked you, did you see that?

18 MR. VIRJEE: So you did ask a question, and
19 the question -- it is a --

20 MR. JACOBS: Calm down, Fram.

21 MR. VIRJEE: The question is a compound. The
22 question and is vague and ambiguous.

23 THE WITNESS: So you want to try again?

24 Q BY MR. JACOBS: Was it not your intent with
25 this language to say to parents, "You should have high

1 legitimate reason for not having a textbook.

2 Q BY MR. JACOBS: And this relates back to your
3 vision of accountability, correct?

4 A Part of my vision.

5 Q That is that at the -- that the parents will
6 hold the school officials at whatever level accountable
7 for what goes on in the classroom.

8 A Yes.

9 Q And that that's going to happen at the local
10 level?

11 A That should happen at the local level. That
12 should begin at the local level.

13 Q That's based in part on your personal
14 experience in a school district about the way
15 governance worked in that school district, correct?

16 MR. VIRJEE: Objection, asked and answered.

17 THE WITNESS: That's correct.

18 Q BY MR. JACOBS: And that district was -- you
19 were active in the Novato School District?

20 A I serve on the school board there.

21 Q Would you characterize that using the words
22 you used before as a suburban school district?

23 A Yes.

24 Q And the model worked in your judgment
25 effectively in Novato in terms of the degree to which

1 expectations, not only for the quality of the
2 instructional program in some sense, but for how that
3 program is delivered in terms of facilities and
4 instructional materials"?

5 MR. VIRJEE: Objection, asked and answered.

6 THE WITNESS: I don't know what else I could
7 say besides what's here.

8 Q BY MR. JACOBS: You don't know what else you
9 could say about what you were trying to convey to
10 parents?

11 A Yes.

12 Q So as you sit here today looking at this
13 quote -- I will just ask you directly -- what were you
14 trying to convey to parents?

15 MR. VIRJEE: Objection, asked and answered.
16 Also misstates her testimony as to whether this is a
17 verbatim quote of what she said.

18 THE WITNESS: If the bathrooms do not meet the
19 standard that a parent would expect, then the parents
20 should go to the leadership at that school and ask them
21 what's going on.

22 If there is an expectation that a child -- by
23 the parent that the child have a textbook, the parent
24 should go to that teacher and say, "Why does my child
25 not have a textbook?" The teacher may have a very

1 parents held school boards and school officials
2 accountable?

3 A Yes.

4 Q And do you have any -- and you believe you can
5 extrapolate from your experience in Novato to other
6 school districts, correct?

7 A In terms of principle, yes.

8 Q Do you have any concerns about whether that
9 model is applicable to a large urban school district
10 such as Los Angeles Unified or Oakland or San Francisco
11 Unified School District?

12 MR. VIRJEE: Objection, calls for speculation,
13 lacks foundation.

14 THE WITNESS: I support the model.

15 Q BY MR. JACOBS: That sounded like a statement
16 of your position rather than a statement of your views.

17 MR. VIRJEE: There's no question pending. I
18 would like your commentary.

19 Q BY MR. JACOBS: Do you have any concerns about
20 the applicability of that model to large urban school
21 districts such as the ones I mentioned?

22 MR. VIRJEE: Calls for speculation, lacks
23 foundation, incomplete hypothetical.

24 THE WITNESS: I believe we have a system in
25 place that provides for locally elected school boards

1 that need to be held accountable by those people that
2 elect them.

3 Q BY MR. JACOBS: Is it in your judgment an
4 empirical question whether the model, in fact, works;
5 that is, is it something that one can test and make
6 judgments from?

7 MR. VIRJEE: Objection, calls for speculation,
8 calls for an expert opinion.

9 THE WITNESS: I don't know.

10 Q BY MR. JACOBS: And you haven't in any -- you
11 haven't thought through how one would assess whether
12 that model works, would you?

13 MR. VIRJEE: I think your question is vague
14 and ambiguous, only because you added the "would you"
15 at the end, when you say "you haven't" and "would you."

16 MR. JACOBS: That was terrible if I did that.
17 So let me do it again.

18 Q I asked you whether this is something that you
19 can assess empirically, and you said you don't know.

20 And my question is, have you given that
21 question any thought; that is, how you would assess the
22 effectiveness of the model that you support?

23 MR. VIRJEE: Objection, vague and ambiguous as
24 to "effectiveness" and in what context. Overbroad.

25 THE WITNESS: Ultimately what we are about is

1 invade the deliberative process privilege and is also
2 vague and ambiguous.

3 THE WITNESS: Am I supposed to answer this?

4 MR. VIRJEE: Only if you can without
5 revealing --

6 THE WITNESS: No.

7 MR. VIRJEE: -- the deliberative process
8 privilege.

9 MR. JACOBS: Let's mark as 315 a "Q&A with
10 Kerry Mazzoni, the Newly Appointed Secretary For
11 Education Looks Ahead" downloaded from the CSBA
12 website, www.csba.org.

13 (Plaintiffs' Exhibit

14 No. 315 was marked for
15 identification.)

16 MR. JACOBS: It has a copyright notice at the
17 end of it of 2003, but I'm not sure -- I don't mean to
18 insist that that's when it occurred.

19 Q My first question to you is, do you recall
20 this interview and when it occurred?

21 But why don't you look it over in the
22 meantime.

23 A (Witness reviewing document.)

24 Your question was?

25 Q When did this occur?

1 student achievement. And that is the end measure.

2 Q BY MR. JACOBS: So you can tell whether the
3 model is working by whether student achievement
4 improves, correct?

5 A Correct.

6 Q In part.

7 A Yeah.

8 Q And you can tell --

9 A That's the goal of the system is to support
10 student achievement at the highest level.

11 Q So I'm not sure I tied up this tent flap.
12 When you refer to the Alarcon Legislation, is
13 there anything else that has changed at the state
14 Legislative level in terms of the administration of
15 labor contracts that addresses the question of senior
16 experienced teachers choosing to work in the best
17 schools?

18 MR. VIRJEE: Objection, calls for speculation,
19 lacks foundation.

20 THE WITNESS: Not that I'm aware of.

21 Q BY MR. JACOBS: Are you aware of any
22 initiatives the Governor has launched, whether or not
23 they've been successful, to try to persuade the
24 Legislature to address that question?

25 MR. VIRJEE: Object to the extent that would

1 MR. VIRJEE: I don't want you to guess or
2 speculate, but he's entitled to your best estimate.

3 THE WITNESS: I think sometime last year. I
4 think it was in maybe last spring. I'm not quite sure.

5 Q BY MR. JACOBS: Last spring meaning 2002 as
6 opposed to spring 2003?

7 A Maybe spring 2003. I'm interviewed so many
8 times, I can't recall. I remember her sitting in my
9 office, but I can't exactly recall when it was. I
10 don't know.

11 Q I want to focus you on the second Q&A about
12 the high school exit exam.

13 A Hmm-hmm.

14 Q And you said, according to the interviewer,
15 "We also need to make sure that children have had an
16 opportunity to learn what we are expecting them to know
17 on the exit exam."

18 You see that?

19 A Hmm-hmm.

20 Q Does that accurately reflect the substance of
21 your comment in that interview?

22 A I would say, yes.

23 Q And what's the -- as you sit here today,
24 what's your understanding of the mechanism -- first of
25 all, is your judgment that the state is making sure

1 that children have an opportunity to learn what we are
 2 expecting them to know on the exit exam?
 3 MR. VIRJEE: Objection, vague and ambiguous as
 4 to "opportunity to learn."
 5 THE WITNESS: The state has embarked upon a
 6 number of programs that would support access to the
 7 rigor of our content standards for all students.
 8 Q BY MR. JACOBS: And that's -- so on the last
 9 piece of that is what you meant by "opportunity to
 10 learn," what we are expecting them to know on the exit
 11 exam, that is access to a rigorous content?
 12 A That's correct.
 13 Q And the support structure is what corresponds
 14 to "we also need to make sure" --
 15 MR. VIRJEE: Objection, vague and ambiguous.
 16 THE WITNESS: What I mean is that I want all
 17 children to have access to the rigor of the content
 18 standards.
 19 Q BY MR. JACOBS: What did you mean by "we" in
 20 that sentence?
 21 A We as an administration.
 22 Q At the -- meaning the state administration?
 23 A Meaning the Governor, the state Board, the
 24 Superintendent of Public Instruction. We need to put
 25 into place those programs that will best ensure that

1 all students have access to the rigor.
 2 Q And do you have a vision of how that -- well,
 3 we just went through an exercise where an attempt was
 4 made to assess whether that condition was met, correct?
 5 MR. VIRJEE: Objection, if that's --
 6 MR. JACOBS: Let me start over.
 7 Q We just went through a process at the state
 8 level to assess the question whether it was appropriate
 9 to make effective the high school exit exam.
 10 MR. VIRJEE: And you are asking "we just went
 11 through," Michael, are you asking we just went through
 12 in her testimony, the state just went through --
 13 MR. JACOBS: The state --
 14 MS. READ-SPANGLER: Are you referring to the
 15 HumRRO report? You could probably just refer to that.
 16 Q BY MR. JACOBS: What was your understanding of
 17 the purpose of the HumRRO report?
 18 A My understanding of the purpose of the HumRRO
 19 report was to provide an assessment as to how well the
 20 state was moving towards that goal of access to the
 21 rigor curriculum, as well as whether or not the test,
 22 the exit exam was valid. I think there's another term,
 23 but I don't recall right now.
 24 Q Were you satisfied with the methodology of the
 25 HumRRO report on the first question; the question of

1 access?
 2 MR. VIRJEE: Objection, calls for speculation,
 3 lacks foundation, also calls for an expert opinion.
 4 THE WITNESS: I can't comment on the
 5 methodology.
 6 Q BY MR. JACOBS: You didn't form a judgment as
 7 to whether that was a workable approach to answering
 8 the question of access?
 9 MR. VIRJEE: Objection, vague and ambiguous as
 10 to "workable approach." Also calls for an expert
 11 opinion.
 12 THE WITNESS: I have no expertise in
 13 evaluating that.
 14 Q BY MR. JACOBS: And what's your understanding
 15 of the -- of what will happen next when this issue
 16 comes up again of whether the HSEE should be made
 17 effective in terms of assessing the access question?
 18 MR. VIRJEE: Objection, vague and ambiguous as
 19 to "what will happen next." In what forum? Overbroad,
 20 nonsensical.
 21 THE WITNESS: The state Board was provided one
 22 opportunity to postpone the exit exam, and they have
 23 exercised that.
 24 Q BY MR. JACOBS: By Legislation?
 25 A That's correct.

1 Q And so if nothing changes Legislatively, your
 2 understanding is what?
 3 A If nothing changes Legislatively, the
 4 consequences for the exit exam will be applied to the
 5 class of 2006.
 6 Q Are you aware of any process that's been
 7 developed to determine whether the question whether
 8 children have had an opportunity to learn what we are
 9 expecting them to know on the exit exam has been
 10 improved, whether that situation has been improved?
 11 MR. VIRJEE: Objection, vague and ambiguous.
 12 THE WITNESS: According to the HumRRO report,
 13 as I recall it, there has been improved access to the
 14 content standards over time.
 15 Q BY MR. JACOBS: I guess my specific question
 16 is, do you -- are you aware of any plan to do an update
 17 to the HumRRO report or some other study of a similar
 18 nature?
 19 A I don't recall. I don't recall what the Board
 20 action was on that.
 21 Q One of the things the HumRRO report did was
 22 look across the school system in California and assess
 23 the degree to which there was access to the rigorous
 24 content, correct?
 25 A Yes.

1 Q And are you aware of whether there's been any
2 focused examination on whether school children in inner
3 city schools have had access to the -- to what we are
4 expecting them the know on the exit exam?

5 MR. VIRJEE: Objection, vague and ambiguous as
6 to "action," calls for speculation, incomplete
7 hypothetical.

8 THE WITNESS: What I know would be contained
9 in the HumRRO report, as well as just add the recent
10 SAT with greater participation of those groups of
11 children in AP courses.

12 Q BY MR. JACOBS: The greater participation of
13 inner city or urban school kids?

14 A The subgroup -- English learners, African
15 Americans, et. cetera. All the sub groups.

16 Q Sub groups defined by the PSAA? Public School
17 Accountability Act.

18 A You know more than I.

19 I'm not certain all of the sub groups are the
20 same with the SAT, but that was another indicator.

21 Q You see on the HSEE paragraph that I was
22 referred to, you said, "We need to make sure the test
23 is a valid test."

24 A Hmm-hmm.

25 Q "And that it reflects what we believe are the

1 added, quote, I'm not surprised because I have been in
2 public education for a long enough time to know that we
3 have serious problems and conditions that are not
4 acceptable," close quote.

5 So take a look at the article, and then I will
6 ask you questions about that.

7 THE WITNESS: (Witness reviewing document.)

8 Q My question to you is, does the paragraph I
9 read to you capture the substance of what you said to
10 Susan Pardington, the reporter on the story?

11 MR. VIRJEE: Did you read a paragraph? I'm
12 sorry, you just pointed to the paragraph.

13 Okay. Thank you. Starting with "It's
14 legitimate"?

15 MR. JACOBS: Yes.

16 MR. VIRJEE: Thanks.

17 THE WITNESS: I don't recall saying that
18 specifically.

19 Q BY MR. JACOBS: Do you recall the substance of
20 what you conveyed?

21 A It is probably the substance of my comments.

22 Q And what were you referring to in substance
23 when you referred to "serious problems and conditions
24 that are not acceptable"?

25 A The lack of access to rigor, the lack of

1 important skills necessary for graduation."

2 You see that?

3 A Hmm-hmm.

4 Q One way of testing that is whether -- one way
5 of measuring whether it's valid and measures important
6 skills is the degree to which it's aligned with the
7 content standards?

8 MR. VIRJEE: Objection, calls for speculation,
9 calls for expert opinion, incomplete hypothetical.

10 THE WITNESS: I am not a psychometrician. I
11 don't know how -- I don't know how validity is arrived
12 at. I do know that it's important that it be valid.

13 MR. JACOBS: Let's spend a little more time on
14 the HSEE. Mark as 316, the next in order.

15 (Plaintiffs' Exhibit

16 No. 316 was marked for
17 identification.)

18 MR. JACOBS: This is an article from the
19 Contra Costa Times, July 13, 2003. "Headline: High
20 school exit exam delay doesn't end suits, controversy."
21 Again it's a Lexis printout of the article.

22 Q Let me focus you on what I'm going to ask you
23 about, but you can look at the whole thing.

24 On the second page it states, "It's legitimate
25 to be surprised at the scores, Mazzoni said, but she

1 commitment by some schools, teachers, to holding a high
2 standard for all students.

3 Q Did you have anything else in mind?

4 A No. That is my issue.

5 Q You said -- the article has you saying in
6 substance, but not in quotes, "The state has started to
7 improve the schools, but it takes a while to overcome
8 the deficits, she added."

9 Does that capture the substance of what you
10 said on this?

11 A Yes. Probably.

12 Q And by "deficits," what did you mean?

13 A I would not have used the term "deficits."

14 But that you do not turn around a system of over six
15 million children where there has been a historic
16 culture to underserve large groups of children
17 overnight.

18 Q On the first page --

19 THE WITNESS: Can I take a bathroom break?

20 (A break was taken.)

21 Q BY MR. JACOBS: On the front page of the
22 exhibit it states, "Kerry Mazzoni, the Governor's top
23 education aide, said students will be better prepared
24 two years from now because they will have more time to
25 benefit from curriculum and textbooks that are aligned

1 with the state standards. If the state waits until all
2 schools are ready to impose the test, who would
3 determine when they are ready, she asked."

4 A Hmm-hmm.

5 Q Does that capture the substance of your
6 comments on that issue to the reporter?

7 A I don't specifically recall, but I would say
8 yes.

9 Q My question is, does the -- are you aware of
10 any issue -- it's a slightly different version of a
11 question I asked before.

12 Are you aware of any initiative to assess
13 whether the supports that you referred to, in fact,
14 result in greater access to the rigorous curriculum?

15 MR. VIRJEE: Objection, asked and answered.

16 THE WITNESS: That is under the purview of the
17 state Board in terms of asking HumRRO to come back. If
18 that's what the question...

19 Q BY MR. JACOBS: Are you aware of any measure
20 like that, like asking HumRRO to come back or
21 developing new metrics of whether, in fact, the
22 curriculum -- the rigorous curriculum has been made
23 available to students?

24 MR. VIRJEE: Objection, asked and answered.
25 Also calls for speculation, lacks foundation.

1 extent that it would invade that.

2 THE WITNESS: Okay.

3 I won't answer.

4 Q BY MR. JACOBS: So just to understand why you
5 are not answering, the only understanding you have is
6 an understanding developed from internal conversations
7 within the -- within the Governor's office on that
8 question?

9 MR. VIRJEE: Objection, vague and ambiguous as
10 to "Governor's office."

11 And I will instruct you not to answer to the
12 extent it would invade the deliberative process
13 privilege.

14 THE WITNESS: Impart of the Governor's office,
15 and I cannot answer the question.

16 MR. JACOBS: So just ask it slightly
17 differently.

18 Q You are not aware of any communication between
19 the Governor's office and the state Board of Education
20 on what position to take on AB -- SB 495?

21 MS. READ-SPANGLER: Objection. Even if she
22 were aware of that, that would still be covered by the
23 deliberative process and the official information
24 privilege. So we'd still instruct her not to answer
25 that one.

1 THE WITNESS: I could only speculate.

2 Q BY MR. JACOBS: Are you aware of AB 495, the
3 Legislation creating an opportunity to learn index?

4 A That is AB 495?

5 MR. HAJELA: SB.

6 MR. JACOBS: Thank you.

7 Q SB 495?

8 A By Senator Vasconcellos?

9 Q I believe so.

10 A Yes.

11 Q Has the Executive Branch of government taken a
12 position that has been communicated outside the
13 Executive Branch?

14 A No.

15 Q Let me ask this, and wait -- you can let Mr.
16 Virjee do what he will do.

17 THE WITNESS: I won't jump in.

18 MS. READ-SPANGLER: There will be a privilege
19 objection.

20 Q BY MR. JACOBS: Do you have an understanding
21 of what position any Executive Branch of the state
22 government will be taking on SB 495?

