

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 VIII
TAKEN ON
TUESDAY, APRIL 8, 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 9:33 a.m., on Tuesday, April
4 8, 2003, before Cathy A. Reece, RPR, CSR No. 5546.

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1 I N D E X

2
3 WITNESS: JEANNIE OAKES
4
5

6 EXAMINATION PAGE
7 BY MR. HERRON 1344, 1404
8
9

10 EXHIBITS

11 EXHIBIT MARKED
12 77 Synthesis or Meta report, 73 pages 1369
13 78 Agenda for 7-14-02 Williams 1419
conference, one page
14
15
16

17 QUESTIONS WITNESS WAS INSTRUCTED NOT TO ANSWER:
18 (NONE)
19

20 INFORMATION TO BE SUPPLIED:
21 (NONE)
22
23
24
25

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

4
5 EXAMINATION

6
7 BY MR. HERRON:

8 Q. Good morning, Dr. Oakes.

9 A. Good morning.

10 Q. How are you?

11 A. Fine.

12 Q. Have you recently consumed any medication,
13 alcohol or any other substance that would cloud your
14 mind or interfere with your ability to give your very
15 best testimony here today?

16 A. No.

17 Q. We are here to hear your testimony about your
18 third report, your third expert report in this case and
19 the opinions related to it.

20 What did you do to prepare for this
21 deposition?

22 A. I reread my report. I scanned the underlying
23 reports and checked a few sites on the Internet to
24 refresh my memory of some of the details.

25 Q. Did you do anything else to prepare for this

1 the Harris report on the Public Advocates website. I
2 looked at the EdSource website.

3 I am sure there were others, but that is all
4 that is coming to mind.

5 Q. What information did you review on the CDE
6 website?

7 A. I looked at the contents standards, not --
8 when I say, "looked at," I mean really "looked at."
9 These were very quick perusals.

10 I actually looked at the description of the
11 Uniform Complaint Procedures. I looked at the
12 frameworks.

13 Q. "Looked at" in the same sense you looked at
14 the contents standards?

15 A. Yes. Just -- I also looked at the report, the
16 2001 report from the I guess it is called the
17 "California Technology Project" -- "Technology Survey,"
18 the 2002 report, which was not out at the time of my
19 original work.

20 And I am sure I looked at some other places on
21 that website, but I am not recalling.

22 Q. Why did you visit the Associated Civil
23 Engineers website?

24 A. Oh, I also looked at the NEA website because
25 the NEA website had some state comparisons and one of

1 deposition?

2 A. No.

3 Q. When you say you "scanned the underlying
4 reports," what are you referring to?

5 A. I looked at some of the other expert reports
6 that are synthesized in this third report of mine.

7 Q. Did you look at some of them or all of them,
8 if you recall?

9 A. I certainly looked at all of them, but in the
10 last 24 hours I only looked at some of them.

11 Q. I am asking: In preparation for the
12 deposition, do you recall which ones you looked at?

13 A. I can certainly recall some of them I looked
14 at.

15 Q. Please provide those, identify those reports.

16 A. I looked at Mr. Sobol's report, Professor
17 Fine's report. I looked at Dr. Sandel's report. I
18 looked at Dr. Koski's report.

19 Those are the ones I looked at to the best of
20 my recollection.

21 Q. Very good.

22 Do you recall what Internet sites you checked?

23 A. I looked at the -- I looked at the California
24 Department of Education's website. I looked at the
25 Association for Civil Engineers website. I looked at

1 them was about facilities, and I was curious about it.
2 So I -- it referenced -- had a link for the reference to
3 what it said about school facilities in California, and
4 I followed that link, and it took me to the Association
5 of Civil Engineers, which had state-by-state comparisons
6 of facilities' conditions across the U.S.

7 Q. How did California rank versus other states on
8 that comparison you just referenced?

9 A. The summary statement by the -- on the NEA
10 website was that California was the worst in the
11 condition of its school buildings.

12 The actual engineers' website doesn't give a
13 ranking, but it gives the percentages of buildings or
14 facilities that have certain problems. It has about six
15 or seven categories. I did a scan and a rough count,
16 and California was very near the bottom or at the bottom
17 on all but about one of the categories, where it was
18 probably in the bottom third, but not right at the
19 bottom, as I recall.

20 Q. Have you relied on the data you just
21 referenced to form your opinions related to your third
22 report?

23 A. I was interested in that those data seemed to
24 corroborate what is in the expert reports on facilities
25 that I relied on for this report.

1 I was actually surprised that those data
2 weren't themselves included in the reports, but I guess
3 I would say that as a part of my preparation it added to
4 my confidence about the findings related to facilities
5 that I report in this third report.

6 Q. Why were you surprised that the data you just
7 referenced was not included in the other expert reports?

8 A. Because it seemed like a reliable source of
9 information on school facilities that helped portray the
10 status of school buildings in California.

11 Q. And, therefore, it is the type of information
12 that the experts should have relied on but did not?

13 A. I am not saying they "should have" relied on
14 it. I am not myself an expert on school facilities, and
15 I certainly am confident in their judgment of what they
16 chose or didn't choose, but I found it interesting.

17 Q. Was it -- was this one report or two separate
18 reports that you reviewed?

19 A. Well, they have several -- like most people
20 do, you get on a website, and you start looking up lots
21 of things.

22 They have a National Report Card on the
23 infrastructure that includes transportation and all
24 kinds of sort of the built environment and the status,
25 so there is some information on schools in that National

1 Q. That is the study that is referenced in your
2 instructional materials report?

3 A. Yes. It is also referenced in this third
4 report.

5 Q. Okay.

6 A. I looked at quite a few things, but frankly
7 they are not coming to mind.

8 Q. Okay. Did you speak to anyone in preparation
9 for your deposition here today?

10 A. On Friday morning I had a 30-minute telephone
11 conversation with Mr. Rosenbaum and Ms. Fanelli.

12 Q. Did you speak with anyone else?

13 A. Certainly I mentioned to my colleagues and my
14 family I was going to be doing this, but nothing about
15 the substance.

16 Q. What was discussed with Mr. Rosenbaum and Ms.
17 Fanelli?

18 A. They encouraged me to continue doing the kind
19 of preparation that I had been doing previously.

20 They suggested that I -- I asked them whether
21 it would be a good idea for me to read the depositions
22 of the other experts whose reports I refer to. They
23 suggested that that wasn't necessary.

24 I asked them if there were any -- if it would
25 be appropriate for them to share any places I ought to

1 Report Card.

2 This report --

3 Q. The NEA report?

4 A. No. The NEA report was -- I simply looked at
5 that -- I am talking about the civil engineers' report.

6 Q. Okay.

7 A. And then they have this -- the site that I am
8 referring to, though, the page is this state-by-state
9 comparisons under their listing of statistics about
10 schools.

11 Q. What information did you review on the
12 EdSource website?

13 A. I actually went to the EdSource website in --
14 because I was searching on the content standards, and it
15 was -- it was the first one that popped up, and I went
16 there thinking that I was going to the Department of
17 Education and just ended up on the EdSource website.
18 There was a link there to the content standards.

19 Q. Okay. The content standards that are set
20 forth on the CDE website?

21 A. Yes.

22 Q. Other than what you testified to or
23 identified, what other documents did you review in
24 anticipation of your deposition?

25 A. I looked again at the SPRA study.

1 concentrate on more than others, and they said no; that
2 they were not concerned about that.

3 It was a brief and encouraging pep talk.

4 Q. Okay. To your knowledge what mechanisms does
5 California currently use to measure student achievement?

6 A. Well, California has a whole series of -- do
7 you mean the State or local districts as well?

8 Q. The State.

9 A. The State has its STAR program, which is the
10 State Testing And Reporting program, which includes a
11 norm reference test of, currently, the CAT-6, I believe,
12 which replaced the SAT-9.

13 That is augmented by items that are
14 standards-based items called the "California Standards
15 Test" in language arts and I believe this year in
16 mathematics as well. The plan is to over time increase
17 the number of standards-based items on the test and
18 diminish the weight placed on norm reference testing as
19 part of the academic performance index.

20 California also gives a Spanish version of a
21 basic skills test to students who have been in
22 California schools for less than 12 months and who speak
23 Spanish as their primary language.

24 California requires that English learners be
25 administered an English language development test

1 yearly.

2 There are tests that are used that provide
3 accommodations for students with disabilities.

4 California gives a high school exit exam which
5 beginning in 2004 will -- with the class of 2004 -- will
6 determine whether or not they receive high school
7 diplomas.

8 California requires students who are being
9 considered for placement in special education programs
10 be administered diagnostic tests.

11 There have been, and I think -- I am not sure
12 how widespread these are used -- but State developed or
13 State coordinated or end-of-course exams for high school
14 students. I am not sure where those are in terms of
15 implementation because there is some concern they will
16 not meet the requirements of the No Child Left Behind
17 accountability provisions.

18 Those are the State tests that are coming to
19 mind at this point, although there may be others that I
20 am not recalling.

21 Q. What mechanisms do districts use separate and
22 apart from what you just testified to to measure student
23 achievement, if you know?

24 A. Do you mean "districts" as a district entity
25 or individual schools or individual teachers or all of

1 content standards, and the high school exit exam is
2 based on the standards set for the tenth grade level.

3 Teachers certainly are encouraged to develop
4 all of their classroom assessments around the standards.
5 I don't know the extent to which that actually happens.

6 Q. Okay. Is it your opinion, then, that
7 currently California uses the same measures, the same
8 mechanisms, to measure student achievement as it does to
9 measure whether students are learning the content
10 standards?

11 A. Not entirely, because some of the measures of
12 achievement, like the CAT-6 and formerly the SAT-9, are
13 not -- were not developed as measures of the standards,
14 and while there is some overlap, they are not perfectly
15 aligned.

16 Q. So you don't consider the CAT-6 to measure
17 whether students are learning the content standards?

18 A. That is not the purpose of that test.

19 Q. And it doesn't take that measure?

20 A. I think there is some overlap between the
21 standards and what is on the CAT-6, but it is not a
22 standards-based assessment.

23 Q. Do you think -- in your understanding has the
24 CAT-6 completely entirely replaced the SAT-9?

25 A. The -- my understanding is that the contract

1 the above?

2 Q. The district as a separate entity.

3 A. I think it varies, and it changes over time,
4 where the districts would quite frequently administer
5 their own standardized tests of basic skills, but with
6 the increasing prominence of the State testing program
7 many of them have stopped doing their -- the independent
8 testing. It is in flux.

9 Q. Do you know whether the Los Angeles Unified
10 School District administers its own standardized test?

11 A. I know there are 17 different tests
12 administered in LAUSD, and some of them are -- they are
13 all standardized in some way. Some of them are
14 performance exercises. Some of them are more
15 conventional standardized multiple-choice tests. I
16 can't list all 17 for you now.

17 Q. Okay. Among the measures you identified that
18 the State of California uses, you've talked about the
19 STAR program and the CAT-6 and the California Standards
20 Test, the high school exit exam, among many others; are
21 there any mechanisms that California currently uses --
22 and by "California," I mean the state -- to measure
23 whether students are learning the content standards?

24 A. Well, certainly the content -- the California
25 Standards Test measures whether students are learning

1 with the company that produces the SAT-9 expired last
2 year, and it was replaced with a contract with the
3 Educational Testing Service that produces the CAT-6. I
4 mean, they are very similar instruments. It is just
5 that it is a different company.

6 Q. Can you describe to us the differences between
7 the SAT-9 and the CAT-6 -- the major differences?

8 A. Generally, they are more alike than they are
9 different, and I would have to look at the instruments
10 and the manuals to identify the specific ways in which
11 they differ.

12 Q. You can't identify any differences for us
13 today?

14 A. No.

15 Q. In your opinion is California's use of test
16 scores, previously on the SAT-9 and now on the CAT-6, a
17 proper measure of student achievement?

18 MR. ROSENBAUM: Vague and ambiguous.

19 THE WITNESS: I think there are reasons for
20 which one might want to use a norm reference
21 standardized test, and those are certainly credible
22 instruments to be used for those purposes.

23 BY MR. HERRON:

24 Q. What are the reasons one might want to use a
25 norm reference test?

1 A. To understand students' achievement of basic
2 skills relative to the achievement of other students.

3 Q. And you believe that previously the SAT-9 and
4 the CAT-6, then, are proper measures of students'
5 skills?

6 MR. ROSENBAUM: Vague and ambiguous.

7 THE WITNESS: As I said, if you are interested
8 in comparing how well a student or a group of students
9 performs on a measure of basic academic skills with the
10 performance of other students, those are reasonable
11 instruments to use for that purpose.

12 BY MR. HERRON:

13 Q. Do you think that an appropriate purpose?

14 MR. ROSENBAUM: Same objection.

15 THE WITNESS: It depends on the context and
16 who is asking the question.

17 BY MR. HERRON:

18 Q. Do you think it is appropriate for California
19 to want to have a norm reference test administered so
20 that it can compare the performance of its students with
21 students in other states?

22 A. Actually, California does have the ability to
23 compare its performance with those in other states
24 through the National Assessment of Educational Progress,
25 and I think that measure is a far better measure for

1 that purpose. It is called the "Nation's Report Card."
2 Its entire purpose is to compare California and the
3 other states -- compare among states on the achievement
4 of their students.

5 With the National Assessment in place I find
6 little reason to support the use of another -- the use
7 of a norm reference test of basic skills as a State
8 mechanism for comparing its performance with those of
9 students in other states.

10 Q. Why is the NAEP -- it is NAEP, N-A-E-P; right?

11 A. Yes.

12 Q. Why is the NAEP test preferable to previously
13 the SAT-9 and currently the CAT-6?

14 MR. ROSENBAUM: Asked and answered.

15 THE WITNESS: I believe it is a
16 state-of-the-art measure of students' achievement. It
17 has been developed by a consortium of measurement
18 experts.

19 It is a very efficient test in that it takes
20 very little of any one student's time and, therefore,
21 because it is done for the purposes of comparison and
22 not for diagnosis or informing teaching and learning, it
23 is very ideal to minimize the burden on teachers and
24 students in that kind of test.

25 I think in terms of quality and efficiency it

1 is superior.

2 BY MR. HERRON:

3 Q. Do you know to what extent the NAEP test
4 currently is administered to California students?

5 A. Would you tell me what you mean by "to what
6 extent"?

7 Q. Percentage number.

8 A. The NAEP survey is a sample survey, so they
9 draw a sample of students in California which is
10 statistically appropriate for generalizing to the state
11 as a whole.

12 I don't know the exact number of the
13 California sample.

14 Q. Other than what you have already testified,
15 identify for us, if you would, the flaws or deficiencies
16 in the SAT-9 and CAT-6.

17 A. I can talk about the reasons why I do not
18 support those measures as a State measure of students'
19 achievement of California's instructional goals.

20 The first is that it is not well-aligned with
21 the State standards.

22 The second is the test construction, because
23 it is a norm reference test, is only useful for
24 comparing students with one another. It does not tell
25 you about students' absolute level of mastery of a

1 particular content domain.

2 It is not constructed in a way that provides
3 information back to schools, teachers, parents, students
4 about the strengths or weaknesses in students' learning
5 so that it is not terribly helpful for guiding
6 instruction.

7 The report dates of those tests are such that
8 by the time a teacher would have access to the scores of
9 students that were in his or her class those students
10 would have moved on to another class.

11 Those are certainly some of the reasons. If I
12 think of others, I will tell you, but I don't want to
13 count on my memory only for a comprehensive assessment
14 of the strengths and weaknesses of those tests. I think
15 I cover this in my report, though, actually, in much
16 more detail.

17 Q. Have you reviewed any studies that support
18 your opinion that the items you just identified are
19 flaws in previously the SAT-9 and currently the CAT-6?

20 A. Yes.

21 Q. What studies are those?

22 A. Well, certainly Mr. Russell's analysis of
23 California's testing programs. I think it is broadly
24 consistent with this critique.

25 I read much of what has been written by Robert

1 Linn and Eva Baker, who are the codirectors of the
2 National Center for Research on Evaluation, Testing and
3 Student Standards.

4 I have read much of what Dan Koretz at the
5 RAND Corporation and Brian Stecher at the RAND
6 Corporation have written about the uses and misuses of
7 standardized tests.

8 I have read a great deal by George Madaus and
9 Walt Haney and their colleagues at the Boston College
10 Center on Testing and Public Policy.

11 I am familiar with the studies that have been
12 done by the National Academy of Sciences on the use of
13 testing and making decisions about students.

14 I am familiar with the and I've read the
15 American Psychological Association analysis of tests and
16 their use, the American Educational Research
17 Association's set of standards and analysis, and the
18 National Council -- National Council for Measurement in
19 Education, also.

20 And other than those major assessment bodies,
21 I have read many, many individual studies by
22 researchers.

23 Q. Have you individually or in concert with
24 others conducted any research on the topic of whether
25 the SAT-9 and CAT-6 are proper measures of student

1 is to compare the proficiency and basic skills of a
2 student or a group of students with another student or
3 another group of students.

4 I wouldn't -- I would never deny that these
5 are properly used for that purpose.

6 My analyses have always been done in the
7 context of either making placement decisions about
8 students in terms of their course placement or their
9 promotion from grade to grade or for the purpose of
10 assessing whether or not students have met a certain set
11 of criterion standards.

12 Q. Do you believe that a student's improvement
13 year to year on the SAT-9 and CAT-6 test scores
14 demonstrates improved achievement?

15 MR. ROSENBAUM: Vague and ambiguous.
16 Speculation. Incomplete hypothetical.

17 THE WITNESS: I think you can infer if you
18 have a longitudinal record of student scores on a
19 measure like SAT-9 or CAT-6 that there has been some
20 increased proficiency based on increase in test scores.
21 At least you can say that the student has changed his
22 rank relative to other students of the same age.

23 BY MR. HERRON:

24 Q. What is the "API"?

25 A. The "API" is called the "Academic Performance

1 achievement?

2 MR. ROSENBAUM: Vague and ambiguous.

3 THE WITNESS: If you mean have I analyzed the
4 proper uses or the relative tradeoffs, yes.

5 BY MR. HERRON:

6 Q. Okay. What did that analysis consist of?

7 A. Review of the literature and an analysis of
8 policies.

9 Q. For what purpose did you conduct that research
10 and analysis?

11 A. I have done work like this for 15 years, and
12 my vita contains a number of papers that include those
13 analyses.

14 Q. You have published on this topic; that is,
15 whether the SAT-9 and CAT-6 are proper measures of
16 student achievement?

17 A. When I say, "proper measures of student
18 achievement," I can only respond in terms of the actual
19 context and the purpose for which they are used.

20 I wouldn't characterize what I have done as
21 any absolute analysis of them as proper measures of
22 student achievement in isolation.

23 Q. What do you mean by "in isolation"?

24 A. Well, as I said before, that the SAT-9 and the
25 CAT-6 are proper measures for using if what your purpose

1 Index." It was established as part of the 1999 Public
2 School Accountability Act in the State of California.

3 It is made up of cross-sectional data about
4 the schools' aggregate scores on a number of measures.
5 It is -- schools are grouped into bands of similar
6 schools, and then the scores are used to determine
7 whether schools are performing as expected or low
8 performing to compare them with other schools.

9 They are used as a basis for -- I mean, I
10 cover all of this in my report.

11 Q. Okay. And do you in your opinion consider the
12 API to be flawed?

13 A. Yes.

14 Q. How is it flawed?

15 A. It provides far less information than the
16 State requires in order to make useful judgments about
17 both the performance of students and the conditions
18 under which that performance was achieved.

19 It has certainly been criticized for being
20 based on measures that are largely reflective of student
21 background rather than on school achievement.

22 It has a significant margin of error or
23 measurement error in it that schools that could be seen
24 as high performing one year could as easily have scored
25 in ways that make them low performing within -- by

1 chance. I mean, there is enough -- the confidence
2 interval is such that there is a great deal of room for
3 error in judging schools.

