

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

Plaintiffs,)

) No. 312236

vs.)

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

Defendants.)

DEPOSITION OF

JEANNIE OAKES, VOLUME V

TAKEN ON

THURSDAY, MARCH 13, 2003

Reported by:

Cathy A. Reece, RPR, CSR No. 5546

1 Deposition of JEANNIE OAKES, taken on behalf of
2 Defendants, at 400 South Hope Street, Los Angeles,
3 California, commencing at 9:35 a.m., on Thursday, March
4 13, 2003, before Cathy A. Reece, RPR, CSR No. 5546.

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18 58 E-mail from Silver to Saunders, 889
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22 60 E-mail from Friedlaender to Oakes, 915
dated 5-27-02, Bates No. 06771

23 61 SPRA School Equity Study 915
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Bates Nos. 06772 through 7080

24

25

1 JEANNIE OAKES,
2 having been first duly sworn, was
3 examined and testified as follows:
4

EXAMINATION

BY MR. HERRON:

7 Q. Good morning, Dr. Oakes.
8 A. Good morning.
9 Q. Have you recently consumed any medication,
10 alcohol or any other substance that would cloud your
11 mind or interfere with your ability to give your best
12 testimony here today?
13 A. No.
14 Q. Is there any other reason we can't proceed?
15 A. No.
16 Q. Did you review any documents between the close
17 of last night's deposition and this morning?
18 A. Indirectly, yes.
19 Q. How so?
20 A. I had a conversation with David Silver, and he
21 was looking at the data while I was talking to him
22 because we were attempting to resolve the answers to the
23 questions about Table No. 4 and 5, I believe, where the
24 numbers did not at up to 100 percent.
25 Q. What did you learn from David Silver or what

1 EXHIBITS (Continued)

2 62 Symposium agenda, dated 11-18-01, 925
one page

3

4 63 Document titled, "Description of 925
Research Papers," undated, three
pages

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QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:
(NONE)

INFORMATION TO BE SUPPLIED:
(NONE)

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1 was the conclusion?
2 A. Well, I actually shared with David my
3 hypotheses about what had happened, and he ran the data
4 on his computer to determine whether or not I was
5 correct, and it turns out I was, and I was glad to have
6 it confirmed.
7 The first -- in Table No. 4 -- the percentage
8 of schools -- the percentage shortage between --
9 percentage of teachers at schools with greater than 80
10 percent certified and greater than 20 percent
11 uncertified, it is a difference of about 6 percent.
12 Q. Yes.
13 A. It turns out that those teachers were at
14 schools where the CBEDS database from which the
15 percentage of credentialed teachers -- where the -- that
16 had not reported or at least had missing data in the
17 CBEDS data file about the percentage of credentialed
18 teachers at the schools, that is about 6 percent.
19 Q. And, therefore, those schools were excluded
20 from the results reported in Table 4?
21 A. Yes. The teachers at those schools.
22 Q. Yes.
23 A. In Table 5, there are duplicate counts, as I
24 suggested yesterday, in that teachers were asked to
25 report the levels at which they teach, and those levels

1 included -- there were several categories, and I don't
 2 recall them right now, but it included basics, K-6, K-8,
 3 middle school, elementary and middle school, and for the
 4 purposes of this, since the analyses don't require that
 5 these be discrete sets of teachers, we simply listed in
 6 the column of elementary school teachers any teacher who
 7 said they teach elementary school students. The same
 8 with middle and the same with high, so there are some
 9 duplicate counts that explain why the total number of
 10 teachers equals more than the sample as a whole.

11 Q. And what you just talked about referred to
 12 Table 5?

13 A. Table 5, yes.

14 Q. Very good.

15 With respect to Table 4 are you able to
 16 identify the schools that had the missing CBEDS data?

17 A. In the data file you can -- I'm afraid I don't
 18 understand the question.

19 You mean the names of the schools?

20 Q. Yes.

21 A. I'm not, no.

22 Q. Did you talk to David Silver about anything
 23 else concerning Tables 4 and 5?

24 A. No.

25 Q. Did you talk to David Silver at all about any

1 who fell into the category of being at schools with
 2 greater than 20 percent uncertified teachers, the
 3 comparison that we tested the significance of is with
 4 the other 83 percent of the teachers or whatever --
 5 whatever percentage is left, knowing some of the data
 6 were missing in that category.

7 So it is between those two groups, and it is
 8 not between the group of teachers in this sample and the
 9 overall sample of teachers.

10 Q. Which is a way of saying the "not sure"
 11 respondents were excluded from the comparison?

12 A. That certainly happened, but what I am
 13 saying -- there are two kinds of comparisons you could
 14 make.

15 You could say, "Were the percentages of
 16 teachers in schools with 20 percent uncertified
 17 significantly different from teachers' responses in the
 18 rest of the schools," or you could say, "Let's see if
 19 the teachers in these schools responded differently than
 20 teachers in the whole group," meaning that you would
 21 leave them in the comparison group.

22 You could say, "Do they differ from the people
 23 who are in schools not like them" or "Do they differ
 24 significantly from the state as a whole."

25 Q. Let me see if I understand.

1 other statistical aspect of your report?

2 A. I did ask him about the significance tests in
 3 the tables we have not yet discussed --

4 Q. Okay.

5 A. -- because I wanted to make sure that my
 6 explanation of those tests is -- would be consistent
 7 with his -- with what he actually did, and it was.

8 Q. What was discussed?

9 A. That the comparisons in the tables near the
 10 end of the section, the tables that --

11 Q. Do you care to point us to an example?

12 A. I am looking for one. Yes.

13 For example, on Page 42, Table No. 20 --

14 Q. Right.

15 A. -- the first column on the table is the
 16 overall percentages reporting each of the following --
 17 each of the problems in the rows.

18 And then the next column is the percentage of
 19 people who are -- teachers who were at schools with more
 20 than 20 percent uncertified, and I wanted to verify and
 21 remind myself that we had decided to -- that the
 22 comparisons that are indicated by the asterisks showing
 23 significant differences are with teachers at schools
 24 that do not fall into this category.

25 So while there are 17 percent of the teachers

1 We are now looking at Page 42 and Table 20. I
 2 would like to take as an example the column that says,
 3 "School staff greater than 20 percent uncertified," the
 4 one with the 17 percent.

5 A. Yes.

6 Q. Let's view, "Not enough texts for class."

7 Now the percentage expressed in that crosstab
 8 is 12 percent?

9 A. Yes.

10 Q. So let's just assume for purposes of
 11 discussion that there were 150 teachers who were
 12 surveyed, and of that 150, 50 either said "not sure" or
 13 didn't respond.

14 Am I to understand, then, that that 50 was
 15 disregarded, and what the 12 percent represents here is
 16 12 out of the 100 remaining teachers who did respond,
 17 positively or negatively?

18 A. So there were 150 teachers in this category --
 19 in this type of school?

20 Q. Right. Who were asked the question --

21 A. And if we excluded 50 of them, then the 12
 22 percent would be 12 percent of the remaining, yes, if
 23 your -- if the assumptions you said were the case, that
 24 would be correct.

25 Q. Okay. So the -- if you had included the "not

1 sure" respondents in the denominator -- I mean, the way
2 you get 12 percent is 12 out of 100, correct, in my
3 example?

4 A. Yes.

5 Q. Okay. If you had included instead the "not
6 sure" respondents, what would you come up with is 12
7 over 150; correct?

8 A. Yes.

9 Q. And, therefore, if "not sure" respondents had,
10 in fact, been included in this statistic, that
11 percentage would decrease.

12 Am I right?

13 A. No. It would be greater.

14 MR. LONDEN: I think there is an ambiguity
15 here.

16 MR. HERRON: Actually, I think the survey
17 introduces the ambiguity. I am just trying to make that
18 clear.

19 MR. LONDEN: Well, I think the question is
20 ambiguous.

21 BY MR. HERRON:

22 Q. Do you understand what I am saying?

23 A. Not entirely, actually.

24 Q. The -- well, the Harris survey, am I incorrect
25 here, in fact, in all of the percentages calculated

1 in the table.

2 Here is what I think is true. If you --

3 MR. HERRON: Go ahead.

4 MR. LONDEN: I think what I have understood is
5 that this 12 percent is 12 percent of the total 183 in
6 that category. But for significance testing the test
7 was the number of respondents to the number, excluding
8 "not sure."

9 So you have a chi-square test that excludes
10 "not sure," but results reported that do include the
11 "not sures," meaning that the ratios are lower than they
12 would be. 12 percent is a lower number than the
13 percentage would be if the "not sures" were excluded.

14 I think that is what I understood.

15 THE WITNESS: That is exactly correct.

16 MR. HERRON: We are going to put you on the
17 stand.

18 THE WITNESS: He's good.

19 MR. LONDEN: Just give me a chance.

20 MR. HERRON: I have often felt the same way.
21 Thank you.

22 Q. Did you and David Silver discuss anything
23 else?

24 A. No.

25 Q. Did you have discussions with anyone other

1 included the "not sure" respondents or the
2 nonrespondents in the denominator for any ratio
3 expressed in the report.

4 Is that true or false?

5 A. The numbers show the percent of the entire
6 sample who said definitely, "Yes."

7 Q. In the Harris survey?

8 A. Yes.

9 Q. And "not sure" respondents are treated in what
10 manner in the Harris survey?

11 A. They are kept in the pool of the entire
12 sample.

13 Q. Meaning that they are in the denominator for
14 any ratio or percentage expressed in the Harris survey;
15 correct?

16 A. Yes.

17 Q. Okay. But you don't do that?

18 A. Yes, I do it. Absolutely. They are --

19 MR. LONDEN: The ambiguity --

20 THE WITNESS: They are included in the
21 significance tests.

22 MR. HERRON: Jack, why don't you help me?

23 MR. LONDEN: Yeah. I think it was unclear
24 whether you were asking about the chi-square test ratios
25 or the ratio of 12 to 100 or 12 percent of 183 reported

1 than counsel related to your deposition in between the
2 time we broke last and this morning about your
3 deposition?

4 A. Yes. I talked with one of my students, and I
5 talked with my husband.

6 Q. What was the discussion with your student?

7 Who was the student, I guess?

8 A. My student was a second-year student who I met
9 because we took an exercise class together last night,
10 and she asked me how it was going, and I said it was
11 going okay.

12 Q. Okay. What was discussed with your husband
13 about the deposition?

14 A. I repeated some of the questions to him that I
15 recalled --

16 Q. Especially that one really long one?

17 A. No.

18 -- and some of the responses I gave, and we
19 discussed the tenor of the exchange.

20 Q. Very good.

21 Anything else?

22 A. And I think that covers it.

23 Q. What did you say about the tenor of the
24 exchange?

25 MR. LONDEN: Is it really necessary to ask

1 about a conversation with her husband -- between husband
2 and wife -- about the tenor of the exchange?
3 MR. HERRON: No. But it was an interesting
4 question.
5 (Exhibit 43 was marked for I.D.)
6 BY MR. HERRON:
7 Q. Have you had an opportunity to review Exhibit
8 43?
9 A. Yes.
10 Q. This is an e-mail dated March 5, 2002 from
11 Marisa Saunders to you; correct?
12 A. Yes.
13 Q. It talks about, quote:
14 "I am having a really hard
15 time with the Lou Harris numbers --
16 they aren't doing what I want,
17 hence that whole section is still
18 weak."
19 Did I read that correctly?
20 A. Yes.
21 Q. What was she referring to, if you know, about
22 "having a really hard time with the Lou Harris numbers"?
23 A. Yes. I had design tables that I wanted her to
24 take the numbers off the banners that the Lou Harris
25 group had provided and put them into my tables, and my

1 tables specified the kinds of relationships that I
2 wanted to explore.
3 And she, in studying the banners, was
4 beginning to figure out that the relationships I wanted
5 explored were not ones that were reported in the
6 banners, and she was frustrated by that and wasn't sure
7 whether she was doing something wrong or whether the
8 banners weren't reporting the relationships we wanted.
9 And this is the conversation that eventually
10 led to my requesting the dataset itself to do the
11 analysis in our shop rather than trying to rely on the
12 banners, which hadn't compared -- made the comparisons
13 that I was interested in having.
14 Q. When she says, "hence that whole section is
15 weak," do you know what section she is talking about?
16 A. I don't. I mean, my guess is it is Section 2,
17 where we have the tables.
18 Q. Okay.
19 (Exhibit 44 was marked for I.D.)
20 BY MR. HERRON:
21 Q. Dr. Oakes, have you had an opportunity to
22 review Exhibit 44?
23 A. Yes.
24 Q. This is a one-page document Bates stamped
25 1366. I want to focus -- it appears to be a series of

1 e-mails. I want to focus on the bottom e-mail.
2 That is an e-mail from Richard Harris to you
3 dated March 17, 2002; correct?
4 A. I think I have a different document.
5 Q. I hope not.
6 Focusing right here --
7 A. Okay. That was --
8 Q. -- the stuff below "Original message."
9 A. I see.
10 Q. Do you recognize that?
11 A. I am remembering it now that I see it.
12 Q. Peter Harris is writing to you in response to
13 a request you had made?
14 A. Yes.
15 Q. What was your request?
16 A. This --
17 Q. Generally describe it.
18 A. This is a request for some analyses that
19 supplemented what were sent on the banners that I had
20 received previously.
21 Q. Why was it that Peter Harris was willing to
22 provide you with assistance, if you know?
23 MR. LONDEN: Calls for speculation.
24 Go ahead.
25 THE WITNESS: I just assumed it was part of

1 conventional professional practice that people who were
2 analyzing someone else's dataset made requests, if they
3 didn't have the dataset, for particular kinds of
4 analyses, and people generally provide that as a
5 professional courtesy.
6 BY MR. HERRON:
7 Q. But I thought you said his survey was
8 independent of the litigation?
9 MR. LONDEN: Misstates the testimony.
10 THE WITNESS: The -- I'm sorry. I am not
11 understanding the connection between that and what I
12 said.
13 BY MR. HERRON:
14 Q. Well, you are doing your report for purposes
15 of the litigation; correct?
16 A. As I said yesterday, I was doing this research
17 for multiple purposes: Scholarly work, which then would
18 also become an expert report.
19 Q. And I guess my question is: Why did you
20 believe that in those circumstances Peter Harris, who
21 was doing an independent survey, would assist you in any
22 way?
23 MR. LONDEN: Asked and answered.
24 THE WITNESS: Peter Harris was funded by
25 Rockefeller to do a survey of the conditions teachers

1 experienced in California schools.
 2 I had participated, as we discussed yesterday,
 3 in providing some suggestions for what that survey might
 4 be like, and we had a relationship where it was
 5 perfectly normal and appropriate for me to ask him as a
 6 researcher to do some data runs that I was interested
 7 in.

8 BY MR. HERRON:

9 Q. And I take it his assistance aided you in
 10 preparing your expert report.

11 True or false?

12 MR. LONDEN: Foundation.

13 THE WITNESS: Actually, this assistance didn't
 14 help all that much.

15 As I said before, I became increasingly
 16 interested in having my independent analyses done or
 17 doing analyses in our own place, and certainly his
 18 willingness to provide me with the data, as he has -- he
 19 has made it publicly available -- that was certainly
 20 helpful in the conduct of my research that led to the
 21 production of this report.

22 (Exhibit 45 was marked for I.D.)

23 BY MR. HERRON:

24 Q. Dr. Oakes, have you had an opportunity to
 25 review Exhibit 45?

1 "Turns out the Harris sample
 2 came from a vendor's database of
 3 teachers, which means it very
 4 seriously underrepresents first and
 5 second year teachers since the
 6 database has a time lag."

7 Do you agree with that assessment?

8 A. I believe it.

9 Q. So, yes?

10 A. Yes. I mean, I agree with it on the basis
 11 that's what Linda told me, and I find her trustworthy.
 12 I don't have independent knowledge of that.

13 Q. Uh-huh. Is it your belief or understanding
 14 that as a result of that underrepresentation your own
 15 results -- those results expressed in your expert report
 16 underrepresent first and second-year teachers?

17 A. I think that is highly likely. Yes.

18 Q. Is there any basis to say otherwise, that you
 19 are aware of?

20 A. No.

21 Q. It goes on to state, this e-mail, "Thus it is
 22 also" -- I will try that again.

23 "Thus it also seriously
 24 underrepresents uncredentialed
 25 teachers and should not be used to

1 A. Yes, I have.

2 Q. This is a document Bates stamped 8135 and
 3 appears to be a series of e-mails.

4 Am I correct?

5 A. Yes.

6 Q. Do you recognize this document?

7 A. Yes.

8 Q. There are two e-mails. The first is from
 9 Linda Darling-Hammond to you and others dated March 10,
 10 2002; correct?

11 A. It is actually the second. They are in
 12 reverse chronological order.

13 Q. True.

14 The one at the top, then, is that?

15 A. Yes.

16 Q. The bottom one is the one to which Linda
 17 Darling-Hammond is responding.

18 It is apparently from you to apparently people
 19 unknown, but at least Linda Darling-Hammond, dated March
 20 10; correct?

21 A. Yes.

22 Q. Let's look at Linda Darling-Hammond's e-mail
 23 at the top first. That is the first one appearing at
 24 the top.

25 It states:

1 draw generalizations about the
 2 proportions of teachers with
 3 different kinds of preparation or
 4 credentialing in the state as a
 5 whole."

6 Do you disagree or agree with that
 7 characterization?

8 A. Yes. I agree with that.

9 Q. Did that affect any opinions or conclusions
 10 you drew in your expert report?

11 A. As I suggested yesterday and as I suggested in
 12 my own question to Linda, it -- it makes the results
 13 more positive than they would be had less experienced
 14 and less underprepared teachers been represented in the
 15 sample at the same rate that they are represented in the
 16 population of California school teachers.

17 Q. Do you agree with her point that you can not
 18 draw generalizations about the proportions of teachers
 19 as a whole to the state as a whole?

20 A. She says, I believe, or at least what I
 21 understand her to say, is that you can't draw
 22 generalizations about the proportions of teachers with
 23 different kinds of preparation or credentialing as a
 24 whole.

25 Q. Okay. And you agree with that?

1 A. That you can't generalize from the sample to
 2 the state in terms of the proportion of teachers with
 3 various kinds of credentialing? Yes. Absolutely.
 4 Q. Let's look at your e-mail, at the second
 5 paragraph reading, "Also." I won't read it, but this
 6 seems to address what Linda was responding to -- Linda
 7 Darling-Hammond was responding to in her e-mail.
 8 Now, where is this issue described or
 9 explained in the text of your expert report?
 10 MR. LONDEN: Vague.
 11 THE WITNESS: I don't recall exactly, but I
 12 don't know that I explained this in my report.
 13 BY MR. HERRON:
 14 Q. Okay. You don't know how the Harris people
 15 may have weighted their own data to compensate for this
 16 particular issue, do you?
 17 A. Actually -- and if I could refer to Exhibit 30
 18 to refresh my memory --
 19 Q. Certainly.
 20 A. My understanding based on my quick perusal of
 21 this and my recollection is that they didn't weight the
 22 sample in order to compensate for the differences in
 23 credential status or experience in this.
 24 Q. Did you or your team weight for that factor in
 25 your own analysis of the data?

1 A. No.
 2 Q. The last sentence on Exhibit 45, beginning
 3 "BTW" states, quote:
 4 "I will have the final report
 5 of the SPRA case studies on Tuesday
 6 night."
 7 What does "SPRA" refer to?
 8 A. It is the Social Policy Research Associates.
 9 Q. Which is referred to in your expert report?
 10 A. Yes.
 11 Q. What did you mean by "case studies"?
 12 A. The methodology used in the SPRA research was
 13 a case study method. It ends up producing a cross-case
 14 analysis of the 17 cases that they studied, and that is
 15 what that means.
 16 Q. How is it -- is it proper or appropriate to
 17 refer to "case studies" interchangeably with
 18 "qualitative studies"?
 19 A. No. "Case study" is a design, where you study
 20 cases of something.
 21 "Qualitative" is a set of data collection and
 22 analysis methods that you could use in a number of
 23 designs, case studies being only one.
 24 (Exhibit 46 was marked for I.D.)
 25 THE WITNESS: Okay.

1 BY MR. HERRON:
 2 Q. Dr. Oakes, have you had an opportunity to
 3 review Exhibit 46?
 4 A. Yes.
 5 Q. This is a two-page document Bates stamped at
 6 the bottom 11825 and 11826.
 7 It appears to be a series of e-mails; correct?
 8 A. I think it is only one.
 9 Q. Do you recognize this document?
 10 A. Yes.
 11 Q. Did you receive this -- I am focusing at the
 12 top on Page 11825.
 13 This is an e-mail message, apparently from
 14 Russell Rumberger to you, with various cc's included
 15 dated March 12, 2002; correct?
 16 A. Actually, the original message I think is a
 17 copy of an e-mail I sent to Marisa Saunders which
 18 includes in it the copy of the e-mail from Russell
 19 Rumberger to me.
 20 Q. Okay. But in any event, the Russell Rumberger
 21 e-mail was received by you on March 12; is that correct?
 22 A. Yes.
 23 Q. What is he discussing here? The RAND survey?
 24 A. He is responding to the e-mail that Linda --
 25 the same e-mail that Linda Darling-Hammond was

1 responding to in Exhibit 45, and so he is responding to
 2 my question about whether we have a margin -- any margin
 3 of error or comparable indicators of confidence levels
 4 about the Harris data.
 5 And he -- as Russ is prone to do -- it
 6 triggers for him a thought about ways to report our
 7 confidence in the significance of the differences we are
 8 reporting generally in our studies.
 9 He then refers to the RAND Class Size
 10 Reduction Study which used a particular sampling design
 11 which has an implication for how the standard errors are
 12 calculated, and then he says, if the design for Harris
 13 was similar, then you would need to follow similar
 14 procedures.
 15 Then he is talking about the various
 16 alternatives for reporting our confidence in the
 17 differences that we report.
 18 Q. He states:
 19 "Once we know the standard
 20 errors, we can either report them
 21 in the tables, report them in a
 22 supplemental table or test for
 23 significant differences directly
 24 and report those. I don't have a
 25 strong preference although the

1 first way (report the standard
2 errors in the table) might be the
3 most straightforward.
4 Did I read that correctly?
5 A. Yes.
6 Q. Did you report the standard errors in the
7 tables?
8 A. I chose to test for significance differences
9 directly and report those.
10 Q. So that is what the Pearson chi-square test
11 references are?
12 A. Yes.
13 Q. You don't need to review -- you know, you
14 might just review the attached data, just scanning to
15 know what it is.
16 (Exhibit 47 was marked for I.D.)
17 BY MR. HERRON:
18 Q. Dr. Oakes, have you had an opportunity to
19 review Exhibit 47, consistent with my limitations?
20 A. Yes. A brief perusal of the attachments.
21 Q. Right.
22 Do you recognize -- I guess it is really
23 "these" documents?
24 A. Yes.
25 Q. What are they?