23 MR. VIRJEE: Objection, invades the
24 deliberative process privilege.

25 And I will instruct you not to answer to the

1 Q BY MR. JACOBS: And you are not aware of any
2 communications between the Governor's office and
3 Senator Vasconcellos on the Governor's position on SB
4 495?

5 A The Governor has no position on SB 495.

6 Q And, therefore, there have been no
7 communications with Senator Vasconcellos on what the
8 Governor will do on that particular issue?

9 MS. READ-SPANGLER: Objection, calls for
10 speculation.

11 THE WITNESS: It would just be speculative,
12 because numerous people speak to Senator Vasconcellos
13 on numerous issues.

14 Q BY MR. JACOBS: But you are not aware of any
15 specific communication with him as to, "This is what
16 the Governor plans to do on 495"?

17 A That's correct.

18 Q Do you have a view on whether SB 495 is good
19 policy?

20 MR. VIRJEE: I will instruct you not to answer
21 to the extent it will invade the deliberative process
22 privilege.

23 THE WITNESS: I'm not going to answer.

24 Q BY MR. JACOBS: Do you have a view on whether
25 gathering data about what happens at the classroom

1 level in terms of access to the curriculum is or is not
 2 good policy?
 3 MR. VIRJEE: Objection, vague and ambiguous as
 4 to "gathering data," and "access to the curriculum."
 5 Also assumes facts not in evidence. Assumes that's not
 6 already being done.
 7 THE WITNESS: I don't understand the question
 8 either.
 9 Q BY MR. JACOBS: What part of it was hard to
 10 understand in your mind?
 11 A Maybe if you could just repeat it.
 12 MR. JACOBS: Why don't you read it back.
 13 THE REPORTER: Do you have a view on whether
 14 gathering data about what happens at the classroom
 15 level in terms of access to the curriculum is or is not
 16 good policy?
 17 MR. VIRJEE: Objection, vague and ambiguous as
 18 to "access to the curriculum," assumes facts not in
 19 evidence, assumes it's not already being done.
 20 THE WITNESS: We already gather data in terms
 21 of test scores, and that is an indicator of access to
 22 the rigor.
 23 Q BY MR. JACOBS: And do you have a view as to
 24 whether gathering other data besides test scores is or
 25 is not good policy?

1 MR. VIRJEE: Objection, vague and ambiguous as
 2 to "good policy," incomplete hypothetical, calls for
 3 speculation.
 4 THE WITNESS: Would you repeat the question?
 5 THE REPORTER: And do you have a view as to
 6 whether gathering other data besides test scores is or
 7 is not good policy?
 8 MR. VIRJEE: Objection, vague and ambiguous as
 9 to "other data."
 10 THE WITNESS: I don't know what you mean by
 11 "other data."
 12 Currently the state gathers information
 13 relative to student achievement on our statewide test
 14 on the exit exam and are provided information as to how
 15 our students do on college entrance examinations and
 16 placement examinations.
 17 Q BY MR. JACOBS: You -- do you have an
 18 understanding one of the things plaintiffs urge in this
 19 lawsuit is that the state gather data about the
 20 availability to all students of textbooks that are
 21 aligned with the state standards?
 22 MR. VIRJEE: Instruct you not to answer to the
 23 extent it would invade the attorney-client privilege.
 24 If you have some independent understanding of what the
 25 plaintiffs are alleging, you can answer.

1 Calls for speculation and lacks foundation.
 2 THE WITNESS: I really don't know how to
 3 respond.
 4 Q BY MR. JACOBS: Because?
 5 A We've had the discussion about resources for
 6 standards aligned instructional materials.
 7 Q And so to take -- to move from that
 8 discussion, the question I'm asking is, is it your
 9 understanding that the plaintiffs urge that the state
 10 gather data on whether the resource -- on what effect
 11 the resources actually have at the classroom level to
 12 measure, among other things, whether the resources are
 13 sufficient or whether there is misadministration within
 14 school districts when it comes to textbooks?
 15 MR. VIRJEE: Objection, vague and ambiguous,
 16 calls for speculation.
 17 Instruct you not to answer to the extent it
 18 invades the attorney-client privilege.
 19 And to the extent you are asking her to tell
 20 you what the plaintiffs' allegations are, the complaint
 21 speaks for itself.
 22 THE WITNESS: All I can say is we look at
 23 student performance on our statewide test and other
 24 assessments that are given and which the data is
 25 provided us.

1 Q BY MR. JACOBS: So it's your judgment it would
 2 be bad policy to collect that data?
 3 MR. VIRJEE: Objection, vague and ambiguous as
 4 to "bad policy, that data," incomplete hypothetical,
 5 calls for speculation.
 6 THE WITNESS: I don't know what you mean by
 7 "that data."
 8 Q BY MR. JACOBS: Data that I referred to in my
 9 previous question.
 10 MR. VIRJEE: Same objections. I think your
 11 previous question dealt with the plaintiffs'
 12 allegations. I'm not sure that is clear here.
 13 MR. JACOBS: If you are having trouble with
 14 that, let me rephrase it.
 15 Q You are familiar with the school
 16 accountability report card?
 17 A Yes.
 18 Q You know that on the school accountability
 19 report card, or SARC, there's a data element for the
 20 availability of textbooks?
 21 A Hmm-hmm.
 22 Q And you are aware that currently the -- and
 23 the purpose of that is to enhance the kind of
 24 accountability system that you referred to earlier in
 25 your testimony, correct?

1 MR. VIRJEE: Objection, calls for speculation
2 as to "purpose." Lacks foundation.

3 THE WITNESS: Reporting on the number of
4 textbooks available on a school accountability report
5 card is a piece of information provided to parents, it
6 does not necessarily mean that students do not have
7 access to standards aligned instructional materials.

8 Q BY MR. JACOBS: Is there a component on the
9 SARC that tells parents whether students have access to
10 standards aligned instructional materials?

11 MR. VIRJEE: Objection, vague and ambiguous.

12 THE WITNESS: I am uncertain on that.

13 Q BY MR. JACOBS: Is there a mechanism at the
14 state level for gathering information of the sort
15 reported on the SARC about whether students have access
16 to standards aligned instructional materials?

17 MR. VIRJEE: Objection, asked and answered.
18 She's already testified to that.

19 MS. READ-SPANGLER: Calls for speculation.

20 THE WITNESS: School boards are required to
21 hold a public hearing in which they certify that there
22 are instructional materials, standards aligned
23 instructional materials available for every student.

24 Q BY MR. JACOBS: Would it be bad policy in your
25 judgment to take steps to ensure that the data reported

1 which is on achievement as measured by tests?

2 MR. VIRJEE: Objection, vague and ambiguous as
3 to "availability," compound, and disjunctive question.

4 THE WITNESS: The most important thing is that
5 all access to and rigorous content, rigorous content,
6 standards aligned content. There are myriad ways in
7 which that can occur.

8 So the information on school accountability
9 report card can be helpful, but it is not necessarily
10 the whole picture.

11 Q BY MR. JACOBS: And information from tests is
12 helpful, but it's not the whole picture, correct?

13 A Information from tests is extremely helpful.
14 It does not -- it is not necessarily the whole picture.
15 Individual teachers have the ability to use other
16 indicators to assess student achievement.

17 From a site-wide perspective, it's very
18 difficult to assess whether or not students are
19 achieving and the goals are being met in terms of
20 access, equal access to the rigor in any way other than
21 a statewide test.

22 Q One metric potentially available to the state
23 is the degree to which teachers have, in fact, taken
24 advantage of the AB 566?

25 A 466.

1 on the SARC is accurate?

2 MR. VIRJEE: Objection, vague and ambiguous as
3 to "bad policy," incomplete hypothetical, calls for
4 speculation, and vague and ambiguous as to
5 "inaccurate."

6 THE WITNESS: I don't know if the information
7 is inaccurate. I think one must assume that it is
8 accurate.

9 Q BY MR. JACOBS: Would it be bad policy in your
10 judgment for the state to assemble that data to try and
11 develop a greater understanding of the degree to which
12 resources made available by the state result in
13 resources in the classroom?

14 MR. VIRJEE: Objection, "bad policy."
15 Incomplete hypothetical, and vague and ambiguous as to
16 "assemble."

17 THE WITNESS: There are various pieces of
18 information that might help some parents assess a
19 particular school that their child might be going to.
20 In my opinion the most important piece of information
21 is how students are achieving, and that is measured by
22 our statewide test.

23 Q BY MR. JACOBS: And you're concerned that
24 greater focus on, for example, availability of
25 textbooks, would lead people astray from a proper focus

1 Q AB --

2 A AB 466.

3 Q AB 466 training, correct?

4 MR. VIRJEE: Objection, vague and ambiguous as
5 to "metric."

6 THE WITNESS: Yeah. I'm not --

7 MR. JACOBS: Well, let me ask it directly.

8 Q Do you know if the state knows how many
9 teachers have actually taken advantage of that program?

10 A We do know.

11 Q And do you know -- and do you know if that's
12 publicly reported?

13 A It is -- I'm not certain if it's publicly
14 reported, it is public information.

15 Q And is the distribution district-to-district
16 of, let's call it the penetration of that program, is
17 that information also public information?

18 A Yes.

19 Q And would that be -- okay.

20 MR. JACOBS: Let's look at another article.

21 THE WITNESS: I'm going to give up talking to
22 the press.

23 MR. JACOBS: That may make your lawyer happy,
24 but not the plaintiffs in the case.

25 Here is a preview copy, we will get to the

1 exhibits in a second.

2 This will be 317.

3 (Plaintiffs' Exhibit

4 No. 317 was marked for

5 identification.)

6 MR. JACOBS: Exhibit 317 is an AP State and
7 Local Wire release dated August 29, 2002 with an AP
8 writer named Jessica Brice reporting under the,
9 "Headline: Despite improvement, STAR scores still
10 below state goals."

11 Q I'm going to ask you about your comment about
12 two-thirds of the way down the first page that starts,
13 "We've got the pieces in place."

14 A (Witness reviewing document.)

15 Q So, according to the reporter, you said,
16 quote, "We've got the pieces in place, now we have to
17 give them time to work. Not all teachers have been
18 trained" -- and teachers is in parenthesis -- "in
19 teaching the state's standard based curriculum, close
20 paren. Not all students have standards-based materials
21 in their hand," close quote.

22 Do you see that?

23 A Hmm-hmm.

24 Q Is that still true?

25 A I don't know. I don't know for sure whether

1 they just require that there be standards aligned

2 instructional materials.

3 Q BY MR. JACOBS: The question you -- the issue
4 you addressed in that sentence, "Not all students have
5 standards-based materials in their hands," was not
6 whether you had -- whether the state had the support
7 structure in place, but whether students -- whether
8 that support structure was delivered to students,
9 correct?

10 A Whether or not school districts had actually
11 moved forward the adoption process is one in which
12 there has been the opportunity for some school
13 districts to bank their money. And so there may be
14 occasions when they had not purchased their standards
15 aligned instructional materials, though there is a
16 specified timeline in which they need to do that.

17 Q And as of today -- so as of the time of this
18 interview, you were aware of instances where at least
19 on account of that condition students didn't have
20 standards-based materials in their hands?

21 A I was not aware of any particular instance.

22 Q You were aware of the general issue?

23 A I was aware that could be the case from what
24 I've read in the press or whatever.

25 Q And what's your understanding as you sit here

1 or not all students have standards-based materials.

2 Q In their hands?

3 A In their hands or whatever.

4 I think, again, whether or not I said exactly
5 that, the issue is standards aligned instructional
6 materials that are not always a book.

7 Q And you didn't say "textbooks" there, you said
8 "materials."

9 A According to this interviewer.

10 Q Are you aware of any cases where the state
11 Board has adopted standards aligned materials where a
12 major component is not a textbook?

13 MR. VIRJEE: Objection, calls for speculation,
14 lacks foundation.

15 THE WITNESS: I know there are some software
16 programs that are standards aligned. And there are
17 opportunities for interim review of materials that
18 would not necessarily be bound textbooks.

19 Q BY MR. JACOBS: And the -- is it your
20 understanding that the software materials are provided
21 as an independent stand-alone standards aligned
22 material as opposed to accompaniment to a textbook?

23 MR. VIRJEE: Objection, lacks foundation.

24 THE WITNESS: I'm not sure. I know at the
25 high school level the state does not adopt textbooks,

1 today?

2 MR. VIRJEE: Objection, asked and answered.

3 THE WITNESS: Yeah. I have no further
4 information on that.

5 Q BY MR. JACOBS: And on the "not all teachers
6 have been trained," we talked just a few minutes ago
7 about the data on the degree to which teachers have, in
8 fact, been trained.

9 A Hmm-hmm.

10 Q What's your understanding -- take a snapshot
11 today on the degree of penetration of that program.

12 A We certainly have not penetrated the whole
13 state. Originally it was planned to take four years.

14 Q Starting when?

15 A When the bill was passed. I think it was in
16 '91.

17 Q 2001?

18 A I mean, yeah, excuse me, 2001. I think that's
19 when the bill was passed.

20 But from the -- from that point the plan was
21 four years. We have diminishing resources, and that's
22 been adjusted.

23 Q So is there a current life of the program?

24 A Yes.

25 Q What is that?

1 A I can't tell you. But that information is out
2 there.
3 Q And is that Legislative extension or --
4 A Yes. Through the budget.
5 Q Through the adoption of the budget the
6 Legislature adopted an extension of the AB 466 program?
7 A I can't say that they adopted an extension.
8 There was a reduction in the amount that was going to
9 be funded which, in effect, would mean it would take
10 longer to get all the teachers trained.
11 MR. JACOBS: Let's mark as the next in order
12 Exhibit 318.
13 (Plaintiffs' Exhibit
14 No. 318 was marked for
15 identification.)
16 MR. JACOBS: 318 is an article again
17 downloaded from Lexis-Nexis December 13, 2002, Modesto
18 Bee, "Headline: Study: More Students Fail If Teachers
19 Underqualified."
20 Your comments are at the end of the article,
21 but I'm going to ask you about the article itself.
22 THE WITNESS: (Witness reviewing document.)
23 Q BY MR. JACOBS: So the study referred to here
24 from the Center For Future of Teacher Learning analyzed
25 the relationship between the percentage of teachers

1 lacking full credentials and performance on the high
2 school exit exam.
3 Is that your understanding of this report?
4 A Yes.
5 MR. VIRJEE: The document speaks for itself.
6 Q BY MR. JACOBS: And Sylvia Smith, assistant
7 superintendent for instructional services in the Merced
8 Union High School District is reported to have said
9 that, "Teacher quality is only one factor. All of the
10 highly qualified teachers in the world are not going to
11 change the fact that we don't have the materials and
12 can't afford the training," with the quotes around the
13 sentence "all of the highly qualified teachers."
14 Do you see that?
15 A Yes.
16 Q And it's your position that if they don't have
17 the materials, that's not on account of lack of
18 adequate resources from the state, correct?
19 A Yes.
20 Q And that if -- and not being able to afford
21 the training is in your judgment and misassessment,
22 because there is this training in standards aligned
23 instruction available?
24 A Yes.
25 Q So this is in your judgment a school district

1 official who is pointing the finger somewhere else
2 where accountability should properly lie at the local
3 level?
4 A Yes.
5 Q At the bottom of the article where you are
6 quoted, one of the issues you are addressing there is
7 the definition of a highly qualified teacher under No
8 Child Left Behind Act, correct?
9 A Yes.
10 Q And your understanding of the state -- of the
11 state's proposed definition of "highly qualified
12 teachers" is what?
13 A That our intern program qualifies under the
14 requirements of NCLB.
15 Q And that has been determined by federal
16 officials?
17 A Yes.
18 Q And that there is no longer a -- that is no
19 longer a point of contention between the state and
20 federal officials?
21 A That is my understanding.
22 Q And have you been involved in the interaction
23 with federal officials on this?
24 A Some.
25 Q And the rationale that the state proffered for

1 why interns should be included as a highly qualified
2 teacher, your understanding of that is what?
3 A That the teachers are involved in a program to
4 provide them with a clear credential, they must pass
5 the CBEST. Those are the things that come to mind now.
6 It is inherent within NCLB to provide for alternative
7 routes into teaching.
8 Q Meaning alternative routes other than the
9 classic routes of credentialing a credential by going
10 to a school of education and temporarily serving in a
11 classroom?
12 A Yeah. A fifth year program. That there be
13 other opportunities beyond the fifth year program.
14 Q In the course of your career, have you taken
15 positions on the benefit of fifth year programs?
16 MR. VIRJEE: Objection, vague and ambiguous as
17 to "taken positions" and "career."
18 THE WITNESS: I have spoken publicly about
19 teacher credentialing with fifth year programs, intern
20 programs.
21 Q BY MR. JACOBS: Up until the time you became
22 Secretary of Education, what viewpoint did you express
23 about the merits of fifth year programs as opposed to
24 what we now call alternative routes?
25 MR. VIRJEE: Objection, vague as to time, as

1 to which period of time during that, and also assumes
2 facts not in evidence. Assumes she took such a
3 position.

4 THE WITNESS: My position has been that fifth
5 year programs are valuable, as are intern programs.

6 Q BY MR. JACOBS: Equally?

7 MR. VIRJEE: Objection, incomplete
8 hypothetical, calls for speculation, lacks foundation.

9 THE WITNESS: Intern programs in California
10 are proving to be quite positive.

11 Q BY MR. JACOBS: As measured by what?

12 A As measured by retention, as measured by
13 diversity, and not only diversity in terms of
14 ethnicity, but greater numbers of men coming into
15 teaching and staying.

16 Q When you say "staying," you mean staying in
17 teaching?

18 A Yes.

19 Q How about the question of whether -- first of
20 all whether interns, as opposed to fully credentialed
21 teachers, tend to be concentrated in inner city
22 schools, do you have any understanding of whether
23 that's true or not?

24 A I know that some of our large urban school
25 districts have created intern programs to train their

1 Q Do you happen to know if it has a title?

2 A I don't recall.

3 Q Do you know if it's public information?

4 A It is public.

5 Q And is there anything else you can associate
6 with it by way of identifying it so if somebody called
7 up the CTC and said, "I want this" they would get what
8 you have in mind?