4 Because we do not have longitudinal data on
5 students in California we simply are looking at this
6 year's third graders compared to last year's third
7 graders, not having any control over whether or not the
8 degree to which those are exactly the same -- how much
9 mobility there has been in the school and, of course,
10 they are not the same kids so we don't know anything
11 about growth of individual children.

12 Those are a few of the flaws I see in the --
13 well, another major flaw is when the -- it has not been
14 implemented as designed; that in the original design of
15 the API, the legislation, they were to include things
16 like measures of graduation rates, dropouts, other
17 measures which have never been included in the Academic
18 Performance Index.

19 I am sure there may be other things that I
20 refer to in my report, but that is a summary of my
21 critique.

22 Q. I take it your opinion is that it is improper
23 for California to use the API?

24 MR. ROSENBAUM: Vague and ambiguous.

25 THE WITNESS: Actually, I think the API could

1 I was very involved, as you know, in the
2 construction of the Student Learning Working Group
3 report for the California Master Plan which includes
4 some other suggestions.

5 I have recently authored an article for a book
6 on responsible accountability which has some analysis in
7 it.

8 I am -- I am not sure what more you want me to
9 say.

10 Q. Anything that comes to mind.

11 A. I have tried to make it efficient by excluding
12 what is in the report.

13 Q. To the extent it is already in your report, I
14 don't want you to repeat that.

15 A. Do you want me to repeat what is in all of my
16 other publications?

17 Q. If they are different than what is in your
18 report and what you testified to, yes.

19 A. I would have to say, I don't have a perfect
20 recollection of everything that is written in everything
21 I have written, and I wouldn't want to exclude anything
22 I have written because I don't recall it at the moment.

23 Q. So long as you have done your best, that is
24 fine.

25 A. I am willing to keep talking because I don't

1 be improved in ways that could make it quite a useful
2 measure by correcting some of the problems that I
3 mentioned.

4 I would like to see it sit side by side with
5 an Opportunity-to-Learn index or something comparable so
6 that the State would be able to look at the outcomes in
7 relationship to the opportunities and conditions and
8 resources in particular schools.

9 BY MR. HERRON:

10 Q. Are all the ways in which you believe the API
11 could be improved set forth in your report?

12 A. Either in my report or in other writing I have
13 done on the topic.

14 Q. Other than what is in your report and your
15 reference to there being an Opportunity-to-Learn index,
16 in what other ways could California's use of the API be
17 improved?

18 MR. ROSENBAUM: Same objections.

19 BY MR. HERRON:

20 Q. If any come to mind.

21 A. Lots come to mind, and I think the --
22 correcting that list of errors would be a good start.

23 I also certainly am in accord with what Mr.
24 Russell suggests in his report are appropriate ways to
25 improve the API.

1 want you to exclude anything that I may have written
2 elsewhere.

3 Q. But you aren't recalling right now?

4 A. But I am not recalling right now.

5 Q. Very good.

6 What did you mean when you said,
7 "Opportunity-to-Learn index"?

8 A. There has been a concept for probably 15 years
9 that in addition to having standards for the content of
10 what students should learn and in addition to having
11 performance standards that establish what would
12 constitute mastery of those standards, that there should
13 also be standards for the delivery of resources and
14 instruction that specify what is essential in the
15 environment in which teachers teach and children learn
16 and that there should be measures of those as part of
17 any accountability, any standards-based accountability
18 system.

19 "Opportunity to Learn" has become a phrase
20 that is meant to encompass those conditions, resources
21 and less tangible opportunities that could be thought of
22 as essential to the learning environment.

23 The idea of developing an index is to develop
24 indicators, measures and indicators, that would allow
25 one to describe the status and to monitor changes over

1 time and to make judgments about the adequacy of the
2 resources, conditions and opportunities in the school
3 environment.

4 The idea has been talked about in Congress,
5 in -- certainly in the state. There have been some
6 pieces of legislation in California that have proposed
7 it.

8 I -- I have written about Opportunity to Learn
9 quite extensively for 12, 15 years.

10 Q. Is the Opportunity-to-Learn index mentioned
11 anywhere in your third report, even if by a different
12 title or reference?

13 A. In -- at the very end of my report, on Page
14 68, No. 3 --

15 Q. Uh-huh.

16 A. -- talks about the need to include measures of
17 the resources and conditions under which students are
18 expected to learn as part of an expanded accountability
19 system in the state.

20 That certainly -- I am not sure that
21 Opportunity to Learn is mentioned in that context, but
22 that is certainly a description of the kinds of things
23 one talks about when one refers to "Opportunity to
24 Learn."

25 It is also referred to sometimes as

1 A. Jack Londen, I believe, if you are asking
2 who --

3 Q. Yes. Who from the --

4 A. Yes. Jack Londen, I believe, to the best of
5 my recollection.

6 Q. Did he tell you why he wanted you to prepare
7 the third report?

8 A. Actually, the original idea he suggested to me
9 was that it would be useful, given the volume of
10 reports, to have something that might function as a
11 guide to the reader or an overview that -- of the expert
12 reports.

13 Q. Did you have subsequent discussions with
14 Mr. Londen about why he wanted you to prepare this third
15 report, if you recall?

16 A. I think on two or three occasions we repeated
17 that conversation, and he suggested that it would be
18 useful, but --

19 Q. When you say, "useful," useful to provide an
20 overview of the other reports?

21 A. Yes. That was the original idea.

22 Q. Did that idea ever change?

23 A. In my mind it changed.

24 Q. How so?

25 A. In that as I set out to do that, I realized

1 "Opportunities to Teach and Learn."

2 Q. Okay.

3 (Exhibit 77 was marked for I.D.)

4 BY MR. HERRON:

5 Q. Have you had an opportunity to quickly scan
6 what we have marked now as Exhibit 77?

7 A. Yes.

8 Q. Do you recognize that document?

9 A. Yes, I do.

10 Q. What is it?

11 A. This is my third report prepared in
12 conjunction with this case. It is what we, shorthand,
13 call a "synthesis report" or a "Meta report."

14 Q. What does "Meta report" mean?

15 A. "Meta" --

16 MR. ROSENBAUM: That is really a good
17 question.

18 MR. HERRON: Mark --

19 THE WITNESS: I think it is a phrase we made
20 up.

21 Essentially, it means a synthesis or a big
22 picture of smaller things.

23 BY MR. HERRON:

24 Q. Okay. Who asked you to prepare the third
25 report?

1 that the whole needed to be more than the sum of the
2 parts.

3 Q. What do you mean by that?

4 A. That the cumulative weight of the evidence and
5 the arguments should be, from my perspective as a
6 researcher -- needed to be articulated in ways that were
7 different than simply summarizing what was in the
8 individual reports.

9 Q. Did you do that?

10 A. I think I did.

11 Q. Did you have any other discussions you recall
12 with Jack Londen on this topic?

13 A. I remember about a month into it showing Jack
14 an outline of how I was thinking about structuring the
15 report, how I intended to proceed with the report, and
16 generally having a conversation that this seemed like a
17 productive and interesting strategy.

18 Q. Did you have any other conversations with Jack
19 Londen on this topic that you recall?

20 A. I do recall having conversations from time to
21 time. I got quite engaged in writing this report, and
22 from time to time I would have a brief conversation,
23 saying that, "This is really interesting" and things
24 like that.

25 It didn't go as quickly as I thought it might,

1 so sometimes I talked to him about needing more time.

2 I think that is all I -- there may have been
3 other conversations, but I am not recalling.

4 Q. Did you have conversations with plaintiffs'
5 counsel other than Jack Londen concerning why you were
6 to prepare this report?

7 A. Yes. I think there were others. Certainly
8 Mark Rosenbaum participated in some of those
9 conversations, and he and I may have spoken
10 independently about the report.

11 The -- I don't remember any divergence,
12 though, in terms of the reasons why a report like this
13 would be useful.

14 I think I spoke to Catherine Lhamon also.

15 Q. And as with Mr. Rosenbaum, there was no
16 difference -- let me try that again.

17 Topics discussed with Mr. Rosenbaum and Ms.
18 Lhamon were essentially the same as those discussed with
19 Mr. Londen? No divergence of opinion?

20 A. Well, you asked about the purpose for which
21 the report would be done --

22 Q. Yes.

23 A. I don't remember any inconsistencies in the
24 conversations. I may have spoken about it briefly with
25 others as well, but --

1 I think there was -- the litigation team was
2 helpful in getting the latest versions of reports to me.
3 I can remember talking on two or three occasions with
4 Peter Eliasberg about Robert Corley's report and when
5 would I have it. Generally, the litigation team
6 provided a lot of support in making sure that I had the
7 latest versions of the report and the material to study.

8 There may have been other things. I am just
9 not -- those are the things that come to mind.

10 Q. Okay. You mentioned Mr. Nolte --

11 A. Yes.

12 Q. -- that he acted as a research assistant of
13 some type?

14 A. Yes.

15 Q. What type of research did Mr. Nolte do, if you
16 recall?

17 A. I asked him to look for me -- to find me
18 documents that I knew existed about the discussion on
19 Opportunity-to-Learn standards that went on in the
20 Governor's summits and the federal debates about
21 standards-based reform in the 1990's.

22 I asked him to find material about Bill
23 Hoening's reform -- and documents. He, I think, searched
24 the Lexis system and Google and ERIC and did the kind of
25 things that research assistants do -- produced documents

1 Q. "Others" meaning other plaintiffs' counsel?

2 A. Perhaps. I might have been on the -- I might
3 have talked to Peter Eliasberg.

4 Q. Okay. You said that you showed Mr. Londen an
5 outline of your -- for your third report.

6 Did he provide you any comments on your
7 outline?

8 A. I remember him thinking it looked terrific.

9 Q. Did he provide any comment other than that, if
10 you recall?

11 A. I don't recall the specifics.

12 Q. Okay. Other than what you have testified to,
13 who worked with you on this report?

14 A. I did most of this report on my own. No one
15 in my office worked on it with me. I know from time to
16 time I spoke with Sophie Fanelli or Catherine Lhamon.

17 John Nolte was an intern, I believe, last
18 summer at the ACLU, and he was made available to me to
19 do some research assistant kind of work.

20 My husband, Martin Lipton, once again did
21 reading and editing for style and clarity.

22 I think Gary Blasi may have read it at one
23 point as a colleague.

24 Q. Did anyone else assist?

25 A. There was another intern at the ACLU.

1 for me and occasionally summarized what he found.

2 He may have done other things, but they were
3 all like that.

4 Q. Did you rely on any of the research conducted
5 by Mr. Nolte to prepare your third report?

6 A. I certainly read everything he gave me, and
7 essentially what I used those documents for was to
8 refresh my memory of the events, historical events, that
9 I know, participated in, recalled, but wanted to verify
10 the details. It was helpful.

11 Q. Did you have any written communications with
12 Mr. Nolte?

13 A. I might have. I know he -- I think he
14 prepared -- I don't know -- a summary or two. I think
15 he gave me a written summary or two.

16 Q. Did you have any e-mail communications with
17 Mr. Nolte that you recall?

18 A. You know, I may have, but I don't recall
19 specifically.

20 Q. Okay.

21 A. He mostly came and hung around the office.

22 Q. Did Ms. Fanelli and the other individuals at
23 the ACLU also conduct research assistant-type tasks for
24 you in connection with your preparation of the third
25 report?

1 A. There were some occasions where they came to
2 my office -- Ms. Fanelli came to my office, and we would
3 go over some of the expert reports, and I would indicate
4 which pieces of the expert reports I was interested in
5 using, and they did some abstracting of portions for me
6 to look at, some of which I used, some of which I
7 didn't, but it was always -- we had probably a half a
8 dozen meetings where I essentially went over material
9 and gave them instructions about what would be helpful
10 for me.

11 Q. Other than Mr. Nolte did you have any e-mail
12 communications with Ms. Fanelli or any of the ACLU
13 individuals who acted as research assistants?

14 A. There may have been some. Mostly we did our
15 work in person or on the telephone.

16 MR. HERRON: Mr. Rosenbaum, we have not been
17 able to locate any documents prepared by, as best we can
18 tell, anyone from the ACLU in connection with the third
19 report.

20 To the extent there are e-mail communications
21 or prepared summaries of the type Dr. Oakes referenced
22 with respect to Mr. Nolte or abstracts that she
23 referenced with respect to Ms. Fanelli and others, we
24 believe that those should be produced.

25 MR. ROSENBAUM: David, could you hold on just

1 Q. Did he provide you with any comments regarding
2 the third report?

3 A. Yeah, he did.

4 Q. Were the comments made in writing?

5 A. No.

6 Q. What comments did he provide you?

7 A. Again, he suggested places that I could
8 elaborate for clarity.

9 He suggested places where I maybe had gone on
10 at more length than any reader would want to tolerate.

11 It was essentially -- I don't remember any
12 specific substantive suggestions. I think he suggested
13 that I -- it was a lot about shortening. I had
14 originally told the litigation team that this would be
15 about a 25-page paper. I think there were some efforts
16 to keep me to my promise.

17 Q. You only missed it by a factor of three.

18 A. I know. You should have seen it last July.

19 MR. HAJELA: We are just as accurate when we
20 say we only have one more question.

21 MR. ROSENBAUM: How much longer, David?

22 MR. HERRON: As long as you will concede the
23 plaintiffs have no case, I am ready to stop now.

24 Q. Now you said you did the writing on this
25 report?

1 one moment?

2 MR. HERRON: Sure.

3 (Discussion off the record.)

4 MR. ROSENBAUM: Miss Fanelli assures me that
5 we produced absolutely everything that exists. I will
6 be glad to double check it for you.

7 MR. HAJELA: Would this be a good time to take
8 a short break?

9 THE WITNESS: Good idea.

10 (Recess taken.)

11 BY MR. HERRON:

12 Q. Did Martin Lipton provide any comments to your
13 third report other than stylistic and clarity-type
14 comments that you recall?

15 MR. ROSENBAUM: Covered by the spousal
16 privilege, but --

17 THE WITNESS: I think he asked several
18 questions, but it was for explanation for clarity and,
19 then I think clarity and style probably covers it.

20 BY MR. HERRON:

21 Q. You gave Gary Blasi a copy of your report?

22 A. Yes.

23 Q. Do you recall when that was?

24 A. Yes. I think it was sometime July or August
25 of 2002.

1 A. Yes.

2 Q. Did anyone else draft any portion of the
3 report?

4 A. No. Well, I should say that there are places
5 in which I borrowed quite liberally from the other
6 expert reports, and I think I have a footnote early on
7 that makes clear that -- on Page 3 I say in Footnote 1:

8 "Much of this report is drawn
9 from those reports as cited
10 throughout the text."

11 So I was more liberal in terms of borrowing
12 than I would be under other circumstances.

13 Q. Did -- other than what you already described,
14 what was plaintiffs' counsel's role in generating this
15 report?

16 A. I think they -- they simply encouraged me to
17 do it and regularly communicated their enthusiasm for
18 having it done.

19 Q. Did any plaintiffs' counsel draft any portion
20 of the report?

21 A. No.

22 Q. Did any plaintiffs' counsel edit the third
23 report?

24 A. At the very end I think in the process of
25 reading it very carefully one of the Morrison, Foerster

1 attorneys sent me some punctuation, spelling, typo kind
2 of editing type comments.

3 Q. Nothing beyond that?

4 A. No. At least not that I recall.

5 Q. Okay. Other than the expert reports are you
6 able to identify for us or is there an easy way to
7 identify what other documents you relied upon to
8 generate this third report?

9 A. Well, there are some footnotes that specify
10 other documents that were relied on throughout.

11 Q. That is really what I am after.

12 I don't want you to list each document for me,
13 but if there is a way that we are able to identify other
14 than the expert reports what you relied on, what is that
15 way?

16 A. By looking at the footnotes.

17 Q. So if, for example, a footnote references a
18 document but doesn't say that that particular document
19 comes from an expert report, then that was separately
20 relied upon by you in generating this third report? Is
21 that fair?

22 A. I think -- that was my intention, so unless
23 there are --

24 Q. For example, if you could look at Footnote 129
25 on Page 36, that references --

1 in generating this third report?

2 A. All of them that are listed on Pages 72 and 73
3 of my report.

4 Q. Did you personally -- in preparing your third
5 report did you personally read each and every one of the
6 expert reports listed on Pages 72 and 73 of your third
7 report?

8 A. Yes.

9 Q. Did you based upon those readings provide
10 comments to the other experts about there reports?

11 A. No.

12 Q. Did you in connection with preparing your
13 third report review any of the documents that the other
14 experts relied upon?

15 A. Yes. In some cases.

16 Q. Can you describe, without providing a list
17 which is impossible, I am sure -- can you tell us to
18 what extent you reviewed documents that support the
19 other experts' reports?

20 MR. ROSENBAUM: That is vague and ambiguous.
21 Can you explain "to what extent" means?

22 BY MR. HERRON:

23 Q. I am trying to get a feel for -- maybe we have
24 to go report by report, but I am trying to get a feel
25 for whether you looked at, for example -- you read

1 A. Yes.

2 Q. -- two types of documents; the first is PACE,
3 P-A-C-E, all caps, "Crucial Issues in California
4 Education, 2000," Page 49 as the first document?

5 A. Yes.

6 Q. And that was not one that came from one of the
7 expert reports, or it was intended by you to identify a
8 separate document?

9 A. It is certainly a document that I have read
10 and used in the preparation of this report.

11 Whether or not one of the experts might have
12 also relied on it is something I am not recalling.

13 Q. Okay. But if we go to the footnotes and find
14 the separately listed documents, then we are able to
15 find all the documents upon which you relied to generate
16 this report?

17 A. I think for the most part, although there are
18 a lot of things in this report that are not referenced
19 because they are matters of general knowledge and are in
20 several sources.

21 My rule of thumb is if something is repeated
22 in about three or four different sources, it is
23 something that I am -- and it is something that I
24 know -- I don't cite it as specialized knowledge.

25 Q. Which of the expert reports did you rely upon

1 Mr. Corley's report and then in connection with
2 preparing your third report also reviewed all the data
3 upon which he relied in generating that report?

4 A. I certainly didn't comprehensively reanalyze
5 all of the materials that all of the other experts
6 relied on.

7 I generally read there reports carefully, and
8 in some cases either because I was interested or I
9 wanted to understand more about it, I would check out
10 some of the sources that they referenced, but not in any
11 sort of systematic way or with an idea to being
12 comprehensive.

13 Q. Did you review the documents supporting
14 various studies that were conducted by the experts
15 listed on Pages 72 and 73 of your third report?

16 A. I am not understanding what you mean.

17 Q. For example, Dr. Fine --

18 A. Yes.

19 Q. -- did a study or a survey?

20 A. Yes.

21 Q. Did you, for instance, look at the documents
22 related to that survey?

23 A. I read her report and -- which includes a
24 pretty thorough description of her methodology and the
25 instruments she used.

1 Q. But you did not look at the underlying data --
 2 A. No.
 3 Q. -- correct?
 4 A. Correct.
 5 Q. Okay. Is the same thing true of Mr. Koski's
 6 report?
 7 A. As I explained in the -- I think -- in one of
 8 our previous sessions, I did have my research group do a
 9 perusal of the standards and -- in light of the charts
 10 in his appendices to -- in the course of my preparation
 11 of the instructional materials report.
 12 Q. Okay. Other than Drs. Fine and Koski are you
 13 aware whether any of the other experts conducted surveys
 14 of any kind?
 15 By "conducted," I mean independently conducted
 16 surveys.
 17 A. You know, I am not recalling precisely all of
 18 the methods that everyone used.
 19 I know that Professor Mintrop collected some
 20 additional data in the course of his report.
 21 Certainly, a number of people relied on the
 22 data, the new analyses of the Harris data.
 23 Linda Darling-Hammond did some new analyses of
 24 existing data of various sorts.
 25 But I am not recalling with precision all of

1 the methods that were used by all of these people.
 2 Q. Sure.
 3 Did you review the underlying documents
 4 related to Mr. Mintrop's survey, the survey that he
 5 conducted?
 6 A. Well, I am not entirely sure that what he did
 7 was a survey, but I did not look at the underlying data.
 8 He -- because he and I are colleagues at UCLA
 9 and have conversations, I have a vague recollection of
 10 him talking to me about that work in the course of its
 11 being done, but I am not recalling the specifics.
 12 Q. Regarding the new analysis that Linda
 13 Darling-Hammond did on existing data of various sorts
 14 did you review underlying documents; that is, documents
 15 she created relating to that new analysis?
 16 A. I don't recall. I don't recall looking at it.
 17 Q. Okay. Are you aware of each of -- I am
 18 focusing on Pages 72 and 73.
 19 Are you aware of the backgrounds of each of
 20 these experts?
 21 A. Yes. I know something about all of them.
 22 Q. Are you aware of their educational level?
 23 A. I have certainly looked at it. Yes.
 24 Q. Are you aware of their experiences related to
 25 the topics on which they wrote expert reports?

