

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

ELIEZER WILLIAMS, et al.,)

Plaintiffs,)

vs.)

No. 312 236

STATE OF CALIFORNIA, DELAINE)

EASTIN, State Superintendent)

of Public Instruction,)

STATE DEPARTMENT OF EDUCATION,)

STATE BOARD OF EDUCATION,)

Defendants.)

-----)
AND RELATED CROSS-ACTION.)

-----)

DEPOSITION OF JOHN MOCKLER
Sacramento, California
Wednesday, January 23, 2002
Volume I

Reported by:
TRACY LEE MOORELAND
CSR No. 10397
JOB No. 30596

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1 BE IT REMEMBERED, that on Wednesday, January
2 23, 2002, commencing at the hour of 10:05 a.m., thereof,
3 at the offices of Morrison & Forester, 400 Capitol Mall,
4 26th Floor, Sacramento, California, before me,
5 TRACY LEE MOORELAND, a Certified Shorthand Reporter in
6 the State of California, there personally appeared
7 JOHN MOCKLER,
8 called as a witness herein, who, having been duly sworn
9 to tell the truth, the whole truth, and nothing but the
10 truth, was thereupon examined and interrogated as
11 hereinafter set forth.

12 --oOo--

13 EXAMINATION BY MR. JACOBS

14 Q. Good morning, Mr. Mockler. My name is Michael
15 Jacobs. I represent the plaintiffs in this case.
16 You've seen the complaint?
17 A. Yeah.
18 Q. Have you been deposed before?
19 A. No.
20 Q. Never in your professional career has your
21 deposition been taken?
22 A. No, I don't believe so.
23 Q. The basic ground rules are that I ask the
24 questions, you give the answers, the reporter takes them
25 down. That imposes a certain discipline on us. I have

1 to complete my question in order to allow you to answer
2 it, and then you have to finish your question -- finish
3 your answer before I can do the next question. The
4 reporter takes the transcript down. We can use that for
5 certain purposes in the litigation.

6 Do you understand all that?

7 A. Yes.
8 Q. If you don't understand my question, please ask
9 me to clarify it. That may engender a little dialogue
10 between us about what needs clarification, but it's
11 important that the question and answer be clear on the
12 record so that there's not a dispute later on about what
13 I meant and what you meant. Okay?
14 A. Yes.
15 Q. You graduated college in?
16 A. 1963.
17 Q. From there what did you do?
18 A. I won a Coro Foundation Fellowship for the year
19 of '63, '64.
20 Q. And was that in an educational context?
21 A. No, it's a public policy program in a number of
22 cities. I was in San Francisco.
23 Q. In city government?
24 A. City, state politics. Coro Foundation --
25 Q. I know Coro. But your particular assignment?

1 A. All of them. They send you to all of them,
2 city government, county government, state government.
3 Q. After Coro, what did you do?
4 A. I was the executive director of the Youth
5 Against Proposition 14.
6 Q. And then what did you do?
7 A. Traveled for about eight months or ten months
8 and came back as administrative assistant to state
9 Senator Fred Farr, 1965, about June, I think.
10 Q. Did you have a series then of positions for
11 legislators in Sacramento?
12 MR. VIRJEE: You mean consecutively, is that
13 what you're asking?
14 MR. JACOBS: Yeah.
15 THE WITNESS: Well, I worked for Senator Farr,
16 they reapportioned the senate one man, one vote. I then
17 went back to graduate school at Sacramento State
18 University.
19 Q. BY MR. JACOBS: And what did you do --
20 A. I finished my coursework for a master's in
21 economics. Did not get a master.
22 Q. Finished coursework?
23 A. Yeah.
24 Q. Then what?
25 A. Then I went to work for the assembly office of

1 research in about January of 68.
2 Q. How long did you work there?
3 A. About five months, four months. And then I
4 went to work for the governmental efficiency and economy
5 committee for about six months.
6 Q. Then what?
7 A. Then I went to work for the assembly education
8 committee for two years.
9 Q. You were on the committee staff as opposed --
10 A. Committee staff.
11 Q. -- as opposed to an individual legislator or
12 staff?
13 A. Committee staff, yes.
14 Q. So that brings us to what year?
15 A. 1971, January, when I went to work for the
16 assembly ways and means committee as a consultant.
17 Q. How long did you do that?
18 A. Three-and-a-half years.
19 Q. And then?
20 A. I went to work for the State Department of
21 Education, went to work for Wilson Riles, superintendent
22 of public instruction.
23 Q. What was your position in the DOE?
24 A. Chief office of government affairs, which is
25 sort of a lobbyist, and later manager of the school

1 finance equalization project. We did school finance
 2 modeling for implementation of Serrano.
 3 Q. And that brings us to what year?
 4 A. 1977. Went to work as the director of the
 5 independent analysis unit, Los Angeles Board of
 6 Education until about, I think, December of 80.
 7 Q. Then what?
 8 A. '81, '82 I created and operated a business in
 9 which I did consulting and government advocacy.
 10 Q. Was that in Los Angeles?
 11 A. In Sacramento.
 12 Q. So you moved back here?
 13 A. Right.
 14 Q. And when you did the job with the independent
 15 analysis unit, was your job located, in Los Angeles?
 16 A. Yes. Yes.
 17 Q. '82?
 18 A. '81 and '82 I did the business, and then in '83
 19 I went to work for the speaker of the assembly, '82 and
 20 '83
 21 (Mr. Jordan entered the room.)
 22 Q. BY MR. JACOBS: Was that Willie Brown by then?
 23 A. It was indeed.
 24 Q. How long did you work for him?
 25 A. From that stint, two years. Ways and means was

1 three-and-a-half years --
 2 MR. VIRJEE: Answer his questions.
 3 Q. BY MR. JACOBS: Next?
 4 A. Then I went back to the business I had formed.
 5 Q. Did you use the same name in '83, '84 -- I'm
 6 sorry, after '83, '84 when you went back to the
 7 business --
 8 What was the name of your business in '81, '82?
 9 A. Murdoch, Mockler & Associates, M-u-r-d-o-c-h.
 10 Q. And what was the name of the business in the
 11 period after you worked for the speaker '83, '84?
 12 A. Murdoch, Mockler & Associates.
 13 Q. And how long did you remain in that capacity?
 14 A. Until, I believe, 1991.
 15 Q. What did you do in 1991?
 16 A. Formed a company called Strategic Education
 17 Services.
 18 Q. And was the mission of Strategic Education
 19 Services similar to your mission with Murdoch, Mockler?
 20 A. Yes, Murdoch Mockler divided up.
 21 Q. And how long did you -- were you the only
 22 principal at Strategic Education Services?
 23 MR. VIRJEE: Objection. Vague and ambiguous as
 24 to "principal."
 25 THE WITNESS: Principal?

1 MR. VIRJEE: Also assumes facts not in
 2 evidence.
 3 THE WITNESS: Principal?
 4 Q. BY MR. JACOBS: Meaning what was your title
 5 at -- in Strategic Education Services?
 6 A. President.
 7 Q. Was there -- and you did lobbying on behalf of
 8 clients, correct?
 9 A. Yes.
 10 Q. And were you a registered lobbyist?
 11 A. Yes.
 12 Q. Were there any other registered lobbyists at
 13 Strategic Education Services?
 14 A. Yes.
 15 Q. How many?
 16 A. One.
 17 Q. At Strategic Education Services were all of
 18 your engagements education focused?
 19 A. Engagements?
 20 Q. Meaning on behalf of clients.
 21 A. No.
 22 Q. You had some noneducation responsibilities?
 23 A. Yes.
 24 Q. How long did -- is Strategic Education Services
 25 in existence today as an entity?

1 A. Yes.
 2 Q. Is somebody else running it?
 3 A. I sold it.
 4 Q. I see. And when was that?
 5 A. I believe 1998. Could have been late 1997.
 6 Q. And did you disengage entirely after you sold
 7 it?
 8 MR. VIRJEE: Objection. Vague and ambiguous as
 9 to "disengage entirely." You mean from the work force
 10 of the Strategic Education Services?
 11 MR. JACOBS: Yes.
 12 THE WITNESS: Yes.
 13 Q. BY MR. JACOBS: And in 1990 -- let me start
 14 over.
 15 Did you do that in order to take a position
 16 with state government?
 17 A. No.
 18 Q. Did you take a position with state government
 19 shortly thereafter?
 20 A. No.
 21 Q. What did you do after you sold it?
 22 A. I had John Mockler & Associates, and I
 23 consulted and did not lobby.
 24 Q. Were your clients educational entities?
 25 A. Mostly.

1 Q. What was the next milestone?
 2 A. I was appointed executive director of the State
 3 Board of Education, I think, November of '99.
 4 Q. And then at some point you became acting
 5 secretary of education; is that correct?
 6 A. Interim secretary.
 7 Q. And when was that?
 8 A. August 19 -- 2000.
 9 Q. And did that mean that you gave up your
 10 position as executive director?
 11 A. Yes.
 12 Q. As interim secretary, did you hold any other
 13 positions in state government?
 14 A. No.
 15 MR. VIRJEE: Concurrently you mean?
 16 MR. JACOBS: Yes.
 17 THE WITNESS: No.
 18 Q. BY MR. JACOBS: And you went back to the State
 19 Board at some point; is that correct?
 20 A. Yes.
 21 Q. And when was that?
 22 A. February, I believe, 2000.
 23 Q. And that's your position today; is that
 24 correct?
 25 A. That's correct.

1 Q. I want to talk with you first about finance
 2 issues, and I want to approach it from the standpoint of
 3 where Serrano left off. And you wrote an article about
 4 Serrano in 1978, and if it would help to refresh your
 5 recollection, I could show you that. We haven't run
 6 that off, so let's not do that then.
 7 Serrano aimed to squeeze out of the educational
 8 finance system wealth-based disparities, would you agree
 9 with that proposition?
 10 A. No.
 11 MR. VIRJEE: Objection. Vague and ambiguous as
 12 to "squeeze out."
 13 Before you answer the questions, give the
 14 lawyers a chance to object, and then you can go ahead
 15 and answer.
 16 Q. BY MR. JACOBS: How would you characterize the
 17 aims of the Serrano -- the resolution of Serrano?
 18 MR. VIRJEE: Objection. Calls for speculation.
 19 Lacks foundation as to "aims." Also calls for a legal
 20 conclusion which this witness is not competent to give.
 21 MR. SEFERIAN: Counsel, can we stipulate that
 22 objections asserted by defense counsel are also asserted
 23 by other defense counsel?
 24 MR. JACOBS: Yes.
 25 MR. SEFERIAN: Thank you.

1 THE WITNESS: I don't understand your question.
 2 Q. BY MR. JACOBS: Which part don't you
 3 understand?
 4 A. Repeat it again.
 5 (Record read.)
 6 MR. VIRJEE: Objection. Compound. Which one,
 7 the aims or the resolution? Vague and ambiguous. Calls
 8 for speculation. Lacks foundation. Calls for a legal
 9 conclusion.
 10 THE WITNESS: What do you mean by "aims"?
 11 MR. JACOBS: Goals.
 12 MR. VIRJEE: Same objection as to "goals." And
 13 same objection as to the previous question. Also calls
 14 for complete speculation as to what the goals may have
 15 been of the court in the case.
 16 MR. SEFERIAN: Vague and ambiguous as to whose
 17 goals are being inquired about.
 18 THE WITNESS: What do you mean by "aim" and
 19 "goals"?
 20 Q. BY MR. JACOBS: Let me ask it another way so we
 21 can figure out how to get started here.
 22 You have commented on the Serrano litigation
 23 over time, correct?
 24 A. Yes.
 25 Q. You wrote an article about it, about the

1 Serrano case in 1978 and what it all meant?
 2 MR. VIRJEE: If you recall.
 3 Q. BY MR. JACOBS: You don't remember that?
 4 That's okay if you don't.
 5 A. There's an article I wrote in 1978.
 6 Q. And it's about Serrano, correct?
 7 MR. VIRJEE: Objection. Vague and ambiguous as
 8 to "about Serrano."
 9 Q. BY MR. JACOBS: It's called School Finance
 10 After Serrano. Does that refresh your recollection?
 11 A. Yes, it's about school finance.
 12 Q. And it's about school finance in the wake of
 13 the Serrano litigation, correct?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "wake." I guess the document also speaks for itself,
 16 the article.
 17 THE WITNESS: I wrote an article in 1978 about
 18 school finance.
 19 Q. BY MR. JACOBS: Could you answer my question?
 20 A. What question?
 21 (Record read.)
 22 MR. VIRJEE: Objection. The document, article
 23 speaks for itself as to what it's about.
 24 THE WITNESS: It's about school finance as
 25 implemented by the legislature.

1 Q. BY MR. JACOBS: In the wake of the Serrano
2 litigation, correct?
3 MR. VIRJEE: Objection. Vague and ambiguous as
4 to "wake of Serrano litigation." Calls for speculation.
5 Also to the extent you're asking is it about the effects
6 of Serrano, calls for a legal conclusion which this
7 witness is not competent to give. The document speaks
8 for itself.
9 THE WITNESS: What do I do now?
10 MR. JACOBS: Answer.
11 MR. VIRJEE: If you can. I think he has twice.
12 THE WITNESS: I wrote an article about
13 implementation by the legislature, the legislature
14 response and what they did about school finance.
15 Q. BY MR. JACOBS: What they did in response to
16 what, sir?
17 MR. SEFERIAN: Objection. Assumes facts not in
18 evidence.
19 THE WITNESS: The legislature passed a piece of
20 legislation AB 65.
21 Q. BY MR. JACOBS: In response to nothing?
22 MR. VIRJEE: Objection. Calls for speculation.
23 Lacks foundation.
24 THE WITNESS: They passed school finance bills
25 all the time.

1 Q. BY MR. JACOBS: You understand that you're
2 under oath, sir?
3 A. Yes.
4 Q. And you understand that this is a public --
5 MR. VIRJEE: We'll stipulate he understands
6 he's under oath. You don't need to badger him and tell
7 him what his obligations are. He's under oath, he's
8 answering your questions as best he can.
9 Q. BY MR. JACOBS: You understand that this
10 transcript is a matter of public record?
11 A. Yes.
12 Q. So what was your 1978 article about in
13 reference to Serrano?
14 MR. VIRJEE: Objection. Asked and answered
15 three times.
16 You can answer it one more time. You don't
17 have to answer it again. You can answer it the same
18 way.
19 MR. JACOBS: I'll give you a copy of the
20 article, sir.
21 THE WITNESS: Right.
22 MR. VIRJEE: Let the record reflect also that
23 the title has been misquoted.
24 Are you going to hand a copy to me, Counsel,
25 please?

1 MR. JACOBS: Let's mark as Exhibit 233 a
2 reprint of an article from the Journal of Education of
3 Finance, spring 1978, School Finance in California
4 Pre-Serrano to the Present, John Mockler and Gerald
5 Hayward.
6 Q. Does this refresh your recollection of the
7 article?
8 A. I know the article.
9 MR. VIRJEE: That calls for speculation that
10 his recollection needed to be refreshed. I don't think
11 there was any indication that it needed to be refreshed.
12 (Exhibit SAD-233 was marked.)
13 Q. BY MR. JACOBS: Could you look at the bottom of
14 page 386 and the top of page 387, please.
15 A. Yes.
16 Q. Could you put in your own words, in an oral
17 context, if you will, what you were describing in the
18 part of the article that starts, in the 1970, '71 fiscal
19 year, and then goes on to describe ranges?
20 MR. VIRJEE: Objection. Assumes facts not in
21 evidence. Assumes that he put this into writing.
22 There's two different authors. That lacks foundation.
23 MR. SEFERIAN: Document speaks for itself.
24 THE WITNESS: The table shows the highs and
25 lows of assessed evaluation per ADA, and the highs and

1 lows of tax rates and expenditures.
2 Q. BY MR. JACOBS: And what were you --
3 THE WITNESS: As of 1970, '71.
4 Q. BY MR. JACOBS: And by "ADA," you mean average
5 daily attendance?
6 A. Yes, the students attending each day.
7 Q. And on the top of page 387 you've translated
8 the effect of tax rate and assessed valuation and ADA
9 into a dollar amount per ADA, right?
10 MR. VIRJEE: Objection. Document speaks for
11 itself. Vague and ambiguous as to "translated." Calls
12 for speculation. Lacks foundation that he did anything.
13 THE WITNESS: The article explains what a few
14 districts raised with a particular tax rate.
15 Q. BY MR. JACOBS: And what they raised on a
16 dollar amount per student, correct?
17 A. Correct, with property taxes.
18 Q. And AB 65 was the legislation that was passed
19 that you were referring to earlier in your answers?
20 A. Yes. I believe that's true, yes.
21 Q. And AB 65 was aimed, in part, at reducing the
22 differences in expenditures per ADA among school
23 districts, correct?
24 MR. SEFERIAN: Objection. Assumes facts not in
25 evidence. Calls for speculation as to whose aim. Lacks

1 foundation. Calls for an inadmissible legal opinion.
 2 THE WITNESS: AB 65 capped revenues of school
 3 districts as one of its -- more so than they'd be capped
 4 previously.
 5 Q. BY MR. JACOBS: By capping revenue per school
 6 district, what do you mean?
 7 A. I mean by statute you may not spend more than
 8 that cap.
 9 Q. What was the purpose of capping the
 10 expenditures -- capping the revenue per school district
 11 as you described?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "purpose." Calls for speculation. And lacks
 14 foundation as to whose purpose. If you're asking what
 15 the legislature's purpose was, clearly it calls for
 16 speculation. Also calls for a legal conclusion.
 17 THE WITNESS: AB 65 capped revenues so that
 18 districts would have more equal funding per student --
 19 per ADA, not per student.
 20 Q. BY MR. JACOBS: Did you work on AB 65?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "work on."
 23 THE WITNESS: I was employed initially by the
 24 State Department of Education when AB 65 was developed.
 25 Q. BY MR. JACOBS: And your unit was -- played a

1 role in the formulation of AB 65?
 2 MR. SEFERIAN: Objection. Vague and ambiguous
 3 as to "role."
 4 MR. VIRJEE: And "formulation."
 5 THE WITNESS: We reviewed the provisions of
 6 AB 65.
 7 Q. BY MR. JACOBS: And commented on them?
 8 MR. VIRJEE: Are you asking if Mr. Mockler or
 9 the Department commented on them?
 10 THE WITNESS: I commented on behalf of the
 11 superintendent of the Board.
 12 Q. BY MR. JACOBS: Were there any other
 13 expenditure -- strike that.
 14 Were there any other provisions of AB 65 that
 15 aimed at more equal funding per ADA?
 16 MR. SEFERIAN: Objection. Vague and ambiguous
 17 as to aim. Lacks foundation. Calls for speculation.
 18 MR. VIRJEE: Also vague as to time.
 19 MR. SEFERIAN: Calls for an inadmissible legal
 20 opinion.
 21 THE WITNESS: What do you mean by aim?
 22 MR. JACOBS: In the same sense that you refer
 23 to the provision on capping revenues as having an impact
 24 on more equal funding per ADA or having an intended
 25 impact on more equal funding.

1 MR. SEFERIAN: Same objections.
 2 THE WITNESS: The bill capped expenditures for
 3 some districts, increased expenditures for other
 4 districts, and reduced expenditure -- proposed to reduce
 5 expenditure variations over time.
 6 Q. BY MR. JACOBS: When you say "proposed," was
 7 that part not enacted? Why do you say "proposed"?
 8 A. It was enacted and immediately made
 9 unenforceable because of Proposition 13.
 10 Q. Have you participated in any other initiatives
 11 to achieve more equal funding per ADA across the state?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "participated" and "initiatives" and "equal funding."
 14 THE WITNESS: If you can explain initiatives
 15 and participate.
 16 Q. BY MR. JACOBS: Which word first?
 17 A. Okay. Initiatives.
 18 Q. Initiatives. So why don't we confine it to
 19 proposed legislation in which you played a role in the
 20 formulation.
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "played a role."
 23 THE WITNESS: I have had many opportunities to
 24 comment on legislation regarding financing of public
 25 schools.

1 Q. BY MR. JACOBS: And some of which were aimed at
 2 greater equality in funding per ADA?
 3 MR. VIRJEE: Objection. Calls for speculation.
 4 Vague as to time, and vague and ambiguous as to more
 5 equal funding.
 6 THE WITNESS: There are several pieces of
 7 legislation that reduced property tax wealth-related
 8 disparities, if that's what you mean. You mean equal
 9 funding or you mean equal property taxes?
 10 MR. JACOBS: The former.
 11 THE WITNESS: Equal funding?
 12 MR. JACOBS: Uh-huh.
 13 MR. VIRJEE: Objection. Vague and ambiguous as
 14 to "equal funding".
 15 Q. BY MR. JACOBS: Maybe we can work backwards so
 16 we can start with something that's recent rather than by
 17 now historical.
 18 What are the most recent comments that you have
 19 provided relating to the legislation about equality of
 20 funding?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "equality of funding," and also vague and ambiguous
 23 as to "comments."
 24 THE WITNESS: Do you mean equal dollars per
 25 student when you mean equal funding?

1 Q. BY MR. JACOBS: How did you mean it when you
2 referred to it earlier?

3 MR. VIRJEE: Objection. Assumes facts not in
4 evidence. I don't know that he did refer to it earlier.

5 THE WITNESS: As a consultant I have worked on
6 several pieces of legislation that dealt with that
7 issue.

8 Q. BY MR. JACOBS: What's the most recent?

9 A. SB 813, 1983, but there have been several
10 smaller actions subsequent, including legislation as
11 late as last year.

12 Q. In the case of last year's legislation, what
13 are you referring to?

14 A. Proposals by some to give more money to school
15 districts who had lower excused absence rates.

16 Q. Moving backwards in time from that one, what's
17 the next most recent piece of legislation on which you
18 commented?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to comment. Before he was talking about consulting.
21 Vague and ambiguous as to comments.

22 THE WITNESS: I can't remember particular bill
23 numbers between there, but there have been several, over
24 time, proposals to provide the same dollars per ADA to
25 school districts.

1 Calls for an expert opinion which this witness may or
2 may not be competent to give. Calls for a legal
3 conclusion.

4 MR. SEFERIAN: Incomplete and improper
5 hypothetical question.

6 THE WITNESS: I'm trying to get a way to answer
7 that question. The issue of equal dollars per ADA is a
8 simplistic notion of school funding and it has two
9 sides, so I've participated in discussions about this,
10 but research, I don't know.

11 Q. BY MR. JACOBS: When you say "two sides," what
12 do you mean?

13 A. I mean that wealth -- solving wealth-related
14 disparities, reduced funding for low-income children,
15 while producing a more narrow band of expenditures based
16 on a notion that ADA and property wealth are a measure
17 of wealth.

18 Q. Why did that occur?

19 MR. SEFERIAN: Objection. Calls for an
20 inadmissible legal opinion.

21 MR. VIRJEE: Lacks foundation. Calls for
22 speculation. Calls for a legal conclusion. Also vague
23 and ambiguous as to "that."

24 MR. SEFERIAN: Overly broad. Lacks foundation.

25 THE WITNESS: You want my opinion about that?

1 Q. BY MR. JACOBS: Have you provided input into
2 any studies, let's limit it to the last five years,
3 about school finance in California?

4 MR. VIRJEE: Objection. Vague and ambiguous as
5 to "studies," "input" and "school finance."

6 THE WITNESS: By "studies" do you mean
7 research, do you mean -- I don't --

8 MR. JACOBS: I mean it broadly, something that
9 resulted in a paper on school finance.

10 MR. SEFERIAN: Objection. Vague and ambiguous
11 as to "studies" and "paper."

12 THE WITNESS: I talk about -- a lot about
13 school finance. I don't know if talking is
14 participating. I certainly wouldn't call it research.
15 I don't recall a particular study in the last five
16 years.

17 Q. BY MR. JACOBS: Do you have a basis in your
18 knowledge or experience for answering the following
19 question: To what degree are there disparities in
20 funding per ADA among the school districts in the state
21 of California in the period beginning 2000, ending
22 today?

23 MR. VIRJEE: Objection. Vague and ambiguous as
24 to "disparities," and calls for speculation as to
25 whether he has a basis of knowledge or experience.

1 Q. BY MR. JACOBS: You've offered your opinion on
2 that before, correct?

3 A. Yes, my opinion is that the notion was
4 simplistic because wealth defined by property -- wealth
5 is not a good measure of ability to pay, nor is it
6 related to the income of the citizens.

7 Q. And why did that result in reduced funding for
8 low-income students?

9 MR. VIRJEE: Why did what result in low-income
10 students?

11 MR. JACOBS: I think it's clear.

12 MR. VIRJEE: I don't think it's clear. It's
13 vague and ambiguous.

14 MR. JACOBS: What you just testified to.

15 MR. VIRJEE: He didn't say it did, so that
16 assumes facts not in evidence.

17 MR. SEFERIAN: Objection. Vague and ambiguous
18 as to "that." Lacks foundation. Calls for an
19 inadmissible opinion.

20 MR. VIRJEE: You can answer the question if you
21 understand it.

22 THE WITNESS: Well, I -- do you want -- what
23 are you looking for?

24 Q. BY MR. JACOBS: I'm looking for you to tie it
25 up. You said in your earlier answer that one of the

1 effects of solving wealth-related disparities was
 2 reduced funding for low-income students, and then I
 3 asked you why that occurred and you commented on the
 4 relationship between wealth-related disparities and the
 5 ability to pay or the income of the relevant payers, and
 6 so my question is, can you tie those two together?

7 MR. VIRJEE: Objection. That misstates his
 8 testimony.

9 MR. SEFERIAN: Calls for an inadmissible
 10 opinion. Lacks foundation. Incomplete and improper
 11 hypothetical question.

12 THE WITNESS: A large number of low-income
 13 children lived in, live in high wealth school districts,
 14 high property wealth school districts.

15 Q. BY MR. JACOBS: And so to try and move this
 16 along, your view is that because low-income children
 17 live in high property wealth school districts, by
 18 focusing on high-property wealth as the source of
 19 disparity, in fact, it reduced the funding available to
 20 low-income students; is that right?

21 MR. SEFERIAN: Objection. Calls for an
 22 inadmissible opinion. Lacks foundation. Incomplete
 23 hypothetical question. Vague and ambiguous as to focus,
 24 "source" and "disparity."

25 MR. VIRJEE: Also compound question. Assumes a

1 system that we have in the year 2002 has evolved
 2 considerably from the system that was the immediate
 3 output of AB 65, correct?

4 MR. VIRJEE: Objection. Vague and ambiguous as
 5 to "system".

6 You're talking about the system for funding
 7 school districts?

8 MR. JACOBS: Yes.

9 THE WITNESS: No.

10 Q. BY MR. JACOBS: And with reference to wealth
 11 related -- that is because you're focusing on the aspect
 12 of AB 65 that relates to equalizing?

13 MR. SEFERIAN: Objection. Calls --

14 Q. BY MR. JACOBS: Is that why you say no?

15 MR. SEFERIAN: Objection. Calls for an
 16 inadmissible opinion.

17 THE WITNESS: AB 65 has many parts. The
 18 current system looks very much like that.

19 Q. BY MR. JACOBS: Why do you say that?

20 A. That's my opinion.

21 Q. And what's the basis for it?

22 A. AB 65 addresses revenue limit, equalization,
 23 and categorical funds, and our current system addresses
 24 equalization and categorical funds.

25 Q. So the way we got started on this is I asked

1 blanket rule.

2 THE WITNESS: That's my thought.

3 Q. BY MR. JACOBS: I think we started down this
 4 path because you said there were two sides to the issue,
 5 and I asked you what were those two sides. I think
 6 sides was the word you used. Is that both of the sides
 7 or one of the sides?

8 MR. SEFERIAN: Objection. Vague and ambiguous.

9 MR. VIRJEE: Assumes facts not in evidence.

10 Assumes it's either one.

11 THE WITNESS: My reference to two sides was
 12 that reducing property wealth related disparities became
 13 an objective of many people.

14 Q. BY MR. JACOBS: As opposed to equalizing
 15 funding at the end of the application of the formula
 16 that resulted from that effort?

17 A. Yes.

18 MR. SEFERIAN: Objection. Vague and ambiguous.

19 Q. BY MR. JACOBS: So as we look at -- the system
 20 that we have in the year 2002, it has evolved
 21 considerably beyond AB 65, correct?

22 MR. SEFERIAN: Objection. Vague and ambiguous
 23 as to "evolved" and "considerably." Incomplete
 24 hypothetical question.

25 Q. BY MR. JACOBS: Let me break that down. The

1 you, as you look at the system covering the last several
 2 years, did you have a basis for commenting on the
 3 sources of -- I think I asked you --

4 MR. VIRJEE: You never got there.

5 Q. BY MR. JACOBS: Let's start it again. Looking
 6 at the system for the last three years, in terms of
 7 inequality among expenditures per ADA in the school
 8 districts of the state, what is the explanation today
 9 for that inequality?

10 MR. SEFERIAN: Objection. Assumes facts not in
 11 evidence. Vague and ambiguous as to "inequality" and
 12 "expenditures." Lacks foundation. Calls for an
 13 inadmissible opinion.

