

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiffs,) CASE NO.

vs.) 312236

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

Defendants.) (PAGES 1649-1749)

DEPOSITION OF:

JEANNIE OAKES
THURSDAY, APRIL 10, 2003
9:40 A.M.

REPORTED BY LESLIE A. MAC NEIL
RPR, CSR NO. 7187

1 Deposition of JEANNIE OAKES, the witness, taken on
2 behalf of the Defendants, at 9:40 a.m., Thursday, April
3 10, 2003, at 400 South Hope Street, Los Angeles,
4 California, before LESLIE A. MAC NEIL, RPR, CSR NO.
5 7187.

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13 Auchincloss dated May 30, 2002
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17 82 1741 Seven-page document headed "Research
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7 Jeannie Oakes from Frederick Frelow
8 dated June 20, 2002 bearing the
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10 Associates"
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1 Q. Is there any reason you're not able to give
2 your very best testimony today?
3 A. No.
4 Q. Since we broke yesterday have you spoken to
5 anyone about your deposition?
6 A. Only the briefest conversation when -- with
7 Ms. Fanelli and Mr. Rosenbaum. I spoke with my husband
8 briefly over dinner, and I had a very brief telephone
9 conversation with Jack London this morning.
10 Q. Was anything substantive discussed?
11 A. No.
12 MR. ROSENBAUM: Why don't you explain why you
13 didn't talk to me this morning.
14 BY MR. HERRON:
15 Q. Did you review any documents from the break
16 last night until this morning regarding the deposition
17 or in preparation for it?
18 A. Yes. I reread Professor Russell's report and I
19 read portions of Professor Hakuta's report.
20 Q. Anything else?
21 A. No.
22 Q. Let me guide your attention to page 62 of your
23 report, and specifically Item 3 at the bottom.
24 We are in that portion of your report that
25 talks about building capacity of schools and districts

1 LOS ANGELES, CALIFORNIA;
2 THURSDAY, APRIL 10, 2003, 9:40 A.M.
3

4 JEANNIE OAKES,
5 having been first duly sworn, was
6 examined and testified as follows:
7

8 MR. ROSENBAUM: I just want to put on the
9 record we're starting a few minutes late this morning.
10 It's completely -- well, it's indirectly my fault
11 because my daughter -- her neighborhood school is a
12 concept school, Mr. Herron, and so I take her. And
13 today I took her to the magnet school. Today it took me
14 two and a half hours to get her to that school, but I
15 don't care, much.

16 Okay. That was worth it. Two and a half
17 hours, three freeways.
18

EXAMINATION

19 BY MR. HERRON:
20 Q. Good morning, Dr. Oakes.
21 A. Good morning.
22 Q. Dr. Oakes, are you able to give your very best
23 testimony here today?
24 A. I think so, yes.
25

1 statewide. And your third proposed remedy is collect,
2 analyze and use data to monitor and report regularly the
3 supply and equitable distribution of teachers,
4 instructional materials -- I'm now paraphrasing -- and
5 school facilities.
6 Is that a nonnegotiable minimum?
7 A. First of all I'd like to sort of recast what
8 you said, that this is a third principle that I think
9 needs to be embodied in any set remedies. The first is
10 to set some standard and hold schools to them. The
11 second is to build capacity. And this third one is
12 distinct.
13 Q. Okay.
14 A. It is really about building the capacity of the
15 State in some ways to -- by the regular collection and
16 analysis and reporting of data about the extent to which
17 children are provided with these essentials.
18 And I actually do believe that it's a --
19 nonnegotiable that the State should regularly collect
20 the information that allows it to be aware of the
21 conditions in its schools and that it has a
22 responsibility to report those conditions publicly.
23 Q. You're right, I misspoke. This is the third
24 prong of a specific remedy.
25 A. Well, no, it's the third principle in a set of

1 principles and specific examples.

2 Q. Okay. Very good.

3 Now, at the very bottom of this page 62 you
4 state:

5 "Data collection and analysis can
6 be costly, cumbersome and
7 time-consuming."

8 And then continuing on to page 63:

9 "Even if in the wrong hands
10 coercive."

11 What do you mean by that sentence?

12 A. Well, this sentence really modifies what I said
13 in the previous sentence, that it's difficult for me to
14 imagine any serious opposition to collecting valid and
15 useful information about school conditions, but that I
16 will certainly acknowledge that, like any other policy,
17 it doesn't come free and that it's -- that data, like
18 anything else, is -- shouldn't be considered as -- sort
19 of neutral in itself.

20 Q. Are the current data collection and analysis
21 mechanisms in place in the State of California costly in
22 your view?

23 MR. ROSENBAUM: Vague. Compound.

24 THE WITNESS: You know, costly is always a
25 relative term. What's costly to one person might not be

1 time-consuming?

2 A. Well, certainly the -- the overuse of -- of
3 testing, I think, is burdensome to both teachers and
4 students and can be distracting from the task of
5 teaching and learning, especially if the assessments
6 that are being used don't provide useful diagnostic
7 information to inform teaching and learning.

8 On my recent experience working with the
9 Alternative Assessment Task Force in the Los Angeles
10 Unified School District, at one of the meetings one of
11 the staff members of the district listed on the board
12 the number of tests that were administered by the
13 district and the number of instructional minutes that
14 were consumed by all of those. I think 17 tests was
15 what was listed on the board. And I don't recall the
16 numbers, but it was striking how many hours were
17 actually spent in the collection of data about student
18 learning rather than in the process of student learning
19 itself.

20 So that's just one example of the kind of
21 burden that has to be considered when one is making
22 decisions about what and how much information to
23 collect.

24 Q. How about on-site data collection mechanisms
25 such as CCR or WASC. Are they time-consuming to

1 costly to another. I think of all the things the State
2 does, data collection is one of the cheapest things
3 we've done.

4 BY MR. HERRON:

5 Q. What do you mean in the sentence we've read,
6 that "if in the wrong hands coercive"?

7 A. Well, I think we've seen many instances in
8 history generally that information about human beings
9 irresponsibly used can cause damage.

10 Q. Have you seen that in the educational context?

11 A. No, this was strictly a -- this was not in
12 reference, this was just a general statement.

13 Q. So you've not seen that in the educational
14 context?

15 A. Oh, I -- absolutely, I've seen cases where
16 information has been used in ways that turn out to be
17 harmful.

18 I mean, I think we see that in the current --
19 current use of data in the academic performance index as
20 specified by Professor Russell in his reports, some
21 examples of how incorrect and sometimes harmful
22 decisions are made based on the use of test data for a
23 purpose for which it was not designed.

24 Q. In the context of education and in your
25 opinion, to whom is data collection and analysis

1 students, teachers, schools or districts in any
2 detrimental way?

3 A. Well, I think it depends on the quality of the
4 undertaking. If people are well-trained for the
5 process, if educators enter into the self-study portions
6 of those activities with -- in a spirit of wanting to
7 learn and wanting to improve --

8 Q. Uh-huh.

9 A. -- yes, they're very time-consuming. But they
10 may be a useful way of achieving some improvement goals.

11 Q. You don't consider the self-study portion of
12 CCR or WASC to be necessarily wrong so long as it's
13 conducted in a way that yields useful information?

14 A. I think I've made clear in both this report and
15 certainly in the instructional materials report that I
16 think there's a great deal of potential in the use of
17 self-study as one part of a comprehensive system of data
18 collection and review and monitoring, and that unlike a
19 lot of tests that you fill in the bubbles and never see
20 anything about them again, a process of a self-study
21 accompanied by discussions with trained reviewers and
22 some feedback and perhaps even some intervention can be
23 a very useful process.

24 Q. You mention on page 63, the first full
25 paragraph, "obtaining more comprehensive data

1 collection," and then list a number of sources including
2 CCR, WASC and SARC, S-A-R-C.

3 What improvements, in your opinion, are
4 required to make the CCR process fully effective?

5 MR. ROSENBAUM: Again, David, like yesterday
6 you're welcome to ask this question.

7 I believe, you correct me if I'm wrong,
8 Dr. Oakes, but that you've answered lots of questions
9 about this precise issue in the first deposition.

10 But --

11 THE WITNESS: Well, I agree that I have, but I
12 don't certainly mind repeating that the CCR should go
13 beyond simply the monitoring of the compliance with the
14 strict regulations of state and federal categorical
15 programs to look more comprehensively at the basic
16 conditions, whether the foundations are in place for
17 those programs to operate in compliance as well as
18 whether they're in compliance per se.

19 Currently they're not designed to do that, and
20 so there's no sort of systematic way for these important
21 foundations for the programs to be monitored.

22 BY MR. HERRON:

23 Q. Do you believe that the CCR process could be
24 changed in a way that if -- with feasibly and reasonably
25 obtained classroom level data about teachers,

1 develop some strategies that allow it to collect
2 reliable and valid data about -- the extent to which the
3 essentials are in place for every child and have
4 mechanisms where they can intervene in effective ways
5 when those fundamentals are not in place. I am hopeful
6 that in developing strategies for doing that that the
7 State will consider what the most cost-effective ways of
8 doing that are.

9 Q. You had mentioned that there -- within the CCR
10 process there is a way to collect, quote, strictly
11 local -- I'm sorry -- data on, quote, strictly local
12 issues. What did you mean by that?

13 A. I -- it's not my judgment, of course, that
14 those are strictly local, but they're things that the
15 State, Department of Education, says now that they're
16 strictly local.

17 And I would refer you specifically to the
18 uniform complaint procedure and the instructions that
19 are on -- on the CD web site there's a very interesting
20 PowerPoint presentation that is used to help train
21 people in how to use -- or at least to inform people
22 about the universal complaint procedure. And one of the
23 slides in the PowerPoint presentation talks about local
24 responsibilities and it lists a number of things
25 including staffing, facilities, textbooks and

1 instructional materials and facilities?

2 A. Yes.

3 Q. Would that require massive change from the
4 system as it currently exists?

5 A. I actually think not, that certainly that's not
6 the only thing that I think ought to be in place for
7 data collection, but I think that -- that there -- the
8 things now that are considered strictly local matters
9 could be incorporated into that review process and with
10 better training for those who do the reviews and the
11 use -- the more extensive use of on site reviews.

12 I mean, the number of on-site reviews seems to
13 diminish as time goes on, and where the self-study is
14 considered the only and final report of the CCR, that
15 doesn't seem reasonable to me. But I do think that
16 modifications could be made to it in ways that it could
17 be a useful process.

18 Q. Do you think that those modifications could be
19 done cost-effectively?

20 MR. ROSENBAUM: Vague.

21 BY MR. HERRON:

22 Q. Which is to say that the modifications would
23 not require substantial expenditure beyond current
24 levels for those activities?

25 A. Well, my recommendation is that the State

1 instructional materials and several other things.

2 And the instructions to the Power- -- the
3 person who's presenting the PowerPoint say we, you
4 know -- we get lots of complaints about these things and
5 we always turn them back because the State has no
6 responsibility with regard to these things.

7 So that's my -- the context for my specifying
8 them as things the State sees as strictly local.

9 Q. Okay. Now, you've mentioned WASC, and we're
10 looking now at page 63, first full paragraph. And you
11 state:

12 "Similarly with State training and
13 oversight, the WASC review teams could
14 provide much of the necessary data in
15 its reports and recommendations to
16 trigger State action to solve problems."

17 What do you mean by State training and
18 oversight?

19 A. That the review teams are more thoroughly and
20 carefully prepared to inspect and review and investigate
21 these foundational issues as well as the things that are
22 currently not protocol.

23 Now, their protocols are fairly comprehensive,
24 but the extent to which they're systematically looking
25 at these foundational items is variable if you read the

1 reports.

2 The other issue with WASC is that it's strictly
3 voluntary.

4 Q. It's strictly private as well, isn't it, WASC?

5 A. Well, actually, WASC and the State have sort of
6 a joint agreement, so that high schools -- you know, the
7 focus on learning process that -- is done sort of
8 collaboratively with the State.