9 MS. READ-SPANGLER: He wants to know so he can
10 ask us to get it for him.

11 THE WITNESS: It provides the data about the
12 intern program in California; the rate of retention,
13 which as I recall is higher than fifth year programs.
14 As I said earlier, the ethnic diversity is more
15 reflective of the State of California than those going
16 through a fifth year program. There is, as I recall,
17 higher numbers of men teaching, particularly in the
18 younger grades. And let's see. I said -- as I recall,
19 they are staying longer in the profession.

20 Q BY MR. JACOBS: At the end of the story you
21 estimated the degree to which if you add intern --
22 people in intern programs with fully credentialed
23 teachers, you reduce the count of underqualified
24 teachers.

25 You see that?

1 teachers.

2 Q And do you have an understanding that that --
3 whatever the cause that, in fact, interns are
4 concentrated in inner city schools?

5 MR. VIRJEE: Objection, asked and answered.

6 Q BY MR. JACOBS: Or urban school districts.

7 A I have no data that -- or -- that I can recall
8 that would indicate that.

9 Q And how about the question whether interns
10 tend to get trained in an urban school district and
11 then leave the urban school for a suburban school once
12 fully credentialed?

13 A The data I'm familiar with indicates that, in
14 fact, the interns are staying in the schools, which is
15 in my opinion a positive indicator.

16 Q And staying in particular schools or staying
17 in the districts?

18 A Staying in the schools.

19 Q Can you recall what study you are referring to
20 or what data?

21 A This is data coming from the CTC.

22 Q Any report that -- in mind or that you've been
23 provided informally?

24 A Data they've provided me. And I can't recall
25 whether it was a specific report or a White paper.

1 A Yes.

2 Q And it went, as you estimated it then, from
3 42,000 underqualified teachers to 32,000.

4 Do you see that?

5 A Yes.

6 Q Do you have a snapshot today of the effect of
7 intern programs on that issue?

8 A I do not.

9 Q Do you have an understanding of whether --
10 even if we -- so let's assume for a minute that we do
11 ask the question including interns in qualified
12 teachers, do you have an understanding of the degree of
13 concentration today of underqualified teachers in urban
14 school districts?

15 MR. VIRJEE: Objection, vague.

16 MS. READ-SPANGLER: Objection, vague and
17 ambiguous as to "qualified" and "underqualified."

18 MR. VIRJEE: And "urban districts."

19 THE WITNESS: There are many things that make
20 a good teacher, not necessarily a piece of paper.

21 Q BY MR. JACOBS: I'm sorry. I already agreed
22 with you for purposes of this question we are going to
23 use your numbers at the end of the article. And you
24 knew what you meant when you said "underqualified
25 teachers to about 32,000." Correct?

1 MS. READ-SPANGLER: Objection, that's not a
2 direct quote. I don't think she said that she used
3 those terms. You said she used those terms, but I
4 don't think she said she used those terms.

5 THE WITNESS: This is a dispute that I had
6 with the numbers as defined by "highly qualified" in
7 NCLB and/or "fully credentialed."

8 Q BY MR. JACOBS: And you were pointing out that
9 for purposes of NCLB, California is including intern
10 program teachers in the highly qualified category.

11 A That's correct.

12 Q Leaving, -- for NCLB purposes -- 32,000
13 underqualified teachers.

14 A 32,000 who are not qualified under NCLB.

15 Q Okay. So stay with me for a minute. Use that
16 definition.

17 A Hmm-hmm.

18 Q Do you have an understanding of the degree to
19 which such underqualified teachers are concentrated in
20 particular types of school districts?

21 MR. VIRJEE: Objection, vague and ambiguous as
22 to "concentrated," and "particular types of school
23 districts."

24 THE WITNESS: Not firsthand. But from what I
25 read in various reports, that there are higher numbers

1 depends on the quality of the statewide tests as
2 measures of teacher contribution to learning, correct?

3 MR. VIRJEE: Objection, vague and ambiguous as
4 to "teacher contribution to learning."

5 THE WITNESS: The statewide test is an
6 indicator as to whether or not children are receiving
7 the rigorous content that we expect them to be
8 receiving.

9 Q BY MR. JACOBS: So it's not a measure of
10 teacher quality?

11 MR. VIRJEE: Objection, vague and ambiguous as
12 to "teacher quality," calls for speculation, and
13 incomplete hypothetical.

14 THE WITNESS: It is against our law in
15 California to use our statewide test in an evaluation
16 of teacher quality.

17 Q BY MR. JACOBS: So coming back to my question.

18 If you -- I take it to be your testimony that
19 in your judgment, with your years of experience in
20 education, you cannot draw inferences from
21 concentrations of -- for NCLB purposes -- under-
22 qualified teachers in large urban school districts --
23 inferences that point to inequity in access to a
24 rigorous curriculum?

25 MR. VIRJEE: Objection, calls for speculation,

1 of teachers who do not meet NCLB requirements in our
2 urban centers.

3 Q BY MR. JACOBS: And -- but I take it that it's
4 your position that that does not in and of itself
5 create an issue with respect to equity as we talked
6 about it this morning.

7 MR. VIRJEE: Objection, vague and ambiguous as
8 to "equity." Incomplete hypothetical.

9 THE WITNESS: The most important indicator as
10 shown in my read of research of student achievement is
11 a good teacher. There is great variance in training
12 and skill in our teacher pool. Some of our -- some of
13 the teachers that might be considered underqualified
14 could be terrific teachers. So a narrow definition of
15 quality does not necessarily mean quality.

16 Q BY MR. JACOBS: And from the standpoint of a
17 state policymaker, then, who has expressed concern
18 about equity, how would you determine whether there is
19 or is not equity in access to qualified teachers?

20 MR. VIRJEE: Objection, vague and ambiguous as
21 to "access to qualified teachers." Calls for
22 speculation, and asked and answered.

23 THE WITNESS: I would look to -- as indicators
24 to our statewide test.

25 Q BY MR. JACOBS: And so the accuracy of that

1 lacks foundation, calls for an expert opinion, and
2 incomplete hypothetical.

3 THE WITNESS: The issue of large numbers of
4 what would be defined as an underqualified teacher as
5 defined by holding a clear credential was in my opinion
6 largely created by class size reduction, the high
7 concentration of these teachers in our inner city
8 schools.

9 And it gets back to our earlier discussion on
10 contractual relationships and the, in my opinion, lack
11 of accountability in school districts to ensure that
12 there was -- that those students who most needed the
13 best teachers were not disadvantaged by class size
14 reduction.

15 In the end they were. Because in some cases
16 those contractual relationships that allow the most
17 senior -- if you are defining a highly qualified
18 teacher as the one that has experience, again I don't
19 necessarily abide by that -- but the allowance of them
20 to transfer out of those schools in which there were
21 large numbers of students who are those very students
22 that historically have been under-served. The state
23 has no ability to intervene in those contractual
24 relationships.

25 Q BY MR. JACOBS: So here we are today, though,

1 2003, and we are looking at the data about, -- for NCLB
2 purposes -- underqualified teachers.

3 And the question is, is it your testimony --
4 is it your view that one can or cannot draw inferences
5 from concentrations of NCLB underqualified teachers,
6 inferences relating to equal access to the rigorous
7 curriculum?

8 MR. VIRJEE: Objection, asked and answered,
9 calls for speculation, lacks foundation, incomplete
10 hypothetical, vague and ambiguous as to "access."

11 THE WITNESS: It depends.

12 Q BY MR. JACOBS: It depends on what?

13 A It depends on the leadership of the school,
14 whether or not they are participating in the
15 professional development, whether or not there is a
16 concerted effort to make sure that all children -- that
17 there is a focus on children and not on adults. And
18 schools do that to greater/lesser degrees across the
19 state and across school districts.

20 Q And because it depends on those factors, it's
21 your view that you cannot draw inferences from the
22 concentration of -- for NCLB purposes -- underqualified
23 teachers in large urban school districts as to equal
24 access to a rigorous curriculum?

25 MR. VIRJEE: Objection, asked and answered

1 The data is going to scatter, right?

2 A Hmm-hmm.

3 Q In some cases there are going to be schools
4 that are showing those achievement -- showing
5 satisfactory achievement levels and those that aren't,
6 correct?

7 A Yes.

8 Q And the state has a mechanism in place for
9 addressing the case where a school or sub groups in a
10 school do not make their achievement targets.

11 A That's correct.

12 Q And that mechanism also turns on the quality
13 of the achievement tests as a reliable indicator of
14 school quality, correct?

15 MR. VIRJEE: Objection, vague and ambiguous as
16 to "school quality" and "quality of achievement tests."
17 Calls for speculation, calls for an expert opinion.

18 THE WITNESS: The statewide test is an
19 indicator of the student achievement --

20 Q BY MR. JACOBS: And just to --

21 A -- of that school.

22 Q Just to make the point a little differently.

23 There is not an intervention mechanism set up
24 currently by which a state intervenes in local
25 administration where that intervention is triggered by

1 three times now, calls for speculation, lacks
2 foundation, incomplete hypothetical, calls for an
3 expert opinion.

4 THE WITNESS: I am aware of the data that
5 shows that there are higher concentrations of these
6 teachers in certain areas. That information in and of
7 itself does not mean that those students do not have
8 access to the rigor. There are other indicators of
9 that.

10 Q BY MR. JACOBS: And at the state level the
11 indicator that you use is achievement tests?

12 A That's correct.

13 Q And then the quality of the conclusion and the
14 policy judgment one reaches based on that data depends
15 on the quality of the achievement test data, correct?

16 A That's correct.

17 Q And what that data would show presumably is
18 that in some schools with a high number of -- for NCLB
19 purposes -- underqualified teachers, students are
20 not -- students are achieving academic performance?

21 A Yes.

22 Q And in other schools they are not.

23 A That's -- well --

24 Q Presumably -- let's set up the data diagram
25 for a minute.

1 a large number of -- for NCLB purposes --
2 underqualified teachers; is that correct?

3 A That's correct.

4 Q There is an intervention mechanism that's
5 triggered by results on achievement tests.

6 A That's correct.

7 MR. JACOBS: So let's turn to an article that
8 interviewed you about, in part, about that intervention
9 mechanism.

10 MS. READ-SPANGLER: Let's go off the record
11 for a second.

12 (The luncheon recess was taken.)

13 MR. JACOBS: Let's mark as the next in
14 order.

15 (Plaintiffs' Exhibit
16 No. 319 was marked for
17 identification.)

18 MR. JACOBS: Exhibit 319 is a Nexis printout
19 of an article from the Alameda Times-Star dated August
20 28, 2002. "Headline: Schools eagerly await Stanford 9
21 results."

22 And the reason I've picked this article out is
23 it talked about the intervention system, and you are
24 quoted on it.

25 Q So if you could take a look at it.

1 A (Witness reviewing document.)
 2 Q The intervention system discussed here is the
 3 II/USP program; is that correct?
 4 A That's correct.
 5 Q Referring to our discussion this morning about
 6 your vision of a system that provides equal access and
 7 equity to all, how does the -- does the II/USP program
 8 fit into that vision?
 9 A The II/USP program is a tool by which the
 10 state can intervene in schools that, for probably
 11 myriad reasons, are not serving their students.
 12 And the accountability -- the whole idea, the
 13 whole vision of accountability is to hold schools
 14 accountable for student achievement. And if they are
 15 not successful in educating their children, that they
 16 be held accountable for that.
 17 Q And the -- one of the assumptions underlying
 18 the II/USP program is that state intervention can be
 19 useful in improving school performance?
 20 A No. Not necessarily improving school
 21 performance. That really is dependent upon teachers
 22 and leaders, administrators, parents, a lot of other
 23 factors. But the school can say -- the state can say
 24 enough is enough, and we are going to step in and
 25 assist to the best of our ability change that we

1 believe could result in improved academic performance.
 2 Q So one -- and the reason that this kind of
 3 insistence is necessary is what?
 4 MR. VIRJEE: Objection, vague and ambiguous.
 5 THE WITNESS: Can you repeat it?
 6 MR. JACOBS: I can put it in context.
 7 THE WITNESS: I don't understand exactly where
 8 you are going.
 9 MR. JACOBS: It wasn't clear where I was
 10 going. I don't mean to be opaque.
 11 Q This morning we talked about parental pressure
 12 as the principle tool you believe should be used to
 13 drive improved school performance at the local level.
 14 Correct?
 15 A No, not necessarily the principle tool. One
 16 of a number of components of local accountability.
 17 Q And the --
 18 A An important component of it.
 19 Q And is it the case that the II/USP program is
 20 in place because, in your judgment, there may be cases
 21 where local parental pressure isn't sufficient to drive
 22 improved school performance?
 23 MR. VIRJEE: Objection, calls for speculation,
 24 lacks foundation as to the reasons for the II/USP being
 25 in place.

1 (Off the record.)
 2 THE WITNESS: Could you repeat the question?
 3 THE REPORTER: And is it the case that the
 4 II/USP program is in place because, in your judgment,
 5 there may be cases where local parental pressure isn't
 6 sufficient to drive improved school performance?
 7 THE WITNESS: No.
 8 Q BY MR. JACOBS: How does the II/USP program
 9 relate to parental pressure as a tool for driving --
 10 for holding schools and school districts accountable?
 11 MR. VIRJEE: Objection, assumes facts not in
 12 evidence. Assumes there is a relationship.
 13 THE WITNESS: Yeah. I don't agree that -- as
 14 I said earlier, parental pressure is the driving force.
 15 It's an important condition, it's not the only
 16 condition. And there could be cases, as we well know,
 17 where there is not adequate parental involvement, and
 18 those schools need to be changed.
 19 Q BY MR. JACOBS: Hence the II/USP program?
 20 A Yes.
 21 Q So --
 22 A The II/USP program being focused on student
 23 achievement.
 24 Q The current snapshot of the II/USP program,
 25 what's its status?

1 MR. VIRJEE: Objection, vague and ambiguous as
 2 to "status" and "snapshot."
 3 THE WITNESS: The II/USP program continues to
 4 be in operation. There was not a new cohort budgeted
 5 in the recent budget.
 6 Q BY MR. JACOBS: That means that the last
 7 cohort was identified when?
 8 A The prior year. I'm not good at years and all
 9 of that. I think to be accurate we did not establish a
 10 new cohort.
 11 Q So there were two cohorts or three?
 12 A I think three.
 13 Q And there is an evaluation of the II/USP
 14 program that is accomplished or underway? I think one
 15 or the other.
 16 MR. VIRJEE: Objection, calls for speculation,
 17 lacks foundation.
 18 THE WITNESS: I don't know the status of that.
 19 Q BY MR. JACOBS: You formed an opinion as to
 20 whether the II/USP program is effective in driving
 21 improved school performance?
 22 A Yes.
 23 Q What is that?
 24 A I think it's a piece of -- it's one of a
 25 number of factors that are driving change and

1 improvement in our schools.

2 Q How important is it?

3 MR. VIRJEE: Objection, vague and ambiguous as
4 to "how important." Incomplete hypothetical. Vague.

5 THE WITNESS: I would say it's an important
6 component, but probably not any more important than
7 some of the other components of the program.

8 Q BY MR. JACOBS: So you'd put it on a par with
9 other components in terms of its significance?

10 A Certainly you could not have an II/USP -- you
11 would not have our II/USP program or accountability
12 system without a statewide assessment. So that is an
13 equal component to it. You could not have a quality
14 accountability system unless you had well articulated
15 content standards. And you could not have a good
16 accountability system unless you were ensuring that
17 there were programs in place that supported teachers to
18 deliver the rigor to the students.

19 Q The II/USP program, as you noted at the bottom
20 here, has the potential for a complete overhaul and
21 state takeover, correct?

22 A That's correct.

23 Q Are you aware of how many schools have gone
24 through the program and reached the stage where they
25 have undergone what you meant by a complete overhaul

1 building capacity to improve schools, whether or not
2 they are in the II/USP program or not, such as AB 466.
3 There's also 8075 which is a similar program for
4 administrators. So there are programs in place to
5 build capacity, and there are certainly the programs
6 that are required under NCLB.

7 Q BY MR. JACOBS: There's a paragraph a little
8 ways up in the article referring to unnamed state
9 officials. This is in quotes, "State officials,
10 however, have said that resources will largely limit
11 just how many schools they will be able to take over.
12 There simply isn't enough state staff to oversee the
13 running of a great number of individual schools,
14 period," close quote.

15 Is it your understanding that that statement
16 is correct?

17 MR. VIRJEE: Objection, calls for speculation,
18 lacks foundation as to "great number of schools."
19 Vague and ambiguous.

20 THE WITNESS: My understanding of the state
21 Department of Education, under whose domain this would
22 be, currently would not have the staff to take over
23 hundreds of schools.

24 Q BY MR. JACOBS: How about dozens?

25 MR. VIRJEE: Objection, calls for speculation,

1 and/or state takeover?

2 A I cannot give you the precise numbers. There
3 were -- I think there was something like upwards of 200
4 schools that technically qualified, and that number was
5 reduced by, as I understand it, a greater analysis and
6 determination of the state Board to a point where
7 there's a handful, under ten, that I think are being
8 taken over.

9 Q The capacity to handle interventions of the
10 sort of fitting -- falling in the -- within the concept
11 complete overhaul and/or state takeover, that capacity,
12 has there been a program that you are aware of to
13 enhance the state's capacity to accomplish that?

14 MR. VIRJEE: Objection, vague and ambiguous as
15 to "program to enhance."

16 Also instruct you not to answer to the extent
17 it invades the deliberative process privilege.

18 THE WITNESS: There are intervention teams
19 that have been qualified and authorized by the state
20 Board to participate in the II/USP program to assist
21 schools in improving.

22 Q BY MR. JACOBS: Is there any other capacity-
23 building initiatives underway that you are aware of?

24 MR. VIRJEE: Same objections.

25 THE WITNESS: I -- much of what we do is about

1 lacks foundation.

2 THE WITNESS: I have no way to assess that.

3 Q BY MR. JACOBS: There was a -- the first
4 cohort went -- started in the program 2001? 2000? Do
5 you know when the first cohort was identified?