1 A. Yes.
 2 Q. For each of them?
 3 A. Yes.
 4 Q. Are you aware of their level of expertise on
 5 the subjects they wrote about?
 6 MR. ROSENBAUM: Vague.
 7 THE WITNESS: I certainly have looked at their
 8 descriptions of their own expertise and accounts of
 9 their experience.
 10 I haven't independently verified that
 11 everything they have said about what they have done and
 12 what they know is true.
 13 BY MR. HERRON:
 14 Q. What did you do, then, to assure yourself that
 15 each of these individuals were qualified to express
 16 expert opinions on the matters of their reports?
 17 A. Many of them I know very, very well, and I am
 18 very familiar with their work and their reputations.
 19 The ones that I don't, I -- some of them I
 20 actually looked them up on the Internet to find out
 21 about their affiliation and their scope of work and
 22 their past experience.
 23 In one case, in Mr. Corley's case, for
 24 example, Dr. Corley -- Mr. Corley -- I asked lots of
 25 questions of Peter Eliasberg about his previous work in

1 this area because he is somebody I didn't know prior to
 2 this.
 3 Q. What else, if anything, did you do to assure
 4 that the individuals upon whose reports you relied were
 5 qualified to express expert opinions on the matters
 6 their reports address?
 7 A. In nearly every case, with very few
 8 exceptions, I know each of these people well. I know
 9 their reputations. I've read their work, reviewed their
 10 work, consider them as colleagues, and in one case, in
 11 Mr. Earthman's case, I had a conversation with a
 12 colleague of mine, Professor Ortiz at the University of
 13 California, Riverside, who told me that Professor
 14 Earthman was an extraordinarily highly regarded expert
 15 in this field, someone she considered to be a real
 16 authority.
 17 As I explained before, I asked questions about
 18 Mr. Corley's background and experience.
 19 The other -- Dr. Myers, who I didn't know
 20 before, I did -- looked at what she had on the Internet,
 21 reports of her work, and to make sure she had experience
 22 in this area, and the other person I didn't know was
 23 Professor Sandel, who, again, I looked at her vita and
 24 her background, and I certainly have some confidence in
 25 the peer review system at Boston University for tenuring

1 faculty. And the others I know very well.

2 Q. What, if anything else, did you do?

3 A. Well, because many of these people were
4 simultaneously or some of them were simultaneously
5 writing scholarly papers for me, I certainly knew about
6 the methods they were using to proceed with their work,
7 and at the November meeting of the scholars I got a good
8 sense of the direction they were taking. So that
9 probably is a reasonable summary of what I did.

10 Q. Who was in that last group; those who were
11 both scholars and experts?

12 A. Well, Professor Ortiz, who I spoke of before,
13 had engaged Professor Earthman in assisting her or
14 coauthoring with her the paper she was doing as part of
15 the scholarly papers. I certainly knew of him and what
16 he was doing from that.

17 Linda Darling-Hammond, Michelle Fine, who was
18 not originally part of the scholarly group but became
19 part of the group, and I had a conversation with her
20 about her work.

21 Professor Grubb and Laura Goe were in that
22 group.

23 Certainly, Professor Hakuta was not part of
24 that group, but his paper relies heavily on the work of
25 Patricia Gandara and Russell Rumberger. I had several

1 regarding Dr. Mintrop that which?

2 A. That hired him to come to UCLA.

3 Q. Okay.

4 A. I did not know Professor Russell's work, but I
5 spoke with George Madaus, who is a leading scholar in
6 testing and measurement, who gave him the most glowing
7 endorsement of someone whose expertise was outstanding.

8 Of course, Dr. Sobol is someone I have known
9 about for years in terms of his work as the Commissioner
10 in New York.

11 Q. Have you read any prior written work of Dr.
12 Sobol's?

13 A. Actually, I may have read a piece that he
14 wrote about -- I was very interested in the New Compact
15 Schools in New York and the New Compact Policy that was
16 developed when he was Commissioner, and I can't recall
17 with precision whether I read his articles about it or
18 others.

19 I also was interested in the Quality Review
20 Process that he -- that was developed under his
21 leadership and read -- again, I can't recall whether I
22 read things he actually wrote or others wrote about it.
23 I know he had a piece in Teachers College Record, for
24 one, describing some of that work.

25 Q. You may have read one prior publication

1 conversations with them about how they were proceeding
2 with their analysis and what they were doing and the
3 methods they used. Mr. Koski was part of that group.
4 Again, not initially but later on, Professor Mintrop,
5 Professor Russell.

6 Q. Which of the experts were you so thoroughly
7 familiar with that all you did is note what their prior
8 work was and what their reputation was?

9 A. Well, Professor Darling-Hammond. I mean, I
10 have read research by all of these people. So it is not
11 just reputational, but it is my own judgment of the
12 quality of their work and knowing about -- knowing their
13 experiences and their training and background, so
14 Professor Darling-Hammond and Professor Fine and
15 Professor Grubb, who supervised Laura Goe, who I had not
16 met before. Certainly, Professor Hakuta.

17 Dr. Mitchell, I am very familiar with the work
18 that he had done in -- at the University of California
19 Riverside with his father, who was a professor at UC
20 Riverside.

21 Professor Mintrop's work I know extremely
22 well. I was on the committee that hired him to come to
23 UCLA.

24 Mr. Russell was --

25 Q. Before you go on, you were on the committee

1 authored by Dr. Sobol?

2 A. Dr. Sobol is primarily a practitioner and a
3 policymaker and an education leader, so that there are
4 ways of understanding his expertise that are not
5 reflected in written work.

6 As part of the group of Chief State School
7 Officers, his work was very well-known and written about
8 widely. So I am not sure how much writing he had done
9 about this, but I certainly -- I haven't read a great
10 deal of writing by him.

11 Q. At most you read one article published by him?

12 A. No. I wouldn't say, "at most."

13 I can recall specifically that I know about a
14 piece he wrote in the Teachers College Record, and I am
15 just not recalling whether the other things I have read
16 about his work in New York were written by him.

17 I know he and his wife have written a book on
18 schooling and how you can judge a good school. I mean,
19 his expertise, I think, is well-known and highly
20 regarded.

21 Q. How about Mr. Corley's work? Had you read
22 anything else he has ever published?

23 A. I don't believe I have.

24 Q. What did Peter Eliasberg tell you about Dr. or
25 Mr. Corley's qualifications?

1 A. That he had done a great deal of work in
2 California doing consulting, sort of a lot of
3 on-the-ground work with school districts, school systems
4 about there facilities, and was extraordinarily familiar
5 with policies and practices around school facilities in
6 California.

7 Q. Anything else?

8 A. I think he told me a number of things, but I
9 am just not recalling what they were.

10 I know he satisfied me that Mr. Corley had the
11 expertise necessary to speak about the issues that he
12 did in his report.

13 Q. What did you do to assure that the other
14 expert reports were properly researched?

15 MR. ROSENBAUM: That is vague. I think it has
16 been asked and answered.

17 THE WITNESS: In nearly every case I have a
18 fair-to-good working knowledge of the field about which
19 these experts were writing. So by reading there work
20 and judging it, as I would any research that I was asked
21 to review, I felt quite comfortable that they had not
22 exceeded the scope of their expertise in what they had
23 written and that they had proceeded following accepted
24 standards.

25 BY MR. HERRON:

1 A. About 25 years of doing research on schools,
2 much of which has taken place on school sites, and seven
3 years as a public schoolteacher working in school
4 buildings, 20 years as the wife of a public
5 schoolteacher working in school buildings and six years
6 as the Director of Teacher Education for UCLA, where I
7 supervised and assisted novice teachers in the context
8 of school buildings.

9 Q. In terms of the body of research underlying
10 the reports created by Mr. Corley, Mr. Earthman and Ms.
11 Myers, as well as the -- Ms. Sandel's report, you were
12 not familiar with that body of research; is that
13 correct?

14 MR. ROSENBAUM: Could you read that question
15 back? I didn't catch that.

16 (Record read.)

17 MR. ROSENBAUM: That has been asked and
18 answered.

19 THE WITNESS: I wouldn't say that I had never
20 read any of it, but I would not consider myself as
21 having an independent command of that body of work.

22 BY MR. HERRON:

23 Q. Now the --

24 A. I do know a broken toilet when I see one.

25 Q. Now these experts listed on Pages 72 and 73 of

1 Q. You said in nearly every case you had a
2 fair-to-good working knowledge about the subject
3 matters.

4 In which cases did you not have a fair-to-good
5 working knowledge?

6 A. I had not read a great deal about school
7 facilities in the past.

8 I had also not read a great deal -- again, it
9 is about facilities, but about the health effects of
10 facilities.

11 But in the other areas I have done lots of
12 reading.

13 Q. So prior to generating your report you did not
14 have a fair-to-good working knowledge about the items
15 addressed by Mr. Corley?

16 A. No. I wouldn't say I didn't have a
17 fair-to-good working knowledge about the items.

18 I am saying that I wasn't familiar with the
19 whole body of research on school facilities. I have a
20 great deal of knowledge of school facilities from my own
21 professional experience.

22 MR. HERRON: Would you read that back.

23 (Record read.)

24 BY MR. HERRON:

25 Q. What is that professional experience?

1 your third report rely on various studies and research.

2 What, if anything, did you do to assure, other
3 than what you already testified to, that the research
4 and studies relied upon by the other experts was,
5 indeed, reliable?

6 A. Well, I certainly looked at the sources of the
7 research they relied on to get a sense of whether they
8 were published in mainstream journals, whether they were
9 reports of respectable organizations like the Public
10 Policy Institute of California or departments of
11 education.

12 I am always cautious when I run across what we
13 called before "fugitive documents," documents that are
14 unpublished or are hard to find. So I assured myself
15 that this group of people had not been relying heavily
16 on those sort of obscure sources, but in many cases I
17 have independent familiarity with the work they relied
18 on and have relied on it myself on other occasions.

19 Q. Did you do anything else to assure that the
20 research and studies relied upon by the experts was,
21 indeed, reliable?

22 A. I think that probably describes generally what
23 I did.

24 Q. What did you do to assure yourself that other
25 experts properly had relied on documents that were,

1 quote, "hard to find" as you testified?

2 MR. ROSENBAUM: I --

3 THE WITNESS: I didn't say that I was -- I
4 said I looked at there source material to make sure that
5 the preponderance of there report was not based on
6 documents that weren't in mainstream sources, peer
7 review journals, come from trustworthy agencies.

8 BY MR. HERRON:

9 Q. But did you not review the documents that they
10 cited; correct?

11 A. I reviewed some of them, but certainly not all
12 of them.

13 Q. But do you believe that the research and
14 studies, then, relied upon by the other experts was,
15 indeed, reliable?

16 A. I certainly have confidence in what they
17 did -- the experts did.

18 I would not -- I have no reason -- I found
19 nothing to suggest to me that there was anything
20 improper or -- in the work.

21 Q. What did you do to assure yourself that the
22 opinions of the other experts on whose reports you
23 relied were well-founded?

24 A. I read each report carefully to make an
25 independent judgment about whether they had marshaled

1 the validity of the surveys or other data relied upon by
2 the other experts?

3 A. You know, I have to say that I did not -- I
4 think as I read each of the reports and found them
5 credible based both on the level of expertise of the
6 authors and on the arguments and evidence -- the
7 arguments, the methods they described having used, I did
8 not examine all of the data firsthand and, you know --
9 that is enough.

10 Q. Okay. To any extent did you disagree with any
11 of the opinions offered by any of the other experts in
12 there reports?

13 MR. ROSENBAUM: I think that has been asked
14 and answered.

15 THE WITNESS: There were no -- I can recall no
16 major areas of disagreement. As I am sitting here
17 today, I just --

18 BY MR. HERRON:

19 Q. Can you recall any minor areas of
20 disagreement?

21 MR. ROSENBAUM: Same objection.

22 THE WITNESS: You know, I am just not
23 recalling.

24 BY MR. HERRON:

25 Q. You don't recall any as you sit here today?

1 enough evidence and reported enough evidence for there
2 conclusions that they persuaded me, and that is
3 conventionally what peer reviewers do when judging the
4 quality of research or the appropriateness of
5 conclusions drawn about research.

6 Q. And did you believe that each of the opinions
7 expressed in the expert reports upon which you relied
8 were, indeed, well-founded?

9 A. Nothing jumped out at me as being unwarranted.

10 Q. Okay. Was there anything contained in any of
11 these other experts' reports that you disagreed with?

12 A. You know, there might have been, but I am not
13 recalling.

14 Q. Nothing jumps out at you as being a major area
15 of disagreement?

16 A. Not that I recall at the moment.

17 Q. Were there -- was there anything in the
18 surveys or data relied upon by the other plaintiffs'
19 experts with which you disagreed?

20 A. It is very difficult for me to recall all of
21 the detail -- it is impossible for me to recall all of
22 the details of all of those reports, but nothing sitting
23 here today jumps out at me as something I found
24 troubling.

25 Q. Did you have reason at any time to question

1 A. Not that I recall at the moment.

2 Q. How do the opinions in your third report
3 differ from the opinions of the experts on whose reports
4 you relied?

5 MR. ROSENBAUM: Assumes facts not in evidence.

6 THE WITNESS: I think that the way that the
7 findings differ is that they reflect both the -- they
8 reflect the cumulative impact of the evidence examined
9 by each of the experts. They provide some explanatory
10 material --

11 BY MR. HERRON:

12 Q. What is the "they"?

13 A. My conclusions.

14 They provide some explanation, both historical
15 and contemporary, that is not included in the expert
16 reports.

17 It -- my conclusions illuminate themes that
18 cut across the specifics of the various reports, and I
19 think my conclusions provide some overarching judgments
20 and recommendations that come about from the synthesis
21 of these separate reports rather than from any one on
22 its own.

23 Q. Can you identify all such recommendations that
24 come about from the synthesis as opposed to having been
25 drawn from any of the expert reports upon which you

1 relied?

2 A. Yes. I think actually that nearly everything
3 in the report are -- nearly all of the conclusions in
4 the report are synthetic conclusions in terms of each
5 section draws on the individual reports to reach an
6 overarching conclusion that because it draws on more
7 than one report is different from what any single report
8 says.

9 Q. But different only to that extent?

10 MR. ROSENBAUM: That is vague.

11 THE WITNESS: No. I think they are also
12 different because I have added to the individual reports
13 my own knowledge and expertise about the separate fields
14 and the field as a whole. So there is an additional
15 layer of analysis that I applied, given my own
16 background and expertise in these areas.

17 BY MR. HERRON:

18 Q. Okay. You used the term, "conclusions"
19 several times, saying that you had conclusions about
20 historical and contemporary information, conclusions
21 that illuminate certain themes -- and I am not saying
22 everything you testified to -- but conclusions about
23 overarching judgments and recommendations.

24 What do you mean by "conclusions" as you have
25 used that term in those contexts?

1 could be done; is that correct?

2 A. I make two types of suggestions.

3 I make a set of suggestions that are fairly
4 specific and address specific problems or concerns that
5 are raised throughout this report and the other expert
6 reports.

7 Then I also make a far more general set of
8 recommendations about long-term systemic directions that
9 I believe would be good for the State to follow.

10 In all cases though, the specific suggestions
11 are really suggestions. They are to illuminate that
12 there are some particular things that could be done that
13 could remedy the problems.

14 They are in no way intended to be a
15 prescription that should be followed wholesale.

16 Q. What do you mean, "not intended to be a
17 prescription that should be followed wholesale"?

18 A. Well, my task was not to devise a particular
19 remedy that could be implemented as specified but,
20 rather, to illustrate that there are a range of things
21 that could be done to relieve the problem.

22 So rather than being asked actually to devise
23 a particular remedy, I took it upon myself to say, it is
24 enough simply to provide some examples to show that, in
25 fact, remedying these problems is a feasible, reasonable

1 A. I would include a number of things. I was
2 using that, I think, rather loosely, that some of the
3 conclusions are factual conclusions. Some of them are
4 summary conclusions. Some of them are evaluative
5 conclusions. Some of them are recommendations.

6 There may be other -- the quality of -- some
7 of them are descriptive conclusions.

8 Q. Beginning at Page 58 of your third report and
9 continuing on through Page 71 you discuss remedies;
10 correct?

11 A. I certainly in this section make a set of
12 recommendations that seem to me reasonable options that
13 might be considered as remedies are devised.

14 MR. ROSENBAUM: David, I don't want to
15 interrupt your line of questioning here, but I just want
16 to know timewise what you would like to do. It is about
17 25 to 12:00.

18 If you have a line of questions you want to go
19 to, you are welcome to do that. I don't know what you
20 thought an appropriate time to stop would be.

21 MR. HERRON: How about a couple more minutes?

22 MR. ROSENBAUM: Sure. Whatever you want.

23 BY MR. HERRON:

24 Q. I take it that you are recommending on Pages
25 51 through 71 certain remedies for certain things that

1 task to undertake.

2 Q. How did the suggestions that you have made on
3 Pages 58 through 71 of your third report differ from the
4 suggestions made in the expert reports upon which you
5 relied?

6 MR. ROSENBAUM: Asked and answered.

7 THE WITNESS: I would say that they differ in
8 the same way that I describe the differences between my
9 conclusions and the conclusions in the other report;
10 that in -- that they -- they are synthetic. They go
11 beyond, they summarize, and they add a layer of my own
12 analysis that is not included in the individual reports.

13 MR. HERRON: Now is a good time to break.

14 MR. ROSENBAUM: Off the record.

15

16 (Whereupon at 11:35 a.m. the deposition
17 of JEANNIE OAKES was adjourned.)

18 (Whereupon at 12:55 p.m. the
19 deposition was reconvened.)

20

21 MR. HERRON: Okay. We wanted to have
22 something put on the record.

23 MS. FANELLI: Yes. We identified several
24 documents that Mr. Herron asked about earlier. They are
25 PLTFX PJO 1803 through 1846, PLTFX PJO 1993, 1994, 2002,

1 2004 through 2006, 2060 through 2138.
 2 Thank you.
 3 MR. HERRON: Those are all the documents that
 4 fall into the categories I earlier identified?
 5 MR. ROSENBAUM: We will continue to check.
 6 That's the first cut that we have.
 7 MR. HERRON: Okay. Great. Thank you.