9 So, yes, it's private, but there's a
10 quasi-public part to it.

11 Q. Which entity currently selects the review
12 teams, WASC or the State?

13 A. I believe WASC does. But I'm not sure exactly
14 how that procedure goes, especially in the collaborative
15 focus on learning process.

16 Q. What is it that makes you believe that the
17 review teams need to be more thoroughly prepared than
18 they currently are?

19 A. My perusal of their reports and my experience
20 with talking with members of the team and my experience
21 talking with educators who have participated in
22 preparing for WASC visits and reviews.

23 Q. How many reports have you viewed?

24 A. Maybe 20 to 25.

25 Q. Over the years how many educators and

1 general point that's really underlying this statement in
2 the report, and that is that in order for the State to
3 assure itself that it is getting systematic, accurate
4 data that it can use as a trigger for intervention and
5 action, it needs to assure itself and the rest of us
6 that the people who are conducting those reviews are
7 very, very well-trained. And that is a far more
8 important principle here than any specific criticisms of
9 the current training.

10 BY MR. HERRON:

11 Q. Okay. In the second full paragraph on page 63
12 you state -- I'm only taking part of the sentence --

13 "The State must collect data
14 about teachers, textbooks and
15 materials at the classroom level."

16 Why must it collect data at the classroom level
17 in your opinion? "It" being the State.

18 Do you see where I am? Second full paragraph.

19 A. In order for the data to be accurate.

20 For example, if -- if a school had 20 percent
21 of its teachers certified to teach English learners and
22 it had 20 percent of its students English learners. If
23 one only looked at aggregated school data one would have
24 absolutely no way of knowing whether or not the teachers
25 who were prepared to teach English learners were

1 participants in the WASC review process have you talked
2 to? If you're able to give us an estimate.

3 A. Hundreds.

4 Q. Why is it that you believe that the CCR folks
5 conducting the CCR reviews need to be receiving, quote,
6 better training?

7 A. I would say the same -- the same reasons.

8 Q. You've reviewed CCR reports?

9 A. Yes.

10 Q. How many?

11 A. I think I gave an estimate in an earlier
12 deposition. I -- and I may have estimated around --
13 those might have been IIUSP reports, I don't remember,
14 but I -- I review a lot of reports.

15 I may have said something like 10 or 12
16 earlier. And I remember reading the transcript
17 thinking, what, am I crazy, you've read many more than
18 that. So I don't know. But again, somewhere in the --
19 I'd say between 20 and 50.

20 Q. What is it about your review of CCR reports and
21 WASC reports that led you to believe that the
22 individuals conducting those reviews were not properly
23 trained?

24 MR. ROSENBAUM: Asked and answered.

25 THE WITNESS: Well, the -- there's a more

1 actually teaching English learners.

2 If the school had 300 children and it had
3 reported it had 300 children and it reported it had 300
4 mathematics textbooks, without knowing that those books
5 were actually in classrooms being used by children and
6 the right -- children at the right grade level had the
7 right books and that the books were aligned to the
8 standards of that grade level, the State would not have
9 very good information about whether its requirement that
10 all children have appropriate standard space textbooks
11 to use was being fulfilled. So it's a matter of getting
12 data at the level at which you can feel confident about
13 its accuracy.

14 Q. Recency of the data also is important, is it
15 not, in addition to accuracy?

16 A. Certainly it's important that decisions be made
17 on data that is recent enough to be considered an
18 accurate description of what's currently in place, yes.

19 Q. So what is it in your -- what are you
20 contemplating by means of a data collection system that
21 would allow both accurate and recent data to be
22 collected at classroom level?

23 A. I don't have a specific design in mind. I'm
24 just laying out who -- that the requirements are for an
25 adequate system.

1 Q. Are you aware of any state other than
 2 California that has the CCR-type process in place?
 3 MR. ROSENBAUM: Vague.
 4 THE WITNESS: I'm certainly aware that other
 5 states have -- have on-site review processes in place.
 6 Whether they exactly match California's is not something
 7 about which I have detailed information.
 8 BY MR. HERRON:
 9 Q. Right. Whether or not they exactly match
 10 California's CCR process, which states have that type of
 11 mechanism that you're aware of?
 12 A. Well, I believe that both Professor Russell and
 13 I use the State of Rhode Island as an example of a place
 14 that has a very comprehensive on-site data collection
 15 process in place that is used both to monitor conditions
 16 and as the basis for intervention for improvement and
 17 for ongoing capacity building of the schools in that
 18 state.
 19 Q. Do you know how long that's been in place in
 20 Rhode Island?
 21 A. It's been put in place over the last ten to a
 22 dozen years.
 23 Q. What have you done to familiarize yourself with
 24 Rhode Island's mechanism?
 25 A. Well, I've certainly read a great deal about

1 ask. This is a system that's put in place that's
 2 designed to ensure that schools -- that children are
 3 learning in the context of healthy and sufficient
 4 opportunities. And that's what it does. It both
 5 monitors learning and the conditions under which that
 6 learning takes place.
 7 Q. So whether or not that mechanism has a direct
 8 effect on student achievement is unimportant in your
 9 mind?
 10 MR. ROSENBAUM: Mischaracterizes the testimony
 11 and it's vague.
 12 THE WITNESS: The leap between a government's
 13 monitoring system, an oversight system and student
 14 achievement is so great and there's so many intervening
 15 variables that it -- that's simply not a question that I
 16 would either ask or answer in that way.
 17 BY MR. HERRON:
 18 Q. Well, Mr. Earthman did, didn't he?
 19 A. Mr. Earthman?
 20 Q. Yes. Wasn't he the one who said a school
 21 facility's condition has a direct effect on student
 22 achievement?
 23 A. But you asked me about the State's monitoring
 24 and oversight system. You didn't ask me about
 25 improvement in facilities.

1 it. I also happen to be a personal acquaintance of one
 2 of the primary designers of that system.
 3 Q. Have you obtained any information about the
 4 cost to the State of implementing that mechanism?
 5 A. No.
 6 Q. Have you obtained or are you aware of any
 7 information demonstrating whether or not the mechanism
 8 that Rhode Island uses is effective?
 9 A. Yes, I've certainly read a number of reports by
 10 people in Rhode Island, both in the government and at
 11 the universities, who are quite pleased with the -- the
 12 way that the system is helping them ensure quality in
 13 their schools.
 14 Q. Do you happen to recall the title or -- a title
 15 of any of those reports or know where we might be able
 16 to get them?
 17 A. You can call Robert Felner, who's the dean of
 18 the university in Rhode Island, who -- of the Ed School,
 19 who was one of the primary designers of this system and
 20 who has written a number of reviews and reports of what
 21 happened in Rhode Island.
 22 Q. Has implementation of Rhode Island's mechanism
 23 that you've discussed been shown to have any effect on
 24 student achievement?
 25 A. That's not a question that I have or would

1 Q. I'm simply pointing out that some of the
 2 plaintiffs's experts have found that there's a direct
 3 effect on student achievement in their recommendations
 4 to the mechanisms of -- that they're suggesting. Why
 5 wouldn't that be true here as well?
 6 MR. ROSENBAUM: That's your testimony. You
 7 didn't ask a question, David, you embedded it with some
 8 testimony. That's not an appropriate question.
 9 THE WITNESS: The -- the proximity of a factor
 10 to a child engaged in learning enables one to -- to make
 11 those kinds of evaluations. The -- I mean, you could
 12 probably draw some correlations between improved
 13 achievement and a state monitoring system. I think you
 14 would be foolish to draw causal conclusions without a
 15 very complex, sophisticated model that traced the impact
 16 of that monitoring on all sorts of things that
 17 intervene.
 18 Besides, there's a more important principle at
 19 work here. Children deserve safe facilities and
 20 opportunities to learn whether or not it increases their
 21 test scores by a single point.
 22 BY MR. HERRON:
 23 Q. Why is it appropriate for California to look to
 24 Rhode Island as a model for the type of inspection
 25 system California might use?

1 A. First of all, I wouldn't call it necessarily an
 2 inspection system. I think that mischaracterizes what
 3 Rhode Island does.
 4 Second, I am not suggesting that Rhode Island
 5 is a model that California should follow. I'm
 6 suggesting that there are -- that Rhode Island provides
 7 an example of a place that has implemented a
 8 comprehensive system of data collection that allows them
 9 to monitor and intervene, and that at the same time
 10 builds capacity that is very useful for California to
 11 think about as it's designing a system of its own that
 12 should have those same results.
 13 Q. Does the Rhode Island -- do the Rhode Island
 14 inspections occur on an annual basis for all schools?
 15 A. They're on cycles. And I'm not recalling if
 16 you -- I can certainly refer to the details of either my
 17 report or Mr. Russell's report to get the exact timing.
 18 Q. No, that's unnecessary. If you don't recall
 19 that's fine.
 20 Page 63 on the -- concerning the discussion
 21 about teachers, the second full sentence --
 22 MR. ROSENBAUM: Which page, I'm sorry?
 23 MR. HERRON: 63.
 24 MR. ROSENBAUM: Thank you.
 25 BY MR. HERRON:

1 Q. -- states:
 2 "However, the State does not use
 3 these two systems, CBED and CTC, to
 4 provide the type of data or analyses
 5 that policy makers need to anticipate
 6 or to detect problems."
 7 On what do you base that statement?
 8 A. Well, this is a summary of the extensive
 9 discussion about problems in the data systems regarding
 10 teachers that is offered by Professor Darling-Hammond in
 11 her expert report. There's a quote from her following
 12 that -- well, that's actually a quote from the Center
 13 For The Future Teaching and Learning.
 14 Q. Okay.
 15 A. A report that Dr. Darling-Hammond also
 16 reports.
 17 The inability to connect information about
 18 teachers's credentialing status to information about
 19 their current assignments makes it very, very
 20 difficult -- or the credentialing process has records
 21 about teachers, their history, their credentialing
 22 history that are very, very useful to predict the
 23 supply -- questions that predict elements of the supply
 24 and demand of teachers that are not possible to relate
 25 to CBEDs, which is cross-sectional data that doesn't

1 allow any of that longitudinal look at the teacher work
 2 force.
 3 I mean, this is discussed in detail --
 4 Q. Sure.
 5 A. -- in Professor Darling-Hammond's report.
 6 Q. Let's look at page 64, and specifically that
 7 portion that discusses textbooks, Item B.
 8 Your suggestion or proposed remedy here is
 9 strengthening and enforcing the current requirements of
 10 the instructional materials funding program.
 11 A. I'm suggesting -- is that a question, by the
 12 way?
 13 Q. No, no. I'm raising that and I'm just actually
 14 stopping to think whether or not your suggestions aren't
 15 set forth below. I'm just not sure.
 16 Are they? Is what you're suggesting stated in
 17 this paragraph?
 18 A. This paragraph certainly makes the general
 19 suggestion that one way to improve the accuracy of the
 20 data or to improve -- or to get data about the supply
 21 and quality of textbooks would be to strengthen the
 22 reporting requirements and -- in the instructional
 23 materials funding program. I don't specify any examples
 24 of how that might be done.
 25 Q. Do you have any opinion as you sit here today

1 how that might be done?
 2 A. I think there needs to be greater oversight and
 3 enforcement of the -- and perhaps some reworking -- I
 4 haven't thought through specifically what mechanisms
 5 could be done. It's simply given as an example of
 6 something the State already has in place that could be
 7 used in an efficient way to collect reliable and valid
 8 data about the supply and quality of textbooks.
 9 It certainly would not satisfy the requirement
 10 that it be collected at the classroom level in the
 11 current form that it is, but it could be modified in
 12 that way, for example.
 13 Q. What you're referring to in terms of the
 14 current mechanism is Section 60119; is that correct?
 15 A. Yes.
 16 Q. Are you aware of any other state that has a
 17 similar provision requiring certification of adequacy of
 18 textbooks at the district level?
 19 MR. ROSENBAUM: That's vague. And again,
 20 you're welcome to ask this, Dave, but you went into this
 21 in some length in her earlier deposition.
 22 THE WITNESS: I know in my report on textbooks
 23 and instructional materials I give some examples of
 24 states that have used a variety of strategy including
 25 annual reports of the availability of the supply and

1 quality of textbooks.
 2 BY MR. HERRON:
 3 Q. Is what you know on that topic set forth in
 4 your instructional materials report?
 5 A. I probably know more about it than is in that
 6 report, but that's certainly the source I would turn you
 7 to as the first place to go if you wanted to learn more
 8 about that.
 9 Q. The major points are there?
 10 MR. ROSENBAUM: Vague.
 11 THE WITNESS: Probably. But I'm -- I can't say
 12 that I wouldn't think of something else.
 13 BY MR. HERRON:
 14 Q. All right.
 15 MR. ROSENBAUM: Nice try.
 16 MR. HERRON: Yes. I mean, it's like, you know,
 17 herding cats.
 18 Q. Let's talk about facilities since I'm not a cat
 19 herder.
 20 Now --
 21 MR. ROSENBAUM: A purr-fect question.
 22 MR. HERRON: At least we're going to have fun
 23 today. That is a notable change.
 24 MR. ROSENBAUM: But if you come back down here
 25 I go back to the other objections.