6 A The Legislation was passed in '99, and so the
7 identification of those schools would have been in
8 2000. No. The baseline would be -- no. Yeah. The
9 baseline would be 2000-2001. As I said, I am not
10 really good at backtracking and trying to figure out.

11 Q My real question is, do you have a judgment as
12 to whether the program has been in place long enough to
13 determine whether it is effective in addressing issues
14 of equal access and equality for all?

15 MR. VIRJEE: Objection, vague and ambiguous as
16 to "equal access and equality for all," lacks
17 foundation, calls for speculation, calls for an expert
18 opinion.

19 THE WITNESS: You want to repeat the --

20 MR. JACOBS: Read it back, please.

21 THE REPORTER: Do you have a judgment as to
22 whether the program has been in place long enough to
23 determine whether it is effective in addressing issues
24 of equal access and equality for all?

25 THE WITNESS: Given the data, many schools in

1 the program did meet their targets. One could take
2 that as an indicator that there was some positive
3 outcome as a result of the program. The program is a
4 program to hold schools, essentially the adults in the
5 system, accountable for student achievement. The
6 student achievement is dependent upon whether or not
7 those adults are delivering the rigorous content
8 standards.

9 So there are other things that are more
10 important -- that are at least equally, if not more
11 important in terms of equity than the II/USP program by
12 itself.

13 Q BY MR. JACOBS: And the data for measuring
14 whether those other components are effective are the
15 test scores you referred to this morning, right?

16 A Student achievement is what we are looking
17 for.

18 Q And so if there is -- if the program as a
19 whole is achieving equal access and equity, that will
20 be measured by --

21 A Closure of the achievement gap.

22 Q And the II/USP programs interventions
23 resulting in some greater improvement in the worst off
24 schools is suggestive to you that it is one of the
25 components of the program that is useful?

1 THE WITNESS: I would say there is data to
2 suggest that the program that is in place that includes
3 the II/USP program, but is not solely the II/USP
4 program, indicates that what is happening in California
5 public schools is positive, and that we are seeing
6 improvement in student achievement, we are seeing
7 indicators of closure of the achievement gap, and even
8 our base is rising.

9 Q BY MR. JACOBS: You will make no such claim
10 for the II/USP program as a component of that overall
11 program?

12 MR. VIRJEE: Objection, asked and answered two
13 or three times now. Calls for speculation, lacks
14 foundation, incomplete hypothetical.

15 THE WITNESS: I don't think that you can take
16 it in isolation.

17 Q BY MR. JACOBS: Is the lack of funding for a
18 new cohort an indication of a policy judgment as to the
19 relative usefulness of the II/USP program as against
20 other components of the system?

21 MR. VIRJEE: I will instruct you not to answer
22 to the extent that invades the deliberative process
23 privilege.

24 And otherwise calls for speculation, lacks
25 foundation.

1 MR. VIRJEE: Objection, asked and answered.

2 THE WITNESS: The II/USP program is one of the
3 components in the entire program that is designed to
4 increase student achievement and close the achievement
5 gap.

6 Q BY MR. JACOBS: And the data you have about
7 schools in the program is suggestive to you that it is
8 a useful component?

9 MR. VIRJEE: Objection, vague and ambiguous as
10 to "useful," calls for speculation, and asked and
11 answered.

12 THE WITNESS: The accountability of which this
13 is a system of measurement of student achievement
14 against rigorous standards is an architecture which I
15 believe is useful.

16 Q BY MR. JACOBS: And the II/USP program itself?

17 A The II/USP program, as with any program,
18 needs, and will need, ongoing evaluation, as with any
19 program.

20 Q So sitting here today, you don't have a
21 judgment as to -- it's an experiment and the data is
22 inconclusive so far?

23 MR. VIRJEE: Objection, vague and ambiguous,
24 calls for speculation, calls for expert opinion, lacks
25 foundation.

1 THE WITNESS: The II/USP program is dealt with
2 in the context of the budget and in -- and the
3 Legislative priorities in that final document.

4 MR. JACOBS: Could you read back my question,
5 please?

6 THE REPORTER: Is the lack of funding for a
7 new cohort an indication of a policy judgment as to the
8 relative usefulness of the II/USP program as against
9 other components of the system?

10 Q BY MR. JACOBS: Can you answer whether it is,
11 in fact, a reflection of a policy judgment?

12 MR. VIRJEE: Objection, asked and answered.

13 Also, again, instruct you not to answer to the
14 extent it would invade the deliberative process
15 privilege.

16 Otherwise calls for speculation, lacks
17 foundation.

18 MR. JACOBS: Let me break it down.

19 Q Did the Governor's -- what was the Governor's
20 last recommendation as to the II/USP program new cohort
21 funding?

22 A There was no funding of a new cohort in the
23 May revise, I don't recall, and I don't think there was
24 one in the January budget. But that can be
25 substantiated by the document. That is a decision that

1 is made in the context of competing priorities, given
2 the extreme budgetary situation that we found ourselves
3 in. It is not an indication that there is any lack of
4 support for the program.

5 Q On the second page of this article you were
6 quoted as saying, "These are schools that are in
7 serious trouble. There are serious problems there that
8 really justify being taken over," quote, unquote.

9 You see that?

10 A Hmm-hmm.

11 Q Is that an accurate accounting of what you
12 said?

13 A I would say so.

14 Q And when you said these are schools that are
15 in serious trouble, did you have any particular schools
16 or any particular kinds of schools in mind?

17 A No. No particular schools. Knowing that if
18 you -- if a school is identified for intervention, that
19 there are serious issues relative to student
20 achievement.

21 Q The II/USP program is voluntary.

22 A That's correct.

23 Q If a school district is not delivering high
24 academic achievement, one component of your vision for
25 an accountability system is parental pressure directly

1 the mechanism. Can you explain that?

2 A There -- given limited resource and
3 conflicting priorities, a certain amount of money was
4 set aside for the II/USP program on a voluntary basis
5 for the school districts to participate. If, in fact,
6 enough school districts did not volunteer, then the
7 state could require schools to come into it.

8 Q That was in the original statute?

9 A Yes.

10 And -- but, in fact, the program was fully
11 subscribed.

12 Q The eligibility for the program was the school
13 is in the below 50 percent percentile group?

14 A That's correct.

15 Q And the -- are you aware of any data as to
16 whether the -- whether there was a correlation between
17 where you ranked within the 50 percentile group and
18 whether you volunteered or not?

19 MR. VIRJEE: Objection, calls for speculation,
20 lacks foundation. To the extent you are asking what
21 the regulations or the statute requires, they speak for
22 themselves.

23 THE WITNESS: I don't have data on that,
24 although the participation was weighted.

25 Q BY MR. JACOBS: Weighted towards what?

1 on a school board to improve educational offerings,
2 correct?

3 MR. VIRJEE: Objection, asked and answered a
4 number of times.

5 THE WITNESS: One component is parental
6 pressure, parental participation, parents asking
7 questions.

8 Can you repeat your question?

9 MR. VIRJEE: That was his question.

10 MR. JACOBS: I will tell you what I'm driving
11 at.

12 Q The II/USP program is voluntary. If the
13 school district chooses not to embark on the program,
14 then one would say to the parents, "You need to hold
15 the district accountable not to embark on the program"?

16 MR. VIRJEE: Objection, that is an incomplete
17 hypothetical as to whether II/USP is always voluntary.

18 THE WITNESS: If parents had the information
19 available to them that there was this program, it would
20 provide their schools with extra money and their school
21 district did not participate in it, parents should be
22 asking that question.

23 The program is voluntary. But if there was
24 not full subscription to it, it was not voluntary.

25 Q BY MR. JACOBS: I didn't understand that to be

1 A Toward the bottom.

2 Q This is -- participation was designed to be
3 weighted, or ended up being weighted?

4 A Designed to be weighted.

5 Q So one of the criticisms of the program is
6 that the districts which had schools that they were the
7 most concerned about whether they could meet the
8 targets once within the program would avoid
9 volunteering those schools.

10 Do you have any evidence one way or the other
11 to respond to that criticism?

12 MR. VIRJEE: You don't have to assume that's a
13 criticism. That may be one of his criticisms.

14 The question is vague and ambiguous.

15 THE WITNESS: I really have no information
16 relative to that.

17 MR. JACOBS: Let's give you another public
18 statement. This will be 320.

19 (Plaintiffs' Exhibit
20 No. 320 was marked for
21 identification.)

22 MR. JACOBS: 320 is a five-page document,
23 testimony to the Little Hoover Commission, Secretary of
24 Education Kerry Mazzoni, February 21, 2001.

25 Q Do you recognize this?

1 A I do.
 2 Q What is it?
 3 A It's testimony that I gave to the Little
 4 Hoover Commission.
 5 Q I want to refer you in particular to page 5.
 6 I will ask the question, then if you want to read the
 7 rest of the document to answer it you can.
 8 Under "Assessing Teacher Workforce Quality,"
 9 you say, "It is difficult to assess teacher quality
 10 without the ability to monitor individual student
 11 performance over time. Accordingly, the Governor's
 12 incentives include incentives for school districts to
 13 develop systems for monitoring individual student
 14 achievement from class-to-class and school-to-school
 15 over time."
 16 Do you see that?
 17 A Hmm-hmm.
 18 MR. VIRJEE: For the record, you misread it.
 19 It's the "Governor's initiatives," not "incentives."
 20 MR. JACOBS: I'm sorry.
 21 Q "Governor's initiatives include incentives."
 22 First question. What initiatives included the
 23 incentives referred to?
 24 A Okay. Let me just finish reading this
 25 section. I don't necessarily think I have to read the

1 whole testimony.
 2 Q Sure.
 3 A (Witness reviewing document.)
 4 You want to repeat the question?
 5 Q I will just restate it.
 6 What initiatives include the incentives you
 7 are referring to there?
 8 A Certainly the Governor's performance awards to
 9 school districts that meet their growth targets over
 10 time. One of the ways to support student achievement
 11 is to monitor student achievement in an ongoing
 12 fashion. And that would be a way for schools -- there
 13 would be funds there for schools to do that through
 14 that program.
 15 The Governor also had a program for school
 16 districts for money designed to go to the lowest
 17 performing schools to support those school districts or
 18 those schools within the district. That was teaching
 19 as a priority, or teachers as a priority. And those
 20 incentives were -- that incentive money could be used
 21 in a variety of ways. Certainly the end result is
 22 always about student achievement over time.
 23 Q The comment here suggested to me, at least,
 24 that you were talking about specific incentives for the
 25 development of student-identified performance over

1 time.
 2 Was there a program specifically directed to
 3 that?
 4 A There is. I am unable to cite any specific
 5 program, though the CSIS program is a voluntary program
 6 for school districts to come into that looks at student
 7 data, individual student data. And we would like to
 8 see all school districts participate in that.
 9 Q CSIS is the California Student Information
 10 System?
 11 A Yes.
 12 Q And what is the current status of CSIS?
 13 A It is moving forward.
 14 Q Moving forward at what pace?
 15 MR. VIRJEE: Objection, vague and ambiguous as
 16 to "what pace." Calls for speculation.
 17 THE WITNESS: Again, with limited resources
 18 and competing priorities, those are decisions that are
 19 made within the context of the budget negotiations.
 20 Q BY MR. JACOBS: So what's the -- with the May
 21 revise, what's the funding for CSIS?
 22 A I can't tell you what the funding is, but I
 23 know that we are still moving forward with it.
 24 Q And what is the stage at which it is currently
 25 in?

1 A There is pretty -- I don't know
 2 percentage-wise the participation. I know that it is
 3 improving over time. And with the entrance of Los
 4 Angeles Unified being the largest school district, that
 5 is a big increase.
 6 Q And what exactly is the status of LAUSD's
 7 participation in CSIS?
 8 MR. VIRJEE: Objection, calls for speculation,
 9 lacks foundation.
 10 THE WITNESS: I have heard that they were
 11 coming in to CSIS. And I don't know where they are in
 12 the process.
 13 Q BY MR. JACOBS: By "coming into CSIS," what do
 14 you understand that to mean? Does that mean they will
 15 provide data to CSIS that will be available in some
 16 way?
 17 A That's what I understand it to mean.
 18 Q And what's your current -- what's your
 19 understanding of the current regime with respect to the
 20 availability of CSIS data?
 21 MR. VIRJEE: Objection, vague and ambiguous as
 22 to "regime," calls for speculation, and lacks
 23 foundation.
 24 THE WITNESS: I am not -- I don't know how --
 25 let's see. I don't know to the extent CSIS is

1 providing the data that it is designed to do over time,
2 because we are not there yet. Under NCLB we are
3 required to have an individual student identifier, and
4 I am confident because of that that we will have that
5 for the students of California.

6 Q BY MR. JACOBS: Is -- do you -- has the -- has
7 CSIS been a topic of negotiation between the state and
8 federal NCLB authorities?

9 MR. VIRJEE: Objection, vague and ambiguous as
10 to "CSIS." Also calls for speculation and lacks
11 foundation.

12 THE WITNESS: I don't know to what extent CSIS
13 has been discussed specifically with the federal
14 government. We have been -- we do have conversations
15 about individual student identifiers.

16 Q BY MR. JACOBS: And your understanding is that
17 NCLB requires the association of an identifier with a
18 student, but not necessarily the creation of a database
19 relying that identifier?

20 MR. VIRJEE: Objection, No Child Left Behind
21 Act or NCLB speaks for itself.

22 THE WITNESS: NCLB requires that individual
23 student identifier so we can monitor student
24 achievement over time.

25 Q BY MR. JACOBS: I'm trying to unpack those

1 time."

2 Is that your judgment today?

3 A Yes.

4 Q And why is it difficult as you said there?

5 A If one is not able to determine whether or not
6 a teacher -- let me back up here. Let's see.

7 A quality teacher, a good teacher will be a
8 teacher who is able to achieve academic growth for a
9 student over time. If one is able to measure that, for
10 example in a pre and post test situation, one then can
11 determine whether or not the rigor of curriculum is
12 being delivered.

13 If there is no growth over time, one would
14 assume that there -- that the curriculum is not being
15 delivered. If there is growth over time, one would
16 then assume that it is being delivered. Those students
17 that have the greatest need we would want to see
18 greater growth over time. And that is why this then
19 becomes important. As I said earlier, by law we cannot
20 use this data in evaluation. There's nothing that
21 precludes using the data in a supportive way by an
22 administrator with a teacher.

23 Q And that was actually one of the questions I
24 was going to ask.

25 Is it your understanding that the restriction

1 words.

2 Does that mean it's your understanding that
3 actually CSIS itself is not mandated by -- or a CSIS is
4 not mandated by NCLB?

5 MR. VIRJEE: Objection, vague and ambiguous as
6 to a "CSIS" and "mandated," and the bill speaks for
7 itself.

8 THE WITNESS: My understanding of NCLB is that
9 we have to have an individual student identifier.
10 Whether or not it's CSIS is another issue.

11 Q BY MR. JACOBS: And whether or not it's a
12 database that provides -- that is a system for
13 monitoring individual student achievement from
14 class-to-class and school-to-school over time, that's a
15 decision up to the State of California, correct?

16 MR. VIRJEE: Objection, calls for speculation,
17 lacks foundation. And to the extent you are asking her
18 to tell you what NCLB says, the document speaks for
19 itself. The bill speaks for itself.

20 THE WITNESS: My understanding is that we need
21 to have an individual student identifier so that we are
22 able to measure student growth.

23 Q BY MR. JACOBS: The sentence before that, "It
24 is difficult to assess teacher quality without the
25 ability to monitor individual student performance over

1 applies not only to existing data of the -- such as the
2 achievement tests, it also would apply to a
3 longitudinal system like this?

4 MR. VIRJEE: Objection, calls for speculation,
5 lacks foundation. And also vague and ambiguous as to
6 "use of the data." She just testified in a way it
7 could be used.

8 THE WITNESS: The system that we have in place
9 now with our statewide test is a system in which there
10 is data provided to parents, teachers, administrators,
11 public, et. cetera, in different ways. Individual
12 student data is restricted to those people that -- the
13 parents and teachers and principals.

14 The current data does not provide for value or
15 growth over time. It's a snapshot. So it is limited
16 in that -- to that degree.

17 The individual student identifier and a value
18 added model is the model that we need to get to with
19 NCLB, as well as with CSIS, that shows us individual
20 student growth over time.

21 Q BY MR. JACOBS: And is there a variation in
22 the way the data can be used for teacher evaluation
23 purposes that depends on whether it's the snapshot
24 versus value added model?

25 A The value added model would be the model that

1 one would prefer, because different groups of children
 2 at different times would create a different snapshot.
 3 Q And -- but my question is in terms of the
 4 restrictions on the -- you've referred a couple times
 5 to the Legislative restrictions on the use of data.
 6 My question is, it doesn't matter whether --
 7 A Doesn't matter.
 8 Q Okay. Do you have -- by "you" I mean official
 9 Sacramento -- have an estimated timetable for when CSIS
 10 would come on line for -- when you said. "We need to
 11 get to" -- do you have an estimate of when we'll get to
 12 that?
 13 MR. VIRJEE: Objection, vague and ambiguous as
 14 to when we'll get to what, and also vague and ambiguous
 15 as to "official Sacramento."
 16 THE WITNESS: The estimates that I've heard in
 17 terms of CSIS being fully implemented is still several
 18 years out.
 19 My understanding of NCLB and the document
 20 would reveal that we need the individual student
 21 identifier probably sooner than the estimated time of
 22 CSIS being fully implemented.
 23 Q BY MR. JACOBS: And referring back to your
 24 comments this morning about a system that provides
 25 equal access and equity to all and what you were just

1 saying a few minutes ago about what you'd like to see
 2 for the least advantaged students in terms of growth,
 3 how does a CSIS type system fit into your vision of a
 4 system that provides equal access and equity to all?
 5 A A CSIS type system would provide us the rich
 6 data that we would need to measure accurately closure
 7 of the achievement gap and the progress of individual
 8 students. It also would provide us -- now I want to
 9 say that I'm saying this in the context of an
 10 individual student identifier.
 11 Q As opposed to -- why do you say it that way?
 12 A Because we are going to have -- we have to
 13 have an individual student identifier for NCLB. And
 14 the CSIS system, as I understand it, is -- will collect
 15 all kinds of data that may not be necessary for NCLB.
 16 What I'm interested in is looking at data that
 17 shows whether or not we are making a difference in the
 18 lives of children in terms of student achievement. And
 19 we need to have the individual student identifier to
 20 show that. We also need to look at our graduation and
 21 dropout rates.
 22 Q And in your judgment will CSIS type data be a
 23 tool for measuring whether we have -- whether we are
 24 coming closer to your vision of a system that provides
 25 equal access and equity to all?