1 A. This is a response to Peter Harris after he
2 sent me a second set of banners in response to my
3 request for some additional analyses of the relationship
4 among the instructional materials variables, and I am
5 thanking him.
6 I am also sending him copies of a very
7 preliminary set of tables that I constructed showing the
8 kinds of relationships that I wanted to test, and I am
9 asking him to glance them over to make sure that I am
10 not -- haven't represented the data inappropriately in
11 his view.
12 And I am also asking, in my continuing pursuit
13 for making sure that we can be confident in the
14 differences we are reporting -- I asked him about a
15 margin of error for any statistics that he has done that
16 I should -- that he would suggest that I use.
17 Q. Did you have a later conversation with him
18 about that latter topic, the margin of error, et cetera?
19 A. Not that I recall.
20 Q. Again, what was the final conclusion, then,
21 drawn by you that -- in relation to the margin of error
22 issue?
23 A. Never feeling fully satisfied that I got an
24 answer that -- I wasn't sure whether it was that I
25 wasn't understanding or that I simply -- I simply

1 decided to do the analyses independently and test the
2 differences using my own analyses.
3 Q. That is the end conclusion?
4 A. That is the end conclusion.
5 Q. Okay. Great.
6 A. However, I don't want it to be seen as if I
7 didn't trust what Harris was doing. I just decided to
8 do it myself.
9 You can see this was a very complicated set of
10 exchanges.
11 (Exhibit 48 was marked for I.D.)
12 BY MR. HERRON:
13 Q. Dr. Oakes, have you had an opportunity to
14 review Exhibit 48?
15 A. Yes.
16 Q. This is a one-page document Bates stamped 7128
17 and appears to be an e-mail.
18 Am I right?
19 A. Yes.
20 Q. It is from you, Jeannie Oakes, to Matt Kreeger
21 and Gary Blasi with a cc to Marisa Saunders, dated March
22 20, 2002; correct?
23 A. Yes.
24 Q. Item No. 1 says -- well, just above Item 1 it
25 says:

1 "I can't really finish up this
2 portion of the report until I have
3 more information."
4 What portion were you discussing, the first
5 half?
6 A. Are you asking if it was the first half?
7 Q. Yes, Ma'am.
8 A. Yes. The response, what is now Section No. 2.
9 I am not sure it was Section No. 2 at the time.
10 Q. And Item 1 of the information you identify
11 needing for that purpose is, quote, "documentation of
12 the Harris survey methodology"?
13 A. Yes.
14 Q. What did you mean by that?
15 A. I wanted to see Harris's explanation of his
16 sampling strategy and his analytic strategy and the
17 response rates and the kind of information that is in
18 Exhibit No. 30.
19 Q. Did you ever receive documentation of the
20 Harris survey methodology?
21 A. At this point I did.
22 Q. Did you review it?
23 A. Yes. On the -- yes. I think I reviewed it on
24 the Internet. It was an electronic copy.
25 I think I recall telling you yesterday this

1 was the first time I had seen this document.
 2 Q. Meaning Exhibit 30?
 3 A. Yes, Exhibit 30. This is the first time I
 4 have seen it in this hard copy form.
 5 Q. Did you provide the Harris survey methodology
 6 to anybody who was working with you on your expert
 7 report?
 8 A. You know, I don't recall whether I provided it
 9 to David and Marisa or whether they obtained it
 10 independently.
 11 Q. What did you do and anyone else do with the
 12 Harris survey methodology?
 13 A. I know I read it, and my understanding from
 14 David Silver is that he not only read it, but that he
 15 called the Harris group and had lengthy discussions to
 16 make sure he understood it completely.
 17 Q. Okay. The second-to-the-last full sentence
 18 states:
 19 "I'd also like to see a copy
 20 of the work that Michelle Fine has
 21 done, if that's appropriate."
 22 Why were you asking for that?
 23 A. I have known Michelle Fine for a very long
 24 time, and I have a lot of regard for her work, and I had
 25 heard that she was -- she had been retained as an

1 expert, and since that was independent of my group of
 2 scholars, I was interested in what she was doing.
 3 And at that point was considering asking her
 4 to become a member of the group of scholars for purposes
 5 of publication.
 6 Q. Did you review her expert report and provide
 7 any comments at any time to her?
 8 A. I read it. I think I may have told her that I
 9 liked it and was moved by some of the material in it.
 10 She had actually already submitted or at some
 11 point had submitted a shorter version of it to the same
 12 journal that had agreed to publish the papers as a
 13 whole.
 14 Editors, not knowing anything about the
 15 project, asked me if I would review Michelle Fine's
 16 paper, just serendipitously, so I actually looked at it
 17 and declined to review it because I told the editors
 18 that I was inviting her to participate in this group of
 19 scholars, and then they delayed having anybody review it
 20 until we reviewed it as a part of this, because Michelle
 21 had agreed to shift her submission for publication away
 22 from a general submission toward a submission along with
 23 the group.
 24 Q. Did you, separate from that, what you just
 25 described, review Michelle Fine's expert report and

1 provide her with comments prior to its production in
 2 this litigation?
 3 A. No, I don't think -- not that I recall.
 4 Q. Did you recommend to plaintiffs' litigation
 5 team that they might want to contact Michelle Fine as a
 6 potential expert in this case?
 7 A. I know we had conversations about who in the
 8 country had expertise around the more social and
 9 psychological impact of schooling on children, and
 10 Michelle's name -- I would have been likely to mention
 11 her name in that context, but I don't have a specific
 12 recollection.
 13 (Exhibit 49 was marked for I.D.)
 14 BY MR. HERRON:
 15 Q. Dr. Oakes, have you had an opportunity to
 16 peruse Exhibit 49?
 17 A. I have.
 18 Q. Okay. Do you recognize this document?
 19 A. Yes, I do.
 20 Q. What is it?
 21 A. It is a series of tables that I produced as my
 22 first attempt to display some of the relationships I was
 23 interested in examining and reporting.
 24 Q. When you say you "produced," what do you mean?
 25 A. That I sat at my table at home with the Lou

1 Harris banners beside my computer and made tables on my
 2 computer and copied the numbers or the -- what seemed to
 3 be relationships from the Lou Harris banners into my
 4 tables.
 5 Q. You yourself did this?
 6 A. Yes, I did.
 7 Q. Did David Silver assist at all?
 8 A. No.
 9 Q. If you will look kindly at Page 8977, at the
 10 very bottom --
 11 A. Yes.
 12 Q. -- it says:
 13 "X equals significant
 14 relationship at the .05 level
 15 (independent z-tests.)"
 16 What does that mean?
 17 A. The -- this is -- I was taking this from the
 18 banners that were provided by Lou Harris. I don't
 19 recall exactly where or how on the banner -- I mean, I
 20 can't visualize from where on the banner I took this
 21 particular note about the significance tests, but I
 22 believe my recollection is this was all from the
 23 banner -- this was all produced before David Silver was
 24 involved.
 25 Q. What is an "independent z-test"?

1 A. It is just the name of the phrase used to
2 describe the test of significance -- whether the
3 differences between two numbers are significant.

4 Q. How does the z-test differ from a chi-square
5 approach to testing significance?

6 A. The chi-square test is a test that you use
7 always on categorical variables, like "Yes"/"No" answers
8 rather than 1 to 5 answers.

9 What you do is develop a contingency table, so
10 you place the numbers that occurred. So if you have a
11 two-by-two table of people who answered "Yes" on one
12 thing and "No" on that same thing, "Yes"/"No" columns --
13 and the rows are also the columns -- and then you put
14 the numbers of each type of response from each group
15 into the table. And then the chi-square test allows you
16 to test whether that particular distribution of the
17 numbers in that table could have occurred by chance or
18 the likelihood it could have occurred by chance.

19 That is a different kind of a test than most
20 significance tests, which actually simply test the
21 difference between the averages or the percents, the
22 number that was obtained, given the size of the
23 sampling.

24 I am not a statistician, but that is my --
25 that is a general explanation.

1 saying? You group pairs of responses and test that
2 using the chi-square method?

3 MR. LONDEN: Vague and ambiguous.

4 THE WITNESS: On some occasions I tested the
5 categories as they were given -- the number of responses
6 that fell into different categories.

7 In some cases I collapsed categories and
8 always indicated in the tables where that was done.

9 So, for example, if people were given four
10 responses, "Excellent," "Good," "Fair" and "Poor," on
11 some occasions I would say, "Let's lump the positive
12 ones together; how many people responded positively,
13 meaning "Good" or "Excellent" compared to how many
14 people responded, "Fair" or "Poor," generally negative
15 responses.

16 Q. Okay. That was my question.

17 Can you put a date on this document?

18 A. Sometime in the spring of 2002.

19 Q. Can you be any more definite than that?

20 A. I could say, given the -- given the e-mails we
21 have just reviewed, some time during March or maybe
22 early April, I think.

23 Q. You are assuming I am a chronological person.

24 A. I don't know.

25 Q. All right. Thank you.

1 Q. But how the chi-square approach may differ
2 from a z-test you can't tell us?

3 A. I think I did just tell you, but -- I don't --
4 I told you my understanding of the difference.

5 Q. Okay. If a chi-square test, as you stated, is
6 best used with the "Yes"/"No" type of response, why then
7 was it applied to the responses of the Harris study
8 where multiple responses to each question existed?

9 A. In my analyses I always test the number of
10 responses in a particular category, so the number of
11 people who said, "Yes" or "No" or the number who said a
12 combination of "Fair" and "Poor." It makes it a
13 categorical variable.

14 It is not somebody saying, "To what degree do
15 you believe this is a problem. Rank it from zero to
16 100" or "How many of your students have something," and
17 then you simply use that number in the continuous -- as
18 a continuous variable. All of the numbers I tested were
19 categorical data.

20 Q. I guess I am missing it a little bit.

21 Some of the categories, some of the responses
22 to the Harris survey questions were "Excellent," "Good,"
23 "Not so good," "Fair," "Poor," "Nonexistent"; right?

24 A. Yes. Those are categorical data.

25 Q. And then you group those; is that what you are

1 (Exhibit 50 was marked for I.D.)

2 BY MR. HERRON:

3 Q. Have you had an opportunity to review Exhibit
4 50?

5 A. Yes.

6 Q. Do you recognize this document?

7 A. Yes.

8 Q. What is it?

9 A. It is a series of e-mails exchanged between
10 Marisa Saunders and myself.

11 Q. The e-mail at the upper part of Page 11820 is
12 from you to Marisa Saunders dated 4-30-02; correct?

13 A. Yes.

14 Q. Now, it states in the second sentence:

15 "Late this afternoon I had a
16 conversation with Matt Kreeger and
17 the statistician Andy."

18 "Andy" is Andy Lazarus?

19 A. Yes.

20 Q. What was the conversation?

21 A. I was requesting that he do significance tests
22 on the analyses, the tables -- the relationships that I
23 had -- that I wanted to report in my work.

24 Q. Did "he," Andy?

25 A. No, he did not. At least to my knowledge he

1 didn't.

2 Q. Dr. Oakes, did Noah Delissovoy assist David
3 Silver in the significance testing performed by the
4 individuals assisting you with your expert report?

5 A. I think Noah double-checked numbers. He might
6 have done some other clerical types of tests.

7 Q. But his role was minimal, if at all, at least
8 with respect to David Silver's in that respect?

9 A. Yes.

10 (Exhibit 51 was marked for I.D.)

11 BY MR. HERRON:

12 Q. Have you had an opportunity to review Exhibit
13 51?

14 A. I have.

15 Q. Why don't we make this a one-page exhibit? We
16 will -- the only page of the exhibit will be 7939.

17 MR. LONDEN: That makes perfect sense. There
18 is nothing on Page 2.

19 BY MR. HERRON:

20 Q. Was this page intentionally left blank?

21 A. Some of my best thinking.

22 Q. Okay. This document is -- Exhibit 51 is a --
23 has a couple of e-mails on it.

24 I want to focus on the one at the top of the
25 page, which is from David Silver to Jeannie Oakes, cc to

1 problems for t-tests and
2 correlations.)"

3 Can you tell me what he is talking about
4 there?

5 A. He, like all good statisticians, is
6 extraordinarily cautious about the assumptions that
7 underlie certain kinds of data, and he is telling me
8 that it is his judgment that the chi-square tests are
9 the most appropriate ones to use with the kind of data
10 that we have.

11 (Exhibit 52 was marked for I.D.)

12 BY MR. HERRON:

13 Q. Dr. Oakes, have you had an opportunity to
14 review Exhibit 52?

15 A. Yes.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. What is it?

19 A. This is a report by David Silver to me of what
20 he perceived as an error in the dataset that he received
21 or the -- it looks like one error is an error in one of
22 the banners from the Harris group and another is an
23 error he found in the code book.

24 Q. The error you are referring to in the Harris
25 group banner is the "Textbooks and materials in only

1 Marisa Saunders, dated May 3, 2002; correct?

2 A. Yes.

3 Q. In the first sentence it says:

4 "I've looked over the data and
5 related files that Matt sent"?

6 A. Yes.

7 Q. Matt Kreeger; correct?

8 A. Yes.

9 Q. Do you know what data and files were sent?

10 A. I know that the data was the Harris data. It
11 was sent -- at least on some occasions it was sent in
12 two forms, an ASCII file form and an SPS form.

13 Q. Right.

14 A. And I am not recalling what the related files
15 were.

16 Q. In the second -- I'm sorry -- third full
17 sentence, David Silver talks about tests that could be
18 used. He says:

19 "I think we should stick with
20 the chi-square statistics since
21 they allow us to use one test
22 uniformly throughout the paper.
23 (They are robust to issues of
24 normality and nonlinearity of the
25 Likert scale data that pose

1 fair or poor physical condition" piece?

2 A. There was an error in the grouping. Yes.

3 Q. Do you know whether Harris incorrectly
4 reported that data?

5 MR. LONDEN: Compound.

6 THE WITNESS: I do not know.

7 BY MR. HERRON:

8 Q. Did you report this data?

9 A. No.

10 Q. Did you report the data in corrected form?

11 A. Yes.

12 Q. How did you correct it, if you know?

13 A. We -- my recollection is that we eliminated
14 the "Excellent" -- the numbers of people who responded,
15 "Excellent" from our grouping of people who made
16 negative responses.

17 Q. Why was that the proper solution?

18 A. Because we wanted to report the extent of
19 people who reported that their textbooks and materials
20 were in only fair or poor condition and certainly not
21 want to include people who said "Excellent" in that
22 group.

23 Q. Okay. He talks about there is an unrelated
24 problem with the code book.

25 Can you describe what that problem is?

1 A. That, apparently, in the code book the values
2 assigned to different responses for purposes of analysis
3 were inconsistent in this item with the way they had
4 been assigned to other items.

5 Q. How did that affect your report?

6 MR. LONDEN: Assumes facts.

7 THE WITNESS: It didn't affect my report at
8 all because we had the data and correct -- I don't know
9 whether -- actually, I don't know whether this was an
10 error in the dataset or whether it was simply a typo in
11 the code book.

12 BY MR. HERRON:

13 Q. Did you see a hard copy of the code book at
14 any time?

15 A. No.

16 MR. LONDEN: Assumes facts.

17 (Exhibit 53 was marked for I.D.)

18 BY MR. HERRON:

19 Q. Dr. Oakes, have you had an opportunity to
20 review Exhibit 53?

21 A. Yes.

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. What is it?

25 A. It is an e-mail memo from me to several

1 English language learners and so that the denominator --
2 right -- the --

3 Q. Yes.

4 A. -- the ratios were wrong because the
5 percentage of teachers reporting was calculated -- the
6 percentage of people reporting that they had these
7 problems was calculated as a percentage of the whole
8 sample rather than simply as a percentage of the people
9 who were asked that question, which was smaller, meaning
10 that all of our results underestimated the extent to
11 which teachers of English learners were reporting these
12 as problems.

13 Q. Was that the 32 versus 36 percent issue?

14 MR. LONDEN: Vague.

15 THE WITNESS: I have no recollection of a 32
16 versus 36 percent issue.

17 BY MR. HERRON:

18 Q. Where, if at all, do the "materials in home
19 language" and "materials at English reading levels" make
20 its way into your report?

21 A. Originally they were in my report and in my
22 tables that David was performing the significance tests
23 on.

24 When he discovered this error, we had two
25 choices. One choice would be to remove them from the

1 members of the litigation team and some of the scholars
2 working on the Harris data and to -- and copied to my
3 IDEA group.

4 Q. The language below "Jeannie," is that
5 something you drafted or something you received from,
6 for instance, David Silver?

7 A. It looks like I have copied that material from
8 a message sent to me by David Silver.

9 Q. Can you describe for us what truly the issue
10 is that he is raising here, David Silver, in the
11 language below "Jeannie"?

12 A. Yes. There were two items, the two he names,
13 "shortage of materials in home language" and "shortage
14 of materials at English reading levels," that I and
15 others had been treating as if the whole sample had
16 answered those questions.

17 David discovered there was a lot of missing
18 data and then went back and looked -- you know, I don't
19 know if others had been treating it that way. At least
20 I was treating it as everybody in the sample had
21 answered those questions.

22 David noticed all of this missing data and
23 investigated why that might be and realized that in the
24 questionnaire those questions were only asked of people
25 who reported they were teaching students who were

1 tables and create separate tables in order to make it
2 easy for the reader to make clear that these were
3 questions asked of only a subsample of the whole group
4 or to eliminate them altogether.

5 My choice, because we were under extreme
6 pressure for deadlines and because there was another
7 report on issues related to English learners
8 specifically, that I would simply delete those rows from
9 my tables and not report them.

10 Q. What other report are you referring to?

11 A. The report that -- well, there was scholarly
12 work being done by Patricia Gandara and Russ Rumberger
13 looking at all the data relating to English learners.

14 Their work became the basis for Kenji
15 Hakuta -- at least part of the basis for Kenji Hakuta's
16 expert report.

17 Q. Sure.

18 (Exhibit 54 was marked for I.D.)

19 BY MR. HERRON:

20 Q. Dr. Oakes, have you had an opportunity to
21 review Exhibit 54?

22 A. Yes.

23 Q. Do you recognize this document?

24 A. Yes.

25 Q. What is it?

1 A. This is an e-mail from Marisa Saunders to me.

2 Q. Can you describe to us what is going on.

3 A. The -- this was a part of our conversation
4 about what to do with the respondents throughout the
5 dataset who said they were not sure.

6 Q. Uh-huh.

7 A. David had eliminated them from his analysis
8 when he was doing significance tests and sent us the
9 numbers and the percentages that were -- that resulted
10 when the "not sures" were not included in the
11 denominator.

12 As you suggested, I think either earlier today
13 or yesterday, that increased the percentage of
14 respondents that reported particular problems.

15 In the case of respondents who indicated they
16 did not have enough textbooks for students to use at
17 home, it changed the percentage. It increased the
18 percentage from 32 percent to 36 percent.

19 It was after thinking about this that I made
20 the decision to leave the "not sures" in the denominator
21 to -- rather than representing the percentages of people
22 who were sure one way or the other. I wanted to
23 represent the percentages of everyone who was asked this
24 question.

25 Q. A more conservative approach?

1 that is the proper relationship to do significance tests
2 on, there would be no reason to do significance tests or
3 to use significance tests on the other relationship.

4 I have no idea what he may or may not have
5 done independent of my knowledge.

6 Q. Okay.

7 MR. LONDEN: When you get to a breaking point,
8 I am going to check on an exhibit.

9 MR. HERRON: Now is fine if you would like to.

10 MR. LONDEN: It is really for you.

11 (Recess taken.)

12 (Exhibit 55 was marked for I.D.)

13 BY MR. HERRON:

14 Q. Dr. Oakes, have you had an opportunity to
15 review Exhibit 55?

16 A. Yes.

17 Q. Do you recognize this document?

18 A. Yes, I do.

19 Q. What is it?

20 A. This is a series of e-mails reporting my
21 consultation with David Silver and then with the
22 other -- a group of the other experts about the most
23 appropriate way to represent those who responded that
24 they didn't know or weren't sure in -- to the questions
25 in the Harris survey.

1 A. Yes.

2 Q. Was it necessary for Mr. Silver or anyone to
3 do significance testing after the "not sures" were
4 placed back in the denominator?

5 MR. LONDEN: Vague.

6 THE WITNESS: We decided after discussion that
7 the appropriate comparison was between the two groups of
8 people who were sure rather than trying to second-guess
9 the people who were not sure and put them in one
10 category or the other.

11 BY MR. HERRON:

12 Q. Yes.

13 But my question is whether or not it was
14 necessary for them to do additional significance
15 testing.

16 Let me start again.

17 He's done significance testing on the data
18 which existed and did not include the "not sure"
19 responses; is that correct?

20 A. My understanding from my conversations with
21 him is that he created a dataset for the purpose of
22 doing significance testing that eliminated people who
23 did not respond or were not sure.

24 And in my judgment there would be no reason to
25 do significance testing -- that once you have decided

1 Q. In your e-mail on the bottom of the page Bates
2 stamped as 08123 -- this is an e-mail dated May 19,
3 2002 -- you provide two alternatives; correct?

4 A. Yes.

5 Q. Did you follow Alternative 2 in reporting the
6 data set forth in your expert report?

7 A. I followed a variation of Alternative 2.

8 Q. Describe the variation, please.

9 A. I created a separate table -- rather than
10 including the two figures, the percentages who said they
11 don't have enough and the percentages who were not
12 sure -- and tried to -- rather than trying to integrate
13 those two columns into the existing tables, I decided to
14 create a table and present it right upfront.

15 And it is Table -- you may have it.

16 Q. Table 7, Page 23?

17 A. Yes.

18 To take -- to create a table so that before
19 reading any of the subsequent analyses, readers would
20 have a very clear understanding of the proportion of
21 people on these main items that I used in my analysis
22 for reporting definitely, "Yes," this was a problem for
23 them or that they were not sure.

24 Q. Okay.

25 (Exhibit 56 was marked for I.D.)

1 BY MR. HERRON:

2 Q. Have you had an opportunity to review Exhibit
3 56?

4 A. Yes.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. This is a series of e-mails, the second one of
8 which -- meaning the one that comes about in the middle
9 of the page -- is from Marisa Saunders to UCLA -- to
10 whom is it? Can you tell me?

11 Do you see what I am talking about?

12 A. Yes. The e-mail is addressed to me, but I
13 don't recognize the e-mail address on the "To" line.

14 Q. Do you recognize this document?

15 A. I certainly recognize the content of it as
16 part of a conversation I participated in.

17 Q. In the e-mail from Marisa Saunders to you at
18 the last three sentences in the first paragraph it
19 states, "For these two items." I think it is referring
20 to "materials in home language" and "materials at
21 reading level." Again, then:

22 "For these two items, teachers
23 were told to skip these questions
24 if they did not have any ELL
25 students in their class. Yet, the

1 Russ Rumberger?

2 A. Correct.

3 Q. It is a message dated May 20, 2002; correct?

4 A. Yes.

5 Q. He states:

6 "I don't think this is a very
7 good solution because as a reader I
8 want to see the actual percentages
9 that the statistical tests are
10 based on. In other words, I want
11 to see that two observed
12 percentages (e.g., 12 percent
13 versus 19 percent) are
14 statistically significant."

15 What is he saying there?

16 A. He was saying that he would prefer a more
17 complicated table that showed all three sets of
18 respondents and that as a reader he would be happier
19 with that solution.

20 Q. And his solution was rejected by you?

21 A. Yes.

22 Q. The top part is a message from you to Russ, I
23 take it -- not -- yes. The top two e-mails are from you
24 to Russ Rumberger; is that right?

25 A. Yes -- no. The first one is -- the second one

1 percentages we are reporting
2 include these teachers. At the
3 very least, we should address this
4 in the text."

5 You resolved this, as stated before; right?

6 A. Yes.

7 (Exhibit 57 was marked for I.D.)

8 BY MR. HERRON:

9 Q. Dr. Oakes, have you had an opportunity to
10 review Exhibit 57?

11 A. Yes.

12 Q. This is a two-page document Bates stamped 8128
13 and 8129.

14 The bottom e-mail, the e-mail on the bottom of
15 the first page, 8128, is from Marisa Saunders to Russ, I
16 take it Rumberger, and Patricia Gandara?