14 THE WITNESS: I have only general knowledge
 15 regarding expenditure variations among districts.

16 Q. BY MR. JACOBS: And that general knowledge is
 17 what?

18 A. Base revenue limit equity, depending on how you
 19 measure it, is fairly equal with some outliers.

20 MR. JACOBS: Can you just read back the answer.
 21 (Record read.)

22 Q. BY MR. JACOBS: What do you mean by basic
 23 revenue limit equity?

24 A. Equal dollars per student by size and type of
 25 school district in the base revenue limit system.

1 Q. By type of school district, what are you
 2 referring to?
 3 A. High school, unified, elementary, large, small.
 4 Q. So is size a -- by that did you mean to wrap in
 5 the size component also, or is size used in a different
 6 way?
 7 MR. SEFERIAN: Objection. Vague and ambiguous.
 8 THE WITNESS: Size refers to the number of
 9 students in the district.
 10 Q. BY MR. JACOBS: And the outliers you were
 11 referring to, how would you describe them?
 12 MR. VIRJEE: Other than what he's already said?
 13 THE WITNESS: A few districts with high
 14 revenues per student.
 15 Q. BY MR. JACOBS: So those -- the outliers you
 16 are thinking of are a few districts --
 17 MR. VIRJEE: Did you want him to finish his
 18 answer before you interrupt him?
 19 THE WITNESS: Few districts with high revenues
 20 and revenues per student.
 21 Q. BY MR. JACOBS: Do you have an understanding of
 22 what those districts are?
 23 MR. VIRJEE: Objection. Calls for speculation.
 24 Lacks foundation.
 25 THE WITNESS: Vague. You want to know can I

1 name the districts?
 2 MR. JACOBS: Yes.
 3 THE WITNESS: Can I name some of them?
 4 Q. BY MR. JACOBS: Can you name some of them?
 5 A. I shouldn't do that.
 6 MR. VIRJEE: Let the record reflect we were all
 7 laughing.
 8 THE WITNESS: Palo Alto, Kern districts, Reed.
 9 Q. BY MR. JACOBS: Reed in Marin County?
 10 A. Right. I can't recall any more.
 11 Q. And what is the -- what is your understanding
 12 of how the system that you've described allows for these
 13 outliers?
 14 MR. SEFERIAN: Objection. That calls for an
 15 inadmissible opinion. Vague and ambiguous as to
 16 "allows." Lacks foundation. Incomplete and improper
 17 hypothetical question.
 18 MR. VIRJEE: And calls for speculation.
 19 THE WITNESS: Are you saying why do they exist?
 20 MR. JACOBS: Yes.
 21 MR. SEFERIAN: Same objections.
 22 THE WITNESS: Historic circumstances of revenue
 23 limit calculations and excess property taxes.
 24 Q. BY MR. JACOBS: What are the other components
 25 of school district expenditures besides basic (sic)

1 revenue limit?
 2 MR. VIRJEE: Base revenue limit.
 3 Q. BY MR. JACOBS: Did you say base or basic?
 4 A. Base.
 5 MR. SEFERIAN: Objection. Vague and ambiguous
 6 as to "expenditures."
 7 MR. VIRJEE: Also vague and ambiguous as to
 8 "components."
 9 THE WITNESS: Do you mean revenues, or do you
 10 mean expenditures?
 11 MR. JACOBS: Revenues.
 12 MR. SEFERIAN: Objection. Overly broad. Vague
 13 and ambiguous as to "revenues."
 14 THE WITNESS: Various categorical support,
 15 state and federal.
 16 Q. BY MR. JACOBS: Are there any others?
 17 MR. VIRJEE: Objection. Calls for speculation.
 18 Lacks foundation. Compound.
 19 THE WITNESS: There are others.
 20 Q. BY MR. JACOBS: What are they?
 21 MR. VIRJEE: Objection --
 22 THE WITNESS: I don't know them all offhand.
 23 Local-voted bonds, local-levied fees, including how much
 24 you charge for lunch, grants.
 25 Q. BY MR. JACOBS: By "local-voted bonds," are you

1 referring, in part, to construction-related bonds?
 2 MR. VIRJEE: Objection. Vague and ambiguous as
 3 to "construction-related bonds" and "in part." Also
 4 compound as to which district you're talking about.
 5 THE WITNESS: Local districts have the ability
 6 to vote for local bonds for facilities.
 7 Q. BY MR. JACOBS: And is there any other
 8 subcategories within your category local-voted bonds?
 9 MR. VIRJEE: Any other subcategory? Objection.
 10 Vague and ambiguous as to subcategory. He has not set
 11 forth a subcategory.
 12 THE WITNESS: All bonds are for facilities.
 13 Q. BY MR. JACOBS: Have you commented recently
 14 on -- I'm asking you this really to try and get a
 15 vocabulary down between us.
 16 Have you spoken recently about the topic of
 17 total per student expenditures in the state of
 18 California?
 19 MR. SEFERIAN: I'll object to the extent it
 20 calls for information protected by the deliberative
 21 process and official information privileges. Vague and
 22 ambiguous.
 23 MR. VIRJEE: Vague and ambiguous as to "total
 24 per student expenditures," and also vague and ambiguous
 25 as to "spoken."

1 THE WITNESS: What do you mean by the question?

2 Q. BY MR. JACOBS: In your 1978 paper you talked
3 about raising 719 per ADA, for example, on page 387, and
4 now people talk about average per student expenditures
5 in the state of California in the 5, 6, \$7,000 range.

6 I'm asking you whether you have discussed the
7 topic recently of average per student expenditures with
8 that as background?

9 MR. SEFERIAN: Object to the question to the
10 extent it calls for information protected by official
11 information, deliberative process privileges.

12 MR. VIRJEE: Also vague and ambiguous as to
13 spoken.

14 THE WITNESS: Do you mean have I publically
15 talked about how much money we spend in California?

16 MR. JACOBS: Yes.

17 THE WITNESS: You should have asked.

18 MR. JACOBS: He can't object to your question,
19 so it's fine if you ask your own. You know where I'm
20 going.

21 THE WITNESS: In general I review expenditures
22 and revenues of public schools, in a general case.

23 Q. BY MR. JACOBS: And what is your -- what are
24 the terms you use to describe those revenues and
25 expenditures? Do you talk about revenue per ADA? How

1 What's vague about the question?

2 THE WITNESS: I'm unaware of whether you mean
3 all expenditures, state and local tax expenditures.
4 You'll have to clarify that.

5 Q. BY MR. JACOBS: What I'm asking you is what are
6 the various ways to describe the phenomenon of
7 expenditures per student?

8 MR. VIRJEE: That's a different question.

9 Q. BY MR. JACOBS: When you've publically spoken
10 on it, which of those categories do you use?

11 MR. VIRJEE: Objection. Compound. Which
12 question do you want him to answer now? Those are two
13 new questions different than your last question.

14 Be careful what question you answer because he
15 told you when you answer his questions, he's going to
16 assume you understood the question and that your answer
17 is responsive. Make sure you know which question you're
18 answering.

19 THE WITNESS: Would you repeat the question,
20 please.

21 Q. BY MR. JACOBS: When you speak publically about
22 the general topic of expenditures per student in the
23 state of California, which measures of expenditures per
24 student do you use for that purpose?

25 MR. VIRJEE: Objection. Calls for speculation

1 do you discuss that topic?

2 MR. VIRJEE: Objection. Assumes facts not in
3 evidence. It assumes he discusses the topic. Also
4 compound. Depends on the context of the situation.
5 Vague and ambiguous. Calls for speculation, and lacks
6 foundation.

7 THE WITNESS: All of those.

8 Q. BY MR. JACOBS: All of what?

9 A. You asked if I commented on per student, per
10 ADA. I have conversations with people all the time
11 about things like that.

12 Q. And what -- so take a simple question, what
13 is -- what might seem like a simple question. What are
14 California's current expenditures per student in the
15 public school system?

16 MR. VIRJEE: Objection. Vague and ambiguous as
17 to "California," "current" and "expenditures per
18 student."

19 MR. SEFERIAN: Lacks foundation. Calls for
20 speculation. Calls for an inadmissible opinion.
21 Incomplete and hypothetical question.

22 THE WITNESS: You'd have to explain what you
23 wish there. Do you wish --

24 MR. SEFERIAN: You've answered the question,
25 Mr. Mockler.

1 and lacks foundation. Compound as opposed -- and
2 assumes facts not in evidence. Assumes he uses a single
3 measure for all time when he speaks publically about it
4 each time.

5 MR. SEFERIAN: Overly broad.

6 THE WITNESS: You'd have to get to somewhere
7 I -- I speak of revenues per enrolled student, revenues
8 per ADA, state and local revenues, Prop 98 revenues.

9 Q. BY MR. JACOBS: Have you spoken, say, in the
10 last five years about what you believe the best measure
11 is of expenditures per student if one is trying to
12 determine the total resources that are being allocated
13 to public education in the state?

14 MR. VIRJEE: Objection. Vague and ambiguous as
15 to "total resources" and "best measure."

16 THE WITNESS: Yes.

17 Q. BY MR. JACOBS: What have you said on that
18 topic?

19 MR. SEFERIAN: I'll object to the extent it
20 calls for privileged communications. Calls for an
21 inadmissible opinion. Lacks foundation. Calls for
22 speculation.

23 THE WITNESS: Five years, must have spoken of
24 many, many things. Which time period or what -- what's
25 the specific?

1 Q. BY MR. JACOBS: As you sit here today, what is
 2 your opinion as to the best metric for that purpose?
 3 MR. VIRJEE: Objection. Vague and ambiguous as
 4 to "best metric for that purpose." Compound. Calls for
 5 speculation as to which particular situation might occur
 6 and require which metric.
 7 MR. SEFERIAN: Incomplete and improper
 8 hypothetical question. Calls for an inadmissible
 9 opinion.
 10 THE WITNESS: There is no -- in my opinion,
 11 there is no best. There's several indicators.
 12 Q. BY MR. JACOBS: And the indicators are the ones
 13 that you listed a few minutes ago?
 14 A. And others.
 15 Q. What others would you point to?
 16 MR. SEFERIAN: Objection. Assumes facts not in
 17 evidence. Vague and ambiguous as to "point to." Vague
 18 as to context.
 19 THE WITNESS: Income per student.
 20 Q. BY MR. JACOBS: Meaning family income?
 21 A. Meaning family income.
 22 Q. Any others?
 23 A. I can't recall all of them now, but there are
 24 several.
 25 Q. You're familiar with articles in the press that

1 say that California's ranked in a certain position in
 2 terms of average expenditures per student on public
 3 education, yes?
 4 MR. VIRJEE: Objection. Calls for speculation.
 5 Lacks foundation. Also assumes facts not in evidence.
 6 I guess he's asking if you've ever seen such an
 7 article.
 8 THE WITNESS: Yes.
 9 Q. BY MR. JACOBS: And typically California is
 10 ranked in relatively low positions in those rankings,
 11 yes?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "relatively" and "low." Also vague and ambiguous as
 14 to time as to when the ranking was occurring.
 15 MR. SEFERIAN: Vague and ambiguous as to
 16 "typically." Lacks foundation. Calls for speculation.
 17 THE WITNESS: Articles have expressed it
 18 numerous ways, some articles suggest low ranking, some
 19 articles suggest higher ranking.
 20 Q. BY MR. JACOBS: And do you have an opinion as
 21 to what the most reliable measure is in order to
 22 determine the question how California ranks as against
 23 other states in expenditures per pupil?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "expenditures per student." Calls for speculation.

1 Lacks foundation as to what would be the best measure,
 2 and also calls for expert testimony.
 3 MR. SEFERIAN: Vague and ambiguous as to
 4 "reliable measure" and "ranks." Incomplete and improper
 5 hypothetical question.
 6 THE WITNESS: I know of no reliable data on the
 7 subject.
 8 Q. BY MR. JACOBS: Now, you yourself have
 9 commented both in the 1978 article and recently on
 10 expenditures in education as a function of some figure
 11 that is a -- that you viewed as reliable, a proxy for
 12 total state income. I can't remember what that was. We
 13 could find it.
 14 Do you know what I'm referring to?
 15 MR. SEFERIAN: Objection. Calls for
 16 speculation.
 17 Q. BY MR. JACOBS: I recall it's something along
 18 the lines of having dropped from 5.9 percent to 3.7
 19 percent in the last 30-plus years.
 20 Does that refresh --
 21 MR. SEFERIAN: Objection. Vague as to context.
 22 Overly broad.
 23 THE WITNESS: One indicator is percent of
 24 personal income allocated to public schools.
 25 Q. BY MR. JACOBS: And in the part of that

1 function that is allocated to public schools --
 2 MR. VIRJEE: "That" function?
 3 Q. BY MR. JACOBS: -- what is the -- what are you
 4 including in your calculation of what's been allocated
 5 to public schools?
 6 MR. VIRJEE: Objection. Vague and ambiguous
 7 and calls for speculation, and in what context.
 8 MR. SEFERIAN: Assumes facts not in evidence.
 9 THE WITNESS: Explain what you mean. What goes
 10 into what?
 11 Q. BY MR. JACOBS: I think I understand what
 12 percent -- what the personal income is in that function.
 13 I'm trying to unpack what you mean by "allocated to
 14 public schools" or "public education."
 15 A. The numerator is expenditures by public
 16 schools, the denominator is total personal income of the
 17 state.
 18 Q. And by "expenditures by public schools," when
 19 you've run that calculation, is there a source you go to
 20 to determine what you mean by expenditures per public
 21 schools?
 22 MR. VIRJEE: Objection. Assumes facts not in
 23 evidence. Assumes that he runs that calculation or that
 24 there is any one single source that he goes to.
 25 THE WITNESS: There are several sources, ways

1 to make that calculation.

2 Q. BY MR. JACOBS: What have you relied on in
3 compiling that calculation of --

4 A. National Center for Education Statistics and
5 the NEA, National Education Association.

6 MR. SEFERIAN: Would this be a good time for a
7 break?

8 MR. JACOBS: Yep.

9 (Recess taken.)

10 MR. JACOBS: I'd like to mark as the next in
11 order an article from the Los Angeles Times dated May
12 11th, 1998.

13 (Exhibit SAD-234 was marked.)

14 Q. BY MR. JACOBS: This is an article about a
15 survey that was conducted by the American Association of
16 Publishers. Do you see that?

17 MR. SEFERIAN: Do you want him to read the
18 article? Are we going to give him time to read the
19 article?

20 Q. BY MR. JACOBS: Sir?

21 A. Yeah, I see the article.

22 Q. You are quoted there as saying, Californians'
23 common sense tells them you're not going to get where
24 you want to go if kids don't have the basic stuff of
25 education, said John Mockler, a consultant to the

1 Q. BY MR. JACOBS: The focus of the article here
2 is on textbooks. Did you mean to disclaim in your
3 answer textbooks in particular?

4 MR. SEFERIAN: Objection. Argumentative.

5 MR. VIRJEE: Also assumes facts not in
6 evidence. Assumes that when he had the conversation
7 with this reporter, if he had one, that the focus of
8 their discussion was textbooks.

9 MR. SEFERIAN: Also assumes he knew the focus
10 of the article at the time he was commenting.

11 THE WITNESS: Textbooks, broadly defined, means
12 access to instructional resources. It could be a book,
13 could be many different things, could be paper, could be
14 pencils, could be audio, video, could be -- but students
15 need the stuff of education provided them in some form.

16 Q. BY MR. JACOBS: And by you're not going to get
17 where you want to go, did you mean achieving educational
18 outcomes that were desired?

19 MR. SEFERIAN: Objection. Assumes facts not in
20 evidence. Vague and ambiguous as to "outcomes." Vague
21 as to context. Assumes facts not in evidence.

22 THE WITNESS: The question was about the poll.
23 The answer is that the public believes that student must
24 have stuff of education, and I was commenting that their
25 instincts are correct. Textbooks is in a broad context.

1 publishers group. Do you see that?

2 A. Yes.

3 Q. Do you recall having discussions around this
4 time about the topic that you were -- that you reported
5 as having commented on in this article?

6 MR. VIRJEE: Objection. Vague and ambiguous as
7 to "topic," "reported as having commented on." Does he
8 remember making this statement?

9 THE WITNESS: Something like that.

10 Q. BY MR. JACOBS: What did you mean when you were
11 referring to, first of all, "the basic stuff of
12 education"?

13 MR. SEFERIAN: Objection. Assumes facts not in
14 evidence. Calls for speculation. Vague as to context.

15 THE WITNESS: Students in this context needed
16 instructional resources.

17 Q. BY MR. JACOBS: And by "instructional
18 resources," what did you mean?

19 MR. VIRJEE: What does he mean now, because
20 those words aren't used.

21 MR. JACOBS: Fair enough.

22 Q. What do you mean now?

23 MR. SEFERIAN: Objection. Vague as to context.

24 THE WITNESS: Achievement, a wide variety of
25 papers, pencils, instructional resources of all kinds.

1 Q. BY MR. JACOBS: Their instincts are correct in
2 that they believe they need the stuff of education in
3 order to achieve desired educational outcomes?

4 MR. SEFERIAN: Objection. Assumes facts not in
5 evidence.

6 MR. JACOBS: I'm going to call up the
7 commissioner now and I'm going to get on the phone
8 unless this harassment stops. This is absolutely out of
9 control.

10 MR. VIRJEE: Let's go ahead and stop and let
11 you call the commissioner then. That's fine.

12 MR. JACOBS: That transparently doesn't call
13 for an objection. The way it's framed, it doesn't draw
14 an objection.

15 MR. VIRJEE: Well, I join in his objection.

16 MR. JACOBS: We're going to take this
17 transcript and we're going to go to the judge with it
18 and we're going to put it on a website and it will --
19 those are absurd objections.

20 MR. VIRJEE: Either ask questions or adjourn
21 the deposition.

22 MR. JACOBS: I'm going to temporarily adjourn
23 the deposition and see if we can reach the commissioner.

24 MR. VIRJEE: I'm not going to participate on a
25 conference call with the commissioner if that's what

1 you're suggesting. You ask your deposition questions or
2 you adjourn the deposition and we'll come back after you
3 talk to the commissioner some other time.

4 MR. JACOBS: I'm going to do an ex parte with
5 the commissioner.

6 MR. VIRJEE: I'm not going to participate in
7 any ex parte with the commissioner. Ask your questions.
8 He can make his objections for the record. They are
9 reasonable objections. I disagree with you.

10 MR. JACOBS: So if we adjourn temporarily to
11 get the commissioner on the phone, you are stating the
12 position of the State of California that it will not
13 participate in that telephone conference with the
14 discovery commissioner?

15 MR. VIRJEE: You can adjourn the deposition and
16 you can make a motion, you can do whatever you need to
17 do but we're here for a deposition. If you're going to
18 adjourn the deposition, we'll go.

19 MR. JACOBS: Let me be clear, Fram.

20 MR. VIRJEE: I'm not agreeing to participate in
21 an ex parte conference call with the commissioner right
22 now. No, I'm not agreeing to do that.

23 MR. JACOBS: No, it's an ex parte if I do it on
24 my own.

25 MR. VIRJEE: I'm not agreeing to participate in

1 the conference call with the commissioner right now.
2 No, I'm not agreeing to do that.

3 MR. JACOBS: And the basis for that?

4 MR. VIRJEE: I don't need to give you a basis.
5 I'm just not agreeing to do it.

6 MR. JACOBS: So if I call the commissioner now,
7 what will you do?

8 MR. VIRJEE: I won't do anything. I won't
9 participate in the phone call.

10 MR. JACOBS: But we can ask him whether you
11 should participate in the phone call.

12 MR. VIRJEE: If you want to adjourn the
13 deposition and make a phone call, go ahead. Go ahead.

14 MR. JACOBS: I'm suspending the deposition to
15 make the phone call. And you will?

16 MR. VIRJEE: If you're going to adjourn the
17 deposition, we're going to go. If you're taking a
18 break, we'll take a break and we'll come back when you
19 tell us to come back. We just took a break.

20 MR. JACOBS: I think I'm going to call the
21 commissioner and see if we can schedule a call. So
22 we'll take a five-minute break. Okay?

23 MR. VIRJEE: You can do whatever you need to
24 do.

25 (Recess taken.)

1 Q. BY MR. JACOBS: Back to 234, again,
2 Mr. Mockler.

3 A. Okay, the press release.

4 Q. At the time you commented in this article, were
5 you a consultant to the American Association of
6 Publishers?

7 A. Yes, and a lobbyist.

8 Q. Did you have any information at the time about
9 what the cost per student of an adequate level of
10 textbooks or instructional materials was?

11 MR. VIRJEE: Objection. Vague and ambiguous as
12 to "cost per student" and "adequate level."

13 THE WITNESS: That's a while back, but as I
14 recall, it's about 60 bucks a kid we're talking about.

15 Q. BY MR. JACOBS: Per year?

16 A. Per year, every year.

17 Q. And was that across K through 12, or did you
18 have an understanding as to variations in that cost in
19 different grade levels?

20 MR. VIRJEE: Same objections as to "cost" and
21 adequacy.

22 THE WITNESS: Costs vary.

23 Q. BY MR. JACOBS: By grade level, sir?

24 A. By subject by grade level.

25 Q. So the \$60, though, is an average across K

1 through 12, correct?

2 A. And across subjects.

3 Q. But that's a -- that figure is a total cost per
4 student per year, not a per subject per student per
5 year?

6 MR. VIRJEE: Objection. Vague and ambiguous as
7 to "cost per student."

8 MR. SEFERIAN: Lacks foundation.

9 THE WITNESS: Average cost.

10 Q. BY MR. JACOBS: Of what?

11 A. Of providing instructional resources to
12 students.

13 Q. Per year?

14 A. Per year over time.

15 Q. And by instructional resource in this context,
16 are you including materials in addition to textbooks?

17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to "textbooks," unless you mean brick and mortar.

19 MR. JACOBS: I meant --

20 MR. VIRJEE: An actual textbook?

21 MR. JACOBS: Correct.

22 MR. VIRJEE: So you understand his definition
23 now of textbook is the actual document, the brick and
24 mortar.

25 THE WITNESS: By textbook you mean just a

1 textbook, or do you mean -- do you mean just a textbook?
 2 Q. BY MR. JACOBS: So let's refine this definition
 3 a little bit. In your \$60 per student estimate that you
 4 were referring to earlier, what were you including in
 5 the category of expenditures represented by that amount?
 6 A. Instructional materials broadly defined over an
 7 eight-year cycle.
 8 Q. And by "instructional materials broadly
 9 defined," what do you mean to include?
 10 A. Textbooks, supplemental materials, ditto
 11 masters, classroom libraries, et cetera.
 12 Q. But excluding pencils?
 13 A. Excluding pencils.
 14 Q. Excluding raw materials for -- such as blank
 15 paper?
 16 MR. SEFERIAN: Objection. Vague and ambiguous
 17 as to "raw materials."
 18 THE WITNESS: Excluding blank paper.
 19 Q. BY MR. JACOBS: Excluding reproduction costs --
 20 excluding costs of using a Xerox machine in the school
 21 to make materials for classroom purposes?
 22 MR. VIRJEE: Objection. Calls for speculation.
 23 Lacks foundation. Calls for expert testimony. There's
 24 been no foundation he has any knowledge about the
 25 delivery of educational resources in the classroom.

1 THE WITNESS: The \$60 estimate, or thereabouts,
 2 presumes instructional resources, broadly defined,
 3 purchased by the school district.
 4 Q. BY MR. JACOBS: And by purchased from the --
 5 A. "By."
 6 MR. VIRJEE: Purchased "by" the school
 7 district.
 8 Q. BY MR. JACOBS: -- purchased by the school
 9 district, you mean that each copy of the materials has
 10 been purchased from an external source; is that correct?
 11 MR. VIRJEE: Objection. Vague and ambiguous as
 12 to "copy." Some of these don't come in copies.
 13 THE WITNESS: Some come in blue-line masters in
 14 which you repeat them, some are consumables that are
 15 used and discarded in a short period, some are hard
 16 covers, some are CD-ROMs, some are -- instructional
 17 materials are not simply a book.
 18 Q. BY MR. JACOBS: Let me ask it a little
 19 differently. When you -- by that answer you mean to
 20 exclude what the district or school might have spent in
 21 running its own reproduction machine, correct?
 22 A. Correct.
 23 Q. Do you have information to the same effect,
 24 that is, the average per student costs of instructional
 25 materials, that has been updated since 1998?

1 MR. VIRJEE: Objection. Assumes facts not in
 2 evidence.
 3 THE WITNESS: No.
 4 Q. BY MR. JACOBS: So the best information you
 5 have as to that question dates back to around that time
 6 frame?
 7 MR. VIRJEE: Around 1998?
 8 MR. JACOBS: Yes.
 9 THE WITNESS: My best recollection of the
 10 estimate of that time.
 11 Q. BY MR. JACOBS: And as you sit here today, if
 12 you were called upon in some nonlitigation context,
 13 Mr. Mockler, how much does it cost to equip a student
 14 with instructional materials, your answer would be --
 15 MR. VIRJEE: Objection. Calls for speculation.
 16 MR. JACOBS: Let me finish.
 17 Q. -- your answer would be, my best recollection
 18 is data from 1998, and that it was \$60 per student?
 19 MR. VIRJEE: Objection. Calls for speculation.
 20 Lacks foundation. Vague and ambiguous.
 21 THE WITNESS: That was my estimate. The
 22 estimate would be slightly higher today.
 23 Q. BY MR. JACOBS: Are there -- based on your
 24 knowledge and experience in California public schools,
 25 are there schools in which in your judgment students are

1 not provided with, as you said here, the basic stuff of
 2 education from the standpoint of instructional
 3 materials?
 4 MR. SEFERIAN: Objection. Lacks foundation.
 5 MR. VIRJEE: Objection. It assumes facts not
 6 in evidence to the extent you're indicating that he has
 7 some experience in schools, because your question was
 8 vague on that issue.
 9 MR. SEFERIAN: Calls for speculation.
 10 THE WITNESS: I have no direct knowledge about
 11 individual schools.
 12 Q. BY MR. JACOBS: And how about issues in the
 13 school system?
 14 MR. VIRJEE: Objection. Vague and ambiguous.
 15 THE WITNESS: We have heard testimony by some
 16 that some schools did not -- did not and do not have
 17 instructional materials for their students because they
 18 have not purchased them or whatever.
 19 Q. BY MR. JACOBS: And when you're referring to
 20 "testimony," are you referring to testimony you've heard
 21 in your role as executive director?
 22 A. Most recently last month the former
 23 administrator of Compton Unified testified that when he
 24 took over, the schools did not have materials for all
 25 kids and that they now do.

1 Q. Is there other testimony you're thinking of?
 2 A. No.
 3 Q. So have you heard -- let me ask it a little
 4 differently.
 5 Have you received any other information, say,
 6 since around the time of this article that is to that
 7 similar effect?
 8 MR. VIRJEE: Objection. You're obviously not
 9 asking just in his position as the executive director.
 10 MR. JACOBS: Correct.
 11 MR. VIRJEE: Objection. Calls for speculation.
 12 Lacks foundation.
 13 THE WITNESS: I read the newspapers. I've read
 14 articles of this occurring, yes.
 15 Q. BY MR. JACOBS: And aside from that, any other
 16 information to that effect?
 17 A. No official information.
 18 Q. At the American Association of Publishers, did
 19 you ever have occasion to come across information about
 20 the same issue, that is, whether there were schools that
 21 were not giving students sufficient instructional
 22 materials?
 23 MR. VIRJEE: Are you asking did he ever learn
 24 that from the Association?
 25 MR. JACOBS: Yes.

1 MR. VIRJEE: Because I don't think there's been
 2 any testimony that he's been at the Association.
 3 Q. BY MR. JACOBS: In your capacity as a
 4 consultant for them, did you receive that information?
 5 A. I have a vague recollection that they had done
 6 some survey work nationwide on that issue, and that they
 7 found, which, of course, is in their interest, that
 8 there were schools and students that did not have
 9 instructional materials.
 10 Q. And did you --
 11 A. Broadly defined.
 12 Q. And did you have -- did you receive information
 13 at that time about why that was so?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 THE WITNESS: Only supposition.
 16 Q. BY MR. JACOBS: What was the supposition?
 17 A. Funding and management.
 18 Q. Did the -- and insofar as management was
 19 concerned, did you have any more detailed information or
 20 supposition on the management issues that would lead to
 21 that result?
 22 MR. VIRJEE: You're talking about with the
 23 American Association of Publishers?
 24 MR. JACOBS: Yes.
 25 THE WITNESS: No.

1 Q. BY MR. JACOBS: Have you participated in any
 2 discussions in the period 1998 to the present in which
 3 questions on the management side as opposed to the
 4 funding side, questions on the management of textbook
 5 availability have been on the agenda?
 6 A. Yes.
 7 Q. And what have been those discussions?
 8 MR. SEFERIAN: I'll object to the extent it
 9 calls for privileged communications.
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to "on the agenda" and textbooks.
 12 THE WITNESS: Is your reference to State Board
 13 agenda?
 14 MR. JACOBS: Actually, I meant agenda broadly.
 15 Q. That's been a topic that you have discussed?
 16 A. I can answer with respect to the State Board.
 17 We have had districts who did not comply technically
 18 with the law and were requesting the State Board to
 19 waive technically the law to absolve them of a penalty
 20 that occurs.
 21 Q. This is the 60119 provision of the statute?
 22 A. Yes, I believe that's the right section.
 23 Q. And in that context have you had discussions
 24 about the question of the management of textbooks and
 25 how that relates to whether sufficient instructional

1 materials are available to students?
 2 MR. VIRJEE: Objection. Vague and ambiguous as
 3 to "textbooks," "sufficient" and "available."
 4 THE WITNESS: Discussions? What do you mean by
 5 discussions? To me discussion could be a cocktail party
 6 conversation.
 7 MR. JACOBS: That's why I said "in that
 8 context." You were talking about the waiver.
 9 THE WITNESS: State Board. Okay. Yes, there
 10 were. It was clear that the notification with respect
 11 to that section was vague. It was clear that some
 12 districts had not obeyed that section of law. It was
 13 clear that some of those not obeying the law were
 14 technical, inadvertent and immaterial, but that others
 15 were questionable management practices.
 16 And the policy of the Board under law was that
 17 they were allowed to waive for technical and inadvertent
 18 circumstances, i.e., we're supposed to place three
 19 notices, but there's only one gas station in town, or
 20 that it was a 29-day notice, not a 30-day notice, and
 21 those were waivable under the law, but that more serious
 22 violations were not. So the State Board developed a
 23 policy around when they would and when they would not
 24 waive that section.
 25 Q. BY MR. JACOBS: And the conditions that result

1 in a nonwaiver, did those conditions include any direct
2 information about -- strike that.