8
 9 EXAMINATION (Continued)

10 BY MR. HERRON:
 11 Q. Dr. Oakes, over the lunch hour did you consume
 12 any medication, alcohol or any other substance which
 13 would cloud your mind or interfere with your ability to
 14 give your very best testimony here this afternoon?
 15 A. No.
 16 Q. Would you please identify any opinion of any
 17 other expert that differs from the opinions expressed in
 18 your third report.
 19 MR. ROSENBAUM: That was asked and answered.
 20 THE WITNESS: I think they -- many of them
 21 differ because mine are broader and encompass more than
 22 the single focus of many that the experts, the other
 23 experts, drew.
 24 However, I think there is considerable overlap
 25 as well. I would not be able to sit here and tell you

1 those things are in that first bullet, and I think all
 2 of those statements go beyond what any one of the other
 3 experts' reports found.
 4 Q. Do they go beyond what the expert reports
 5 collectively found?
 6 A. Actually, I think in each case they are
 7 certainly somewhat more than the sum of the individual
 8 parts.
 9 Q. What do you mean by that?
 10 A. That they are more than simply an aggregation
 11 of the findings of the individual reports.
 12 Q. Let's focus specifically on the remedies set
 13 forth on Pages 58 through 71 of your report.
 14 Would you please identify any proposed remedy
 15 set forth in your report that differs from the
 16 remedies -- let me try that again.
 17 Can you identify any proposed remedy set forth
 18 in your report that differs in any way from the remedies
 19 proposed by any of the other experts?
 20 MR. ROSENBAUM: Vague. Ambiguous.
 21 THE WITNESS: I don't believe any of the other
 22 reports mandate the provision of qualified teachers,
 23 textbooks and materials, equipment technology and
 24 uncrowded school facilities as a set.
 25 BY MR. HERRON:

1 one by one which ones are completely distinct and how
 2 they are distinct.
 3 BY MR. HERRON:
 4 Q. Can you as you sit here today identify any
 5 opinion of any other expert that differs? And I mean
 6 specifically identify any opinion of any other expert
 7 that differs from the opinions expressed in your third
 8 report.
 9 MR. ROSENBAUM: Asked and answered.
 10 Foundation. Vague.
 11 THE WITNESS: I think largely they all differ
 12 for the reasons that I just said; that mine are broader
 13 and encompass more -- they cut across the reports, so I
 14 think there is a qualitative difference about them.
 15 BY MR. HERRON:
 16 Q. Can you identify for us one opinion in your
 17 third report -- that you set forth in your third
 18 report -- that is broader than a similar opinion
 19 expressed by any other expert?
 20 A. Well, I can -- for example, on Page 1 in the
 21 first bullet I speak collectively about the importance
 22 of teachers, instructional materials and facilities and
 23 what they enable students to do.
 24 The basis on which their importance rests and
 25 the consequences of not having access to them, all of

1 Q. But collectively they do make those
 2 recommendations -- the other expert reports; correct?
 3 A. Actually, no. If I just did it collectively,
 4 I would have listed them as separate points rather than
 5 collecting them into coherent groups.
 6 Q. So if we look -- I'm sorry. I interrupted.
 7 A. That is enough.
 8 Q. Okay. So if we look at Linda
 9 Darling-Hammond's report, for example, it doesn't say
 10 anything about mandating the provision of qualified
 11 teachers?
 12 MR. ROSENBAUM: Mischaracterizes her
 13 testimony.
 14 THE WITNESS: What I did here is to speak more
 15 globally about mandating the essential conditions and
 16 resources that students require, and that certainly goes
 17 beyond what Linda Darling-Hammond recommended.
 18 I would make the same characterization about
 19 the recommendation on Page 59 about capacity building,
 20 and certainly on Page 62 the general finding and
 21 recommendation that the State develop a comprehensive
 22 strategy for collecting, analyzing and using data for
 23 purposes of monitoring and public reporting.
 24 And, of course, everything in between are the
 25 details of suggestions about how that might be done.

1 On Page 65, this general recommendation that
2 the State develop and use effective strategies of
3 oversight and intervention to respond to problems as
4 they are found again is something that goes beyond, and
5 I think the framing is somewhat different than in the
6 reports.

7 Then certainly on Page 66 through the end this
8 more general set of suggestions about long-term systemic
9 remedies certainly goes beyond what any of the
10 individual expert reports suggest.

11 BY MR. HERRON:

12 Q. Your recommendations regarding systemic
13 remedies set forth on Pages 66 through 71 are a
14 synthesis of all the other expert recommendations on
15 that subject; correct?

16 A. They are my judgments about what sort of
17 systemic changes are necessary based on my analysis and
18 synthesis of those reports, but again I don't believe
19 that simply adding up those -- the recommendations in
20 those individual reports would yield this kind of a
21 comprehensive conception of systemic reforms.

22 Q. Can you identify, then, where you have gone
23 beyond -- I am talking now about Pages 61 through -- 66
24 through 71 regarding systemic remedies.

25 Where has your report gone beyond what

1 other reports are compatible with what is here.

2 Q. And there is no inconsistency that you can
3 identify for us between your recommendations on Pages 66
4 through 71 and any recommendation made by any other
5 expert in this case?

6 A. As I just characterized it, I don't think,
7 certainly, they are inconsistent in that they are at a
8 very different level, and I would not characterize them
9 as being in conflict, but they are of quite a different
10 order.

11 Q. What do you mean, "of quite a different
12 order"?

13 A. That they are more of a synthetic,
14 comprehensive, holistic approach to thinking about
15 possible ways the problems identified throughout my
16 reports and the other reports could be solved.

17 Q. And there are no inconsistencies between what
18 you recommend at Pages 66 through 71 and what all the
19 other experts recommend; correct?

20 A. There might be, but none that I recall at the
21 moment.

22 Q. And none that you can identify for us at the
23 moment; correct?

24 MR. ROSENBAUM: Asked and answered.

25 THE WITNESS: Without having an opportunity to

1 collectively we could find in all the other expert
2 reports?

3 MR. ROSENBAUM: It has been asked and answered
4 in part.

5 THE WITNESS: I think in its overarching
6 conceptualization of the elements that should be present
7 and how they comprise a whole certainly goes beyond, and
8 I think many of the specific principles that are
9 outlined in the, say, the bullets on 66 and 67 are
10 certainly -- go beyond simply an aggregation of the
11 individual recommendations, and some of the details of
12 how that holistic approach might be knowledge
13 implemented repeat some of the specific suggestions. I
14 am talking about the material on Page 67 through Page
15 70, but I think it is qualitatively different, although
16 consistent with those recommendations.

17 BY MR. HERRON:

18 Q. Is it in any way inconsistent with any
19 recommendation of any other expert; that is, the
20 recommendations you make at Pages 66 through 71 of your
21 third report?

22 A. Because none of the experts attempted to frame
23 a comprehensive approach, it is hard for me to do that
24 kind of a comparison, although I think most of the
25 details in the recommendations that are made in the

1 thoroughly review everything once again, I couldn't
2 identify --

3 BY MR. HERRON:

4 Q. You can take as much time as you want to
5 review Pages 66 through 71 to answer that question.

6 A. It is virtually impossible to make a
7 comparative statement when only one of the documents is
8 available for perusal.

9 If you would like me to take two or three days
10 to review all the other expert reports with this
11 specific question in mind, I would be happy to do that.

12 Q. What I am really looking for is your very best
13 answer as you sit here today.

14 You cannot identify for us any inconsistencies
15 between the systemic remedies you propose on Pages 66
16 through 71 and any remedy proposed by the other experts
17 in the case?

18 MR. ROSENBAUM: I think it has been asked and
19 answered several times, particularly two questions ago.

20 THE WITNESS: My best answer -- and I have
21 certainly attempted to give you my best answer to every
22 question you have asked -- but because my goal was to
23 see these reports in their entirety and to do this
24 Meta analysis, in a qualitative sense of that word, my
25 goal was not to match or try to comprehensively repeat

1 every detail of all of the other recommendations.
 2 BY MR. HERRON:
 3 Q. Understood.
 4 A. So I didn't conduct an analysis that allows me
 5 to detail for you specific instances where there might
 6 be divergences.
 7 Q. You talked about -- and I am focusing on Pages
 8 66 through 71 -- that your recommendations are more of
 9 an overarching conceptualization -- why don't I skip
 10 that question since I can't read my own handwriting.
 11 MR. ROSENBAUM: Want some help?
 12 BY MR. HERRON:
 13 Q. Now --
 14 MR. ROSENBAUM: The objection would have been
 15 vague and ambiguous.
 16 MR. HERRON: The proper objection is: Learn
 17 to write.
 18 THE WITNESS: Illegible.
 19 MR. HERRON: Objection. Illegible.
 20 Q. Focusing now, then, on Pages 58 through 66 up
 21 to where your discussion of systemic remedies begin, I
 22 understand you identified several differences between
 23 what you recommend on one hand and what the other
 24 experts recommend.
 25 The first is the mandate piece on Page 58; is

1 from the --
 2 MR. ROSENBAUM: I think that has been asked
 3 and answered several times.
 4 BY MR. HERRON:
 5 Q. I guess to make it easier, if you could --
 6 A. It is so uncharacteristic of my process to
 7 think about matching line by line or wording by
 8 wording --
 9 Q. Sure.
 10 A. -- that it just doesn't represent the way this
 11 was done.
 12 This process of analysis and synthesis and
 13 learning and applying all of my own knowledge to these
 14 topics and coming up with this particular framing, it
 15 would really require that I go back and look
 16 specifically at each report and the language that is
 17 used and match it with what -- how I framed it here in
 18 order to give you an accurate detailing of the places
 19 where there may be some differences.
 20 Q. Uh-huh. Are you aware of any such differences
 21 as you sit here today?
 22 A. That I consciously departed from a
 23 recommendation of one of the experts in a way that would
 24 create a conflict between what I say and what they said?
 25 No.

1 that correct?
 2 A. Yes. I think I suggested that everything in
 3 this section has a qualitative -- is qualitatively
 4 different in that it is comprehensive, and even though
 5 the details of the recommendations mirror what is found
 6 in the other expert reports, that because they are more
 7 comprehensive, that makes them different.
 8 Q. The details of the recommendations from Pages
 9 58 through 65 are taken from each of the other experts'
 10 reports; correct?
 11 MR. ROSENBAUM: Vague and ambiguous and
 12 misstates her testimony.
 13 THE WITNESS: They -- I certainly learned from
 14 the experts' reports about potential strategies for
 15 remedying specific problems, but the rendering of them
 16 here both -- sometimes in the wording, sometimes in the
 17 juxtaposition of ideas, sometimes in the omission of
 18 some details or the inclusion of others, are really my
 19 own judgments.
 20 Plus in every case there is a layer of my own
 21 thinking that gets added to them.
 22 BY MR. HERRON:
 23 Q. Okay. What I really want to, as quickly as we
 24 can, get to is where precisely in Pages 58 through 65
 25 your recommendations differ to any extent whatsoever

1 Q. Okay. And there was no inconsistency between
 2 what you recommend --
 3 A. There may be, but not to my knowledge, and it
 4 is certainly -- I do not recall any instances of saying,
 5 "I have to say something that contradicts what they
 6 say."
 7 Q. Understood.
 8 Your report, the part of it that precedes Page
 9 58, draws conclusions about conditions, educational
 10 conditions in California.
 11 Can you describe for us how your conclusions
 12 about conditions in California are inconsistent with the
 13 conclusions of all the other experts in the case?
 14 MR. ROSENBAUM: Vague. Foundation.
 15 THE WITNESS: Again, I would say that I am not
 16 aware of places where there are conflicts between what I
 17 have concluded and what the expert reports say, although
 18 my analysis is synthetic so it certainly is not
 19 identical to those individual analyses in the reports.
 20 BY MR. HERRON:
 21 Q. In your review of the other experts' reports
 22 did you notice any inconsistencies between or among
 23 them?
 24 MR. ROSENBAUM: Same objections.
 25 THE WITNESS: Not that I am recalling at the

1 moment. I mean, they are very different. There is some
2 overlap. For example, Linda Darling-Hammond's paper and
3 Kenji Hakuta's paper both talk about issues of teacher
4 quality. They are coming at it from different angles.
5 Their discussions are different.

6 I am not recalling any -- anything you would
7 consider a "disagreement."

8 BY MR. HERRON:

9 Q. You have generated three expert reports for
10 this case.

11 When did you begin drafting your first report,
12 if you recall?

13 MR. ROSENBAUM: I thought this -- I don't want
14 to cut you off. I thought this was covered in your
15 deposition.

16 MR. HERRON: Was it?

17 THE WITNESS: Uh-huh.

18 BY MR. HERRON:

19 Q. How about the second report?

20 MR. ROSENBAUM: I think that was covered.

21 THE WITNESS: That was also covered as well.

22 BY MR. HERRON:

23 Q. Could you remind me when it was because I
24 wasn't there for that part?

25 A. Somewhere late, say, in the fall of 2001, I

1 Q. So you received expert reports upon which you
2 relied over the summer of 2002?

3 A. And into the early fall.

4 BY MR. HERRON:

5 Q. Okay. What version of the experts' reports --
6 what version of the other expert reports did you rely
7 upon?

8 A. I relied on only the final versions of these
9 reports.

10 Q. How do you know that?

11 A. Well, in that I suspect I saw some portions of
12 reports in a slightly earlier form, but when they were
13 all completed, I went over all of them to make sure that
14 I had not relied on anything that didn't appear in the
15 final version of these reports.

16 I mean, when I have -- in my report I am
17 saying I am relying on their report, it is relying on
18 the final version because I went back and checked if
19 that had been the case.

20 Q. Was that a protocol that had been established,
21 as far as you know? Meaning, was there a discussion
22 between you and plaintiffs' counsel that you should only
23 rely upon the final reports of each of the other experts
24 in generating your third report?

25 A. We might have had some conversation that that

1 think.

2 Q. And when did you complete drafting that second
3 report? What I mean by that is, when was it finalized?

4 A. In September or October of 2002.

5 Q. When did you begin drafting your third report?

6 A. In about June of 2002.

7 Q. When did you finish drafting your third
8 report?

9 A. In October of 2002.

10 Q. Do you know what day?

11 A. I can't recall.

12 MR. ROSENBAUM: A happy day.

13 BY MR. HERRON:

14 Q. Have you -- do you know when the experts upon
15 whose reports you relied completed the final drafts of
16 these reports?

17 A. No. Not with precision. I know there was a
18 great deal of variation.

19 Q. Do you know when any of them were completed?

20 A. I only know that I was sent parts of the
21 reports as they became completed, and that happened over
22 the summer of 2002.

23 So I am assuming that they all finished
24 sometime in the months preceding the date they were
25 filed in the court.

1 was a good idea, but I don't recall anything like a
2 "protocol."

3 Q. Do you recall the content of any such
4 conversation? You are saying, "might have" --

5 A. Not specifically. I do remember thinking it
6 would be a good idea to make sure that I represented the
7 reports as they appeared in the versions that were filed
8 in the court, but I am not recalling the specifics of --
9 I don't know.

10 I am not -- there may have been a
11 conversation. I am not recalling.

12 Q. Okay.

13 A. We can check my memory with the last
14 deposition date.

15 (Exhibit 78 was marked for I.D.)

16 BY MR. HERRON:

17 Q. Have you had an opportunity to review Exhibit
18 78?

19 A. Yes, I have.

20 Q. Do you recognize this document?

21 A. I do.

22 Q. What is it?

23 A. It is the agenda for the July 14, 2002 meeting
24 of the scholars who were participating in IDEA's
25 project.

1 Q. Did each of the people provide presentations
2 as indicated on this document?

3 A. I think that is correct. Where it says,
4 "Presentation and Response to," that means that the
5 author of the report was not there to make the
6 presentation, but that the presentation of the report
7 was made by the person who follows the word, "by."

8 For example, Linda Darling-Hammond was not
9 present at that meeting, but her report was both
10 presented by and commented on by Norton Grubb.

11 Q. Why is that? Is that protocol or is that the
12 way you do things in the academic world; you don't have
13 the author there to say, "Here is my report," and
14 someone else provides a response?

15 A. As it turns out, at the last minute Linda
16 couldn't come and Pedro Noguera couldn't come and Flora
17 Ortiz couldn't come. They had schedule conflicts.

18 Q. You gave a presentation or at least made
19 introductory remarks; right?

20 A. Yes.

21 Q. What were the gist of those remarks?

22 A. Just a welcome and introduce people and remind
23 them about our meeting in November and to say how
24 pleased and enthused I was that we were all back
25 together, and we could share the work with each other.

1 Just general remarks.

2 Q. This is July 14, 2002; correct?

3 A. Yes.

4 Q. What was the purpose of this conference?

5 A. For people who had been working on parallel
6 projects for six to eight, nine months to get together
7 and share their work.

8 We had originally proposed in this project
9 that there would be -- that we would function as a
10 community of scholars rather than simply individual
11 researchers doing these papers and that we would have
12 opportunities -- I think I once characterized the
13 November meeting as a "preliminary dissertation, oral,"
14 and this was more like a -- it wasn't final, because
15 people weren't done, but it was more like, "Here is the
16 analysis I have done, and I would like to share it," and
17 people were interested.

18 Q. And the responses were critiques?

19 A. I would say there was some analysis, some
20 questions raised, some comments upon, a whole range of
21 kind of comments.

22 There wasn't a whole lot of time. It was more
23 a discussion starter.

24 Q. How far along were you in the drafting of your
25 third report by the date of this conference, July 14,

1 2002?

2 A. I had very little more than an outline, which
3 I presented to them, and I wanted to use this occasion
4 for people to offer suggestions on the overall structure
5 and design.

6 This was a new kind of activity, and I was
7 interested in having them both know about it and, as
8 colleagues, thinking through what an overview of the
9 work might look like.

10 Q. Did anyone who served as a scholar but not an
11 expert in this case provide you with comments concerning
12 your third report?

13 A. Actually, as I recall, we were so late and
14 people had planes to catch and we had a dinner
15 reservation, that I rushed through very, very quickly,
16 and there was almost no discussion at the end of my
17 presentation.

18 Q. Do you recall having received at any time
19 input or comments about your third report from any of
20 the scholars who were not experts in this case?

21 A. John Rogers might have -- it would be likely
22 that John Rogers and I would have had some conversations
23 about it since we have daily discussions, but I don't
24 recall specifically.

25 Q. Anyone else?

1 A. Not that I have any specific recollection of.

2 Q. Did John Rogers read your report in order to
3 provide you with comments?

4 A. You know, I really -- I don't know.

5 Q. Do you recall what was discussed with John
6 Rogers concerning your third report?

7 MR. ROSENBAUM: Foundation. Speculation.

8 THE WITNESS: No. I actually don't recall.

9 BY MR. HERRON:

10 Q. Did you rely on the report of any other -- of
11 any other scholars who are not experts in this case in
12 generating through third report?

13 A. I think I probably -- I mean, I certainly was
14 reading them, and I was interested in them. I was
15 learning from them. They refreshed my own recollection
16 about things, so I suspect that they did have some
17 influence on me, but only -- unless I put a footnote, I
18 didn't rely on them in a way that was independent of my
19 own understanding of the issues that they were
20 discussing.

21 Q. Let's look at the list of experts and there
22 report topics on Pages 72 and 73 of your expert report.

23 Robert Corley wrote a report titled, "The
24 Condition of California School Facilities and Policies
25 Related to Those Conditions."

1 Are you more or less qualified than Robert
2 Corley to offer opinions on the topics addressed by his
3 expert report?

4 MR. ROSENBAUM: Vague and ambiguous.

5 And, David, I presume you are going to ask
6 some more questions about the others so rather than
7 interrupt your questions, could I have a continuing
8 objection?

9 BY MR. HERRON:

10 Q. Sure.

11 A. I think my expertise is very different than
12 Robert Corley's. He has firsthand knowledge from years
13 of experience around the administrative end of school
14 facilities.

15 My knowledge is more about conditions that
16 promote teaching and learning, which includes the
17 environments in which students learn. So I think our
18 expertise is very different and that we could say sort
19 of equal expertise -- different things about school
20 facilities and their importance.

21 Q. Okay. The question wasn't whether you have
22 different expertise than him, but whether you are more
23 or less qualified than him.

24 MR. ROSENBAUM: I think the last sentence of
25 her answer answered your question.

1 titled, "The Effect of the Condition of School
2 Facilities on Student Academic Achievement," are you
3 more or less qualified than Mr. Earthman to offer
4 opinions on the topics addressed by his report?