17 A. Yes.

18 Q. Do you know why she was writing to them?

19 A. Because I wanted her to let Patricia and Russ
20 know how to handle the "not sures."

21 Q. Does Marisa's e-mail at the bottom of 8128
22 accurately reflect what you had decided to do and
23 ultimately did do?

24 A. Yes.

25 Q. Above that there is a message to Marisa from

1 is from me to Russ, and then the top one is Russ's back
2 to me.

3 Q. In the one from you to Russ it states:

4 "We will report the 'not
5 sures' right upfront and then
6 remind readers that they are not
7 included in our significance tests.
8 If the attorneys scream, we can
9 certainly produce the numbers we
10 used for every table."

11 Did the attorneys scream? That was --

12 A. I want to put this in context.

13 No. Nobody screamed. I think -- what I am
14 saying is, "Russ, I understand your concern. I think
15 what I have chosen to do is adequate to satisfy this
16 concern without being unduly confusing."

17 But I was certainly willing for the purposes
18 of the expert report to include any complicated tables
19 that might make it clearer to the people who were going
20 to be using the report.

21 Q. Do you know -- well, we haven't had a response
22 to our subpoena to your IDEA group yet, so I am unable
23 to see this simply by reviewing Mr. Rumberger's report.

24 But do you know whether Mr. Rumberger followed
25 his own advice on how he expressed the data?

1 A. I don't recall.
 2 Q. You have reviewed his report?
 3 A. Yes.
 4 Q. Have you seen drafts of his report?
 5 A. I may have. You mean, prior to the final
 6 version?
 7 Q. Uh-huh.
 8 A. I may have.
 9 Can I volunteer something?
 10 Q. If your counsel lets you.
 11 A. I can give you the password on the
 12 password-protected site on the Internet where all of
 13 those papers are housed.
 14 Q. Okay.
 15 MR. LONDEN: I saw a response to the
 16 subpoena -- objections and response, and I think it -- I
 17 think it made the same offer.
 18 BY MR. HERRON:
 19 Q. Okay. Right. I guess my point is that we
 20 sent someone out there to collect the documents and were
 21 apparently turned away, so I don't have the documents
 22 and can't question you about them, as I would.
 23 But I am glad to take that password.
 24 A. The university attorneys are handling this for
 25 me so --

1 Q. I understand. It is not your issue.
 2 A. Should I say it out loud so it can be on the
 3 record?
 4 Q. If you'd like it on the record, that is fine.
 5 If you would like it off, that is also acceptable to
 6 me.
 7 MR. LONDEN: Is there any reason to have it
 8 off?
 9 THE WITNESS: No.
 10 MR. LONDEN: Let's put it in the record then.
 11 THE WITNESS: The website address is
 12 www.ucla/idea.org, and I believe you click on either
 13 "Research" or "Publications." I am not sure of the
 14 title.
 15 When you get into that site, there will be --
 16 there will be a phrase that says, "Williams watch,"
 17 which is our shorthand name for the papers being
 18 prepared for this project. Then it will say, "Password
 19 protected," and you will click on it, and you will get a
 20 dialogue box, and it will say, "User name," and you
 21 write, "Williams," and in the password you write,
 22 "wcase2002." If that doesn't work try just,
 23 "wcase2000," but I think it is "2002."
 24 MR. LONDEN: No spaces?
 25 THE WITNESS: No.

1 MR. JORDAN: All lower case?
 2 THE WITNESS: Yes.
 3 And the series of papers that are awaiting
 4 their conversion to PDFs are right at that site.
 5 MR. HILL: Is it "ucla/idea"?
 6 THE WITNESS: "-idea."
 7 MR. HILL: And I did get it off of the
 8 "Publications" list, is where I found it, but I got --
 9 THE WITNESS: Were you able to get in?
 10 MR. HILL: No. I needed the password. It
 11 wouldn't let me in.
 12 THE WITNESS: Well, now you have it.
 13 And you should know the papers on that site
 14 are the long versions of the papers. They are not the
 15 short papers that are about to be reviewed for
 16 publication.
 17 (Exhibit 58 was marked for I.D.)
 18 BY MR. HERRON:
 19 Q. Dr. Oakes, please just review the crosstabs
 20 for quick identification, if you would.
 21 A. Okay. So you are not going to ask me about
 22 this page?
 23 Q. I am not.
 24 A. Can I ask you about them?
 25 Q. Please don't.

1 Dr. Oakes, have you had an opportunity to
 2 peruse Exhibit 58?
 3 A. Yes.
 4 Q. Do you recognize this document?
 5 A. Yes.
 6 Q. What is it?
 7 A. This is David Silver's memo to Marisa and me
 8 and Noah, providing us with the significance tests that
 9 he did on Tables 17 and 18.
 10 Q. Is that Tables 17 and 18 as set forth in your
 11 report, if you know?
 12 A. I will have to look at these more carefully.
 13 Q. Okay.
 14 A. I actually believe the table numbers have
 15 changed so these are not now Tables 17 and 18. It looks
 16 like, rather, they are Tables 14 and -- Tables 14 and --
 17 13 and 14, it looks like.
 18 Q. Great. Thank you.
 19 The e-mail on Page -- well, this document,
 20 this Exhibit 58, is comprised of pages Bates numbered
 21 7942 through 7952.
 22 Looking at the e-mail on 7942 it states in the
 23 third full sentence:
 24 "Probably due to exclusion of
 25 'not sure' respondents, but there

1 is also a small chance that the
2 data I used differ slightly from
3 those used by Harris."

4 What was up with that or, framed differently,
5 what data was David Silver using that was different than
6 that used by Harris?

7 A. Well, he explains in the parentheses following
8 that sentence that what he was provided with at this
9 point was not a complete dataset that included the
10 variables from the CBEDS data, and so he recreated
11 the -- he added those variables in himself and suspected
12 that having handled the data himself rather than taking
13 the data as they had constructed it might have resulted
14 in very small differences, given how they might have
15 handled missing data.

16 I didn't think it was the case, and it
17 actually turned out it was not the case.

18 Q. When David Silver references in his e-mail,
19 "school variables," you interpret that as CBEDS data?

20 A. Yes.

21 Q. When he says, "I had to recreate one from
22 scratch," do you have any idea what his task was there?

23 A. To merge the CBEDS data with the Harris data.

24 Q. I see.

25 Your report at Page 23 refers in its last full

1 data relied upon by the AAP and NEA in their report.

2 A. I did nothing more than read their report and
3 a bit about how they conducted the study, their reports
4 of the study.

5 Q. Did they have a random sample in their survey?

6 A. I would have to review the document in order
7 to refresh my memory on the specifics of their
8 methodology.

9 Q. Was there any statistical testing as far as
10 you know done to the results of that survey to assure
11 that it was valid?

12 A. What I am reporting here is simply percentages
13 of teachers who said particular things, not whether the
14 differences between one group of teachers and another
15 was statistically significant.

16 The one comparison I make is the difference
17 between California teachers and teachers nationwide,
18 which was a difference of 54 percent compared to 39
19 percent.

20 That seemed to me a large enough difference to
21 be meaningful, and I don't recall whether there was a
22 significance test attached to that.

23 Q. I mean, it is a large enough difference to be
24 meaningful if, indeed, the data is worth anything;
25 right?

1 paragraph to a study apparently done by the Association
2 of American Publishers in conjunction with the NEA.

3 Do you see what I am talking about?

4 A. Yes, I do.

5 Q. Did you review that study prior to production
6 of your report in this case?

7 A. Yes, I did.

8 Q. Did you find it surprising that the AAP might
9 conclude that more texts would be needed in California
10 schools?

11 A. No.

12 Q. Did you consider the fact that this is --
13 consider the fact that since they are in the business of
14 providing texts to schools that their report may be
15 biased?

16 A. I did consider that.

17 Q. How did you assure it was not biased?

18 A. I satisfied myself that it was worth using
19 since it was so very consistent with what we had
20 obtained in the Harris data, and it was consistent with
21 my knowledge of the fact that there were shortages in
22 the California schools.

23 Q. What did you do to assure yourself that the
24 survey data was valid?

25 When I am saying, "survey data," the survey

1 MR. LONDEN: Argumentative. Vague.

2 THE WITNESS: I think that is a correct
3 statement.

4 BY MR. HERRON:

5 Q. Can you vouch for the validity of this study
6 and its results?

7 MR. LONDEN: Vague.

8 THE WITNESS: Not without reexamining what I
9 logged and doing further examination, if I felt that was
10 necessary, before I would vouch for the validity of the
11 data.

12 BY MR. HERRON:

13 Q. The reality is that neither you nor anyone
14 working with you on this report did anything to assure
15 the AAP/NEA study was, in fact, a valid statistical
16 study; correct?

17 MR. LONDEN: Objection. Argumentative. Vague
18 and asked and answered.

19 THE WITNESS: In my own -- and I have read
20 lots and lots of studies in my career -- I think I am
21 pretty good at detecting ones which are blatantly bogus
22 and which ones are not.

23 I certainly was confident enough that this was
24 worth reporting in the very general way that I did.

25 BY MR. HERRON:

1 Q. I want to talk to you about the SPRA study
2 that is referenced many places, but it is certainly at
3 one place on Page 24 of your report.

4 Was the SPRA study prepared at your direction?

5 MR. LONDEN: Vague.

6 THE WITNESS: I am not sure I would
7 characterize it as my "direction."

8 It was a subcontract from IDEA to SPRA. I was
9 not involved in any way in directing the study.

10 BY MR. HERRON:

11 Q. How did -- what was the purpose of the survey?

12 A. It wasn't a survey. Actually, it was a set of
13 case studies.

14 Q. Okay.

15 A. The purpose was really twofold: One, to get a
16 rich description and firsthand accounts and observations
17 of the problems in schools where large numbers of
18 uncertified teachers were teaching, and to try to get
19 some sense of how various problems related to one
20 another and impacted the ability of teachers to teach
21 and students to learn.

22 Q. Whose idea was it to do this case study?

23 A. I believe I thought this case study would be a
24 good idea.

25 Q. Why did you think it would be a good idea?

1 A. Or December of 2001.

2 Q. Okay. Now, what was the total amount of -- I
3 take it I got a grant from Rockefeller?

4 A. I did get a grant from Rockefeller.

5 Q. Did the grant come to IDEA?

6 A. The grant came to IDEA.

7 Q. You then subcontracted with these folks,
8 Social Policy Research Associates?

9 A. Yes.

10 Q. What is the amount of the grant?

11 A. I think -- to the best of my recollection, it
12 was \$100,000. If it might have been -- I think it was.
13 It might have been 85. I am not remembering exactly.

14 Q. What is the "Social Policy Research
15 Associates"? What is that?

16 A. It is an independent social science research
17 firm in Oakland, California, that does contract research
18 on various social policy questions.

19 Q. Have you used them before, Social Policy
20 Research Associates? Before this.

21 A. Have I ever contracted with them?

22 Q. Right.

23 A. No.

24 Q. Had you ever used their services other than
25 contracting with them before you commissioned this

1 A. My preferred research approach is a
2 multi-method approach where I combine patterns that
3 are -- my understanding of patterns that are revealed
4 from quantitative analyses with rich descriptions of
5 those phenomenon in context through qualitative studies.

6 Q. After you decided that you wanted such a case
7 study done, how did you go about assuring you would get
8 it done?

9 A. Well, this is a long sequence of events.

10 Where would you like me to begin?

11 Q. As Julie Andrews said, "Let's start at the
12 very beginning."

13 A. I called Fred Frelow, who is a program officer
14 at the Ford Foundation who I know, and asked him if he
15 would be interested -- if Rockefeller would be
16 interested in providing support for such a study, and he
17 said he was very much interested in just the issues that
18 the studies addressed, and that he thought it would be a
19 very worthwhile investment of Rockefeller funds to
20 support the study.

21 Q. When did that contact take place, if you know?

22 A. Sometime in the fall or early winter of 2001.

23 Q. Okay. You mean fall of 2001, winter of 2002?

24 A. Yes.

25 Q. What --

1 school equity study?

2 MR. LONDEN: The question is vague and
3 ambiguous.

4 THE WITNESS: As -- you know, I don't -- not
5 in any -- let's see.

6 As an entity, I believe that in the past I may
7 have called upon them to do some sort of informal
8 consulting, but I don't recall the specifics of that.

9 I have known of them for a while and had
10 interactions with the group.

11 BY MR. HERRON:

12 Q. Why did you choose them, Social Policy
13 Research Associates?

14 A. Two reasons: One is their reputation for
15 doing high-quality work and, second, Diane Friedlaender,
16 who was the principal investigator on this study, had
17 been my Ph.D. student at UCLA, and I knew the quality of
18 her work to be outstanding.

19 Q. When had she been your Ph.D. student?

20 A. In the mid-1990's.

21 Q. Who is Steve Frenkel?

22 A. Her colleague at Social Policy Research
23 Associates.

24 Q. Who did you interact with at Social Policy
25 Research Associates in order to commission the study?

1 A. I interacted almost exclusively with Diane,
2 but there may have been some exchanges with their
3 contracts office. There might have been others, but it
4 was primarily with Diane.

5 Q. Prior to commissioning the study did you
6 discuss it at all with the plaintiffs' litigation team?

7 A. Yes. I think I told them that I was
8 interested in doing this and that I planned to do it and
9 that I thought it was a good idea, and I may have even
10 asked them what they thought.

11 Q. Do you recall what they responded, if they
12 did?

13 A. I think there was some -- I don't really
14 recall.

15 Q. Did you intend to use -- at the time you
16 commissioned this study did you intend to use its
17 results in your expert report?

18 A. I would have to answer that in the same way I
19 have about the Harris data; that I certainly intended to
20 use it in my research, and I knew at the time it might
21 well turn up in the expert report as well.

22 Q. And you intended your research to inform
23 plaintiffs' litigation team about issues related to
24 education; correct?

25 MR. LONDEN: Asked and answered.

1 Q. What discussions did you have at any time with
2 Gary Blasi about this school equity study done by SPRA?

3 A. I don't recall specifically, although Gary and
4 I talk a lot about both of our work, but I don't recall
5 specifically.

6 Q. How about with Bill Koski? Same question.

7 A. I have no recollection.

8 Q. Linda Darling-Hammond, same question.

9 A. I do recall a general discussion with her
10 about her sense that the data were interesting and
11 useful.

12 Q. How about Mr. -- Professor Rogers?

13 A. Very much the same. He was a little more
14 involved because, as the associate director of IDEA, he
15 had some conversations -- we had one substantive
16 conversation with Diane as she began this work, and John
17 participated in that as well.

18 Q. Uh-huh. Other than that one substantive
19 conversation did you have any other conversations with
20 him?

21 A. We had -- with John?

22 Q. Yes. About this report.

23 A. Probably. Yes.

24 Q. Do you recall them?

25 A. No.

1 THE WITNESS: Yes. That is the purpose of the
2 study, as outlined early on. I mean, the broad study,
3 bringing together scholars, investigating the issues
4 related to the case. One of the broad purposes of all
5 that work was to help educate the litigation team.

6 BY MR. HERRON:

7 Q. Okay. You received at some point a final
8 report?

9 A. I did.

10 Q. And did you provide that report to any of the
11 "IDEA scholars," as we have used that term?

12 A. Yes.

13 Q. To whom?

14 A. I don't recall with certainty the entire list
15 of people who received it either from me or from
16 elsewhere.

17 I know that I provided it to Linda
18 Darling-Hammond, probably to Russ Rumberger and Patricia
19 Gandara, and there may well have been others -- John
20 Rogers, I suspect.

21 Q. How about Bill Koski?

22 A. Could be.

23 Q. How about Gary Blasi?

24 A. Could be, although he was not part of the
25 group of scholars.

1 Q. Do you recall what was said in them?

2 A. No.

3 Q. What was the -- when was the substantive
4 conversation you just referenced?

5 A. With Diane Friedlaender?

6 Q. Correct.

7 A. Soon after I had received notice that I was
8 going to be awarded the grant from Rockefeller, Diane --
9 and maybe she brought an associate with her. I don't
10 recall -- came to Los Angeles to IDEA, and we had one
11 meeting. It might have been three hours.

12 Q. Who attended that meeting?

13 A. I know John Rogers did and I did, and I don't
14 recall who else.

15 Q. Did anyone from plaintiffs' litigation team
16 attend that meeting?

17 A. Not that I recall.

18 Q. Did anyone from plaintiffs' litigation team
19 speak to Diane Friedlaender at any time as far as you
20 know about this report?

21 A. I don't believe so, but I don't know.

22 Q. Did anyone from plaintiffs' litigation team
23 speak to Diane Friedlaender at any time as far as you
24 know?

25 MR. LONDEN: Asked and answered.

1 THE WITNESS: Not that I know of.
 2 BY MR. HERRON:
 3 Q. Why is it that you talked to Gary Blasi about
 4 this report or any other aspect of this case?
 5 MR. LONDEN: Vague.
 6 THE WITNESS: I think as I explained in one of
 7 our earlier days --
 8 BY MR. HERRON:
 9 Q. Don't repeat yourself.
 10 A. -- that Gary and I are colleagues and that we
 11 have a shared interest. We proposed work together, and
 12 we have regular conversations.
 13 Q. Okay. You had this three-hour substantive
 14 meeting, as you have described it.
 15 Tell us what was discussed.
 16 A. I provided a general overview for Diane of the
 17 issues in the case.
 18 Q. Meaning the Williams case?
 19 A. The Williams case and the problems that were
 20 laid out in the complaint and my interest in a study of
 21 schools that would be likely to fall in the group of
 22 schools that are considered schools attended by the
 23 plaintiff class of children or --
 24 Q. Uh-huh.
 25 A. -- and my interest in learning much more about

1 the claims in the complaint.
 2 And I asked her to design a study -- so I
 3 described all of that to her, and I think we had a
 4 brainstorming session about what sort of variables would
 5 be of interest, like teachers' working conditions,
 6 overcrowding, textbooks, some of the same constructs
 7 that I had suggested to the Harris team because I was
 8 very interested in having this parallel survey data and
 9 qualitative case study data that could be matched
 10 against one another.
 11 Q. To what extent did you discuss a potential
 12 design for the study?
 13 A. We negotiated -- I said that I would love to
 14 have at least 20 schools, and she figured out her
 15 budget, and at some later point said that 17 is what she
 16 could do. She may have said 15. We may have
 17 compromised on 17 -- that was -- in terms of the number
 18 of schools.
 19 The fact that there would be on-site
 20 observations and interviews was something we talked
 21 about since I was interested both in teachers' reports
 22 and in firsthand observations.
 23 Q. Interviews were conducted as part of this
 24 study?
 25 A. She certainly reports they were conducted.

1 Q. And there were on-site observations?
 2 A. Yes. Yes, as reported in her document.
 3 Q. Have the interviews been produced in this
 4 case?
 5 A. No.
 6 MR. LONDEN: Lacks foundation.
 7 BY MR. HERRON:
 8 Q. Have the on-site observations or notes thereof
 9 been produced in this case?
 10 A. Not to my knowledge.
 11 MR. LONDEN: Lacks foundation.
 12 BY MR. HERRON:
 13 Q. Did -- what else was discussed at that
 14 meeting?
 15 A. The fact that I wanted to be completely
 16 independent of the study; that I did not want to know
 17 the names of the schools that were studied nor the names
 18 of any respondents.
 19 I didn't want to have any interactions with
 20 members of her research team about the study; that I
 21 wanted to be viewed as a client for whom she as a
 22 researcher was conducting research with all of the
 23 independence and following all of the professional
 24 standards for doing independent scholarly research.
 25 Q. Did you ever learn the names of the schools or

1 districts involved in the case study?
 2 A. No.
 3 Q. Did you ever learn the name of any
 4 interviewee/respondent?
 5 A. No.
 6 Q. What else was discussed at that meeting?
 7 A. I don't recall.
 8 Q. What other communications did you have with
 9 Diane Friedlaender at any time regarding this study?
 10 A. We -- we had a whole series of e-mail
 11 conversations and sometimes telephone conversations
 12 because UCLA's business office was extraordinarily slow
 13 and difficult in getting Diane any money for this work.
 14 If you have my e-mails, you may have a whole
 15 string of exchanges between the two of us where we are
 16 trying to figure that out.
 17 Q. I do not have those, but go ahead.
 18 A. We also had some conversations about whether
 19 or not this kind of work required UCLA's human subjects'
 20 approval.
 21 After consultation with the institutional
 22 review board at UCLA it was determined this type of work
 23 did not require human subjects' approval.
 24 Later after the study was completed she asked
 25 me to write a letter to her supervisor. If I thought

1 the work was well done, she would appreciate her
 2 supervisor being told that.
 3 Q. Okay. Did you at any time discuss the
 4 methodology of the case study other than what you have
 5 already described?
 6 A. Not that I recall.
 7 Q. Interviews were constructed and questions
 8 asked.
 9 Did you ever review the interview questions
 10 prior to their being used?
 11 A. Not that I recall.
 12 We might have had some conversation during
 13 that meeting about that, but I am not -- I don't have
 14 any specific recollection of it.
 15 Q. And in -- couldn't the interview questions
 16 properly be characterized as a "survey"?
 17 A. In the broadest sense of the word.
 18 Q. Did you review any drafts prior to receiving
 19 the final draft?
 20 A. A draft of the --
 21 Q. The --
 22 A. -- the report?
 23 Q. Yes.
 24 A. I think I may have because I had a deadline
 25 for my own writing, and I wanted to have the results of

1 her survey -- her study to include in my writing, and
 2 she e-mailed me what might have been her not-quite-final
 3 draft in the middle of the night one night so I could
 4 have it in time so I could use some of the results.
 5 I think she later replaced that version with a
 6 more polished version.
 7 Q. Did you provide her with any comments on that
 8 draft?
 9 A. Just general comments of -- that I thought it
 10 was helpful and that I was appreciative, but I made no
 11 comments on the substance that I can recall.
 12 Q. Were your comments in writing or oral?
 13 A. I don't recall.
 14 Q. If you had a conversation with her -- well, do
 15 you recall having a conversation with her that critiqued
 16 or discussed at least the draft that you had received?
 17 A. I don't recall it.
 18 Oh, you know -- let me see. I know at one
 19 point there was a discussion about what should appear on
 20 the title page, and I think I suggested to her that she
 21 identify Rockefeller as the funder of the study because
 22 foundations like that sort of thing.
 23 There may have been something in the framing
 24 of the first page that I might have made a suggestion
 25 on. I am not remembering specifically.