3 What were the conditions that would result in a
4 nonwaiver?

5 MR. VIRJEE: Objection. Compound. Calls for
6 speculation. Vague as to time.

7 MR. SEFERIAN: The policy speaks for itself.

8 THE WITNESS: The policy is more to what you
9 will waive, not what you will not. It's narrowly
10 defined.

11 Q. BY MR. JACOBS: Have there been cases in which
12 the State Board has denied waivers for noncompliance
13 with 60119?

14 A. I don't recall a specific instance. The policy
15 on waivers typically is administered by the agency and
16 they inform the districts who seek waivers of the
17 likelihood of that being successful, and we're told
18 anecdotally that districts in other circumstances did
19 not proceed with the waiver. I don't recall a
20 particular --

21 Q. The 60119 requires a public hearing to reach
22 certain conclusions, correct?

23 MR. VIRJEE: Objection. The statute speaks for
24 itself. Calls for a legal conclusion.

25 THE WITNESS: That's my understanding.

1 LA Times on lots of subjects, and that one too.

2 Q. BY MR. JACOBS: Do you have a recollection of
3 reading this particular article?

4 A. Not particularly.

5 Q. You're paraphrased on page 88 of the printout.

6 A. Right.

7 Q. There's a discussion there of the hearings that
8 I believe we were discussing, and you are said to have
9 said something along the lines of, John Mockler,
10 executive director of the State of Board of Education,
11 said, the hearings should be advertised so that
12 students, parents and teachers can tell their stories.

13 To be more accurate about it, you are said to have said
14 something along the lines of the hearings should be
15 advertised so that students, parents and teachers can
16 tell their stories. Do you see that?

17 A. Yes, I believe what I told the reporter was
18 what the law states that the district must do.

19 Q. And did you provide --

20 A. They must have a noticed public hearing.

21 Q. And did you go on to say something along the
22 lines of, so that students, parents and teachers can
23 tell their stories?

24 MR. VIRJEE: If you recall.

25 THE WITNESS: I don't recall having said that.

1 Q. BY MR. JACOBS: And the purpose of the statute
2 is to improve accountability at the local level for
3 district performance in delivering textbooks or
4 instructional materials to students, correct?

5 MR. VIRJEE: Objection. Vague and ambiguous as
6 to "purpose." Calls for speculation. Lacks foundation.
7 Calls for a legal conclusion.

8 THE WITNESS: The law, as I understand it,
9 requires an annual public hearing and a finding, and if
10 the finding is not positive, then the district must take
11 action within a time period to ensure that the
12 provisions of the law are carried out.

13 MR. JACOBS: Let's mark this as 235.
14 (Exhibit SAD-235 was marked.)

15 Q. BY MR. JACOBS: This is an article from Los
16 Angeles Times, dated July 16, 2000, headline, with state
17 checkbook open, some students still lack texts;
18 education; some schools have unused books in storage.
19 Changing standards also cause delays.

20 Let me ask you, generally have you read the LA
21 Times -- do you recall reading any LA Times' articles
22 about textbook issues in the Los Angeles Unified School
23 District?

24 MR. VIRJEE: Objection. Vague as to time.

25 THE WITNESS: I recall reading articles in the

1 Q. BY MR. JACOBS: Do you believe that's one of
2 the purposes to be served by the public hearing?

3 MR. VIRJEE: Objection. Calls for speculation.
4 Lacks foundation. Vague and ambiguous as to "purpose,"
5 and calls for a legal conclusion.

6 THE WITNESS: I believe the statute requires
7 such notification.

8 Q. BY MR. JACOBS: And you don't have an opinion
9 as to the policy purpose served by the notification?

10 MR. SEFERIAN: Objection. Lacks foundation.
11 Calls for speculation. Calls for an inadmissible
12 opinion.

13 THE WITNESS: In my view the law requires
14 public notice and notification of parties, and that's
15 what districts are required to do.

16 Q. BY MR. JACOBS: And you don't have an opinion
17 as to the policy purpose served by the provisions you've
18 just referred to?

19 MR. SEFERIAN: Objection. Lacks foundation.
20 Calls for an inadmissible opinion.

21 THE WITNESS: My opinion is the law was clear
22 that the statute expects local districts to meet the
23 instructional resources needs of kids in their school.

24 Q. BY MR. JACOBS: And what's the purpose of the
25 hearing?

1 MR. SEFERIAN: Objection. Calls for
 2 speculation. Lacks foundation. Calls for an
 3 inadmissible opinion.
 4 Q. BY MR. JACOBS: What's the purpose of the -- of
 5 advertising the hearing?
 6 MR. SEFERIAN: Same objections.
 7 THE WITNESS: The purpose of advertising, to
 8 give public notice of an action.
 9 Q. BY MR. JACOBS: And you don't have any opinion
 10 beyond that as to the purpose of advertisement?
 11 MR. SEFERIAN: Same objections. Asked and
 12 answered.
 13 THE WITNESS: Under the statute two things
 14 happen, you must make a finding. The question is, is it
 15 accurate, and second of all if your finding is negative,
 16 the district has an open-ended right to raid other
 17 funds. So one would presume that both are something the
 18 public ought to know about. There's wide latitude for
 19 districts to fund whatever needs they have.
 20 Q. BY MR. JACOBS: Just to be clear, you don't
 21 recall saying in words or substance, so that students,
 22 parents, teachers can tell their stories?
 23 A. I don't recall saying that, but that doesn't
 24 mean I didn't.
 25 Q. As you sit here today, do you believe

1 affirmatively that you did not say that because you did
 2 not believe that to be the purpose of advertising the
 3 hearings?
 4 A. No. No. Is that a double negative?
 5 Q. I think so.
 6 A. Is no yes or yes no?
 7 MR. VIRJEE: No.
 8 MR. JACOBS: Let the record reflect laughter.
 9 Q. Let me ask it a little differently to avoid the
 10 double negative.
 11 As you sit here today, what is your opinion on
 12 whether the hearings should be advertised so that
 13 students, parents and teachers can tell their stories?
 14 MR. SEFERIAN: Objection. Lacks foundation.
 15 Calls for an inadmissible opinion.
 16 THE WITNESS: I think the obligation is to
 17 notice the public hearings and notify the parties called
 18 for in law.
 19 Q. BY MR. JACOBS: And you have no -- I need a yes
 20 or no answer, I guess, to this question, if you can give
 21 one.
 22 Do you disagree --
 23 A. No. Sorry.
 24 Q. Do you disagree that the hearings should be
 25 advertised so that students, parents and teachers can

1 tell their stories with an emphasis on the "so that"
 2 clause of the sentence?
 3 A. Is the question do I disagree with what you
 4 just said?
 5 Q. Yes.
 6 A. No.
 7 Q. In the State Board of Education when you've had
 8 discussions on 60119, have you had discussions about the
 9 efficacy of the hearing requirements in improving the
 10 availability of textbooks or instructional materials to
 11 students?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "efficacy," and assumes facts not in evidence.
 14 MR. SEFERIAN: Object to the extent it calls
 15 for privileged communications.
 16 THE WITNESS: What does "efficacy" mean?
 17 MR. JACOBS: Effectiveness.
 18 THE WITNESS: Effectiveness. Not to my
 19 recollection.
 20 MR. VIRJEE: You've answered the question.
 21 Q. BY MR. JACOBS: Sir, did you wish to clarify
 22 your answer?
 23 A. It's our obligation to make sure that the
 24 hearings are held.
 25 Q. Do you have an opinion, based on your knowledge

1 and experience with educational issues, as to whether
 2 the provisions of 60119 are effective in achieving
 3 greater availability of textbooks or instructional
 4 materials to students?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "availability." Calls for speculation, and lacks
 7 foundation.
 8 THE WITNESS: I have opinions on almost
 9 everything.
 10 MR. VIRJEE: So stipulated.
 11 Q. BY MR. JACOBS: And what is your opinion on
 12 that subject, sir?
 13 MR. SEFERIAN: Same objections.
 14 THE WITNESS: It is clear from the record that
 15 school districts, many school districts initially did
 16 not pay attention to that section of law, but that have
 17 subsequently, because of the penalties involved, paid a
 18 great deal of attention to that law, and therefore it
 19 would be my view that it's been an important part of the
 20 statute.
 21 Q. BY MR. JACOBS: And important in accomplishing
 22 what?
 23 A. Making sure school districts are aware as to
 24 whether or not students have appropriate instructional
 25 resources, and their duty under the law.

1 Q. And is that -- I take it that one basis for
2 that opinion is the wider dissemination of knowledge
3 about what the statute requires since you had that
4 discussion about the ambiguity in the communication with
5 the districts; is that correct?

6 MR. VIRJEE: Objection. Vague and ambiguous.

7 THE WITNESS: It's the number of districts that
8 sought waivers initially, but not subsequently.

9 Q. BY MR. JACOBS: So the number of districts --
10 based on the waiver applications, you believe more
11 districts are in compliance with the spirit and
12 substance -- well, the substance of the 60119 hearing
13 requirements, yes?

14 A. Yes.

15 Q. And aside from that, do you have any other
16 information for believing that the -- any other basis
17 for believing that the statute has achieved the goals
18 that you set out a couple minutes ago in your answer,
19 that was, making visible to the district whether it
20 was -- what the textbook issues were and aiming at the
21 resolution?

22 MR. VIRJEE: Objection. Vague and ambiguous.
23 Also misstates his testimony as to what the goals were.
24 I don't think he used the word "goals," and I don't
25 think he used the same description.

1 MR. VIRJEE: Objection. Vague and ambiguous as
2 to "role" and "setting the agenda." I'm assuming you're
3 not just talking about physically putting together the
4 agenda, what goes on it.

5 MR. JACOBS: Correct.

6 THE WITNESS: You mean the content of the State
7 Board's agenda?

8 MR. JACOBS: Yes.

9 THE WITNESS: We work with the superintendent
10 and the Board president in creating the agenda.

11 Q. BY MR. JACOBS: And from the standpoint of --
12 do you have a particular role in that process as
13 executive director?

14 A. Board staff coordinates the creation of the
15 agenda. Much of the work is accomplished by the
16 superintendent's office.

17 Q. Can you describe what the role of the executive
18 director is?

19 A. You work for the State Board of Education. We
20 administer a small staff, we advise the Board with
21 respect to duties imposed upon it by statutes, we carry
22 out the duties called for in statute and the duties put
23 forth by the Board.

24 Q. When you refer to "a small staff," how many
25 people are you talking about?

1 MR. SEFERIAN: Calls for speculation.

2 THE WITNESS: Nothing explicit. Anecdotal
3 information.

4 Q. BY MR. JACOBS: And is there any evaluation --
5 and by evaluation I mean a study-type evaluation --
6 currently underway in the Department to answer that
7 question?

8 MR. VIRJEE: Objection. Calls for speculation
9 as to what's going on in the Department. Lacks any
10 foundation.

11 THE WITNESS: I have general information
12 that -- that the Department asked some questions
13 regarding materials in schools. I've not seen a
14 research project on that.

15 Q. BY MR. JACOBS: By "asked some questions," what
16 are you referring to?

17 A. Ms. Griffith, Sherry Griffith, who is in the
18 agency, has done, I believe, some survey work -- I have
19 not seen the results. I believe there are others -- to
20 get generalized information.

21 Q. Do you have any information about what the
22 results of that have been?

23 A. No.

24 Q. And as the executive director of the Board,
25 what is your role in setting the Board's agenda?

1 MR. VIRJEE: How many people does he as the
2 executive director supervise?

3 MR. JACOBS: Yes.

4 THE WITNESS: About 10.

5 Q. BY MR. JACOBS: Do you have a capacity in --
6 strike that.

7 What is that group called, Board staff?

8 A. State Board of Education staff.

9 Q. Does the State Board of Education staff have
10 the capacity to enter into agreements with third parties
11 to conduct studies?

12 MR. SEFERIAN: Objection. Vague and ambiguous
13 as to "capacity." Calls for an inadmissible legal
14 opinion.

15 THE WITNESS: No.

16 Q. BY MR. JACOBS: Do you have any independent
17 research, what you regard as an independent research
18 capability on the Board staff?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "independent research capability."
21 And now you're talking about Board staff,
22 right?

23 MR. JACOBS: Yes.

24 MR. SEFERIAN: Calls for an inadmissible legal
25 opinion.

1 THE WITNESS: What do you mean by "research"?

2 Q. BY MR. JACOBS: The ability to go out and --

3 that's a good question. Let's focus on textbooks for a

4 minute.

5 Do you have any -- on the Board staff do you

6 have any resources that potentially could be applied to

7 answering the question whether 60119 has been effective

8 in achieving any goals with respect to textbooks or

9 instructional materials?

10 MR. SEFERIAN: Objection. Vague and ambiguous

11 as to "resources." Calls -- incomplete and improper

12 hypothetical question. Lacks foundation.

13 THE WITNESS: State Board staff is not funded

14 for those types of activities.

15 Q. BY MR. JACOBS: And because you're not funded,

16 therefore it is --

17 A. The duties of the --

18 MR. SEFERIAN: Please let him finish the

19 question, Mr. Mockler.

20 Q. BY MR. JACOBS: Were you going to clarify your

21 previous answer?

22 A. Just the duties of the -- the duties of the

23 staff in place don't include that function.

24 Q. And that's true generally also that the duties

25 of the staff don't include studies regarding

1 effectiveness of policies and programs?

2 MR. SEFERIAN: Objection. Calls for

3 inadmissible legal opinion.

4 MR. VIRJEE: Also overbroad. Vague and

5 ambiguous and compound.

6 THE WITNESS: Limited.

7 Q. BY MR. JACOBS: Limited to what?

8 A. Limited ability. We have smart people that can

9 review data, but they have many tasks.

10 Q. And so you could review data that's available

11 from other sources, correct?

12 A. That's correct.

13 Q. And you can review studies that have been

14 conducted by the Department of Education?

15 MR. SEFERIAN: Objection. Vague and ambiguous

16 as to "you."

17 THE WITNESS: The word is could?

18 MR. JACOBS: Yes.

19 THE WITNESS: Yes.

20 Q. BY MR. JACOBS: And could you review studies

21 done by third parties such as the Little Hoover

22 Commission?

23 MR. VIRJEE: You're asking is it possible that

24 the Board staff could review those things?

25 THE WITNESS: Yes.

1 MR. JACOBS: Yes.

2 Q. As a matter of practice does the Board staff

3 review -- let's take Little Hoover Commission. Does the

4 Board staff review Little Hoover Commission studies

5 concerning public education?

6 MR. VIRJEE: Objection. Calls for speculation.

7 Lacks foundation. Also vague as to time and compound.

8 THE WITNESS: From time to time those documents

9 are reviewed to the extent they pertain to our duties.

10 Q. BY MR. JACOBS: Is there a -- does someone on

11 the staff have the responsibility to provide the results

12 or summaries of Little Hoover Commission reports that

13 pertain to State Board of Education duties to State

14 Board members?

15 MR. SEFERIAN: Object to the extent it calls

16 for privileged communications.

17 THE WITNESS: There's -- no.

18 Q. BY MR. JACOBS: And is there a vehicle aside

19 from Board staff for that? As you understand the way

20 studies filter up to board members, is there a vehicle

21 other than board staff for that to occur?

22 MR. VIRJEE: Objection. Calls for speculation

23 as to how Board members might get Little Hoover

24 Commission studies.

25 THE WITNESS: There's no specific requirement

1 to review Little Hoover Commission studies. Board

2 members request reviews. To the extent we have staff to

3 do that, we do that.

4 Q. BY MR. JACOBS: And is that a -- something that

5 an individual board member can request, or does the

6 Board have to act to make that request?

7 MR. VIRJEE: Objection. Vague and ambiguous.

8 Are you asking whether the Board member has the

9 legal ability to do that?

10 MR. JACOBS: No, just a practical matter.

11 MR. VIRJEE: Whether they do it? Because you

12 said it's something they could, so I'm just trying to

13 understand your question.

14 Q. BY MR. JACOBS: What's the mechanism by which

15 your review of studies for board members occurs?

16 MR. VIRJEE: Objection. Assumes facts.

17 Assumes there's specific mechanisms.

18 THE WITNESS: Statute policy, board member

19 requests individually or collectively.

20 Q. BY MR. JACOBS: And let's take an example.

21 Actually, before we do that, let's just talk now about

22 the staffing when you were interim secretary of

23 education on that side of the house.

24 What was the staffing of the office of the

25 secretary of education when you were interim secretary?

1 A. I'm guessing, but about, I think, 15, and I
 2 think another three on the mentor program, so about 18,
 3 19.
 4 Q. What was the "mentor program"?
 5 A. It's a program to encourage and fund citizens
 6 mentoring students in school.
 7 Q. And this is a program that was operated out of
 8 the --
 9 A. Administered by the secretary's office.
 10 Q. The capacity of the -- strike that.
 11 What do we call that group, staff of the office
 12 of secretary?
 13 A. It reports to the secretary.
 14 Q. And is there a name for the group?
 15 A. It's the mentor unit.
 16 Q. I'm sorry, I was referring to the rest of the
 17 team, not the mentor unit, but the 15 staff persons.
 18 A. I was just trying to calculate the number in my
 19 head. The staff works for the secretary.
 20 Q. Do you call them the secretary's staff?
 21 A. Yes.
 22 Q. Did the secretary's staff have the capability
 23 to engage third parties to conduct research on
 24 educational policy questions?
 25 MR. VIRJEE: Objection. Vague and ambiguous as

1 to "capability" and "conduct research." Also calls for
 2 speculation. Vague as to time.
 3 THE WITNESS: Could you clarify "research
 4 capacity," those two terms, I mean?
 5 Q. BY MR. JACOBS: Let me walk it the way you
 6 walked it before. A staff person in the secretary staff
 7 could review data provided by outsiders, correct?
 8 A. Yes.
 9 MR. VIRJEE: You're asking whether it's
 10 physically possible?
 11 Q. BY MR. JACOBS: And there would be an
 12 institutional capacity in the office of the secretary of
 13 education to review data from third parties, yes?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "institutional capacity."
 16 Are you asking whether they have some statutory
 17 or legislative right to do that, or just whether they
 18 have the physical capacity based on staff members? It's
 19 vague and ambiguous.
 20 MR. JACOBS: In any of those sentences, sir.
 21 THE WITNESS: Within the staff of the
 22 secretary's office, when I was there, they had limited
 23 capacity to review data given by numbers. Their duties
 24 are assigned by the governor and by statute.
 25 Q. BY MR. JACOBS: And the answer would be the

1 same for reviewing studies from third parties, correct?
 2 A. Yes, within their duties they do review
 3 studies.
 4 Q. And within their duties, do they contract for
 5 studies to be performed?
 6 MR. VIRJEE: Objection. Calls for speculation.
 7 Lacks foundation. Also vague and ambiguous as to "they
 8 contract."
 9 THE WITNESS: The secretary's office has
 10 contracted for some studies that's called for by statute
 11 or the Budget Act.
 12 Q. BY MR. JACOBS: And by "statute" you mean
 13 there's a legislative mandate for the secretary's office
 14 to conduct a particular study?
 15 A. Correct, and funding.
 16 Q. And how about any kind of a discretionary
 17 capability to do that?
 18 A. No discretionary money for that.
 19 Q. How would you characterize the difference in
 20 roles, let's say, statutorily-defined roles to begin
 21 with, between the secretary of education and the
 22 superintendent of public instruction? Let's start
 23 there.
 24 MR. VIRJEE: Objection. Assumes facts not in
 25 evidence. Assumes there are statutorily-defined roles

1 for both. Also calls for speculation and lacks
 2 foundation. And to the extent you're asking what the
 3 statutes require, calls for a legal conclusion.
 4 MR. SEFERIAN: It's overly broad.
 5 THE WITNESS: The secretary's office is
 6 advisory to the governor. There is no statute creating
 7 the office, to my knowledge. There are statutes that
 8 direct some of the duties, for example, the mentor
 9 program. The superintendent of public instruction is a
 10 statewide elected constitution officer and has several
 11 statutory duties.
 12 MR. HAJELA: I have a question for Mike and for
 13 you, Fram. I have very few questions for Mr. Mockler,
 14 but does it make sense to ask them as we're going over
 15 subject areas, or just ask them all at the end?
 16 MR. VIRJEE: Wait until the end.
 17 MR. HAJELA: And the reason I ask that is if I
 18 have something on textbooks, do I have to establish all
 19 over again that he said average \$60, or are we just
 20 going to let me go?
 21 MR. VIRJEE: Just going to let you go.
 22 MR. SEFERIAN: Is this a good time for a lunch
 23 break?
 24 MR. JACOBS: Actually, it is.
 25 (Recess taken.)

1 MR. JACOBS: Let me show you an article from
2 the Los Angeles Times dated July 28, 1997, which we will
3 mark as 236.

4 (Exhibit SAD-236 was marked.)

5 Q. BY MR. JACOBS: Just to focus you on the
6 portion that's specifically relevant to you, you're
7 quoted at the bottom of page 13 as stating, quote, we've
8 allocated huge amounts of other monies, like lottery,
9 for instructional material over the last three years,
10 close quote, said John Mockler, a Sacramento lobbyist
11 retained by both Textbook Publishers and LA Unified.
12 Quote, there's no reason they shouldn't have a book for
13 every kid, period, close quote.

14 Do you see that?

15 A. Yes.

16 Q. And if you want to scan the article for its
17 context, I'll ask you a few questions about it.

18 A. Yeah.

19 Q. Do you recall this article?

20 A. Vaguely, yeah.

21 Q. Is the quote accurate?

22 A. Reasonably so. I mean, the words may not be
23 precise, but that's how the press operates.

24 Q. So in substance you said what's quoted?

25 A. Yeah.

1 attorney/client privilege.

2 THE WITNESS: I don't recall talking about
3 lottery funding at the State Board ever.

4 Q. BY MR. JACOBS: Let me get at in a slightly
5 different way. Is it your understanding that generally
6 lottery money is thought of as categorical funding as
7 opposed to base aid?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "base aid," and also calls for speculation.

10 THE WITNESS: Lottery funds are allocated on a
11 dollar amount and can be spent for any purpose the local
12 district deems.

13 Q. BY MR. JACOBS: And the reason I ask is that
14 when I think of categoricals, I usually think of
15 purpose-specific funding.

16 MR. SEFERIAN: He hasn't asked you a question.
17 Please let him ask you a question first.

18 Q. BY MR. JACOBS: So when you refer to it as
19 categorical, I'm wondering if that's common parlance or
20 not?

21 MR. VIRJEE: Objection. Calls for speculation.
22 Lacks foundation as to "common parlance," in what
23 context.

24 THE WITNESS: Yes.

25 Q. BY MR. JACOBS: And my understanding of

1 Q. Let me ask you, first of all, about lottery
2 monies in that paragraph. When we were having our
3 discussion early on about revenue sources for schools,
4 how do lottery monies fit into the various buckets that
5 you identified?

6 A. Lottery money is allocated on a flat amount per
7 student precisely per ADA, and that money may be used by
8 a local district or university or whatever.

9 Q. And in the -- what I took down as notes of the
10 various buckets for revenue included the base,
11 categorical --

12 A. It's categorical.

13 Q. It's categorical but open ended?

14 A. General categorical.

15 Q. And as you understand the discussion about
16 school finance in -- strike that.

17 When you've participated in discussions about
18 school finance in your capacity at the State Board, has
19 it been understood that lottery money is thought of as
20 categorical?

21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "categorical." Also assumes facts not in evidence.

23 Assumes that he's participated in discussions about
24 school finance at the State Board. Also object on the
25 grounds of official information privilege and

1 categorical, is therefore flawed, categorical funding as
2 you used the term is not necessarily purpose specific;
3 is that correct?

4 A. That's correct.

5 Q. And then what defines it as categorical as you
6 used the term is what?

7 A. It's a separate pot of money unrelated to the
8 revenue limit system.

9 Q. And you've participated in discussions in which
10 the question of the relative amount of funding that
11 districts have discretion over versus amounts that's
12 purpose specific has been on the table, yes?

13 MR. VIRJEE: You're asking --

14 MR. JACOBS: I'm just setting the predicate
15 for --

16 MR. VIRJEE: Has he ever had those discussions?

17 MR. JACOBS: Yes.

18 THE WITNESS: Yes.

19 Q. BY MR. JACOBS: And in that context is it
20 typical for people to think of -- isn't that pie usually
21 divided up between the base funding and categoricals?

22 MR. VIRJEE: Objection. Vague and ambiguous.
23 Compound.

24 THE WITNESS: Definition of categorical?

25 MR. VIRJEE: Calls for speculation depending on

1 the context.

2 Are you still back at the State Board level, by
3 the way?

4 MR. JACOBS: Just in general. Common parlance
5 here.

6 Q. Let me ask it this way. I'll ask it very
7 directly and if you can answer it, great, if not, no.
8 I've read a lot of articles in which the
9 comment is made that over time the amount of money that
10 districts lack discretionary control over has gone up
11 relative to the amount of money as to which they have
12 discretionary control. You've seen similar articles,
13 yes?

14 A. Oh, yes.

15 Q. Usually when I read those articles they
16 distinguish between on the one hand categorical
17 expenditures, and seem to assume that as to categorical
18 districts don't have discretion as compared with the
19 discretion they have over base allocations.

20 Have you read articles in which that same
21 assumption -- is that typical in your experience as
22 well?

23 MR. VIRJEE: Objection. Calls for speculation.
24 Vague and ambiguous as to "typical."

25 THE WITNESS: That would be a narrow definition

1 THE WITNESS: That's about five years ago. In
2 that time there are -- the provisions of the Bustamante
3 Act allows school districts the authority to access all,
4 unless otherwise expressed negatively, categorical to
5 fund instructional materials, broadly stated.

6 Q. BY MR. JACOBS: And is that still true in 2002?

7 MR. SEFERIAN: Objection. Lacks foundation.

8 MR. VIRJEE: Calls for speculation. Calls for
9 a legal conclusion.

10 THE WITNESS: Is your question is the law
11 essentially the same?

12 MR. JACOBS: Yes.

13 THE WITNESS: Yes.

14 Q. BY MR. JACOBS: When you said there's no reason
15 they shouldn't have a book for every kid, you were
16 saying that money is not a reason that they shouldn't
17 have a book for every kid, correct?

18 MR. VIRJEE: Objection. Vague and ambiguous as
19 to "book for every kid." Assumes facts not in evidence.

20 (Ms. Duffy left the room.)

21 THE WITNESS: I use the term book, textbook,
22 instructional resources, instructional materials
23 broadly. And I believe there were funds available from
24 a variety of sources that could have been used to ensure
25 a wide array of instructional materials for kids.

1 used by those seeking one form of aid or another.

2 Q. BY MR. JACOBS: And more properly you think
3 that, therefore, lottery money should be thought of
4 as -- in this context as money that schools do, in fact,
5 have broad discretion over how to spend?

6 A. Yes.

7 Q. And do you have a rule of thumb answer to the
8 question how much lottery money per student is currently
9 being distributed in the state?

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "distributed." Vague and ambiguous as to
12 "currently."

13 MR. SEFERIAN: Lacks foundation.

14 THE WITNESS: Are you speaking of the last
15 couple years?

16 MR. JACOBS: Yes.

17 THE WITNESS: About \$125 a student.

18 Q. BY MR. JACOBS: When you made the comment
19 that's reflected on the bottom of page 13 of Exhibit
20 236, did you have any particular facts in mind in terms
21 of data on cost or data about recent allocations of
22 money for textbooks?

23 MR. VIRJEE: Objection. Calls for speculation.
24 Lacks foundation about what he might have had in mind in
25 July of 1997 when he made a comment.

1 Q. BY MR. JACOBS: So the answer to my question,
2 aside from your definition of the word "book," is
3 correct, yes?

4 MR. VIRJEE: The answer to your question is
5 correct.

6 THE WITNESS: Yes. If your question is did the
7 schools have resources available for which they could
8 have purchased materials for students, broadly stated,
9 the answer is yes.

10 Q. BY MR. JACOBS: And you were not disputing that
11 students -- you were not disputing the factual
12 presentation at the time that there were students who
13 didn't have such access to instructional materials,
14 correct?

15 MR. VIRJEE: Objection. Vague and ambiguous as
16 to "factual presentation." There's been no evidence
17 that there was a factual presentation made. Lacks
18 foundation. Calls for speculation.

19 THE WITNESS: I believe I was asked a question
20 by a reporter who said that they had found
21 circumstances, and I said the circumstances -- if those
22 circumstances exist, there are resources to overcome
23 them.

24 Q. BY MR. JACOBS: And you meant to imply by that,
25 did you not, that it was not a finance issue but a

1 management issue if text -- instructional materials were
2 not in the hands of students, correct?

3 MR. VIRJEE: Objection. Calls for speculation.
4 Lacks foundation. Also compound. Also calls for
5 speculation as to what he might have meant in 1997.

6 THE WITNESS: I believe that there is never as
7 much money as we'd like to have in schools, but when
8 you're talking \$60 a student, there is sufficient
9 resources at that time, and more now, for local
10 management to ensure that the provisions of 60119 are
11 carried out.

12 Q. BY MR. JACOBS: And by the "provisions of
13 60119," in this context you mean more than holding the
14 public hearing, correct?