1 MR. HERRON: Oh, no, no, not a chance.
 2 BY MR. HERRON:
 3 Q. Concerning facilities, here on page 64 you
 4 state that comprehensive, accurate and useful data about
 5 facilities requires on-site inspections.
 6 Is that a nonnegotiable minimum in your view?
 7 A. I think that some -- that whatever data
 8 collection system the State devises should include some
 9 sort of on-site inspection, yes.
 10 Q. And when you're determining that form of
 11 on-site inspection why couldn't it be conducted by the
 12 districts themselves?
 13 A. Oh, it certainly could be if it were under the
 14 direction of the State and with considerable State
 15 oversight and -- although it's sort of like asking the
 16 fox to guard the chicken coop, right, or the hen house.
 17 It would be useful, as we do with restaurants
 18 and smog devices and other sorts of things in the State
 19 that we care about the condition of, to have some
 20 outside person participate in that process.
 21 Q. Do you -- are you aware what any district in
 22 the State of California now does in terms of its own
 23 on-site inspections of its school facilities?
 24 A. Well, I certainly know what happens in Compton
 25 because that's been well-documented and publicized.

1 Q. Sure. Other than Compton?
 2 A. Well, I only -- no, I'd have to say I'm not
 3 familiar with the details of local inspection processes.
 4 Q. You referred to the Myers report and an
 5 inventory system in this paragraph, the one beginning
 6 with see -- "See facilities." And it -- the last full
 7 sentence states:
 8 "Once a data gathering system has
 9 been established as described above,
 10 then the State working with the local
 11 districts can identify and prioritize
 12 those districts and specifically the
 13 buildings that are the top priorities
 14 for funding."
 15 Is the end goal of the recommended inventory
 16 that the State will decide what buildings get funded
 17 first?
 18 A. They -- I think we discussed this at some
 19 length yesterday, and I would refer you back to that.
 20 But I will say again that clearly what
 21 Dr. Myers is suggesting, and I think it is probably
 22 wise, is some sort of negotiated dialogic process
 23 between the State and districts based on really good
 24 data.
 25 Certainly the State needs to be involved in

1 that process because districts can certainly be expected
 2 to lobby and advocate strongly that their needs are the
 3 greatest and they should be the top priority. And you
 4 can't blame them for that. But the State has the
 5 responsibility to be the arbiter.
 6 Q. Why shouldn't we just rely on districts to seek
 7 money when they have facilities needs? What's wrong
 8 with that?
 9 MR. ROSENBAUM: It's been asked and answered.
 10 THE WITNESS: It's the State's responsibility
 11 to make sure that every child has adequate and equitable
 12 opportunities to attend safe and healthy schools and
 13 needs to have a hand in making sure that happens.
 14 BY MR. HERRON:
 15 Q. But if the State defers that responsibility to
 16 the districts, why shouldn't it rely on the districts to
 17 carry it out?
 18 MR. ROSENBAUM: Same objection.
 19 THE WITNESS: My belief is the State can't
 20 ultimately defer its responsibility, that it needs to be
 21 engaged in proactive ways as well as reactive ways to
 22 ensure that children have safe and healthy and uncrowded
 23 schools.
 24 BY MR. HERRON:
 25 Q. Upon what do you base that opinion?

1 A. Common sense, years of experience, knowledge of
2 how systems work, how districts seek resources, and
3 unfortunately how sometimes there's neglect at the local
4 level.

5 Q. Do you acknowledge that the State has created
6 political subdivisions in districts and referred to them
7 with authority regarding their own facilities in certain
8 respects?

9 A. Well, certainly they've delegated their
10 responsibility to implement policies of the State
11 locally. And -- and I think that's fine if that's how
12 the State chooses to do it, but the State needs to be
13 engaged enough to ensure itself that standards of
14 adequacy and equity are being met.

15 Q. And in your view, only by instituting an
16 inventory system in which the State is intimately
17 involved will that be achieved?

18 A. I think a statewide inventory of the conditions
19 of school building is an essential part of a responsible
20 State oversight system, yes.

21 Q. The last paragraph on page 64, which continues
22 over on to 65 of your report, it talks about the Corley
23 and the Myers reports and also identifies Illinois and
24 Maryland as having, what, inventory systems or
25 inspection systems?

1 A. Well, I certainly rely on the expertise of
2 Mr. Corley and Dr. Myers in offering them as examples
3 of -- of -- of systems that could be of use to
4 California. So that's the basis for my citing them here
5 in this report.

6 Q. Are you aware whether Mr. Corley or Ms. Myers
7 have conducted any review, research or analysis to
8 determine whether or not the Illinois or Maryland
9 programs have been successful?

10 A. Well, my -- I am quite confident that they are
11 using them as examples, is a product of their analysis.

12 Q. Are you aware of whether either Mr. Corley or
13 Ms. Myers have reviewed the Illinois and Maryland
14 programs to determine what the cost of those programs
15 was to the respective states?

16 A. I have no knowledge of what they've done
17 regarding costs.

18 Q. Let's turn to the top of page 65.

19 What is Item 4 there meant to be?

20 A. Well, Item 4 simply states the principle that
21 oversight and intervention need to be a part of the
22 State's responsibility to ensure adequacy and equity in
23 the conditions that we've been discussing. And
24 essentially data is a critical part of doing that, but
25 it is not the only part, that data needs to be used as a

1 Why are they identified, Illinois and Maryland?

2 A. Illinois and Maryland provide examples -- I
3 believe if you look back to the first paragraph in C --

4 Q. Sure.

5 A. -- that I recommend not only a data gathering
6 system but -- that's established, but then some sort of
7 ongoing updating of that inventory and the records about
8 schools. And that can be done through an inspection and
9 monitoring process.

10 And again, Illinois and Maryland are offered by
11 Dr. Myers and Mr. Corley as examples that California
12 might want to look to as it is establishing a systematic
13 data collection system and -- about its own schools.

14 Q. Are you aware of states other than Illinois and
15 Maryland that have implemented a data collection program
16 of the type discussed here on page 64?

17 A. You know, I would have to refer to their
18 reports. I know I pulled these examples from their
19 reports because they appear to be interesting and
20 compelling to me. They may have provided other examples
21 which would -- or that the -- the -- that I certainly
22 have been familiar with but don't recall at the moment.

23 Q. Okay. Now, have you obtained or reviewed any
24 data indicating whether the Illinois program has been
25 successful?

1 trigger for action when action is warranted.

2 Q. Item 4 reads, "Develop and use" -- I'm on
3 page 65.

4 "Develop and use effective
5 strategies of State oversight and
6 intervention whenever problems related
7 to students's access to teachers,
8 instructional materials and facilities
9 in poor condition."

10 A. It must -- certainly there's a little bit left
11 off.

12 Q. "Exist"?

13 A. It should say "poor conditions appear or
14 occur."

15 Q. Okay. Now, are the items below -- the text
16 below No. 4 is:

17 "...to provide various examples
18 of possible programs the State could
19 consider and adopt, or indeed ways the
20 State could enhance its existing
21 programs."

22 A. Well, it actually is about both. It is --
23 again, reiterates that improved data systems could serve
24 as triggers for intervention and assistance.

25 It also suggests that the current programs in

1 place could be improved immediately without waiting
2 until we have a complete, accurate, valid and reliable
3 data system, a complaint system that certainly goes
4 beyond the uniform complaint procedures now in place.

5 Q. Uh-huh.

6 A. And then it elaborates further in --
7 summarizing in a very cursory way the extensive and
8 quite useful critique Professor Mintrop makes of the
9 current IIUSP program which is meant to provide
10 intervention and support to schools that are in
11 trouble.

12 Q. Right.

13 A. I think that -- I certainly refer to the report
14 for a complete rendering of what it says, but I think
15 that's a brief overview.

16 Q. The second full paragraph on page 65 beginning
17 "And obvious."

18 A. Yes.

19 Q. Is it your point that there simply is not a
20 complaint mechanism currently in place by which the
21 State can receive and respond to complaints?

22 A. Well, I think as I explained earlier --

23 Q. That's why I'm saying that. I want to get by
24 it if you have already testified in full about that.

25 A. I have.

1 that's certainly to be applauded. However, the program
2 is -- is flawed by many things that could be fixed.

3 Q. The program is sufficiently good that you
4 are -- and Mr. Mintrop are recommending that it's
5 mandatory for all schools in the lowest API deciles;
6 correct?

7 A. I think neither of us would say that it should
8 be mandatory in the current form and all the specifics
9 it now has. But the notion of the State intervening and
10 helping when a school is in trouble should be one that
11 the State insists upon rather than saying, gee, all of
12 our data say you're in a terrible condition. If you'd
13 like some help we're happy to give it, but if you don't
14 want it that's fine too. I mean, that's the spirit of
15 what's being said here.

16 Q. Right. And the major points about how you
17 would improve the IIUSP program are set forth in either
18 this report or your instructional materials report?

19 A. And in Professor Mintrop's report, and I think
20 Professor Russell speaks to it. Several of the experts
21 talk about ways of strengthening -- Professor Grubb's
22 report.

23 Professor Huerta I think gave a deposition
24 about -- a number of us have looked at the IIUSP and are
25 enthused by the idea of intervention and have some

1 Q. Fine.

2 A. And I think the limitations systems are clear
3 in the materials that the Department of Education makes
4 publicly available.

5 Q. As you noted earlier and as you note here on
6 page 65 spilling on to 66, Mr. Mintrop is recommending
7 that the State make the IIUSP mandatory for schools in
8 the lowest API deciles.

9 What are the -- in your opinion, what are the
10 positive aspects, the beneficial effects of the IIUSP as
11 presently constituted?

12 A. I think earlier in this report --

13 Q. Uh-huh.

14 A. -- and I believe beginning on page 39 and
15 continuing --

16 Q. Okay.

17 A. -- I talk about my concerns and some of the
18 potential that now characterize the State's current
19 oversight and intervention programs.

20 Specifically starting on page 33 I have a
21 little bit on the IIUSP program. I may not say it here,
22 I may say it in the instructional materials report, but
23 I recall at some point saying that I think that the
24 State's recognition and -- of the need to provide
25 assistance to low performing schools is a good one, and

1 serious concerns about the current form of it.

2 Q. Did any of the experts do an analysis of how
3 much it would cost the State to make the IIUSP mandatory
4 for schools with the lowest API deciles?