5 A. I would make the same statement about the
6 differences about Professor Earthman's expertise and my
7 own.

8 Q. Is it fair to say, then, as to all of these
9 experts you can't tell me whether you are more or less
10 qualified than them to speak to the topics addressed by
11 the report?

12 A. No. It is not that I can't say. It is that I
13 think it is not an appropriate kind of comparison to
14 make; that we are all different, and I bring to each of
15 these topics something different from what each of them
16 brings to the topics.

17 Q. Okay. But you can't tell us whether you are
18 more or less qualified to speak to the items they
19 address in their reports, "they" being the experts
20 listed on Pages 72 and 73?

21 MR. ROSENBAUM: Asked and answered.

22 THE WITNESS: I think there is -- that it
23 varies, I think, in terms of the details of -- the
24 details in each of these cases, perhaps the familiarity
25 with the specifics of each of the studies they rely on.

1 THE WITNESS: I think it is not possible --
2 well, it's -- I think it depends.

3 I have a much bigger picture view than he does
4 about the role that facilities play in the education of
5 young children.

6 He has much more detailed knowledge than I do
7 about the actual workings of issues related to the
8 construction and maintenance and planning for school
9 facilities.

10 Our expertise is different. I wouldn't
11 characterize it as "more" or "less."

12 BY MR. HERRON:

13 Q. On the topic of his report?

14 A. On the topic of his report.

15 Q. So it is the same as?

16 MR. ROSENBAUM: No.

17 THE WITNESS: No. That is what I just said;
18 that we have come at it from very different
19 perspectives, and he can comment and draw conclusions as
20 he did in a particular way because that is his basis of
21 knowledge and his understanding, and I use it in the way
22 that I do because of my perspective about teaching and
23 learning.

24 BY MR. HERRON:

25 Q. Relative to Glen Earthman's report, which is

1 They may be better able to characterize those than I.

2 I think with regard to a global view, an
3 ability to see each of these separate reports in the
4 larger context of schooling and the opportunities
5 schools provide students to learn, that perhaps I can
6 speak to that with a broader expertise than they.

7 BY MR. HERRON:

8 Q. Myers may be an example of what you are
9 saying, that is, Nancy R. Myers. She wrote a report on
10 "Solutions Available Utilized by States Other than
11 California to Address the Long-Term Planning,
12 Maintenance, Supervision and Operation of School
13 Facilities."

14 MR. ROSENBAUM: That is argumentative. She is
15 giving you the best answer to each one of the
16 statements.

17 I think it is inappropriate for you to make
18 that comment.

19 THE WITNESS: Again, I would say that Dr.
20 Myers certainly has a command of the details of plans
21 and policies around facilities both -- and especially in
22 states other than California, but in terms of being able
23 to judge the likely efficacy and reasonableness of those
24 plans in the light of California policy generally, I
25 think I have considerable expertise that allows me to do

1 that.

2 BY MR. HERRON:

3 Q. Do you know who Luis Suerta is?

4 A. Yes.

5 Q. Are you familiar with his background and
6 education?

7 A. Yes.

8 Q. And what is that?

9 A. That he has a Ph.D. in education policy. He
10 is an expert in school finance. He has been a
11 researcher at the Policy Analysis for California
12 Education for a number of years, working closely with
13 Berkeley, UC Berkeley faculty members and Stanford
14 faculty members in that regard, and he is now a
15 professor at the Teachers College, Columbia.

16 There is probably much more in his background
17 I don't know, but I know those things off the top of my
18 head.

19 Q. Have you read any of his writings?

20 A. Yes, I have.

21 Q. Can you describe for us what?

22 A. Well, I certainly read a piece he coauthored
23 with Norton Grubb called, "Spinning Straw into Gold,"
24 which is an accounting of the new school finance.

25 I believe he had a piece in a publication by

1 please.

2 (Record read.)

3 BY MR. HERRON:

4 Q. What do you mean by "general domain"?

5 MR. ROSENBAUM: Foundation. There is --
6 foundation objection.

7 THE WITNESS: My report covers a number of
8 topics, including the conditions and resources and
9 opportunities required for a sound education, the extent
10 to which those conditions are present in the schooling
11 of California schoolchildren, the extent to which
12 California's policies or practices or decisions may have
13 caused, contributed to, exacerbated, relieved those --
14 the status of those conditions, some explanation of how
15 those policies and conditions may have come to be what
16 they are today, and illustrations or possibilities that
17 might be considered if the State were to undertake a
18 serious effort at solving problems that were identified.

19 Those are the essential domains of the report
20 and what I believe I have been asked to speak to. There
21 may be other things covered in my report that I am not
22 mentioning, so I wouldn't want to exclude them, but that
23 is my overview of the areas in which I am prepared to
24 talk.

25 BY MR. HERRON:

1 PACE that I cite in a footnote in this report, maybe
2 Footnote 129 that you pointed out earlier. Is that
3 right? Yes. "Crucial Issues in California Education."
4 A piece on school finance in California, and I think I
5 have read a few other things he has written.

6 Q. As concerns solely your third report, what
7 opinions have you been asked to offer at trial?

8 A. I have been asked to offer anything that is
9 included in my report.

10 Q. Have you been asked -- I am focusing solely on
11 the third report.

12 Have you been asked to offer any opinions that
13 are not set forth expressly in this third report?

14 A. I don't think I have been asked -- I don't
15 think I have actually been asked that question.

16 Q. Focusing solely on your third report, have you
17 ever discussed with plaintiffs' counsel the possibility
18 of your offering at trial any opinions that are not set
19 forth specifically in your third report?

20 A. My expectation from our conversations or I
21 have interpreted my conversations to be that anything
22 that is in the general domain of the topics in my report
23 is fair game for testimony at trial, but we have not had
24 that conversation specifically.

25 MR. HERRON: Could you repeat that answer,

1 Q. Okay. At Page 44 of your report there is a
2 Footnote 152.

3 MR. ROSENBAUM: Hang on.

4 Q. Would you please read that to yourself.

5 Have you had an opportunity to review that
6 footnote?

7 A. Yes, I have.

8 Q. Do you stand by the statement that is made in
9 that footnote -- statements?

10 A. I certainly stand by the assertion that the
11 State has not collected data that would allow us to
12 specify with any certainty the precise costs of
13 remedying the problems that are identified in the expert
14 reports, although it seems reasonable to hypothesize it
15 might require more funding to do so. So, yes, I stand
16 by that.

17 Q. And by "more funding to do so," you mean that
18 it will cost more than current expenditures to provide
19 equitable and adequate schooling to all California
20 students?

21 MR. ROSENBAUM: Could the question be read
22 back, please.

23 (Record read.)

24 MR. ROSENBAUM: Is that a -- is that a
25 question, David? I don't hear the question.

1 BY MR. HERRON:

2 Q. Yeah. Her response was that it would "require
3 more funding to do so." I am trying to clarify what
4 that means.

5 Maybe you could describe what "more funding"
6 means.

7 MR. ROSENBAUM: I think she said it was a
8 reasonable hypothesis. I don't think she said for
9 certain.

10 BY MR. HERRON:

11 Q. Okay.

12 A. I did not say -- in fact, the point of this
13 paragraph is that I am unwilling at this point to make a
14 definitive judgment about whether more funding would be
15 required or not.

16 Q. Okay. The last full sentence in Footnote 152
17 reads:

18 "Accordingly, although a
19 strong hypothesis emerges from the
20 expert reports that providing
21 equitable and adequate schooling to
22 all California students will
23 require greater levels of
24 investment than has been the case,
25 far better information is required

1 One, as I describe later in the report, is
2 that we engage in a procedure much like Oregon did and
3 Maryland has done and Wyoming, I think, has done and
4 develop models of what would constitute an adequate
5 education for California children and to cost out those
6 models and adjust the costs for additional costs that
7 might accrue from the particular disadvantages or
8 differences in certain student populations.

9 For example, you might want to adjust the cost
10 for English learners since there would be additional
11 cost supports required to provide that for them, or for
12 students with -- in special education, who had special
13 education needs. That is one form of data, is a really
14 thorough costing out of the essential elements of an
15 education.

16 A second kind of data that you would need is
17 really statewide data illuminating the extent to which
18 the current resources in the system fall short of the
19 model of an adequate education.

20 With those two kinds of data I think you could
21 probably make a reasonable estimate about whether new --
22 additional funding is needed and what the extent of that
23 new funding might be.

24 Q. Do you have an opinion about whether or not
25 the current resources fall short of what would be

1 to confirm it."

2 How strong is that hypothesis?

3 A. Maybe you better tell me what you mean by
4 "strong."

5 Q. I am just reading your words here.

6 A. It is a strong hypothesis. "Hypothesis" means
7 that you pose it as a likelihood, but certainly not a
8 certainty.

9 It is not a weak hypothesis, which means you
10 are quite doubtful, but that is -- there is not much
11 support for it.

12 I think there is some support that emerges,
13 although the main point of this is that -- and what is
14 argued throughout this report -- is that we need to have
15 a funding system that is restructured based on good
16 models of what it costs to provide educational
17 essentials, and then only from those kinds of models is
18 it really possible to make a considered judgment about
19 whether overall there is additional funding required.

20 Q. What type of information would be needed to
21 determine whether greater levels of investment would
22 have to be made to assure equitable and adequate
23 schooling to all California students?

24 A. Well, I think we need to have two kinds -- at
25 least two kinds of information.

1 necessary to provide a model education?

2 MR. ROSENBAUM: Vague and incomplete
3 hypothetical.

4 THE WITNESS: I think the material that I
5 cover in the report suggests that we might hypothesize
6 that it would require additional funding, and that is
7 based both on the data that we have amassed about
8 current conditions compared with the literature that
9 establishes what is important and based on the fact that
10 California for the last 30 years has provided its
11 education system with considerably less funding than
12 have most other states.

13 But, again, I want to emphasize I think it is
14 not possible to make a definitive statement about that
15 at this time.

16 BY MR. HERRON:

17 Q. What did you mean when you said, "model
18 education"?

19 A. I was referring to the process that has been
20 used, as I suggested, by Oregon and is actually
21 suggested in the recommendations for the California
22 Master Plan; that models be developed that specify what
23 is required and what it costs.

24 The word, "model" is not being used here in
25 any sort of ideal, perfect, excellent,

1 all-you-could-ever-want sort of sense, but rather a
2 model as a -- as like a mock-up or a set of
3 specifications for something that would be adequate.

4 Q. Okay. You said that California for the last
5 30 years has provided less funding than other states.

6 What do you mean by that?

7 A. Well, as I detail in my report at some length,
8 since the passage of Proposition 13 in California the
9 level of spending measured -- there are several ways of
10 measuring it, but let's say as a proportion of State
11 wealth -- has declined in particular relative to the
12 level of effort made by other states.

13 Q. What did you mean by "proportion of State
14 wealth"?

15 A. It is a measure that is often used to evaluate
16 expenditures in education. It is a proportion of
17 personal income or wealth or gross domestic product
18 or -- there are many indicators economists use to try to
19 describe and compare funding levels.

20 Q. And you are saying on that measure that
21 California has provided less funding than all other
22 states?

23 A. Most other states.

24 Q. Most other states?

25 A. Yes.

1 A. I actually think we bumped up a bit in 2001.
2 Somewhere around 37 is coming into my mind, although I
3 would not want to say that with certainty without
4 checking.

5 Q. Are you aware of data for the 2001-2002 school
6 year for per pupil spending and how California ranks
7 relative to other states in that regard?

8 A. I might have seen some data from the 2001-2002
9 school year in a report that came out at the beginning
10 of this year, but I am not remembering the specifics.

11 Q. Are you aware of any data generated and
12 published by the California Department of Education in
13 the last five years relative to California's per pupil
14 spending?

15 A. Well, certainly the Education data contains
16 financial reports about spending on California schools.

17 Q. Right.

18 Are you aware specifically of any per pupil
19 spending data that was issued by the CDE in the last
20 five years?

21 A. Sure. The report -- they report the per pupil
22 spending.

23 Q. And you have reviewed that data?

24 A. I have certainly reviewed reports of it. I am
25 not sure whether I actually looked at the raw data files

1 Q. Do you have data on how many other states?

2 A. Well, at this point I think California -- at
3 least in 2001 data -- I may have it here in my report --
4 that we ranked 48th among the states in the -- on Page
5 55 of my report I give a brief summary of the levels of
6 spending, both in terms of per pupil spending, which
7 John Sonstiehl, with the PPIC, Public Policy Institute
8 of California, has written a report about this, and here
9 I am citing Linda Darling-Hammond's citation of that
10 report. That states per pupil spending fell about 25
11 percent between 1979 and 1994-95 and, as she notes, went
12 up a bit between '95 and '98, but in '99-2000 California
13 ranked 48th in K-12 expenditures as a share of personal
14 income.

15 Dr. Darling-Hammond's report I think provides
16 additional detail about the declining investment in
17 California schools since Proposition 13 was passed, as
18 does the Grubb and Goe paper.

19 Q. Are you aware of any data --

20 MR. ROSENBAUM: Were you done?

21 THE WITNESS: Yes.

22 BY MR. HERRON:

23 Q. Are you aware of any data from the 2000-2001
24 school year related to California's ranking vis-a-vis
25 other states in terms of per pupil spending?

1 from the CDE.

2 Q. Do you recall what that data showed?

3 A. From the last five years?

4 Q. Correct.

5 A. A slight increase over previous years.

6 Q. Did that CDE data rank California relative to
7 other states in per pupil spending? Do you recall?

8 A. I don't recall.

9 Q. Have you seen any data over the last five
10 years from the California Department of Finance that
11 analyzed per pupil spending for education in California?

12 A. Probably.

13 Q. Do you know what that data said?

14 A. Not off the top of my head.

15 Q. In the -- Page 55 of your report, actually
16 Page 56, the EdSource -- Footnote 165 refers to Dr.
17 Darling-Hammond's report which, in turn, was citing
18 EdSource 2001.

19 Have you reviewed the EdSource report
20 concerning the information for which it is cited here in
21 your report?

22 A. I may have. I read EdSource reports on a
23 fairly regular basis. I am not recalling specifically
24 which one Dr. Darling-Hammond is citing.

25 Q. Now does EdSource provide annual reports of

1 per pupil spending by various states?

2 A. They might. There are several places to find
3 those comparisons.

4 Q. What are other places? Meaning what other
5 sources other than EdSource provide those per pupil
6 spending data?

7 A. I believe you can get it from the National
8 Center for Education Statistics, and I know you can get
9 it from "Education Week," which is a publication that
10 annually prepares a report that compares data.

11 There are several sources of data that compare
12 education systems on a variety of characteristics, but I
13 am not recalling exactly which ones have per pupil
14 spending and which ones have other sort of fiscal
15 adequacy measures and which don't deal with fiscal
16 matters at all.

17 Q. Are you aware whether any of those reporting
18 services or groups that you just mentioned include
19 capital outlays in there calculation of per pupil
20 spending?

21 A. You know, I would have to double check before
22 I said.

23 Q. Okay. Do you know whether any of those
24 reporting services or entities include in there per
25 pupil spending calculations money received from the

1 than California in the aggregate on education?

2 A. In the aggregate?

3 Q. Right.

4 A. No, but California has more students that
5 anyone else.

6 MR. ROSENBAUM: He just wants you to answer
7 his question.

8 THE WITNESS: No.

9 BY MR. HERRON:

10 Q. Have you yourself conducted any analysis that
11 compares the expenditures of -- educational expenditures
12 of California with Texas?

13 A. No.

14 Q. Florida?

15 A. It depends on what you mean by "analysis."

16 I certainly looked at reports that make
17 comparisons. I have not gathered firsthand data about
18 spending and an independent analysis, no.

19 Q. Did I ask the question about New York?

20 A. No.

21 Q. Same question.

22 A. No. Same answer.

23 Q. Okay. Illinois?

24 A. Same answer.

25 Q. Oregon?

1 federal government for education?

2 A. Sometimes that is broken out separately and
3 sometimes it isn't, but I am referring here to a number
4 of measures and -- where per pupil spending is only one
5 of several indicators about the fiscal effort that
6 states make in education.

7 I wouldn't want to confine my analysis or
8 responses to simply per pupil spending.

9 Q. Are you aware that a bond was passed in
10 November 2002 for new school construction and
11 modernization?

12 A. Yes.

13 Q. Are you aware of the amount of that bond?

14 A. I believe it was about \$11 billion or \$13
15 billion. Something in that neighborhood.

16 Q. Are you aware of any state that has ever
17 passed a bond for new school construction and
18 modernization greater in amount than that bond passed by
19 the California voters?

20 A. In total amount or per pupil?

21 Q. Total, first.

22 A. No, but I haven't -- I haven't reviewed all of
23 those things, so my knowledge is not based on a
24 systematic review of bond measures.

25 Q. Are you aware of any state that spends more

1 A. Same answer.

2 Q. Nevada?

3 A. I -- maybe I can save us time by saying I
4 simply haven't collected new data and done systematic
5 analyses independent of what other reports have done.

6 MR. HERRON: Let's take a break.

7 (Recess taken.)

8 BY MR. HERRON:

9 Q. There are -- again, focusing on Pages 58
10 through 71 of your report and the proposed remedies you
11 set forth there, were you asked by plaintiffs' counsel
12 to provide an estimate of what it would cost to
13 implement all, collectively, all of these remedies?

14 A. No.

15 Q. Did you ever have a discussion about that
16 topic with plaintiffs' counsel?

17 A. I believe that the discussion that you and I
18 just had about how difficult it is to estimate the costs
19 both of maintaining an adequate system and making up for
20 the many years of deficiencies in California's system --
21 the difficulty of estimating that without having good
22 models or good data from the State to do that, that
23 conversation we certainly had, and that -- what seemed
24 to be more important from my perspective -- and I think
25 we may have talked about this -- was to try to

1 understand, first, what it is that California students
2 really need and get a reasonable assessment of the
3 extent to which those things are in place; that that
4 was -- seemed substantively much more important than
5 trying to just think about more money.

6 Q. Did plaintiffs' counsel ever instruct you not
7 to provide an estimate of what it would take or how much
8 it would cost to implement all of the remedies set
9 forth, proposed remedies set forth, on Pages 58 through
10 71 of your report?

11 A. No.

12 Q. You understand that it is plaintiffs'
13 counsel's strategy not to provide the cost of their
14 proposed remedies as a target in this case; right?

15 MR. ROSENBAUM: Objection. Argumentative.

16 THE WITNESS: I don't know what their strategy
17 is.

18 BY MR. HERRON:

19 Q. Did you ever have a discussion about whether
20 or not --

21 A. I think we may have had a conversation
22 about -- or maybe I just presumed it from other cases
23 that I have been in -- that this was more about
24 establishing liability and getting the facts on record
25 and suggesting that these are problems that can be

1 judgment without a lot more evidence or a lot more
2 opportunity to analyze what is available. I just
3 haven't taken that on.

4 BY MR. HERRON:

5 Q. On the fifth day of your deposition, and it
6 was at Page 97 of the rough version of the transcript
7 Mr. Jordan --

8 You remember him?

9 A. Yes.

10 Q. -- asked you a question, and you answered as
11 follows.

12 "Question: I think you have
13 previously outlined, I think, your
14 analysis of various problems and
15 options the State might take to
16 address, you know, the problems
17 that you have outlined.

18 "Is cost to the State a
19 relevant factor in making those
20 policy choices from your
21 perspective?"

22 "Answer: I certainly think
23 that any policy decision should be
24 accompanied by a careful analysis
25 of the costs and benefits of those

1 solved rather than -- and I guess my understanding --
2 and I don't know, again, whether it was from
3 conversations with them or my prior knowledge, that the
4 development of a remedy is something that comes after
5 there is a decision. I might be wrong. That has been
6 my presumption.

7 Q. Okay. Do you have an opinion as to whether or
8 not implementing all of the proposed remedies set forth
9 on Pages 58 through 71 of your third report would
10 require greater levels of investment in education than
11 California is now making?