1 A Yes, as would any other system with an
 2 individual student identifier.
 3 Q And just what's the -- tie that together.
 4 How will a CSIS system help achieve that
 5 vision?
 6 MR. VIRJEE: Objection, asked and answered.
 7 THE WITNESS: The CSIS system or a system
 8 with an individual student identifier would provide us
 9 the information relative to individual student growth
 10 over time. It would provide us information on mobility
 11 and -- that would give us better data relative to
 12 dropout rates. And there are myriad other things that
 13 it could provide. But I think those are two important
 14 measures.
 15 Q BY MR. JACOBS: And how does that relate to
 16 equal access and equity?
 17 A Well, we must monitor whether or not those
 18 children who have been historically underserved are
 19 gaining and closing the achievement gap. Without that
 20 information we won't know. And even though they may be
 21 improving over time, unless they are improving at a
 22 faster rate, we won't close the gap. And so we need
 23 that information to inform our decisions relative to
 24 the allocation of resources for those goals of academic
 25 achievement.

1 Q Have you given any other public statements
 2 since this testimony on the question of the importance
 3 of monitoring individual student performance over time?
 4 MR. VIRJEE: Objection, vague and ambiguous as
 5 to "public statements."
 6 THE WITNESS: I really don't know if I have
 7 any formal document such as this that discuss this
 8 issue. I do speak frequently in public regarding this.
 9 Q BY MR. JACOBS: And your comments today align
 10 with what you've said in public?
 11 A Yes.
 12 MR. JACOBS: Along a similar vein, let me ask
 13 you to look at Exhibit 321.
 14 (Plaintiffs' Exhibit
 15 No. 321 was marked for
 16 identification.)
 17 MR. JACOBS: I will just -- I will mention
 18 that the quote from you is on the second page in the
 19 fifth paragraph. But I'm also going to ask you about a
 20 quote from a Margaret Raymond on the third-to-last
 21 page. Actually it looks -- yeah, third-to-last page.
 22 Q So if you could take a look at this, I would
 23 appreciate it.
 24 A The third-to-last page?
 25 Q Yes.

1 A Where on the page?
 2 Q It's the fifth paragraph up from the bottom.
 3 A (Witness reviewing document.)
 4 All right.
 5 Q So a couple of preliminary questions.
 6 Do you recall this report from the Orange
 7 County Register coming out?
 8 A I do.
 9 MR. VIRJEE: This report or this article? Is
 10 that what you are referring to?
 11 Q BY MR. JACOBS: You do recall?
 12 A I recall this article, yes.
 13 MR. JACOBS: And just to make sure we have
 14 this in the transcript. This is an article dated
 15 August 11, 2002, "Headline: SPECIAL INVESTIGATION:
 16 MISSING THE MARK // Test scores unreliable //
 17 Education - Error margin means state can't precisely
 18 measure how schools are doing, but the cash still
 19 flows."
 20 Q And did you -- and so you are quoted as saying
 21 on the second page, "I have to trust the experts who
 22 designed the system that they have taken into account
 23 the statistical issues, and they've adjusted for that.
 24 And they've done the best they can to put together the
 25 system, quote, unquote, said Kerry Mazzoni, Davis'

1 Secretary for Education and a former Assemblywoman when
 2 the law was written."
 3 Do you see that?
 4 A Yes.
 5 Q Is that something you said to the reporters on
 6 this story?
 7 A I don't recall if that's exactly what I said.
 8 But it certainly had something to do with trusting
 9 their expertise. These were experts that did this, and
 10 it's been evaluated.
 11 Q Did you give any other public statements
 12 around this time about whether you thought the system
 13 referred to there was sufficiently accurate for the
 14 purposes of allocating rewards?
 15 A I don't recall.
 16 Q So turning to what Margaret Raymond said.
 17 First of all, you are aware Margaret Raymond
 18 is a retained expert for the state in this litigation?
 19 A I don't know Margaret Raymond, and I'm not,
 20 I'm not familiar with your experts.
 21 Q Your experts.
 22 A Oh, our experts. I don't know her. You know,
 23 I'm not familiar with some of the experts that we have.
 24 Q So she said, "I just don't think the API is
 25 accurate, quote, unquote.

1 You see that?
 2 A Yes.
 3 Q The article goes on to say, "The more
 4 controversial findings were left out of a news release
 5 by the state Office of the Secretary for Education."
 6 And then she says -- I think the article is quoting
 7 Raymond here, quotes, "It's not an accounting of what
 8 they are doing with all students in the school," close
 9 quote.
 10 You see that?
 11 A Yes.
 12 Q So I guess the first question is, were
 13 controversial findings left out of a news release by
 14 the state Office of the Secretary for Education?
 15 MR. VIRJEE: Objection. Any news release
 16 speaks for itself. Also vague and ambiguous as to
 17 "controversial findings," calls for speculation.
 18 THE WITNESS: Without having the release here,
 19 I don't even know what release she's talking about.
 20 Q BY MR. JACOBS: So sort of a question similar
 21 to one I asked before.
 22 Around the time of this article, do you recall
 23 whether you defended a news release by the state Office
 24 of the Secretary for Education as being complete?
 25 MR. VIRJEE: Objection, vague and ambiguous as

1 to "defended."
 2 Q BY MR. JACOBS: By the way, this isn't a trick
 3 question. I don't have a document here.
 4 A I don't recall. It is not my practice to
 5 manipulate the press, nor data.
 6 Q You see the previous paragraph that explains
 7 the study that Margaret Raymond did? It says, "The
 8 effect of this missing -- of these missing children
 9 also is spotted by Stanford University researchers who
 10 had received \$500,000 from the state to study ways to
 11 improve the API, but concluded so many students were
 12 left out that the scores were unreliable."
 13 You see that?
 14 A I do.
 15 Q Did you make any public comments at the time
 16 as to the question of the significance of students
 17 being left out of the scores?
 18 MR. VIRJEE: Objection, vague as to time. And
 19 vague as to "students left out of scores."
 20 THE WITNESS: I recall being interviewed for
 21 this article. I do not have any idea the premise for
 22 the designation of missing children.
 23 Q BY MR. JACOBS: If you are thinking about it,
 24 I didn't want to ask my next question.
 25 A As I recall -- I'm very foggy on this -- but

1 the people at Stanford rebutted these claims.
 2 Q What are you thinking of?
 3 A I know that the person at Stanford, though
 4 they are not -- are they mentioned by name in here?
 5 Maybe I should read the whole article.
 6 Q I can help you out, and Fram will tell you if
 7 I'm telling you something wrong.
 8 Margaret Raymond is at the Hoover Institution
 9 at Stanford.
 10 A Hmm-hmm.
 11 MS. READ-SPANGLER: I don't think that's what
 12 she's talking about. I think she's talking about the
 13 rebuttal. And if she reads through it, she would find
 14 the name. I can just tell her if you want me to.
 15 MR. JACOBS: Yeah, go ahead. I don't care.
 16 THE WITNESS: And I think there was a rebuttal
 17 that was printed in the paper.
 18 Q BY MR. JACOBS: If that's your recollection.
 19 MR. VIRJEE: There's no question pending.
 20 MR. JACOBS: Do you want to point her to
 21 something while we are on this?
 22 MS. READ-SPANGLER: No. I'm not going to --
 23 if she can remember independent, that's fine.
 24 THE WITNESS: I remember this article --
 25 MR. VIRJEE: There's no question pending.

1 Q BY MR. JACOBS: So the pending question is, as
 2 of today, do you believe the API is accurate?
 3 MR. VIRJEE: Objection, vague and ambiguous as
 4 to "accurate." Also calls for speculation, lacks
 5 foundation, also calls for an expert witness testimony,
 6 which this witness is not competent to give.
 7 THE WITNESS: Again, I am not an expert in
 8 designing accountability systems.
 9 I do know that our accountability system has
 10 been defined by a number of experts in the field as a
 11 very solid accountability system. I again know that
 12 all initiatives over time need to be monitored, which
 13 we do. I think the accountability system, the API is a
 14 valuable tool in identifying schools that are in need
 15 of improvement across the state.
 16 MR. JACOBS: Ask you about a letter you wrote
 17 to Senator Vasconcellos.
 18 (Plaintiffs' Exhibit
 19 No. 322 was marked for
 20 identification.)
 21 MR. JACOBS: Exhibit 322 is a letter dated
 22 August 22nd, 2002 from you to Senator Vasconcellos.
 23 Q Is this, in fact, a letter you sent to Senator
 24 Vasconcellos?
 25 A Yes.

1 MR. VIRJEE: Take your time and look at the
 2 letter first, Kerry, before you answer the question.
 3 THE WITNESS: I'm going to go ahead and read
 4 it if that's okay.
 5 MR. JACOBS: Sure.
 6 THE WITNESS: (Witness reviewing document.)
 7 Q BY MR. JACOBS: So my question about this
 8 letter is focused on the bottom of page one and the
 9 carry-over paragraph.
 10 You stated, "Despite these efforts, the rapid
 11 implementation of class size reduction created
 12 unintended consequences that greatly expanded the need
 13 and exacerbated the problem of unqualified teachers
 14 working in classrooms, particularly in schools with the
 15 greatest needs."
 16 Do you see that?
 17 A Hmm-hmm.
 18 Q By "unqualified," you mean not in some
 19 mechanical sense, but in some actual significant
 20 measure of teacher quality, correct?
 21 MR. VIRJEE: Objection, vague and ambiguous as
 22 to "mechanical" versus "significant measure."
 23 THE WITNESS: This certainly is in reference
 24 to what we found as a result of the implementation of
 25 class size reduction as indicated here. And what we

1 found was that those, as a result of class size
 2 reduction evaluation report and the interim reports of
 3 that, that the -- those children that were most at risk
 4 of not succeeding in school ended up with the least
 5 experienced teachers.
 6 Q BY MR. JACOBS: The letter goes on to refer to
 7 a program SB 2042 Alpert and Mazzoni.
 8 A Yes.
 9 Q Is that the program you were referring to this
 10 morning --
 11 A Yes.
 12 Q -- in the context of teacher credentialling?
 13 A Yes.
 14 Q As you sit here today in 2003, do you believe
 15 that the teacher credentialling system is a valuable
 16 component of a system that provides access to a
 17 rigorous curriculum?
 18 MR. VIRJEE: Objection, asked and answered,
 19 also vague and ambiguous as to "value." She answered
 20 that question twice this morning.
 21 THE WITNESS: A credentialling program is part
 22 of our program. There are different ways to get to
 23 that. But again, even then, just because a person has
 24 a credential does not mean they are a good teacher.
 25 Q BY MR. JACOBS: The significance of that is

1 what?

2 MR. VIRJEE: Significance of what is what?

3 Q BY MR. JACOBS: The significance of the --

4 MR. VIRJEE: Vague and ambiguous.

5 Q BY MR. JACOBS: -- the possible case of
6 someone credentialed not being a good teacher.

7 What inferences do you draw from that?

8 MR. VIRJEE: Objection, incomplete

9 hypothetical, calls for speculation.

10 THE WITNESS: There are many things that go
11 into the development and support of a good teacher.

12 Some of those things are certainly just inherent in the
13 personality of the teacher; if they like children, they
14 are passionate, they understand the content, they want
15 to make a difference. Other components, including
16 strong school leadership that supports the ongoing
17 development of the teacher. Mentoring. Collaboration.
18 There are myriad things that can support and influence
19 quality teaching. And what is important for one
20 teacher, what is important in terms of supports for one
21 teacher may not be the same for another teacher.

22 Q BY MR. JACOBS: So given all that, what's the
23 role of the teacher credentialing system in improving
24 the quality of education in California?

25 MR. VIRJEE: Objection, asked and answered.

1 Q BY MR. JACOBS: Are you aware that one of the
2 state's retained expert -- that's the expert opinion of
3 one of the state's retained experts in this litigation?

4 MR. VIRJEE: I don't want you to guess or
5 speculate.

6 THE WITNESS: I know that there are different
7 opinions and there's different research to support
8 different arguments relative to what is a good teacher.

9 I don't think that there is much dispute that
10 the important thing is having a good teacher.

11 Q BY MR. JACOBS: And are you aware of Dr.
12 Hanushek's research aside from any involvement he may
13 have had in this litigation?

14 A I am.

15 Q And you are aware that he's a critique of
16 teacher credentialing systems?

17 A Yes.

18 Q And that he would tend to -- on the scale of
19 no assurance to guarantee, he would tend to put the
20 credentialing system toward the no assurance end of
21 the scale?

22 MR. VIRJEE: Again, you don't have to assume
23 that's what Dr. Hanushek would say or do. That is
24 calling for speculation.

25 THE WITNESS: And I can't, I can't comment on

1 THE WITNESS: The role of credentialing is a
2 screen, so-to-speak, that would provide some assurance
3 that a person that is going to step into a classroom
4 and impact the lives of hundreds of children has some
5 training, some -- in both pedagogy, some training in
6 content, some induction, various things that we believe
7 are components to success in the classroom.

8 Q And by "some assurance," you are saying first
9 of all that nothing guarantees anything in life, and a
10 credential doesn't guarantee quality. Correct?

11 A That's correct.

12 Q But it's better than -- because we are
13 investing a lot in the credentialing system, it must
14 be the judgment of people like yourself that it's more
15 than no assurance.

16 A That's correct.

17 Q You are aware that one of the state's experts,
18 a Dr. Hanushek, has done economic metric research that
19 in his judgment demonstrates that the credentialing
20 system and whether a teacher has a credential is not
21 correlated with improved student outcomes?

22 MR. VIRJEE: You don't have to accept his
23 reference that that's what Dr. Hanushek's report says.
24 If he wants to ask a question about your beliefs about
25 that, that's fine.

1 that. What I'm interested in is in improved student
2 achievement over time.

3 Q BY MR. JACOBS: Well, actually Dr. Hanushek's
4 interested in that, too.

5 MR. VIRJEE: You don't have to assume that
6 either.

7 Q BY MR. JACOBS: My question is, first of all,
8 have you ever offered a public response to the research
9 or researchers who critiqued the California teacher
10 credentialing system?

11 A Not that I recall.

12 Q Have you commented publicly on the degree to
13 which the California teacher credentialing system
14 provides any assurance as to teacher quality? You said
15 here "some assurance."

16 What have you said on that issue in public?

17 A On the --

18 MR. VIRJEE: I'm going to object, that's
19 compound. I don't know which one of these two
20 questions you want her to answer.

21 THE WITNESS: On the issue of teacher quality,
22 I have publicly supported the work of the commission.
23 I also have publicly supported looking at other ways of
24 identifying what makes for a quality teacher.

25 Q BY MR. JACOBS: By "other ways" in this

1 context what do you mean?

2 MR. VIRJEE: Objection, asked and answered.

3 THE WITNESS: There is research that says
4 higher pay leads to better teachers. There is research
5 that suggests that it's not about content, it's about
6 personality type. There's a lot of different research
7 on this particular issue.

8 What I am interested in is looking at the data
9 that shows improved student achievement over time.

10 Q BY MR. JACOBS: And to the degree possible,
11 moving the credentialing system closer and closer so
12 that it aligns with that data?

13 MR. VIRJEE: Objection, assumes facts not in
14 evidence, also calls for an expert opinion which this
15 witness is not competent to give, and speculation.

16 THE WITNESS: I believe that content knowledge
17 is important for a good teacher. I believe that
18 pedagogy is important for a good teacher. I believe
19 that induction is important for a good teacher.
20 Collaboration. Strong site leadership. These are all
21 things that support good teaching. And when those are
22 there, we optimize our chances of improved student
23 achievement over time.

24 MR. JACOBS: Why don't we take just a few
25 minutes. Take a pretty short break so we can finish up

1 call -- I would never make this kind of a statement.

2 Q And particularly which part of it?

3 A "It is time for local districts and teachers
4 unions to do their parts -- their part." And it's not
5 in quotations. I would not dispute that I probably
6 spoke about contractual relationships, but I have never
7 made a statement like that.

8 Q And the issue here was one we talked about
9 this morning about, as stated on page 1, "a high
10 concentration of teachers without credentials in
11 schools in poor neighborhoods."

12 You see that?

13 MR. VIRJEE: The issue of the article is that,
14 is that what you are asking? Or the issue of her
15 statement?

16 Q BY MR. JACOBS: Do you see that, Ms. Mazzoni?

17 A I see the second paragraph "Anything, that is,
18 except dismantling union contract rules that make it
19 easier for experienced teachers to migrate from tough
20 jobs in poor neighborhoods to more comfortable," is
21 that what you are talking about?

22 Q Yes. That's the issue you were speaking to?

23 A Yes. I have talked about that.

24 Q And do you believe you did say that, "The
25 state has done a tremendous amount to provide

1 and let these guys do some questioning.

2 (A break was taken.)

3 (Plaintiffs' Exhibit
4 No. 323 was marked for
5 identification.)

6 MR. JACOBS: We've marked as Exhibit 323 an
7 article downloaded from Nexis, Contra Costa Times,
8 April 20th 2001. "Headline: Rethinking Seniority At
9 Schools; Unions Are Being Asked to Change Rules That
10 Allow Experienced Teachers to Leave Neediest
11 Classrooms." And I'm going to ask you about the
12 comment that is attributed to you at the bottom of the
13 second page.

14 Q BY MR. JACOBS: The paragraph reads, "Kerry
15 Mazzoni, Governor Gray Davis's Education Secretary, has
16 said the state has done a tremendous job to provide
17 incentives to teachers in low-performing schools, and
18 it is time for local districts and teachers unions to
19 do their part."