5 A. They may have. I only know of what they've
6 done in that regard by what they've written about in
7 their reports.

8 Q. You have not conducted such a financial
9 analysis?

10 A. No.

11 Q. Do you know whether there have been any
12 proposals in the legislature within the last three years
13 to expand the IIUSP program to make it mandatory for
14 schools in the lowest API deciles?

15 A. You know, I'm not recalling the specifics.

16 Senator Vasconellos and --

17 Q. You're going to have to spell that later.

18 A. Vasconellos?

19 Q. Yes.

20 A. Two Ls.

21 -- and -- worked together with a republican I'm
22 not remembering to develop the high priority schools
23 grants program which was to provide a stronger program
24 for the very lowest scoring schools. Frankly, I don't
25 recall the specific language.

1 Q. Okay. Let's look at the top of page 66.
2 Is -- are the suggestions here that one of the
3 improvements to IIUSP should be that you should have a,
4 as you say, cadre of fully trained and accredited
5 evaluators for the IIUSP program?

6 A. Well, I think with Professor Mintrop this is a
7 suggestion of something that could be done. I think
8 it's -- it's a condition if -- that the State chooses to
9 use this form of intervention of having external
10 evaluators, that it should ensure that these evaluators
11 are very well-prepared and competent to really assist
12 the schools.

13 Q. In your opinion are the current external
14 evaluators being used in the IIUSP program deficient,
15 not fully trained?

16 A. I think there is a great deal of variation, as
17 both Professor Mintrop writes and others of us have
18 written, and other studies of the process.

19 Laura Goe, for example, who is the co-author
20 with Professor Grubb of one of the reports, has done an
21 extensive study of IIUSP, and one of her findings from
22 that study is that there's extraordinary variation in
23 the quality and the preparation of the evaluators and
24 that it's a serious problem that needs to be attended
25 to.

1 A. I believe these principles are essential to a
2 system that ensures that.

3 Q. When you say these principles are you talking
4 about the four bullet points that are set forth on
5 page 66 through 67 and as explained more fully
6 thereafter?

7 A. I think there are five bullet points.

8 Q. Five bullet points, I'm sorry.

9 A. And -- yes, for me it is my professional
10 opinion that these five principles -- enacting these
11 five principles provides the very best hope for a system
12 that would ensure a basic education for all students.

13 Q. And these are the nonnegotiable minimums, these
14 five bullet point standards?

15 MR. ROSENBAUM: Asked and answered.

16 THE WITNESS: They're essential principles.
17 That's for me a far better way of framing what they
18 are.

19 BY MR. HERRON:

20 Q. Okay. What does systemic change mean or
21 systemic reform mean to you in terms of what you're
22 writing here?

23 A. Systemic means that it alters basic structures
24 of the system rather than simply treating particular
25 deficiencies in the -- the actual conditions that --

1 Q. Let's turn to systemic remedies. I think that
2 you set those forth from pages 66 through 71 of your
3 report, but let's start at page 66 under Item B which
4 states "systemic remedies to prevent, detect and correct
5 the inadequacies and disparities."

6 Now, this paragraph under Item B in 66 has a
7 number of statements, that there are, quote, deep
8 systemic problems, that the conditions that are the
9 subject of this litigation require systemic reform that
10 recognizes and corrects for structural impediments.

11 Are the systemic remedies that you're proposing
12 in -- from pages 66 through 71 nonnegotiable minimums?

13 A. They -- again, what's presented here are a set
14 of principles that should guide a systemic reform of the
15 State's education system.

16 I think the principles are nonnegotiable. I
17 think these are essential elements of a system that
18 would function well. The specifics are certainly
19 matters for decision making among experts and policy
20 makers and the public about how best in California to
21 accomplish these principles.

22 Q. Following the principles that you set forth in
23 your report are the systemic changes proposed essential
24 to assure that children receive basic education in
25 California, in your opinion?

1 that -- as I detailed at length earlier in this report
2 there's a whole history --

3 Q. Sure.

4 A. -- and development of a governance and system,
5 and a funding system that have not served the State
6 well. And my concern is that without fundamental
7 changes in those governance structures and in the
8 funding structure, which includes these five bullet
9 points --

10 Q. Uh-huh.

11 A. -- that we would be unlikely to arrive at a
12 solution that did anything more than a -- a superficial
13 and probably temporary kind of fix.

14 Q. Do you consider the suggestions you're making
15 for systemic change to be designed to create a paradigm
16 shift in how education is delivered in California?

17 MR. ROSENBAUM: Vague.

18 THE WITNESS: Well, I -- I would never use the
19 word "paradigm shift." I think it's much overused and
20 gone way beyond what Kuhn ever intended it to be used
21 for. But it certainly would create a funding --

22 MR. ROSENBAUM: Nice try, though, Dave.

23 MR. HERRON: Again, I can only herd so well.
24 Go ahead.

25 THE WITNESS: I think it would create

1 fundamental changes which I think are required.
 2 BY MR. HERRON:
 3 Q. Okay.
 4 A. It's K-u-h-n, by the way.
 5 MR. ROSENBAUM: Actually the one David was
 6 using was a different Kuhn, but that's okay.
 7 MR. HERRON: No, now that's -- no, no, no,
 8 huh-uh.
 9 MR. HAJELA: When it is a good time can we take
 10 five minutes?
 11 MR. HERRON: Sure.
 12 MR. ROSENBAUM: Thank you.
 13 (Recess taken.)
 14 BY MR. HERRON:
 15 Q. Do you believe that the systemic
 16 recommendations you're proposing on pages 66 through 71
 17 of your report would be disruptive --
 18 MR. ROSENBAUM: Vague. I'm sorry.
 19 BY MR. HERRON:
 20 Q. -- to the educational program currently in
 21 place?
 22 MR. ROSENBAUM: Same objection.
 23 THE WITNESS: It's -- disruptive is quite a
 24 loaded word and I think it would change much of what
 25 currently takes place in the governance and the mode of

1 funding.
 2 I would trust that California officials could
 3 design ways to make those changes that would not be
 4 disruptive in a negative sense to the -- the teaching
 5 and learning.
 6 BY MR. HERRON:
 7 Q. Have you read any studies about how volatile --
 8 how frequent policy shifts in any particular arena,
 9 education, environment, transportation, are detrimental?
 10 A. Well, I think that that's exactly one of the
 11 major problems that we see in the way California is
 12 currently now structured, yes. It's known to be a
 13 problem, and that's a characteristic of California's
 14 education system.
 15 Part of the purpose behind these principles is
 16 to establish certainly more coherence and stability in
 17 the system.
 18 Q. Are the elements of the systemic remedies that
 19 you're proposing -- elements of the systemic remedy
 20 you're proposing all set forth in your report?
 21 A. This is a very brief overview of some
 22 fundamental ideas that have been described in much
 23 greater length by me and by many other scholars in many
 24 other places. So I would have to say no, this is not a
 25 comprehensive treatment of these ideas.

1 Q. Are there any fundamental principles essential
 2 to the systemic reform you think ought to take place
 3 that are not referenced in your report?
 4 MR. ROSENBAUM: Vague.
 5 THE WITNESS: Well, I would never, as a
 6 scholar, be confined to what I wrote at any one
 7 particular moment and not allow for the possibility that
 8 upon further reflection and study there might be further
 9 refinement of these ideas.
 10 BY MR. HERRON:
 11 Q. That's understood. But is there anything major
 12 as you sit here today that comes to mind that is not
 13 contained -- by major I mean major fundamental
 14 policies -- that's not contained in your report?
 15 MR. ROSENBAUM: Same objection.
 16 THE WITNESS: This is a set of principles to
 17 guide the development of policy. I think these five
 18 principles set forth here provide a very comprehensive
 19 and helpful set of guidelines for the developing of
 20 specific policies and ideas. There's no effort here or
 21 no claim that this -- these five pages or four pages
 22 contain all of the policy recommendations that I would
 23 make.
 24 BY MR. HERRON:
 25 Q. Right. Let's talk about the bullet point -- I

1 guess summaries of the guiding principles.
 2 And specifically beginning on the bottom of
 3 page 66, the first bullet point states:
 4 "State standards that specify the
 5 resources and conditions that are
 6 minimally required for teaching and
 7 learning and that the State considers
 8 necessary prerequisites to achieving
 9 the State's content and performance
 10 standards."
 11 Whether or not California should do that is
 12 hotly debated, is it not?
 13 MR. ROSENBAUM: That's vague.
 14 THE WITNESS: It certainly has been a matter of
 15 discussion. Right now it happens to be a strong
 16 recommendation of the -- in the California master plan
 17 that's been adopted by the legislature.
 18 BY MR. HERRON:
 19 Q. Is there anyone in the legislature that you
 20 know of that opposes implementing this type of systemic
 21 reform we've just identified?
 22 A. There may be. I'm not familiar with the views
 23 on this topic of every legislator.
 24 Q. Are there any academics who suggest, as far as
 25 you're aware, that imposing this sort of systemic reform

1 is misguided?

2 A. Yes.

3 Q. Who, if you have names?

4 A. Well, I'm not -- actually, I'm not certain I
5 can recall anyone who has made an explicit statement in
6 opposition to this particular formulation of this
7 recommendation.

8 Q. The second bullet points states:

9 "A school funding system based on
10 the actual cost of providing a central
11 resources and conditions with
12 adjustments for cost differences in
13 schools serving different communities
14 and students."

15 Is there any debate about whether or not that's
16 an appropriate systemic reform for California that
17 you're aware of?

18 A. Actually, I'm not aware of -- again, of much
19 opposition to this principle.

20 And this is also a major recommendation of
21 the -- the master plan that's just been passed by the
22 legislature. It's, certainly as Professor Grubb and
23 Goe, Laura Goe, describe in their paper, certainly
24 the -- kind of current best thinking among scholars of
25 school finance about how state funding systems should be

1 BY MR. HERRON:

2 Q. On page 67, Item 1, you deal more specifically
3 with the first of the fundamental principles, and that
4 is, "State standards that specify the resources and
5 conditions," and then it continues on from that.

6 Have you set forth in your report the major
7 problems experienced by California that suggest this
8 systemic change is warranted?

9 The reason I ask that is if you say yes, I'm
10 not going to ask you any questions. If you say no, I'm
11 going to ask you what's wrong with California.

12 MR. HAJELA: What if I say yes?

13 THE WITNESS: I think the scope of this report
14 and all the other reports that underlie this report
15 provide ample analysis and data and evidence of the
16 problems that certainly warrant this principle.

17 BY MR. HERRON:

18 Q. What other states in the United States --

19 MR. ROSENBAUM: The record should reflect the
20 door to this room is locked and Mr. Herron has the key
21 and predicates certain answers upon unlocking the door.

22 MR. HERRON: And the light bulb has been
23 dangling down from the ceiling as well. Things are
24 getting rough.

25 Q. Okay. Back to seriousness.

1 structured.

2 Q. Are you aware of whether any academics have a
3 view that suggests that a school funding system as set
4 forth in bullet point 2 is inappropriate for
5 implementation?

6 MR. ROSENBAUM: Vague.

7 THE WITNESS: There certainly may be. I'm not
8 familiar with, again, a particular academic writing that
9 attacks this principle as it's stated here.

10 BY MR. HERRON:

11 Q. There are on the top of page 67 three
12 additional bullet points, one talking about an expanded
13 data accountability system; two, unambiguous lines of
14 state, regional and district responsibility; and three,
15 an accountability system that is reciprocal.

16 Do you know whether or not there's debate over
17 the form these types of remedies ought to take?

18 MR. ROSENBAUM: It's compound.

19 THE WITNESS: Again, I think there's been
20 considerable discussion. I elaborate in some detail in
21 the middle section of this report about the debate about
22 whether accountability systems should include measures
23 of the context or inputs as well as outcomes, and there
24 certainly has been a lot of lively discussion about
25 that.