12 MR. ROSENBAUM: She answered that at length
13 when she was discussing that footnote.

14 THE WITNESS: I think it certainly might, and
15 especially given the fact that things have deteriorated
16 over time; that there may be some specific costs, some
17 compensatory cost, to make up for long-standing
18 problems.

19 In terms of the ongoing cost, I think it is
20 just really hard to tell how much efficiency might be in
21 a system that was based on a model and had lots of
22 technical capacity building in it so that local school
23 districts could use their money more efficiently and
24 effectively.

25 I really -- I really don't want to make that

1 policies."

2 You stand by that testimony?

3 A. I think what I have just said to you about
4 wanting to be cautious about proposing additional costs
5 is absolutely consistent with that statement.

6 Q. So you believe that any policy recommendation
7 should be accompanied by a careful cost-benefit analysis
8 of those policies?

9 A. I wouldn't want to restrict it to cost-benefit
10 in the narrow sense of a cost-benefit analysis, but I
11 think weighing the cost versus the needs and advantages
12 and potential gains is always a prudent and important
13 thing to do.

14 Are you aware of any expert other than you who
15 has analyzed costs and benefits of any of the proposed
16 remedies set forth in your third report?

17 MR. ROSENBAUM: Misstates her testimony.

18 THE WITNESS: Are you asking me whether
19 anybody has taken this report and done a cost-benefit
20 analysis of what I suggest as possible remedies?

21 BY MR. HERRON:

22 Q. Yes.

23 A. Not to my knowledge.

24 Q. Have any of the experts done any cost-benefit
25 analysis of their own proposed remedies -- let me try

1 that again.

2 The other experts, the other expert reports,
3 set forth a variety of proposed remedies.

4 I take it we agree on that point?

5 A. They -- all of the reports, I think, provide
6 some suggested directions for remedies and some
7 illustrations. Some are more directive than others.

8 Q. Sure.

9 Are you aware whether any other expert has
10 conducted a cost-benefit analysis of the remedies that
11 they propose?

12 A. I think actually -- I know that Dr.
13 Darling-Hammond -- and frankly I am not sure -- I am not
14 recalling specifically whether it is in this report or
15 whether it is in other things she has done -- has
16 certainly compared the costs of increasing the salaries
17 and working conditions for teachers to retain them to
18 the costs of having to constantly prepare new entrants
19 into the teaching profession.

20 I really don't recall whether that is in this
21 particular report or whether it is from another source.

22 Q. Uh-huh.

23 A. There may have been -- in the reports there
24 may be other places where those kinds of analyses are
25 made, but I don't recall seeing a formal cost-benefit

1 principles, concepts that should guide the formulation
2 of any specific policy proposal, which should then be
3 costed out.

4 MR. HERRON: Would you read that back.

5 (Record read.)

6 BY MR. HERRON:

7 Q. Okay. As I understand your testimony, you are
8 saying that there is a strong hypothesis that California
9 would have to spend more money were it to implement the
10 remedies proposed by you collectively than is currently
11 being spent.

12 Is that a fair statement?

13 A. Yes. Given the fact that we have had some
14 decades of declining expenditures and deteriorating
15 infrastructure, it is very likely that remedying those
16 current deficiencies would cost some additional money.
17 It is hard to know how much.

18 It is also hard to know whether a more
19 coherent sort of model-driven, adequacy-driven system
20 would cost any more or how much more than California
21 currently spends.

22 I think, however, since California is quite
23 low among the states in what it spends and its cost of
24 living and its cost of doing business is quite higher
25 than most places, I would not be surprised to learn that

1 analysis in the expert reports.

2 I think that is essentially because most of
3 these recommendations were simply provided -- I don't
4 know what other people had in their mind. I have been
5 thinking about them as illustrations and demonstration
6 that it is -- there are possible ways to address these
7 problems.

8 Q. You are not saying that any of these remedies
9 that are set forth on Pages 58 through 71 of your report
10 necessarily must be adopted?

11 A. I think they suggest some very sound
12 directions. They are not meant to be prescriptive in a
13 literal sense. I think the direction and the essence of
14 them is what I would recommend if I were consulted.

15 They are certainly not worked out in the
16 detail that they should be to be entertained as a policy
17 proposal.

18 Q. Why do you consider it appropriate to make
19 various recommendations regarding remedies without
20 having conducted a cost-benefit analysis of what
21 collectively those remedies would cost?

22 A. It's perfectly reasonable, and I think an
23 important first step, to make an assessment about
24 whether it is possible to solve problems, explore the
25 range of options and suggest some directions,

1 we might have to spend additional money to maintain a
2 high-quality system.

3 Q. The remedies that you propose in your third
4 report, as you earlier testified, were provided by way
5 of example and of things that you considered to be,
6 quote, "feasible and reasonable," were your words.

7 Is that a fair statement -- a fair assessment
8 of what you testified to?

9 A. I would add one thing. I think that is true,
10 but I think there are also principles that should be
11 paid attention to. And the examples, they are not just
12 sort of any old examples. They are examples that after
13 some analysis seem to press in a constructive direction.

14 Q. Okay. How is it that any of the remedies
15 proposed on Pages 58 through 71 of your report are
16 reasonable if they are not accompanied by some cost
17 estimate?

18 A. Because they are grounded in a great deal of
19 scholarship about State policy instruments and how the
20 State -- how states can craft a role for themselves that
21 creates, supports, sustains a sound educational system.

22 Q. Well, how are these proposed remedies
23 feasible? How do you know they are feasible if you
24 haven't attempted to make any cost-benefit analysis or
25 cost assessment?

1 MR. ROSENBAUM: Assumes facts not in evidence.
2 Asked and answered.

3 THE WITNESS: Well, the fact that there hasn't
4 been a specific cost analysis of each of these
5 suggestions does not mean that in the process ideas
6 weren't sifted through toward an idea of what would be
7 so unreasonably expensive that one would not want to
8 suggest it.

9 For example, I talk about the need for more
10 careful oversight, better data and reporting. Now one
11 way one might accomplish that would be to hire a whole
12 army of State education inspectors that would go out on
13 a regular basis, maybe wearing white coats and carrying
14 clipboards, and inspecting the schools, making reports,
15 overseeing. That to me seems like an option that might
16 work to solve the problem, but that one would not be
17 advised to recommend such an option because it would
18 create a whole new State bureaucracy that I think most
19 California citizens would not want to spend money on.

20 So that sort of first cut at what is
21 reasonable and feasible was certainly part of my
22 thinking as I framed these suggestions.

23 BY MR. HERRON:

24 Q. Okay. But as you sit here you can't tell us
25 that California feasibly in terms of finances could

1 MR. HERRON: Can you please reread the
2 question.

3 (Record read.)

4 MR. HERRON: Now read her answer.

5 (Record read.)

6 BY MR. HERRON:

7 Q. Now I would like you to answer the question I
8 asked, please.

9 MR. ROSENBAUM: That is an inappropriate
10 comment. She did answer.

11 THE WITNESS: The suggestions for the examples
12 of remedies that I propose was not proposed as a
13 coherent, integrated collection of recommendations that
14 would make up one systemic remedy.

15 And before I would want to assess the cost and
16 the feasibility of that cost of a remedy I would want to
17 think in a more integrated fashion about which bundle of
18 these remedies seemed like a sensible package.

19 At that point I think it would be reasonable
20 to decide whether the cost of that was something that
21 California citizens would determine to be of value and
22 worth spending money on. It is --

23 BY MR. HERRON:

24 Q. Have you determined what bundle of these
25 recommendations, proposed remedies set forth at Pages 58

1 adopt the recommendations, the proposed remedies set
2 forth at Pages 57 through 71 of your report; correct?

3 A. I can say that each of the things that I
4 suggest is on its face reasonable and feasible enough to
5 warrant further investigation.

6 Q. But from a financial standpoint you can't
7 provide us any testimony today that suggests that
8 California can afford -- can finance the remedies set
9 forth on Pages 58 through 71 of your report; correct?

10 A. Well, I would say two things. One is that
11 California is the fifth largest economy in the world.
12 It is a state of enormous wealth and probably could
13 afford whatever it wants to do.

14 I will also say that I have not done a
15 detailed analysis of what each of these recommendations
16 would cost.

17 Q. You think that the fact that California is the
18 fifth largest economy in the world suggests that it can
19 feasibly finance the recommendations set forth on Pages
20 58 through 71 of your report?

21 A. No one of these recommendations stands out to
22 me as unreasonable to at least warrant serious
23 consideration.

24 Q. That didn't respond to my question.

25 MR. ROSENBAUM: Yes, it did.

1 through 71 of your third report would make up a coherent
2 or integrated program, as you have just mentioned?

3 A. I have not framed a specific bundle of
4 remedies, although I think that every principle that is
5 outlined here should be incorporated into a remedy,
6 although the specifics, I think, require more analysis,
7 more conceptual and analytic work.

8 I certainly stand by the principles and the
9 overall design because the purpose for which I framed
10 these was to illustrate potential. This section was not
11 written as a comprehensive, definitive package of
12 specific policy recommendations.

13 Q. Are you qualified to offer an opinion as to
14 what -- which of your proposed remedies the State can
15 afford?

16 MR. ROSENBAUM: Vague. Incomplete
17 hypothetical.

18 THE WITNESS: I would not independently make
19 such a recommendation or judgment, but I think I would
20 contribute in a very positive way as a member of a team
21 making those judgments.

22 BY MR. HERRON:

23 Q. What is it that qualifies you to make that
24 sort of input?

25 A. 25 years of research and teaching and

1 professional practice in the field of education.

2 Q. What does that have to do with what the State
3 can and cannot afford?

4 MR. ROSENBAUM: Argumentative.

5 THE WITNESS: It has to do with specifying
6 what things the State should consider when it is making
7 a decision about what it should -- could afford.

8 I could be quite good, I think, at saying,
9 "Item Z is ridiculous, and one should not ask California
10 taxpayers to pay for that." That kind of thing.

11 BY MR. HERRON:

12 Q. On the fiscal side, though, are you qualified
13 to determine and offer an opinion as to whether or not
14 the State could as a fiscal matter afford the
15 recommendations set forth at Pages 58 through 71 of your
16 report?

17 MR. ROSENBAUM: Same objections. Foundation.

18 THE WITNESS: That is a very difficult
19 question. I am not an economist nor an accountant.

20 BY MR. HERRON:

21 Q. Right.

22 A. But I have a great deal of professional
23 experience and a whole lot of horse sense that could
24 contribute to decisions like that.

25 Q. Have you ever done any economic forecasting?

1 discussion about what the public wants in its school
2 system and how that can be accommodated.

3 I would also think that some analysis of how
4 the State is currently spending its dollars and whether
5 or not that matches with the public priorities would be
6 an important thing to do.

7 Q. Why does the public will regarding the
8 resources that are spent on education matter?

9 A. Well, primarily because we are a democracy and
10 how the State chooses to create and support public
11 institutions should be a matter of public deliberations.

12 Q. You are aware of Prop 98?

13 A. I am.

14 Q. In your opinion is there anything wrong with
15 that proposition as a funding mechanism for education in
16 California?

17 MR. ROSENBAUM: It is an incomplete
18 hypothetical. It is vague.

19 THE WITNESS: I would say that there are two
20 problems that immediately come the mind.

21 One is that it was framed without -- in the
22 absence of a coherent plan about how spending should be
23 spent, any model of an education system that should
24 drive it. So I think that then money gets spent from
25 Prop 98 based on the particular interests or the

1 A. No.

2 Q. Have you reviewed the current State budget to
3 determine the State's ability to pay for the remedies
4 you propose at Pages 58 through 71 of your report?

5 A. I have certainly reviewed the current State
6 budget. I don't think that I would consider that the
7 proper mechanism or the proper instrument to look at for
8 deciding whether or not California could solve its
9 educational problems.

10 This is a long-term enterprise that we are
11 talking about. I actually think that in some ways a
12 time of economic downturn is a really good time to sit
13 down and do some long-term planning because there is not
14 a lot of extra money around that people can figure out
15 how to spend in a hurry.

16 Q. Would you read the last answer back.

17 (Record read.)

18 BY MR. HERRON:

19 Q. What in your view is the proper instrument or
20 mechanism for deciding whether California can fiscally
21 solve its educational problems?

22 A. I think some long-term planning and assessment
23 of the State's economic resources and some assessment of
24 the public will regarding how resources should be spent,
25 probably a whole lot of public engagement and public

1 political power of interest groups who can influence
2 legislation and develop new programs. So there is no
3 underlying sort of conception of what the Prop 98 funds
4 should be used to create and sustain.

5 A second problem with Prop 98 as a funding
6 mechanism is that it is a wholly dependent on the state
7 of the economy and the amount of the income taxes that
8 come in.

9 One of the reasons we are in the difficulty we
10 are now in is because downturns in the economic cycle
11 have this enormous impact on how much money makes up the
12 income and, therefore, the Prop 98 portion. It results
13 in a lot of volatility in the system that is unsettling
14 to programs and the people in them.

15 BY MR. HERRON:

16 Q. In your opinion what is the best way to remove
17 that volatility?

18 A. Well, I would be interested in seeing some
19 sort of proposal developed for a funding scheme that was
20 less vulnerable to economic cycles, perhaps something
21 based on wealth which remains more constant over -- more
22 constant than income.

23 I basically think property taxes are a fairly
24 stable source of income. I am not prepared to make a
25 specific funding proposal, but I would certainly like to

1 see some analyses of those kinds of options.
 2 Q. That would take away the volatility?
 3 A. That would take away the volatility and ground
 4 the system in a plan or a model of an education system
 5 that drove decisions about how particular money should
 6 be spent.
 7 Q. Are you at all aware of the projected tax
 8 revenue for California for this year?
 9 A. I have -- I am vaguely familiar with it. Yes.
 10 Q. What is that number?
 11 A. The number -- I don't know the number.
 12 Q. Are you aware of what the projected tax
 13 revenue is for next year in California?
 14 A. I don't know that number.
 15 Q. How about for the next five years?
 16 A. I don't know those numbers.
 17 Q. Have you looked at any data on those subjects?
 18 A. I have -- yeah. I think I have, but I do not
 19 recall the specifics of those numbers.
 20 Q. I want you to assume that your hypothesis in
 21 Footnote 152 is correct and that implementing the
 22 remedies proposed in the third report will require a
 23 greater level of investment than is currently taking
 24 place.
 25 I want you to assume further you are the sole

1 decision maker on how money is spent in the state of
 2 California and that the State faces a budget deficit of
 3 some \$35 billion.
 4 From what source would the money come to pay
 5 for implementing all the remedies in your third report?
 6 MR. ROSENBAUM: Incomplete hypothetical.
 7 Foundation.
 8 THE WITNESS: Well, I am certainly not
 9 prepared to offer you today a plan.
 10 If I were the sole decision maker, I would
 11 gather around me the best experts I know and think long
 12 and hard and collect lots of data and come up with a
 13 proposal that I would then offer up for discussion among
 14 the people of California and their elected
 15 representatives.
 16 I would also want to do an analysis that would
 17 enable people to see that if California had continued
 18 the level of spending on education that it had prior to
 19 Proposition 13 how much more investment would have been
 20 made in the system than has been made in the last 30
 21 years.
 22 I would also want to look at -- say, take the
 23 mean level of spending in all 50 states, and say if
 24 California had spent at the mean level of spending in
 25 all 50 states, how much more investment there would be

1 in the system so that people would have a chance to
 2 understand what the deferred costs are compared to what
 3 might be ongoing maintenance costs.
 4 BY MR. HERRON:
 5 Q. Same assumptions, would you raise taxes?
 6 MR. ROSENBAUM: Same objections.
 7 THE WITNESS: I might, but I wouldn't say so
 8 for sure today.
 9 BY MR. HERRON:
 10 Q. Same assumptions, spending on -- and
 11 in addition, assume that spending on education is 42
 12 percent of the budget.
 13 Under the assumptions I have asked you to
 14 assume, would you make any cuts in education?
 15 MR. ROSENBAUM: Same objections. It is really
 16 an incomplete hypothetical.
 17 THE WITNESS: The current budget crisis I see
 18 is quite a distinct matter from thinking long-term about
 19 solving these systemic problems that are at issue in
 20 this case.
 21 This is an extraordinary time in the budget
 22 cycle. My own center is being proposed to being cut 56
 23 percent. It is a time when all of us are sacrificing.
 24 I think I would certainly look to some other
 25 parts of the system before I looked at education, but I

1 can't say with all certainty that I wouldn't propose
 2 some cuts.
 3 BY MR. HERRON:
 4 Q. In education?
 5 A. I can't say with certainty that I would not if
 6 I were the Governor or the Legislative Budget Committee
 7 at this point in this short-term crisis.
 8 Q. What is your understanding of what role the
 9 Legislature has in determining the level of funding for
 10 education in California?
 11 A. Well, the Legislature certainly considers the
 12 proposal by the Governor and either approves,
 13 disapproves or negotiates with the Governor about what
 14 the budget is going to look like.
 15 Usually they disagree and end up negotiating
 16 until September or so, when times are tough, until they
 17 come up with some sort of negotiated compromise. The
 18 Legislature is usually very active in that part. In the
 19 end the Governor has veto power that is pretty
 20 important.
 21 Q. Is there any other role that the Legislature
 22 plays, in your understanding, in determining funding for
 23 education in California?
 24 A. Well, certainly the placing of bonds for
 25 education on ballots have to be -- they can be -- one

1 way of getting them on is by having two-thirds of the
2 Legislature approve the proposal of such a measure.

3 I believe that is what happened with Prop 47,
4 if I am recalling correctly.

5 Q. In your understanding what role does the
6 electorate have in determining the level of funding for
7 education in California?

8 A. By "electorate," do you mean simply people
9 serving in their role as voting --

10 Q. We the people.

11 A. We the people have many roles to play. We can
12 lobby. We can organize. We can write letters to the
13 editor. We can do all kinds of things, and we can elect
14 people we like to office who have platforms on education
15 spending we approve of. We can kick the ones out of
16 office that we don't like, and we can vote specifically
17 on funding measures when they are put before us on
18 ballots. We can call the Governor. We can do many
19 things. We can bring a lawsuit.

20 Q. In your opinion what educational inputs are
21 most important to assure that California schoolchildren
22 receive an adequate and equitable opportunity to learn?

23 MR. ROSENBAUM: Vague.

24 THE WITNESS: Well, I believe there are many,
25 and I think the three specific basic tools that are

1 required to be competitive.

2 BY MR. HERRON:

3 Q. So is it your belief, then, that every
4 schoolchild ought to be given sufficient education so
5 they will have an opportunity to compete for openings at
6 the best college in California?

7 A. I would say that no child should go to a
8 school that by virtue of limitations on its resources,
9 conditions or opportunities prevents a child from
10 competing.

11 Q. The first three items you mentioned as being
12 most important to assure that California schoolchildren
13 receive an adequate and equitable opportunity to learn
14 are teachers, books and safe, uncrowded places to
15 learn -- safe and uncrowded school facilities?

16 A. I would modify those things. I think it is
17 not just an adult that has a sign on their chest that
18 says, "Teacher," but actually to have teachers that are
19 qualified and well prepared in both the content -- you
20 know, I think they ought to be credentialed, and I think
21 they ought to have some real commitment and
22 understanding and desire to work with young people.

23 In terms of books, I would say that they need
24 to have access to books of a quality that match the
25 content expectations for children, and that they should

1 mentioned in this lawsuit, teachers and books and a safe
2 uncrowded place to learn, are certainly very
3 foundational. I don't think they are enough to
4 constitute an adequate education in themselves.

5 I think certainly having a curriculum that
6 aims towards coherent goals, time on instruction that
7 allows students to learn and be taught to those goals,
8 learning activities and interactions that make knowledge
9 accessible to children, including children who are
10 diverse in their background and their language and their
11 culture.

12 I think some sort of system of assessment that
13 provides useful information about strengths and gaps in
14 children's learning. That is a beginning list.