15 A. 60119 goes well beyond the public hearing.

16 Q. So what did you mean when you said there's
17 enough resources to carry out the provisions of 60119?

18 MR. VIRJEE: Objection. Calls for speculation.
19 Calls for a legal conclusion.

20 THE WITNESS: 60119, my layman's understanding
21 of it, requires both the public hearing, and if the
22 finding is you do not have materials, then you are
23 directed to access any other revenue source to produce
24 that result within a two-year period.

25 Q. BY MR. JACOBS: And "the result" being what?

1 A. That students have a broad array of textbooks
2 and other instructional materials, instructional
3 resources, if you will. And it says textbooks or
4 instructional materials, so it's a broad definition of
5 what kids might need in various circumstances.

6 Q. And so it is your belief, therefore, that if
7 that objective is not met, I guess, there are two
8 possibilities, one is a deliberate decision is made not
9 to meet it, and the other is that management
10 inadequacies block achievement of that objective; is
11 that correct?

12 MR. SEFERIAN: Objection. Overly broad. Calls
13 for speculation. Incomplete and improper hypothetical
14 question. Overly broad. Lacks foundation.

15 THE WITNESS: I don't think you can have a
16 single reason for this, if that phenomenon -- of that
17 phenomenon, instructional materials broadly not
18 available to students. There are a variety of factors
19 involved. Management is certainly one of them.

20 Q. BY MR. JACOBS: And are you aware of any steps
21 that have been taken at the state level to address
22 management as an issue in the availability of textbooks
23 or other instructional materials to students?

24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "availability," "address" and "management." Also

1 vague as to time.

2 MR. SEFERIAN: Object to the extent it calls
3 for privileged communications.

4 THE WITNESS: In any -- I'm trying to follow
5 the question. Is your question does the State address
6 local management issues, or is your question are there
7 other steps that the State may have taken with respect
8 to this instructional materials issue?

9 MR. JACOBS: I guess I mean it in the second
10 sense, but with the focus on management as you've used
11 that word.

12 MR. VIRJEE: Same objections.

13 (Ms. Duffy entered the room.)

14 THE WITNESS: I think actions taken over time
15 with respect to 60119 and with respect to allocation of
16 funding addressed both issues, management and funding.

17 Q. BY MR. JACOBS: And anything else that you
18 would point to as addressing management?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "management." Calls for speculation. And to the
21 extent you're asking what the law requires, calls for a
22 legal conclusion.

23 MR. SEFERIAN: Lacks foundation.

24 THE WITNESS: Nothing in particular. Wide
25 variety of discussion, et cetera. When you raise the

1 issue up, it's more likely to be solved.

2 Q. BY MR. JACOBS: Just to be clear, your answer
3 is nothing in particular, there have been discussions,
4 and when there are discussions the problem is more
5 likely to be solved?

6 MR. VIRJEE: Objection. Misstates his
7 testimony. His testimony speaks for itself.

8 THE WITNESS: My testimony was in addition to
9 funding and the provisions of 60119. With respect to
10 specificity, I think the answer to your question is I'm
11 not aware of any specific managerial action, but that
12 the response with respect to 60119 and the public
13 discussion of the issue seems to have put it on a front
14 burner.

15 Q. BY MR. JACOBS: And the evidence for that is --
16 in your view is what?

17 MR. SEFERIAN: Objection. Lacks foundation.
18 Asked and answered. Calls for inadmissible opinion.

19 MR. VIRJEE: And "for that," you mean putting
20 it on the front burner?

21 MR. JACOBS: Yes.

22 THE WITNESS: Anecdotal information and the
23 discussions around waivers related to 60119.

24 Q. BY MR. JACOBS: The chronology of the
25 discussions around the waiver in a very rough sense is

1 what?

2 MR. VIRJEE: Objection. Vague and ambiguous as
3 to "chronology" and "discussions." I'm sorry, Michael,
4 what are you asking?

5 Q. BY MR. JACOBS: Basically I'm asking when you
6 would date the --

7 A. I'd have to have some help. I came to the
8 Board in November of '99, but I know there were
9 discussions prior to that. So I'm not quite sure of
10 those discussions, I wasn't there.

11 But subsequent to '99 the -- it was clear that
12 districts, from their testimony, were not properly
13 informed initially of their duties under -- at least
14 that was their position, and they sought waivers, some
15 from technical violations, some for other violations,
16 and the Board took several actions with respect to that.

17 Q. I guess my question is this, based on your
18 understanding of those discussions, the anecdotal
19 information you referred to and the other information
20 you have, do you believe that the State Board of
21 Education actions are too recent to allow for an
22 evaluation of whether those actions coupled with the
23 statutory provisions have, in fact, resulted in
24 improvement in the management of textbook availability?

25 MR. VIRJEE: Objection. Vague and ambiguous as

1 evidence you mean.

2 Q. BY MR. JACOBS: I don't think the answer turns
3 on that though, does it? The question is whether you
4 think it's too soon to tell from the Board action
5 whether 60119 if fully implemented is effective?

6 MR. SEFERIAN: Objection. Lacks foundation.
7 Calls for an inadmissible opinion. Vague and ambiguous
8 as to "effective."

9 MR. VIRJEE: Also calls for a legal conclusion.

10 THE WITNESS: I mentioned a number of issues,
11 one, the appropriation of \$3 billion; two, the
12 provisions of 60119; three, public notice, as you've
13 noted in your newspaper articles, attention to the fact
14 or lack thereof whether students have wide-ranging
15 instructional materials.

16 I know of no inclusive empirical study that
17 demonstrates improvement or lack of improvement, but my
18 impression is there's been substantial improvement.

19 Q. BY MR. JACOBS: With a specific focus on 60119
20 and the greater focus on compliance with the hearing
21 requirements that you described, do you think that
22 there's been enough time to see whether that mechanism
23 is effective or not, or if you were presented with
24 empirical evidence of textbook issues, would you say,
25 give it more time?

1 to "management of textbook availability." Calls for
2 speculation. Lacks foundation. And also misstates his
3 testimony.

4 MR. SEFERIAN: Calls for an inadmissible
5 opinion.

6 THE WITNESS: I have no hard evidence. I have
7 my -- my gut tells me it's gotten better both for
8 management, and the fact that we've appropriated \$3
9 billion in addition to what we were appropriating in
10 1997.

11 Q. BY MR. JACOBS: My specific question is in
12 terms of the chronology of the Board actions if the
13 empirical evidence were such -- were to indicate that
14 textbooks -- that there are still textbook issues of the
15 sort described in the -- in Exhibit 236 around the
16 state, would your response to that empirical evidence be
17 it's still too soon to tell, we should give 60119 more
18 time?

19 MR. VIRJEE: Objection. Calls for speculation.
20 Lacks foundation. Vague and ambiguous as to "textbook
21 issues" and "empirical evidence." Calls for expert
22 testimony.

23 MR. SEFERIAN: Incomplete and improper
24 hypothetical question. Lacks foundation.

25 THE WITNESS: I don't know what empirical

1 MR. VIRJEE: Objection. Calls for speculation.
2 Vague and ambiguous as to "empirical evidence." Also
3 incomplete hypothetical. And also misstates his
4 testimony to the extent you were trying to incorporate
5 that. He said there's more than just the hearing
6 requirements in 60119, because you asked about both
7 60119 and the hearing requirements.

8 Q. BY MR. JACOBS: And I'll just simplify this for
9 you. If you will tell me that you will not testify on
10 September 23rd or thereafter that it's too soon to tell
11 because we've only recently stepped up our efforts to
12 ensure compliance with 60119, I will go away on this
13 topic.

14 MR. VIRJEE: Objection. Calls for speculation.
15 Lacks foundation. Assumes facts not in evidence.

16 Q. BY MR. JACOBS: But you understand my job here
17 is to understand what the State might ask you to testify
18 to and whether there's a basis for it?

19 A. Yes. I don't actually understand your purpose,
20 but I understand. I think the -- we have 8, 9,000
21 schools in California. Anything you say about a school
22 in California on any day is probably happening
23 somewhere, good or bad, so anecdotal evidence doesn't
24 help me much.

25 If you're talking about empirical research

1 about -- across the board, you'd have to take a look at
2 that. The question is not perfection. The question is,
3 is it a reasonable chance that it's better. My
4 impression, with no systematic research, is that it is.
5 Q. And for all the reasons that you described,
6 that is, funding and the greater attention on 60119's
7 compliance?

8 A. And public notice.

9 Q. And so in terms of the chronology of this, of
10 these policy changes, when would you say that all three
11 conditions were met, that is, the Board had -- was
12 assuring that there was better understanding of 60119,
13 No. 1, 2, the money that you were referring to had been
14 appropriated and, 3, there was the public attention that
15 you referred to?

16 MR. SEFERIAN: Objection. Lacks foundation.
17 Assumes facts not in evidence. Compound question.

18 THE WITNESS: What's the question?

19 MR. VIRJEE: Calls for speculation.

20 Q. BY MR. JACOBS: When would you say those three
21 conditions were met?

22 MR. VIRJEE: Objection. Vague and ambiguous.
23 Those are not conditions that can be met or not met.
24 Calls for speculation. Calls for an expert opinion.
25 Also incomplete hypothetical.

1 THE WITNESS: What's the question?

2 Q. BY MR. JACOBS: I'm back to my trial testimony
3 and I'm imagining you on the stand saying the plaintiffs
4 are wrong about the system that we have set up, we've
5 seen improvement in textbook availability and these
6 conditions, money, public attention, and better
7 compliance with the terms of 60119. They've only been
8 out there for the last six months, so who is to say
9 whether they are sufficient or not. And it's that six
10 months that I'm asking you about.

11 How long is --

12 A. Six months? Where did that come from?

13 Q. I just made it up. I don't want you to testify
14 to that unless you tell me now so I can go out and rebut
15 it.

16 MR. VIRJEE: He won't testify to anything you
17 make up.

18 Q. BY MR. JACOBS: How long will you say that has
19 been the situation so that we can now test whether that
20 situation, that combination of policies and procedures
21 has addressed the textbook issue?

22 MR. VIRJEE: Objection. Calls for speculation.
23 Lacks foundation. Calls for an expert opinion. Assumes
24 facts not in evidence. Vague and ambiguous.

25 THE WITNESS: Is your judgment on perfection or

1 on a generalized action?

2 MR. JACOBS: I'm not sure what you mean by
3 "generalized action".

4 THE WITNESS: Is it better or is it perfect?
5 Is that how we know something works?

6 Q. BY MR. JACOBS: I'm really just asking you on
7 the time -- if you view this as an experiment that is
8 testable, how long have these set of experimental
9 conditions that you described been existent?

10 MR. SEFERIAN: Objection. Assumes facts not in
11 evidence. Calls for speculation. Lacks foundation.

12 MR. VIRJEE: Also vague and ambiguous as to
13 "experiment." He's testifying about the statute. Calls
14 for speculation. Calls for an expert opinion.

15 THE WITNESS: I can't answer that. I don't
16 have any way to answer that question.

17 Q. BY MR. JACOBS: And the reason you can't answer
18 it is?

19 A. I don't understand your specific -- what
20 data -- I don't understand what you're asking about.
21 How would I know these things?

22 Q. You would know when the funding levels had been
23 as you described?

24 A. Yes.

25 Q. You would know when the Board actions that

1 you've described were taken, and you have some
2 impressions about greater public attention.

3 Those are the three things that you said lead
4 you to believe that the situation has improved?

5 A. Correct.

6 Q. And so my question is, how long have those
7 three things been in place?

8 MR. VIRJEE: Objection. Calls for speculation.
9 Lacks foundation. I don't want you to guess or
10 speculate.

11 THE WITNESS: I think they're constant.

12 Q. BY MR. JACOBS: Well, they didn't exist before
13 60119 was enacted, right?

14 A. Right. Money began -- huge money, huge money
15 began in '98, '99. The adoption cycle is an eight-year
16 cycle.

17 Q. And how does the adoption cycle relate to --

18 A. Districts tend to buy materials within 18
19 months of -- in elementary when the State Board adopts
20 them. That's the cycle that's typical.

21 Q. So part of your -- part of the explanation for
22 shortages, we've heard this elsewhere, is that districts
23 are waiting for textbooks to be adopted before buying
24 them.

25 Do you share that as a partial causal

1 explanation for why there may be, in some schools around
2 the state, shortages of textbooks?

3 MR. SEFERIAN: Objection. Lacks foundation.
4 Incomplete hypothetical question. Calls for
5 speculation. Lacks foundation. Calls for an
6 inadmissible opinion.

7 THE WITNESS: I have no independent
8 verification of that.

9 Q. BY MR. JACOBS: So, again, come September if
10 they ask you that question, Mr. Mockler, isn't it true
11 that we haven't given these policies enough time because
12 the textbook adoption cycle hasn't been played out, you
13 don't have a basis for answering that one way or the
14 other, right?

15 MR. VIRJEE: Objection. Vague and ambiguous as
16 to "adoption cycle." Calls for speculation. Lacks
17 foundation.

18 THE WITNESS: I might know more in September
19 than I know now.

20 Q. BY MR. JACOBS: As you sit here today?

21 A. I have no independent research, ability to tell
22 you what the results are. I have no knowledge of that.

23 Q. And so now we've taken -- in terms of your
24 knowledge as you sit here today, we've taken the
25 adoption cycle out of the equation, as I understand it,

1 to as leading to improvement in the availability of
2 textbooks and instructional materials to students needs
3 additional time before any adjustment to those policies
4 aimed at greater improvement in the availability of
5 textbooks or instructional materials is considered?

6 MR. VIRJEE: Objection. Vague and ambiguous.
7 Calls for speculation. Lacks foundation. Calls for an
8 expert opinion. Vague as to time.

9 THE WITNESS: I'm in the business of making
10 things better, so if somebody has a way to make them
11 better, I'm for making them better. I can't tell you
12 that there's nothing better out there.

13 Q. BY MR. JACOBS: I think that's not an answer to
14 my question.

15 A. Sorry.

16 Q. You've participated in policy discussions, I'm
17 sure, sir, in which one proponent of a particular policy
18 has said, we've got to change this, and another
19 proponent has said, let's give the existing system more
20 time to play itself out?

21 MR. VIRJEE: Objection. Overbroad. Vague and
22 ambiguous. Compound.

23 THE WITNESS: Sure.

24 Q. BY MR. JACOBS: And so my question to you is,
25 in the context of policies regarding textbook

1 in terms of your understanding of how 60119 with its
2 associated public attention and financing might have
3 resulted in an improvement of the textbook issues?

4 A. Who took the adoption cycle out?

5 Q. I think you just did.

6 MR. VIRJEE: Misstates his testimony.

7 MR. SEFERIAN: Misstates his testimony.

8 THE WITNESS: No, the adoption cycle is very
9 important to the decisions of local districts and to the
10 provisions of 60119, because 60119 requires you to have
11 materials aligned to the standards. Excuse me, the
12 frameworks. The frameworks are part of the cycle. If
13 you connect 60119 to the development of frameworks and
14 adoption schedule, which are all related, then the cycle
15 does make a difference as to whether you're in
16 compliance with 60119.

17 Q. BY MR. JACOBS: I'm going to ask you this
18 directly again without all the ancillary stuff about the
19 trial, but that's the context. You understand why I'm
20 asking this question, I need to know what you might
21 testify to next fall.

22 MR. SEFERIAN: Objection. Calls for
23 speculation.

24 Q. BY MR. JACOBS: Is it your opinion, sir, that
25 the combination of factors that you have been pointing

1 availability, assume for a moment that empirical
2 evidence is brought to your attention that indicates
3 that there are significant issues still with the
4 availability of textbooks or instructional materials to
5 students, assume that.

6 A. "Significant issues"?

7 Q. Yes. Of the sort described with respect to
8 LAUSD in Exhibits 235 and 236.

9 MR. VIRJEE: There's been no indication that
10 he's read or has any knowledge about what happened at
11 LAUSD as described in 235 and 236. You've asked him
12 specifically about what he said in those, Michael, so
13 that's not very fair.

14 MR. JACOBS: He made it clear that he read them
15 at the time.

16 MR. VIRJEE: No, he didn't make it clear. He
17 said that he had read things at the time. He didn't say
18 he read these articles. I just want to make sure the
19 record is clear.

20 Q. BY MR. JACOBS: I'll go back. Did you read
21 Exhibit 236 at approximately the time it came out?

22 MR. VIRJEE: Objection. Calls for speculation.
23 Lacks foundation. If you remember.

24 THE WITNESS: I remember reading stuff like
25 this. My guess is I probably read it.

1 MR. VIRJEE: We don't want you to guess or
 2 speculate. He's asking did you read it at that time.
 3 THE WITNESS: I cannot tell you for sure I read
 4 it.
 5 Q. BY MR. JACOBS: Do you recall reading articles
 6 about textbooks shortages in LAUSD?
 7 MR. VIRJEE: Objection. Asked and answered.
 8 THE WITNESS: Yes.
 9 Q. BY MR. JACOBS: And you know generally what's
 10 being described in these articles, that students are
 11 going without texts, that they, following the principles
 12 that you've set out in your comments, should have. So,
 13 for example --
 14 MR. VIRJEE: Let's let the record reflect is
 15 that what he's done is he's looked at the section of the
 16 exhibit that you've asked him to look at, there's been
 17 no indication that he's read these articles to know what
 18 they contain. If you want him to do that, we're happy
 19 to do that, but he hasn't done that so far.
 20 Q. BY MR. JACOBS: You understand that that's
 21 what's being reported on, correct, that students don't
 22 have textbooks they should have?
 23 A. The general tenor of this report, of this
 24 article as I understand it is that the reporters
 25 discovered some places in LA Unified, and perhaps other

1 places, other districts in which students did not have,
 2 in the view of the reporters, appropriate instructional
 3 materials in 1997.
 4 Q. And 2000, right, sir?
 5 MR. VIRJEE: He's looking at --
 6 THE WITNESS: I'm on '97. I don't know about
 7 2000.
 8 Q. BY MR. JACOBS: Take a look at 235.
 9 A. I've not read that article, but I might have
 10 read it at the time.
 11 MR. VIRJEE: What's your question, Michael?
 12 Q. BY MR. JACOBS: So I need to know, sir, what
 13 your opinion is on the following question: Assume that
 14 empirical evidence is brought to your attention, that
 15 the problem described in these articles --
 16 MR. VIRJEE: Let's set forth the fact that he
 17 hasn't read the articles so he doesn't know what the
 18 articles describe. So if you want to describe a problem
 19 for him, that's fine. But he hasn't read the article.
 20 Q. BY MR. JACOBS: Sir, what problem do these
 21 articles describe?
 22 MR. VIRJEE: Generally?
 23 MR. JACOBS: He just stated it, Fram. He just
 24 told me what problem the articles describe.
 25 MR. VIRJEE: He just told you he hasn't read

1 the article.
 2 MR. JACOBS: We're on for 3:00 with the
 3 discovery master.
 4 MR. VIRJEE: If you want to ask him about
 5 whether or not students have textbooks, then ask him the
 6 question. That's fine. But it's unfair to ask him
 7 about the content of an article that he hasn't read. If
 8 you want him to read it, that's fine.
 9 MR. JORDAN: Might I suggest that now might be
 10 a good time to break for lunch.
 11 MR. JACOBS: Let's just finish up this line of
 12 questioning.
 13 MR. SEFERIAN: There's no question pending,
 14 Mr. Mockler.
 15 Q. BY MR. JACOBS: What problem do these articles
 16 describe from the standpoint of the students' education?
 17 MR. VIRJEE: The articles speak for themselves.
 18 He's asking you to tell him what the articles say. You
 19 better read them.
 20 THE WITNESS: I haven't read the articles as
 21 they sit.
 22 Q. BY MR. JACOBS: Sir, it is your understanding
 23 that those articles described a problem of students not
 24 receiving textbooks that, in the view of the reporters,
 25 the students should have, yes?

1 MR. JORDAN: Calls for hearsay.
 2 MR. SEFERIAN: The articles speaks for
 3 themselves. He just said he hasn't read the articles.
 4 I don't know how he can answer that.
 5 THE WITNESS: My impression?
 6 Q. BY MR. JACOBS: That's a concern of
 7 policymakers, correct, that students should have
 8 sufficient textbooks and instructional materials to
 9 learn the curriculum?
 10 MR. VIRJEE: Objection. Vague and ambiguous as
 11 to "sufficient." Calls for speculation as to what might
 12 be of concern to somebody.
 13 THE WITNESS: Do you mean textbooks,
 14 instructional materials, instructional resources in a
 15 broad sense? I am having trouble with your definition.
 16 MR. JACOBS: I mean in your sense.
 17 THE WITNESS: Because it could be some kids do
 18 different things. you know, you have a P.E. class, a
 19 group of special ed kids, so it's different. It's not
 20 always just a book.
 21 MR. JACOBS: I understand that.
 22 THE WITNESS: So in a broad sense the
 23 policymakers are concerned that students and teachers
 24 have appropriate instructional resources, broadly
 25 stated, to carry out the curriculum chosen.

1 Q. BY MR. JACOBS: And you would agree with me,
2 sir, that whether that is, in fact, in place is
3 potentially subject to empirical verification?
4 MR. SEFERIAN: Objection. Lacks foundation.
5 Calls for an inadmissible opinion. Vague and ambiguous
6 as to "empirical verification."
7 THE WITNESS: Theoretically there are ways to
8 quantify that.
9 Q. BY MR. JACOBS: And what do you have in mind in
10 terms of the ways to quantify that?
11 MR. VIRJEE: Objection. Calls for speculation.
12 Lacks foundation. Calls for an expert opinion.
13 THE WITNESS: I don't have a way to do it. I'm
14 sure there are lots of ways, but I don't know any
15 particular way.
16 Q. BY MR. JACOBS: You don't have a particular way
17 in mind as you sit here today?
18 A. Well, I think the policy of the State has been
19 quite powerful. There are other things one might do, I
20 suppose. There's a list of them. I don't have a
21 particular solution that's beyond where we are now.
22 Q. I'm talking about testing whether students have
23 the access to instructional materials that the policies
24 are aimed to provide. That empirical question in the
25 field is testable, is not it?

1 MR. SEFERIAN: Objection. Lacks foundation.
2 Calls for an inadmissible opinion. Vague and ambiguous
3 as to "testable."
4 THE WITNESS: Conceptually you could do
5 anything from monitoring every class every day to
6 looking at the audit provisions of 60119 and presuming
7 the districts do not lie.
8 Q. BY MR. JACOBS: And you could also do a survey,
9 correct, sir?
10 MR. VIRJEE: Objection. Calls for speculation.
11 Lacks foundation.
12 THE WITNESS: You may do many things, including
13 a survey.
14 Q. BY MR. JACOBS: So conceivably a survey might
15 come to your attention which indicated that students do
16 not have access to instructional resources of the type
17 you've described, and that that information is that the
18 problem is sufficient in magnitude that you, as someone
19 concerned with educational policy, concludes it's still
20 a serious policy concern, correct? You can imagine that
21 situation arising?
22 MR. VIRJEE: Objection. Calls for speculation.
23 Incomplete hypothetical.
24 THE WITNESS: If that arrived, I would have to
25 then presume that the school district in which you found

1 those conditions had lied on their requirements under
2 60119.
3 Q. BY MR. JACOBS: But doesn't the school
4 simply -- doesn't the school district simply certify
5 whether they had the hearing or not, sir?
6 MR. SEFERIAN: Objection. Calls for an
7 inadmissible opinion. Incomplete and improper
8 hypothetical.
9 THE WITNESS: Statute goes well beyond what you
10 just said.
11 Q. BY MR. JACOBS: Who is lying to whom then? I
12 don't quite understand.
13 A. Statute requires the local board in a public
14 hearing to assert, to make a finding that each student
15 has available textbooks or other instructional materials
16 in subjects consistent with the State Board adoption
17 cycle, which has to do with their recency, that is, how
18 old are they. And that if they do not make -- if they
19 make that finding, they have asserted that each kid does
20 have that available. If they do not make that finding,
21 then they are directed to make such a condition within
22 two years of that finding.
23 Q. And does the -- so what would be the lie in the
24 latter case?
25 MR. SEFERIAN: Objection. Calls for

1 speculation. Incomplete hypothetical question.
2 THE WITNESS: If you assert a condition exists
3 and it does not exist, that would be dishonest.
4 Q. BY MR. JACOBS: But the latter case, sir, was
5 we don't have enough, but we're going to develop
6 policies to get there?
7 MR. VIRJEE: Objection. That misstates his
8 testimony.
9 THE WITNESS: Statute doesn't say make
10 policies.
11 Q. BY MR. JACOBS: It says get there?
12 MR. VIRJEE: Objection. The statute speaks for
13 itself.
14 MR. JORDAN: Also calls for a legal conclusion.
15 Q. BY MR. JACOBS: Correct?
16 A. My understanding of the statute is they must be
17 there within two years of a negative find.
18 Q. And you don't know how many districts have made
19 negative findings, you collectively don't know, correct?
20 MR. VIRJEE: What do you mean "you
21 collectively"?
22 MR. JACOBS: You the State, you the State Board
23 of Education.
24 MR. SEFERIAN: Objection. Compound question.
25 Calls for speculation.

1 THE WITNESS: I have seen no thorough
2 information on that subject.
3 Q. BY MR. JACOBS: So your view is one way to know
4 whether this is still a serious problem as of 2002 is
5 what the latest set of findings is? If they're
6 overwhelmingly positive findings on this hearing
7 requirement, you'd say that's one source of -- one
8 potential source of data about what's really happening
9 in the field; is that correct?
10 MR. SEFERIAN: Objection. Vague and ambiguous
11 as to "this," and as to "serious problem."
12 MR. VIRJEE: Also incomplete hypothetical and
13 calls for speculation.
14 THE WITNESS: What do you mean? You mean if
15 you looked at -- what do you mean?
16 Q. BY MR. JACOBS: I think what you said was if
17 this empirical evidence that I described which was not
18 based on 60119 findings were brought to your attention,
19 you would be -- I think what you were implying was you
20 would be skeptical about that --
21 A. Excuse me just one second.
22 Q. -- you would be skeptical about that because
23 that would suggest that the districts had been dishonest
24 in complying with 60119, correct?
25 MR. SEFERIAN: Could you read back the

1 question, please.
2 (Record read.)
3 MR. VIRJEE: Objection. That misstates his
4 testimony.
5 MR. SEFERIAN: Objection. Calls for
6 speculation. Incomplete and improper hypothetical
7 question.
8 THE WITNESS: Can you try that question a
9 little more specifically?
10 Q. BY MR. JACOBS: What part of it are you having
11 trouble with, sir?
12 MR. VIRJEE: Objection. Assumes facts not in
13 evidence.
14 Q. BY MR. JACOBS: What part are you having
15 trouble with?
16 A. If your question is -- I don't understand what
17 you want me to tell you. You're setting up a
18 circumstance.
19 Q. Yeah, I'm setting up a circumstance.
20 A. What's the -- the circumstance is what?
21 Q. Let me just say it once so we'll have it on the
22 table, and then we'll refer to it as "the circumstance."
23 Okay? Are you with me, the circumstance?
24 The circumstance, sir, is that empirical data
25 is brought to your attention that indicates that there

1 is a problem with the availability of instructional
2 materials to students, broadly construed, and you as a
3 policymaker look at that data and you say to yourself,
4 if that data is true, we still have a serious problem
5 with textbook availability in the -- with instructional
6 material availability in the state of California.
7 That's the circumstance. Okay?
8 Are you with me on the definition of "the
9 circumstance"?
10 A. Okay.
11 Q. So data, conclusion by you.
12 MR. VIRJEE: And so I don't have to make the
13 objection every time on circumstance, I'll just object
14 to the definition of circumstance as vague and ambiguous
15 as to "availability", and assumes that he's a policy
16 maker, and it's an incomplete hypothetical. Now I
17 won't have to say that every time.
18 MR. JACOBS: Good.
19 Q. Now, let me ask the question. If "the
20 circumstance" occurs, would it be your opinion that --
21 and it occurs before September 23rd, 2002 -- so we just
22 added another condition, the circumstances, and it
23 occurs before 2002, September 23rd -- would it be your
24 opinion that nonetheless the existing statutory
25 provisions and the existing policies of the State Board

1 of Education with respect to their implementation should
2 be given more time to be implemented before concluding
3 that they should be revised?
4 MR. VIRJEE: Objection. Calls for speculation.
5 Incomplete hypothetical.
6 MR. SEFERIAN: Assumes facts not in evidence.
7 Lacks foundation. Calls for an inadmissible opinion.
8 THE WITNESS: You'd have to quantify your
9 presumption for me to respond to the question.
10 If there were 8,000 schools out there,
11 hypothetically, and you found that condition to exist in
12 eight, that would be one view. If you found it in
13 5,000, that would be another view. So you'd have to --
14 you can't simply make a finding about a statewide policy
15 for which there is what we would call an Aunt Tilly
16 circumstance.
17 Q. BY MR. JACOBS: A what?
18 A. Aunt Tilly circumstance. Aunt Tilly is
19 everybody has an Aunt Tilly in some school, and
20 something is happening good or bad in any school in
21 California on every hour in every day. So you would
22 have to have a whole different evidential circumstance
23 for me to make a comment on what a policy -- the second
24 thing you would have to have is the nature of the
25 improvement. If you were at your first look out there

1 and you found 20 percent had and 80 percent had not, and
2 three years later you had 80 percent had and 20 percent
3 had not, I would say the policy is working, even though
4 for 20 percent it clearly had not. So that's the only
5 way I can view that in a factual way.

6 Q. And my follow-up question is, if we were to do
7 such a study in 2002, we really wouldn't have a -- to
8 the best of your knowledge, wouldn't have a basis in
9 data for looking backward at the availability of
10 instructional resources to students, correct?