1 What other states are you aware of, Dr. Oakes,
2 that have specified standards for the resources and
3 conditions that are minimally required for teaching and
4 learning and that that state considers necessary
5 prerequisites to achieving the state's content --

6 MR. ROSENBAUM: Asked and answered.

7 BY MR. HERRON:

8 Q. -- and performance standards?

9 MR. ROSENBAUM: I'm sorry. Asked and answered
10 and compound.

11 THE WITNESS: I think that much of what I've
12 provided in earlier testimony and certainly the -- this
13 report and all of the expert reports on which it relies
14 provide numerous examples of states that have standards
15 for one or more of the -- the elements that we've been
16 talking about and that I specify here.

17 BY MR. HERRON:

18 Q. Is there any one state that specifies standards
19 for qualified teachers, proper instructional materials
20 and adequate uncrowded facilities that you're aware of?

21 MR. ROSENBAUM: Same objections.

22 THE WITNESS: Various states -- I mean, there's
23 an enormous variation in what states require. I -- and
24 what they have standards for. And, you know, I'm -- I'm
25 actually not prepared -- I'd need more information to --

1 I've not done that analysis. It would be an interesting
2 one to do.

3 BY MR. HERRON:

4 Q. Let's discuss Item 2 on page 67.

5 This is a school funding system based on the
6 actual cost to providing essential resources and
7 conditions with adjustments for cost differences in
8 schools serving different communities and students.

9 This is the system that is discussed largely in
10 the Grubb and Goe report and testified to by Dr. Huerta?

11 A. Yes. It's also discussed in lots of literature
12 on school finance that -- most of which is referenced in
13 the Grubb and Goe paper.

14 Q. This -- your report talks about a two-stage
15 process in the second to last line on page 67 and in the
16 first two lines on page 68 and describes this two-stage
17 process as follows:

18 "It's first necessary to ascertain
19 those practices and instructional
20 conditions within schools and
21 classrooms that enhance learning, then
22 it is necessary to out-gate resources
23 to those practices rather than
24 ineffective uses."

25 Who is involved in each of those steps or who

1 legislation actually authorizing this commission in
2 California was passed last summer. It -- based on the
3 recommendation of the California -- it came out of the
4 California master plan process -- suggests that the
5 commission could have a report within 12 months. That
6 may be pretty speedy.

7 The -- and I don't -- and I don't have a
8 considered judgment about the time that it would be
9 required to restructure the funding system accordingly
10 and to make sure allocations were in place.

11 Q. We talked earlier about Oregon. Was the Oregon
12 system simply one that did -- predicted the actual cost
13 of textbooks?

14 A. No. As I describe earlier in the report, the
15 Oregon system developed models at the elementary, middle
16 and senior high school level of what at least it
17 believed in the context of Oregon's obligations
18 constituted the essential elements which -- I may be
19 able to find it, actually -- of adequate schooling,
20 including but certainly going beyond textbooks and
21 materials.

22 Q. Okay.

23 A. It's fully detailed on the -- they have a very
24 elaborate web page that spells it all out.

25 Q. Okay. Great.

1 do you recommend should be involved in each of those
2 steps?

3 A. Well, I provide one example. There may be many
4 ways of doing that.

5 The example that I provide is one that was used
6 in Oregon and actually one that is about to -- at least
7 may be launched in California, and that is to have a
8 commission of appointees based on their expertise and
9 range of experience to -- supported by a great deal of
10 research and expertise to specify the specific elements
11 that would meet the requirement that all children --
12 that all schools provide children with a sound,
13 fundamental education, and then to determine the costs
14 of those things.

15 And then it would probably require some
16 legislative action or some regulatory process to ensure
17 that the funds are allocated and they flow to those
18 elements of the model that's been determined through
19 this process.

20 Q. Do you have any -- whoops. Sorry.

21 A. This is an example that I provide of how it's
22 been done other places and could be done in California.

23 Q. Do you have any estimate of how long it would
24 take to complete this two-stage process in California?

25 A. Well, certainly the first stage, the

1 Have you done any assessment to determine
2 whether that implementation in Oregon of its system of
3 the like you're recommending here has been effective?

4 MR. ROSENBAUM: Vague.

5 THE WITNESS: Well, actually, Oregon has yet to
6 fully implement its model.

7 BY MR. HERRON:

8 Q. Has Oregon been able to fund education to the
9 level required by the model it developed?

10 A. Well, the implementation process is still in --
11 in -- in process. My understanding is that the current
12 budget crisis has stalled that process. I don't know
13 that there are any plans to abandon it.

14 Q. Is there any state other than Oregon, as far as
15 you know, that has implemented a school funding system
16 based on actual costs as recommended in Item 2 on
17 page 67?

18 A. Well, there are other states that have this
19 process underway. Maryland is looked to as a -- a place
20 that's -- that has this in process and has a commission
21 and has been widely held as the beginning of a very
22 useful and -- process. I'm not sure exactly where they
23 are in implementation.

24 Wyoming has a similar -- you know, somewhat
25 similar process. There are a number -- I think the

1 Grubb and Goe report and -- certainly references some of
 2 these.
 3 Q. You're not aware whether or not Maryland has
 4 fully implemented its system?
 5 A. I don't know if it's been fully implemented.
 6 Q. How about Wyoming?
 7 A. I don't know where they are in the
 8 implementation process.
 9 Q. Didn't Grubb and Goe state explicitly that this
 10 new approach to school finance that they're recommending
 11 has not been tried anywhere?
 12 A. I'd want to look back at the specifics of their
 13 discussion of that and -- if you'd like me to look at
 14 their report so I can see what they said and the context
 15 in which they said it.
 16 Q. Well --
 17 A. I don't want to depend on my memory.
 18 Q. Okay. For our purposes are you aware whether
 19 in any state a school funding system based on the actual
 20 cost of providing essential resources and conditions has
 21 been fully implemented?
 22 A. Not as I sit here today, I can't recall the
 23 details of where states are in the implementation
 24 process.
 25 Q. Is this any reason to believe that

1 do that, but I would refer you to his report.
 2 BY MR. HERRON:
 3 Q. Very good.
 4 On page 68, the first full paragraph, the one
 5 beginning "For example," I'd like to draw your attention
 6 to the -- and you should take a chance to look at that
 7 paragraph if you'd like, but I'd like to talk about the
 8 last sentence in that first full paragraph on 68.
 9 A. All right.
 10 Q. That last sentence reads:
 11 "That means that the State must
 12 provide differing levels of resources
 13 when needed to attain an equitable
 14 education for students with differing
 15 circumstances."
 16 What does that mean precisely?
 17 A. It means that the -- the foundational elements
 18 such as well-qualified teachers, high quality textbooks
 19 and materials in sufficient supply, and clean, safe,
 20 uncrowded facilities in order to meet the State's
 21 standards is likely to cost -- I mean both in themselves
 22 and in conjunction with the State's academic
 23 expectations for students are likely to cost more in
 24 some situations than others and the -- that equity is
 25 defined by students having what they need, not by simply

1 implementation of this systemic remedy, that is, a
 2 school funding system based on actual cost of providing
 3 essential resources and conditions, will work in
 4 California?
 5 MR. ROSENBAUM: Argumentative.
 6 THE WITNESS: I can think of no reason to
 7 believe that it wouldn't.
 8 On its face the idea that one would figure out
 9 what elements ought to be in a system of any sort and
 10 then develop a funding system that is based on those
 11 costs and is designed to meet those costs seems to me
 12 ultimately reasonable and, frankly, surprising to me
 13 that it has to be the result of such extensive amount of
 14 scholarship.
 15 BY MR. HERRON:
 16 Q. And yet if it's so obvious, why has no other
 17 state done it, in your opinion?
 18 MR. ROSENBAUM: Same objection.
 19 THE WITNESS: Well, I think --
 20 MR. ROSENBAUM: Assumes certain facts not in
 21 evidence too.
 22 THE WITNESS: -- that Professor Grubb's report
 23 does quite a nice job of detailing the history of school
 24 finance and the struggle for equitable school finance.
 25 And if you'd like me to repeat it all I would -- I would

1 the dollars that are spent. And I think that's an
 2 essential element of this new school finance approach.
 3 Q. So, in other words, equity does not necessarily
 4 mean equal division of finances on a per-pupil basis.
 5 A. Yes, that's right.
 6 MR. HERRON: Could we have like a two-minute
 7 break?
 8 MR. ROSENBAUM: You can have a three-minute
 9 break if you want.
 10 (Recess taken.)
 11 MR. ROSENBAUM: Before this break -- or in the
 12 course of the break the lawyers had a discussion.
 13 Mr. Herron courteously represented that he has a limited
 14 period of time, an hour -- I'm not holding you to that,
 15 David -- but the notion was that we would finish this
 16 afternoon, and he was accommodating schedules.
 17 We offered Mr. Saferian and Mr. Hajela the
 18 opportunity to question. They both requested an
 19 opportunity to prepare to streamline and to set up the
 20 questions. That's fine that they don't begin today, but
 21 the understanding is that we will finish tomorrow within
 22 the timelines that we set.
 23 MR. HAJELA: That's agreeable.
 24 MR. SEFERIAN: That's agreed.
 25 MR. ROSENBAUM: Thank you.

1 BY MR. HERRON:

2 Q. Okay. We're looking now at page 68 of your
3 report, specifically Item 3.

4 This is one of the guiding principles you've
5 talked about; correct? And I may not be saying that
6 right. Fundamental principle.

7 A. Yes.

8 Q. And it states:

9 "An expanded State accountability
10 system that places valid, fair and
11 useful measures of student achievement
12 State standards in the context of
13 measures of the learning resources and
14 conditions under which students were
15 expected to learn."

16 Is this proposed accountability system -- this
17 proposed expanded State accountability system in your
18 view more likely to cost more than the current
19 test-based accountability system?

20 MR. ROSENBAUM: Speculation. Foundation.

21 THE WITNESS: I have no way to estimate that.

22 MR. ROSENBAUM: David, is there a way to --

23 MR. HERRON: No, we're just going to -- I'm
24 sorry about that. We're just going to have to put up
25 with it.

1 results-based accountability system. And what I'm --
2 what I'm citing here is essentially a summary of what
3 the governor has said in his veto messages of efforts to
4 create this kind of accountability, is that it would be
5 very costly because then they would be required to
6 provide the things that are thought of as necessary.

7 Q. We've talked, concededly at length, about
8 California's test-based accountability system. Are
9 there any studies you're aware of that suggest that is
10 an appropriate measure of student achievement?

11 MR. ROSENBAUM: Vague.

12 THE WITNESS: That the --

13 BY MR. HERRON:

14 Q. Let me try that one again.

15 A. Okay.

16 Q. Are there any studies you're aware of that
17 suggest that California's use of its test-based
18 accountability system is appropriate?

19 MR. ROSENBAUM: Same objections.

20 THE WITNESS: I think there are some analyses
21 that have concluded that a results-based accountability
22 system is appropriate.

23 I talk at length in this report about the
24 debate throughout the 1990s and the movement toward
25 results-based. Certainly that was -- there were

1 MR. HERRON: Off for a second.
2 (Discussion held off the record.)

3 MR. HERRON: Back on the record.

4 Q. If you'd kindly turn to page 51 of your
5 report.

6 I'm looking at Item 2 on page 51 and it says:

7 "Test-based accountability
8 provided State policy makers with a
9 far less costly alternative."

10 So I guess my question is than what?

11 A. The -- the item -- the principle on page 68 and
12 the conclusion on page 51 are referring to two very
13 different phenomena.

14 In 68 I was discussing the principle that data
15 and -- about the conditions of learning should be
16 included in an accountability system. And you asked me
17 if that accountability system would cost more.

18 Q. Uh-huh.

19 A. The cost of the accountability system is
20 something, as I said, I'm not prepared to specify at
21 this point.

22 On page 51 I am talking about the long-term
23 consequences of -- of what would have happened if the
24 systemic reform had been established that specified
25 conditions at the time when California chose to go to a

1 researcher/advocates of results-based who wrote about
2 that as being their preferred model.