20 Do you see that?

21 A Yes.

22 Q Is that an accurate -- in substance is that an
23 accurate recitation of what you said?

24 A No. Though I have on a number of occasions
25 talked about contractual relationships, I would never

1 incentives for teachers"?

2 A Yes.

3 Q That has been something you have said on
4 numerous occasions?

5 A Yes.

6 MS. READ-SPANGLER: You've got to let him
7 finish his question.

8 Q BY MR. JACOBS: Do you have an assessment of
9 the effectiveness of those incentives, as we sit here
10 in September 2003, in assuring that there is less of an
11 issue with the concentration of teachers without
12 credentials in the schools referred to in the article?

13 MR. VIRJEE: Objection, compound as to which
14 incentives, calls for speculation, incomplete
15 hypothetical.

16 THE WITNESS: I don't know if there is any
17 absolute data that would show that the various
18 incentives that the Davis administration has put into
19 place to attract or retain teachers to our lowest
20 performing schools have been successful, because I
21 don't think that data has -- is available yet. It
22 takes a while to gather data and for programs to be in
23 place. So these are fairly new programs.

24 On the other hand, we do have data that shows
25 that teachers are staying, that those teachers that

1 have been in intern programs are staying in the
 2 schools. And those teachers -- we know that we have
 3 had a number of teachers that were interns in our
 4 lowest performing schools. So one could extrapolate
 5 and say they are staying in those schools, and that the
 6 programs that we've put in place have had an impact.
 7 Q BY MR. JACOBS: The data you are referring to
 8 about interns is the data you referred to this morning?
 9 A Yes.
 10 Q So you weren't referring to any new data --
 11 A No.
 12 And the decline in the number of teachers that
 13 are not credentialed or in a program.
 14 Q The absolute decline?
 15 A Yes.
 16 MR. JACOBS: Exhibit 324.
 17 (Plaintiffs' Exhibit
 18 No. 324 was marked for
 19 identification.)
 20 MR. JACOBS: Exhibit 324 is an article from
 21 the Argus, Fremont, California, January 27, 2003,
 22 "Mixed reviews for takeovers by state; Record of
 23 districts supervised" is the headline. Again a Nexis
 24 printout.
 25 And you are quoted in the fifth paragraph and

1 then about Oakland on the sixth paragraph up from the
 2 bottom of the second page. So fifth paragraph on the
 3 first page, sixth paragraph up from the bottom on the
 4 second page.
 5 THE WITNESS: (Witness reviewing document.)
 6 Q BY MR. JACOBS: You are quoted and paraphrased
 7 as follows. "State takeovers have improved more than
 8 just finances, said state Secretary of Education Kerry
 9 Mazzoni, explaining that, quote, A well managed
 10 district has a better chance of delivering academically
 11 for students than a mismanaged one," period, close
 12 quote.
 13 Do you see that? That's the one on the first
 14 page.
 15 A Yes.
 16 Q Did you say that?
 17 MR. VIRJEE: Say what's in quotes?
 18 Q BY MR. JACOBS: Well, did you say in substance
 19 the content of that paragraph?
 20 MR. VIRJEE: He's asking about the whole
 21 paragraph.
 22 THE WITNESS: The first part is not exactly
 23 what I would say, or I don't recall saying that. The
 24 second part I could have said. I would not dispute the
 25 second part. The state takeover is the part which is

1 paraphrased. There's really only one school district
 2 that we did more than a financial takeover of.
 3 Q BY MR. JACOBS: That was Compton?
 4 A Correct.
 5 Q So taking the part in quotes, "A well managed
 6 district has a better chance of delivering academically
 7 for students than a mismanaged one," what did you mean
 8 when you referred to "a well managed district"?
 9 A District in which the resources are being used
 10 in their appropriate manner focused on student
 11 achievement.
 12 Q Aside from the API data that you've referred
 13 to in your testimony, does the state have any measures
 14 whether a district is well managed or not?
 15 MR. VIRJEE: Objection, overbroad, calls for
 16 speculation, lacks foundation, vague and ambiguous.
 17 THE WITNESS: There are audits, reviews.
 18 Districts have the ability to contract with FCMAT.
 19 There are compliance reviews, there are internal
 20 reviews and audits. There are yearly audits. There
 21 are -- there's the API. There's the accountability
 22 report card. So there are many things that the state
 23 has put in place to support well managed districts.
 24 Q BY MR. JACOBS: To support well managed
 25 districts or to assess --

1 A Or to assess.
 2 Q So I know you were going to tell me the API is
 3 a piece of that, and I want to set that aside.
 4 You refer to audits.
 5 A Yes.
 6 Q In what way do audits determine whether a
 7 district is well managed?
 8 MR. VIRJEE: Objection, calls for speculation,
 9 lacks foundation.
 10 THE WITNESS: Certainly districts are required
 11 to have an outside auditor come in, look at their
 12 books, make sure they are spending their money
 13 according to law. Districts also have their internal
 14 reviews.
 15 Q BY MR. JACOBS: What do you mean by the
 16 internal reviews?
 17 A What are they called. The reviews that they
 18 do internally whenever they look at their curriculum
 19 and they look at -- their site councils do them. It's
 20 late in the day. I've lost all the acronyms in all of
 21 that.
 22 Q Let me back you up.
 23 The first audit, are you referring to the
 24 coordinated compliance review, the CCR?
 25 MR. VIRJEE: The first she referred to?

1 THE WITNESS: I'm talking about the outside
2 fiscal audit where you hire an outside auditor to look
3 at your books. Then you have your CCRs that come in
4 and look to see whether or not you are in compliance
5 with the laws. You have your county Office of
6 Education which certify your budgets or -- if that's
7 the case, or don't certify them. There are a number of
8 controls in place.

9 Q BY MR. JACOBS: And is that what you were
10 referring to -- well, strike that.

11 You said that what you were referring to in
12 connection with a well managed district was whether the
13 resources were being applied to the goal of student
14 achievement.

15 And my question is, do any of those metrics or
16 methods, other than the API, allow the state to make
17 judgments about whether a district is well managed in
18 that sense?

19 A Well, certainly if a school district has a
20 balanced budget and they are appropriately providing
21 standards aligned instructional materials, which they
22 need to certify to before they can buy other types of
23 materials, if they are -- particularly now under NCLB
24 making sure that they have fully credentialed teachers
25 in their classrooms in Title 1 schools, that these are

1 A Would lead to certainly further concern and
2 the potential entrance of FCMAT.

3 Q And FCMAT would come in with a view toward
4 addressing at least budget issues, correct?

5 A Yes.

6 Q Now, in the case of school districts that fall
7 so far off the map that they need a bailout from the
8 state; one of those recently is Oakland, Compton was
9 the first?

10 A No. Compton was not the first.

11 Q I guess West Contra Costa was the first.

12 A Yes.

13 Q Then Compton, then Emeryville?

14 A Cohachella Valley I think was one. West
15 Fresno. Those are the five.

16 Q And in each of those cases the result has been
17 a loan from the state to the school district, correct?

18 MR. VIRJEE: Objection, calls for speculation,
19 lacks foundation, also incomplete --

20 THE WITNESS: As I recall, yes.

21 Q BY MR. JACOBS: And the loan is repaid out of
22 the general funds allocated to the district?

23 A In future years.

24 Q I'm sorry?

25 A In future years.

1 all supports and indicators that could lead one to
2 believe that there is a good -- that there is the
3 potential for a good system in place.

4 Q Does the state have any mechanisms for
5 assembling that data, other than the API data that goes
6 into the program and draw any interventions toward
7 improving district management?

8 MR. VIRJEE: Objection, compound, vague and
9 ambiguous.

10 Which question do you want her to answer?

11 THE WITNESS: I'm not sure exactly what you
12 are asking.

13 We ask for audits, we ask for budgetary
14 information, we ask for certifications, such as for
15 standards aligned instructional materials. Those are
16 all things that would indicate that a district is on
17 the right track, separate from the API and evidence of
18 student improvement.

19 Q BY MR. JACOBS: And which of those indicators,
20 the ones you just referred to, would lead to any form
21 of intervention if the indicators were headed into the
22 negative territory?

23 MR. VIRJEE: Objection, calls for speculation.

24 THE WITNESS: A budget that is not certified.

25 Q BY MR. JACOBS: Would lead to what?

1 Q And those funds are then unavailable for the
2 purchase of, for example, textbooks or for paying
3 teachers, correct?

4 A There are specified funds for instructional
5 materials and other categoricals. Beyond that, the
6 general fund is left for personnel costs and other
7 costs to the district. And that's -- that is the
8 amount -- where the money would come from, not from
9 instructional materials account.

10 Q I think the state has argued in other context
11 that -- and I think it's sort of beyond dispute -- that
12 instructional materials are paid for in part out of the
13 designated funds and in part out of the general funds.

14 So would it not be the case, then, that there
15 would be less available from the general fund for the
16 purchase of instructional materials?

17 A I can't respond to that.

18 Q Are you aware of any mechanisms in place to
19 ensure that students in districts that are the subject
20 of bailouts are not deprived of equity and equal access
21 in the way you described it this morning by virtue of
22 the need of the district to repay those funds?

23 A I am not aware of that as being a cause for
24 inequity.

25 Q So the answer is since you are not aware of it

1 being a cause for inequity, you are not aware of any
2 specific mechanism addressed at that --

3 A I know there have been various pieces of
4 Legislation to either forgive or elongate the payback
5 period so that there would not be an impact.

6 Q In the case of Oakland, do you have any
7 information about what the impact will be on a per
8 student basis of the need to repay the loan?

9 MR. VIRJEE: Objection, calls for speculation,
10 lacks foundation.

11 THE WITNESS: I don't have -- I don't know
12 what the per pupil cost will be.

13 MR. JACOBS: Let's talk about misassignments
14 for a minute. And we will mark as the next 325.

15 (Plaintiffs' Exhibit
16 No. 325 was marked for
17 identification.)

18 MR. JACOBS: An article from a Nexis download
19 of the Los Angeles Times, August 22, 2002, "Headline:
20 The state study questions teachers training."

21 This is an article about a report by the
22 Education Trust on the degree to which in various
23 states, including California, certain secondary school
24 classes are taught by teachers who lacked a college
25 major or minor in field. And you are quoted in the

1 THE WITNESS: Again, I have no current data.
2 I do believe we are addressing the problem as a result
3 of programs we've put in place and NCLB.

4 Q BY MR. JACOBS: The specific NCLB influence is
5 what?

6 A Is that you have to have a major in subject
7 matter or pass a test. You have to have -- middle
8 school. Secondary level you have to have a major.

9 Q So middle school it's test or major, secondary
10 it's major?

11 A I'm not clear on the intent of that, but I
12 know that it's middle school on the major becomes an
13 important document -- or important in that.

14 Q And are there particular initiatives underway
15 to address misassignments in the context of NCLB in
16 California?

17 MR. VIRJEE: I'm going to object to the extent
18 it will invade the deliberative process privilege. And
19 also object to the grounds of speculation.

20 THE WITNESS: There was. And I don't think --
21 I don't know if it was -- if it's being funded or not,
22 because I don't recall it in the budget.

23 Q BY MR. JACOBS: Which program were you
24 thinking of?

25 A This was a program actually that is a bill of

1 third paragraph up from the bottom.

2 THE WITNESS: Yes, I see that.
3 (Witness reviewing document.)
4 Okay.

5 Q BY MR. JACOBS: Actually you are paraphrased
6 on the second-to-the-last paragraph, also.

7 A Hmm-hmm.

8 Q First of all, did you say, quote, "It is
9 better to have someone at least trying to teach science
10 than have absolutely no science"?

11 A I think I probably did.

12 Q And did you say, "We have some misassignments,
13 but we are addressing the problem"?

14 A And I think I probably also said that.

15 Q Fast forward to September 2003.

16 Do you have a judgment about the degree to
17 which misassignment is currently a problem in
18 California public schools?

19 MR. VIRJEE: Objection, calls for speculation,
20 lacks foundation.

21 THE WITNESS: I have no current data on that.

22 Q BY MR. JACOBS: Would you say today we have
23 some misassignments, but we are addressing the problem?

24 MR. VIRJEE: Objection, calls for speculation,
25 lacks foundation.

1 mine in the Wilson administration to send mathematics
2 teachers back to college to get major or minor. And
3 again, with budgetary constraints and competing
4 priorities, it, I don't think, is funded.

5 Q And the name of that was?

6 A I don't recall. It was a number of years ago.
7 It may not have been funded for several years, in fact.

8 Q It wasn't named by its bill number?

9 A No.

10 We also are addressing that through our work
11 with our colleges and universities that credential
12 teachers to make sure the teachers have the appropriate
13 preparation and content for meeting that requirement of
14 NCLB.

15 (Plaintiffs' Exhibit
16 No. 326 was marked for
17 identification.)

18 MR. JACOBS: I've marked as 326 a download of
19 an article from the Contra Costa Times, April 25, 2001,
20 "Headline: Diversity soars among the young."

21 On the top of the third page is a discussion
22 of an initiative to extend the school year, the middle
23 school year by 30 days.

24 Q You were one of the driving forces behind that
25 initiative, correct?

1 A This initiative was a bill that was sponsored
2 by the Governor. I came in as Secretary of Education
3 at the time -- the year that he sponsored it.
4 Q And you personally advocated for it?
5 A Yes.
6 Q You, in fact, were of the view that this would
7 particularly benefit lower performing students and
8 schools the most, correct?
9 A Yes.
10 Q And the reason that extending the middle
11 school year by 30 days would do that -- would have that
12 particular effect was what?
13 A Let me just read what I said here, if I might.
14 Q Sure.
15 A (Witness reviewing document.)
16 Okay. Back to your question.
17 Q What was the -- why did you think that
18 extending the middle school year by the proposed 30
19 days would particularly benefit lower performing
20 students in schools?
21 A Because I think the research is very
22 convincing that more time in standards aligned
23 instruction increases student achievement. And these
24 are children that need to greatly improve their
25 achievement.

1 Q The -- one of the issues in the case, in the
2 Williams case is the Concept 6 multi track year 'round
3 system.
4 Are you familiar with Concept 6?
5 A Yes, I am.
6 Q And you understand that it -- that although it
7 extends the length of the school day, it shortens the
8 total number of school days in the academic calendar.
9 A That's correct.
10 Q Do you have a judgment about whether that has
11 a negative impact on lower performing students in
12 schools?
13 MR. VIRJEE: Objection, calls for speculation,
14 lacks foundation, calls for an expert opinion which
15 this witness is not competent to give.
16 THE WITNESS: I believe that more time, and
17 that the research supports more time, as I've said, in
18 standards-based instruction is important, particularly
19 for those students that are behind. I also believe
20 that it is supported in research that long periods of
21 time outside of school is most detrimental for those
22 children who are not performing well, which would bring
23 me to conclude that children who are in lower
24 performing schools or lower performing themselves,
25 rather, should be in school longer with shorter breaks,

1 or days with shorter breaks.
2 Q And that relates to Concept 6 how?
3 A Concept 6 meets state requirements in terms of
4 instructional minutes, but not instructional days.
5 Q There's been some litigation that would
6 require the phaseout of Concept 6. And I believe the
7 Governor has vetoed that Legislation.
8 First of all, am I correct?
9 A If that was a bill last year, I believe he
10 did.
11 Q And did you make any public statements about
12 that veto?
13 A I don't believe I did.
14 Q Did the -- are you aware of any public
15 statements the Governor made on that veto?
16 A No.
17 Q Are you aware of any rationale for that veto
18 that Mr. Virjee -- that you could give, notwithstanding
19 Mr. Virjee's deliberative privilege instruction?
20 MR. VIRJEE: Which I will now give you.
21 THE WITNESS: Other than what is stated in the
22 veto message, I will have to listen to the attorney.
23 Q BY MR. JACOBS: You went on to talk about the
24 issue of teacher quality. And according to the article
25 you cited a research by prominent education experts who

1 find a student assigned an ineffective teacher may
2 never recover from academic deficiencies.
3 You see that?
4 A Yes.
5 Q Is that consistent with what you told the
6 interviewer?
7 A Yes.
8 Q And it's consistent with what you believe
9 today?
10 A Yes.
11 Q Then you said, quote, "We cannot do that to
12 children. It's unconscionable," end quote. Correct?
13 A Correct.
14 Q And that remains your view today?
15 A It is.
16 (Plaintiffs' Exhibit
17 No. 327 was marked for
18 identification.)
19 MR. JACOBS: Marked as Exhibit 327, download
20 of an article from The Modesto Bee, September 29, 2002,
21 "Headline: Simon Mocks Davis' Claims of Progress in
22 State's Schools Despite the Rhetoric, Debate Over
23 Education More Muted Than Past."
24 Q You said a couple things -- you are reported
25 to have said a couple things in this article, but I

1 wanted to ask you specifically about the comment in the
2 middle of the second page. "Certainly there are
3 concerns about the achievement gap, Mazzoni said, but
4 we are doing analysis of practices that are working in
5 some districts to close the gap."

6 Do you see that?

7 A Let's see.

8 Q It's five paragraphs down on page 2.

9 A Let me read everything I said.

10 Q Sure.

11 A (Witness reviewing document.)

12 Okay.

13 Q So my question is, when you referred to
14 analysis of practices -- strike that.

15 Did you say, "Certainly there are concerns
16 about the achievement gap, but we are doing analysis of
17 practices that are working in some districts to close
18 the gap"?

19 A I can say that I probably have said there are
20 concerns about the -- that part about the achievement
21 gap. I do not recall saying, "We are doing analysis of
22 practice."

23 I can say that what I would have been
24 referring to is the use of research based reading
25 programs in schools and watching the data relative to

1 is largely caused by teacher salaries, which takes me
2 back to our earlier conversation about the distribution
3 of teachers across the district that is largely
4 determined by contractual relationships.

5 Q BY MR. JACOBS: Are you aware -- strike that.

6 My understanding of your view was that local
7 school boards need to be held more accountable for the
8 arrangements they make, the contractual understandings
9 they make with teacher bargaining units; is that
10 correct?

11 A I think that local school boards need to
12 certainly consider the distribution of resources across
13 the district and what that looks like relative to their
14 student population.