15 Actually, in California I think I would add to
16 that that every school attended by a California child
17 who is not deemed to be neurologically impaired in some
18 way should provide that child with everything reasonable
19 people would say is necessary to have a fair shot at
20 competing for a seat at UC Berkeley, given that that is
21 the most competitive public institution of higher
22 education in California. And while no child should be
23 guaranteed a place, no child should have a place
24 foreclosed because they happen to attend a school where
25 it is not possible to learn to the level that is

1 be in sufficient supply.

2 We have talked as a general standard, to have
3 a book for every child in every subject that they are
4 studying and then the ancillary materials that are
5 required to provide students with access to knowledge.

6 Q. Okay. When you say that the teachers ought to
7 be credentialed --

8 A. Uh-huh.

9 Q. -- do you mean have a clear credential under
10 the current credentialing guidelines in place?

11 A. I think the teachers should meet whatever
12 requirements that the State may have in place at any
13 particular time for being a fully certified teacher.

14 Q. What if the State decided it wasn't going to
15 require credentialing at all; instead any person who had
16 a bachelor's degree could teach school in the subject of
17 their major?

18 Would you consider that to be a fully
19 qualified teacher?

20 A. No.

21 Q. Why not?

22 A. First of all, I think it would be a big
23 mistake if the State decided to do that, to call that a
24 fully certified teacher, but there -- teachers really
25 need a number of qualities beyond demonstration that

1 they have mastered a content area.
 2 They need to understand how children learn.
 3 They need to understand how to provide instruction that
 4 makes knowledge accessible to children, and in a state
 5 like California they need to know a great deal about
 6 language and language acquisition and culture and how
 7 language and culture play a role in affecting the
 8 instructional strategies that are most appropriate for
 9 enabling children to learn.

10 Q. Are you aware of what National Board
 11 Certification is?

12 A. Yes, I am.

13 Q. Why shouldn't the standard for qualified
 14 teachers in California be that all teachers must possess
 15 National Board Certification?

16 A. Well, my view is that National Board
 17 Certification is terrific and that it would be a very
 18 wholesome and healthy thing if every school had some
 19 number of Board-certified teachers on their staff who
 20 could act as mentors and instructional leaders.

21 I don't think it is essential that every
 22 teacher possess that advanced level of certification.

23 Q. Why not?

24 A. I guess I have just never thought about that.

25 MR. ROSENBAUM: Foundation.

1 A. I actually don't -- I think that
 2 mischaracterizes the recommendation.

3 Q. Okay.

4 A. I think that the analysis is that once -- that
 5 some pretty terrible things happen in the school once
 6 more than 20 percent of the teachers are uncertified.

7 I think the recommendation is that all
 8 teachers be certified.

9 Q. Okay. Are you aware that some teachers are --
 10 possess a full, clear credential but have not satisfied
 11 the current requirements in place for a full credential?

12 A. Sure. There are people who have credentials
 13 that are from an earlier period of time when the
 14 credentialing requirements were different, and their
 15 portfolio of experiences and qualifications may not look
 16 the same.

17 Many of those teachers have undergone lots of
 18 professional development which has added to their
 19 knowledge, especially around issues of language
 20 development and cultural diversity, which have been the
 21 main sort of changes to the credentialing requirements
 22 that have occurred over the last 15 or 20 years.

23 Q. What reason is there to believe that those
 24 individuals possess the required qualifications that you
 25 are suggesting all teachers must possess?

1 THE WITNESS: It is a lovely idea, actually,
 2 but I think that we could certainly achieve high quality
 3 and a certain degree of efficiency by having some -- a
 4 range of people with experience and advanced levels of
 5 preparation in any school.

6 I think the credential should encompass what
 7 the State sees as bare minimum standards. I think that
 8 is what the Teacher Credentialing Commission has
 9 attempted to do. I think it is a wonderful if people
 10 want to exceed that.

11 BY MR. HERRON:

12 Q. But you find the current credentialing
 13 requirements, that is, those credentialing requirements
 14 that are -- one must satisfy to get a clear credential,
 15 you find those satisfactory as a surrogate for
 16 determining what a qualified teacher is?

17 A. I think they set a minimum threshold that
 18 should be expected of all teachers who have full
 19 responsibility for a classroom of children.

20 Q. One of plaintiffs' experts recommends that no
 21 schools should have any more than 20 percent
 22 emergency-credentialed teachers and that the remaining
 23 80 percent of teachers ought to be fully credentialed or
 24 have a clear credential.

25 Are you aware of that?

1 A. I think what we do know about them is that at
 2 the time they were credentialed, they met the State's
 3 minimum threshold for qualification and, therefore, have
 4 a license. That is what we know about all certified
 5 teachers.

6 Q. Right.

7 But those teachers didn't satisfy the
 8 credentialing requirements currently in place, so why is
 9 it that we should assume they are fully qualified to
 10 teach California schoolchildren?

11 A. Well, by definition, if you have a full
 12 certification you are defined as fully qualified to
 13 teach in the State of California.

14 Q. If the State changed its credentialing
 15 requirements, would satisfaction of those changed
 16 requirements still to you mean that the teacher was
 17 fully qualified to teach?

18 MR. ROSENBAUM: Asked and answered.

19 THE WITNESS: I think --

20 MR. ROSENBAUM: Incomplete hypothetical.

21 THE WITNESS: It would certainly depend on the
 22 nature of the changes.

23 I mean, right now the nature of the credential
 24 is very much in flux, with the SB-2042 redefining the
 25 nature of the credential.

1 A panel worked for about three years to
2 specify what that meant in terms of teachers'
3 competencies. Measures are currently being developed to
4 assess those.

5 That kind of a change that has been fully
6 participated in by professionals at all levels of the
7 education profession seems like a reasonable process to
8 undergo if -- and changes made in that way, I think --
9 it certainly depends on what the changes are.

10 If in one fell swoop the State redid its
11 credentialing so that it did say, as you suggest, that
12 any teacher with a bachelor's degree in a subject area
13 could be a fully certified teacher, I would have
14 problems with that.

15 BY MR. HERRON:

16 Q. Are you aware of what the current requirements
17 are for credentialing reciprocity in California?

18 A. We are in the process of establishing
19 reciprocity with -- I think we have it now with most
20 states and are in the process of establishing it with
21 other states.

22 It has -- again, it is a -- it is one of the
23 policies that is currently in transition.

24 Q. Do you have any critique or criticism of the
25 requirements for -- under reciprocity for credentialing

1 Q. Okay. Do you have any awareness of efforts by
2 the Commission on Teacher Credentialing within the last
3 two years to assure that each teacher who receives a
4 full credential also has the equivalent of a CLAD or
5 BCLAD?

6 A. Yes. The CLAD credential was to be the
7 primary credential.

8 A BCLAD is an added-on, an additional
9 competency for bilingual teachers, but with 2042 and the
10 work of that panel, the credentialing requirements are
11 changing, and my understanding is there will no longer
12 be a CLAD credential; that all credentials will -- at
13 least the principle was that all credentials would
14 ensure that teachers have the competencies that were
15 previously specified under the CLAD credential for
16 working with linguistically and culturally diverse
17 groups of students.

18 Q. What do you understand 2042 to provide? You
19 can describe it generally or to the extent that you have
20 knowledge.

21 A. Well, 2042 is an effort to create a
22 standards-based teacher credentialing system that
23 specifies -- and we have a set of standards, California
24 standards, for the teaching profession that were
25 developed four, five, six years ago -- and the 2042

1 out-of-state teachers in California?

2 A. Do I have any what?

3 Q. Critique or criticism.

4 A. I think the general idea of saying, if a
5 teacher is qualified to teach in Portland, Maine, they
6 might be qualified to teach in Portland, Oregon is a
7 reasonable proposition.

8 I want to make sure -- I would like to have
9 some certainty, however, that teachers coming into
10 California and who are working with students who are not
11 English dominant have some preparation, whether it be
12 professional development or some sort of preparation in
13 working with students who are learning English.

14 Q. Do you know whether that is a component of the
15 reciprocity components for credentialing out-of-state
16 teachers in California?

17 A. I don't believe so, but I don't know for sure.

18 Q. As you sit here today do you have any other
19 critique or criticism for the requirements for
20 reciprocity insofar as they concern credentialing
21 out-of-state teachers in California?

22 A. You know, I don't have a familiarity with the
23 specifics of those agreements with other states to give
24 a blanket statement about whether I agree or disagree
25 with them.

1 effort is an effort to construct or to specify the kinds
2 of competencies one would need to demonstrate in order
3 to provide evidence that one had met those standards for
4 the teaching profession.

5 It restructures the assessment of teachers so
6 there is more specific assessments that are aligned to
7 those standards and those competencies, and it is an
8 effort to recognize and incorporate into the
9 credentialing process the concept that the first year of
10 teaching, the induction year, is really a continuation
11 of teacher preparation.

12 So that it builds in two levels of the
13 credential, one before -- at the end of teacher
14 preparation and a second level at the end of the first
15 or second year of teaching.

16 MR. ROSENBAUM: David, I don't want to cut you
17 off at any time. If it is convenient --

18 MR. HERRON: Yes. Let's take a break.

19 (Recess taken.)

20 BY MR. HERRON:

21 Q. Dr. Oakes, do you consider 2042 to be an
22 example of policy movement in the right direction, at
23 least insofar as teacher certification issues are
24 concerned?

25 MR. ROSENBAUM: Vague.

1 THE WITNESS: I haven't made an overall
2 judgment about that.

3 BY MR. HERRON:

4 Q. Do you have any sense in that regard?

5 A. As a member of that panel for two years I was
6 extraordinarily impressed with the level of commitment
7 and effort and professionalism of the people who were
8 struggling to enact that policy.

9 I also had some concerns that it was -- that
10 there was a potential that it would overstandardize the
11 teacher preparation process.

12 I certainly think the focus on including an
13 induction year is a good one, but as I said, I don't
14 have a real -- a global thumbs-up, thumbs-down kind of
15 judgment about it.

16 Q. Who on the California Teacher Credentialing
17 Commission served on the panel, if you know?

18 A. I am not sure that anyone on the Commission
19 actually served on the panel.

20 We were constituted by the Commission and
21 reported to the Commission, but it was a professional
22 panel that was led by staff members, visited by,
23 observed in -- Sam Swofford, who was the chief staffer
24 on the Commission participated from time to time.
25 Commission members, I think, may have visited from time

1 as that threshold.

2 I would not say that simply holding a
3 credential is a guarantee that one will be a
4 high-quality teacher. I think the chances are much
5 greater if one is credentialed that one will be. It is
6 the minimum.

7 Q. Okay. Are you aware what effect, if any, the
8 federal NCLB has had or is having in California in
9 determining what a "highly qualified teacher" is?

10 A. Yes.

11 Q. Can you explain your understanding in that
12 regard.

13 A. One of the provisions of the No Child Left
14 Behind Reauthorization of the Elementary and Secondary
15 Education Act is that over time no teacher who is less
16 than highly qualified is to be employed as a teacher of
17 record in schools that receive Title I funding from the
18 federal government and/or that no teacher in the state
19 is to -- let's see -- but as of this year no new
20 teachers could be hired in Title I schools that didn't
21 meet the definition of "highly qualified."

22 Now it was left to each state to define what
23 it meant by "highly qualified," although the federal
24 legislation does include the provision that the teacher
25 be -- hold a credential, a State credential, a State

1 to time but were not working members of that panel.

2 Q. Were you aware of whether under the current
3 requirements for receiving a clear credential in
4 California teachers are required to be tested on the
5 State content standards?

6 A. No.

7 Q. You don't know?

8 A. No, they are not.

9 Q. Okay.

10 A. There are assessments, for example, on
11 teachers' knowledge of reading and how to teach reading,
12 but there is not a content-based test for teachers, per
13 se.

14 Q. In your opinion what improvements are required
15 for the teacher credentialing process in California to
16 assure that credentialing equates to -- that is, someone
17 receiving a full credential -- is a qualified teacher?

18 A. Well, I think I first would like to make a
19 distinction between a "qualified teacher" and a
20 "high-quality teacher." Sometimes those concepts are
21 conflated.

22 A "qualified teacher" is one who meets the
23 State's minimum threshold for competence to be a teacher
24 of record. I think the State's certification system has
25 been and continues to be fairly strong in what it sets

1 certification.

2 Last May the State Board of Education framed a
3 definition of what California requires for highly
4 qualified teachers and submitted that on a preliminary
5 application to the federal government, U.S. Department
6 of Education, for state funding.

7 It was not a highly publicized decision, and
8 the definition that they adopted was essentially that
9 any person who had a bachelor's degree and passed a test
10 of basic skills would be defined as a "highly qualified
11 teacher" for the purposes of No Child Left Behind.

12 During last summer and toward the end of the
13 summer, there was increasing attention brought to this
14 definition in the state of California and considerable
15 protest by teachers and others about it, including a lot
16 of expressed concern on the part of Representative
17 George Miller, who was one of the coauthors of the No
18 Child Left Behind legislation.

19 At some point in the fall -- I'm sorry. Am
20 I going beyond what you want to know about?

21 Q. No. Please continue.

22 A. Sometime in the fall I think the federal
23 government signalled to California that it would not
24 accept that definition, and it would have to reframe its
25 definition.

1 I think there -- that the response of
2 California to the federal government in its permanent
3 application or its final application for federal funding
4 is in the process of being constructed as we speak. I
5 don't know what that definition may now look like.

6 I do know that in the last two or three months
7 there was a lawsuit filed challenging the State of
8 California's definition. That is about the sum total of
9 what I know about it.

10 Q. If the federal government accepts California's
11 definition of "highly qualified," "highly qualified
12 teacher," is it your position that that will be
13 sufficient to assure that, as recommended in your third
14 report, each child has access to a qualified teacher?

15 A. No. I actually think that the qualities that
16 are outlined in Professor Darling-Hammond's report and
17 that I summarize very briefly in my report are what
18 should be required for all children.

19 I think that it remains to be seen what the
20 federal government will do, but I would not want -- I
21 could never imagine that a political decision of that
22 sort would alter my professional judgment about the
23 qualifications that California teachers should have.

24 Q. So it is conceivable that while the federal
25 government could accept California's definition of

1 individuals who may be able to teach quite well who have
2 not been certified by the State, but I would never
3 recommend that as a public policy.

4 Q. Are you aware of statistics about the
5 percentage of a emergency-credentialed teachers serving
6 in California public schools over the, say, past five
7 years?

8 A. Yes.

9 Q. What do those statistics demonstrate or show?

10 A. They show several things.

11 One, they show that the percentage of teachers
12 teaching on less than a full credential has increased
13 every year except for their there was a slight dip in the
14 most recent year. Very slight, like 1 percent or
15 something.

16 That the distribution of less than fully
17 certified teachers in California is very skewed, so that
18 low-income children and children of color in this state
19 are many times more likely to be taught by less than
20 fully certified teachers.

21 We also learned from those data there have
22 been new categories of less than fully certified
23 teachers that have been invented so that the precise
24 number who are holding emergency permits, named as
25 "emergency permits," has dropped dramatically, but they

1 "highly qualified teacher," your opinion for purposes of
2 this litigation would be that that definition was
3 insufficient to assure that every child was given access
4 to a qualified teacher; correct?

5 A. Yes. If the federal government, for example,
6 were to accept the definition that was initially
7 proposed I would certainly go on record in every venue
8 that I felt it was an insufficient level of
9 qualifications to be considered highly qualified.

10 Q. Your opinion is that an emergency-credentialed
11 teacher is not a qualified teacher; am I correct?

12 A. That is right.

13 Q. Is it possible an emergency teacher could be a
14 qualified teacher?

15 A. By definition --

16 MR. ROSENBAUM: Objection. Vague.

17 THE WITNESS: By definition, a person on an
18 emergency permit is not a qualified teacher, given the
19 State of California's definition of what it takes to be
20 a fully certified teacher.

21 BY MR. HERRON:

22 Q. In your opinion could an
23 emergency-credentialed teacher provide his or her
24 students an adequate and equitable opportunity to learn?

25 A. I have no doubt that there are some

1 have been replaced by larger numbers of teachers who are
2 either on preintern credentials or intern credentials,
3 which are not full certification and are simply new
4 categories for the people who are emergency -- who were
5 previously holding emergency permits.

6 Q. What data are you referring to?

7 A. The -- well, there have been a number of
8 analyses. The ones I am most familiar with are the ones
9 done by SRI for the Center for the Future of Teaching
10 and Learning.

11 Q. Okay. Have you reviewed any data issued by
12 the California Commission on Teacher Credentialing
13 concerning the number of emergency permit teachers for
14 the 2000-2001 school year?

15 A. I believe I have.

16 Q. And have you seen comparative data from prior
17 years demonstrating a drastic drop in the number of
18 emergency-credentialed teachers?

19 MR. ROSENBAUM: Objection. Vague.

20 THE WITNESS: Yes, I have, and with the
21 understanding I just provided; that there have been new
22 categories of less than fully certified teachers that --
23 and new credentials developed to provide people who
24 previously would have been in the category of emergency
25 permit teachers.

1 BY MR. HERRON:

2 Q. What efforts are you aware of that the State
3 of California has undertaken to assure that the number
4 of emergency-credentialed teachers in California
5 diminishes?

6 A. Well, certainly the biggest one was the
7 redefinition and the creation of preintern and intern
8 certifications for people who would be otherwise be
9 considered emergency permit teachers.

10 They have also expanded the number of
11 internship programs that they have authorized, including
12 internship programs mounted by school districts as well
13 as by universities.

14 They have -- I know there are some current
15 recommendations that -- for policies that further modify
16 those programs and -- but they have not yet been
17 enacted.

18 Q. Are you aware of any efforts by regional
19 Teacher Recruitment Centers to assure that districts are
20 able to hire fully credentialed teachers?

21 A. Yes. I know that the Teacher Recruitment
22 Centers have made an effort to increase the supply of
23 qualified teachers.

24 Q. And in your opinion has that effort been
25 successful to any degree?

1 inputs, necessary to assure that California
2 schoolchildren receive an adequate and equitable
3 opportunity to learn.

4 You have identified a number. Some you have
5 identified are teachers, qualified teachers, books,
6 textbooks, instructional materials and safe and
7 uncrowded facilities.

8 Can you rank those items in the order of
9 importance?

10 MR. ROSENBAUM: Incomplete hypothetical.
11 Vague.

12 THE WITNESS: Well, that's a very odd
13 question.

14 BY MR. HERRON:

15 Q. Thank you.

16 MR. HAJELA: Sorry I missed it.

17 THE WITNESS: All of those things are
18 essential. Certainly, most children in the state have
19 them. Every child should have them.

20 To be able -- to try to rank order them or to,
21 say, sort out which matters most doesn't seem like a
22 reasonable exercise to me.

23 BY MR. HERRON:

24 Q. Well, are you aware of any studies that, in
25 fact, rank those three items in order of importance in

1 MR. ROSENBAUM: Vague.

2 THE WITNESS: I think they've provided a good
3 service. They have certainly not made a dent in the
4 overall shortage.

5 BY MR. HERRON:

6 Q. Are you aware of any efforts by the regional
7 Teacher Recruitment Center concerning assuring that the
8 Oakland Unified School District could get fully
9 credentialed teachers as opposed to
10 emergency-credentialed teachers?

11 A. I know there has been an increase in Oakland
12 of the percentage of certified teachers.

13 I am not aware specifically of the efforts
14 that the recruitment center made in that regard. They
15 also increased teacher salaries.

16 Q. "They" being Oakland Unified?

17 A. Oakland, yes.

18 Q. In your opinion are preinterns and interns not
19 qualified teachers?

20 A. Yes. They are not.

21 Q. Why not?

22 A. Because they have not passed the minimum
23 threshold the State has set to be defined as a qualified
24 teacher.

25 Q. We have talked about inputs, educational

1 terms of their effect on providing an adequate and
2 equitable opportunity to learn?