3 BY MR. HERRON:

4 Q. Are there any states you're aware of that have
5 test-based accountability systems in place that are
6 similar to California's?

7 MR. ROSENBAUM: Vague.

8 THE WITNESS: There are other states with
9 test-based accountability systems in place, yes.
10 There's a range of similarities and differences among
11 them with -- with California.

12 BY MR. HERRON:

13 Q. Don't most states in the United States use
14 test-based accountability systems?

15 A. I think it's probably -- if we added up the
16 states we'd find that, yes, that's the most common form
17 of accountability system right now.

18 Q. How is it that the expanded State
19 accountability system you're proposing here on page 68
20 and thereafter of your third report -- how does it
21 differ from the current system? Just by way of
22 generalization if you'd like.

23 A. Well, I think the most general difference is
24 that -- that in addition to providing information about
25 student learning -- well, it differs in two ways.

1 One, it says that measures of student
2 achievement ought to be valid, fair and reliable
3 measures of the achievement of the State standards. I
4 personally prefer Mr. Russell's formulation of something
5 that gives you good diagnostic information about school
6 level performance.

7 But in addition, it also says that useful
8 information about the resources and conditions in which
9 that learning occurred should -- I always lose my
10 subject and verb in these long sentences.

11 MR. ROSENBAUM: Don't put that on the record.

12 THE WITNESS: That -- that to be truly useful
13 for both monitoring purposes and for intervention and
14 that ensures equity and adequacy, that the
15 accountability system needs to include measures of the
16 conditions under which learning took place.

17 That's the primary difference between this and
18 a results-based -- of course there -- you know, it leads
19 to what's suggested in the other two principles, that
20 once you begin to hold the system accountable for
21 conditions and resources and opportunities you need to
22 have clear lines of responsibility established and you
23 need to hold the right people accountable for the things
24 over which they have control.

25 You're not going to hold a school accountable

1 expected API targets."

2 This isn't different than the inspections
3 you've talked about earlier in this report; is that
4 correct? Or is it?

5 A. I've talked about the concept of on-site
6 reviews as being an important element of oversight and a
7 trigger for intervention. The -- those are simply
8 examples.

9 I could think of other forms of examples and
10 the specifics of how this oversight and the -- who would
11 constitute a professional cadre of external evaluators
12 if that were the choice of how to get this information.
13 Could be done in many ways.

14 Q. Could this professional cadre of external
15 evaluators work under the CCR process or revised CCR
16 process, or are you suggesting something needs to be
17 done separate from CCR?

18 MR. ROSENBAUM: Vague.

19 THE WITNESS: That's one possibility. I can
20 imagine changes in current processes or the elimination
21 of current processes and the formulation of new ones.

22 BY MR. HERRON:

23 Q. Now, you go on to talk about in that same
24 paragraph, and skipping over to page 70, a system in
25 England.

1 for the conditions of its facilities if, in fact, the
2 constraints on its facilities come from either the
3 district or the State level.

4 BY MR. HERRON:

5 Q. Page 69 of your report identifies Rhode Island
6 as a state that has a type of system similar to the
7 expanded State accountability system you're talking
8 about. We've already discussed that fully and
9 completely, haven't we? That is your understanding of
10 what Rhode Island's system consists of?

11 A. No, we haven't discussed what I know about
12 Rhode Island fully and completely. But we certainly
13 have talked about Rhode Island as having -- providing
14 one example of the kind of system that includes
15 opportunities and conditions as part of its
16 accountability system.

17 Q. The -- the last full paragraph on page 69 talks
18 about -- I'll just read it:

19 "Accurate and useful information
20 on conditions under which students are
21 expected to learn can probably be
22 accomplished best by a professional
23 cadre of external evaluators who
24 gather data from all schools, not just
25 those that performed below the

1 MR. ROSENBAUM: Is that a question?

2 MR. HERRON: No, not yet.

3 Q. What knowledge or what information do you have
4 about the inspectorate of schools that's used in
5 England?

6 A. Well, I certainly have some -- a whole range of
7 knowledge, both having read about the programs for a
8 number of years.

9 I think I mentioned before that a UCLA
10 colleague who was the principal of the elementary school
11 on the UCLA campus used to be a member of her majesty's
12 inspectorate and has talked some about that experience.

13 I probably here are most -- am most relying on
14 Professor Grubb's own study of the British inspectorate
15 system and the -- as he describes his conclusions, his
16 findings in his own -- in the Grubb and Goe report.

17 Q. You state in this -- on page 69:

18 "Her Majesty's Inspectorate of
19 Schools (HMI) is a model of oversight
20 that is carried out by a cadre of
21 well-educated, highly qualified
22 individuals who evaluate schools for
23 accountability, program and
24 effectiveness."

25 Separate from what you learned from the other

1 experts's reports do you have any information as to the
2 success or failure of this program, that is, the
3 inspectorate of schools program in England?

4 MR. ROSENBAUM: Vague.

5 THE WITNESS: Well, there's been quite a lot of
6 writing about it in the scholarly literature and I think
7 the reviews are mixed. And while I'm not entirely
8 relying on Professor Grubb, I think he does a nice job
9 of talking about the strengths and some of the -- some
10 of the problems that have occurred with that system.

11 BY MR. HERRON:

12 Q. Let me read to you something, and I'll ask you
13 if you know who said this. Quote:

14 "Why have millions of pounds of
15 taxpayers' money been wasted on
16 initiatives that have sunk teachers in
17 a morass of paperwork and unnecessary
18 bureaucracy?"

19 "I resigned as Chief Inspector
20 partly because I could no longer
21 stomach the fact that millions of
22 pounds of taxpayers' money were being
23 wasted on misconceived initiatives
24 that added to the bureaucratic burdens
25 and distracted teachers and head

1 Q. Well, your report is suggesting this
2 inspectorate is a model of oversight that could be used
3 in California. Why should we believe that it would be
4 any more successful here than it is in England?

5 A. Actually, as I've said to you many, many times,
6 I am not suggesting that any of these specific
7 suggestions are models that should be followed. I'm
8 suggesting that they're examples of the way other
9 systems have attempted to provide for -- to accommodate
10 or to enact these sorts of principles.

11 I think Professor Grubb's report on the English
12 inspectorate system is quite clear about the conditions
13 under which those systems are effective, and that's
14 certainly what I'm relying on here.

15 Q. Do you agree that an oversight system that is
16 an expanded state accountability system risks the
17 intrusiveness and burdensomeness that was just quoted
18 by -- that I just quoted from Mr. Woodhead?

19 A. Any system needs to be done well and
20 carefully. And I would hope that California is sensible
21 enough to put in place instantiations of these
22 principles that are careful and respectful.

23 Q. The system that you're proposing, that is, the
24 one on page 68 and 69, recognizing that all the details
25 are not there, has not been fully tried anywhere; is

1 teachers from their proper
2 responsibilities.

3 "The question was one I had been
4 asked hundreds, if not thousands of
5 times before: '...how can you justify
6 a system of school inspection which is
7 demoralizing the entire teaching
8 profession?'"

9 "The whole life of the school
10 stops for weeks in the run-up to an
11 inspection. Scores of documents have
12 to be written to satisfy the
13 bureaucratic demands."

14 Have you heard that quote before?

15 A. Not that I know of.

16 Q. Have you ever heard of Chris Woodhead?

17 A. No.

18 Q. He was a former chief inspector of the
19 inspectorate of schools.

20 A. Actually, that -- that quote is quite
21 consistent with Professor Grubb's discussion of how the
22 K-12 inspectorate in England has had problems, and he
23 contrasts it with a much more constructive approach
24 that's been used in what's in their equivalent community
25 college system.

1 that correct?

2 A. First of all, it is not a system that I'm
3 recommending. These are principles that are well
4 established in scholarly literature as being sound
5 approaches to governance, funding, oversight.

6 Q. Perhaps. But your own report says an expanded
7 state accountability system and also -- and I'm looking
8 at page 68. It says, "Russell provides one list of the
9 indicators that such a system might include."

10 So are you not suggesting a new system for
11 California?

12 MR. ROSENBAUM: David, you're arguing with the
13 witness. It's argumentative in its most minimal sense
14 what she testified.

15 THE WITNESS: Yes, I think having an expanded
16 accountability system is one element of this general set
17 of principles. I think that both Professor Russell and
18 I make clear that in Rhode Island you actually do find a
19 system that looks quite a lot like this. And so I would
20 suggest that yes, there is a place where this has been
21 tried.

22 BY MR. HERRON:

23 Q. Page 70 of your report talks about -- it begins
24 with Item 4. It talks about unambiguous lines of state,
25 regional and district responsibility for ensuring that

1 all students have these learning resources and
2 conditions with mechanisms that hold the appropriate
3 officials at each of these levels accountable.

4 I take it you believe that the current system
5 is broken.

6 MR. ROSENBAUM: Objection. Vague and
7 ambiguous. Argumentative.

8 THE WITNESS: Well, I'm -- I'm not sure I would
9 ever use that language. I think that the current
10 accountability system is inadequate in that it stops at
11 the school. It currently holds students and their
12 teachers responsible for all of the problems in the
13 system over which they have little control.

14 BY MR. HERRON:

15 Q. What, in concrete terms, are you advocating
16 with respect to Item 4 here on page 70?

17 A. Well, this is very, very similar to one of
18 the -- the principles that came out of the master plan
19 process and that was approved by the legislature, that
20 rather than having a proliferation of agencies and
21 entities at the level of the State who share and overlap
22 in the kind of responsibilities they have either been
23 delegated or that they've assumed, that the State's
24 governance structure should be reorganized in ways that
25 there are clear lines of authority.

1 I think essentially the -- the notion of
2 transparency. Rather than the state Department of
3 Education and the school board and the governor's
4 secretary of education all having some responsibility
5 for things like designing particular educational
6 programs, that there should be some clarity so that it's
7 clear who is responsible for what.

8 Q. Have you detailed in your report or has any
9 expert detailed in their report the precise construct of
10 such a -- a new means of holding districts, regional and
11 state educational entities responsible?

12 A. There's actually a bill in front of the
13 legislature right now, Senator Alpert's bill, that
14 actually tries to bring greater clarity to the
15 governance structure and does assign -- or tries to --
16 to assign responsibility to -- to various entities and
17 to talk about what the State should be accountable for
18 and what should be regionally done and the various
19 bodies that could most effectively do it.

20 That draws on the deliberation of those -- the
21 expert and citizens' committees of the master plan.
22 It's certainly not my responsibility or intention to
23 spell out the specifics of how this should be realized,
24 but it certainly is my intention to say that with -- as
25 long as things remain ambiguous and nobody's held

1 accountable it's unlikely that we can solve the problems
2 that now beset our state.

3 Q. Do you support -- well, in your opinion is
4 Ms. Alpert's bill appropriate?

5 MR. ROSENBAUM: Vague.

6 THE WITNESS: Actually, I haven't done a
7 careful analysis of the specifics of that bill.

8 BY MR. HERRON:

9 Q. And neither you nor any of the other experts
10 set forth in any of the reports precisely what you say
11 should happen in terms of revising the levels of
12 accountability for education in California?

13 MR. ROSENBAUM: That's very vague, very
14 ambiguous.

15 BY MR. HERRON:

16 Q. Well, I can rephrase it if you like.

17 What I'm saying here is things ought to
18 change. And I asked earlier where in the reports is it
19 detailed precisely what ought to happen in terms of a
20 revision of the lines of authority in terms of
21 responsibility for education in California. If it's not
22 in the reports and you say so, I'll move on. If not,
23 I'd like to know where you specify precisely the program
24 you're advocating.

25 A. First of all, I'm not advocating any particular

1 program.

2 Q. Okay.

3 A. I am arguing here, with I think considerable
4 evidence from my own work and the reports of the
5 experts, that clarity, transparency, and who's
6 responsible for what is an important principle that
7 reform of this state's education system should adhere
8 to.