11 MR. SEFERIAN: Objection. Calls for
12 speculation. Incomplete and improper hypothetical
13 question. Lacks foundation.

14 THE WITNESS: One data point is not a trend.
15 It would cause a different form of analysis.

16 Q. BY MR. JACOBS: But the answer to my question
17 is correct, yes?

18 MR. SEFERIAN: Same objections.

19 THE WITNESS: Answer to which question?

20 Q. BY MR. JACOBS: We don't have the basis for --

21 A. A longitudinal study with one point in data,
22 that's correct.

23 Q. Let me be clear. We cannot do -- based on the
24 information you have, there's no data, looking backward,
25 to allow us to do a longitudinal study with more than

1 there is also concern that school districts are not
2 getting those materials into the hands of the teachers.

3 Do you see that?

4 A. Right.

5 Q. First of all, does that capture the substance
6 of your comment?

7 A. Well, narrowly.

8 Q. And what do you mean?

9 A. Well, AB 466 is the professional development
10 bill. It was on the agenda. It was a proposal by the
11 governor to provide reading and math training, and in
12 that bill there was a provision saying if you got the
13 training, then you had to be trained on the
14 standards-based instructional materials, and that was
15 the essence of the bill.

16 There's two kinds of issues here, one is you
17 can have instructional materials, but are they adopted
18 subsequent to standards. So this says we only adopted
19 materials in January of '01 that were standards based.

20 Q. Is that the basis for the concern that you
21 expressed?

22 MR. VIRJEE: Which concern?

23 Q. BY MR. JACOBS: Or that you reported on?

24 MR. VIRJEE: The one you just read?

25 MR. JACOBS: Yeah.

1 one data point?

2 A. Correct.

3 MR. SEFERIAN: Objection. Lacks foundation.

4 MR. JACOBS: Now we can break.

5 (Lunch recess taken.)

6 (Exhibit SAD-237 was marked.)

7 Q. BY MR. JACOBS: Mr. Mockler, I'd like to ask
8 you about some State Board of Education meeting minutes
9 marked as Exhibit 237, the minutes from April 12th,
10 2001. Take a moment, look at item 18. I'm going to ask
11 you about your comment in the second paragraph of item
12 18.

13 A. 214?

14 MR. SEFERIAN: This paragraph.

15 MR. JACOBS: No, I'm sorry on the next page,
16 second paragraph.

17 THE WITNESS: Okay. Right.

18 Q. BY MR. JACOBS: Does the statement -- let's
19 just set the stage, Mrs. Joseph inquired about the
20 requirement that schools have state-adopted
21 instructional materials in order to receive funding for
22 reading and mathematics, professional development under
23 AB 466. Then it goes on to say that is still being
24 discussed. He stated that there is a need for students
25 to have standards-based instructional materials, and

1 THE WITNESS: Yeah, the concern was that
2 because we had just adopted new standards-based
3 materials that those new materials that were adopted in
4 January -- we're talking about, what, two, three months
5 later -- that what materials were the teachers going to
6 be trained on? And the law, given on math materials,
7 doesn't have to be standards based, but this law said,
8 no, you had to be trained on standards-based materials.
9 And for elementary schools that was materials adopted by
10 the Board.

11 Q. BY MR. JACOBS: When you said he stated that
12 there is a need for students to have standards-based
13 instructional materials, was that with reference to your
14 understanding what the statute was going to require?

15 A. Yes.

16 Q. And the concern that you expressed was solely
17 related to timing?

18 A. It was related -- it was a question about what
19 did the statute do. I responded to questions about the
20 statute.

21 Q. But then you said there's also a concern. Do
22 you see that?

23 A. Right, because -- you have to put it in
24 context.

25 Q. That's my question.

1 A. There's no way that anybody would have
2 materials in April of '01 that were adopted in January.
3 Q. That's my question, was that the only issue you
4 were addressing in terms of why the materials weren't in
5 the hands of teachers, that is, the timing issue?
6 A. I was addressing it, yes. But with respect to
7 466, it was under legislative review, was passed and
8 wasn't effective until this January, so you have to put
9 that in some time context.
10 So she asked about the bill and does -- if
11 you're going to be trained on math, are you going to
12 be -- and reading, what are the teachers are going to be
13 trained on, old materials or new materials? And we said
14 the bill was being designed then. The way the bill was
15 designed at that point, what it said in the bill was
16 that we did have to have new standards-based materials
17 if you were going to receive the training.
18 Q. And, again, just to pin this down, the only
19 basis for the concern that you expressed at the meeting
20 regarding whether school districts were getting those,
21 bracket, standards-based, close bracket, materials into
22 the hands of teachers was a concern about the recency of
23 the adoption of the standards-based materials
24 themselves, right?
25 MR. JORDAN: Asked and answered.

1 THE WITNESS: Yeah.
2 (Exhibit SAD-238 was marked.)
3 Q. BY MR. JACOBS: I've marked as Exhibit 238
4 minutes from the California State Board of Education
5 meeting of November 7th and 8, actually, draft minutes
6 to be precise, of 2001. And I want to -- I'm going to
7 be asking you about discussion on page 9, 10, 11 and
8 then 12 to start out with.
9 MR. VIRJEE: Would you like him to read those
10 pages?
11 MR. JACOBS: Yes, please.
12 THE WITNESS: All of those pages, or start from
13 somewhere?
14 MR. JACOBS: I'm going to start with your
15 comment about -- it's reported you said, Mr. Mockler
16 commented that high schools are the toughest schools to
17 reform.
18 MR. VIRJEE: You are on page 9.
19 MR. JACOBS: Actually, that's on page 10. Item
20 17 starts on 9. I wanted you to have the background.
21 THE WITNESS: I got you.
22 MR. VIRJEE: Shall we just take them one at a
23 time and then he can read them as you go?
24 MR. JACOBS: Okay.
25 Q. First of all, did you say something along the

1 lines of Mr. -- that high schools are the toughest
2 schools to reform in that meeting?
3 A. Yes.
4 Q. And what did you mean by that?
5 A. I mean that the measurable achievement
6 improvement in high schools over time has shown -- been
7 the most resistance to improvement.
8 Q. Did you have in mind some particular data on
9 that front?
10 A. No, just achievement data that we have seen in
11 the STAR and the standards programs.
12 Q. And do you have in mind now or did you have in
13 mind then instances of successful reform of high schools
14 as you meant reformed in that sentence?
15 MR. VIRJEE: Objection. Vague and ambiguous as
16 to "instances."
17 You're asking for specific schools?
18 MR. JACOBS: No, or the characteristics of such
19 schools.
20 MR. VIRJEE: Objection. Calls for speculation.
21 Lacks foundation.
22 THE WITNESS: No, this was about an incentive
23 program, and the question was regarding the achievement
24 growth in high schools compared to other schools.
25 Q. BY MR. JACOBS: And then you said the way to

1 solve this is not to lower the bar, but to get the
2 message out that high schools will be held accountable.
3 It's reported that you said that. Did you say
4 that in words or substance?
5 A. Yes.
6 Q. What did you mean by getting the message out?
7 A. The item was about what level of growth was
8 required to receive a special incentive award. Some
9 suggested that we were requiring too much growth in high
10 schools for them to get awards, and one way to change
11 that was to lower your growth target for high schools.
12 That comment was saying that it would be better to tell
13 the high schools, no, you have the same target as
14 elementary and middle schools.
15 Q. And with the incentive program being a vehicle
16 for getting the message out?
17 A. Yes.
18 Q. And then two paragraphs after that you state --
19 you're reported as having said that the Board is
20 interested in sustained systemic improvement in academic
21 achievement.
22 Did you say that in words or substance?
23 A. Yes.
24 Q. What did you mean by "systemic improvement"?
25 MR. VIRJEE: With respect to academic

1 achievement?
 2 Q. BY MR. JACOBS: In this context what did you
 3 mean by it?
 4 A. In this context I mean that all groups or
 5 subgroups make academic progress toward a set standard
 6 on a systematic basis, not a one-time pop up and down.
 7 Q. And that also answers the question then what
 8 you meant by "sustained" in that context?
 9 A. Systemic would be -- in my view is all subjects
 10 measured. Systemic sustained would be over time, so
 11 both.
 12 Q. And by "academic achievement" here, did you
 13 have any particular metric of academic achievement in
 14 mind, or were you commenting more generally?
 15 A. State STAR system measured over time.
 16 Q. Then in item 18, I want you to take a look at
 17 that and your comments.
 18 A. There's a number of them.
 19 Q. Why don't you take a look at the whole item so
 20 you can see the context.
 21 A. Yes.
 22 Q. First of all AB 961, is that the statute that
 23 enacted the high priority schools grant program?
 24 A. Yes.
 25 Q. And by the time of this discussion, that had

1 been passed into law, correct?
 2 A. Correct.
 3 Q. And Ms. Harris is reported as having said,
 4 there is more district responsibility under AB 961 and a
 5 more public spotlight.
 6 Do you see that?
 7 A. Yes.
 8 Q. Did you understand -- do you know what she
 9 meant by "a more public spotlight"?
 10 MR. SEFERIAN: Objection. Calls for
 11 speculation.
 12 MR. VIRJEE: Vague and ambiguous as to "more
 13 public spotlight."
 14 THE WITNESS: Not specifically, only 961 is
 15 more money, and there's no other -- there's nothing
 16 particularly otherwise different about it.
 17 Q. BY MR. JACOBS: And then with respect to more
 18 district responsibility --
 19 A. Let me check that. 961 also has a provision
 20 that requires the local boards who did not apply to have
 21 a public hearing saying why not. There are a couple of
 22 things like that. So that's more of a public spotlight.
 23 So some districts -- schools in a lower decile it didn't
 24 apply, and the legislative intent was that if they don't
 25 wish to apply for whatever reason -- some districts

1 didn't choose to apply because they felt they could do
 2 better without it.
 3 Q. And the legislative intent in AB 961 was to
 4 make the decision not to apply on behalf of an eligible
 5 school a matter of a noticed hearing to the school
 6 districts; is that right?
 7 MR. SEFERIAN: Objection. Calls for
 8 speculation. Lacks foundation.
 9 THE WITNESS: It's my understanding 961 has
 10 that effect.
 11 Q. BY MR. JACOBS: And then more district
 12 responsibility. Do you have an understanding what she
 13 meant by more district responsibility?
 14 MR. VIRJEE: Calls for speculation. Lacks
 15 foundation.
 16 If you understood what Ms. Harris --
 17 THE WITNESS: I don't understand what
 18 Ms. Harris meant.
 19 Q. BY MR. JACOBS: In terms of the statute, do you
 20 have an opinion whether it provides for more district
 21 responsibility?
 22 A. Yes, in numerous places it states the
 23 district's responsibility clearer than II/USP, and it
 24 also creates a new sanction in which the superintendent
 25 and the State Board could put the district under an

1 obligation to improve schools that didn't meet target
 2 rather than simply taking them over. So it's an
 3 additional sanction, and based on the -- the local
 4 board's responsibilities.
 5 Q. And the requirement -- the provisions that you
 6 just referred to apply to all schools in the II/USP
 7 program, or only schools that are receiving high
 8 priority schools grants?
 9 MR. VIRJEE: Objection. The statute speaks for
 10 itself. Calls for a legal conclusion.
 11 THE WITNESS: Are you talking about the
 12 provision of sanctioning, having a district take action?
 13 MR. JACOBS: Yes, those provisions.
 14 THE WITNESS: My understanding is it applies to
 15 all II/USPs.
 16 Q. BY MR. JACOBS: And then in the next paragraph
 17 you speak about current II/USP versus -- I take it you
 18 were contrasting the current law with the sanctioned
 19 provision of AB 961?
 20 A. Where is that?
 21 Q. Bottom paragraph.
 22 A. I was speaking of the option to require the
 23 district to take certain actions.
 24 Q. When you say "require the district to take
 25 certain actions," what's your understanding of the range

1 of actions that the districts can be required to take?
 2 MR. VIRJEE: Objection. Calls for speculation.
 3 Lacks foundation. Vague and ambiguous as to "range of
 4 action." And also calls for a legal conclusion.
 5 THE WITNESS: I was speaking only to the
 6 general provisions of 961, which unlike previous II/USP
 7 laws, allowed the Board to -- the superintendent and the
 8 Board to rather than take over a school, to impose a
 9 duty on the district to take certain actions.
 10 Q. BY MR. JACOBS: And do you have an
 11 understanding of what the -- what the kinds of actions
 12 that the district can be directed to undertake are?
 13 MR. VIRJEE: Same objections.
 14 THE WITNESS: Fully, no. Some you have to
 15 speculate. It's pretty vague in the law.
 16 Q. BY MR. JACOBS: So how would you characterize
 17 the kind of authority that has been made available to
 18 the superintendent and the Board under 961 in terms of
 19 their directive powers over school districts?
 20 MR. SEFERIAN: Objection. Calls for an
 21 inadmissible legal opinion.
 22 THE WITNESS: I would simply say that for
 23 particular schools who did not meet particular targets,
 24 the Board and the superintendent have authority to
 25 insist that the district take particular action for that

1 school.
 2 Q. BY MR. JACOBS: And the particulars are?
 3 A. General. Vague.
 4 Q. When you were referring to taking over schools
 5 next September, you were referring to the date by which
 6 the first cohort of II/USP schools would be up for
 7 takeover under the existing program?
 8 A. Correct.
 9 Q. And do you have any current understanding of
 10 the number of schools that are subject to the -- strike
 11 that.
 12 Under AB 961 there's still the authority to
 13 actually take over specific schools, correct?
 14 MR. SEFERIAN: Objection. Calls for an
 15 inadmissible legal opinion.
 16 MR. VIRJEE: Calls for speculation.
 17 THE WITNESS: My understanding of 961 is that
 18 under 961's conditions that were existing before, they
 19 still exist with respect to taking over, that the first
 20 cohort could still be taken over at the request of the
 21 superintendent. Also the additional sanction of a
 22 district intervention was available.
 23 Q. BY MR. JACOBS: What information do you have
 24 about the current planning in the Department or at the
 25 State Board for the -- for the first cohort come next

1 September?
 2 MR. VIRJEE: Objection. Calls for speculation.
 3 Lacks foundation. Also assumes facts.
 4 MR. SEFERIAN: Objection to the extent it calls
 5 for privileged communications, attorney/client, official
 6 information privileges.
 7 THE WITNESS: We've received a report from the
 8 superintendent. Superintendent's hired a staff person
 9 to look at the circumstance. We'll not know how many
 10 schools are involved until we get the results of the
 11 tests in November.
 12 Q. BY MR. JACOBS: In?
 13 A. September, November. Whenever we post the API.
 14 Q. So the last round of the API is not the
 15 decisive one for that cohort, there's one more round, is
 16 that what you're saying?
 17 A. The next round is the third.
 18 Q. And when will -- the test for that is
 19 administered when?
 20 A. Depending on your schedule, somewhere around
 21 May of 2002.
 22 Q. So, to your knowledge, has there been any
 23 discussions about the specific steps the superintendent
 24 and the Board will be taking from the trigger date for
 25 taking action with respect to the first cohort?

1 MR. VIRJEE: Objection. Assumes facts not in
 2 evidence. Calls for speculation.
 3 MR. SEFERIAN: Object to the extent it calls
 4 for privileged communications.
 5 THE WITNESS: There's an advisory group that
 6 assists the superintendent on this matter. They've
 7 provided certain information to the Board regarding
 8 modeling, and that's all we've gotten so far.
 9 Q. BY MR. JACOBS: By "modeling," what do you
 10 mean?
 11 A. If this was -- if this section had been in
 12 effect in a previous year, would there be -- what's the
 13 likelihood of how many schools being in what category,
 14 and it was speculative.
 15 Q. It was mostly aimed at gauging the size of the
 16 group of schools that would have been subject to, under
 17 the old law, takeover?
 18 MR. VIRJEE: You're asking what the modeling
 19 showed?
 20 MR. JACOBS: What it was directed to.
 21 Q. Was it directed to size issues, size of the
 22 group?
 23 A. Yes.
 24 Q. And it didn't go into --
 25 A. Criteria, went into criteria.

1 Q. I'm sorry?
 2 A. Went into criteria.
 3 Q. Criteria for what?
 4 A. The Board has not adopted this. This is just
 5 information that came to the Board. I don't have any
 6 particular knowledge in front of me.
 7 Q. Are you on that advisory board?
 8 A. No.
 9 Q. Now, are there other places in the state
 10 government other than the Department where, to your
 11 knowledge, this issue is being addressed from the
 12 planning standpoint?
 13 MR. VIRJEE: Again, we're talking about the
 14 issue of a sanction for the first cohort under the
 15 II/USP?
 16 Q. BY MR. JACOBS: Let me simplify this. It is a
 17 fair comment. The issue my questions are addressed to
 18 is that the first cohort will come due for some sort of
 19 remedial action, right?
 20 A. If they do not meet their growth targets.
 21 Q. And so let's just call that the event of
 22 remedial action for shorthand.
 23 What kind of planning is underway elsewhere in
 24 the state, aside from CDE, for what to deal -- what to
 25 do in the event -- when the event of remedial action

1 comes?
 2 MR. VIRJEE: Objection. Calls for speculation.
 3 Lacks foundation.
 4 THE WITNESS: That's the duty of the
 5 superintendent. There's no other agency that I know of.
 6 Q. BY MR. JACOBS: Have you participated in any
 7 discussions about what kind of capacity building is
 8 going to have to take place at the CDE in order to
 9 implement the remedial action provisions of the II/USP
 10 program or AB 961?
 11 MR. SEFERIAN: Objection. Vague and ambiguous
 12 as to "capacity building." Object to the extent it
 13 calls for privileged communications.
 14 THE WITNESS: What do you mean by "capacity"?
 15 MR. JACOBS: I mean by the kinds of resources
 16 that will be necessary in order to actually take either
 17 sanctions or takeover steps.
 18 THE WITNESS: In a vague way this discussion
 19 has been brought up and talked about in front of the
 20 Board, but I don't have any particular information.
 21 Q. BY MR. JACOBS: There have been Board
 22 discussions on this?
 23 A. Yeah, by the Department. The Department
 24 brought forth just what the duties were going to be.
 25 Q. Was there any action requested?

1 A. No.
 2 Q. In terms of the duties that were described,
 3 what was set forth?
 4 A. Determining the cohort, determining how to
 5 divide schools into those categories required by law,
 6 making decisions about levels of sanctions. Again, in
 7 the statute it's the duty of the superintendent to
 8 propose such. The Board only acts upon the
 9 recommendation of the superintendent.
 10 Q. So your understanding of the mechanics here
 11 will be that as to schools individually or by group the
 12 superintendent will propose action to the Board, and
 13 then the Board will vote yea or nay on that proposal?
 14 A. That's my understanding.
 15 Q. And do you have an opinion based on your
 16 knowledge and experience about how the Board and the
 17 Department of Education should go about deciding what to
 18 do with respect to schools when the event of remedial
 19 action comes?
 20 MR. VIRJEE: Objection. Calls for speculation.
 21 Lacks foundation as to any experience that he may have
 22 in this area, and calls for speculation and a legal
 23 conclusion.
 24 THE WITNESS: Yes.
 25 Q. BY MR. JACOBS: What is your opinion?

1 A. I believe the question was opinions.
 2 Q. What are your opinions?
 3 MR. SEFERIAN: Same objections.
 4 THE WITNESS: It's going to be a difficult task
 5 which the Board will have to engage in.
 6 Q. BY MR. JACOBS: That's one opinion. You said
 7 there are plural.
 8 A. It's going to be difficult to implement given
 9 the state of the law.
 10 Q. And I think you commented a little bit on that
 11 in the -- commented on one aspect that's stated in the
 12 law in the next paragraph. But what are you referring
 13 to now in the way that the program is statutorily
 14 configured?
 15 A. Well, you have to identify the schools first,
 16 and then you have to make decisions regarding the
 17 relative progress, then you have to determine what kind
 18 of a sanction would provide improvement, and then you
 19 have to have the ability to implement that sanction.
 20 Those are all things never done before. When the State
 21 does something it's never done before, it's very
 22 complicated and likely to do harm.
 23 Q. So let's start with the analysis of that
 24 problem. Are you aware of any other states that have a
 25 similar kind of -- analogous kind of system?

1 A. No.

2 Q. Are you aware of any studies that have been
3 conducted to try to guide policymakers as they approach
4 the challenge that you just outlined?

5 MR. VIRJEE: Objection. Vague and ambiguous.
6 Calls for speculation.

7 THE WITNESS: Only vaguely, and not by name.

8 Q. BY MR. JACOBS: Who are you --

9 A. I have some sense that there's been articles
10 about this in newspapers and magazines. I don't have
11 any direct citation for you.

12 Q. And it's approaching the end of January 2002.
13 Do you have in mind a timetable how this challenge is
14 going to be planned for over the coming months?

15 MR. VIRJEE: Does he personally?

16 MR. JACOBS: Yes.

17 MR. VIRJEE: Objection. Relevancy. And also
18 lacks foundation and calls for an expert opinion.

19 THE WITNESS: Our understanding is that the
20 special deputy hired by the superintendent to engage in
21 this process is working on it. We don't have any
22 specific information of his success thus far.

23 Q. BY MR. JACOBS: Was that the staff person you
24 were referring to before that had been hired?

25 A. Yes.

1 Q. Who is that?

2 A. He's right in here. Richard Whitmore.

3 Q. Next paragraph, top of page 11, Mr. Mockler
4 added that a legislative solution to this problem is
5 being sought.

6 And I take it the problem is the -- whether you
7 had to use external evaluators or could use internal
8 evaluators; is that right?

9 A. Yes.

10 Q. And do you know the current status of the
11 legislative solution that is being sought?

12 MR. VIRJEE: Objection. Assumes facts not in
13 evidence. Assumes it currently is still being sought.
14 Unless you're asking was there any legislative solution
15 after November 8.

16 MR. SEFERIAN: Objection to the extent it calls
17 for privileged communications.

18 THE WITNESS: AB 961 has substantial technical
19 problems, and there are many interpretations. And the
20 legislature wrote a letter in to the journal suggesting
21 some changes to clarify the laws. Now, without a proper
22 amendment it pretty near is impossible to administer
23 technically, not as to its intent. That's what they're
24 talking about there.

25 If you use an external evaluator in just

1 II/USP, then do you have to have another one, or which
2 ones do you have to do with the external evaluator. Is
3 it now opened up to all II/USP, or just the low deciles.
4 The law, it's got confused.

5 Q. BY MR. JACOBS: It's the interplay between the
6 evaluator and the --

7 A. Yeah, and the rapid drafting of legislature.
8 Go off the record, I'd call it sloppy. But on the
9 record it's just --

10 Q. Then it says, Ms. Harris added that adequate
11 staffing is an issue.

12 Do you understand at that time that she was
13 referring to staffing in the Department to carry out the
14 Department's duties?

15 A. Yes.

16 MR. VIRJEE: Objection. Calls for speculation
17 as to what Ms. Harris might have been referring to.

18 Q. BY MR. JACOBS: And then Superintendent Eastin
19 commented that if the necessary positions are released
20 by December 10, the Department would have plans for the
21 Board in January. If not, the plans would not be before
22 the Board until February.

23 And by plans they're -- it looks from the
24 context here like she was referring to the plans being
25 submitted by the schools. Is that your understanding?

1 MR. SEFERIAN: Objection. Calls for
2 speculation.

3 THE WITNESS: I understood she was talking
4 about the new 961 plans.

5 Q. BY MR. JACOBS: And by referring to the
6 necessary positions, was she referring, as you
7 understood it, to the positions needed in the Department
8 to administer this program?

9 MR. SEFERIAN: Objection. Calls for
10 speculation.

11 THE WITNESS: Yes.

12 Q. BY MR. JACOBS: And do you know whether the
13 positions had been released?

14 A. Yes.

15 Q. Were they released by December 10th?

16 A. I don't know about the date. Yes.

17 Q. Do you know what the schedule is for having the
18 plans before the Board? Did that occur or will that
19 occur soon?

20 A. The governor has proposed that the program be
21 deferred and has asked the legislature to defer it to
22 July 1.

23 Q. And by "the program" now you're referring to
24 what plan?

25 A. 961.

1 Q. And so is this part of the budget adjustment?
 2 A. Yes.
 3 Q. Then you discussed relationship between II/USP
 4 and the federal program in the third paragraph. Do you
 5 see that?
 6 A. Where I commented?
 7 Q. It says Mr. Mockler noted. You were talking
 8 about the lower five deciles versus the lowest two
 9 deciles. And then you said, according to these minutes
 10 the federal program has different requirements than the
 11 state programs.
 12 A. Yes.
 13 Q. Do you see that?
 14 A. Yes.
 15 Q. Did you speak to that issue of the differences
 16 between the federal and state program requirements at
 17 that meeting?
 18 A. Yes.
 19 MR. VIRJEE: By "speak to," do you mean did he
 20 identify that there were differences?
 21 THE WITNESS: I identified -- I asserted that
 22 there were differences.
 23 Q. BY MR. JACOBS: By federal program, what were
 24 you referring to?
 25 A. Comprehensive school reform demonstration

1 program. Title 1 preexisting to the new law, federal
 2 law.
 3 Q. Meaning the new Leave No Child Behind act -- No
 4 Child Left Behind Act?
 5 A. (Witness nods head.)
 6 Q. Is that a yes?
 7 A. Yes.
 8 Q. So then down in the second to last paragraph
 9 there's a comment about the bill language being cleaned
 10 up in January. Ms. Harris replied that the Department
 11 does not plan to draft regulations until after the bill
 12 language is cleaned up in January.
 13 Do you see that?
 14 A. Yes.
 15 Q. And was that the kind of cleanup you were
 16 referring to earlier when you were referring to the
 17 letter from the legislature?
 18 A. Correct.
 19 Q. And then you said, regulations are needed. A
 20 set of criteria must be consider, including: How are
 21 the schools going to get qualified teachers for their
 22 students; how will teachers be trained; how will schools
 23 get standards-based instructional materials to all
 24 students. Is the school safe.
 25 Do you see that?

1 A. Yes.
 2 Q. And are those among the challenges the -- were
 3 you referring there to challenges the State would face
 4 if it had to do a takeover or impose sanctions?
 5 A. No.
 6 Q. What were you referring to?
 7 A. The provisions of 961 that, in shorthand,
 8 requires those issues to be considered in your plan.
 9 Q. So you said -- according to the minutes, you
 10 said a set of criteria must be considered.
 11 Who had to do the considering there as you use
 12 the words "must be considered?" Who were you addressing
 13 yourself to?
 14 MR. VIRJEE: Objection. Vague and ambiguous.
 15 Calls for speculation.
 16 THE WITNESS: Discussions about regulations.
 17 We're talking about the provisions of 961. 961 has four
 18 or five core areas that the local district must address
 19 as to how to. Those plans that are reviewed by the
 20 superintendent, and then recommended to the Board. The
 21 superintendent's duty and the Board's duty is to say,
 22 have they been covered.
 23 Q. BY MR. JACOBS: And as you understand it --
 24 A. It's shorthand for the law. The law is much
 25 more complicated than that wording.

1 Q. In terms of the review that is required, as you
 2 understand the way this will be rolled out or should be
 3 rolled out, will the plans be looked at to determine
 4 whether, for example, with respect to getting qualified
 5 teachers for their students, whether there is, in fact,
 6 a realistic plan for doing that as opposed to merely --
 7 or will it simply look at whether there is a plan at
 8 all?
 9 MR. VIRJEE: Objection. Calls for speculation.
 10 Lacks foundation. Also vague and ambiguous as to
 11 "realistic."
 12 THE WITNESS: I'd refer you to the law. The
 13 law gives great latitude to the districts, gives a very
 14 short time to the State, so they must be addressed. We
 15 review, are they addressed.
 16 Q. BY MR. JACOBS: So when you were referring to
 17 regulations, were you referring to regulations
 18 governing, among other things, the format of the
 19 application forms?
 20 A. Partially. Regulations, bills has a lot of
 21 provisions. The only time you need regulations is if
 22 the statute needs clarification. And depending on what
 23 the amended -- amendment corrections are, you'll need a
 24 lot or a few regulations.
 25 Q. I see. And with respect to the criteria that

1 had to be considered that you listed here --
 2 A. Those are in statute and would not have to be
 3 regulated. I don't think so. They may. I don't know.
 4 Q. So you weren't linking in your comments the
 5 need for regulations with the set of criteria that must
 6 be considered?
 7 A. Not necessarily.
 8 Q. Is one of the differences between AB 961 and
 9 II/USP the -- maybe this is implicit in what you said
 10 before.
 11 In the II/USP program it's very school-focused,
 12 in AB 961 there's a focus on actions the district must
 13 take to correct school positions?
 14 MR. VIRJEE: Objection. Calls for a legal
 15 conclusion. The statute speaks for itself.
 16 MR. JORDAN: Misstates what he said earlier.
 17 THE WITNESS: I think the problem with 961 is
 18 that it attempts to subsume II/USP and then add. So
 19 your question has a multiple nature and has to do with
 20 the implementation problem. Because the bill has
 21 technical errors, it's hard to tell you what it does. I
 22 was speaking generally to what the Board was going to
 23 have to approve.
 24 Q. BY MR. JACOBS: In the II/USP program the
 25 external evaluators look closely at the schools and

1 determine what the barriers are to learning, correct?
 2 MR. SEFERIAN: Objection. Lacks foundation.
 3 THE WITNESS: I'd say that's incorrect.
 4 Q. BY MR. JACOBS: How would you characterize what
 5 they do?
 6 MR. VIRJEE: Objection. Calls for speculation.
 7 Lacks foundation. Compound. And calls for an expert
 8 opinion and a legal conclusion.
 9 THE WITNESS: I would say they do many
 10 different things.
 11 Q. BY MR. JACOBS: Among them?
 12 MR. VIRJEE: Same objections.
 13 THE WITNESS: Well, the external evaluator
 14 plans that were developed were of a wide variety and
 15 wide criteria in the first instance, narrowed somewhat
 16 by Board action subsequently, and so external evaluators
 17 are a wide swath. You can't characterize their work.
 18 Q. BY MR. JACOBS: Okay. Let's see. On page 12
 19 and 13, item 19, this is the -- an item on the issue of
 20 awards and interventions, right?
 21 A. Correct, from the advisory committee.
 22 Q. Is this the most recent report of the advisory
 23 committee to the State Board of Education?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "report."