1 Q. Beyond that, you don't recall having provided
 2 her with any comments?
 3 A. Not that I recall.
 4 (Exhibit 59 was marked for I.D.)
 5 BY MR. HERRON:
 6 Q. Dr. Oakes, a scan of all the pages past Page 1
 7 would be sufficient.
 8 A. You mean -- by "Page 1," you mean the cover
 9 page with the e-mail?
 10 Q. Right.
 11 A. Okay.
 12 Q. Dr. Oakes, have you had an opportunity to
 13 peruse Exhibit 59?
 14 A. Yes.
 15 Q. This is a document Bates stamped 776 through
 16 793.
 17 The first page is an e-mail; correct?
 18 A. Yes.
 19 Q. This is from you to Matt Kreeger, John Rogers,
 20 John Affeldt, Patricia Gandara -- if I am saying that
 21 correctly?
 22 A. Yes.
 23 Q. -- dated February 13, 2002; correct?
 24 A. Yes.
 25 Q. And attached is a draft, I take it, of the

1 SPRA study, at least as it existed at that time?
 2 A. It is a memo. It says it is a preliminary
 3 memo. I certainly have not recalled this.
 4 Q. Why did you direct it to Matt Kreeger and John
 5 Affeldt?
 6 A. Since I didn't recall even getting it, it is
 7 hard for me to say with any certainty, although I am
 8 sure I was just sharing something I had gotten.
 9 Q. Your e-mail does say in the second sentence:
 10 "It's only about half done,
 11 but I think it gives us enough to
 12 use for the upcoming reports."
 13 What were you referring to?
 14 A. I can only speculate that we were up against a
 15 deadline at that point, and I will -- thought there
 16 might be some helpful things in it.
 17 Q. You mean the deadline of producing expert
 18 reports in this case?
 19 A. I think that probably was the case.
 20 Q. Patricia Gandara, why did you forward this
 21 document to her?
 22 A. Patricia was working on scholarly work related
 23 to English language learners, and that was a part of the
 24 focus that Diane and her group had in their study, and I
 25 forward things routinely to Patricia on this topic that

1 I think she would find of interest.

2 Q. Describe -- setting that document aside, can
3 you kindly describe to us the methodology that was
4 actually employed in conducting this school equity
5 study?

6 MR. LONDEN: Vague. Foundation.

7 THE WITNESS: Well, the details of the
8 methodology are in Diane's report, and I didn't review
9 that report in preparation for today, but I do know the
10 basic outlines of the methodology, off the top of my
11 head, is that they sampled 17 schools, some of which
12 were elementary middle and high schools.

13 They were both rural schools and urban
14 schools, and they were geographically located throughout
15 the state of California.

16 They selected schools based on the percentage
17 of uncredentialed teachers at the school, and all of the
18 schools had at least 30 percent uncredentialed teachers.

19 Through interviews and observations they
20 looked at the quality of materials and asked teachers
21 about the quality of materials, the adequacy of both
22 texts and supplementary materials and about technology,
23 and they also, I know, asked about overcrowding and
24 other kinds of conditions, issues around teaching
25 English language learners. Generally, the problems

1 A. Yes. Yes.

2 Q. Do you know whether or not any school from the
3 Los Angeles Unified School District was sampled or
4 whether they were involved in this case study?

5 A. I don't know with any certainty about any --
6 the name or location of any school.

7 Q. Do you know the number of teachers who were
8 surveyed?

9 MR. LONDEN: Assumes facts.

10 THE WITNESS: I do not.

11 BY MR. HERRON:

12 Q. How about administrators?

13 A. I do not.

14 Q. How about students, if any?

15 A. I do not.

16 Q. Do you know whether the survey defined such
17 terms as "State content standards"?

18 A. First, it wasn't a survey.

19 It was a series of case studies, and I have no
20 knowledge of the specifics of the conversations that
21 were held other than those that were quoted in the
22 report.

23 Q. Did you review the entire report prior to
24 including it in your -- excuse me. Let me try that
25 again.

1 identified in the Williams case.

2 I know that in the course of their work they
3 took their -- the researchers took a tour of the campus,
4 talked with the principals or whatever administrator was
5 available to them, sat in and observed classroom
6 instruction and interviewed teachers, examined materials
7 and conditions firsthand.

8 BY MR. HERRON:

9 Q. The selection of schools was not random?

10 A. No. It is what we call a "purposive sample,"
11 meaning you are sampling schools with particular
12 characteristics because your interest is in
13 understanding the phenomena at those particular sites.

14 Q. Certain schools selected for participation in
15 this study originally later declined to participate.

16 Do you know why?

17 A. Yes. Actually, I believe Diane told me that
18 many schools were reluctant to -- when she approached
19 them about participating -- were reluctant to have
20 researchers come in and document the extent of problems
21 that they were experiencing at their schools.

22 Q. When you use the term, "uncredentialed
23 teachers," are you using that in the same way you have
24 before, which is to say, any teacher who didn't have a
25 preliminary or full credential?

1 Did you review the final draft of the school
2 equity study prior to including it in your expert
3 report?

4 A. Yes, I did.

5 Q. Did anyone else who was working with you on
6 your expert report?

7 MR. LONDEN: Review it? Review the expert
8 report?

9 BY MR. HERRON:

10 Q. Yes. I'm sorry.

11 A. Yes. I believe Marisa Saunders did and Jamy
12 Stillman, and Noah Delissovoy also may have reviewed it.

13 MR. HERRON: You know, why don't we break now
14 so you can get to that call, Jack?

15 MR. LONDEN: Good.

16
17 (Whereupon at 11:57 a.m. the deposition
18 of JEANNIE OAKES was adjourned.)
19 (Whereupon at 1:15 p.m. the deposition
20 was reconvened.)

21
22 EXAMINATION (Continued)

23 BY MR. HERRON:

24 Q. Doctor, is there any reason you can't give
25 your best testimony this afternoon?

1 A. No.
 2 (Record read.)
 3 MR. HERRON: Mark those separately. 60.
 4 (Exhibit 60 was marked for I.D.)
 5 MR. HERRON: And 61.
 6 (Exhibit 61 was marked for I.D.)
 7 BY MR. HERRON:
 8 Q. Dr. Oakes, Exhibit 60 is just the e-mail?
 9 A. Just the e-mail?
 10 Q. Yes.
 11 A. Okay.
 12 Q. Have you had an opportunity to review Exhibit
 13 60?
 14 A. Yes.
 15 Q. Do you recognize this document?
 16 A. Yes, I do.
 17 Q. What is it?
 18 A. It's an e-mail message from Diane Friedlaender
 19 in which she is sending me the final report and
 20 appendices of the Social Policy Research Associates
 21 school equity study.
 22 Q. This document is Bates stamped as 6771.
 23 It is from Diane to you dated March 27, 2002;
 24 is that correct?
 25 A. Yes.

1 Q. The first line says:
 2 "I know you are going to send
 3 your papers off soon."
 4 Do you know what she meant when she used the
 5 term, "papers"?
 6 A. Not for sure.
 7 Q. What is your understanding?
 8 A. That she knew I was under a deadline to
 9 produce my expert report, and she may have been
 10 referring to that as the paper that needed to be sent
 11 off soon.
 12 Q. Okay. Great. Set that one aside, and we will
 13 look at what we marked as Exhibit 61.
 14 I well understand you have not had an
 15 opportunity to review this in detail whatsoever, but do
 16 you recognize this document?
 17 A. Yeah. I -- yeah. I have a copy of at least
 18 most of this document, maybe all of it, in my office.
 19 It is the final report of the school equity
 20 study done by Social Policy Research Associates.
 21 Q. And I take it, particularly given the Bates
 22 number on Exhibit 60 and then Exhibit 61, this document,
 23 Exhibit 61, was attached to the e-mail, Exhibit 60, that
 24 we just reviewed?
 25 A. It appears that is the case.

1 Q. Was there a document that came after this one,
 2 Exhibit 61; meaning is this, indeed, the final report or
 3 was there another iteration later?
 4 A. I know that Diane sent bound copies to me
 5 later, and I am not sure whether there might have been
 6 minor editing changes.
 7 I think I mentioned earlier suggesting to her
 8 that she acknowledge the Rockefeller Foundation on the
 9 front page. She may have done that. I don't recall.
 10 Q. Okay. If there is another version of this, we
 11 don't have it.
 12 I will direct you to particular portions of
 13 this document, but by no means will I go through a
 14 substantial portion.
 15 I want you to look at Page 1 of this document,
 16 please, which is Bates stamped 6773.
 17 Are you there?
 18 A. Yes.
 19 Q. What does "RE1" mean, if you know?
 20 A. First of all, I should tell you that this was
 21 compiled out of order; that according to my notes this
 22 should be Appendix B of the report and, therefore, would
 23 come following the substantive part of the report, I
 24 believe right after page -- this should be Appendix B,
 25 which the appendices are not labeled on here, so it is

1 not -- at any rate, that may or may not be important.
 2 Q. Do you know whether the final version of this
 3 report had labeled appendices?
 4 A. I don't know.
 5 Q. I think what you are saying is that the
 6 documents Bates stamped as 6773 through 6778, in fact,
 7 are or should be Appendix B to this report; is that
 8 right?
 9 A. Appendix B, yes.
 10 Q. This is titled, this document on Page 1, that
 11 is the one that starts with 6773, "School equity study
 12 teacher sample"?
 13 A. Yes.
 14 Q. What does "RE1" mean?
 15 A. I believe those are codes, with the first
 16 letter of the code, "R," standing for "rural," the
 17 second letter, "E," standing for "elementary," and the
 18 number standing for the identification number of the
 19 first rural elementary school that was part of the
 20 sample.
 21 Q. So "UE" stands for "urban elementary"; "RM" --
 22 "RM" would be what?
 23 A. "Rural middle."
 24 Q. And "UM" would be "urban middle"?
 25 A. Yes.

1 Q. "RH" and "UH" would be "rural high" and "urban
2 high" school respectively?
3 A. Yes.
4 Q. Turn to the introduction page that is marked
5 as Page 1 but is Bates stamped as 6781.
6 A. Yes.
7 Q. You see Footnote 1, "Koski, William S."?
8 A. Yes.
9 Q. Does the "unpublished manuscript" at the end
10 of this footnote refer to his expert report in this
11 case?
12 A. I don't know.
13 Q. Looking the Page 2, 6782, Footnote 5 --
14 A. Yes.
15 Q. -- "Gary Blasi, 'Reforming Educational
16 Accountability,'" do you see that?
17 A. Yes.
18 Q. "Unpublished manuscript," do you know what
19 that is?
20 A. I believe it is a manuscript of a paper on
21 accountability that Gary has subsequently published in a
22 UCLA journal.
23 Q. If you could turn to Page 5, which is Bates
24 stamped 6785, do you see the last partial paragraph?
25 This talks about conducting 45-minute, quote,

1 that their identities will never be revealed and they
2 will never be reported about in a way that would allow
3 others to easily recognize them.
4 BY MR. HERRON:
5 Q. When you say, "general procedure," in what
6 context are you referring to that general procedure?
7 A. In education research.
8 Q. How about in education research that's used
9 specifically to support litigation? What is the general
10 procedure there?
11 A. I don't know. I don't know. I have never
12 been engaged in that kind of work, and I don't know if
13 there are protocols or what they might be.
14 Q. I take it you knew that documents you worked
15 upon or relied upon would have to be disclosed in
16 connection with your expert report in this litigation;
17 right?
18 A. Yes.
19 MR. LONDEN: Vague.
20 BY MR. HERRON:
21 Q. Why did you believe that the identities of the
22 SPRA participants, that is the interviewees, would not
23 have to be disclosed?
24 A. Because the only document I was relying upon
25 was the report -- the final report of the project, which

1 "structured interviews," unquote.
2 What does that mean, "structured interview"?
3 A. It means the conversations in the interview
4 were guided by a written protocol with questions that
5 would then be used consistently across all the
6 interviews.
7 Q. Do you know whether the district's -- well,
8 who truly participated in this, just teachers or is it
9 teachers and administrators? That is, the survey.
10 MR. LONDEN: Foundation.
11 THE WITNESS: The data collection tools that
12 are appended to this report include school administrator
13 protocol and teacher protocol.
14 And the text tells us that 49 teachers and 14
15 school administrators were interviewed.
16 BY MR. HERRON:
17 Q. Okay. Were the teachers and administrators
18 promised anonymity, as far as you know?
19 A. I believe they were, but I don't -- I believe
20 that is standard procedure. I would assume they were.
21 Q. Were they promised, as far as you know, that
22 their notes of their interviews would not be disclosed?
23 MR. LONDEN: Foundation.
24 THE WITNESS: I don't know.
25 The general procedure is that people are told

1 we have in front of us. I have never seen or relied on
2 any other documents.
3 Plus I made sure that I had no personal
4 knowledge of the schools or the individuals who
5 participated because I wanted to protect Diane's right
6 to do this work as an independent scholar and to respect
7 the conventions of doing scholarly education work.
8 Q. Did any plaintiffs' counsel ever tell you that
9 that would work to shield the identity of the
10 participants in the SPRA survey?
11 A. I don't recall discussing it.
12 MR. HERRON: Let me take a break.
13 (Recess taken.)
14 BY MR. HERRON:
15 Q. Okay. In connection with the SPRA study did
16 you make a grant application to the Rockefeller
17 Foundation?
18 A. Yes. I don't believe SPRA was named or the --
19 in the grant proposal.
20 Q. Where is that document stored? Who has it?
21 A. Certainly the UCLA Office of Grants
22 Administration would have a copy.
23 Q. Do you have a copy?
24 A. I probably have a copy.
25 Q. Was there any overhead charge imposed by UCLA

1 to that grant when you received the funds?
 2 A. I don't recall.
 3 Q. Other than the -- well, do you recall what the
 4 grant application said or identified as the purpose for
 5 the grant?
 6 A. There were two purposes. One was to support a
 7 qualitative case study work around the issues in the
 8 Williams case, and the second purpose was to provide
 9 some additional support to translate the scholarly
 10 papers that had been conducted into publications.
 11 Q. And the \$85,000 to \$100,000 was to cover both
 12 of those things?
 13 A. Yes.
 14 Q. Now, was there a correspondence other than
 15 what you already testified about between you and anyone
 16 regarding this grant?
 17 A. Yes. I am sure.
 18 Q. Did you -- do you have a written record of
 19 that correspondence there?
 20 A. I don't know.
 21 Q. Might you have e-mails?
 22 A. I might. I know I -- when the decision was
 23 made -- when I decided to subcontract this to Social
 24 Policy Research Associates, I had to, as I talked about
 25 yesterday when you have grants -- I had to consult with

1 the foundation to make sure that this was a reallocation
 2 of funds in a way that was -- that they thought was
 3 appropriate.
 4 There may be -- I may have e-mail about that.
 5 I don't know.
 6 Q. Does your e-mail system have an automatic
 7 delete function?
 8 MR. LONDEN: Vague.
 9 THE WITNESS: Not that I know of.
 10 BY MR. HERRON:
 11 Q. I request that you please provide those
 12 e-mails to the extent you have them.
 13 Did you have any written communications with
 14 the Rockefeller Foundation regarding the grant other
 15 than what you already testified about?
 16 A. I think there may have been some
 17 communications with Mr. Frelow about whether or not he
 18 was going to make a trip to California to meet with us.
 19 It is a little bit confused in my mind because
 20 I have another -- I have submitted other grant requests
 21 to him during the same period, and I am not sure which
 22 of the proposals or projects the communications might
 23 have been referring to.
 24 Q. Okay. To the extent you have those, we would
 25 like you to preserve them.

1 How many grants have you received from the
 2 Rockefeller Foundation that were in any way related to
 3 this litigation?
 4 A. One.
 5 Q. And that is the one just spoken about, the
 6 85,000 to 100,000?
 7 A. Yes.
 8 Q. Off the record.
 9 (Discussion off the record.)
 10 MR. HERRON: 62 will be the first page.
 11 (Exhibit 62 was marked for I.D.)
 12 MR. HERRON: 63 will be the second set of
 13 pages.
 14 (Exhibit 63 was marked for I.D.)
 15 BY MR. HERRON:
 16 Q. Dr. Oakes, have you had an opportunity to
 17 review Exhibit 62?
 18 A. Yes.
 19 Q. Do you recognize this document?
 20 A. Yes.
 21 Q. What is it?
 22 A. It is either a preliminary or final draft of
 23 an agenda for the November 2001 meeting of the scholars
 24 that I pulled together.
 25 Q. Was this agenda followed at that meeting?

1 A. I think it was. I recall telling you that
 2 we -- I am not sure if we had a timer at this meeting or
 3 just at the July 1, but --
 4 Q. Okay. Exhibit 63, do you recognize this
 5 document, iterations of which we have seen before?
 6 A. Yes.
 7 Q. Is this the description of research papers,
 8 documents that were actually distributed to the various
 9 scholars, as best you know?
 10 A. It might have been. I would hope I would
 11 catch the grammatical error before I sent this copy out.
 12 This is closer than the ones we have seen
 13 before.
 14 Q. This may be it; if not, we are darn close?
 15 A. Yes.
 16 Q. Do you know whether this was distributed at
 17 the November 8, 2001 meeting of the various IDEA
 18 scholars?
 19 A. I don't recall.
 20 Q. I want to guide your attention, please --
 21 settling aside these documents now -- to Page 24 of your
 22 report.
 23 Before I go there, another question about the
 24 SPRA results.
 25 Do you consider the results to be anecdotal --

1 MR. LONDEN: Vague.
 2 BY MR. HERRON:
 3 Q. -- as opposed to statistically significant?
 4 A. I would consider them to be neither. I would
 5 consider them to be careful findings from a systematic
 6 qualitative case study research.
 7 Q. Please turn to Page 43 of Exhibit 61, if you
 8 would, please.
 9 A. Refresh my memory about which is 61.
 10 Q. This one.
 11 A. This is 61?
 12 Q. Yes.
 13 A. Page what?
 14 Q. 43. Bates stamped at the bottom 6823.
 15 MR. JORDAN: 68 --
 16 MR. HERRON: 23.
 17 MR. JORDAN: Thank you.
 18 BY MR. HERRON:
 19 Q. Pages 42 and 43 are the conclusion of this
 20 report. On Page 43 we see the sentence that begins,
 21 "Although anecdotal, these findings suggest," and it
 22 goes on.
 23 You disagree with that?
 24 A. Yes. I wouldn't characterize them that way.
 25 Q. Okay. Does your report -- I am now referring

1 to your expert report in this case -- misrepresent the
 2 data that is yielded by the SPRA report at all?
 3 A. Not to my knowledge.
 4 Q. For example, on Page 24 in the middle there is
 5 a paragraph beginning, "This problem." If we look at
 6 the third full sentence, it says:
 7 "In seven schools teachers
 8 reported no materials for ELL
 9 students. Many schools did not
 10 provide materials written in
 11 students' home language, believing
 12 that it was against the law."
 13 What does "many schools" mean there?
 14 A. I would have to go back and count.
 15 Q. Does it mean what the SPRA report says "many
 16 schools" means?
 17 A. I am not recalling what their definition of
 18 "many" is in their report.
 19 Q. If you look, please, at Page 7 of Exhibit 61,
 20 the one that is Bates stamped 6787, looking at that
 21 page, isn't "many" defined as "nine to 12 schools"?
 22 A. Yes.
 23 Q. When you used the term, "many" in your own
 24 report in reference to the SPRA report, were you
 25 complying with that convention or not?

1 A. I wasn't intentionally complying with this
 2 convention.
 3 Q. So if your report says, "few," we don't know
 4 whether that means "one to four schools" as the SPRA
 5 report at 6787 says?
 6 A. No. It would be my own use of the word and my
 7 own judgment of what constituted "few," "several,"
 8 "many" or "most."
 9 Q. I understand.
 10 On Page 25 of your report -- help me out with
 11 the footnote below Table 8.
 12 Are we to read -- there is a three-sentence
 13 area here beginning with "Pearson chi-square" and
 14 continuing from "Statistical," which is the second line
 15 and "Respondents," which is the third.
 16 Are these all one footnote or are there two
 17 different thoughts contained there?
 18 A. There are two thoughts both relating to the
 19 statistical testing for significance. One is about the
 20 name of the test used, the Pearson chi-square and the
 21 values, the key to how the values are identified, and
 22 the second is reporting to the reader that the test of
 23 significance -- the difference between the numbers was
 24 performed with the nonrespondents and "not sure"
 25 respondents excluded from the analysis.

1 Q. Kindly turn to Page 31 of your report. I
 2 would just like you to look at and refamiliarize
 3 yourself with Table 11.
 4 A. Yes.
 5 Q. How do you explain the disparity that is
 6 represented here?
 7 MR. LONDEN: Vague.
 8 BY MR. HERRON:
 9 Q. Let me try it again.
 10 One column says, "English teachers without
 11 enough novels and books." The second column says,
 12 "English teachers with enough novels and books."
 13 A. Yes.
 14 Q. Why are those -- why are those figures
 15 different?
 16 A. Because 20 percent of the 812 people who said
 17 they teach English said they did not have enough books
 18 and novels, and 79 percent of the 812 teachers who
 19 taught English said they did have enough.
 20 Q. That much I understand. I am really not that
 21 dumb. But what I was wondering was: Causally, what is
 22 to explain that?
 23 For example, you have a Compton school. Let's
 24 say it doesn't have enough books. You have a PV school;
 25 it does have enough books.

1 Why is that?
 2 MR. LONDEN: The question is vague and
 3 compound.
 4 THE WITNESS: First of all, are you asking
 5 about my table?
 6 BY MR. HERRON:
 7 Q. Not these percentages.
 8 I just want to know what is the cause behind
 9 the percentages that are reflected in here.
 10 MR. LONDEN: Lacks foundation.
 11 BY MR. HERRON:
 12 Q. Set that table aside.
 13 I take it you agree the system of finance in
 14 California in terms of instructional materials funds
 15 provides equalized funding based on ADA.
 16 Is that correct or incorrect in your
 17 understanding?
 18 MR. LONDEN: Vague and ambiguous.
 19 THE WITNESS: The categorical funds for the
 20 purchase of instructional materials are allocated to
 21 school districts based on some -- you know, I don't -- I
 22 have to tell you I don't know the exact formula by which
 23 the funds are allocated.
 24 I know in the most recent Instructional
 25 Materials Realignment Act they were to be allocated on

1 Q. Assuming that is, in fact, the case, in my
 2 hypothetical what is to explain why Compton has bad
 3 book -- doesn't have enough instructional materials and
 4 Palos Verdes does?
 5 A. Well, given the -- that this is
 6 hypothetical --
 7 Q. Right.
 8 A. -- and that I am not reporting on my specific
 9 knowledge of a particular place --
 10 Q. Sure?
 11 A. -- that many school systems who are less
 12 burdened with students with special needs or are less
 13 burdened with the need to provide funding for school
 14 security are able to spend more of their unallocated or
 15 uncategorical, their general funds, to supplement the
 16 specially designated funds for instructional materials.
 17 Also in some communities there are business
 18 partnerships or donations from private individuals that
 19 often are used to provide instructional materials above
 20 and beyond what the State dollars allow them to
 21 purchase.
 22 Q. Could it be, too, that the District simply is
 23 filled with a bunch of dolts who don't know what they
 24 are doing with instructional materials?
 25 MR. LONDEN: Argumentative. Vague. Calls for

1 the same basis to school districts as they have been in
 2 the past, but I can't give you the specifics of that
 3 allocation formula.
 4 Q. Do you know whether the allocation, whatever
 5 it is, provides equal instructional materials funding --
 6 I'm sorry. Let me try that again.
 7 Do you know whether the formula that provides
 8 instructional materials funds does so on a -- on a
 9 per-pupil basis?
 10 A. I would like to check my --
 11 Q. Feel free.
 12 A. The instructional materials funds are
 13 distributed or allocated to districts based on average
 14 daily attendance for kindergarten through Grade 8, and
 15 for Grades 9 through 12 it is based on total enrollment.
 16 Q. Let's use a hypothetical, then, of K through
 17 8. Let's say that there is an elementary school in
 18 Compton and an elementary school in Palos Verdes.
 19 Each gets, apparently, from what you just told
 20 us, the same amount of instructional materials funding;
 21 right?
 22 MR. LONDEN: The question is ambiguous.
 23 THE WITNESS: I believe that is the intent of
 24 the provision.
 25 BY MR. HERRON:

1 speculation.
 2 THE WITNESS: Well, I would never characterize
 3 educators or educational administrators in that
 4 terminology, but I think certainly the competence of
 5 individuals employed by school districts certainly
 6 varies around the state.
 7 BY MR. HERRON:
 8 Q. Might the discrepancy also be explained by the
 9 incidence of theft in one district -- theft of
 10 instructional materials in one district versus the
 11 other?
 12 MR. LONDEN: Vague.
 13 THE WITNESS: In the hypothetical -- since we
 14 are talking hypothetically, I think that could explain
 15 some part of the difference.
 16 BY MR. HERRON:
 17 Q. Or destruction, even?
 18 A. Was that a question?
 19 Q. Yeah.
 20 MR. LONDEN: It is a vague and ambiguous
 21 question.
 22 Go ahead if you can.
 23 THE WITNESS: I expect in some locales or many
 24 locales some books are destroyed, and it diminishes the
 25 supply.