3 MR. ROSENBAUM: Vague.

4 THE WITNESS: I know there are some
5 researchers who attempt to rank them in terms of -- I am
6 not sure of exactly rank those things -- but who do rank
7 features of an educational environment in terms of the
8 contribution each makes to scores on standardized tests,
9 but it is not an analysis I would do.

10 It is not a premise about the educational
11 system that I accept; that you can parse out different
12 pieces as if they act independent of one another.

13 BY MR. HERRON:

14 Q. Well, Linda Darling-Hammond has done such a
15 ranking; correct?

16 A. Linda Darling-Hammond has not done such a
17 ranking.

18 Linda has asserted that the evidence that she
19 has reviewed suggests that having a highly qualified
20 teacher may have -- may be the most important thing one
21 can provide a child.

22 I have never seen her anywhere in print or
23 verbally say that one would want to have a highly
24 qualified teacher in the absence of instructional
25 materials or textbooks or decent facilities.

1 Q. Do you agree with her that teachers are the
 2 most important input to assuring that California
 3 schoolchildren receive an adequate and equitable
 4 opportunity to learn?
 5 A. I think teachers are extremely important --
 6 highly qualified teachers are extremely important.
 7 I might, if pressed, say they matter most, but
 8 I would never want to be pushed into a position of
 9 saying that they can operate effectively in the absence
 10 of all the other elements that we talk about in these
 11 reports.
 12 Q. "These reports" being all the expert reports?
 13 A. The expert reports, yes.
 14 Q. In selecting from competing educational policy
 15 choices, is it important in your opinion to direct
 16 educational funding to those policies that will have the
 17 most positive effect on student learning?
 18 A. I think there are some basics that are so
 19 fundamental that they need to be provided to all
 20 children regardless of -- regardless.
 21 Q. Regardless of cost?
 22 A. Absolutely. There are some things that are so
 23 fundamental, some things that most California children
 24 have, that most parents insist for their children, that
 25 the State has an obligation to provide for all children.

1 Q. And what are those items?
 2 A. I think the three that we have been talking
 3 about in this case are certainly -- fall into that
 4 category, and I would add the other things that I list
 5 for you, including this standard of what reasonable
 6 people would agree is necessary to provide a child an
 7 opportunity to compete for a place at UC Berkeley.
 8 Q. So qualified teachers ought to be provided to
 9 each California student without regard to cost?
 10 Is that your opinion?
 11 A. Yes; I think it is.
 12 Q. And books, quality books, books that are
 13 aligned with the state content standards ought to be
 14 provided to California children without regard to cost?
 15 Is that your opinion?
 16 A. Certainly, all children should be provided the
 17 books and materials that give them at least as much
 18 access to knowledge as that that is enjoyed by most
 19 children in the state.
 20 Q. And why is that?
 21 A. Because I believe that schools not only need
 22 to be adequate, they need to be equitable.
 23 Q. I thought this case was about basic education.
 24 Isn't that your understanding?
 25 MR. ROSENBAUM: That is argumentative.

1 THE WITNESS: First of all, I am not a lawyer
 2 so I would not presume to speak to the legal principles
 3 on which this case is based.
 4 I am engaged in this case because I believe
 5 that it is about both providing the basic tools to all
 6 children and providing them on an equitable basis.
 7 BY MR. HERRON:
 8 Q. Meaning that if one set of children have
 9 excellent textbooks, the very best that money can buy,
 10 that all children ought to have those textbooks; is that
 11 right?
 12 MR. ROSENBAUM: Objection. Vague. I don't
 13 know what you mean by, "one set of children."
 14 THE WITNESS: I think I would say that the
 15 standards that the State has set for the quality of
 16 textbooks, meaning the kind of textbooks that are on the
 17 State Adoption List -- that all children should have
 18 those textbooks in sufficient supply, that they are
 19 provided access at school and for doing homework to the
 20 content standards that the State expects them to meet.
 21 BY MR. HERRON:
 22 Q. Do you believe that the State content
 23 standards are appropriate measures of whether or not
 24 California schoolchildren are provided an adequate and
 25 equitable opportunity to learn?

1 A. I believe they are the standards that the
 2 State has set for that purpose.
 3 Q. And you agree that they are adequate and
 4 equitable?
 5 A. I believe I agree they are the appropriate
 6 standards to use in this case because they are what the
 7 State has set as to what it wants and expects from its
 8 schoolchildren and its education system.
 9 Q. What if the State had set less aggressive or
 10 less demanding content standards than currently are in
 11 place?
 12 MR. ROSENBAUM: That is an incomplete
 13 hypothetical.
 14 BY MR. HERRON:
 15 Q. I haven't asked the question yet.
 16 A. But they haven't.
 17 Q. Neither you nor I have seen a hypothetical
 18 that wasn't incomplete. Let me start again.
 19 Let's assume that the State content standards
 20 were not as demanding as they currently are.
 21 Is there some point at which those standards
 22 do not provide the basic level of learning that ought to
 23 be required of all students in California in your
 24 opinion?
 25 A. Yes. Actually, I think that we had a

1 circumstance like this, you know, before we adopted a
2 standards-based system, where we had minimum
3 competencies and minimum competency tests, and that the
4 standards were too low, and it would not be appropriate
5 to say we had an equitable system if all children were
6 simply provided what was necessary to pass those minimum
7 competencies.

8 In fact, at the time we had that and today, we
9 have big divergences in what some students get and what
10 other students get and that, in itself, is a fundamental
11 problem.

12 Q. Is it your opinion that the textbooks adopted
13 by the State, those textbooks on its adoption list, have
14 been appropriately adopted?

15 A. I know they have emerged from a careful
16 professional process that I hope was not too influenced
17 by the publishing companies, and they passed muster with
18 the State Board of Education. I think that is an
19 appropriate process for approving textbooks.

20 I might not -- I think that is -- they have
21 emerged from a fairly rigorous process.

22 Q. And you have no quarrel with the textbooks
23 that are on the adoption list? In other words, you are
24 not suggesting that there are some that absolutely
25 should not be on the adoption list?

1 Q. We talked earlier about the bond issued in
2 November of 2002 that you estimated at somewhere between
3 \$10 and \$13 billion. My own belief is it is
4 13.5 billion, but --

5 A. Give or take a billion.

6 MR. HAJELA: 13.05.

7 BY MR. HERRON:

8 Q. Are you aware whether that bond money alone is
9 sufficient to assure that -- if spent wisely -- to
10 assure that no child will be on a Concept 6 calendar?

11 MR. ROSENBAUM: Speculation. Foundation.
12 Vague and ambiguous.

13 THE WITNESS: I actually think not.

14 In fact, the -- there is another bond slated
15 for this November's election because I think the general
16 consensus is that the Prop 47 was not adequate to meet
17 the State's facilities needs.

18 Second, I think there is no provision in 47,
19 at least to my understanding, that will specifically
20 target students in Concept 6 schools and ensure that
21 they be provided settings where they can be on a --
22 either a traditional or single-track, year-round
23 calendar.

24 BY MR. HERRON:

25 Q. Are you aware from the November 2002 bond

1 MR. ROSENBAUM: Objection. Speculation.

2 THE WITNESS: I have certainly not examined
3 every textbook that is on the adoption list. I am
4 certain that some might not suit my tastes, but I have
5 no overall quarrel with the process.

6 BY MR. HERRON:

7 Q. Is it your opinion that safe, uncrowded,
8 educationally appropriate facilities ought to be
9 provided to all California schoolchildren without regard
10 to cost?

11 A. Yes.

12 Q. Why is that your opinion?

13 A. Two reasons. We now provide it to most
14 children in the State, and my belief is that all
15 children deserve no less.

16 Q. Okay. The second reason?

17 A. That is the second reason.

18 Q. That all -- okay.

19 A. That most children have it and that all
20 children deserve it.

21 Q. Have you seen -- let me start again.

22 Have you reviewed any data suggesting what it
23 would cost to assure that no California schoolchildren
24 are on a Concept 6 calendar?

25 A. No. I don't think I have.

1 money whether there is any set aside for critically
2 overcrowded schools?

3 A. There is some provision of money for
4 critically overcrowded schools. It is still not clear
5 to me that Concept 6 schools will be the primary
6 beneficiaries of that money.

7 Q. Why do you say that?

8 A. To my understanding there is -- first of all,
9 it is not named specifically as a category of
10 overcrowding that is targeted by the state bond money.

11 Second is that there are currently at least in
12 the -- the last time I looked -- some disincentives or
13 some mechanisms in place that put Concept 6 schools in a
14 lower priority than other schools.

15 The funding that is provided for schools, the
16 additional funding that is provided for schools to
17 either start up or maintain multi-track, year-round
18 calendars then has the effect of removing or lessening
19 the number of students who are impacted by overcrowding
20 and then works against those schools when they seek new
21 construction money because of overcrowding because they
22 are seen as having accommodated their overcrowding in
23 other ways.

24 Q. Okay. I believe the next bond that is --

25 A. Is 2004.

1 Q. It is April 2004?
 2 A. Yes.
 3 Q. Do you know what the amount of that bond is
 4 anticipated to be?
 5 A. It is, again, another relatively comparable
 6 amount. I seem to be recall 12 billion, but I am not
 7 precise that is exact.
 8 MR. HERRON: Do you wish to testify to that?
 9 MR. HAJELA: I think it is March.
 10 THE WITNESS: 12 billion?
 11 MR. HAJELA: Something like that.
 12 MR. HERRON: Okay.
 13 Q. Have you seen any analysis, data or studies
 14 that suggest that the combination of the November 2002
 15 bond and the March 2004 bond if, indeed, passed, that
 16 that money would be sufficient to eliminate Concept 6
 17 calendars in the state of California?
 18 A. The projections I have seen even recently
 19 suggest that in L.A. Unified, for example, that they
 20 will move -- they will be forced to move to even greater
 21 numbers of Concept 6 schools than are currently the
 22 case.
 23 I don't know that I have seen an analysis that
 24 suggests that -- I know I haven't seen an analysis that
 25 suggests that the bond money would completely remedy

1 that problem, alongside of all the other priorities for
 2 new construction and renovation and maintenance that are
 3 also going to be placing demands on that bond money.
 4 Q. Are you aware of any efforts by the Los
 5 Angeles Unified School District within the last 12
 6 months to reduce the number of children attending that
 7 district who are attending Concept 6 schools?
 8 MR. ROSENBAUM: I'm sorry. Do you --
 9 BY MR. HERRON:
 10 Q. That was a bad question. Let me try it again.
 11 Here is what I want to know: Are you aware of
 12 any efforts by LAUSD in the last year to reduce the
 13 number of its students who are attending schools on a
 14 Concept 6 calendar?
 15 A. In January -- I believe it was in January --
 16 the school board adopted a plan that would shift the
 17 sixth graders out of middle schools and into elementary
 18 schools and would change the three-track Concept 6
 19 schools at the elementary level to four-track,
 20 year-round schools that would still be multitrack year
 21 round, but would provide 180 days of instruction for
 22 elementary schoolchildren.
 23 Another element of that plan, I believe, was
 24 to work toward eliminating Concept 6 in a handful of --
 25 I am not sure of the number -- five, seven of the

1 district's middle schools. That plan -- I am not sure
 2 where that plan is at the moment.
 3 Q. Are you aware of the number of new schools
 4 that LAUSD has obtained funding for?
 5 A. No.
 6 Q. Are you aware of what districts in the state
 7 of California have Concept 6 calendars?
 8 A. I believe right now there are four districts
 9 that have Concept 6 calendars: Los Angeles, Lodi,
 10 Vista, Palmdale.
 11 Q. Are you aware of any efforts by Palmdale,
 12 Vista or Lodi in the last 12 months to reduce or
 13 eliminate the Concept 6 calendar in their districts?
 14 A. I have -- I know of lots of lamenting about
 15 Concept 6 in those districts, and it has been reported
 16 in newspaper accounts, but I am not familiar with
 17 specific plans. There may be some, but I am not
 18 familiar with them at this point.
 19 Q. Focusing again on the remedies proposed from
 20 Pages 58 through 71 of your report, have you conducted
 21 any analysis to determine which of your proposed
 22 remedies ought to be funded first?
 23 A. The -- my concept in these remedies is that
 24 the problems identified in these reports with the severe
 25 inadequacies in the provision of qualified teachers,

1 adequate textbooks and decent school facilities are so
 2 severe that we need to begin with the presumption that
 3 all of these current problems will be remedied and a
 4 system put in place to make sure that all children have
 5 access to them. And I have not thought incrementally
 6 about how one might proceed, although I clearly in
 7 Section A of this final section of the report talk about
 8 a more and more immediate set of specific remedies and a
 9 more comprehensive -- beginning on Page 66 -- long-term
 10 set of systemic changes.
 11 Q. When you say, "Section A," you are talking
 12 about that section which begins on Page 58 of your
 13 report and is titled, "Remedying the Specific
 14 Complaints"?
 15 A. Yes.
 16 Q. And it continues through the middle of Page
 17 66; correct?
 18 A. Yes.
 19 Q. Okay. Are you aware whether any plaintiffs'
 20 experts have conducted an analysis to determine which of
 21 their own proposed remedies ought to be funded first?
 22 A. I am not recalling.
 23 Q. Has anyone been engaged, whether it is an
 24 expert serving as a plaintiffs' expert in the case, a
 25 scholar as part of your group at IDEA -- been engaged to

1 determine or have they analyzed which of your proposed
2 remedies, those remedies set forth on Pages 58 through
3 71 of your report, ought to be funded first?

4 A. Well, the -- I think a general presumption in
5 here both by me and others I have discussed this with is
6 that the remedies, the systemic remedies, that begin on
7 Page 67 do have some sequence to them; that you would
8 certainly want to establish standards for resources and
9 conditions that are minimally required before designing
10 a new funding system that would accommodate the costs of
11 those things.

12 You would want to devise and establish clear
13 lines of state, regional and district authority for
14 various aspects of providing the essential elements of
15 an education to all children before you could design an
16 accountability system that held the proper people
17 responsible. So that there are implied in these
18 recommendations a certain order of things.

19 Q. The systemic changes that you are recommending
20 here beginning on Page 66 and continuing through Page 71
21 of your report are not minor changes, are they?

22 MR. ROSENBAUM: Vague.

23 THE WITNESS: They are systemic changes. I
24 don't know -- I suppose it is a matter of perspective
25 about whether you would say they are "minor" or not.

1 all children have what they need to learn and that they
2 have it on equal terms.

3 Q. Why are you not interested in cost
4 effectiveness?

5 A. Well, I think, as I suggested before, that I
6 have a great deal of difficulty with trying to parse out
7 various pieces of the system and determining which of
8 the constellation of things will have a greater benefit
9 given its cost.

10 Q. You mean from among the remedies that are
11 proposed in your report?

12 A. On any basis.

13 I think that it is important to establish that
14 things matter, but there are some things that are so
15 fundamental that one wouldn't want to say, "Well, we
16 can't provide that because we can't afford it," like
17 breakfast.

18 Q. Is there anything other than highly qualified
19 teachers -- when I say, "anything," any educational
20 input -- other than highly qualified teachers, adequate
21 instructional materials, as we talked about before, and
22 safe, uncrowded and educationally appropriate facilities
23 that all schoolchildren in California ought to have
24 without regard to cost, in your opinion?

25 A. I think all of the things that I said before,

1 BY MR. HERRON:

2 Q. Is it fair to say that these would cause a
3 fundamental change in the way California education is
4 delivered?

5 A. I think it would cause a fundamental change.
6 That would be my hope.

7 Q. Have you conducted any analysis to determine
8 whether your proposed remedies will have a more
9 beneficial effect on student learning than the policies,
10 programs and practices currently in place?

11 A. They are certainly grounded in all of the
12 literature that has been cited by me and by the other
13 experts that say the absence of a system that ensures
14 the necessary resources and conditions will be more
15 detrimental to students than a system that has in place
16 mechanisms that ensure that students have what they need
17 to learn.

18 Q. Have you conducted any analysis to determine
19 whether or not your proposed remedies would be more cost
20 effective -- would have a more cost-effective effect on
21 student learning than the policies, programs and
22 practices currently in place in California?

23 A. I am not really interested in the cost
24 effectiveness of these various proposals. I am
25 interested in having a system in place that ensures that

1 including my standard, my favorite standard of saying a
2 reasonable opportunity to compete for a place at
3 Berkeley. That is part and parcel of the public
4 education system in the state, and all children should
5 have access to it.

6 Q. When you say all the things you said before,
7 what were you referencing?

8 A. When I gave you the preliminary list that
9 augmented the three elements that are in the immediate
10 matters in this case and then finished with that more
11 global standard, which includes but probably goes beyond
12 those as well.

13 Q. Are you aware of whether any plaintiffs'
14 expert has done an analysis of your proposed remedies to
15 determine whether they will have a more beneficial
16 effect on student learning than the policies, programs
17 and practices currently in place?

18 A. I think that each of the reports provides an
19 analysis that in the end says, if these recommendations
20 are adopted, they will have a more beneficial effect on
21 the educational system in California.

22 Q. Are you aware of anyone, whether it is the
23 other plaintiffs' experts or scholars, as an example,
24 that has done an analysis of your proposed remedies to
25 determine whether they will have a more cost-effective

1 effect on student learning than the policies, programs
 2 and practices currently in place?
 3 MR. ROSENBAUM: Vague.
 4 THE WITNESS: It would not surprise me if the
 5 experts that you have retained as part of the State's
 6 defense would do such an analysis.
 7 I personally believe that the basic tools of
 8 education should be provided to all students because
 9 they are an essential part of a educational system,
 10 whether or not somebody does a cost-effectiveness study
 11 that says that they have a measurable effect on
 12 students' achievement as measured by standardized tests.
 13 Q. Last question -- for today.
 14 What do you mean by "basic tools of
 15 education"?
 16 A. Certainly, the elements that are defined in
 17 this set of reports that we have discussed at length
 18 here regarding teachers and texts and materials and
 19 facilities, and those are certainly basic tools.
 20 I think they don't constitute an adequate
 21 education, but I would certainly think of them as "basic
 22 tools."
 23 MR. HERRON: Why don't we end for today?
 24 Same stipulation as before?
 25 MR. ROSENBAUM: Sure.

1 to the deposition within that
 2 30-day period. And if there are no
 3 such changes or signature within
 4 that time, that any unsigned and
 5 uncorrected copy may be used for
 6 all purposes as if signed and
 7 corrected.
 8 "MR. ROSENBAUM: If it's not
 9 a burden for the reporter, because
 10 I'm out of town a lot now because
 11 of depositions and my teaching, if
 12 copies could be served -- the
 13 stipulation that Mr. Herron read
 14 may -- if it could be served on
 15 both me and Ms. Lhamon, Catherine
 16 Lhamon, I think it would facilitate
 17 the process. Is that okay?
 18 "THE REPORTER: Yes.
 19 "MR. ROSENBAUM: With that
 20 addendum, I certainly stipulate to
 21 that.
 22 "MR. HERRON: Very good.")
 23
 24 (Whereupon at 4:31 p.m., the
 25 deposition of JEANNIE OAKES was adjourned.)

1 (The following stipulation
 2 from a prior deposition was
 3 incorporated as follows:
 4 "MR. HERRON: May we
 5 stipulate the copies of the
 6 documents attached to the
 7 deposition may be used as
 8 originals, and may we further
 9 stipulate that the original of this
 10 deposition be signed under penalty
 11 of perjury.
 12 "The original will be
 13 delivered to the offices of the
 14 ACLU and directed to Mark
 15 Rosenbaum; that the reporter is
 16 relieved of liability for the
 17 original of the deposition. The
 18 witness will have 30 days from the
 19 date of the court's transmittal
 20 letters to review, sign and correct
 21 the deposition.
 22 "And that Mr. Rosenbaum or
 23 anyone he shall designate from
 24 plaintiffs' side shall notify all
 25 parties in writing of any changes

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