1 THE WITNESS: Do you mean report to the Board?
 2 What do you mean?
 3 MR. JACOBS: I guess that's fair.
 4 Q. Item 19 is an informational report of the
 5 awards intervention subcommittee, correct?
 6 A. Yes.
 7 Q. Have there been any other informational reports
 8 to the State Board of Education since?
 9 A. Not to my recollection. I don't believe so.
 10 You mean subsequent?
 11 Q. Correct. When it uses the word
 12 "informational," are there other kinds of reporting
 13 items on the agenda of a subcommittee like the awards
 14 intervention subcommittee?
 15 MR. VIRJEE: Objection. Calls for speculation.
 16 Lacks foundation.
 17 THE WITNESS: Sometimes they ask for action, in
 18 which case it would be labeled action.
 19 Q. BY MR. JACOBS: And have there been any such --
 20 A. I --
 21 MR. SEFERIAN: Let him finish the question.
 22 Q. BY MR. JACOBS: Have there been any such items
 23 from the awards intervention subcommittee subsequent to
 24 this informational report?
 25 MR. VIRJEE: Such items being items asking for

1 action?
 2 MR. JACOBS: Yes.
 3 THE WITNESS: You mean action?
 4 MR. JACOBS: Yes.
 5 THE WITNESS: No, not to my knowledge.
 6 Q. BY MR. JACOBS: There's a lot in this section.
 7 Let me ask you about the discussion about the number of
 8 schools that can be taken over effectively, second to
 9 last paragraph.
 10 MR. VIRJEE: On page 12?
 11 MR. JACOBS: Correct.
 12 THE WITNESS: Right.
 13 Q. BY MR. JACOBS: Ms. Covin reported that the
 14 committee has been thinking about how many schools can
 15 be taken over effectively, the committee is taking a
 16 practical approach. Do you see that?
 17 A. Yes.
 18 Q. Do you have any information as you sit here
 19 today about the best current estimate about how many
 20 schools can be taken over effectively?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "can be taken over effectively." Vague and ambiguous
 23 as to "effectively," and calls for speculation. Calls
 24 for an expert opinion.
 25 MR. SEFERIAN: Object to the extent it calls

1 for privileged communications.
 2 THE WITNESS: No.
 3 Q. BY MR. JACOBS: And then President Hastings
 4 said that a two-tiered system of intervention is one way
 5 to address the concern about how many schools we have
 6 the capacity to intervene in effectively.
 7 Aside from what he said in this meeting, are
 8 you aware of any other consideration being given to a
 9 two-tiered system of intervention?
 10 MR. SEFERIAN: Object to the extent it calls
 11 for privileged communications.
 12 THE WITNESS: Two-tiered system refers to the
 13 provisions of 961 that allow, in absence of taking over
 14 a particular school, the Board and the superintendent,
 15 asking the Board's approval, are allowed to sanction a
 16 district rather than just a school.
 17 Q. BY MR. JACOBS: On the bottom there it says,
 18 Mr. Fisher commented that the Board should avoid the
 19 impossible task of taking over schools.
 20 Do you see that?
 21 A. Yeah.
 22 Q. Do you remember his comments from the meeting?
 23 A. I remember him saying something like that.
 24 Q. Did he say more than is reported there about
 25 that topic?

1 A. Not to my knowledge. I don't remember anything
 2 more than that.
 3 Q. And then Superintendent Eastin stated that it
 4 is important to figure out how to engage districts.
 5 Do you have an understanding, perhaps from
 6 other things she said at this meeting or other
 7 discussions you've had, about what she meant by engaging
 8 districts?
 9 MR. JORDAN: Objection. Calls for speculation.
 10 MR. VIRJEE: Objection. Calls for speculation.
 11 MR. SEFERIAN: Object to the extent it calls
 12 for privileged communications.
 13 THE WITNESS: Thank God she didn't ask us to
 14 marry them.
 15 MR. JACOBS: Joined at the hip.
 16 THE WITNESS: It would be pure speculation, but
 17 my understanding is she wants the districts to
 18 understand their responsibilities under 961.
 19 Q. BY MR. JACOBS: Then on the top of page 13,
 20 Mr. Mockler suggested that the two-tier system includes
 21 something akin to probation for most schools that do not
 22 show significant growth and takeover of very few
 23 schools. And then you purportedly went on to summarize
 24 that by consensus it appears that the Board is
 25 comfortable with requiring some growth in the definition

1 of significant growth.
 2 That second sentence was about the definition
 3 of the threshold for not invoking the event of remedial
 4 action, right?
 5 A. No.
 6 Q. What is that about?
 7 A. The data problems are that schools can go up
 8 and down or down and up or up a little, down a little,
 9 or any combination. And the law requires the Board and
 10 the superintendent to make certain findings, meet
 11 targets, made significant growth towards targets, made
 12 no progress, so when you do that, you array.
 13 So the "akin to probation" means that you find
 14 someone guilty and then you tell the Board to do
 15 something. That's what that means. And the "consensus"
 16 means that we divide schools into ones that aren't
 17 making it at all and some that are making some and some
 18 that are making good in order to have a more valid use
 19 of the data.
 20 Q. So what did you mean by "probation"?
 21 A. The law allows you to take over the school, the
 22 superintendent to take over the school. The law allows
 23 you also to have the district take over the school or
 24 have a plan to take over the school. The Board, the
 25 superintendent would approve that.

1 Probation would be that they are sanctioned.
 2 They are, if you will, in a drug court sense, found
 3 guilty, and then said, but if you do this, your own
 4 sanction, we will watch that. It divides those not
 5 making full progress into groups.
 6 Q. Now, there are other instances of state school
 7 takeovers that you're aware of, right?
 8 MR. SEFERIAN: Objection. Vague and ambiguous
 9 as to "school takeovers." Overly broad.
 10 THE WITNESS: Do you mean in California?
 11 MR. JACOBS: Correct.
 12 MR. SEFERIAN: Same objections.
 13 THE WITNESS: I know of no case where the State
 14 has taken over a school.
 15 Q. BY MR. JACOBS: As opposed to a district, is
 16 that the distinction?
 17 A. Right.
 18 Q. Is it your understanding that one of the
 19 options open under the combination of the old II/USP
 20 program and AB 961 is a district takeover?
 21 MR. JORDAN: Calls for a legal conclusion.
 22 THE WITNESS: My understanding of the law is
 23 that 961 or not, either way, there is an ability to
 24 sanction a district.
 25 Q. BY MR. JACOBS: By "sanction," what's the most

1 extreme sanction?
 2 MR. SEFERIAN: Objection. The law speaks for
 3 itself. Calls for an inadmissible legal opinion.
 4 THE WITNESS: I don't have the law in front of
 5 me, but there are provisions.
 6 MR. JACOBS: Keep this open for a minute. I
 7 want to segue briefly.
 8 (Exhibit SAD 239 was marked.)
 9 MR. JACOBS: I've marked as Exhibit 238 (sic)
 10 an article from California Journal dated January 1,
 11 2001.
 12 MR. JORDAN: Just for the record, I think it
 13 should probably be 239.
 14 MR. JACOBS: I'm sorry, you're right, 239.
 15 THE WITNESS: Yes.
 16 Q. BY MR. JACOBS: And you're quoted in a couple
 17 of places in this article. I just note that this is
 18 before the enactment of AB 961. So this is an article
 19 that's just about II/USP, correct?
 20 A. That's what the date suggests, yes.
 21 Q. At the bottom of page 94 there's a discussion
 22 about how large the group of schools requiring
 23 state-directed remediation might be. Do you see that?
 24 A. Yeah.
 25 MR. VIRJEE: I think that mischaracterizes the

1 document.
 2 You want him to read the last two paragraphs?
 3 THE WITNESS: The secretary of education, John
 4 Mockler said that --
 5 Q. BY MR. JACOBS: That part is your comment on
 6 that issue?
 7 A. Yeah.
 8 Q. As you sit here today, do you have an estimate
 9 of -- as you sit here today, would you still say what
 10 you said in this article?
 11 MR. SEFERIAN: Objection. Assumes facts not in
 12 evidence. Calls for an inadmissible opinion. Calls for
 13 speculation. Lacks foundation.
 14 MR. VIRJEE: It's also compound.
 15 Which portion of the statement?
 16 MR. JACOBS: Fair enough. Let's start over.
 17 Q. Did you say in words or substance in -- to
 18 someone who was writing an article on II/USP for
 19 California Journal, if all 400 schools didn't meet their
 20 target, we'd be in difficult circumstances, but we don't
 21 think that's going to happen?
 22 A. Something like that, yeah.
 23 Q. And obviously when you said that, the same was
 24 true if 350 schools didn't meet their target, right?
 25 MR. VIRJEE: Objection. Calls for speculation.

1 Lacks foundation.
 2 Q. BY MR. JACOBS: You didn't mean to limit it to
 3 the limit case of all 400 schools, did you?
 4 MR. SEFERIAN: Objection. Compound question.
 5 THE WITNESS: Specifically, no.
 6 Q. BY MR. JACOBS: And did you have in mind some
 7 number of schools that if that number didn't meet their
 8 target, you would not be in difficult circumstances when
 9 you made this comment?
 10 A. No.
 11 MR. VIRJEE: Objection. Calls for speculation.
 12 Lacks foundation.
 13 Q. BY MR. JACOBS: Do you have any sense now of
 14 how many schools are not going to meet their target?
 15 MR. VIRJEE: Objection. Asked and answered.
 16 MR. SEFERIAN: Lacks foundation. Calls for
 17 speculation.
 18 THE WITNESS: No.
 19 Q. BY MR. JACOBS: And is that because you're
 20 still awaiting the next API?
 21 MR. VIRJEE: Objection. Asked and answered.
 22 MR. SEFERIAN: Calls for speculation.
 23 THE WITNESS: No.
 24 Q. BY MR. JACOBS: What is the reason?
 25 A. We haven't seen the adjusted -- the real API

1 just came out a week ago for the first two years, not
 2 the second, not the third one.
 3 Q. When you say the "real API --
 4 A. The adjusted API.
 5 Q. Adjusted for?
 6 A. In January. It adjusts for a lot of things.
 7 Q. For socioeconomic status and other factors?
 8 A. No.
 9 Q. Not that?
 10 A. Well, some of that -- it updates for data that
 11 was not available in October.
 12 Q. But this is test score data as opposed to the
 13 factors that go into -- this is the base API score; is
 14 that right?
 15 A. Yes.
 16 Q. Have you participated in any discussions in
 17 which there has been an estimate of the number of
 18 schools that will be in the -- that will not meet their
 19 target?
 20 MR. VIRJEE: Objection. Asked and answered.
 21 Calls for privileged communications.
 22 THE WITNESS: Yes.
 23 Q. BY MR. JACOBS: And what has been the substance
 24 of those discussions?
 25 MR. VIRJEE: Objection to the extent it may

1 call for attorney/client privileged information or
 2 information protected by the official information
 3 privilege.
 4 THE WITNESS: The II/USP presentation you
 5 referenced earlier in that document, they talked of
 6 various alternatives that could occur depending on the
 7 standards that one set.
 8 Q. BY MR. JACOBS: Do you recall the range of
 9 alternatives from that?
 10 A. Not specifically.
 11 Q. In a general sense do you have a takeaway --
 12 did you come away from that discussion with a sense of
 13 what the likely rough number of schools would be?
 14 MR. VIRJEE: Objection. Calls for speculation.
 15 Lacks foundation.
 16 THE WITNESS: I don't recall specifically.
 17 Somewhere in the neighborhood of --
 18 MR. SEFERIAN: He doesn't want you to guess,
 19 Mr. Mockler.
 20 Q. BY MR. JACOBS: Mr. Mockler, I'm entitled to
 21 your answer, however, and I would appreciate it --
 22 A. Less than 100 in the potential takeover review.
 23 Q. When you say "less than 100," you mean
 24 somewhere between 75 and 100, was that your take away?
 25 MR. VIRJEE: Objection. Calls for speculation.

1 Lacks foundation.
 2 MR. SEFERIAN: Misstates his testimony.
 3 THE WITNESS: It's hard to get any more
 4 specific without going back. I haven't looked at it for
 5 months.
 6 Q. BY MR. JACOBS: And the document you're
 7 referring to was part of the advisory subcommittee
 8 report?
 9 A. It was an II/USP simulation of prior used data.
 10 There's no real data available.
 11 Q. This document was presented to the SBE?
 12 A. I think so, yes.
 13 Q. Then on page 95, state education officials
 14 admit that the program is not perfect, but say it's a
 15 good start. Quote, there are no guarantees, close
 16 quote, said Mockler. Quote, but we can no longer sit by
 17 knowing there are schools out there not making progress.
 18 It's incumbent on us morally to give those kids a
 19 chance, period, close quote. Do you see that?
 20 A. Yeah.
 21 Q. Did you say that in words or substance?
 22 A. Something like that.
 23 Q. And with it being "incumbent on us morally to
 24 give those kids a chance," what did you mean?
 25 MR. SEFERIAN: Objection. Calls for

1 speculation. Vague as to context.
 2 MR. JACOBS: That's the most ridiculous
 3 objection I've ever heard.
 4 THE WITNESS: We measure schools by academic
 5 progress. Schools that begin low and make no progress,
 6 that's a school that you have to fix or cause to be
 7 fixed.
 8 Q. BY MR. JACOBS: And then in the next paragraph
 9 you talked about how the program is showing some initial
 10 promise. Do you see that?
 11 A. Yeah.
 12 Q. Maybe I should be more precise. It implies by
 13 the linkage with your comment on the turnaround that you
 14 were also saying something about the program showing
 15 promise.
 16 Did you, in fact, say something like that?
 17 MR. VIRJEE: Objection. Vague and ambiguous as
 18 to "the program." And I'm not sure a program can show
 19 promise.
 20 THE WITNESS: I think the quote is fairly
 21 accurate, that a large number of schools are increasing
 22 their test scores that ordinarily would not expect such
 23 a large growth and that's good news.
 24 Q. BY MR. JACOBS: Now, in the context of
 25 increasing their test scores or with reference to that

1 topic, are you aware of any assessment of whether the
 2 improvement in test scores is reflective of a genuine
 3 improvement in the educational opportunities given to
 4 those children?
 5 MR. VIRJEE: Objection. Vague and ambiguous as
 6 to "assessment," "genuine improvement," and "educational
 7 opportunities."
 8 THE WITNESS: I don't understand that question.
 9 Q. BY MR. JACOBS: What part is confusing?
 10 A. What are you asking? Do some people say that
 11 kids aren't learning if their test scores improve?
 12 Q. Some people do say that, don't they?
 13 MR. VIRJEE: Objection. Calls for speculation.
 14 Lacks foundation as to what some people might say.
 15 THE WITNESS: Some people say everything.
 16 Q. BY MR. JACOBS: What is your personal opinion
 17 on that topic?
 18 MR. SEFERIAN: Objection. Vague and ambiguous.
 19 Overly broad. Calls for an inadmissible opinion.
 20 MR. VIRJEE: Incomplete hypothetical.
 21 THE WITNESS: Sustained academic achievement as
 22 measured by the STAR program is an impressive display of
 23 academic achievement in the main.
 24 Q. BY MR. JACOBS: In the main?
 25 A. In the main.

1 Q. And by "in the main," you mean there may be
2 cases where that's not true?

3 A. We know of cases where people have cheated, for
4 example. That's not impressive.

5 Q. And are you aware of any efforts to establish
6 whether that is true for II/USP schools?

7 MR. VIRJEE: Objection. Vague and ambiguous as
8 to "that is true."
9 Are you talking about people cheating?

10 MR. JACOBS: You're right. That wasn't clear.

11 MR. VIRJEE: I'm not trying to be facetious.
12 I'm just trying to understand.

13 Q. BY MR. JACOBS: The impressiveness turns on
14 whether the tests measure educational achievement that
15 is useful for -- in some other context, like useful as a
16 citizen of a democratic society?

17 MR. VIRJEE: Objection. Vague and ambiguous.
18 Also misstates his testimony.

19 THE WITNESS: No.

20 Q. BY MR. JACOBS: What do you mean by educational
21 achievement? Aside from test scores, what does
22 educational achievement mean to you?

23 MR. SEFERIAN: Objection. Vague as to context.

24 MR. VIRJEE: Also incomplete hypothetical.

25 THE WITNESS: Means increased measurable

1 achievement.

2 Q. BY MR. JACOBS: And is there any measure of
3 that aside from test scores --

4 MR. VIRJEE: Objection. Calls for speculation.

5 Q. BY MR. JACOBS: -- that you believe is a way to
6 validate whether the tests are valid?

7 MR. VIRJEE: Objection. Lacks foundation.
8 Calls for an expert opinion.

9 THE WITNESS: No.

10 Q. BY MR. JACOBS: Now I don't understand where
11 you're coming from.
12 How do you decide as an observer of testing and
13 test scores whether the test scores reflect something
14 that's genuinely occurring in terms of education as
15 opposed to mere test taking for its own purpose?

16 MR. VIRJEE: Objection. Assumes facts not in
17 evidence. Assumes that he does observe that. Also
18 calls for speculation. Lacks foundation. Also calls
19 for an expert opinion.

20 MR. SEFERIAN: Vague and ambiguous as to
21 "genuinely occurring."

22 Q. BY MR. JACOBS: Sir?

23 A. What's the question?

24 MR. JACOBS: Want to read it back, please.
25 (Record read.)

1 MR. VIRJEE: Objection. Calls for speculation.
2 Lacks foundation. Calls for an expert opinion.

3 THE WITNESS: Experts that have testified
4 before the Board and elsewhere have convinced me that
5 sustained achievement is a very fine demonstration of
6 achievement, and that the validity and reliability of
7 tests are quite high.

8 Q. BY MR. JACOBS: And what evidence do you find
9 particularly persuasive?

10 A. I would refer you to them.

11 Q. You have no opinion on that topic of what
12 evidence persuades you that the test scores are a
13 reliable indicator of educational achievement?

14 MR. JORDAN: Asked and answered.

15 MR. VIRJEE: Asked and answered. Objection.
16 Calls for speculation. Lacks foundation. Also vague
17 and ambiguous as to "reliable" and "educational
18 achievement."

19 THE WITNESS: I don't understand your question.
20 Is your question how do I know if a test is valid?

21 Q. BY MR. JACOBS: How do you know if a test is
22 valid?

23 MR. SEFERIAN: Objection. Overly broad.

24 Q. BY MR. JACOBS: I take it the first step is you
25 listen to experts who tell you whether it's valid?

1 MR. SEFERIAN: Objection. Overly broad.
2 Incomplete and improper hypothetical.

3 MR. VIRJEE: Also vague and ambiguous as to
4 "first step."

5 THE WITNESS: The test scores used in the STAR
6 system are reliable and valid for the purpose in which
7 they're given.

8 Q. BY MR. JACOBS: And how do you know that?

9 A. By the psychometrics provided by the experts
10 who have so advised us.

11 Q. Was there any particular psychometric measure
12 that you found persuasive, or was it just the general
13 advice?

14 A. General advice.

15 MR. SEFERIAN: We've been going over an hour.
16 Can we take a short break?

17 MR. JACOBS: Uh-huh.
18 (Recess taken.)

19 Q. BY MR. JACOBS: Mr. Mockler, referring you back
20 to Exhibit 239, page 96 of the printout. The issue
21 addressed starting in the middle of the page is cost of
22 takeovers. Do you see that?

23 A. Yes.

24 Q. And you are quoted as having said, there's no
25 question that the State will need some resources to

1 intervene, but it's not going to be a substantial
 2 investment given where we are in funding.
 3 Do you see that?
 4 A. Yes.
 5 Q. Did you say that in words or substance?
 6 A. Yes.
 7 Q. And when you said "given where we are in
 8 funding," what did you mean?
 9 A. Well, this was January 2001.
 10 MR. VIRJEE: Actually, the journal is dated
 11 that day.
 12 THE WITNESS: I don't know when I said this,
 13 but sometime in that -- the question is how much money
 14 do you need. They'll need some money to intervene.
 15 They asked for it, they got it.
 16 Q. BY MR. JACOBS: They asked for it, they got it,
 17 meaning what?
 18 A. Meaning that the superintendent asked for \$3
 19 million and she got it.
 20 Q. That's an event that happened?
 21 A. Subsequent to this statement.
 22 Q. And which event is that?
 23 A. Fall of '01.
 24 Q. The takeover of a school or district?
 25 MR. VIRJEE: I'm sorry, you're asking did a

1 takeover of a school occur then?
 2 Q. BY MR. JACOBS: Let me ask you, what are you
 3 referring to, sir?
 4 A. You said the question -- there's no question we
 5 need some resources, but it's not going to be a
 6 substantial investment.
 7 Q. Right. And you were referring to an instance
 8 in which the SPI asked for resources, I take it, and she
 9 got it; is that correct?
 10 A. No.
 11 Q. Then I misunderstood where you were going.
 12 A. I was predicting that at the time the State was
 13 going to implement that portion of the II/USP, the state
 14 agency or some form would need resources, meaning money
 15 budget allocations. That, in fact, did come to pass, so
 16 I was prophetic.
 17 Q. So are you referring to the staffing increase?
 18 A. Yes.
 19 Q. Anything else that has been asked for so far
 20 that you meant to embrace by your comment about, she
 21 asked for it, she got it?
 22 A. No, that's what I was referring to.
 23 Q. And then when you said given where we are in
 24 funding, were you referring to the overall school
 25 funding situation at the time?

1 A. Yes.
 2 Q. And when you made the comment, you were
 3 optimistic, I take it, at that point that funding for
 4 schools would continue on the track that it had been on
 5 for the previous several years?
 6 MR. VIRJEE: Objection. Vague and ambiguous as
 7 to "previous several years" and "track." Calls for
 8 speculation.
 9 THE WITNESS: No.
 10 Q. BY MR. JACOBS: What were you assuming when you
 11 referred to given where we are in funding?
 12 A. By the end of 2000, state investment in public
 13 schools over a three-year period had grown
 14 substantially, therefore there were funds available at
 15 districts and at state levels to manage this task.
 16 Q. Even without continued increases.
 17 MR. SEFERIAN: Objection. Incomplete
 18 hypothetical question.
 19 MR. VIRJEE: Also vague and ambiguous as to
 20 "continued increases."
 21 THE WITNESS: I was talking about the state at
 22 the time.
 23 Q. BY MR. JACOBS: And then you see in the next
 24 paragraph there's a discussion about what is -- what
 25 resources are going to be needed to improve failing

1 schools?
 2 MR. JORDAN: Misstates the document. It says
 3 take control of and improve.
 4 MR. VIRJEE: Are you asking about the next
 5 paragraph?
 6 MR. JACOBS: Take a look at the top of the next
 7 paragraph.
 8 THE WITNESS: Yeah.
 9 MR. VIRJEE: Just for the record, Mr. Mockler,
 10 you probably ought not to mark on the exhibits
 11 themselves. Just for the record, he did, on page 76,
 12 put a stray mark.
 13 MR. SEFERIAN: Page 96.
 14 THE WITNESS: 96.
 15 MR. VIRJEE: I'm sorry. If counsel directs you
 16 to mark, you should do so, but otherwise you should
 17 probably leave the exhibits clean.
 18 Q. BY MR. JACOBS: It says teachers and some
 19 education experts believe that underlying causes for low
 20 student achievement, such as teacher quality, cannot be
 21 improved without a significant investment in higher pay
 22 and staff development programs.
 23 Do you see that?
 24 A. I do.
 25 Q. And before the break, we talked about measuring

1 student achievement by way of test scores, and now this
2 discussion is not about measurement but about what the
3 inputs are that are required for improvement in
4 achievement, right?

5 MR. VIRJEE: Objection. Vague and ambiguous as
6 to "discussion." You're asking is that what this says?
7 The document speaks for itself if you're asking what it
8 says. If you're insinuating that these are
9 Mr. Mockler's statements, I think that misrepresents the
10 document.

11 Q. BY MR. JACOBS: Sir, did you understand the
12 question?

13 A. You don't believe that's my statement? What's
14 your question?

15 Q. No, I was just wondering, do you see that's
16 what's being discussed there?

17 A. That is what the statement says.

18 Q. And what is your professional opinion on that
19 question?

20 MR. VIRJEE: Objection. Vague and ambiguous as
21 to "professional" to the extent you're indicating that
22 he has some professional expertise in this area. Calls
23 for speculation. Lacks foundation, and calls for an
24 expert opinion.

25 THE WITNESS: I would say an investment of \$13

1 resources are available to address -- to the extent that
2 you believe that underlying causes for low student
3 achievement, such as teacher quality, require
4 improvement, do you believe that the resources are
5 available to do that today?

6 MR. SEFERIAN: Objection. Lacks foundation.
7 Calls for an inadmissible opinion. Incomplete and
8 improper hypothetical question.

9 MR. JORDAN: Calls for speculation.

10 MR. VIRJEE: Michael, you started one question
11 and then asked another. Did you intend to include the
12 first part of that, or just the second question?

13 MR. JACOBS: Just the second part.

14 MR. VIRJEE: Had nothing to do with II/USP
15 then?

16 MR. JACOBS: No. I'm sorry.

17 MR. VIRJEE: Because you started in the context
18 with II/USP, and then you stopped and asked a whole
19 different question, so I need to know.

20 MR. JORDAN: I misunderstood it then too.

21 Q. BY MR. JACOBS: Did you understand it, sir?

22 A. I thought you were asking about what this
23 writer's opinion is here.

24 MR. VIRJEE: Which doesn't refer to II/USP.

25 THE WITNESS: It doesn't have anything to do

1 billion in four years is -- pretty significantly answers
2 that question.

3 Q. BY MR. JACOBS: And by that I take it you
4 believe that in the existing budget there is sufficient
5 resources to accomplish improvement in, for example,
6 teacher quality, the kind of improvement that's being
7 referred to in this paragraph?

8 MR. VIRJEE: Objection. Vague and ambiguous as
9 to "existing."

10 Are you asking as of January 2001 or today?

11 MR. JACOBS: Whatever your answer was as of,
12 sir.

13 MR. SEFERIAN: Vague and ambiguous as to
14 "improvement" and "teacher quality." Lacks foundation.

15 THE WITNESS: I read the statement to say that
16 you need investments in training and pay to continue
17 improvement of low-performing schools. I would -- my
18 opinion, such as it is, is that it's true, and that has
19 been done and is continuing to be done.

20 Q. BY MR. JACOBS: And by being done, you mean
21 that the -- you're referring now to the expenditure of
22 money on those issues, correct?

23 A. Yes.

24 Q. And in the context of the II/USP program,
25 perhaps as modified by AB 961, do you believe the

1 with II/USP or anything else as far as I can tell. But
2 I didn't understand the question.

3 Q. BY MR. JACOBS: We'll just take it from the
4 top. We've got all day. I believe the context is the
5 cost to intervene, right? That's what you've just
6 commented on in the previous paragraph, right?

7 MR. VIRJEE: That's the context in the previous
8 paragraph. I'll object as to calls for speculation as
9 to what's being referred to in the next paragraph by the
10 writer.

11 THE WITNESS: I thought you wanted my comment
12 on a paragraph in this article, or partial part of the
13 paragraph, which suggests that investment in training
14 and higher pay are some, though not all, of the
15 components to improve achievement, and I agreed with
16 that.

17 Q. BY MR. JACOBS: And do you believe today that
18 in the context of the improvements that are needed in
19 low-performing schools that the resources are available
20 to achieve the necessary -- to the extent that you
21 believe that necessary improvement -- let me simplify
22 this.

23 You agree that in some cases low-performing
24 schools will require further investment in teaching
25 quality, yes?

1 MR. VIRJEE: Objection. Calls for speculation.
2 Lacks foundation. Also vague as to time and incomplete
3 hypothetical.

4 THE WITNESS: Is the question will some
5 underperforming schools need investments to get better,
6 is that the question?

7 MR. JACOBS: No. Can you read back my
8 question?

9 (Record read.)

10 MR. VIRJEE: Objection. Vague and ambiguous as
11 to "investment" and "teaching quality." Calls for an
12 expert opinion.

13 MR. JORDAN: It's also vague and ambiguous as
14 to for what purpose.

15 MR. SEFERIAN: Incomplete and improper
16 hypothetical question.

17 MR. JORDAN: To meet their targets?

18 THE WITNESS: I think some low-performing
19 schools will require increased investments over time in
20 professional development, teacher quality and other --
21 many other activities in order to continue to improve.

22 Q. BY MR. JACOBS: And in your opinion -- when you
23 said in this article, it's not going to be a substantial
24 investment given where we are in funding --

25 A. No, that's not --

1 might cost to actually improve the schools as opposed to
2 administer a program of school improvement; is that
3 correct?

4 A. The cost of intervention is what I was
5 referring to in that quote.

6 Q. The cost of intervention means what to you?

7 A. It means how many people the Department and/or
8 some local agency would have to use to go in look at and
9 take over, if you will, the school under the provisions
10 of II/USP.

11 Q. So you were not commenting there on once
12 there's a takeover and once the administrators that you
13 described are in place, whether a substantial investment
14 would be needed to improve school quality?