1 BY MR. HERRON:
 2 Q. Okay. Could you kindly turn to Page 33 of
 3 your expert report. I want to focus, once you are
 4 there, on the access -- on access to technology, but
 5 specifically the second -- third full paragraph, the big
 6 one.
 7 A. Yes.
 8 Q. And in particular the latter half of that
 9 paragraph that begins:
 10 "Again, California was ranked
 11 last in the country; however, this
 12 ratio seems to have improved
 13 somewhat recently."
 14 Then it goes on.
 15 Do you see that?
 16 A. Yes.
 17 Q. Do you know why there has been improvement?
 18 A. Not specifically.
 19 Q. Do you know what the current status is, since
 20 this is 2001 data set forth in your report?
 21 MR. LONDEN: Vague.
 22 THE WITNESS: No.
 23 BY MR. HERRON:
 24 Q. When I say, "current status," what I am saying
 25 is: What presently is the ratio of student to computers

1 in California, if you know?
 2 A. I don't know.
 3 Q. How presently does -- let me change that
 4 question.
 5 As of 2001 how did California compare to the
 6 rest of the nation in terms of its student-to-computer
 7 ratio?
 8 MR. LONDEN: The question is 2001?
 9 BY MR. HERRON:
 10 Q. Correct.
 11 A. My assumption is that the 2001 ranking that I
 12 report was based on 2000 data.
 13 Q. I see what you are saying.
 14 A. See what I am saying?
 15 And I don't know that I know whether the
 16 improvement in the ratio that occurred in 2001 has
 17 affected the ranking or whether or not a ranking has
 18 been done since that point.
 19 Q. Are you aware of any funding provided by the
 20 State to districts to improve the student-to-computer
 21 ratio for the current school year, 2002-2003?
 22 A. Not a specific measure that I recall.
 23 Q. Are you aware of any proposals pending
 24 presently concerning the provision of funding for
 25 improving the student-to-computer ratio in California?

1 A. You mean in the governor's current budget
 2 proposal?
 3 Q. Right.
 4 A. Not that I have taken specific note of.
 5 Q. Have you considered what more ought to be done
 6 in California in order to improve the computer --
 7 student-to-computer ratio?
 8 A. The general suggestions that I make in the
 9 final portion of my report about improving the supply
 10 and quality of instructional materials generally is
 11 meant to encompass technology as a part of the -- of
 12 the -- of the collection of instructional materials that
 13 schools require.
 14 Q. And in your opinion what student-to-computer
 15 ratio would be sufficient to provide California students
 16 with a basic education?
 17 MR. LONDEN: Assumes facts.
 18 THE WITNESS: I don't have a specific number
 19 in mind and would want to do some additional analysis
 20 before coming up with such a number.
 21 BY MR. HERRON:
 22 Q. What analysis would you have to do to be able
 23 to provide that answer?
 24 A. I would look at research on the use of
 25 computer technology and its relationship to high-quality

1 instruction and look at recommendations of other experts
 2 who focus on technology specifically.
 3 Q. Do you intend to do that research at any time
 4 prior to trial in this case?
 5 A. Not unless I am asked.
 6 Q. Do you intend to offer any opinion as to what
 7 the -- what ratio of student -- I'm sorry.
 8 Do you intend to offer an opinion at trial
 9 about what student-to-computer ratio is necessary to
 10 afford students a basic education in California?
 11 A. As of this point I don't -- I haven't narrowly
 12 defined what I expect to testify about other than all of
 13 what is in my various reports.
 14 Q. And in this report there is no such opinion.
 15 That is why I ask.
 16 A. About the specific ratio?
 17 Q. Yes.
 18 A. That's correct.
 19 Q. Okay. "That's correct" means what?
 20 A. That you are right in saying that there is no
 21 specific ratio recommended in this report.
 22 Q. Okay. So the answer to the question, do you
 23 intend to provide such an opinion at the time of trial,
 24 is the answer presently no?
 25 A. The answer is that I don't -- I'm not

1 completely familiar with what the rules are regarding
2 what I may or may not testify about, and I certainly
3 intend to abide by those rules, and I will testify about
4 anything that I feel competent to testify about within
5 those rules.

6 Q. Very good.

7 You haven't been asked to testified about that
8 yet, have you?

9 A. Not that specific piece of information, no.

10 Q. What is in your opinion -- what is the
11 requirement -- let me try that again.

12 In your opinion what textbooks, curriculum
13 materials and other instructional materials are required
14 to be provided to California students in order that they
15 receive a basic education?

16 MR. LONDEN: Vague.

17 THE WITNESS: My opinion is -- as we have
18 discussed somewhat before, so I won't repeat it all --
19 that students should have sufficient materials --
20 teachers should have materials sufficient so they can
21 provide each student with the standards-based materials
22 they need for use in class and for use at home in the
23 context of studying outside of school, and that my
24 recommendation is that while
25 one-book-per-child-per-subject is a reasonable rule of

1 A. Yes.

2 Q. What are we to make of the first row of
3 numbers -- what do they tell us -- that are placed with
4 reference to shortages of texts to use in class?

5 A. That the -- that there is little difference in
6 the extent to which teachers experience shortages,
7 either across the state as a whole or between those who
8 are in the schools with the most and fewest children in
9 poverty.

10 Q. How best to -- how best should we interpret
11 the data that is set forth with respect to "Textbooks
12 and materials in only fair or poor physical condition,"
13 that row of data?

14 A. That there is no significant difference
15 between the physical condition of textbooks and
16 materials in schools with high numbers of poor children
17 and schools with high numbers -- with low numbers of
18 poor children or in the state as a whole.

19 This is maybe contrary to some people's
20 stereotypes about what poor children do to their
21 textbooks.

22 Q. If you look at the next row of data relating
23 to "Textbooks not up to date," how best to interpret the
24 data set forth there?

25 A. The data there suggests that while teachers in

1 thumb, that because of the extraordinary variety and
2 increasing variety of instructional materials, that the
3 State would do well to augment the textbook and
4 materials adoption process by having a specification of
5 sufficiency for the various kinds of materials should it
6 depart from one-book-per-child-per-subject.

7 BY MR. HERRON:

8 Q. Would you kindly look at Page 35 of your
9 expert report. I would like you to review, please,
10 Table 13.

11 Have you had an opportunity to review Table
12 13?

13 A. Yes.

14 Q. What does "CalWORKS eligibility" mean?

15 A. It is the State subsidies for families with
16 very low incomes.

17 Q. Now, the columns in this table are "Total
18 sample of teachers"?

19 A. Yes.

20 Q. That is Column 1.

21 Column 2, "Teachers and schools with highest
22 CalWORKS eligibility, 20 percent of sample"?

23 A. Yes.

24 Q. And, finally, Column 3, "Teachers and schools
25 with lowest CalWORKS eligibility, 20 percent of sample"?

1 schools with the highest number of low-income children
2 or children who qualify for CalWORKS report at greater
3 rates that their textbooks are not up to date; that the
4 size of the difference between their reports and those
5 of teachers in the school with the fewest number of
6 students on CalWORKS does not reach statistical
7 significance.

8 Q. Similarly, with the last row that relates to
9 "Textbooks with only fair or poor coverage of
10 standards," how does one best interpret that data?

11 A. The same as with "not up to date"; that there
12 is a difference, but one that doesn't reach statistical
13 significance.

14 If the sample of -- sample sizes were larger,
15 these differences probably would be significant.

16 Q. Is there anything encouraging to be taken from
17 the statistics we have just reviewed?

18 A. Well, as I said, I think that some of it --
19 the physical condition one certainly is contrary to what
20 most people assume about how children in -- poor
21 children treat the materials and textbooks that schools
22 provide them.

23 Q. Are there any other encouraging things that
24 you can take from the data set forth in Table 13?

25 MR. LONDEN: The question is vague.

1 Go ahead.

2 THE WITNESS: That on the specific variables

3 we have talked about, it is encouraging that there are

4 no statistically significant differences between schools

5 with large numbers of poor children and schools with

6 small numbers of poor children.

7 BY MR. HERRON:

8 Q. Have you studied any data similar to that set

9 forth in Table 13 with respect to the state of Florida?

10 MR. LONDEN: Vague.

11 THE WITNESS: Not that I recall.

12 BY MR. HERRON:

13 Q. How about Oregon?

14 A. Not that I recall.

15 Q. How about Connecticut, Kentucky or Rhode

16 Island?

17 A. Not that I recall.

18 Q. On Page 36 of your report you discuss a RAND

19 Class Size Reduction Survey.

20 Can you describe for us -- well, can you tell

21 us whether or not the survey methodology employed by

22 RAND in that Class Size Reduction Survey was sound?

23 MR. LONDEN: Vague.

24 THE WITNESS: Having been a RAND researcher

25 for five years and knowing in some painful detail the

1 scrutiny that RAND research receives inside, I am quite

2 confident about the soundness of the methodology.

3 I also know the researchers who were the

4 leaders of this study and have reviewed their work

5 before.

6 BY MR. HERRON:

7 Q. Who are they?

8 A. Brian Stecher was the lead researcher.

9 Q. Has Brian Stecher served as a consultant to

10 plaintiffs' counsel in this case, as far as you know?

11 A. Not to my knowledge.

12 Q. Have you had any communications with him

13 regarding this case?

14 A. I have.

15 Q. In what context?

16 A. Actually, I would have to say it was

17 tangential to the case.

18 I originally called him and asked him if he

19 would be interested in participating among the group of

20 scholars I was pulling together to write papers around

21 the issues in the case. I never approached him directly

22 about being involved with the case.

23 Q. Look at the bottom of Page 37, please. The

24 last half of the paragraph at the bottom of that page

25 states, "However, the data."

1 Do you see that?

2 A. Yes.

3 Q. Can you tell us how to interpret the two

4 patterns identified there?

5 MR. LONDEN: Vague.

6 THE WITNESS: Well, first of all, it may be

7 slightly confusing because this paragraph refers to the

8 table on the next page. It does not refer back up to

9 the table that is on that page.

10 BY MR. HERRON:

11 Q. Okay. Withdraw the question.

12 I would like you to look at Page 40, if you

13 would, please, of your report. I would like you to look

14 at the footnote, Footnote 7, and I think it refers to a

15 report; that the report is, in fact, a California

16 State -- Bureau of State Audits report.

17 Have I got that right?

18 A. Yes.

19 Q. That is a Bureau of State Audits report

20 related to the Los Angeles Unified School District --

21 A. Yes.

22 Q. -- concerning its quantity and quality of

23 available textbooks?

24 A. Well, precisely, the study was to determine

25 whether or not there was a disparity in textbooks

1 between high and low performing schools in the district.

2 Q. I am going to defer to LAUSD's counsel on

3 questions about that audit, but I did want to ask you

4 about Footnote 7, specifically the first sentence there

5 where it says:

6 "The report does discuss other

7 factors found at low-performing

8 schools that may impact API

9 ranking: The level of parents'

10 education."

11 A. Wait. Wait. I am not following where you

12 are.

13 Q. Footnote 7, Page 40.

14 A. Yes.

15 Q. Sorry. I will start again.

16 In the first full sentence it states:

17 "The report does discuss other

18 factors found at low-performing

19 schools that may improve API

20 ranking: The level of parents'

21 education, students' transiency,

22 socioeconomic status and English

23 proficiency."

24 Do you see that?

25 A. Yes.

1 Q. My limited understanding of this Bureau of
2 State Audits report was that it concluded that while
3 there was a disparity in the provision of instructional
4 materials, that the factors identified in Footnote 7
5 more likely explained the differences in API scores.
6 Is that your understanding?
7 MR. LONDEN: Vague.
8 THE WITNESS: That is certainly what they said
9 in their report.
10 BY MR. HERRON:
11 Q. Do you agree with that conclusion?
12 A. I found no evidence for that conclusion in
13 their report.
14 Q. Do you think the items identified in Footnote
15 7 do affect a student's achievement?
16 A. I think they may.
17 Q. Where does access to instructional materials
18 follow in any sort of hierarchy that includes these
19 other factors?
20 MR. LONDEN: Vague. Assumes facts and is a
21 hypothetical with an incomplete answer available.
22 BY MR. HERRON:
23 Q. Let me try it again. I will try it a little
24 differently.
25 Linda Darling-Hammond, I think you know, has

1 published on the issue of what affects -- what most
2 affects student achievement.
3 Are you aware that research and publication?
4 A. She certainly writes about the explanatory
5 power in a statistical sense of various out-of-school
6 and in-school factors on student achievement.
7 Q. Have you seen any publication by Linda
8 Darling-Hammond which ranks in a hierarchy the items
9 listed in Footnote 7?
10 "Hierarchy," meaning that which most affects
11 student achievement listed in hierarchy down to that
12 which least affects student achievement.
13 A. I don't recall.
14 Q. How would you list those items in a hierarchy?
15 A. I wouldn't list them in a hierarchy.
16 Q. Are you able to?
17 A. Actually, no, because they are so interrelated
18 that I believe it is extraordinarily difficult if -- and
19 perhaps impossible to separate out those in terms of
20 which -- what the independent effects of those various
21 things are.
22 Q. What do you think more affects student
23 achievement, the level of parents' education or access
24 to instructional materials?
25 MR. LONDEN: The question is vague.

1 THE WITNESS: It is not a question I would
2 entertain or choose to answer. Those two things happen
3 to be too highly interrelated.
4 BY MR. HERRON:
5 Q. You can't rank one above the other?
6 A. I wouldn't.
7 Q. Same question about students' transiency.
8 A. These are not analyses that I -- that I make.
9 Q. Nor could you offer an opinion about them?
10 MR. LONDEN: The question is vague.
11 THE WITNESS: I will certainly report
12 something that I know that Linda has reported, and that
13 is more in the form of a pie chart where she looks at
14 students' achievement and looks at statistically -- and
15 I want to make clear that statistical explanations do
16 not necessarily equate with real-world causality -- but
17 statistically you can explain about half of the variants
18 of student achievement by factors that are outside of
19 the domain of school and the other half by within-school
20 factors. That is rough.
21 I think this is based on Ronald Ferguson's
22 work at Harvard. And Linda makes the point -- and I
23 think she is correct -- that of the within-school
24 factors, teachers probably have the largest influence on
25 those -- the differences in achievement scores --

1 quality of teachers.
2 BY MR. HERRON:
3 Q. And as far as the out-of-school factors are
4 concerned, she identifies socioeconomic status as being
5 the greatest influence on achievement; correct?
6 A. That is -- she may, although that is a very
7 nonprecise term, and different analysts bundle different
8 groups of factors in -- in that term. So it is very
9 hard to know, when you see that, what precisely is being
10 measured.
11 Q. Have you read any studies concerning
12 out-of-school factors which affect student achievement
13 other than what you already identified for us?
14 MR. LONDEN: That is a confusing question.
15 THE WITNESS: Have I read other studies about
16 out-of-school factors?
17 BY MR. HERRON:
18 Q. Uh-huh.
19 A. Yes.
20 Q. Did they include the factors identified here
21 in your report, Page 40, Footnote 7?
22 MR. LONDEN: Vague and compound.
23 THE WITNESS: I am sure many of them did, in
24 some combination.
25 BY MR. HERRON:

1 Q. Do you recall the title of any of those
2 studies?

3 A. No.

4 Q. What do you think has a greater effect on
5 student achievement, the condition of a school facility
6 or access to instructional materials?

7 MR. LONDEN: Assumes facts. Vague.

8 THE WITNESS: I have never attempted to parse
9 out the relative impact of those things.

10 MR. HERRON: Why don't we take a break?

11 (Recess taken.)

12 (Whereupon MR. LONDEN exited
13 the deposition proceedings and

14 MR. ROSENBAUM entered the proceedings.)

15 BY MR. HERRON:

16 Q. Did you attend --

17 MR. ROSENBAUM: Asked and answered.

18 BY MR. HERRON:

19 Q. Did you attend a conference in Santa Clara
20 with Linda Darling-Hammond?

21 A. Yes, I did.

22 Q. Were you a co-presenter?

23 A. Yes.

24 Q. And she presented on some of the issues we
25 have just been discussing; correct?

1 school she said 40 percent of student achievement can be
2 attributed to a teacher?

3 A. I don't recall the exact percentage off the
4 top of my head, but it was certainly the largest portion
5 of the other half of the variants.

6 Q. Which leaves, if I am right about her
7 percentages, at least that -- 10 percent of the effect
8 on student achievement is all other in-school factors,
9 at least according to Linda?

10 MR. ROSENBAUM: According to Linda.

11 She just testified she didn't recall the
12 numbers. If you want to ask about her calculations, you
13 can.

14 MR. HERRON: I just did, Mark. If you want to
15 object, go ahead and object.

16 MR. ROSENBAUM: Objection. Assumes facts not
17 in evidence.

18 BY MR. HERRON:

19 Q. All right. You may respond.

20 A. I don't recall the exact portion of the pie
21 chart that Ferguson left to other factors.

22 Q. That wasn't the question. Let me try it
23 again.

24 I am representing to you that what Linda
25 Darling-Hammond said in the papers that were presented

1 MR. ROSENBAUM: Vague.

2 THE WITNESS: Which issues do you specifically
3 mean?

4 BY MR. HERRON:

5 Q. I think the issues we have been discussing
6 related to Footnote 7.

7 Are those things, both in and out of school,
8 that contribute to student achievement?

9 A. Yes. In fact, she presented the pie chart I
10 described to you at the conference.

11 Q. And her pie chart, I take it, said that half
12 of student achievement can be attributed to factors
13 outside of the school?

14 A. I prefer the way I have characterized it; that
15 the -- that the variants in student achievement can be
16 explained statistically by background character,
17 students' characteristics, out-of-school --
18 out-of-school factors, including students' background
19 characteristics.

20 Q. And as a statistical matter she attributed
21 half of student achievement to factors other than those
22 present at school; isn't that true?

23 A. She displayed a chart displaying Ronald
24 Ferguson's findings that have those results. Yes.

25 Q. And of those factors that affect students in

1 at the Santa Clara conference you attended said that 40
2 percent of the in-school factors -- let me try it again.

3 There was a pretty easy pie chart. 50 percent
4 was attributed to factors outside of school -- student
5 achievement. 40 percent of student achievement was
6 attributed to -- just take my representation if you
7 would for purposes of this question -- to teachers -- at
8 least 10 percent.

9 Does that sound wrong or right?

10 A. The math sounds right. I don't recall the
11 specific percentages in the pie chart.

12 Q. Did she say, Linda Darling-Hammond, what
13 percentage of student achievement might be attributable
14 to access to textbooks and instructional materials?

15 A. I don't recall whether she mentioned that
16 specifically or not.

17 Q. Did you agree with her analysis that we have
18 been discussing in these questions since the break?

19 MR. ROSENBAUM: Vague.

20 THE WITNESS: Could you explain a little bit
21 about what you mean by "agree."

22 BY MR. HERRON:

23 Q. No.

24 A. No?

25 Q. I mean, do you not understand the word,

1 "agree"?

2 A. I don't usually use the word, "agree" when it
3 comes to the findings of well-done research.

4 Q. Okay.

5 A. I accept the findings as being an accurate
6 representation of what -- of the results a study
7 yielded.

8 It is not a matter of agreeing or disagreeing.

9 Q. Can you please turn to Page 48 of your report.
10 The second full paragraph on Page 48 apparently talks
11 about money spent by teachers from their own funds for
12 such things as software, instructional posters and art
13 supplies; correct?

14 MR. ROSENBAUM: Where are you referring?

15 BY MR. HERRON:

16 Q. The second full paragraph on Page 48.

17 MR. ROSENBAUM: Restate the question, please.

18 BY MR. HERRON:

19 Q. This paragraph discusses amounts of money
20 spent by teachers out of their own pockets for such
21 things as books, software, instructional materials and
22 art supplies; isn't that correct?

23 A. Yes.

24 Q. You cite a Quality Education Data report
25 finding that U.S. teachers spend on average \$521

1 annually for such items; correct?

2 A. Yes.

3 Q. Are you aware whether that is the same as or
4 different than the California average?

5 A. The one study I know of that looked across the
6 state is the RAND Class Size Reduction Study which only
7 looked at teachers K through 3, and it contrasts the
8 spending of teachers in schools with either
9 high-minority or high-poverty populations with schools
10 with low-poverty or low-minority populations, and I
11 would have to review that study in order to make an
12 accurate comparison between this Quality Education
13 figure for U.S. teachers generally and California
14 teachers.

15 I would also want to check the dates to make
16 sure they are comparable.

17 Q. Right.

18 Is that the RAND Class Size Reduction Study
19 that is cited in your report?

20 A. Yes. Yes.

21 Q. Would you kindly turn to Page 50 of your
22 report. I am focusing on the top third, basically the
23 first full paragraph and the first two bullets
24 underneath it.

25 This first full paragraph talks about the

1 Harris data showing a clear relationship between the
2 adequacy of instructional materials and teachers'
3 indication that they plan to leave their current school
4 within the next one to three years.

5 Could you please describe what that "clear
6 relationship" is.

7 A. The relationship is that more than twice the
8 percentage of teachers who say they are going to leave
9 within one to three years in comparison to those who
10 plan to stay four or five years or those -- and -- is --
11 suggests that teachers who are planning to leave are
12 those teachers who say they have too few books for
13 classroom use.

14 Q. Can the Harris data be used to suggest that
15 there is a causal relationship between those two pieces
16 of data?

17 A. The Harris data can only describe the
18 relationships and the convergence of conditions. It
19 doesn't claim to be causal.

20 Q. So the mere fact that you might find what your
21 report on Page 50 characterizes as "inadequacy of
22 instructional materials" does not imply that is causing
23 teachers to leave their current school or causing them
24 to plan to leave their current school within one to
25 three years?

1 MR. ROSENBAUM: Argumentative.

2 BY MR. HERRON:

3 Q. Correct?

4 A. The relationship neither -- the language here
5 and the Harris data neither claims a causal relationship
6 or denies a causal relationship.

7 It simply says there is a relationship, and we
8 don't know from these data whether it is causal or not.

9 Q. Okay. Look at the last full paragraph on Page
10 50 of your report.

11 What I would like to ask you about is the
12 first two sentences.

13 A. Yes.

14 Q. The second sentence states:
15 "Despite these problems,"
16 which I take it is the lack of
17 access to textbooks and
18 instructional materials -- "Despite
19 these problems, teachers often
20 claim that they can still teach the
21 state standards to their students."

22 Is there any way to judge based on the data
23 referenced here in your report that the teachers were
24 correct or incorrect on that score?