9 Both my reports and those of the other experts
10 have provided lots of examples of how that clarity could
11 be achieved by suggesting particular ways that these
12 functions could be better accomplished. I think it's a
13 matter for the State to take on, to develop the
14 specifics of a proposal. I would be more than happy to
15 help with that when the time's appropriate.

16 Q. Item 5 on page 70 talks about an accountability
17 system that is reciprocal, i.e., it includes a two-way
18 flow of accountability information and provides
19 legitimate roles for local, community, parent, students
20 -- and students.

21 A. All of them.

22 Q. And holding one -- one system accountable.

23 This too is one of those fundamental principals
24 that you're suggesting?

25 A. Yes, that reciprocity in the system is

1 important. That it's not only students and teachers who
2 are held accountable to higher levels of government, but
3 that community members and citizens, parents should have
4 a role in holding state government accountable to the
5 children and the families and communities in the state.

6 Q. Neither you nor any of the other experts detail
7 specifically and explicitly what the accountability
8 system that is reciprocal will look like; is that
9 correct?

10 MR. ROSENBAUM: Same objections.

11 THE WITNESS: Well, I would answer the same way
12 I've answered all the other questions, that this is a
13 principle that is well established and there are many
14 ways that it could be specifically enacted, and it is
15 not our role here to detail a specific program design or
16 policy design.

17 BY MR. HERRON:

18 Q. Regarding this accountability system that is
19 reciprocal, why is the current accountability system not
20 reciprocal in your opinion? Or perhaps not sufficiently
21 reciprocal in your opinion?

22 A. Well, I think that we detail in a number of the
23 reports the -- first of all, the lack of information
24 available about the conditions and the resources and
25 opportunities that are provided.

1 that says, "An example, three urban schools."

2 A. Yes.

3 Q. And then below that there's Urban Elementary
4 School No. 4.

5 This is from the SPRA study?

6 A. Yes, it is.

7 Q. Do you know what the test scores were for that
8 school, urban elementary No. 4?

9 A. I know that all three of these schools are
10 decile 1 schools.

11 Q. Do you know whether any of the schools were
12 involved at any time in the IIUSP program?

13 A. You know, I don't recall. It might have said
14 in the -- the materials, the reports that SPRA provided,
15 but I'm not recalling.

16 Q. Let's turn to page 29 of your report.

17 Now, I believe that this section of your
18 report -- it follows heading C on page 27 talking about
19 your assertion that inadequacies and inequalities are
20 neither new nor newly discovered. This page, page 29,
21 is talking about presumably textbook and instructional
22 materials problems.

23 The -- what's the most current data you're
24 aware of to suggest that -- or which demonstrates that
25 inadequacies and inequalities were known to the State?

1 The -- I think Professor Russell does quite an
2 extraordinary job of explaining how the API absolutely
3 mystifies the information about student learning so that
4 one would have to sort through a very arcane formula in
5 order to try to understand what it is, the levels of
6 performance that have been demonstrated in a particular
7 place. Plus it uses measures that really don't tell you
8 anything about student strengths or weaknesses in
9 specific content areas.

10 So the lack of information. The obfuscation of
11 information about learning. The -- the fallibility
12 here.

13 The weaknesses in the state accountability
14 report card system, which is supposed to be the
15 mechanism that provides information to local community
16 members, is often inaccurate, done in some cases in a --
17 in a very superficial way, is in many cases available
18 only to those who have Internet access or who can get
19 easily to their district offices during the hours that
20 those offices are open. They're full of inaccuracies.

21 And, finally, there's nothing that local people
22 can do effectively in response to any information they
23 should be able to obtain.

24 Q. Let's turn to page 13 of your report. At the
25 bottom you provide -- there's a bolded set of language

1 MR. ROSENBAUM: Very vague, very compound.

2 THE WITNESS: The most recent?

3 BY MR. HERRON:

4 Q. Sure.

5 A. I'm sorry, you mean the most recent data about
6 disparities and inadequacies?

7 Q. Yes.

8 A. I think the Harris data is probably the most
9 recent data that documents disparities. And it's very
10 consistent with the other -- the other reports that I
11 cite that go back over about a 13-year period.

12 Q. Can you kindly turn to page 36 of your report?

13 I'm focusing on the facilities piece mentioned
14 on this page 36. And this follows, I believe, the
15 heading on page 36, B, "State policies do not give local
16 districts the capacity to provide basic educational
17 resources and conditions."

18 What I'd like to focus on on page 36 is the
19 sentence beginning "In contrast," right about in the
20 middle of that first full paragraph on 36.

21 A. Yes.

22 Q. "In contrast, funds for deferred
23 maintenance are allocated on an equal
24 basis, e.g., using the same formula
25 for matching local funds to all those

1 districts that apply. If there isn't
 2 enough funds to meet all needs, that
 3 cuts" -- "that cuts the ratio of State
 4 to local funds."
 5 Can you describe to me what's meant by those
 6 two sentences?
 7 A. Well, the first one I think is fairly clear,
 8 that the strategy --
 9 Q. All right.
 10 A. -- is that there's the same formula for
 11 matching funds that -- you know, the match between local
 12 and state funds.
 13 And, frankly, I have to apologize for the next
 14 sentence because I don't recall what was meant to be
 15 written there. But clearly something was dropped.
 16 Q. Okay. On the last full two sentences in that
 17 first full paragraph it states:
 18 "Additionally, because the State
 19 provides some funding for deferred
 20 maintenance projects but provides no
 21 funds for ongoing maintenance, it
 22 creates a disincentive for locals to
 23 keep their buildings in good
 24 condition."
 25 Is it your testimony that the State provides no

1 funds for ongoing maintenance?
 2 A. No, actually it's not. And I think as
 3 Dr. Myers and I think Mr. Corley talk -- speak about
 4 that -- and I'm not exactly remembering which of the
 5 facilities reports this is in --
 6 Q. Sure.
 7 A. -- but it's in one of them, that actually it's
 8 part of the general funds that are expected to be used
 9 by districts for ongoing maintenance.
 10 The problem is -- is that when schools run
 11 short of general funds it's often the maintenance, as is
 12 the case, I guess, with many of us in our houses, that
 13 is the first to go when there's competition for meeting
 14 the basic ongoing needs for current expenditures. So
 15 that -- that buildings are allowed to deteriorate in --
 16 in part because there are no actually designated funds
 17 for ongoing maintenance or that deferred maintenance
 18 funding isn't accompanied by a certain percentage or a
 19 pot of money that would be designated to keep up the --
 20 the conditions once they've been repaired.
 21 Q. Are you aware of any study, be it by
 22 Mr. Corley, Ms. Myers or anyone else, that quantifies
 23 the degree to which districts do not maintain -- the
 24 degree to which districts suffer from the problem you're
 25 identifying here?

1 MR. ROSENBAUM: It's vague.
 2 BY MR. HERRON:
 3 Q. Mr. Rosenbaum makes a good point. You're --
 4 MR. ROSENBAUM: Did you get that?
 5 THE REPORTER: Yes, sir.
 6 MR. HERRON: There's always a first, Mark.
 7 Q. Your point here is that some districts wait to
 8 address maintenance problems because of a lack of
 9 earmarked maintenance funding; is that correct?
 10 A. Yes. And because of -- yes.
 11 Q. And to -- and is there any study you're aware
 12 of that supports that point?
 13 A. Well, I actually think that Dr. Myers -- the
 14 study that she provided us and that certainly
 15 Mr. Corley's vast experience with school districts and
 16 his reports provide considerable evidence that this is a
 17 problem.
 18 Q. Beyond what either Ms. Myers or Mr. Corley say
 19 in their reports are you aware of any studies or data on
 20 that point?
 21 A. I think the Harris data makes it pretty clear
 22 as -- that there are serious problems with the failure
 23 to keep buildings in good condition.
 24 Q. Is there anything about the Harris data that
 25 says that buildings are not in good enough condition

1 because there was no, as you suggest on page 36 of your
 2 report, earmarked maintenance fund provided by the
 3 State?
 4 A. The Harris data describes conditions that,
 5 juxtaposed against the analysis of Mr. Corley and
 6 Dr. Myers, makes a reasonable inference -- at least I
 7 hope would make a reasonable inference that schools
 8 allow these conditions to exist because they do not have
 9 the resources to keep them in good condition.
 10 MR. ROSENBAUM: Off the record.
 11 (Discussion held off the record.)
 12 MR. HERRON: All right. Let's mark this as 78.
 13 THE WITNESS: No, I think we're at 79,
 14 actually.
 15 MR. HERRON: 79.
 16 MR. HAJELA: Wow, she's on it.
 17 MR. HERRON: Yes.
 18 (Exhibit 79 was marked for
 19 identification and attached to and
 20 made a part of this deposition.)
 21 BY MR. HERRON:
 22 Q. Have you had an opportunity to review
 23 Exhibit 79?
 24 A. Yes.
 25 Q. Do you recognize this document?

1 A. I think so.
 2 Q. The part below "Original Message" is from
 3 Catherine Lhamon to you and to Mr. Rogers. "Subject:
 4 expert...summaries"; correct?
 5 A. Yes.
 6 Q. Dated as of May 30, 2002; correct?
 7 A. Yes.
 8 Q. What was attached to this e-mail, if you know?
 9 A. Well, I don't recall specifically. I mean,
 10 my -- any --
 11 MR. ROSENBAUM: He doesn't want you to guess.
 12 THE WITNESS: I mean, I don't recall
 13 specifically.
 14 BY MR. HERRON:
 15 Q. Did you rely on the expert report summaries at
 16 all to draft your third report?
 17 A. Actually, I don't believe I saw summaries. I
 18 think that actually summaries may not be the right word
 19 for it.
 20 I -- we sat in -- I have to chuckle, first of
 21 all, because this says May 30, and I think I told you
 22 yesterday I started working on the Meta report in June.
 23 So I'd like to correct that because as this refreshes my
 24 memory, it must have been May.
 25 Q. Okay.

1 A. The -- well, a process which I described
 2 yesterday was that on a couple of occasions, and this
 3 must have been with Ms. Lhamon, I -- in my office the --
 4 we went over the reports as they were being finished
 5 together, and I indicated parts of them that I would
 6 like to use in the -- in constructing the Meta report.
 7 I never asked for summaries. I asked them
 8 to -- and they offered, which was great -- I think
 9 Mr. Nolte did some of this, I'm not sure -- to pull
 10 portions of them that I wanted to rely on as I wrote the
 11 report. In some cases, as you can probably tell, I've
 12 plugged those sections in almost verbatim. In other
 13 cases I summarized and commented on them.
 14 So my -- my assumption is, given that that was
 15 our process, that what got sent to me were these
 16 excerpted pieces of the reports that I had suggested
 17 that I would like to have.
 18 Q. Okay. Let's set that aside and look at
 19 Exhibit 80.
 20 (Exhibit 80 was marked for
 21 identification and attached to and
 22 made a part of this deposition.)
 23 BY MR. HERRON:
 24 Q. Do you recognize this document?
 25 A. Yes.

1 Q. What is it?
 2 A. It's a document I provided to you I think
 3 yesterday.
 4 Q. Yes, that I understand. What is this document,
 5 though?
 6 A. This is an attachment -- I believe this was an
 7 attachment to an e-mail from, I believe, if I'm
 8 recalling correctly, Lisa Welch at Morrison & Foerster
 9 in San Francisco to me. I don't recall the date.
 10 Q. What was the purpose of this document?
 11 A. She actually --
 12 MR. ROSENBAUM: Speculation.
 13 THE WITNESS: I can tell you what she said.
 14 BY MR. HERRON:
 15 Q. That would be fine.
 16 A. She said that here is an accounting of what
 17 we -- I think -- I think this -- if I'm recalling, this
 18 was already completed. That she wanted to give me a
 19 memo letting me know what they had actually provided to
 20 the various scholars who had been working on the project
 21 with me, an idea, and it was simply for my information.
 22 Q. As best you understand it then this document
 23 details the final payments made to each of the
 24 individuals listed here?
 25 MR. ROSENBAUM: Foundation. Speculation.