15 A. I was not commenting on that at all, at all.

16 Q. So that's my question to you, then, because now
17 I see the confusion between us. What I thought you were
18 referring to there was whether there would be a
19 substantial investment needed in order to actually bring
20 about school improvement.

21 Do you have an opinion on the funding resources
22 available to actually carry out school improvement in
23 the context, let's say, specifically of the II/USP and
24 AB 961, and whether those resources are adequate?

25 MR. VIRJEE: Objection. Vague and ambiguous as

1 MR. SEFERIAN: Wait for the question,
2 Mr. Mockler.

3 Q. BY MR. JACOBS: -- were you commenting on the
4 funding resources available to accomplish what you just
5 recited?

6 A. No.

7 Q. Do you believe that given where we are in
8 funding today, a substantial additional investment,
9 meaning an increase in year-by-year amounts, is going to
10 be needed in order to accomplish what you just recited?

11 MR. VIRJEE: Objection. Vague and ambiguous as
12 to "substantial" and "additional." Calls for
13 speculation. Lacks foundation. Calls for an expert
14 opinion. Incomplete hypothetical.

15 THE WITNESS: What do you mean by
16 "substantial"? Got a range for that?

17 Q. BY MR. JACOBS: Well, you used the word
18 substantial in your comment.

19 A. My reference there was purely and absolutely to
20 the issue of the administrative expenses of
21 intervention, not for other activities, not with respect
22 to -- this is state intervention, it has -- it's the
23 cost of the state intervening, not the cost of the
24 program in place.

25 Q. So your comment there was not about what it

1 to "adequate" and "carry out school improvement." Calls
2 for speculation. Lacks foundation. And calls for an
3 expert opinion.

4 THE WITNESS: Properly spent, those resources
5 are sufficient to deal with the schools that are funded.
6 There's no -- we know of a large number of II/USP
7 schools that have substantially more resources than
8 other II/USP schools, so the connection between total
9 investment and achievement is not linear. So you can't
10 make a generalized statement, but overall the connection
11 between teachers and training is related to achievement.
12 And that's what that statement seems to say to me and
13 that's what I would believe.

14 Q. BY MR. JACOBS: I didn't understand where you
15 broke the sentences in your answer. So you turned to
16 the topic of teachers. What did you mean to say about
17 teachers and teacher training?

18 MR. VIRJEE: Just for the record when he said
19 "that statement," he pointed to paragraph -- the fourth
20 full paragraph of the document on page 96.

21 THE WITNESS: The statement is that teachers
22 need to be paid and they need to be trained. Staff
23 development, such as the term that is used, but in my
24 view I'll say training. I believe investment,
25 professional development and adequate pay for teachers

1 is a major component in turning around a low-performing
 2 school.
 3 Q. BY MR. JACOBS: And how does that belief relate
 4 to the question of the sufficiency of the total
 5 resources available to a school? And our focus still is
 6 on schools in the II/USP or AB 961 programs.
 7 MR. VIRJEE: Objection. Calls for speculation.
 8 Lacks foundation. Calls for an expert opinion.
 9 Incomplete hypothetical.
 10 THE WITNESS: I would say there's been
 11 substantial investment in these issues with emphasis on
 12 low-performing schools over the last three years, and
 13 that investment pattern is sufficient to produce
 14 exceptional achievement, properly managed.
 15 Q. BY MR. JACOBS: Let's focus on that last
 16 clause. "Properly managed," what do you mean by that?
 17 A. I mean a school district that takes achievement
 18 seriously, that uses data properly, that insists on
 19 training its teachers around a core curriculum aligned
 20 to standards.
 21 Q. Anything else that you meant to convey by
 22 "properly managed"?
 23 MR. VIRJEE: Objection. Calls for speculation.
 24 Lacks foundation. Compound question. Calls for an
 25 expert opinion.

1 THE WITNESS: I'd prefer they didn't waste the
 2 money.
 3 Q. BY MR. JACOBS: And do you have a way, from
 4 your vantage point as the executive secretary to the
 5 State Board of Education --
 6 MR. VIRJEE: Executive director.
 7 MR. JACOBS: Sorry, executive director. Thank
 8 you.
 9 Q. -- executive director of the State Board of
 10 Education to find out whether a school district is
 11 properly managed, as you just defined the term?
 12 MR. VIRJEE: Objection. Vague and ambiguous as
 13 to "have a way," and calls for speculation.
 14 MR. SEFERIAN: Assumes facts not in evidence.
 15 THE WITNESS: We measure student -- growth in
 16 student achievement as whether or not the school is
 17 becoming better.
 18 Q. BY MR. JACOBS: So as the night follows day,
 19 come next fall there are going to be pleas for
 20 additional resources for schools in order to achieve the
 21 kinds of school improvement that we've discussed over
 22 the last couple minutes.
 23 And my question to you is, do you have a basis
 24 and an understanding of school finance to be able to
 25 address the claim that this is -- that in order to bring

1 about school improvement of that sort, that additional
 2 resources are needed?
 3 MR. VIRJEE: Objection. Calls for speculation.
 4 Lacks foundation. Incomplete hypothetical. Assumes
 5 facts not in evidence.
 6 THE WITNESS: I think the answer to the answer
 7 is no.
 8 Q. BY MR. JACOBS: You mean, no, you do not have a
 9 basis for rebutting the claim that additional resources
 10 are needed?
 11 A. I don't think that was the question.
 12 THE WITNESS: Want to read back the question?
 13 (Record read.)
 14 MR. SEFERIAN: Same objections.
 15 THE WITNESS: Same answer.
 16 Q. BY MR. JACOBS: No, we do not have such a
 17 basis?
 18 A. No, not for that question.
 19 Q. Can you explain "no"? The teacher is asking
 20 the student to answer no with a complete sentence so
 21 that the answer is clear here.
 22 MR. VIRJEE: No is a complete sentence.
 23 MR. SEFERIAN: He's answered the question.
 24 MR. JACOBS: I want to make sure we're
 25 connecting, sir.

1 MR. JORDAN: The objection is asked and
 2 answered.
 3 MR. SEFERIAN: There's no question pending,
 4 Mr. Mockler.
 5 Q. BY MR. JACOBS: No what, sir?
 6 A. No.
 7 MR. VIRJEE: I guess no is the answer to your
 8 question.
 9 Q. BY MR. JACOBS: Do you believe that such a
 10 basis should be developed?
 11 MR. SEFERIAN: Objection. Incomplete
 12 hypothetical question.
 13 MR. VIRJEE: Also vague and ambiguous as to
 14 "such a basis."
 15 MR. SEFERIAN: Calls for an inadmissible
 16 opinion.
 17 THE WITNESS: What is "such a basis"?
 18 MR. JACOBS: The basis that I asked you about
 19 in my question.
 20 THE WITNESS: Your basis has to do with night
 21 following day sometime in September.
 22 MR. JACOBS: I don't think you got where you
 23 did, sir, by not listening to questions or comments.
 24 MR. VIRJEE: That's an inappropriate comment.
 25 That's badgering the witness. If you have a question,

1 ask the question.

2 Q. BY MR. JACOBS: Do you have a basis for
3 rebutting claims that in order to bring about school
4 improvement, additional funding is necessary?

5 MR. VIRJEE: Objection. Calls for speculation.
6 Vague and ambiguous as to "additional resources," and
7 calls for speculation. Lacks foundation. Calls for an
8 expert opinion.

9 MR. JORDAN: And it's an incomplete
10 hypothetical.

11 THE WITNESS: I don't understand the context of
12 your question. The answer is I don't know because I
13 don't understand it. Are you saying can I refute a
14 claim that more money is better, is that your question?

15 MR. JACOBS: I don't think that was my
16 question.

17 MR. VIRJEE: Clearly he doesn't understand your
18 question.

19 THE WITNESS: I don't. I don't know what
20 you're getting at.

21 Q. BY MR. JACOBS: Let me try it this way, sir. I
22 don't think this is so difficult, but evidently I'm
23 wrong.

24 You said that you didn't think there was going
25 to be a substantial investment given where we are in

1 distinction?

2 MR. VIRJEE: Objection. Assumes facts not in
3 evidence. Assumes they are mutually exclusive. Also
4 misstates his testimony.

5 THE WITNESS: The schools in question have
6 substantial amounts of money. In addition, these
7 schools have II/USP money and potentially, in the
8 future, more money. The question, is that sufficient to
9 produce academic progress towards a stated goal. I
10 would say yes.

11 Q. BY MR. JACOBS: And what is the basis for that
12 statement?

13 MR. VIRJEE: Objection. Asked and answered.
14 Calls for speculation. Calls for an expert opinion.

15 THE WITNESS: The basis is that similar schools
16 with similar investments are making such improvements.

17 Q. BY MR. JACOBS: And is a -- are you -- what are
18 you relying on for that statement?

19 A. The Star system assessment results for similar
20 schools.

21 Q. Are you relying on any analysis of the Star
22 system results aimed at answering the question you just
23 answered?

24 MR. VIRJEE: Objection. Vague and ambiguous as
25 to "analysis." Also vague as to time.

1 funding, and you were referring to the costs --
2 essentially to administrative costs of intervention,
3 correct?

4 A. Correct.

5 MR. VIRJEE: Objection. Asked and answered.

6 Q. BY MR. JACOBS: And the basis of that was you
7 ran -- as I understood it, you ran a mental calculation
8 of what it would really cost to do the administrative
9 effort, and you concluded that in the scheme of things,
10 that's not -- the amount of money necessary to do that
11 is not a lot; is that correct?

12 MR. VIRJEE: Objection. Is that supposed to be
13 a statement of his testimony, because if is, it
14 misstates his testimony.

15 MR. JORDAN: It's also asked and answered.

16 THE WITNESS: The legislature allotted \$3
17 million for that cost subsequent to my statement. There
18 are some federal funds available for the administrative
19 costs. When I was talking about not a lot, that's
20 within the range of not a lot.

21 Q. BY MR. JACOBS: Now we've distinguished between
22 the administrative costs of intervention and the costs
23 of bringing out improvement, the desired improvement in
24 school performance.

25 Do you recall that discussion of that

1 MR. SEFERIAN: Calls for an inadmissible
2 opinion.

3 THE WITNESS: I think the answer is no. We
4 look at data regarding similar schools. I would not
5 call that research. We find schools that are similarly
6 situated that do better than other schools by a
7 substantial margin, indicating that with the resources,
8 typical resources, academic improvement is clearly not
9 only possible but demonstrated.

10 Q. BY MR. JACOBS: And you're referring to work
11 that's been done by -- in this case by you and your
12 staff, or are you referring to something else?

13 A. Just call up on the Internet the report of the
14 STAR system. No particular research document. Although
15 I've seen some around, I can't mention -- I don't
16 remember their names, but there are a number.

17 Q. And are you aware of any efforts to try and
18 isolate the factors that have led to the success cases?

19 MR. SEFERIAN: Objection. Assumes facts not
20 evidence.

21 THE WITNESS: Only in the generalest of terms.

22 Q. BY MR. JACOBS: When you say "generalest of
23 terms," what do you mean?

24 MR. SEFERIAN: Objection to the extent it calls
25 for privileged communications.

1 THE WITNESS: We've had testimony in front of
 2 the Board regarding successful schools in which we have
 3 members of our Board who were principals of successful
 4 schools that are -- have conditions similar to those
 5 low-performing schools with respect to the needs of
 6 those students and their conditions, and they have
 7 indicated a number of variables that they have used to
 8 produce achievement and have so demonstrated that.
 9 Q. BY MR. JACOBS: Now to go back to as the night
 10 follows day comment, I take, then, that as you sit here
 11 today, if someone were to say to you, in order to bring
 12 about sustained systemic improvements in achievement as
 13 we used those terms earlier today, we need more funding,
 14 your answer would be, look at similarly-situated
 15 schools, they have comparable funding resources, they're
 16 making improvements, why can't you?
 17 MR. VIRJEE: Objection. Calls for speculation.
 18 Lacks foundation. Incomplete hypothetical. Calls for
 19 an expert opinion.
 20 THE WITNESS: I would say that's what I'd ask
 21 them to do first, yes.
 22 Q. BY MR. JACOBS: And in anticipation of
 23 intervention by the State in the fall, is there any
 24 additional effort underway to identify the factors that
 25 explain the success stories; in other words, is somebody

1 looking at that with a view toward providing some
 2 support to the state itself when it has to intervene in
 3 those schools?
 4 MR. VIRJEE: Objection. Calls for speculation.
 5 Lacks foundation.
 6 MR. SEFERIAN: Object to the extent it calls
 7 for privileged communications.
 8 THE WITNESS: I couldn't list a particular set
 9 of studies, but the Department works on that data all
 10 the time in the accountability unit. As they get new
 11 data and as we get more trend data, they do that all the
 12 time. Other researchers do that also. I don't have any
 13 particular ones to cite, but I've seen outputs of some
 14 of those.
 15 Q. BY MR. JACOBS: Any particular outputs you're
 16 referring to?
 17 A. Sound curriculum, focused training of teachers,
 18 principal leadership and increased achievement.
 19 Q. And achievement is the output of those inputs,
 20 correct?
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "outputs" and "inputs."
 23 Q. BY MR. JACOBS: It's not itself an input?
 24 MR. VIRJEE: Objection. Vague and ambiguous as
 25 to "input."

1 THE WITNESS: Achievement is the output.
 2 Achievement is the product, yes.
 3 MR. JACOBS: We can just finish up with Exhibit
 4 238. Those were those minutes.
 5 MR. VIRJEE: Any particular page?
 6 Q. BY MR. JACOBS: Yeah, let's go to page 13. And
 7 this is item 22, the proposed waiver policy for
 8 retroactive waivers. Do you see that?
 9 A. Yes.
 10 Q. And you commented that the waiver policy that
 11 Ms. Pinegar was evidently responsible for developing was
 12 a very important waiver policy. It represents a lot of
 13 money for districts.
 14 Do you see that?
 15 A. Yes.
 16 Q. When you're referring to the money for
 17 districts, were you referring to categorical funding for
 18 instructional materials that is in jeopardy if the
 19 district doesn't comply with 60119?
 20 A. Yes.
 21 Q. And can you summarize the policy that was -- I
 22 take it the policy was adopted, right?
 23 MR. SEFERIAN: Objection. Vague and ambiguous
 24 as to policy. Vague as to time. Overly broad.
 25 THE WITNESS: Yeah, I believe the minutes show

1 that it was adopted unanimously.
 2 Q. BY MR. JACOBS: What is the substance of the
 3 policy?
 4 MR. VIRJEE: Objection. The document speaks
 5 for itself or the policy speaks for itself.
 6 MR. SEFERIAN: Objection. Vague and ambiguous
 7 as to time of policy.
 8 THE WITNESS: The policy creates the
 9 requirements the districts must meet in order to be
 10 within the statute, and even if they're within the
 11 statute, to meet the Board's policy as to waivers.
 12 Distinguishing essentially between minor and
 13 inadvertent errors which did not violate the substance
 14 of the law, which is to say, do you have materials with
 15 respect to -- compared to districts that -- whose
 16 violations were beyond technical and inadvertent or who
 17 did not meet the intent of the law.
 18 Q. BY MR. JACOBS: Does the policy describe the
 19 latter case?
 20 A. Yes.
 21 Q. Do you recall what that says?
 22 A. I don't recall specifically, but it essentially
 23 says the local board has to make certain assertions that
 24 while they may have made technical violations of the
 25 notice, for example, that they have, in fact, or will

1 have within that period the materials. And if they
 2 don't so assert, then they do not receive a waiver.
 3 The Board creates policies under waivers purely
 4 for the reason of informing districts of the likelihood.
 5 Anybody can still ask for a waiver, it's just more
 6 likely you'll get it if you're within policy than if
 7 you're without.
 8 Q. So it's your understanding that the way this is
 9 going to be implemented from here on out, in applying
 10 for a waiver, the districts will be required to say --
 11 to report on the substance of -- the substantive
 12 question that they do or do not have sufficient
 13 textbooks or they do or do not have a plan to get
 14 sufficient textbooks or instructional materials?
 15 MR. VIRJEE: Objection. The policy speaks for
 16 itself. And also object to the extent you're talking
 17 about any other kind of waiver other than 60019 waivers.
 18 MR. SEFERIAN: Calls for speculation.
 19 THE WITNESS: The waiver policy -- the Board's
 20 authority in this area to waive is restricted by statute
 21 to minor and inadvertent. I believe there may be other
 22 terms, but essentially small errors.
 23 But even that -- the Board has felt that if
 24 there were minor errors, then the substance of the
 25 policy is that the district had to meet the overall

1 criteria of law. And they did so assert and
 2 demonstrate. Therefore, if you want the State to give
 3 you your money back, you'd better have met the
 4 substance.
 5 Q. BY MR. JACOBS: And by "the substance" you mean
 6 the actual substantive outcome of the textbooks and
 7 instructional materials purchasing and distribution as
 8 opposed to whether or not there was, in fact, a hearing?
 9 A. Correct.
 10 Q. Let me show you another article from the Los
 11 Angeles Times. This is 240.
 12 (Exhibit SAD-240 was marked.)
 13 Q. BY MR. JACOBS: And you are quoted, sir, on
 14 page 16 of the printout, the third page.
 15 MR. VIRJEE: Just for the record, just so it's
 16 clear, on many of these documents, while they're
 17 consecutively numbered, they don't start at No. 1. This
 18 one, for example, starts at page 14. Exhibit 239 starts
 19 at page 94. So I don't want there to be any indication
 20 that pages were missing from the exhibits.
 21 MR. JORDAN: For the record, we've been using
 22 the internal pagination as opposed to the pages counting
 23 from the beginning of each exhibit.
 24 MR. VIRJEE: Exactly.
 25 Q. BY MR. JACOBS: I want to ask you about the

1 portion in particular that starts with Mockler and other
 2 state officials have raised concerns about the quality
 3 of many achievement plans that were submitted to the
 4 state this year.
 5 Do you see that?
 6 A. Yes.
 7 Q. And then it says, because of those concerns,
 8 the State Board of Education is weighing a proposal to
 9 tighten requirements for the batch of action plans that
 10 will arrive next spring. Do you see that?
 11 A. Yes.
 12 Q. So if you focus on the date of this article,
 13 you had raised concerns about the quality of the first
 14 batch that had been received; is that right?
 15 MR. VIRJEE: Objection. Vague and ambiguous as
 16 to "raised concerns."
 17 THE WITNESS: There's a timing sequence issue
 18 here. I don't know precisely when this concern was
 19 raised. By September of 2000 I was -- I think I was
 20 secretary at the time or interim secretary. Previous to
 21 that I was with the Board. And I don't recall the
 22 timing of it, but we looked at the initial data of
 23 initial plans, and the Board took action to specify some
 24 narrowing of the criteria to the plans, and especially
 25 with respect to the use of test scores and the subscores

1 to define data, the training, with respect to
 2 instructional materials, professional knowledge of the
 3 standards, knowledge of frameworks. And that had been
 4 done back in 19 -- I believe 1999, or maybe early 2000.
 5 I don't recall exactly the sequence.
 6 Q. BY MR. JACOBS: So it says on Wednesday --
 7 which would probably be Wednesday, September 6th, 2000,
 8 based on the article date -- the Board will vote on a
 9 plan requiring evaluators to submit additional
 10 information about the schools they're reviewing. Do you
 11 see that?
 12 A. Yes.
 13 Q. Is that what you're referring to in terms of a
 14 tightening up?
 15 A. Board policy, yes.
 16 Q. It says in the article that the reports will
 17 have to show that each student at a campus has a
 18 complete set of books aligned to the state's new
 19 academic standards.
 20 Do you see that?
 21 A. Yes.
 22 Q. Did the Board, in fact, require that of the
 23 action plans?
 24 MR. VIRJEE: Objection. Calls for speculation.
 25 Lacks foundation. Vague as to time.

1 THE WITNESS: I don't know what date this is.
 2 The Board at some point -- and I don't know what meeting
 3 this was, but the Board at some point did, in fact,
 4 adopt additional criteria for II/USP plans to be
 5 submitted in subsequent years, and included something
 6 about the review of standards, frameworks and
 7 instructional materials. I don't have the specifics of
 8 it. I couldn't say this is precisely correct, but it's
 9 in that genre.
 10 Q. BY MR. JACOBS: To the extent you have followed
 11 the evolution of policy in this area, is it your
 12 understanding that the Board policy that was adopted
 13 then is the -- is currently in force?
 14 MR. VIRJEE: Objection. Vague and ambiguous as
 15 to "currently in force."
 16 THE WITNESS: Are you referring to II/USP
 17 plans, 961 plans?
 18 MR. JACOBS: I'm referring to the plans that
 19 you were referring to.
 20 THE WITNESS: Well --
 21 MR. SEFERIAN: Objection. Lacks foundation.
 22 THE WITNESS: It's unclear from 961 what II/USP
 23 plans will come to the state and what their content will
 24 be. The law has been changed subsequent to this
 25 criteria, so it's still unclear, pending legislative

1 technical adjustments, as to whether or not -- what's
 2 the nature of the Board's authority with respect to
 3 plans. So there's a -- we're in the middle of like two
 4 different things going on at once. But absent
 5 legislative action, that was the policy.
 6 Q. BY MR. JACOBS: And then -- so keep separating
 7 out the AB 961 issue. It's your understanding that the
 8 Board policy currently requires that the action plan
 9 have those components that you spoke about a couple of
 10 questions and answers ago?
 11 MR. VIRJEE: Objection. Board policy speaks
 12 for itself.
 13 MR. SEFERIAN: Vague and ambiguous as to "those
 14 components."
 15 THE WITNESS: Previous to the passage of 961,
 16 in general the answer would be yes. With the passage of
 17 961 and the ability of districts to proceed to action
 18 without plan and the confusion within that law, I can't
 19 assert the effectiveness or the legal effect of these
 20 criteria for all II/USP schools.
 21 Q. BY MR. JACOBS: I guess maybe I just had a
 22 simpler question. The Board hasn't actually taken
 23 formal action to revise the policy?
 24 A. No. No.
 25 Q. Let me now ask you to look at what we'll mark

1 as Exhibit 241.
 2 (Exhibit SAD-241 was marked.)
 3 Q. BY MR. JACOBS: I'm going to talk about item
 4 14.
 5 A. Page what?
 6 Q. It's the first and second and third pages of
 7 the handout. It's 26 through 27 of the internal
 8 numbering of the document.
 9 A. Yeah.
 10 Q. And my question to you is about your comments
 11 there. You said there is a lot of money to help these
 12 schools, but little state-level involvement. Department
 13 staff does review all plans, and this year's plans are
 14 better than last year's plans, however there are still
 15 substantial problems in key areas. An incredible amount
 16 of money is being spent on consultants which gives us
 17 pause.
 18 Do you see that?
 19 A. Yes.
 20 MR. SEFERIAN: Objection. Assumes facts not in
 21 evidence.
 22 MR. JACOBS: What fact did I assume that was
 23 not in evidence?
 24 MR. SEFERIAN: That he made that statement.
 25 MR. JACOBS: My question was, do you see that.

1 MR. SEFERIAN: Your question started, you
 2 stated that. And you went on. You assumed that he made
 3 that statement.
 4 MR. VIRJEE: He's told you he sees it, Mike.
 5 MR. JACOBS: Sometimes I have to clarify the
 6 objection, Mr. Virjee.
 7 MR. VIRJEE: I appreciate that. But the
 8 question is did you see that, he said yes.
 9 Q. BY MR. JACOBS: Does that capture the substance
 10 of your comments on the topic?
 11 A. In general, yes.
 12 Q. First of all, what did you mean by a lot of
 13 money to help these schools?
 14 MR. VIRJEE: Just for the record, you haven't
 15 asked him whether he said that.
 16 MR. JACOBS: I just did.
 17 MR. VIRJEE: I missed that. Falling asleep.
 18 Q. BY MR. JACOBS: What did you mean by a lot of
 19 money to help these schools?
 20 A. Well, \$100 million, \$200 a student. In
 21 addition to a \$50,000 planning grant, these schools
 22 receive about \$200 a student on top of all of the money
 23 they have.
 24 Q. And then "little state-level involvement," what
 25 did you mean by that?

1 A. II/USP is designed to have -- to be essentially
 2 a local school-based externally evaluated system with
 3 very little state oversight.
 4 Q. And was that a descriptive or a prescriptive
 5 comment you were making there?
 6 MR. VIRJEE: Objection. Vague and ambiguous as
 7 to "descriptive" or "prescriptive."
 8 Q. BY MR. JACOBS: Were you urging that there be
 9 more state-level involvement?
 10 A. No.
 11 Q. Just describing the current system?
 12 A. Describing what the law says.
 13 Q. And then you were commenting on the plans and
 14 you said this year's plans are better, but there are
 15 still substantial problems. Do you see that?
 16 A. Yes. It was a general statement.
 17 Q. You said substantial problems in key areas.
 18 What did you have in mind when you said that?
 19 MR. VIRJEE: If you recall.
 20 THE WITNESS: The Board adopted a policy, or
 21 has had a policy regarding II/USP schools. The question
 22 is did each of the plans that were sent up fully comply
 23 with those, that is to say, did they comment about the
 24 training, did they comment about how they used test
 25 scores to improve instruction, did they comment about

1 state and local schools. And our review, which was not
 2 an in-depth research, indicated that we -- we did the
 3 same thing the year before on a sample basis, and our
 4 sample, just in general, suggested the plans seemed to
 5 be getting better, but there were some that continued to
 6 be pretty vague.
 7 Q. BY MR. JACOBS: So the key areas in which there
 8 were problems, they related to areas that the Board
 9 policy had specifically asked the plans to focus on?
 10 A. And the statute does also.
 11 Q. And were there -- did you identify any new
 12 problem areas in reviewing the plans at that time?
 13 A. No, not specifically.
 14 Q. And then an incredible amount of money is being
 15 spent on consultants, which gives us pause.
 16 Is that money that comes out of the \$50,000
 17 planning grant, or were you referring to something else?
 18 A. Both planning and implementation. When you
 19 look at the budgets, we don't get the budget for
 20 planning, we get the budget only for implementation.
 21 When you look at the budget, you see districts
 22 externally hiring external consultants external to
 23 districts. If that's all you're doing, that seems to
 24 suggest you're not -- you wouldn't have enough money
 25 left over for training and other things. That's just a

1 personal judgment. Districts might have a different
 2 view of that.
 3 Q. Has there been any action at the Board level to
 4 address the issue of how the action plan money is being
 5 spent?
 6 A. No.
 7 MR. VIRJEE: Objection. Assumes facts not in
 8 evidence. Calls for speculation.
 9 Q. BY MR. JACOBS: Then it says Ms. Tacheny notes
 10 that it might be interesting, as a follow-up, to see
 11 what the good plans and good external evaluators do to
 12 help a school. Do you see that?
 13 A. I do.
 14 Q. What did you understand her to be suggesting?
 15 MR. VIRJEE: Objection. Assumes facts not in
 16 evidence.
 17 THE WITNESS: Ms. Tacheny is an incredibly
 18 bright reseach-oriented person, and she would love to do
 19 a bunch of research on every action the Board takes.
 20 Q. BY MR. JACOBS: Aside from that, what did you
 21 understand her to be proposing?
 22 A. That's all I got from that is that she said it
 23 might be interesting to do some research on, to track
 24 them over time, does it produce good results. So it
 25 would be interesting. Sure, I agree it's interesting.

1 Q. But not interesting enough for you to be -- but
 2 only interesting and not sufficiently useful to warrant
 3 the expenditure of funds?
 4 MR. VIRJEE: Objection. Calls for speculation.
 5 Lacks foundation. Calls for an expert opinion.
 6 MR. SEFERIAN: Assumes facts not in evidence.
 7 THE WITNESS: I don't think it would be a
 8 useful exercise.
 9 Q. BY MR. JACOBS: And why is that?
 10 MR. SEFERIAN: Same objections.
 11 THE WITNESS: Well, because if you note the
 12 timing of this, in July of 2001, it was clear that the
 13 legislative direction was to terminate the requirement
 14 of the external evaluators. So it's interesting to look
 15 at dead people, but it doesn't help you much for the
 16 living.
 17 Q. BY MR. JACOBS: And how about the good plans
 18 focus of that as opposed the good external evaluators?
 19 A. Well, that's intellectually interesting, but as
 20 to whether good plans produce good results, again, I
 21 think the legislative assumption was that good plans
 22 that are approved by the state are not as important as
 23 other activities schools could do.
 24 Q. And what do you --
 25 A. That's just what the legislature was doing.

1 Q. What do you base that on?
 2 A. 961 essentially substantially cuts back on the
 3 issue of plans and the issue of external evaluators and
 4 the role of the Board in approving those plans, allowing
 5 districts to proceed to -- outside of the planning stage
 6 to an implementation of activity.
 7 Q. With the evaluation not to be based on a plan,
 8 but on whether they get results?
 9 A. Yes, they do have to have a plan, but it's not
 10 that first-step planning phase. It's a much truncated
 11 system.
 12 Q. And then it says, Superintendent Eastin stated
 13 that federal law requires some district-level
 14 responsibility. State law does not. She thinks that
 15 the Board shares her concern that there be district
 16 responsibility. Mr. Mockler noted that the law requires
 17 the district to take action if schools do not reach
 18 their 5-percent growth target. This is one way we track
 19 schools' progress.
 20 Do you see that?
 21 A. Yes.
 22 Q. Now, this comment was made before AB 961 had
 23 been enacted, right?
 24 A. Uh-huh.
 25 Q. So what were you referring to in terms of a

1 requirement that the district take action if schools do
 2 not reach their 5-percent growth target?
 3 A. II/USP law requires districts who, in their
 4 II/USP schools, who did not reach the first year of a
 5 target, which is the 5-percent growth to the higher
 6 level, that the district is supposed to go in and try to
 7 help them get better. It's in the law. It doesn't tell
 8 them what to do. It just says take a look, do
 9 something. That's my understanding of the law.
 10 Q. And so you were offering that as an instance of
 11 whether -- as an instance that there is, in fact, some
 12 district responsibility under the existing statute, was
 13 that your point?
 14 A. Yes. I was being polite to the superintendent.
 15 Q. Now, there is an evaluation of the II/USP
 16 program underway, isn't there?
 17 MR. SEFERIAN: Objection.
 18 MR. VIRJEE: Objection. Vague and ambiguous as
 19 to "evaluation."
 20 MR. SEFERIAN: Objection to the extent it calls
 21 for privileged communications.
 22 MR. VIRJEE: Also vague as to time.
 23 THE WITNESS: You mean an official one with the
 24 Department?
 25 MR. JACOBS: That's what I'm referring to.