25 A. No.

1 Q. What is your view?

2 MR. ROSENBAUM: Foundation.

3 THE WITNESS: My view is that, given
4 Mr. Koski's analysis of the necessity for particular
5 materials in order for students to achieve certain
6 standards, that teachers -- while teachers who do not
7 have those particular things may believe that they are
8 able to teach the standards to a degree that students
9 master them -- although that is not necessarily assumed
10 here -- that they probably are not technically correct.

11 BY MR. HERRON:

12 Q. What do you mean by "not technically correct"?

13 A. That while a student may -- a teacher may
14 generally say that they feel -- that they can teach the
15 State standards to students.

16 If we looked carefully and specifically, say,
17 at a teacher who might say that, who is a social studies
18 teacher and who does not have computers available to the
19 students so they can do research on the Internet, for
20 example, the teacher would be unable to teach that to
21 the extent that students would be able to master that
22 particular standard that relates to that knowledge and
23 skill, even though the teacher may believe that in
24 general they are able to teach the material and the
25 standards.

1 Q. In terms of the teacher/respondents to these
2 various surveys, that is, the Harris survey, the RAND
3 survey, the SPRA survey that are mentioned on Page 50,
4 are you saying that when they claim they could still
5 teach the State standards to their students, they were
6 mistaken?

7 MR. ROSENBAUM: Misstates her testimony.

8 THE WITNESS: I believe that I said that
9 teachers generally may respond they are able to teach
10 content that is part of the State standards, but I don't
11 believe they are correct that they can teach students to
12 the students' level of mastery of those materials -- of
13 those standards for which specific materials are
14 required and they do not have those materials available.

15 BY MR. HERRON:

16 Q. Okay. If you could look at Page 52 of your
17 report, please. Page 52 sets forth a question and then
18 your opinion.

19 Does that opinion actually -- accurately
20 summarize your opinions concerning Question 3?

21 A. It was certainly my intention it would be an
22 accurate summary.

23 Q. And is it?

24 A. I believe it is an accurate summary.

25 Q. What State mandates exist regarding the

1 provision of textbooks and instructional materials in
2 California?

3 A. I know of no mandates that require that
4 schools provide instructional materials to students.

5 Q. What categorical funding exists for
6 instructional materials in California at present?

7 A. Well, as of January of this year we have the
8 Instructional Materials Fund Realignment -- is it an
9 act -- but that program, which consolidates three prior
10 categorical sources of funding.

11 Is this question related to the prior one
12 about mandates?

13 Q. You can consider it separate.

14 A. Okay.

15 Q. You are done answering?

16 A. You asked me about what categorical funds
17 exist currently for instructional materials?

18 Q. Yes.

19 A. Yes. I am done answering.

20 Q. What mandates do you think that the State
21 should impose to assure that students in California are
22 given sufficient access to instructional materials --
23 textbooks and instructional materials so that they can
24 acquire a basic education?

25 A. I discussed this generally in my report

1 beginning on Page 102.

2 Q. Okay. We will get to that shortly.

3 A. Okay.

4 Q. Part of your discussion on Page 53 of your
5 report refers to "State incentives in capacity
6 building"; correct?

7 A. Yes.

8 Q. And I take it that one of the things you are
9 suggesting is that the State ought to build capacity at
10 the district level to assure that students receive
11 adequate instructional materials; is that correct?

12 A. What place on the page are you finding this?

13 Q. I was talking more generally than on this
14 page.

15 A. Well, I would -- I would like to think about
16 it in context because I have said several things about
17 capacity building.

18 Let me say generally that I believe that it is
19 the State's responsibility to build the capacity of the
20 educational system, to insure that all students have
21 adequate numbers and quality of instructional materials,
22 and that it is certainly the State's choice about
23 whether or not it chooses to have districts perform that
24 function for it.

25 Q. In your opinion what role do school districts

1 play in assuring that California students within that
2 district receive access -- adequate access to
3 instructional materials?

4 MR. ROSENBAUM: Could I have that said again,
5 please? Repeat it or have it read back.

6 (Record read.)

7 THE WITNESS: Currently the school districts
8 play the intermediary role in translating the resources
9 provided by the State into students' access to
10 instructional materials.

11 BY MR. HERRON:

12 Q. What do you think the districts'
13 responsibilities ought to be in terms of assuring that
14 students are given adequate access to instructional
15 materials?

16 MR. ROSENBAUM: Incomplete hypothetical.

17 THE WITNESS: If the State chooses to leave
18 the responsibility to school districts for providing
19 instructional materials, then it would be important that
20 the capacity to purchase inventory, distribute and
21 maintain materials be developed at that level.

22 BY MR. HERRON:

23 Q. Is it your view that that currently is the
24 District's responsibility?

25 A. It is my view that currently the State has

1 any.

2 Q. We don't know any?

3 MR. ROSENBAUM: Argumentative. That is not --
4 BY MR. HERRON:

5 Q. Right.

6 We don't know what districts were talked to in
7 the Harris survey; right?

8 A. That is correct.

9 I should say -- I want to amend that; that
10 certainly in the II/USP applications and plans that
11 districts have submitted, several of them have named
12 this as a problem, so I think we can -- we can feel
13 comfortable naming those places as well.

14 Q. But from the Harris survey, from the SPRA
15 survey and from the RAND survey there is no way to
16 divine by name which district is failing to live up to
17 its responsibilities?

18 A. That is correct.

19 Q. Which entity is in a better position to insure
20 that students have adequate access to instructional
21 materials, the school district or the State?

22 MR. ROSENBAUM: Incomplete hypothetical.

23 THE WITNESS: My view is the State has the
24 responsibility to insure that -- the decision about
25 which entity is better positioned to do it is one that

1 assigned that responsibility to school districts and the
2 school district, then, to schools.

3 Q. Can you identify districts that are not living
4 up to their responsibilities in your view under the
5 current system?

6 A. By name?

7 Q. Yes.

8 MR. JORDAN: Foundation.

9 THE WITNESS: The only school districts that I
10 can name are those that have been the subject of
11 investigation.

12 Certainly the Los Angeles Unified School
13 District as evidenced by the State Audit Report has
14 failed to insure an adequate supply or distribution or
15 carry out its State responsibility in a way that is
16 adequate.

17 Certainly before FCMAT intervened in Compton,
18 there was certainly a documented problem in that
19 district.

20 BY MR. HERRON:

21 Q. Okay.

22 A. The data from both the Harris survey and from
23 the SPRA study and from the RAND Class Size Reduction
24 Study suggests that something is awry in many more
25 places than those two, but I would be hesitant to name

1 the State makes, and I certainly can imagine a variety
2 of configurations that would be workable.

3 But whatever arrangement is made, it is the
4 State that provides the resources and the technical
5 assistance and the monitoring and the oversight to make
6 sure that it is carried out well.

7 I am not sure that answers your question, but
8 I -- it seems like it gets into legal territory that I
9 don't want to comment on.

10 BY MR. HERRON:

11 Q. What do you mean, "it gets into legal
12 territory"?

13 A. About whose responsibility it is to insure
14 that children have textbooks.

15 Q. No. I am not asking for your legal opinion.
16 What I would like to know is a practical matter.

17 Which entity is in the best position to assure
18 that students have adequate access to instructional
19 materials, the districts or the State?

20 MR. ROSENBAUM: Incomplete hypothetical.

21 THE WITNESS: Are you assuming the California
22 education system as it now exists?

23 BY MR. HERRON:

24 Q. Sure.

25 A. Neither.

1 Q. Why do you say that?

2 A. Because the system as it is currently
3 structured and configured in resources is not capable of
4 insuring it -- insuring that students have adequate
5 access to textbooks and materials.

6 Q. Are aware of any district in the state of
7 California that monitors whether or not its students
8 have adequate access to instructional materials?

9 A. I know that Compton does.

10 Q. Okay. Any other districts?

11 A. I know it is a requirement of the School
12 Accountability Report Card that schools monitor or at
13 least report to their communities the adequacy of the
14 supply and the quality of their textbooks.

15 I know that a requirement is variously adhered
16 to. I know that as a condition of receiving
17 Instructional Materials Fund moneys from the State,
18 districts are expected to hold public hearings at which
19 they report their investigation of the extent to which
20 students have access to adequate materials.

21 I know that that requirement is variously
22 adhered to as well.

23 Q. Did you say 60119?

24 A. Yes. I might not have said it, but that is
25 what I meant to say.

1 by the California Department of Education.

2 Q. Okay.

3 A. So. So these very well may not be my words.

4 I read it to mean that the author of this
5 passage believes that the curriculum frameworks and the
6 content standards -- well, I won't go beyond what it
7 says -- are a useful tool or a powerful tool for
8 improving student achievement.

9 Q. Do you believe that?

10 A. Yes.

11 Q. We have talked briefly before, I think, about
12 the adoption process --

13 A. Yes.

14 Q. -- previously.

15 Have you compared adoption process, the
16 Textbook Adoption Process in California, to the adoption
17 process in any other state?

18 A. No.

19 Q. Do you have an opinion as to whether
20 California's adoption process is good or bad, adequate
21 or inadequate?

22 MR. ROSENBAUM: Vague.

23 THE WITNESS: I think it is a fairly adequate
24 process.

25 BY MR. HERRON:

1 Q. Okay. If you could turn to Page 55 of your
2 report, please. There is a discussion set forth under
3 the heading of "Instructional materials evaluation and
4 adoption."

5 What is your critique of the Framework
6 Development process curriculum -- Framework Development
7 process in California?

8 MR. ROSENBAUM: Vague. Overbroad.

9 THE WITNESS: I don't believe I have expressed
10 a critique of it.

11 BY MR. HERRON:

12 Q. The last full sentence in Paragraph 2 on Page
13 55 states:

14 "With the curriculum
15 frameworks and the content
16 standards they embody as the
17 foundation, adoptions are a
18 powerful leverage point for
19 educational reform and improvement
20 in student achievement."

21 Did I read that correctly?

22 A. Yes.

23 Q. What does that mean?

24 A. First, I would like to say I am -- I believe
25 this text is taken directly from the fact book published

1 Q. Why do you say so?

2 A. It engages professionals in a review of the
3 materials for their appropriateness for children at
4 various ages for the match with the standards.

5 My only concern is the extent to which that
6 process can be influenced by publishers who have a great
7 deal at stake monetarily of having their texts adopted
8 and sometimes do wining and dining beyond a level I
9 would see as healthy for the system, but --

10 Q. Have you been involved at all in the adoption
11 process, that to is to say, hands-on?

12 Have you participated in the textbook adoption
13 process at all?

14 A. I think as a teacher I was involved in going
15 to -- or maybe as a researcher -- going to a review
16 center where the materials up for adoption were on
17 display for professionals to come and review and comment
18 on.

19 Q. What year was that?

20 A. I don't recall.

21 Q. Was it more than 10 years ago?

22 A. Probably.

23 Q. Was it more than 15?

24 A. I don't recall.

25 Q. I would like to draw your attention to Page 58

1 of your report, specifically the middle of that page
2 discussing the underlined portion, which is
3 "Inadequacies in California's textbook policies."

4 A. Could I point you to a mistake on this page I
5 would like to correct?

6 Q. Certainly.

7 A. One, two, three, four, five, six lines from
8 the bottom, it says, "for three years." It should say,
9 "for four years."

10 Then following the "comment," it should say,
11 "1998 to 1999" instead of "1999 to 2000."

12 And on the following page in the second line it
13 also says, "three years" instead of "four years."

14 Q. Your report is so amended.

15 A. Thank you.

16 A. This talks about -- back on Page 58 at the
17 middle there -- you discuss California textbook
18 policies. The third full sentence states:

19 "Neither do they" --

20 presumably you are saying textbooks
21 policies -- "insure that the funds
22 allocated to districts for
23 purchasing textbooks and materials
24 are sufficient to provide all
25 students with the textbooks and

1 levels of spending in Connecticut districts.

2 Q. Do you have any other basis for your
3 opinion -- I'm sorry.

4 Do you have any other basis for your statement
5 on Page 58 that I read to you just a moment ago?

6 MR. ROSENBAUM: Which statement?

7 BY MR. HERRON:

8 Q. Okay.

9 "Neither do they insure that
10 the funds allocated to districts
11 for purchasing textbooks and
12 materials are sufficient to provide
13 all students with the textbooks and
14 materials that a California
15 education requires."

16 A. Yes. On Page 59 I cite, again, a publisher's
17 study -- with the same caveats we described earlier --
18 that suggests that the allocations for funds are in
19 their estimation close to half of what they ought to be.

20 Also, I cite an example of an II/USP plan
21 where a school has actually reported that their -- the
22 budget is insufficient to provide materials.

23 I believe those are the basis of evidence.

24 The other is what I said before, is my own
25 perusal of the costs of textbooks and comparison of

1 materials that a California
2 education requires."

3 What is the basis for that statement?

4 A. The comparison of the dollars provided with
5 the costs of the texts and the comparisons with what
6 other states have determined to be an adequate provision
7 of dollars for textbooks or the comparison of what they
8 actually spent.

9 Q. Where are those comparisons set forth in your
10 report, if they are?

11 A. They are.

12 I don't actually cite the prices of the
13 textbooks and compare those prices with the amount of
14 money actually spent, but the prices of the currently
15 adopted texts are on the website of the California
16 Department of Education.

17 On Page 60 I make two comparisons. One is
18 between California's level of spending, the categoricals
19 for textbooks and instructional material, and what the
20 Oregon Quality Education Commission determined to be
21 adequate levels of spending for materials on -- at those
22 various grade levels, elementary, middle and secondary
23 schools. That is Table 24.

24 Table 25 compares California's actual
25 appropriations for materials with those -- with the

1 those costs with the amounts allocated through the
2 categorical funds.

3 Q. Okay. Now, in the last partial paragraph on
4 Page 58 it states, "However, neither" -- do you see
5 where I am?

6 A. Yes.

7 Q. Okay.

8 "However, neither the IMF
9 allocations nor the
10 Schiff-Bustamante supplemental
11 funding has been driven by an
12 analysis of what it would actually
13 cost to provide sufficient
14 textbooks and instructional
15 materials."

16 Did I read that correctly?

17 A. Yes.

18 Q. What is the basis for that statement?

19 A. There has been -- no reported at least --
20 systematic attempt to assess the actual needs for
21 instructional materials in light of the current supply
22 and the future demand and use that analysis as the basis
23 for the amounts that were provided through the
24 legislation -- the budget process.

25 Q. Do you know what information the legislature

1 considered in determining IMF allocations for the past
2 five years?
3 A. Not entirely.
4 Q. Do you know what the legislature considered --
5 information the legislature considered as to the amount
6 of Schiff-Bustamante supplemental funding over the past
7 five years?
8 A. Well, Schiff-Bustamante isn't five years old,
9 but I am not familiar with the details of what was
10 discussed.
11 I have, though, searched for analyses that
12 could have been used to -- as a basis of these
13 discussions and could find none.
14 Q. In your opinion what sort of analysis -- let
15 me try that again.
16 How would one analyze what it would actually
17 cost to provide sufficient textbooks and instructional
18 materials?
19 A. Well, first, we would need to have a
20 sufficiency standard, as we talked about before. So to
21 establish for any particular text or set of text
22 adoptions what amount would be sufficient for a given
23 student or group of students.
24 One would certainly want to inventory what is
25 available currently and then look at the divergence of

1 the requirements of new adoptions from existing
2 adoptions to get a sense of whether the new adoptions
3 would supplement or would have to completely supplant
4 prior adoptions.
5 One would certainly want to have projections
6 about increases of the student population and do some
7 math about what the total bill might be.
8 Especially -- and you would also want to know
9 the cost, if I didn't say that, of various materials.
10 Q. Do you have any way of assessing -- on the
11 cost item, do you have any way of assessing how much a
12 study like you just described might cost?
13 A. Well, the Oregon Quality Education Commission
14 recently did analysis that at least allowed them to
15 estimate the cost per student, which then may be
16 multiplied.
17 I spoke recently with the Alpert -- Senator
18 Alpert about the recently passed legislation
19 establishing such a commission in California, and she
20 was -- she said to me that she thought that the costs of
21 such a commission to do its work would be quite small.
22 She actually thought if she could find funds
23 for a single staff person and some office supplies and
24 support that there would be plenty of Californians
25 willing to volunteer to participate in doing that work

1 much as Californians did in the master plan process.
2 Q. Okay. Now on Page 59 of your report here, the
3 first paragraph, first partial paragraph, the
4 second-to-the-last sentence states:
5 "The study conducted by Harris
6 in 2002 demonstrates that
7 California public schools continue
8 to experience inadequate supplies
9 and an inadequate quality of
10 textbooks and other instructional
11 materials."
12 Did I read that correctly?
13 A. Yes.
14 Q. Here you are generalizing the Harris survey
15 results to California to public schools in terms, at
16 least, of inadequate supplies; correct?
17 A. Yes.
18 Q. And also in terms of inadequate quality of
19 textbooks; correct?
20 A. Yes.
21 Q. Okay. Did you on -- in the next paragraph the
22 Association of Publishers 2000 -- AAP 2000, is that a
23 different study than we talked about earlier on?
24 A. Yes. The earlier one was in 1996. This one
25 was in 2000.

1 Q. Have you reviewed that AAP 2000 study to
2 determine whether it is a valid study or not?
3 MR. ROSENBAUM: Vague.
4 THE WITNESS: I read the report of the study
5 which was a -- I can't remember the level of detail that
6 the report was.
7 BY MR. HERRON:
8 Q. Did it seem at all that the Association of
9 Publishers were backing some advocacy society in that
10 study?
11 MR. ROSENBAUM: Foundation.
12 THE WITNESS: I am always suspicious of
13 studies that are sponsored by people who have narrow
14 self-interests in the outcomes of -- in the influence of
15 the outcomes, and that is certainly why I would not rely
16 on that study alone to make an opinion about this issue.
17 BY MR. HERRON:
18 Q. Did you see anything in that report to suggest
19 that its conclusions, and specifically that there be a
20 shortfall of \$1.2 billion, were well founded or not well
21 founded?
22 A. I felt that it was sufficiently useful, and it
23 had been widely or at least somewhat reported. I know
24 the State -- I believe the State Curriculum and
25 Materials Commission had a report of the study at one of

1 their meetings, all of which provided me with sufficient
2 justification to mention it in the way that I have.

3 Q. Okay. The -- you reference the Carson II/USP
4 plan on Page 59?

5 A. Yes.

6 Q. Is this an example of II/USP acting as a
7 detection device to detect when there is a problem with
8 instructional materials?

9 A. I wouldn't frame it that way. I would frame
10 it as the II/USP gives schools an opportunity to report
11 problems.

12 Q. And here you are relying on Carson's II/USP to
13 suggest that there was a problem and that, indeed, it
14 was reported?

15 A. I am trusting that the Carson group
16 represented the problem as they believed it to be.

17 Q. Did the Carson group -- were they required to
18 come up with an action plan in connection with this
19 II/USP report?

20 A. Yes.

21 Q. Did that action plan address what they were
22 going to do to assure that all students had textbooks to
23 take home?

24 MR. ROSENBAUM: Foundation.

25 THE WITNESS: I would have to review the

1 California?

2 A. I wasn't thinking of that. No.

3 Q. Do you agree with that?

4 MR. ROSENBAUM: That Oregon is near
5 California?

6 MR. HERRON: Don't be obnoxious.

7 Q. Go ahead.

8 MR. ROSENBAUM: What is a "comparator"?

9 BY MR. HERRON:

10 Q. You have to practice an amount of
11 discrimination, Mark.

12 Go ahead.

13 MR. ROSENBAUM: Would you mind repeating the
14 question?

15 MR. HERRON: Yes.

16 MR. ROSENBAUM: Could I have the question read
17 back, please.

18 (Record read.)

19 MR. ROSENBAUM: Do you agree with the fact
20 that the geographical proximity makes it an appropriate
21 comparator?

22 BY MR. HERRON:

23 Q. Yes.

24 A. I think it would depend on what you are
25 comparing.

1 action plan to tell you that.

2 BY MR. HERRON:

3 Q. Have you reviewed the action plan?

4 A. I have.

5 Q. Why is -- I want you to turn to Page 60,
6 Tables 24 and 25.

7 Why is comparing Oregon to California an
8 appropriate thing to do in terms of textbooks and
9 materials?

10 MR. ROSENBAUM: Vague.

11 THE WITNESS: Two reasons, I think. One is
12 that I think their process was a very interesting one,
13 and it is widely cited as a model of how states might go
14 about determining the costs of providing an adequate
15 education.

16 Second, because texts and instructional
17 materials is a big business and the same array of
18 materials are available across the states and the costs
19 are the same regardless of whether you live in Tennessee
20 or Texas or California, that the comparison was a
21 reasonable one to make.

22 BY MR. HERRON:

23 Q. Do you think that Oregon's geographical
24 proximity to California makes it is an appropriate
25 comparator in terms of its educational program in

1 Geographic proximity might be a reasonable
2 comparison if you were looking at things the states had
3 in common, like earthquake propensity.

4 I certainly felt it was an appropriate
5 comparison in terms of a model for how one might
6 determine the costs of providing instructional materials
7 and textbooks but that was very independent of the
8 geography.

9 BY MR. HERRON:

10 Q. In Table 24, Column 2, "California's current
11 funding, 2001-2002, for textbooks and instructional
12 materials, IMF, with Schiff-Bustamante."

13 Do you see that column?

14 A. Yes.

15 Q. What do those figures represent? Actual
16 expenditures?

17 A. No. Those are the per-pupil allocations
18 through the textbooks and Instructional Materials Fund
19 and -- combined with the Schiff-Bustamante supplement.

20 Q. Okay. So that is the per-pupil allocation?

21 A. Yes.

22 Q. Okay. Now, in the far right column, "Oregon's
23 standard for quality education, textbooks plus other
24 instructional materials," what is the -- what do those
25 figures represent?

1 A. Those are numbers reported to the Connecticut
2 Office of Legislative Research by Connecticut school
3 districts about the average levels of spending for
4 textbooks in that state.

5 Q. I'm sorry. I was talking about the far right
6 column.

7 A. Oregon standards?

8 Q. Yes.

9 A. Oregon actually in their Quality Education
10 model has two figures. One is a figure that is for
11 textbooks only, and that is in the third column, and in
12 the fourth column, add to that amount for textbooks the
13 costs of other instructional materials, and that yields
14 this larger number.

15 Q. Are those figures, that is, the Oregon figures
16 in the far right column, actual appropriations or not?

17 A. These are the model that the commission
18 proposed as the figures that should guide spending in
19 Oregon.

20 Q. Do those figures guide spending in Oregon?

21 A. Not at the moment.

22 Q. Why is that?

23 A. Because Oregon has a budget crisis that is --
24 that has prevented them, at least so far, from being
25 able to fund their schools.

1 Q. Are you aware whether or not Oregon has
2 reduced the number of school days per year in light of
3 that budget crisis?

4 A. I heard on the radio that this was a strong
5 likelihood in Oregon, and in some places teachers were
6 volunteering to teach without pay in order to keep the
7 number of days what they had been.

8 Q. Are you aware of the statistics or data
9 concerning Oregon's expenditures on textbooks, actual
10 expenditures for textbooks for the past five years?

11 A. No.

12 Q. Are you able to provide us with any
13 information concerning California's actual expenditures
14 versus Oregon's actual expenditures for any year?

15 A. No.

16 Q. What does Table 24 suggest, then; that
17 California ought to aspire to the standards set by
18 Oregon?

19 MR. ROSENBAUM: Argumentative. Vague.

20 THE WITNESS: The purpose of Table 24 is to
21 compare California's allocations with a model, carefully
22 developed model, of what an adequate level of spending
23 ought to be in Oregon.