15 Q Are you aware of any initiatives to strengthen
16 local school board capacity in that regard?

17 A I know that the CSBA has programs for
18 leadership for school board members. I know that the
19 Brode Foundation does some leadership training. There
20 is nothing I'm aware of systemically relative to that.

21 MR. JACOBS: I'm going to mark as the next in
22 order the California master plan.

23 (Plaintiffs' Exhibit
24 No. 328 was marked for
25 identification.)

1 that. And those schools that had implemented early on
2 Open Court and those school districts that had
3 participated early on in the professional development,
4 that is the 466, that really got started with AB2X.
5 That was the bill I carried when I was in the Assembly.

6 Q And any other analysis of practices?

7 A No. It was primarily looking at the reading.

8 Q And the data on Open Court is suggestive of
9 what?

10 A That the school districts that have
11 participated in Open Court -- using Open Court and came
12 on board early are showing quite good improvement and
13 outcomes for those children, and that those also tend
14 to be school districts that have participated in our
15 professional development.

16 Q Are you aware -- set the article aside.

17 Are you aware of any data that shows that in
18 some school districts schools in low income
19 neighborhoods with high numbers of low ELL kids are
20 effectively subsidizing schools in higher income
21 neighborhoods?

22 MR. VIRJEE: Objection, vague and ambiguous.

23 THE WITNESS: There is research to suggest
24 that follow the dollars to a school within a district
25 that there is disparity in terms -- and that disparity

1 THE WITNESS: I'm not going to sit here and
2 read this.

3 MR. JACOBS: No. Don't worry.

4 Exhibit 328 is a copy of the California Master
5 Plan For Education.

6 Q My first question to you is, did you have any
7 input into the master plan?

8 A I co-chaired the master plan the first --
9 well, just before I was termed out of office when the
10 master plan community was developed, Senator Alpert and
11 I were the co-chairs.

12 Q So when you ended your co-chairship, what was
13 the state of the master plan?

14 A It had -- the discussions around the master
15 plan were just getting started.

16 Q Now the master plan is done. Have you made
17 any public comments about it?

18 A I have not made -- I may have made some minor
19 public comments.

20 My position on the master plan was that it was
21 a Legislative document and that the administration
22 would comment on it relative to any bills that came
23 forward as a result of the master plan.

24 Q So do you have a view on recommendation 19.1
25 on page 50?

1 MR. VIRJEE: You have it memorized, right?
 2 THE WITNESS: On page 50?
 3 Q BY MR. JACOBS: Recommendation 19.1. "The
 4 state should establish clear, concise, and workable
 5 standards for facilities, to ensure a high-quality/
 6 high-performance teaching and learning environment."
 7 MR. VIRJEE: Objection, incomplete
 8 hypothetical, calls for speculation, lacks foundation.
 9 Also an unfair question to the witness without having
 10 read anything regarding the recommendations. Obviously
 11 the master plan includes a lot of information to
 12 support what that may or may not mean, and it's an
 13 unfair question without letting her do that.
 14 THE WITNESS: The state does have standards
 15 for facilities.
 16 Q BY MR. JACOBS: What are you referring to?
 17 A The standards for facilities through the state
 18 Allocation Board.
 19 Q For new school construction?
 20 A That's correct.
 21 Q How about for existing facilities?
 22 MR. VIRJEE: Same objections.
 23 Q BY MR. JACOBS: Just take a minute to look at
 24 the surrounding text.
 25 MR. VIRJEE: Well, "the surrounding text" is a

1 slippery term. This is a multiple page document.
 2 MR. JACOBS: We don't need a lecture, just
 3 object.
 4 MR. VIRJEE: This is a multi-page document,
 5 and if you want her to understand what that specific
 6 recommendation means, you have to either establish that
 7 she's read the document and understands it completely,
 8 or give her a chance to read the entire document if she
 9 needs to do that.
 10 THE WITNESS: (Witness reviewing document.)
 11 Okay. You want to repeat?
 12 MR. JACOBS: Sure. I will say it again.
 13 Q Do you have a view on recommendation 19.1?
 14 MR. VIRJEE: Objection, calls for speculation,
 15 lacks foundation, incomplete hypothetical, burdensome
 16 and oppressive.
 17 THE WITNESS: (Witness reviewing document.)
 18 Well, given what this recommendation says, one
 19 does not necessarily follow the other. There are other
 20 factors in play. Just because you have standards does
 21 not mean -- of facilities, does not mean that you have
 22 high-quality teaching.
 23 Q BY MR. JACOBS: So do you not support 19.1?
 24 A I don't --
 25 MR. VIRJEE: Objection, vague and ambiguous as

1 to "support," incomplete hypothetical, calls for
 2 speculation.
 3 THE WITNESS: Again, standards for facilities
 4 does not ensure high-quality/high-performance teaching.
 5 Q BY MR. JACOBS: Do you see anywhere in this
 6 document that -- where it is argued that standards for
 7 facilities ensure high-quality/high-performance
 8 teaching?
 9 MR. VIRJEE: Other than the recommendation in
 10 19.1?
 11 THE WITNESS: That's what it says.
 12 MR. JACOBS: It says "to ensure a
 13 high-quality/high-performance teaching and learning
 14 environment."
 15 MR. VIRJEE: The language speaks for itself.
 16 I guess that would make it vague and ambiguous.
 17 MS. READ-SPANGLER: I think we could all use a
 18 break when you are done with this question.
 19 MR. JACOBS: Sure. Just finish up on this.
 20 THE WITNESS: I think this is an incomplete,
 21 not clear recommendation. One might think that a
 22 classroom that has beautiful art in it and all of the
 23 accoutrements, so-to-speak, will mean that it is
 24 creating an environment for high-quality and
 25 high-performance teaching and learning. And I don't

1 believe that is necessarily true. I have been in
 2 classrooms where they have been beautiful and there was
 3 not high-quality teaching and learning going on. And I
 4 have been in classrooms that have been minimal where
 5 there was.
 6 Q BY MR. JACOBS: Is it not the case that a
 7 major part of the Davis administration's initiatives in
 8 the educational arena have been to provide more funding
 9 for facilities?
 10 A Yes.
 11 Q And isn't the goal of that to increase the
 12 likelihood that students will learn in a high-quality,
 13 high-performance teaching and learning environment?
 14 MR. VIRJEE: Objection, asked and answered
 15 this morning, also vague and ambiguous.
 16 THE WITNESS: It's important for the State of
 17 California to provide facilities for our students and
 18 to provide them with an environment that supports
 19 learning. But it is not the only thing that makes a
 20 difference. And in many ways it's much less important
 21 than the interaction that goes on between the teacher
 22 and the student.
 23 MS. READ-SPANGLER: Can we take a break?
 24 MR. JACOBS: Well, I'm sort of on a line right
 25 now.

1 Q So let me just come back to recommendation
2 19.1.
3 You've read the whole master plan?
4 A I have.
5 Q And you understand that it encompasses a wide
6 range of issues that go to improving the quality of
7 learning in California?
8 A That's correct.
9 Q It goes to teacher quality?
10 A Hmm-hmm.
11 Q Yes?
12 A Yes.
13 Q The document separately speaks to teacher
14 quality itself, correct?
15 MR. VIRJEE: The document speaks for itself.
16 You don't have to tell him what the document
17 says.
18 THE WITNESS: The document addresses many
19 things.
20 Q BY MR. JACOBS: Including teacher quality?
21 MR. VIRJEE: The document speaks for itself.
22 THE WITNESS: Yes. That's one of the things
23 it talks about.
24 Q BY MR. JACOBS: Includes quality of
25 instructional materials?

1 MR. VIRJEE: Objection, the document speaks
2 for itself. Vague and ambiguous as to "quality
3 instructional materials."
4 THE WITNESS: I have not read the document
5 recently, so --
6 MR. VIRJEE: I don't want you to guess or
7 speculate what the document says. Kerry, the document
8 speaks for itself.
9 MS. READ-SPANGLER: If you want to point her
10 to specific points of it, that's fine.
11 Q BY MR. JACOBS: My question to you is
12 recommendation 19.1.
13 Do you concur or not --
14 MR. VIRJEE: Objection.
15 Q BY MR. JACOBS: -- with that recommendation?
16 MR. VIRJEE: Objection, asked and answered
17 twice. She told you she doesn't understand it, it's
18 nonsensical. And she's already answered whether she
19 agrees or doesn't agree.
20 You don't have to change your answer because
21 the question is asked again, Kerry.
22 THE WITNESS: I believe this is a strange
23 recommendation.
24 Q BY MR. JACOBS: You don't support it?
25 MR. VIRJEE: Objection, asked and answered

1 three times.
2 THE WITNESS: I'm not saying I don't support
3 it. I'm saying that there is not an absolute nexus
4 between standards for facilities and student
5 performance.
6 Q BY MR. JACOBS: And you understand the
7 document to be -- you understand the recommendation to
8 be premised on that absolute nexus?
9 MR. VIRJEE: Objection, the document speaks
10 for itself, calls for speculation, lacks foundation.
11 THE WITNESS: The phrase "to insure" suggests,
12 as I read it, the nexus, and I don't agree there's a
13 nexus.
14 MR. JACOBS: One more on this then we'll take
15 a break.
16 MR. VIRJEE: Kerry, if you need to take a
17 break, you can take a break whenever you are ready. If
18 you are --
19 THE WITNESS: Well, we'll take a break. Brief
20 break.
21 MR. JACOBS: Okay.
22 (A break was taken.)
23 MR. JACOBS: Back on the record.
24 (Plaintiffs' Exhibit
25 No. 329 was marked for

1 identification.)
2 MR. JACOBS: Marked as Exhibit 329 an article
3 from The Associated Press State and Local Wire
4 downloaded from Nexis. "New Education Secretary upset
5 fellow democrat to win seat."
6 Q I don't want to ask you about upsetting the
7 fellow democrat to win the seat.
8 A That is really old news.
9 Q I want to ask you what you said when you came
10 into office, according to this article.
11 A Okay.
12 Q Which was that, "The biggest needs still
13 facing public education are qualified teachers, modern
14 buildings and sufficient help for poor and limited
15 English children."
16 MR. VIRJEE: Where are you? Thank you.
17 THE WITNESS: Yes, I see it.
18 Q BY MR. JACOBS: Did you say that in words or
19 substance?
20 A I probably did.
21 Q What are the biggest needs still facing public
22 education today?
23 A Certainly well trained teachers, good
24 teachers, quality teachers, early childhood education,
25 high school reform, leadership, educational leadership.

1 Q At the local level?

2 A Yes.

3 Q And where would you put sufficient help for
4 poor and limited English children?

5 A I think we are actually doing quite a bit, as
6 evidenced by our results on our statewide test on the
7 CELDT and -- relative to English learners. Certainly
8 we must continue to support their achievement. I think
9 there are things in place, and actually relative to
10 English learners one of the best things we can do is
11 provide them with high-quality early childhood
12 education.

13 Q And how about modern buildings?

14 A Modern buildings, this actually is -- it
15 certainly is important, as I have talked about earlier,
16 to make sure we provide facilities and -- adequate
17 facilities for our students. We experienced great
18 student growth and enrollment, although that is
19 flattening out now, and we have provided three, to date
20 three school bonds and another one coming up to address
21 that particular issue.

22 MR. JACOBS: I have no further questions.

23 THE WITNESS: You are done?

24 MR. JACOBS: I am. But the process, however,
25 goes on.

1 At any time.

2 MR. POULOS: Yeah. Just over your career.

3 Q I'm just trying to get a sense of your
4 experience with LA.

5 A I can't say that I had any experience with
6 LAUSD as a school board member, but as an
7 Assemblymember I -- and as chair of the Assembly
8 education committee I had the opportunity to visit the
9 school district on at least one formal occasion, if not
10 more. I don't recall, but I know I had one formal
11 day-long visit.

12 As Secretary for Education, I have visited
13 LAUSD on numerous occasions, and have also interacted
14 with staff from LAUSD in my office as well.

15 Q The trip or trips that you described when you
16 visited as the Secretary for Education, was it the case
17 that Superintendent Romer was the superintendent of Los
18 Angeles during all of those trips?

19 A No. The formal trip that I took to LA while I
20 was chair of Assembly education was -- I think I went
21 more than once, I'm sorry. I think there were -- one
22 was prior to the predecessor to Roy Romer and -- his
23 immediate predecessor, and perhaps --

24 Q Yeah. I apologize. I may have misspoke.
25 I was interested in your visits as the

1 Mr. Hajela, I think you intervened before
2 LAUSD.

3 MR. HAJELA: I don't have any questions.

4 MR. POULOS: Is it easier for me to move over
5 there?

6 Good afternoon, Secretary Mazzone. My name
7 is John Poulos, I'm one of the lawyers that represents
8 the Los Angeles Unified School District. And I'm
9 hopefully going to have to ask you just a few questions
10 this afternoon, and then we will be done.

11 First of all I would like to thank you for
12 your public service to the state. It is a sometimes
13 thankless task. I guess my gift -- my gift will be to
14 be brief, hopefully --

15 THE WITNESS: Thank you.

16 MR. POULOS: -- and get you out of here.

17 EXAMINATION BY MR. POULOS

18 Q In your experience as a school board member,
19 an Assemblyperson, and now as the Secretary of
20 Education, have you had occasion to interact with
21 management in the Los Angeles Unified School District?

22 A Yes, I have.

23 Q Can you just generally give me a thumbnail
24 sketch of your interactions with LAUSD?

25 MR. VIRJEE: Objection, vague as to time.

1 Secretary of Education.

2 A Okay. As Secretary of Education only with
3 Roy.

4 Q Do you have a present understanding about the
5 management of the Los Angeles Unified School District,
6 and specifically -- I'm just asking for your own views
7 as to whether you believe that the Los Angeles Unified
8 School District is well managed?

9 MR. VIRJEE: Objection, vague and ambiguous as
10 to "management" and "well managed," as to whether that
11 means by administration, by the board, or something
12 else.

13 THE WITNESS: My experience with LAUSD has
14 been, while it's been under the leadership of
15 Superintendent Romer, has been to visit various school
16 sites with the Governor, or with the superintendent, or
17 both. And my experience has been that in those
18 circumstances that the schools that I visited were
19 schools that I would send my child to.

20 Q BY MR. POULOS: Do you recall during the
21 visits, visiting several primary learning centers?
22 What I'm specifically recalling is perhaps some K-2
23 schools in the Los Angeles Unified School District.

24 A I don't recall going to any K-2 schools, but I
25 have been only to elementary schools since Roy has been

1 superintendent.

2 Q Do you have any views on the effectiveness of
3 the Los Angeles Unified School Board?

4 MR. VIRJEE: Objection, vague and ambiguous as
5 to "effectiveness."

6 THE WITNESS: I don't know the school board.
7 I had the occasion to meet members of the school board.
8 I am not in a position to judge their effectiveness. I
9 am familiar with the test scores of Los Angeles
10 Unified.

11 Q BY MR. POULOS: The same question with respect
12 to the superintendent.

13 Any views about his leadership capabilities?

14 A I have no experience working, obviously, for
15 the superintendent. My experience with the
16 superintendent has been a positive one. I regard him
17 highly, and the -- my experience in visiting the
18 district has suggested to me that he is an effective
19 leader.

20 Q Would it be true that you do not have any
21 direct experience with any deputy superintendent in the
22 LAUSD?

23 A I don't think it would be true.

24 Q Can you recall --

25 A Ronny Efram. I know Ronny and -- I know

1 and facilities that I recall from my visits as an
2 Assemblymember.

3 Q Are you aware that elementary test scores in
4 Los Angeles are increasing at a higher rate than the
5 rest of the state?

6 A Yes, I am.

7 Q Do you have any views as to why that is?

8 MR. VIRJEE: Objection, calls for speculation,
9 lacks foundation.

10 THE WITNESS: My understanding of Los Angeles
11 Unified School District, from the conversations that
12 I've had with people that I have been involved with,
13 have indicated to me that there has been a great
14 emphasis on participation in the AB 466 trainings,
15 early implementation of Open Court, and additionally,
16 of course, is the passage of, was it BB, for matching
17 funds for state monies.

18 Q BY MR. POULOS: Are you aware that -- well,
19 strike that.

20 I assume that you are aware that Los Angeles
21 is the largest school district in the State of
22 California?

23 A I am.

24 Q Are you also aware that the same types of
25 challenges that I've seen you describe that California

1 different people that have been very involved in LAUSD
2 and in the reforms that LAUSD has put into place.

3 Q What about can you recall any specific
4 thoughts or recollection you have about any of those
5 individuals and their abilities to do their jobs?

6 MR. VIRJEE: Object as overbroad and compound.
7 You can answer.

8 THE WITNESS: I have been impressed with the
9 focus that I have seen at the schools that I have
10 visited and the leadership of the administrators, that
11 being the principals at those schools, as well as the
12 comments that I have heard from teachers and parents at
13 those schools on my visits.

14 Q BY MR. POULOS: Do you have any knowledge of
15 any mismanagement of any textbook allowances at LAUSD?

16 MR. VIRJEE: Objection, vague and ambiguous as
17 to "mismanagement." Calls for speculation, lacks
18 foundation.

19 THE WITNESS: I don't.

20 Q BY MR. POULOS: Are you aware -- other than --
21 strike that.

22 Other than what you've testified to here a
23 little bit earlier, are you aware of the specific
24 conditions of any particular facilities in the LAUSD?

25 A Those facilities that I have visited recently

1 has in general are prevalent to a greater degree in the
2 Los Angeles Unified School District?

3 MR. VIRJEE: I'm going to object as overbroad
4 and vague and ambiguous.

5 THE WITNESS: I am aware of the demographic
6 composition of LAUSD and the challenges inherent in
7 that.

8 Q BY MR. POULOS: And specifically are you aware
9 that Los Angeles has a high percentage of ELL students?

10 A I am.

11 Q Are you aware that Los Angeles has a high
12 percentage of socioeconomically disadvantaged students?

13 A I am.

14 Q Do you also have an understanding as to
15 whether it takes more time to build new schools in
16 urban environments?

17 MR. VIRJEE: Objection, calls for speculation,
18 lacks foundation.

19 THE WITNESS: I am aware of the issues that
20 LAUSD has faced relative to land acquisition, impactation
21 in terms of student enrollment, cost, et. cetera.