1 THE WITNESS: All I know is this is what she
 2 said was what they were providing to the experts with
 3 whom they'd made agreements to do the scholarly work.
 4 She wanted me to have a copy.
 5 BY MR. HERRON:
 6 Q. Did you use that copy for anything?
 7 A. No.
 8 Q. Where did you locate each of those documents
 9 that were produced to me the other day?
 10 A. They were in a -- on my computer.
 11 Q. Why did you look for them?
 12 A. Because you had asked me to.
 13 MR. ROSENBAUM: He just likes to hear that.
 14 THE WITNESS: Actually, I found this --
 15 No. 80?
 16 BY MR. HERRON:
 17 Q. Yes.
 18 A. I came across it in the process of responding
 19 to your request for materials related to the grant I
 20 received from the Rockefeller Foundation. When I saw
 21 this I realized I had misfiled it at some point in my
 22 folder related to the Rockefeller grant and I was
 23 concerned that maybe I hadn't produced it earlier. And
 24 since it seemed relevant and responsive to what you
 25 asked for before, I simply included it in what I

1 provided the other day.

2 Q. I appreciate that.

3 (Exhibit 81 was marked for
4 identification and attached to and
5 made a part of this deposition.)

6 BY MR. HERRON:

7 Q. Let's look at what's been marked as
8 Exhibit 81.

9 Do you recognize this document?

10 A. Yes, I do.

11 Q. What is it?

12 A. This was the original budget that I proposed to
13 the Rockefeller Foundation when I requested some
14 additional funding from them to support some further
15 research related to the conditions and resources in
16 California schools.

17 Q. So this was the proposed budget for the SPRA
18 study?

19 A. Actually, I didn't originally intend it to be
20 subcontracted to the SPRA. When I conceptualized the
21 project -- and I think you probably have a copy of the
22 proposal --

23 Q. Uh-huh.

24 A. -- I thought that we would do it in our own
25 office. When it turned out that that wasn't feasible, I

1 A. It was approved and the funds were granted.

2 And then I renegotiated the budget with Rockefeller.

3 Q. One statistic listed on this budget was
4 surprising to me, and that is on the first line you see
5 "Personnel, Oakes, J."

6 That's you?

7 A. Yes.

8 Q. Titled principal investigator. Then percent
9 effort zero?

10 A. Yes.

11 Q. Which didn't seem right, especially given your
12 effort in this deposition.

13 A. Well, the University of California provides
14 one-third of my salary for the conduct of research. And
15 on small projects I typically compensate myself from my
16 salary.

17 Q. Okay. Page 2. What does "F&A Costs at
18 5 percent TDC" mean?

19 A. I don't know what F&A stands for, but
20 essentially it's the overhead rate that Rockefeller has
21 negotiated with the university. I think you and I
22 talked once before about how rates are different and
23 they get negotiated. That's just what the business
24 office uses to indicate overhead.

25 Q. Very good.

1 then subcontracted it and negotiated with Rockefeller to
2 contract with -- to pay or to use some -- some of these
3 funds -- a large proportion of these funds to pay for
4 the SPRA work.

5 Q. Why did you ultimately not do it with an idea,
6 that is, what became the SPRA study?

7 A. Two reasons really. One is that we just didn't
8 have the capacity to do it. We were all too busy doing
9 all kinds of other things.

10 The second reason frankly is that since I -- I
11 knew that it was likely to appear in -- in my expert
12 report as well as my scholarly report, I felt that --
13 knowing that going into it, that I would compromise the
14 confidentiality of people I asked to participate.
15 Because the scholarly convention is that you promise
16 confidentiality and you can honor that promise.

17 I wanted to have this done as research, and I
18 didn't ever want to be put in a position where I would
19 have to reveal the identities, compromise the
20 professional promise I'd made as a researcher.

21 So I felt it was more prudent to actually have
22 someone quite independent of me do the work so I -- I
23 wouldn't compromise those people who'd participated.

24 Q. This Exhibit 81 then is a draft budget. It
25 actually never was utilized in any way?

1 Let's look at Exhibit 82.

2 (Exhibit 82 was marked for
3 identification and attached to and
4 made a part of this deposition.)

5 BY MR. HERRON:

6 Q. Do you recognize Exhibit 82?

7 A. Yes, I do.

8 Q. What is it?

9 A. This is the text of the proposal that I
10 submitted to the Rockefeller Foundation to request
11 additional support for research.

12 Q. For what became the SPRA study?

13 A. Yes. And plus there was -- as I'm sure you
14 have more e-mails to show, there was some additional
15 amount that was added to the support of the scholarly
16 papers and their publication.

17 Let's look at Exhibit 83.

18 (Exhibit 83 was marked for
19 identification and attached to and
20 made a part of this deposition.)

21 BY MR. HERRON:

22 Q. Do you recognize this document?

23 A. Yes. This is a letter that I wrote to
24 Fred Frelow, who is the program officer at the
25 Rockefeller Foundation, submitting the proposal to him.

1 One thing you might not know is that at the
2 university, before you can officially submit a proposal
3 you have to go through quite an elaborate process of --
4 budget process. So my custom is that I submit a
5 proposal to a foundation with the caveat that this is an
6 informal proposal and my -- so my custom is that once a
7 program officer says yes I'll fund this, then I go
8 through all the red tape necessary to produce the
9 official proposal and actually get the money.

10 Q. I understand.

11 A. So this is the letter on that preliminary
12 proposal.

13 Q. And again, this is a November 9, 2001 letter
14 from you to Fred Frelow?

15 A. Yes.

16 Q. Let's look at Exhibit 84.
17 (Exhibit 84 was marked for
18 identification and attached to and
19 made a part of this deposition.)

20 BY MR. HERRON:

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. This is the proposal that Diane Friedlaender of
25 Social Policy Research Associates sent to me when I

1 Q. -- to review --

2 A. Yes.

3 Q. -- Exhibit 85?

4 A. Yes.

5 Q. This is a November 21, 2001 letter from you and
6 apparently Sherry Miranda --

7 A. Yes.

8 Q. -- to Fred J. Frelow; correct?

9 A. Yes.

10 Q. What is the purpose of this letter?

11 A. This is the -- once -- following my letter of
12 November 9 and the proposal, Mr. Frelow and I had a
13 telephone conversation in which he conveyed his approval
14 of the proposal and the foundation's willingness to fund
15 it. So I then went through the procedures required by
16 the university to get all the official approvals.

17 We have a piece of paper called a Golden Rod,
18 indicating the color of that, that has to have many
19 sign-offs. Went through all of that. When that was
20 finished on November 21 I sent it to Mr. Frelow as the
21 official proposal that I had promised. It was also
22 accompanied by the same document I sent him originally.

23 Q. Let's look at Exhibit 86.

24 (Exhibit 86 was marked for
25 identification and attached to and

1 asked her if she would provide me with a -- a proposal
2 of how she might go about conducting a small-scale study
3 of conditions in California schools and what it would
4 cost.

5 Q. Now, if you look at Exhibit 83 it starts -- and
6 I'm talking about the letter of Fred J. Frelow.

7 A. Yes.

8 Q. It starts: "Enclosed you will find a
9 preliminary proposal."

10 Is Exhibit 84 what was enclosed to Mr. Frelow?

11 A. No, what was enclosed to Mr. Frelow was Exhibit
12 No. 82.

13 Q. Excellent.

14 Do you know when Diane Friedlaender sent you
15 Exhibit 84?

16 A. Sometime early in December.

17 Q. Of?

18 A. Of 2001.

19 Q. Let's look at the next document then.

20 (Exhibit 85 was marked for
21 identification and attached to and
22 made a part of this deposition.)

23 BY MR. HERRON:

24 Q. Have you had an opportunity --

25 A. Yes.

1 made a part of this deposition.)

2 BY MR. HERRON:

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. What is it?

6 A. This is a request that I made in June of 2002
7 after a long series of negotiations with the Social
8 Policy Research Associates over the problems they were
9 having in paying people who had actually conducted the
10 study, the SPRA study.

11 Q. Uh-huh.

12 A. The problem had been that after I had received
13 the verbal approval and had submitted the official
14 proposal to Rockefeller and quickly realized that I was
15 not going to be able to do this study I had a
16 conversation with Diane Friedllaender, who submitted
17 that proposal to me in early December, came down and had
18 a meeting with me. I think I described before --

19 Q. Yes.

20 A. -- about a three-hour meeting. And she went
21 back, and knowing that I wanted this in a hurry hired
22 people to begin to work on the -- the study.

23 Turned out that the official start date that
24 Rockefeller put on the grant was January 1, 2002. And
25 it turns out that then UCLA would not provide SPRA with

1 any money for charges that were incurred before
 2 January 1, 2002.
 3 Q. And Exhibit 86 fixes all that?
 4 A. Yes, it does.
 5 Q. Very good.
 6 Let's look at Exhibit 87.
 7 (Exhibit 87 was marked for
 8 identification and attached to and
 9 made a part of this deposition.)
 10 BY MR. HERRON:
 11 Q. Have you had an opportunity to review
 12 Exhibit 87?
 13 A. Yes.
 14 Q. Do you recognize that document?
 15 A. Yes.
 16 Q. What is it?
 17 A. This is a request for a no cost extension to
 18 Fred Frelow at the Rockefeller Foundation. The grant
 19 was given for a year, which ended December 31, 2001.
 20 The final report was due like 60 days later or
 21 something, including a fiscal report and a narrative
 22 report.
 23 The -- in preparing the final report Jerchel
 24 Anderson, who was my administrator at UCLA, realized
 25 that we had a small amount of money left that hadn't

1 been spent. The usual procedure is that if you have a
 2 good use to put that money to you try not to return it
 3 to the funder, but rather request that you can carry
 4 that money forward and use it to support related work
 5 that -- in a period of time that extends beyond the
 6 official end date of the grant, which is what this is.
 7 Q. Did your request meet with a positive response
 8 from Mr. Frelow?
 9 A. Yes, it did.
 10 MR. HERRON: No further questions at this
 11 time.
 12 Should we have the same stipulation?
 13 MR. ROSENBAUM: We sure do. Thank you very
 14 much.
 15 MR. HERRON: Thank you very kindly.
 16 MR. ROSENBAUM: See you all tomorrow.
 17 (Whereupon, at 12:45 p.m., the
 18 deposition of JEANNIE OAKES was
 19 adjourned.)
 20
 21
 22
 23
 24
 25

1 STATE OF CALIFORNIA)
 2 COUNTY OF LOS ANGELES) ss.
 3
 4
 5 I, JEANNIE OAKES, hereby certify under penalty
 6 of perjury under the laws of the State of California
 7 that the foregoing is true and correct.
 8 Executed this _____ day of
 9 _____, 2003, at
 10 _____, California.
 11
 12
 13 _____
 14 JEANNIE OAKES
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 STATE OF CALIFORNIA)
 2 COUNTY OF LOS ANGELES) ss.
 3
 4 I, LESLIE A. MAC NEIL, RPR, CSR No. 7187, in and
 5 for the State of California, do hereby certify:
 6 That, prior to being examined, the witness named in
 7 the foregoing deposition was by me duly sworn to
 8 testify the truth, the whole truth and nothing but the
 9 truth;
 10 That said deposition was taken down by me in
 11 shorthand at the time and place therein named, and
 12 thereafter reduced to typewriting under my direction,
 13 and the same is a true, correct and complete transcript
 14 of said proceedings;
 15 I further certify that I am not interested in the
 16 event of the action.
 17 Witness my hand this ____ day of _____,
 18 2003.
 19
 20 _____
 21 Certified Shorthand
 22 Reporter for the
 23 State of California
 24
 25