24 BY MR. HERRON:

25 Q. What facts or data is there to suggest that

1 the levels of spending suggested by Oregon's model are
2 appropriate in California?

3 A. Well, as I just explained, the costs of
4 textbooks are comparable regardless of the state you
5 live in, and many states adopt or approve the same
6 published texts.

7 In fact, the ones that are approved in
8 California often define or strongly influence what is
9 available in other states, so for that reason it is --
10 did you ask me if it was a --

11 Q. What reason is there to believe that
12 California ought to adopt the Oregon standard?

13 A. The second reason is that as states adopt
14 content standards, the level and type of expectations
15 for student learning become increasingly similar across
16 the states.

17 Q. Would you read the last answer back.
18 (Record read.)

19 BY MR. HERRON:

20 Q. Okay. Table 25, help us out.
21 What is the far right column concerning
22 Connecticut's 2000 spending? What is that intended to
23 show?

24 A. Again, it is an -- it is an example which
25 allows us to see California's funding allocations in --

1 relative to what other states either recommend or
2 actually spend on textbooks and materials.

3 Q. Is the far right column in Table 25 what
4 Connecticut actually spent on instructional materials?

5 A. I believe so, although the data were collected
6 by the State -- the Office of Legislative Research in
7 Connecticut from school districts, and it is their
8 reports of what they spent. So to the extent those are
9 accurately reported, this would be a representation of
10 Connecticut spending.

11 Q. Are you aware of data that -- well, are you
12 aware of what Connecticut's spending has been on
13 instructional materials in the last five years?

14 A. I am only familiar with this particular set of
15 numbers.

16 Q. Are you aware of whether or not Connecticut
17 has -- what its adoption process is for texts and
18 instructional materials?

19 A. No.

20 Q. Other than what is set forth in Table 25, do
21 you have any information about what Connecticut's
22 policies are regarding the funding of instructional
23 materials?

24 A. Not that I recall at the moment.

25 Q. What facts are there to suggest that

1 Connecticut's funding level for instructional materials,
2 at least as set forth in Table 25, would be appropriate
3 for California?

4 A. I would respond with the same answer I gave
5 about the reasonableness of comparing Oregon to
6 California: That essentially it is the same pool of
7 texts and instructional materials at the relative same
8 costs available to Connecticut as to California, and
9 with the advent of standards-based instruction,
10 standards-based school reform, the kinds of demands
11 placed on students for learning and expectations are
12 similar; therefore, the relative need for textbooks and
13 instructional materials would be comparable.

14 Q. That may be, but why are we to assume that
15 Connecticut's spending of \$191 per student, per
16 elementary student, is appropriate for California?

17 MR. ROSENBAUM: Objection. Asked and
18 answered.

19 THE WITNESS: Well, I think I explained
20 earlier that I used some other information to make my
21 judgments about the adequacy of California's level of
22 spending.

23 One is the --

24 BY MR. HERRON:

25 Q. You need not repeat yourself on that point.

1 inferences, you could draw between the disparities?

2 A. Not at the moment.

3 Q. Well, for example, could you draw from these
4 disparities that California has in the recent past spent
5 more than Connecticut on instructional materials and,
6 therefore, it spends less now?

7 Is that a reasonable conclusion?

8 A. I couldn't say whether it is reasonable
9 without looking at data about spending patterns over the
10 last several years.

11 Q. Well, are you aware whether that is factually
12 accurate?

13 A. Not without looking at some data.

14 Q. Have you ever looked at that data?

15 A. The history of spending levels in Connecticut
16 as compared to California?

17 Q. Correct.

18 A. No.

19 Q. Don't you think that is sort of essential in
20 determining whether or not Connecticut's level of
21 spending is appropriate for California to adopt?

22 MR. ROSENBAUM: Argumentative.

23 THE WITNESS: First, I have not ever
24 recommended that California adopt Connecticut's level of
25 spending.

1 I am asking about why Connecticut's level of
2 spending is adequate for California or appropriate for
3 California.

4 A. I am not recommending that California adopt
5 Connecticut's level of spending.

6 I am using Connecticut as an example of
7 another state that appears, at least from these
8 comparisons, to spend more than twice as much, sometimes
9 almost three times as much, on instructional materials
10 as California provides for its schools.

11 Q. And why is that?

12 MR. ROSENBAUM: Why is what?

13 BY MR. HERRON:

14 Q. Why does Connecticut spend three times as much
15 as California?

16 MR. ROSENBAUM: Speculation.

17 THE WITNESS: It appears that Connecticut
18 believes the money it provides is what is required to
19 provide adequate textbooks for its children.

20 BY MR. HERRON:

21 Q. Is that how you read that figure?

22 MR. ROSENBAUM: Argumentative.

23 THE WITNESS: That is an inference.

24 BY MR. HERRON:

25 Q. Are there other inferences, other reasonable

1 And, second, given all of the other facts that
2 are presented in these few pages, I think it is a very
3 reasonable comparison to use as an illustration.

4 BY MR. HERRON:

5 Q. As an illustration that California spends less
6 than Connecticut or something else?

7 A. That spending levels in California are less
8 than they probably need to be to provide an adequate
9 supply and quality of textbooks and instructional
10 materials for California's children.

11 Q. Okay.

12 (Recess taken.)

13 BY MR. HERRON:

14 Q. Why don't we take a look at Page 61 of your
15 report.

16 I am going to focus on the Program Quality
17 Review, PQR.

18 A. Yes.

19 Q. Can you give us a brief explanation as to what
20 PQR was?

21 A. PQR was a process that the State used to
22 monitor the extent to which schools who are receiving
23 funding under school improvement programs were using
24 those funds appropriately.

25 Q. Have you ever been involved in a PQR review?

1 A. No.

2 Q. Where does your information concerning PQR
3 come from?

4 A. My reading of the California Department of
5 Education website about the PQR process, my
6 conversations with teachers and others who have been
7 involved in the process, my reading of some reports
8 of -- about the Program Quality Review process on the
9 websites of various school systems, and there may be
10 other sources of information that I have used over the
11 years, but that is what I recall at the moment.

12 Q. How many conversations have you had with
13 teachers or others about the PQR?

14 A. It would be very hard for me to guess.

15 MR. ROSENBAUM: He doesn't want you to guess.

16 BY MR. HERRON:

17 Q. Are you able to provide us an estimate?

18 A. I would say between 30 and 100.

19 Q. What reports have you reviewed on the -- on
20 various websites related to PQR?

21 A. Well, I certainly reviewed the one I
22 referenced from the Lincoln Unified School District.

23 I also searched the web pretty thoroughly
24 looking for various descriptions of the process as it
25 has occurred, and so in that process I probably looked

1 Q. Have you ever been involved in a CCR on-site
2 visit?

3 A. No.

4 Q. Have you reviewed the CCR training guide?

5 A. Yes.

6 Q. Did you review the CCR training guide in
7 connection with your preparation of this report?

8 A. Yes. As referenced in Footnote 11.

9 Q. On what documents, what CCR-related documents,
10 did you rely for your opinions expressed in your report?

11 A. I relied on the Department of Education
12 website, the actual section of the Education Code that
13 describes the process.

14 I reviewed some depositions or reviewed
15 certainly Ms. Clark-Thomas's deposition, who is the
16 manager of the Coordinated Compliance Review management
17 unit.

18 I reviewed several reports of the reviews.

19 I certainly reviewed all the forms and --
20 related to Coordinated Compliance Review, or at least
21 many of them, and have included them as Appendix C to my
22 report.

23 Q. How many CCR reports did you review in
24 connection with your preparation of this expert report?

25 A. Maybe 10. That is just an estimate.

1 at 20 district websites.

2 Q. Did any of those documents that you reviewed
3 form at all the basis for your opinions set forth in
4 this report?

5 A. The ones that I reference are the ones I
6 relied on for specific information.

7 Q. Are the ones you relied on for your report?

8 A. The ones I reference in the report are the
9 ones I relied on for the report --

10 Q. Okay.

11 A. -- as well as just my general knowledge.

12 Q. Sure.

13 Page 62 talks about, among other things,
14 Coordinated Compliance Review?

15 A. Yes.

16 Q. Can you give us a brief overview of your
17 understand of the CCR process?

18 A. The CCR process has changed some over time,
19 but essentially it is a 20-year-old program that allows
20 the State to review the compliance of schools and
21 districts who receive funding from certain State and
22 federal programs to make sure that the requirements of
23 those programs are being adhered to.

24 Q. Do CCR reviews entail on-site visits?

25 A. On-site visits? Yes.

1 Q. Is that your best estimate?

2 A. You know, I don't have a clear recollection,
3 but I know there were more than -- certainly more than
4 five. Probably more like 10. Maybe more than that.

5 Q. Okay. Did you review Eleanor Clark-Thomas's
6 entire deposition transcript?

7 A. In a cursory way. I am not sure that I read
8 with detail all of it, other than the parts I relied on.

9 Q. Did plaintiffs' counsel identify for you
10 certain parts of Eleanor Clark-Thomas's deposition to
11 review?

12 A. They may have.

13 Q. Do you recall that they did?

14 A. I recall that they sent me the deposition, and
15 I am not recalling the specifics of any conversation, if
16 there was one, about it.

17 Neither do I recall whether a conversation was
18 with me or perhaps Marisa Saunders. I don't recall.

19 Q. Page 62, the last full paragraph, talks about
20 "California Department of Education goals for the CCR
21 process are as follows," and there are a number of
22 listed items.

23 The second listed item is "Increased local
24 responsibility for insuring compliance through a
25 self-review."

1 Do you think that is an appropriate goal of
2 the CCR process?
3 MR. ROSENBAUM: Vague.
4 THE WITNESS: If it is part of a comprehensive
5 oversight process, a self-review can be useful.
6 BY MR. HERRON:
7 Q. Is the CCR process part of a comprehensive --
8 whatever you said -- oversight process?
9 MR. ROSENBAUM: Vague.
10 THE WITNESS: In many cases it is not.
11 In many cases the self-review is the only
12 thing that takes place, and that the Department of
13 Education considers the self-review the official report
14 of findings of the review.
15 BY MR. HERRON:
16 Q. As such, do you consider this Item 2,
17 increasing local responsibility for insuring compliance
18 for a self-review to be improper as a goal for the CCR
19 process?
20 MR. ROSENBAUM: Objection. Asked and
21 answered. It was answered two questions ago.
22 THE WITNESS: Again, I think if a self-review
23 is a part of a comprehensive oversight process, it can
24 make a useful contribution.
25 BY MR. HERRON:

1 Q. I don't think that is responsive to what I am
2 asking.
3 Do you think it is appropriate to increase
4 local responsibility?
5 MR. ROSENBAUM: If you want to add something,
6 you can do it. You answered this just fine.
7 THE WITNESS: I would say that under certain
8 conditions it may be a good idea. I think if there is
9 some -- under some conditions I think increasing local
10 responsibility is a good idea.
11 BY MR. HERRON:
12 Q. But under current conditions you think this is
13 a bad idea, increasing local responsibility?
14 MR. ROSENBAUM: You answered that four times.
15 BY MR. HERRON:
16 Q. You may respond.
17 You don't need to respond. You answered
18 that --
19 MR. HERRON: Are you instructing her not to
20 respond?
21 MR. ROSENBAUM: Go ahead and answer this.
22 THE WITNESS: I think increasing local
23 responsibility through a self review as a stand-alone
24 way of insuring compliance is not proper.
25 BY MR. HERRON:

1 Q. You know, we are not -- I guess we are not
2 connecting very well here.
3 I am asking specific questions, and I would
4 ask that you pay attention to the question I am asking
5 and respond to that as opposed to --
6 MR. ROSENBAUM: Cut it out. He just doesn't
7 like your answers.
8 MR. HERRON: Mark, you know what --
9 MR. ROSENBAUM: No. You don't lecture her
10 that way and tell her she is not doing her job.
11 She answered it fully. She answered three
12 times.
13 If you don't get the answer you want, that is
14 not a ground for you to lecture a witness.
15 If you have a question, ask it. Otherwise, I
16 will object.
17 MR. HERRON: If you have an objection, make
18 it. Stop --
19 MR. ROSENBAUM: Ask her a question.
20 MR. HERRON: Don't interrupt me.
21 MR. ROSENBAUM: Make your speech. Go ahead.
22 MR. HERRON: If you want to make an objection,
23 make it. Stop there, please.
24 There is a notable difference in the way this
25 deposition is proceeding since you took over the seat

1 that was filled by your colleague, and it does not speak
2 well of the way you are conducting yourself in this
3 deposition.
4 MR. ROSENBAUM: Okay. Thanks.
5 MR. HERRON: You shouldn't thank me for it. I
6 am not praising you in any way, but I am requesting that
7 you comply with the rules that govern depositions, which
8 are to make your objection and stop there.
9 MR. ROSENBAUM: I object when you don't ask
10 questions.
11 Ask a question, please.
12 BY MR. HERRON:
13 Q. Do you have anything to add to your last
14 response, Dr. Oakes?
15 A. I would like to be more responsive, but it is
16 impossible for me to do it without understanding a whole
17 lot more about the context in which you are asking about
18 the desirability of increasing local responsibility.
19 Q. Describe to us, if you would, please, what the
20 "Single Plan for Pupil Achievement" is?
21 MR. ROSENBAUM: What page are you on, please?
22 MR. HERRON: 64.
23 MR. ROSENBAUM: I also want to state this is
24 multiple days of questioning this witness.
25 To ask her to state what she already put in

1 her report I think is a waste of her time. It is the
 2 third set of questions -- fourth set of questions that
 3 you have asked her that ask her to state what she
 4 already stated in her report as your predicate question.
 5 MR. HERRON: I disagree. If you would like to
 6 terminate the deposition, go ahead.
 7 MR. ROSENBAUM: I am not going to be patient
 8 in asking questions --
 9 MR. HERRON: Then terminate the deposition.
 10 Let's go talk to a judge then, Mark.
 11 If you disagree that these are valid
 12 questions, then that is your answer. We will see the
 13 judge. If not, object only, and let's try to move
 14 through it.
 15 How's that?
 16 MR. ROSENBAUM: Objection.
 17 MR. HERRON: Does that work, the proposal that
 18 you object when you hear a bad question?
 19 MR. ROSENBAUM: That is all I am doing.
 20 MR. HERRON: I think you are trying to
 21 interfere with this deposition. I find this very
 22 offensive. "This" being your conduct.
 23 Q. Are you at Page 64?
 24 A. Yes, I am.
 25 Q. Can you explain to us your understanding of

1 the Single Plan for Pupil Achievement?
 2 MR. ROSENBAUM: Same objection.
 3 THE WITNESS: The Single Plan for Pupil
 4 Achievement is the current mechanism the State uses to
 5 ask schools to report -- to analyze and report their
 6 effectiveness in relationship to local criteria and in
 7 particular in relationship to their use of funds for
 8 programs that they have obtained through the
 9 consolidated application, which is an application the
 10 State asks districts to make in order to obtain funds
 11 related to particular State and federal programs.
 12 BY MR. HERRON:
 13 Q. I'm sorry. Go ahead. I am sorry. I
 14 interrupted. Go ahead.
 15 A. I think that is -- if that is not enough of an
 16 answer, you can ask me something else.
 17 Q. On Page 66 you pose a question, which is:
 18 "The question that needs to be
 19 posed is as follows."
 20 You see where I am?
 21 A. Yes.
 22 Q. Okay.
 23 "How well have California's
 24 on-site monitoring processes worked
 25 to identify problems in students'

1 access to textbooks, instructional
 2 materials, equipment and
 3 technology, and how effective are
 4 these processes in remedying these
 5 problems when they are found?"
 6 The next sentence states:
 7 "This question is extremely
 8 difficult to answer."
 9 What is the answer, in your opinion?
 10 A. In both cases I would say, less than
 11 adequately well.
 12 Q. Do you think that reasonable people could
 13 differ on your answer or your opinion?
 14 MR. ROSENBAUM: Vague.
 15 THE WITNESS: They might.
 16 Also, I would also say I think anyone who
 17 examines the evidence would likely conclude that the
 18 policies are weaker than they could be.
 19 BY MR. HERRON:
 20 Q. Which policies are those?
 21 A. The policies related to California's on-site
 22 monitoring processes and their ability to identify and
 23 correct problems related to instructional materials and
 24 equipment technology.
 25 Q. Are you talking about the II/USP?

1 A. No. I am talking about PQR, CCR and SB 374,
 2 which are the three policies that I have just discussed
 3 and I am now reflecting on their adequacy in identifying
 4 and correcting problems.
 5 Q. How could the CCR process be changed in your
 6 view to better detect problems with instructional
 7 materials?
 8 A. One example is -- I discuss this in my report
 9 in the last section -- is that the CCR could include
 10 as -- on its instruments the specific direction that the
 11 supply and quality of instructional materials be
 12 considered as part of the review.
 13 That is one example.
 14 Q. Are there others that come to mind?
 15 A. Well, I think that the training and -- of
 16 teams that are doing the reviews and the oversight and
 17 monitoring of the work, those teams could also emphasize
 18 instructional materials and textbooks.
 19 Q. Does the training of the teams not now
 20 emphasize that?
 21 A. It is my understanding that it does not
 22 emphasize -- it is not a named item in the protocols
 23 that the review teams use.
 24 Q. Upon what is your understanding based?
 25 A. Both my review of the training guide and the

1 instruments that are used in the review process and my
2 review of Ms. Clark-Thomas's deposition, the
3 notification of findings reported to the Oakland Unified
4 School District for the 1999-2000 school year, the
5 notification of findings for LAUSD in '98-'99 and the
6 '99-2000, and the notification of findings in several
7 other school districts as detailed in -- I will stop
8 there.

9 Q. Are you looking at a particular page of your
10 report?

11 A. I just glanced through this whole section of
12 the analysis of the CCR.

13 Q. I want to direct your attention to Pages 71
14 and 72 of your report.

15 MR. ROSENBAUM: One second, please. Okay.
16 BY MR. HERRON:

17 Q. The last partial paragraph, second sentence
18 beginning, "While," why don't you just read that entire
19 paragraph.

20 MR. ROSENBAUM: As described above?

21 MR. HERRON: Yes. Beginning there, spilling
22 onto Page 72.

23 Q. Have you had an opportunity to review that
24 paragraph?

25 A. Yes.

1 MR. ROSENBAUM: After her deposition?

2 BY MR. HERRON:

3 Q. No. After the visitation by the CCR unit.

4 A. I know that Eleanor Clark-Thomas didn't know
5 that.

6 Q. Right. But that was not the question.

7 The question is: Do you know whether any
8 other member of the team, that is, the CCR unit that
9 actually visited the Oakland school referenced, assured
10 that the eighth graders at that school received history
11 books?

12 A. No.

13 Q. Do you know whether or not the District, based
14 on the CCR unit's visit, assured that the eighth graders
15 referenced by Eleanor Clark-Thomas received history
16 books?

17 A. No.

18 Q. The next sentence in the -- following that
19 paragraph on Page 2, the first -- Page 74, the first
20 full paragraph states:

21 "These depositional data make
22 evident the State does not practice
23 uniform systematic or timely
24 procedures to gain information
25 about school resources."

1 Q. This is a reference to Eleanor Clark-Thomas's
2 deposition?

3 A. Yes.

4 Q. And I take it you are using this reference in
5 part to -- let me talk about the second full paragraph
6 in this paragraph, beginning on Page 71, quote:

7 "While this is a potentially
8 excellent source of data, that is,
9 self-reviews and validation visits,
10 evidence again seems to indicate
11 that the State does not respond to
12 issues that stem from these
13 meetings."

14 Then you go on to talk about Eleanor Clark
15 Thomas's deposition.

16 Do you know whether Eleanor Clark-Thomas ever
17 followed up to see whether the eight graders in her
18 study, indeed, had history books?

19 A. Following her deposition?

20 Q. Yes.

21 A. I don't know.

22 Q. Do you know whether any other member of the
23 team conducted a followup to determine whether or not
24 the eighth graders at the referenced school in Oakland
25 actually received history books?

1 My question to you: Are you referring only to
2 Eleanor Clark-Thomas's deposition when you say,
3 "depositional data"?

4 A. Yes.

5 Q. And it is your conclusion from this excerpt of
6 her deposition that, "the State does not practice
7 uniform, systematic or timely procedures to gain
8 information about school resources"?

9 A. My conclusion about that is not based solely
10 on her deposition.

11 My conclusion from her deposition is that if
12 the State had uniform, systematic and timely procedures
13 that she, as manager of the unit, would know about them.

14 Q. Is there any other basis for your statement,
15 the first sentence, the first full paragraph of 72 --
16 Page 72?

17 A. Well, I reference in that paragraph also my
18 review of the instruments.

19 It is also a conclusion I drew from -- well, I
20 think the depositional data was the primary source,
21 since it was the manager speaking as the unit
22 representative.

23 Q. Now the second-to-the-last full paragraph on
24 Page 72 talks about a "second flaw in the CCR process."
25 Specifically --

1 MR. ROSENBAUM: No, it doesn't. That
2 misstates the text. You said, "a second flaw." It
3 says, "a second reason for this flaw."

4 BY MR. HERRON:

5 Q. Okay. Let me just read the sentence.

6 "A second reason for this flaw
7 in the CCR process is the reliance
8 on districts and schools to uncover
9 and report noncompliance issues
10 through a process of self-study."
11 Why is that a second reason for this flaw?

12 A. The "flaw" being referenced here is the
13 failure of the CCR tool to detect and then act on
14 problems regarding students' access to textbooks.

15 And the second reason for the flaw is that
16 when the process is entirely reliant on self-study and
17 there is no evidence that the reporting of problems will
18 result in additional assistance, there may not be
19 adequate incentives in the process to encourage schools
20 to report problems in their self-review.

21 Q. Is it your review that the CCR process is
22 entirely reliant on self-study?

23 MR. ROSENBAUM: Vague.

24 THE WITNESS: In many cases the self-study is
25 considered the final report of the Coordinated

1 Q. Are you aware of any district that has ever
2 reported noncompliance and was therefore sanctioned with
3 the withholding of categorical funding?

4 A. I am not familiar with specific cases.

5 Q. Are you aware of general cases where that has
6 been true?

7 MR. ROSENBAUM: Vague.

8 THE WITNESS: I have not -- I have -- I have
9 no awareness of either the existence or nonexistence of
10 those circumstances.

11 BY MR. HERRON:

12 Q. Page 75 of your report, I want to talk to you
13 about the Western Association of Schools and Colleges,
14 WASC.

15 How did you become familiar -- how have you
16 become familiar with what WASC does?

17 A. As a former high school teacher and the wife
18 of a former high school teacher I have some personal
19 experience with the WASC review process.

20 I have also studied the documents that WASC
21 provides that describe the process and the joint process
22 that WASC and the California Department of Education
23 have developed.

24 I have also read the WASC reports of a number
25 of schools.

1 Compliance Review.

2 BY MR. HERRON:

3 Q. In your opinion what is the answer to the
4 problem you identify, that is, relying on self-study?

5 MR. ROSENBAUM: Vague. Incomprehensible.

6 THE WITNESS: I discuss what I consider to be
7 more effective oversight and accountability strategies
8 in the last section of my report.

9 BY MR. HERRON:

10 Q. We'll get to it there.

11 Would you please turn to Page 73. The first
12 full paragraph beginning, "Reliance" talks about
13 sanctions such as the withholding of categorical funds
14 that may result for reporting such issues.

15 What sanctions may be imposed under the CCR
16 process?

17 A. Well, the sanctions for the failure to comply
18 with the State or federal programs could be the
19 withholding of those funds.