1 THE WITNESS: There are lots of folks looking
 2 at II/USP results.
 3 MR. JACOBS: I mean a contract.
 4 THE WITNESS: I believe, yes, there is. I
 5 believe, yes, that's true. I don't have much details on
 6 it, but I believe it is because there -- there's always
 7 been a funding issue.
 8 Q. BY MR. JACOBS: Do you know the current status
 9 of it?
 10 A. I do not.
 11 Q. All right. Let's do another article. We'll
 12 mark this as 242.
 13 (Exhibit SAD-242 was marked.)
 14 Q. BY MR. JACOBS: This is an article dated August
 15 15th, 2000. Headline, economic disparity seen in
 16 student test results, results show poorer performance by
 17 neediest pupils, from San Francisco Chronicle.
 18 You are quoted there as having said, the battle
 19 is to close the gap over time. A lot more is needed,
 20 but we know the ingredients, clear standards,
 21 appropriate instructional material, and well-trained
 22 teachers.
 23 Do you see that?
 24 A. Yes.
 25 Q. Did Ms. Asimov, the writer of this article,

1 quote you accurately?
 2 A. Within reason, yeah.
 3 Q. And when you said a lot more is needed in
 4 August 15th, 2000, you meant to say that schools -- that
 5 the school system needs to achieve clear standards,
 6 appropriate instructional materials, and well-trained
 7 teachers, correct?
 8 MR. VIRJEE: Objection. Calls for speculation.
 9 Vague and ambiguous.
 10 Are you asking what he meant by "a lot more is
 11 needed"?
 12 That's what he's asking.
 13 THE WITNESS: As I understand the question,
 14 that's incorrect.
 15 Q. BY MR. JACOBS: So what did you mean?
 16 A. Well, I meant that we know that clear
 17 standards, appropriate instructional materials, and
 18 trained teachers produce better results, and that I know
 19 from at this point in time, August 2000, that we had not
 20 yet fully adopted math standards, instructional
 21 materials aligned with standards. We had not yet
 22 adopted a full set of reading materials directly aligned
 23 to standards, we had not yet fully implemented the
 24 governor's testing program. Nor had we implemented the
 25 teachers priority block grant. Nor had we implemented

1 the teacher fellowship program, nor the increase in
2 grants to teachers who were teaching in low-performing
3 schools, the expansion of the teacher loan forgiveness
4 program to provide support for teachers in the lower
5 decile schools. Or I guess I already said or any of the
6 professional development, reading, math. We had just
7 begun that. So that's what I meant.

8 Q. So if you were asked the question she asked you
9 then, would you say -- you would say something different
10 today, right, you would not say a lot more is needed?

11 MR. VIRJEE: Objection. Calls for speculation.
12 Lacks foundation. Incomplete hypothetical.

13 MR. SEFERIAN: Calls for an inadmissible
14 opinion. Assumes facts not in evidence.

15 THE WITNESS: I think we're a lot closer now
16 than we were then.

17 Q. BY MR. JACOBS: And now -- when you say you're
18 "a lot closer now," are you referring to the programs
19 that you referred to earlier, or are you actually
20 referring to outputs in terms of test scores?

21 MR. SEFERIAN: Same objections.

22 Q. BY MR. JACOBS: Or both?

23 MR. VIRJEE: Thank you.

24 THE WITNESS: I would say the ingredients,
25 we're more closer to having the ingredients.

1 closing, what examples come to mind?

2 MR. VIRJEE: Objection. Calls for speculation.
3 Lacks foundation. Calls for an expert opinion. Also
4 vague as to time.

5 THE WITNESS: I don't have anything to add on
6 that.

7 Q. BY MR. JACOBS: You don't have anything to --

8 A. Do I have anything to add on gaps widening?

9 Q. Correct.

10 A. No, I don't have anything.

11 Q. And as you sit here today, you can't think of
12 any gaps that are not closing?

13 MR. SEFERIAN: Objection. Vague and ambiguous
14 as to "gaps." Calls for an inadmissible opinion. Lacks
15 foundation.

16 THE WITNESS: Separate question, and there's
17 not enough data to answer that question because we don't
18 track kids over time.

19 Q. BY MR. JACOBS: This is the issue related to
20 the CSIS, correct?

21 MR. VIRJEE: Objection. Vague and ambiguous as
22 to "issue related to CSIS."

23 THE WITNESS: It is an issue related to the
24 lack of a tracking system, whether it's CSIS or any
25 other tracking system, that is to say, tracking

1 Q. BY MR. JACOBS: And in terms of the gap, were
2 you referring to the achievement gap?

3 A. I was referring to a wide variety of
4 achievement gaps.

5 Q. And do you have an opinion today with reference
6 to whatever achievement gaps you were referring to then
7 whether the gap is closed or wide -- the gaps have
8 closed or widened since then?

9 MR. VIRJEE: Objection. Calls for speculation.
10 Lacks foundation. Calls for an expert opinion.

11 MR. SEFERIAN: Overly broad.

12 THE WITNESS: I think some of the gaps are
13 closing and some are not.

14 Q. BY MR. JACOBS: And the ones that are closing
15 are? What do you have in mind?

16 MR. VIRJEE: Objection. Calls for speculation.
17 Lacks foundation. Calls for an expert opinion.

18 THE WITNESS: For example, percent of English
19 learner scoring above the 50th percentile on the
20 standards and norm-reference test. Just an example.

21 Q. BY MR. JACOBS: Any other examples that come to
22 mind as you sit here?

23 MR. SEFERIAN: Same objections.

24 THE WITNESS: No.

25 Q. BY MR. JACOBS: How about gaps that are not

1 individual student progress over time. The data is
2 compounded by intakes and extakes from the system.
3 Without over-time data, it's very hard to get a good
4 handle on what you're talking about.

5 Q. BY MR. JACOBS: By intakes and extakes in the
6 system, you're referring to?

7 A. Turnover, kids. English learners becoming
8 fluent in English. New kids coming to the system from
9 foreign lands.

10 Q. And by "the system," are you referring to the
11 system as a whole now, or as any particular school or
12 system, both?

13 A. Lots of schools, lots of districts.

14 Q. And in particular with reference to
15 well-trained teachers, aside from the particular
16 programs that you mentioned, do you have any basis for
17 stating whether teacher training has, in fact, improved
18 since you made this statement?

19 MR. VIRJEE: Objection. Vague and ambiguous as
20 to "teachers training." Calls for speculation. Lacks
21 foundation. Calls for an expert opinion.

22 THE WITNESS: I would say that the professional
23 development activities in reading, mathematics and other
24 subjects, at least by our evidence, has produced much
25 better quality of teaching those subjects.

1 Q. BY MR. JACOBS: And the evidence that you're
2 pointing to is what?

3 A. Anecdotal evidence from the University of
4 California.

5 Q. And by "anecdotal evidence," what are you
6 referring to?

7 A. They have a recipient research project going.
8 They don't have all their data, but that's their sense.

9 Q. What are the parameters of that research?

10 MR. VIRJEE: Objection. Calls for speculation.
11 Lacks foundation. Vague and ambiguous as to
12 "parameters."

13 MR. SEFERIAN: Object to the extent it calls
14 for privileged communications.

15 THE WITNESS: Probably better ask them. The
16 law requires them to track the student achievement
17 results of their training in reading and math.

18 Q. BY MR. JACOBS: And who is the "they"?

19 A. University of California, Professional
20 Development Institute.

21 Q. Is there an individual who you're thinking of?

22 A. No.

23 MR. JACOBS: Why don't we take five minutes
24 here.

25 (Recess taken.)

1 THE WITNESS: The quote says --

2 Q. BY MR. JACOBS: The quoted words are, immense
3 savings in capitals. The entire sentence has you saying
4 in substance, the increased interest in year-around
5 programs results from immense savings in capital. Do
6 you see that?

7 A. Yes.

8 Q. And then the sentence goes on to say, by
9 increasing the capacity of existing schools, a district
10 can postpone costly construction of new schools.

11 Do you see that?

12 A. Yes.

13 MR. VIRJEE: Actually, the sentence doesn't go
14 on. That's the next sentence, but that's fine.

15 Q. BY MR. JACOBS: It's still true, is it not,
16 that year-round programs save capital, yes?

17 MR. VIRJEE: Objection. Calls for speculation.

18 Lacks foundation. Incomplete hypothetical. Vague and
19 ambiguous as to "capital." Also overbroad.

20 MR. SEFERIAN: Calls for an inadmissible
21 opinion.

22 THE WITNESS: There are ways that year-round
23 schools save -- can save capital facilities funds. They
24 have other costs and other benefits.

25 Q. BY MR. JACOBS: And the article has you then in

1 MR. JACOBS: I'd like to mark as the next in
2 order Exhibit 243, an article from the Los Angeles Times
3 dated June 16, 1986, headline, year-round programs given
4 high marks for educational continuity.

5 (Exhibit SAD-243 was marked.)

6 Q. BY MR. JACOBS: You're quoted, sir, on the
7 middle of the second page of the printout, page 212,
8 marked in the upper right-hand corner.

9 A. Right.

10 Q. If you look at the beginning of the article,
11 you'll see that there are some comments from various
12 observers about how year-round programs enhance
13 educational quality, and then the article turns to the
14 issue of increasing school capacity right before the
15 phrase "immense savings." Do you see that?

16 A. I do.

17 Q. And then you were quoted as saying that the
18 increased interest -- the quote is, immense savings, in
19 capitals, close quote. The sentence is --

20 MR. VIRJEE: I don't think those are quotes.
21 There is just a single quotation there. Maybe I'm
22 wrong. I think that's intended --

23 MR. JACOBS: No, it's in the sentence itself.

24 MR. VIRJEE: I apologize. I was looking at the
25 title.

1 the next paragraph estimating what it would have taken
2 at the time to -- let me ask you.

3 The article states, the Los Angeles Unified
4 School District, which has placed 93 schools on
5 year-round schedules, needs \$1.5 billion to build enough
6 schools to meet its growth, Mockler said. New schools
7 cost about \$14,000 per student, he said. So every time
8 construction can be avoided through year-round
9 scheduling, quote, you can put that, paren, money, close
10 paren, in the bank, close quote.

11 Do you see that?

12 A. Yes.

13 Q. Probably don't remember the discussion with the
14 reporter that's reflected here, do you?

15 MR. VIRJEE: In 1986?

16 THE WITNESS: No, but it's a bit of a mixed
17 metaphor, I know, just by the numbers.

18 Q. BY MR. JACOBS: That was my question, did you
19 understand you to be commenting at the time about what
20 it would take to build out of year-round schedules, or
21 to meet growth with the continuation of 93 schools on
22 year-around schedules?

23 MR. VIRJEE: Objection. Calls for speculation.

24 Lacks foundation as to what he understood at the time in
25 1986, June 1986.

1 THE WITNESS: How many schools are on
2 year-round does not determine the savings, it's the
3 number of students for whom you do not build a school is
4 the capital savings.

5 The \$14,000 figure refers to the average
6 statewide cost of building a school. It is much lower
7 than the average cost of building a school in Los
8 Angeles at that time, which was about twice that amount.

9 Q. BY MR. JACOBS: And was your estimate of \$1.5
10 billion to build enough schools to meet its growth, was
11 that to meet growth prospectively, or to, in addition,
12 move the 93 schools that were on year-round schedules,
13 at least some of them, off of those schedules?

14 MR. JORDAN: Assumes that was his estimate.

15 MR. VIRJEE: Objection. Calls for speculation.
16 Lacks foundation. Assumes facts not in evidence.

17 THE WITNESS: I recall that it was a discussion
18 in general about managing capacity with the massive
19 increase in number of students, and that one could build
20 schools which would cost "X" amount of money, and
21 depending on where you are, the cost differentials for
22 building a school are immense depending in the main on
23 land costs.

24 So the 93 schools was kind of a -- they sort of
25 weaved in some other information. This was not my

1 referring to you may overstate your capacity, that is to
2 say, you could put too many students on a campus and
3 have negative effects. So while theoretically you can
4 have substantial capacity increases by your
5 configuration, that density, that level of density could
6 cause negative effects. It's like anything else. Too
7 much candy hurts you.

8 Q. BY MR. JACOBS: So when you were referring to
9 the configuration, were you in any way referring to the
10 particular choice of year-round schedule that is
11 adopted?

12 MR. VIRJEE: When he was just referring to
13 configuration, or when he was referring back then?

14 MR. JACOBS: I think it's clear.

15 MR. VIRJEE: Calls for speculation. Lacks
16 foundation. Vague as to time.

17 MR. SEFERIAN: Calls for an inadmissible
18 opinion.

19 THE WITNESS: As I recall, in those years there
20 were multiple types of schedules being used in LA and in
21 other districts, so it was a generic statement about a
22 sound year-round school program.

23 Q. BY MR. JACOBS: And as you sit here -- let me
24 ask you this, what is your -- what work have you done
25 that has given you information about the effects,

1 quote. My quote is LA gets excess capacity in those
2 schools to handle growth. The alternative would be to
3 build those schools, and that would have a cost.

4 Q. BY MR. JACOBS: And your estimate at the time
5 was it would have cost about \$1.5 billion?

6 A. I don't recall that number but that -- you
7 know.

8 Q. You referred earlier to additional benefits and
9 costs that are provided by a move to year-round schools.
10 What did you mean?

11 MR. VIRJEE: Objection. Calls for speculation.
12 Lacks foundation. Incomplete hypothetical. Overbroad,
13 and calls for an expert opinion. Also vague as to time.

14 THE WITNESS: At that time, depending on how
15 you configure the schools, students may have more time
16 in school and more opportunities for intercession,
17 intervention if they're low achieving. The costs
18 include managing a year-round schedule, size and scope
19 issues, capacity, et cetera.

20 Q. BY MR. JACOBS: And when you said depending on
21 the configuration, what were you referring to?

22 MR. VIRJEE: Objection. Calls for speculation.
23 Lacks foundation. Overbroad. Calls for an expert
24 opinion.

25 THE WITNESS: Well, it's only an opinion. I'm

1 positive and negative, of moving toward multi-track
2 year-round schedules?

3 MR. VIRJEE: Objection. Vague and ambiguous as
4 to "work," "done." Vague as to time, and assumes facts
5 not in evidence.

6 THE WITNESS: What do you mean, worked on?

7 Q. BY MR. JACOBS: I take it one way you learned
8 about it was because you represented Los Angeles Unified
9 School District, which was one of the adopters of
10 multi-track year-round schooling, correct?

11 MR. VIRJEE: Objection. Assumes facts not in
12 evidence.

13 You don't have to assume that simply because he
14 takes it that way.

15 THE WITNESS: In that period of time we were
16 advocating that if school districts did go on
17 year-round, that they receive funding based upon the
18 savings that they made to support year-round schools and
19 to build new schools, and that partially was adopted by
20 the legislature.

21 Q. BY MR. JACOBS: And when you say partially
22 adopted, what do you mean?

23 A. The legislature adopted a year-round school
24 incentive program that it never funded in which
25 districts at that time would be receiving a relative,

1 general payment to be used by the district to support
2 the cost of year-round or to build new schools as an
3 incentive to get better capacity use.

4 Q. When you say "never funded," what do you mean?

5 A. The legislature and the governor at that time
6 did not fully fund that which was in the initial law,
7 the proposal.

8 Q. And when you say not fund, how does that work
9 statutorily? And by that I mean, is there some
10 statutory mechanism that is in the law, but something
11 happened so that the money did not flow down through
12 that mechanism?

13 MR. SEFERIAN: Objection. Calls for an
14 inadmissible legal opinion.

15 MR. VIRJEE: Objection. Calls for speculation.
16 Lacks foundation. Calls for a legal opinion.

17 THE WITNESS: The legislature and the governor
18 simply appropriated less money than was needed to fund
19 the incentive and it's prorated.

20 Q. BY MR. JACOBS: The incentive program is in the
21 statute; is that correct?

22 MR. VIRJEE: Objection. Statute speaks for
23 itself.

24 THE WITNESS: Yes.

25 Q. BY MR. JACOBS: And is that true today?

1 MR. VIRJEE: Calls for speculation. Lacks
2 foundation.

3 There's been no evidence that Mr. Mockler was
4 urging anything.

5 THE WITNESS: The suggested formula was based
6 precisely on the cost avoided. Those costs that were
7 avoided were always in dispute. Some chose a statewide
8 average cost, which is disadvantageous to districts with
9 high land costs. Some chose a direct district cost of,
10 for example, land cost and that dispute was there. The
11 funding was there, so we urged full cost reimbursement
12 as we always do.

13 Q. BY MR. JACOBS: And the "we" here is?

14 A. The Los Angeles Unified District on their
15 behalf. And received less than that, as is often the
16 case.

17 Q. And how did you translate avoided capital costs
18 into a year-by-year budget-related formula?

19 MR. VIRJEE: Objection. Calls for speculation.
20 Lacks foundation. Vague and ambiguous as to "you."

21 MR. SEFERIAN: Assumes facts not in evidence.

22 THE WITNESS: Cost-avoided formulas are simply
23 mathematical calculations, the costs that would have
24 incurred had you built a new school, you multiply it by
25 some factor, cost of bond money, if you will, and that's

1 MR. VIRJEE: Same objection.

2 THE WITNESS: A different statute in effect
3 today.

4 Q. BY MR. JACOBS: Does it have a similar
5 mechanism?

6 MR. SEFERIAN: Objection. Vague and ambiguous.
7 Statute speaks for itself.

8 THE WITNESS: "Similar" may be too great a
9 word, but alike a little bit.

10 Q. BY MR. JACOBS: How would you compare and
11 contrast the mechanism that you were referring to from
12 the mid '80s and the mechanism today?

13 A. It's a lesser amount per dollar saved than was
14 originally envisioned.

15 Q. And is that amount fully funded today?

16 MR. VIRJEE: Objection. Vague and ambiguous as
17 to "fully funded."

18 THE WITNESS: No.

19 Q. BY MR. JACOBS: And compared with what you are
20 urging -- can we get a little more concrete.

21 What was the funding level you were urging in
22 the mid '80s?

23 MR. VIRJEE: Objection. Vague and ambiguous as
24 to "funding level" and "you" and "urging."

25 MR. SEFERIAN: Assumes facts not in evidence.

1 your ongoing savings.

2 Q. BY MR. JACOBS: But to translate that into a
3 year-by-year budget allocation, you have to do some sort
4 of amortization or present value calculation?

5 A. Yeah, it's all in the law.

6 Q. And do you remember what the mechanism was?

7 MR. VIRJEE: Objection. Statute speaks for
8 itself. Calls for speculation. Lacks foundation.
9 Calls for an expert opinion.

10 THE WITNESS: I don't know the details.

11 Q. BY MR. JACOBS: Do you recall what the dollar
12 amount per student that LAUSD was proposing at the time
13 would have been?

14 A. No.

15 MR. VIRJEE: Objection. Vague and ambiguous as
16 to "dollar amount per student."

17 MR. SEFERIAN: Assumes facts not in evidence.

18 THE WITNESS: No.

19 Q. BY MR. JACOBS: Roughly?

20 MR. VIRJEE: Same objection. Calls for
21 speculation. Lacks foundation.

22 THE WITNESS: No. The LA position was quite
23 simple. It was do the calculation on what the average
24 cost of the land is and average cost of building and
25 amortize it, we'll take the savings.

1 Q. BY MR. JACOBS: Now, at the time that LAUSD was
2 advocating this position, was the district arguing that
3 this additional money would be needed in order to
4 provide additional resources at the school level to
5 compensate for some of the disadvantages of moving to a
6 year-round schedule?

7 MR. VIRJEE: Objection. Vague and ambiguous as
8 to "disadvantages." Calls for speculation as to what
9 the district may or may not be arguing or advocating.

10 MR. JORDAN: Calls for hearsay without
11 sufficient foundation as to who said what to whom.

12 THE WITNESS: They made many arguments about
13 equity and distribution, relative distributions, costs,
14 ability to use to bond the money to build other
15 facilities. They made many arguments.

16 Q. BY MR. JACOBS: When you say "they," are you
17 including yourself?

18 A. Partially me, with lots of other people.

19 Q. But you were one of the advocates for the LAUSD
20 position, correct?

21 A. I was.

22 Q. When do you recall it becoming clear that
23 the -- strike that.

24 The first thing that happens is that the
25 legislature enacts an incentive program with a formula,

1 THE WITNESS: I don't know. I haven't worked
2 on that kind of stuff for a long time.

3 Q. BY MR. JACOBS: That was actually how we got
4 into this, because I was asking what work you did
5 related to multi-track year-around school.

6 And I take it one answer is, I represented
7 LAUSD on the issue of -- on various issues associated
8 with MTYRE, correct?

9 MR. VIRJEE: Objection. Vague and ambiguous as
10 to "represented."

11 THE WITNESS: There was a period in my life
12 when I represented LA Unified School District on issues
13 involving multi-track year around.

14 Q. BY MR. JACOBS: And were there other
15 assignments that you've had in your professional career
16 that have caused you to look in-depth at MTYRE issues?

17 MR. VIRJEE: Objection. Vague and ambiguous as
18 to cause "to look in-depth."

19 THE WITNESS: No.

20 Q. BY MR. JACOBS: And as you -- in your work with
21 the State Board, have you participated in discussions
22 about the advantages or disadvantages of MTYRE?

23 MR. SEFERIAN: Objection to the extent it calls
24 for privileged communications.

25 MR. VIRJEE: Also vague and ambiguous as to

1 and then subsequently you learned what the appropriation
2 would be, correct?

3 MR. VIRJEE: Objection. Vague and ambiguous as
4 to "enacts," "formula."

5 MR. SEFERIAN: Incomplete hypothetical
6 question.

7 MR. VIRJEE: Also calls for a legal conclusion.
8 Any statute or enactment speaks for itself.

9 THE WITNESS: There were presumed savings and
10 appropriations, and there were changes in the laws,
11 natural and political process. It happened over a long
12 period of time. I can't give you too many specifics
13 about it at this point.

14 Q. BY MR. JACOBS: Do you recall any moment -- any
15 particular point in time in which you realized that
16 LAUSD would not be receiving what it had hoped it would
17 receive for moving to multi-track year-round schedules?

18 MR. VIRJEE: Objection. Calls for speculation
19 as to what LAUSD might have hoped for. Vague and
20 ambiguous. Overbroad, and vague as to time.

21 THE WITNESS: I have no direct recollection.

22 Q. BY MR. JACOBS: And now, the way the statute
23 works today, what is the formula?

24 MR. VIRJEE: Objection. The statute speaks for
25 itself. Calls for a legal conclusion.

1 "discussions."

2 THE WITNESS: No, the State Board has no
3 jurisdiction over school facilities matters.

4 Q. BY MR. JACOBS: And as interim secretary, did
5 you participate in any such discussions?

6 MR. SEFERIAN: Object to the extent it calls
7 for privileged communications.

8 MR. VIRJEE: Also vague and ambiguous as to
9 "such discussions."

10 THE WITNESS: There probably were some
11 discussions. I can't recall many. It was a period of
12 time when -- that fall when a lot of issues around bond
13 issues were being talked about, but I don't recall any
14 specific conversation.

15 Q. BY MR. JACOBS: So, again, now with a view
16 toward closing out how the State might use you at trial,
17 other than the LAUSD involvement, I take it you have no
18 other basis in your knowledge or experience for
19 testifying in detail about MTYRE issues; is that
20 correct?

21 MR. VIRJEE: Objection. Calls for speculation.
22 Lacks foundation. Vague and ambiguous as to MT --
23 whatever the initials are. Multi-year tracking issues.

24 THE WITNESS: I don't understand the question.
25 I think it's vague and general.

1 Q. BY MR. JACOBS: We got a letter from the State
 2 that said you have some substantive working knowledge.
 3 MR. VIRJEE: You didn't get the letter from the
 4 State. Let's be clear, please.
 5 THE WITNESS: What's that?
 6 MR. JACOBS: I'm sorry, we got it from the
 7 state of California, Department of Justice. I think
 8 that's the state.
 9 MR. VIRJEE: If that's the way you meant "the
 10 state," then we can use that definition from now on
 11 then. Whenever you use the word "state," you mean the
 12 Attorney General's office. I'm just seeking to clarify
 13 things.
 14 Q. BY MR. JACOBS: We received a letter actually
 15 from Anthony V. Seferian, deputy attorney general, who
 16 stated that you have some substantive working knowledge
 17 regarding multi-tracking issues.
 18 MR. SEFERIAN: Counsel, I'll represent that was
 19 a letter that I sent and that was based on the
 20 information we have, but I don't think it's fair for you
 21 to question the witness based on a letter that I sent,
 22 and any delving into that would obviously go into
 23 attorney/client communication.
 24 MR. JACOBS: Mr. Seferian, that's absurd.
 25 Q. Let me ask you, sir, do you have any other

1 substantive working knowledge regarding multi-tracking
 2 issues other than that which you've testified to so far?
 3 MR. VIRJEE: Objection. Vague and ambiguous as
 4 to "substantive working knowledge."
 5 MR. SEFERIAN: Calls for an inadmissible legal
 6 opinion.
 7 THE WITNESS: What does that mean, "substantive
 8 working knowledge"?
 9 MR. JACOBS: Maybe Mr. Seferian should tell us
 10 because he wrote it.
 11 MR. VIRJEE: Mr. Seferian is not answering
 12 questions here.
 13 THE WITNESS: What does it mean? Does it mean
 14 have I ever approached the problem for a different
 15 client or a different way or at a different time?
 16 MR. JACOBS: I think, actually, that's what I
 17 was getting at with assignments.
 18 MR. VIRJEE: I think he answered the question.
 19 MR. JACOBS: So, yes, let's take that meaning
 20 of the question.
 21 MR. VIRJEE: Objection. Asked and answered.
 22 He now wants you to answer your own question,
 23 John. That's what you get when you ask questions of
 24 yourself.
 25 THE WITNESS: There were times subsequent to

1 1986 when I knew something about multi-track year-around
 2 funding and how it relates to class size reduction, et
 3 cetera, et cetera, but in the same context for a Los
 4 Angeles school district. But no other independent
 5 research, if that's what you're getting at.
 6 MR. JACOBS: I think that's what I'm getting
 7 at.
 8 Q. One of the issues in the case is whether
 9 multi-track year-around schooling, particularly of the
 10 Concept 6 variety, the extent to which that mechanism
 11 deprives students of educational opportunity.
 12 MR. VIRJEE: You don't have to assume that's an
 13 issue in the case. And I'll object as to vague and
 14 ambiguous as to "deprives" and "educational
 15 opportunity."
 16 Q. BY MR. JACOBS: Do you have any basis for
 17 opining one way or the other on the degree to which
 18 concept 6 multi-tracking affects educational
 19 opportunities?
 20 A. No.
 21 MR. VIRJEE: Objection. Vague and ambiguous as
 22 to "affects" and "multi-tracking," "opportunities."
 23 MR. SEFERIAN: Calls for an inadmissible legal
 24 opinion.
 25 (The deposition concluded at 6:04 p.m.)

1 Please be advised that I have read the foregoing
 2 deposition. I hereby state there are:
 3
 4 (check one) _____ NO CORRECTIONS
 5 _____ CORRECTIONS ATTACHED
 6
 7 _____
 8 Date Signed
 9
 10 _____
 11 JOHN MOCKLER
 12 Case Title: Williams vs State, Volume I
 13 Date of Deposition: Wednesday, January 23, 2002
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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: JOHN MOCKLER, VOLUME I
8 CASE: WILLIAMS VS STATE

9 DATE OF DEPOSITION: WEDNESDAY, JANUARY 23, 2002

10 I, _____, have the following
11 corrections to make to my deposition:

| 12 | 13 | 14 | 15 |
|----|-------|-------|-------------------|
| 16 | PAGE | LINE | CHANGE/ADD/DELETE |
| 17 | _____ | _____ | _____ |
| 18 | _____ | _____ | _____ |
| 19 | _____ | _____ | _____ |
| 20 | _____ | _____ | _____ |
| 21 | _____ | _____ | _____ |
| 22 | _____ | _____ | _____ |
| 23 | _____ | _____ | _____ |
| 24 | _____ | _____ | _____ |

25 _____
JOHN MOCKLER DATE

1 REPORTER'S CERTIFICATE

2
3 I certify that the witness in the foregoing
4 deposition,
5 JOHN MOCKLER,
6 was by me duly sworn to testify the truth, the whole
7 truth, in the within-entitled cause; that said
8 deposition was taken at the time and place therein
9 named; that the testimony of said witness was reported
10 by me, a duly certified shorthand reporter and a
11 disinterested person, and was thereafter transcribed
12 into typewriting.

13 I further certify that I am not of counsel or
14 attorney for either or any of the parties to said cause,
15 nor in any way interested in the outcome of the cause
16 named in said deposition.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 this 4th day of February, 2002.

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23 _____
TRACY LEE MOORELAND, CSR 10397
24 State of California
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