22 Q BY MR. POULOS: Some of those -- are you aware
23 that in general urban districts have to, for lack of a
24 better word, reclaim land that has been used for some
25 other purpose before building a school district as

1 opposed to suburban districts that can go out and build
 2 on a clean cow pasture?
 3 A I am.
 4 Q Are you aware of the red team audits in LAUSD?
 5 A I am.
 6 Q Do you have any views as to the effectiveness
 7 of those audits?
 8 A No.
 9 Q Either way, positive or negative?
 10 A Right.
 11 Q Since you've been the Secretary of Education,
 12 would you say that educational opportunities for
 13 students in LAUSD have improved or deteriorated?
 14 MR. VIRJEE: Objection, calls for speculation,
 15 lacks foundation. Also vague and ambiguous as to
 16 "educational opportunities."
 17 THE WITNESS: Based on my view of your
 18 statewide test scores, I would -- your statewide test
 19 scores would lead me to believe that the opportunities
 20 are greater today than they were ten years ago.
 21 Q BY MR. POULOS: Do you agree that it takes
 22 more dollars to educate students -- raw dollars in
 23 urban environments than it does in suburban
 24 environments?
 25 MR. VIRJEE: Objection, calls for speculation,

1 lacks foundation, calls for an expert opinion which
 2 this witness is not competent to give.
 3 MR. JACOBS: And vague and ambiguous.
 4 MR. POULOS: That's how I know I've asked the
 5 perfect question, when everybody objects.
 6 MR. HAJELA: Sorry I didn't object.
 7 MR. POULOS: It's not too late.
 8 THE WITNESS: I believe that students that are
 9 at risk of not succeeding in school often require
 10 additional services. Some of these services are
 11 necessary because of the communities in which they
 12 live, whether or not they have breakfast when they come
 13 to school, whether they have the support services at
 14 home that provide them with outside reading. And so I
 15 do believe that there is a place for specific
 16 categorical type dollars for certain groups of
 17 children.
 18 Q BY MR. POULOS: Do you agree that Los Angeles
 19 has a high percentage of students that are at risk of
 20 not being able to succeed?
 21 MR. VIRJEE: Vague and ambiguous as to "at
 22 risk," calls for speculation, lacks foundation,
 23 incomplete hypothetical.
 24 MR. JACOBS: And vague and ambiguous.
 25 MR. HAJELA: I just didn't like it.

1 THE WITNESS: I believe given the demographics
 2 of Los Angeles Unified School District and what we know
 3 about the impacts of those factors outside -- what
 4 those impacts from factors outside of school can have
 5 on student learning, that LAUSD does face challenges.
 6 I do believe that all children are capable of
 7 rising to high standards.
 8 Q BY MR. POULOS: Now I'm going to ask you just
 9 a few questions regarding your experience in the
 10 political process in California. Because one of the
 11 things that frankly has my head swimming is that
 12 I've -- as I sit here I've listened to a lot of
 13 professors talk about a lot of stuff, and you are my
 14 opportunity to talk to somebody that's actually been
 15 doing things. And so I don't want to pass up that
 16 opportunity, if it's okay with you.
 17 Do you agree that our system of democratic
 18 government requires state and local government to make
 19 difficult policy decisions?
 20 A Yes.
 21 Q Do you agree that California, or any state for
 22 that matter, does not have enough money to fund all
 23 worthy education programs?
 24 MR. VIRJEE: Objection, vague and ambiguous as
 25 to "worthy." Vague as to time.

1 THE WITNESS: I would like to see more money
 2 allocated to education and more opportunities available
 3 for everyone.
 4 I do not believe that money is the only
 5 indicator, or the amount of money is the only indicator
 6 of a quality education system.
 7 Q BY MR. POULOS: As a school board member, did
 8 you ever have to make what I'm going to refer to as
 9 difficult allocation of resources decisions?
 10 A Yes.
 11 Q And I assume -- is the same also true when you
 12 were a Legislator?
 13 A Yes.
 14 Q And I gather the reason that those decisions
 15 were difficult is because there wasn't enough money to
 16 fund everything. Is that correct?
 17 MR. VIRJEE: Objection, vague and ambiguous as
 18 to "enough" and "everything."
 19 THE WITNESS: Sometimes the issue is money and
 20 sometimes it's not money. Sometimes it's political
 21 context in which a decision has to be made.
 22 Q BY MR. POULOS: Without regard to whether it
 23 should be or not, is it your belief that the
 24 establishment of educational policy at the statewide
 25 level is and always will be a political process?

1 A Absolutely.
 2 Q I'm just going to ask a couple follow-up
 3 questions to some of the documents that you've
 4 discussed earlier today by plaintiffs' counsel.
 5 I gather in one of those documents -- am I
 6 correct in understanding that the reason that you
 7 decided to run for Assembly was that you wanted to have
 8 a greater impact on statewide public educational
 9 policy?
 10 A That's correct.
 11 Q When you were a school board member, do you
 12 recall experiencing any frustration because many of the
 13 decisions are controlled by state policy?
 14 A Yes.
 15 Q Do you believe that school districts have more
 16 discretion today in educational policy or less
 17 discretion than when you were a school board member?
 18 A Less discretion.
 19 Q And am I correct in recalling that you believe
 20 that at least one of the primary functions of local
 21 school boards is to implement state policy in the best
 22 ways for their communities?
 23 A That's correct.
 24 Q And that local districts are, I think you said
 25 the critical entity, but correct me if I'm wrong, for

1 the delivery of state policy.
 2 A That's correct.
 3 MR. POULOS: I believe that's all the
 4 questions I have.
 5 MR. JACOBS: I just have a couple of
 6 follow-ups to his.
 7 EXAMINATION BY MR. JACOBS
 8 Q The question of local discretion. That should
 9 be driven with a razor like focus on student
 10 achievement, correct?
 11 MR. VIRJEE: Objection, vague and ambiguous as
 12 to "razor like focus."
 13 THE WITNESS: Everything that we do in
 14 education must be focused in student achievement.
 15 Q BY MR. JACOBS: That includes the allocation
 16 of responsibility to various levels of government?
 17 MR. VIRJEE: Objection, vague and ambiguous.
 18 THE WITNESS: Would you repeat it?
 19 THE REPORTER: That includes the allocation of
 20 responsibility to various levels of government?
 21 THE WITNESS: I'm not quite sure what you
 22 mean.
 23 Q BY MR. JACOBS: As to whether a particular
 24 amount or degree of local discretion is useful,
 25 important, good, bad, that should be measured by the

1 degree to which that level of local discretion
 2 contributes to student achievement?
 3 MR. VIRJEE: Objection, vague and ambiguous,
 4 incomplete hypothetical.
 5 THE WITNESS: I think our II/USP system is an
 6 example of where student achievement is not occurring
 7 that there then becomes a greater responsibility, or a
 8 responsibility that moves from the local school board
 9 to some other entity that steps in to ensure, as best
 10 it can, that student achievement will improve.
 11 Q BY MR. JACOBS: So that's an example of the
 12 state implementing a policy that moves authority and
 13 responsibility between levels of government driven by
 14 the goal of improving student achievement?
 15 A Yes.
 16 Q The schools that you visited at LAUSD, were
 17 they chosen by LAUSD?
 18 A Yes. Actually, not always. They were often
 19 chosen by me, or by my office.
 20 Q You are talking about Office of the Secretary
 21 of Education?
 22 A Yes. Schools that we would want to go see.
 23 Q And did you ever select schools that you
 24 wanted to see because you had an indication that it was
 25 a troubled school?

1 A Since I have been secretary, I have primarily
 2 visited in school -- in LA schools that fall in the
 3 bottom decile, sometimes schools in the first or second
 4 decile.
 5 When I was in the Assembly, I visited schools
 6 that were selected by LAUSD, but I wanted to visit some
 7 certain types of schools. I wanted to visit a highly
 8 impacted school, and I wanted to visit schools in
 9 ghetto areas.
 10 Q So taking the first part of your answer, the
 11 schools you visited as Secretary of Education. You
 12 said those were in the bottom deciles?
 13 A Yes.
 14 Q You are talking about the bottom deciles on
 15 the API?
 16 A Yes.
 17 Q Do you recall what their similar school
 18 ranking was?
 19 A Some of them had -- I can't say that I visited
 20 a 1-1. I am relatively certain I visited either a 2-3
 21 or a 2-4. I am relatively certain I had visited
 22 schools that had higher similar rankings.
 23 Q As to each of those cases is it true that they
 24 met the standard "I would be willing to send my child
 25 to it"?

1 A Yes.

2 Q And I guess my question is, if they are low
3 decile schools, then they are low performing schools
4 under the state's measure, correct?

5 MR. VIRJEE: Objection, vague and ambiguous as
6 to "low performing."

7 THE WITNESS: These are also schools that I
8 believed were on the move and improving.

9 Q BY MR. JACOBS: When you said as a standard "I
10 would send my child to it," what did you have in mind?

11 A That there was focus on the content, the
12 rigor, a belief that all students could learn. There
13 was strong leadership. There was organization. There
14 was collaboration.

15 Q And the low rankings on the API were a
16 function of the relative newness of those features in
17 the school environment?

18 MR. VIRJEE: Objection, calls for speculation,
19 lacks foundation.

20 THE WITNESS: And I can't say whether they
21 were -- I can't say.

22 Q BY MR. JACOBS: The point is that the -- I
23 guess the point I'm driving at is you couldn't tell
24 from the API whether those were schools you would send
25 your child to, correct?

1 ambiguous.

2 THE WITNESS: The schools were clean,
3 well-maintained, no graffiti, no garbage.

4 Q BY MR. JACOBS: No dark classrooms?

5 A No dark classrooms.

6 Q No extremes of hot and cold?

7 A No.

8 Q No --

9 A Not that I experienced.

10 Q No jackhammer noises or other distracting
11 noise?

12 A No.

13 Q Those are all things that you had your eyes
14 out for as you were looking for -- as you were going
15 through these schools and making a judgment about
16 school quality, correct?

17 MR. VIRJEE: Objection, calls for speculation,
18 lacks foundation, vague and ambiguous.

19 MR. POULOS: Objection.

20 THE WITNESS: When I go to a school I look at
21 all kinds of things. The most important thing is
22 what's happening in the classroom.

23 Q BY MR. JACOBS: Now, did you ever -- you ever
24 tried to do kind of a compare and contrast within
25 LAUSD, or any other school district; that is go to some

1 A That's correct.

2 Q You had to form a judgment based on these
3 nontestable or nontested factors.

4 MR. VIRJEE: Objection, vague and ambiguous as
5 to "nontested."

6 THE WITNESS: I would say what impressed me
7 again was a -- was the instruction that was aligned to
8 the standard, a focus on that. A focus that all
9 children had achieved. A strong leader -- a strong
10 support system for teachers in terms of the leadership
11 at the school, an excitement that children were
12 learning and that the sky was the limit. It was very
13 much a sense of empowerment and positive feeling at
14 these schools.

15 Q BY MR. JACOBS: The facilities were clean?

16 A Facilities were clean.

17 Q They were well-maintained?

18 A They were well-maintained.

19 Q They may or may not have been modern in the
20 sense of built in the last several years, but you
21 didn't see any facilities issues that in your judgment
22 would interfere with quality instruction?

23 MR. VIRJEE: Objection, calls for speculation,
24 lacks foundation, calls for an expert opinion this
25 witness isn't competent to give, and vague and

1 schools that you are able to determine yes, I would
2 send my child here based on these kinds of factors, and
3 now I really want to seek out some schools where I
4 understand these factors are not present?

5 A Yes.

6 MR. POULOS: Objection, compound.

7 Q BY MR. JACOBS: What's an example of that?

8 A Compton.

9 Q When was your visit to Compton?

10 A I made a couple visits to Compton in my
11 experience as an Assemblywoman.

12 Q How about as Secretary of Education, have you
13 done that kind of compare and contrast kind of visit?

14 MR. POULOS: Objection, vague and ambiguous.

15 THE WITNESS: I have not done that within a
16 school district. And I haven't done it in any
17 organized way around the state, although I have visited
18 numerous schools, and there are schools where there's a
19 positive attitude going on about students and there are
20 schools where there's not.

21 Q BY MR. JACOBS: And it's something
22 detectable -- you have to worry, right, that the school
23 is putting on a show for you when you come visit?

24 A Right.

25 Q You have to worry about the protecting the

1 village problem?

2 A Yes.

3 Q Have you been able to penetrate below what the
4 school might be trying to show and determine whether,
5 in fact, what you are seeing is reality?

6 MR. VIRJEE: Objection, calls for speculation.

7 THE WITNESS: To some degree.

8 Q BY MR. JACOBS: And what are the mechanisms
9 you use?

10 MR. POULOS: Objection, lacks foundation.

11 THE WITNESS: I talk to staff, I talk to
12 students. I look around, I try to assess what's
13 happening in the classroom. Is there a uniform
14 curriculum. Is there a focus on high standards. Have
15 the teachers -- I ask, "Have the teachers participated
16 in our training," those kinds of things.

17 Q BY MR. JACOBS: And is this an exercise that
18 you have found -- where you have said to yourself, "I
19 am uniquely able to do this kind of visit," as opposed
20 to -- and make these kind of observations as opposed
21 to, "This is something that is doable by people who
22 have spent time in education"?

23 MR. VIRJEE: Objection, calls for speculation,
24 lacks foundation. Vague and ambiguous.

25 THE WITNESS: I don't think I'm uniquely able

1 A Hmm-hmm.

2 Q That were not -- where the belief was not all
3 students can achieve. Correct?

4 A Correct.

5 Q And that's as Secretary of Education?

6 A I would say more -- I would say yes, I've been
7 to some schools like that.

8 Q And I won't put you in an awkward spot by --
9 unless you are comfortable -- identifying those
10 schools.

11 A I can't. I've been to so many schools, I
12 couldn't tell you.

13 Q Did you ever find yourself frustrated at the
14 lack of your ability to directly influence what was
15 going on in those schools?

16 MR. VIRJEE: Objection, assumes facts not in
17 evidence.

18 THE WITNESS: I've never assumed that I had
19 the ability to directly impact that.

20 As an Assemblymember I believed I had some
21 ability to influence state policy, through Legislation
22 that I authored. And as Secretary of Education I
23 believe that I have some ability to advise the Governor
24 on education policy. That's very different than having
25 a direct impact on any particular school.

1 to do that.

2 Q BY MR. JACOBS: In the course of your -- when
3 Delaine Eastin was Superintendent of Public
4 Instruction, she made a comment once, that we will be
5 asking her about next week, where she said, "I don't
6 have the authority to order people to do things,"
7 something along those lines. And she was referring to,
8 for example, really run-down schools. "I don't have
9 the authority to order them to fix those schools up."

10 Did you -- in any of your visits, did you ever
11 conclude to yourself, you know, "We really need a
12 vehicle for coming into a school like this and turning
13 it around more quickly"?

14 MR. POULOS: Objection, vague and ambiguous.

15 MR. VIRJEE: Objection, vague and ambiguous,
16 also assumes facts not in evidence.

17 You don't have to assume that former
18 Superintendent Eastin ever made any such comment.

19 THE WITNESS: I don't quite understand your
20 question. Try again or repeat it.

21 Q BY MR. JACOBS: You visited schools where you
22 were not impressed.

23 A Hmm-hmm.

24 Q And you saw environments that were -- that did
25 not have a focus on students.

1 MR. JACOBS: No further questions.

2 (Off the record.)

3 MS. READ-SPANGLER: The deponent will have 45
4 days from the date that the counsel for the deponent
5 receives the deposition transcript to make the
6 corrections and send them back.

7 MR. JACOBS: No problem.

8 MR. HAJELA: That's okay.

9 MR. POULOS: So stipulated.

10 MR. VIRJEE: So stipulated. Thank you.
11 (The deposition was concluded at 4:53 p.m.)

12 //

13 //

14

15

16

17

18

19

20

21

22

23

24

25

1 PURSUANT TO SECTION 2025 (q) (1) of the Code of
2 Civil Procedure of the State of California, I hereby
3 certify that I have read my deposition, made those
4 changes and corrections I deem necessary, and approve
5 the same as now written.

6
7 (Check one) NO CORRECTIONS
8 CORRECTIONS PER
9

10
11 DATED this 26th day of September, 2003.
12

13
14 _____
15 KERRY MAZZONI
16

17
18 CASE TITLE: Williams v State of Calif.
19 DATE OF DEPOSITION: September 18, 2003
20 JOB NUMBER: 38591
21
22
23
24
25

1 REPORTER'S CERTIFICATE
2

3 I, LISA RICHARDSON, a Certified Shorthand Reporter
4 for the State of California, duly licensed and a
5 disinterested person, certify:

6 That the foregoing deposition was taken before me
7 pursuant to applicable sections of the Code of Civil
8 Procedure of the State of California at the time and
9 place herein set forth;

10 That Kerry Mazzoni, the deponent herein, was put
11 under oath by me;

12 That the testimony of the witness and all
13 objections made at the time of the examination were
14 recorded stenographically by me, to the best of my
15 ability, and were thereafter transcribed;

16 That the foregoing deposition is a verbatim record
17 of the testimony of the deponent and all objections
18 made at the time of the examination.

19 IN WITNESS WHEREOF, I have subscribed my name on
20 this 26th day of September, 2003.
21

22 _____
23 LISA RICHARDSON
24 Certified Shorthand Reporter,
25 License No. 5883

1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting from
4 your testimony, print the exact words you want to
5 delete. Specify with "Add" or "Delete" and sign this
6 form.

7 DEPOSITION OF: Kerry Mazzoni
8 CASE: Williams v State of Calif.
9 DATE OF DEPOSITION: September 18, 2003
10

11 I, Kerry Mazzoni, have the following corrections to
12 make to my deposition:
13

14	PAGE	LINE	CHANGE/ADD/DELETE
15	___	___	_____
16	___	___	_____
17	___	___	_____
18	___	___	_____
19	___	___	_____
20	___	___	_____
21	___	___	_____
22	___	___	_____
23	SIGNATURE	DATE	_____

24
25