20 Q. Is your point, then, that that -- that
21 sanctions shouldn't be imposed?

22 A. My point is that the disincentives are great
23 for reporting noncompliance when there is a strong
24 likelihood that your report will never be validated and
25 noncompliance might result in loss of funding.

1 Q. WASC does on-site reviews; is that correct?

2 A. Yes.

3 Q. Have you ever been involved in a WASC on-site
4 review?

5 A. I certainly may have been on site when a WASC
6 has been conducted. I have not been a member of a
7 review team.

8 Q. What kind of individuals are selected for WASC
9 on-site reviews?

10 MR. ROSENBAUM: Vague.

11 THE WITNESS: The review teams are made up of
12 educators.

13 BY MR. HERRON:

14 Q. What kind of training, if any, do the
15 educators undergo before they participate in a WASC
16 on-site review?

17 A. I know there is some training, but I am not
18 recalling the details of that training.

19 Q. On Page 76 you identify inadequacies in WASC.
20 One weakness you identify is that:

21 "It lacks any enforcement
22 capabilities beyond denying
23 accreditation or reducing the terms
24 of accreditation."

25 Why in your opinion is that an insufficient

1 enforcement capability?

2 A. Because it cannot or does not direct the
3 schools to remedy the problems it finds.

4 Q. Do you think WASC has the authority to order
5 schools to remedy the deficiencies they find?

6 MR. LONDEN: Calls for a legal conclusion.

7 THE WITNESS: No.

8 BY MR. HERRON:

9 Q. What is the answer, then, to this apparently
10 deficient enforcement capability?

11 MR. ROSENBAUM: Vague. Argumentative.

12 THE WITNESS: Well, one, that WASC right now
13 is a voluntary process.

14 I also know that while sometimes the terms of
15 accreditation are reduced, so -- in terms of being
16 voluntary, the State could choose, if it wanted, to make
17 it a mandatory process for secondary schools.

18 I know from my conversations with people at
19 the -- I am trying to remember the conversation, but
20 someone from WASC said their preference is to discourage
21 schools from going through process rather than face a
22 negative accreditation result.

23 Q. I'm sorry.

24 I'm sorry. You say they have refused to
25 undergo the WASC review?

1 number of schools.

2 Q. Is there any other basis for that statement?

3 A. I think only my general knowledge in addition
4 to these sources of the WASC process.

5 Q. What does "FCMAT" stand for?

6 A. "FCMAT" is the "Fiscal Crisis and Management
7 Assistance Team."

8 Q. What are its statutory responsibilities, as
9 you understand them?

10 A. I think FCMAT was established by the
11 legislature in order to provide districts with a
12 resource in the form of some assistance to manage its
13 finances.

14 Q. Has FCMAT adopted any professional standards
15 that you are aware of?

16 MR. ROSENBAUM: About any particular area?

17 BY MR. HERRON:

18 Q. Just generally.

19 A. Well, FCMAT certainly has some criteria that
20 it uses to assess and rate schools who ask for its help
21 or when the County asks for help.

22 I thought I finished my answer.

23 Q. Do you know whether FCMAT has adopted
24 professional standards related to the provision of
25 instructional materials to students in California

1 A. They encourage schools to not undergo the
2 review rather than having a negative result.

3 Q. Are you aware what percentage of secondary
4 schools in California have undergone the WASC review in
5 the last six years?

6 A. Not precisely. I would estimate that most
7 have.

8 Q. "Most" -- what is your best estimate of
9 "most"?

10 A. I wouldn't want to make a precise estimate
11 without having the data in front of me.

12 Q. You don't have that data?

13 A. Unless it is in my report, I don't have it in
14 front of me.

15 Q. Page 76 you make a statement under the -- in
16 the large paragraph under the "Inadequacies in WASC"
17 header.

18 "WASC does not place a great
19 deal of importance on the gathering
20 of information relating to the
21 availability of textbooks and
22 instructional materials."

23 What is the basis for that statement?

24 A. The reviews of the materials that describe the
25 WASC process and my review of the WASC reports on the

1 schools?

2 A. I certainly know that in the case of the
3 Compton Unified School District that FCMAT assisted the
4 District in developing a set of guidelines and
5 monitoring instruments to help them provide adequate
6 textbooks and materials to their students.

7 Q. Are you aware of any other professional
8 standards on that topic adopted by FCMAT?

9 MR. ROSENBAUM: That is very vague.

10 THE WITNESS: Well, in conjunction, I think,
11 with its first work in what is now West Contra Costa
12 Unified School District, that there were some criteria
13 used to judge the sufficiency and quality of curriculum
14 materials in the district, and schools were rated
15 against those criteria.

16 BY MR. HERRON:

17 Q. Other than the criteria adopted with respect
18 to Compton and West Contra Costa Unified concerning
19 instructional materials are you aware of any
20 professional standards that FCMAT has adopted on that
21 topic?

22 A. At the moment I am not recalling any.

23 Q. Who can request the assistance -- who can
24 request that FCMAT assist a district?

25 A. The District itself or County Offices of

1 Education can request support from FCMAT.
 2 Q. How about the Superintendent of Public
 3 Instruction?
 4 A. I don't know.
 5 Q. Does FCMAT from time to time do on-site
 6 reviews, as far as you know?
 7 A. In response to requests for assistance.
 8 Q. Okay. Have you ever been involved in any way
 9 with FCMAT on-site review?
 10 A. I may have been in Compton schools -- either I
 11 or someone else in IDEA was in Compton schools when
 12 Randy Ward was there conducting some oversight and had
 13 access to the monitoring process.
 14 I may have also had other conversations with
 15 Ward on occasion, and that is the extent of it. That is
 16 the best of my recollection right now.
 17 Q. Who is Randy Ward?
 18 A. Randy Ward was named, as I believe it is
 19 called, an "administrator" who had oversight
 20 responsibilities for the Compton School District.
 21 Q. Are you aware of a California program known as
 22 the "teacher retention incentive program"?
 23 A. Yes.
 24 Q. Are you aware whether FCMAT has done any
 25 reviews at districts concerning the teacher retention

1 incentive program?
 2 A. Not to my knowledge. I don't know.
 3 Q. Other than fiscal reviews what authority --
 4 let me try that again.
 5 Other than fiscal reviews what kind of reviews
 6 does FCMAT do, to your knowledge?
 7 A. In the case of Compton and West Contra Costa
 8 County, they were also involved in reviewing things like
 9 materials, instructional materials.
 10 In Compton, certainly they were involved in
 11 reviewing the physical facilities of the schools.
 12 Q. Anything else?
 13 A. Certainly in Compton they were monitoring
 14 things like emergency drills and volunteers and
 15 cooperativeness of the staff.
 16 FCMAT in Compton also provided assessments of
 17 student achievement, personnel management, community
 18 relations, in addition to the fiscal and facilities
 19 management.
 20 I described this quite at length in my report
 21 in the fourth section.
 22 Q. Okay. What is the basis for your knowledge
 23 about FCMAT and how it operates?
 24 A. Reading of the FCMAT materials, certainly
 25 reading a great deal of material about the consent

1 decree in Compton and the arrangements for FCMAT
 2 assistance and oversight in that case, some about the
 3 West Contra Costa County review process.
 4 I looked at the FCMAT website, which is quite
 5 good, actually, and read some of the legislation that
 6 authorized FCMAT in the first place, AB 1200, I think.
 7 Q. You say you read FCMAT materials.
 8 What are those?
 9 A. I have certainly read some reports and the
 10 materials on their website about their staff, their
 11 charge, the kind of assistance they provide -- most
 12 pages on their website; I am not recalling all of them.
 13 Q. Page 78, "Inadequacies in FCMAT." That first
 14 paragraph under that, under the underlined portion, if I
 15 can direct your attention there --
 16 MR. ROSENBAUM: Where it says, "Inadequacies
 17 in FCMAT"?
 18 BY MR. HERRON:
 19 Q. Yes. The last two sentences state:
 20 "Through a fiscal audit FCMAT
 21 may alert the District, County and
 22 State to critical educational
 23 concerns; however, the District,
 24 County and State do not routinely
 25 follow up on either the concerns of

1 the -- the concerns or the
 2 recommendations for remedy."
 3 What is the basis for that statement?
 4 A. The lack of any evidence of routine standard
 5 procedures for following up.
 6 Q. Can you identify any report, any FCMAT report,
 7 on which there was no routine follow-up?
 8 A. I found no evidence of a procedure, a
 9 systematic procedure.
 10 I am not recalling what specific reports may
 11 or may not have established.
 12 Q. What did your investigation entail in trying
 13 to find a procedure for following up on FCMAT reports at
 14 the district level?
 15 A. I was -- I scrutinized the FCMAT materials
 16 about the policies and procedures that govern FCMAT's
 17 work.
 18 Q. But the statement here is that the District
 19 does not routinely follow up on either the concerns or
 20 the recommendations for remedy.
 21 What is it that you did to determine that is,
 22 in fact, the case?
 23 A. I read whatever I could find about FCMAT.
 24 Q. Have you read anything other than what you
 25 have already identified to us?

1 A. I think I described the range of things I
 2 read.
 3 Q. So if there wasn't a -- something in the
 4 documents you already identified talking about routine
 5 follow-up on the concerns expressed by the FCMAT report,
 6 then you are assuming it just doesn't exist?
 7 A. It doesn't exist as a standard public routine
 8 part of the procedures they talk about doing.
 9 Q. Is there any district policy you are aware of
 10 at any district that says the district will follow up on
 11 FCMAT concerns as expressed in a FCMAT report?
 12 A. Not that I am aware.
 13 Q. Is there a County of Education requirement or
 14 rule that you are aware of on this topic?
 15 MR. ROSENBAUM: Vague.
 16 THE WITNESS: I am aware of no County
 17 requirement that it follow up on a FCMAT report. To my
 18 knowledge, I know of no such policy.
 19 BY MR. HERRON:
 20 Q. The Bureau of State Audits did a review of the
 21 Los Angeles Unified School District?
 22 A. Yes.
 23 Q. And you, I take it, have reviewed that audit?
 24 A. Yes.
 25 Q. Did you personally review that audit?

1 A. Yes.
 2 Q. What are your critiques of the audit's
 3 conclusions?
 4 MR. ROSENBAUM: Vague. Beyond what she put
 5 down in her report?
 6 THE WITNESS: Well, I can only respond with
 7 what is in my report. I wrote down what I concluded
 8 from my analysis.
 9 BY MR. HERRON:
 10 Q. Why don't you direct us to where those
 11 conclusions are.
 12 A. On Page 79 and continuing on to Page 80
 13 through Page 81.
 14 Q. Okay. Under the "Inadequacies in Audits"
 15 header here on Page 80, do you see where I am?
 16 A. Yes.
 17 Q. I take it this is discussing inadequacies in
 18 audits generally conducted by the California State
 19 Auditor -- or no?
 20 A. This is using the recent audit of Los Angeles
 21 Unified School District's programs and policies for
 22 providing textbooks as an example of how a -- the State
 23 audit might fall short.
 24 Q. The first inadequacy you -- you say here:
 25 "First of all, the report

1 relies on a small sample of
 2 schools, 16, to make conclusions
 3 about the adequacy of resources in
 4 the District's 947 schools --
 5 centers, including 677 separate
 6 schools."
 7 Did I read that correctly?
 8 A. Yes.
 9 Q. What is wrong with that sample size?
 10 MR. ROSENBAUM: In this context you mean?
 11 BY MR. HERRON:
 12 Q. Yes.
 13 A. It seemed to me to be a very small number of
 14 schools about which to draw conclusions about the
 15 adequacy of resources and their distribution in the
 16 entire district.
 17 Q. Okay. Now the SPRA study that we have talked
 18 about before examined 17 schools out of 8,500 statewide.
 19 Why is that sample inadequate for the SP --
 20 adequate for the SPRA study but not adequate for this
 21 audit?
 22 MR. ROSENBAUM: Argumentative.
 23 THE WITNESS: Because it is using an entirely
 24 different research methodology with a different set of
 25 assumptions and makes no claim to generalize to the

1 State as a whole.
 2 BY MR. HERRON:
 3 Q. "It" being the SPRA study?
 4 A. Yes.
 5 Q. At the bottom of that paragraph it says,
 6 quote:
 7 "By distracting the reader,
 8 the public legislators and other
 9 government officials it appears
 10 that alleviating the disparities
 11 that exist and are documented in
 12 the report is not of primary
 13 concern."
 14 What is it that you mean by "distracting the
 15 reader"?
 16 A. By -- first, the charge to the audit was to
 17 simply examine whether or not there were disparities in
 18 the provision of materials to Los Angeles -- to students
 19 in high and low performing schools in the Los Angeles
 20 Unified School District.
 21 The audit team went far beyond its charge and
 22 took it upon itself to make a judgment about whether the
 23 disparities they found are consequential in terms of
 24 student achievement.
 25 By concluding that they were not

1 consequential, they diminished the significance -- not
2 in the statistical sense -- but the importance of their
3 finding that yes, there were disparities in the
4 resources available to high and low-performing schools
5 in the district.

6 Q. The first sentence of the next paragraph says
7 that -- talks about "potential action," but then
8 concludes that:

9 "Early indicators seem to
10 demonstrate that very little will
11 result."

12 What was the basis for that statement?

13 A. I could find no evidence at the time that I
14 wrote this report that any response had been made to the
15 audit report.

16 Q. In your understanding what is the status now
17 of Los Angeles Unified School District's provision of
18 instructional materials to its schools?

19 MR. ROSENBAUM: Vague.

20 THE WITNESS: "Status" in terms of what?

21 BY MR. HERRON:

22 Q. Status in terms of the items that were
23 reviewed by the audit.

24 MR. ROSENBAUM: Still vague.

25 THE WITNESS: I have seen no follow-up report

1 sufficient to constitute a means of monitoring
2 enforcement?

3 A. Several reasons, including those that I have
4 listed in the report.

5 One is that simply -- well, simply having
6 local information about school conditions without having
7 any reference point in comparison, like a State average
8 or the data in a neighboring school district or some
9 other reference points, makes it extraordinarily
10 difficult for community members and parents to have any
11 understanding of the relative adequacy of the education
12 in their schools compared to those elsewhere in
13 California.

14 Q. Okay.

15 A. Second is that the State does not follow up in
16 any way to either verify the -- whether or not these
17 data are actually reported by local schools and the
18 reports distributed to parents or whether the data
19 reported is accurate.

20 A fourth problem is that to the extent -- or
21 if we assume that the State is ultimately responsible
22 for children being provided an adequate education,
23 simply having local reports by school district doesn't
24 really enable the State, especially if it doesn't
25 analyze the data and use it, to make sure that it is

1 that updates the status of materials, distribution or
2 adequacy in those schools.

3 BY MR. HERRON:

4 Q. Are you aware of any data on that topic that
5 has been generated or distributed since the time of the
6 audit?

7 A. I have seen none.

8 Q. On Page 83, as part of your discussion about
9 public reporting --

10 A. Yes.

11 Q. -- the first full paragraph begins, "Under
12 current State law" --

13 A. I'm sorry. Page what?

14 Q. 83.

15 A. Okay.

16 Q. See where I am?

17 A. Yes.

18 Q. Okay.

19 "Under current State law each
20 California school is required to
21 provide information to their
22 communities about a number of
23 school conditions on the School
24 Accountability Report Card."
25 Why in your opinion is that not alone

1 fulfilling its responsibility.

2 Q. In your opinion is the School Accountability
3 Report Card process able to be modified in a way that
4 would be an effective tool?

5 MR. ROSENBAUM: Incomplete hypothetical.
6 Vague.

7 THE WITNESS: I think if it were modified,
8 monitored and the data reported on it used by the State
9 to provide statewide reports of the conditions that are
10 reported locally and if those were reported in ways that
11 citizens and parents could understand them and use them
12 to guide their own decision making about the quality of
13 their schools, that under those conditions I think the
14 School Accountability Report Cards could be a useful
15 tool.

16 BY MR. HERRON:

17 Q. Page 84 talks about, among other things,
18 inadequacies in 60119.

19 Of the flaws you identify listed here on Page
20 84, it only applies to districts applying for textbook
21 funds.

22 Isn't that 100 percent of the districts in the
23 State of California?

24 A. It probably is, but it falls short of a
25 mandate that schools do this. It is -- it relies on the

1 incentive provided by the availability of funds.
2 MR. HERRON: Could you read that answer back,
3 please.

4 (Record read.)

5 MR. HERRON: I guess I don't understand.

6 Q. You are saying it is not a mandate that
7 districts apply for district funds?

8 A. The requirement in 60119 is that a governing
9 board must determine whether or not there are a
10 sufficient numbers of texts and instructional materials,
11 and that the board is also required to report that
12 information to its public and to its teaching staff and
13 to take action to improve any deficiencies that they
14 might find.

15 I think that is quite a fine thing to ask
16 school districts to do, but it is -- it is not a mandate
17 that schools do it. It is a regulation that accompanies
18 the receipt of categorical funds.

19 Q. The next paragraph talks about the public
20 hearing requirement of 60119. Your conclusion in the
21 last two sentences seems to be that:

22 "Compliance with the
23 requirement for a public hearing
24 has been uneven: Some districts
25 have not held public hearings at

1 Q. Are you aware of any data showing the
2 percentage of districts over the past -- well, since
3 660119 has been in effect -- that have not held public
4 hearings as required by that section?

5 A. Actually, I am not sure that those data exist.

6 Q. Are you aware of any district by name which
7 failed to give proper notice of a public hearing?

8 A. Not on the -- off the top of my head. I know
9 I have seen such names.

10 Q. The last sentence in that paragraph says --

11 MR. ROSENBAUM: What paragraph?

12 MR. HERRON: The same one we are looking at.
13 It is the second-to-the-last full paragraph on Page 84.

14 MR. ROSENBAUM: Okay.

15 BY MR. HERRON:

16 Q. The last sentence states:

17 "Others have conducted the
18 hearing in the most superficial
19 manner."

20 Your report goes on to identify SFUSD, San
21 Francisco and West Contra Costa Unified School
22 Districts.

23 Are there any other districts that you are
24 aware of that have conducted the hearings in a
25 superficial manner?

1 all. Others have failed to give
2 proper notice."

3 Are you aware of any of district by name that
4 has not held a public hearing pursuant to 60119?

5 A. Actually, I believe Needles School District is
6 one such district, because I was reviewing the 60119 --
7 the minutes of the -- maybe the Committee on Audits. I
8 am not trusting fully my recollection, but the
9 committee, but the State committee that actually reviews
10 the petitions that districts submit to have their -- I
11 am not sure of the technical language -- but it is to
12 have their failure to hold a public hearing forgiven or
13 their failure to hold it in compliance with the
14 regulations forgiven.

15 Q. Or waived, I guess.

16 A. Yes. Or the penalties associated with that
17 waived.

18 And Needles is one district that I recall
19 being discussed in that regard.

20 Q. Are you aware of any other district by name
21 that has not complied with the public hearing
22 requirement of 60119?

23 A. Not off the top of my head.

24 I could certainly produce a list if you would
25 like one.

1 A. I have heard several anecdotes about this, but
2 these are the two examples that have solid
3 documentation, so I chose to use them as examples.

4 Q. Are you aware whether San Francisco Unified
5 School District has been taken over by the State?

6 MR. ROSENBAUM: Vague.

7 THE WITNESS: No.

8 BY MR. HERRON:

9 Q. Are you aware of any intervention by the State
10 in San Francisco Unified School District's operations
11 within the past six months?

12 MR. ROSENBAUM: Vague.

13 THE WITNESS: I am not recalling the
14 specifics.

15 BY MR. HERRON:

16 Q. Are you aware of any State intervention at
17 West Contra Costa Unified School District?

18 A. I know West Contra Costa -- do you have a time
19 frame for that?

20 Q. Any time in the last five years.

21 A. I know as a result of the Butts case the
22 school district was reconstituted and has been monitored
23 and has worked with FCMAT.

24 Q. Okay.

25 A. I am not sure about the time period, though.

1 Q. I want to talk to you about waivers.
 2 MR. ROSENBAUM: Dave, off the record a moment.
 3 (Discussion off the record.)
 4 MR. HERRON: Same stipulation, Mark, as to the
 5 first session of the depo.
 6 MR. ROSENBAUM: Yes. Fine.
 7
 8 (Whereupon at 4:53 p.m., the
 9 deposition of JEANNIE OAKES was concluded.)
 10
 11 (The following stipulation
 12 from a prior deposition was
 13 incorporated as follows:
 14 "MR. HERRON: May we
 15 stipulate the copies of the
 16 documents attached to the
 17 deposition may be used as
 18 originals, and may we further
 19 stipulate that the original of this
 20 deposition be signed under penalty
 21 of perjury.
 22 "The original will be
 23 delivered to the offices of the
 24 ACLU and directed to Mark
 25 Rosenbaum; that the reporter is

1 Lhamon, I think it would facilitate
 2 the process. Is that okay?
 3 "THE REPORTER: Yes.
 4 "MR. ROSENBAUM: With that
 5 addendum, I certainly stipulate to
 6 that.
 7 "MR. HERRON: Very good.")
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1 relieved of liability for the
 2 original of the deposition. The
 3 witness will have 30 days from the
 4 date of the court's transmittal
 5 letters to review, sign and correct
 6 the deposition.
 7 "And that Mr. Rosenbaum or
 8 anyone he shall designate from
 9 plaintiffs' side shall notify all
 10 parties in writing of any changes
 11 to the deposition within that
 12 30-day period. And if there are no
 13 such changes or signature within
 14 that time, that any unsigned and
 15 uncorrected copy may be used for
 16 all purposes as if signed and
 17 corrected.
 18 "MR. ROSENBAUM: If it's not
 19 a burden for the reporter, because
 20 I'm out of town a lot now because
 21 of depositions and my teaching, if
 22 copies could be served -- the
 23 stipulation that Mr. Herron read
 24 may -- if it could be served on
 25 both me and Ms. Lhamon, Catherine

1 STATE OF CALIFORNIA)
) SS.
 2 COUNTY OF LOS ANGELES)
 3
 4 I am the witness in the foregoing deposition.
 5 I have read the foregoing deposition or have
 6 had read to me the foregoing deposition, and having made
 7 such changes and corrections as I desired, I certify
 8 that the same is true in my own knowledge.
 9 I hereby declare under penalty of perjury
 10 under the laws of the State of California that the
 11 foregoing is true and correct.
 12 This declaration is executed this ____ day of
 13 _____, 2003, at _____
 14 California.
 15
 16
 17 _____
 18 JEANNIE OAKES
 19
 20
 21
 22
 23
 24
 25

1 STATE OF CALIFORNIA)
) SS.

2 COUNTY OF LOS ANGELES)
3

4 I, CATHY A. REECE, CSR No. 5546, a Certified
5 Shorthand Reporter in and for said County and State, do
6 hereby certify:

7 That prior to being examined, the witness
8 named in the foregoing deposition, JEANNIE OAKES, by me
9 was duly sworn to testify to the truth, the whole truth,
10 and nothing but the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and
13 thereafter reduced to computerized transcription under
14 my direction and supervision, and I hereby certify the
15 foregoing deposition is a full, true and correct
16 transcript of my shorthand notes so taken.

17 I further certify that I am neither counsel
18 for nor related to any party to said action nor in
19 anywise interested in the outcome thereof.

20 IN WITNESS THEREOF, I have hereunto subscribed
21 my name this _____ day of _____, 2003.
22

23
24

CATHY A. REECE, RPR, CSR No. 5546

25